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## State Government Ethics and Lobbying

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One of the most significant pieces of legislation of the 2006 session was the State Government Ethics Act [S.L. 2006-201 (H 1843)]. The act makes the following major changes: (1) It codifies and expands Executive Order No. 1, which established certain ethical standards and disclosure requirements applicable to the executive branch of state government. (2) It revises the Legislative Ethics Act, which established ethical standards for members of the General Assembly, to make it consistent with the State Ethics Commission's responsibilities with respect to the General Assembly. (3) It makes further revisions to S.L. 2005-456, an expansion of the State Lobbying Act enacted in 2005. What follows is a discussion of the events leading to the adoption of the State Government Ethics Act and a summary of its key components.

### **The Lottery's Progeny**

The enactment of the State Government Ethics Act in 2006 arose from the legislative activity leading up to the adoption of the state lottery in 2005. Immediately following the ratification of the State Lottery Act, the nine-member Lottery Commission was appointed. However, once the membership of the commission was announced, controversy arose over Commissioner Kevin Geddings, appointed by the Speaker of the House of Representatives. Although he was initially touted as the commission member "most familiar" with lotteries, soon after his appointment local media reported that Mr. Geddings had performed consulting work for Scientific Games, one of two vendors vying for the lottery contract, and had been paid \$24,500 by the company in 2005. It was also reported that Mr. Geddings failed to disclose the payments received from Scientific Games on a statement of financial interest he filed with the North Carolina Board of Ethics. Amid the controversy over his ties to the lottery industry and his financial disclosures, Mr. Geddings eventually resigned from the Lottery Commission. As events unfolded, the lobbying activities of Meredith Norris, a former member of Speaker James B. Black's legislative staff and his campaign's unpaid political director, were brought into question. It was alleged that Ms. Norris

acted as a lobbyist on behalf of Scientific Games but failed to register as a lobbyist for that company. Finally, information concerning Michael Deckers's receipt of "blank payee" campaign contributions and his personal use of campaign contributions raised campaign finance concerns.

These unfolding events spotlighted several weaknesses in North Carolina's ethics and lobbying laws. Specifically, executive ethics was regulated by Executive Order No. 1, issued initially in 1977 by Governor James B. Hunt Jr. and reissued by subsequent governors, traditionally the first order announced by each administration. However, there was no statute that dealt specifically with executive branch ethics. Moreover, the Board of Ethics did not have the authority to impose civil or criminal penalties for violations of Executive Order No. 1. The only penalty available was removal from office. Once an official was no longer in office, the Ethics Board had no further power. Finally, the board's jurisdiction over officials serving on the myriad state boards was inconsistent, as it applied only to gubernatorial appointees or appointees of certain officials who elected to be covered by the Executive Order.

With respect to the regulation of the relationship between lobbyists and state officials and lawmakers, public interest groups and the media expressed concerns about the fact that North Carolina did not regulate so-called "goodwill" lobbying and did not place any restrictions on the goodwill gifts, trips, and dinners that could be accepted by public officials from lobbyists. In addition, there were increasing concerns about the manner in which campaign contributions and campaign spending were regulated.

Effective December 5, 2005, Speaker Black established the House Select Committee on Ethics and Governmental Reform, co-chaired by Representatives Joe Hackney and Julia C. Howard. Initially, the Select Committee was asked to determine whether the effective date of portions of S.L. 2005-456 (Amend Lobbying Laws) should be accelerated. The committee was also asked to consider whether Executive Order No. 1 should be codified and expanded to include all appointees to executive boards and commissions and to include penalties for misstatements on financial disclosures filed by executive officials. The Select Committee's charge was revised on February 20, 2006, to also include the involvement of lobbyists in political campaigns, the content of financial disclosures made by legislators, whether ethics training for legislators and legislative employees should be mandatory, the regulation of post-campaign spending of contributions, and the use of blank-payee checks.

