

March 19, 2009

S 716. 2009 OMNIBUS CAMPAIGN FINANCE LAW CHANGES. Filed 3/19/09. *TO AMEND THE CAMPAIGN FINANCE LAWS.*

Amends GS 163-278.5 to apply the provisions of Article 22A of Chapter 163, which regulates contributions and expenditures in political campaigns, to Article 22J of Chapter 163, the Voter-Owned Election Act.

Intro. by Clodfelter.

GS 163

June 30, 2010

S 716. 2010 ETHICS AND GOVERNMENT REFORM CHANGES (NEW) . Filed 3/31/09. House committee substitute deletes all provisions of 1st edition and replaces with *AN ACT TO PROVIDE LIMITS ON THE TRADING OF INFLUENCE OR POSITION FOR GAIN BY PROHIBITING CAMPAIGN CONTRIBUTIONS BY CERTAIN CONTRACTORS AND CLARIFYING CRIMINAL STATUTES ON SELF DEALING; TO CREATE THE VOTER-OWNED ELECTIONS COMMISSION; TO INCREASE THE PUNISHMENT FOR MAKING CAMPAIGN CONTRIBUTIONS IN THE NAME OF ANOTHER; TO INCREASE ACCESSIBILITY TO INFORMATION RELATED TO CANDIDATE CAMPAIGN COMMITTEES AND TO INFORMATION RELATED TO STATE CONTRACTS AND GRANTS; TO STRENGTHEN PUBLIC CONFIDENCE IN GOVERNMENT BY INCREASING THE REVOLVING DOOR PERIOD AND APPLICABILITY; TO CODIFY CERTAIN POSITIONS IN STATE GOVERNMENT AS A PUBLIC SERVANT UNDER THE STATE GOVERNMENT ETHICS ACT; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH ADDITIONAL DISCLOSURES BY PUBLIC SERVANTS, INCLUDING CAMPAIGN CONTRIBUTIONS PRIOR TO APPOINTMENT; TO INCREASE ACCOUNTABILITY OF PUBLIC SERVANTS, APPOINTEES OF THE GOVERNOR, AND STATE EMPLOYEES BY PERMITTING THE GOVERNOR TO ADOPT MINIMUM STANDARDS OF ETHICAL CONDUCT; TO CLARIFY THE INDIRECT GIFT BAN AND CLARIFY REPORTING BY LOBBYIST PRINCIPALS; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH INCREASING AND CLARIFYING ACCESSIBILITY TO LEGISLATIVE RECORDS AND OTHER PUBLIC RECORDS; TO MAKE TECHNICAL CHANGES TO THE ETHICS LAW; AND TO EXPEDITE REVIEW OF PRELIMINARY INVESTIGATIONS OF ALLEGATIONS OF WRONGDOING UNDER CHAPTERS 120 AND 138A OF THE GENERAL STATUTES.*

Prohibiting Campaign Contributions. Enacts new GS 163-278.13D to prohibit: (1) a contractor that has a contract in excess of \$50,000 with an office associated with a relevant political campaign from contributing more than \$1,000 per calendar year to that campaign, from the date of request for proposals through the contract's term, and (2) a relevant political campaign from knowingly accepting a contribution over \$1,000 per year from a contractor that has a contract in excess of \$50,000 with the office associated with the campaign. Provides that a contractor may cure a violation of the section by requesting, in writing, a return of the contribution within 60 days. Provides that a relevant political campaign may cure a violation by discovering the offending contribution within 10 business days of receipt and returning that contribution within 10 business days of discovery. Provides definitions for *contractor*, *office*, and *relevant political campaign* under the section, and makes a violation of the section a Class 2 misdemeanor. Effective December 1, 2010, and applies to contributions made on or after that date.

Voter-Owned Elections Commission. Establishes the ten-member Public Funding of Council of State Elections Commission, and directs the Commission to study a specified list of related issues. Describes the five Commission members to be appointed by the Speaker of the House and the five members to be appointed by the President Pro Tempore of the Senate. Instructs the Commission to report its results and recommendations to the 2011 General Assembly by March 1, 2011.

Exchanging Influence or Positions for Gain. Amends GS 126-14 to make it unlawful for an individual, as defined, to coerce a person, as described, to support or contribute to a political candidate, a political committee, or a political party by threatening discipline or promising preferential treatment with regard to that person's business with the individual's State office or to that person's activities regulated by the individual's State office. Makes other technical changes.

