

North Carolina's New Ethics And Lobbying Laws

January 1, 2007

After two years of work, the General Assembly in 2006 made significant changes to North Carolina's ethics and lobbying laws (H1843, 2006 N.C. Sess. Laws 201). The changes will impact many businesses, trade associations, attorneys and lobbyists, and most were effective on January 1, 2007. It should be noted that there are a number of unanswered questions about the practical application of the new laws. Some of these questions will likely be addressed in rules to be issued by the Secretary of State's office and by interpretations from the new State Ethics Commission.

I. Overview

Here are some of the key changes:

- The State lobbying laws are amended to cover executive branch lobbying for the first time, to restrict lobbyists' campaign contributions, gift giving, and service on regulatory boards, and to change reporting of activity by lobbyists;
- Ethical standards, as well as permitted and prohibited practices for elected and appointed officials and certain State employees, are outlined;
- The Statement of Economic Interest that must be filed with the new State Ethics Commission ("Ethics Commission") by elected and appointed officials and certain State employees must provide additional details about certain assets, board memberships and business relationships, and the penalties for lack of disclosure are increased; and,
- A new Ethics Commission replaces the State Board of Ethics and will oversee the administration of State ethics laws applicable to elected and appointed officials and certain State employees.

II. Lobbying (GS 120C-100 to -800)

The new laws change the State's lobbying laws in important ways and an understanding of certain key terms and concepts is necessary in order for companies, associations and individuals to comply with them.

What is "Lobbying"?

The law defines "lobbying" to include both:

- Influencing or attempting to influence legislative or executive action (both terms are broadly defined) through "direct communication or activities" (sometimes called "traditional lobbying"), and

- Developing goodwill through communications or activities, including the building of relationships with the intention of influencing current or future legislative or executive action, or both, (sometimes called “goodwill lobbying”)

with a “designated individual” [a legislator, legislative employee or “public servant” (members of the Council of State and Cabinet, voting members of boards, and certain State employees)], or a member of their immediate family (includes spouse and unemancipated children, or extended family living in the household). “Lobbying” does not include communications or activities that occur as part of a relationship (business, civic, religious, fraternal, personal or commercial) which is not connected to such action.

Who is a “Lobbyist”?

A “lobbyist” is an individual who engages in “lobbying” and is employed or engaged to lobby, who receives compensation to lobby even if not paid by the person or entity he represents, who contracts for economic consideration to lobby, or who is employed by a person or entity and a “significant part” of the employee’s duties include lobbying. An “employee” is not a lobbyist if less than 5% of that employee’s actual duties in any 30-day period include engaging in the traditional lobbying referenced above. The law lists a number of activities that do not make a person a “lobbyist,” including expressing a personal opinion or stating facts or recommendations on legislative or executive action to a “designated individual” and appearing before a committee, commission, board, council or other collective body whose membership includes “designated individuals” by invitation of the body or a member of the body.

Who are “Solicitors”?

The new law creates a new group of persons that are subject to the lobbying laws. These persons—“solicitors”—use delineated methods (broadcast, cable, or satellite transmission, print, telephone, mail, e-mail, a communication at a meeting) to solicit members of the public to communicate directly with or contact “designated individuals” to influence or attempt to influence legislative or executive action to further the solicitor’s position on that action. These “solicitors” must register with the Secretary of State when the total expenses for solicitation of others exceeds \$3,000 during any 90-day period.

What Registration is Required?

Lobbyists, principals, and solicitors (when they meet the \$3,000 threshold) must register with the Secretary of State’s office. Principals must file a written authorization for lobbyists, and lobbyists must file a separate registration statement for each principal. The registration fee for both lobbyists and principals is \$100. Solicitors do not have to pay a registration fee. The Secretary of State can reduce or waive registration fees for nonprofit entities.

What Reporting is Required?

The law requires reporting of all “reportable expenditures” (anything of value over \$10 or a contract, agreement, or promise) made for the purpose of lobbying. Reports must be filed by lobbyists, their principals and solicitors whether or not such expenditures are made. Reports for lobbyists, their principals and solicitors must be made under oath and filed quarterly. In addition, monthly reports are required to be filed by lobbyists and their principals when they make reportable expenditures related to lobbying legislators and legislative employees when the General Assembly is in session.