The House Select Committee met six times beginning in January 2006. It accepted testimony from many stakeholders, including the North Carolina Board of Ethics, the North Carolina Board of Transportation, the Secretary of State, the Attorney General, the Commissioner of Insurance, lobbyists, the Director of the Wisconsin Ethics Board, and representatives from a number of public interest groups, including Democracy North Carolina, the North Carolina Coalition for Lobbying Reform, and North Carolina Fair Share. The Select Committee also formed three subcommittees to develop proposed legislation. Following the convening of the General Assembly on May 9, 2006, a total of ten bills were introduced. Upon the General Assembly's adjournment sine die on July 28, 2006, several of those bills had passed. S.L. 2006-201 (H 1843), titled the State Government Ethics Act, recodifies and expands the Legislative Ethics Act, G.S. Chapter 120, Article 32, and incorporates the provisions of H 1844, Executive Branch Ethics Act, and H 1849, Lobbying Reforms 2006. What follows is a discussion of the two chapters of the General Statutes enacted by S.L. 2006-201, Chapter 138A (State Government Ethics Act) and Chapter 120C (Lobbying).

## **State Government Ethics Act—G.S. Chapter 138A**

### **Scope**

The State Government Ethics Act divides public officials into different categories. The obligations imposed by the act vary according to each category. The two major categories are legislative employees and "covered persons." The State Ethics Board is required to periodically

publish a list of the names and positions of all legislative employees and covered persons as well as all boards subject to the act.

Legislative employees include General Assembly employees and officers as well as consultants and counsel to General Assembly committees and commissions who are paid by state funds. A *covered person* is defined as a legislator, a judicial officer, or a public servant.

A *legislator* is a person elected, appointed, or serving as a member or presiding officer of the General Assembly. For purposes of the obligations imposed by G.S. Chapter 138A, the Lieutenant Governor is considered a legislator when presiding over the Senate and a public servant for all other purposes. A *judicial officer* is a person elected, appointed, or serving as a justice or judge, a district attorney, or a clerk of court. The term *public servant* includes all of the following:

- Individuals elected or serving as constitutional officers (the council of state)
- State department heads, chief deputies and administrators of all constitutional officers and department heads, and confidential assistants and secretaries of those department heads, deputies, and administrators
- Employees of the Office of the Governor
- Exempt policy-making employees as designated by the Governor and members of the council of state in accordance with the State Personnel Act, and confidential secretaries to those individuals
- Judicial employees (the director and assistant director of the Administrative Office of the Courts and Judicial Department employees who earn \$60,000 or more, as designated by the Chief Justice)
- Voting members of nonadvisory boards created by statute or executive order, including ex officio members
- Voting members of the UNC Board of Governors, the president and vice presidents of the University of North Carolina, and the chancellors, vice chancellors, and voting members of the boards of trustees of UNC constituent institutions
- Voting members of the State Board of Community Colleges, the president and chief financial officer of the Community College System Office, the president, chief financial officer, and chief administrative officer of each community college, and the voting members of each board of trustees of those colleges
- Members of the State Ethics Commission
- Contractors working in a position classified as a public servant

### **State Ethics Commission**

Article 2 of G.S. Chapter 138A creates the eight-member State Ethics Commission composed of four members appointed by the Governor and four members appointed by the General Assembly, two recommended by the Speaker of the House of Representatives and two recommended by the President Pro Tempore of the Senate. The commission is required to annually publish its advisory opinions and to publish a newsletter containing policies, procedures, opinions, and interpretive bulletins. The commission is specifically exempted from the rulemaking requirements of the Administrative Procedures Act. Articles 2 and 3 of G.S. 138A establish the commission's duties administering the following provisions.

