

## 2010 ETHICS AND LOBBYING LEGISLATION

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In response to ongoing public concerns and media attention about the perceived influence of special interests in state government, the General Assembly enacted The Government Ethics and Campaign Reform Act of 2010 (S.L. 2010-169, HB961) to strengthen the requirements of laws governing the conduct of certain state officials and employees and those who seek to influence them. The Act also strengthened campaign finance laws, added new prohibitions against political coercion by certain government officials, and expanded the information in government employee personnel files that is considered public information.<sup>1</sup>

This summary covers the *major* changes to the state's ethics and lobbying laws enacted by the General Assembly during the 2010 Short Session. *Persons are covered under the State Government Ethics Act should consult with the State Ethics Commission to learn more about specific changes in the law that directly impact them, such as new Statement of Economic Interest disclosure requirements and changes in the ethics complaint process. Lobbyists, lobbyist principals, and liaison personnel should consult with the Secretary of State's Office to learn more about the expanded expenditure reporting requirements.*

### STATE GOVERNMENT ETHICS ACT (G.S. Chapter 138A)

#### GUBERNATORIAL ETHICS STANDARDS

*Appointees* – The Governor now has clear statutory authority to adopt additional ethics standards for gubernatorial appointees to boards and commissions. This authority extends to gubernatorial appointees on boards created by statute or executive order regardless of whether the board is covered by the State Government Ethics Act.

*State Employees* – The Governor was also granted statutory authority to adopt minimum ethics standards for any employee of a State agency. These standards can apply to state employees who are also covered under the State Government Ethics Act. *Both provisions are effective upon enactment.*

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<sup>1</sup> This summary does not address changes to campaign finance laws.

## **EXPANDED COVERAGE OF CERTAIN EXECUTIVE BRANCH OFFICIALS**

More individuals in the Executive Branch are now specifically covered under the State Government Ethics Act, including the executive director and assistant executive director of the State Ethics Commission, members of the Governor's Crime Commission, the director of the Office of State Personnel, the State Controller, a number of individuals in the Office of Technology Services, the director of the State Museum of Art, the executive director of the Agency for Public Telecommunications, the Commissioner of Motor Vehicles, the Commissioner of Banks and the chief deputy commissioners of the Banking Commission, the executive director of the N.C. Housing Finance Agency, and several individuals in the N.C. Turnpike Authority. *Effective upon enactment.*

## **GIFTS**

*Campaign Contributions* – Now included among those items exempted from the definition of a “gift” (and thus not subject to the gift ban) is “anything of value” properly reported under Article 22A of G.S. Chapter 163 (Regulating Contributions & Expenditures in Political Campaigns); these items are not required to be reported under the lobbying law reporting requirements. Previously, only lawful campaign contributions were exempted under this category.<sup>2</sup> *Effective upon preclearance by the U.S. Department of Justice.*

*Indirect Gift Ban* - The gift ban applies to certain gifts given both directly *and indirectly*. The indirect gift ban now applies regardless of whether the prohibited recipient was *the* intended recipient and regardless of the number of recipients who are covered by the State Government Ethics Act. *Effective December 1, 2010.*

## **ECONOMIC INTEREST DISCLOSURES**

A number of additional items are now included among the economic interest disclosure requirements for those who are covered under the State Government Ethics Act, including expanded reporting of business dealings and political campaign contributions. *Effective January 2, 2011.*

In addition, elected officials covered under the State Government Ethics Act are now required to file statements of economic interest in the year *after* the official resigns or does not file a notice of candidacy. *Effective upon enactment.*

## **ENFORCEMENT**

The State Ethics Commission is generally responsible for enforcing the State Government Ethics Act, including investigating complaints alleging violations of the Act. A number of changes were made to the Commission's investigation process including shortened time frames for notice, initiating an inquiry, receiving additional information, and concluding preliminary inquiries. *Effective upon enactment.*

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<sup>2</sup> This provision was included in S.L. 2010-170, Sec. 15 (HB748).

## LOBBYING (G.S. Chapter 120C)

### LOCAL GOVERNMENT EMPLOYEE “LOBBYISTS”

Local government employees and officials are generally exempt from the requirements of the state’s lobbying laws. However, a local government employee whose *principal* job duties – either in practice or as set out in his or her job description – include lobbying members of the General Assembly and/or legislative staff are now subject to certain requirements and restrictions. These employees are referred to as “local government liaison equivalents.” The new requirements apply to employees of all political subdivisions of the State, and any other entity or organization created by a political subdivision of the State (“governmental unit”), which includes counties, municipalities, and local boards of education. The governmental unit itself is *not* subject to the new requirements (it is not considered a “lobbyist principal”) even if it employs a local government liaison.

Local government liaisons are required to:

- Register with the Secretary of State’s Office,
- Report expenses related to lobbying state legislators and/or legislative employees, and
- Comply with the prohibition against giving gifts to legislators and/or legislative employees (the “gift ban”).

*Registration* – While local government liaisons are required to register with the Secretary of State’s Office, they are *not* required to pay the registration fee normally charged lobbyists. The local government for whom the liaison lobbies is *not* required to pay the lobbyist principal registration fee. For purposes of the lobbyist registry maintained by the Secretary of State, local government liaisons will be treated as “liaison personnel.”

