



HOUSE BILL 1055: State Ethics Comm. Revisions.

2016-2017 General Assembly

Committee:	House Ethics	Date:	May 27, 2016
Introduced by:	House Ethics Committee	Prepared by:	Augustus Willis
Analysis of:	PCS to First Edition H1055-CSTY-10		Erika Churchill Brad Krehely Committee Co-Counsel

SUMMARY: *The PCS to House Bill 1055 would make various changes to the State's ethics and lobbying laws, including the procedures for investigations of ethics violations by the State Ethics Commission (SEC) and Legislative Ethics Committee (LEC).*

CURRENT LAW and BILL ANALYSIS:

Section 1: Under current law, generally anything of monetary value given or received without valuable consideration is considered a gift for purposes of the gift ban, however, gifts between extended family members are exempted from the gift ban. Section 1 would add to the exclusions from the definition of a gift (i) anything of value given and received between extended family members, and (ii) campaign contributions that are properly reported under federal law.

Section 2: Makes technical changes clarifying the powers and duties of the SEC to conduct inquiries, investigations, and hearings.

Section 3: Currently, judicial officers are not required to participate in mandatory ethics education programming provided by the SEC. Section 3 clarifies that judicial officers must adhere to this requirement if they are also serving as a public servant in addition to their role as a judicial officer.

Section 4: Currently, the head of a state agency or head of a board subject to the State ethics laws must provide certain persons under their supervision with a statement of economic interest and notify the SEC of the person's hiring, appointment, or promotion to a position covered by the State Ethics Act "as soon as reasonably practical after" the person's new designation. Section 5 would require the agency head or board chair to take those actions prior to the designation and to notify the SEC in writing of the designation.

Section 5: Under current law, certain public servants who have submitted a statement of economic interest may be hired or appointed provisionally prior to the submission of the SEC's evaluation of the statement and are subject to dismissal or removal by the SEC based on that evaluation. Under current law, those public servants include:

- For the University of North Carolina, the voting members of the Board of Governors, the president, vice presidents, and the chancellors, vice chancellors, and voting members of the boards of trustees of the constituent institutions.
- For the Community College System, the voting members of the State Board of Community Colleges, the President and chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

Karen Cochrane-Brown
Director



H 1 0 5 5 - S M T Y - 4 0 C S T Y - 1 0 - V - 9

Legislative Analysis
Division
919-733-2578

House PCS 1055

Page 2

Section 5 would provide that all public servants, except Constitutional officers of the State and individuals appointed as Constitutional officers prior to taking office, may be hired or appointed provisionally prior to the Commission's evaluation of the statement of economic interest.

Section 6: Clarifies and expands the disclosure requirements of statements of economic interest to include all public servants, including those who also serve, or are seeking to serve as a legislator or judicial officer and their immediate families. Adds to the list of those items that must be disclosed, stock grants, stock units and restricted stocks, whether vested or unvested, as well as any scholarship related to the filing person's public service or position valued over \$200.

Section 7: Within 30 days after the date that a statement of economic interest is due to be filed, the SEC must notify any filing person who has failed to file a complete application. Currently, a filing person has 30 days from the receipt of that notice to file or complete their statement, and the SEC must report any failure to file to the State Bureau of Investigation (SBI) for investigation and possible referral to the District Attorney for possible prosecution. Section 7 would change the timeframe for filing to 30 days after the date of the notice and require the SBI to forward a copy of its investigation to the Wake County District Attorney.

Section 8: Currently, the SEC must evaluate subsequently filed statements of economic interest every other year, except for public servants listed on certain specified institutions, whose statements must be evaluated annually. A public servant who simultaneously serves on more than one covered board may file a single statement without requiring re-evaluation by the SEC during that biennium. Section 8 would add Metropolitan Planning Organizations, Rural Transportation Planning Organizations, and the NC Board of Transportation to the list of annual evaluations and eliminates the exception on public servants serving on multiple covered boards, thereby requiring them to file a statement for each board.

