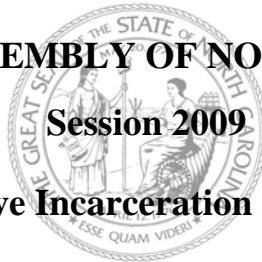


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2009**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** House Bill 961 (Fifth Edition)

**SHORT TITLE:** Gov't Ethics and Campaign Reform Act of 2010.

**SPONSOR(S):** Representatives Glazier, Stam, Ross, and Goodwin

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>	<b><u>FY 2014-15</u></b>
<b>REVENUE</b>					
<b><u>NC Voter-Owned</u></b>					
<b><u>Fund</u></b>					
SOS	\$960,985	\$960,505	\$960,035	\$959,565	\$981,095
Insurance	\$322,925	\$322,925	\$322,925	\$322,925	\$322,925
Labor	\$323,935	\$323,935	\$323,935	\$323,935	\$323,935
Agriculture	\$286,500	\$286,500	\$286,500	\$286,500	\$286,500
Treasurer	\$1,134,040	\$1,134,040	\$1,134,040	\$1,134,040	\$1,134,040
Revenue	\$1,098,919	\$1,098,919			
<b>TOTAL</b>	<b>\$4,538,369</b>	<b>\$4,251,389</b>	<b>\$3,152,000</b>	<b>\$3,151,530</b>	<b>\$3,173,060</b>
<b>TOTAL</b>					
<b>EXPENDITURES:</b>					
<b><u>NC Voter-Owned</u></b>					
<b><u>Fund</u></b>					
Candidate					
Grants			<b>\$4,869,600</b>		
State Board of Elections			<b>See Assumptions and Methodology</b>		
<b><u>General Fund</u></b>					
State Ethics Commission	\$537,013	\$326,943	\$349,469	\$369,013	\$383,889
Correction			<b>Exact amount cannot be determined*</b>		
Judicial			<b>Exact amount cannot be determined*</b>		
<b>POSITIONS:</b>					
<b>(cumulative)</b>					
State Ethics Commission	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
<i>*See Assumptions and Methodology</i>					

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Department of Correction; Judicial Branch; Department of Labor; Department of Agriculture; Department of State, Department of Insurance, Department of Treasurer, Department of Revenue, State Ethics Commission, State Board of Elections, Governor and Office of State and Budget Management.

**EFFECTIVE DATE:** Except as otherwise provided, this act is effective when it becomes law.

*\*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

## **BILL SUMMARY:**

House Bill 961 would make various changes to the public campaign financing laws; campaign finance laws, public records laws, ethics laws, and lobbying laws. Except as otherwise provided, this bill is effective when it becomes law.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Current Law and Bill Analysis**

North Carolina has two public campaign financing programs:

- North Carolina Public Campaign Finance, a program that covers all nonpartisan elections for State Supreme Court and Court of Appeals, which was enacted in 2002 and used in the elections of 2004, 2006, and 2008.
- Voter-Owned Elections, a program that covers partisan elections for three Council of State offices – Auditor, Commissioner of Insurance, and Superintendent of Public Instruction, which was used in the 2008 election.

In brief, both programs work as follows: Qualified candidates who agree to limits on private fundraising are eligible to receive public money to fund their campaigns. Candidates qualify for the program by pledging to abide by contribution and spending limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants.

If participating candidates are faced with opponents, in primary or general elections, who spend more than the participating candidates can match, or independent expenditures or electioneering communications targeted at them beyond what they can spend, the Fund provides "matching funds" which are additional funds to match an opponent's expenditures and can be used by participating candidates to defend themselves. Candidates may opt out at any time, and repay the monies received from the Fund.

Both programs also require the State Board of Elections to produce and distribute a Voter Guide to as many voting-age NC residents as possible. The Voter Guide contains information about the affected elections and space for candidates to present themselves without cost.

### **Sections 1 & 2:**

Section 1 would add the Offices of the Agriculture Commissioner, Labor Commissioner, Secretary of State, and State Treasurer to the Council of State offices eligible to participate in the Voter-Owned Elections program, effective 2012 and Section 2 would add the office of Attorney General effective for the 2016 election. Section 1(b) would impose various fees on certain activities of these offices, with the funds collected to be transferred to the Voter-Owned Election Fund. Section 1 becomes effective October 1, 2010 and Section 2 becomes effective July 1, 2015.

### **Section 3 and 4: Revisions to criminal provisions**

#### **Section 3:**

Currently, it is unlawful for a State employee or a person appointed to non-elected State office to coerce political contributions or support from a State employee or applicant subject to the State Personnel Act by threatening discipline or promising preferential personnel treatment. Section 3 would expand this provision by making it unlawful for a member of the Council of State to coerce political contributions or support by threatening discipline or promising preferential treatment to the following groups of people:

- Persons doing or seeking to do business with the Council of State member's department.
- Persons engaged in activities that are regulated or controlled by the Council of State member's department.
- Persons who have financial interests that may be substantially affected by the performance or nonperformance of the Council of State member's official duties. A violation of this section is a Class 2 misdemeanor.

#### **Section 4:**

Currently under G.S. 14-234, no public officer or employee involved in making or administering a contract on behalf of a public agency may solicit or receive a gift, reward, or promise of a reward in exchange for recommending, influencing, or attempting to influence the award of the contract. Section 4 would expand this by also prohibiting public officers and employees from soliciting or receiving favors, services, and promises of future employment. Section 4 becomes effective December 1, 2010 and applies to offenses committed on or after that date.

#### **Section 5: Revolving Door**

Under current lobbying law (G.S. 120C), all agencies and constitutional officers of the State with staff must designate *liaison personnel* to lobby for legislative action. Liaison personnel, by definition, are employees of the State whose principal duties include lobbying legislators or legislative employees. Liaison personnel must register and make reports with the Secretary of State and are subject to the gift ban.

Currently, the lobbying laws limit when certain people may register as a lobbyist as follows:

- **Legislators-** No legislator or former legislator may register as a lobbyist
  - While in office

- Before the later of the close of session in which the legislator served or six months after leaving office.
- **Constitutional Officers of the State-** Members of the Council of State may not register as a lobbyist while in office or within six months after leaving office.

