



HOUSE BILL 606: Prohibit Collusive Settlements by the AG.

2021-2022 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	May 5, 2021
Introduced by:	Reps. McNeill, Torbett, Sauls, Warren	Prepared by:	Erika Churchill
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *House Bill 606 requires that when the Speaker of the House of Representatives (Speaker) and the President Pro Tempore of the Senate (President Pro Tempore) have jointly intervened on behalf of the General Assembly, or are jointly named in their official capacities as parties to a dispute, claim, or controversy, both must approve any consent judgment or settlement agreement prior to the Attorney General entering into the judgment or agreement. The bill also requires that settlement agreements be satisfied from the current fiscal year, as are consent agreements.*

CURRENT LAW: In bringing claims against the State, if the action in any North Carolina State court is challenging the validity or constitutionality of an act of the General Assembly or a provision of the North Carolina Constitution, the General Assembly, jointly through the Speaker and the President Pro Tempore, constitutes the legislative branch of the State of North Carolina and the Governor constitutes the executive branch of the State of North Carolina. When the State of North Carolina is named as a defendant in such cases, both the General Assembly and the Governor constitute the State of North Carolina. The same is true with such actions in federal court, with the federal court requested to allow both the legislative branch and the executive branch of the State of North Carolina to participate in any such action as a party. G.S. 1-72.2.

The Speaker and the President Pro Tempore, as agents of the State, by and through counsel of their choice, jointly have standing to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute or provision of the North Carolina Constitution, by filing of a notice of intervention of right in the trial or appellate court in which the matter is pending regardless of the stage of the proceeding. G.S. 1-72.2.

Whenever the validity or constitutionality of an act of the General Assembly or a provision of the North Carolina Constitution is the subject of an action in any State or federal court, the Speaker and the President Pro Tempore are necessary parties. G.S. 120-32.6 and G.S. 1A-1, Rule 19(d). The Speaker and the President Pro Tempore possess final decision-making authority with respect to the defense of the challenged act of the General Assembly or provision of the North Carolina Constitution. G.S. 120-32.6.

In those instances when the General Assembly employs counsel in addition to or other than the Attorney General, the Speaker and the President Pro Tempore may jointly designate the counsel employed by the General Assembly as lead counsel in the defense of the challenged act of the General Assembly or provision of the North Carolina Constitution. The lead counsel so designated possesses final decision-making authority with respect to the representation, counsel, or service for the General

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Assembly. Other counsel for the General Assembly, consistent with the Rules of Professional Conduct, are to cooperate with the designated lead counsel. G.S. 120-32.6.

Such participation of the Speaker and the President Pro Tempore, as a party or otherwise, does not constitute a waiver of legislative immunity or legislative privilege of any individual legislator or legislative officer or staff of the General Assembly. G.S. 1-72.2 and G.S. 120-32.6.

With respect to settlement of claims against the State:

- In order for a consent judgment entered into by the State or by a State department, agency, institution, or State officer, to be effective against the State, the consent judgment must be signed by the Attorney General, personally. This does not apply when the dispute, claim, or controversy names a State department, agency, institution, or officer as a party, in which case the consent judgment must be approved by the head of the department, agency, institution, or by the State officer before the judgment can be entered. G.S. 114-2.2.
- The Attorney General must review the terms of any proposed settlement agreement that involves the State or State department, agency, or institution if the settlement would involve paying \$75,000 or more. For a settlement agreement to be effective against the State, the Attorney General must submit a written opinion regarding the advisability of entering into the agreement to the State or the State department, agency, or institution prior to entering into the agreement. The Attorney General must also report to the Joint Legislative Commission on Governmental Operations regarding all agreements that involve the payment of \$75,000 or more. G.S. 114-2.4.
- Generally, no consent judgment may be entered into by the State unless the State's entire obligation for the current and for future fiscal years will be satisfied with funds that are available for that purpose for the current fiscal year, including funds that the Council of State agrees to allot from the Contingency and Emergency Fund. No consent judgment is binding on the State except to the extent that the obligation is satisfied in the current fiscal year. The Director of the Budget must report to the appropriation committees of the General Assembly concerning all funds made available during the preceding fiscal year from the Contingency and Emergency Fund for the purpose of carrying out consent judgments. G.S. 114-2.1.

Specifically with respect to elections, the State Board of Elections (State Board) has the authority to make reasonable interim rules, via temporary rule making under Chapter 150B of the General Statutes, if a state election law or a form of election is held unconstitutional or invalid by a State or federal court and the ruling impacts the ability to hold an election so long as the interim rules do not conflict with any provisions of Chapter 163 of the General Statutes. These rules become void 60 days after the next convening session of the General Assembly. Additionally, the State Board may enter into a settlement agreement, upon the recommendation of the Attorney General, during the interim and until the General Assembly convenes. G.S. 163-22.2.

BILL ANALYSIS: The bill would require that if a North Carolina statute or provision of the North Carolina Constitution is being challenged in a dispute, claim, or controversy, where the Speaker and the President Pro Tempore have jointly intervened on behalf of the General Assembly or are jointly named, in their official capacity, as parties to the action, the Speaker and the President Pro Tempore would have to jointly approve any consent judgment or settlement agreement prior to the judgment or agreement being entered into.

The bill would also apply restrictions regarding the financial obligation of settlement agreements parallel to the ones already in place for consent agreements. This would mean that no settlement agreement could

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be entered into by the State except to the extent that the State's entire obligation for the current and for future fiscal years are satisfied with funds that are available for that purpose for the current fiscal year, including funds that the Council of State agrees to allot from the Contingency and Emergency Fund.

EFFECTIVE DATE: Effective October 1, 2021, and applies to consent judgments, settlement agreements, or other agreements arising on or after that date.