



# SENATE BILL 473: Enhance Local Gov't Transparency.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	February 2, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Erika Churchill Staff Attorney
<b>Analysis of:</b>	S.L. 2021-191		

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**OVERVIEW:** *S.L. 2021-191 does the following:*

- *Requires the State Auditor (Auditor) to notify the Local Government Commission (Commission) when an audit report is the result of an investigation of a unit of local government, effective December 9, 2022.*
- *Allows the Commission, following the release of an investigative report, to be involved in that local government's audit process for up to three fiscal years, effective December 9, 2022 and applies to investigative reports conducted July 1, 2018 and after.*
- *Requires a local finance officer to garnish a board or council member's compensation in order to collect monies owed for unpaid county and city services, effective December 9, 2022.*
- *Creates a new felony offense for public officers who personally benefit financially from their position, effective January 1, 2022.*
- *Subject to certain exceptions, prohibits public officials from participating in making or administering a contract, including the award of money, with any nonprofit with which the public official is associated, effective January 1, 2022.*

## CURRENT LAW and BILL ANALYSIS:

### Annual Audits

The Local Government Budget and Fiscal Control Act, found in Article 3 of Chapter 159 of the General Statutes, "prescribe[s] for local governments and public authorities a uniform system of budget adoption and administration and fiscal control." ([G.S. 159-7\(c\)](#)). One of the requirements of the Local Government Budget and Fiscal Control Act is that each unit of local government must have its accounts audited as soon as possible after the close of each fiscal year. The auditor is selected by and reports directly to the governing board. ([G.S. 159-34](#)).

**Section 1**, effective December 9, 2021, requires the Auditor to notify the Commission if a published audit report is the result of an investigation of a unit of local government. It also allows the Commission to provide a list of three certified public accountants from which the governing board must select to conduct the annual audit of the governing board's accounts when the Commission has received notice of the release of an investigative report from the Auditor. The Commission could exercise this authority for up to three fiscal years after the release of the investigative report. The certified public accountant selected would report directly to the Commission and governing board, comply with all rules of the Commission, and be paid by the governing board. The Commission's authority to select the certified public accountant

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conducting the annual audit applies to any local government subject to an investigative report initiated July 1, 2018, or after.

## **Wage Garnishment of Elected or Appointed County or City Official**

If a city or county finance officer obtains a final judgment awarding monetary damages against an elected or appointed member of the board of commissioners or the city council, he or she may enforce the judgment as if final judgment awarding monetary damages were delinquent taxes and the finance officer were a tax collector. ([G.S. 153A-30](#) and [G.S. 160A-64.1](#)).

**Section 2** requires, effective December 9, 2021, a county finance officer, or a city finance officer, to garnish a board member's compensation to collect unpaid monies due for county services until the debt is paid in full.

## **Embezzlement**

Any officer, agent, or employee of the State who embezzles from the State shall be guilty of a felony. If the property's value is \$100,000 or more, it is a Class C felony. If the property's value is less than \$100,000, it is a Class F felony. (G.S. 14-91 and G.S. 14-92).

**Section 3**, effective January 1, 2021, establishes a Class H felony for an elected officer that solicits or receives personal financial gain from the political subdivision for which he or she serves by means of intimidation, undue influence, or misuse of the employees of that subdivision.

## **Conflicts of Interest**

Currently under G.S. 14-234, no public officer or employee involved in making or administering a contract on behalf of a public agency may solicit or receive a gift, reward, or promise of a reward in exchange for recommending, influencing, or attempting to influence the award of the contract. It also prohibits public officers and employees from soliciting or receiving favors, services, and promises of future employment. Violations are a Class 1 misdemeanor, and exceptions such as the following apply:

- An employment relationship between a public agency and the public officer's spouse.
- Remuneration from a public agency for services, facilities, or supplies furnished directly to needy individuals by a public officer or employee of the agency under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by the agency, if certain conditions are met.
- Any elected official or person appointed to fill an elective office of a municipality having a population of no more than 20,000.
- Any elected official or person appointed to fill an elective office of a county within which there is located no municipality with a population of more than 20,000.
- Any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 20,000.
- Any elected official or person appointed to fill an elective office on a county board of education in a county within which there is no city with a population of more than 20,000.
- A physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance

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abuse board serving one or more counties within which there is located no city with a population of more than 20,000.

- Contracts subject to Article 8 of Chapter 143 of the General Statutes (Public Building Contracts).
- Public hospitals or public hospital authorities.

Contracts in violation of this prohibition are void, but could continue in effect until an alternative can be arranged if (1) an immediate termination would result in harm to the public health or welfare and (2) the continuation was approved by the Chair of the Local Government Commission upon a party's request.

**Section 4**, effective January 1, 2021, prohibits public officials from knowingly participating in making or administering a contract, including the award of money, with any nonprofit with which the public official is associated. The political subdivision would be able to enter into the contract upon the recusal of the public official. A violation is a Class 1 misdemeanor. The exceptions listed above, plus more, would apply. And, like G.S. 14-234, contracts in violation of this prohibition would be void, but could continue in effect until an alternative can be arranged if (1) an immediate termination would result in harm to the public health or welfare and (2) the continuation was approved by the Chair of the Local Government Commission upon a party's request.