

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-347
HOUSE BILL 1110**

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

The General Assembly of North Carolina enacts:

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

"§ 120-87. Disclosure of confidential information.

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

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

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

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

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

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

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

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

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

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

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

"§ 120C-500. Liaison personnel.

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

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

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

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

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

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

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

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

"(24) Nonprofit corporation or organization with which associated. – Any not for profit public or private enterprise, corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, lobbyist registered as under Chapter 120C of the General Statutes, or independent ~~contractor as of December 31 of the preceding year~~ contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this State."

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

"§ 138A-14. Ethics education program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or

board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

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

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

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

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

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

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

(c) The statements of economic interest filed by prospective public servants, and the written evaluations by the Commission of those statements, for persons confirmed for appointment as a public servant by the General Assembly shall be provided to the chair of the standing committee handling the legislation regarding the appointment. The statements of economic interest filed by prospective public servants for confirmation for appointment by the General Assembly, and written evaluations by the Commission of those statements, are public records at the time of the announcement of the appointment."

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

"(b) A covered person may not solicit for a charitable purpose any ~~gift-thing of monetary value~~ from any subordinate State employee. This subsection shall not apply to

generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign."

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

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

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

"(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, ~~or~~ a business with which the legislator is associated, or a nonprofit corporation or organization with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from the action, and if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes an economic or financial detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, ~~or~~ (iii) a business with which the legislator is associated, associated, or (iv) a nonprofit corporation or organization with which the legislator is associated. A benefit also includes an economic or financial detriment to (i) the legislator, (ii) a member of the legislator's extended family, (iii) a business with which the legislator is associated, or (iv) a nonprofit corporation or organization with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter."

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

"§ 138A-38. Permitted participation exception.

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

- (1) The only interest or reasonably foreseeable benefit or detriment that accrues to the covered person, the covered person's extended family, ~~or~~ business with which the covered person is associated, associated, or nonprofit corporation or organization with which the covered person is associated as a member of a profession, occupation, or general class is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.
- (2) When an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

- (3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission or Committee a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the Commission or Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.
- (4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.
- (5) When action is ministerial only and does not require the exercise of discretion.
- (6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under G.S. 130-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.
- (7) When a public servant notifies the Commission in writing that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:58 a.m. this 9th day of August, 2007