



New Law Is Creating Challenges for Nonprofit Boards

The North Carolina Center for Nonprofits, which works with nonprofits serving all 100 counties of North Carolina, has heard that a provision in the new local government transparency law is causing local elected officials to resign from serving on the boards of directors of nonprofits in their communities. *The General Assembly can protect nonprofits' board governance by making a small change to this provision in early 2022.*

Background on the new law

- On December 9, 2021, Governor Cooper signed S.L. 2021-191 into law. This local government transparency law added NCGS § 14-234.3, which requires local government elected officials who serve on nonprofit boards to recuse themselves from decisions to provide grants, contracts, or appropriations to those organizations. The new law took effect on January 1, 2022.
- The provision only applies to cities, towns, or villages with more than 15,000 residents and to counties that have municipalities with 15,000 or more residents.
- Many NC counties and municipalities include nonprofit funding in their budgets. In these jurisdictions, the new law means that local elected officials who serve on nonprofit boards will not be allowed to vote on local government budgets that include funding for these nonprofits.
- Section 501(c)(3) of the Internal Revenue Code prohibits board members of charitable nonprofits from profiting from their board service. This means that, under existing federal law, local elected officials cannot benefit financially from local funding of nonprofits on whose boards they serve.
- The new local government transparency law does not require local elected officials to recuse themselves from decisions to award contracts to for-profit businesses on whose boards they serve, even though these contracts may provide personal financial benefits to the elected officials.

Impact of the new law on nonprofits and local governments

- Nonprofits in many parts of the state have reported that local elected officials have resigned from their boards this year because of the new law. In some counties and municipalities, elected officials are being asked to resign from *all* nonprofit boards, regardless of whether the organizations are likely to receive local grants, contracts, or appropriations. These resignations are creating board governance challenges as some nonprofits have significant vacancies on their boards of directors.
- Many nonprofits have provisions in their bylaws requiring that a portion of their boards must be comprised of local elected officials. Nonprofit community action agencies, which often receive local funding, are required by federal law to have local elected officials comprise one-third of their boards of directors. Board resignations resulting from the new law have caused these organizations to be in violation of their own bylaws and, in some cases, in violation of federal laws.

Potential solution

The General Assembly can fix this issue by replacing the recusal provision in NCGS § 14-234.3 with a requirement that local elected officials provide public disclosure of their service on nonprofit boards. It would be particularly helpful for legislators to fix this issue as soon as possible – either in the 2022 short session or earlier – to minimize harm to nonprofits. The Center is prepared to assist with language to address nonprofits' concerns with the law while still ensuring transparency about elected officials' board service.

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