

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 612*

Short Title: Amend Lobbying Laws.

(Public)

Sponsors: Senators Rand; Kinnaird and Thomas.

Referred to: Judiciary I.

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE
3 INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES
4 AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING
5 ACTIVITIES OF EXECUTIVE BRANCH AGENCIES AND EMPLOYEES, AND
6 TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Article 9A of Chapter 120 of the General Statutes reads as
9 rewritten:

10 "Article 9A.

11 "Lobbying.

12 **"§ 120-47.1. Definitions.**

13 For the purposes of this Article, the following terms shall have the meanings
14 ascribed to them in this section unless the context clearly indicates a different meaning:

15 (1) The terms "contribution," "compensation" and "expenditure" mean any
16 advance, conveyance, deposit, payment, gift, retainer, fee, salary,
17 honorarium, reimbursement, loan, pledge or anything of value and any
18 contract, agreement, promise or other obligation whether or not legally
19 enforceable, ~~but those terms do not include prizes, awards, or~~
20 ~~compensation not exceeding one hundred dollars (\$100.00) in a~~
21 ~~calendar year enforceable.~~

22 (1a) The term "executive action" means the preparation, research, drafting,
23 introduction, consideration, modification, amendment, approval,
24 passage, adoption, tabling, postponement, defeat, or rejection of a rule,
25 regulation, executive order, policy, resolution, contract, request for
26 proposal, amendment, motion, report, nomination, or appointment by
27 the executive branch or by a member or employee of the executive
28 branch acting or purporting to act in an official capacity. This term

1 shall not include any action by an attorney in connection with litigation
2 involving a State official or State agency.

3 (1b) The term "executive lobbyist" means any lobbyist for or against
4 executive action.

5 (2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

6 (4) The term "legislative action" means the preparation, research, drafting,
7 introduction, consideration, modification, amendment, approval,
8 passage, enactment, tabling, postponement, defeat, or rejection of a
9 bill, resolution, amendment, motion, report, nomination, appointment,
10 or other matter by the legislature or by a member or employee of the
11 legislature acting or purporting to act in an official capacity. It also
12 includes the consideration of any bill by the Governor for the
13 Governor's approval or veto.

14 (4a) The term "legislative liaison personnel" means any State officer or
15 employee whose principal duties in practice or as set forth in that
16 person's job description involve lobbying the General Assembly.

17 (4b) The term "legislative lobbyist" means any lobbyist for or against
18 legislative action.

19 (5) The term "lobbying" ~~means:~~means any of the following:

20 a. Influencing or attempting to influence legislative action through
21 direct oral or written communication with a member of the
22 General Assembly; or Assembly, or the staff or an employee of
23 the General Assembly.

24 a1. Influencing or attempting to influence executive action through
25 direct oral or written communication with an officer or
26 employee of the executive branch authorized to take such
27 action, including members of boards, commissions, councils, or
28 other collective bodies.

29 b. Solicitation of others by lobbyists to influence legislative or
30 executive action.

31 (6) The term "lobbyist" means an individual who:

32 a. Is employed and receives compensation, or who contracts for
33 economic consideration, for the purpose of lobbying; or

34 b. Represents another person and receives compensation for the
35 purpose of lobbying.

36 The term "lobbyist" shall not include those individuals who are
37 specifically exempted from this Article by G.S. 120-47.8. For the
38 purpose of determining whether an individual is a lobbyist under this
39 subdivision, reimbursement of actual travel and subsistence expenses
40 shall not be considered compensation; provided, however, that
41 reimbursement in the ordinary course of business of these expenses
42 shall be considered compensation if a significant part of the
43 individual's duties involve lobbying before the Executive Branch or

1 the General Assembly. The term "lobbyist" includes both executive
2 lobbyist and legislative lobbyist.

3 (7) The terms "lobbyist's principal" and "principal" mean the entity in
4 whose behalf the lobbyist influences or attempts to influence executive
5 or legislative action.

6 (8) The term "person" means any individual, firm, partnership, committee,
7 association, corporation, or any other organization or group of persons.

8 (9) The General Assembly is in "regular session" from the date set by law
9 or resolution that the General Assembly convenes until the General
10 Assembly either:

11 a. Adjourns sine die; or

12 b. Recesses or adjourns for more than 10 days.

13 **"§ 120-47.2. Registration procedure.**

14 (a) A lobbyist shall file a registration statement with the Secretary of ~~State~~ State,
15 in a manner prescribed by the Secretary of State including electronically, before
16 engaging in any lobbying. A separate registration statement is required for each
17 lobbyist's principal. The registration shall indicate whether it is for executive action,
18 legislative action, or both.

