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Short Title: Clarify Powers of State Auditor.

(Public)

Sponsors:

Referred to:

March 31, 2025

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE POWERS OF THE STATE AUDITOR, TO MAKE OTHER
3 CHANGES RELATED TO THE STATE AUDITOR, AND TO ALLOW THE
4 DEPARTMENT OF REVENUE TO FORCE COLLECT DEBTS OWED TO STATE
5 AGENCIES THROUGH LEVY AND SALE AND ATTACHMENT AND
6 GARNISHMENT.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. CLARIFY POWERS OF STATE AUDITOR**

10 **SECTION 1.** G.S. 143-64.24 reads as rewritten:

11 "**§ 143-64.24. Applicability of Article.**

12 This Article ~~shall~~does not apply to the following agencies:

13 ...

14 (10) The Office of the State Auditor."

15 **SECTION 2.** G.S. 143B-1320(b) reads as rewritten:

16 "(b) Exemptions. – Except as otherwise specifically provided by law, ~~the provisions of~~
17 ~~this Chapter do~~ this Article does not apply to the following entities: the General Assembly, the
18 Judicial Department, ~~and~~ The University of North Carolina and its constituent ~~institutions.~~
19 institutions, and the Office of the State Auditor. These entities may elect to participate in the
20 information technology programs, services, or contracts offered by the Department, including
21 information technology procurement, in accordance with the statutes, policies, and rules of the
22 Department. The election must be made in writing, as follows:

23 (1) For the General Assembly, by the Legislative Services Commission.

24 (2) For the Judicial Department, by the Chief Justice.

25 (3) For The University of North Carolina, by the Board of Governors.

26 (4) For the constituent institutions of The University of North Carolina, by the
27 respective boards of trustees.

28 (5) For the Office of the State Auditor, by the State Auditor."

29 **SECTION 3.** G.S. 143B-1350 reads as rewritten:

30 "**§ 143B-1350. Procurement of information technology.**

31 (a) The State CIO is responsible for establishing policies and procedures for information
32 technology procurement for State agencies.



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1 ~~Notwithstanding~~ Except as otherwise provided by subsection (l) of this section,
2 notwithstanding any other provision of law, the Department shall procure all information
3 technology goods and services for participating agencies and shall approve information
4 technology procurements for separate agencies. The State CIO may cancel or suspend any agency
5 information technology procurement that occurs without State CIO approval.

6 ...

7 (l) The Office of the State Auditor is exempt from this Part and may procure information
8 technology services pursuant to G.S. 147-64.7(b)(1)."

9 **SECTION 4.** G.S. 147-64.4 reads as rewritten:

10 **"§ 147-64.4. Definitions.**

11 The following definitions apply in this Article:

12 ...

13 (5) Publicly funded entity. – Any individual, private corporation, institution,
14 association, board, or other organization that receives, disburses, or otherwise
15 handles State or federal funds."

16 **SECTION 5.** G.S. 147-64.6B(b) reads as rewritten:

17 "(b) The Auditor shall investigate reports of allegations of improper governmental
18 activities of State ~~agencies and State employees~~ agencies, employees of those agencies, and
19 publicly funded entities within the scope of authority set forth in G.S. 147-64.6, including
20 misappropriation, mismanagement, or waste of State resources, fraud, violations of State or
21 federal law, rule or regulation by State agencies or State employees administering State or federal
22 programs, and substantial and specific danger to the public health and safety. When the allegation
23 involves issues of substantial and specific danger to the public health and safety, the Auditor
24 shall notify the appropriate State agency immediately. When the Auditor believes that an
25 allegation of improper governmental activity is outside the authority set forth in G.S. 147-64.6,
26 the Auditor shall refer the allegation to the appropriate State agency responsible for the
27 enforcement or administration of the matter for investigation. When the Auditor believes that an
28 allegation of improper governmental activity involves matters set forth in subdivisions (1), (2),
29 or (3) of this subsection, those matters shall be referred as follows:

- 30 (1) Allegations of criminal misconduct to either the State Bureau of Investigation
31 or the District Attorney for the county where the alleged misconduct occurred.
32 (2) Allegations of violations of Chapter 138A, Chapter 120C and Article 14 of
33 Chapter 120 of the General Statutes to the State Ethics Commission.
34 (3) Allegations of violations of Chapter 163 of the General Statutes to the State
35 Board of Elections."