### **Statements of Economic Interest**

Article 3 of G.S. Chapter 138A requires that all covered persons file Statements of Economic Interest with the Ethics Commission. However, the following public servants are exempt from this requirement if their annual compensation is less than \$60,000:

- Employees of the Office of Governor
- Confidential assistants and secretaries of state constitutional officers, principal state department heads, and chief deputies and administrative assistants
- Policy-making employees designated as exempt and their confidential secretaries

- Employees or appointees the Governor designates as public servants under the State Government Ethics Act

The Statement of Economic Interest must be filed before the appointment, election, or employment of a covered person, and no later than March 15 of each year thereafter. However, individuals newly appointed by new members of the council of state during the first sixty days of the member's term may file a Statement of Economic Interest within thirty days after appointment or employment. Candidates for offices covered by G.S. Chapter 138A are required to file Statements of Economic Interest upon filing their notices of candidacy. The Statement of Economic Interest must include a sworn certification that the statement is true, correct, and complete to the best of the person's knowledge.

G.S. 138A-24 requires the commission to prepare a written evaluation of each Statement of Economic Interest. The commission may authorize the executive director and staff of the commission to evaluate Statements of Economic Interest on behalf of the commission. G.S. 138A-23 provides that the Statement of Economic Interest and the commission's evaluations of those statements become public records upon the appointment or employment of the public servant. G.S. 138A-24 delineates the required content of the Statement of Economic Interest.

G.S. 138A-25 imposes a penalty of \$250 for a covered person's failure to file a complete Statement of Economic Interest. Failure to file may also subject a person to disciplinary action, including removal from his or her position. In addition, it is a Class 1 misdemeanor for a person to knowingly conceal or fail to disclose information required on a Statement of Economic Interest and a Class H felony for a person to knowingly provide false information.

### **Ethics Complaints**

G.S. 138A-12 authorizes the commission to receive and investigate complaints alleging unethical conduct by covered persons and legislative employees. In addition to investigating complaints alleging a violation of G.S. Chapter 138A, the commission is charged with considering complaints alleging violations of the Legislative Ethics Act, alleged criminal law violations by a covered person in the performance of official duties, and alleged violations of G.S. 126-14, prohibiting the coercion of certain state employees and applicants into supporting a particular political candidate. However, the act specifically requires the Ethics Commission to refer alleged violations of the Code of Judicial Conduct to the Judicial Standards Commission without investigation.

The procedure for processing ethics complaints is as follows:

1. Filing. A complaint must be filed with the commission within two years after the date the complainant knew or should have known of the conduct at issue. The complaint must be sworn, identify the person filing it and the person against whom it is filed, and include a concise statement of the violation asserted and the specific facts indicating that a violation of G.S. Chapter 138A or 120 has occurred. The commission must send a copy of the complaint to the covered person or legislative employee who is the subject of the complaint and to that person's employing entity with thirty days after it is filed.
2. Dismissal. The commission may dismiss any complaint that is untimely, fails to allege a violation of G.S. Chapter 138A or 120, or fails to allege facts sufficient to establish such a violation. The commission is also authorized to dismiss a complaint that is frivolous or brought in bad faith, duplicative of an earlier complaint, or more appropriately handled by other agencies or authorities, such as law enforcement agencies.
3. Preliminary inquiry. If a complaint is not dismissed, the commission is required to initiate an inquiry within sixty days after it is filed to determine if there is reason to believe that a violation has occurred or may occur. For complaints submitted against a public servant, if the commission determines that it has jurisdiction to consider the complaint and that there is probable cause to conclude that a violation has occurred or may occur, the commission will proceed with a hearing on the complaint. If probable cause is found for a complaint against another person, it is referred as follows: complaints against legislators, to the

Legislative Ethics Committee; complaints against judicial officers, to the Judicial Standards Commission or other listed judicial authority; complaints against legislative employees, to the employer.

4. Commission hearing. During a hearing at which the commission considers a complaint brought against a public servant, the commission may consider testimony and exhibits, including those presented by the public servant and commission staff. Violations must be proven by clear and convincing evidence.
5. Disposition. If the commission finds that a violation occurred, it may issue a private admonishment, refer the matter to the employing entity for appropriate action, or both. If requested by the employing entity, the commission may recommend appropriate sanctions or issue rulings as appropriate.