**Heads of Principal State Departments-** Heads of all principal State departments (as identified in G.S. 143B-6) who are appointed by the governor may not register as a lobbyist within six months after separation from employment as a public servant.

Section 5 would increase the revolving door time frame from the current six months to one year for legislators, Council of State members and principal department heads. The bill would limit all State agency employees from registering to lobby the agency that employee left for one year. Section 5 becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

### **Sections 6, 7, 8: Campaign Finance**

#### **Section 6:**

The State Board of Elections has the authority to prescribe and furnish certain statements required to be filed by candidates, committees, and county boards. Section 6 would authorize the State Board of Elections to hire or contract with a private investigator to investigate alleged violations of incorrect or unfiled statements filed by candidates, committees, and county boards.

#### **Section 7:**

It is currently unlawful for an individual, political committee, or other entity to make a contribution anonymously or in the name of another, G.S. 163-278.14(a). It is also unlawful for corporations, business entities, labor unions, professional associations and insurance companies to make campaign contributions to candidates or political committees or to compensate, reimburse or indemnify an individual for money or property for making contributions or expenditures, G.S. 163-278.19(a). A violation of this section is a Class 2 misdemeanor.

Section 7 provides that a person who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a), and the unlawful contributions total more than \$10,000 per election, is guilty of a Class I felony. This prohibition shall not apply to contributions by individuals with the lawful authority to act on behalf of another individual. This section becomes effective December 1, 2010 and applies to offenses committed on or after that date.

#### **Section 8:**

Section 8 mandates that the State Board of Elections create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

#### **Section 9: NC OpenBook**

Section 9 codifies the Governor's Executive Order Number 4 to require the Office of State Budget and Management and Information Technology Services to build and maintain a single, searchable

website and database on State spending for grants and contracts awarded in amounts in excess of \$10,000. The information provided for each contract or grant shall include: The name of the entity receiving the award; the amount of the award; the location of the entity receiving the award; expected outcomes of the contract or grant and specific deliverables required; and contact information for the responsible state government officer or administrator of the contract or grant.

### **Section 10 -14: Ethics Act Revisions**

#### **Sections 10 and 11:**

Under current law, public servants include the Council of State, department heads, chief deputies, employees of the Office of the Governor, judicial employees, members of non-advisory boards, members of the Board of Governors, University boards of trustees, State Board of Community Colleges, and members of the boards of trustees of each community college. Public servants are covered by the State Government Ethics Act and are subject to the gift ban and are required to file an annual statement of economic interest.

Section 10 adds the following as public servants: the Executive Director and Assistant Executive Director of the State Ethics Commission; the director of the Office of State Personnel; the State Controller; the chief information officer, deputy chief information offices, chief financial officers, and general counsel of the Office of Information Technology; the director of the State Museum of Art; the executive director of the Agency for Public Telecommunication; the Commissioner of Motor Vehicles; the Commissioner of Banks, and the chief deputy commissioners of the Banking Commission; the executive director of the North Carolina Housing Finance Agency; and the executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority.

Section 11 adds the Governor's Crime Commission as a covered board, which means its members are public servants under the State Government Ethics Act.

#### **Section 12:**

Currently, legislators, judicial officers and public servants are required to file a statement of economic interest upon election, appointment, or employment and annually thereafter. Candidates for legislative or constitutional offices are also required to file a statement of economic interest when filing for candidacy. Section 12 would also require a statement of economic interest to be filed on or before April 15<sup>th</sup> of the year following the year a covered person leaves office or dies in office.

#### **Section 13:**

Section 13 makes various changes to the annual statement of economic interest required to be filed by covered persons.

- Removes the requirement that statements of economic interest be sworn.
- Adds sole proprietorships to the list of business entities that must be listed on the statement of economic interest.
- Clarifies that the statement of economic interest should include the name of each business with which the filing person or filing person's immediate family is an employee, director,

officer, partner, proprietor, or member or manager, and identifies which of these businesses do business with the State.

Section 13 becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

**Section 14:**

Section 14 authorizes the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission or similar public body. It also authorizes the Governor to adopt minimum ethics standards applicable to any employee of a State agency. The Governor is required to publish the standards in the North Carolina Register and make them available to each appointee or employee subject to the standards.

**Section 15: Gift Ban Clarification**

Under current law, unless an exception to the gift ban applies, no lobbyist or lobbyist principal may knowingly give a gift to a legislator, legislative employee or public servant or give a gift with the intent that a legislator, legislative employee, or public servant be the ultimate recipient of the gift. Section 15 clarifies that an indirect gift can include gifts where a designated individual is not the sole recipient. Section 15 becomes effective December 1, 2010, and applies to offenses committed on or after that date.

**Section 16: Rule making for SEC** Under current law, the State Ethics Commission is required to follow a truncated rule-making procedure when adopting a rule. At least 30 business days prior to adopting a rule, the Commission shall publish the proposed rule and notice of the hearing in the North Carolina Register, notify interested parties, accept comments, and hold a public hearing.

Section 16 states that a rule adopted by the Commission that does not comply with the above mentioned procedural requirements is null, void, and without effect. It also defines a rule as any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission.

**Section 17: Lobbyist Principal Reporting**

Currently, the term 'lobbying' is defined as influencing or attempting to influence legislative or executive action, or both, through direct communications and activities with a designated individual or developing goodwill through communications or activities with designated individuals with the intention of influencing current or future legislative or executive action, or both. A lobbyist is currently defined as an individual who is hired to engage in lobbying and meets certain criterion and a lobbyist principal is currently defined as a person or governmental unit on whose behalf a lobbyist lobbies.

