

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

**BILL NUMBER:** Senate Bill 612 (Seventh Edition)

**SHORT TITLE:** Amend Lobbying Laws.

**SPONSOR(S):** Senator Rand

<b>FISCAL IMPACT</b>					
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
<b>REVENUES:</b>					
General Fund	\$0	(\$176,800) to (\$273,200)	\$96,800 to \$193,200	(\$176,800) to (\$176,800)	\$96,800 to \$193,200
See Assumptions and Methodology					
<b>EXPENDITURES:</b>					
General Fund					
Correction	Exact amount cannot be determined, no substantial impact anticipated				
Judicial	Exact amount cannot be determined, no substantial impact anticipated				
Secretary of State					
Nonrecurring	\$150,045	\$115,326			
Recurring		\$402,160	\$404,660	\$404,660	\$404,660
<b>POSITIONS</b> (cumulative):		9	9	9	9
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of the Secretary of State, Department of Correction, Judicial Branch					
<b>EFFECTIVE DATE:</b> Sections 4 become effective July 1, 2005. The remainder of the sections is effective January 1, 2007.					

**BILL SUMMARY: (in pertinent part):**

This bill amends the lobbying laws that currently govern legislative lobbying to reduce the registration period from two years to one year and to reduce the fee from \$200 per registration to \$100 per registration. Under this bill, each lobbyist would be required to file a registration statement for each of its principals. However, the bill would eliminate the requirement that the principal file a separate registration statement for each of its lobbyists. The bill would add new Article 4C to Chapter 147 of the General Statutes to govern executive branch lobbying. The new Article would impose the same registration requirement and fee structure for executive lobbyists and principal registrations as would be provided for the legislative lobbying. The bill, however,

would reduce the registration fee to \$75 each if a lobbyist registers as a legislative lobbyist and executive lobbyist for the same principal.

The bill increases the frequency with which expenditure reports must be filed and it would require the Department of the Secretary of State to perform systematic reviews of the expenditure reports. The Department would also be required to implement a system that allows for electronic filings.

The bill also provides that any willful violation of Articles 9A or 4C of Chapters 120 and 147, respectively, would constitute a Class 1 misdemeanor. (*Continued in 7<sup>th</sup> edition*) Among the activities prohibited in relation to executive or legislative lobbying would be failure to abide by expense and other reporting requirements.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Fees:**

The bill would amend the registration period and registration fees for lobbyists who engage in legislative lobbying. It would also create lobbying laws that govern executive branch lobbying.

Under current law a lobbyist is required to file a separate registration statement with the Secretary of State for each lobbyist's principal before engaging in legislative lobbying. A fee of \$200 per registration statement is due at the time of registration. The registration is effective from the date of filing until January 1 of the following *odd numbered* year. Thus, it essentially covers a legislative session, which is two years. This bill would make the registration effective from the date of filing until January 1 of the following year, thereby reducing the registration period for a legislative lobbyist from two years to one year. This bill would also require an executive lobbyist to file a registration statement with the Secretary of State for each lobbyist's principal before engaging in executive branch lobbying. The registration period for an executive lobbyist would also be for one year-effective from the date of filing until January 1 of the following year. Under this bill, a \$100 fee per registration statement is due at the time of each legislative lobbyist registration, except that if the legislative lobbyist is also registering as an executive lobbyist for the same lobbyist's principal, the registration fee is \$75. Similarly, a \$100 fee per registration statement is due at the time of each executive lobbyist registration except that if the executive lobbyist is also registering as a legislative lobbyist for the same lobbyist's principal, the registration fee is \$75.

Also, under current law, a separate registration, together with a separate registration fee of \$200 is required for each lobbyist's principal for which a person acts as a legislative lobbyist. The bill would amend the existing law to require a lobbyist's principal to register only one time rather than once for each lobbyist that works for the principal. The registration fee for the lobbyist's principal is \$100 annually.

