

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1110*
Committee Substitute Favorable 5/17/07
Senate Select Committee on Government and Election Reform Committee
Substitute Adopted 7/30/07

Short Title: State Government Ethics Act Technical Changes.

(Public)

Sponsors:

Referred to:

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE STATE GOVERNMENT
ETHICS ACT, THE LEGISLATIVE ETHICS ACT, AND THE LOBBYING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-87(a) reads as rewritten:

"§ 120-87. **Disclosure of confidential information.**

(a) No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of the legislator's official position that could result in financial gain for: (i) the legislator; (ii) a business with which the legislator is associated; (iii) a nonprofit corporation or organization with which the legislator is associated; (iv) a member of the legislator's immediate household; family; or (v) any other person."

SECTION 2. G.S. 120-103.1(c) reads as rewritten:

"(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section or initiate an investigation of a complaint or dismiss the complaint. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee ~~can~~ may take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations."

SECTION 3. G.S. 120-104(c) reads as rewritten:

"(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under ~~G.S. 138A-13(a); G.S. 138A-13(b).~~"

SECTION 4. G.S. 120C-206(b) reads as rewritten:

1 "(b) The form of the authorization shall be prescribed by the Secretary of State
2 and shall include the lobbyist's principal's full name, complete address, and telephone
3 number, name and title of ~~the official signing any official authorized to sign~~ for the
4 lobbyist's principal, and the name of each lobbyist registered to represent that principal."

5 **SECTION 5.(a)** G.S. 120C-302 is recodified as G.S. 163-278.13C.

6 **SECTION 5.(b)** G.S. 163-278.13C, as enacted by Section 5(a) of this act, is
7 amended by adding a new subsection to read:

8 "(d) For purposes of this section, the term "lobbyist" shall mean an individual
9 registered as a lobbyist under Chapter 120C of the General Statutes."

10 **SECTION 6.(a)** G.S. 120C-500 reads as rewritten:

11 "**§ 120C-500. Liaison personnel.**

12 (a) All agencies and constitutional officers of the State, including all boards,
13 departments, divisions, constituent institutions of The University of North Carolina,
14 community colleges, and other units of government in the executive ~~branch, except~~
15 ~~local units of government, branch~~ shall designate liaison personnel to lobby for
16 legislative action. This subsection shall not apply to units of local government, or a
17 State agency or board with no staff.

18 (b) No State funds may be used to contract with persons who are not employed
19 by the State to lobby legislators and legislative employees. This subsection shall not
20 apply to counsel employed by any agency, board, department, or division authorized to
21 employ counsel under G.S. 147-17.

22 (c) No more than two persons may be designated as liaison personnel for each
23 agency and constitutional officers of the State, including all boards, departments,
24 divisions, constituent institutions of The University of North Carolina, community
25 colleges, and other units of government in the executive branch."

26 **SECTION 6.(b)** G.S. 120C-100(a)(8) reads as rewritten:

27 "(8) Liaison personnel. – Any State ~~employee~~ employee, counsel employed
28 under G.S. 147-17, or officer whose principal duties, in practice or as
29 set forth in that person's job description, include lobbying designated
30 individuals."

31 **SECTION 7.** G.S. 138A-3(13) reads as rewritten:

32 "(13) Extended family. – Spouse, lineal descendant, lineal ascendant,
33 sibling, spouse's lineal ~~ascendant~~ descendant, spouse's lineal
34 ~~deseendant~~ ascendant, spouse's sibling, and the spouse of any of these
35 persons."

36 **SECTION 8.** G.S. 138A-3(24) reads as rewritten:

37 "(24) Nonprofit corporation or organization with which associated. – Any
38 not for profit public or private enterprise, corporation, organization, or
39 association, incorporated or otherwise, that is organized or operating in
40 the State primarily for religious, charitable, scientific, literary, public
41 health and safety, or educational purposes and of which the person or
42 any member of the person's immediate family is a director, officer,
43 governing board member, employee, lobbyist registered as under
44 Chapter 120C of the General Statutes, or independent ~~contractor as of~~

1 ~~December 31 of the preceding year contractor. Nonprofit corporation~~
2 ~~or organization with which associated shall not include any board,~~
3 ~~entity, or other organization created by this State or by any political~~
4 ~~subdivision of this State."~~

5 **SECTION 9.(a)** G.S. 138A-14 reads as rewritten:

6 **"§ 138A-14. Ethics education program.**

7 (a) The Commission shall develop and implement an ethics education and
8 awareness program designed to instill in all covered persons and their immediate staffs,
9 and legislative employees, a keen and continuing awareness of their ethical obligations
10 and a sensitivity to situations that might result in real or potential conflicts of ~~interest or~~
11 ~~appearances of conflicts of interest.~~

12 (b) The Commission shall make basic ethics education and awareness
13 presentations to all public servants and their immediate staffs, upon their election,
14 appointment, or employment, and shall offer periodic refresher presentations as the
15 Commission deems appropriate. Every public servant and the immediate staff of every
16 public servant shall participate in an ethics presentation approved by the Commission
17 within six months of the person's election, reelection, appointment, or employment, and
18 shall attend refresher ethics education presentations at least every two years thereafter in
19 a manner as the Commission deems appropriate.