Amends GS 14-234(a) to add that no public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, *including a promise of future employment* in exchange for preferential treatment related to awarding a contract. Effective December 1, 2010, and applies to offenses committed on or after that date.

Criminal Penalties. Amends GS 163-278.27 to make a person or individual who intentionally violates GS 163-278.14(a) (prohibiting contributions in the name of another and anonymous contributions) or GS 163-278.19(a) (prohibiting described contributions from corporations and other professional entities), when the unlawful contributions total more than \$10,000 per election, guilty of a Class I felony. Amends GS 163-278.14(a) (prohibiting anonymous contributions) to provide that the subsection does not apply to any contribution by an individual with the lawful authority to act on another's behalf. Clarifies, however, that if the lawful authority is granted by GS Chapter 35A (pertaining to guardianship), no contribution may be made by the guardian of the estate for the minor or incompetent person. Effective December 1, 2010, and applies to offenses committed on or after that date.

NC OpenBook. Directs the State Board of Elections (Board) to create a database for the public to use to search for information related to political campaigns. Enacts new GS 143C-2-5 to direct the Governor to require the Office of State Budget and Management (OSBM), with the support of Information Technology Services, to build and maintain a database and website on state spending for grants and contracts, designated NC OpenBook. Requires specified parties to conduct a monthly review of all state contracts and grants administered by their respective departments, and directs all state offices, subject to the Governor's authority, to link to NC OpenBook on their agency websites and to facilitate contract and grant searches from their websites. Enacts new GS 143C-2-6 to direct specified offices to provide OSBM information on state contracts necessary for the database and website, and to update the information at least monthly. Further directs OSBM to work with certain offices to incorporate data on grants into the database and website. Requires all awarded state contracts and grants in excess of \$10,000 to be included in the database and website, and requires the inclusion of additional listed information.

State Government Ethics Act. Amends GS 138A-3(30), adding offices and officers to the list of individuals defined as *public servants* under the State Government Ethics Act (Ethics Act). Amends GS 143B-478 to apply the Ethics Act to the Governor's Crime Commission. Amends GS 138A-22 to require a covered person holding elected office or a former covered person who held elected office subject to the Ethics Act to file a statement of economic interest, according to two described instances. Amends GS 138A-24 to provide that any statement of economic interest must be on a form prescribed by the State Ethics Commission (Commission) (was, prescribed by the Commission and sworn to by the filing person). Requires the form to also include the name of each associated business where the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager. Removes, from required inclusion on the form, a list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company. Adds that the form must include the name of each nonpublicly owned company or business entity, including interests in *sole proprietorships*, among other listed formats. Requires that the statement also include (1) a list of all contributions of \$1,000 or more made by the filing person, as described, and (2) a list of contributions from the fundraising of \$1,000 or more by the filing person, as described, provided the requirement applies to certain, listed filing persons. Removes references to *sworn* certification from GS 138A-24(c). Recodifies GS 138A-24(a)(2)i (requiring information on the statement of economic interest related to contracts with specified businesses or companies) as GS 138A-24(a)(16) and makes conforming changes thereto. Makes the provisions related to economic interest statements effective January 1, 2011, and applicable to statements of economic interest filed on or after that date. Amends GS 138A-41 to authorize the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor, and which will be published in the North Carolina Register. Also authorizes the Governor to adopt minimum ethics standards applicable to any employee of a state agency.

Makes technical changes to GS 120C-303(a), GS 138A-32(c), and GS 138A-32(d1), effective December 1, 2010.

Amends GS 120C-101(c) to make a rule adopted by the State Ethics Commission under the subsection applicable prospectively, and makes an adopted rule that does not comply with the subsection's procedural requirements null, void and without effect. Defines *rule* for the purposes of the subsection.

