

State Government Ethics Act

Session Law 2006 - 201 (HB 1843)
Ratified - July 28, 2006
Signed by Governor Easley, August 4, 2006

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Table of Contents

- 1) **Short Summary: New Requirements**
effective January 1, 2007
- 2) **Summary: State Government Ethics Act**
prepared by Smith Anderson
- 3) **State Government Ethics Act**
(Session Law 2006-201; House Bill 1843)
- 4) **Summary: State Government Ethics Act:**
prepared by North Carolina General Assembly
Committee Counsel
- 5) **Lobbying Temporary Administrative
Rules:** approved December 14, 2006
- 6) **News Articles -- Ethics Commission**
 - *Former FBI Agent to Police New Ethics Laws, News and Observer, November 28, 2006*
 - *Farmer, Finch appointed to new NC Ethics Commission, The Associated Press State & Local Wire, November 3, 2006*
 - *Stubbs appointed to NC Ethics Commission, The Associated Press State & Local Wire, November 10, 2006*

SHORT SUMMARY:

NEW REQUIREMENTS EFFECTIVE JANUARY 1, 2007

LOBBYING REGULATION IN NORTH CAROLINA NOW APPLIES TO:

- 1 Advocacy contact with Executive and Legislative Branch Officials
- 2 Goodwill development – simply building goodwill with State officials for the purpose of lobbying

PRINCIPALS AND LOBBYISTS CANNOT:

- 1 Give gifts to designated individuals

(A designated individual is a legislator, legislative employee or public servant. A public servant is almost anyone in State government with decision-making authority.)

- 2 Attempt to influence a designated individual's actions by promising to support or oppose the designated individual's candidacy.

LOBBYISTS CANNOT:

- 1 Contribute to candidates or candidate committees, (i.e., make political contributions)
- 2 Collect contributions from others and transfer them to candidates or committees (i.e., bundle campaign contributions)
- 3 Accept contingency fees based on legislative or executive action
- 4 Serve as a treasurer or assistant treasurer of a campaign for the General Assembly or any Executive Branch office
- 5 Receive an appointment to any body that has regulatory authority over the activities of a principal that the lobbyist represents or has represented in the last 120 days
- 6 Permit a designated individual to use the lobbyist's cash or credit unless the lobbyist is in attendance.

LOBBYISTS AND PRINCIPALS MUST PROVIDE REPORTS:

- 1 Quarterly reports of all “reportable expenditures”: or
- 2 Monthly reports of all “reportable expenditures” if made during the time the General Assembly is in session.

(A reportable expenditure is essentially any expenditure that benefits a legislator, legislative employee or public servant.)

THE STATE GOVERNMENT ETHICS ACT

SUMMARY

On August 4, 2006, Governor Easley signed House Bill 1843 – The State Government Ethics Act (hereinafter “Act”) Session Law 2006-201. The Act contains provisions constituting the most comprehensive regulation of the interaction between the public and State employees and elected officials since the passage of the law requiring registration of lobbyists.

The Act has three major parts:

PART I – STATE GOVERNMENT ETHICS ACT

PART II – LEGISLATIVE ETHICS ACT

PART III – LOBBYING LAWS

This Summary is organized to track the organization of the Act. As is true in many complicated regulatory schemes, definitions in each part of the Act are critical in understanding the scope and impact of each provision. We attempt to point the definitions critical to a basic understanding of the Act.

This Summary is not legal advice. It is not intended to address specific questions about compliance with the Act. We encourage you to consult counsel for answers to specific questions about the Act.

PART I – STATE GOVERNMENT ETHICS ACT

The State Government Ethics Act codifies a new Chapter 138A and creates a new State Ethics Commission with expanded responsibilities.

General Provisions (Article 1)

Article 1 consists of multiple pages of definitions. Some of the most important definitions are listed below.

“Covered persons” include legislators, “public servants,” and judicial officers (which include justices and judges of the General Court of Justice, district attorneys, and clerks of court.)

A critical definition is that of “public servants.” *N.C.Gen.Stat.* § 138A-3(30) defines “public servants” to include all of the following:

- (a) All constitutional officers of North Carolina;
- (b) Employees of the Office of Governor;
- (c) Heads of all principal state departments appointed by the Governor;
- (d) The Chief Deputy and Chief Administrative Assistants of all constitutional officers and heads of principal state departments;
- (e) Confidential assistants and secretaries to constitutional officers, heads of departments, and chief deputies;
- (f) Employees in exempt positions designated in accordance with N.C.Gen.Stat. § 126-5(d)(1), (2), or (2A) and confidential secretaries to these individuals;
- (g) Any other employees or appointees in principal state departments as may be designated by the Governor;
- (h) All members of state boards serving by Executive, Legislative, or Judicial Branch appointment;
- (i) Members of the UNC Board of Governors, President, Vice President, and Chancellors, Vice Chancellors, and voting members of Board of Trustees of constituent UNC institutions;
- (j) Members of the State Board of Community Colleges, the President and CFO of the Community College System, and the President, CFO, and Chief

Administrative Officer of each community college, and voting members of the Board of Trustees of each community college.

A “person” includes “any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.”

A “public event” is defined as follows:

(a) For legislators and legislative employees:

1. An organized gathering of persons open to the general public to which all legislators or legislative employees are invited to attend.
2. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, a joint commission, or a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, and one of the following apply:
 - i. At least 10 individuals associated with the person actually attend, other than the legislator or legislative employee, or the immediate family of the legislator or legislative employee.
 - ii. All shareholders, employees, board members, officers, members, or subscribers of the person located in North Carolina are notified and invited to attend.
 - iii. The person is a governmental body and the gathering is subject to the open meetings law.

(b) For public servants:

1. An organized gathering of individuals open to the general public to which at least 10 public servants are invited to attend.
2. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which at least 10 public servants are invited to attend.
3. An organized gathering of a person to which at least 10 public servants are invited to attend and to which at least 10 individuals, other than the public servant, or the public servant’s immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or

subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.

State Ethics Commission (Article 2)

Article 2 establishes a bipartisan eight-member State Ethics Commission, effective October 1, 2006. The Governor appoints four members to staggered terms, and the General Assembly, on recommendations of the Speaker and President *Pro Tem*, appoints four members. No more than two of the Governor's and one of the Speaker/President *Pro Tem*'s appointees can be members of the same political party.

The Commission's powers and duties are set out in Section 138A-10 and include:

1. Receiving and reviewing all statements of economic interest;
2. Receiving and investigating complaints;
3. Rendering advisory opinions; and
4. Implementing a mandatory ethics education program.

The Commission receives and conducts inquiries of complaints alleging unethical conduct by legislative employees and "covered persons." "Judicial employees" are not covered under this provision. Complaints may only be filed within two years of the date the complainant knew or should have known of the conduct upon which the complaint is based.

Commission hearings are conducted in closed session, unless the public servant requests that the hearing be held in an open and public session. Complaints, responses to complaints, reports, and all other investigative documents and records are confidential and not matters of public record, unless the person being charged asks that they be made public. When public sanctions are imposed, the complaint, response, and Commission's report are made public.

The Commission may also give advisory opinions to public servants, legislative employees, and legislators. See *N.C.Gen.Stat.* § 138A-13. Requests for formal advisory opinions must be in writing, which includes e-mail. Requests for advisory opinions and the opinions themselves are confidential and not matters of public record.

Article 2 makes ethics education mandatory for all "covered persons" and their immediate staffs.

Public Disclosure of Economic Interests (Article 3)

Generally, every "covered person" subject to the Ethics Act, including anyone appointed to fill a vacancy in an elected office, must file a Statement of Economic Interest (SEI) with the

Commission prior to their initial appointment, election, or employment. Candidates and nominees for covered elected positions must file SEIs, as well.

N.C.Gen.Stat. § 138A-24 sets out the requirements for SEIs. All information provided in the SEI must be current as of the last of December of the year preceding the date the SEI is due.

The consequences of not filing an SEI or filing late have been increased. On the front end, covered persons may not be appointed or employed before the Commission submits its evaluation of the person's SEI. On the backend, the Commission may fine or sanction persons who fail to file their SEI. Most significantly, filers now face criminal penalties for knowingly concealing, omitting, or falsifying material information.

It is important to note that all SEIs and all other written evaluations of potential conflicts of interest by the Commission are public records. See *N.C.Gen.Stat.* § 138A-23.

Ethical Standards for Covered Persons (Article 4)

Article 4 sets out the basic rules of conduct for persons covered by the Act. These new rules of conduct may have an impact on existing and continuing relationships with covered persons in the Executive, Judicial, and Legislative branches of State Government. The key rules governing "covered persons" are outlined below.

Use of Public Position for Private Gain (*N.C.Gen.Stat.* § 138A-31) – One of the most basic rules is that covered persons may not knowingly use their public position in a manner that will result in a financial benefit to the person, a member of the person's family, or a business with which the person is associated.

A covered person shall not mention his or her public position in non-governmental advertising that advances the private interests of the covered person. This prohibition does not apply to political advertising, news articles, or charitable solicitation for nonprofits.

Covered persons are no longer permitted to use State funds for any advertisement or public service announcement that contains the covered person's name, picture, or voice.

Gift Ban (*N.C.Gen.Stat.* § 138A-32) – *N.C.Gen.Stat.* § 138A-32 adopts a general ban on gifts to covered persons with 10 enumerated exceptions.

