

2006 LOBBYING & ETHICS REFORMS: An Overview

Prepared December 5, 2006

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A new law (H-1843) governing lobbying and ethics in state government takes effect

Jan 1, 2007: <http://www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H1843v8.html>

The law has two large components. The first two-thirds is about ethics and it creates a new statute, Chapter 138A (State Government Ethics Act). The last third rewrites the law regulating lobbyists and lobbying and creates NCGS Chapter 120A. This overview focuses on lobbying issues, but many of the controlling terms (e.g., “gifts” and “public events”) are defined in the first part of the bill/law regarding ethics.

The new law includes many changes regarding lobbying: definitions of lobbying, who gets lobbied (“designated individual”), lobbyist, principal, and solicitation of others to lobby; registration fees and period covered by the fee; the contents and frequency of required expense reports; prohibitions; restrictions (not a ban) on giving gifts; reporting by non-registered entities who provide gifts or grants; criminal and civil penalties; enforcement powers of Secretary of State and the new Ethics Commission; and exceptions.

Lobbying is communicating or engaging in other activities, including developing goodwill, with a “designated individual” or that person’s immediate family member for the purpose of influencing or attempting to influence “legislative action” or “executive action” – generally the development of any public policy related to the legislative or executive branch.

KEY PEOPLE REGULATED IN THE NEW LOBBYING LAW

Designated individual – An individual who is a legislator (including candidate), or legislative employee/consultant, or a public servant. Public servants include top tiers of officials and “exempt” employees in executive branch and in university/community college system, judicial employees, and voting members of any state non-advisory board created by statute or executive order.

Lobbyist – An individual who engages in goodwill or direct lobbying related to “executive action” or “legislative action” and who meets any of the following criteria [NCGS 120C-100(9)]:

- a. Is employed by a “person” (any entity) for the intended *purpose of lobbying*.
- b. Represents another person and receives compensation for the *purpose of lobbying*. For the purposes of this definition, “compensation” shall not include reimbursement of actual travel and subsistence.
- c. Contracts for economic consideration for the *purpose of lobbying*.
- d. Is employed by a person and a *significant part* of that employee's *duties include lobbying*. In no case shall an employee be considered a lobbyist if less than 5% of the employee's actual duties in any 30-day period involve lobbying.

The term “lobbyist” does not include individuals exempted by NCGS 120C-700 or registered as liaison personnel.

Principal – The “person” (i.e. entity) on whose behalf the lobbyist lobbies. If the lobbyist is compensated by an employer (e.g., a law firm) to represent another entity, the principal is the entity whose interests the lobbyist represents in lobbying. If the lobbyist is employed or retained by an association, the lobbyist's principal is the association, not the individual members.

Solicitor – A “person” (entity) who does not otherwise file reports and who solicits members of the *general public* (i.e., not its own members, employees, subscribers, etc.) to communicate directly with “designated individuals” in order to influence legislative or executive action, IF the

expenses incurred in any of the following methods of solicitation totals over \$3,000 during any 90-day period:

- a. A broadcast, cable, or satellite transmission.
- b. An e-mail or a Web site posting.
- c. A communication delivered by print media as defined in NCGS 163-278.38Z.
- d. A letter or written communication delivered by mail or by comparable delivery service.
- e. Telephone.
- f. A communication at a conference, meeting, or similar event.

Other Gift Giver – Another type of person is covered by the new law if they spend money “for the benefit of” or “on behalf of” a designated individual. [NCGS 120C-800] *“If a designated individual accepts such an expenditure made for the purpose of lobbying with a total value of over \$200 per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Ethics Act, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.”* If the person making the expenditure is outside N.C. and the designated individual accepting it is also outside N.C., then the designated individual is responsible for reporting the expenditure on his or her statement of economic interest.

Liaison Personnel – All State agencies shall designate no more than two individuals to lobby on legislative action. No State funds can be used to contract with a non-State employee for legislative lobbying. Liaison personnel shall register and file expenditure reports (but not pay a fee). They are restricted in making gifts to *legislators/legislative employees* like lobbyists. The UNC system and its liaisons are restricted in giving gifts to any *designated individual*.

WHAT TO REPORT & WHEN

New Reporting Requirements for N.C. Lobbyists

Quick Take:

While the new regimen will take some “getting used to” and probably includes some components that will need tweaking, it is, in general, an improvement over the prior law that should shine new light on expenditures that were previously hidden. Especially in light of the new disincentives to providing gifts to lawmakers, there is every reason to expect that the new reporting requirements will cause a minimum of hassle for most lobbyists.

Key Provisions:

- New law goes into effect **January 1**.
- Lobbyists and principals must file **regular reports** with the Secretary of State's office.
- Reports are due **quarterly**, by 10 days after the reporting period ends. They must be **notarized**, must be filed whether or not there were “**reportable expenditures**.”
- Lobbyists and principals must file **additional reports when they make reportable expenditures during any month in which the General Assembly is in session**. These reports must be filed within 10 days of the end of the month in which the reportable expenditures are made.
- “**Reportable expenditures**” means any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member: (a) any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than \$10 per designated individual per single calendar day; (b) a contract, agreement, promise, or other obligation whether or not legally enforceable.
- This means that **essentially all items** provided to designated individuals (except those below specified thresholds) must be reported – even if, for instance, it is explicitly exempted from the definition of a “gift.” In addition, lobbyists must report any gifts given to public servants not related to lobbying (principals must do so when the non-lobbying related gifts exceed \$200 in value).
- **Each report sets forth** fair market value/face value, date, description of expense, and name of the beneficiary/designated individual/family member. No need to name names if 15 or more designated individuals benefit, but must tell approximately how many benefited and provide specific description about the group.
- Lobbyists, principals and “solicitors” must also generally report expenditures of more than \$3,000 on **solicitation** of members of the general public to influence legislative or executive action (even though such outlays are not included in the formal definition of “reportable expenditure”).