19 (b) The form of the registration shall be prescribed by the Secretary of State and
20 shall include the registrant's full name, firm, and complete address; the registrant's place
21 of business; the full name and complete address of each person by whom the registrant
22 is employed or retained; and a general description of the matters on which the registrant
23 expects to act as a lobbyist.

24 (c) Each lobbyist shall register again with the Secretary of State no later than 10
25 days after any change in the information supplied in his last registration under
26 subsection (b). Each supplementary registration shall include a complete statement of
27 the information that has changed.

28 (d) Within 20 days after the convening of each session of the General Assembly,
29 the Secretary of State shall furnish each member of the General Assembly and the State
30 Legislative Library a list of all persons who have registered as executive or legislative
31 lobbyists and whom they represent. Within 20 days after the beginning of the term of a
32 Governor, the Secretary of State shall furnish the Governor, each other member of the
33 Council of State, and the head of each principal department of the Executive Branch,
34 and the State Legislative Library a list of all persons who have registered as executive
35 or legislative lobbyists and whom they represent. A supplemental list of legislative
36 lobbyists shall be furnished periodically each 20 days thereafter as the session
37 progresses. A supplemental list of executive lobbyists shall be furnished periodically
38 each 60 days thereafter.

39 (e) Each registration statement of a legislative lobbyist required under this
40 Article shall be effective from the date of filing until January 1 of the following
41 odd-numbered year. The lobbyist shall file a new registration statement after that date,
42 and the applicable fee shall be due and payable.

43 (f) Each registration statement of an executive lobbyist required under this
44 Article shall be effective from the date of filing until January 1 of the following

1 odd-numbered year when the term of the Governor commences. The lobbyist shall file a
2 new registration statement after that date, and the applicable fee shall be due and
3 payable.

4 **"§ 120-47.3. Registration fee.**

5 (a) Every lobbyist's principal shall pay to the Secretary of State a fee of two
6 hundred dollars (\$200.00) that is due and payable by either the lobbyist or the lobbyist's
7 principal at the time of registration.

8 (b) A separate registration, together with a separate registration fee of two
9 hundred dollars (\$200.00) is required for each lobbyist's principal for which a person
10 acts as a lobbyist. Fees so collected shall be deposited in the General Fund of the State.

11 (c) A separate registration and fee is required for each of legislative and
12 executive branch lobbying.

13 (d) The Secretary of State may prescribe that fees required under this section be
14 paid electronically.

15 **"§ 120-47.4. Written authority from lobbyist's principal to be filed.**

16 Each lobbyist shall file with the Secretary of State within 10 days after his
17 registration a written authorization to act as such, signed by the lobbyist's principal.

18 **"§ 120-47.4A. Certain expenditures prohibited.**

19 It shall be a violation under this Article for any lobbyist or lobbyist principal to give
20 or pay for any of the following to any legislator, a member of the legislator's immediate
21 family, legislative staff person, legislative employee, or any other person elected or
22 appointed a legislator prior to taking office:

23 (1) Gifts in excess of twenty-five dollars (\$25.00) in value.

24 (2) Gifts valued twenty-five dollars (\$25.00) or less, unless the same types
25 of gifts are given to every member of the General Assembly.

26 (3) Meals.

27 (4) Transportation expenses except actual reasonable expenses permitted
28 under subdivision (5) of this section.

29 (5) Tickets, fees, or expenses for or to any sporting, recreational, or
30 entertainment events.

31 (6) Speaking fees or honoraria except for reimbursement of actual
32 reasonable travel expenses incurred in connection with the speech.

33 (7) Loans, other than commercially available loans made on terms not
34 more favorable than generally available to the public in the normal
35 course of business.

36 (8) Contributions, other than lawful campaign contributions.

37 **"§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

38 (a) No person shall act as a lobbyist for compensation which is dependent in any
39 manner upon the passage or defeat of any proposed legislation or upon any other
40 contingency connected with any action of the General Assembly, the House, the Senate
41 or any committee thereof.

42 (b) No person shall attempt to influence the action of any member of the General
43 Assembly by the promise of financial support of the member's candidacy, or by threat of
44 financial contribution in opposition to the member's candidacy in any future election.

1 (c) No person shall act as a lobbyist for compensation that is dependent in any
2 manner upon any executive action.

3 (d) No person shall attempt to influence the action of the Governor or any other
4 member of the Council of State by the promise of financial support of the member's
5 candidacy, or by threat of financial contribution in opposition to the member's
6 candidacy in any future election.

