

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS35377-RU-49B (01/09)

Short Title: State Government Ethics Act.

(Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO
CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL
STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE
EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND
COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC
INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE,
AND JUDICIAL BRANCHES, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to
read:

"Chapter 138A.

"State Government Ethics Act.

"Article 1.

"General Provisions.

"§ 138A-1. Title.

This Chapter shall be known and may be cited as the 'State Government Ethics Act.'

"§ 138A-2. Purpose.

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no

1 place in decision making for the public. Public officials must exercise their duties
2 responsibly with skillful judgment and energetic dedication. Public officials must
3 exercise discretion with sensitive information pertaining to public and private persons
4 and activities. To maintain the integrity of North Carolina's State government, those
5 citizens entrusted with authority must exercise it for the good of the public and treat
6 every citizen with courtesy, attentiveness, and respect. Because many public officials
7 serve on a part-time basis, it is inevitable that conflicts of interest and appearances of
8 conflict will occur. Often these conflicts are unintentional and slight, but at every turn
9 those public officials who represent the people of this State must be certain that it is the
10 interests of the people, and not their own, that are being served. Officials should be
11 prepared to remove themselves immediately from decisions, votes, or processes where
12 even the appearance of a conflict of interest exists. The State is committed to the
13 responsible exercise of authority by persons of honor and goodwill in government, by
14 adopting a stronger procedure to prevent the occurrence of conflicts of interest in
15 government and to resolve conflicts when they do occur.

16 **"§ 138A-3. Definitions.**

17 The following definitions apply in this Chapter:

- 18 (1) Board. – Any State executive branch board, commission, council,
19 committee, task force, authority, or similar public body, however
20 denominated, except for those public bodies that have only advisory
21 authority.
- 22 (2) Business. – Any of the following, whether or not for profit:
- 23 a. Association.
24 b. Corporation.
25 c. Enterprise.
26 d. Joint venture.
27 e. Organization.
28 f. Partnership.
29 g. Proprietorship.
30 h. Vested trust.
31 i. Every other business interest, including ownership or use of
32 land for income.
- 33 (3) Business associate. – A partner, or member or manager of a limited
34 liability company.
- 35 (4) Business with which associated. – A business of which the covered
36 person or any member of the covered person's immediate family has a
37 pecuniary interest. For purposes of this sub-subdivision, the term
38 'business' shall not include a widely held investment fund, including a
39 mutual fund, regulated investment company, or pension or deferred
40 compensation plan, if all of the following apply:
- 41 a. The covered person or a member of the covered person's
42 immediate family neither exercises nor has the ability to
43 exercise control over the financial interests held by the fund.

- 1 b. The fund is publicly traded, or the fund's assets are widely
2 diversified.
- 3 (5) Commission. – The State Ethics Commission.
4 (6) Committee. – The Legislative Ethics Committee.
5 (7) Compensation. – Any money, thing of value, or economic benefit
6 conferred on or received by any person in return for services rendered
7 or to be rendered by that person or another. This term does not include
8 campaign contributions properly received and, if applicable, reported
9 as required by Article 22A of Chapter 163 of the General Statutes.
- 10 (8) Confidential information. – Information defined as confidential by
11 statute.
- 12 (9) Constitutional officers of the State. – Officers whose offices are
13 established by Article III of the Constitution.
- 14 (10) Contract. – Any agreement, including sales and conveyances of real
15 and personal property and agreements for the performance of services.
- 16 (11) Covered person. – A legislator, a public servant, or a judicial officer.
17 (12) Economic interest. – Matters involving a business with which the
18 person is associated or a nonprofit corporation or organization with
19 which the person is associated.
- 20 (13) Employing entity. – Any of the following bodies of State government
21 of which the public servant is an employee or a member, or over which
22 the public servant exercises supervision: agencies, authorities, boards,
23 commissions, committees, councils, departments, offices, institutions
24 and their subdivisions, and constitutional offices of the State.
- 25 (14) Extended family. – Spouse, descendant, ascendant, or sibling of the
26 covered person or descendant, ascendant, or sibling of the spouse of
27 the covered person.
- 28 (15) Immediate family. – An unemancipated child of the covered person
29 residing in the household and the covered person's spouse, if not
30 legally separated.
- 31 (16) Judicial officer. – Justice or judge of the General Court of Justice,
32 district attorney, clerk of court, or the director or assistant director of
33 the Administrative Office of the Courts, or any person elected or
34 appointed to any of these positions prior to taking office.
- 35 (17) Legislative action. – As the term is defined in G.S. 120-47.1.
36 (18) Legislative employee. – As the term is defined in G.S. 120-47.1.
37 (19) Legislator. – A member or presiding officer of the General Assembly,
38 or a person elected or appointed a member or presiding officer of the
39 General Assembly before taking office.
- 40 (20) Lobbying. – As the term is defined in G.S. 120-47.1.
41 (21) Nonprofit corporation or organization with which associated. – Any
42 public or private enterprise, incorporated or otherwise, that is
43 organized or operating in the State primarily for religious, charitable,
44 scientific, literary, public health and safety, or educational purposes

1 and of which the person or any member of the person's immediate
2 family is a director, officer, governing board member, employee, or
3 independent contractor as of December 31 of the preceding year.

4 (22) Official action. – Any decision, including administration, approval,
5 disapproval, preparation, recommendation, the rendering of advice,
6 and investigation, made or contemplated in any proceeding,
7 application, submission, request for a ruling or other determination,
8 contract, claim, controversy, investigation, charge, or rule making.

9 (23) Participate. – To take part in, influence, or attempt to influence,
10 including acting through an agent or proxy.

11 (24) Pecuniary interest. – Any of the following:

12 a. Owning, either individually or collectively, a legal, equitable, or
13 beneficial interest of ten thousand dollars (\$10,000) or more or
14 five percent (5%), whichever is less, of any business.

15 b. Receiving, either individually or collectively, during the
16 preceding calendar year, compensation that is or will be
17 required to be included as taxable income on federal income tax
18 returns of the covered person, the covered person's immediate
19 family, or a business with which associated in an aggregate
20 amount of five thousand dollars (\$5,000) from any business or
21 combination of businesses. A pecuniary interest exists in any
22 client or customer who pays fees or commissions, either
23 individually or collectively, of five thousand dollars (\$5,000) or
24 more in the preceding 12 months to the covered person, the
25 covered person's immediate family, or a business with which
26 associated.

27 c. Receiving, either individually or collectively and directly or
28 indirectly, in the preceding 12 months, gifts or honoraria having
29 an unknown value or having an aggregate value of five hundred
30 dollars (\$500.00) or more from any person. A pecuniary interest
31 does not exist under this sub-subdivision by reason of (i) a gift
32 or bequest received as the result of the death of the donor; (ii) a
33 gift from an extended family member; or (iii) acting as a trustee
34 of a trust for the benefit of another.

35 d. Holding the position of associate, director, officer, business
36 associate, or proprietor of any business, irrespective of the
37 amount of compensation received.

38 (25) Public event. – Either of the following:

39 a. An organized gathering of individuals open to the general
40 public or to which a legislator or legislative employee is invited
41 along with the entire membership of the House of
42 Representatives, Senate, a committee, a subcommittee, a county
43 legislative delegation, a joint committee, or legislative caucus

- 1 and to which at least 10 employees or members of the principal
2 actually attend.
- 3 b. An organized gathering of individuals open to the general
4 public or to which at least 10 public servants are invited to
5 attend and at least 10 employees or members of the principal or
6 person actually attend.
- 7 (26) Public servants. – All of the following:
- 8 a. Constitutional officers of the State and persons elected or
9 appointed as constitutional officers of the State prior to taking
10 office.
- 11 b. Employees of the Office of the Governor.
- 12 c. Heads of all principal State departments, as set forth in
13 G.S. 143B-6, who are appointed by the Governor.
- 14 d. The chief deputy and chief administrative assistant of each
15 person designated under sub-subdivision a. or c. of this
16 subdivision.
- 17 e. Confidential assistants and secretaries as defined in
18 G.S. 126-5(c)(2), to persons designated under sub-subdivision
19 a., c., or d. of this subdivision.
- 20 f. Employees in exempt positions as defined in G.S. 126-5(b) and
21 employees in exempt positions designated in accordance with
22 G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to
23 these individuals.
- 24 g. Any other employees or appointees in the principal State
25 departments as may be designated by the Governor to the extent
26 that the designation does not conflict with the State Personnel
27 Act.
- 28 h. All voting members of boards, including ex officio members
29 and members serving by executive, legislative, or judicial
30 branch appointment.
- 31 i. For The University of North Carolina, the voting members of
32 the Board of Governors of The University of North Carolina,
33 the president, the vice-presidents, and the chancellors, the
34 vice-chancellors, and voting members of the boards of trustees
35 of the constituent institutions.
- 36 j. For the Community Colleges System, the voting members of
37 the State Board of Community Colleges, the President and the
38 chief financial officer of the Community Colleges System, the
39 president, chief financial officer, and chief administrative
40 officer of each community college, and voting members of the
41 boards of trustees of each community college.
- 42 k. Members of the Commission.
- 43 l. Persons under contract with the State working in or against a
44 position included under this subdivision.