36 **SECTION 6.** G.S. 147-64.7 reads as rewritten:

37 **"§ 147-64.7. Authority.**

38 (a) Access to Persons and Records. –

- 39 (1) The Auditor and the Auditor's authorized representatives shall have ready
40 access to persons and may examine and copy all books, records, reports,
41 vouchers, correspondence, files, personnel files, investments, and any other
42 documentation of any State agency. Upon demand of the Auditor, access shall
43 extend to databases, datasets, and digital records necessary for any purpose
44 within the authority of the Auditor, including performing audits of any type,
45 assessing government efficiency, risk assessment, fraud detection, audit
46 planning, and evidence gathering. The review of State tax returns shall be
47 limited to matters of official business and the Auditor's report shall not violate
48 the confidentiality provisions of tax laws. Notwithstanding confidentiality
49 provisions of tax laws, the Auditor may use and disclose information related
50 to overdue tax debts in support of the Auditor's statutory mission.

- 1 (2) ~~The~~ For audits or investigations conducted under G.S. 147-64.6(c)(25), the
 2 Auditor and the Auditor's duly authorized representatives shall have ~~such~~
 3 access to persons, records, papers, reports, vouchers, correspondence, books,
 4 databases, datasets, digital records, and any other documentation which that
 5 is in the possession of any ~~individual, private corporation, institution,~~
 6 ~~association, board, or other organization~~ publicly funded entity which pertain
 7 to either of the following:
 8 a. Amounts received pursuant to a grant or contract from the federal
 9 government, the State, or its political subdivisions.
 10 b. Amounts received, disbursed, or otherwise handled on behalf of the
 11 federal ~~government or the State~~ government, the State, or its political
 12 subdivisions. In order to determine that payments to providers of social
 13 and medical services are legal and proper, the providers of ~~such these~~
 14 services ~~will~~ shall give the Auditor, or the Auditor's authorized
 15 representatives, access to the records of recipients ~~who that~~ receive
 16 ~~such these~~ services.
 17 (3) The Auditor shall, for the purpose of examination and audit ~~authorized by this~~
 18 ~~act~~, have the authority, and will be provided ready access, to examine and
 19 inspect all property, equipment, and facilities in the possession of any State
 20 agency or any ~~individual, private corporation, institution, association, board,~~
 21 ~~or other organization~~ publicly funded entity which were furnished or
 22 otherwise provided through grant, contract, or any other type of funding by
 23 the State of North Carolina, or the federal government. Audits and
 24 investigations of publicly funded entities are limited as provided in
 25 G.S. 147-64.6(c)(25).
 26 (4) All contracts or grants entered into by State agencies or political subdivisions
 27 shall include, as a necessary part, a clause providing access as intended by this
 28 section.
 29 (5) The Auditor and ~~his the~~ Auditor's authorized agents ~~are authorized to~~
 30 representatives may examine all books and accounts of any individual, firm,
 31 or corporation only insofar as they relate to transactions with any agency of
 32 the State.

33 (a1) Hearing. – If a person fails or refuses to provide to the Auditor or the Auditor's
 34 authorized representatives the access described in subsection (a) of this section, the Auditor may
 35 commence an action in superior court for a show cause hearing. The person shall appear at the
 36 hearing and show cause why the person failed or refused to comply with subsection (a) of this
 37 section. The court may issue an injunction to the person to comply with subsection (a) of this
 38 section.

