

§ 120-32.6. Certain employment authority.

(a) Use of Private Counsel. – G.S. 114-2.3, 143C-6-9(b), and 147-17(a) through (c1) shall not apply to the General Assembly.

(b) General Assembly Acting on Behalf of the State of North Carolina in Certain Actions. – Whenever the validity or constitutionality of an act of the General Assembly or a provision of the Constitution of North Carolina is the subject of an action in any State or federal court, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State through the General Assembly, shall be necessary parties and shall be deemed to be a client of the Attorney General for purposes of that action as a matter of law and pursuant to Section 7(2) of Article III of the North Carolina Constitution. In such cases, the General Assembly shall be deemed to be the State of North Carolina to the extent provided in G.S. 1-72.2(a) unless waived pursuant to this subsection. When the General Assembly through the Speaker of the House of Representatives and President Pro Tempore of the Senate participates in such an action, the Attorney General is not authorized to take any position on behalf of the State of North Carolina that is contrary to or inconsistent with the position of the General Assembly. Additionally, in such cases, the General Assembly through the Speaker of the House of Representatives and President Pro Tempore of the Senate jointly shall 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. In any such action, the General Assembly, through the Speaker of the House of Representatives and the President Pro Tempore of the Senate, may waive such representation and decline to participate in the action by written notice to the Attorney General.

(c) General Assembly Counsel Shall Be Lead Counsel. – In those instances when the General Assembly employs counsel in addition to or other than the Attorney General, the Speaker of the House of Representatives and the President Pro Tempore of the Senate 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 shall possess final decision-making authority with respect to the representation, counsel, or service for the General Assembly. In actions in which the General Assembly is deemed to be the State of North Carolina as provided in subsection (b) of this section, the lead counsel so designated shall possess final decision-making authority with respect to the positions taken on behalf of the State, as well as the representation of, counsel to, or service provided to the State. Other counsel for the General Assembly shall, consistent with the Rules of Professional Conduct, cooperate with such designated lead counsel.

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

(e) Notwithstanding any other provision of law, the participation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate in any action challenging the validity of a North Carolina statute or provision of the North Carolina Constitution under State or federal law, as a party or otherwise, shall not constitute a waiver of legislative immunity or legislative privilege of any individual legislator or legislative officer or staff of the General Assembly. (2006-201, s. 3; 2011-145, s. 22.5; 2014-100, s. 17.3A(a); 2017-57, s. 6.7(g), (l); 2024-57, s. 3D.1(k).)