

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1315\*

Short Title: Private Counsel/Atty. Fees/State Emp.

(Public)

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Sponsors: Senators Miller and Albertson.

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Referred to: Judiciary II.

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May 18, 2000

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR PRIVATE COUNSEL AND TO PROVIDE FOR THE  
2 RECOVERY OF COSTS AND ATTORNEYS' FEES IN CIVIL ACTIONS  
3 AGAINST A STATE EMPLOYEE WHEN THE STATE EMPLOYEE IS  
4 ALLEGED TO BE PERSONALLY LIABLE FOR DAMAGES FOR ANY  
5 OFFICIAL ACT OR OMISSION IN CONNECTION WITH THE ENFORCEMENT  
6 OF ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE  
7 ENVIRONMENTAL REVIEW COMMISSION.  
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9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 114-2.3 reads as rewritten:

11 "**§ 114-2.3. Use of private counsel limited.**

12 Every agency, institution, department, bureau, board, or commission of the State,  
13 authorized by law to retain private counsel, shall obtain written permission from the  
14 Attorney General prior to employing private counsel. An agency that is responsible for  
15 the administration or enforcement of any law for the protection of the environment,  
16 public health, or natural resources shall request private counsel for a State employee or  
17 former State employee who, in any action or special proceeding, is alleged to be  
18 personally liable for damages as the result of any act or omission by the employee during  
19 the course of his or her employment, if the employee requests private counsel. The  
20 Attorney General shall approve the request unless the Attorney General determines that

1 the employee clearly acted outside of the course and scope of the employee's duties. This  
2 section does not apply to counties, cities, towns, other municipal corporations or political  
3 subdivisions of the State, or any agencies of these municipal corporations or political  
4 subdivisions, or to county or city boards of education."

5           Section 2. Article 3 of Chapter 6 of the General Statutes is amended by adding  
6 a new section to read:

7 **"§ 6-19.3. Allowance of costs and attorneys' fees in certain cases involving**  
8 **enforcement of environmental, public health, or laws.**

9           Upon the determination that a State employee or former State employee has prevailed  
10 in a civil action or special proceeding brought against the employee for an act or  
11 omission related to the enforcement of any law for the protection of the environment,  
12 public health, or natural resources; the court shall award costs, including reasonable  
13 attorneys' fees for the attorneys who represent the employee and the State agency  
14 employer, unless the court finds that the award of attorney fees would be unjust."

15           Section 3. This act is effective when it becomes law and applies to any action  
16 or special proceeding commenced on or after that date.