An "intent-based" standard applies to gifts from non-lobbyists. Specifically, a covered person or a legislative employee shall not accept a gift (which is defined as anything of value) in return for being influenced in the discharge of such person's official responsibilities.

There is a strict prohibition on any public servant, legislator, or legislative employee knowingly accepting a gift, directly or indirectly, from a lobbyist or lobbyist principal.

Additionally, no public servant shall accept a gift, directly or indirectly, from a person seeking to do business with the public servant's employing entity or who is engaged in activities that are regulated or controlled by the public servant's employing entity.

Gift Ban Exceptions (N.C.Gen.Stat. § 138A-32(e)) – The following key exceptions apply to the general prohibition on gifts to “public servants,” legislators, or legislative employees:

1. Food and beverages for immediate consumption in connection with public events.
2. Reasonable actual expenditures of the covered person or legislative employee for food, beverages, registration, travel, lodging, and entertainment in connection with such person's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the covered person or legislative employee, or in order for the covered person or legislative employee to participate as a speaker or member of a panel. . . provided the following conditions are met:
 - (a) The reasonable actual expenditures are made by a lobbyist principal and not a lobbyist.
 - (b) Any educational meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.
 - (c) Any food, beverages, or entertainment must be provided to all attendees or defined groups of 10 or more attendees.
 - (d) Any entertainment must be incidental to the principal agenda of the educational meeting.
3. Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist principals.
4. Gifts given to a public servant, whether the gift is food and beverages, transportation, lodging, entertainment, or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all of the following conditions apply:
 - (a) Public servant did not solicit the gift and did not accept the gift in exchange for performance of official duties.
 - (b) Public servant reports electronically to the Commission within 30 days of receipt of the gift.

Conflict of Interest (Article 4)

Recusal (totally and completely removing oneself from the decision-making process) is the stated way to avoid conflicts of interest. See *N.C.Gen.Stat.* §§ 138A-36 and 138A-37. Public servants must abstain from taking any action, verbal or written, in furtherance of the subject official action when the following conditions are met:

If the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has an economic interest in, or may reasonably and foreseeably benefit from, the matter under consideration, which would impair the public servant's independence of judgment from which it could reasonably infer that the interest or benefit would influence the public servant's participation in the official action. See *N.C.Gen.Stat.* § 138A-36(8). A potential benefit includes a detriment to a business competitor.

The standard is slightly different for legislators:

No legislator shall knowingly participate in the legislative action if the legislator, a member of the legislator's extended family, or the legislator's client, or a business with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from such action, and if after considering whether the legislator's judgment would be substantially influenced by the interest, and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the Legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. See *N.C.Gen.Stat.* § 138A-37.

There are several enumerated situations where otherwise disqualified covered persons would be allowed to participate, including where the interest or benefit accrues to all members of a particular profession, occupation, or general class equally.

Violation, Consequences, and Effective Dates (Article 5)

The willful failure of any public servant serving on a covered board to comply with the law is removal from such board. The willful failure of any public servant serving as a State employee to comply with the law is termination of employment. The willful failure of a legislator to comply with the law is grounds for sanctions under the Legislative Ethics Act.

The provisions outlined above become effective January 1, 2007.

PART II – LEGISLATIVE ETHICS ACT

Sections 3-14 of HB 1843 make conforming changes to the Legislative Ethics Act to reflect the new duties given to the State Ethics Commission with regard to legislative ethics, including the filing of SEIs, ethics education, advisory opinions, and receipt of ethics complaints.

PART III – LOBBYING LAWS

The legislation adds a new Chapter 120C, regulating both legislative and executive lobbying, with no substantive distinction made between the two.

General Provisions (Article 1)

Article 1 of Chapter 120C cross-references many of the definitions included in Article 1 of the State Government Ethics Act. It does, however, include several important additional definitions.

Lobbying – Consistent with the lobbying reform legislation adopted in 2005, the definition of “lobbying” is expanded to include not only influencing or attempting to influence legislative or executive action through direct communication or activities, but it also includes developing goodwill, including the building of relationships.

Executive Action – In expanding the definition of “lobbying” to include the Executive Branch, Article 1 defines “executive action” to include:

The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in their official capacity.

Importantly, “executive action” does not include the following:

- (a) Proceedings of a contested case hearing under Chapter 150B of the General Statutes of a judicial nature, or a quasi-judicial nature.
- (b) A public servant’s communication with a person, or another person on that person’s behalf, with respect to any of the following:
 - 1. Applying for a permit, license, determination of eligibility, or certification.
 - 2. Making an inquiry about or asserting a benefit claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal under Chapter 143.
 4. Rate-making.
- (c) Internal administrative functions.
 - (d) Ministerial functions.
 - (e) A public servant's communication with a person with respect to public comments made in an open meeting, or submitted as a written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation and no reportable expenditure is made.

Lobbyist – The definition of “lobbyist” is expanded to include anyone who is employed by a person and a “significant part” of the employee’s duties include lobbying. A bright-line test is included in this definition, which states that an employee should not be considered a lobbyist “if less than 5% of the employee’s actual duties in any 30-day period include engaging in lobbying.”

Reportable Expenditure – Article 1 includes a new definition of “reportable expenditure” to include anything of value greater than \$10.00 per legislator, legislative employee, or public servant, for each single calendar day.

The Ethics Commission and Secretary of State are given joint authority to adopt rules for carrying out the provisions of Chapter 120C. Interestingly, the Commission is exempt from the rulemaking provisions of Chapter 150B, including review by the Rules Review Commission.

With respect to lobbying registration forms that may be filed with the Secretary of State, the Secretary of State is directed to adopt rules to protect the disclosure of confidential information related to economic development initiatives or business recruitment activities.

Lobbyist Principal – The definition of a “lobbyist principal” includes the association or organization that retains a “lobbyist,” but not the individual members of such association or organization.

Advisory Opinion – At the request of any person, the Ethics Commission shall render advisory opinions on specific questions involving the application of Chapter 120C. The Commission shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

The Commission is also required to develop and implement a lobbying education awareness program for lobbyists, lobbyist principals, and legislators.

Lobbyist Registration (Article 2)

Lobbyists must file a separate Registration Statement for each principal. Such Registration Statements must now include a general description of the matters on which the lobbyist expects to act. An Amended Registration Statement is required to be filed no later than 10 days after any change in the information supplied in the lobbyist's last Registration Statement.

A lobbyist is required to register with the Secretary of State each year. A lobbyist is required to pay \$100.00 for each Registration Statement. Likewise, each calendar year a lobbyist principal is required to pay \$100.00 when filing its Authorization Statement for its lobbyist.

A lobbyist is required to identify himself or herself as a lobbyist prior to engaging in lobbying and to disclose the identity of the lobbyist principal connected to such lobbying, communication, or activity.

For the first time, individuals engaged in "solicitation of others" must register as lobbyists, when total expenses incurred for soliciting others exceeds \$3,000.00 during any 90-day period. "Solicitation of others" includes solicitation of members of the public to communicate with legislators or public servants for the purpose of influencing legislative or executive action, when the request is made using broadcast, cable, or satellite transmission, e-mail communication, print media, or written communication delivered by mail. The term "solicitation of others" does not include communications made by a person to employees, board members, officers, members, subscribers, or other persons who have consented to receive regular publications or notices. This new provision is designed to include "grassroots" and "grass-tops" lobbying efforts in the lobbyist registration requirements.

Unlike the lobbying reform legislation passed in 2005, the new registration requirements do not require separate registration for Legislative and Executive Branch advocacy. Instead, registration is streamlined to apply to both legislative and executive action.

Prohibitions and Restrictions (Article 3)

Contingency Fees – Consistent with existing law, lobbyists are prohibited from charging contingency fees based upon the result or outcome of any legislative or executive action.

No person (including, but not limited to, lobbyists and lobbyist principals) shall attempt to influence the action of a legislator or public servant by the promise of financial support of the individual's candidacy, or by threat of financial support in opposition to the designation individual's candidacy in any future election.

Lobbyist Contributions – Campaign contributions by lobbyists to legislators and public servants are now prohibited.

Bundling – N.C.Gen.Stat. § 120C-302(b) prohibits lobbyists from engaging in bundling of contributions. Specifically, this prohibition states that no lobbyist may collect contributions from multiple contributors, take possession of such multiple contributions, or transfer or deliver the collected multiple contributions to the intended recipient (legislator or public servant).

Gift Ban – Consistent with the gift ban included in the State Government Ethics Act, lobbyists may not make gifts to legislators or public servants, unless they meet the criteria for one of the 10 delineated exceptions in N.C.Gen.Stat. § 138A-32(e).

Revolving Door Time Limit – *N.C.Gen.Stat.* § 120C-304 contains time restrictions on when former legislators and public servants may register as lobbyists.

Campaign Treasurer – Lobbyists are prohibited from serving as a treasurer or assistant treasurer for any political committee for the election of a member of the General Assembly or constitutional officer of the State.

State Appointments – A lobbyist is ineligible for appointment to any State body that has regulatory authority over the activities of a person that the lobbyist represents.

Reporting (Article 4)

“Reportable expenditures” (anything of value greater than \$10.00 per individual per calendar day) for the benefit of a legislator, public servant, or legislative employee, or that individual’s immediate family member, must be reported to the Secretary of State. Each report shall set forth the fair market value, date, description of the reportable expenditure, name and address, name of any designated individual or family member connected with the reportable expenditure. Expenditures shall be reported using the following categories:

1. Transportation and lodging.
2. Entertainment.
3. Food and beverages.
4. Meetings and events.
5. Gifts, and other reportable expenditures.

