



SENATE BILL 473: Enhance Local Gov't Transparency.

2021-2022 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	November 29, 2021
Introduced by:	Sens. Barnes, Sanderson, Edwards	Prepared by:	Brad Krehely
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: *Senate Bill 473 would do the following:*

- *Require 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.*
- *Allow the Commission, following the release of an investigative report, to be involved in that local government's audit process for up to three years.*
- *Require 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.*
- *Create a new felony offense for public officers and employees who personally benefit financially from their position.*
- *Would, subject to certain exceptions, prohibit 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 and would create a misdemeanor offense for such violations.*

CURRENT LAW: "The Local Government Budget and Fiscal Control Act," found in Article 3 of Chapter 159 of the General Statutes, "prescribes for local governments and public authorities a uniform system of budget adoption and administration and fiscal control." ([G.S. 159-7\(c\)](#)).

Annual Audits

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](#)).

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](#)).

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).

BILL ANALYSIS:

Section 1(a) would require the Auditor to notify the Commission if a published audit report is the result of an investigation of a unit of local government.

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Section 1(b) would allow the Commission to select the certified public accountant (CPA) to conduct the annual audit of the governing board's accounts, rather than the governing board, when the Commission has received notice of the release of an investigative report described in Section 1(a). The Commission could exercise this authority for three years after the release of the report. The CPA would report directly to the Commission and governing board, comply with all rules of the Commission, and be paid by the governing board.

Section 1 would be effective when it becomes law and apply to any audit issued by the Auditor on or after that date. At the Commission's discretion, it may use authority established by Section 1(b) with respect to any unit of local government audited by the Auditor on or after July 1, 2018.

Section 2(a) would require a county finance officer to garnish a board member's compensation to collect unpaid monies due for county services until the debt is paid in full.

Section 2(b) would apply the same requirements in Section 2(a) to a city finance officer.

Section 2 would become effective when the bill becomes law, and would apply to any compensation paid in accordance with G.S. 153A-28 or G.S. 160A-64 on or after that date.

Section 3(a) would create 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.

Section 4(a) would prohibit 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. The political subdivision would be able to enter into the contract upon the recusal of the public official. A violation would be a Class 1 misdemeanor. The following exceptions apply:

- Any contract between a public agency and a bank, banking institution, savings and loan association, or with a public utility.
- An interest in property conveyed by an officer or employee of a public agency under a judgment entered by a superior court judge in a condemnation proceeding initiated by the public agency.
- An employment relationship between a public agency and the public officer's spouse.
- Any employment relationship between a local board of education and the spouse of the superintendent of that local school administrative unit, if that employment relationship has been approved by that board in an open session meeting pursuant to the board's policy.
- 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 15,000.
- 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 15,000.
- 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 15,000.
- 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 15,000.

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- 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 abuse board serving one or more counties within which there is located no city with a population of more than 15,000.
- A member of the board of directors of a public hospital, if certain conditions are met.
- Contracts subject to Article 8 of Chapter 143 of the General Statutes (Public Building Contracts).
- Application for or the receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control, the Community Conservation Assistance Program, or the Agricultural Water Resources Assistance Program, by a member of the Soil and Water Conservation Commission if certain requirements are met, and does not apply to a district supervisor of a soil and water conservation district if certain requirements are met.
- Application for, or the receipt of a grant or other financial assistance from, the Tobacco Trust Fund by a member of the Tobacco Trust Fund Commission or an entity in which a member of the Commission has an interest provided that certain requirements are met.
- Public hospitals or public hospital authorities.

Contracts in violation of this section 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.

Sections 3 and 4 would become effective December 1, 2021 and apply to offenses committed on or after that date.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.