

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

FILED SENATE
Apr 1, 2021
S.B. 473
PRINCIPAL CLERK

S

D

SENATE BILL DRS35210-ST-20

Short Title: Enhance Local Gov't Transparency. (Public)

Sponsors: Senators Barnes, Sanderson, and Edwards (Primary Sponsors).

Referred to:

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

11 The General Assembly of North Carolina enacts:

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

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

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

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



* D R S 3 5 2 1 0 - S T - 2 0 *

1 this subsection. Upon exercise of this authority granted by this subsection, the certified public
2 accountant shall report directly to the Commission and governing board, shall comply with all
3 rules of the Commission, and shall be paid by the governing board."

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

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

9 **"§ 153A-28. Compensation of board of commissioners.**

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

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

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

25 **"§ 160A-64.1. Withholding compensation; money judgment against council member.**

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

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

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

40 **SECTION 2.(c)** This section becomes effective July 1, 2021, and applies to any
41 compensation paid in accordance with G.S. 153A-28 or G.S. 160A-64 on or after that date.

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

44 **"§ 14-234.2. Public officers or employees financially benefiting from public position.**

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

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

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

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

3 **SECTION 4.(a)** G.S. 14-234(a1) reads as rewritten:

4 "(a1) For purposes of this section:

5 (1) As used in this section, the term "public officer" means an individual who is
6 elected or appointed to serve or represent a public agency, other than an
7 employee or independent contractor of a public agency.

8 (2) A public officer or employee is involved in administering a contract if he or
9 she oversees the performance of the contract or has authority to make
10 decisions regarding the contract or to interpret the contract.

11 (3) A public officer or employee is involved in making a contract if he or she
12 participates in the development of specifications or terms or in the preparation
13 or award of the contract. A public officer is also involved in making a contract
14 if the board, commission, or other body of which he or she is a member takes
15 action on the contract, whether or not the public officer actually participates
16 in that action, unless the contract is approved under an exception to this
17 section under which the public officer is allowed to benefit and is prohibited
18 from voting.

19 (4) A public officer or employee derives a direct benefit from a contract if any of
20 the following apply to the ~~person~~ public officer or employee, or his or her
21 spouse:

22 ~~(i)~~a. The person has more than a ten percent (10%) ownership or other
23 interest in an entity that is a party to the ~~contract;~~contract.

24 ~~(ii)~~b. The person derives any income or commission directly from the
25 ~~contract;~~ or contract.

26 ~~(iii)~~c. The person acquires property under the contract.

27 d. The person is a director, officer, or governing board member of a
28 not-for-profit corporation, organization, or association, incorporated
29 or otherwise, that is organized or operating in the State primarily for
30 religious, charitable, scientific, literary, public health and safety, or
31 educational purposes and which is seeking a contract. Nonprofit
32 corporation or organization for the purposes of this sub-subdivision
33 shall not include any board, entity, or other organization created by
34 this State or by any political subdivision of this State.

35 (5) A public officer or employee is not involved in making or administering a
36 contract solely because of the performance of ministerial duties related to the
37 contract.

38 (6) As used in this section, the term "contract" shall include the award of money
39 from the public agency in the form of a grant, loan, or other appropriation."

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

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