

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35555-RUz-18A* (05/14)

Short Title: Clarify Juris. Under State Gov't. Ethics Act.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY JURISDICTION UNDER THE STATE GOVERNMENT
ETHICS ACT WITH REGARDS TO OFFICE OF THE STATE AUDITOR AS
RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-64.6(c)(16) reads as rewritten:

"(16) The Auditor shall be responsible for receiving reports of allegations of the improper governmental activities set forth in G.S. 126-84. The Auditor shall provide a telephone hotline to receive such allegations and informant may choose whether to remain anonymous. The Auditor shall implement the necessary policies and procedures to investigate hotline allegations and recommend appropriate action. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate agency immediately. Upon determination by the Auditor that an allegation involves violations of Chapter 138A, Chapter 120C, or Article 14 of Chapter 120 of the General Statutes, the Auditor shall refer the matter to the State Ethics Commission. In addition, the Auditor shall publicize the hotline number periodically and shall report findings to the agencies involved.

All records maintained by the ~~State~~ Auditor which involve unsubstantiated allegations of improper governmental activities set forth in G.S. 126-84 shall be destroyed within four years from the date such allegation was received."

SECTION 2. G.S. 147-64.6(c) is amended by adding an additional subdivision to read:

"(c) The Auditor shall be responsible for the following acts and activities:

1 ...
2 (19) Notwithstanding any other provision of this Article, the Auditor shall
3 not have jurisdiction over and shall not audit, examine, investigate, or
4 otherwise review any potential violations of Chapter 138A or 120C of
5 the General Statutes or Article 14 of Chapter 120 of the General
6 Statutes or compliance by any individual with these laws. Upon
7 determination by the Auditor that information received or collected by
8 the Auditor relates to potential violations of Chapter 138A and 120C
9 of the General Statutes and Article 14 of Chapter 120 of the General
10 Statutes, the Auditor shall refer all this information to the State Ethics
11 Commission and the Secretary of State, as appropriate. The Auditor
12 shall take no further actions with regard to these potential violations,
13 except as requested by the State Ethics Commission or the Secretary of
14 State."

15 **SECTION 3.** G.S. 147-64.6(d) reads as rewritten:

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

28 Except as provided ~~above~~in this section, or upon subpoena issued by a ~~duly~~
29 ~~authorized court or court official~~superior court judge with appropriate jurisdiction,
30 audit work papers and related supportive material shall be kept ~~confidential~~confidential,
31 including those furnished to the State Ethics Commission under this subsection."

32 **SECTION 4.** G.S. 138A-12(b) reads as rewritten:

33 "(b) Institution of Proceedings. – On its own motion, in response to a signed and
34 sworn complaint of any individual filed with the Commission, upon referral of a matter
35 under G.S. 147-64.6(c)(16) or (19), or upon the written request of any public servant or
36 any person responsible for the hiring, appointing, or supervising of a public servant, the
37 Commission shall conduct an inquiry into any of the following:

- 38 (1) The application or alleged violation of this Chapter.
- 39 (2) For legislators, the application of alleged violations of Part 1 of Article
40 14 of Chapter 120 of the General Statutes.
- 41 (3) An alleged violation of the criminal law by a covered person in the
42 performance of that individual's official duties.
- 43 (4) An alleged violation of G.S. 126-14.

1 Allegations of violations of the Code of Judicial Conduct shall be referred to the
2 Judicial Standards Commission without investigation."

3 **SECTION 5.** G.S. 138A-12(n) reads as rewritten:

4 "(n) Confidentiality. – Complaints and responses filed with the Commission and
5 reports and other investigative documents and records of the Commission connected to
6 an inquiry under this ~~section~~–section, including information provided pursuant to
7 G.S. 147-64.6(c)(16) or (19), shall be confidential and not matters of public record,
8 except as otherwise provided in this section or when the covered person or legislative
9 employee under inquiry requests in writing that the complaint, response, and findings be
10 made public. Once a hearing under this section commences, the complaint, response,
11 and all other documents offered at the hearing in conjunction with the complaint, not
12 otherwise privileged or confidential under law, shall be public records. If no hearing is
13 held at such time as the Commission reports to the employing entity a recommendation
14 of sanctions, the complaint and response shall be made public."

15 **SECTION 6.** This act is effective when it becomes law and applies to all
16 information received or collected by the State Auditor concerning alleged violations of
17 Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the
18 General Statutes on or after January 1, 2007.