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Legislative Update

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ETHICS & LOBBYING LAWS AMENDED BY 2008 GENERAL ASSEMBLY

During the 2008 “short session,” the General Assembly made substantive, clarifying and technical changes to both the State Government Ethics Act (Chapter 138A of the General Statutes) and the Lobbying Law (Chapter 120C of the General Statutes). On August 15, 2008, Governor Easley signed into law House Bill 2542 (S.L. 2008-213), Clarify Ethics & Lobbying Laws, and Senate Bill 1875 (S.L. 2008-215), Clarify Auditor Hotline Authority/SEC. In order to assist covered persons and lobbyists in identifying those changes, the Ethics Commission staff has prepared the attached legislative report. This report categorizes the amendments and provides references to the bill section numbers as well as the statutes that were affected. While the acts are generally effective August 15th, it is important to note that certain effective dates are retroactive to January 1, 2007. Several sections are effective December 1, 2008. In addition to this report, we will have an unofficial updated version of both Chapter 138A and Chapter 120C on our website in the coming weeks. Finally, while the Commission has not yet made any interpretations of these amendments, our hope is that this report will provide general information on important changes to the ethics and lobbying laws.

In the Appropriations Act, the General Assembly also provided funding for an additional attorney position and an appropriation for contractual services to reduce the current backlog of work. We are optimistic that the addition of permanent and temporary staff will greatly improve our response times with regard to both the SEI evaluations and advisory opinions.

Finally, the General Assembly also mandated that the State Ethics Commission conduct a study of the implementation and effectiveness of the State Government Ethics Act. This study will give the Commission a chance to look back over the last two years and evaluate those areas where we have done well and identify areas where improvement is needed. Toward that end, we would like to invite any comments and suggestions from you, the affected community. We also welcome and encourage the input of the general public. The Commission is in the process of organizing this study, and we will provide further information in an upcoming newsletter. The Commission must make its final report and recommendations to the General Assembly no later than March 1, 2009.

Again, we hope this information is helpful to you. Please feel free to contact us if you have any questions or need additional information.

Education Update

For those who have not yet received their mandatory ethics and lobbying education, the Commission is in the process of scheduling additional sessions in October. The dates, times, and locations will be posted on our website within the next two weeks at <http://www.ethicscommission.nc.gov/eduSchedule.htm>.

**2008 LEGISLATIVE CHANGES TO
THE STATE GOVERNMENT ETHICS ACT & LOBBYING LAW**

S.L. 2008-213 (HB 2542) – Clarify Ethics & Lobbying Laws
S.L. 2008-215 (SB 1875) – Clarify Auditor Hotline Authority/SEC
S.L. 2008-181 (HB 2431) – Studies Act of 2008
(Retroactive Effective Dates are Noted in Bold)