When more than 15 “designated individuals” (legislator, legislative employee, or public servant) benefit from a reportable expenditure, no names of individuals need be reported, provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record, or including a description of the group that

clearly distinguishes its purpose or composition from the general membership of the General Assembly.

Reporting Schedule – Lobbyists shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal. Such report shall include the following for the reporting period: all reportable expenditures, solicitation of others involving costs of more than \$3,000.00, reportable expenditures reimbursed by the lobbyist principal, and all reportable expenditures for gifts under *N.C.Gen.Stat. § 138A-32(e)*. In addition to the quarterly reports, any lobbyist incurring reportable expenditures in any month while the General Assembly is in Session with respect to lobbying legislators and legislative employees, shall file a monthly reportable expenditure report.

Lobbyist principals shall file similar quarterly (or monthly) reports with the Secretary of State. In addition to the information required of lobbyists, such reports shall also include compensation paid to lobbyists during the time period. The principal shall estimate and report the portion of the lobbyist's salary, fee, or retainer that compensates for lobbying.

Failure to file the required report shall void all registration of the lobbyist and lobbyist principal.

Liaison Personnel (Article 5)

No more than two persons may be designated as legislative liaison personnel for any agency or constitutional officer of the State, including boards, departments, divisions, and the University of North Carolina. No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees. (Note: This prohibition does not apply to local units of government.)

Violations and Enforcement (Article 6)

Willful violation of any provision of Article 2 or Article 3 of Chapter 120C is a Class 1 misdemeanor. In addition, no lobbyist who is convicted of a violation shall in any way act as a lobbyist for a period of two years from the date of conviction. The Secretary of State may also levy civil fines of up to \$5,000.00 per violation.

Exemptions (Article 7)

This provision lists various persons who shall not be deemed to be lobbyists under the definition of Chapter 120C, including individuals engaged in expressing personal opinions on legislative action, persons appearing before committees, commissions, and boards at the request of the body, local officials, legislative research staff, etc.

Miscellaneous (Article 8)

If a legislator or public servant accepts a reportable expenditure made for the purpose of lobbying with a total value of over \$200.00 per calendar quarter from a person, the person making the reportable expenditure shall report the expenditure to the Secretary of State, irrespective of whether the person is a lobbyist or lobbyist principal.

It is unethical for a legislator to promise or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-201
HOUSE BILL 1843**

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; TO AMEND THE LOBBYING LAWS; AND TO MAKE CONFORMING CHANGES.

Whereas, 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; and

Whereas, 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; and

Whereas, 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; and

Whereas, acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted should not be used to advance narrow interests for oneself or others; and

Whereas, self-interest, partiality, and prejudice have no place in decision making for the public good; and

Whereas, public officials must exercise their duties responsibly with skillful judgment and energetic dedication; and

Whereas, public officials must exercise discretion with sensitive information pertaining to public and private persons and activities; and

Whereas, to maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect; and

Whereas, because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

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 purpose of this Chapter is to ensure that elected and appointed State agency officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. To this end, it is the intent of the General Assembly in this Chapter to ensure that standards of ethical conduct and standards regarding conflicts of interest are clearly established for elected and appointed State agency officials, that the State continually educates these officials on matters of ethical conduct and conflicts of interest, that potential and actual conflicts of interests are identified and resolved, and that violations of standards of ethical conduct and conflicts of interest are investigated and properly addressed.

"§ 138A-3. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority.
- (2) Business. – Any of the following organized for profit:
 - a. Association.
 - b. Business trust.
 - c. Corporation.
 - d. Enterprise.
 - e. Joint venture.
 - f. Organization.
 - g. Partnership.
 - h. Proprietorship.
 - i. Vested trust.
 - j. Every other business interest, including ownership or use of land for income.
- (3) Business with which associated. – A business in which the person or any member of the person's immediate family does any of the following:
 - a. Is an employee.
 - b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
 - c. Owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.

For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

- a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
- b. The fund is publicly traded, or the fund's assets are widely diversified.

- (4) Commission. – The State Ethics Commission.
- (5) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.
- (6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, reported as required by Article 22A of Chapter 163 of the General Statutes.
- (7) Confidential information. – Information defined as confidential by the law.
- (8) Constitutional officers of the State. – Officers whose offices are established by Article III of the North Carolina Constitution.
- (9) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.
- (10) Covered person. – A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.
- (11) Economic interest. – Matters involving a business with which associated or a nonprofit corporation or organization with which associated.
- (12) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For legislative employees, it is the authority that hired the individual. For judicial employees, it is the Chief Justice.
- (13) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.
- (14) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.
- (15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:
 - a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.
 - b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.
 - c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
 - d. Academic or athletic scholarships based on the same criteria as applied to the public.
 - e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
- (16) Honorarium. – Payment for services for which fees are not legally or traditionally required.
- (17) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not

- legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.
- (18) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars (\$60,000) or more.
 - (19) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.
 - (20) Legislative action. – As the term is defined in G.S. 120C-100.
 - (21) Legislative employee. – As the term is defined in G.S. 120C-100.
 - (22) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.
 - (23) Lobbying. – As the term is defined in G.S. 120C-100.
 - (24) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.
 - (25) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.
 - (26) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.
 - (27) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.
 - (28) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.
 - (29) Public event. – Any of the following:
 - a. For legislators and legislative employees:
 - 1. An organized gathering of persons open to the general public to which all legislators or legislative employees are invited to attend.
 - 2. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, a joint commission, or a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, and one of the following apply:
 - I. At least 10 individuals associated with the person actually attend, other than the legislator or legislative employee, or the immediate family of the legislator or legislative employee.

- II. All shareholders, employees, board members, officers, members, or subscribers of the person located in North Carolina are notified and invited to attend.
 - III. The person is a governmental body and the gathering is subject to the open meetings law.
- b. For public servants:
- 1. An organized gathering of individuals open to the general public to which at least 10 public servants are invited to attend.
 - 2. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which at least 10 public servants are invited to attend.
 - 3. An organized gathering of a person to which at least 10 public servants are invited to attend and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.
- (30) Public servants. – All of the following:
- a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.
 - b. Employees of the Office of the Governor.
 - c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
 - d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.
 - e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.
 - f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
 - g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
 - h. Judicial employees.
 - i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.
 - j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
 - k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative

officer of each community college, and voting members of the boards of trustees of each community college.

l. Members of the Commission.

m. Persons under contract with the State working in or against a position included under this subdivision.

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

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

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

"§ 138A-4. Application to Lieutenant Governor.

For purposes of this Chapter, the Lieutenant Governor shall be considered a legislator when carrying out the Lieutenant Governor's duties under Sec. 13 of Article II of the Constitution, and a public servant for all other purposes.

"§ 138A-5: [Reserved]

"Article 2.

"State Ethics Commission.

"§ 138A-6. State Ethics Commission established.

There is established the State Ethics Commission.

"§ 138A-7. Membership.

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

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

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

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

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

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance. Members appointed by the Governor may be removed by the Governor. Members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be removed by the Governor upon the recommendation of the Speaker. Members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be removed by the Governor upon the recommendation of the President Pro Tempore.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by

the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

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

- (1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
- (2) Hold office in any political party above the precinct level.
- (3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.
- (4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

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

"§ 138A-8. Meetings and quorum.

The Commission shall meet at least quarterly and at other times as called by its chair or by four of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Five members of the Commission constitute a quorum.

"§ 138A-9. Staff and offices.

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

"§ 138A-10. Powers and duties.

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

- (1) Provide reasonable assistance to covered persons in complying with this Chapter.
- (2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of the Chapter.
- (3) Identify and publish the following:
 - a. A list of nonadvisory boards.
 - b. The names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.
- (4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.
- (5) Conduct inquiries of alleged violations against judicial officers, legislators, and legislative employees in accordance with G.S. 138A-12.
- (6) Conduct inquiries into alleged violations against public servants in accordance with G.S. 138A-12.
- (7) Render advisory opinions in accordance with G.S. 138A-13 and G.S. 120C-102.

- (8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.
- (9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.
- (10) Adopt procedures and guidelines to implement this Chapter.
- (11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.
- (12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(h), the number of complaints referred for appropriate action under G.S. 138A-12(h) or G.S. 138A-12(k)(3), and the number of complaints pending action by the Commission.
- (13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

§ 138A-11. Identify and publish names of covered persons and legislative employees.

The Commission shall identify and publish at least quarterly a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. The Commission shall also identify and publish at least annually a listing of all boards to which this Chapter applies. This listing may be published electronically on a public Internet Web site maintained by the Commission.

§ 138A-12. Inquiries by the Commission.

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall conduct inquiries of complaints alleging unethical conduct by covered persons and legislative employees, as set forth in this section.

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

- (1) The application or alleged violation of this Chapter.
- (2) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.
- (3) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.
- (4) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

- (1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.
- (2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within two years of the date the complainant knew or should have known of the conduct upon which the complaint is based.
- (3) The Commission may decline to accept, refer, or conduct an inquiry into any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.
- (4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer, or conduct an inquiry into a complaint if it determines that any of the following apply:
 - a. The complaint is frivolous or brought in bad faith.
 - b. The individuals and conduct complained of have already been the subject of a prior complaint.
 - c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint inquiry pending final resolution of the other investigation.
- (5) The Commission shall send a copy of the complaint to the covered person or legislative employee who is the subject of the complaint and the employing entity, within 30 days of the filing.