Section 17 clarifies the definition of lobbyist so that the relationship between a lobbyist and a lobbyist principal is triggered only when the relationship includes payment. Section 17 changes the definition of a lobbyist to an individual who engages in lobbying **for payment** and meets certain criterion. Section 17 also makes corresponding changes to the definition of lobbyist principal to

clarify that a lobbyist principal is a person or governmental unit on whose behalf a lobbyist lobbies **and who makes payment for that lobbying.**

Section 17 also sets out what information about the payment is to be reported by the lobbyist principal annually. Section 17 becomes effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

### **Section 18: Personnel Records**

Personnel files of State and local government employees are confidential and cannot be released, except for certain items of information which must be maintained as separate public records. Generally, the items that may be released as public records are: name; age; date of original employment or appointment; current position; title; current salary; date and amount of most recent increase or decrease in salary; date of most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and office or station to which the employee is currently assigned. Similar statutes govern the personnel records of: local boards of education, community colleges, area mental health authorities, State employees, public health authorities, counties, cities, and water and sewer authorities.

Section 18 would also require release of the date and amount of *each* salary change, and the date of *each* promotion, demotion, transfer, suspension, separation or other change in position classification.

Section 18 becomes effective October 1, 2010.

### **Section 19: Penalties of SEC and SOS published**

Under current law, the Legislative Ethics Committee is required to publish annually statistics on the number of complaints filed, considered, dismissed, resulting in admonishment, referred to the appropriate house for appropriate action, referred for criminal prosecution and the number and age of complaints pending action by the Legislative Ethics Committee.

Section 19 requires the Secretary of State and the State Ethics Commission to publish similar annual statistics for complaints of violations of the lobbying law.

All civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be public record.

### **Section 20: Mediation of public records disputes.**

Section 20 amends the access to public records law by requiring mediation of public records disputes. Mediation may be voluntarily initiated prior to suit being filed, but must be initiated within 30 days from the filing of responsive pleadings with the clerk.

Mediation is initiated by filing a request for mediation with the clerk of court in a county in which the action may be brought. The mediation shall be conducted in accordance with the standards for mediated settlements of civil cases. Mediation may be waived if all parties agree and the mediator is so informed in writing. At the conclusion of mediation, the mediator shall prepare and file a certification stating the date on which the mediation was concluded and the general results of the

mediation. If a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees. The court may not assess attorneys' fees against a governmental body or governmental unit if the court finds the governmental body or governmental unit acted in reasonable reliance on a court order, appellate decision, or opinion of the Attorney General. Section 20 becomes effective October 1, 2010, and applies to actions filed on or after that date.

### **Section 21: Technical Corrections**

Section 21 makes various technical and clarifying changes to the State Government Ethics Act and Lobbying laws.

### **Section 22:**

Except as otherwise provided, this act is effective when it becomes law.

*Source: Adopted from Committee Counsel's Bill Summary dated June 22, 2010.*

## **Revenue**

### ***Department of Secretary of State***

Section 1.(c) of the bill directs the Secretary of State to add a \$5 increase to the Articles of Organization fee. The bill provides that the revenue generated from this fee increase shall be paid into the North Carolina Voter-Owned Elections Fund. The Department of Secretary of State (SOS) expects to pay \$168,395 into the North Carolina Voter-Owned Election Fund as a result of this \$5 fee increase in FY 2010-11, \$167,915 in FY 2011-12, \$167,445 in FY 2012-13, \$166,975 in FY 2013-14, and \$188,505 in FY 2014-15.

Section 1.(e) of the bill provides for a \$5 increase to the initial or renewal registration filing fee in the case of a securities dealer and salesman. The bill requires that the revenue generated from this fee increase be paid into the North Carolina Voter-Owned Elections Fund. SOS expects to pay \$792,590 to the North Carolina Voter-Owned Election Fund annually as a result of this \$5 fee increase.

Section 1(c) (25) increases the annual report filing fee for LLCs by \$5 from \$200 to \$205. According to the Department of Secretary of State, there were \$131,000 annual reports filed in 2008 and 162,000 in 2009. Based on the average number of reports filed for the two years, 147,000 reports is assumed and the total amount of additional revenue is estimated to be \$735,000 annually.

### ***Department of Insurance***

Section 1.(d) of the bill provides for a \$5 fee increase for the licensing of agents, brokers, limited representatives, and adjusters. The bill provides that the revenue generated from this fee increase shall be paid into the North Carolina Voter-Owned Elections Fund. Based on the most recent fiscal year count, the Department of Insurance (DOI) issued 64,585 licenses; however, this figure may



fluctuate. DOI expects to pay \$322,925 to the North Carolina Voter-Owned Election Fund annually as a result of this \$5 fee increase (64,585 licenses multiplied by \$5 fee increase).

### ***Department of Labor***

#### **Section 1(f)**

Section 1(f) amends G.S. 95-110.5(20) to direct that an additional \$5 will be charged for devices and equipment subject to Article 14A of Chapter 95 and that this new revenue be allocated to the North Carolina Voter-Owned Elections Fund. These fees are charged by the NC Department of Labor (DOL) for elevators, dumbwaiters, and handicapped lifts. Current fees range from \$65 - \$200; the statutory maximum for these fees is \$200. Thus, it is not clear if DOL would be able to increase those fees by \$5. In FY 2008-09, DOL assessed 22,145 fees under this article and collected \$3,860,795. Of those 22,145 fees, 14,861 are below the \$200 maximum and thus it would be possible to add an additional \$5 to the fee. Fiscal Research assumes that the number of elevators and dumbwaiters will remain relatively constant, and thus \$74,305 (14,861 x \$5) will be allocated to the North Carolina Voter-Owned Elections Fund.

#### **Section 1(g)**

Section 1(g) amends G.S. 95-69.11(11) to direct that DOL charge an additional \$5 for boilers and pressure vessels and that this increased fee revenue go to the North Carolina Voter-Owned Elections Fund. There are 45 different fees charged under this article. In FY 2008-09, 49,926 fees were assessed and \$2,021,148 was collected. Fiscal Research assumes that boiler and pressure vessel inspection numbers are relatively constant, and thus \$249,630 (49,926 x \$5) will be allocated to the North Carolina Voter-Owned Elections Fund.

### ***Department of Agriculture and Consumer Services***

Section 1.(h) amends G.S. 106-22 by adding section (18) which requires the Department of Agriculture and Consumer Services (DACS) to add a three percent surcharge to every rental agreement for real property where the Board of Agriculture or the Commissioner is the lessor and transfer this surcharge to the North Carolina Voter-Owned Election Fund. DACS currently has thousands of rental agreements for which the Board of the Commissioner is the lessor.

