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Volume 9, Issue 9

Lobbying Law Summary

September 2006

"WHEREAS, THE PEOPLE OF NORTH CAROLINA ENTRUST PUBLIC POWER TO ELECTED AND APPOINTED OFFICIALS FOR THE PURPOSE OF FURTHERING THE PUBLIC, NOT PRIVATE OR PERSONAL, INTEREST..."
STATE GOVERNMENT ETHICS ACT, PREAMBLE

Letter from the Director

On August 4, 2006, Governor Easley signed the "State Government Ethics Act" into law. Among other things, it contains a major modification of the State's lobbying law, Chapter 120C. It covers both legislative and executive lobbying. It also divides responsibilities for lobbying regulation between the Secretary of State and the State Ethics Commission. The Secretary of State will continue to handle all lobbyist and lobbyist principal registration, filing, and reporting. The Commission will issue advisory opinions and conduct mandatory education programs. Both the Secretary and the Commission will investigate complaints pertaining to their respective areas of responsibility.

We will attempt to hit some of the highlights of the new law in this newsletter and then follow that up with more detailed discussions of specific areas (like registration, education, and gifts). This is a long summary, but it deals with a long and complex law. Please bear with us. Some of the major changes include

New lobbying law effective January 1, 2007;

Joint responsibility for lobbying with the Secretary of State and the new State Ethics Commission;

Mandatory lobbying education;

Confidential advisory opinions; and

A ban on gifts by lobbyists and lobbyist principals.

Feel free to contact us when you have questions about the new law, and the sooner the better. We will not have all of the answers, but we will certainly get them for you as quickly as we can. As we will all be learning the new lobbying system together, have patience as we work through the process.

Perry Y. Newson, Executive Director 

Summary of Major Provisions

House Bill 1843 is comprised of three parts:

- Part I enacts the State Government Ethics Act;
- Part II amends the Legislative Ethics Act, and
- Part III amends the lobbying laws (Chapter 120C).

We summarized the ethics portion of the law in our last newsletter (Vol. 9, Issue 8, August 2006). This newsletter will briefly summarize the **lobbying portion** of the new law, new Chapter 120C of the General Statutes ("the Lobby Law"). To see the entire law, go to the General Assembly's web site, <http://www.ncga.state.nc.us/> and search for the bill number: H1843. Please note that the current version on the General Assembly's web site may **not** yet contain both technical corrections and more significant changes to the lobbying portion of the law. The entire, complete law will be posted on the Board of Ethics' web site as soon as possible.

Also, it is absolutely critical to remember that this is a summary of some of the major provisions of the Lobby Law. It is not, and is not intended to be, a comprehensive listing or analysis of the entire law. Please consult the final version of the law for complete details.

The Lobbying Law is broken down into eight parts:

- Article 1: General Provisions;
- Article 2: Registration;
- Article 3: Prohibitions & Restrictions;
- Article 4: Reporting;
- Article 5: Liaison Personnel;
- Article 6: Violations & Enforcement;
- Article 7: Exemptions; and
- Article 8: Miscellaneous.

We will hit the *highlights* of each in order.

Article 1: General Provisions

Article 1 contains the chapter-specific lobbying definitions *and* incorporates by reference all of the Ethics Law definitions contained in Chapter 138A North Carolina General Statutes (“N.C.G.S.”) §120C-100. They are all quite significant and need to be studied carefully. Based on these definitions and other provisions of the Lobbying Law, the following individuals are covered by the Law in one way or another:

“Legislators”; “Legislative Employees”; “Liaison Personnel”; “Lobbyists”; “Lobbyist Principals”; “Solicitors”; and “Public Servants”.

Those who are subject to being lobbied are called “Designated Individuals.” They include legislators, legislative employees, and “Public Servants” as that term is defined in N.C.G.S. §138A-3 (30). *See* our Ethics Law Summary, Vol. 9, Issue 8, August 2006. This term includes all “Council of State” members, the heads of all principal state departments and their chief deputies and administrative assistants, high-level exempt employees, all voting members of covered boards (including voting *ex officio* members, regardless of who appoints them), and designated officers in both the Community College and University systems. Thus, all voting trustees of the boards of trustees of the various community colleges and the 16 constituent institutions in the University of North Carolina system are covered Designated Individuals.

“Liaison Personnel” is any State employee or officer whose **principal duties**, in practice or as set forth in that person's job description, include lobbying designated individuals. Section 120C-100 (a) (8).

“Solicitors” are persons not otherwise required to register under the Lobby Law who use certain delineated methods to solicit members of the **public** to communicate with or contact designated individuals for the purpose of influencing legislative or executive action to further the solicitor's position on that legislative or executive action. Sections 120C-100 (a) (13) and 120C-215. These solicitors must register and report when the total expense incurred for *solicitation of others* exceeds three thousand dollars (\$3,000) during any 90-day period.

Other definition highlights include:

Lobbying – This includes both traditional direct lobbying and “goodwill lobbying.” However, the term does **not** include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action.