At all times in the process until sanctions are issued, complaint records are confidential unless the covered person requests that the records be made public. Upon the issuance of sanctions, the complaint, the response, and the commission's report to the employing entity are made public.

### **Advisory Opinions**

G.S. 138A-13 requires the commission to issue written advisory opinions concerning the interpretation of G.S. Chapter 138A at the request of a public servant or a legislative employee, his or her supervisor, or an agency ethics liaison. The commission is also required to issue recommended advisory opinions to the Legislative Ethics Committee upon the request of a legislator. Reliance upon a written advisory opinion will immunize a public servant or legislative employee against investigation on the same matter by the commission or any adverse employment action by the person's employer. Moreover, until acted upon by the Legislative Ethics Committee, a written advisory opinion from the commission will immunize the legislator from investigation by the commission and any adverse action by the house of which the legislator is a member. The section on advisory opinions does not apply to judicial officers. G.S. 138A-13 requires that the request for an advisory opinion be in writing and relate to actual or reasonably anticipated circumstances.

G.S. 138A-13(c) also authorizes the commission's staff to issue advisory opinions pursuant to procedures adopted by the commission. The commission is required to publish its advisory opinions, along with advisory opinions issued by the Legislative Ethics Committee, at least annually. However, the commission must edit the opinions as necessary to protect the identity of persons requesting opinions.

### **Ethics Education**

G.S. 138A-14 requires that within six months of employment, election, or appointment and every two years thereafter, a public servant and his or her immediate staff must participate in an ethics presentation approved by the commission. Legislators and legislative employees must also participate in an ethics presentation within three months after their election, appointment, or employment. Although the commission is required to offer refresher ethics training programs to legislators and legislative employees, there is no requirement that those individuals attend the refresher programs. Moreover, although lobbyists are encouraged to attend ethics programs, their attendance is not mandated.

### **Ethical Standards**

Article 4 of G.S. Chapter 138A establishes the following standards of ethics that are applicable to different categories of public officials, as explained in detail below.

**Use of position for private gain.** G.S. 138A-31 prohibits a covered person or a legislative employee from using a public position in an official or legislative action that will result in financial benefit to that person or to a member of the person's extended family or a business with which the covered person or legislative employee is associated. The prohibition specifically

excludes financial benefits provided on the same level as benefits offered to other state citizens and benefits that are so insignificant or speculative that they would not compromise a person's judgment.

The *extended family* includes the person's spouse, lineal descendant or ascendant, or sibling; the spouse's lineal descendant or sibling; and the spouse of any of these persons. A *business with which the person is associated* is a for-profit business (1) that employs the person or a member of the person's immediate family (spouse and family members living in the household); (2) in which the person is a director, officer, partner, or proprietor; or (3) of which the person has a specified ownership interest. Notably, nonprofit businesses are not included in the term "business with which associated."

G.S. 138A-31 prohibits a covered person (but not a legislative employee) from using state funds for any advertisement or public service announcement that includes the name, picture, or voice of the covered person, with the following exceptions: (1) Internet advertisements and announcements and (2) announcements made during emergencies if the announcement is necessary to the covered person's official functions.

G.S. 138A-31 also prohibits a covered person (but not a legislative employee) from using his or her official position in nongovernmental advertising, with the following exceptions:

- Political advertising, news stories, or news articles
- The mention of the person's position in a directory or biographical listing
- Charitable solicitations for certain nonprofit business entities
- Disclosure of the person's position to an existing or prospective customer or supplier when the disclosure is material

**Gift ban.** G.S. 138A-32 prohibits the acceptance of certain gifts by public officials. The gift ban is one of the most significant new rules in the State Government Ethics Act. It is also one of the most complicated, due to the numerous exceptions and the fact that the restrictions vary depending on the recipient's position and the donor's status as a lobbyist or lobbyist principal.

