

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 366

Education/Higher Education Committee Substitute Adopted 4/14/97

Short Title: Revise Sch. Bd./Cty. Comm. Mediation.

(Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MEDIATION PROCEDURE FOR RESOLVING SCHOOL BUDGET DISPUTES BETWEEN LOCAL BOARDS OF EDUCATION AND BOARDS OF COUNTY COMMISSIONERS, AND TO CLARIFY THE SCOPE OF THE SCHOOL FACILITIES GUIDELINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-431 reads as rewritten:

"§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations.

Prior to the joint meeting, the Senior Resident Superior Court Judge shall appoint a mediator unless the boards agree to jointly select a mediator. The mediator shall preside at the joint meeting and shall act as a neutral facilitator of disclosures of factual

1 information, statements of positions and contentions, and efforts to negotiate an
2 agreement settling the boards' differences.

3 At the joint meeting, the entire school budget shall be considered carefully and
4 judiciously, and the two boards shall make a good-faith attempt to resolve the differences
5 that have arisen between them.

6 (b) If no agreement is reached at the joint meeting of the two boards, either board
7 may notify the clerk of superior court who shall request the appointment of a mediator by
8 superior court under G.S. 7A-38.1. The mediator shall be appointed within five days of
9 the notification to the clerk. The mediator shall present recommendations for resolution
10 of the matters in dispute within 15 days of the notification to the clerk. the mediator shall,
11 at the request of either board, commence a mediation immediately or within a reasonable
12 period of time. The mediation shall be held in accordance with rules and standards of
13 conduct adopted under Chapter 7A of the General Statutes governing mediated settlement
14 conferences but modified as appropriate and suitable to the resolution of the particular
15 issues in disagreement.

16 Unless otherwise agreed upon by both boards, the following individuals shall
17 constitute the two working groups empowered to represent their respective boards during
18 the mediation:

19 (1) The chair of each board or the chair's designee;

20 (2) The superintendent of the local school administrative unit and the
21 county manager or either's designee;

22 (3) The finance officer of each board; and

23 (4) The attorney for each board.

24 Members of both boards, their chairs, and representatives shall cooperate with and
25 respond to all reasonable requests of the mediator to participate in the mediation. Unless
26 otherwise subject to Article 33C of Chapter 143 of the General Statutes, the mediation
27 proceedings involving the two working groups shall be conducted in private. Information
28 disclosed and conduct occurring during the mediation proceedings shall remain
29 privileged and confidential. Reports by members of either working group to their
30 respective boards shall be made in compliance with Article 33C of Chapter 143 of the
31 General Statutes.

32 Unless both boards agree otherwise, or unless the boards have already resolved their
33 dispute, the mediation shall end no later than July 1. The mediator shall have the
34 authority to determine that an impasse exists and to discontinue the mediation. The
35 mediation may continue beyond July 1 provided both boards agree. If both boards agree
36 to continue the mediation beyond July 1, the board of county commissioners shall
37 appropriate to the local school administrative unit for deposit in the local current expense
38 fund a sum of money sufficient to equal the local contribution to this fund for the
39 previous year.

40 If the working groups reach a proposed agreement, the terms and conditions must be
41 approved by each board. If no agreement is reached, the mediator shall announce that
42 fact to the chairs of both boards, the Senior Resident Superior Court Judge, and the
43 public. The mediator shall not disclose any other information about the mediation. The

1 mediator shall not make any recommendations or public statement of findings or
2 conclusions.

3 The local board of education and the board of county commissioners shall share
4 equally the mediator's compensation and expenses. The mediator's compensation shall be
5 determined according to rules adopted under Chapter 7A of the General Statutes.