Due to time constraints and the complexity of defining "rental agreements" and "rental of real property," DACS estimates that "rental agreements" bring in over \$12.5 million annually. These funds are used for operations, personnel, and maintenance at the farmers markets, the agricultural centers, and the state fairs. DACS' estimate uses a combination of items budgeted in the Rental of Real Property line item and the Gate/ Admission Fee line item; DACS budgets some agreements such as the midway rental agreements for the fairs in the Gate/ Admission Fee line. DACS notes that "Given more time to do the required analysis, the number may change as we sort out what is and is not rental income." Therefore, the Fiscal Research Division (FRD) assumes that \$12.5 million is the upper range of total rents collected.

In order to provide a lower boundary for the range, FRD estimated the transfer assuming the surcharge only applied to the line item "rental of real property." In this case, DACS collected about \$6.6 million in FY 2008-09. Assuming that future rental agreement collections are similar

to FY 2008-09, DACS would transfer between \$198,000 and \$375,000 to the North Carolina Voter-Owned Election Fund annually. Table 1 summarizes the expected transfer range.

<b>Table 1: Estimated Range of Rental Agreement Revenue</b>		
	<b>Collections</b>	<b>3% of Collections</b>
<u>Upper Boundary:</u> Rental of Real Income & certain Gate/ Admission Fees	\$12,500,000	\$375,000
<u>Lower Boundary:</u> Rental of Real Income Only	\$6,600,000	\$198,000
<i>Average</i>	<i>\$9,550,000</i>	<i>\$286,500</i>

Historically, DACS has experienced two outcomes when rental rates increase: (1) the number of rentals decreases or (2) large vendors negotiate their contracts to account for the new rate or surcharge. The three percent surcharge may add to the pressures created by the recent rate increases and the economy, further decreasing the number of rentals. This could impact receipts generated for both operations and the transfer to the North Carolina Voter-Owned Elections Fund.

Lastly, there are logistical challenges to applying a surcharge to each rental agreement. The scale of DACS's rental agreements varies widely from a few dollars to rent a day spot at the local farmers market to thousands of dollars to rent the entire midway at the State Fairgrounds for two weeks. In addition, DACS does not always have a set rental rate. For example, the Kerr Scott Building rents for \$1,800 per day or 10 percent of gross sales after taxes, whichever is greater; it may be difficult to determine the expected surcharge amount when a variable fee applies.

***Department of State Treasurer***

Section 1.(i) of the bill requires there to be a fee of .02% on each fund held by the Treasurer that consists of non-tax revenue, excluding funds holding monies for pensions and retirement, escheats, general fund, federal funds, and bond proceeds, to be paid into the North Carolina Voter-Owned Elections Fund.

The Department of State Treasurer estimates that it would transfer \$1,134,040 to the North Carolina Voter-Owned Election Fund annually (\$5,670,200,435 from a variety of short-term and long-term investment funds multiplied by .02%).

***Department of Revenue***

Section 1.(j) of the bill requires that, for the period January 1, 2011 through December 31, 2012, \$2.50 of each \$3 allocation under the North Carolina Public Campaign Fund shall be transferred on a monthly basis to the North Carolina Voter-Owned Election Fund.

The Department of Revenue reports that it has transferred on average \$1,318,702 to the North Carolina Public Campaign Fund from FY 2006-07 to FY 2009-10 annually. Fiscal Research estimates that the Department of Revenue would transfer \$1,098,919 to the North Carolina Voter-Owned Election Fund annually (\$1,318,702 multiplied by 83.3%). There would be a corresponding loss to the NC Public Campaign Fund, which supports the candidates for certain nonpartisan judicial elections.



The table below provides a summary of the total revenue generated by HB 961.

<b>TABLE 2. ESTIMATED REVENUE GENERATED BY HB 961</b>					
<b>Agency</b>	<b>Revenue Generated in FY 2010-11</b>	<b>Revenue Generated in FY 2011-12</b>	<b>Revenue Generated in FY 2012-13</b>	<b>Revenue Generated in FY 2013-14</b>	<b>Revenue Generated in FY 2014-15</b>
SOS	\$1,695,985	\$1,695,505	\$1,695,035	\$1,694,565	\$1,716,095
Insurance	\$322,925	\$322,925	\$322,925	\$322,925	\$322,925
Labor	\$323,935	\$323,935	\$323,935	\$323,935	\$323,935
Agriculture <sup>1</sup>	\$286,500	\$286,500	\$286,500	\$286,500	\$286,500
Treasurer	\$1,134,040	\$1,134,040	\$1,134,040	\$1,134,040	\$1,134,040
Revenue	\$1,098,919	\$1,098,919			
<b>TOTAL</b>	<b>\$4,538,369</b>	<b>\$4,251,389</b>	<b>\$3,152,000</b>	<b>\$3,151,530</b>	<b>\$3,173,060</b>

<sup>1</sup> The midpoint of the expected range has been included for DACS

## **Expenditures**

### ***Voter-Owned Election Program***

The Voter-Owned Election Program is one of NC's two public campaign financing program. The Program currently provides grants to candidates for Auditor, Insurance Commissioner, and Superintendent of Public Instruction who agree to limits on private fund raising. In addition to distributions to qualified candidates, all expenses for implementation, including staff, administrative, and enforcement costs, are paid for by the North Carolina Voter-Owned Elections Fund. According to the 2008-2009 Campaign Finance Manual issued by the Campaign Finance Office of the North Carolina State Board of Elections, there are currently five sources of revenue for the North Carolina Voter-Owned Elections Fund.

HB 961 adds five additional Council of State offices (Secretary of State, Agriculture Commissioner, Labor Commissioner, State Treasurer, Attorney General) that are eligible to participate in the Program. It also imposes various fee increases as additional sources of revenue for the Fund.

