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HOUSE BILL DRH40281-MU-23

Short Title: State Auditor Clarifying Amendments.

(Public)

Sponsors: Representative Howard.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CLARIFYING AND TECHNICAL CHANGES IN THE STATE
3 AUDITOR STATUTES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 147-64.2 reads as rewritten:

6 "§ 147-64.2. Legislative policy and intent.

7 The General Assembly is ultimately responsible for authorizing the expenditure of public
8 moneys, designating the sources from which moneys may be collected, and shaping the
9 administrative structure to perform the work of government throughout the State, and is held
10 finally accountable for how the funds are spent and what is accomplished with them. The
11 legislature should, therefore, provide the basic direction for audits of State ~~agencies~~ agencies as
12 defined in G.S. 147-64.4.

13 In the interest of reducing audit overlap and expense at all levels of government, the General
14 Assembly and the Auditor should promote, to the extent possible, coordinated nonduplicating
15 audits of public programs and activities of all governmental levels throughout the State.

16 It is the intent of this Article that all State agencies, and entities supported, partially or
17 entirely, by public funds be subject to audit and investigation under the policy guidance of the
18 Auditor. ~~Such~~ These audits and investigations shall be made to assist in furnishing the General
19 Assembly, the Governor, the executive departments and agencies of the State, the governing
20 bodies and executive departments of the political subdivisions of the State, and the public in
21 general with an independent evaluation of public program performance."

22 SECTION 2.(a) Subdivision (1) of G.S. 147-64.4 is recodified as subdivision (2a)
23 of that section.

24 SECTION 2.(b) G.S. 147-64.4, as amended by subsection (a) of this section, reads
25 as rewritten:

26 "§ 147-64.4. Definitions.

27 ~~The words and phrases used in this Article have the following meanings:~~ following definitions
28 apply in this Article:

29 ...
30 (2) "~~Accounting system~~".—Accounting system or system of accounting. — The
31 total structure of records and procedures ~~which that~~ discover, record, classify,
32 and report information on the financial position and operating results of a
33 ~~governmental unit~~ State agency or any of its funds, balanced account groups,
34 and organizational components.

35 (2a) "~~Audit~~".—Audit. — An independent review or examination of ~~government~~
36 State agency organizations, programs, activities, and functions. The purpose



of an audit is to help ensure full accountability and assist ~~government~~ State agency officials and employees in carrying out their responsibilities. The elements of ~~such an audit are~~ are as follows:

- a. Financial and compliance: to determine whether financial operations are properly conducted, whether the financial reports of ~~an audited entity~~ a State agency are presented fairly, and whether the ~~entity~~ State agency has complied with applicable ~~laws and regulations; and, laws.~~
- b. Economy and efficiency: to determine whether the ~~entity~~ State agency is managing or utilizing its resources (such as personnel and property) in an economical and efficient manner and the causes of any inefficiencies or uneconomical practices, including inadequacies in ~~laws and regulations, laws,~~ management information systems, administrative policies and procedures, or organizational ~~structures; and, structures.~~
- c. Program results: to determine whether the desired results or benefits are being achieved, whether the objectives established by the General Assembly or ~~other~~ another authorizing body are being met, and whether the State agency has considered alternatives ~~which that~~ might yield desired results at lower costs.
- d. An audit may include all three elements or only one or two. It is not intended or desirable that every audit include all three. Economy and efficiency and program result audits should be selected when their use will meet the needs of expected users of audit results.

(3) ~~"Federal agency".~~ Federal agency. – Any department, agency, or instrumentality of the federal government and any federally owned or controlled corporation.

(3a) Investigation. – An independent review or examination of an allegation of an improper governmental activity regarding a State agency organization, program, activity, or function. The purpose of an investigation is to help ensure full accountability and assist State agency officials and employees in carrying out their responsibilities.

(4) ~~"State agency".~~ State agency. – Any department, political subdivision, institution, board, commission, committee, division, bureau, officer, official or any other entity for which the State has oversight responsibility, including but not limited to, any university, mental or specialty hospital, community college, or clerk of court."

SECTION 3. G.S. 147-64.6 reads as rewritten:

"§ 147-64.6. Duties and responsibilities.

(a) General Duty. – It is the policy of the General Assembly to provide for the auditing and investigation of State agencies by the impartial, independent State Auditor.