*Expense reporting* – Local government liaisons are required to file quarterly reports with the Secretary of State’s Office detailing all reportable expenditures related to lobbying legislators and/or legislative employees. If lobbying expenditures are incurred while the General Assembly is in session, additional reports detailing these expenditures must be filed on a monthly basis. The local government for whom the liaison lobbies is *not* required to file lobbying expenditure reports.

*Gift Ban* – Finally, local government liaisons are prohibited from giving a gift directly or indirectly to a legislator or legislative employee (the exceptions to this gift ban applicable to lobbyists and lobbyist principals are also applicable to local government liaison equivalents). This prohibition does *not* apply to gifts from the local government itself or any individual local government official or non-liaison local government employee. *All provisions are effective January 1, 2011.*

### **“COOLING OFF” PERIOD**

Currently, Cabinet Secretaries are prohibited from registering as a lobbyist for six months after leaving employment with the State. This six-month “cooling off” period is now expanded to apply to all state employees, but only for lobbying the State agency that formerly employed them. If a former State employee registers as a lobbyist within the 6 month “cooling off” period, he or she must indicate the State agency that formerly employed him or her. *Effective October 1, 2010.*

### **LOBBYIST PRINCIPAL REPORTS**

Lobbyist principals are required to report expenditures made for lobbying. These reporting requirements are now expanded to include certain communications and activities (research, drafting, monitoring legislative or executive action, advising and rendering opinions to a lobbyist principal as to the construction and effect of proposed legislative or executive action) that are related to lobbying. In addition, lobbyist principals must now report any non-lobbyist principals on whose behalf the lobbyist principal directs the lobbyist to lobby (this requirement does not apply to associations whose lobbyists are directed to lobby on behalf of individual members of the association.) *Effective January 1, 2011.*

## **POLITICAL COERCION AND PUBLIC EMPLOYEE PERSONNEL INFORMATION**

The Government Ethics and Campaign Reform Act of 2010 also included changes in the law intended to strengthen prohibitions against coercion by certain government officials and to expand the information in government employee personnel files that is considered public information.

### **POLITICAL COERCION**

*Coercion by Constitutional Officers (G.S. 126-14)* – Current law protects state employees from being threatened or coerced to support or contribute to a political campaign. This protection was expanded to now make it unlawful for Constitutional officers (Governor, Lieutenant Governor and Council of State) to coerce “interested persons” to support or contribute to a candidate or political party by threatening discipline or promising preferential treatment. Interested persons are persons doing or seeking to do business with the State agency; are regulated or controlled by the State agency; or have a financial interest that may be substantially or materially affected by the agency’s actions. Violations of this prohibition are punishable as a Class 2 misdemeanor. *Effective December 1, 2010, and applies to offenses committed on or after that date.*

*Public Contracting (G.S. 14-234)* – Current law prohibits a public officer or employee who is involved in making or administering a contract from soliciting or receiving any gift or favor in exchange for recommending, influencing, or attempting to influence the

award of a public contract by the agency that the public official or employee serves. This prohibition was expanded to now prohibit the solicitation or receipt of a service or a reward that includes a promise of future employment. Violations of this prohibition are punishable as a Class 1 misdemeanor.

*Effective December 1, 2010, and applies to offenses committed on or after that date.*

*Bribery (G.S. 14-217)* – The current prohibition against bribery by a public office holder was expanded to now include persons who have filed a notice of candidacy for or who have been nominated for public office (was previously applicable only to office holders). In addition, political campaign contributions are now specifically considered a “thing of value” for purposes of the prohibition against bribery. Violations of this prohibition are punishable as a Class F felony.

*Effective December 1, 2010, and applies to offenses committed on or after that date.*

### **PUBLIC EMPLOYEE PERSONNEL RECORDS**

Information in public employees’ personnel files that is considered public information is now expanded to include more historical information about the employment history of an employee. The information that is now considered public information is:

- *each* (was only most recent) increase or decrease in salary,
- *each* (was only most recent) promotion, demotion, transfer, suspension, separation or other change in position classification,
- the date and general description of the reasons for *each* promotion, and
- the date and type of *each* dismissal, suspension, or demotion for disciplinary reasons.

This change is applicable to the personnel files of state employees (G.S. 126-23) and employees of local boards of education (G.S. 115C-320), community colleges (G.S. 115D-28), area mental health, developmental disabilities, and substance abuse authorities (G.S. 122C-158), counties (G.S. 153A-98), municipalities (G.S. 160A-168), and water and sewer authorities (G.S. 162A-6.1). While a government agency or unit of government is obligated to maintain information about any personnel actions it has taken directly and disclose this information if requested, it is not obligated to obtain or maintain historical personnel information from other government agencies or units with which an employee previously worked. *Effective October 1, 2010.*

For more information on public employee personnel records changes and other public records law changes, see Frayda Bluestein’s Coates’ Canons NC Local Government Law Blog post “Personnel Privacy Law Changes” (July 14, 2010), which is available on the School of Government website at <http://sogweb.sog.unc.edu/blogs/localgovt/?p=2798>.