1 (27) Vested trust. – A trust, annuity, or other funds held by a trustee or
2 other third party for the benefit of the covered person or a member of
3 the covered person's immediate family. A vested trust shall not include
4 a widely held investment fund, including a mutual fund, regulated
5 investment company, or pension or deferred compensation plan, if:

6 a. The covered person or a member of the covered person's
7 immediate family neither exercises nor has the ability to
8 exercise control over the financial interests held by the fund;

9 and

10 b. The fund is publicly traded, or the fund's assets are widely
11 diversified.

12 **"§ 138A-4 and 138A-5. [Reserved]**

13 "Article 2.

14 "Ethical Standards for Covered Persons.

15 **"§ 138A-6. Use of public position for private gain.**

16 (a) A covered person shall not knowingly use the covered person's public
17 position in any manner that will result in financial benefit, direct or indirect, to the
18 covered person, a member of the covered person's extended family, or a person with
19 whom, or business with which, the covered person is associated. The performance of
20 usual and customary duties associated with the public position or the advancement of
21 public policy goals or constituent services, without compensation, shall not constitute
22 the use of public position for financial benefit. This subsection shall not apply to
23 financial or other benefits derived by a covered person that the covered person would
24 enjoy to an extent no greater than that which other citizens of the State would or could
25 enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable
26 person would conclude under the circumstances that the covered person's ability to
27 protect the public interest and perform the covered person's official duties would not be
28 compromised.

29 (b) A covered person shall not mention or permit another person to mention the
30 covered person's public position in nongovernmental advertising that advances the
31 private interest of the covered person or others. The prohibition in this subsection shall
32 not apply to political advertising, news stories, or news articles.

33 **"§ 138A-7. Gifts.**

34 (a) A public servant or legislator shall not knowingly, directly or indirectly, ask,
35 accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of
36 value for the public servant or legislator, or for another person, in return for being
37 influenced in the discharge of the public servant's or legislator's official responsibilities,
38 other than that which is received by the public servant or the legislator from the State
39 for acting in the public servant's or legislator's official capacity.

40 (b) A public servant may not solicit for a charitable purpose any gift from any
41 subordinate State employee. This subsection shall not apply to generic written
42 solicitations to all members of a class of subordinates.

43 (c) No public servant, legislator, or legislative employee shall knowingly accept
44 anything of monetary value, directly or indirectly, from a legislative lobbyist or

1 principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in
2 G.S. 147-54.31. No public servant shall knowingly accept anything of monetary value,
3 directly or indirectly, from a person whom the public servant knows or has reason to
4 know any of the following:

5 (1) Is doing or is seeking to do business of any kind with the public
6 servant's employing entity.

7 (2) Is engaged in activities that are regulated or controlled by the public
8 servant's employing entity.

9 (3) Has financial interests that may be substantially and materially
10 affected, in a manner distinguishable from the public generally, by the
11 performance or nonperformance of the public servant's official duties.

12 (d) Subsection (c) of this section shall not apply to any of the following:

13 (1) Meals and beverages for immediate consumption in connection with
14 public events.

15 (2) Informational materials relevant to the duties of the public servant,
16 legislator, or legislative employee.

17 (3) Reasonable actual expenses for food, registration, travel, and lodging
18 of the public servant, legislator, or legislative employee for a meeting
19 at which the public servant, legislator, or legislative employee
20 participates in a panel or speaking engagement at the meeting related
21 to the public servant's, legislator's, or legislative employee's duties and
22 when expenses are incurred on the actual day of participation in the
23 engagement or incurred within a 24-hour time period before or after
24 the engagement.

25 (4) Entertainment or recreation provided in connection with a public event
26 sponsored by a charitable organization as defined under G.S. 1-539.11.

27 (5) Items or services received by a public servant in connection with a
28 state, national, or regional organization in which the public servant or
29 the public servant's agency is a member by virtue of the person's public
30 position.

31 (6) Items or services received by a legislator or legislative employee in
32 connection with a state, regional, or national legislative organization of
33 which the General Assembly, the legislator or legislative employee is a
34 member by virtue of the person's legislative position.

35 (7) Items and services received relating to an educational conference or
36 meeting.

37 (8) A plaque or similar nonmonetary memento recognizing individual
38 services in a field or specialty or to a charitable cause.

39 (9) Gifts accepted on behalf of the State.

40 (10) Anything generally available or distributed to the general public or all
41 other State employees.

42 (11) Anything for which fair market value is paid by the public servant,
43 legislator, or legislative employee.

- 1 (12) Commercially available loans made on terms not more favorable than
2 generally available to the public in the normal course of business if not
3 made for the purpose of lobbying.
- 4 (13) Contractual arrangements or business relationships or arrangements
5 made in the normal course of business if not made for the purpose of
6 lobbying.
- 7 (14) Academic scholarships made on terms not more favorable than
8 scholarships generally available to the public.
- 9 (15) Political contributions properly received and reported as required
10 under Article 22A of Chapter 163 of the General Statutes.
- 11 (16) Gifts from the public servant's, legislator's, or legislative employee's
12 extended family, or a member of the same household of the public
13 servant, legislator, or legislative employee, or gifts received in
14 conjunction with a marriage, birth, adoption, or death.
- 15 (17) Things of monetary value given to a public servant valued in excess of
16 ten dollars (\$10.00) where the thing of monetary value is entertainment
17 or related expenses associated with the public business of industry
18 recruitment, promotion of international trade, or the promotion of
19 travel and tourism, and the public servant is responsible for conducting
20 the business on behalf of the State, provided all the following
21 conditions apply:
- 22 a. The public servant did not solicit the thing of value, and the
23 public servant did not accept the thing of value in the
24 performance of the public servant's official duties.
- 25 b. The public servant reports electronically to the Commission
26 within 30 days of receipt of the thing of value. The report shall
27 include a description and value of the thing of value and a
28 description how the thing of value contributed to the public
29 business of industry recruitment, promotion of international
30 trade, or the promotion of travel and tourism. This report shall
31 be posted to the Commission's public Web site.
- 32 c. A tangible thing of value in excess of ten dollars (\$10.00), other
33 than meals or beverages, shall be turned over as State property
34 to the Department of Commerce within 30 days of receipt.
- 35 (18) Things of monetary value of personal property valued at less than one
36 hundred dollars (\$100.00) given to a public servant in the commission
37 of the public servant's official duties if the gift is given to the public
38 servant as a personal gift in another country as part of an overseas
39 trade mission, and the giving and receiving of such personal gifts is
40 considered a customary protocol in the other country.
- 41 (e) A prohibited gift shall be declined, returned, paid for at fair market value, or
42 accepted and donated immediately to the State. Perishable food items of reasonable
43 costs, received as gifts, shall be donated to charity, destroyed, or provided for
44 consumption among the entire staff or the public.

1 (f) A public servant or legislative employee shall not accept an honorarium from
2 a source other than the employing entity for conducting any activity where any of the
3 following apply:

4 (1) The employing entity reimburses the public servant or legislative
5 employee for travel, subsistence, and registration expenses.

6 (2) The employing entity's work time or resources are used.

7 (3) The activity would be considered official duty or would bear a
8 reasonably close relationship to the public servant's or legislative
9 employee's official duties.

10 An outside source may reimburse the employing entity for actual expenses incurred by a
11 public servant or legislative employee in conducting an activity within the duties of the
12 public servant or legislative employee, or may pay a fee to the employing entity, in lieu
13 of an honorarium, for the services of the public servant or legislative employee.

