

Chapter 120C.

Lobbying.

Article 1.

General Provisions.

- § 120C-1. Reserved for future codification purposes.
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§ 120C-100. Definitions.

- (a) As used in this Article, the following terms mean:
- (1) Commission. – The State Ethics Commission under Chapter 138A of the General Statutes.
 - (3) Designated individual. – A legislator, legislative employee, or public servant.
 - (5) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:
 - a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.
 - b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:
 1. Applying for a permit, license, determination of eligibility, or certification.
 2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.
 3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.
 4. Ratemaking.
 - c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).
 - d. Ministerial functions.
 - e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open

meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.

- (7) In session. – One of the following:
 - a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
 - 1. Adjourns sine die.
 - 2. Recesses or adjourns for more than 10 days.
 - b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
 - 1. Adjourns sine die.
 - 2. Recesses or adjourns for more than 10 days.
- (9) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.
- (11) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, and students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, but not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages.
- (13) Repealed by Session Laws 2018-146, s. 4.1(a), effective December 27, 2018.
- (15) Liaison personnel. – Any State employee, counsel employed under G.S. 147-17, or officer whose principal duties, in practice or as set forth in that individual's job description, include lobbying legislators or legislative employees.
- (17) Lobby or Lobbying. – Any of the following:
 - a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.
 - b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The terms "lobby" or "lobbying" do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(19) Lobbyist. – An individual who engages in lobbying for payment and meets any of the following criteria:

- a. Represents another person or governmental unit, but is not directly employed by that person or governmental unit.
- b. Contracts for payment for lobbying.
- c. 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 in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (17)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (17)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(21) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist lobbies and who makes payment for the lobbying. In the case where a lobbyist is paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter.

(22) through (31) Reserved for future codification purposes.

(32) Payment. – Any money, thing of value, or economic benefit conveyed to the lobbyist for lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence.

(34) Reportable expenditure. – 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 ten dollars (\$10.00) per designated individual per single calendar day.
- b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

(36) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

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

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter. (1933, c. 11, s. 1; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2001-424, s. 6.10(b); 2005-456, s. 1.; 2006-201, s. 18; 2007-347, s. 6(b); 2007-348, ss. 7, 8(a), (b); 2008-213, ss. 4-8, 90; 2009-129, s. 3; 2010-169, s. 17(a)-(e); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 4.1(a).)

§ 120C-101. Rules and forms.

(a) The Commission shall adopt any rules or definitions necessary to interpret the provisions of this Chapter and adopt any rules necessary to administer the provisions of this Chapter, except for Articles 2, 4 and 8 of this Chapter. The Secretary of State shall adopt any rules, orders, and forms as are necessary to administer the provisions of Articles 2, 4 and 8 of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) With respect to the forms adopted under subsection (a) of this section, the Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) Repealed by Session Laws 2018-146, s. 4.5(h), effective December 27, 2018.

(d) For purposes of G.S. 150B-21.3(b2), a written objection filed by the Commission to a rule adopted by the Secretary of State pursuant to this Chapter shall be deemed written objections from 10 or more persons under that statute. Notwithstanding G.S. 150B-21.3(b2), a rule adopted by the Secretary of State pursuant to this Chapter objected to by the Commission under this subsection shall not become effective until an act of the General Assembly approving the rule has become law. If the General Assembly does not approve a rule under this subsection by the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule shall not become effective and any temporary rule associated with the permanent rule expires. If the General Assembly fails to approve a rule by the day of adjournment, the Secretary of State may initiate rulemaking for a new permanent rule, including by the adoption of a temporary rule. (1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 9; 2008-213, s. 9; 2010-169, s. 16; 2016-125, 4th Ex. Sess., s. 4; 2017-6, ss. 2, 3, 6; 2018-146, ss. 3.1(a), (b), 4.5(h).)

§ 120C-102. Request for advice.

(a) At the request of any person, State agency, or governmental unit affected by this Chapter, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and that person's, State agency's, or any governmental unit's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate to real or reasonably anticipated fact settings or circumstances.

(b) A request for a formal opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The Commission shall issue formal advisory opinions having prospective application only. An individual, State agency, or governmental unit who relies upon the advice provided to that individual, State agency, or governmental unit on a specific matter addressed by a requested formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the Commission.
- (2) Any adverse action by the employing entity.
- (3) Investigation by the Secretary of State.

(c) Staff to the Commission may issue advice, but not formal advisory opinions, under procedures adopted by the Commission.

(d) The Commission shall publish its formal advisory opinions within 30 days of issuance, edited as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsections (c) and (e1) of this section, a request for advice, any advice provided by Commission staff, any formal advisory opinions, any supporting documents submitted or caused to be submitted to the Commission or Commission staff, and any documents prepared or collected by the State Board or the State Board staff in connection with a request for advice are confidential. The identity of the individual, State agency, or governmental unit making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual, State agency, or governmental unit who requests advice or receives advice, including a formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

(e1) Staff to the Commission may share all information and documents related to requests under subsection (a) and (a1) of this section with staff of the Office of the Secretary of State. The information and documents in the possession of the staff of the Office of the Secretary of State shall remain confidential and not public records. The Commission shall forward an unedited copy of each formal advisory opinion under this section to the Secretary of State at the time the formal advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.

(f) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of a formal advisory opinion. (2006-201, s. 18; 2007-348, s. 10; 2008-213, s. 2(c); 2009-570, s. 14; 2016-125, 4th Ex. Sess., s. 4; 2017-6, ss. 2, 3, 6; 2018-146, s. 3.1(a), (b).)

§ 120C-103. Lobbying education program; newsletter; resource collection.

(a) The Commission shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen

and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Commission shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Commission deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the State Board within six months of the designated individual's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Commission deems appropriate. The Commission shall also make lobbying education and awareness programs available to lobbyists and lobbyists' principals. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) A designated individual appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) by the Commission shall attend lobbying education and awareness programs within six months of notification of the designation by the Commission and at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall publish a newsletter containing summaries of the advisory opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request. (2006-201, s. 18; 2008-213, s. 11; 2009-549, s. 2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 120C-104. Chapter applies to candidates for certain offices.

For purposes of this Chapter, the term "legislator" as defined in G.S. 120C-100(7) and the term "public servant" as defined in G.S. 138A-3(30)a. shall include an individual having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or nominated under G.S. 163-114 or G.S. 163-98. (2006-201, s. 18; 2008-213, s. 12; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

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