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## **Resolution Urging the State to Take Action to Remit Civil Penalties Unconstitutionally Withheld from North Carolina's Public Schools**

**Whereas**, the North Carolina Supreme Court ruled that under Article IX, Section 7 of the NC Constitution that the public schools are entitled to the clear proceeds of specific civil penalties collected by various state agencies, including the Department of Revenue (DOR), Department of Transportation (DOT), the campuses of the University of North Carolina (UNC), the Department of Commerce (DOC), the Employment Security Commission (ESC), state owned psychiatric institutions in the Department of Health and Human Services (DHHS), and the Department of Environment and Natural Resources (DENR, now DEQ); and

**Whereas**, in 1997, the General Assembly created the Civil Penalty and Forfeiture Fund in G.S. 115C-457.1 and provided that the clear proceeds of all civil penalties collected by state agencies should be paid into the fund; and

**Whereas**, in 2008, the NC Superior Court upon remand from the NC Supreme Court ruled that state agencies were in clear violation of the State Constitution by improperly withholding \$747,883,074 that should have been paid to the Civil Penalty and Forfeiture Fund from January 1996 through June 2005; and

**Whereas**, the 2008 court order lists the amount to be paid by each state agency to public schools: DOR \$583,340,162; DOT \$104,071,323; UNC \$42,368,982; ESC \$18,017,467; DHHS \$53,955; DOC \$10,404; DENR/DEQ \$20,781; and

**Whereas**, the legislature declared that such funds should be used exclusively for school technology and appropriated to the individual public-school units on a per pupil basis; and

**Whereas**, public school units are in dire need of additional technology funding; and

**Whereas**, according to the Department of Public Instruction (DPI), only 38% of North Carolina's 115 local school districts in 2018-19 reported having achieved the State's 4-year replacement goal for student devices (Chromebook, iPad, laptop, etc.); and

**Whereas**, more than 30% of school districts in 2018-19 reported having no resources budgeted for replacement devices; and

**Whereas**, investing in current technology is necessary to achieve a 21<sup>st</sup> century education that utilizes innovative, collaborative, and learner centered experiences; and

**Whereas**, since 2008, the public schools have received only \$18.1 million, approximately 2.5% of the total amount owed; and



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**Whereas**, the defendants have not fulfilled their constitutional obligation to make up for the remaining \$729,699,823 that was diverted from public schools; and

**Whereas**, on March 6, 2019, a consent order was entered to extend the enforceability of the existing unpaid 2008 judgement to prevent it from expiring; and

**Whereas**, the plaintiffs have tried to work with state leaders for almost fifteen years to find an amicable resolution to this matter; and

**Whereas**, the plaintiffs continue to seek a win/win outcome and remain willing and ready to work on a mutually beneficial resolution.

**Therefore**, be it resolved that the Lincoln County Schools Board of Education respectfully requests the General Assembly to approve during its January 2020 session a multiyear plan to pay the remaining \$729.7 million judgment for civil penalties that should have gone to public school units for school technology but were diverted to other purposes in violation of the North Carolina Constitution.

**Adopted by the Lincoln County Schools Board of Education this 10<sup>th</sup> day of December, 2019.**

Cathy G. Davis, Chairperson

Dr. Lory D. Morrow,  
Superintendent / Secretary

Heather H. Rhyne, Vice-chairperson

Joan S. Avery

D. Kirk Herbertson

Tony A. Jenkins

Mark L. Mullen

D. Todd Wulfhorst