14 (g) Acceptance or solicitation of a thing of value in compliance with this section
15 without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

16 **"§ 138A-8. Other compensation.**

17 A public servant shall not solicit or receive personal financial gain, other than that
18 received by the public servant from the State, or with the approval of the employing
19 entity, for acting in the public servant's official capacity, or for advice or assistance
20 given in the course of carrying out the public servant's duties.

21 **"§ 138A-9. Use of information for private gain.**

22 A public servant shall not use or disclose information gained in the course of, or by
23 reason of, the public servant's official responsibilities in a way that would affect a
24 personal financial interest of the public servant, a member of the public servant's
25 extended family, or a person with whom or business with which the public servant is
26 associated. A public servant shall not improperly use or disclose any confidential
27 information.

28 **"§ 138A-10. Appearance of conflict.**

29 A public servant or legislator shall make reasonable efforts to avoid even the
30 appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of
31 conflict exists when a reasonable person would conclude from the circumstances that
32 the public servant's or legislator's ability to protect the public interest, or perform public
33 duties, is compromised by familial, personal, or financial interest. An appearance of
34 conflict could exist even in the absence of an actual conflict of interest.

35 **"§ 138A-11. Other rules of conduct.**

36 (a) A public servant shall make a due and diligent effort before taking any action,
37 including voting or participating in discussions with other public servants on a board on
38 which the public servant also serves, to determine whether the public servant has a
39 conflict of interest or an appearance of a conflict. If the public servant is unable to
40 determine whether or not a conflict of interest or the appearance of a conflict may exist,
41 the public servant has a duty to inquire of the Commission as to that conflict or
42 appearance of conflict.

43 (b) A legislator shall make a due and diligent effort before taking any action,
44 including voting or participating in discussions with other legislators, to determine

1 whether the legislator has a conflict of interest or an appearance of a conflict. If the
2 legislator is unable to determine whether or not a conflict of interest or the appearance
3 of a conflict may exist, the legislator has a duty to inquire of the Committee as to that
4 conflict or appearance of conflict.

5 (c) A public servant or legislator shall continually monitor, evaluate, and manage
6 the public servant's or legislator's personal, financial, and professional affairs to ensure
7 the absence of conflicts of interest and appearances of conflicts.

8 (d) A public servant or legislator shall obey all other civil laws, administrative
9 requirements, and criminal statutes governing conduct of State government appointees
10 and employees.

11 **"§ 138A-12. Participation in official actions.**

12 (a) Except as permitted by subsection (e) of this section, no public servant acting
13 in that capacity, authorized to perform an official action requiring the exercise of
14 discretion, shall knowingly participate in an official action by the employing entity if
15 the public servant, a member of the public servant's extended family, or a business with
16 which the public servant is associated, has a pecuniary interest in, or a reasonably
17 foreseeable benefit from, the matter under consideration, which would impair the public
18 servant's independence of judgment or from which it could reasonably be inferred that
19 the interest or benefit would influence the public servant's participation in the official
20 action. A potential benefit includes a detriment to (i) a business competitor of the public
21 servant, (ii) a member of the public servant's extended family, or (iii) a business with
22 which the public servant is associated.

23 (b) Except as permitted by subsection (f) of this section, no legislator shall
24 knowingly participate in a legislative action if the legislator, a member of the legislator's
25 extended family, the legislator's client, or a business with which the legislator is
26 associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit
27 from, the matter under consideration, which would impair the legislator's independence
28 of judgment or from which it could reasonably be inferred that the interest or benefit
29 would influence the legislator's participation in the legislative action. A potential benefit
30 includes a detriment to (i) a business competitor of the legislator, (ii) a member of the
31 legislator's extended family, or (iii) a business with which the legislator is associated.

32 (c) A public servant described in subsection (a) of this section shall abstain from
33 participation in the official action. The public servant shall submit in writing to the
34 employing entity the reasons for the abstention. When the employing entity is a board,
35 the abstention shall be recorded in the employing entity's minutes. A legislator
36 described in subsection (b) of this section shall abstain from participation in the
37 legislative action. The legislator shall submit in writing the reasons for the abstention to
38 the principal clerk of the house of which the legislator is a member.

39 (d) A public servant shall take reasonable and appropriate steps, under the
40 particular circumstances and considering the type of proceeding involved, to remove
41 himself or herself, to the extent necessary to protect the public interest and comply with
42 this Chapter, from any proceeding in which the public servant's impartiality might
43 reasonably be questioned due to the public servant's familial, personal, or financial
44 relationship with a participant in the proceeding. A participant includes (i) an owner,

1 shareholder, business associate, employee, agent, officer, or director of a business,
2 organization, or group involved in the proceeding, or (ii) an organization or group that
3 has petitioned for rule making or has some specific, unique, and substantial interest in
4 the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative
5 proceedings. A personal relationship includes one in a leadership or policy-making
6 position in a business, organization, or group.

7 (e) If a public servant is uncertain whether the relationship described in
8 subsection (d) of this section justifies removing the public servant from the proceeding
9 under subsection (d) of this section, the public servant shall disclose the relationship to
10 the person presiding over the proceeding and seek appropriate guidance. The presiding
11 officer, in consultation with legal counsel if necessary, shall then determine the extent to
12 which the public servant will be permitted to participate. If the affected public servant is
13 the person presiding, then the vice-chair or any other substitute presiding officer shall
14 make the determination. A good-faith determination under this subsection of the
15 allowable degree of participation by a public servant is presumptively valid and only
16 subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake,
17 fraud, abuse of discretion, or willful disregard of this Chapter.

18 (f) Notwithstanding subsections (a), (b), and (d) of this section, a public servant
19 or legislator may participate in an official action or legislative action under any of the
20 following circumstances:

21 (1) The only pecuniary interest or reasonably foreseeable benefit that
22 accrues to the public servant, the legislator, the public servant's or
23 legislator's extended family, or business with which the public servant
24 or legislator is associated as a member of a profession, occupation, or
25 large class, is no greater than that which could reasonably be foreseen
26 to accrue to all members of that profession, occupation, or large class.

27 (2) Where an official or legislative action affects or would affect the
28 public servant's or legislator's compensation and allowances as a
29 public servant or legislator.

30 (3) Before the public servant or legislator participated in the official or
31 legislative action, the public servant or legislator requested and
32 received from the Commission a written advisory opinion that
33 authorized the participation. In authorizing the participation under this
34 subsection, the Commission shall consider the need for the legislator's
35 particular contribution, such as special knowledge of the subject
36 matter, to the effective functioning of the General Assembly.

37 (4) Before participating in an official action, a public servant made full
38 written disclosure to the public servant's employing entity which then
39 made a written determination that the interest or benefit would neither
40 impair the public servant's independence of judgment nor influence the
41 public servant's participation in the official action. The employing
42 entity shall file a copy of that written determination with the
43 Commission.

- 1 (5) When action is ministerial only and does not require the exercise of
2 discretion.
- 3 (6) When a public or legislative body records in its minutes that it cannot
4 obtain a quorum in order to take the official or legislative action
5 because the public servant or legislator is disqualified from acting
6 under this section.
- 7 (7) When a public servant notifies, in writing, the Commission that the
8 public servant or someone whom the public servant appoints to act in
9 the public servant's stead, or both, are the only individuals having legal
10 authority to take an official action.

11 **"§ 138A-13. Disqualification to serve.**

12 (a) Within 30 days of notice of the Commission's determination that a public
13 servant has a disqualifying conflict of interest, the public servant shall eliminate the
14 interest that constitutes the disqualifying conflict of interest or resign from the public
15 position.

16 (b) Failure by a public servant to comply with subsection (a) of this section is a
17 violation of this Chapter for purposes of G.S. 138A-45.

18 (c) As used in this section, a disqualifying conflict of interest is a conflict of
19 interest of such significance that the conflict of interest would prevent a public servant
20 from fulfilling a substantial function or portion of the public servant's public duties.

21 **"§ 138A-14. Employment and supervision of members of public servant's extended**
22 **family.**

23 A public servant or legislator shall not cause the employment, appointment,
24 promotion, transfer, or advancement of an extended family member of the public
25 servant or legislator to a State or local office or position to which the public servant or
26 legislator supervises or manages, except for positions at the General Assembly as
27 permitted by the Legislative Services Commission. A public servant shall not participate
28 in an action relating to the discipline of a member of the public servant's extended
29 family.