Lobbying. Amends GS 120C-100(a)(10) to remove *payment for services* and associated language; makes a conforming change to GS 120C-100(a)(11k) and GS 120C-300 (prohibiting contingency fees). Also clarifies that a lobbyist is an individual who engages in lobbying *for payment*. Amends GS 120C-100(a)(11) to provide that a lobbyist principal is the person or governmental unit on whose behalf the lobbyist lobbies *and who makes payment for the lobbying*. Makes clarifying changes to GS 120C-305 (prohibits use of lobbyist's cash or credit), and applies GS 120C-303 (prohibits gifts by lobbyists and lobbyist principals) to that section. Amends GS 120C-403 to require that each lobbyist principal file a quarterly report within 15 (was, 10) business days after the end of the reporting period, and that the report include the name of each person or governmental unit not otherwise registered as a lobbyist principal for whom the lobbyist principal directs the lobbyist to lobby, whether for payment or not. Further requires each lobbyist principal to annually report in the last report of the registration period the total of all payments for lobbying and other activities as described. Provides applicable guidelines for lobbyist principals' reports. Makes technical and clarifying changes to GS 120C-100(a)(9), GS 120C-100(a)(13), GS 120C-400, GS 120C-402(b), GS 120C-404(b)(1), GS 120C-501(e), GS 120C-800(a), GS 138A-3(1), GS 138A-3(15), GS 138A-13(f), GS 138A-24(a)(8), and GS 138A-32(e)(10). Makes the above provisions effective January 1, 2011, and applicable to offenses committed on or after that date, and to reports filed on or after that date.

Restrictions on Lobbyist Registration. Amends GS 120C-304(a) to prohibit a legislator or former legislator from registering as a lobbyist under GS Chapter 120C while in office or within one year after leaving office (was, before the later of close of session in which the legislator served or six months), and makes a conforming change to GS 120C-304(b). Amends GS 120C-304(c) to prohibit a public servant or former public servant from registering as a lobbyist within one year (was, six months) after separating from employment as a public servant. Further prohibits an employee of any state agency from registering as a lobbyist to lobby the previously employing agency within one year after voluntary separation or separation for cause from that agency. Amends GS 120C-200 to require that former employees of a state agency registering as a lobbyist must indicate with which state agency they were employed in the registration. Enacts new GS 120C-502 to require that each employee of a governmental unit whose principal duties include lobbying, in practice or in description, must register and file reports under GS Chapter 120C. Directs the Secretary of State to treat these individuals as liaison personnel for publication purposes, and also applies gift prohibitions. Effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

Public Records. Amends the following statutes to make the amount of *each* salary increase or decrease (was, most recent), and the date and category of each promotion, demotion, transfer, suspension, separation, or other classification change (was, most recent) for employees in various agencies and departments subject to inspection, and makes additional technical, organizational and clarifying changes: GS 126-23 (state employee personnel records); GS 115C-320 (local boards of education); GS 115D-28 (community college employee personnel records); GS 122C-158(b) (employees under the Mental Health, Developmental Disabilities, and Substance Abuse Act); GS 153A-98(b) (county employees); GS 160A-168(b) (city employees); and GS 162A-6.1(b) (water and sewer authority employees). Effective October 1, 2010.

Amends GS 120C-600 to require the Secretary of State to publish annual statistics on complaints received and systematic reviews conducted under the section, including described components. Makes the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, a public record. Amends GS 120C-601 to require the State Ethics Commission to publish annual statistics on complaints, including described components.

Mediation of Public Records Disputes. Enacts new GS 7A-38.3E to provide guidelines governing the mediation of public record disputes. Directs that mediation of a public records dispute be initiated by filing a request for mediation with the clerk of the superior court in the county in which the action may be brought. Provides for voluntary mediation, allowing the parties

to a public records dispute under GS Chapter 132 to agree at any time prior to filing a civil action under GS Chapter 132 to mediation under the proposed new section. Requires mandatory mediation after a party files a civil action in a public records dispute under GS Chapter 132. Requires that mandatory mediation be initiated no later than 30 days from the timing of the filing of responsive pleadings with the clerk in the county where the action is filed. Directs the Administrative Office of the Courts to prescribe a form to request mediation. Provides criteria for service of the mediation form by certified mail with return receipt requested by the filing party. Specifies guidelines for the selection of a mediator and provides for the appointment of a mediator by the senior resident superior court judge when the parties cannot agree on the selection of the mediator.

