

March 27, 2007

H 1111. CLARIFY STATE GOVERNMENT ETHICS ACT (=S 1228). Filed 3/27/07. *TO MAKE CLARIFYING CHANGES TO THE STATE GOVERNMENT ETHICS ACT.*

Identical to S 1228, filed 3/21/07.

Intro. by Howard.

GS 138A

May 17, 2007

H 1111. CLARIFY STATE GOVERNMENT ETHICS ACT. Filed 3/27/07. House committee substitute makes the following changes to 1st edition. Changes the title to *AN ACT TO MAKE CLARIFYING CHANGES TO THE STATE GOVERNMENT ETHICS ACT BY ADDING LIAISON PERSONNEL TO THE DEFINITION OF GIFT; BY CLARIFYING THAT GIFTS FROM EXTENDED FAMILY MEMBERS DO NOT NEED TO BE REPORTED UNDER THE LOBBYING LAW; AND BY CLARIFYING THAT BENEFITS TO NONPROFITS WITH WHICH ASSOCIATED AS MEMBERS OF A GENERAL CLASS ARE NOT PROHIBITED AS A CONFLICT OF INTEREST, AS RECOMMENDED BY THE HOUSE COMMITTEE ON ETHICS.*

July 31, 2007

H 1111. CLARIFY STATE GOVERNMENT ETHICS ACT. Filed 3/27/07. Senate committee substitute makes the following changes to 2nd edition. Amends GS 120C-101 to require the Secretary of State (SOS) to adopt only the forms necessary to carry out lobbying laws and requires the State Ethics Commission (SEC) (was, SOS) to adopt rules to carry out the lobbying laws and concerning confidentiality. Amends GS 120C-201(b), GS 120C-207(b), and GS 120C-401(h) to require the SEC (was, SOS) to adopt rules concerning other provisions of the lobbying law.

Amends GS 120-102(5) to allow the Legislative Ethics Committee (LEC) to prepare advisory memos to legislators and legislative employees on specific ethical concerns. Amends GS 120-103.1 to expand LEC's jurisdiction to investigations into the application or alleged violation of the entire Legislative Ethics Act and Article 14 of GS Chapter 120 (was, Part 1 of Article 14). Amends GS 120-103.1(h) to require a determination by LEC that probable cause exists to proceed with further investigation into a legislator's conduct.

Amends GS 120-103.1(i)(3) and GS 138A-12(i)(4) to make ethics complaints hearings of the LEC and the SEC open to the public except for issues involving minors, personnel records, or matters that can otherwise take place in closed session under GS 143-318.11 (closed sessions for meetings of public bodies). Amends GS 120-103.1(1) and GS 138A-12(n) to provide that once a hearing commences before the LEC or SEC, the complaint, response, respective reports, and hearing documents that are not privileged or confidential are public record; if no hearing is held the information becomes public when the LEC recommends sanctions or when the SEC reports to the employing entity. Amends GS 120-104(f) to require the LEC to redact opinions before submitting the opinions for publishing to the SEC. Allows LEC to distribute the redacted advisory opinion to legislators before publication. Amends GS 120-104 and GS 120C-102 to allow requests for advisory opinions to be withdrawn by the person making the request at any time before an advisory opinion has been issued.

Amends 120C-100(a)(6) to exclude from the definition of *legislative employee* non-supervisory employees of the Administrative Division's Facility Maintenance and Food Services staff. Amends GS 120C-100(a)(10) to remove from the definition of *lobbyist* the requirement that the individual be employed for the intended purpose of lobbying. Also excludes from the definition any person for which less than 5% of that employee's duties in any 30-day period include engaging in lobbying to develop goodwill.

Amends GS 120C-102 to provide that good faith reliance on a requested written advisory opinion provides immunity for designated individuals from investigation by the SOS. Requires the SEC to forward an unedited copy of each advisory opinion to the SOS at the time the opinion is issued to the requestor, and requires the unedited version to be treated confidentially.

Amends GS 120C-215 to define *incur* for the purpose of determining when a person is required to register as a lobbyist as the point at which a binding obligation arises. Effective December 1, 2007, amends GS 120C-303 to clarify that a lobbyist or lobbyist's principal may not

knowingly give a gift to a designated individual and prohibits knowingly giving a gift to a third party with the intent that a designated individual be the ultimate recipient. Also provides that gifts given by a lobbyist or lobbyist principal to a state, regional, national, or international legislative or executive branch organization are not prohibited gifts. Effective December 1, 2007, amends GS 120C-304(a)(2) to clarify that a legislator cannot register as a lobbyist before the later of when the regular session in which the legislator served adjourns sine die or six months after leaving office.