So, to sum up:

- **Lobbyist reports** must include: reportable expenditures, reportable expenditures reimbursed by the lobbyist's principal or another person, "solicitation of others" that exceeds \$3,000 in any 90-day period, and all non-lobbying related gifts.
- **Principal reports** must include: reportable expenditures, reportable expenditures reimbursed to lobbyists that are not reported on the lobbyist's report, "solicitation of others" that exceeds \$3,000, compensation paid to lobbyists (even employees), all non-lobbying related gifts exceeding \$200.
- **Solicitor reports** must include: reportable expenditures and "solicitation of others" that exceeds \$3,000 in any 90-day period.
- **Failure to file** required reports can void the registration of the lobbyist, principal and solicitor and bars re-registration until reports are filed. The Secretary of State can also levy civil fines of up to \$5,000 per violation related to required reports.
- SOS office prescribes the **reporting forms**.

MAJOR OPPORTUNITIES FOR EXPENDITURES

Rather than impose a flat ban on all expenditures that benefit a designated individual, the new law lists a variety of opportunities for lobbyist, principals and others to feed, entertain, give gifts, etc. Two of the biggest involve "**public events**" and "**educational meetings**."

- At **public events**, lobbyists and principals can provide food and beverages to designative individuals and their immediate families for consumption.
- At **educational meetings**, lobbyists and principals can provide "reasonable" food, beverages, registration, travel, lodging and "other incidental items of nominal value," plus entertainment that is "incidental to the principal agenda of the educational" meeting.

These expenses are allowed – but they must be reported on expense reports.

A **public event** is defined in NCGS 138A-3(29). The definition is long and full of caveats that could arguably allow a lobbyist to take a legislator to dinner every night IF the lobbyist also (a) sent an obscure email inviting the other members of the legislator's "municipal delegation" or "recognized legislative caucus" and (b) sent another email inviting all the board members or officers of the lobbyist's principal (who would know to ignore it).

An **educational meeting** is defined in NCGS 138A-32(e)(3). The meeting must have a formal agenda, be attended by 10 or more participants, and notice of the meeting must be "given at least 10 days in advance" of the event. The meeting must be (a) "primarily related to the public duties and responsibilities" of the designated individual, who is participating as a speaker or member of a panel; or (b) sponsored by a regional, national, or other association of legislative or executive branch individuals or agencies.

ABIDING BY THE GIFT BAN & EXCEPTIONS

Current Law - allows unlimited spending

New Law - bans spending on “designated individuals” **NCGS 120C-303**; but provides more than a dozen exceptions in **138A-32(e)**.

Gift Ban applies to “Designated Individuals” – “no lobbyist or lobbyist’s principal may directly or indirectly give a gift to a designated individual. (lawmakers, legislative staff, top state government employees) **120C-100 (2)**

Gifts defined in 138A-3 – anything of monetary value given or received.

Key Exceptions:

- Food and beverage for consumption at a “public event” defined in GS 138A-3 (29)
- Attendance or participation at an “educational event”
- Relevant information
- Plaques, non-monetary mementos
- Gifts on behalf of the state for the benefit of the state
- Gifts from extended family or same household
- Gifts for personal, civic, business, etc. – if “reasonable person” wouldn’t see it as for lobbying purposes
- Industrial recruitment, promotion of tourism (public servants)
- Gifts less than \$100 from foreign country (public servant)
- Anything generally made available to public or all state employees

Questions (An Exercise For You):

1. Can I buy my favorite lawmaker a cup of coffee?
2. Can I buy a lunch of under \$10 for my close contact in the Governor’s office?
3. Can I give lawmakers attending my organization’s banquet a free meal?
4. Can a wealthy lobbyist pay for a weekend retreat meeting for the Senate Democratic caucus?
5. Can a wealthy special interest host a hospitality suite every night for lawmakers?
6. Can I give tickets to a friend, associate or spouse of the designated individual?

RAISING & GIVING MONEY: What you can and can't do

Giving Money:

You can't give money if you're a lobbyist.*** As of January 1, 2007, lobbyists may not give legislators or state executives (or candidates for those offices) ANY campaign contributions. This includes in-kind contributions such as donating your living room for a fundraiser for a candidate or elected official.

Raising Money:

You can't bundle, collect or deliver multiple campaign contributions to a legislator or public servant if you're a lobbyist. That means that lobbyists' are a little bit hindered from fundraising activities but not much.

Lobbyists can get around the rule by getting a non-lobbyist to physically deliver the funds they raised from various contributors to the intended recipient (like a Secretary or a Board Chair).

Lobbyists can still virtually host fundraisers; they just have to use someone else's home (to avoid making an in-kind donation) and have that person deliver the money raised.

****FYI: The NC Coalition for Lobbying & Government Reform did NOT support a flat ban on lobbyists' campaign contributions, only limits. The flat ban may also be challenged in Court in 2007.*

Have Questions? Contact:

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