7 **"§ 120-47.6. Statements of lobbyist's lobbying expenses required.**

8 (a) Each legislative lobbyist shall file an expense report under oath with the
9 Secretary of State~~State~~, in a manner prescribed by the Secretary of State including
10 electronically, with respect to each principal within 60 days after the last day of ~~the each~~
11 annual regular session. This expense report shall include all expenditures made between
12 January 1 and the last day of ~~the each annual~~ regular session. The lobbyist shall file a
13 supplemental report including all expenditures made after the last day of ~~the each~~
14 annual regular session, but during the calendar year, by February 28 of the following
15 year. The lobbyist shall file both expense reports whether or not expenditures are made.

16 (a1) Each executive lobbyist shall file semiannual expense reports with the
17 Secretary of State with respect to each principal within 45 days after the end of the
18 reporting periods ending on June 30 and December 31 of each year. The expense report
19 shall include all expenditures during the prior six-month reporting period. The lobbyist
20 shall file an expense report whether or not expenditures are made.

21 (b) Each expense report shall set forth the date of each expenditure, to whom
22 paid, the name of any legislator or executive branch official who benefitted from each
23 expenditure, and the amount of each expenditure made during the previous reporting
24 period in connection with lobbying, in each of the following categories: (1)
25 transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash
26 equivalent value of ~~more than twenty five dollars (\$25.00)~~ and (6) contributions made,
27 paid, incurred or promised, directly or indirectly. ~~It shall not be necessary to report~~
28 ~~expenditures of twenty five dollars (\$25.00) or less, nor shall it be necessary to report~~
29 ~~any expenditures made in connection with the attendance of a legislator at any~~
30 ~~fund raising function or event sponsored by a nonprofit organization qualified under 26~~
31 ~~U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or~~
32 ~~were invited to benefit from an expenditure, the lobbyist shall not be required to report~~
33 ~~the name of any legislator, but shall be required to report the number of legislators or,~~
34 ~~with particularity, the basis for their selection.~~

35 (b1) In addition to the expenditures required to be reported under subsection (b) of
36 this section, the expense report shall also include information concerning contractual
37 arrangements in excess of one hundred dollars (\$100.00) per year or direct business
38 relationships between the legislator, the legislator's spouse, or the legislator's dependent
39 household members and the lobbyist, currently in existence or entered into within the
40 previous 12 months.

41 (c) All reports shall be in the form prescribed by the Secretary of State and shall
42 be open to public ~~inspection.~~inspection upon filing.

43 (d) When a lobbyist fails to file a lobbying expense report as required herein, the
44 Secretary of State shall send a certified or registered letter advising the lobbyist of the

1 delinquency and the penalties provided by law. Within 20 days of the receipt of the
2 letter, the lobbyist shall deliver or post by United States mail to the Secretary of State
3 the required report and an additional late filing fee in an amount equal to the late filing
4 fee under G.S. 163-278.34(a)(2).

5 (e) Filing of the required report and payment of the additional fee within the time
6 extended shall constitute compliance with this section. Failure to file an expense report
7 in one of the manners prescribed herein shall result in revocation of any and all
8 registrations of a lobbyist under this Article. No lobbyist may register or reregister
9 under this Article until he has fully complied with this section. Appeal of a decision by
10 the Secretary of State shall be in accordance with Chapter 150B of the General Statutes.

11 (f) The oath required under this section shall attest to the truthfulness and
12 completeness of the report.

13 **"§ 120-47.7. Statements of lobbyist's principal lobbying expenses required.**

14 (a) Each legislative lobbyist's principal shall file an expense report under oath
15 with the Secretary of State~~State~~, in a manner prescribed by the Secretary of State
16 including electronically, within 60 days after the last day of ~~the each annual~~ regular
17 session. This expense report shall include all expenditures made between January 1 and
18 the last day of ~~the each annual~~ regular session. The principal shall file a supplemental
19 expense report, including all expenditures made after the last day of ~~the each annual~~
20 regular session, but during the calendar year, by February 28 of the following year. The
21 principal shall file both expense reports whether or not expenditures are made during a
22 reporting period.

23 (a1) Each executive lobbyist's principal shall file semiannual expense reports with
24 the Secretary of State within 45 days after the end of the reporting periods ending on
25 June 30 and December 31 of each year. The expense report shall include all
26 expenditures made during the prior six-month reporting period. The principal shall file
27 an expense report whether or not expenditures are made during a reporting period.