39 "

41 **PART II. OTHER STATE AUDITOR AMENDMENTS**

- 42 **SECTION 7.** G.S. 143B-168.12(b) is repealed.
 43 **SECTION 8.** Section 62(b) of S.L. 2014-115 is repealed.
 44 **SECTION 9.** G.S. 143B-1410 is repealed.
 45 **SECTION 10.** G.S. 147-64.6(c) reads as rewritten:

46 "(c) Responsibilities. – The Auditor is responsible for the following acts and activities:

- 47 ...
 48 (21) If an audit or investigation undertaken by the Auditor results in a finding that
 49 a private person or entity has received public funds as a result of fraud,
 50 misrepresentation, or other deceptive acts or practices while doing business
 51 with a State agency, the Auditor shall submit a detailed written report of the

finding, and any additional necessary supporting documentation, to (i) the Department of Revenue in accordance with G.S. 105A-6A(a) and (ii) the State Purchasing Officer or the appropriate official, as applicable. A report submitted under this subsection may include a recommendation that the private person or entity be debarred from doing business with the State or a State agency.

...

(24) The Auditor may engage in an audit or investigation of any publicly funded entity. Any such audit or investigation conducted shall be limited to the State or federal funds received, disbursed, or otherwise handled by the publicly funded entity."

PART III. DEPARTMENT OF REVENUE AUTHORIZATION TO FORCE COLLECT DEBTS

SECTION 11.(a) Chapter 105A of the General Statutes reads as rewritten:

"Chapter 105A.

"Setoff Debt Collection and Forced Debt Collection Act.

"Article 1.

"In General.

"§ 105A-1. Purposes.

The purpose of this Chapter is to establish as policy that all claimant ~~agencies~~ agencies, the Office of the State Auditor, and the Department of Revenue shall cooperate in identifying debtors who owe money to the State or to a local government through their various agencies and who qualify for refunds from the Department of Revenue. ~~agencies.~~ It is also the intent of this Chapter that procedures be established for (i) setting off against ~~any a debtor's tax~~ any a debtor's tax refund the sum of any debt owed to the State or to a local ~~government.~~ government and (ii) force collecting debts owed to State agencies. Furthermore, it is the legislative intent that this Chapter be liberally construed so as to effectuate these purposes as far as legally and practically possible.

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

...

(5) Forced collection. – The debt collection remedies provided by G.S. 105A-6B and G.S. 105A-6C.

...

(7) Net proceeds collected. – ~~Gross~~ For setoff collection actions, "net proceeds collected" means gross proceeds collected through setoff against a debtor's refund minus the collection assistance fees provided in G.S. 105A-13.G.S. 105A-13(a) or (c), as appropriate. For forced collection actions, "net proceeds collected" means gross proceeds collected through forced collection minus the forced collection assistance fee provided in G.S. 105A-13(a1).

...

"§ 105A-3. ~~Remedy~~ Remedies additional; mandatory State usage; optional local usages; usage of setoff collection only; obtaining identifying information; registration.

(a) ~~Remedy~~ Remedies Additional. – The collection ~~remedy~~ remedies under this Chapter ~~is are~~ in addition to and not in substitution for any other remedy available by law.

...

(b1) ~~Optional Local Usage.~~ Usage of Setoff Collection Only. – A local agency may submit a debt owed to it for setoff collection under this Chapter. A local agency may not submit a debt owed to it for forced collection under this Chapter. A local agency that decides to submit a setoff

1 debt owed to it for collection under this Chapter must establish the debt by following the
2 procedure set in G.S. 105A-5 and must submit the debt through one of the following:

3 ...
4 (d) Registration and Reports. – A State agency must register with the Department and
5 with the State Controller. Every State agency must report annually to the State Controller the
6 amount of setoff debts owed to the agency for which the agency did not submit a claim for setoff
7 and the reason for not submitting the claim.

8 **"§ 105A-4. Minimum debt and ~~refund~~-refund for setoff collection; minimum debt for**
9 **forced collection.**

10 This Chapter applies only to (i) a setoff collection debt that is at least fifty dollars (\$50.00)
11 and to a refund that is at least this same ~~amount~~-amount and (ii) a forced collection debt for which
12 the Department determines the cost to the State in collecting the debt is less than the amount of
13 the debt collectible.

