

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1093

Short Title: Retention of Outside Counsel/General Assembly. (Public)

Sponsors: Representatives L. Hall, Michaux, Harrison, and W. Richardson (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

May 11, 2016

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCESS BY WHICH THE GENERAL ASSEMBLY RETAINS
OUTSIDE COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-32.7. Process for hiring outside counsel.

(a) Solicitation of Bids. – No later than October 1 of each even-numbered year, the Legislative Services Commission shall solicit sealed bids to serve as outside counsel to the General Assembly or any of its officers on matters related to anticipated litigation challenging enacted legislation.

(b) Form of Bids. – Sealed bids shall be solicited by advertisement in multiple newspapers widely distributed in this State and through electronic means. In addition to setting forth other terms, each advertisement shall state the time and place for opening of the bids and reserve to the Legislative Services Commission the right to reject any or all bids and to take those actions authorized by subsection (g) of this section. The period for soliciting bids shall be no less than 30 calendar days and bids shall not be opened until at least three bids have been received.

(c) Opening of Bids. – All bids shall be opened in a public meeting of the Legislative Services Commission.

(d) Awarding of Contracts. – The Legislative Services Commission shall award the contract to the lowest responsible, responsive bidder or bidders, taking into consideration quality and performance, as determined by a vote in open session of a majority of members of the Legislative Services Commission.

(e) Sole Methods of Hiring Outside Counsel. – Notwithstanding G.S. 120-31(f) or any other provision of law, the procedures set forth in this section shall be the sole methods for hiring or retaining outside counsel by the General Assembly or for any of its officers.

(f) Posting of Information on Web site. – The Legislative Services Commission shall ensure that all General Assembly outside counsel contracts that are currently open for bidding, as well as all bids received and all award decisions, are posted to the General Assembly's Web site and thereby made accessible to the public.

(g) Special Situations. – The General Assembly recognizes that the need for particular legal expertise can be difficult to foresee. Accordingly, nothing in this section shall be construed to prevent the Legislative Services Commission from hiring or retaining outside counsel separate from counsel initially selected through the bidding process set forth in subsections (a) through (d)



1 of this section. When a special need to hire or retain additional counsel arises, the Legislative
2 Services Commission shall use the same method set forth in those subsections to select the outside
3 counsel who will be retained to handle the particular legal need, except that at least two bids have
4 been received before bids are opened."

5 **SECTION 2.** G.S. 120-31 reads as rewritten:

6 **"§ 120-31. Legislative Services Commission organization.**

7 (a) The Legislative Services Commission shall consist of the President pro tempore of the
8 Senate or a Senator designated by the President Pro Tempore, four Senators appointed by the
9 President pro tempore of the Senate, the Speaker of the House of Representatives or a member of
10 the House of Representatives designated by the Speaker, and four Representatives appointed by
11 the Speaker of the House of Representatives. At least two Senators and at least two
12 Representatives shall be members of the minority party. The President pro tempore of the Senate,
13 and the Speaker of the House shall serve until the selection and qualification of their respective
14 successors as officers of the General Assembly. The initial appointive members shall be appointed
15 after the date of ratification of this Article and each shall serve for the remainder of his elective
16 term of office and until his successor is appointed or until he ceases to be a member of the General
17 Assembly, whichever occurs first. A vacancy in one of the appointive positions shall be filled in
18 the same manner that the vacated position was originally filled, and the person so appointed shall
19 serve for the remainder of the unexpired term of the person whom he succeeds. In the event the
20 office of Speaker becomes vacated, the four Representatives shall elect one of themselves to
21 perform the duties of the Speaker as required by this Article. In the event the office of President
22 pro tempore becomes vacated, the four Senators shall elect one of themselves to perform the duties
23 of President pro tempore as required by this Article. Members so elevated shall perform the duties
24 required by this Article until a Speaker or a President pro tempore is duly elected by the
25 appropriate house.

26 ...

27 (f) ~~In~~ Except as provided in G.S. 120-32.7(e), in any case where any provision of law or
28 any rule of the Legislative Services Commission requires approval of any action by the Legislative
29 Services Commission, approval of that action by the President Pro Tempore of the Senate and by
30 the Speaker of the House of Representatives constitutes approval of the Commission."

31 **SECTION 3.** G.S. 120-32.6 reads as rewritten:

32 **"§ 120-32.6. Certain employment authority.**

33 (a) Use of Private Counsel. – G.S. 114-2.3 and G.S. 147-17 (a) through (c) shall not apply
34 to the General Assembly.

35 (b) General Assembly as Client of Attorney General by Operation of Law. – Whenever the
36 validity or constitutionality of an act of the General Assembly or a provision of the Constitution of
37 North Carolina is the subject of an action in any court, if the General Assembly hires outside
38 counsel to represent the General Assembly in connection with that ~~action~~, action pursuant to
39 G.S. 120-32.7, the General Assembly shall also be deemed to be a client of the Attorney General
40 for purposes of that action as a matter of law. Nothing herein shall (i) impair or interfere with the
41 rights of other named parties to appear in and to be represented by the Attorney General or outside
42 counsel as authorized by law or (ii) impair the right of the Governor to employ counsel on behalf
43 of the State pursuant to G.S. 147-17.

44 (c) General Assembly Counsel Shall Be Lead Counsel. – In those instances when the
45 General Assembly employs counsel in addition to or other than the Attorney General, the Speaker
46 of the House of Representatives and the President Pro Tempore of the Senate may jointly
47 designate the counsel employed by the General Assembly pursuant to G.S. 120-32.7 as lead
48 counsel for the General Assembly. The lead counsel so designated shall possess final
49 decision-making authority with respect to the representation, counsel, or service for the General
50 Assembly. Other counsel for the General Assembly shall, consistent with the Rules of Professional
51 Conduct, cooperate with such designated lead counsel.

1 (d) The rights provided by this section shall be supplemental to those provided by any
2 other provision of law."

3 **SECTION 4.** There is appropriated from the General Fund to the General Assembly
4 the sum of twenty thousand dollars (\$20,000) for the 2016-2017 fiscal year to pay for the cost of
5 technological upgrades necessary in order for the General Assembly to carry out its duties under
6 G.S. 120-32.7(f), as enacted by Section 1 of this section.

7 **SECTION 5.** Section 4 of this act becomes effective July 1, 2016. The remainder of
8 this act is effective when it becomes law and applies to the hiring or retention of counsel
9 beginning with the 2017 Regular Session of the General Assembly.