The State Board of Elections is responsible for administering the Voter-Owned Election Program, including the development of procedures for the proper administration of the Program. The Board has delegated the daily administration of the Fund to the Campaign Finance Division of the State Board of Elections. Under the direction of the Board, the Campaign Finance Division will audit all reports of both non-participating and participating candidates to ensure compliance with the provisions of the Program. Certification requirements will be verified by Campaign Finance staff prior to the Board certifying a candidate. The Board makes determinations regarding whether electioneering communications will trigger matching funds and will be responsible for making determinations of violations of Article 22J of Chapter 163 of the General Statutes, the provisions creating the Program.

HB 961 is expected to have a fiscal impact on revenue, as well as a fiscal impact on the amount needed for distribution to qualifying candidates and for administrative costs.

*Distributions to Qualifying Candidates*

G.S. 163-278.99 outlines the method employed by the State Board of Elections, in consultation with the State Treasurer and the State Controller, to determine how the Fund is distributed among certified candidates. The table below shows the estimated expenses of the Voter-Owned Elections Program. Based on the table, \$4,869,600 would be needed for distribution to candidates for the 2012 election for Treasurer, Labor and Agriculture Commissioner and Secretary of State. An additional \$4,221,600 would be needed in FY 2016-17 for candidates for the 2016 election for the Attorney General.

<b>TABLE 3. Expenses of Voter-Owned Elections (VOE) Program, 4-Years &amp; Per Year</b>					
<b>Current Law</b>	Average over last three elections	Amount Candidate would Receive	Cost of 2 Candidate in Program	Allow 20% Extra for Rescue Fund	Total Cost for Election Cycle
Auditor	\$135,000	\$300,000	\$600,000	\$120,000	\$720,000
Insurance Comm.	\$280,000	\$300,000	\$600,000	\$120,000	\$720,000
Supt. Public Instr.	\$161,000	\$300,000	\$600,000	\$120,000	\$720,000
<b>Subtotal</b>	<b>\$576,000</b>	<b>\$900,000</b>	<b>\$1,800,000</b>	<b>\$360,000</b>	<b>\$2,160,000</b>
<b>HB 961 Additions</b>					
Treasurer	\$1,064,000	\$1,064,000	\$2,128,000	\$425,600	\$2,553,600
Labor Comm.	\$150,000	\$300,000	\$600,000	\$120,000	\$720,000
Ag. Comm.	\$365,000	\$365,000	\$730,000	\$146,000	\$876,000
Secretary of State	\$198,000	\$300,000	\$600,000	\$120,000	\$720,000
<b>Subtotal</b>		<b>\$2,029,000</b>	<b>\$4,058,000</b>	<b>\$811,600</b>	<b>\$4,869,600</b>
Attorney General	\$1,759,000	\$1,759,000	\$3,518,000	\$703,600	\$4,221,600
<b>TOTAL H961 COST</b>		<b>\$3,788,000</b>	<b>\$7,576,000</b>	<b>\$1,515,200</b>	<b>\$9,091,200</b>

*Source: Fiscal Note for SB 966, FY 2009-10; Fiscal Research has no reason to believe that these statistics have changed significantly.*

**Administrative Costs**

*State Board of Elections*

The State Board of Elections provided information that estimates the impact of Sections 1, 2, 6 and 8 of HB 961 to be at least \$82,472. However, due to time constraints, Fiscal Research cannot confirm these estimates at this time.

HB 961 calls for the State Board of Elections' Advisory Committee to meet several times. Fiscal Research estimates the cost of each meeting to be approximately \$2,102 but the exact number of meetings required cannot be determined at this time.

According to the State Board, the administration of the Voter-Owned Elections Fund would necessitate an additional Governmental Accounts Auditor Position, which would total \$80,371 including salary, benefits, and associated costs:

531211	Salary	\$ 54,000	
531511	Soc Sec	\$ 4,131	
531521	Ret	\$ 5,675	
531561	Med Ins	\$ 4,929	
532144	PC/Printer		\$ 1,680
5327xx	Travel	\$ 1,500	
532811	Telephone		\$ 1,500
532815	Email & Calendaring	\$ 156	
5329xx	Registration & Ed Expenses	\$ 300	
533xxx	Supplies	\$ 2,000	
534511	Office Furniture		\$ 2,000
534521	Office Equipment		\$ 2,000
534713	PC Software		\$ 500
		<hr/>	
		\$ 72,691 R	\$ 7,680 NR

*Office of State Budget and Management and the Governor*

Section 9 of the bill codifies the Governor's Executive Order Number 4 to require the Office of State Budget and Management and Information Technology Services to build and maintain a single, searchable website and database on State spending for grants and contracts awarded in amounts in excess of \$10,000.

There are no new costs associated with requiring the use of NC OpenBook. Executive Order Number 4 established the requirement for NC OpenBook, so funding for the project has already been identified, and the system is already being implemented. Total cost of ownership for the system, which includes operations and maintenance costs through 2015, is expected to be \$1,684,409.

Section 14 of the bill authorizes the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission or similar public body. The Office of State Budget and Management estimates that the bill will have no fiscal impact on the Office of the Governor.

*State Ethics Commission*

The State Ethics Commission estimates that Sections 5, 13, 14, and 15 of HB 961 would require a minimum of \$537,013 in additional funding for FY 10-11 and subsequent fiscal years, which includes the following:

- Salary, fringes, and associated costs for one Attorney II and one Paralegal III for compliance and enforcement, as well as two Paralegal IIs for customer service regarding compliance and any additional rules or standards implemented by the Governor: \$277,505
- Contractual legal services: \$100,000
- Online/electronic filing of Statements of Economic Interest (SEIs): \$110,000

- Legal research tool: \$6,000
- Online education: \$20,000
- Other associated IT costs: \$23,508

Furthermore, Section 5(c) would apply a “cooling off” period for lobbyist registration to *all* State agency employees, which in turn would likely generate a large amount of information requests for the State Ethics Commission regarding how to comply with this provision. Although the Commission cannot predict the total number of requests that would be generated, it is possible that additional staff members would be required in order to process these requests.