30 **"§ 138A-15. Bribery, etc.**

31 (a) No person shall offer or give to a legislator or a member of a legislator's
32 immediate household, or to a business with which the legislator is associated, and no
33 legislator shall solicit or receive, anything of monetary value, including a gift, favor or
34 service, or a promise of future employment, based on any understanding that the
35 legislator's vote, official actions or judgment would be influenced thereby, or where it
36 could reasonably be inferred that the thing of value would influence the legislator in the
37 discharge of the legislator's duties.

38 (b) It shall be unlawful for the business associate, client, customer, or employer
39 of a legislator or the agent of that partner, client, customer, or employer, directly or
40 indirectly, to threaten economically that legislator with the intent to influence the
41 legislator in the discharge of the legislator's duties.

42 (c) It shall be unlawful for any person, directly or indirectly, to threaten
43 economically another person in order to compel the threatened person to attempt to
44 influence a legislator in the discharge of the legislator's duties.

1 (d) It shall be unethical for a legislator to contact the business associate, client,
2 customer, or employer of another legislator if the purpose of the contact is to cause the
3 partner, client, customer, or employer, directly or indirectly, to threaten economically
4 that legislator with the intent to influence that legislator in the discharge of the
5 legislator's duties.

6 (e) A violation of subsection (a), (b), or (c) of this section is a Class F felony. A
7 violation of subsection (d) of this section is not a crime but is punishable under
8 G.S. 138A-45.

9 **"§ 138A-16. Disclosure of confidential information.**

10 No legislator shall use or disclose in any way confidential information gained in the
11 course of the legislator's official activities or by reason of the legislator's official
12 position that could result in financial gain for the legislator or any other person.

13 **"§ 138A-17. Personnel-related action unethical.**

14 It shall be unethical for a legislator to take, promise, or threaten any legislative
15 action for the purpose of influencing or in retaliation for any action regarding State
16 employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126
17 of the General Statutes.

18 **"§ 138A-18. Other ethics standards.**

19 Nothing in this Chapter shall prevent the Supreme Court, constitutional officers of
20 the State, heads of principal departments, the Board of Governors of The University of
21 North Carolina, State Board of Community Colleges, or other State executive boards
22 from adopting more stringent ethics standards applicable to that public agency's
23 operations.

24 **"§ 138A-19. [Reserved]**

25 "Article 3.

26 "State Ethics Commission.

27 **"§ 138A-20. State Ethics Commission established.**

28 There is established the State Ethics Commission.

29 **"§ 138A-21. Membership.**

30 (a) The Commission shall consist of eight members. Four members shall be
31 appointed by the Governor, of whom no more than two shall be members of the same
32 political party. Four members shall be appointed by the General Assembly, two upon
33 the recommendation of the Speaker of the House of Representatives, neither of whom
34 may be of the same political party, and two upon the recommendation of the President
35 Pro Tempore of the Senate, neither of whom may be of the same political party.
36 Members shall serve for four-year terms, beginning January 1, 2007, except for the
37 initial terms that shall be as follows:

38 (1) Two members appointed by the Governor shall serve an initial term of
39 one year.

40 (2) Two members appointed by the General Assembly, one upon the
41 recommendation of the Speaker of the House of Representatives and
42 one upon the recommendation of the President Pro Tempore of the
43 Senate, shall serve initial terms of two years.

1 (3) Two members appointed by the Governor shall serve initial terms of
2 three years.

3 (4) Two members appointed by the General Assembly, one upon the
4 recommendation of the Speaker of the House of Representatives and
5 one member upon the recommendation of the President Pro Tempore
6 of the Senate, shall serve initial terms of four years.

7 (b) Members shall be removed from the Commission only for misfeasance,
8 malfesance, or nonfesance as determined by the Governor.

9 (c) The Governor shall fill any vacancies in appointments for the remainder of
10 any unfulfilled term.

11 (d) No member while serving on the Commission or employee while employed
12 by the Commission shall:

13 (1) Hold or be a candidate for any other office or place of trust or profit
14 under the United States, the State, or a political subdivision of the
15 State.

16 (2) Hold office in any political party above the precinct level.

17 (3) Participate in or contribute to the political campaign of any public
18 servant or any candidate for a public office as a public servant over
19 which the Commission would have jurisdiction or authority.

20 (4) Otherwise be an employee of the State, a community college, or a
21 local school system, or serve as a member of any other State board.

22 (e) The Governor shall appoint a chair. The Commission shall elect a vice-chair
23 annually. The vice-chair shall act as the chair in the chair's absence or if there is a
24 vacancy in that position.

25 (f) Members of the Commission shall receive no compensation for service on the
26 Commission but shall be reimbursed for subsistence, travel, and convention registration
27 fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

28 **"§ 138A-22. Meetings and quorum.**

29 The Commission shall meet at least quarterly and at other times as called by its
30 chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members.
31 Five members of the Commission constitute a quorum.

32 **"§ 138A-23. Staff and offices.**

33 The Commission may employ professional and clerical staff, including an executive
34 director. The Commission shall be located within the Department of Administration for
35 administrative purposes only, but shall exercise all of its powers, including the power to
36 employ, direct, and supervise all personnel, independently of the Secretary of
37 Administration, and is subject to the direction and supervision of the Secretary of
38 Administration only with respect to the management functions of coordinating and
39 reporting.

40 **"§ 138A-24. Powers and duties.**

41 In addition to other powers and duties specified in this Chapter, the Commission
42 shall:

43 (1) Provide reasonable assistance to covered persons in complying with
44 this Chapter.

- 1 (2) Develop readily understandable forms, policies, rules, and procedures
2 to accomplish the purposes of the Chapter.
- 3 (3) Receive and review all statements of economic interests filed with the
4 Commission by prospective and actual covered persons and evaluate
5 whether (i) the statements conform to the law and the rules of the
6 Commission, and (ii) the financial interests and other information
7 reported reveals actual or potential conflicts of interest.
- 8 (4) Investigate alleged violations in accordance with G.S. 138A-25.
- 9 (5) Render advisory opinions in accordance with G.S. 138A-26.
- 10 (6) Initiate and maintain oversight of ethics educational programs for
11 covered persons and their staffs consistent with G.S. 138A-27.
- 12 (7) Conduct a continuing study of governmental ethics in the State and
13 propose changes to the General Assembly in the government process
14 and the law as are conducive to promoting and continuing high ethical
15 behavior by governmental officers and employees.
- 16 (8) Adopt rules to implement this Chapter, including those establishing
17 ethical standards and guidelines to be employed and adhered to by
18 public servants and legislators in attending to and performing their
19 duties.
- 20 (9) Report annually to the General Assembly and the Governor on the
21 Commission's activities and generally on the subject of public
22 disclosure, ethics, and conflicts of interest, including recommendations
23 for administrative and legislative action, as the Commission deems
24 appropriate.
- 25 (10) Perform other duties as may be necessary to accomplish the purposes
26 of this Chapter.

27 **§ 138A-25. Investigations by the Commission.**

28 (a) Institution of Proceedings. – On its own motion, in response to a signed and
29 sworn complaint of any individual filed with the Commission, or upon the written
30 request of any public servant or legislator or any person responsible for the hiring,
31 appointing, or supervising of a public servant, the Commission shall conduct an
32 investigation into any of the following:

- 33 (1) The application or alleged violation of this Chapter.
- 34 (2) The application or alleged violation of rules adopted in accordance
35 with G.S. 138A-24.
- 36 (3) The alleged violation of the criminal law by a covered person in the
37 performance of that individual's official duties.

38 (b) Complaint. –

- 39 (1) A complaint filed under this Chapter shall state the name, address, and
40 telephone number of the person filing the complaint, the name and job
41 title or appointive position of the public servant or legislator against
42 whom the complaint is filed, and a concise statement of the nature of
43 the complaint and specific facts indicating that a violation of this
44 Chapter has occurred, the date the alleged violation occurred, and

1 either (i) that the contents of the complaint are within the knowledge
2 of the individual verifying the complaint, or (ii) the basis upon which
3 the individual verifying the complaint believes the allegations to be
4 true.

5 (2) Except as provided in subsection (c) of this section, a complaint filed
6 under this Chapter must be filed within one year of the date the
7 complainant knew or should have known of the conduct upon which
8 the complaint is based.