Directs that except as expressly provided in this proposed statute, the mediation procedure is to be conducted under the provisions for mediated settlement of civil cases in GS 7A-38.1 and GS 7A-38.2 and the rules and standards adopted pursuant to those sections. Also provides that the NC Supreme Court may adopt additional rules and standards to implement the proposed section and may include an exemption from the provisions of GS 7A-38.1 for cases in which mediation was attempted under this section. Permits parties to agree to waive mediation with a written notice informing the mediator of the desire for a waiver. Provides that there will be no costs to the parties if all of the parties waive mediation before the initial mediation meeting. Upon the conclusion of mediation or the waiver of mediation, directs the mediator to prepare a certification stating that mediation has concluded or has been waived. Specifies that the certification must include the general result of the mediation. Directs the mediator to file an original of the certification with the clerk and provide a copy to each party. Provides criteria for the tolling of time periods relating to the filing of a claim or taking other actions regarding a public records dispute. Also provides that nothing in the proposed section shall be construed to prevent a party seeking production of public records from seeking injunctive or other relief, including seeking the production of public records before any scheduled mediation. Makes conforming change to GS 7A-38.2(a) to add mediators and other neutral persons certified or otherwise qualified under new GS 7A-38.3E to those for whom the state Supreme Court may adopt standards of conduct.

Amends GS 132-9 to provide that a person seeking access to public records must comply with new GS 7A-38.3E prior to the court's issuance of an order compelling disclosure or copying. Permits the court to allow attorneys' fees to a party seeking disclosure of public records who substantially prevails (was, permitted attorneys' fees to the prevailing party, unless the agency acted with substantial justification or the award of fees would be unjust). Provides three exemptions under which the court may not assess attorneys' fees against a governmental body or unit. Effective October 1, 2010.

Amends GS 138A-14(b) to require the Commission to offer (was, make) ethics presentations. Recodifies GS 138A-24(c2) as GS 138A-22(c2). Amends the catchline of GS 138A-37 to read "legislator participation in legislative (was, official) actions." Amends GS 138A-38 to clarify that the permitted participation exception applies when a public servant (was, public servant judicial employee) or someone appointed by the public servant to act in the public servant's stead are the only persons with legal authority to take an official action and the public servant provides written disclosure of the circumstances and nature of the conflict of interest. Makes technical corrections to GS 138A-38(a), GS 120-104(c), and GS 120C-800(b).

Complaint Investigation Process. Amends GS 138A-12(c)(1) to add that a sworn complaint may be filed under that section alleging a violation of GS Chapter 138A, GS Chapter 120, or GS 126-14 (promise or threat to obtain political contribution or support), or the criminal law in the performance of that individual's official duties. Amends GS 138A-12(c)(5) to require the State Personnel Commission (Commission) to send the complaint to the alleged individual and employing entity within 10 business days (was, 30) of the filing. Amends GS 138A-12(d) to direct the Commission to initiate an inquiry into a complaint within 10 business days (was, 60) of the filing. Amends GS 138A-12(f) to direct the Commission to conclude its preliminary inquiry within 20 days, and to dismiss the complaint following the inquiry if the Commission determines that the complaint is frivolous or brought in bad faith, or falls into another category under current law. Makes technical changes to GS 138A-12(b)(2), and makes conforming changes to GS 120-103.1(c) (directing the Legislative Ethics Committee to investigate complaints within 10 business

days) and GS 120-103.1(c1) (directing the Legislative Ethics Committee to conclude its preliminary inquiries within 20 business days).

Legislative and Public Records. Amends GS 120-130 to clarify that documents submitted to a legislator by another person or any supporting documents (was, any supporting documents) submitted to a legislative employee by a legislator in connection with drafting or information request are confidential and are not public records. States that a document that is a public record will continue to be treated as such, notwithstanding its inclusion as a supporting document to a drafting or information request. Makes technical changes to SL 2009-129, GS 120-130, and GS 120-131. Amends GS 120-131.1 to provide that a request, and any supporting documents, made to an agency employee by a legislative employee, as described, is confidential. Authorizes the agency employee receiving the request or learning of the request made to another agency employee to reveal the request only to other agency employees to the extent necessary to respond. Provides that all documents prepared by the agency employee in response to the request are confidential and must be kept confidential in the same manner as the original request. Declares that the request, any supporting documents, and any prepared documents are not public records. Requires that confidential requests and documents must bear an indication on the face of the request or document showing such. Makes a violation of the section subject to penalties under GS 120-134 (was, may be grounds for disciplinary action). Makes other technical and conforming changes. Amends GS 120-132 to clarify that, *except as provided*, no present or former legislative employee may disclose (was, be required to disclose) any information acquired, while employed or retained by the State, from any location of the state legislative buildings and grounds or other location, as provided under the current law. Provides that a present or former legislative employee may disclose information acquired under the section that would be reflected in the official public record or was otherwise publicly disseminated. Also provides that, subject to GS 120-9 (speech and debate clause), GS 120-133 (redistricting communications), and the common law of legislative privilege and immunity, a judge may compel disclosure of acquired information if, in the judge's opinion, disclosure is necessary to the proper administration of justice. Makes additional clarifying and technical changes. Amends GS 120-134 to clarify that a violation of the Article by a current legislative, executive, or judicial branch employee will be grounds for disciplinary action, and adds that a violation by a legislative employee who is a law student extern will be referred to the academic institution and the Legislative Services Commission may terminate the externship. Enacts new GS 120-135 to explain that a legislative employee hired by, supervised by, or assigned to a member will be treated as the member for legislative confidentiality purposes. Further amends GS 120-134, as amended by the act and effective December 1, 2010, to provide that any other person who willfully violates the Article will be guilty of a Class 3 misdemeanor, and that no *other* criminal penalty will attach. Effective October 1, 2010, unless otherwise noted.