STATE GOVERNMENT ETHICS ACT

JURISDICTION OF STATE ETHICS COMMISSION	
<p>Jurisdiction <i>SB 1875, Sec. 1-5 & 7;</i> GS 138A-10; GS 138A-12(b) & (n)</p>	<p>Clarifies that:</p> <ul style="list-style-type: none"> • The State Ethics Commission is the sole State agency with the authority to determine compliance with or violations of the State Government Ethics Act. • Any decisions and advisory opinions of the Commission are binding on all other State agencies. • The State Auditor must refer allegations of violations of the State Government Ethics Act, Article 14 of the Legislative Ethics Act, and the Lobbying Law to the Commission. • The State Auditor is bound by the Commission’s determination as to whether or not such allegations constitute a violation. <p><i>Effective:</i> August 15, 2008, and applies to all information received or collected by the Auditor concerning alleged violations of the State Government Ethics Act, Article 14 of the Legislative Ethics Act, and the Lobbying Law on or after January 1, 2007.</p>
<p>Advisory Opinion Requests from State Auditor <i>SB 1875, Sec. 6, and HB 2542, Sec. 91.5</i> GS 138A-13(b1)/(b2)</p>	<ul style="list-style-type: none"> • Allows the State Auditor to request an advisory opinion as to whether or not someone has complied with the ethics or lobbying laws. The request must be in writing and relate to real fact settings or circumstances. • If the request involves a legislator, the Commission must submit its recommended advisory opinion to the Legislative Ethics Committee within 60 days of receiving all necessary information. The Committee must then act on the opinion within 30 days. If the Committee fails to do so, the Commission must deliver its recommended opinion to the Auditor. • For requests not involving legislators, the Commission must respond to the Auditor within 60 days of receiving all necessary information. <p><i>Effective:</i> August 15, 2008, and applies to all information received or collected by the Auditor concerning alleged violations of the State Government Ethics Act, Article 14 of the Legislative Ethics Act, and the Lobbying Law on or after January 1, 2007.</p> <ul style="list-style-type: none"> • The Auditor may only release the portions of the advisory opinion that are necessary to comply with recognized accounting standards. <p><i>Effective:</i> August 15, 2008.</p>
INVESTIGATIONS	
<p>Notification <i>HB 2542, Sec. 57</i> GS 138A-12(a1)</p>	<p>Requires Commission to notify covered person immediately upon receipt of a written allegation of unethical conduct.</p> <p><i>Effective:</i> August 15, 2008.</p>

Form of Complaints <i>HB 2542, Sec. 1</i> <i>GS 138A-12(b1)</i>	Clarifies that investigations initiated by the Commission on its own motion or at the request of a public servant do not have to be sworn or verified. <i>Effective:</i> August 15, 2008.
ADVICE & ADVISORY OPINIONS	
Requests for Advice <i>HB 2542, Sec. 2</i> <i>GS 138A-13(f)</i>	Allows judicial officers to request advice from the Commission concerning their Statements of Economic Interest. <i>Effective:</i> January 1, 2007.
Confidentiality <i>HB 2542, Sec. 2</i> <i>GS 138A-13</i>	<ul style="list-style-type: none"> • Clarifies that all requests for advice, advice provided, any formal or recommended formal advisory opinion, and any documents submitted to or collected or prepared by the Commission are confidential. • Provides that the identity of an individual requesting advice, the existence of the request, and any information related to the request are confidential and may not be disclosed without the consent of the requester. • Allows an individual requesting advice to authorize the release of the advice. <i>Effective:</i> January 1, 2007 , and applies to requests made on or after that date.
Opinions <i>HB 2542, Sec. 2</i> <i>GS 138A-13(c) & (d)</i>	<ul style="list-style-type: none"> • Clarifies that Commission staff may issue advice, but not formal or recommended advisory opinions. • Requires the Commission to publish edited versions of its own formal advisory opinions within 30 days of issuance and formal advisory opinions of the Legislative Ethics Committee within 30 days of receipt from the Committee. <i>Effective:</i> January 1, 2007.
STATEMENTS OF ECONOMIC INTEREST [SEI'S]	
Disclosures <i>HB 2542, Sec. 72</i> <i>GS 138A-24(a)(10)</i>	Revises "Question 19" to require that a filing person disclose any other information the filing person believes will assist the Commission in advising the person regarding compliance with the ethics law. <i>Effective:</i> January 1, 2007 , and applies to SEI's filed on or after that date.
Evaluations <i>HB 2542, Sec. 74 & 74.5</i> <i>GS 138A-24(e) & (f)</i>	<ul style="list-style-type: none"> • Provides that the Commission is no longer required to prepare SEI evaluations for legislators or judicial officers. • Requires evaluation of SEI's for nominees to the UNC Board of Governors and the State Board of Community Colleges within 7 days. <i>Effective:</i> August 15, 2008.

