HOUSE BILL 461

Short Title:	State Auditor Clarifying Amendments.	(Public)
Sponsors:	Representatives Howard, Szoka, Setzer, and Bradford (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	State Government, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House	

April 1, 2021

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AND TECHNICAL CHANGES IN THE STATE AUDITOR STATUTES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

"**§ 147-64.4. Definitions.**

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

…

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

(2a) ~~"Audit". —~~Audit. – An independent review or examination of ~~government~~ 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.

(3) Are promptly collecting, depositing, and properly accounting for all revenues and receipts arising from their activities.

(4) Are conducting programs and activities and expending funds made available in a faithful, efficient, and economical manner in compliance with and in furtherance of applicable laws ~~and regulations~~ of the State, and, if applicable, federal ~~law and regulation.~~law.

(5) Are determining that the authorized activities or programs effectively serve the intent and purpose of the General Assembly and, if applicable, federal ~~law and regulation.~~law.

(6) Are adhering to statutory requirements that include conditions precedent, classifications, and similar eligibility or qualifying standards to assure that statutory intent is carried out while the requirements are in effect.

(7) Are not engaging in an improper governmental activity as provided in G.S. 147-64.6B, including misappropriation, mismanagement, waste of State resources, fraud, or a violation of State or federal law.

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

(1) Audits made or caused to be made by the Auditor shall be conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the United States General Accounting Office, or other professionally recognized accounting standards-setting bodies.

(2) Financial and compliance audits may be made at the discretion of the Auditor without advance notice to the organization being audited. Audits of economy and efficiency and program results shall be discussed in advance with the prospective auditee unless an unannounced visit is essential to the audit.

(3) The Auditor, on the Auditor's own initiative and as often as the Auditor deems necessary, or as requested by the Governor or the General Assembly, shall, to the extent deemed practicable and consistent with the Auditor's overall responsibility as contained in this ~~act,~~ Article, make or cause to be made audits of all or any part of the activities of the State agencies. Each State agency ~~or department~~ receiving a financial statement audit by the Auditor under this subdivision shall prepare a financial statement and supplementary information in the format required by the Auditor. Financial statements and supplementary information prepared as required by this subdivision shall be completed and submitted to the Auditor not later than 60 days after the deadline for the State agency's ~~or department's~~ Comprehensive Annual Financial Report submission as established by the State Controller.

(4) The Auditor, at the Auditor's own discretion, may, in selecting audit areas and in evaluating current audit activity, consider and utilize, in whole or in part, the relevant audit coverage and applicable reports of the audit staffs of the various State agencies, independent contractors, and federal agencies. The Auditor shall coordinate, to the extent deemed practicable, the auditing conducted within the State to meet the needs of all governmental bodies.

(5) The Auditor ~~is authorized to~~ may contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the Auditor to perform audits of federal grants and programs administered by ~~the State Departments and institutions~~ State agencies in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency ~~shall~~

~~subgrant~~ subgrants these federal funds to local governments, regional councils of ~~government~~ government, and other local groups or private or semiprivate institutions or agencies, the Auditor ~~shall have the authority to~~ may examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance with State and federal ~~laws and regulations.~~laws.

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

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

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

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

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

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

(11) The Auditor shall, through appropriate tests, satisfy himself or herself concerning the propriety of the data presented in the Comprehensive Annual

Financial Report and shall express the appropriate auditor's opinion in accordance with generally accepted auditing standards.

(12) The Auditor shall provide a report to the Governor and Attorney General, and other appropriate officials, of ~~such~~ facts ~~as are~~ in the Auditor's possession ~~which~~ that pertain to the apparent violation of ~~penal~~ criminal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

(13) At the conclusion of an audit, the Auditor or the Auditor's designated representative shall discuss the audit with the official whose office is subject to audit and submit necessary underlying facts developed for all findings and recommendations ~~which~~ that may be included in the audit report. On audits of economy and efficiency and program results, the auditee's written response shall be included in the final report if received within 15 to 30 days from receipt of the draft report. The length of time shall be determined by the Auditor and shall be commensurate with the number and complexity of the findings.

(14) The Auditor shall notify the General Assembly, the Governor, the ~~Chief Executive Officer~~ head of each State agency audited, and other persons as the Auditor deems ~~appropriate~~ appropriate, that an audit report has been published, its subject and title, and the locations, including State libraries, at which the report is available. The Auditor shall then distribute copies of the report only to those who request a report. The copies shall be in written or electronic form, as requested. ~~He~~ The Auditor shall also file a copy of the audit report in the Auditor's ~~office, which will~~ office which shall be a permanent public record. In addition, the Auditor may publish on ~~his or her Web site~~ the Auditor's website any reports from audits of State agencies not directly conducted by the Auditor. Nothing in this subsection ~~shall be construed as authorizing or permitting~~ permits the publication of information whose disclosure is otherwise prohibited by law.

(15) ~~It is not the intent of the audit function, nor shall it be so construed, to~~ The audit and investigation function does not infringe upon or deprive the General Assembly and the executive or judicial branches of State government of any rights, powers, or duties vested in or imposed upon them by statute or the Constitution.

(16) The Auditor ~~shall be~~ is responsible for receiving reports of allegations of the improper governmental activities as provided in G.S. 147-64.6B. The Auditor shall adopt policies and procedures necessary to provide for the investigation or referral of these allegations.

(17) Repealed by Session Laws 2009-136, s. 2, effective June 19, 2009.

(18) Repealed by Session Laws 2010-31, s. 6.15(b), effective July 1, 2010.

(19) Whenever the Auditor believes that information received or collected by the Auditor may be evidence of a violation of any of the provisions of Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, or Article 14 of Chapter 120 of the General Statutes, the Auditor shall report that information to the State Ethics Commission and the Secretary of State as appropriate. The Auditor ~~shall be~~ is bound by interpretations issued by the State Ethics Commission as to whether or not any information reported by the Auditor under this subdivision involves or may involve a violation of Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, or Article 14 of Chapter 120 of the General Statutes. Nothing in this subdivision ~~shall~~

~~be construed to limit~~ limits the Auditor's authority under subdivision (1) of this subsection.

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

(21) If an audit or investigation undertaken by the Auditor results in a finding that a private person or entity has received public funds as a result of fraud, misrepresentation, or other deceptive acts or practices while doing business with ~~the State or a political subdivision thereof,~~ a State agency, the Auditor shall submit a detailed written report of the finding, and any additional necessary supporting documentation, to the State Purchasing Officer or the appropriate ~~political subdivision~~ 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 ~~political subdivision thereof.~~State agency.

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

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

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

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

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