Effective when the act becomes law, unless otherwise indicated.

July 1, 2010

S 716. 2010 ETHICS AND GOVERNMENT REFORM CHANGES. Filed 3/19/09. House committee substitute makes the following changes to 2nd edition.

Makes changes to the membership criteria of the ten-member Public Funding of Council of State Elections Commission.

Amends GS 150B-38(a) to provide that the provisions of GS Chapter 150B, Article 3A (Other Administrative Hearings) apply to the State Board of Elections in the administration of any investigation or audit under the provisions of Article 22A of GS Chapter 163.

Amends GS 120C-403 (regarding lobbyist principal's reports) to provide that a lobbyist principal that is an association or other organization is not required to report under GS 120C-403(b)(6) any individual member of the association or organization for which the lobbyist is directed to lobby by that lobbyist principal.

Amends GS 126-23, GS 115C-320, GS 115-D28, GS 122C-158(b), GS 153A-98(b), GS 160A-168(b), and GS 162A-6.1(b) to require each affected entity to maintain employee records that also include a description of the reasons for each change in position or classification.

Makes additional clarifying and technical corrections and amends the title.

July 6, 2010

S 716. 2010 ETHICS AND GOVERNMENT REFORM CHANGES. Filed 3/19/09. House amendments make the following changes to 3rd edition.

Amendment #1 amends proposed GS 120C-502(a) to clarify that each employee of a governmental unit whose principal duties, in practice or by description, include lobbying *for legislative action*, must register and file reports as indicated. Makes a clarifying change to proposed GS 138A-22(d1) (detailing circumstances for filing statement of economic interest). Amends GS 138A-24(a) (contents for statements of economic interest) to require that each statement include a list of all contributions, as defined, with a cumulative total of more than \$1,000 (was, \$1,000 or more) during the preceding calendar year by the filing person, as detailed; also requires a list of contributions resulting from fundraising with a cumulative total of more than \$1,000 (was, \$1,000 or more) during the preceding calendar year by the filing person, as detailed. Adds new section, amending GS 138A-12(c)(3), to allow the State Ethics Commission to make its decision on complaints within a period of time no less than five (was, seven) business days. Adds new section, directing that \$181,061 in recurring funds and \$217,850 in nonrecurring funds will be used for specified positions and operating expenses for programs and activities related to statements of economic interest and online education. Makes additional clarifying changes.

Amendment #2 amends GS 120C-304 to remove the one-year waiting period for certain lobbyist registrations, as previously amended, and revert to the original six months period. Makes a conforming change to GS 120C-200, and makes additional conforming change.

Amendment #3 adds new subsection (e) to GS 132-9 (access to public records) to prohibit a court from assessing attorneys' fees against a public hospital if the court finds that the action was brought by or on behalf of a competing health care provider for obtaining information to be used to gain a competitive advantage.

Amendment #4 amends the following statutes to provide that (1) the date and general description of the reasons for each promotion, and (2) the date and category of position classification change due to a criminal conviction in each of the listed categories (was, date, type and description of classification change regardless of reason for change), will be subject to inspection: GS 126-23 (state employee personnel records); GS 115C-320 (local boards of education); GS 115D-28 (community college employee personnel records); GS 122C-158(b) (employees under the Mental Health, Developmental Disabilities, and Substance Abuse Act); GS 153A-98(b) (county employees); GS 160A-168(b) (city employees); and GS 162A-6.1(b) (water and sewer authority employees).