(d) Conduct of Inquiry of Complaints by the Commission. – The Commission shall conduct an inquiry into all complaints properly before the Commission in a timely manner. The Commission shall initiate an inquiry into a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate inquiries upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. Commission-initiated complaint inquiries under this section shall be initiated within two years of the date the Commission knew of the conduct upon which the complaint is based, except when the conduct is material to the continuing conduct of the duties in office. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting inquiries.

(e) Covered Person and Legislative Employees Cooperation With Inquiry. – Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related inquiry. Failure to cooperate fully with the Commission in any inquiry shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(g) Commission Inquiries. – If at the end of its preliminary inquiry, the Commission determines to proceed with further inquiry into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the inquiry and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(h) Action on Inquiries. – The Commission shall conduct inquiries into complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

- (1) For public servants, decide to proceed with a hearing under subsection (i) of this section.
- (2) For legislators, except the Lieutenant Governor, refer the complaint to the Committee.
- (3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, to the senior resident superior court judge of the district or county for complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.
- (4) For legislative employees, refer the complaint to the employing entity.

(i) Hearing. –

- (1) The Commission shall give full and fair consideration to all complaints received against a public servant. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a hearing, a hearing shall be held.
- (2) The Commission shall send a notice of the hearing to the complainant, and the public servant. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.
- (3) The Commission shall make available to the public servant prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.
- (4) At any hearing held by the Commission:
 - a. Oral evidence shall be taken only on oath or affirmation.
 - b. The hearing shall be held in closed session unless the public servant requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.
 - c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Settlement of Inquiries. – The public servant who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the inquiry or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the inquiry is subject to the approval of the Commission.

(k) Disposition of Inquiries. – After hearing, the Commission shall dispose of the matter in one or more of the following ways:

- (1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.
- (2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.
- (3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:
 - a. Issue a private admonishment to the public servant and notify the employing entity, if applicable. Such notification shall be treated as part of the personnel record of the public servant.
 - b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.
 - c. Refer the matter for appropriate action to the Chief Justice for judicial employees.
 - d. Refer the matter to the Principal Clerks of the House of Representatives and Senate of the General Assembly for constitutional officers of the State.
 - e. Refer the matter for appropriate action to the principal clerk of the house of the General Assembly that elected the public servant for members of the Board of Governors.

(l) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, against legislative employees to the employing entity for legislative employees, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court.

(m) Reports and Records. – The Commission shall render the results of its inquiry in writing. When a matter is referred under subdivision (h)(2) and (3), or subsection (k) of this section, the Commission's report shall consist of the complaint, response, and detailed results of its inquiry in support of the Commission's finding of a violation under this Chapter.

(n) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an inquiry under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes public sanctions. At such time as public sanctions are imposed on a covered person, the complaint, response, and Commission's report to the employing entity shall be made public.

(o) Recommendations of Sanctions. – After referring a matter under subsection (k) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

- (1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for a public servant as

set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

- (2) The number of ethics violations.
- (3) The severity of the ethics violations.
- (4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.
- (5) Whether the ethics violations were inadvertent or intentional.
- (6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.
- (7) Whether the public servant has previously been advised or warned by the Commission.
- (8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(e).
- (9) The public servant's motivation or reason for the improper conduct or action, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(p) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entities to discipline the covered person or legislative employee.

(q) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person, who was formerly a public servant or legislative employee, ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

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

(s) Reports. – The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(12).

(t) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission.

§ 138A-13. Advisory opinions.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this

Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. On its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

- (1) Investigation by the Commission.
- (2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render recommended advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

- (1) Investigation by the Committee or Commission.
- (2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. Except for the Lieutenant Governor, the immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

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

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

(f) This section shall not apply to judicial officers.

"§ 138A-14. Ethics education program.

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of the person's election, reelection,

appointment, or employment in a manner as the Commission and Committee deem appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

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

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

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

(i) This section shall not apply to judicial officers.

"§ 138A-15. Duties of heads of State agencies.

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

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

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

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

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment, or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"§§ 138A-16 through 20: [Reserved]"

"Article 3.

"Public Disclosure of Economic Interests.

"§ 138A-21. Purpose.

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

"§ 138A-22. Statement of economic interest; filing required.

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars (\$60,000), shall file a statement of

economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (d) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

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

(c) Notwithstanding subsection (a) of this section, public servants, under G.S. 138A-3(30)j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed, or elected provisionally prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article, subject to dismissal or removal based on the Commission's evaluation.

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

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

(f) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of each candidate who have filed as a candidate for office as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Elections under this section.

(g) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall

furnish to all other covered persons the appropriate forms needed to comply with this Article.

"§ 138A-23. Statements of economic interest as public records.

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"§ 138A-24. Contents of statement.

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

- (1) The name, home address, occupation, employer, and business of the person.
- (2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars (\$10,000) owned by the filing person and the filing person's immediate family. This list shall include the following:
 - a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.
 - b. Real estate that is currently leased or rented to or from the State.
 - c. Personal property sold to or bought from the State within the preceding two years.
 - d. Personal property currently leased or rented to or from the State.
 - e. The name of each publicly owned company.
 - f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.
 - g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars (\$10,000).
 - h. A list of all nonpublicly owned businesses of which the person is an officer, employee, director, partner, owner, or member or manager of a limited liability company.
 - i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.
 - j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.
 - k. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

1. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, if known, and a brief description of the nature of the business, or which with due diligence could reasonably be known.
- (3) A list of each source (not specific amounts) of income of more than five thousand dollars (\$5,000) received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains, and business income.
- (4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars (\$10,000) from any of the following categories of legal representation:
 - a. Administrative law.
 - b. Admiralty law.
 - c. Corporate law.
 - d. Criminal law.
 - e. Decedents' estates law.
 - f. Environmental law.
 - g. Insurance law.
 - h. Labor law.
 - i. Local government law.
 - j. Negligence or other tort litigation law.
 - k. Real property law.
 - l. Securities law.
 - m. Taxation law.
 - n. Utilities regulation law.
- (5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars (\$10,000).
- (6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator or a judicial officer.
- (7) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.
- (8) A list of all things of monetary value greater than two hundred dollars (\$200.00) given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing

was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, or from the person's extended family. The list shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person.

(10) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, the Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall be subject to the provisions of G.S. 138A-25.

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

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

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

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

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

(4) The Chief Justice for judicial officers and judicial employees.

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

(6) The State Board of Elections for those filing persons who are elected.

(7) The Committee, together with a copy of the statement of economic interest, for legislators.

"§ 138A-25. Failure to file.

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed

within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

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

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

"§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.

"§§ 138A-28 through 30: [Reserved]

"Article 4.

"Ethical Standards for Covered Persons.

"§ 138A-31. Use of public position for private gain.

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3). Disclosure of a covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier, or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, magazines, or billboards, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fund-raising on behalf of and aired on public radio or public television.

"§ 138A-32. Gifts.

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive

anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

- (1) Is doing or is seeking to do business of any kind with the public servant's employing entity.
- (2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.
- (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

- (1) Food and beverages for immediate consumption in connection with public events.
- (2) Informational materials relevant to the duties of the covered person or legislative employee.
- (3) Reasonable actual expenditures of the covered person or legislative employee for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) a covered person's or legislative employee's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the covered person or legislative employee, or in order for the covered person or legislative employee to participate as a speaker or member of a panel; (ii) a legislator's or legislative employee's attendance and participation in meetings of a state, regional, national, or international legislative organization of which the General Assembly is a member or that the legislator or legislative employee is a member or participant of by virtue of that person's public position, or as a member of a board, agency, or committee of such organization; or (iii) a public servant's attendance and participation in meetings as a member of a board, agency, or committee of a state, regional, national, or international legislative organization of which the public servant's agency is a member or the public servant is a member by virtue of that person's public position, provided the following conditions are met:
 - a. The reasonable actual expenditures shall be made by a lobbyist's principal, and not a lobbyist.
 - b. Any educational meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.
 - c. Any food, beverages, or entertainment must be provided to all attendees or defined groups of 10 or more attendees.
 - d. Any entertainment must be incidental to the principal agenda of the educational meeting.

- (4) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
- (5) Gifts accepted on behalf of the State for the benefit of the State.
- (6) Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist's principals.
- (7) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.
- (8) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
 - a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.
 - b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.
 - c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.
- (9) Gifts of personal property valued at less than one hundred dollars (\$100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.
- (10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or donated immediately to charity or the State.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

- (1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.
- (2) The employing entity's work time or resources are used.
- (3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86.

"§ 138A-33. Other compensation.

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

"§ 138A-34. Use of information for private gain.

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

"§ 138A-35. Other rules of conduct.

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

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"§ 138A-36. Public servant participation in official actions.

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself to the extent necessary, to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, partner, member or manager of a limited liability company, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

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

"§ 138A-37. Legislator participation in official actions.

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from the action, and if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104.

"§ 138A-38. Permitted participation exception.