Section 14 would give the Governor the power to adopt additional ethics standards for appointees and State employees. The scope of these additional standards and associated workload could vary widely, and could potentially require future additional positions in the State Ethics Commission; however, at this time it is not possible to estimate the exact fiscal impact of this section of the bill.

Section 15 would change the indirect gift ban analysis for the State Ethics Commission, and would likely result in an increased number of information requests to the Commission. This in turn would increase the workload of existing staff members, although at this time it is impossible to estimate whether this would exceed existing capacity.

#### *Office of State Personnel*

Section 18 of the bill expands the amount of personnel information that can be made public to include the date and amount of each salary change or each position change (i.e, promotion, demotion, transfer, suspension, separation, or classification) The Office of State Personnel (OSP) estimates that, although this legislation would create additional work for all personnel staff in all State agencies, the additional work required is similar enough to the work that is currently performed that it can be absorbed into the current workforce. Therefore, OSP anticipates no additional cost associated with Section 18 of the bill.

#### *Department of Correction – Division of Prisons*

##### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

An analysis of selected sections of H961 affecting the Department of Correction follows:

##### **Section 3:**

This section creates a new Class 2 misdemeanor by adding subsection (a1) to G.S. 126-14, Promise or threat to obtain political contribution or support. Subsection (a1) makes it unlawful for a Constitutional officer of the State or an individual elected or appointed as a constitutional officer of the State prior to taking office (hereafter, “individual”), while knowing or having reason to know that a person (1) is doing or is seeking to do business of any kind with the individual’s employing entity, (2) is engaged in activities that are regulated or controlled by the individual’s

employing entity, or (3) has financial interests that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the individual's official duties, to coerce the person to support or contribute to a political candidate, a political committee, or a political party by threatening discipline or promising preferential treatment with regard to that person's business with the individual's State office or that person's activities regulated by the individual's State office. Effective December 1, 2010, and applicable to offenses committed on or after that date.

Because the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2008-09, 23% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 11 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under the existing offense of bribery in G.S. 14-217, it is a Class F felony for a State officeholder to receive or consent to receive directly or indirectly anything of value or personal advantage, or the promise thereof, for performing or omitting to perform an official act within the scope of his official authority, or with the express or implied understanding that his official act or omission is to be influenced thereby. A subset of the acts covered by the new offense would already be covered by G.S. 14-217, insofar as (1) the person's support or contribution to a political candidate, committee, or party would amount to a receipt of something of value or personal advantage to the individual under new G.S. 126-14(a1), and (2) the individual coerces the support or contribution through preferential performance (or nonperformance) of official duties *vis a vis* the person's business or financial interests related to (or regulated by) the individual's office. There was 1 conviction under G.S. 14-217 in FY 2008/09. Because the Administrative Office of the Courts' (AOC) Automated Criminal/Infractions System does not contain data on specific elements of conduct, it is not known if this conviction was for conduct covered under the proposed offense.

**Section 4(a):**

This section may enlarge the scope of an existing Class 1 misdemeanor in G.S. 14-234, Public officers or employees benefitting from public contracts; exceptions, by amending subpart (a)(3). Currently G.S. 14-234(a)(3) forbids a public officer or employee from soliciting or receiving "any gift, reward, or promise of reward," in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves. Section 4(a) would expand the list of forbidden benefits to include any "favor" or "service" and would explicitly include the "promise of future employment" within the current prohibition on any "reward." Given the existing bar against any form of "reward," it is unclear whether the proposed amendment to (a)(3) would actually increase the range of forbidden acts. Effective December 1, 2010, and applicable to offenses committed on or after that date.

AOC currently does not have a specific offense code for violations of G.S. 14-234(a)(3). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result



from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 5(a)-(c):**

These subsections create additional periods of opportunity in which to violate existing Class 1 misdemeanors in G.S. 120C-304, Restrictions, by extending the waiting period for registering as a lobbyist after leaving public office. Section 5(c) also expands the pool of potential offenders for this offense.

**Section 5(a)** amends G.S. 120C-304(a) to provide that a legislator or former legislator may not register as a lobbyist while in office or within one year after leaving office. Currently, the legislator may not register while in office or before the later of the close of the session in G.S. 120C-100(a)(4)b.1 in which the legislator served or within six months after leaving office.

AOC currently does not have a specific offense code for violations of G.S. 120C-304(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 5(b)** amends G.S. 120C-304(b) to provide that a Constitutional officer of the State, or an individual elected or appointed as a constitutional officers of the State prior to taking office, may not register as a lobbyist under Chapter 120C while in office or within one year after leaving office. Currently, covered persons may not register while in office or within six months after leaving office.

AOC currently does not have a specific offense code for violations of G.S. 120C-304(b). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions for this offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 5(c)** amends G.S. 120C-304(c) to provide that an employee of a State agency may not lobby the State agency that previously employed the former employee within one year after

voluntary separation from employment with the State agency. Currently, subsection (c) applies only to the heads of all principal State departments who are appointed by the Governor, as set forth in G.S. 143B-6, Principal departments, and forbids them from registering as lobbyists under Chapter 120C within six months after separation from their employment as public servants. The proposed amendment would thus greatly expand the range of covered employees (albeit excluding those involuntarily separated from employment) and would increase the waiting period after employment from six months to one year.

AOC currently does not have a specific offense code for violations of G.S. 120C-304(c). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 5(d)** creates a new offense by adding to the registration requirements for a lobbyist who is a former state employee. It is currently a Class 1 misdemeanor under G.S. 120C-602(a) to willfully violate any provision of Article 2 (Registration) of General Statutes Chapter 120C (Lobbying). Under G.S. 120C-200, Lobbying Registration Procedure, it is unlawful to lobby without registering within one business day of engaging in any lobbying. Subsection (b) of G.S. 120C-200 lists the information required in a registration. Section 5(d) adds subsection (f) to G.S. 120C-200, which would further require a former state agency employee who registers as a lobbyist within one year after voluntary separation from employment with the agency to disclose the agency with whom he or she was employed. A registrant's willful failure to disclose the state agency with whom he or she was employed would constitute a violation of Article 2 punishable as a Class 1 misdemeanor under G.S. 120C-602(a). Effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

AOC currently does not have a specific offense code for violations of G.S. 120C-602(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 7(a):**

This section creates a new Class I felony by adding subsection (a2) to G.S. 163-278.27, Criminal penalties; duty to report and prosecute. Subsection (a2) makes it unlawful for a person or individual to intentionally violate G.S. 163-278.14(a) (making a contribution anonymously or in another's name, or knowingly accepting same) or G.S. 163-278.19(a) (political contribution by

corporation, union, or other entity), and the unlawful contributions total more than ten thousand dollars (\$10,000). This conduct is currently punished under subsection (a) of G.S. 163-278.27 as a Class 2 misdemeanor. Effective December 1, 2010, and applies to offenses committed on or after that date.

