

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 205
Feb 23, 2023
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH50009-LMf-38C

Short Title: Transparent Governance & Integrity Act.-AB

(Public)

Sponsors: Representative Penny.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING FOR GREATER TRANSPARENCY IN AND MAINTENANCE OF
3 STATE AND LOCAL GOVERNMENT FINANCIAL MATTERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.(a) G.S. 115C-442 reads as rewritten:

6 "§ 115C-442. Fidelity bonds.

7 (a) The finance officer shall give a true accounting and faithful performance bond with
8 sufficient sureties in an amount to be fixed by the board of education, ~~not less than fifty thousand~~
9 ~~dollars (\$50,000).~~ education. A person may not be appointed as a finance officer if the person is
10 unable to obtain the bond required by this subsection. This bond shall cover the faithful
11 performance of all duties placed on the finance officer by or pursuant to law and the faithful
12 accounting for all funds in his custody except State funds placed to the credit of the local school
13 administrative unit by the State Treasurer. The premium on the bond shall be paid by the local
14 school administrative unit. The amount of the bond fixed by the board of education may not be
15 less than the greater of the following:

16 (1) Fifty thousand dollars (\$50,000).

17 (2) An amount equal to ten percent (10%) of the board of education's total
18 annually budgeted expenditures, up to a maximum bond amount of one
19 million dollars (\$1,000,000). The amount of annually budgeted expenditures
20 includes the amount of total expenditures (excluding transfers out to other
21 funds) in annually budgeted funds such as the local current expense fund, State
22 Public School Fund, capital outlay fund, and enterprise funds but excludes
23 those in intragovernmental service funds and those in trust or custodial funds.
24 For the purpose of determining the minimum bond amount, the amount of
25 annually budgeted expenditures should be those expenditures included in the
26 initial annual budget resolution (excluding any interim budget resolutions)
27 adopted by the board of education pursuant to G.S. 115C-432.

28"

29 SECTION 1.(b) This section applies to bonds purchased or renewed on or after
30 January 1, 2024.

31 SECTION 2. G.S. 143-318.10 reads as rewritten:

32 "§ 143-318.10. All official meetings of public bodies open to the public.

33 ...

34 (b) As used in this Article, "public body" means any elected or appointed authority,
35 board, commission, committee, council, or other body of the State, or of one or more counties,
36 cities, school administrative units, constituent institutions of The University of North Carolina,



1 or other political subdivisions or public corporations in the ~~State~~ State, whether established by
2 the North Carolina Constitution or otherwise, that (i) is composed of two or more members and
3 (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial,
4 administrative, or advisory function. In addition, "public body" means the governing board of a
5 "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation
6 to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary
7 of such nonprofit corporation, and any nonprofit corporation owning the corporation to which
8 the hospital facility has been sold or conveyed.

9"

10 **SECTION 3.** G.S. 132-1 reads as rewritten:

11 **"§ 132-1. "Public records" defined.**

12 (a) "Public record" or "public records" shall mean all documents, papers, letters, maps,
13 books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing
14 records, artifacts, or other documentary material, regardless of physical form or characteristics,
15 made or received pursuant to law or ordinance in connection with the transaction of public
16 business by any agency of North Carolina government or its subdivisions. Agency of North
17 Carolina government or its subdivisions shall mean and include every public body subject to
18 Article 33C of Chapter 143 of the General Statutes and every public office, public officer or
19 official (State or local, elected or appointed), institution, board, commission, bureau, council,
20 department, authority or other unit of government of the State or of any county, unit, special
21 district or other political subdivision of government.

22"

23 **SECTION 4.(a)** G.S. 147-13 reads as rewritten:

24 **"§ 147-13. May convene Council of State; quorum; journal.**

25 (a) The Governor may convene the Council of State for consultation whenever ~~he~~ the
26 Governor may deem it proper. The Governor shall convene the Council of State whenever the
27 statutes call for the concurrence, advice, discretion, opinion, or consent of the Council of State.
28 In all meetings of the Council of State, five members exclusive of the Governor shall constitute
29 a quorum.