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CONFLICTS OF INTEREST	
<p>Public Servant Participation in Official Actions <i>HB 2542, Sec. 84</i> GS 138A-36; GS 138A-3(14c) & (27c)</p>	<ul style="list-style-type: none"> • Amends the conflict of interest statute to provide that public servants cannot participate in official actions if the public servant knows the public servant or a “person with which the public servant is associated” may incur a reasonably foreseeable “<i>financial benefit</i>.” • Defines “financial benefit” as a “direct pecuniary gain or loss” to <ul style="list-style-type: none"> ○ The public servant. ○ A person with which the public servant is associated. ○ A business competitor of the public servant. ○ A business competitor of a person with which the public servant is associated. • Expands entities “associated with” a public servant to include: <ul style="list-style-type: none"> ○ Clients and ○ State, political subdivision of the State, board, or any other entity created by the State or a political subdivision of the State that employs the public servant or a member of the public servant’s immediate family. <p><i>Effective:</i> August 15, 2008.</p>
<p>Legislator Participation in Legislative Actions <i>HB 2542, Sec. 84</i> GS 138A-36; GS 138A-3(14c) & (27c)</p>	<ul style="list-style-type: none"> • <i>Same requirements as for public servants.</i> <p><i>Effective:</i> August 15, 2008.</p>
<p>Legislators Employed by Governmental Units <i>HB 2542, Sec. 85</i> GS 138A-38(c)</p>	<ul style="list-style-type: none"> • Notwithstanding the conflict of interest statute, a legislator may participate in a legislative action if the legislator is: <ul style="list-style-type: none"> ○ Employed, retained by, or an independent contractor of a “governmental unit;” and, ○ The only member of the house elected from the legislative district where the governmental unit is located. • The relationship must be disclosed. • Defines “governmental unit” as a political subdivision of the State and any other entity or organization created by a political subdivision of the State. <p><i>Effective:</i> August 15, 2008.</p>
<p>Membership on Entities Established to Support Community Colleges <i>HB 2542, Sec 85</i> GS 138A-38(d)</p>	<p>Allows certain officers or board of trustees members who also serve as an officer, board member, or employee of a nonprofit corporation established to support the community college to take official action without violating the conflict of interest statute so long as the majority of the nonprofit board is not made up of the community college’s officers or board of trustee members.</p> <p><i>Effective:</i> August 15, 2008.</p>

GIFT BAN & EXCEPTIONS	
<p>“Public Event” and “Food & Beverage” Exception <i>HB 2542, Sec. 49 & 79</i> GS 138A-3(29); GS 138A-32(e)(1)</p>	<ul style="list-style-type: none"> • Repealed the definition of “public event” and reorganizes and amends portions of that definition under the “food & beverage” gift ban exception. • Clarifies that food & beverage may be given at an open meeting of a public body if the meeting was noticed under the Open Meetings Law. • Provides that signs or other communication of gatherings open to the general public must be displayed and convey to the general public that the gathering is open. • For permissible gatherings, other than public meetings and those open to the general public, reorganizes previous invitation and attendance requirements from the definition of “public event” and also defines “invited” as a written notice: <ul style="list-style-type: none"> ○ From at least one host or sponsor. ○ Containing the date, time, and location of the gathering. ○ Given at least 24 hours in advance. ○ If it is known at the time of the notice that at least one sponsor is a lobbyist or lobbyist principal, the notice must state whether or not the gathering is permitted by the “food & beverage” exception. <p><i>Effective:</i> August 15, 2008.</p>
<p>Indirect Gifts <i>HB 2542, Sec. 77 & 78</i> GS 138A-32(c) & (d1)</p>	<ul style="list-style-type: none"> • Clarifies that any entity, including the State, can be a third party for purposes of the indirect gift ban. • Clarifies that public servants cannot accept indirect gifts knowing that they were intended to be the “ultimate recipient” of the gift. <p><i>Effective:</i> December 1, 2008.</p>
<p>Gifts to State <i>HB 2542, Sec. 80.5</i> GS 138A-32(e)(5)</p>	<p>Amends the gift ban exception for gifts to the State to clarify that gifts accepted for the use of the State are also permissible.</p> <p><i>Effective:</i> August 15, 2008.</p>
<p>Gifts from Liaison Personnel <i>HB 2542, Sec. 77</i> GS 138A-32(c)</p>	<p>Clarifies that legislators and legislative employees cannot accept gifts from liaison personnel.</p> <p><i>Effective:</i> December 1, 2008.</p>
TECHNICAL, CLARIFYING & CONFORMING CHANGES	
<p>“State Agency” <i>HB 2542, Sec. 54</i> GS 138A-3(30k)</p>	<p>Clarifies that a “state agency” is an executive branch agency.</p> <p><i>Effective:</i> August 15, 2008.</p>
<p>Consistent Use of Terms <i>HB 2542, various sections.</i></p>	<p>Amends various sections of the Ethics Act to ensure that defined terms are used consistently. These changes did not affect the overall substance of the Act.</p> <p><i>Effective:</i> August 15, 2008.</p>

