

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**HOUSE BILL 364
RATIFIED BILL**

**AN ACT TO CLARIFY THE CONFLICT OF INTEREST PROVISIONS FOR CERTAIN
COMMISSIONS AND TO MODIFY APPOINTMENTS TO SEVERAL STATE
BOARDS AND COMMISSIONS.**

Whereas, the Environmental Management Commission was established by Section 19 of S.L. 1973-1262, effective July 1, 1974; and

Whereas, as provided in G.S. 143B-282(a), the Environmental Management Commission was established with the power and duty to promulgate rules for the protection, preservation, and enhancement of the water and air resources of the State; and

Whereas, the membership of the Environmental Management Commission was established by Section 20 of S.L. 1973-1262; and

Whereas, subdivision (9) of subsection (a) of Section 20 of S.L. 1973-1262 provided, "The Governor, by executive order, shall promulgate criteria for determining the eligibility of persons under this section and for this purpose, may promulgate the rules, regulations or guidelines established by any federal agency interpreting and applying equivalent provisions of law."; and

Whereas, Section 5 of S.L. 1979-1158 amended the provision enacted by subdivision (9) of subsection (a) of Section 20 of S.L. 1973-1262 to also provide, "The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law."; and

Whereas, the provision enacted by subdivision (9) of subsection (a) of Section 20 of S.L. 1973-1262, as subsequently amended, currently provides in G.S. 143B-283(c), "The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law."; and

Whereas, the Coastal Resources Commission was established by Section 1 of S.L. 1973-1284, effective July 1, 1974; and

Whereas, the Coastal Resources Commission was established to implement the Coastal Area Management Act of 1974; and

Whereas, as provided in G.S. 113A-102(b), the goals of the Coastal Area Management Act include management of the natural coastal systems in order to protect and maintain their natural productivity and their biological, economic, and esthetic values and management of development and preservation of the land and water resources of the coastal area in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations; and

Whereas, the membership of the Coastal Resources Commission was established by Section 1 of S.L. 1973-1284; and

Whereas, Section 1 of S.L. 1989-505 amended the membership provisions established by Section 1 of S.L. 1973-1284 to provide, "The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section."; and



Whereas, the provision enacted by Section 1 of S.L. 1973-1284, as subsequently amended, currently provides, "The Governor shall require adequate disclosure of potential conflicts of interest by these members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection."; and

Whereas, the Coal Ash Management Commission was established by Section 3.(a) of S.L. 2014-122, effective September 20, 2014; and

Whereas, as provided in G.S. 130A-309.202(a), the Coal Ash Management Commission was established in recognition of the complexity and magnitude of the issues associated with the management of coal combustion residuals and the proper closure and remediation of coal combustion residuals surface impoundments; and

Whereas, as provided in G.S. 130A-309.213(c), the Coal Ash Management Commission must evaluate all information submitted in accordance with the Coal Ash Management Act related to the proposed classifications of coal combustion residuals surface impoundments and may only approve a proposed classification if it determines that the classification was developed in accordance with the Coal Ash Management Act and that the classification accurately reflects the level of risk posed by the coal combustion residuals surface impoundment; and

Whereas, as provided in G.S. 130A-309.214(d), the Coal Ash Management Commission must approve a Closure Plan if it determines that the Closure Plan was developed in accordance with the Coal Ash Management Act, that implementation of the Closure Plan according to the Closure Plan's schedule is technologically and economically feasible, and the Closure Plan is protective of the public health, safety, and welfare; the environment; and natural resources. In addition, the Commission may consider any impact on electricity costs and reliability, but this factor may not be dispositive of the Commission's determination; and

Whereas, like the Environmental Management Commission and the Coastal Resources Commission, the Coal Ash Management Commission was established to evaluate complex issues related to the risks posed by environmental contaminants and ensure that the actions taken to manage environmental contaminants are protective of the public health, safety, and welfare; the environment; and natural resources; and

Whereas, due to the similar powers and duties shared by the Coal Ash Management Commission with the Environmental Management Commission and the Coastal Resources Commission, the General Assembly modelled many of the provisions establishing the Coal Ash Management Commission on provisions establishing the Environmental Management Commission and the Coastal Resources Commission; and

Whereas, the General Assembly modelled the conflict of interest and disclosure provision of the Coal Ash Management Commission found in G.S. 130A-309.202(j) on the long-standing and unchallenged conflict of interest and disclosure provisions of the Environmental Management Commission and the Coastal Resources Commission; and

Whereas, although the General Assembly finds that measures to prevent conflicts of interest for public servants and to provide abundant disclosure to prevent the appearance of conflicts of interest are of the utmost public good, the General Assembly finds that implementing such measures through issuance of an Executive Order by the Governor is unnecessary and that the Governor may determine that such additional measures are not necessary given the protections provided under Chapter 138A of the General Statutes, the State Government Ethics Act; and

Whereas, the holding of the North Carolina Supreme Court in *Wallace v. Bone*, 304 N.C. 591 (1982), prohibits legislators from serving on certain boards; and

Whereas, since *Wallace v. Bone*, the General Assembly has periodically enacted legislation removing legislators from serving in such capacities when those instances arise; and

Whereas, the General Assembly has determined that legislators are not eligible to serve on certain existing boards and commissions; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. CLARIFY CONFLICT OF INTEREST PROVISIONS

SECTION 1.1. G.S. 130A-309.202 reads as rewritten:

"§ 130A-309.202. (Repealed effective June 30, 2030) Coal Ash Management Commission.