Based on information provided by the Secretary of State, for the 2004-05 fiscal year, there were approximately 1,255 lobbyist's registrations for the 2005 Session of the General Assembly. In addition to the lobbyist's registrations, there were approximately 673 individual lobbyist's principals. Combining the two groups, Fiscal Research estimates that there would be 1,928 registrations annually. Please note that under current law, a registration can cover both the odd year (Long Session) and the even year (Short Session) of a two-year Legislative Session. Changing the registration from two years to one year, as this bill would, may result in fewer registrations for

the even years. However, we have no data upon which to determine the number, if any, of lobbyists and principals that may not register for the even years. Also, there is some data that indicates that there are lobbyists and principals that register for the second year only. Therefore, considering that, under this bill, some registrations will only be for one year of the two-year Legislative Session, our estimate will assume that the number of registrations will remain constant.

This bill would also require executive lobbyists and principals to register. Presently, there is no data upon which to estimate the number of executive lobbyists and principals that may be required to register with the Secretary of State. Fiscal Research, however, believes that it is reasonable to assume that the executive lobbyists and principals will be a subset of the lobbyists and principals that register as legislative lobbyists. Therefore, the 1,928 lobbyists and principals would pay a \$100 fee to register as legislative lobbyists/principals *or* as executive lobbyists/principals or they would pay \$75 to register as a legislative lobbyist/principal *and* another \$75 to register an executive lobbyist/principal. Fiscal Research therefore estimates that the annual revenue would range from \$192,800 (1,928 registrations \* \$100 -- assuming all 1,928 lobbyists and principals registered for legislative or executive lobbying) to \$289,200 (1,928 registrations \* \$150 -- assuming all 1,928 lobbyists and principals registered for both legislative lobbying and executive lobbying).

As noted above, this bill would reduce the registration period and fee from a two-year period with a \$200 fee to a one-year period with a \$100, thereby shifting the revenue stream. It would also eliminate the requirement that a principal register as such for each lobbyist that works for the principal, thereby reducing the revenue by the amount of the multiple principal registrations. Currently, there are 2,333 registration relationships for the odd years, generating approximately \$466,000 in the fiscal years that end in odd years (i.e., 2006-07) and another 480 for the even years, generating approximately \$96,000 in the fiscal years that end in even years (i.e., 2007-08). As noted in the paragraph above, under this bill, the annual revenue is estimated to be between \$192,800 and \$289,200. The estimated net effect of changing the fee structure is noted in the table below.

<b>Net Effect of Change in Fee Structure on General Fund</b>		
<b>Assumes 1,928 registrations as legislative or executive lobbyist @ \$100 each</b>		
	FY 2006-07	FY 2007-08
Revenue at \$200/2yr registration	-\$466,000	-\$96,000
Revenue at \$100/1yr registration	\$192,800	\$192,800
Net Effect on General Fund	<u>-\$273,200</u>	<u>\$96,800</u>
<b>Assumes 1,928 registrations as legislative and executive lobbyist @ \$150 each</b>		
	FY 2006-07	FY 2007-08
Revenue at \$200/2yr registration	-\$466,000	-\$96,000
Revenue at \$100/1yr registration	\$289,200	\$289,200
Net Effect on General Fund	<u>-\$176,800</u>	<u>\$193,200</u>

**Operating Expenses – Secretary of State**

Under current law, each lobbyist and principal must file two expense reports each year during the Legislative Session for which they have registered. The first report is due within 60 days after the last day of the regular session. The second is a supplemental report that captures expenditures made after the last day of the regular session but during the calendar year. This bill would require each lobbyist to file monthly expenditure reports with respect to each of its principals while the General Assembly was in regular session and quarterly thereafter. It would also require each principal to file monthly expenditure reports while the General Assembly was in regular session and quarterly thereafter. Executive lobbyists and principals and well as legislative liaisons would be subject to the same reporting requirement.

Under this bill, nine reports would be required in each odd year and six in each even year for each of the 1,928 legislative lobbyist and principal registrations. Four additional reports would be required annually for those who were also registered as executive lobbyists and/or principals. Currently there are approximately 89 legislative liaisons for 52 State entities. This bill would require the 89 liaisons and the 52 State entities that they represent to file nine reports in each odd year and six reports in the even years. Based on this data, Fiscal Research estimates that the Secretary of State will receive between 12,414 and 20,126 reports in each even year and between 18,621 and 26,333 reports in each odd year. Under the bill, the reports could be filed manually or electronically.

