
N.C. ETHICS



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Legislative Update

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ETHICS & LOBBYING LAWS AMENDED BY THE 2010 GENERAL ASSEMBLY

During the 2010 legislative session, the General Assembly amended the State Government Ethics Act (Chapter 138A of the General Statutes) and the Lobbying Law (Chapter 120C of the General Statutes). These amendments were made in HB 961 (S.L. 2010-169), Government Ethics & Campaign Reform Act of 2010; and HB 748, (S.L. 2010-170), Citizens United Response. In addition, the Commission received funding for an attorney and three paralegals to handle complaints and respond to inquiries related to ethics law compliance and any additional standards implemented by the Governor. The Commission also received funds to implement online SEI filing and online ethics education. These amendments are discussed in detail below. There were also several technical amendments to the ethics and lobbying laws which are not summarized in this newsletter.

In addition to this newsletter, we will have copies of these bills on the Commission's website at www.ethicscommission.nc.gov. Finally, the information in this newsletter is a general summary of the amendments to the ethics and lobbying laws. If you have specific questions about the applicability of these

changes to you, please contact the State Ethics Commission at (919) 715-2071 or by e-mail at ethics.commission@doa.nc.gov.

STATE GOVERNMENT ETHICS ACT

DESIGNATION OF ADDITIONAL "PUBLIC SERVANTS."

Under current law, the only executive branch officials who are covered by the State Government Ethics Act are those designated as "public servants" in G.S. 138A-3(30). "Public servants" include other employees or appointees in the principal State departments as designated by the Governor.

Effective August 2, 2010, additional positions are designated as "public servants." Therefore, the individuals holding these positions are subject to the State Government Ethics Act. The legislation also clarified that the Governor's Crime Commission is a "covered board" thereby making all of its members "public servants" and subject to the State Government Ethics Act as well. These changes primarily codify portions of Executive Orders previously issued by Governor Perdue.

DEFINITION OF "GIFT."

The ethics act excludes from the definition of "gift" any "campaign contributions properly received and reported" under the campaign finance law (Article 22A of Chapter 163). Thus, the gift ban does not apply.

Effective upon preclearance by the US Department of Justice, this amendment clarifies that "anything of value properly reported" under those laws is exempt from the definition of "gift".

STATEMENTS OF ECONOMIC INTEREST.

- **SEI Filing After Leaving Office.** Under the previous law, an elected official who resigned, decided not to seek re-election, or could not seek re-election was not required to file an SEI for his or her final year in office.

Effective August 2, 2010, certain elected officials must file an SEI in the year after the elected official resigns or does not file a notice of candidacy (i.e., does not or cannot seek re-election). This requirement applies to Constitutional officers, legislators, justices, judges, district attorneys, and clerks of court.

- **Campaign Contributions.** Under current law, campaign contributors are not required to report their contributions. The reporting obligation is on the candidate's campaign committee under the election and campaign finance laws.

Effective January 1, 2011, contributors who file an SEI and make contributions totaling more than \$1,000 to the Constitutional officer who appointed the contributor to his or her position on the covered board must list those contributions on the SEI. This reporting requirement applies only to the contributor who is filing the SEI and not to any immediate family member of the contributor.

- **Certain Campaign Activities.** Under current law, SEI filers are not required to disclose any campaign activities undertaken on behalf of the public officials who appointed them.

Effective January 1, 2011, heads of principal State departments who are appointed by the Governor, justices and judges, and appointees to certain boards must disclose certain campaign activities with respect to the Constitutional officer who appointed them. Board members who must make disclosures include members of the following: ABC Commission; Coastal Resources Commission; State Board of Education; State Board of Elections; Employment Security Commission; Environmental Management Commission; Industrial Commission; State Personnel Commission; Rules Review Commission; Board of Transportation; UNC Board of Governors; Utilities Commission; Wildlife Resources Commission. Specifically, individuals subject to the disclosure requirement must indicate whether or not they 1) collected contributions from multiple contributors and delivered them to the Constitutional officer who appointed them; 2) held a fundraiser either in their residence or business for the Constitutional officer who appointed them; or, 3) volunteered for any campaign activities for the Constitutional officer who appointed them.

- **Online SEI Filing.**
 - Under current law, all SEIs must be sworn to by the filing person. Effective January 1, 2011, this requirement will be eliminated which will facilitate the electronic filing of SEIs.
 - The Commission also received funds to develop and implement online SEI filing.

