



This Bill Analysis reflects the contents of the bill as it was presented in committee.

# SENATE BILL 127: All State Agencies/Use Temporary Solutions

2015-2016 General Assembly

<b>Committee:</b>	Subcommittee of the Joint Legislative Program Evaluation Oversight Committee	<b>Date:</b>	April 14, 2015
<b>Analysis of:</b>	PCS to First Edition S127-CSMD-2	<b>Prepared by:</b>	Ben Stanley Staff Attorney

**SUMMARY:** *Bill Draft 2015-MD-56 requires that personal services contracts entered into by Executive Branch agencies be subject to the same requirements and procedures as service contracts, requires State agencies to obtain temporary employees through the Temporary Solutions Program, and codifies the requirement that information technology personal services contracts be approved in writing by the Office of Information Technology Services and the Office of State Budget and Management.*

**CURRENT LAW:** The procurement of most contracts entered into by State agencies in North Carolina is overseen by the Division of Purchase and Contract of the Department of Administration or the Office of Information Technology Services. However, the North Carolina Administrative Code exempts personal services contracts from having to be obtained through these agencies. The most recent State budget effectively overrode this exemption with respect to information technology personal services contracts but this exception does not apply to non-IT personal services contracts and it will expire on June 30, 2015 unless the General Assembly takes action.

On February 27, 2013, the Governor issued an executive order requiring all non-Council of State executive branch agencies that employ temporary employees, and encouraging Council of State agencies and The University of North Carolina, to employ them through the Temporary Solutions Program of the Office of State Human Resources. As a practical matter, however, most IT-related temporary staffing needs have been handled through the Office of Information Technology Services.

**BILL ANALYSIS:** **Section 1** of the bill implements the first recommendation of the Program Evaluation Division's Report Number 2015-03. It amends the statutory article that governs purchases and contracts by State agencies by adding a new section that requires that non-IT personal services contracts be subject to the same requirements and procedures as service contracts. The term 'personal services contract' is defined for purposes of the new section as a contract for services provided by a professional individual as an independent contractor on a temporary or occasional basis. The Department of Administration is required to adopt rules consistent with the new section.

**Section 2** of the bill implements the first and third recommendations of the Program Evaluation Division report. It amends the statutes that govern the procurement of information technology for State agencies to require that IT-related personal services contracts be subject to the same requirements and procedures as IT-related service contracts. The term 'personal services contract' is defined the same way it is in Section 1 of the bill, and the Office of Information Technology Services is required to adopt rules consistent with the new section.

This section also codifies language that has appeared in recent budgets (most recently in Section 7.8 of S.L. 2013-360) providing that no information technology personal services contract be established or renewed without written approval from the Office of Information Technology Services and the Office of

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State Budget and Management. The Office of Information Technology Services is also required to adopt certain standards related to the procurement of information technology contracts and to work with State agencies to create positions when it is determined that a State employee rather than a contractor should be performing the function.

Finally, this section requires the Office of Information Technology Services to perform compliance audits of State agencies and requires biennial reporting to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division.

**Section 3** of the bill addresses the disposition of personal services contracts that are in existence at the time the bill becomes law. Specifically, it provides that such contracts be allowed to expire in accordance with the terms of the contract and that a personal services contract that can be terminated at any time shall be reviewed within 60 days of the effective date of the act and shall only be continued if the contract complies with the requirements of the statutes enacted by Sections 1 and 2 of the bill. Contracts entered into or renewed on or after the effective date of the act are required to comply with those requirements.

**Section 4** of the bill is a conforming change that deletes a statutory section that is no longer needed. The statute in question, G.S. 143-64.70 required State agencies to annually report about their use of personal services contracts and required the Office of State Budget and Management to analyze and submit an annual report on agency and institution use of these contracts. Since those contracts will now be procured in the same manner as other service contracts, there is no longer a need to have a separate report on them.

**Section 5** of the bill implements the second recommendation of the Program Evaluation Division report by extending the requirement that executive branch agencies use the Temporary Solutions Program to acquire temporary employees for non-information technology services to all executive branch agencies, including Council of State agencies. The State Human Resources Director may create exceptions to this requirement, which must be in writing. The Office of State Human Resources is required to report biannually to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on agency compliance with these requirements.

**Section 6** of the bill requires that the State Human Resources Commission establish policies and rules governing the implementation of the requirements of Section 5 of the bill in a manner that is uniform across affected State agencies.

**EFFECTIVE DATE:** **Section 7** of the bill provides that the bill is effective when it becomes law.

**BACKGROUND:** The bill draft is based on the Program Evaluation Division report entitled *North Carolina Should Eliminate the Use of Personal Services Contracts in Favor of Using Existing Mechanisms*, Report Number 2015-03 (February 2015). The executive order referred to in the current law portion of this summary is available at <http://www.governor.state.nc.us/sites/default/files/orders-and-proclamations/20130228/McCroryEO4.pdf>.