

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 462
Senate Commerce Committee Substitute Adopted 6/7/12
Third Edition Engrossed 6/19/12

Short Title: Contingency Contracts for Audits/Assessments.

(Public)

Sponsors:

Referred to:

March 28, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT USE OF CONTINGENT-BASED CONTRACTS FOR AUDIT OR
3 ASSESSMENT PURPOSES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-243.1 is amended by adding a new subsection to read:

6 "(a1) In determining the liability of any person for a tax, the Secretary may not employ an
7 agent who is compensated in whole or in part by the State for services rendered on a contingent
8 basis or any other basis related to the amount of tax, interest, or penalty assessed against or
9 collected from the person."

10 **SECTION 2.** G.S. 105-299 reads as rewritten:

11 **"§ 105-299. Employment of experts.**

12 The board of county commissioners may employ appraisal firms, mapping firms or other
13 persons or firms having expertise in one or more of the duties of the assessor to assist the
14 assessor in the performance of these duties. The county may also assign to county agencies, or
15 contract with State or federal agencies for, any duties involved with the approval or auditing of
16 use-value accounts. The county may make available to these persons any information it has that
17 will facilitate the performance of a contract entered into pursuant to this section. Persons
18 receiving this information are subject to the provisions of G.S. 105-289(e) and G.S. 105-259
19 regarding the use and disclosure of information provided to them by the county. Any person
20 employed by an appraisal firm whose duties include the appraisal of property for the county
21 must be required to demonstrate that he or she is qualified to carry out these duties by
22 achieving a passing grade on a comprehensive examination in the appraisal of property
23 administered by the Department of Revenue. In the employment of these firms, primary
24 consideration must be given to the firms registered with the Department of Revenue pursuant to
25 G.S. 105-289(i). A copy of the specifications to be submitted to potential bidders and a copy of
26 the proposed contract may be sent by the board to the Department of Revenue for review before
27 the invitation or acceptance of any bids. Contracts for the employment of these firms or persons
28 are contracts for personal services and are not subject to the provisions of Article 8, Chapter
29 143, of the General Statutes. If the board of county commissioners employs any person or firm
30 to assist the assessor in the performance of the assessor's duties, the person or firm may not be
31 compensated, in whole or in part, on a contingent fee basis or any other similar method that
32 may impair the assessor's independence or the perception of the assessor's independence by the
33 public."

34 **SECTION 3.** Chapter 116B-8 reads as rewritten:

35 **"§ 116B-8. Employment of persons with specialized skills or knowledge.**



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1 The Treasurer may employ the services of such independent consultants, real estate
2 managers and other persons possessing specialized skills or knowledge as the Treasurer deems
3 necessary or appropriate for the administration of this Chapter, including valuation,
4 maintenance, upkeep, management, sale and conveyance of property and determination of
5 sources of unreported abandoned property. The Treasurer may also employ the services of an
6 attorney to perform a title search or to provide an accurate legal description of real property
7 which the Treasurer has reason to believe may have escheated. Persons whose services are
8 employed by the Treasurer pursuant to this section to determine sources and amounts of
9 unreported property are subject to the same policies, including confidentiality and ethics, as
10 employees of the Department of State Treasurer assigned to determine sources and amounts of
11 unreported property. ~~Compensation of persons whose services are employed pursuant to this~~
12 ~~section on a contingent fee basis shall be limited to twelve percent (12%) of the final~~
13 ~~assessment.~~If the Treasurer contracts with any other person to conduct an audit under this
14 Chapter, the audit shall not be performed on a contingent fee basis or any other similar method
15 that may impair an auditor's independence or the perception of the auditor's independence by
16 the public. Notwithstanding the preceding sentence, the Treasurer may contract with any other
17 person on a contingent fee basis to conduct audits of life insurance companies where the audit
18 is being conducted for the purpose of identifying unclaimed death benefits or to conduct audits
19 of holders of unredeemed bond funds."

20 **SECTION 3.1.** G.S. 116B-6(h) reads as rewritten:

21 "(h) Expenditures. – The Treasurer may expend the funds in the Escheat Fund, other
22 than funds in the Escheat Account, for the payment of claims for refunds to owners, holders
23 and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of
24 abandoned or escheated property; costs of preparing lists of names of owners of abandoned
25 property to be furnished to clerks of superior court; costs of notice and publication; costs of
26 appraisals; fees of persons employed pursuant to G.S. 116B-8 costs involved in determining
27 whether a decedent died without heirs; fees of persons employed pursuant to G.S. 116B-8 to
28 conduct audits; costs of a title search of real property that has escheated; and costs of auction or
29 sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out
30 the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the
31 Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

32 **SECTION 4.** G.S. 153A-146 reads as rewritten:

33 **"§ 153A-146. General power to impose taxes.**

34 A county may impose taxes only as specifically authorized by act of the General Assembly.
35 Except when the statute authorizing a tax provides for penalties and interest, the power to
36 impose a tax includes the power to impose reasonable penalties for failure to declare tax
37 liability, if required, and to impose penalties or interest for failure to pay taxes lawfully due
38 within the time prescribed by law or ordinance. In determining the liability of any taxpayer for
39 a tax, a county may not employ an agent who is compensated in whole or in part by the county
40 for services rendered on a contingent basis or any other basis related to the amount of tax,
41 interest, or penalty assessed against or collected from the taxpayer. The power to impose a tax
42 also includes the power to provide for its administration in a manner not inconsistent with the
43 statute authorizing the tax."

44 **SECTION 5.** G.S. 160A-206 reads as rewritten:

45 **"§ 160A-206. General power to impose taxes.**

46 A city shall have power to impose taxes only as specifically authorized by act of the
47 General Assembly. Except when the statute authorizing a tax provides for penalties and
48 interest, the power to impose a tax shall include the power to impose reasonable penalties for
49 failure to declare tax liability, if required, or to impose penalties or interest for failure to pay
50 taxes lawfully due within the time prescribed by law or ordinance. In determining the liability
51 of any taxpayer for a tax, a city may not employ an agent who is compensated in whole or in

1 part by the city for services rendered on a contingent basis or any other basis related to the
2 amount of tax, interest, or penalty assessed against or collected from the taxpayer. The power to
3 impose a tax shall also include the power to provide for its administration in a manner not
4 inconsistent with the statute authorizing the tax."

5 **SECTION 6.** This act becomes effective July 1, 2012, and applies to audits,
6 determinations of liability, and assessments contracted for on or after that date. Units of local
7 government and the Treasurer shall not renew contingency fee based contracts for these
8 services after July 1, 2012.