

H1031 Working Group Meeting #5  
February 1, 2019 1pm–3pm

**Participants**

Working Group Members

- Amy Cannon Cumberland County Manager (Working Group Co-Chair)
- Pam Dubois Senior Deputy Cabarrus County Manager
- Susan Holder Assistant Sampson County Manager
- Jeff Hollamon CFO, Onslow County Schools
- Kimberly Honeycutt Finance Officer, Harnett County
- Jennifer Mace Catawba County Budget and Management Director
- Glynn Rollins Halifax County Attorney
- Pam Satterfield Executive Director, NCASBO (Working Group Co-Chair)
- Nick Sojka In-house Counsel, Cumberland County Schools
- Leanne Winner NC School Boards Association
- Mark Winters CFO, Wake County Public Schools
- Kyle Wolf Forsyth County Budget Director

Facilitators

- David Brown Research Director, nclIMPACT, UNC School of Government
- Sharon Edmundson Director, Fiscal Management Section, State and Local Finance Division, Department of State Treasurer

**Agenda**

- I. Briefly review draft fund balance language and make any needed revisions
- II. Review capital outlay fund discussion from last meeting
- III. Engage in specific discussion of “a mechanism for calculating by formula or other means to resolve disputes related to capital outlay as alternatives to litigation”
- IV. Discuss draft capital outlay language
- V. Identify next steps and set date of next meeting

## School System Fund Balances – Discussion Items

Draft legislative language is on hold while the group continues to discuss capital funding, which also will be addressed in the draft language. (See next section.)

## School System Capital Funding – Discussion Items

- We need to revisit part of the group’s charge related to capital funding. We’re responsible for identifying “a mechanism for calculating by formula or other means to resolve disputes related to capital outlay as alternatives to litigation.”
- There is a reluctance for schools to give up the ability to sue – what would be their recourse afterward?
  - Commissioners must balance schools’ capital needs with the county’s ability to pay, including considerations about debt issuance.
  - We need to identify what the concerns there would be if there were no longer the possibility of litigation.
- Are we already satisfying our charge by identifying alternatives to litigation, but not foreclosing the possibility of it?
  - Even in mediation, you’re in a legal process. So, is there a way to set up a better process?
  - It doesn’t seem feasible to get to some kind of standard formula.
- As described in the [PED report](#), we would be preserving the pre-litigation phase but doing away with the litigation phase.
- Wake County example: A Core Facilities Committee exists with representatives from county budget, county finance, and the school system.
  - As a growing county with a robust building program, they meet multiple times over the course of the year.
  - In Wake, there have been more battles over operations than capital.
- Both sides are giving up something if we’re recommending that litigation be eliminated. We’ve done it for local current expense, we could also do it for capital.
  - We know what the school systems would be giving up – the ability to obtain needed funding in court. But what would the counties be giving up?

- The ability to be bound by a decision. Even if the threat of litigation goes away, a county can't just walk away from a funding request.
      - Still think the school system needs a backstop, and history has shown we're not going to have a lot of these cases.
- Besides Union County, what have the disputes been over?
  - In Scotland County, commissioners adopted a budget ordinance that had \$0 for capital.
  - In Cabarrus County, a single commissioner cut the school system's project cost estimates in half.
- As the working group has discussed before, communication between the parties is what is most needed.
- It doesn't benefit the community to end up in a courtroom.
  - The unfortunate reality is that if litigation phase remains an option, each side's strategy may continue to be, "Let's just hurry up and get through the mediation phase so we can get to litigation."
- Who would be the right person to arbitrate these disputes?
  - Someone with independence – a reliable source with expertise that everyone trusts.
  - What kind of professional background would that person need to have – architecture, engineering, financial advising?
    - There are architects and engineers in North Carolina who specialize in school construction.
- If we eliminate litigation and there's still a disagreement, what's the next step?
  - **How about some kind of communication and review committee?**
    - The committee would be a fact-finder. The best way to resolve these disputes is by talking them through.
- Would the decision of such a committee be binding?
  - If a decision made by the committee is one that requires more revenue, but county commissioners still don't provide that funding, someone would certainly sue.
  - Maybe the committee is positioned as a required step before you pursue litigation.
  - Seems like there would have to be a limit to how large the tax hike could be and finite criteria about what you could consider (ADA compliance, health and safety, compliance with state laws.)

- You'd have to lay out what the committee is supposed to make findings about so that you could subsequently have record review rather than a thorough re-trial.
  - Record review would not be satisfactory to either side. If we're embracing this new "enhanced mitigation" process, the schools would want to retain due process.
  - Two units of government would meet with their principals to share information, then a financial advisor who understands ability to pay (and is responsible to a licensing body) would weigh in.
  
- Should the interdisciplinary committee that meets four times per year include elected officials?
  - They have a fiduciary responsibility to public to deliver a sound basic education (School Board) and to fund it (County Commissioners).
  - Two critical participants would be a school facilities expert and an ability to pay expert.
  
- Maybe what we're doing is putting more structure into the mediation process.
  - This "enhanced mediation" would be better than the unstructured process with opinions flying around that some have witnessed during these funding disputes.
  - Depending upon the way the committee is structured, open meeting laws may apply.
  
- The final legislative language should require a joint meeting rather than encourage one.
  - "Shall meet at least once per year and are encouraged to meet periodically afterwards"

### **Next Steps**

- Finish drafting the proposed legislative language that the working group will recommend in its report to the Joint Legislative Education Oversight Committee.

### **Next Meeting**

- Monday, February 25<sup>th</sup> 12:30pm–2:30pm at the School of Government