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

- (1) The only interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class is no greater than that which could

- reasonably be foreseen to accrue to all members of that profession, occupation, or general class.
- (2) When an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.
 - (3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission or Committee a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the Commission or Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.
 - (4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.
 - (5) When action is ministerial only and does not require the exercise of discretion.
 - (6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under G.S. 130-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.
 - (7) When a public servant notifies the Commission in writing that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

"§ 138A-39. Disqualification to serve.

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

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

(c) A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

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

"§ 138A-40. Employment and supervision of members of covered person's extended family.

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's extended family, except as specifically authorized by the public servant's or legislative employee's employing entity.

"§ 138A-41. Other ethics standards.

Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

"§§ 138A-42 through 44: [Reserved]

"Article 5.

"Violation Consequences.

"§ 138A-45. Violation consequences.

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House of Representatives, the Speaker of the House of Representatives may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the Speaker of the House of Representatives, the Governor at the recommendation of the Speaker of the House of Representatives may remove the offending public servant. For appointees of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the President Pro Tempore of the Senate, the Governor at the recommendation of the President Pro Tempore of the Senate may remove the offending public servant. For public servants elected to a board by either the Senate or House of Representatives, the electing house of the General Assembly shall exercise the discretion of whether to remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For any other public servant serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

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

(e) The willful failure of a legislator, other than the Lieutenant Governor, to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

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

(g) The Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2.(a) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(14) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes."

SECTION 2.(b) G.S. 116-7 is amended by adding a new subsection to read:

"(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the Board of Governors, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant."

SECTION 2.(c) G.S. 115D-2.1 is amended by adding a new subsection to read:

"(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the State Board of Community Colleges, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-32.6. Certain employment authority.

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. G.S. 120-85, 120-87(b), 120-88, and Part 2 of Article 14 of Chapter 120 of the General Statutes are repealed.

SECTION 5. Part 1 of Article 14 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-85.1. Definitions.

As used in this Article, the following terms mean:

- (1) Business with which associated. – As defined in G.S. 138A-3.
- (2) Confidential information. – As defined in G.S. 138A-3.
- (3) Economic interest. – As defined in G.S. 138A-3.
- (4) Immediate family. – As defined in G.S. 138A-3.
- (5) Legislator. – As defined in G.S. 138A-3.
- (6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.
- (7) Vested trust. – As defined in G.S. 138A-3."

SECTION 6. G.S. 120-86 reads as rewritten:

"§ 120-86. Bribery, etc.

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

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or

indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

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

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103~~. G.S. 120-103.1."

SECTION 7. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ 12 members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 8. G.S. 120-99(c) is repealed.

SECTION 9. G.S. 120-101 reads as rewritten:

"§ 120-101. Quorum; expenses of members.

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 10. G.S. 120-102 reads as rewritten:

"§ 120-102. Powers and duties of Committee.

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~ may:

- ~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~
- ~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~
- ~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~
- ~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10 year period, these documents shall be destroyed.~~
- ~~(5) To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~ Prepare a list of ethical principles

and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

- (5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.
- (6) ~~To advise~~ Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.
- (6a) Review, modify, or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.
- (7) ~~To propose~~ Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.
- (8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.
- (9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.
- (10) Adopt procedures to implement this Article.
- (11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 11. G.S. 120-103 is repealed.

SECTION 12. Part 3 of Article 14 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-103.1. Investigations by the Committee.

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

- (1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.
- (2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.
- (3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

- (1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.
- (2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

- a. The complaint is frivolous or brought in bad faith.
 - b. The individuals and conduct complained of have already been the subject of a prior complaint.
 - c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.
- (3) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.
 - (4) Notwithstanding any other provisions of this section, complaints filed with the Committee concerning the conduct of the Lieutenant Governor shall be referred to the State Ethics Commission under Chapter 138A of the General Statutes without investigation by the Committee.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section or initiate an investigation of a complaint or dismiss the complaint. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee shall do at least one of the following:

- (1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.
- (2) Conduct further investigations and hearings under this section.
- (3) Dismiss the complaint.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry, the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to

the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

- (1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.
- (2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.
- (3) At any hearing held by the Committee:
 - a. Oral evidence shall be taken only on oath or affirmation.
 - b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.
 - c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

- (1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.
- (2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:
 - a. Issue a public or private admonishment to the legislator.
 - b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.
 - c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.
- (3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

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

(l) Confidentiality. – Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records, and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends

sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

(n) The Committee shall publish annual statistics on complaints filed with or considered by the Committee, including the number of complaints filed, the number of complaints dismissed, the number of complaints resulting in admonishment, the number of complaints referred to the appropriate house for appropriate action, the number of complaints referred for criminal prosecution, and the number and age of complaints pending action by the Committee."

SECTION 13. G.S 120-104 reads as rewritten:

"§ 120-104. Advisory opinions.

(a) At the request of any member of the General Assembly, the Committee shall render formal advisory opinions on specific questions involving legislative ethics. ~~These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall receive and review recommended advisory opinions issued to legislators, except the Lieutenant Governor, by the State Ethics Commission under G.S. 138A-13. The opinion shall not be considered a formal advisory opinion until the advisory opinion is adopted by the Committee. The Committee may modify or overrule the recommended advisory opinions issued to legislators by the State Ethics Commission, and the final action on the opinion by the Committee shall control.

(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under G.S. 138A-13(a).

(d) Staff to the Committee may issue informal, nonbinding advisory opinions under procedures adopted by the Committee.

(e) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators, except the Lieutenant Governor, and these interpretations are binding on all legislators upon publication.

(f) The Committee shall submit its formal advisory opinions to the State Ethics Commission, and the State Ethics Commission shall publish the Committee's opinions under G.S. 138A-13(d).

(g) Except as provided under subsection (f) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission are confidential and not matters of public record."

SECTION 14. G.S. 120-105 reads as rewritten:

"§ 120-105. Continuing study of ethical questions.

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article ~~as well as sections to cover the administrative branch of government and~~ and Chapter 138A and Chapter 120C of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 15. G.S. 143B-350 reads as rewritten:

"§ 143B-350. Board of Transportation – organization; powers and duties, etc.

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the

appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~ the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall~~ include

- (1) ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.
- (2) ~~Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related~~

~~to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

- (3) ~~Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) ~~Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.~~

(m) ~~Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature-nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, the North Carolina Board of Ethics, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.~~

...."

PART III. AMEND LOBBYING LAWS.

SECTION 16.(a) G.S. 120-47.7B, as enacted by S.L. 2005-456, is effective when this act becomes law.

SECTION 16.(b) G.S. 120-47.7B is repealed effective January 1, 2007.

SECTION 17. Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 18. The General Statutes are amended by adding a new Chapter

to read:

"Chapter 120C.

"Lobbying.

"Article 1.

"General Provisions.

"§ 120C-100. Definitions.

(a) As used in this Article, the following terms mean:

- (1) Commission. – The State Ethics Commission under Chapter 138A of the General Statutes.
- (2) Designated individual. – A legislator, legislative employee, or public servant.
- (3) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

- a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.
 - b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:
 - 1. Applying for a permit, license, determination of eligibility, or certification.
 - 2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.
 - 3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.
 - 4. Ratemaking.
 - c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).
 - d. Ministerial functions.
 - e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.
- (4) In session. – One of the following:
- a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
 - 1. Adjourns sine die.
 - 2. Recesses or adjourns for more than 10 days.
 - b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
 - 1. Adjourns sine die.
 - 2. Recesses or adjourns for more than 10 days.
- (5) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.
- (6) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, but not including legislators, members of the Council of State, or pages.
- (7) Legislator. – As defined in G.S. 138A-3 and G.S. 120C-104.
- (8) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.
- (9) Lobbying. – Any of the following:

- a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.
- b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both.

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

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

- a. Is employed by a person for the intended purpose of lobbying.
- b. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.
- c. Contracts for economic consideration for the purpose of lobbying.
- d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if less than five percent (5%) of that employee's actual duties in any 30-day period include engaging in lobbying as defined in subdivision (9)a. of this section.

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

(11) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

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

(12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

- a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars (\$10.00) per designated individual per single calendar day.
- b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

(13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals for the purpose of influencing or attempting to influence legislative or executive action to further the solicitor's position on that

legislative or executive action, when that request is made by any of the following methods:

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

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

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"§ 120C-101. Rules and forms.

(a) The Commission shall adopt any rules necessary to interpret and carry out the provisions of this Chapter. The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

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

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall maintain a mailing list of interested persons as provided in G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

- (1) Publish the proposed rules in the North Carolina Register.
- (2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.
- (3) Notify persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
- (4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
- (5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this section becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

"§ 120C-102. Advisory opinions.

(a) At the request of any person affected by this Chapter, the Commission shall render advisory opinions on specific questions involving the meaning and application of

this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion from both of the following:

- (1) Investigation by the Commission.
- (2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(c) The Commission shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"§ 120C-103. Lobbying education program.

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

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

(c) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request.

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

For purposes of this Chapter, the term "legislator" as defined in G.S. 120C-100(7) and the term "public servant" as defined in G.S. 138A-3(30)a. shall include a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or nominated under G.S. 163-114 or G.S. 163-98.

"Article 2.

"Registration.

"§ 120C-200. Lobbyist registration procedure.

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering within one business day of engaging in any lobbying as defined in G.S. 120C-100(9) unless exempted by this Chapter.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address, and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist's principal connected to that lobbying communication or activity.

