



# S.L. 2017-6: Bipartisan Board of Elections and Ethics Enforcement.

2017-2018 General Assembly

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<b>Committee:</b>	<b>Date:</b>	November 9, 2017
<b>Introduced by:</b>	<b>Prepared by:</b>	Erika Churchill
<b>Analysis of:</b>	S.L. 2017-6	Staff Attorney

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**OVERVIEW:** *S.L. 2017-6 repeals certain provisions related to the designation of exempt positions in State employment; repeals the portion of the 2016 Session Law consolidating the functions of ethics, elections, and lobbying; and re-establishes the Bipartisan State Board of Elections and Ethics Enforcement, effective May 1, 2017.*

*As of November 1, 2017, portions of S.L. 2017-6 remain under litigation. Members of the Bipartisan State Board of Elections and Ethics Enforcement have not yet been appointed due to order of the courts.*

## CURRENT LAW AND BILL ANALYSIS:

### Section 1. Designation of Exempt Positions

G.S. 126-5(d) describes the positions that may be exempted from the North Carolina Human Resources Act (NCHRA). Under those provisions, the Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, the Labor Commissioner and the Department of Public Instruction may designate exempt positions. The number of exempt policymaking positions in each department headed by an elected official is limited to 20 exempt policymaking positions or 1% of the total number of full time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or 1% of the total number of full time positions in the department, whichever is greater. G.S. 126-5(d)(2).

S.L. 2016-126 amended G.S. 126-5(d)(2) to increase the number of positions the Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner could designate as exempt to 25 or 2% of the total number of full-time positions for exempt policymaking positions, whichever is greater, and 25 exempt managerial positions, or 2% of the total number of full-time positions in the department, whichever is greater. For the State Board of Education, the number of positions potentially designated as exempt was increased to 70 exempt policymaking positions, or 2% of the total number of full-time positions, whichever is greater, and 70 exempt managerial positions, or 2% of the total number of full-time positions in the department, whichever is greater, effective December 16, 2016. Additionally, S.L. 2016-126 also provided that the Superintendent of Public Instruction was to designate exempt positions, rather than the State Board of Education, beginning January 1, 2017.

Section 1 repeals G.S. 126-5(d)(2), as enacted by S.L. 2016-126.

## CURRENT LAW AND BILL ANALYSIS:

### Sections 2-21. Consolidation of Elections, Ethics and Lobbying

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The State Ethics Commission (SEC) administers the State Government Ethics Act, including providing ethics guidance, through formal written advisory opinions and informal advice, and ethics education to legislators, public servants, and legislative employees, and all persons affected by the lobbying laws, Chapter 120C of the General Statutes. The SEC consists of eight members (four appointed by the Governor and four appointed by the General Assembly, two of whom are recommended by the Speaker of the House and two of whom are recommended by the President Pro Tempore of the Senate). The Governor appoints the chair of the SEC annually. Members of the SEC:

- Serve four-year terms.
- May be re-appointed.
- Must be registered voters in this State.
- No more than one half of the membership may be associated with the same political party.
- May not do any of the following:
  - Hold or be a candidate for any office of the United States, North Carolina, or political subdivision of the State.
  - Hold office in any political party above the precinct level.
  - Participate in or contribute to political campaigns of covered persons.
  - Be employed by the State, community college, school system, or serve as a member of any other State board. Chapter 138A of the General Statutes.

The State Board of Elections (SBE) administers elections and campaign finance and provides guidance, advice, and training for elections and campaign finance to the county boards of elections. The SBE consists of five members, all of whom are appointed by the Governor from a list of nominees submitted to the Governor by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the SBE. The SBE organizes itself by electing one of its members chairman and another secretary. Members of the SBE:

- Serve four-year terms.
- May be re-appointed.
- No more than three members may be of the same political party.
- May not do any of the following:
  - Hold or be a candidate for any office under the government of the United States, North Carolina, or political subdivision of the State.
  - Hold any office in a political party or organization.
  - Be a campaign manager or treasurer of any candidate in a primary or election.

County boards of elections consist of three registered voters of each county. No more than two members of the county board of elections may belong to the same political party. Chapter 163 of the General Statutes.

The Secretary of State is responsible for registrations and reporting by lobbyists and lobbyist principals in North Carolina. Chapter 120C of the General Statutes.

**Section 2** repeals Part I of S.L. 2016-125, which consolidated the functions of ethics, elections and lobbying under one board appointed by the Governor and General Assembly.