20 (c) The Commission, jointly with the Committee, shall make basic ethics
21 education and awareness presentations to all legislators and legislative employees upon
22 their election, reelection, appointment, or employment and shall offer periodic refresher
23 presentations as the Commission and the Committee deem appropriate. Every legislator
24 and legislative employee shall participate in an ethics presentation approved by the
25 Commission and Committee within three months of the person's election, reelection,
26 appointment, or ~~employment~~ employment, and every legislative employee shall attend
27 refresher ethics education presentations at least every two years thereafter, in a manner
28 as the Commission and Committee deem appropriate.

29 (d) Upon request, the Commission shall assist each agency in developing
30 in-house education programs and procedures necessary or desirable to meet the agency's
31 particular needs for ethics education, conflict identification, and conflict avoidance.

32 (e) Each agency head shall designate an ethics liaison who shall maintain active
33 communication with the Commission on all agency ethical issues. The ethics liaison
34 shall continuously assess and advise the Commission of any issues or conduct which
35 might reasonably be expected to result in a conflict of interest and seek advice and
36 rulings from the Commission as to their appropriate resolution.

37 (f) The Commission shall publish a newsletter containing summaries of the
38 Commission's opinions, policies, procedures, and interpretive bulletins as issued from
39 time to time. The newsletter shall be distributed to all covered persons and legislative
40 employees. Publication under this subsection may be done electronically.

41 (g) The Commission shall assemble and maintain a collection of relevant State
42 laws, rules, and regulations that set forth ethical standards applicable to covered
43 persons. This collection shall be made available electronically as resource material to
44 public servants, and ethics liaisons, upon request.

1 (h) As used in this section, "immediate staff" means those individuals who report
2 directly to the public servant.

3 (i) This section shall not apply to judicial officers."

4 **SECTION 9.(b)** G.S. 138A-15 reads as rewritten:

5 **"§ 138A-15. Duties of heads of State agencies.**

6 (a) The head of each State agency, including the chair of each board subject to
7 this Chapter, shall take an active role in furthering ethics in public service and ensuring
8 compliance with this Chapter. The head of each State agency and the chair of each
9 board shall make a conscientious, good-faith effort to assist public servants within the
10 agency or on the board in monitoring their personal, financial, and professional affairs
11 to avoid taking any action that results in a conflict of interest ~~or the appearance of a~~
12 ~~conflict.~~interest.

13 (b) The head of each State agency, including the chair of each board subject to
14 this Chapter, shall maintain familiarity with and stay knowledgeable of the reports,
15 opinions, newsletters, and other communications from the Commission regarding ethics
16 in general and the interpretation and enforcement of this Chapter. The head of each
17 State agency and the chair of each board shall also maintain familiarity with and stay
18 knowledgeable of the Commission's reports, evaluations, opinions, or findings
19 regarding individual public servants in that person's agency or on that person's board, or
20 under that person's supervision or control, including all reports, evaluations, opinions, or
21 findings pertaining to actual or potential conflicts of interest.

22 (c) When an actual or potential conflict of interest is cited by the Commission
23 under G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict
24 shall be recorded in the minutes of the applicable board and duly brought to the
25 attention of the membership by the board's chair as often as necessary to remind all
26 members of the conflict and to help ensure compliance with this Chapter.

27 (d) The head of each State agency, including the chair of each board subject to
28 this Chapter, shall periodically remind public servants under that person's authority of
29 the public servant's duties to the public under the ethical standards and rules of conduct
30 in this Chapter, including the duty of each public servant to continually monitor,
31 evaluate, and manage the public servant's personal, financial, and professional affairs to
32 ensure the absence of conflicts of ~~interest or appearances of conflict.~~ interest.

33 (e) At the beginning of any meeting of a board, the chair shall remind all
34 members of their duty to avoid conflicts of interest ~~and appearances of conflict~~ under
35 this Chapter. The chair also shall inquire as to whether there is any known conflict of
36 interest ~~or appearance of conflict~~ with respect to any matters coming before the board at
37 that time.