30 (b) ~~The advice and~~ proceedings of the Council of State shall be entered in a journal, to be
31 kept for this purpose exclusively and signed by all members present. Any member of the Council
32 of State may have entered in the journal ~~his~~ the member's dissent to any part of the journal. The
33 journal shall be maintained by the Governor and shall be placed before the General Assembly
34 when called for by either house.

35 (c) The convening of the Council of State shall be subject to Article 33C of Chapter 143
36 of the General Statutes, and the minutes required under that Article shall include the journal kept
37 in accordance with this section."

38 **SECTION 4.(b)** This section becomes effective January 1, 2024.

39 **SECTION 5.(a)** On or before October 1, 2023, the Council of State shall adopt rules
40 establishing a comprehensive system of parliamentary procedure, including the method of
41 introducing and considering resolutions presented by members of the Council of State and the
42 posting of the journal and minutes online. If the Council of State fails to adopt rules as required
43 by this section, Mason's Manual of Legislative Procedure shall apply to all meetings of the
44 Council of State held after October 1, 2023, and the Governor shall provide for the posting of all
45 minutes and the journal online within 10 business days of each meeting of the Council of State.

46 **SECTION 5.(b)** On or before October 1, 2023, the Council of State shall review its
47 department rules, as recorded in Chapter 1 of Title 06 of the North Carolina Administrative Code
48 for compliance and conformity with the General Statutes and Sections 2 through 5 of this act,
49 and initiate any amendments to those rules by that date.

1 **SECTION 6.** Sections 2 through 5 of this act clarify and restate the intent of existing
2 law that meetings, deliberations, and actions of the Council of State, like all public bodies, shall
3 be conducted openly.

4 **SECTION 7.** Part 3 of Article 4 of Chapter 153A of the General Statutes is amended
5 by adding a new section to read:

6 **"§ 153A-54. Financial management education required.**

7 (a) Each member of the governing board of a county shall complete financial
8 management education, as provided in this section, if either of the following applies: (i) the Local
9 Government Commission is exercising its authority under Article 11 of Chapter 159 of the
10 General Statutes and has assumed control of the financial affairs of the county or (ii) the county
11 is included on the most recently published Unit Assistance List issued by the Department of State
12 Treasurer. For purposes of this section, the phrase "member of the governing board" means a
13 member who (i) is in office on the date the Commission begins exercising its authority under
14 Article 11 of Chapter 159 of the General Statutes and assumes control of the financial affairs of
15 the county or is in office on the date the Unit Assistance List is published, (ii) is elected or
16 appointed during the time the Commission is exercising its authority under Article 11 of Chapter
17 159 of the General Statutes and assumes control of the financial affairs of the county, or (iii) is
18 elected or appointed within 12 months of the date the Unit Assistance List is published.

19 (b) The financial management education required under subsection (a) of this section
20 shall:

- 21 (1) Cover laws and principles that govern local government fiscal and debt
22 management, including, but not limited to, Chapter 159 of the General
23 Statutes, and shall be no less than six clock hours.
- 24 (2) Be provided by the Local Government Commission, North Carolina League
25 of Municipalities, North Carolina Association of County Commissioners, the
26 School of Government at the University of North Carolina at Chapel Hill, or
27 other qualified sources at the choice of the governing board and upon the prior
28 approval of the Local Government Commission.
- 29 (3) Be completed by members of the governing board within three months of any
30 of the events described in subsection (a) of this section requiring the
31 education.
- 32 (4) Not be required for a member who has completed financial management
33 education within 24 months prior to the date the county on whose governing
34 board the member serves is included on the Unit Assistance List.
- 35 (5) Upon completion by the member, be verified in a record maintained by the
36 clerk to the governing board. The clerk shall provide the verification to the
37 Secretary of the Local Government Commission, upon request."