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LOBBYING LAW

ADVICE & ADVISORY OPINIONS	
<p>Confidentiality <i>HB 2542, Sec. 2</i> GS 120C-102</p>	<ul style="list-style-type: none"> • Clarifies that requests for advice, any advice and any related documents are not public records. Documents are broadly defined under N.C.G.S. 120-129. • Clarifies that the request for advice, any advice provided by the staff, formal opinions, any supporting documents submitted, and any documents prepared or collected by the Commission or its staff in connection with a request are confidential. • Requires requester’s consent to release prior to the release of any information and any documents to anyone other than the requester. <p><i>Effective: January 1, 2007, and applies to requests made on or after that date.</i></p>
<p>Opinions <i>HB 2542, Sec. 2</i> GS 120C-102</p>	<ul style="list-style-type: none"> • Clarifies staff can issue informal advice; only the Commission can issue formal advisory opinions. • Requires Commission to publish a redacted copy of a formal opinion within 30 days of the Commission issuing it. <p><i>Effective: January 1, 2007.</i></p>
“GOVERNMENTAL UNIT”	
<p>“Governmental Unit “ <i>HB 2542, Sec. 6, 7 & 44</i> GS 120C-100(a)(10)b.; GS 120C-100(a)(11); GS 138A-3(15d)</p>	<ul style="list-style-type: none"> • Clarifies that a “governmental unit” may hire a contract lobbyist to lobby on its behalf. Hiring a contract lobbyist makes the governmental unit a lobbyist principal and it must register and report as such. • Adds a new defined term “governmental unit” to G.S. 138A-3. “Governmental unit” is defined as a political subdivision of the State, and any other entity or organization created by a political subdivision of the State. <p><i>Effective: August 15, 2008.</i></p>
COMPENSATION DEFINITION	
<p>“Compensation” Replaced with “Payment for Services” <i>HB 2542, Sec. 8</i> GS 120C-100(a)(11k)</p>	<ul style="list-style-type: none"> • Adds new defined term “payment for services,” replacing the term “compensation,” to distinguish payments to lobbyists for lobbying from “compensation” as defined in G.S. 138A for SEI (statement of economic interest) purposes. • Defines “Payment for services” as any money, thing of value, or economic benefit paid to a lobbyist in return for lobbying, but excludes reimbursement of actual travel, administrative expenses or subsistence. <p><i>Effective: August 15, 2008.</i></p>
REPORTING OF REPORTABLE EXPENDITURES	
<p>Reportable Expenditures Made Directly to the State <i>HB 2542, Sec. 23</i> GS 120C-400</p>	<p>Provides that reportable expenditures of cash, a cash equivalent, or a fixed asset made directly to a State agency that maintains a public record accounting of the reportable expenditure do not need to be reported by the lobbyist or lobbyist principal.</p> <p><i>Effective: August 15, 2008.</i></p>
<p>Reporting Names of Designated Individuals <i>HB 2542, Sec. 25</i> GS 120C-401</p>	<p>Provides that if a lobbyist principal does not know the name(s) of the designated individuals who will receive a permissible indirect gift, the lobbyist principal must report a description and the approximate number of the DI(s) and the DI immediate family members benefiting.</p> <p><i>Effective: August 15, 2008.</i></p>