	<i>Legislative Lobbying Only</i>			<i>Legislative and Executive Lobbying</i>		
	<b>Even Years</b>			<b>Even Years</b>		
	# Registrations	of # of Reports per Registrations	per Total	# Registrations	of # of Reports per Registrations	per Total
Lobbyists/Principals	1,928	6	11,568	1,928	10	19,280
Liaisons/State Entities	141	6	846	141	6	846
<b>Total</b>			<b>12,414</b>			<b>20,126</b>
	<b>Odd Years</b>			<b>Odd Years</b>		
Lobbyists/Principals	1,928	9	17,352	1,928	13	25,064
Liaisons/State Entities	141	9	1,269	141	9	1,269
<b>Total</b>			<b>18,621</b>			<b>26,333</b>

The Department of the Secretary of State estimates that it would need 18 additional positions to fulfill the requirements of this bill. This estimates includes funding for the salaries, benefits and operating costs for a Lobbyist Director (grade 78), an Assistant Director/Auditor Supervisor (grade 73), 7 Investigator/Auditors (grade 71), an Assistant Registrar (grade 68), and 8 Administrative Assistant Is (grade 63). The Department believes that this staffing level would allow it to properly oversee and administer the Lobbyist Section, to register and index the legislative and executive registrations and expenditure reports, to respond to public inquiries, to post lobbyist records for public inspection, to publish the lobbyist directories, to perform systematic audits at a rate of 25% of the reports filed each year, and to perform investigatory audits as warranted by complaints and the results of the systematic audits.

The Department also provided an alternative estimate that would require 9 additional positions (instead of 18). The alternative estimate includes funding for the salaries, benefits, and operating costs for a Lobbyist Director (grade 78), an Assistant Director/Auditor Supervisor (grade 73), 1 Investigator/Auditors (grade 71) instead of 7 as included in the Departments preferred estimated, an Assistant Registrar (grade 68), and 5 Administrative Assistant Is (grade 63) instead of 8 as included in the preferred estimate. With this staffing level, the Department estimates that it could only perform audits as driven by complaints and other indications of possible lobbying misconduct versus performing systematic audits.

The bill would require the Department to perform systematic reviews of the expenditure reports to ensure complete and timely disclosure of expenditures. The Fiscal Research Division believes that the requirements imposed upon the Secretary of State by this bill to review expenditures reports, and make them available for public inspection are very similar to the requirements imposed upon the Campaign Reporting Office of the State Board of Elections by the campaign finance laws prescribed in Articles 22A, 22B, 22C and 22D of Chapter 163 of the North Carolina General Statutes. The Campaign Reporting Office is responsible for the manual auditing of the campaign finance reports filed by over 2,000 political committees, providing public access to the reports, providing assistance to the committees and the county elections staff on the application of the campaign finance laws, maintaining a campaign finance disclosure system, and corresponding with the political committees and county elections staff to ensure timely and accurate compliance with the laws. The Campaign Reporting Office receives at least 2 reports from each political committee in an off-election year and at least 4 reports from each during an election years. In addition, it also receives reports of independent expenditures and 48-hour reports as required by statute. There is 100% auditing of these reports that include adjusting accounting discrepancies, cross-checking data, information validity assurance, and correspondence with the committees based on the audit results. The Office has a staff of 5 permanent full-time positions and 3.25 temporary positions. The 5 permanent staff include a Deputy Director for Campaign Reporting (grade 75), 3 grade 65 level Administrative Assistant IIs who are primarily responsible for the auditing and education responsibilities of the office, and a grade 57 level Office Assistant III position who provides support to the professional staff. The temporary staff employees assist with scanning reports for public inspection and data entry of reports that are filed manually.

Because of the similarities between the requirements imposed upon the Secretary of State by this bill and the existing requirements imposed upon the State Board of Elections' Campaign Reporting Office, Fiscal Research believes that the staffing level and structure that is in place for the Campaign Reporting Office is a reasonable one for the Secretary of State's Lobbyist Section. We therefore estimate that the Secretary of State would need 9 additional positions to fulfill the requirements of this bill. We believe, however, that the 9 positions should include 5 grade level 65 Administrative Assistant II, and 3 grade level 61 Processing Assistant IVs, and 1 grade level 75 Lobbyist Director. The estimated cost for the salaries, benefits, and operating cost for the 9 positions is estimated to be \$504,701 for fiscal year 2006-07 and \$391,875 for subsequent fiscal years. See the summary that follows.