AOC currently does not have a specific offense code for violations of G.S. 163-278.27. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many convictions under the current subsection (a) would meet the \$10,000 threshold for the proposed Class I felony in subsection (a2). In FY 2008-09, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, 11 Class 2 misdemeanor convictions per year were to become Class I felony convictions under the proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

#### **Section 10:**

This section amends the definition of “Public servants” in G.S. 138A-3(30), Definitions, to include members of the State Ethics Commission, the executive director, and the assistant executive director of the Commission; individuals under contract with the State working in or against a position included under this subdivision; the director of the Office of State Personnel; the State Controller; the chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology; the director of the State Museum of Art; the executive director of the Agency for Public Telecommunication; the Commissioner of Motor Vehicles; the Commissioner of Banks, and the chief deputy commissioners of the Banking Commission; the executive director of the North Carolina Housing Finance Agency; and the executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority. “Public servants” as defined in statute are covered by the State Government Ethics Act in Chapter 138A of the General Statutes. Every covered person subject to the Act who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, must file a statement of economic interest with the State Ethics Commission prior to the covered person's initial appointment, election, or employment and no later than April 15 of every year thereafter. By expanding the definition of “public servants,” this section is expanding the pool of potential violators of the offenses contained in Chapter 138A. Effective when it becomes law.

Under G.S. 138A-26, Concealing or failing to disclose material information, a filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under Article 3, Public Disclosure of Economic Interests, of Chapter 138A is guilty of a Class 1 misdemeanor. AOC currently does not have a specific offense code for violations of G.S. 138A-26. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under G.S. 138A-27, Penalty for false information, a filing person who provides false information on a statement of economic interest as required under Article 3, Public Disclosure of Economic Interests, of Chapter 138A, knowing that the information is false, is guilty of a Class H felony. AOC currently does not have a specific offense code for violations of G.S. 138A-27. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

### **Section 11:**

This section amends G.S. 143B-478, Governor's Crime Commission – creation; composition; terms; meetings, etc., by adding subsection (f) which states that the Governor's Crime Commission shall be treated as a board for purposes of Chapter 138A of the General Statutes. As a result, its members will be considered public servants under the State Government Ethics Act. Every covered person subject to the Act who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, must file a statement of economic interest with the State Ethics Commission prior to the covered person's initial appointment, election, or employment and no later than April 15 of every year thereafter. By expanding the definition of "public servants," this section is expanding the pool of potential violators of the offenses contained in Chapter 138A. Effective when it becomes law.

Under G.S. 138A-26, Concealing or failing to disclose material information, a filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under Article 3, Public Disclosure of Economic Interests, of Chapter 138A is guilty of a Class 1 misdemeanor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-26. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under G.S. 138A-27, Penalty for false information, a filing person who provides false information on a statement of economic interest as required under Article 3, Public Disclosure of Economic Interests, of Chapter 138A, knowing that the information is false, is guilty of a Class H felony. AOC currently does not have a specific offense code for violations of G.S. 138A-27. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 35% of Class H convictions

resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

**Section 12:**

This section amends G.S. 138A-22, Statement of economic interest; filing required, by adding subsection (d1). This subsection requires a covered person who is holding elected office or a former covered person who held elective office to file a statement of economic interest on or before April 15 of the year following the year the covered person elects not to continue in the position, resigns from the position, or dies while holding the position that made the individual a covered person. Effective when it becomes law.

Under G.S. 138A-26, Concealing or failing to disclose material information, a filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under Article 3, Public Disclosure of Economic Interests, of Chapter 138A is guilty of a Class 1 misdemeanor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 138A-26. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Under G.S. 138A-27, Penalty for false information, a filing person who provides false information on a statement of economic interest as required under Article 3, Public Disclosure of Economic Interests, of Chapter 138A, knowing that the information is false, is guilty of a Class H felony. AOC currently does not have a specific offense code for violations of G.S. 138A-27. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three additional Class H convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

**Section 15:**

This section expands the gift ban in G.S. 120C-303(a) and G.S. 138A-32 to include gifts that are intended for multiple recipients. Although **Section 15(d)** refers to offenses committed on or after December 1, 2010, there does not appear to be any criminal offense directly resulting from violation of G.S. 138-32. Effective December 1, 2010, and applies to offenses committed on or after that date.

**Section 15(a)** amends G.S. 120C-303(a) to forbid a lobbyist or lobbyist principal from knowingly giving a gift with the intent that a designated individual be an ultimate recipient thereof. Currently the provision requires knowledge that the designated individual will be the ultimate recipient thereof. The amendment would thus reach gifts intended for more than one recipient. Under G.S. 120C-602(a), violation of this provision is a Class 1 misdemeanor.

AOC currently does not have a specific offense code for violations of G.S. 120C-602(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 17:**

This section amends the definitions in G.S. 120C-100(a) to specify that a “lobbyist” is an individual who engages in lobbying “for payment” (rather than one who receives “payment for services”), that a lobbyist includes one who contracts for “payment” (rather than “economic consideration”) for lobbying, and that the “lobbyist principal” is a person or governmental unit who makes payment for the lobbying.

**Section 17(f)** makes a technical amendment to G.S.120C-300(a) to prohibit an individual from acting as a lobbyist “and receiv[ing] payment for lobbying” that is dependent upon a result or outcome of any legislative or executive action. Currently, the provision bars an individual from acting as a lobbyist “for payment for services” that is dependent upon a result or outcome. As amended, the offense would not require that the contingent fee be for “services” rendered by the lobbyist. Violation of G.S. 120C-300 is a Class 1 misdemeanor under G.S. 120C-602(a).