(b) Areas of Examination. – The duties of the Auditor are independently to examine into and make findings of fact on whether State ~~agencies;~~ agencies have done or are doing all of the following:

- (1) Have established adequate operating and administrative procedures and practices; systems of accounting, ~~reporting~~ reporting, and auditing; and other necessary elements of legislative or management control.
- (2) Are providing financial and other reports ~~which that~~ disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of ~~such~~ these programs and operations.

- 1 (3) Are promptly collecting, depositing, and properly accounting for all revenues
2 and receipts arising from their activities.
- 3 (4) Are conducting programs and activities and expending funds made available
4 in a faithful, efficient, and economical manner in compliance with and in
5 furtherance of applicable laws ~~and regulations~~ of the State, and, if applicable,
6 federal ~~law and regulation~~ law.
- 7 (5) Are determining that the authorized activities or programs effectively serve
8 the intent and purpose of the General Assembly and, if applicable, federal ~~law~~
9 ~~and regulation~~ law.
- 10 (6) Are adhering to statutory requirements that include conditions precedent,
11 classifications, and similar eligibility or qualifying standards to assure that
12 statutory intent is carried out while the requirements are in effect.
- 13 (7) Are not engaging in an improper governmental activity as provided in
14 G.S. 147-64.6B, including misappropriation, mismanagement, waste of State
15 resources, fraud, or a violation of State or federal law.
- 16 (c) Responsibilities. – The Auditor is responsible for the following acts and activities:
- 17 (1) Audits made or caused to be made by the Auditor shall be conducted in
18 accordance with generally accepted auditing standards as prescribed by the
19 American Institute of Certified Public Accountants, the United States General
20 Accounting Office, or other professionally recognized accounting
21 standards-setting bodies.
- 22 (2) Financial and compliance audits may be made at the discretion of the Auditor
23 without advance notice to the organization being audited. Audits of economy
24 and efficiency and program results shall be discussed in advance with the
25 prospective auditee unless an unannounced visit is essential to the audit.
- 26 (3) The Auditor, on the Auditor's own initiative and as often as the Auditor deems
27 necessary, or as requested by the Governor or the General Assembly, shall, to
28 the extent deemed practicable and consistent with the Auditor's overall
29 responsibility as contained in this ~~act~~, Article, make or cause to be made audits
30 of all or any part of the activities of the State agencies. Each State agency ~~or~~
31 ~~department~~ receiving a financial statement audit by the Auditor under this
32 subdivision shall prepare a financial statement and supplementary information
33 in the format required by the Auditor. Financial statements and supplementary
34 information prepared as required by this subdivision shall be completed and
35 submitted to the Auditor not later than 60 days after the deadline for the State
36 agency's ~~or department's~~ Comprehensive Annual Financial Report submission
37 as established by the State Controller.
- 38 (4) The Auditor, at the Auditor's own discretion, may, in selecting audit areas and
39 in evaluating current audit activity, consider and utilize, in whole or in part,
40 the relevant audit coverage and applicable reports of the audit staffs of the
41 various State agencies, independent contractors, and federal agencies. The
42 Auditor shall coordinate, to the extent deemed practicable, the auditing
43 conducted within the State to meet the needs of all governmental bodies.
- 44 (5) The Auditor ~~is authorized to~~ may contract with federal audit agencies, or any
45 governmental agency, on a cost reimbursable basis, for the Auditor to perform
46 audits of federal grants and programs administered by ~~the State Departments~~
47 ~~and institutions~~ State agencies in accordance with agreements negotiated
48 between the Auditor and the contracting federal audit agencies or any
49 governmental agency. In instances where the grantee State agency ~~shall~~
50 ~~subgrant~~ subgrants these federal funds to local governments, regional councils
51 of ~~government~~ government, and other local groups or private or semiprivate

1 institutions or agencies, the Auditor ~~shall have the authority to~~ may examine
2 the books and records of these subgrantees to the extent necessary to
3 determine eligibility and proper use in accordance with State and federal ~~laws~~
4 ~~and regulations.~~ laws.

5 The Auditor shall charge and collect from the contracting federal audit
6 agencies, or any governmental agencies, the actual cost of all the audits of the
7 grants and programs contracted by ~~him~~ the Auditor to do. Amounts collected
8 under these arrangements shall be deposited in the State Treasury and be
9 budgeted in the Department of State Auditor and shall be available to hire
10 sufficient personnel to perform these contracted audits and to pay for related
11 travel, ~~supplies~~ supplies, and other necessary expenses.