Amends GS 120C-400 to exclude from the reporting requirements any reportable expenditure made to a state agency that maintains an accounting of the reportable expenditure that is a public record. Amends GS 120C-401 to provide that a gift given to a designated individual that is paid for or returned is not included in lobbying report and if it is reported before being paid for or returned, that must be reported on the next report due. Requires the SOS to provide a form on which a gift recipient can indicate that a gift was declined, returned, paid for, or donated. Amends GS 138A-32(g) to allow a permissible gift to be declined, promptly returned, paid for, or donated. Amends GS 120C-700 to make technical changes and to provide that individuals appointed as county or city attorneys are considered county or city employees for the purpose of exemption from lobbying laws.

Amends GS 120C-800(c) to limit the report of scholarships to those that are related to the recipient's public service or position. Amends GS 133-32(d) to allow gifts that are exceptions to the gift ban under the State Government Ethics Act.

Amends GS 138A-3 as follows: Defines a *blind trust*. Modifies the definition of *business with which associated* to include a business for which a covered person or a member of their immediate family is a registered lobbyist. Amends the definition of *gift* to include anything of monetary value given without consideration by or from liaison personnel and excludes specified expressions of condolences. Adds a definition of *permanent designee*. Amends the definition of *person* to exclude the state, a political subdivision of the state, a board, or any other entity created by the state or a political subdivision of the state. Amends the definition of *public event* for public servants to include an organized gathering where the entire board of which the public servant is a member is invited. Amends the definition of *public servant* to include permanent designees of a voting member of a board. Excludes blind trusts from the definition of *vested trust*.

Amends GS 138A-12 to clarify that the SEC must dismiss a complaint that is not within the SEC's jurisdiction. Also requires that when the SEC finds that an alleged violation has been established, the matter must be referred for appropriate action to the clerk of the house that elected the public servant for members of the State Board of Community Colleges. Also removes the reference to the appearance of conflicts of interest.

Amends GS 138A-13 to provide that an advisory opinion from the SEC immunizes a public servant, legislative employee, or legislator from investigations by the SOS but not from investigations into criminal conduct. Requires SEC to include a copy of the legislator's request for an opinion and the issued opinion to the chairs of the LEC. Requires only the formal SEC opinion to be published. Allows SEC staff to share with LEC staff information related to requests, and requires the information to be treated as confidential.

Amends GS 138A-22 change the filing date for the Statement of Economic Interest from March 15 to April 15. Also requires a public servant reappointed to a board between January 1 and April 15 to file a statement of economic interest before the reappointment. Amends GS 138A-24 to make changes to the following categories of information that must be included on a statement of economic interest: mailing address, publicly owned companies, indebtedness, stock options, income, a public servant's listing of organizations and advocacy groups of which the individual is a director, officer, or governing board member, items of monetary value over \$200, felonies, nonprofit membership, and family members acting as registered lobbyists.

Amends GS 138A-32 to prohibit a public servant, legislator, or legislative employee from accepting a gift from a third party knowing that the gift was obtained by the third party from a registered lobbyist or principal with the intent that the gift be given to a public servant, legislator, or legislative employee. Also prohibits a public servant from accepting a gift from a third party given by a person with a specified type of relationship with the public servant or their employer. Makes conforming changes.

Amends GS 138A-32(e) as follows. Amends the meeting gift ban exception to allow gifts to a speaker at a meeting only if the person is a bona fide speaker or a member of a panel at a

meeting of 10 or more. Exempts from the gift ban gifts made available to the general public by persons doing business with executive branch agencies or boards. Clarifies the conditions that must be met for an exception for gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship. Also exempts food and beverages for immediate consumption and related transportation that meet specified conditions. Makes conforming changes to the lobbyist and lobbyist principal reporting requirements in GS 120C-403 and GS 120C-402 and amends GS 120C-402(b)(4) to provide that only gifts exceeding \$10 per day, per person have to be reported.

Enacts new GS 138A-36(e) to clarify that the criminal statutes prohibiting self-dealing by public servants still apply. Amends GS 138A-38(a) to clarify that a covered person may participate in an action in which the interest or foreseeable benefit to a nonprofit with which the covered person is associated is no greater than that which could be foreseen to accrue to all members. Amends GS 160A-480.3 to treat an authority created under facility authorities as a board under GS Chapter 138A.

Effective October 1, 2007. Provides that any rules adopted by the SOS under GS 120C-101, GS 120C-201(b), GS 120C-207(b), or GS 120C-401(h) that become effective before the act's October 1, 2007, effective date are repealed as of the effective date of a final rule replacing the rules adopted by the SOS.

