



HOUSE BILL 259: 2023 Appropriations Act, Sec. 27.10: Gov Ops Modifications

2023-2024 General Assembly

Committee:		Date:	January 22, 2024
Introduced by:		Prepared by:	Erika Churchill Staff Attorney
Analysis of:	Sec. 27.10 of S.L. 2023-134		

OVERVIEW: Section 27.10 of S.L. 2023-134 modifies the statutory authority of the Joint Legislative Commission on Governmental Operations, effective October 3, 2023.

CURRENT LAW: The Joint Legislative Commission on Governmental Operations (Commission) is a statutory committee, with a stated purpose "of performing such continuing examination and evaluation of State agencies, [and] their actual effectiveness in programming and in carrying out procedures under reorganization, the General Assembly herein provides for the continuing review of operations of State government." G.S. 120-71.

The Commission consists of 42 members, 21 members appointed from the House and 21 members appointed from the Senate, along with the President pro tempore of the Senate, the Speaker pro tempore of the House, the Deputy President pro tempore of the Senate, the Majority Leader of the House of Representatives, and the Majority Leader of the Senate and the Speaker of the House serving as ex officio members. At least five House members and five Senate members are to be members of the minority party. The President pro tempore of the Senate and the Speaker of the House of Representatives serve as cochairs of the Commission, and either may call a meeting of the Commission.

The cochairs of the Commission may designate and appoint subcommittees to conduct hearings, call witnesses, and inquire into any matters properly before the Commission. A member of the House of Representatives or the Senate may be appointed to a subcommittee, even if that member has not been appointed to the Commission. A duly constituted subcommittee shall have all the powers of the Commission and may utilize staff to the Commission.

The Commission:

- Has access to any paper or document.
- May compel the attendance of any State official or employee before the Commission.
- Secure any evidence under the authority of a legislator to access State records. In addition, the power of subpoena applies to the proceedings of the Commission as if it were a joint committee of the General Assembly.
- Must designate one Commission staff member to have access to the BEACON/HR payroll system.

Under G.S. 120-76, the Commission has the following powers:

- To conduct program evaluation studies of the various components of State agency activity as they relate to service benefits of each program relative to expenditures; achievement of program goals; use of indicators by which the success or failure of a program may be gauged; and conformity with legislative intent.
- To study legislation which would result in new programs with statewide implications for feasibility and need.

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- To study on a continuing basis the implementation of State government reorganization with respect to improvements in administrative structure, practices and procedures; the relative effectiveness of centralization and decentralization of management decisions for agency operation; opportunities for effective citizen participation; and broadening of career opportunities for professional staff.
- To make such studies and reports of the operations and functions of State government as it deems appropriate or upon petition by resolution of either the Senate or the House of Representatives.
- To produce routine written reports of findings for general legislative and public distribution, with the submitted reports including at least the following: ways in which the agencies may operate more economically and efficiently; ways in which agencies can provide better services to the State and to the people; and areas in which functions of State agencies are duplicative, overlapping, or failing to accomplish legislative objectives, or for any other reason should be redefined or redistributed.
- To devise a system, in cooperation with the Fiscal Research Division of the Legislative Services Commission, whereby all new programs authorized by the General Assembly incorporate an evaluation component.
- To evaluate and approve or deny requests from the Department of Transportation regarding the funding of certain federally eligible construction projects.
- To evaluate the North Carolina Utilities Commission.
- To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting any of the duties of the Commission and whether the State's laws require modification as a result of those changes.
- To monitor and study the seafood industry in North Carolina, including studies of the feasibility of increasing the State's production, processing, and marketing of seafood, along with reviewing, evaluating, and making recommendations with respect to seafood and aquaculture in this State.
- To receive reports alleging certain improper activities or matters of public concern. Any report received, in whatever form, is confidential, is not a public record, and becomes available to the public only when distributed in an open committee meeting or on the chamber floor.

The Commission is also to make reports and recommendations to the General Assembly, from time to time, on matters relating to the Commission's powers and duties.

The Governor is required to consult the Commission prior to doing any of the following:

- 1) Authorizing certain expenditures in excess of the total requirements of a purpose or program as enacted by the General Assembly.
- 2) Proceeding to reduce programs subsequent to a reduction of 10% or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.
- 3) Taking extraordinary measures under Article III, Section 5(3) of the North Carolina Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall. This requirement applies to loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Commission fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions and report those actions at the next meeting of the Commission.
- 4) Approving a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly.

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Whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event or an accident, the Governor may take action without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor must report any emergency expenditures to the Commission no later than 30 days after making the expenditure. The report is to identify the emergency, the type of action taken, and how it was related to the emergency.

The Commission must use available secretarial employees of the General Assembly, or may employ, and may remove, such professional and clerical employees as the Commission deems proper. The chairmen may assign and direct the activities of the employees of the Commission, subject to the advice of the Commission. The Commission must ensure that sufficient funds are available within its appropriations before employing professional and clerical employees.

BILL ANALYSIS: Section 27.10 of S.L. 2023-134 repeals the powers stated above and establishes new powers and duties of the Commission as follows:

- To study the efficiency, economy, and effectiveness of any State agency, public authority, unit of local government, or non-State entity receiving public funds.
- To evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any State agency, public authority, unit of local government, or non-State entity receiving public funds.
- To investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by the following:
 - Officers and employees of a State agency, public authority, or unit of local government, as it relates to the officer's or employee's performance of his or her public duties.
 - Officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
- To access and review the following:
 - Any documents or records related to any contract awarded by a State agency, including:
 - Records related to the drafting and approval of the contract.
 - Documents and records of the contractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.
 - Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including:
 - Records related to the drafting and approval of the subcontract
 - Documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.

Section 27.10 of S.L. 2023-134 clarifies and expands the powers of the Commission as follows:

- Clearly granting the power to compel access to any document or system of record held by a:
 - State agency pursuant to the provisions of G.S. 120-19.
 - Unit of local government or public authority.
 - A non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose, or implementation of a program or service paid for with public funds.
- Clearly granting the power to compel the attendance of any officer or employee of any:
 - State agency.
 - Unit of local government or public authority.

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- Non-State entity receiving public funds provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.
- Clearly granting access to the Commission and Commission staff in the discharge of their Commission duties, unless prohibited by federal law:
 - Any building or facility allocated to or leased by a State agency.
 - Any building or facility owned or leased by a unit of local government or public authority.
 - Any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.

With respect to confidentiality, this section also provides that:

- Any confidential information obtained by the Commission remains confidential and is not a public record.
- Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record.
- Any request made to an agency employee by Commission staff and any communication between Commission staff and an agency employee is confidential. The nature and existence of the request and communications may be revealed by an agency employee to another agency employee only to the extent that it is necessary to fulfill a request for document production or to gather more information as requested by Commission staff. A violation by an agency employee is grounds for disciplinary action, including dismissal.
- Any person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by State law with the intent to mislead, impede, or interfere with the Commission's discharge of its duties is guilty of a Class 2 misdemeanor.

This section, along with making conforming changes, establishes that for purposes of the Governor's authority to make expenditures because of an emergency, an emergency is an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, terrorism, weather-related, public health, explosion-related, riot-related cause, or technological failure or accident, including a cyber incident, an explosion, a transportation accident, a radiological accident, or a chemical or other hazardous material incident.

EFFECTIVE DATE: October 3, 2023.