



2023-2024 General Assembly

SENATE BILL 382: Disaster Relief-3/Budget/Various Law Changes, Sec. 3D.1: Powers and Duties of the Attorney General

Committee:		Date:	January 6, 2025
Introduced by:		Prepared by:	Brad Krehely and Bill Patterson, Staff Attorneys
Analysis of:	Sec. 3D.1 of S.L. 2024-57		

OVERVIEW: *Section 3D.1 of S.L. 2024-57 does the following:*

- *Removes the Attorney General's authority to intervene in matters before the Utilities Commission.*
- *Provides that the Judicial Department and Council of State agencies are not required to get permission from the Attorney General or the Governor before retaining private counsel.*
- *Requires the Attorney General to report annually to the Joint Legislative Commission on Governmental Operations on all contracts with private counsel to assist with any of the Attorney General's statutory duties.*
- *Prohibits the Attorney General from advancing any argument in an action in state or federal court in another state that would result in the invalidation of a North Carolina statute.*
- *Provides that whenever the General Assembly, through the Speaker and President Pro Tempore, participates in an action involving the validity of an act or the State Constitution, the Attorney General may not take positions that are contrary to the positions of the General Assembly.*
- *Clarifies that the counsel jointly designated as lead counsel by the President Pro Tempore and Speaker has the final decision-making authority regarding positions on behalf of the State.*

This bill was vetoed by the Governor on November 26, 2024, and the veto was overridden by the General Assembly on December 11, 2024. This section became effective December 11, 2024.

CURRENT LAW AND BILL ANALYSIS: Article III, Sec. 7, of the North Carolina Constitution provides that the Attorney General is elected Statewide and serves a four-year term. Only persons duly authorized to practice law may serve as Attorney General, and the Attorney General's duties are prescribed by law. *Id.* Those duties include the ability to intervene in matters before the Utilities Commission on behalf of the using and consuming public. G.S. 114-2(8).

Subject to some exceptions, every agency, institution, department, bureau, board, or commission of the State of North Carolina authorized by law to retain private counsel must obtain written permission from the attorney general prior to employing private counsel. G.S. 114-2.3(a). No department, officer, agency, institution, commission, bureau or other organized activity of the State that receives support in whole or in part from the State may employ private counsel, except with the approval of the Governor. The Governor will give approval only if the attorney general has advised the Governor that it is impracticable for the attorney general to render the legal services. G.S. 147-17(a).

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The Speaker of the House and the President Pro Tempore of the Senate are necessary parties and a client of the Attorney General when the validity or constitutionality of a State statute or provision of the State Constitution is in question in any state or federal court. G.S. 120-32.6. The Speaker and President Pro Tempore may hire counsel in addition to or other than the Attorney General and may jointly designate the counsel employed by the General Assembly as lead counsel. *Id.*

Section 3D.1 does the following:

- Removes the Attorney General's authority to intervene in matters before the Utilities Commission on behalf of the using and consuming public and makes conforming changes.
- Provides that the Judicial Department and Council of State agencies are not required to obtain written permission from the Attorney General or the Governor before retaining private counsel.
- Requires the Attorney General to report annually to the Joint Legislative Commission on Governmental Operations on all contracts with private counsel to assist with any of the Attorney General's statutory duties.
- Prohibits the Attorney General from advancing any argument in an action in state or federal court in another state that would result in the invalidation of a North Carolina statute.
- Provides that whenever the General Assembly, through the Speaker and President Pro Tempore, participates in an action involving the validity of an act or the State Constitution, the Attorney General may not take positions that are contrary to the positions of the General Assembly.
- Clarifies that the counsel jointly designated as lead counsel by the President Pro Tempore and Speaker has the final decision-making authority regarding positions on behalf of the State.

EFFECTIVE DATE: This bill was vetoed by the Governor on November 26, 2024, and the veto was overridden by the General Assembly on December 11, 2024. This section became effective December 11, 2024.