38 **SECTION 8.** Article 2 of Subchapter II of Chapter 159 of the General Statutes is
39 amended by adding a new section to read:

40 **"§ 159-6.1. Whistleblower protections related to State and local government fiscal and debt**
41 **management.**

42 (a) Statement of Public Policy. – It is the policy of this State that persons shall be
43 encouraged to report verbally or in writing to the Local Government Commission, State and
44 Local Finance Division in the Department of the State Treasurer, State Auditor, Attorney
45 General, or other appropriate authority evidence of activity related to State and local government
46 fiscal and debt management and involving the following: (i) a violation of State or federal law,
47 rule, or regulation, (ii) fraud, (iii) misappropriation of State resources, or (iv) gross
48 mismanagement, a gross waste of monies, or gross abuse of authority. Further, it is the policy of
49 this State that persons shall be free of intimidation or harassment when reporting matters of public
50 concern related to State and local government fiscal and debt management, including offering
51 testimony to or testifying before appropriate legislative panels.

1 (b) Protection From Retaliation. – No employer shall sue, discharge, threaten, or
 2 otherwise discriminate against an employee regarding the employee's compensation, terms,
 3 conditions, location, or privileges of employment because the employee, or a person acting on
 4 behalf of the employee, reports or is about to report, verbally or in writing, any activity described
 5 in subsection (a) of this section, unless the employee knows or has reason to believe that the
 6 report is inaccurate. No other employee of an employer shall retaliate against another employee
 7 because the employee, or a person acting on behalf of the employee, reports or is about to report,
 8 verbally or in writing, any activity described in subsection (a) of this section. No person shall
 9 sue, terminate a contract, threaten, or otherwise discriminate against a reporting person regarding
 10 the reporting person's compensation or terms of contract because the reporting person, or a person
 11 acting on behalf of the reporting person, reports or is about to report, verbally or in writing, any
 12 activity described in subsection (a) of this section, unless the reporting person knows or has
 13 reason to believe that the report is inaccurate.

14 (c) Relief for Violation. – Any person injured by a violation of subsection (b) of this
 15 section may maintain an action in superior court for damages, an injunction, or other remedies
 16 provided in this section against the person who committed the violation within one year after the
 17 occurrence of the alleged violation.

18 (d) Remedies. – A court, in rendering a judgment in an action brought pursuant to this
 19 section, may order an injunction, damages, reinstatement of the employee, the payment of back
 20 wages or payments owed under a contract, full reinstatement of fringe benefits and seniority
 21 rights, costs, reasonable attorneys' fees, or any combination of these. If an application for a
 22 permanent injunction is granted, the person maintaining the action shall be awarded costs and
 23 reasonable attorneys' fees. If in an action for damages the court finds that the person maintaining
 24 the action was injured by a willful violation of subsection (b) of this section, the court shall award
 25 as damages three times the amount of actual damages plus costs and reasonable attorneys' fees
 26 against the individual or individuals found to be in violation of subsection (b) of this section.

27 (e) Unrelated Unfavorable Action. – It shall not be a violation of this section for a person
 28 to discharge or take any other unfavorable action with respect to an employee who has engaged
 29 in activity protected under this section if the person proves by the greater weight of the evidence
 30 that it would have taken the same unfavorable action in the absence of the protected activity of
 31 the employee."

32 **SECTION 9.** G.S. 159-18 reads as rewritten:

33 **"§ 159-18. Capital reserve ~~funds~~accounts.**

34 Any local government or public authority may establish and maintain a capital reserve ~~fund~~
 35 account for any purposes for which it may issue bonds. A capital reserve ~~fund~~and account shall be
 36 established by resolution or ordinance of the governing board which shall state (i) the purposes
 37 for which the ~~fund~~account is created, (ii) the approximate periods of time during which the
 38 moneys are to be accumulated for each purpose, (iii) the approximate amounts to be accumulated
 39 for each purpose, and (iv) the sources from which moneys for each purpose will be derived. A
 40 capital reserve account may be established in the general fund or in any public enterprise fund."