Some Dos and Don'ts in Lobbying

- Lobbyists cannot make campaign contributions to legislative or Council of State candidates nor collect such contributions from multiple contributors, take possession of those multiple contributions, or transfer and deliver them to such candidates (“bundling”).
- There is a minimum six-month “cooling off” period for any legislator, Council of State member, or Cabinet Secretary after leaving office before that person can become a lobbyist.
- No lobbyist can serve as a campaign treasurer or assistant campaign treasurer for a campaign committee for a candidate for the General Assembly or Council of State.
- It is unlawful to attempt to influence the action of a “designated individual” by the promise of financial support of his or her candidacy or the threat to provide financial support to his or her opposition.

What are the Consequences for Violation of the Lobbying Laws?

Penalties for violations include imposition of civil fines by the Secretary of State and Ethics Commission, voiding of a lobbyist’s registration, a two-year ban on lobbying and referral of the matter to the Wake County District Attorney for prosecution if appropriate. Violations of a number of the law’s requirements related to registration, campaign contributions and gifts are a Class 1 misdemeanor.

III. Ethical Standards for “Covered Persons” (GS 138A-31 to -41 and -45)

The new law contains an extensive listing of “dos” and “don’ts” for “covered persons,” which includes legislators, “public servants” (Council of State, Cabinet, voting members of State boards and certain State employees), and “judicial officer(s)” (justices, judges, district attorneys, clerks of court). A fundamental principle is that covered persons and legislative employees cannot knowingly use their public position to benefit them, their family or a business with which they are associated. This includes, directly or indirectly, accepting or soliciting “anything of value” for them, or another person, in return for being influenced in the discharge of their official duties. Penalties for violation include removal from office or

termination from employment.

The new law bans (with a few enumerated exceptions) a “gift” (defined as “anything of monetary value given or received without valuable consideration”) from lobbyists and their principals (the person on whose behalf they are lobbying) to “public servants,” legislators and legislative employees. It also bans a “gift” to “public servants” from persons doing business or seeking to do business with the State entity employing the recipient, persons engaging in activities regulated or controlled by that entity, or persons having a financial interest that may be substantially and materially affected by the recipient’s official actions.

“Public servants” are prohibited (with a few enumerated exceptions) from participating in “official action” (broadly defined in the law) requiring the exercise of discretion if they, a member of their “extended family” (includes spouse, children, siblings, parents and similar relatives of a spouse) or a business they are associated with, has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration that would impair their independent judgment or the inference could be drawn that the interest or benefit would influence their official action.

IV. Statement of Economic Interest (GS 138A-21 to - 27)

“Covered person(s)” [defined to include legislators, “public servants” (includes Council of State, Cabinet, voting members of State boards and certain State employees) and “judicial officer(s)” (justices, judges, district attorneys, clerks of court)] must file a Statement of Economic Interest detailing certain assets, income sources, board memberships, business relationships and other personal information. The law’s stated purpose for the disclosure is to assist covered persons and those that appoint, elect, hire, supervise or advise them to identify and avoid conflicts of interest and potential conflicts of interest between the person’s private interest and public duties. Much of the information required by the law is similar to that required by a Governor’s Executive Order that was first issued in the late 1970s.

Generally, these statements must be filed before a person’s initial appointment, election or employment. Failure to file can result in the person not taking office or employment. Failure to file can also lead to fines or criminal penalties for knowingly concealing or failing to disclose required information.

V. State Ethics Commission (GS 138A-6 to - 15)

Effective October 1, 2006, a new Ethics Commission replaced the State Board of Ethics. The Ethics Commission has eight members, four appointed each by the Governor and the General Assembly with membership split evenly between the two political parties.

The Ethics Commission's powers and duties include receiving and reviewing Statements of Economic Interest filed by elected and appointed officials and certain State employees, receiving and investigating complaints, rendering advisory opinions about ethics laws, and implementing a mandatory ethics education program for elected and appointed officials (including voting members of State boards) and certain State employees.

CONCLUSION

Changes in the State's ethics and lobbying laws can impact businesses, trade associations and individuals in unexpected ways. By enacting these laws, State lawmakers have increased both oversight and disclosure of interactions with public officials and employees. Failure to comply can result in significant penalties, including fines and criminal prosecution. Therefore, it is important to understand and comply with these laws.

If you have questions regarding this *Legal Topics* bulletin, please contact Ed Turlington.