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Date: 5/23/2016 2:25:30 PM
Subject: S.1297 - Chesterfield School District per diem

S.1297 (Sheheen) – Sets parameters for how the Chesterfield County School District Board of Trustees sets and receives per diem.

- This is a special bill in violation of Article III, Section 34 of the Constitution, which prohibits local or special bills from being enacted where a general law is applicable – in this case, the general law is Section 59-1-350.
- This bill has passed the Senate and received a favorable report in the House (5/19/16).
- I suggest we talk to Lucas or Patrick Dennis regarding an amendment to the bill so that we do not have to veto the bill – Delegation members are Henegan, Lucas, and Yow.

In 1936, the Supreme Court provided that the clear intention of the framers of the Constitution of 1895 was by Section 34 of Article III to prohibit the enactment of special laws in all cases where a general law can be made applicable. An AG Opinion has stated that a special act which repeals a special act may not be unconstitutional, especially where it enhances the Home Rule concept. In this case, the General Assembly has already passed a law declaring the school boards may set their own per diem, which has been law since at least the 1937 Code: see Section 59-1-350. In 2011, the Governor signed a local bill (Act 82 of 2011, S.721, Massey), which stated that the school board of Edgefield shall receive compensation agreed upon by the board, which in effect repealed a previous local act that set per diem and which falls in line with the General Assembly's statutory intent pursuant to Section 59-1-350 to allow the board to set per diem.

In line with our precedent and our constitutional analysis, I recommend that we would veto S.1297 as written because it is a special law where a general law has already been made applicable, but if the bill were to be amended to repeal the previous special act or be amended to restate the board's authority (both of which were achieved by Act 82 of 2011), then I would recommend signing the bill as amended.

SECTION 59-1-350. Compensation of members of boards of trustees and boards of education.

Members of the county board of education or board of trustees may serve without pay. Each member of the board may receive a per diem for attendance at board meetings and may be paid mileage to and from such meetings. No member may receive per diem and mileage unless in actual attendance upon a meeting of the board. When any member of a board is directed to travel outside the county or school district on official business of the board, he may be allowed actual expenses incurred as a result.

HISTORY: 1962 Code Section 21-19.2; 1974 (58) 1937.