41 **SECTION 10.** G.S. 159-19 reads as rewritten:

42 **"§ 159-19. Amendments.**

43 The resolution or ordinance may be amended from time to time in the same manner in which
 44 it was adopted. Amendments may, among other provisions, authorize the use of moneys
 45 accumulated or to be accumulated in the ~~fund~~and account for capital outlay purposes not originally
 46 stated."

47 **SECTION 11.** G.S. 159-20 reads as rewritten:

48 **"§ 159-20. Funding capital reserve funds.**

49 ~~Capital reserve funds may be funded by appropriations from any other fund consistent with~~
 50 the limitations imposed in G.S. 159-13(b). A governing board may make appropriations to a
 51 capital reserve account in its annual budget ordinance. When moneys or investment securities,

1 the use of which is restricted by law, come into a capital reserve ~~fund~~, account, the identity of
2 such moneys or investment securities shall be maintained by appropriate accounting entries. Each
3 year, the budget officer shall include in the budget information submitted to the governing board
4 with the proposed budget a report of the estimated ending balance for the current fiscal year in
5 each capital reserve account, including the amounts allocated to each purpose identified in the
6 resolution establishing the capital reserve account and an estimate of the amounts expected to be
7 expended from each capital reserve account during the budget year."

8 **SECTION 12.** G.S. 159-21 reads as rewritten:

9 **"§ 159-21. Investment.**

10 The cash balances, in whole or in part, of capital reserve ~~funds~~ accounts may be deposited at
11 interest or invested as provided by G.S. 159-30."

12 **SECTION 13.** G.S. 159-22 reads as rewritten:

13 **"§ 159-22. Withdrawals.**

14 Withdrawals from a capital reserve ~~fund~~ account may be authorized by resolution ~~or~~
15 ~~ordinance~~ of the governing board of the local government or public authority. No withdrawal
16 may be authorized for any purpose not specified in the resolution ~~or ordinance~~ establishing the
17 ~~fund~~ account or in a resolution ~~or ordinance~~ amending it. The withdrawal resolution ~~or ordinance~~
18 shall authorize an appropriation from the capital reserve ~~fund~~ account to an appropriate
19 appropriation ~~in one of the funds maintained pursuant to G.S. 159-13(a)~~, within the fund it is
20 associated with, in accordance with the provisions of G.S. 159-13(a). No withdrawal may be
21 made which would result in an appropriation for purposes for which an adequate balance of
22 eligible moneys or investment securities is not then available in the capital reserve ~~fund~~ account."

23 **SECTION 14.(a)** G.S. 159-34 reads as rewritten:

24 **"§ 159-34. Annual independent audit; rules and regulations.**

25 ...

26 (e) The Commission shall provide a notice of warning to each unit of local government
27 that fails to submit an annual audit within nine months of the unit's fiscal year end. The notice
28 shall be delivered to the governing board head at the unit's primary mailing address and be made
29 available on the Department of State Treasurer's website. The notice shall be issued and made
30 available within 30 days following nine months after the unit's fiscal year end. A unit that fails
31 to comply with the notice of warning and to complete the annual audit required under subsection
32 (a) of this section within 12 months of the unit's fiscal year end shall be deemed to have given
33 consent to the withholding of a portion of its sales tax distributions, as provided in subsection (f)
34 of this section. Within 45 days of receiving the notice of warning, the unit may notify the
35 Commission that it plans to appeal the action and the unit will be scheduled to appear before the
36 Commission at its next regularly scheduled meeting.

37 (f) A unit that fails to file a copy of its annual audit report with the Secretary within 12
38 months of the unit's fiscal year end may have a portion of its quarterly sales tax distributions
39 withheld. The amount that may be withheld is an amount equal to one hundred fifty percent
40 (150%) of the cost of the required annual audit as indicated in the audit contract between the unit
41 and its external auditor for the audit report, if such a contract has been executed, or one hundred
42 fifty percent (150%) of the actual fee for the most recently filed audit report if a contract has not
43 been executed for the current year audit.

