

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 710

Short Title: Bd. of Ethics, Lobbying, and Campaign Finance. (Public)

Sponsors: Representative Lewis (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Elections.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO COMBINE THE FUNCTIONS OF THE STATE ETHICS COMMISSION, THE LOBBYING SECTION OF THE SECRETARY OF STATE, AND THE CAMPAIGN FINANCE DIVISION OF THE STATE BOARD OF ELECTIONS INTO AN AGENCY TO BE KNOWN AS THE STATE BOARD OF ETHICS, LOBBYING, AND CAMPAIGN FINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 163A.

"State Board of Ethics, Lobbying, and Campaign Finance.

"§ 163A-1. State Board of Ethics, Lobbying, and Campaign Finance; appointment; term of office; vacancies; oath of office.

(a) The State Board of Ethics, Lobbying, and Campaign Finance is established (hereinafter in this Chapter referred to as "Board"). The Board shall consist of six registered voters whose terms of office shall begin on January 1, 2012, and shall continue for four years and until their successors are appointed and qualified. Not more than three members of the Board shall be members of the same political party. Two members of different political parties shall be appointed by the Governor. Two members of different political parties shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Two members of different political parties shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be as provided by G.S. 120-121.

Members shall be removed from the Board only for misfeasance, malfeasance, or nonfeasance. Members appointed by the Governor may be removed by the Governor but only for such reasons. Members appointed by the General Assembly may be removed by the General Assembly.

Any vacancy occurring in the Board in an appointment made by the Governor shall be filled by the Governor, and the person so appointed shall fill the unexpired term. Any vacancy occurring in the Board in an appointment made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term. Any vacancy occurring in the Board in an appointment made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term.



1 **(b)** At the first meeting held after new appointments are made, the members of the
2 Board shall take the following oath:

3 "I, _____, do solemnly swear (or affirm) that I will support the
4 Constitution of the United States; that I will be faithful and bear true allegiance to
5 the State of North Carolina and to the constitutional powers and authorities which
6 are or may be established for the government thereof; that I will endeavor to
7 support, maintain, and defend the Constitution of said State, and that I will well and
8 truly execute the duties of the office of member of the State Board of Ethics,
9 Lobbying, and Campaign Finance according to the best of my knowledge and
10 ability, according to law, so help me, God."

11 **(c)** After taking the prescribed oath, the Board shall organize by electing one of its
12 members chair, one of its members vice-chair, and another secretary.

13 **(d)** No person shall be eligible to serve as a member of the Board who holds any
14 elective or appointive office under the government of the United States or of the State of North
15 Carolina or any political subdivision thereof. No person who holds any office in a political
16 party, or organization, or who is a candidate for nomination or election to any office, or who is
17 a campaign manager or treasurer of any candidate in a primary or election, shall be eligible to
18 serve as a member of the Board. In addition, no person while serving on the Board shall:

- 19 **(1)** Make a reportable contribution to a candidate for a public office over which
20 the Board would have jurisdiction or authority.
- 21 **(2)** Register as a lobbyist under Chapter 120C of the General Statutes.
- 22 **(3)** Make written or oral statements intended for general distribution or
23 dissemination to the public at large supporting or opposing the nomination
24 or election of one or more clearly identified candidates for public office.
- 25 **(4)** Make written or oral statements intended for general distribution or
26 dissemination to the public at large supporting or opposing the passage of
27 one or more clearly identified referendum or ballot issue proposals.
- 28 **(5)** Solicit contributions for a candidate, political committee, or referendum
29 committee.

30 Individual expressions of opinion, support, or opposition not intended for general public
31 distribution shall not be deemed a violation of this section. Nothing in this section shall be
32 deemed to prohibit participation in a political party convention as a delegate.

33 **"§ 163A-2. Meetings of Board; quorum; minutes.**

34 **(a)** Call of Meeting. – The Board shall meet at the call of the chair whenever necessary
35 to discharge the duties and functions imposed by Chapter 120C of the General Statutes,
36 Chapter 138A of the General Statutes, or Articles 22A, 22B, 22C, 22D, 22E, 22F, 22G, 22H,
37 22J, 22M, and 25 of Chapter 163 of the General Statutes. The chair shall call a meeting of the
38 Board only upon the written application or applications of any three members thereof. If there
39 is no chair, or if the chair does not call a meeting within three days after receiving a written
40 request or requests from three members, any four members of the Board shall have power to
41 call a meeting of the Board, and any duties imposed or powers conferred on the Board by the
42 General Statutes may be performed or exercised at that meeting.