G.S. 138A-3(15) defines *gifts* as "anything of monetary value given or received without valuable consideration" by or from a lobbyist, a lobbyist principal, or certain persons doing business with a public servant's employer. It is important to note that there is no de minimis exception to the definition of gift. However, the definition specifically excludes the following:

- Items for which the recipient paid full value
- Loans made on the same terms as are available to the general public
- Contracts or commercial relationships in the normal course of business and not for lobbying purposes
- Certain academic or athletic scholarships
- Campaign contributions that otherwise comply with state law

G.S. 138A-32(g) requires that prohibited gifts be declined. If the gift is initially accepted, the recipient must return it, pay fair market value for it, or immediately upon receipt donate it "to charity" or to the state.

G.S. 138A-32 imposes restrictions relating to five categories of gifts: quid pro quo gifts, charitable contributions, honorariums, gifts from lobbyists and lobbyists' principals, and gifts from interested parties. A covered person or a legislative employee is prohibited from accepting any quid pro quo gifts—that is, gifts specifically given in return for the person being influenced in his or her official duties. A covered person (but not a legislative employee) is prohibited from soliciting charitable contributions from subordinate state employees. The prohibition does not cover generic solicitations sent to all members of a class of employees or service as an honorary head of the State Employees Combined Campaign.

G.S. 138A-32(h) prohibits a covered person (including a judicial officer) or a legislative employee from accepting honorariums from outside entities if the person is attending the event on work time, the person is reimbursed by the state for meeting expenses, or the activity is related to the person's official job duties. The provision specifically permits acceptance of honorariums that do not meet these conditions and states that such honorariums do not constitute gifts.

A public servant, a legislator, or a legislative employee (but not a judicial officer) is prohibited from directly or indirectly accepting any gifts from a lobbyist or a lobbyist's principal. G.S. 120C-303 in turn prohibits a lobbyist or lobbyist principal from directly or indirectly giving a gift to a public servant, legislator, or legislative employee. A public servant (but not a legislator, a legislative employee, or a judicial officer) is also prohibited from directly or indirectly accepting any gifts from any person who (1) is doing or seeking to do business with the public servant's employing entity, (2) is conducting a business that is regulated or controlled by the employing entity, or (3) has a financial interest that may be substantially affected, to a greater degree than the general public, by the manner in which the public servant performs his or her duties.

G.S. 138A-32(e) exempts the following gifts from the gift ban (the exemptions do not apply if a gift is a quid pro quo gift):

- Food and beverage for immediate consumption at public events. Public events are defined differently for legislators and legislative employees than for public servants.
- Food, beverages, registration fees, travel expenses, and entertainment received by a covered person or legislative employee for attendance at certain educational meetings or meetings of legislative organizations if (1) the expenditures are made by a lobbyist's principal; (2) the food, beverages, and entertainment are provided to all attendees or a defined group of at least ten attendees; and (3) the entertainment is incidental to the primary purpose of the meeting.
- A plaque or similar "nonmonetary memento" recognizing individual services in a field or specialty or to a charitable cause.
- Gifts accepted on behalf of the state and for the state's benefit.
- Anything generally made available to the general public or all other state employees by lobbyists or lobbyists' principals.
- Gifts from extended family or members of the same household.
- Gifts given to a public servant that are associated with industry recruitment or the promotion of international trade or tourism, if the gifts are reported electronically to the Ethics Commission within a specified time period and tangible gifts are given to the Department of Commerce.
- Certain gifts under \$100 in value that are given to a public servant while on a trade mission in another country.

A final exception, added during the last few days of the 2006 session, exempts gifts provided "as part of a business, civic, religious, fraternal, personal, or commercial relationship unrelated to the person's public service or position" if one could reasonably conclude the gift was not given for the purpose of lobbying.

G.S. 138A-32(f) provides that an otherwise prohibited gift received by a public servant will be considered to have been given to the state (and therefore not subject to the gift ban) if the gift would constitute "an expense appropriate for reimbursement" by the employer of the public servant if it had been purchased by the public servant and the public servant's employer approved the public servant's receipt of the items on behalf of the state.