38 (f) The head of each State agency, including the chair of each board subject to
39 this Chapter, shall ensure that legal counsel employed by or assigned to their agency or
40 board are familiar with the provisions of this Chapter, including the Ethical Standards
41 for Covered Persons set forth in Article 4 of this Chapter, and are available to advise
42 public servants on the ethical considerations involved in carrying out their public duties
43 in the best interest of the public. Legal counsel so engaged may consult with the

1 Commission, seek the Commission's assistance or advice, and refer public servants and
2 others to the Commission as appropriate.

3 (g) Taking into consideration the individual autonomy, needs, and circumstances
4 of each agency and board, the head of each State agency, including the chair of each
5 board subject to this Chapter, shall consider the need for the development and
6 implementation of in-house educational programs, procedures, or policies tailored to
7 meet the agency's or board's particular needs for ethics education, conflict identification,
8 and conflict avoidance. This includes the periodic presentation to all agency heads, their
9 chief deputies or assistants, other public servants under their supervision or control, and
10 members of boards, of the basic ethics education and awareness presentation outlined in
11 G.S. 138A-14 and any other workshop or seminar program the agency head or board
12 chair deems necessary in implementing this Chapter. Agency heads and board chairs
13 may request reasonable assistance from the Commission in complying with the
14 requirements of this subsection.

15 (h) As soon as reasonably practicable after the designation, hiring, or promotion
16 of their chief deputies, assistants, or other public servants under their supervision or
17 control, or learning of the appointment or election of other public servants to a board
18 covered under this Chapter, all agency heads and board chairs shall (i) notify the
19 Commission of such designation, hiring, promotion, appointment, or election and (ii)
20 provide these public servants with copies of this Chapter and all applicable financial
21 disclosure forms, if these materials and forms have not been previously provided to
22 these public servants in connection with their designation, hiring, promotion,
23 appointment, or election. In order to avoid duplication of effort, agency heads and board
24 chairs shall coordinate this effort with the Commission's staff."

25 **SECTION 10.** G.S. 138A-23 reads as rewritten:

26 "**§ 138A-23. Statements of economic interest as public records.**

27 (a) The statements of economic interest filed by prospective public servants
28 under this Article for appointed or employed positions and written evaluations by the
29 Commission of these statements are not public records until the prospective public
30 servant is appointed or employed by the State. All other statements of economic interest
31 and all other written evaluations by the Commission of those statements are public
32 records.

33 (b) The statements of economic interest filed by prospective public servants, and
34 the written evaluations by the Commission of those statements, for persons elected by
35 the General Assembly shall be provided to the chair of the standing committee handling
36 the legislation regarding the election and made available to all members of the General
37 Assembly. The statements of economic interest filed by public servants elected to
38 positions by the General Assembly, and written evaluations by the Commission of those
39 statements, are not public records until the prospective public servant is sworn into
40 office.

41 (c) The statements of economic interest filed by prospective public servants, and
42 the written evaluations by the Commission of those statements, for persons confirmed
43 for appointment as a public servant by the General Assembly shall be provided to the
44 chair of the standing committee handling the legislation regarding the appointment. The

1 statements of economic interest filed by prospective public servants for confirmation for
2 appointment by the General Assembly, and written evaluations by the Commission of
3 those statements, are public records at the time of the announcement of the
4 appointment."

5 **SECTION 11.** G.S. 138A-32(b) reads as rewritten:

6 "(b) A covered person may not solicit for a charitable purpose any ~~gift-thing of~~
7 monetary value from any subordinate State employee. This subsection shall not apply to
8 generic written solicitations to all members of a class of subordinates. Nothing in this
9 subsection shall prohibit a covered person from serving as the honorary head of the
10 State Employees Combined Campaign."

11 **SECTION 12.** G.S. 138A-36(a) reads as rewritten:

12 "(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38,
13 no public servant acting in that capacity, authorized to perform an official action
14 requiring the exercise of discretion, shall knowingly participate in an official action by
15 the employing entity if the public servant, a member of the public servant's extended
16 family, ~~or~~a business with which the public servant is associated, or a nonprofit
17 corporation or organization with which the public servant is associated, has an
18 economic interest in, or a reasonably foreseeable benefit from, the matter under
19 consideration, which would impair the public servant's independence of judgment or
20 from which it could reasonably be inferred that the interest or benefit would influence
21 the public servant's participation in the official action. A potential benefit includes aan
22 economic or financial detriment to a business competitor of (i) the public servant, (ii) a
23 member of the public servant's extended family, ~~or~~(iii) a business with which the public
24 servant is ~~assoeiated.~~ associated, or (iv) a nonprofit corporation or organization with
25 which the public servant is associated. A benefit also includes an economic or financial
26 detriment to (i) the public servant, (ii) a member of the public servant's extended family,
27 (iii) a business with which the public servant is associated, or (iv) a nonprofit
28 corporation or organization with which the public servant is associated."