"§ 120C-201. Lobbyist's registration fee.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars (\$100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted nonprofit status under 26 U.S.C. § 501(c)(3).

"§§ 120C-202 through 205: Reserved for future codification.

"§ 120C-206. Lobbyist's principal's authorization.

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address, and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"§ 120C-207. Lobbyist's principal's fees.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars (\$100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted nonprofit status under 26 U.S.C. § 501(c)(3).

"§§ 120C-208 through 214: Reserved for future codification.

"§ 120C-215. Other persons required to register.

(a) A person not otherwise required to register under this Chapter shall register and report when the total expense incurred for solicitation of others exceeds three thousand dollars (\$3,000) during any 90-day period. Expenses incurred shall mean the costs of producing and transmitting the communication and, if the communication is

made at a conference, meeting, or similar event, the costs of planning, hosting, sponsoring, and attending the conference, meeting, or similar event.

(b) A person required to register and report under this section shall be referred to as a "solicitor" for purposes of this Chapter.

(c) No fee shall be charged for registering as a solicitor.

"§§ 120C-216 through 219: Reserved for future codification.

"§ 120C-220. Publication and availability of registrations.

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"§ 120C-300. Contingency fees prohibited.

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"§ 120C-301. Election influence prohibited.

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

"§ 120C-302. Campaign contributions prohibition.

(a) No lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(30)a.

(b) No lobbyist may collect contributions from multiple contributors, take possession of such multiple contributions, or transfer or deliver the collected multiple contributions to the intended recipient. This section shall apply only to contributions to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate is a legislator as defined in G.S. 120C-100 or a public servant as defined in G.S. 138A-3(30)a.

(c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163-114 or G.S. 163-98, making a contribution to that lobbyist's candidate campaign committee.

"§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-602(b).

"§ 120C-304. Restrictions.

(a) No legislator or former legislator may register as a lobbyist under this Chapter:

(1) While in office.

(2) Before the later of the close of the session in which the legislator served or six months after leaving office.

(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist while in office or within six months after leaving office.

(c) No person serving as a public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within six months after separation from employment.

(d) No individual registered as a lobbyist under this Chapter shall serve as a treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(e) A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(f) Any appointment or registration made in violation of this section shall be void.

"§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure.

"Article 4.

"Reporting.

"§ 120C-400. Reporting of reportable expenditures.

For purposes of this Chapter, all reportable expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that individual's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"§ 120C-401. Reporting generally.

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary, and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:

- (1) Transportation and lodging.
- (2) Entertainment.
- (3) Food and beverages.
- (4) Meetings and events.
- (5) Gifts.
- (6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or solicitor. No lobbyist, lobbyist's principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

"§ 120C-402. Lobbyist's reports.

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following for the reporting period:

- (1) All reportable expenditures made for the purpose of lobbying.
- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).
- (3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) and all gifts given under G.S. 138A-32(e)(10).

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

"§ 120C-403. Lobbyist's principal's reports.

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following for the reporting period:

- (1) All reportable expenditures made for the purpose of lobbying.
- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).
- (3) Compensation paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.
- (4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.
- (5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars (\$200.00).

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"§ 120C-404. Solicitor's reports.

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

- (1) All reportable expenditures made for the purpose of lobbying during the reporting period.
- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).

"§ 120C-405. Report availability.

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.

"Liaison Personnel.

"§ 120C-500. Liaison personnel.

(a) All agencies and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, and other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby for legislative action.

(b) No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(c) No more than two persons may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, and other units of government in the executive branch.

"§ 120C-501. Applicability of Chapter on liaison personnel.

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) G.S. 120C-200 shall apply to liaison personnel. No registration fee shall be required for registration under this subsection.

(c) Liaison personal designated under this Article shall file reports under G.S. 120C-402.

(d) G.S. 120C-303 shall apply to liaison personnel with respect to legislators and legislative employees.

(e) The University of North Carolina or any of its constituent institutions, or designated liaison personnel of those persons, shall not give, for the purpose of lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students.

"Article 6.

"Violations and Enforcement.

"§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under Articles 4 and 8 of this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures. The Secretary of State shall refer to the Commission any complaints of violations of this Chapter other than those related solely to Article 4 or Article 8 of this Chapter.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of Articles 4 and 8 of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of Articles 4 and 8 of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of Articles 4 and 8 of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"§ 120-601. Powers and duties of the Commission.

(a) The Commission may investigate complaints of violations of this Chapter and shall refer complaints related solely to Article 4 or Article 8 of this Chapter to the Secretary of State.

(b) The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for

any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.

"§ 120C-602. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Article 4 or 8 of this Chapter up to five thousand dollars (\$5,000) per violation. In addition to the criminal penalties set forth in this section, the Commission may levy civil fines for a violation of any provision of this Chapter except Article 4 or Article 8 of this Chapter up to five thousand dollars (\$5,000) per violation.

"§ 120C-603. Enforcement by district attorney and Attorney General.

(a) The Commission may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Commission or any member employee of the Commission shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"§ 120C-700. Persons exempted from this Chapter.

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following:

- (1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.
- (2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.
- (3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties, except for a person designated as liaison personnel under G.S. 120C-500.
- (4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.
- (5) A person who owns, publishes, or is an employee of any recognized news medium, while engaged in the acquisition and publication of

news or news and commentary on behalf of that recognized news medium.

- (6) Designated individuals while acting in their official capacity.
- (7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.
- (8) A person who is a political committee as defined in G.S. 163-278.6(14), that person's employee, or that person's contracted service provider.

"Article 8.

"Miscellaneous.

"§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars (\$200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship valued over two hundred dollars (\$200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

- (1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
- (2) Any gift from an extended family member to a designated individual.
- (3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.
- (4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.
- (5) A thing of value that is paid for by the State.

(f) Within 10 business days after the end of the quarter in which the reportable expenditure was made, reports required by this section shall be filed with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest

under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest.

(g) For purposes of this section, the term "scholarship" shall mean a grant-in-aid to attend a conference, meeting, or other similar event."

SECTION 19. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 20.(a) G.S. 120-86.1 reads as rewritten:

"§ 120-86.1. Personnel-related action unethical.

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4)~~, ~~G.S. 120C-100(5)~~, for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 21. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120 under Chapter 120C~~ of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7)~~, ~~G.S. 120C-100(11)~~ or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120 under Chapter 120C~~ of the General Statutes."

SECTION 22. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 23.(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 23.(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 24. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 25. Sections 4 through 15 and Sections 17 through 21 of this act become effective January 1, 2007, and G.S. 120C-304, as enacted by Section 18 of this act, applies to appointments made on or after that date. Sections 16, 24, and 25 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, to gifts received on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:24 p.m. this 4th day of August, 2006



HOUSE BILL 1843: State Government Ethics Act - 1

BILL ANALYSIS

Committee: House Judiciary I	Date: July 27, 2006
Introduced by: Reps. Hackney, Howard, Brubaker, Luebke	Summary by: R. Erika Churchill
Version: Conference Report	Committee Counsel

SUMMARY: *The Conference Committee Substitute for House Bill 1843 creates an independent ethics commission to oversee the administration of certain ethics laws that apply to the executive branch, the legislative branch, and the judicial branch; makes conforming changes to the Legislative Ethics Act; and enacts provisions regulating lobbyists influencing legislative and executive action.*

BILL ANALYSIS: The Conference Committee Substitute for House Bill 1843 does the following:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT. (BEGINS ON PAGE 2)

SECTION 1. Codifies a new Chapter 138A, State Government Ethics Act, to create the State Ethics Commission with responsibilities as follows:

Article 1. General Provisions.

G.S. 138A-3 sets out the following definitions used in the Chapter:

- **Board** - Any non-advisory State branch board, commission, council, committee, task force, authority, or similar body created by statute or executive order.
- **Covered Person** - Legislator, public servant (defined below), and judicial officers.
- **Gift** - Anything of monetary value given or received without valuable considerations by or from a lobbyist or lobbyist principal, or other defined person doing business with a specific State agency. Excluded from the definition of a gift are things for which fair market value or face value are paid, normal commercial loans and business relationships, not for the purpose of lobbying, normal academic and athletic scholarships, and lawful campaign contributions.
- **Public event** - For legislators, an organized gathering open to the public or a gathering organized by a person to which a specified subset of legislators are invited and that gathering is subject to the open meetings law, or at least 10 individuals associated with the lobbyist's principal attend, or all employees, shareholders, etc. of the person in North Carolina are notified and invited to attend. For public servants, an organized gathering which is open to the public; or subject to the open meetings law; or a set number of public servants and individuals associated with the lobbyist's principal actually attend.

Article 2. State Ethics Commission, establishes the State Ethics Commission as an independent, bipartisan commission of eight members, 4 appointed by the Governor, of which no more than 2 may be of the same political party, 4 appointed by the General Assembly, 2 each on the recommendation of the President Pro Tempore and the Speaker, of which no more than 1 each may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-12 sets out the authority of the Commission to conduct ethics investigations of alleged violations of the ethics laws, or the criminal law in the performance of official duties committed by covered persons and legislative employees. After investigation and before hearing, complaints received against legislators and judicial officers are referred to the Legislative Ethics Committee, the Judicial Standards Commission,

House Bill 1843

Page 3

G.S. 138A-27 makes it a Class H felony for a filing person to provide false information on a SEI knowing the information to be false.