- **Other Disclosures.** House Bill 961 also made the following revisions to the SEI disclosure law, effective January 1, 2011:
 - Adds “sole proprietorships” to the list of business entities that must be disclosed.
 - Clarifies that disclosure includes the name of each business for which the filer or the filer’s immediate family is an employee, director, officer, partner, proprietor, or member or manager and whether those businesses have dealings or contracts with the State.
 - Allows filers to use the initials of unemancipated children living in the household. (Currently, only judicial officers are permitted to use the initials. All other filers must give the child’s full name.)
- **Studies.** House Bill 961 directs the Legislative Ethics Committee (LEC) to study the Statement of Economic Interest and whether it accurately and informatively discloses the required information. The LEC’s report is due on or before April 1, 2011.

EDUCATION.

While no substantive changes were made to the education requirements of the ethics and lobbying laws, the Commission received an appropriation to develop and implement online ethics education for public servants.

GIFT BAN.

Under current law, certain individuals are prohibited from giving gifts to legislators, legislative employees, and public servants unless a gift ban exception applies. These individuals are also prohibited from giving gifts “indirectly” – specifically giving the gift with the intent that the legislator, legislative

employee, or public servant be the ultimate recipient.

House Bill 961 clarifies that an indirect gift includes those gifts where the legislator, legislative employee, or public servant is not the sole recipient. Thus, the indirect gift ban applies regardless of the number of individuals receiving the gift. This amendment is effective December 1, 2010.

VIOLATIONS, COMPLAINTS & ENFORCEMENT.

- **Prohibited Activities.** Under G.S. 126-14, it is unlawful for certain public officials and employees to coerce State employees to support or make contributions to a political candidate, committee, or party, or to change the employee’s voter registration by making promises or threats concerning the individual’s employment.

Effective December 1, 2010, this law is expanded by making it unlawful for Constitutional officers to coerce an “interested person” by threatening discipline or promising preferential treatment regarding the person’s business with or activities regulated by the Constitutional officer’s State office. Interested persons include 1) persons who are doing or seeking to do business with the Constitutional officer’s agency; 2) are regulated or controlled by the Constitutional officer’s agency; or 3) have financial interests that may be substantially and materially affected differently from the public generally by the Constitutional officer’s performance of his or her public duties. *(Note: The Commission has jurisdiction to investigate violations of G.S. 126-14.)*

- **Investigation Timeframes.** Effective August 2, 2010, the timeframes for initiation of investigations of complaints by the Commission are shortened. Specifically, the Commission must :

- Send a copy of the complaint to the individual and the individual's agency or board within 10 business days. (Currently 30 calendar days.)
- Initiate an inquiry within 10 business days. (Currently, 60 calendar days.)
- Receive any additional information requested by the Commission from the complainant within 5 business days. (Currently 7 business days.)
- Conclude the preliminary inquiry within 20 business days (currently no timeframe), including dismissal of frivolous complaints or complaints filed in bad faith.

OTHER ETHICAL STANDARDS.

- **Additional Standards for Governor's Appointees & State Agency Employees.** Currently, the ethics law permits agency heads to adopt additional or supplemental ethical standards applicable to that particular agency. In addition, Governor Perdue has adopted several Executive Orders mandating additional ethical standards for gubernatorial appointees to boards and employees in the Cabinet agencies and Governor's Office.

Effective August 2, 2010, the Governor is further authorized to adopt additional ethical standards for gubernatorial appointees to boards and commissions, regardless of whether the board or commission is subject to the State Government Ethics Act. In addition, the Governor may also adopt ethical standards for any employee of a State agency.

LOBBYING LAW

REGISTRATION.

- **Local Government Liaison Equivalents.** Under current law, local government officials and appointees are exempt from the lobbying law. Therefore, these individuals are not required to register or report and are not subject to a gift ban or other restrictions in the lobbying law. Furthermore, unlike State agencies, local governments are not required to designate liaison personnel to lobby for legislative action.

Effective January 1, 2011, individuals who are employees of a governmental unit (local government) whose principal job duties include legislative lobbying must register and file reports with the Secretary of State's office. In addition, these local government liaisons are prohibited from giving gifts to legislators and legislative employees unless a gift ban exception applies. However, other local government employees whose principal duties do not include legislative lobbying continue to be exempt from the lobbying law when appearing in connection with their public duties.

This new requirement does not affect those local governments that have *hired contract lobbyists*. Those local governments continue to be lobbyist principals and continue to have registration and reporting requirements and are subject to the same restrictions.

