

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 473
Second Edition Engrossed 5/6/21
House Committee Substitute Favorable 6/22/21

Short Title: Enhance Local Gov't Transparency.

(Public)

Sponsors:

Referred to:

April 5, 2021

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE INDEPENDENCE OF THE ANNUAL AUDIT OF UNITS OF LOCAL GOVERNMENT PREVIOUSLY THE SUBJECT OF AN AUDIT BY THE STATE AUDITOR, TO REQUIRE GARNISHMENT OF CERTAIN MONIES OWED TO AN ELECTED OFFICIAL OF A UNIT OF LOCAL GOVERNMENT IN CERTAIN INSTANCES, TO PROVIDE IT IS A CRIME FOR AN ELECTED OFFICIAL TO MISUSE THE ELECTED OFFICE FOR PERSONAL FINANCIAL GAIN, AND TO PROVIDE THAT A PUBLIC OFFICER ALSO SERVING ON A NONPROFIT BOARD SHALL NOT ENGAGE IN SELF-DEALING WITH REGARD TO AWARD OF PUBLIC AGENCY CONTRACTS TO THAT NONPROFIT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 147-64.6(c)(14) reads as rewritten:

"(14) The Auditor shall notify the General Assembly, the Governor, the Chief Executive Officer of each agency audited, and other persons as the Auditor deems appropriate that an audit report has been published, its subject and title, and the locations, including State libraries, at which the report is available. The Auditor shall then distribute copies of the report only to those who request a report. The copies shall be in written or electronic form, as requested. ~~He~~ The Auditor shall also file a copy of the audit report in the Auditor's office, which will be a permanent public record. In addition, the Auditor may publish on his or her Web site any reports from audits of State agencies not directly conducted by the Auditor. If the report is the result of an investigation of a unit of local government subject to Article 3 of Chapter 159 of the General Statutes, the Auditor shall notify the Local Government Commission that a report has been published with respect to that unit of local government. Nothing in this subsection shall be construed as authorizing or permitting the publication of information whose disclosure is otherwise prohibited by law."

SECTION 1.(b) G.S. 159-34 is amended by adding a new subsection to read:

"(d) Notwithstanding the requirement that the auditor is selected by and reports directly to the governing board in subsection (a) of this section, the Commission may select the certified public accountant to conduct the annual audit required by this section when the Commission has received notice of a release of an investigative report with respect to that unit of local government or public authority from the State Auditor in accordance with G.S. 147-64.6(c)(14). The Commission may exercise the authority granted by this subsection for up to three fiscal years after the release of the investigative report by the State Auditor. The Commission may instruct



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1 the Secretary to issue a request for proposals when selecting a certified public accountant under
2 this subsection. Upon exercise of this authority granted by this subsection, the certified public
3 accountant shall report directly to the Commission and governing board, shall comply with all
4 rules of the Commission, and shall be paid by the governing board."

5 **SECTION 1.(c)** This section is effective when it becomes law and applies to any
6 audit issued by the State Auditor on or after that date. The Local Government Commission, in its
7 discretion, may use the authority established by G.S. 159-34(d), as enacted by this act, with
8 respect to any unit of local government audited by the State Auditor on or after July 1, 2018.

9 **SECTION 2.(a)** G.S. 153A-28 reads as rewritten:

10 **"§ 153A-28. Compensation of board of commissioners.**

11 (a) The board of commissioners may fix the compensation and allowances of the
12 ~~chairman-chair~~ and other members of the board by inclusion of the compensation and allowances
13 in and adoption of the budget ordinance. In addition, if the ~~chairman-chair~~ or any other member
14 of the board becomes a full-time county official, pursuant to G.S. 153A-81 or 153A-84, ~~his-the~~
15 compensation and allowances may be adjusted at any time during ~~his-that person's~~ service as a
16 full-time official, for the duration of that service.

17 (b) In addition to any other enforcement available, the finance officer of the county shall
18 garnish compensation paid under this section to any chair or other board member to collect any
19 unpaid monies due to the county for county services until such debt is paid in full using the
20 procedure for attachment and garnishment set forth in G.S. 105-368 as if unpaid monies due to
21 the county for county services were delinquent taxes and that finance officer were the tax
22 collector. The provision of G.S. 105-368(a) that limits the amount of compensation that may be
23 garnished to not more than ten percent (10%) for any one pay period shall not apply to this
24 subsection."

