

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015**

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**HOUSE BILL 364\***

Short Title: Clarify Laws on Exec. Orders and Appointments. (Public)

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Sponsors: Representative Lewis (Primary Sponsor).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

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Referred to: Rules, Calendar, and Operations of the House.

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March 26, 2015

A BILL TO BE ENTITLED  
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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 19 20 **PART I. CLARIFY CONFLICT OF INTEREST PROVISIONS**

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

22 **"§ 130A-309.202. (Repealed effective June 30, 2030) Coal Ash Management Commission.**

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

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

43           ...."

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

45 **"§ 143B-283. Environmental Management Commission – members; selection; removal;**  
46 **compensation; quorum; services.**

47           ...  
48           ~~(e) The Governor shall require adequate disclosure of potential conflicts of interest by~~  
49 ~~members. The Governor, by executive order, shall promulgate criteria regarding conflicts of~~  
50 ~~interest and disclosure thereof for determining the eligibility of persons under this subsection,~~  
51 ~~giving due regard to the requirements of federal legislation, and for this purpose may~~

1 ~~promulgate rules, regulations or guidelines in conformance with those established by any~~  
2 ~~federal agency interpreting and applying provisions of federal law.~~

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

15 ...."

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

17 "**§ 113A-104. Coastal Resources Commission.**

18 ...

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

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

37 ...."

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

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

41 "**§ 116E-3. North Carolina Longitudinal Data System Board.**

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

- 44 (1) The Superintendent of Public Instruction, or the Superintendent's designee.
- 45 (2) The President of The University of North Carolina, or the President's  
46 designee.
- 47 (3) The President of the North Carolina Community College System, or the  
48 President's designee.
- 49 (4) The Secretary of the Department of Health and Human Services, or the  
50 Secretary's designee.

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

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

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

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