9 (3) The Commission may decline to accept or investigate any attempted
10 complaint that does not meet all of the requirements set forth in
11 subdivision (1) of this subsection, or the Commission may, in its sole
12 discretion, request additional information to be provided by the
13 complainant within a specified period of time of no less than seven
14 business days.

15 (4) In addition to subdivision (3) of this subsection, the Commission may
16 decline to accept or investigate a complaint if it determines that any of
17 the following apply:

18 a. The complaint is frivolous or brought in bad faith.

19 b. The individuals and conduct complained of have already been
20 the subject of a prior complaint.

21 c. The conduct complained of is primarily a matter more
22 appropriately and adequately addressed and handled by other
23 federal, State, or local agencies or authorities, including law
24 enforcement authorities. If other agencies or authorities are
25 conducting an investigation of the same actions or conduct
26 involved in a complaint filed under this section, the
27 Commission may stay its complaint investigation pending final
28 resolution of the other investigation.

29 (5) The Commission shall send a copy of the complaint to the public
30 servant or legislator who is the subject of the complaint within 30 days
31 of the filing.

32 (c) Investigation of Complaints by the Commission. – The Commission shall
33 investigate all complaints properly before the Commission in a timely manner. The
34 Commission shall initiate an investigation of a complaint within 60 days of the filing of
35 the complaint, or the complaint shall be dismissed. The Commission is authorized to
36 initiate investigations upon request of any member of the Commission if there is reason
37 to believe that a public servant or legislator has or may have violated this Chapter.
38 There is no time limit on Commission-initiated complaint investigations under this
39 section. In determining whether there is reason to believe that a violation has or may
40 have occurred, a member can take general notice of available information even if not
41 formally provided to the Commission in the form of a complaint. The Commission may
42 utilize the services of a hired investigator when conducting investigations.

43 (d) Investigation by the Commission of Matters Other Than Complaints. – The
44 Commission may investigate matters other than complaints properly before the

1 Commission under subsection (a) of this section. For any investigation initiated under
2 this subsection, the Commission may take any action it deems necessary or appropriate
3 to further compliance with this Chapter, including the initiation of a complaint, the
4 issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law
5 enforcement or other authorities pursuant to subsection (j)(1) of this section.

6 (e) Public Servant and Legislator Cooperation With Investigation. – Public
7 servants and legislators shall promptly and fully cooperate with the Commission in any
8 Commission-related investigation. Failure to cooperate fully with the Commission in
9 any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

10 (f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission
11 determines at the end of its preliminary inquiry that (i) the individual who is the subject
12 of the complaint is not a public servant or legislator subject to the Commission's
13 jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts
14 sufficient to constitute a violation of this Chapter, the Commission shall dismiss the
15 complaint and provide written notice of the dismissal to the individual who filed the
16 complaint and the person against whom the complaint was filed.

17 (g) Notice. – If at the end of its preliminary inquiry, the Commission determines
18 to proceed with further investigation into the conduct of a public servant or legislator,
19 the Commission shall provide written notice to the individual who filed the complaint
20 and the public servant or legislator as to the fact of the investigation and the charges
21 against the public servant or legislator. The public servant or legislator shall be given an
22 opportunity to file a written response with the Commission. Upon the notice required
23 under this subsection being sent, the complaint and any written response shall be public
24 records, and all other documents offered at the hearing in conjunction with the
25 complaint shall be public records.

26 (h) Hearing. –

27 (1) The Commission shall give full and fair consideration to all complaints
28 and responses received against a public servant or legislator. If the
29 Commission determines that the complaint cannot be resolved without
30 a hearing, or if the public servant or legislator requests a public
31 hearing, a hearing shall be held.

32 (2) The Commission shall send a notice of the hearing to the complainant,
33 the public servant or legislator, and any other member of the public
34 requesting notice. The notice shall contain the time and place for a
35 hearing on the matter, which shall begin no less than 30 days and no
36 more than 90 days after the date of the notice.

37 (3) At any hearing held by the Commission:

38 a. Oral evidence shall be taken only on oath or affirmation.

39 b. The hearing shall be open to the public. The deliberations by
40 the Commission on a complaint may be held in closed session,
41 but the decision of the Commission shall be announced in open
42 session.

43 c. The public servant or legislator being investigated shall have
44 the right to present evidence, call and examine witnesses,

1 cross-examine witnesses, introduce exhibits, and be represented
2 by counsel.

3 (i) Settlement of Investigations. – The parties may meet by mutual consent
4 before the hearing to discuss the possibility of settlement of the investigation or the
5 stipulation of any issues, facts, or matters of law. Any proposed settlement of the
6 investigation is subject to the approval of the Commission.

7 (j) Disposition of Investigations. – Except as permitted under subsection (f) of
8 this section, after hearing, the Commission shall dispose of the matter in one or more of
9 the following ways:

10 (1) If the Commission finds substantial evidence of an alleged violation of
11 a criminal statute, the Commission shall refer the matter to the
12 Attorney General for investigation and referral to the district attorney
13 for possible prosecution.

14 (2) If the Commission finds that the alleged violation is not established by
15 clear and convincing evidence, the Commission shall dismiss the
16 complaint.

17 (3) If the Commission finds that the alleged violation of this Chapter is
18 established by clear and convincing evidence, the Commission shall do
19 one or more of the following:

20 a. Issue a public or private admonishment to the public servant
21 and notify the employing entity, if applicable.

22 b. Issue a public or private admonishment to the legislator and
23 notify the principal clerk of the house of which the legislator is
24 a member.

25 c. Refer the matter to the Governor, the employing entity that
26 appointed or employed the public servant or of which the public
27 servant is a member, or the General Assembly for constitutional
28 officers of the State, for appropriate action, and make
29 recommendations on sanctions under subsection (l) of this
30 section.

31 d. Refer the matter to the house of which the legislator is a
32 member, or the General Assembly for constitutional officers of
33 the State, for appropriate action, and make recommendations on
34 sanctions under subsection (l) of this section.

35 (k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or
36 private admonishment concerning a public servant or legislator, the Commission shall
37 retain its records or findings in confidence, unless the public servant or legislator under
38 inquiry requests in writing that the records and findings be made public. If the
39 Commission later finds that a public servant's or legislator's subsequent unethical
40 activities were similar to and the subject of an earlier private admonishment, then the
41 Commission may make public the earlier admonishment and the records and findings
42 related to it.

43 (l) Recommendations of Sanctions. – If the Commission determines, after proper
44 review and investigation, that action against a public servant or legislator is appropriate,

1 the Commission may recommend sanctions or issue rulings as it deems necessary or
2 appropriate to protect the public interest and ensure compliance with this Chapter. In
3 formulating appropriate sanctions, the Commission may consider the following factors:

- 4 (1) The public servant's prior experience in an agency or on a board and
5 prior opportunities to learn the ethical standards for public servants as
6 set forth in Article 2 of this Chapter, including those dealing with
7 conflicts of interest and appearances of conflicts of interest.
- 8 (2) The number of ethics violations.
- 9 (3) The severity of the ethics violations.
- 10 (4) Whether the ethics violations involve the public servant's or legislator's
11 financial interests or arise from an appearance of conflict of interest.
- 12 (5) Whether the ethics violations were inadvertent or intentional.
- 13 (6) Whether the public servant or legislator knew or should have known
14 that the improper conduct was a violation of this Chapter.
- 15 (7) Whether the public servant or legislator has previously been advised,
16 warned, or sanctioned by the Commission.
- 17 (8) Whether the conduct or situation giving rise to the ethics violation was
18 pointed out to the public servant or legislator in the Commission's
19 Statement of Economic Interest evaluation letter issued under
20 G.S. 138A-38(c).
- 21 (9) The public servant's or legislator's motivation or reason for the
22 improper conduct or actions, including whether the action was for
23 personal financial gain versus protection of the public interest.

24 If the Commission determines, after proper review and investigation, that sanctions
25 are appropriate, the Commission may recommend any action it deems necessary to
26 properly address and rectify any violation of this Chapter by a public servant or
27 legislator, including removal of the public servant or legislator from the public servant's
28 or legislator's State position. As it deems necessary and proper, the Commission may
29 make referrals to appropriate State officials, including law enforcement officials, for
30 investigation of wrongful conduct by State employees or appointees discovered during
31 the course of a complaint investigation, regardless of whether the individual is a public
32 servant or legislator under this Chapter. Nothing in this subsection is intended, and shall
33 not be construed, to give the Commission any independent civil, criminal, or
34 administrative investigative or enforcement authority over public servants, legislators,
35 or other State employees or appointees.