Lobbyist – An individual who engages in lobbying and meets one of four criteria (*e.g.*, is employed by a person for the intended purpose of lobbying, represents another person for compensation, or contracts for economic consideration for the purpose of lobbying). The term “lobbyist” does **not** include individuals who are specifically exempted from the Lobby Law (*e.g.*, individuals expressing a personal opinion, Designated Individuals acting in their official capacities, and political committees) or individuals registered as liaison personnel.

Lobbyist Principal – The person on whose behalf the lobbyist lobbies. This term does **not** include those designating registered liaison personnel under the Law (*e.g.*, Community Colleges or Universities).

Reportable Expenditure – A thing of value over \$10 *or* a contract.

In addition to critical definitions, Article 1 also requires the State Ethics Commission to issue confidential **advisory opinions** on specific questions involving the meaning and application of the Lobby Law. Requests must be in writing and relate to real or reasonably anticipated fact settings or circumstances. Reliance upon the advice given in a requested advisory opinion immunizes the designated individual, lobbyist, lobbyist's principal, or other person requesting the opinion from any investigation by the Commission or any adverse action by their employing entity. Staff to the Commission may issue advisory opinions under procedures adopted by the Commission. Opinions will be published at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

The Ethics Commission must also develop and implement a lobbying **education and awareness program**. Designated Individuals (which includes all Public Servants) must participate in a lobbying presentation within six (6) months of their election, appointment, or hiring and must attend a refresher presentation at least every two (2) years thereafter.

Article 2: Registration

Article 2 deals with lobbyist, lobbyist principal, and solicitor **registration** and is administered by the Secretary of State. Lobbyists must file a separate registration statement for each principal before or within one day of engaging in lobbying for that principal. The Secretary of State will create registration forms and collect the \$100 registration fee.

Lobbyist principals must file a written authorization statement for their lobbyist within 10 business days after the lobbyist's registration. The Secretary of State will create authorization forms and collect the \$100 filing fee.

The Secretary of State may reduce or waive both lobbyist registration and principal authorization filing fees for nonprofit entities.

Solicitors must also register and report with the Secretary of State, but there is no fee for doing so. Solicitors are persons not otherwise required to register under the Lobby Law who use certain delineated methods to solicit members of the public to communicate with or contact designated individuals for the purpose of influencing legislative or executive action. Sections 120C-100 (a) (13) and 120C-215. Solicitors must register and report when the total expense incurred for *solicitation of others* exceeds three thousand dollars (\$3,000) during any 90-day period.

The Secretary of State will make all lobbyist registrations, principal authorizations, and solicitors' registrations available in an electronic, searchable format. The Secretary of State will also furnish each designated individual with a list of all registered lobbyists and their principals within 20 days after the convening of each session of the General Assembly.

Article 3: Prohibitions & Restrictions

Article 3 is the Lobby Law's list of legal "don'ts." **Contingency fees** for lobbying are prohibited, with the exception of persons doing business with the State on a commission basis. It is a violation of the Law to attempt to influence the action of a designated individual by the promise or threat of financial support of their candidacy.

Lobbyists are prohibited from making **campaign contributions** to legislative or Council of State candidates. Nor may lobbyists collect contributions from multiple contributors, take possession of those collected contributions, *or* transfer and deliver those collected contributions to legislative or Council of State candidates (a practice known as “bundling”).

Article 3 imposes a general **gift ban** on lobbyists and lobbyist principals. Lobbyists and lobbyist principals may not directly or indirectly give a gift to any designated individual. This general no-gift rule is subject to the same 10 exceptions listed in section 138A-32 (e) of the Ethics Law. *See* our Ethics Law Summary, Vol. 9, Issue 8, August 2006.

Article 3 contains what are commonly called “Revolving Door” provisions for lobbying. No legislator or former legislator may register as a lobbyist while in office or before the **later** of the close of the session in which the legislator served or **six months** after leaving office. Thus there is a minimum six-month “cooling off” period for any legislator who becomes a lobbyist. No Council of State member may register as a lobbyist while in office or within **six months** after leaving office. No head of a principal State department (“Cabinet” heads) may register as a lobbyist under this Chapter within **six months** after separation from employment.

No registered lobbyist may serve as a **campaign treasurer** or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or Council of State.

Lobbyists are not eligible for appointment by a State official to, or service on, any State board that has regulatory authority over a principal that the lobbyist represents or has represented within the past 120 days.

Article 4: Reporting

Article 4 sets out the Law’s **reporting requirements** for lobbyists, lobbyist principals, liaison personnel, and solicitors, and is administered by the Secretary of State. All “reportable expenditures” (anything of value over \$10 *or* a contract) made for the purpose of lobbying must be reported, but reports must be filed *whether or not* reportable expenditures are made. Reports are due 10 business days after the end of the reporting period. The Secretary of State will prescribe the necessary reporting forms and must notify late filers of their noncompliance with the Law. Failure to file the necessary report voids the lobbyist’s registration. All such reports are public records open to public inspection.