Estimate of Lobbying Income <i>HB 2542, Sec. 29</i> <i>GS 120C-403(b)</i>	When reporting payment for services to a lobbyist, lobbyist principals may rely upon a statement by the lobbyist estimating the portion of the lobbyist's salary, fee or retainer that is reasonably allocated for lobbying services. <i>Effective: January 1, 2007</i> , and applies to reports filed on and after that date.
LIAISON PERSONNEL	
Lobbying <i>HB 2542, Sec. 4</i> <i>GS 120C-100(a)(8)</i>	Clarifies that designation of liaison personnel only applies to lobbying of legislators and legislative employees. <i>Effective: August 15, 2008.</i>
State Agencies Cannot Hire Contract Lobbyist <i>HB 2542, Sec. 30 & 54</i> <i>GS 120C-500(b);</i> <i>GS 138A-3(30k)</i>	<ul style="list-style-type: none"> • Clarifies that State agencies and Council of State members cannot hire contract lobbyists. • Defines "State agency" as any agency, board, department or division or other unit of government in the executive branch, including the Governor's office. <i>Effective: August 15, 2008.</i>
Judicial Branch Liaison Personnel <i>HB 2542, Sec. 31</i> <i>GS 120C-500(d)</i>	Requires Judicial branch to designate at least one and no more than four liaison personnel. <i>Effective: August 15, 2008.</i>
COMPLAINTS, INVESTIGATIONS, SYSTEMATIC REVIEWS, AND ALL RELATED RECORDS	
Confidentiality <i>HB 2542, Sec. 34 & 35</i> <i>GS 120C-600(c);</i> <i>GS 120C-601(c)</i>	<ul style="list-style-type: none"> • Complaints of violations, records accumulated in conjunction with the investigation of complaints, and records accumulated by the Secretary of State's Office in performing a systematic review are confidential and may only be released by a court order. • Information obtained from other agencies or organizations on a confidential or restricted basis remains confidential and exempt from the public records law to the same extent that it is confidential in the possession of the providing entity. <i>Effective: August 15, 2008.</i>
CERTAIN SCHOLARSHIPS	
Reporting <i>HB 2542, Sec. 38</i> <i>GS 120C-800(e)</i>	Scholarships paid for by non-lobbyist principal, nonpartisan legislative organizations of which the General Assembly or a legislator or legislative employee are a member do not need to be reported. <i>Effective: January 1, 2007</i> , and applies to scholarships received on or after that date.
"PERSONS" TO REPORT UNDER GS 120C-800	
"Persons" Include "Governmental Units" <i>HB 2542, Sec. 39</i> <i>GS 120C-800(g)</i>	Clarifies that references to "person" in this section include all persons as defined by 138A-3(27) and all governmental units as defined in 138A-3(15d) <i>Effective: August 15, 2008.</i>
TECHNICAL, CLARIFYING & CONFORMING CHANGES	
Consistent Use of Terms <i>HB 2542, various sections.</i>	Amends various sections of the Lobbying Law to ensure that defined terms are used consistently. These changes did not affect the overall substance of the Lobbying Law. <i>Effective: August 15, 2008.</i>

STUDIES
Part XV of S.L. 2008-181 (HB 2431)
State Ethics Commission to Study Implementation and Effectiveness of the
State Government Ethics Act.

- Requires the State Ethics Commission, in consultation with the Legislative Ethics Committee, to conduct a study of the implementation and effectiveness of the State Government Ethics Act, including:
 - Issues related to the administration of the laws created under this act by the State Ethics Commission, the Secretary of State, the State Board of Elections, and any applicable State agency.
 - Areas of the ethics and lobbying process in which public input is needed.
 - Need for notice to the public of interpretations of the law.
 - Effectiveness of the ethics and lobbying education process.
 - Volume of requests for advice.
 - Adequacy of staffing to timely meet the needs of the act.
 - General perceptions of the community affected by the State Government Ethics Act.
- Requires the Commission to report findings and recommend any proposed legislative changes to the Legislative Ethics Committee no later than March 1, 2009.

Effective: August 4, 2008.