Article 4. Ethical Standards for Covered Persons.

G.S. 138A-31 prohibits covered persons from using their public position for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising that advances the private interest of the public servant or others. Use of the public servant's title is permitted for political advertising, charitable solicitations and other limited purposes. A covered person is prohibited from using State funds for advertising or public service announcements that contains the covered person's name, picture or voice except in the case of national emergencies.

G.S. 138A-32 restricts gifts that public servant, legislator or legislative employee can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinate State employees. It prohibits covered persons from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the public servant's agency. Excepted from the gift restrictions are food and beverages for immediate consumption in connection with public events; lodging, transportation, food, beverages, travel, registration, other incidental items of nominal value, and entertainment related to an educational meeting with certain restrictions; informational materials related to the covered person's duties; a plaque or nonmonetary recognition memento; gifts accepted on behalf of the State; anything available to the general public or all State employee; things of monetary value associated with travel and tourism and industry recruitment under certain conditions; gifts of less than \$100 received in a foreign country as part of a trade mission; and gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to public service and made under circumstances a reasonable person would conclude that the gift was not given for the purpose of lobbying.

This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 138A-33 prohibits public servants and legislative employees from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-34 prohibits public servants and legislative employees from using information gained in their official positions for personal financial gain.

G.S. 138A-35 requires public servants to use due diligence to determine if they have a conflict of interest and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-36 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has an economic interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance.

G.S. 138A-37 defines conflicts of interest for legislators. A legislator should not act on a legislative matter if the legislator has an economic interest in the matter being considered that would be substantially influence the legislator's independence of judgment on the matter.

G.S. 138A-38 sets out numerous exceptions to the restrictions in G.S. 138A-36 and 37, primarily involving situations where the benefit is no greater to the covered person than to the public in general, or when the covered person has received an ethics opinion that no conflict exists.

G.S. 138A-39 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-40 prohibits a covered person or legislative employee from hiring or supervising a member of his or her extended family, except for legislators as permitted by the Legislative Services Commission, or specifically authorized by the public servant's employing entity.

G.S. 138A-41 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

House Bill 1843

Page 4

Article 5. Violation Consequences.

Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment. Willful violations by legislators subject them to sanctions by the house of which they are a member.

SECTION 2.(a) {Page 33} Exempts the Commission from the rulemaking provisions of Chapter 150B.

SECTION 2.(b) and (c) {Page 34} Create a process for removing persons elected to the Board of Governors and the State Board of Community Colleges.

PART II. AMEND LEGISLATIVE ETHICS ACT. (BEGINS ON PAGE 34)

SECTIONS 3 through 14 make conforming changes to the Legislative Ethics Act to reflect duties given to the State Ethics Commission with regards to legislative ethics including the filing of statements of economic interests, ethics education, advisory opinions and receipt of ethics complaints.

SECTION 3 exempts the General Assembly from seeking written permission from the Attorney General before hiring private counsel.

SECTION 4 deletes statutes from the Legislative Ethics Act that are no longer needed.

SECTION 5 adds a definition section, G.S. 120-85.1 which corresponds with G.S. 138A-3.

SECTION 6 amends the bribery statute to use the term "immediate family" instead of "immediate household" which is defined in G.S. 120-85.1.

SECTION 7 expands the Legislative Ethics Committee from 10 to 12 members and requires equal partisan representation in each house on the Committee.

SECTION 8 repeals a portion of the statute dealing with the Legislative Ethics Committee that is has been recodified elsewhere.

SECTION 9 changes the number needed to make a quorum from 6 to 8 members.

SECTION 10 modifies the powers of the Legislative Ethics Committee.

SECTION 11 repeals G.S. 120-103 since most of its provisions have been codified in the newly-created G.S. 120-103.1.

SECTION 12 recodifies the law authorizing the Committee to conduct ethics investigations consistent with the authority given to the State Ethics Commission to investigate complaints against public servants and judicial employees.

SECTION 13 amends the authority of the Committee with regard to advisory opinions by giving the Committee authority to modify or override advisory opinions give to legislators by the State Ethics Commission.

SECTION 14 makes a conforming change to the statute dealing with the Committee's continuing study of ethical questions.

SECTION 15 modifies the Department of Transportation ethics laws to conform to the changes made in Section 1 of the bill for other executive branch public officials.

PART III. AMEND LOBBYING LAWS. (BEGINS ON PAGE 43)

SECTION 16. Requires the Secretary of State to treat investigation files of a lobbying violation as a criminal file, and allows the Secretary of State to subpoena information and witnesses, with order of the court. Effective when it becomes law, and repealed January 1, 2007.

SECTION 17. Repeals Article 9A of Chapter 120, Legislative Lobbying, effective January 1, 2007.

SECTION 18. Codifies a new **Chapter 120C, Lobbying**, regulating both legislative and executive lobbying, with no distinction made in the two. Many of the provisions are consistent with Article 9A of Chapter 120, with changes to definitions and reporting requirements. Effective January 1, 2007.

Article 1. General Provisions.

G.S. 120C-100. Sets for the definitions applicable in the chapter. Key definitions include:

House Bill 1843

Page 5

- Designated individual. A legislator, legislative employee, or public servant. (Public servant is the same as Part I above.)
- Lobbyist. An individual who engages in lobbying and meets any of the following criteria:
 - Is employed by a person for the intended purpose of lobbying.
 - Represents another person for compensation.
 - Contracts for economic consideration for the purpose of lobbying.
 - Is employed by a person and a significant part of that employee's duties include lobbying.
- Lobbying. Direct lobbying or goodwill lobbying.
- Reportable expenditure. A thing of value over \$10 or a contract.
- Solicitation of others. A solicitation of the public to influence legislative or executive action to further the position of the solicitor, with some exceptions.

G.S. 120C-101. The State Ethics Commission is to adopt rules to implement the prohibitions and restrictions and enforcement provisions, and the Secretary of State is to adopt rules to implement registration and reporting.

G.S. 120C-102. The State Ethics Commission may provide advisory opinions to persons affected by the Chapter, and that advisory opinion grants immunity to parties involved provided they comply with the opinion.

G.S. 120C-103. The State Ethics Commission is to develop a lobbying education program. Designated individuals are to participate within six months of election or employment, and again at least every 2 years thereafter.

G.S. 120C-104. Specifies that the lobbying provisions also apply to individuals who have filed to run for office in the General Assembly or Council of State.

Article 2. Registration.

G.S. 120C-200. Requires lobbyists to file a separate registration statement for each principal within one day of engaging in lobbying for that principal.

G.S. 120C-201. Requires a fee of \$100 for each lobbyist's registration. The Secretary of State has the authority to reduce that fee for lobbyists representing non-profits.

G.S. 120C-206. Requires an authorization statement signed by each lobbyist's principal to be filed with the Secretary of State.

G.S. 120C-207. Requires a fee of \$100 for each lobbyist's principal's authorization. The Secretary of State has the authority to reduce that fee for non-profits.

G.S. 120C-215. Requires those persons engaging in the solicitation of others to register and report under Chapter 120C when they spend more than \$3,000 in any 90-day period. These persons are referred to as a "solicitor".

G.S. 120C-220. Requires the Secretary of State to publish a list of lobbyist's and lobbyist's principals on a regular basis, and have those lists available in an electronic, searchable format.

Article 3. Prohibitions and Restrictions.

G.S. 120C-300. Contingency fees for lobbying are prohibited, and an exception is granted for those persons doing business with the State who are regularly paid on commission.

G.S. 120C-301. No person is permitted to attempt to influence the action of a designated individual by the promise or threat of financial support of their candidacy.

G.S. 120C-302. Campaign contributions by lobbyists to candidates running for office in the General Assembly or Council of State are prohibited. And, no lobbyist can collect contributions from multiple contributors, take possession of those collected contributions or transfer and deliver those collected contributions to one of those candidates. These restrictions would not apply to a lobbyist giving that lobbyist's campaign for one of those offices.

G.S. 120C-303. Gifts by lobbyists and lobbyist's principals are banned, with some exceptions. The exceptions are those items which a designated individual is permitted to accept. (See G.S. 138A-32 above).

G.S. 120C-304. General restrictions with respect to lobbying are:

House Bill 1843

Page 6

- No member or former member of the General Assembly can register as a lobbyist:
 - While in office.
 - Before the later of the close of the session in which the member served or 6 months.
- No Council of State member can register as a lobbyist:
 - While in office.
 - within 6 months of leaving office
- No head of a principal State department can register as a lobbyist within 6 months of separation from employment.
- No lobbyist can be a campaign treasurer or assistant campaign treasurer for a candidate running for office in the General Assembly or Council of State.
- No lobbyist is eligible for appointment to a State board that has regulatory authority over a principal that lobbyist represents or has represented in the past 120 days.

G.S. 120C-305. No lobbyist can allow the use of that lobbyist's cash or credit for the purpose of lobbying without that lobbyist being present.

Article 4. Reporting.

G.S. 120C-400. States all reportable expenditures are to be reported.

G.S. 120C-401. Sets for the general reporting provisions applicable to all lobbyist's and lobbyists' principals reports. The Secretary of State is responsible for notifying late filers. Failure to file voids the registration of the lobbyist.