25 **SECTION 2.(b)** G.S. 160A-64.1 reads as rewritten:

26 **"§ 160A-64.1. Withholding compensation; money judgment against council member.**

27 (a) In addition to any other enforcement available, the finance officer of a city that obtains
28 a final judgment awarding monetary damages against an elected or appointed member of the city
29 council, either individually or jointly, may enforce that final judgment using any of the remedies
30 set forth in G.S. 105-366(b) or the procedure for attachment and garnishment set forth in
31 G.S. 105-368 as if final judgment awarding monetary damages were delinquent taxes and that
32 finance officer were the tax collector.

33 (b) In addition to any other enforcement available, the finance officer of the city shall
34 garnish compensation paid under G.S. 160A-64 to any mayor or council member to collect any
35 unpaid monies due to the city for city services until such debt is paid in full using the procedure
36 for attachment and garnishment set forth in G.S. 105-368 as if unpaid monies due to the city for
37 city services were delinquent taxes and that finance officer were the tax collector.

38 (c) The provision of G.S. 105-368(a) that limits the amount of compensation that may be
39 garnished to not more than ten percent (10%) for any one pay period shall not apply to this
40 section."

41 **SECTION 2.(c)** This section is effective when it becomes law and applies to any
42 compensation paid in accordance with G.S. 153A-28 or G.S. 160A-64 on or after that date.

43 **SECTION 3.(a)** Article 31 of Chapter 14 of the General Statutes is amended by
44 adding a new section to read:

45 **"§ 14-234.2. Public officers or employees financially benefiting from public position.**

46 (a) No elected officer shall solicit or receive personal financial gain from the political
47 subdivision for which that elected officer serves by means of intimidation, undue influence, or
48 misuse of the employees of that political subdivision.

49 (b) This section shall not apply to financial gain received from a political subdivision for
50 acting in the elected official's official capacity or financial gain received with the approval of the
51 governing board of the political subdivision for which that elected officer serves.

1 (c) Violation of this section shall be a Class H felony."

2 **SECTION 3.(b)** This section becomes effective December 1, 2021, and applies to
3 offenses committed on or after that date.

4 **SECTION 4.(a)** Article 31 of Chapter 14 of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 14-234.3. Local public officials participating in contracts benefiting nonprofits with**
7 **which associated.**

8 (a) No public official shall participate in making or administering a contract, including
9 the award of money in the form of a grant, loan, or other appropriation, with any nonprofit with
10 which that public official is associated. The public official shall record his or her recusal with the
11 clerk to the board, and once recorded, the political subdivision of this State may enter into or
12 administer the contract.

13 (b) Anyone violating this section shall be guilty of a Class 1 misdemeanor. The
14 exceptions listed in G.S. 14-234(b) and (d1) through (d5) shall apply to this section.

15 (c) A contract entered into in violation of this section is void. A contract that is void under
16 this section may continue in effect until an alternative can be arranged when (i) an immediate
17 termination would result in harm to the public health or welfare and (ii) the continuation is
18 approved as provided in this subsection. A political subdivision of this State that is a party to the
19 contract may request approval from the chair of the Local Government Commission to continue
20 contracts under this subsection.

21 (d) For purposes of this section, the following definitions shall apply:

22 (1) Nonprofit with which that public official is associated. – A nonprofit
23 corporation, organization, or association, incorporated or otherwise, that is
24 organized or operating in the State primarily for religious, charitable,
25 scientific, literary, public health and safety, or educational purposes and of
26 which the public official is a director, officer, or governing board member,
27 excluding any board, entity, or other organization created by this State or by
28 any political subdivision of this State.

29 (2) Participate in making or administering a contract. – Any of the following
30 actions by a public official:

31 a. Deliberating or voting on the contract.

32 b. Attempting to influence any other person who is deliberating or voting
33 on the contract.

34 c. Soliciting or receiving any gift, favor, reward, service, or promise of
35 reward, including a promise of future employment, in exchange for
36 recommending, influencing, or attempting to influence the award of a
37 contract by the political subdivision of the State with the not-for-profit
38 with which that public official is associated.

39 (3) Public official. – Any individual who is elected or appointed to serve or
40 represent a political subdivision of the State other than an employee or
41 independent contractor of that political subdivision of the State."

42 **SECTION 4.(b)** This section becomes effective December 1, 2021, and applies to
43 offenses committed on or after that date.

44 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
45 law.