



# SENATE BILL 68: Bipartisan Bd of Elections and Ethics Enforce.

2017-2018 General Assembly

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|-----------------------|--------------------------|---------------------|-----------------|
| <b>Committee:</b>     |                          | <b>Date:</b>        | April 4, 2017   |
| <b>Introduced by:</b> | Sens. D. Davis, Barefoot | <b>Prepared by:</b> | Erika Churchill |
| <b>Analysis of:</b>   | Third Edition            |                     | Staff Attorney  |

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**OVERVIEW:** *Senate Bill 68 would repeal certain provisions related to the designation of exempt positions in State employment; repeal the portion of the 2016 Session Law consolidating the functions of ethics, elections, and lobbying; and re-establish the Bipartisan State Board of Elections and Ethics Enforcement, effective May 1, 2017.*

*In re-establishing the consolidation of the functions of ethics, elections, and lobbying, the new Bipartisan State Board of Elections and Ethics Enforcement would be granted the same authority to impose fees currently collected by the Secretary of State and State Board of Elections, which are being consolidated under the authority the new State Board.*

## CURRENT LAW AND BILL ANALYSIS:

### Section 1. Designation of Exempt Positions

G.S. 126-5(d) describes the positions that can be exempted from the North Carolina Human Resources Act (NCHRA). Under those provisions, exempt positions may be designated in 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. The number of exempt policymaking positions in each department headed by an elected department head 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).

In S.L. 2016-126, the General Assembly increased 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 may 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; and increased the number of positions the State Board of Education may designate as exempt 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 provided that the Superintendent of Public Instruction is to designate exempt positions, rather than the State Board of Education, beginning January 1, 2017.

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

Karen Cochrane-Brown  
Director



Legislative Analysis  
Division  
919-733-2578

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## CURRENT LAW AND BILL ANALYSIS:

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

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. The advisory authority of the SEC includes advising 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), with no more than one half of the membership being associated with the same political party. The Governor appoints the chair of the SEC annually. Members of the SEC serve four year terms and may be reappointed. Members must be registered voters and may not: (i) hold or be a candidate for any office of the United States, North Carolina, or political subdivision of the State, (ii) hold office in any political party above the precinct level; (iii) participate in or contribute to political campaigns of covered persons; or (iv) 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. No more than three members can be of the same political party. The SBE organizes itself by electing one of its members chairman and another secretary. Members of the SBE serve four year terms and may be reappointed. Members may not: (i) hold or be a candidate for any office under the government of the United States, North Carolina, or political subdivision of the State; (ii) hold any office in a political party or organization; or (iii) 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 would repeal 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 would direct 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 entitled "Elections and Ethics Enforcement Act." Within the recodification process, the Revisor would be authorized to make other technical and conforming changes as the Revisor deems appropriate.

Section 4 would establish a new Bipartisan State Board of Elections and Ethics Enforcement ("State Board").

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## Membership of the State Board:

- The State Board would consist of eight individuals registered to vote in North Carolina. Members would be appointed by the Governor, from lists of nominees submitted by the State party chairs of the two parties with the highest voter registration.
- Members would serve two-year terms, beginning May 1 of the odd numbered year.
- Members could be removed from the State Board only for misfeasance, malfeasance, or nonfeasance by the Governor. Vacancies on the State Board would 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 would organize themselves by electing one member as chair, one member as vice-chair, one member as secretary, each to serve a two-year term. In 2017 only, the Governor would appoint the chair.
- Persons ineligible for appointment as a member of the State Board would be 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.
  - Serving as a campaign manager or treasurer of any candidate for office.
  - Serving 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 would be 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 would be required to meet at least monthly.
- Five members of the State Board would constitute a quorum.
- Unless any vote requirement is specifically provided for in the Chapter, the State Board requires the following votes for the following types of actions:
  - At least 5 votes for any action under the Election and Election Laws Subchapter, except for campaign finance actions under Articles 23, 24, 25, and 26 of that Subchapter. Examples include:
    - Issuing a certificate of election.
    - Adopting rules related to voter registration, ballot order, voting systems, counting of ballots.
  - At least 6 votes for any campaign finance action. Examples include:
    - Referral to a district attorney for investigation.
    - Adopting rules and forms related to campaign finance.

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- At least 6 votes for any Ethics action under Articles 5, 6, 7, and 9 of Subchapter II. Examples include:
  - Issuing a formal written advisory opinion to a legislator, public servant, or legislative employee.
  - Dismissing a formal complaint against a legislator, public servant or legislative employee.
- At least a majority of those present and voting for any other action. Examples include:
  - Issuing a formal written advisory opinion to a lobbyist or lobbyist principal.
  - Adopting minutes, agendas, etc.
  - Appointing an Executive Director.
- Examples of specific vote requirements in the new Chapter 163A of the General Statutes:
  - At least 6 votes are needed to order a new election.
  - Unanimous vote of all members present and voting for a reduction in early one-stop voting hours.

## Powers of the State Board:

- The State Board would have the power to administer oaths, issue subpoenas, summon witnesses, and compel evidence.
- Subpoenas would be issued by the State Board for Lobbying, and for Elections and Campaign Finance upon a vote of 5 members, with at least two votes from each political party. Other subpoenas would be upon petition, by a vote of at least 5 members, to the Wake County Superior Court.

## 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 would be the chief State elections official.

**Sections 5 and 6** would make various technical and conforming changes.

**Section 7** would make a variety of substantive, conforming, and technical changes, including:

- County boards of elections would increase from three to four members. Two members would 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 would constitute a quorum, and unless required by law to act unanimously, a majority vote for action of the board would require three of the four members. Chairs of the county boards would be 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 shall 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.
- Six votes of the State Board would be needed to order a new election.

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- The State Board would have to 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 would direct 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 PCS requires the State Board to report initially by April 1, 2018, and again by March 1, 2019, to the Joint Legislative Commission on Government 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 would be directed to submit a list of nominees to the Governor no later than April 20, 2017, and the Governor to 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.