**Section 3** directs the Revisor of Statutes to recodify Chapter 138A of the General Statutes (State Government Ethics Act), Chapter 120C of the General Statutes (Lobbying), and Chapter 163 of the General Statutes (Elections and Election Laws) into a new Chapter 138B of the General Statutes to be

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entitled "Elections and Ethics Enforcement Act." Within the recodification process, the Revisor is authorized to make other technical and conforming changes as the Revisor deems appropriate.

**Section 4** establishes a new Bipartisan State Board of Elections and Ethics Enforcement ("State Board"), as described below.

## Membership of the State Board:

- The State Board consists of eight individuals registered to vote in North Carolina. Members are appointed by the Governor, from lists of nominees submitted by the State party chairs of the two parties with the highest voter registration.
- Members serve two-year terms, beginning May 1st of the odd-numbered year.
- The Governor could remove members from the State Board only for misfeasance, malfeasance, or nonfeasance. Vacancies on the State Board are to be filled by an individual affiliated with the same political party as the vacating member, from a list of nominees submitted by that State political party chair.
- At the first meeting held after new appointments are made, members organize themselves by electing one member as chair, one member as vice-chair, one member as secretary, each to serve a two-year term. Starting in 2017 in four-year increments, the chair is to be a member of the political party with the highest number of registered affiliates, and the vice-chair a member of the political party with the 2nd highest number of registered affiliates. Starting in 2019 in four-year increments, the chair is to be a member of the political party with the 2nd highest number of registered affiliates, and the vice-chair a member of the political party with the highest number of registered affiliates.
- Persons ineligible for appointment as a member of the State Board are those:
  - Holding elective or appointive office under the federal government, State government, or any political subdivision of the State.
  - Holding office in a political party or organization.
  - Being a candidate for any office.
  - Who serve as a campaign manager or treasurer of any candidate for office.
  - Who have served two full consecutive terms on the State Board. For members appointed in 2017, prior service on either the SEC or SBE counts towards the term limit.
- Members of the State Board are prohibited from:
  - Making reportable contributions to candidates over which the State Board would have jurisdiction.
  - Registering as a lobbyist.
  - Making written or oral statements for general distribution supporting or opposing clearly identified candidates for office or clearly identified referendum or ballot issue proposals.
  - Soliciting contributions for a candidate, political committee, or referendum committee.

## Meetings and voting:

- The State Board is required to meet at least monthly.
- Five members of the State Board constitutes a quorum.
- Unless any vote requirement is specifically provided for in the Chapter, an affirmative vote of at least five members of the State Board is required to take action.

## Powers of the State Board:

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- The State Board has the power to administer oaths, issue subpoenas, summon witnesses, and compel evidence for Lobbying and Elections matters.
- The State Board could, upon a vote of at least 5 members, petition the Wake County Superior Court for additional subpoenas.

## Executive Director:

- The State Board would appoint an Executive Director for a term of two years, beginning May 15 after the first meeting held after new appointments to the Board are made.
- The Executive Director is the chief State elections official.

Sections 5 and 6 make various technical and conforming changes.

Section 7 makes a variety of substantive, conforming, and technical changes, including:

- County boards of elections increase from three to four members. Two members are to be of the political party with the highest number of registered affiliates and two from the political party with the second highest number of registered affiliates. Three members constitute a quorum, and unless required by law to act unanimously, a majority vote for action of the board requires three of the four members. Chairs of the county boards are selected by the county board at their first meeting in July each year. In the odd-numbered year, the chair is to be a member of the political party with the highest number of registered affiliates, and the vice-chair a member of the political party with the 2nd highest number of registered affiliates. In the even-numbered year, the chair is to be a member of the political party with the 2nd highest number of registered affiliates, and the vice-chair a member of the political party with the highest number of registered affiliates.
- The State Board must conclude all campaign finance investigations no later than one year from the date of the start of the investigation, unless the Board has reported an apparent violation to the proper district attorney and additional investigation of the apparent violation is deemed necessary by the Board.

Section 8 directs the Joint Legislative Elections Oversight Committee to study the budgets, programs, and policies of the State Board and county boards of elections.

Sections 9-21 outline the transfer of authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations from the SEC, SBE, and the lobbying registration and lobbying enforcement functions of the Secretary of State to the new State Board. The State Board is required to report initially by April 1, 2018, and again by March 1, 2019, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Elections Oversight Committee, and the Legislative Ethics Committee on any recommendations for statutory changes needed for implementation of this consolidation.

To establish the new State Board, the State party chairs are directed to submit a list of nominees to the Governor no later than April 20, 2017, and the Governor must make appointments no later than May 1, 2017. The Executive Director of the SBE will serve as the Executive Director of the State Board until May 2019.

**EFFECTIVE DATE:** May 1, 2017, except as otherwise noted. As of November 1, 2017, portions of the legislation are under litigation.