44 The Secretary of Revenue must withhold from the unit's distribution under G.S. 105-486, and
45 from the unit's distribution under G.S. 105-501 if necessary, the amount required to be withheld
46 upon written notification to do so from the Commission. The notifications must be made on a
47 quarterly basis. The amount may be withheld in subparts if the amount to be withheld exceeds
48 five percent (5%) of the unit's monthly general fund budget for the current fiscal year. The
49 subparts shall be withheld in equal parts of five percent (5%) of the unit's monthly general fund
50 budget for the current fiscal year until the total withholding amount is reached. The total amount
51 to be withheld and any schedule of withholding shall be provided by the Commission in its

1 notification to the Secretary of Revenue. The Secretary of Revenue shall begin withholding from
2 the unit's first distribution of sales and use tax that is at least 45 days after the Secretary receives
3 notification from the Commission.

4 When the required report has been filed with the Secretary, reviewed to ensure compliance
5 with the requirements of this section, and accepted by the Secretary, the Commission must notify
6 the Secretary of Revenue within 30 days to release the funds. The Department of Revenue must
7 release the funds in the unit's first scheduled distribution of sales tax that is at least 45 days after
8 the earlier of the following:

9 (1) Two years from the date of notification for the funds to be withheld.

10 (2) The date the Secretary of Revenue receives notification from the Commission
11 that a report complying with the requirements of this section was filed and
12 accepted by the Secretary."

13 **SECTION 14.(b)** This section becomes effective January 1, 2024, and applies to
14 audits for fiscal years ending on or after June 30, 2023.

15 **SECTION 15.** Part 3 of Article 3 of Chapter 159 of the General Statutes is amended
16 by adding a new section to read:

17 **"§ 159-38.1. Fund balance reserve accounts.**

18 A local government or public authority may establish and maintain a fund balance reserve
19 account in the general fund or in any public enterprise fund for the purpose of maintaining
20 appropriate cash reserves and an adequate fund balance. All of the following shall apply to a fund
21 balance reserve account:

22 (1) The account shall be established by resolution of the governing board. The
23 governing board shall adopt a fund balance policy prior to adopting a
24 resolution establishing a fund balance reserve account.

25 (2) The governing board may make appropriations to a fund balance reserve
26 account in its annual budget ordinance. When moneys or investment
27 securities, the use of which is restricted by law, come into a fund balance
28 reserve account, the identity of such moneys or investment securities shall be
29 maintained by appropriate accounting entries.

30 (3) Cash balances, in whole or in part, in fund balance reserve accounts may be
31 deposited at interest or invested as provided in G.S. 159-30.

32 (4) Withdrawals from a fund balance reserve account may be authorized by
33 resolution of the governing board of the local government or public authority.
34 The withdrawal resolution shall authorize an appropriation from the fund
35 balance reserve account to an appropriate appropriation within the fund it is
36 associated with, in accordance with the provisions of G.S. 159-13(a). No
37 withdrawal may be made which would result in an appropriation for purposes
38 for which an adequate balance of eligible moneys or investment securities is
39 not then available in the fund balance reserve account.

40 (5) Each year, the budget officer shall include in the budget information submitted
41 to the governing board with the proposed budget a report of the estimated
42 ending balance for the current fiscal year in each fund balance reserve account
43 and an estimate of the amounts expected to be expended from each fund
44 balance reserve account during the budget year.

45 (6) If restricted funds are appropriated to or held in a fund balance reserve
46 account, those funds shall continue to be restricted to their original purpose
47 and shall be maintained by appropriate accounting entries."

48 **SECTION 16.** G.S. 159B-39 reads as rewritten:

49 **"§ 159B-39. Permitted uses of revenue from electric power rates.**

50 ...