28 (b) Each expense report shall set forth the name and address of each lobbyist
29 employed, appointed, or retained by the lobbyist's principal, the date of each
30 expenditure made, to whom paid, name of any legislator or executive branch official
31 who benefitted from each expenditure, and amount of each expenditure made during the
32 previous reporting period in connection with lobbying, in each of the following
33 categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item
34 having a cash equivalent ~~value of more than twenty five dollars (\$25.00),~~value, (6)
35 contributions made, paid, incurred or promised, directly or indirectly, and (7)
36 compensation to lobbyists in connection with their lobbying activities. ~~It shall not be~~
37 ~~necessary to report expenditures of twenty five dollars (\$25.00) or less, nor shall it be~~
38 ~~necessary to report any expenditures made in connection with the attendance of a~~
39 ~~legislator at any fund raising function or event sponsored by a nonprofit organization~~
40 ~~qualified under 26 U.S.C. § 501(c). When more than 10 members of the General~~
41 ~~Assembly benefitted or were invited to benefit from an expenditure, the principal shall~~
42 ~~not be required to report the name of any legislator, but shall be required to report the~~
43 ~~number of legislators or the basis for their selection.~~In the category of compensation to
44 lobbyists the principal shall estimate and report the compensation paid or promised

1 directly or indirectly, to all lobbyists based on the estimated time, effort and expense in
2 connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time
3 employee of the principal, or is compensated by means of an annual fee or retainer, the
4 principal shall estimate and report the portion of all such lobbyists' salaries or retainers
5 that compensate the lobbyists for lobbying.

6 (b1) In addition to the expenditures required to be reported under subsection (b) of
7 this section, the expense report shall also include information concerning contractual
8 arrangements in excess of one hundred dollars (\$100.00) per year or direct business
9 relationships between the legislator, the legislator's spouse, or the legislator's dependent
10 household members and the lobbyist's principal, currently in existence or entered into
11 within the previous 12 months.

12 (c) All reports shall be in the form prescribed by the Secretary of State and open
13 to public inspection.

14 (d) When a lobbyist's principal fails to file a lobbying expense report as required
15 herein, the Secretary of State shall send a certified or registered letter advising the
16 lobbyist's principal of the delinquency and the penalties provided by law. Within 20
17 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United
18 States mail to the Secretary of State the required report and a late filing fee in an amount
19 equal to the late filing fee under G.S. 163-278.34(a)(2).

20 (e) Filing of the required report and payment of the late fee within the time
21 extended shall constitute compliance with this section.

22 (f) The oath required under this section shall attest to the truthfulness and
23 completeness of the report.

24 **"§ 120-47.7A. Powers and duties of the Secretary of State.**

25 (a) The Secretary of State shall perform systematic audits of reports required to
26 be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

27 (b) The Secretary of State may petition a court of competent jurisdiction for the
28 approval to issue subpoenas and subpoenas duces tecum as necessary to conduct
29 investigations of violations of this Article. The court shall authorize subpoenas under
30 this subsection when the court determines they are necessary for the enforcement of this
31 Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court
32 through the court's contempt powers.

33 (c) Complaints of violations of this Article and all other records accumulated in
34 conjunction with the investigation of these complaints shall be considered records of
35 criminal investigations under G.S. 132-1.4 and shall not become public records until a
36 determination is made by the appropriate prosecutorial authority that no criminal
37 charges will be brought against the person against whom the complaint was filed.

38 **"§ 120-47.7B. Legislator/lobbyist prohibitions.**

39 (a) No legislator or former legislator may be employed as a lobbyist by a
40 principal to lobby as defined in this Article during any biennial legislative session to
41 which the legislator has been elected or appointed.

42 (b) No legislator may solicit contributions or donations from lobbyists or their
43 principals for any charity, civic project, or other community project.