**Confidential information.** G.S. 138A-34 prohibits a public servant or legislative employee (but not a legislator or a judicial officer) from using or disclosing nonpublic information obtained in the course of the person's position for the financial benefit of the person, the person's extended family, or a person or business with which the person is associated. G.S. 138A-34 also prohibits the improper use or disclosure of confidential information.

**Conflict of interest in official actions.** G.S. 138A-36 and G.S. 138A-37 prohibit both public servants and legislators from participating in official actions in which they have an economic interest, but the standards applicable to a public servant are more stringent. G.S. 138A-38 provides a number of exceptions to the participation restrictions, including when (1) the covered person has received a written advisory opinion from the State Ethics Commission or the Legislative Ethics Committee authorizing the participation, (2) the employing entity determines that there is not a conflict, or (3) the public servant is the only person with legal authority to take the action and the conflict is disclosed in writing.

G.S. 138A-36 prohibits a public servant from participating in an official action if (1) the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in the action or it is "reasonably foreseeable" that they would benefit from the action, and (2) that interest would "impair the public servant's independence of judgment" or it could be reasonably inferred that the benefit would influence the public servant's participation in that action. If a conflict exists, the public servant must abstain from taking any verbal or written action in connection with the official action.

In addition, G.S. 138A-36(c) provides that if the public servant's impartiality "might reasonably be questioned due to a familial, personal, or financial relationship with a participant in a proceeding," the public servant must remove himself or herself from the proceeding as necessary to protect the public interest. If it is unclear to the public servant whether removal is necessary, the person presiding over the proceeding is given the discretion to determine whether the public servant may participate. The presiding officer's determination may be challenged through a complaint to the State Ethics Commission.

G.S. 138A-37 prohibits a legislator's participation in a legislative action if (1) the legislator, the legislator's extended family, or an associated business has an economic interest in the action or may benefit from the action and (2) following a consideration of whether the legislator's judgment would be influenced and the need for the legislator's particular contribution, the legislator concludes that there is an economic interest that would impair the legislator's judgment.

**Disqualifying interests.** G.S. 138A-39 provides that if the State Ethics Commission determines that a public servant has an interest that would disqualify the public servant from serving in an official capacity, the public servant must eliminate the interest or resign from the public position. Such a decision by the commission is considered a final decision under the contested case provisions of the Administrative Procedure Act, G.S. Chapter 150B.

**Nepotism.** G.S. 138A-40 prohibits a covered person or a legislative employee from influencing an extended family member's employment or advancement to a state office or a position supervised by a public servant (except for certain General Assembly positions). State agencies may adopt more stringent ethics guidelines. Current examples of guidelines include those adopted by the Department of Transportation and the State Lottery Commission.

## **Lobbying—G.S. Chapter 120C**

During the 2005 Session, the General Assembly enacted substantial lobbying reforms in S.L. 2005-456, which amended Article 9A of G.S. Chapter 120 (Legislative Branch Lobbying) and enacted new Article 4C of G.S. Chapter 147 (Executive Branch Lobbying), effective January 1, 2007. House Bill 1849, filed on the first day of the 2006 Session, combined the legislative and executive lobbying provisions into a single act and made several substantive changes to those provisions. As the session progressed, the provisions of House Bill 1849 were further revised and incorporated into S.L. 2006-201, the State Government Ethics Act.

### **Scope**

New Chapter 120C of the General Statutes regulates *lobbying*, which is defined as influencing or attempting to influence legislative or executive action through (1) direct communication or activities with designated individuals or their immediate families or (2) the development of goodwill "through communications or activities, including the building of relationships," with designated individuals or their immediate families. A *designated individual* is a legislator, a legislative employee, or a public servant. *Lobbying* does not include contacts that are part of a business, civic, religious, fraternal, personal, or commercial relationship that is not connected to legislative or executive action.