6 (c) ~~Within five days of receiving the recommendations of the mediator, either board~~
7 ~~after an announcement of no agreement by the mediator, the local board of education~~
8 may file an action in the superior court division of the General Court of Justice. The court
9 shall find the facts as to the amount of money necessary to maintain a system of free
10 public schools, and the amount of money needed from the county to make up this total.
11 Either board has the right to have the issues of fact tried by a jury. When a jury trial is
12 demanded, the cause shall be set for the first succeeding term of the superior court in the
13 county, and shall take precedence over all other business of the court. However, if the
14 judge presiding certifies to the Chief Justice of the Supreme Court, either before or
15 during the term, that because of the accumulation of other business, the public interest
16 will be best served by not trying the cause at the term next succeeding the filing of the
17 action, the Chief Justice shall immediately call a special term of the superior court for the
18 county, to convene as soon as possible, and assign a judge of the superior court or an
19 emergency judge to hold the court, and the cause shall be tried at this special term. The
20 issue submitted to the jury shall be what amount of money is needed from sources under
21 the control of the board of county commissioners to maintain a system of free public
22 schools.

23 All findings of fact in the superior court, whether found by the judge or a jury, shall
24 be conclusive. When the facts have been found, the court shall give judgment ordering
25 the board of county commissioners to appropriate a sum certain to the local school
26 administrative unit, and to levy such taxes on property as may be necessary to make up
27 this sum when added to other revenues available for the purpose.

28 (d) If an appeal is taken to the appellate division of the General Court of Justice,
29 and if such an appeal would result in a delay beyond a reasonable time for levying taxes
30 for the year, the judge shall order the board of county commissioners to appropriate to the
31 local school administrative unit for deposit in the local current expense fund a sum of
32 money sufficient when added to all other moneys available to that fund to equal the
33 amount of this fund for the previous year. All papers and records relating to the case shall
34 be considered a part of the record on appeal.

35 (e) If, in an action filed under this section, the final judgment of the General Court
36 of Justice is rendered after the due date prescribed by law for property taxes, the board of
37 county commissioners is authorized to levy such supplementary taxes as may be required
38 by the judgment, notwithstanding any other provisions of law with respect to the time for
39 doing acts necessary to a property tax levy. Upon making a supplementary levy under
40 this subsection, the board of county commissioners shall designate the person who is to
41 compute and prepare the supplementary tax receipts and records for all such taxes. Upon
42 delivering the supplementary tax receipts to the tax collector, the board of county
43 commissioners shall proceed as provided in G.S. 105-321.

1 The due date of supplementary taxes levied under this subsection is the date of the
2 levy, and the taxes may be paid at par or face amount at any time before the one hundred
3 and twentieth day after the due date. On or after the one hundred and twentieth day and
4 before the one hundred and fiftieth day from the due date there shall be added to the taxes
5 interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from
6 the due date, there shall be added to the taxes, in addition to the two percent (2%)
7 provided above, interest at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) per 30
8 days or fraction thereof until the taxes plus interest have been paid. No discounts for
9 prepayment of supplementary taxes levied under this subsection shall be allowed."

10 Section 2. G.S. 143-318.11(a)(3) reads as rewritten:

11 "(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be
12 held only when required to permit a public body to act in the public interest as permitted
13 in this section. A public body may hold a closed session and exclude the public only
14 when a closed session is required:

- 15 (1) To prevent the disclosure of information that is privileged or
16 confidential pursuant to the law of this State or of the United States, or
17 not considered a public record within the meaning of Chapter 132 of the
18 General Statutes.
- 19 (2) To prevent the premature disclosure of an honorary degree, scholarship,
20 prize, or similar award.
- 21 (3) To consult with an attorney employed or retained by the public body in
22 order to preserve the attorney-client privilege between the attorney and
23 the public body, which privilege is hereby acknowledged. General
24 policy matters may not be discussed in a closed session and nothing
25 herein shall be construed to permit a public body to close a meeting that
26 otherwise would be open merely because an attorney employed or
27 retained by the public body is a participant. The public body may
28 consider and give instructions to an attorney concerning the handling or
29 settlement of a claim, judicial action, mediation, arbitration, or
30 administrative procedure. If the public body has approved or considered
31 a settlement, other than a malpractice settlement by or on behalf of a
32 hospital, in closed session, the terms of that settlement shall be reported
33 to the public body and entered into its minutes as soon as possible
34 within a reasonable time after the settlement is concluded.
- 35 (4) To discuss matters relating to the location or expansion of industries or
36 other businesses in the area served by the public body.
- 37 (5) To establish, or to instruct the public body's staff or negotiating agents
38 concerning the position to be taken by or on behalf of the public body in
39 negotiating (i) the price and other material terms of a contract or
40 proposed contract for the acquisition of real property by purchase,
41 option, exchange, or lease; or (ii) the amount of compensation and other
42 material terms of an employment contract or proposed employment
43 contract.