36 (m) Findings and Record. – The Commission shall render formal and binding
37 opinions of its findings and recommendations made pursuant to complaints or
38 Commission investigations. In all matters in which the complaint is a public record, the
39 Commission shall ensure that a complete record is made and preserved as a public
40 record.

41 (n) Authority of Employing Entity. – Any action or failure to act by the
42 Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of
43 any of the following:

- 44 (1) Applicable employing entity to discipline the public servant.

1 (2) The house of which the legislator is a member to discipline the
2 legislator.

3 (o) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction
4 to investigate possible criminal violations of this Chapter for a period of one year
5 following the date a person who was formerly a public servant or legislator ceases to be
6 a public servant or legislator.

7 (p) Confidentiality. – All motions, complaints, written requests, investigations,
8 and investigative materials shall be confidential and not matters of public record, except
9 as otherwise provided in this section.

10 (q) Subpoena Authority. – The Commission may petition the Superior Court of
11 Wake County for the approval to issue subpoenas and subpoenas duces tecum as
12 necessary to conduct investigations of alleged violations of this Chapter. The court shall
13 authorize subpoenas under this subsection when the court determines the subpoenas are
14 necessary for the enforcement of this Chapter. Subpoenas issued under this subsection
15 shall be enforceable by the court through contempt powers. Venue shall be with the
16 Superior Court of Wake County for any person covered by this Chapter, and personal
17 jurisdiction may be asserted under G.S. 1-75.4.

18 **"§ 138A-26. Advisory opinions.**

19 (a) At the request of any public servant or legislator, any individual not otherwise
20 the public servant who is responsible for the supervision or appointment of a person
21 who is a public servant, legal counsel for any public servant, any ethics liaison under
22 G.S. 138A-27, or any member of the Commission, the Commission shall render
23 advisory opinions on specific questions involving the meaning and application of this
24 Chapter and the public servant's or legislator's compliance therewith. The request shall
25 be in writing, electronic or otherwise, and relate prospectively to real or reasonably
26 anticipated fact settings or circumstances. The Commission shall issue advisory
27 opinions having prospective application only. Reliance upon a requested written
28 advisory opinion on a specific matter shall immunize the public servant or legislator, on
29 that matter, from both of the following:

30 (1) Investigation by the Commission.

31 (2) Any adverse action by the employing entity.

32 (b) Staff to the Commission may issue advisory opinions under rules adopted by
33 the Commission.

34 (c) The Commission shall interpret this Chapter by rules, and these
35 interpretations are binding on all public servants and legislators upon publication.

36 (d) The Commission shall publish its advisory opinions at least once a year.
37 These advisory opinions shall be edited for publication purposes as necessary to protect
38 the identities of the individuals requesting opinions.

39 (e) Except as provided under subsection (d) of this section, requests for advisory
40 opinions and advisory opinions issued under this section are confidential and not
41 matters of public record.

42 **"§ 138A-27. Ethics education program.**

43 (a) The Commission shall develop and implement an ethics education and
44 awareness program designed to instill in all public servants and their immediate staffs,

1 and legislators, a keen and continuing awareness of their ethical obligations and a
2 sensitivity to situations that might result in real or potential conflicts of interest or
3 appearances of conflicts of interest. The Commission shall make basic ethics education
4 and awareness presentations to all public servants and their immediate staffs upon their
5 election, appointment, or hiring, and shall offer periodic refresher presentations as the
6 Commission deems appropriate. Every public servant and the immediate staff of every
7 public servant shall participate in an ethics presentation approved by the Commission
8 within six months of the person's election, appointment, or hiring, and shall attend
9 refresher ethics education presentations at least every two years thereafter in a manner
10 as the Commission deems appropriate. The Committee shall make basic ethics
11 education and awareness presentations to all legislators and legislative employees upon
12 their election or employment and shall offer periodic refresher presentations as the
13 Committee deems appropriate. Every legislator and legislative employee shall
14 participate in an ethics presentation approved by the Committee within three months of
15 the person's election, appointment, or employment in a manner as the Committee deems
16 appropriate. Upon request, the Commission shall assist each agency in developing
17 in-house education programs and procedures necessary or desirable to meet the agency's
18 particular needs for ethics education, conflict identification, and conflict avoidance.

19 (b) Each agency head shall designate an ethics liaison who shall maintain active
20 communication with the Commission on all agency ethical issues. The ethics liaison
21 shall continuously assess and advise the Commission of any issues or conduct which
22 might reasonably be expected to result in a conflict of interest and seek advice and
23 rulings from the Commission as to their appropriate resolution.

24 (c) The Commission shall publish a newsletter containing summaries of the
25 Commission's opinions, policies, procedures, and interpretive bulletins as issued from
26 time to time. The newsletter shall be distributed to all public servants or legislators.
27 Publication under this subsection may be done electronically.

28 (d) The Commission shall assemble and maintain a collection of relevant State
29 laws, rules, and regulations that set forth ethical standards applicable to public servants
30 or legislators. They shall be made available electronically as resource material to public
31 servants and ethics liaisons, upon request.

32 (e) As used in this section, "immediate staff" means those individuals who report
33 directly to the public servant.

34 **"§ 138A-28. Duties of heads of State agencies.**

35 (a) The head of each State agency, including the chair of each board subject to
36 this Chapter, shall take an active role in furthering ethics in public service and ensuring
37 compliance with this Chapter. The head of each State agency and the chair of each
38 board shall make a conscientious, good-faith effort to assist public servants within the
39 agency or on the board in monitoring their personal, financial, and professional affairs
40 to avoid taking any action that results in a conflict of interest or the appearance of a
41 conflict.

42 (b) The head of each State agency, including the chair of each board subject to
43 this Chapter, shall maintain familiarity with and stay knowledgeable of the reports,
44 opinions, newsletters, and other communications from the Commission regarding ethics

1 in general and the interpretation and enforcement of this Chapter. The head of each
2 State agency and the chair of each board shall also maintain familiarity with and stay
3 knowledgeable of the Commission's reports, evaluations, opinions, or findings
4 regarding individual public servants in that person's agency or on that person's board, or
5 under that person's supervision or control, including all reports, evaluations, opinions, or
6 findings pertaining to actual or potential conflicts of interest.

7 (c) When an actual or potential conflict of interest is cited by the Commission
8 with regard to a public servant sitting on a board, the conflict shall be recorded in the
9 minutes of the applicable board and duly brought to the attention of the membership by
10 the board's chair as often as necessary to remind all members of the conflict and to help
11 ensure compliance with this Chapter.

12 (d) The head of each State agency, including the chair of each board subject to
13 this Chapter, shall periodically remind public servants under that person's authority of
14 the public servant's duties to the public under the ethical standards and rules of conduct
15 in this Chapter, including the duty of each public servant to continually monitor,
16 evaluate, and manage the public servant's personal, financial, and professional affairs to
17 ensure the absence of conflicts of interest or appearances of conflict.

18 (e) At the beginning of any official meeting of a board, the chair shall remind all
19 members of their duty to avoid conflicts of interest and appearances of conflict under
20 this Chapter. The chair also shall inquire as to whether there is any known conflict of
21 interest or appearance of conflict with respect to any matters coming before the board at
22 that time.

23 (f) The head of each State agency, including the chair of each board subject to
24 this Chapter, shall ensure that legal counsel employed by or assigned to their agency or
25 board are familiar with the provisions of this Chapter, including the Ethical Standards
26 for Public Servants set forth in Article 2 of this Chapter, and are available to advise
27 public servants on the ethical considerations involved in carrying out their public duties
28 in the best interest of the public. Legal counsel so engaged may consult with the
29 Commission, seek the Commission's assistance or advice, and refer public servants and
30 others to the Commission as appropriate.

31 (g) Taking into consideration the individual autonomy, needs, and circumstances
32 of each agency and board, the head of each State agency, including the chair of each
33 board subject to this Chapter, shall consider the need for the development and
34 implementation of in-house educational programs, procedures, or policies tailored to
35 meet the agency's or board's particular needs for ethics education, conflict identification,
36 and conflict avoidance. This includes the periodic presentation to all agency heads, their
37 chief deputies or assistants, other public servants under their supervision or control, and
38 members of boards, of the basic ethics education and awareness presentation outlined in
39 G.S. 138A-27 and any other workshop or seminar program the agency head or board
40 chair deems necessary in implementing this Chapter. Agency heads and board chairs
41 may request reasonable assistance from the Commission in complying with the
42 requirements of this subsection.

