GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-215
SENATE BILL 1875

AN ACT TO RECODIFY THE STATE AUDITOR'S HOTLINE AUTHORITY, TO CLARIFY THE AUTHORITY OF THE STATE ETHICS COMMISSION WITH REGARDS TO REFERRALS FROM THE STATE AUDITOR, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) 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.~~ 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. ~~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. 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 1.(b) Article 5A of Chapter 147 is amended by adding a new section to read:

"**§ 147-64.6B. Reports of improper governmental activities.**

(a) The Auditor shall provide various means, including a telephone hotline, electronic mail, and Internet access to receive reports of allegations of improper governmental activities. The Auditor shall periodically publicize the hotline telephone number, electronic mail address, Internet Web site address, and any other means by which the Auditor may receive reports of allegations of improper governmental activities. Individuals who make a report under this section may choose to remain anonymous until the individual affirmatively consents to having his or her identity disclosed.

(b) The Auditor shall investigate reports of allegations of improper governmental activities of State agencies and State employees within the scope of authority set forth in G.S. 147-64.6, including misappropriation, mismanagement, or waste of State resources, fraud, violations of State or federal law, rule or regulation by State agencies or State employees administering State or federal programs, and substantial and specific danger to the public health and safety. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate State agency immediately. When the Auditor believes that an allegation of improper governmental activity is outside the authority set forth in G.S. 147-64.6, the Auditor shall refer the allegation to the appropriate State agency responsible for the enforcement or administration of the matter for investigation. When the Auditor believes that an allegation of improper governmental activity involves matters set forth in subdivisions (1), (2), or (3) of this subsection, those matters shall be referred as follows:

(1) Allegations of criminal misconduct to either the State Bureau of Investigation or the District Attorney for the county where the alleged misconduct occurred.

(2) Allegations of violations of Chapter 138A, Chapter 120C, and Article 14 of Chapter 120 of the General Statutes to the State Ethics Commission.

(3) Allegations of violations of Chapter 163 of the General Statutes to the State Board of Elections.

(c) All records maintained by the Auditor of reports of unsubstantiated allegations of improper governmental activities shall be destroyed within four years from the date the unsubstantiated allegation was received."

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

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

…

(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 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 the Auditor's authority under subdivision (1) of this subsection."

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

"(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 ~~his~~ the Auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of ~~his~~ 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 issued audit reports 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 such records in connection with some matter officially before them, including criminal investigations.

Except as provided ~~above,~~in this section, or upon ~~subpoena issued by a duly authorized court or court official,~~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 ~~confidential.~~confidential, including any interpretations, advisory opinions, or other information or materials furnished to or by the State Ethics Commission under this section."

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

"(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an inquiry into any of the following:

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

Upon receipt of a referral under G.S. 147-64.6B or a report under G.S. 147-64.6(c)(19), the Commission may conduct an inquiry under this section on its own motion. Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation."

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

"(n) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an inquiry under this ~~section~~ section, including information provided pursuant to G.S. 147-64.6B or G.S. 147-64.6(c)(19), shall be confidential and not matters of public record, except as otherwise provided in this section or when the covered person or legislative employee under inquiry requests in writing that the complaint, response, and findings be made public. Once a hearing under this section commences, the complaint, response, and all other documents offered at the hearing in conjunction with the

complaint, not otherwise privileged or confidential under law, shall be public records. If no hearing is held at such time as the Commission reports to the employing entity a recommendation of sanctions, the complaint and response shall be made public."

SECTION 6. G.S. 138A-13 is amended by adding a new subsection to read:

"(b1) At the request of the Auditor, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter, Article 14 of Chapter 120 of the General Statutes, and Chapter 120C of the General Statutes and an affected person's compliance therewith. The request shall be in writing, electronic or otherwise, and relate to real fact settings and circumstances. Except when the question involves a question governed by subsection (b) of this section, the Commission shall issue an advisory opinion under this subsection within 60 days of the receipt of all information deemed necessary by the Commission to render an opinion. If the question involves a question governed by subsection (b) of this section, the Commission shall comply with the provisions of that section prior to responding to the Auditor by delivering the recommended advisory opinion to the Committee within 60 days of the receipt of all information deemed necessary by the Commission to render an opinion. The Committee shall act on the opinion within 30 days of receipt and the Commission shall deliver the opinion to the Auditor. If the Committee fails to act on a recommended advisory opinion under this subsection with 30 days of receipt, the Commission shall deliver its recommended advisory opinion to the Auditor."

SECTION 7. G.S. 138A-10 is amended by adding a new subsection to read:

"(c) Except as otherwise provided in this Chapter, the Commission shall be the sole State agency with authority to determine compliance with or violations of this Chapter and to issue interpretations and advisory opinions under this Chapter. Decisions and advisory opinions by the Commission under this Chapter shall be binding on all other State agencies."

SECTION 8. G.S. 126-85(c) reads as rewritten:

"(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by ~~G.S. 147-64.6(c)(16).~~G.S. 147-64.6B."

SECTION 9. This act is effective when it becomes law and applies to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007.

In the General Assembly read three times and ratified this the 18th day of July, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:13 a.m. this 15th day of August, 2008