July 31, 2007

H 1111. CLARIFY STATE GOVERNMENT ETHICS ACT. Filed 3/27/07. Senate amendment makes the following changes to 3rd edition. Modifies proposed GS 120C-303(d) and (e) to provide that gifts made to a *nonpartisan* state, regional, national, or international organization of which the General Assembly, a legislator, or legislative employee is a member do not violate the provisions of GS 120C-303(a)(2) or of GS 138A-32(c)(2). Enacts new GS 120C-401(k) to require any lobbyist or lobbyist principal making a gift under proposed GS 120C-303(d) or (e) to file a monthly expenditure report in the month of a reportable expenditure and include the monthly report in the quarterly report required under GS 120C-402 and GS 120C-403.

August 2, 2007

H 1111. CLARIFY STATE GOVERNMENT ETHICS ACT. Filed 3/27/07. Conference report recommends the following changes to 4th edition to reconcile matters in controversy. Modifies proposed amendments to GS 120C-101 to require the State Ethics Commission (SEC) to adopt rules or definitions necessary to interpret the Chapter and to adopt any rules necessary to administer the Chapter except for Articles 2, 4, and 8. Requires the Secretary of State (SOS) to adopt any rules, orders, and forms necessary to administer the provisions of Articles 2, 4, and 8. Restores the provision allowing the SOS to appoint a council to advise the SOS in adopting rules. Makes a conforming deletion of amendments to GS 120C-201, GS 120C-207, and GS 120C-401. Enacts new GS 120C-101(d) providing that for the purposes of GS 150B-21.3(b2), a written objection filed by the SEC to rules adopted by the SOS must be deemed written objections from 10 or more persons and must not become effective until an act of the General Assembly approve the rule has become law. If a rule is not approved by adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule does not become effective and any temporary rule expires and if the General Assembly does not approve a rule by adjournment, the SOS may initiate rulemaking for a new permanent rule. Modifies GS 120C-102 to allow staff to the SEC to share all information related to requests for advisory opinions with staff at the SOS's office and requires the SOS staff to treat the information as confidential.

Modifies proposed GS 120C-303(d) and (e) to make technical and conforming changes. Modifies GS 120C-401 and GS 138A-32(g) to clarify that reportable expenditures and prohibited gifts are to be *promptly* declined, returned, paid for, or donated. Deletes proposed new GS 120C-401(k) requiring the monthly and quarterly reporting of gifts. Modifies GS 138A-3(1) to amend the definition of blind trust to require the trustee not be a member of the covered person's extended family (was, not a relative of the covered person or a member of the covered person's immediate family). Modifies GS 138A-3(29) to amend the definition of public event to clarify that it

includes an organized event to which the entire board of which the public servant is a member is invited. Modifies GS 138A-13 to reinstate the provision exempting judicial officers from the statute. Modifies GS 138A-32(e)(3) to provide that the statute applies to a legislator's or legislative employee's attendance at meetings of a *nonpartisan* state, regional, national, or international legislative organization.

Enacts new GS 138A-32(e)(12) to exclude food and beverage for immediate consumption at an organized gathering to which a public servant is invited to attend for purposes related to the public servant's public service or position, and at which at least 10 individuals actually attend, or to which all specified classes of individuals are invited to attend. Makes conforming changes to GS 120C-402(b)(4) and GS 120C-403(b)(5).

Deletes the proposed amendment to GS 138A-38(1). Makes technical changes to GS 120-102(5), GS 120C-100(a)(10)d., and GS 138A-24.

Changes the effective dates as follows: (1) changes to GS 120C-700, GS 138A-3(27), GS 138A-32(e)(6), GS 138A-32(e)(10), and GS 138A-32(e)(11) are effective January 1, 2007; (2) changes to GS 120C-101 are effective July 1, 2007; (3) changes to GS 120C-100(a)(10), GS 120C-215, GS 120C-401 and GS 138A-32(g), GS 138A-3(3), GS 138A-3, GS 138A-3(30)i., GS 138A-24, and GS 138A-36, are effective October 1, 2007; (4) changes to GS 133-32(d) are effective December 1, 2007; (5) changes to GS 138A-24 are effective January 1, 2008.

August 10, 2007

SL 2007-348 (H 1111). CLARIFY STATE GOVERNMENT ETHICS ACT. AN ACT TO MAKE CLARIFYING CHANGES TO THE STATE GOVERNMENT ETHICS ACT, THE LEGISLATIVE ETHICS ACT, AND THE LOBBYING LAWS. Summarized in *Daily Bulletin* 3/27/07, 5/17/07, 7/31/07, and 8/2/07. Enacted August 9, 2007. Sections 17, 23, 39, 40, and 41 are effective January 1, 2007. Section 9 is effective July 1, 2007. Sections 8, 11, 15, 20, 22, 25, 34, and 42 are effective October 1, 2007. Section 18 is effective December 1, 2007. Section 34 is effective January 1, 2008. The remainder is effective August 9, 2007.