43 (h) As soon as reasonably practicable after the designation, hiring, or promotion
44 of their chief deputies, assistants, or other public servants under their supervision or

1 control, or learning of the appointment or election of other public servants to a board
2 covered under this Chapter, all agency heads and board chairs shall (i) notify the
3 Commission of such designation, hiring, promotion, appointment, or election and (ii)
4 provide these public servants with copies of this Chapter and all applicable financial
5 disclosure forms, if these materials and forms have not been previously provided to
6 these public servants by their appointing authorities. In order to avoid duplication of
7 effort, agency heads and board chairs shall coordinate this effort with the Commission's
8 staff.

9 **"§ 138A-29 through 34. [Reserved]**

10 "Article 4.

11 "Public Disclosure of Economic Interests.

12 **"§ 138A-35. Purpose.**

13 The purpose of disclosure of the financial and personal interests by covered persons
14 is to assist covered persons and those persons who appoint, elect, hire, supervise, or
15 advise them identify and avoid conflicts of interest and potential conflicts of interest
16 between the covered person's private interests and the covered person's public duties. It
17 is critical to this process that current and prospective covered persons examine,
18 evaluate, and disclose those personal and financial interests that could be or cause a
19 conflict of interest or potential conflict of interest between the covered person's private
20 interests and the covered person's public duties. Covered persons must take an active,
21 thorough, and conscientious role in the disclosure and review process, including having
22 a complete knowledge of how the covered person's public position or duties might
23 impact the covered person's private interests. Covered persons have an affirmative duty
24 to provide any and all information that a reasonable person would conclude is necessary
25 to carry out the purposes of this Chapter and to fully disclose any conflict of interest or
26 potential conflict of interest between the covered person's public and private interests,
27 but the disclosure, review, and evaluation process is not intended to result in the
28 disclosure of unnecessary or irrelevant personal information.

29 **"§ 138A-36. Statement of economic interest; filing required.**

30 (a) Every covered person subject to this Chapter who is elected, appointed, or
31 employed, except for public servants whose annual compensation from the State is less
32 than forty thousand dollars (\$40,000), including one appointed to fill a vacancy in
33 elective office, except as otherwise filed under subsection (c) of this section, shall file a
34 statement of economic interest with the Commission prior to the covered person's initial
35 appointment, election, or employment and no later than March 15th of every year
36 thereafter. A prospective covered person required to file a statement under this Chapter
37 shall not be appointed, employed, or receive a certificate of election, prior to submission
38 by the Commission of the Commission's evaluation of the statement in accordance with
39 this Article. The requirement for an annual filing under this subsection also shall apply
40 to covered persons whose terms have expired but who continue to serve until the
41 person's replacement is appointed. Once a statement of economic interest is properly
42 completed and filed under this Article, the statement of economic interest does not need
43 to be supplemented or refiled prior to the next due date set forth in this subsection.

1 (b) Notwithstanding subsection (a) of this section, persons hired by, and
2 appointees of, constitutional officers of the State may file a statement of economic
3 interest within 30 days of their appointments or employment when the appointment or
4 employment is made during the first 60 days of the constitutional officer's initial term in
5 that constitutional office.

6 (c) A candidate for an office subject to this Article shall file the statement of
7 economic interest at the same place and in the same manner as the notice of candidacy
8 for that office is required to be filed under G.S. 163-106, within 10 days of the filing
9 deadline for the office the candidate seeks. A person who is nominated under
10 G.S. 163-114 after the primary and before the general election, and a person who
11 qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file
12 a statement of economic interest with the county board of elections of each county in
13 the senatorial or representative district. A person nominated under G.S. 163-114 shall
14 file the statement within three days following the person's nomination, or not later than
15 the day preceding the general election, whichever occurs first. A person seeking to
16 qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of
17 economic interest with the petition filed under that section. A person seeking to have
18 write-in votes counted for the person in a general election shall file a statement of
19 economic interest at the same time the candidate files a declaration of intent under
20 G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of
21 economic interest at the same time that the president of the convention certifies the
22 names of its candidates to the State Board of Elections under G.S. 163-98.

23 (d) The State Board of Elections shall provide for notification of the statement of
24 economic interest requirements of this Article to be given to any candidate filing for
25 nomination or election to those offices subject to this Article at the time of the filing of
26 candidacy.

27 (e) The executive director of the State Board of Elections shall forward a
28 certified copy of the statement of economic interest to the Commission for evaluation.

29 (f) The Commission shall issue forms to be used for the statement of economic
30 interest and shall revise the forms from time to time as necessary to carry out the
31 purposes of this Chapter. Except as otherwise set forth in this section, the Commission
32 shall furnish to all other covered persons the appropriate forms needed to comply with
33 this Article.

34 **"§ 138A-37. Statements of economic interest as public records.**

35 The statements of economic interest filed by prospective public servants under this
36 Article for appointed or employed positions and written evaluations by the Commission
37 of these statements are not public records until the prospective public servant is
38 appointed or is employed by the State. All other statements of economic interest and all
39 other written evaluations by the Commission of those statements are public records.
40 After becoming public records, statements shall be made available for inspection and
41 copying by any person during normal business hours at the Commission's office.

42 **"§ 138A-38. Contents of statement.**

43 (a) Any statement of economic interest filed under this Article shall be on a form
44 prescribed by the Commission and sworn to by the covered person. Answers must be

1 provided to all questions. The form shall include the following information about the
2 covered person and the covered person's immediate family:

3 (1) The name, home address, occupation, employer, and business of the
4 person filing.

5 (2) A list of each asset and liability of whatever nature (including legal,
6 equitable, or beneficial interest) with a value of at least ten thousand
7 dollars (\$10,000) of the prospective or actual covered person, and the
8 covered person's spouse. This list shall include the following:

9 a. All real estate located in the State owned wholly or in part by
10 the covered person or the covered person's spouse, including
11 specific descriptions adequate to determine the location of each
12 parcel and the specific interest held by the covered person and
13 the spouse in each identified parcel.

14 b. Real estate that is currently leased or rented to the State.

15 c. Personal property sold to or bought from the State within the
16 preceding two years.

17 d. Personal property currently leased or rented to the State.

18 e. The name of each publicly owned company in which the value
19 of securities held exceeds ten thousand dollars (\$10,000).

20 f. The name of each nonpublicly owned company or business
21 entity in which the value of securities or other equity interests
22 held exceeds ten thousand dollars (\$10,000), including interests
23 in partnerships, limited partnerships, joint ventures, limited
24 liability companies or partnerships, and closely held
25 corporations. For each company or business entity listed under
26 this sub-subdivision, the filing covered person shall indicate
27 whether the listed company or entity owns securities or equity
28 interests exceeding a value of ten thousand dollars (\$10,000) in
29 any other companies or entities. If so, then the other companies
30 or entities shall also be listed with a brief description of the
31 business activity of each.

32 g. If the filing covered person or the members of the covered
33 person's immediate family are the beneficiaries of a vested trust
34 created, established, or controlled by the covered person, then
35 the name and address of the trustee and a description of the trust
36 shall be provided. To the extent such information is available to
37 the covered person, the statement also shall include a list of
38 businesses in which the trust has an ownership interest
39 exceeding ten thousand dollars (\$10,000).

40 h. The filing covered person shall make a good faith effort to list
41 any individual or business entity with which the filing covered
42 person, the covered person's extended family, or any business
43 with which the covered person or a member of the covered
44 person's extended family is associated, has a financial or

1 professional relationship provided (i) a reasonable person would
2 conclude that the nature of the financial or professional
3 relationship presents a conflict of interest or the appearance of a
4 conflict of interest for the covered person; or (ii) a reasonable
5 person would conclude that any other financial or professional
6 interest of the individual or business entity would present a
7 conflict of interest or appearance of a conflict of interest for the
8 covered person. For each individual or business entity listed
9 under this sub-subdivision, the filing covered person shall
10 describe the financial or professional relationship and provide
11 an explanation of why the individual or business entity has been
12 listed.

