

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE DRS35201-LE-99A* (03/13)

Short Title: Clarify Laws on Exec. Orders and Appointments.

(Public)

Sponsors: Senator Apodaca (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE CONFLICT OF INTEREST PROVISIONS FOR CERTAIN
3 COMMISSIONS AND TO MODIFY APPOINTMENTS TO SEVERAL STATE
4 BOARDS AND COMMISSIONS.

5 Whereas, the Environmental Management Commission was established by Section
6 19 of S.L. 1973-1262, effective July 1, 1974; and

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

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

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

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

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

33 Whereas, the Coastal Resources Commission was established by Section 1 of S.L.
34 1973-1284, effective July 1, 1974; and

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



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

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

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

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

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

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

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

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

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

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

49 Whereas, the General Assembly modelled the conflict of interest and disclosure
50 provision of the Coal Ash Management Commission found in G.S. 130A-309.202(j) on the

1 long-standing and unchallenged conflict of interest and disclosure provisions of the
2 Environmental Management Commission and the Coastal Resources Commission; and

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

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

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

14 Whereas, the General Assembly has determined that legislators are not eligible to
15 serve on certain existing boards and commissions; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 18 **PART I. CLARIFY CONFLICT OF INTEREST PROVISIONS**

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

20 **"§ 130A-309.202. (Repealed effective June 30, 2030) Coal Ash Management Commission.**

21 ...
22 ~~(j) Conflicts of Interest; Disclosure. — The Governor shall require adequate disclosure~~
23 ~~of potential conflicts of interest by members. The Governor, by executive order, shall~~
24 ~~promulgate criteria regarding conflicts of interest and disclosure thereof for determining the~~
25 ~~eligibility of persons under this subsection, giving due regard to the requirements of federal~~
26 ~~legislation and, for this purpose, may promulgate rules, regulations, or guidelines in~~
27 ~~conformance with those established by any federal agency interpreting and applying provisions~~
28 ~~of federal law.~~

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

41"

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

43 **"§ 143B-283. Environmental Management Commission – members; selection; removal;** 44 **compensation; quorum; services.**

45 ...
46 ~~(e) The Governor shall require adequate disclosure of potential conflicts of interest by~~
47 ~~members. The Governor, by executive order, shall promulgate criteria regarding conflicts of~~
48 ~~interest and disclosure thereof for determining the eligibility of persons under this subsection,~~
49 ~~giving due regard to the requirements of federal legislation, and for this purpose may~~
50 ~~promulgate rules, regulations or guidelines in conformance with those established by any~~
51 ~~federal agency interpreting and applying provisions of federal law.~~

1 (c1) All members of the Commission are covered persons for the purposes of Chapter
2 138A of the General Statutes, the State Government Ethics Act. As covered persons, members
3 of the Commission shall comply with the applicable requirements of the State Government
4 Ethics Act, including mandatory training, the public disclosure of economic interests, and
5 ethical standards for covered persons. Members of the Commission shall comply with the
6 provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may
7 require additional disclosure of potential conflicts of interest by members. The Governor may
8 promulgate criteria regarding conflicts of interest and disclosure thereof for determining the
9 eligibility of persons under this subsection, giving due regard to the requirements of federal
10 legislation, and, for this purpose, may promulgate rules, regulations, or guidelines in
11 conformance with those established by any federal agency interpreting and applying provisions
12 of federal law.

13"

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

15 "**§ 113A-104. Coastal Resources Commission.**

16 ...

17 (c1) The members of the Commission whose qualifications are described in subdivisions
18 (3), (6), (7), (8), (9), (11), and (12) of subsection (b1) of this section shall be persons who do
19 not derive any significant portion of their income from land development, construction, real
20 estate sales, or lobbying and do not otherwise serve as agents for development-related business
21 activities. ~~The Governor shall require adequate disclosure of potential conflicts of interest by~~
22 ~~these members. The Governor, by executive order, shall promulgate criteria regarding conflicts~~
23 ~~of interest and disclosure thereof for determining the eligibility of persons under this~~
24 ~~subsection.~~

25 (c2) All members of the Commission are covered persons for the purposes of Chapter
26 138A of the General Statutes, the State Government Ethics Act. As covered persons, members
27 of the Commission shall comply with the applicable requirements of the State Government
28 Ethics Act, including mandatory training, the public disclosure of economic interests, and
29 ethical standards for covered persons. Members of the Commission shall comply with the
30 provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may
31 require additional disclosure of potential conflicts of interest by the members described in
32 subsection (c1) of this section. The Governor may promulgate criteria regarding conflicts of
33 interest and disclosure thereof for determining the eligibility of persons described in subsection
34 (c1) of this section.

35"

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

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

39 "**§ 116E-3. North Carolina Longitudinal Data System Board.**

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

- 42 (1) The Superintendent of Public Instruction, or the Superintendent's designee.
- 43 (2) The President of The University of North Carolina, or the President's
44 designee.
- 45 (3) The President of the North Carolina Community College System, or the
46 President's designee.
- 47 (4) The Secretary of the Department of Health and Human Services, or the
48 Secretary's designee.
- 49 (5) The Assistant Secretary of the Department of Commerce, Division of
50 Employment Security, or the Assistant Secretary's designee.
- 51 (6) The Secretary of the Department of Revenue, or the Secretary's designee.

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

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

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

- 17 (1) Nine persons appointed by the Governor, one of whom is a clerk of superior
 18 court; one of whom is an academician who is knowledgeable about domestic
 19 violence trends and treatment; one of whom is a member of the medical
 20 community; one of whom is a United States Attorney for the State of North
 21 Carolina or that person's designee; one of whom is a member of the North
 22 Carolina Bar Association who has studied domestic violence issues; one of
 23 whom is a representative of a victims' service program eligible for funding
 24 by the Governor's Crime Commission or the North Carolina Council for
 25 Women; one of whom is a member of the North Carolina Coalition Against
 26 Domestic Violence; one of whom is a former victim of domestic violence;
 27 and one of whom is a member of the public at large.
 28 (2) Nine persons appointed by the General Assembly, upon recommendation of
 29 the President Pro Tempore of the Senate, ~~one of whom is a member of the~~
 30 ~~Senate;~~ one of whom is a district court judge; one of whom is a district
 31 attorney or assistant district attorney; one of whom is a representative of the
 32 law enforcement community with specialized knowledge of domestic
 33 violence issues; one of whom is a county manager; one of whom is a
 34 representative of a community legal services agency who works with
 35 domestic violence victims; one of whom is a representative of the linguistic
 36 and cultural minority communities; one of whom is a representative of a
 37 victims' service program eligible for funding by the Governor's Crime
 38 Commission or the North Carolina Council for Women; and ~~one two~~
 39 ~~of whom is a member~~ are members of the public at large.
 40 (3) Nine persons appointed by the General Assembly, upon recommendation of
 41 the Speaker of the House of Representatives, ~~one of whom is a member of~~
 42 ~~the House of Representatives;~~ one of whom is a magistrate; one of whom is
 43 a member of the business community; one of whom is a district court judge;
 44 one of whom is a representative of a victims' service program eligible for
 45 funding by the Governor's Crime Commission or the North Carolina Council
 46 for Women; one of whom is a representative of the law enforcement
 47 community with specialized knowledge of domestic violence issues; one of
 48 whom provides offender treatment and is approved by the North Carolina
 49 Council for Women; one of whom is a representative of the linguistic and
 50 cultural minority communities; and ~~one two~~
 51 ~~of whom is a public member~~ are members of the public at large.

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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 Senatetwo 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.