1 (6) To consider the qualifications, competence, performance, character,
2 fitness, conditions of appointment, or conditions of initial employment
3 of an individual public officer or employee or prospective public officer
4 or employee; or to hear or investigate a complaint, charge, or grievance
5 by or against an individual public officer or employee. General
6 personnel policy issues may not be considered in a closed session. A
7 public body may not consider the qualifications, competence,
8 performance, character, fitness, appointment, or removal of a member of
9 the public body or another body and may not consider or fill a vacancy
10 among its own membership except in an open meeting. Final action
11 making an appointment or discharge or removal by a public body
12 having final authority for the appointment or discharge or removal shall
13 be taken in an open meeting.

14 (7) To plan, conduct, or hear reports concerning investigations of alleged
15 criminal misconduct."

16 Section 3. G.S. 115C-521(c) reads as rewritten:

17 "(c) The building of all new school buildings and the repairing of all old school
18 buildings shall be under the control and direction of, and by contract with, the board of
19 education for which the building and repairing is done. If a board of education is
20 considering building a new school building to replace an existing school building, the
21 board shall not invest any construction money in the new building unless it submits to the
22 State Superintendent and the State Superintendent submits to the North Carolina
23 Historical Commission an analysis that compares the costs and feasibility of building the
24 new building and of renovating the existing building and that clearly indicates the
25 desirability of building the new building. No board of education shall invest any money
26 in any new building until it has (i) developed plans based upon a consideration of the
27 State Board's facilities guidelines, (ii) submitted these plans to the State Board for its
28 review and comments, and (iii) reviewed the plans based upon a consideration of the
29 comments it receives from the State Board. No local board of education shall contract for
30 more money than is made available for the erection of a new building. However, this
31 subsection shall not be construed so as to prevent boards of education from investing any
32 money in buildings that are being constructed pursuant to a continuing contract of
33 construction as provided for in G.S. 115C-441(c). All contracts for buildings shall be in
34 writing and all buildings shall be inspected, received, and approved by the local
35 superintendent and the architect before full payment is made therefor. Nothing in this
36 subsection shall prohibit boards of education from repairing and altering buildings with
37 the help of janitors and other regular employees of the board.

38 In the design and construction of new school buildings and in the renovation of
39 existing school buildings that are required to be designed by an architect or engineer
40 under G.S. 133-1.1, the local board of education shall participate in the planning and
41 review process of the Energy Guidelines for School Design and Construction that are
42 developed and maintained by the Department of Public Instruction and shall adopt local
43 energy-use goals for building design and operation that take into account local conditions

1 in an effort to reduce the impact of operation costs on local and State budgets. In the
2 design and construction of new school facilities and in the repair and renovation of
3 existing school facilities, the local board of education shall consider the placement and
4 design of windows to use the climate of North Carolina for both light and ventilation in
5 case of power shortages. A local board shall also consider the installation of solar energy
6 systems in the school facilities whenever practicable.

7 In the case of any school buildings erected, repaired, or equipped with any money
8 loaned or granted by the State to any local school administrative unit, ~~the State Board of~~
9 ~~Education, under any rules as it may deem advisable, may retain any amount not to exceed~~
10 ~~fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in~~
11 ~~whole or in part, from the loan or grant funds, shall have been approved by a designated agent of~~
12 ~~the State Board of Education. Upon approval by the State Board of Education, the State~~
13 ~~Treasurer may pay the balance of the loan or grant to the treasurer of the local school~~
14 ~~administrative unit for which the loan or grant was made.~~ no board of education shall invest
15 any money until it has (i) developed plans based upon a consideration of the State Board's
16 facilities guidelines, (ii) submitted these plans to the State Board for its review and
17 comments, and (iii) reviewed the plans based upon a consideration of the comments it
18 receives from the State Board."

19 Section 4. This act is effective when it becomes law.