A *lobbyist* is defined generally as a person who is employed or compensated to lobby, although an employee who spends less than 5 percent of his or her job duties lobbying in any

thirty-day period is not considered a lobbyist. G.S. 120C-700 specifically exempts certain individuals from G.S. Chapter 120C, including the following:

- An individual expressing a personal opinion and not acting as a lobbyist
- An individual who appears before a committee, board, or other collective body that includes a designated individual at the group's invitation and who does not engage in further lobbying activities on that matter
- State, federal, and local officials whose actions are solely related to their public duties, except that officials designated as lobbying liaison personnel are not exempt from the requirements of G.S. Chapter 120C
- Members of a recognized news medium engaged in the gathering and publication of news
- Designated individuals acting in their official capacities
- A person who is responding to inquiries from a designated individual and does not conduct further lobbying activities
- A political committee or its employee or service provider

Article 5 of G.S. Chapter 120C creates a category of lobbyists called liaison personnel. *Liaison personnel* are state employees whose principal duties include lobbying for legislative action (but not executive action) on behalf of various state departments, boards, divisions, and units of government, including constituent institutions of the University of North Carolina. Each entity is limited to two liaison personnel. Liaison personnel are exempt from G.S. Chapter 120C, except they must register as lobbyists and file quarterly expenditure reports. They are also subject to G.S. Chapter 120C's gift restrictions. Article 5 includes a general prohibition against the University of North Carolina or its constituent institutions, and those institutions' liaison personnel, from giving athletic tickets to designated individuals for the purpose of lobbying.

## Regulations

The requirements of G.S. Chapter 120C fall into four major categories: lobbyist registration, reporting of lobbying expenditures, lobbyist activity restrictions (including gift restrictions), and education. Initially, House Bill 1849 placed responsibility for enforcement of all of those provisions with the secretary of state. However, during the final hours of the 2006 Session, the conference committee substitute transferred responsibility for lobbying education, advisory opinions, and enforcement of the lobbyist activity restrictions to the State Ethics Commission.

**Registration and reporting.** The lobbying registration requirements are included in Article 2 of G.S. Chapter 120C. G.S. 120C-200 requires that within one business day of engaging in lobbying, a lobbyist must file a separate registration statement for each principal the lobbyist represents. A lobbyist's principal is required to file a form authorizing a lobbyist to represent the principal. G.S. 120C-201 and 120C-207 set forth a single registration procedure for both executive and legislative lobbyists and for each lobbyist's principal. G.S. 120C-220 requires the secretary of state to make registrations available in an electronic, searchable format and make lists of legislative lobbyists available in the State Legislative Library and to each designated person.

Article 2 imposes a fee of \$100 per each lobbyist or principal registration. G.S. 120C-207(b) requires that the secretary of state adopt rules allowing waiver or reduction of fees for organizations granted nonprofit status.

G.S. 120C-215 creates a new registration and reporting requirement for *solicitors*, defined as persons who are not lobbyists but who have incurred more than \$3,000 during any ninety-day period for solicitation of others. *Solicitation of others* is defined as contacting a designated individual in order to influence legislative or executive action. The definition specifically includes contacts through mass media, Internet, mail, telephone, and direct communications.

Article 4 of G.S. Chapter 120C imposes expenditure reporting requirements. G.S. 120C-402 requires lobbyists to file quarterly reports when the legislature is not in session and monthly reports when the legislature is in session. The reports must include (1) reportable expenditures made for the purpose of lobbying, (2) solicitations of others costing more than \$3,000, (3) reportable expenditures reimbursed to a lobbyist by the lobbyist's principal, and (4) all reportable

expenditures for gifts that are given under the exceptions to the gift ban set forth in G.S. 138A-32(e). *Reportable expenditures* are generally defined as contracts with designated individuals and their immediate family members and any expenditure of more than \$10 in value per designated individual per calendar day. Lobbyists' principals are required to file quarterly reports that include the same information as lobbyists' reports as well as details of the compensation paid to lobbyists.