...
(j) ~~Conflicts of Interest; Disclosure.~~—The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation and, for this purpose, may promulgate rules, regulations, or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(k) ~~Covered Persons; Persons; Conflicts of Interest; Disclosure.~~ – All members of the Commission are covered persons for the purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may require additional disclosure of potential conflicts of interest by members. The Governor may promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation, and, for this purpose, may promulgate rules, regulations, or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

...."

SECTION 1.2. G.S. 143B-283 reads as rewritten:

"§ 143B-283. Environmental Management Commission – members; selection; removal; compensation; quorum; services.

...
(e) ~~The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.~~

(c1) All members of the Commission are covered persons for the purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may require additional disclosure of potential conflicts of interest by members. The Governor may promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation, and, for this purpose, may promulgate rules, regulations, or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

...."

SECTION 1.3. G.S. 113A-104 reads as rewritten:

"§ 113A-104. Coastal Resources Commission.

...
(c1) The members of the Commission whose qualifications are described in subdivisions (3), (6), (7), (8), (9), (11), and (12) of subsection (b1) of this section shall be persons who do not derive any significant portion of their income from land development, construction, real estate sales, or lobbying and do not otherwise serve as agents for development-related business activities. ~~The Governor shall require adequate disclosure of potential conflicts of interest by these members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection.~~

(c2) All members of the Commission are covered persons for the purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and

ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may require additional disclosure of potential conflicts of interest by the members described in subsection (c1) of this section. The Governor may promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons described in subsection (c1) of this section.

...."

PART II. BRING VARIOUS BOARDS INTO WALLACE V. BONE COMPLIANCE

SECTION 2.1. G.S. 116E-3 reads as rewritten:

"§ 116E-3. North Carolina Longitudinal Data System Board.

(a) There is established the North Carolina Longitudinal Data System Board which shall consist of the following 18 members:

- (1) The Superintendent of Public Instruction, or the Superintendent's designee.
- (2) The President of The University of North Carolina, or the President's designee.
- (3) The President of the North Carolina Community College System, or the President's designee.
- (4) The Secretary of the Department of Health and Human Services, or the Secretary's designee.
- (5) The Assistant Secretary of the Department of Commerce, Division of Employment Security, or the Assistant Secretary's designee.
- (6) The Secretary of the Department of Revenue, or the Secretary's designee.
- (7) The Commissioner of Labor, or the Commissioner's designee.
- (8) The President of the North Carolina Independent Colleges and Universities, Inc., or the President's designee.
- (9) The Commissioner of Motor Vehicles, Department of Transportation, or the Commissioner's designee.
- (10) The State Chief Information Officer.
- (11) The State Controller, or the Controller's designee.
- (12) Three public members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
- (13) Three public members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
- (14) One public member appointed by the Governor, to serve at the Governor's pleasure."

SECTION 2.2. G.S. 143B-394.15(c) reads as rewritten:

"(c) Membership. – The Commission shall consist of 39 members, who reflect the geographic and cultural regions of the State, as follows:

- (1) Nine persons appointed by the Governor, one of whom is a clerk of superior court; one of whom is an academician who is knowledgeable about domestic violence trends and treatment; one of whom is a member of the medical community; one of whom is a United States Attorney for the State of North Carolina or that person's designee; one of whom is a member of the North Carolina Bar Association who has studied domestic violence issues; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; one of whom is a member of the North Carolina Coalition Against Domestic Violence; one of whom is a former victim of domestic violence; and one of whom is a member of the public at large.
- (2) Nine persons appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, ~~one of whom is a member of the Senate;~~ one of whom is a district court judge; one of whom is a district attorney or assistant district attorney; one of whom is a representative of the law enforcement community with specialized knowledge of domestic violence issues; one of whom is a county manager; one of whom is a representative of a community legal services agency who works with domestic violence victims; one of whom is a representative of the linguistic and cultural minority communities; one of whom is a representative of a

victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; and ~~one~~two of whom ~~is a member~~are members of the public at large.

- (3) Nine persons appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, ~~one of whom is a member of the House of Representatives~~; one of whom is a magistrate; one of whom is a member of the business community; one of whom is a district court judge; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; one of whom is a representative of the law enforcement community with specialized knowledge of domestic violence issues; one of whom provides offender treatment and is approved by the North Carolina Council for Women; one of whom is a representative of the linguistic and cultural minority communities; and ~~one~~two of whom ~~is a public member~~are members of the public at large.

...."

SECTION 2.3(a) G.S. 143B-1100(a)(1) reads as rewritten:

"(a) There is hereby created the Governor's Crime Commission of the Department of Public Safety. The Commission shall consist of 37 voting members and five nonvoting members. The composition of the Commission shall be as follows:

- (1) The voting members shall be:

...

- d. ~~Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.~~Four public members."

SECTION 2.3(b) G.S. 143B-1100(b)(4) reads as rewritten:

- "(4) ~~The two members of the House of Representatives~~Two public members provided by subdivision (a)(1)d. of this section shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives and the two members of the Senate~~two public members~~ provided by subdivision (a)(1)d. of this section shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate. ~~These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).~~"

SECTION 2.4. G.S. 120-123 reads as rewritten:

"§ 120-123. **Service by members of the General Assembly on certain boards and commissions.**

No member of the General Assembly may serve on any of the following boards or commissions:

...

- (81) The North Carolina Longitudinal Data System Board, as established in G.S. 116E-3.
(82) The Domestic Violence Commission, as established in Part 10C of Article 9 of Chapter 143B of the General Statutes.
(83) The Governor's Crime Commission of the Department of Public Safety, as established in G.S. 143B-1100."

PART III. EFFECTIVE DATE

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of April,

2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____m. this _____ day of _____, 2015