

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 561
Committee Substitute Favorable 4/15/15
Proposed Conference Committee Substitute H561-PCCS10574-RQ-7

Short Title: School System Auth. Re: Legal Proceedings.

(Public)

Sponsors:

Referred to:

April 6, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE AUTHORITY OF SCHOOL SYSTEMS WITH REGARD TO
3 LEGAL PROCEEDINGS AND INVESTIGATIONS AND TO DIRECT THE PROGRAM
4 EVALUATION DIVISION TO STUDY THE PROCESS OF RESOLVING EDUCATION
5 FUNDING DISPUTES BETWEEN LOCAL BOARDS OF EDUCATION AND BOARDS
6 OF COUNTY COMMISSIONERS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 115C-321(a) reads as rewritten:

9 "(a) All information contained in a personnel file, except as otherwise provided in this
10 Chapter, is confidential and shall not be open for inspection and examination except to any of the
11 following persons:

- 12 (1) The employee, applicant for employment, former employee, or his properly
13 authorized agent, who may examine his own personnel file at all reasonable
14 times in its entirety except for letters of reference solicited prior to employment.
15 (2) The superintendent and other supervisory personnel.
16 (3) Members of the local board of education and the board's attorney.
17 (4) A party by authority of a subpoena or proper court order may inspect and
18 examine a particular confidential portion of an employee's personnel file.
19 (5) Any state or federal administrative agency that has a quasi-judicial function or
20 any court of law, when disclosure is necessary in the discretion of the
21 superintendent or superintendent's designee to adequately defend against a
22 claim filed by a current or former employee against the local board of education
23 or a school official or employee for any alleged act or omission arising during
24 the course and scope of his or her official duties or employment. Such
25 disclosure shall be limited to those confidential portions of the personnel file of
26 the employee who filed the claim and only to the extent necessary for the
27 defense of the board of education."

28 **SECTION 2.** G.S. 115C-45(a) reads as rewritten:

29 "(a) Power to Subpoena and to Punish for Contempt. – Local boards of education shall have
30 power to issue subpoenas for the attendance of witnesses. Subpoenas for the attendance of
31 witnesses may be issued in any and all matters which may lawfully come within the powers of the
32 board and which, in the discretion of the board, require ~~investigation; and it shall be the duty of~~
33 ~~the sheriff or any process serving officer to serve such subpoena upon payment of their lawful~~
34 ~~fees.~~investigation. Local boards of education may request the chief district court judge or the
35 judge's designee to grant approval for the local board of education to issue a subpoena for the



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1 production of all tangible things in matters where an employee is suspected of committing
2 job-related misconduct and which, in the discretion of the board, require investigation. Subpoenas
3 for the production of tangible things may include, but are not limited to, documents, papers,
4 letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic
5 communications, electronic data-processing records, artifacts, or other documentary material,
6 regardless of physical form or characteristics. In making the determination to approve the
7 subpoena, the judge shall consider the following: (i) whether the subpoena allows reasonable time
8 for compliance; (ii) if the subpoena requires disclosure of privileged or other protected matter and
9 if any exception or waiver applies to the privilege or protection; (iii) whether the individual would
10 be subject to undue burdens or expenses; and (iv) whether the subpoena is otherwise unreasonable
11 or oppressive.

12 It shall be the duty of the sheriff or any process serving officer to serve any such subpoenas
13 upon payment of their lawful fees.

14 Local boards of education shall have power to punish for contempt for any disorderly conduct
15 or disturbance tending to disrupt them in the transaction of official business."

16 **SECTION 3.** The Program Evaluation Division shall conduct a comprehensive study
17 of the procedure set forth in Article 31 of Chapter 115C of the General Statutes for resolving
18 education funding disputes between local boards of education and boards of county
19 commissioners. The study shall, at a minimum, include the following:

- 20 (1) A historical review of education capital and current expense funding requests
21 made by local boards of education and the amounts appropriated by county
22 commissioners to fund education needs.
- 23 (2) An examination of yearly encumbered and unencumbered fund balances held
24 by local boards of education and county commissions. This examination shall
25 include how fund balances have been used by local boards of education during
26 and after the Great Recession.
- 27 (3) An analysis of the use of fund balances by local boards of education and county
28 commissions to pay for required expenses prior to the receipt of periodic
29 revenue, including, but not limited to, cash flow.
- 30 (4) An evaluation of the current process, including how often mediation and
31 litigation have been used to resolve education funding disputes and the total
32 amount of taxpayer dollars spent to mediate and litigate such disputes.
- 33 (5) An analysis of how the current process impacts county budgeting procedures
34 and relationships between local boards of education and boards of county
35 commissioners.
- 36 (6) An examination of states where local boards of education are fiscally dependent
37 upon other local governments and how those states resolve funding disputes.
- 38 (7) An examination of alternative ways for local boards of education to receive
39 local funds.
- 40 (8) Recommendations for alternative ways to resolve education funding disputes or
41 modifications to the current process.

42 The Program Evaluation Division shall report its findings and recommendations to the
43 Joint Legislative Program Evaluation Oversight Committee no later than May 1, 2017. All State
44 departments and agencies, local governments, local boards of education, and their subdivisions
45 shall provide any necessary information, data, or documents within their possession, ascertainable
46 from their records, or otherwise available to them to the Program Evaluation Division to complete
47 this review and study.

48 **SECTION 4.** This act is effective when it becomes law. Sections 1 and 2 of this act
49 become effective October 1, 2016.