12 (6) The Auditor ~~is authorized and directed~~ shall, in the Auditor's reports of audits
13 or reports of ~~special investigations to~~ investigations, make any comments,
14 suggestions, or recommendations the Auditor deems appropriate concerning
15 any aspect of ~~such~~ the State agency's activities and operations.

16 (7) The Auditor may charge and collect from each examining and licensing board
17 the actual cost of each audit of ~~such~~ the board. Costs collected under this
18 subdivision shall be based on the actual expense incurred by the Auditor's
19 office in making ~~such~~ audit ~~the~~ audit, and the affected State agency ~~shall be~~ is
20 entitled to an itemized statement of ~~such~~ the costs. Amounts collected under
21 this subdivision shall be deposited into the ~~general fund~~ General Fund as
22 nontax revenue.

23 (8) The Auditor shall examine as often as ~~may be deemed~~ necessary the accounts
24 kept by the State Treasurer, and if the Auditor discovers any irregularity or
25 deficiency ~~therein, in the accounts, unless the same be~~ irregularity or
26 deficiency is rectified or explained to ~~his~~ the Auditor's satisfaction, report ~~the~~
27 ~~same forthwith~~ it in writing to the General Assembly, ~~with~~ Assembly and
28 provide a copy of ~~such~~ the report to the Governor and Attorney General. In
29 addition to regular audits, the Auditor shall check the ~~treasury~~ Treasurer's
30 records at the time a new Treasurer assumes office (~~not to succeed himself or~~
31 ~~herself~~), ~~and therein~~ and charge the Treasurer with the balance in the ~~treasury,~~
32 accounts and shall check the Treasurer's records at the time the Treasurer
33 leaves office to determine that the accounts are in order.

34 (9) The Auditor may examine the accounts and records of any bank or financial
35 institution relating to transactions with the State Treasurer, or with any State
36 agency, or the Auditor may require banks doing business with the State to
37 furnish the Auditor information relating to transactions with ~~the State or~~ State
38 agencies.

39 (10) The Auditor may, as often as the Auditor deems advisable, conduct a detailed
40 review of the bookkeeping and accounting systems in use in the various State
41 agencies ~~which that~~ are supported partially or entirely from State funds. ~~Such~~
42 These examinations ~~will~~ shall be for the purpose of evaluating the adequacy
43 of systems in use by these ~~agencies and institutions.~~ State agencies. In
44 instances where the Auditor determines that existing systems are outmoded,
45 inefficient, or otherwise inadequate, the Auditor shall recommend changes to
46 the State Controller. The State Controller shall prescribe and supervise the
47 installation of ~~such~~ these changes, as provided in G.S. 143B-426.39(2).

48 (11) The Auditor shall, through appropriate tests, satisfy himself or herself
49 concerning the propriety of the data presented in the Comprehensive Annual
50 Financial Report and shall express the appropriate auditor's opinion in
51 accordance with generally accepted auditing standards.