Lobbyists’ and lobbyist’s principal’s reports are due quarterly, with monthly reports required when they have reportable expenditures related to the legislature while the General Assembly is in session. Sections 120C-402 and 120C-403 set out what must be reported. One important reportable item is gifts that fall within one of the 10 enumerated exceptions to the general gift ban. A gift may be allowed as an exception to the no-gifts rule, but it will generally need to be reported on both the lobbyist’s and lobbyist’s principal’s reports.

All solicitors must file quarterly reports under oath. The reports must include all reportable expenditures made for the purpose of lobbying during the reporting period and solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).

Liaison personnel must file quarterly and, where applicable, monthly reports under §120C-402. *See* Article 5 below. The Secretary of State will coordinate with the State Board of Elections to create a **searchable Web-based database of reports** filed under the Lobby Law and Subchapter VIII of Chapter 163 of the General Statutes (regulation of election campaigns).

Article 5: Liaison Personnel

“Liaison Personnel” are State employees or officers whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals. Section 120C-100 (a) (8). All State agencies and constitutional officers (Council of State members) *must* designate **liaison personnel** to lobby for legislative action. No state funds may be used to hire a lobbyist. Section 120C-500 (b). No State agency or Council of State member may designate more than two (2) liaison personnel.

Liaison personnel are *generally* exempt from the requirements of the Lobby Law. However, they *are* subject to the registration, reporting, and gift ban provisions of the Law. Section 120C-501. Even though liaison personnel must register according to Article 2 of the Law, they do *not* have to pay a registration fee for doing so.

This article also contains a special provision pertaining to **athletic tickets**. The University of North Carolina, any of its constituent institutions, or their designated liaison personnel cannot give, for the purpose of lobbying, athletic tickets to any designated individual. This ticket ban does not apply to those Public Servants related to The University of North Carolina and its constituent institutions (those listed in §138A-3(30)j) or those designated individuals who are students and receive tickets on the same basis as other students. Section 120C-501 (e).

Article 6: Violations & Enforcement

Enforcement powers and duties are divided between the Secretary of State and the Ethics Commission. As a general matter, the Secretary of State deals with issues relating to Articles 2, 4, and 8 of the Law (the filing and reporting requirements), and the Ethics Commission deals with the rest.

The Secretary of State will conduct systematic reviews of reports filed under Articles 2, 4, and 8 and may investigate violations related to those reports. Section 120C-600. The Secretary of State must refer any complaints of violations of the Lobby Law other than those three articles to the Ethics Commission, and the Commission must likewise refer complaints related solely to Articles 2, 4, and 8 to the Secretary.

Both the Secretary of State and the Commission may petition the Wake County Superior Court for approval to issue investigative subpoenas, and investigation files are treated as a criminal investigation files for public records purposes.

Section 120C-602 sets out the penalties for violation of the Law. Violation of registration or reporting provisions is generally a Class 1 misdemeanor. In addition to the specified criminal penalties, both the Secretary of State and the Commission may levy civil fines of up to \$5000 per violation.

Both the Secretary of State and the Commission must report apparent violations of the Lobby Law to the Wake County district attorney for prosecution if appropriate. Section 120C-603.

Article 7: Exemptions

Article 7 contains eight (8) important exemptions to the Lobby Law. The Law does *not apply to*

Persons speaking on their own behalf (expressing personal opinions);

Persons appearing before a committee at the invitation of that committee;

An elected or appointed official, or employee, of the State or a unit of local government in matters pertaining to the office and public duties (except for officially-designated liaison personnel);

Persons performing professional services in drafting or interpreting proposed legislative or executive action;

Persons of any recognized news medium while engaged in the acquisition and publication of news or news and commentary;

Designated individuals while acting in their official capacity;

Persons responding to an inquiry from a designated individual; or

Political committees, and their employees and contracted service providers.

Article 8: Miscellaneous

Article 8 deals with the disclosure of reportable expenditures by persons who are exempt from or not covered by the Lobby Law (like all of those Article 7 exempt people). The Secretary of State administers this Article.

Generally, items valued over \$200 per calendar quarter given to a designated individual *for the purpose of lobbying* must be reported by either the giver or the designated individual on a quarterly basis. However, if the designated individual is required to file a Statement of Economic Interest with the Ethics Commission under Chapter 138A, that designated individual may opt to report the item on the ethics Statement instead.

Article 8 does not apply to

- (1) Lawful campaign contributions;
- (2) Any gift from an extended family member to a designated individual;
- (3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment;
- (4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom; or
- (5) A thing of value that is paid for by the State.

Effective Date

The new Lobby Law (Chapter 120C) becomes effective January 1, 2007.

WE HAVE MOVED

The Board of Ethics has now moved to its new location on the Ground Floor of the Administration Building in Raleigh.

Please note the following changes:

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