14 **"§ 105A-5. Local agency notice, hearing, and decision.**

15 (a) Prerequisite. – A local agency may not submit a debt for setoff collection under this
16 Chapter until it has given the notice required by this section and the claim has been finally
17 determined as provided in this section.

18 ...
19 (e) Return of Amount Set Off. – If a local agency submits a debt for setoff collection
20 under this Chapter without sending the notice required by subsection (b) of this section, the
21 agency must send the taxpayer the entire amount set off plus the collection assistance fees
22 provided in G.S. 105A-13. Similarly, if a local agency submits a debt for setoff collection under
23 this Chapter after sending the required notice but before final determination of the debt and a
24 decision finds that the local agency is not entitled to any part of the amount set off, the agency
25 must send the taxpayer the entire amount set off plus the collection assistance fees provided in
26 G.S. 105A-13. That portion of the amount returned that reflects the collection assistance fees
27 must be paid from the local agency's funds.

28 If a local agency submits a debt for setoff collection under this Chapter after sending the
29 required notice and the net proceeds collected that are credited to the local agency for the debt
30 exceed the amount of the debt, the local agency must send the balance to the debtor. No part of
31 the collection assistance fees provided in G.S. 105A-13 may be returned when a notice was sent
32 and a debt is owed but the debt is less than the amount set off.

33 ...
34 **"§ 105A-6A. Procedure for force collecting; debts eligible for force collection.**

35 (a) State Auditor Notice of Final Determination to Department Required. – Upon final
36 determination of a debt under G.S. 105A-8A, the Office of the State Auditor shall notify the
37 Department in writing of the debt and shall supply any information necessary to identify the
38 debtor against whom forced collection may be sought, including the written report and any
39 additional supporting documentation required to be submitted by the Auditor under
40 G.S. 147-64.6(c)(21).

41 (b) Department Notice to Debtor Required. – Upon receipt of notification by the Office
42 of the State Auditor under subsection (a) of this section, and prior to implementing any forced
43 collection remedy, the Department shall provide written notice to the debtor of the following:

- 44 (1) The Department's intention to collect the debt and the forced debt collection
45 remedies allowed by this Chapter.
46 (2) The ability of the debtor to pay the debt in full or to enter into an installment
47 agreement to pay the debt pursuant to G.S. 105A-6D.
48 (3) That a collection assistance fee equal to three percent (3%) of the amount of
49 the debt collected will be added to the debt if it is forced collected.

1 (c) Debts Eligible for Forced Collection. – Only those debts that are discovered through
2 an audit or investigation undertaken by the Office of the State Auditor in accordance with
3 G.S. 147-64.6(c)(21) are eligible for forced collection under this Chapter.

4 **"§ 105A-6B. Levy and sale.**

5 Notwithstanding that a debt owed to a State agency is not a collectible tax under
6 G.S. 105-241.22, if a debtor does not pay a debt, or enter into an installment agreement to pay a
7 debt, within 60 days of being notified by the Department in accordance with G.S. 105A-6A(b),
8 the Department may force collect the debt by levy and sale in the manner prescribed by
9 G.S. 105-242(a)(1) and (a)(2) for the levy and sale of property for the nonpayment of tax.

10 **"§ 105A-6C. Attachment and garnishment.**

11 Notwithstanding that a debt owed to a State agency is not a collectible tax under
12 G.S. 105-241.22, if a debtor does not pay a debt, or enter into an installment agreement to pay a
13 debt, within 60 days of being notified by the Department in accordance with G.S. 105A-6A(b),
14 the Department may force collect the debt by attachment and garnishment in the manner
15 prescribed by G.S. 105-242.1 for the attachment and garnishment of intangible personal property
16 for the nonpayment of tax.

17 **"§ 105A-6D. Installment agreements.**

18 The Secretary may enter into an agreement with the debtor for payment of the debt in
19 installments if the Secretary determines that the agreement will facilitate collection of the debt.
20 The Secretary may modify or terminate the agreement if one or more of the following findings
21 is made:

- 22 (1) Information provided by the debtor in support of the agreement was inaccurate
23 or incomplete.
- 24 (2) Collection of debt to which the agreement applies is in jeopardy.
- 25 (3) The debtor's financial condition has changed.
- 26 (4) The debtor has failed to pay an installment when due.
- 27 (5) The debtor has failed to provide information requested by the Secretary.