29 **SECTION 13.** G.S. 138A-37(a) reads as rewritten:

30 "(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly
31 participate in a legislative action if the legislator, a member of the legislator's extended
32 family, the legislator's client, ~~or~~a business with which the legislator is associated, or a
33 nonprofit corporation or organization with which the legislator is associated, has an
34 economic interest in, or may reasonably and foreseeably benefit from the action, and if
35 after considering whether the legislator's judgment would be substantially influenced by
36 the interest and considering the need for the legislator's particular contribution,
37 including special knowledge of the subject matter to the effective functioning of the
38 legislature, the legislator concludes that an actual economic interest does exist which
39 would impair the legislator's independence of judgment. A potential benefit includes a
40 an economic or financial detriment to a business competitor of (i) the legislator, (ii) a
41 member of the legislator's extended family, ~~or~~(iii) a business with which the legislator
42 is ~~assoeiated.~~ associated, or (iv) a nonprofit corporation or organization with which the
43 legislator is associated. A benefit also includes an economic or financial detriment to (i)
44 the legislator, (ii) a member of the legislator's extended family, (iii) a business with

1 which the legislator is associated, or (iv) a nonprofit corporation or organization with
2 which the legislator is associated. The legislator shall submit in writing to the principal
3 clerk of the house of which the legislator is a member the reasons for the abstention
4 from participation in the legislative matter."

5 **SECTION 14.** G.S. 138A-38 reads as rewritten:

6 **"§ 138A-38. Permitted participation exception.**

7 (a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may
8 participate in an official action or legislative action under any of the following
9 circumstances except as specifically limited:

- 10 (1) The only interest or reasonably foreseeable benefit or detriment that
11 accrues to the covered person, the covered person's extended family, ~~or~~
12 business with which the covered person is ~~associated~~-associated, or
13 nonprofit corporation or organization with which the covered person is
14 associated as a member of a profession, occupation, or general class is
15 no greater than that which could reasonably be foreseen to accrue to all
16 members of that profession, occupation, or general class.
- 17 (2) When an official or legislative action affects or would affect the
18 covered person's compensation and allowances as a covered person.
- 19 (3) Before the covered person participated in the official or legislative
20 action, the covered person requested and received from the
21 Commission or Committee a written advisory opinion that authorized
22 the participation. In authorizing the participation under this
23 subdivision, the Commission or Committee shall consider the need for
24 the legislator's particular contribution, such as special knowledge of
25 the subject matter, to the effective functioning of the General
26 Assembly.
- 27 (4) Before participating in an official action, a public servant made full
28 written disclosure to the public servant's employing entity which then
29 made a written determination that the interest or benefit would neither
30 impair the public servant's independence of judgment nor influence the
31 public servant's participation in the official action. The employing
32 entity shall file a copy of that written determination with the
33 Commission.
- 34 (5) When action is ministerial only and does not require the exercise of
35 discretion.
- 36 (6) When a public or legislative body records in its minutes that it cannot
37 obtain a quorum in order to take the official or legislative action
38 because the covered person is disqualified from acting under
39 G.S. 130-36, G.S. 138A-37, or this section, the covered person may be
40 counted for purposes of a quorum, but shall otherwise abstain from
41 taking any further action.
- 42 (7) When a public servant notifies the Commission in writing that the
43 public servant judicial employee, or someone whom the public servant
44 appoints to act in the public servant's stead, or both, are the only

1 individuals having legal authority to take an official action, and the
2 public servant discloses in writing the circumstances and nature of the
3 conflict of interest."

4 (b) This section shall not allow participation in an official action prohibited by
5 G.S. 14-234."

6 **SECTION 15.** G.S. 138A-40 reads as rewritten:

7 "**§ 138A-40. Employment and supervision of members of covered person's or**
8 **legislative employee's extended family.**

9 A covered person or legislative employee shall not cause the employment,
10 appointment, promotion, transfer, or advancement of an extended family member of the
11 covered person or legislative employee to a State office, or a position to which the
12 covered person or legislative employee supervises or manages, except for positions at
13 the General Assembly as permitted ~~by the Legislative Services Commission~~ under
14 G.S. 120-32(2). A public servant or legislative employee shall not supervise, manage, or
15 participate in an action relating to the discipline of a member of the public servant's or
16 legislative employee's extended family, except as specifically authorized by the public
17 servant's or legislative employee's employing entity."

18 **SECTION 16.** Section 23(b) of S.L. 2006-201 reads as rewritten:

19 "**SECTION 23.(b)** Public servants holding positions on January 1, 2007, shall
20 participate in ethics education presentations under G.S. 138A-14 and lobbying
21 education programs under G.S. 120C-103 on or before January 1, 2008."

22 **SECTION 17.** Section 6 of this act becomes effective October 1, 2007. The
23 remainder of this act is effective when it becomes law.