44 **"§ 120-47.8. Persons exempted from provisions of Article.**

1 The provisions of this Article shall not be construed to apply to any of the following:

- 2 (1) An individual, not acting as a lobbyist, solely engaged in expressing a
3 personal opinion on legislative matters to his own legislative
4 delegation or other members of the General Assembly.
- 5 (2) A person appearing before a ~~legislative committee~~ committee,
6 commission, board, council, or other collective body at the invitation
7 or request of the ~~committee~~ collective body or a member thereof and
8 who engages in no further activities as a lobbyist in connection with
9 that or any other executive or legislative matter ~~action~~.
- 10 (3) a. A duly elected or appointed official or employee of the State,
11 the United States, a county, municipality, school district or
12 other governmental agency, when appearing solely in
13 connection with matters pertaining to his office and public
14 duties.
- 15 b. Notwithstanding the persons exempted in this Article, the
16 Governor, Council of State, and all appointed heads of State
17 departments, agencies and institutions, shall designate all
18 authorized official legislative liaison personnel and shall file
19 and maintain current lists of designated legislative liaison
20 personnel with the Secretary of State and shall likewise file
21 with the Secretary of State a full and accurate accounting of all
22 money expended on lobbying, other than the salaries of regular
23 full-time employees, at the same times lobbyists are required to
24 file expense reports under G.S. 120-47.6.
- 25 (4) A person performing professional services in drafting ~~bills~~ bills, rules,
26 regulations, executive orders, policies, resolutions, contracts, or
27 requests for proposal, or in advising and rendering opinions to clients,
28 or to legislators or executive branch officials on behalf of clients, as to
29 the construction and effect of proposed or pending ~~legislation~~
30 executive or legislative action where the professional services are not
31 otherwise, directly or indirectly, connected with legislative or
32 executive action.
- 33 (5) A person who owns, publishes or is employed by any news medium
34 while engaged in the acquisition or dissemination of news on behalf of
35 the news medium.
- 36 (6) Repealed by Session Laws 1991, c. 740, s. 1.1.
- 37 (7) Members of the General ~~Assembly~~ Assembly when the lobbying
38 concerns legislative action.
- 39 (8) A person responding to inquiries from a member of the General
40 Assembly or a legislative employee, and who engages in no further
41 activities as a lobbyist in connection with that or any other legislative
42 matter.

1 (8a) A person responding to inquiries from an executive branch officer or
2 employee and who engages in no further activities as a lobbyist in
3 connection with that or any other executive branch matter.

4 (9) An individual giving facts or recommendations pertaining to
5 legislative matters to his own legislative delegation only.

6 **"§ 120-47.9. Punishment for violation.**

7 (a) Whoever willfully violates any provision of this Article shall be guilty of a
8 Class 1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the
9 provisions of this Article shall in any way act as a lobbyist for a period of two years
10 following his conviction.

11 (b) In addition to the criminal penalties set forth in this section, the Secretary of
12 State may levy civil fines for false or inadequate reporting up to five thousand dollars
13 (\$5,000) per violation.

14 **"§ 120-47.10. Enforcement of Article by Attorney General.**

15 The Secretary of State shall report apparent violations of this Article to the Attorney
16 General. The Attorney General shall, upon complaint made to him of violations of this
17 Article, make an appropriate investigation thereof, and he shall forward a copy of the
18 investigation to the district attorney of the prosecutorial district as defined in
19 G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who
20 violates any provisions of this Article.

21 **"§ 120-47.11. Rules and forms.**

22 The Secretary of State shall make, amend, and rescind any rules, orders, forms, and
23 definitions as are necessary to carry out the provisions of this Article.

24 **"§ 120-47.12. Limitations on agency legislative liaisons.**

25 (a) No principal State department may use State funds to contract with persons
26 who are not employed by the State to lobby the General Assembly.

27 (b) No more than two persons in each principal State department and constituent
28 institution of The University of North Carolina may be registered to lobby the General
29 Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

30 (c) All persons designated as legislative liaison personnel pursuant to this Article
31 and the principal State department or constituent institution of The University of North
32 Carolina who employs the legislative liaison personnel shall report all expenditures
33 made for lobbying purposes in the same manner as required for legislative lobbyists
34 under G.S. 120-47.6 and lobbyist's principals under G.S. 120-47.7."

35 **SECTION 2.** There is appropriated from the General Fund to the Office of
36 the Secretary of State the sum of two hundred thousand dollars (\$200,000) for the
37 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff,
38 and expenses necessary to implement this act.

39 **SECTION 3.** There is appropriated from the General Fund to the Office of
40 the Secretary of State the sum of one hundred twelve thousand dollars (\$112,000) for
41 the 2005-2006 fiscal year to provide for the implementation of electronic filing of all
42 lobbyists' and lobbyists' principals reports required under Article 9A of Chapter 120 of
43 the General Statutes and to provide public access via the Internet to all these filings. The
44 Secretary of State shall implement electronic filing of all lobbyists' and lobbyists'

1 principals reports required under Article 9A of Chapter 120 of the General Statutes and
2 provide public access via the Internet to all these filings as soon as practicable.

3 **SECTION 4.** Sections 2, 3, and 4 of this act become effective July 1, 2005.

4 The remainder of this act becomes effective January 1, 2006.