28 The Secretary must give a debtor who has entered into an installment agreement at least 30
29 days' written notice before modifying or terminating the agreement on the grounds that the
30 debtor's financial condition has changed unless the debtor failed to disclose or concealed assets
31 or income when the agreement was made or the debtor has acquired assets since the agreement
32 was made that can satisfy all or part of the debt. A notice must specify the basis for the Secretary's
33 finding of a change in the debtor's financial condition.

34 ...

35 **"§ 105A-8. Setoff collection; State agency notice, hearing, decision, and refund of**
36 **setoff;setoff collection.**

37 ...

38 **"§ 105A-8A. Forced collection; prerequisite, State Auditor notice, State Auditor hearing,**
39 **decision.**

40 (a) Prerequisite. – The Office of the State Auditor may not submit notice of final
41 determination of a debt to the Department for forced collection under G.S. 105A-6A(a) until the
42 Auditor has finally determined the debt in accordance with this section. For purposes of this
43 section, a "finally determined" debt shall mean a debt that (i) meets the requirements of
44 G.S. 105A-6A(c), (ii) for which the Auditor has given notice as required by subsection (b) of this
45 section, and (iii) for which the debtor did not file a timely request for hearing under this section,
46 or, for which the debtor did file a timely request for hearing but a decision made after hearing
47 determined that a debtor owed a debt, in a sum certain, to a State agency, and all appellate relief
48 afforded the debtor for purposes of finally determining the debt under this section has been
49 exhausted.

50 (b) Notice. – The Office of the State Auditor must send written notice to a debtor that the
51 Auditor intends to submit the debt owed by the debtor to the Department for forced collection.

1 At a minimum, the notice must explain (i) the basis for the State's claim to the debt, (ii) the forced
2 debt collection remedies allowed by this Chapter, (iii) that a collection assistance fee equal to
3 three percent (3%) of the debt will be added to the debt if it is force collected, and (iv) that the
4 debtor has the right to contest the matter by filing a request for hearing with the Auditor, stating
5 the time limits and procedure for requesting the hearing, and by stating that failure to request a
6 hearing within the required time may result in forced collection of the debt.

7 (c) Auditor Hearing. – A hearing on a contested claim of the State Auditor under this
8 section must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes.
9 A request for a hearing must be filed within 30 days after the Auditor mails the debtor notice of
10 the proposed forced collection. A request for a hearing is considered to be filed when it is
11 delivered for mailing with postage prepaid and properly addressed. In a hearing under this
12 section, an issue that has previously been litigated in a court proceeding cannot be considered. A
13 final decision on a hearing under this section may be appealed in accordance with G.S. 105A-9.

14 (d) Decision. – A decision made after a hearing under this section must determine, at a
15 minimum, (i) whether a debt is owed to the State agency, (ii) by whom the debt is owed, and (iii)
16 the amount of the debt.

17 **"§ 105A-9. Appeals from hearings.**

18 Appeals from hearings allowed under this Chapter, other than those conducted by the Judicial
19 Branch and the Division of Employment Security, shall be in accordance with the provisions of
20 Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of
21 initial judicial review shall be the superior court for the county in which the debtor resides.
22 resides, or, in the case of nonresident debtors, the superior court of Wake County. A party
23 aggrieved by an order or decision of a hearing conducted by the clerk of superior court or the
24 Director of the North Carolina Administrative Office of the Courts or the Director's designee,
25 under this Article may, within 10 days of entry of the order, appeal to the superior court for a
26 hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk of superior
27 court in the county where the order was entered. Appeals from hearings allowed under this
28 Chapter that are conducted by the Division of Employment Security shall be in accordance with
29 the provisions of Chapter 96 of the General Statutes.

30 ...

