



HOUSE BILL 561: School System Auth. Re: Legal Proceedings.

2016-2017 General Assembly

Committee:		Date:	June 30, 2016
Introduced by:	Reps. Blackwell, Glazier	Prepared by:	Drupti Chauhan Staff Attorney
Analysis of:	Conference Committee Substitute (H561-CCSRQ-7)		

SUMMARY: *House Bill 561 would (1) allow a state or federal administrative agency with a quasi-judicial function or any court of law to inspect confidential employee personnel records of a current or former employee of a local board of education in certain instances, and (2) allow a local board of education to request approval to issue a subpoena for tangible items in matters where an employee is suspected of committing job-related misconduct. The bill would also direct the Program Evaluation Division to study the statutory procedures for resolving funding disputes between local boards of education and boards of county commissioners.*

CURRENT LAW: G.S. 115C-321 requires information in personnel files of employees of local boards of education be kept confidential, with certain exceptions. Information required to be kept confidential is limited to inspection and examination by the following:

- (1) The employee, applicant for employment, former employee, or the employee's agent;
- (2) The superintendent and supervisory personnel;
- (3) Members of the local board of education and the local board attorney; and
- (4) A party by authority of a subpoena or court order.

Confidential information may also be made available to law enforcement in specified circumstances, and certain information may be released in the discretion of the local board of education if the board has determined that such release is essential to maintaining the board's integrity or in maintaining the level or quality of services provided by the board, as set out in a memorandum.

G.S. 115C-45 provides local boards of education with the power to issue subpoenas for the attendance of witnesses in any and all matters that may lawfully come within the powers of the board and which, in the discretion of the board, require investigation.

BILL ANALYSIS: House Bill 561 would make the following changes:

Section 1 would permit a state or federal administrative agency with a quasi-judicial function or court of law to inspect confidential portions of an employee's personnel file if all of the following apply:

- 1) A current or former employee has filed a claim against the local board of education or a school official or employee for any alleged act or omission arising during the course and scope of the employee's official duties or employment.
- 2) In the discretion of the superintendent or superintendent's designee, disclosure is necessary to adequately defend against the employee's claim.

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- 3) Disclosure is limited to that employee's records, and only to the extent necessary for the defense of the local board of education.

Section 2 of HB 561 would provide that local boards of education can request the chief district court judge or the judge's designee to grant approval for the local board to issue subpoenas for the production of all tangible items in matters where an employee is suspected of committing job-related misconduct and which, in the discretion of the board, requires investigation. The types of tangible things to be subpoenaed could include but would not be limited to: documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic communications, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics. In making the determination to approve the subpoena, the judge must consider the following: (i) whether there is reasonable time for compliance; (ii) if disclosure of privileged or other protected matter is required and if any exceptions apply to the privilege or protection; (iii) whether the person would be subject to undue burdens or expenses; and (iv) whether the subpoena is otherwise unreasonable or oppressive.

Section 3 of HB561 would direct the Program Evaluation Division of the General Assembly to study the statutory procedures for resolving education funding disputes between local boards of education and boards of county commissioners. The study must include a historical review of funding requests made by local boards of education and the amounts appropriated by boards of county commissioners; fund balances; how often mediation and litigation have been used to resolve funding differences; how the current process impacts county budgeting procedures; dispute resolution processes in other states where local boards of education are fiscally dependent on other local governments; alternative ways for local boards of education to receive local funds; and recommendations for alternative ways to resolve education funding disputes or modifications to the current process.

EFFECTIVE DATE: HB 561 would become effective when it becomes law. Sections 1 and 2 of the bill would become effective October 1, 2016.

Kara McCraw, counsel to House Judiciary Committee IV, and Jan Paul, counsel to Senate Judiciary II, substantially contributed to this summary.