- **"Cooling-Off" Period for State Employees.** Under current law, only legislators, Constitutional officers, and heads of principal State departments are prohibited from registering as a lobbyist for six months after leaving office.

Effective October 1, 2010, a former employee of a State agency will be prohibited from registering as a lobbyist

under the NC Lobbying Law (Ch. 120C) to lobby his or her former State agency for six months after separation from employment with the State agency. In addition, if a former State employee does register as a lobbyist under the NC Lobbying Law during that six month period, the former employee must indicate the State agency that formerly employed him or her.

- **Clarification of Registration Prohibition.** House Bill 961 clarifies that the prohibition on registration as a lobbyist for certain former public officials applies only to registrations under the NC Lobbying Law (Ch. 120C). This change is effective October 1, 2010.

“LOBBYIST” & “LOBBYIST PRINCIPAL.”

Under current law, an individual who is hired to engage in lobbying is a “lobbyist” and must register and file expense reports with the Secretary of State’s office. “Lobbying” includes both direct communication with a legislator, legislative employee, or public servant or immediate family of those individuals with the intent to influence legislative or executive action as well as building “goodwill” with a legislator, legislative employee, or public servant or immediate family of those individuals with the intent to influence current or future legislative or executive action. The person on whose behalf the lobbyist lobbies is the “lobbyist principal” and must register and file reports with the Secretary of State’s office.

Effective January 1, 2011, the Lobbying Law is clarified to provide that a lobbyist is someone who engages in lobbying “for payment” and meets certain criteria and further clarifies that a “lobbyist principal” is the person on whose behalf the lobbyist lobbies and “who makes payment for the lobbying.”

LOBBYIST PRINCIPAL REPORTING.

- **Reporting of Communications & Activities Connected with Lobbying.** Under current law, lobbyist principals are required to file reports on expenditures made “for the purpose of lobbying.” In 2009, the Commission adopted a formal advisory opinion (AO-L-010) in which it concluded that lobbyist principals must report both payments made to a lobbyist for direct and goodwill lobbying services as well as payments made to a lobbyist for activities directly connected to direct and goodwill lobbying services.

Effective January 1, 2011, the law is amended to clarify which activities directly connected with lobbying must be reported. Specifically, payment to the lobbyist for certain communications and activities must be reported annually if those communications or activities were used to lobby. These reportable communications and activities include: research, drafting, monitoring legislative or executive action, and advising and rendering opinions to the lobbyist principal as to the construction or effect of proposed or pending legislative or executive action.

- **Lobbying for Non-Lobbyist Principals.** Under current law, lobbyist principals are required to report expenses, including payments to lobbyists, for communications and activities related to lobbying for the lobbyist principal.

Effective January 1, 2011, lobbyist principals will also be required to report the name of any person on whose behalf the lobbyist principal directs the lobbyist to lobby, whether for pay or not. However, if the lobbyist principal is an association or other organization and directs its lobbyist to lobby on behalf of a member of that association or organization, the lobbyist principal does not have to report the name of the individual member.

- **Due Dates.** Under current law, lobbyist principal reports are due within 10 business days after the end of the reporting period. Effective January 1, 2011, lobbyist principal reports will be due on the 15th business day after the end of the reporting period.

MISCELLANEOUS REPORTING.

Effective upon preclearance by the US Department of Justice, the law is clarified to provide that “anything of value” properly reported under Article 22A of Ch. 163 (Regulating Contributions & Expenditures in Political Campaigns) is not required to be reported under the Lobbying Law.

EXEMPTIONS.

Effective August 2, 2010, anything of value given or received in connection with seeking or hosting a national political convention is exempted from the lobbying law requirements.

RULES.

Effective August 2, 2010, the Commission’s rulemaking authority is amended to clarify that any rules adopted by the Commission must follow the procedural requirements of G.S. 120C-101.

LOBBYING COMPLAINT STATISTICS.

Effective August 2, 2010, the Commission and Secretary of State’s office are required to publish annual statistics on lobbying complaints, including the number of complaints filed, the number referred to the district attorney, the number dismissed, and the number and age of any pending complaints. The Secretary of State’s office is also required to publish statistics on the number of systematic reviews conducted. Finally, the amount of a civil fine levied by the Secretary of State under the Lobbying Law and against whom it was levied are public record.

CONTACT INFORMATION

We hope this information is helpful to you. As always, if you have any questions or need additional information regarding this newsletter or other aspects of the State Government Ethics Act or Lobbying Law, please do not hesitate to contact our office. Following is our contact information:

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