43 **(b)** Place of Meeting. – The Board shall meet in its offices in the City of Raleigh or at
44 another place in Raleigh to be designated by the chair. Four members of the Board shall have
45 power to require the Board to meet in a place other than Raleigh for any purpose.

46 **(c)** Quorum. – A majority of the members constitutes a quorum for the transaction of
47 business by the Board. If any member of the Board fails to attend a meeting, and by reason
48 thereof there is no quorum, the members present shall adjourn from day to day for not more
49 than three days, by the end of which time, if there is no quorum, the Governor may remove any
50 members who fail to attend for nonfeasance, and vacancies shall be filled as provided by
51 G.S. 163A-1.

1 (d) Minutes. – The Board shall keep minutes recording all proceedings and findings at
2 each of its meetings. The minutes shall be recorded in a book which shall be kept in the office
3 of the Board in Raleigh.

4 **"§ 163A-3. Compensation.**

5 The members of the Board shall be compensated for their traveling and other expenses
6 necessary and incidental to the discharge of their duties in accordance with the provisions of
7 Chapter 138 of the General Statutes.

8 **"§ 163A-4. Powers of the Board.**

9 (a) The Board shall have general supervision over the following:

10 (1) State Government Ethics Act, as set forth in Chapter 138A of the General
11 Statutes.

12 (2) Lobbying laws, as set forth in Chapter 120C of the General Statutes.

13 (3) Campaign finance regulation, including Articles 22A, 22B, 22C, 22D, 22E,
14 22F, 22G, 22H, 22J, 22M, and 25 of Chapter 163 of the General Statutes.

15 (b) From time to time, the Board, in conjunction with the State Board of Elections, shall
16 publish and furnish to the county and municipal boards of elections and other election officials
17 a sufficient number of indexed copies of all lobbying, ethics, campaign finance, and election
18 laws and rules and regulations then in force.

19 (c) All complaints or inquiries regarding laws enforced by the Board directed to the
20 county and municipal boards of elections and elections officials shall be referred to the Board,
21 and the county and municipal boards of elections and elections officials shall have no authority
22 to act on such complaints and inquiries.

23 (d) The Board shall investigate when necessary or advisable the administration of the
24 laws subject to its enforcement. Any investigation or inquiry by the Board shall be confidential
25 until concluded or until the person or entity subject to the investigation or inquiry requests that
26 it be released to the public. Members of the Board shall not interfere with Board staff in any
27 such investigation or inquiry. Staff shall present their findings to the Board. The Board shall
28 then take any action it deems appropriate, which action shall be made public. In all matters in
29 which it takes any action, or no action, the Board shall notify the district attorney having
30 jurisdiction over the matter of its action. If the district attorney having jurisdiction over the
31 matter shall request the investigative file of the Board or its staff, such file shall be provided
32 promptly to the district attorney. Within six months of its initial appointment, the Board shall
33 adopt rules consistent with this section regarding its investigations and hearings. In the absence
34 of such rules, the Board shall conduct its investigations and hearings to ensure fairness to the
35 parties and enforcement of the law consistent with this section.

36 (e) The Board shall make recommendations to the Governor and the General Assembly
37 relative to the conduct and administration of the laws it enforces as it may deem advisable.

38 (f) Notwithstanding any other provision of law, in order to obtain judicial review of any
39 decision of the Board rendered in the performance of its duties or in the exercise of its powers
40 under this Chapter, the person seeking review must file in the Superior Court of Wake County.

41 (g) The Board may employ an executive director, but until such time the Director under
42 G.S. 163A-9 with the most State service shall be acting executive director.

43 **"§ 163A-5. Temporary rules and regulations.**

44 In the event any portion of any law subject to its enforcement is held unconstitutional or
45 invalid by a State or federal court or is unenforceable because of objection interposed by the
46 United States Justice Department under the Voting Rights Act of 1965 and such ruling
47 adversely affects the conduct and holding of any pending primary or election, the Board shall
48 have authority to make reasonable interim rules and regulations with respect to the pending
49 primary or election as it deems advisable so long as they do not conflict with any provisions of
50 Chapter 163 of the General Statutes, and such rules and regulations shall become null and void
51 60 days after the convening of the next regular session of the General Assembly.

"§ 163A-6. Power of chair.

In the performance of the duties enumerated in this Chapter, the chair of the Board, upon the recommendation of staff and with the consent of at least two other members of the Board, shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. In the absence of the chair or upon the chair's refusal to act, any three members of the Board may issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. In the absence of the chair or upon the chair's refusal to act, any member of the Board may administer oaths.

"§ 163A-7. Power of Board to maintain order.

The Board shall possess full power and authority to maintain order and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the Board or its chair, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chair, and attested by its secretary, commit the person so offending to the jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the Board in writing, and the keeper of the jail shall receive the person so committed and safely keep that person for such time as shall be mentioned in the commitment; provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar (\$200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of the commitment.