31 **"§ 105A-13. Collection assistance fees.**

32 (a) State ~~Setoff.~~ Setoff Collection. – To recover the costs incurred by the Department in
33 collecting setoff debts under this Chapter, a collection assistance fee of five dollars (\$5.00) is
34 imposed on each debt collected through setoff. The Department must collect this fee as part of
35 the debt and retain it. The collection assistance fee under this subsection shall not be added to
36 child support debts or collected as part of child support debts. Instead, the Department shall retain
37 from collections under ~~Division II~~ of Article 4 of Chapter 105 of the General Statutes the cost of
38 collecting child support debts through debt setoff under this Chapter.

39 (a1) State Forced Collection. – To recover the costs incurred by the Department in force
40 collecting debts under this Chapter, a collection assistance fee equal to three percent (3%) of the
41 amount of the debt is imposed on each debt collected through forced collection. The Department
42 must collect this fee as part of the debt and retain it. The collection assistance fee under this
43 subsection shall not be added to child support debts or collected as part of child support debts.
44 Instead, the Department shall retain from collections under Article 4 of Chapter 105 of the
45 General Statutes the cost of collecting child support debts through forced collection under this
46 Chapter.

47 ...

48 (c) Local Debts. – To recover the costs incurred by local agencies in submitting debts for
49 setoff collection under this Chapter, a local collection assistance fee of fifteen dollars (\$15.00) is
50 imposed on each local agency debt submitted under G.S. 105A-3(b1) and collected through

1 setoff. The Department must collect this fee as part of the debt and remit it to the clearinghouse
2 that submitted the debt. The local collection assistance fee does not apply to child support debts.

3 ...
4 **"§ 105A-14. Accounting-Setoff collection; accounting to the claimant agency; agency, credit**
5 **to debtor's obligation.**

6 (a) Setoff Collection; Accounting to Claimant Agency. – Simultaneously with the
7 transmittal of the net proceeds collected through setoff collection to a claimant agency, the
8 Department must provide the agency with an accounting of the setoffs for which payment is
9 being made. The accounting must whenever possible include the full names of the debtors, the
10 debtors' social security numbers or federal identification numbers, the gross proceeds collected
11 per setoff, the net proceeds collected per setoff, and the collection assistance fee added to the
12 debt and collected per setoff.

13 (b) Setoff Collection; Credit to Debtor's Obligation. – Upon receipt by a claimant agency
14 of net proceeds collected on the claimant agency's behalf by the Department, a final
15 determination of the claim if it is a State agency claim, and an accounting of the proceeds as
16 specified under this section, the claimant agency must credit the debtor's obligation with the net
17 proceeds collected.

18 **"§ 105A-14A. Forced collection proceeds credited to General Fund.**

19 The net proceeds collected through a forced collection conducted under this Chapter shall be
20 credited to the General Fund by the Department within 60 days of collection.

21"

22 **SECTION 11.(b)** This section becomes effective December 1, 2025, and applies to
23 the collection of debts on or after that date.

24 **SECTION 12.(a)** G.S. 143B-218 reads as rewritten:

25 **"§ 143B-218. Department of Revenue – duties.**

26 It shall be the duty of the Department to collect and account for the State's tax funds, to insure
27 uniformity of administration of the tax laws and regulations, to conduct research on revenue
28 matters, ~~and~~ to exercise general and specific supervision over the valuation and taxation of
29 property throughout the ~~State~~.State, and to perform other non-tax related functions as enacted by
30 the General Assembly."

31 **SECTION 12.(b)** This section becomes effective December 1, 2025, and applies to
32 the performance of non-tax related functions by the Department on or after that date.

33 **PART IV. EFFECTIVE DATE**

34 **SECTION 13.** Sections 1, 2, and 3 of this act become effective July 1, 2025, and
35 apply to contracts entered into or renewed on or after that date. G.S. 147-64.6(c)(21), as amended
36 by Section 10 of this act, becomes effective December 1, 2025. Unless otherwise provided, the
37 remainder of this act is effective when it becomes law.
38