(e) This section applies only to the following cities and towns that are members of the North Carolina Eastern Municipal Power Agency: Apex, Ayden, Belhaven, Benson, Clayton, Edenton, Elizabeth City, Farmville, Fremont, Greenville, Hamilton, Hertford, Hobgood, Hookerton, Kinston, LaGrange, Laurinburg, Louisburg, Lumberton, New Bern, Pikeville, Red Springs, Robersonville, Rocky Mount, Scotland Neck, Selma, Smithfield, Southport, Tarboro, Wake Forest, Washington, and Wilson a municipal power agency."

SECTION 17.(a) G.S. 160A-17.2 reads as rewritten:

"§ 160A-17.2. Security interests in United States Department of Agriculture loans.

(a) A county or municipality may pledge a security interest in an escrow account funded with loan proceeds, or a certificate of deposit, to secure repayment of the loan, only if the loan is an interest-free loan agreement entered into with the United States Department of Agriculture or an authorized intermediary acting on behalf of the United States Department of Agriculture. Any such escrow account must be substantiated by a written escrow agreement, and the funds must be deposited in accordance with G.S. 159-30 and G.S. 159-31. Any certificate of deposit shall comply with the requirements of G.S. 159-30.

(b) An interest-free loan agreement entered into under this section with the United States Department of Agriculture or an authorized intermediary acting on behalf of the United States Department of Agriculture is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes, unless exempted in G.S. 159-148(b).

...

(d) To secure payment of a loan under this section, a county or municipality may pledge a security interest only in the collateral being financed by a loan to that specific county or municipality. No county or municipality shall pledge a security interest for repayment of, or be liable for, loans entered into under this section by any other county or municipality."

SECTION 17.(b) This section applies to loans made on or after the date this act becomes law.

SECTION 18. Part 3A of Article 5 of Chapter 160A of the General Statutes reads as rewritten:

"Part 3A. Ethics Codes and Education Programs. Codes; Education Programs.

...

"§ 160A-89. Financial management education required.

(a) Each member of the governing board of a city shall complete financial management education, as provided in this section, if either of the following applies: (i) the Local Government Commission is exercising its authority under Article 11 of Chapter 159 of the General Statutes and has assumed control of the financial affairs of the city or (ii) the city is included on the most recently published Unit Assistance List issued by the Department of State Treasurer. For purposes of this section, the phrase "member of the governing board" means a member who (i) is in office on the date the Commission begins exercising its authority under Article 11 of Chapter 159 of the General Statutes and assumes control of the financial affairs of the city or is in office on the date the Unit Assistance List is published, (ii) is elected or appointed during the time the Commission is exercising its authority under Article 11 of Chapter 159 of the General Statutes and assumes control of the financial affairs of the city, or (iii) is elected or appointed within 12 months of the date the Unit Assistance List is published.

(b) The financial management education required under subsection (a) of this section shall:

(1) Cover laws and principles that govern local government fiscal and debt management, including, but not limited to, Chapter 159 of the General Statutes, and shall be no less than six clock hours.

(2) Be provided by the Local Government Commission, North Carolina League of Municipalities, North Carolina Association of County Commissioners, the School of Government at the University of North Carolina at Chapel Hill, or

- 1 other qualified sources at the choice of the governing board and upon the prior
- 2 approval of the Local Government Commission.
- 3 (3) Be completed by members of the governing board within three months of any
- 4 of the events described in subsection (a) of this section requiring the
- 5 education.
- 6 (4) Not be required for a member who has completed financial management
- 7 education within 24 months prior to the date the city on whose governing
- 8 board the member serves is included on the Unit Assistance List.
- 9 (5) Upon completion by the member, be verified in a record maintained by the
- 10 clerk to the governing board. The clerk shall provide the verification to the
- 11 Secretary of the Local Government Commission, upon request."

12 **SECTION 19.** Except as otherwise provided, this act is effective when it becomes

13 law.