"§ 163A-8. Authority of Board to assist in litigation.

The Attorney General shall provide the Board with legal assistance in execution of its authority under this section or, in the Attorney General's discretion, recommend that private counsel be employed. If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor.

"§ 163A-9. Directors of Campaign Finance, Ethics, and Lobbying.

There are created the positions of Director of Campaign Finance, Director of Ethics, and Director of Lobbying, who each shall perform all duties imposed upon that director by law and such duties as might be assigned to that director by the Board. The Directors are subject to the State Personnel Act.

Notwithstanding any other provision of law, all directors shall share information with another director upon request. Whenever any member of the public in writing shall make a request for an opinion to the directors regarding any law enforced by that director's division, such director shall provide written guidance to that person which is binding on that person under the circumstances described in that person's opinion request. The person seeking such advice and relying on written guidance from a director shall not be subject to any civil or criminal action if such person relies on and follows such advice. Any such written guidance shall not be precedential or binding for other parties unless adopted by the Board as a rule.

"§ 163A-10. Board an independent agency.

The Board shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The Board shall exercise its statutory powers, duties, functions, authority, and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10."

SECTION 2. The following statutes are amended by deleting "State Ethics Commission" and substituting "State Board of Ethics, Lobbying, and Campaign Finance":

- (1) G.S. 115D-2.1.
- (2) G.S. 116-7.
- (3) G.S. 120-102.

- 1 (4) G.S. 120-103.1.
- 2 (5) G.S. 120-104.
- 3 (6) G.S. 120C-100(a).
- 4 (7) Chapter 138A of the General Statutes.
- 5 (8) G.S. 143-47.7.
- 6 (9) G.S. 143B-350.
- 7 (10) G.S. 143B-417.
- 8 (11) G.S. 147-64.6.
- 9 (12) G.S. 147-64.6B.
- 10 (13) G.S. 150B-1.
- 11 (14) G.S. 163-278.30.

12 **SECTION 3.** Chapter 120C of the General Statutes is amended by deleting
13 "Secretary of State" every time it appears and substituting "State Board of Ethics, Lobbying,
14 and Campaign Finance".

15 **SECTION 4.** G.S. 163-278 reads as rewritten:

16 **"§ 163-278. Duty of investigating and prosecuting violations of this Article.**

17 It shall be the duty of the ~~State Board of Elections~~ State Board of Ethics, Lobbying, and
18 Campaign Finance and the district attorneys to investigate any violations of this Article, and the
19 Board and district attorneys are authorized and empowered to subpoena and compel the
20 attendance of any person before them for the purpose of making such investigation. The ~~State~~
21 ~~Board of Elections~~ State Board of Ethics, Lobbying, and Campaign Finance and the district
22 attorneys are authorized to call upon the Attorney General to furnish assistance by the State
23 Bureau of Investigation in making the investigations of such violations. The ~~State Board of~~
24 ~~Elections~~ State Board of Ethics, Lobbying, and Campaign Finance shall furnish the district
25 attorney a copy of its investigation. The district attorney shall initiate prosecution and prosecute
26 any violations of this Article. The provisions of G.S. 163-278.28 shall be applicable to
27 violations of this Article."

28 **SECTION 5.** The State Board of Ethics, Lobbying, and Campaign Finance shall
29 adopt rules regarding the conduct of its hearings that shall ensure fairness to parties and
30 enforcement of the law, which shall prevail over the provisions of G.S. 138A-12 to the extent
31 of the conflict. Until such rules are adopted, the State Board of Ethics, Lobbying, and
32 Campaign Finance shall only hold hearings to the extent the Board deems necessary into willful
33 violations of the laws under its jurisdiction and only upon the recommendation of one or more
34 of the directors under G.S. 163A-9. Notwithstanding Article 22A of Chapter 163 of the
35 General Statutes, the county and municipal boards of elections shall refer to the State Board of
36 Ethics, Lobbying, and Campaign Finance all complaints concerning campaign finance.

37 **SECTION 6.** The State Ethics Commission is transferred to the State Board of
38 Ethics, Lobbying, and Campaign Finance, and the transfer shall have all the elements of a Type
39 I transfer under G.S. 143A-6. The campaign finance functions of the State Board of Elections
40 and the lobbying registration and lobbying enforcement functions of the Secretary of State are
41 transferred to the State Board of Ethics, Lobbying, and Campaign Finance, and the transfers
42 shall have all the elements of a Type I transfer under G.S. 143A-6.

43 **SECTION 7.** This act is effective when it becomes law.