Section 9: Makes a technical change to clarify that the permitted exceptions in G.S. 138A-38(a) apply to covered persons and legislative employees who otherwise would not be permitted to act under G.S. 138A-31(a).

Section 10: Clarifies that an ethics liaison would be subject to disciplinary action upon violation of the State Ethics Act.

Section 11: Narrows the definition of "executive action" in the lobbying laws to exclude a public servant's inquiry about or responding to a request for proposal made under Chapter 135 (State Retirement System) and Chapter 147 (State Officers). Current law excludes only such inquiries and responses made under Chapter 143 (State Government Agencies).

Section 12-14: Make technical and clarifying changes to the laws on lobbyist registration, including to use the term "registration statement" consistently.

Section 15: Under current law, for reportable expenditures, each report must set forth the name of any designated individual or that designated individual's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from or request a reportable expenditure, no names of individuals need to be reported if the report identifies the approximate number of designated individuals benefiting or requesting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership is a matter of public record or is otherwise identifiable.

Section 15 would provide that the name of a "board" may be provided on the report, instead of the names of individuals, if there are more than 15 designated individuals who benefit from or request a reportable expenditure. Section 15 makes an additional clarifying change to note that other groups also

House PCS 1055

Page 3

could be listed, instead of individuals, if there is a description of the group that clearly identifies the designated individuals.

Section 16: Clarifies that the SEC or the Secretary of State may utilize the services of a hired investigator when conducting investigations into violations of the State's lobbying laws.

Section 17: Changes the word "person" to "individual" throughout Article 7 (Exemptions) of Chapter 120C (Lobbying).

Section 18: Clarifies that, for purposes of reporting, the term "scholarship" includes all event-related expenses such as food, beverages, registration, travel, and lodging. Makes conforming changes to the lobbying laws in light of the changes to the State Government Ethics Act contained in Section 6 of the PCS.

Section 19(a): Makes changes to the statutes governing investigatory procedures of the SEC, including the following:

- Changes the trigger of the 10 business day timeframe within which the SEC must initiate inquiry and send a copy of a complaint to the person who is the subject of the complaint from the date of the filing of the complaint to the date the SEC accepts the complaint.
- Increases the timeframe within which the SEC must complete an inquiry into a complaint from 20 business days to 30 business days after acceptance of the complaint.
- Once the SEC completes its inquiry and initiates a probable cause investigation, it would no longer be required to provide notice to the individual who filed the complaint if it determines to proceed with an investigation. However, the SEC would still be required to notify the person who is the subject of the complaint, and would now have to also notify the person's employing entity or appointing authority of the fact of an investigation and the allegations against the person.
- Specifies that if the public servant who is the subject of the inquiry and the SEC enter into a settlement of the allegations prior to hearing, once the settlement is approved by the SEC, the SEC would be required to provide written notice of the fact of the settlement to the individual who filed the complaint, the public servant who was the subject of the inquiry, and the public servant's employing entity or appointing authority.
- Would require the SEC, upon finding substantial evidence of a violation of criminal law, to refer the matter to the SBI, which must investigate and forward a copy of the investigation to the District Attorney for possible prosecution.
- Allows SEC staff to share related information and documents with State and local authorities when referring a matter to the agency or authority and specifies that such records and documents remain confidential and are not public records.
- In cases where the SEC has referred a matter to another entity, the SEC would be able to recommend sanctions or issue rulings without the request of the entity to which the matter was referred.
- Gives the SEC continued jurisdiction over a public servant or legislative employee for one year following the date that individual ceases being a public servant or legislative employee to refer evidence of alleged criminal violations to the SBI. The SBI would be required to investigate and forward a copy of the investigation to the Wake County District Attorney.

House PCS 1055

Page 4

Section 20(b): Makes changes to the LEC investigatory statutes to include settlement of inquiries and sharing information in order to align the LEC statutes similarly to the SEC statutes.

EFFECTIVE DATE: Section 1 becomes effective December 1, 2016. The remainder of the act becomes effective October 1, 2016.