- 1 (12) The Auditor shall provide a report to the Governor and Attorney General, and
2 other appropriate officials, of ~~such facts as are in the Auditor's possession~~
3 ~~which that~~ pertain to the apparent violation of ~~penal-criminal~~ statutes or
4 apparent instances of malfeasance, misfeasance, or nonfeasance by an officer
5 or employee.
- 6 (13) At the conclusion of an audit, the Auditor or the Auditor's designated
7 representative shall discuss the audit with the official whose office is subject
8 to audit and submit necessary underlying facts developed for all findings and
9 recommendations ~~which that~~ may be included in the audit report. On audits of
10 economy and efficiency and program results, the auditee's written response
11 shall be included in the final report if received within 15 to 30 days from
12 receipt of the draft report. The length of time shall be determined by the
13 Auditor and shall be commensurate with the number and complexity of the
14 findings.
- 15 (14) The Auditor shall notify the General Assembly, the Governor, the ~~Chief~~
16 ~~Executive Officer~~ head of each State agency audited, and other persons as the
17 Auditor deems ~~appropriate~~ appropriate, that an audit report has been
18 published, its subject and title, and the locations, including State libraries, at
19 which the report is available. The Auditor shall then distribute copies of the
20 report only to those who request a report. The copies shall be in written or
21 electronic form, as requested. ~~He~~ The Auditor shall also file a copy of the audit
22 report in the Auditor's ~~office, which will~~ office which shall be a permanent
23 public record. In addition, the Auditor may publish on ~~his or her Web site~~ the
24 Auditor's website any reports from audits of State agencies not directly
25 conducted by the Auditor. Nothing in this subsection ~~shall be construed as~~
26 ~~authorizing or permitting~~ permits the publication of information whose
27 disclosure is otherwise prohibited by law.
- 28 (15) ~~It is not the intent of the audit function, nor shall it be so construed, to~~ The
29 audit and investigation function does not infringe upon or deprive the General
30 Assembly and the executive or judicial branches of State government of any
31 rights, powers, or duties vested in or imposed upon them by statute or the
32 Constitution.
- 33 (16) The Auditor ~~shall be~~ is responsible for receiving reports of allegations of the
34 improper governmental activities as provided in G.S. 147-64.6B. The Auditor
35 shall adopt policies and procedures necessary to provide for the investigation
36 or referral of these allegations.
- 37 (17) Repealed by Session Laws 2009-136, s. 2, effective June 19, 2009.
- 38 (18) Repealed by Session Laws 2010-31, s. 6.15(b), effective July 1, 2010.
- 39 (19) Whenever the Auditor believes that information received or collected by the
40 Auditor may be evidence of a violation of any of the provisions of Chapter
41 138A of the General Statutes, Chapter 120C of the General Statutes, or Article
42 14 of Chapter 120 of the General Statutes, the Auditor shall report that
43 information to the State Ethics Commission and the Secretary of State as
44 appropriate. The Auditor ~~shall be~~ is bound by interpretations issued by the
45 State Ethics Commission as to whether or not any information reported by the
46 Auditor under this subdivision involves or may involve a violation of Chapter
47 138A of the General Statutes, Chapter 120C of the General Statutes, or Article
48 14 of Chapter 120 of the General Statutes. Nothing in this subdivision ~~shall~~
49 ~~be construed to limit~~ limits the Auditor's authority under subdivision (1) of
50 this subsection.

1 (20) Whenever the Auditor believes that information received or collected by the
2 Auditor may be evidence of criminal misconduct, the Auditor shall report that
3 information to either the State Bureau of Investigation or the ~~District Attorney~~
4 district attorney for the county where the alleged misconduct occurred.
5 Nothing in this subdivision ~~shall be construed to limit limits~~ the Auditor's
6 authority under subdivision (1) of this subsection.

7 (21) If an audit or investigation undertaken by the Auditor results in a finding that
8 a private person or entity has received public funds as a result of fraud,
9 misrepresentation, or other deceptive acts or practices while doing business
10 with ~~the State or a political subdivision thereof, a State agency,~~ the Auditor
11 shall submit a detailed written report of the finding, and any additional
12 necessary supporting documentation, to the State Purchasing Officer or the
13 appropriate ~~political subdivision~~ official, as applicable. A report submitted
14 under this subsection may include a recommendation that the private person
15 or entity be debarred from doing business with the State or a ~~political~~
16 subdivision thereof, State agency.

17 (22) Verification audits for compliance with statutory requirements, with or
18 without advance notice to the ~~organization or~~ State agency being audited,
19 ~~which~~ may be initiated at the discretion of the Auditor or as requested by the
20 Governor or General Assembly.

21 (d) Reports and Work Papers. – The Auditor shall maintain for 10 years a complete file
22 of all audit reports and reports of other examinations, investigations, surveys, and reviews issued
23 under the Auditor's authority. Audit work papers and other evidence and related supportive
24 material directly pertaining to the work of the Auditor's office shall be retained according to an
25 agreement between the Auditor and State Archives. To promote intergovernmental cooperation
26 and avoid unnecessary duplication of audit effort, and notwithstanding the provisions of
27 G.S. 126-24, pertinent work papers and other supportive material related to an audit or
28 investigation made pursuant to this section may be, at the discretion of the Auditor and unless
29 otherwise prohibited by law, made available for inspection by duly authorized representatives of
30 the State and federal government who desire access to and inspection of the records in connection
31 with some matter officially before them, including criminal investigations.

32 Except as provided in this section, or upon an order issued in Wake County Superior Court
33 upon 10 days' notice and hearing finding that access is necessary to a proper administration of
34 justice, audit work papers and related supportive material ~~shall be kept~~ are confidential, including
35 any interpretations, advisory opinions, or other information or materials furnished to or by the
36 State Ethics Commission under this section.

37 (e) Access to Records. – The Auditor may examine the accounts and records of any
38 organization or State agency relating to a verification audit for compliance with a statutory
39 condition precedent, classification, or other similar eligibility or qualifying standard."

40 **SECTION 4.** This act is effective when it becomes law.