13 i. A list of all other assets and liabilities with a valuation of at
14 least ten thousand dollars (\$10,000), including bank accounts
15 and debts.

16 j. A list of each source (not specific amounts) of income
17 (including capital gains) shown on the most recent federal and
18 State income tax returns of the person filing where ten thousand
19 dollars (\$10,000) or more was received from that source.

20 k. A list of all nonpublicly owned businesses with which, during
21 the past five years, the covered person or the covered person's
22 immediate family has been associated, indicating the time
23 period of that association and the relationship with each
24 business as an officer, employee, director, business associate, or
25 owner. The list also shall indicate whether each does business
26 with, or is regulated by, the State and the nature of the business,
27 if any, done with the State.

28 l. A list of all gifts, and the sources of the gifts, of a value of more
29 than two hundred dollars (\$200.00) received during the 12
30 months preceding the date of the statement from sources other
31 than the covered person's extended family, and a list of all gifts,
32 and the sources of the gifts, valued in excess of one hundred
33 dollars (\$100.00) received from any source having business
34 with, or regulated by, the employing entity.

35 m. A list of all bankruptcies filed during the preceding five years
36 by the covered person, or any entity in which the covered
37 person has a controlling interest or was the chief executive
38 officer, the chief financial officer, or chief administrative
39 officer. A brief summary of the facts and circumstances
40 regarding each listed bankruptcy shall be provided.

41 n. A list of all directorships on all business boards of which the
42 covered person or the covered person's immediate family is a
43 member.

1 (3) A list of the covered person's or the covered person's immediate
2 family's memberships or other affiliations with, including offices held
3 in, societies, organizations, or advocacy groups, pertaining to subject
4 matter areas over which the covered person's agency or board may
5 have jurisdiction.

6 (4) In addition to the information required to be reported under
7 subdivisions (1), (2), and (3) of this subsection, the filing covered
8 person shall provide in the covered person's statement a list of any
9 felony indictments or convictions, or any other information that a
10 reasonable person would conclude is necessary either to carry out the
11 purposes of this Chapter or to fully disclose any potential conflict of
12 interest or appearance of conflict. If a covered person is uncertain of
13 whether particular information is necessary, then the covered person
14 shall consult the Commission for guidance.

15 (5) Each statement of economic interest shall contain sworn certification
16 by the filing covered person that the covered person has read the
17 statement and that, to the best of the covered person's knowledge and
18 belief, the statement is true, correct, and complete. The covered
19 person's sworn certification also shall provide that the covered person
20 has not transferred, and will not transfer, any asset, interest, or other
21 property for the purpose of concealing it from disclosure while
22 retaining an equitable interest therein.

23 (6) If the covered person believes a potential for conflict exists, the
24 covered person has a duty to inquire of the Commission as to that
25 potential conflict.

26 (b) All information provided in the statement of economic interest shall be
27 current as of the last day of December of the year preceding the date the statement of
28 economic interest was signed.

29 (c) The Commission shall prepare a written evaluation of each statement of
30 economic interest relative to conflicts of interest and potential conflicts of interest. The
31 Commission shall submit the evaluation to all of the following:

32 (1) The covered person who submitted the statement.

33 (2) The head of the agency in which the public servant serves.

34 (3) The Governor for gubernatorial appointees and employees in agencies
35 under the Governor's authority.

36 (4) The appointing or hiring authority for those public servants not under
37 the Governor's authority.

38 (5) The State Board of Elections for those covered persons who are
39 elected.

40 **"§ 138A-39. Failure to file.**

41 (a) Within 30 days after the date due in accordance with G.S. 138A-36, for every
42 covered person from whom a statement of economic interest has not been received by
43 the Commission, or whose statement of economic interest has been received by the
44 Commission but deemed by the Commission to be incomplete, the Commission shall

1 notify the covered person of the failure to file or complete and shall notify the covered
2 person that if the statement of economic interest is not filed or completed within 30 days
3 of receipt of the notice of failure to file or complete, the covered person shall be subject
4 to a fine as provided for in this section.

5 (b) Any covered person who fails to file or complete a statement of economic
6 interest within 30 days of the receipt of the notice, required under subsection (a) of this
7 section, shall be subject to a fine of two hundred fifty dollars (\$250.00), to be imposed
8 by the Commission.

9 (c) Failure by any covered person to file or complete a statement of economic
10 interest within 60 days of the receipt of the notice, required under subsection (a) of this
11 section, shall be deemed to be a violation of this Chapter and shall be grounds for
12 disciplinary action under G.S. 138A-45.

13 **"§ 138A-40. Concealing or failing to disclose material information.**

14 A covered person who knowingly conceals or fails to disclose information that is
15 required to be disclosed on a statement of economic interest under this Article shall be
16 punished as a Class 2 misdemeanor and shall be subject to disciplinary action under
17 G.S. 138A-45.

18 **"§ 138A-41. Penalty for false or misleading information.**

19 A covered person who provides false or misleading information on a statement of
20 economic interest as required under this Article knowing that the information is false or
21 misleading shall be punished as a Class H felon and shall be subject to disciplinary
22 action under G.S. 138A-45.

23 **"§ 138A-42 through 44. [Reserved]**

24 "Article 5.

25 "Violation Consequences.

26 **"§ 138A-45. Violation consequences.**

27 (a) Violation of this Chapter by any public servant is grounds for disciplinary
28 action. Except as provided in Article 4 of this Chapter and for perjury under
29 G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of
30 this Chapter.

31 (b) The willful failure of any public servant serving on a board to comply with
32 this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance,
33 malfeasance, or nonfeasance, the offending public servant serving on a board is subject
34 to removal from the board of which the public servant is a member. For appointees of
35 the Governor and members of the Council of State, the appointing authority may
36 remove the offending public servant. For appointees of the General Assembly, the
37 Commission shall exercise the discretion of whether to remove the offending public
38 servant.

39 (c) The willful failure of any public servant serving as a State employee to
40 comply with this Chapter is a violation of a written work order, thereby permitting
41 disciplinary action as allowed by the law, including termination from employment.
42 Except for employees of State departments headed by a member of the Council of State,
43 the Governor shall make all final decisions on the manner in which the offending public
44 servant shall be disciplined. For employees of State departments headed by a member of

1 the Council of State, the appropriate member of the Council of State shall make all final
2 decisions on the manner in which the offending public servant shall be disciplined.

3 (d) The willful failure of any constitutional officer of the State to comply with
4 this Chapter is malfeasance in office for purposes of G.S. 123-5.

5 (e) Nothing in this Chapter affects the power of the State to prosecute any person
6 for any violation of the criminal law.

7 (f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

8 **SECTION 2.** G.S. 150B-1 is amended by adding a new subsection to read:

9 "(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and
10 Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics
11 Commission."

12 **SECTION 3.** Part 4 of Article 2A of Chapter 150B of the General Statutes is
13 amended by adding a new section to read:

14 "**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics**
15 **Commission.**

16 The Codifier of Rules shall publish unedited the rules and advisory opinions issued
17 by the State Ethics Commission under Chapter 138A of the General Statutes in the
18 North Carolina Register as they are received from the State Ethics Commission, in the
19 format required by the Codifier.

20 The Codifier of Rules shall publish unedited in the North Carolina Administrative
21 Code the rules as codified and issued by the State Ethics Commission under Chapter
22 138A of the General Statutes, in the format required by the Codifier."

23 **SECTION 4.** Article 14 of Chapter 120 is repealed.

24 **SECTION 5.** The authority, powers, duties and functions, records,
25 personnel, property, unexpended balances of appropriations, allocations, or other funds,
26 including the functions of budgeting and purchasing, of the North Carolina Board of
27 Ethics of the Office of the Governor are transferred to the State Ethics Commission
28 created in Section 1 of this act. The Director of the Budget shall resolve any disputes
29 arising out of this transfer.

30 **SECTION 6.** There is appropriated from the General Fund to the State
31 Ethics Commission the sum of one million dollars (\$1,000,000) for the 2006-2007 fiscal
32 year.

33 **SECTION 7.** Section 4 of this act becomes effective January 1, 2007. The
34 remainder of this act becomes effective October 1, 2006, applies to covered persons on
35 or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1,
36 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses
37 or ethics violations committed before January 1, 2007, are not abated or affected by this
38 act, and the statutes that would be applicable but for this act remain applicable to those
39 prosecutions.