

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B 1093
May 10, 2016
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10515-MDa-138 (04/27)

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

Sponsors: Representative L. Hall.

Referred to:

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)
of this section. When a special need to hire or retain additional counsel arises, the Legislative
Services Commission shall use the same method set forth in those subsections to select the outside



* D R H 1 0 5 1 5 - M D A - 1 3 8 *

1 counsel who will be retained to handle the particular legal need, except that at least two bids have
2 been received before bids are opened."

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

4 **"§ 120-31. Legislative Services Commission organization.**

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

24 ...

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

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

30 **"§ 120-32.6. Certain employment authority.**

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

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

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

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

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

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