**Summary of FRD's Estimate of Additional Staffing Needs**

	<b>FY 2006-07</b>	<b>FY 2007-08</b>
SPA - Reg Salaries (9 positions)	\$245,109	\$245,109
Social Security Contributions	\$18,751	\$18,751
Retirement	\$14,253	\$14,253
Insurance	\$30,888	\$30,888
Transportation	\$6,000	\$6,000
Employee Education & Training	\$7,200	\$7,200
Telephone Service	\$1,674	\$1,674
Office Supplies	\$9,000	\$9,000
Postage	\$2,500	\$5,000
Rent/Lease-Building/Offices	\$54,000	\$54,000
Total Recurring	\$389,375	\$391,875
Office Furniture	\$31,100	\$0
Office Equipment	\$56,200	\$0
Telephone	\$7,326	
Personal Computers & Printers	\$20,700	\$0
Total Non-recurring	\$115,326	

The bill also requires the Secretary of State to implement a system that would allow for the electronic filing of all lobbyists' and lobbyists' principals' reports and to provide public access via the Internet to all of the filings. The Secretary of State believes that a more advanced computer program than the one that currently is in place for electronic access to the filings and for the searchable database would be required. To meet the requirements of the bill, the Department would develop a Knowledge Base System for Lobbyist that parallels in-house systems that it has developed for its Uniform Commercial Code and Notary systems. The Departments estimates that the initial cost of developing the system would be \$150,045. Recurring maintenance cost would be approximately \$12,785 each year thereafter. Fiscal Research believes this approach to developing the system is reasonable.

**Civil Penalties**

As with existing law, the bill would allow the Secretary of State to impose a late filing fee for each day that a required report is late. The late filing fee is equivalent to the fee set forth in G.S. 163-278.34(a)(2), which is currently \$50 per day up to a maximum of \$500. Fiscal Research believe that the frequency of untimely filed reports will increase as a result of the increase in the frequency with which the reports must be filed. However, we have no data upon which to estimate the amount of late filing fees that may be imposed.

The bill would also allow the Secretary of State to levy civil penalties in addition to the criminal penalties discussed below for willful false or incomplete reporting up to \$5,000. Again, Fiscal Research has no data upon which to estimate the extent to which civil penalties might be levied. We note, however, that any late filing fees or civil penalties would be deposited to the Civil Penalties Fund for the benefit of the public education system.

### **Criminal Penalties:**

This bill would expand the scope of an existing Class 1 misdemeanor for violations related to legislative lobbying and create a new Class 1 misdemeanor for violations related to executive lobbying and would therefore be expected to result in additional charges and convictions. Due to the lack of an Administrative Office of the Courts (AOC) offense code for violations of Chapter 120, no historical data is available with respect to the numbers of charges and convictions for the existing offenses. However, the lack of an offense code is some indication that the existing offenses are infrequently charged and rarely result in convictions. As such, few additional charges and convictions would be expected due to this bill, and no substantial impact is anticipated to result from the criminal penalties in this legislation.

### ***Department of Correction***

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

- In FY 2003-04, 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.
- The remaining 19 percent of Class 1 misdemeanors resulted in active sentences and the average estimated time served was 31 days.
- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per day per offender.
- Since most Class 1 misdemeanants serving active time are housed in county jails, this legislation is not expected to significantly impact prison population.

### ***Judicial Branch***

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Due to the lack of an offense code for current violations of Chapter 120—an indication that there are presently few charges for violations related to legislative lobbying—AOC does not anticipate a substantial number of new charges to result from this bill. Based on the costs of time in court,

attorney preparation time, and indigent defense, the average estimated cost to process one Class 1 misdemeanor via trial is \$3,224 per trial and \$284 per guilty plea. The trial cost includes an estimated \$2,627 in jury fees, costs of time in court, and attorney costs and an additional \$2,373 in indigent defense. Based on prior-year data, the majority of any new Class 1 misdemeanor charges are likely to be settled by plea.

**SOURCES OF DATA:** Department of the Secretary of State, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

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**Signed Copy Located in the NCGA Principal Clerk's Offices**