Solicitors are also required to file quarterly reports that detail reportable expenditures made for the purpose of lobbying during the reporting period and solicitations of others with an aggregate cost of more than \$3,000. Finally, Article 8 of G.S. Chapter 120 requires a person to report expenditures of more than \$200 in a calendar quarter made to a designated individual for the purpose of lobbying, even if the person making the expenditures is not a lobbyist.

All expenditure reports filed with the secretary of state are open to public inspection. The secretary of state is responsible for systematically reviewing lobbying registrations and reports and is authorized to conduct investigations of alleged violations of the registration and reporting requirements of G.S. Chapter 120. The secretary of state may impose civil fines of up to \$5,000 per violation of these provisions.

**Lobbying restrictions.** Article 2 of G.S. Chapter 120C requires a lobbyist to identify himself or herself as a lobbyist and disclose the identity of the principal before lobbying a designated individual. Article 3, enforceable by the State Ethics Commission, contains the following prohibitions:

- G.S. 120C-300 prohibits a lobbyist's compensation from being dependent on the result or outcome of legislative or executive action.
- G.S. 120C-301 prohibits any person from attempting to influence the actions of a designated individual by promising financial support of the individual's candidacy or in opposition to that candidacy.
- G.S. 120C-302 prohibits lobbyists (but not lobbyists' principals) from (1) making a contribution to a candidate or campaign committee when the candidate is a legislator or public servant (members of the council of state), or (2) collecting or delivering contributions from multiple contributors to that candidate or campaign committee (bundling). These contribution restrictions do not apply if the lobbyist is making a contribution to the lobbyist's own campaign committee.
- G.S. 120C-303 prohibits lobbyists and lobbyists' principals from directly or indirectly giving a gift to a designated individual, subject to the exceptions provided to the gift ban in the State Government Ethics Act.
- G.S. 120C-304(a)–(c) prohibit current and former members of the General Assembly, the Governor, a member of the council of state, or a head of a principal state department from being employed as a legislative lobbyist within six months after separation from employment or leaving office.
- G.S. 120C-304(d) prohibits a lobbyist from serving as a campaign treasurer or an assistant campaign treasurer for a political committee of a candidate for General Assembly, Governor, or council of state. G.S. 120C-304(e) also provides that a lobbyist is ineligible for appointment to any state body with regulatory authority over a person that the lobbyist currently represents or has represented within a certain time period.
- G.S. 120C-305 prohibits a designated individual or that person's immediate family from using the cash or credit of a lobbyist unless the lobbyist is present.

G.S. 120-601(a) authorizes the Ethics Commission to investigate complaints of violations of Article 3 of G.S. Chapter 120C. It is a Class 1 misdemeanor to willfully violate Article 3. In addition, a lobbyist convicted of violating G.S. Chapter 120C will be banned from acting as a lobbyist for two years. The Ethics Commission is also authorized to levy civil fines of up to \$5,000 per violation.

**Lobbying education program.** G.S. 120C-103 requires that the Ethics Commission implement a lobbying education program. All designated individuals must participate in a lobbying presentation approved by the commission within six months of the person's election,

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appointment, or hiring, and every two years thereafter. Those programs must also be made available to lobbyists and their principals.

### **Rules and Advisory Opinions**

G.S. 120C-101 requires that the Ethics Commission and the secretary of state adopt any rules necessary to interpret and implement G.S. Chapter 120. Although the commission is specifically exempted from the rulemaking requirements of G.S. Chapter 150B, it must follow the procedures set out in G.S. 120C-101(c) before adopting a rule under G.S. Chapter 120C. G.S. 120C-102 requires the Ethics Commission to issue advisory opinions interpreting G.S. Chapter 120 in response to written requests that describe real or reasonably anticipated circumstances. Commission staff is also authorized to issue advisory opinions under procedures adopted by the commission.

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