**South Carolina General Assembly**

124th Session, 2021-2022

**S. 394**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Harpootlian

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Introduced in the Senate on January 12, 2021

Currently residing in the Senate Committee on **Judiciary**

Summary: Subpoena powers

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 Senate Prefiled

12/9/2020 Senate Referred to Committee on **Judiciary**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 298](file:///h:\sj\20210112.docx))

1/12/2021 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 298](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\394_20201209.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 2‑15‑130 SO AS TO GRANT SUBPOENA POWERS TO THE LEGISLATIVE AUDIT COUNCIL; TO AMEND SECTION 2‑15‑40, RELATING TO THE QUALIFICATIONS FOR THE DIRECTOR OF THE LEGISLATIVE AUDIT COUNCIL, SO AS TO EXPAND THE PREREQUISITES FOR HOLDING THE POSITION OF DIRECTOR, AMONG OTHER CHANGES; TO AMEND SECTION 2‑15‑61, RELATING TO ACCESS TO AGENCY RECORDS, SO AS TO EXPAND THE LEGISLATIVE AUDIT COUNCIL’S ACCESS TO RECORDS AND FACILITIES UPON REQUEST AND TO PROVIDE PENALTIES FOR FAILING TO COMPLY; AND TO AMEND SECTION 2‑15‑120, RELATING TO THE CONFIDENTIALITY OF RECORDS, SO AS TO FURTHER DEFINE WHAT IS CONSIDERED CONFIDENTIAL AND TO REVISE THE DEFINITION OF “RECORDS”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 15, Title 2 of the 1976 Code is amended by adding:

“Section 2‑15‑130. (A) For the purposes of carrying out its audit duties pursuant to this chapter, the Legislative Audit Council may issue subpoenas and subpoenas duces tecum to a state agency, its employees, and its contractors and examine the records, reports, audits, reviews, papers, books, recommendations, contracts, correspondence, or any other documents maintained by an agency and compel sworn testimony by subpoena.

(B) The Legislative Audit Council may apply to a circuit court for an order holding an individual in contempt of court if the individual refuses to give sworn testimony under a subpoena issued by the Legislative Audit Council or otherwise disobeys a subpoena or subpoena duces tecum issued by the Legislative Audit Council, or otherwise refuses to provide requested documentation.”

SECTION 2. Section 2‑15‑40 of the 1976 Code is amended to read:

“Section 2‑15‑40. The council shall be in charge of a director who shall be elected by a majority vote of the council and ~~he~~ the director shall hold office for a term of four years and until ~~his~~ a successor shall have been elected and qualifies. The director shall be chosen solely on the grounds of fitness to perform the duties assigned ~~to him~~ and shall possess the following minimum qualifications: (a) a baccalaureate degree from an accredited college or university; (b) at least five years of experience in public, industrial or governmental accounting or auditing with at least three years in a responsible managerial capacity. No member of the General Assembly nor anyone who shall have been a member for two years previously shall be appointed as director. The director shall act as secretary for the council and he shall have authority to employ, with the approval of the council, such technical, clerical, and ~~stenographic assistance~~ audit staff as may be necessary to carry out the duties of the office; provided, however, that at least one staff member shall be qualified to audit or to supervise the audit of State programs and activities in order to determine if funds have been used in a faithful, effective, economical and efficient manner.”

SECTION 3. Section 2‑15‑61 of the 1976 code is amended to read:

“Section 2‑15‑61. (A) For the purposes of carrying out its audit duties under this chapter, the Legislative Audit Council ~~shall~~ must have access to ~~the~~ all records ~~and facilities~~, irrespective of confidentiality, of every state agency ~~during that agency’s operating hours~~ with the exception of reports and returns of the South Carolina Department of Revenue as provided in Sections 12‑7‑1680 and 12‑35‑1530. Staff of the Legislative Audit Council must have access to the persons and facilities of every state agency during that agency’s operating hours. Staff of the Legislative Audit Council must have access to all relevant records and facilities of any private organization receiving state or federal public funds, relating to the management and expenditures of state or federal public funds, during the organization’s normal operating hours. Staff of the Legislative Audit Council does not have access to the records of private organizations which are not related to the management and expenditures of state or federal public funds. The Legislative Audit Council must be permitted to observe the proceedings of any state agency, board, commission, or other body corporate and politic, including, but not limited to, executive sessions and closed hearings. The Legislative Audit Council must be permitted to observe the proceedings, including executive sessions and closed hearings of private organizations to the extent that the proceedings discuss the management and expenditures of state or federal public funds.

(B) Agencies must provide readily available records to the Legislative Audit Council upon request without delay. If the requested records are not readily available, agencies must provide a written explanation regarding the availability of the records and a reasonable timeframe for their delivery. Agencies shall provide access to records requested by the staff of the Legislative Audit Council regardless of whether the information is sought to perform an audit of another agency.

(C) Any person who fails to comply with the provisions of this section or otherwise obstructs the Legislative Audit Council from conducting a duly authorized audit is guilty of a misdemeanor and may be fined not more than one thousand dollars or imprisoned not more than one year. If the person convicted is an officer or employee of the State, the person must be dismissed from office or employment and is ineligible to hold any public office in this State for a period of five years after the conviction.

(D) As used in this section:

(1) ‘Access to records’ includes, but is not limited to, production of records and the ability to inspect, print, copy, download, and otherwise obtain records from an agency or private organization receiving state or federal public funds upon request to that agency or private organization receiving state or federal public funds to place in Legislative Audit Council records.

(2) ‘Records’ includes, but is not limited to, data, reports, audits, documents, correspondence, emails, text messages, maps, photographs, recordings, contracts, or other materials and information regardless of physical or electronic form or storage, prepared, owned, used, received, in the possession, custody, or control of, or retained by the agency or private organization receiving state or federal public funds, whether confidential or not. Unless requested or approved by Legislative Audit Council staff, no records are to be provided with redactions or omissions. The Legislative Audit Council must follow appropriate procedures to ensure the confidentiality and security of this information.”

SECTION 4. Section 2‑15‑120 of the 1976 Code is amended to read:

“Section 2‑15‑120. (A) All records and audit working papers of the Legislative Audit Council with the exception of its final audit reports provided for by Section 2‑15‑60 are confidential and not subject to public disclosure irrespective of whether the records and working papers would otherwise be considered public pursuant to the South Carolina Freedom of Information Act or any other state law. ~~The court in determining the extent to which any disclosure of all or any part of a council record is necessary shall impose appropriate safeguards against unauthorized disclosure.~~

(B) As used in this section, ‘records’ includes, but is not limited to, ~~books, papers, maps, photographs, cards, tapes, recordings, or other documentary~~ data, reports, audits, documents, correspondence, emails, text messages, maps, photographs, recordings, contracts, or other materials ~~regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Legislative Audit Council~~ and information regardless of physical or electronic form or storage prepared, owned, used, received, in the possession of, or retained by the Legislative Audit Council.

(C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars or imprisoned not more than one year. If the person convicted is an officer or employee of the State, he must be dismissed from office or employment and is ineligible to hold any public office in this State for a period of five years after the conviction.”

SECTION 5. This act takes effect upon approval by the Governor.

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