AOC currently does not have a specific offense code for violations of G.S. 120C-300(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Assuming this technical amendment expands the reach of the statute, it is not known how many additional convictions would result. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 17(g)** makes a technical amendment to G.S. 120C-305 to forbid a lobbyist, or person acting on the lobbyist’s behalf, to “lobby by permitting” a designated individual or the individual’s immediate family member to use the lobbyist’s cash or credit unless the lobbyist is present at the time of the reportable expenditure. Currently, the statute forbids the lobbyist or person acting on his or her behalf to “permit” a designated individual or the individual’s immediate family member to use the lobbyist’s cash or credit “for the purpose of lobbying” unless the lobbyist is present for

the reportable expenditure. The amendment would further specify that G.S. 120C-303, Gifts by lobbyists and lobbyist principals prohibited, applies to G.S. 120C-305. Violation of G.S. 120C-305 is a Class 1 misdemeanor under G.S. 120C-602(a).

AOC currently does not have a specific offense code for violations of G.S. 120C-305. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Assuming this technical amendment expands the reach of the current statute, it is not known how many additional convictions would result. In FY 2008-09, 22% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 29 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this Class 1 misdemeanor offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

**Section 17(k)** expands the quarterly and annual reporting requirements for a lobbyist principal under G.S. 120C-403, Lobbyist principles reports. Section 120C-403 requires each lobbyist principal to file quarterly reports under oath with the Secretary of State. Section 17(k) would add subpart (b)(6), requiring the lobbyist principal to report, for each registered lobbyist, the name of any person or governmental unit not otherwise registered as a lobbyist principle for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for payment or not. Section 17(k) also adds subsections (d) and (e) to G.S. 120C-403. These subsections would require the lobbyist principle to annually report the total payments to any lobbyist (1) for lobbying, or (2) for communications and activities used to lobby during the registration period. Willfully making a statement that is false and material while under oath is perjury. Perjury is a Class F felony under G.S. 14-209. Effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

There were 3 convictions under G.S. 14-209 in FY 2008-09. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2008-09, 55% of Class F convictions resulted in active sentences, with an average estimated time served of 19 months. If, for example, there were 2 additional Class F convictions for the offense per year, the combination of active sentences and probation revocations would result in the need for two additional prison beds the first year and three additional prison beds the second year.

### *Judicial Branch*

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

An analysis of selected sections of H961 affecting the Judicial Branch follows:

Various sections of the bill increase the number of individuals who could be charged with misdemeanors or felonies under G.S. 14, 120C, 126, 138A, and 163, as well as broadening the

prohibited actions. There is the potential for an increase in felony and misdemeanor charges. Costs for charges disposed in the courts are as follows:

<b>Penalty</b>	<b>Cost per Trial</b>	<b>Cost per Plea</b>	<b>Indigent Defense*</b>
Class F Felony	\$11,303	\$1,144	\$885
Class H Felony	\$7,794	\$559	\$540
Class I Felony	\$6,809	\$447	\$480
Class 1 Misdemeanor	\$296	\$141	\$225
Class 2 Misdemeanor	\$170	\$85	\$225
Class 3 Misdemeanor	\$140	\$77	\$225

**Section 12:**

The section adds G.S. 138A-22(d1)(3), which requires that the statement of economic interest of a deceased covered person be filed by the personal representative of the estate. AOC assumes that the Ethics Commission will notify the representative of the requirement to file, as the Clerk handling documents for the estate will not have information on whether the deceased person was a covered person under the proposed legislation. Therefore, this section would not impact the clerks' workload.

**Section 20(a):**

This section enacts new 7A-38.3E, which creates a new mediation program. There will be initial costs for establishing new rules and developing new forms to implement the program. In addition to those one-time costs, there will be ongoing case-related costs. These include new appointment and notice requirements for the clerks, and new caseloads for mediation. AOC cannot project the number of cases that will require mediation under the new program, nor can we project the amount of time required per case. Sections 20(a) and 20(b) also expand workload for the Supreme Court to adopt standards regulating the new program and procedures for enforcing those standards. The amount of time required is not known at this time.

**Section 20(c):**

This section amends the statutes regarding access to records to require that the person has complied with the new mediation program. However, the fifth edition of the bill added GS 7A-38.3E(h) to provide that nothing in GS 7A-38.3E is to be construed to prohibit a party who is seeking production of public records from seeking injunctive or other relief, including seeking the production of public records before any scheduled mediation. Therefore, there would not necessarily be a significant reduction of workload under GS 132-9 (Access to records) to offset the new filings under GS 7A-38.3E.

The National Center for State Courts has developed workload standards for North Carolina's court personnel after extensive studies. For FY 2010-11, based on workload formulas, the court system has the following shortages statewide:

District Court Judges:	67
Deputy Clerks:	524
Assistant District Attorneys:	79
DA Victim Witness Legal Assistants:	54



Judicial support staff: 49  
Magistrates: 160

Therefore, any increase in workload could not be absorbed by existing staff. In FY 2008-09, a typical felony case took approximately 203 days to dispose in Superior Court. A typical misdemeanor case took approximately 88 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

**SOURCES OF DATA:** North Carolina Sentencing and Policy Advisory Commission; Judicial Branch; State Board of Elections; Department of Labor; Department of Agriculture and Consumer Services; Office of State Budget and Management; Department of Insurance; and the State Ethics Commission.

**TECHNICAL CONSIDERATIONS:**

1. DACS has indicated that it is uncertain (1) how to define “rental agreement” and “rental of real property” and, consequently, how to determine which agreements would be subject to the new G.S. 106-22 (18).
2. G.S. 95-110.5(20) currently directs that elevator fees not exceed \$200. Some of these fees are currently set at \$200. However, this bill directs DOL to charge an additional \$5 and pay that amount into the Voter-Owned Elections Fund.

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**DATE:** June 23, 2010

**Signed Copy Located in the NCGA Principal Clerk's Offices**