G.S. 120C-402. Lobbyist's reports are due quarterly, with monthly reports required when the lobbyist has reportable expenditures related to the legislature while the General Assembly is in session. The lobbyist is to report all reportable expenditures, solicitation of others over \$3,000, reportable expenditures reimbursed by the principal, reportable expenditures for gifts given under the gift ban exemptions, and gifts given as part of a relationship outside the duties of the designated individual that a reasonable person would conclude were for the purpose of lobbying.

G.S. 120C-403. Lobbyist's principal's reports are due quarterly, with monthly reports required when the principal has reportable expenditures related to the legislature while the General Assembly is in session. The principal is to report all reportable expenditures, solicitation of others over \$3,000, reportable expenditures reimbursed to the lobbyist and not on the lobbyist's report, compensation paid to the lobbyist, reportable expenditures for gifts given under the gift ban exemptions, and gifts valued over \$200 given as part of a relationship outside the duties of the designated individual that a reasonable person would conclude were for the purpose of lobbying.

G.S. 120C-404. Persons required to register as a solicitor are to report quarterly all reportable expenditures and all solicitation of others over \$3,000.

G.S. 120C-405. The reports are open to public inspection upon filing. The Secretary of State and the State Board of Elections are to coordinate to create a searchable, web-based database of reports.

Article 5. Liaison Personnel.

G.S. 120C-500. All State agencies and the Council of State are required to designate liaison personnel to lobby for legislative action. No State agency or member of the Council of State may designate more than 2 liaison personnel, nor may they spend State money to hire a lobbyist.

G.S. 120C-501. Liaison personnel are subject to the following provisions of Chapter 120C:

- Registration.
- Reporting.
- Gift bans.

Additionally, The University of North Carolina and its constituent institutions, and their liaison personnel, are banned from giving athletic tickets to designated individuals for the purpose of lobbying. Exempt from the athletic ticket ban are those public servants related to The University of North Carolina and its constituent institutions and those designated individuals who are students and receive the tickets on the same basis as other students.

House Bill 1843

Page 7

Article 6. Violation and Enforcement.

G.S. 120C-600. The Secretary of State is to perform systematic reviews of reports filed, and may investigate violations related to those reports. Violations of other provisions of the Chapter are to be referred to the State Ethics Committee. Investigation files are treated as a criminal investigation file for public records purposes.

G.S. 120C-601. The State Ethics Commission is to investigate violations of the Chapter not related to reporting. Investigation files are treated as a criminal investigation file for public records purposes.

G.S. 120C-602. Violation of registration or prohibitions and restrictions provisions is generally a Class 1 misdemeanor. Violations of the gift ban provisions are subject to a civil fine of up to \$5,000 per violation only.

G.S. 120C-603. The State Ethics Commission is to refer to the Attorney General for possible prosecution any violator of the Chapter. Complaints alleging violations of the Chapter involving the State Ethics Commission are to be referred to the Attorney General for investigation.

Article 7. Exemptions.

G.S. 120C-700. The Chapter does not apply to:

- o Persons speaking on their own behalf.
- o Persons appearing before a committee at the invitation of that committee.
- o An elected or appointed official, or employee, of the State or a unit of local government in matters pertaining to the office and public duties.
- o Persons performing professional services in drafting or interpreting proposed legislative or executive action.
- o Persons of any recognized news medium while engaged in the acquisition and publication of news or news and commentary.
- o Designated individuals while acting in their official capacity.
- o Persons responding to an inquiry form a designated individual.
- o Political committees, and their employees and contracted service providers.

Article 8. Miscellaneous.

G.S. 120C-800. Items valued over \$200 per calendar quarter given to a designated individual for the purpose of lobbying are to be reported by either the giver or the designated individual on a quarterly basis. However, if the designated individual is required to file a statement of economic interest under Chapter 138A, that designated individual may opt to report on the statement of economic interest.

SECTION 19. Repeals the Executive Lobbying provisions and the "No Gift" registry of provision of S.L. 2005-456, as executive lobbying is part of the new Chapter 120C as enacted by this act, and gifts are banned under this act.

SECTIONS 20 and 21 make conforming changes to citations.

SECTION 22 transfers the North Carolina Board of Ethics personnel, records, property and funds to the State Board of Ethics.

SECTION 23 provides that persons holding a covered position on January 1, 2007 are to file a statement of economic interest by March 15, 2007, if required to file, and public servants holding office on January 1, 2007, are to participate in ethics training by January 1, 2008.

SECTION 24. Severability clause.

EFFECTIVE DATE: Most of the lobbying portions of the bill become effective January 1, 2007. Most of the remainder of the bill becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007. The conforming changes become effective January 1, 2007.

O. Walker Reagan, Brad Krehely, and Karen Cochran-Brown contributed substantially to this summary.

H1843rpt-SMST

**Adopted Lobbying Temporary Administrative Rules
as approved by the NC Rules Review Commission on December 14, 2006
NC Department of the Secretary of State**

TITLE 18 – DEPARTMENT OF THE SECRETARY OF STATE

CHAPTER 12 – LOBBYING

SECTION .0100 – GENERAL

18 NCAC 12 .0101 SCOPE

The rules in this Chapter implement Chapter 120C of the North Carolina General Statutes.

History Note Authority G.S. 120C-101(a),(b); 120C-200; 120C-201; 120C-206; 120C-207; 120C-401;

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0102 DEFINITIONS

(a) The terms and definitions applicable to the rules in this Chapter are those:

- (1) Set out in Article 1 of Chapter 120C of the North Carolina General Statutes; and
- (2) Set out in Article 1 of Chapter 138A of the North Carolina General Statutes; and
- (3) Set out in Paragraphs (b) and (c) of this Rule.

(b) As used in G.S. 120C-100(a) of the North Carolina General Statutes, the following terms and definitions shall apply:

- (1) "Adoption" means formal acceptance;
- (2) "Amendment" means proposed or actual alteration, change or modification;
- (3) "Approval" means confirmation, sanction, ratification, authorization or endorsement;
- (4) "Consideration" means a designated individual's deliberative process and may include deliberation with others;
- (5) "Defeat" means a designated individual's abolition, cancellation, reduction, limitation, or voiding of an action or course of action from present or future consideration;
- (6) "Development" means bringing into existence, creation, or evolution of any action;

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FRI 12/15/2006

Page 1 of 24

- (7) "Drafting" means composition or writing of a document whether in single or multiple versions;
- (8) "Guideline" means a code, protocol, scheme, plan, instruction or criterion;
- (9) "Ministerial" means execution of a specific non-discretionary duty arising from fixed and designated facts. NOTE: For example, calculation of prejudgment interest is a ministerial action;
- (10) "Modification" means an alteration or adjustment or a change in form, qualities or content;
- (11) "Postponement" means putting off to a later time, deferral, delay, extension of a time period, or suspension of consideration;
- (12) "Preparation" means development, creation or composition, getting ready, laying groundwork for, setting up, scheduling or preliminary actions;
- (13) "Procedure" means a regular or established method or way of taking an action or reaching a result;
- (14) "Purporting to act in an official capacity" means to convey expressly or by implication that the individual is communicating or acting because of, due to, or as authorized by law or rule with regard to the individual's position as a designated individual and in conformity with the responsibilities or duties accompanying the position as a designated individual;
- (15) "Reject" means a designated individual's refusal, denial, disallowance, ending, or elimination of an action or course of action from present or future consideration;
- (16) "Request for proposal" means a formal procedure such as an Invitation for Bids, Request for Proposals, Negotiation, or Request for Quotations;
- (17) "Research" means gathering or acquisition of data, facts, statistics, opinions or other information, including inquiry into a subject, for use by a designated individual; and
- (18) "Tabling" means to suspend consideration at that time, to reserve for future discussion, to postpone or shelve indefinitely.

(c) As used in this Chapter and Chapter 120C of the North Carolina General Statutes, the following terms and definitions shall apply:

- (1) "Act" means Chapter 120C of the North Carolina General Statutes entitled "Lobbying";
- (2) "Communication" means the action of imparting or exchanging thoughts, facts, opinions, or other information whether in person, through paper, electronic or other means;
- (3) "Department" means the Department of the Secretary of State;

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- (4) "Disclose" means to affirmatively communicate or confirm information to a designated individual. An oral declarative statement spoken in a manner heard and understood by the designated individual; in a document in bold or large typeface or other method clearly stating; or, by a visible display such as a name tag constitutes disclosure;
- (5) "Disclose the identity of the principal":
- (A) For a lobbyist representing a single principal, means an affirmative communication of the identity of the principal. An oral and affirmative statement identifying the principal; or the act of supplying a business card with the name of the principal; or stating in correspondence the identity of the principal; or the act of placing the words "lobbyist for" and the identity of the principal in correspondence; or the visible displaying of a name tag containing the identity of the principal; or words that affirmatively convey that the person is representing a principal and the identity of the principal constitutes disclosure of the identity of the principal;
- (B) For a lobbyist representing multiple principals, an affirmative communication of the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating with the designated individual. An oral and affirmative declaration stating the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating; or stating in correspondence the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating; or placing the words "lobbyist for" and the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating in correspondence constitutes disclosure of the identity of the principal;
- (6) "Economic development activity" means any project, initiative or business or industrial recruitment activity which satisfies the statutory requirements to withhold a public record under G.S. 132-6(d);
- (7) "Economic development designation" means a written request completed and submitted for the purpose of withholding economic development activity information;
- (8) "Filer" means a person making a filing;
- (9) "Filing," "document" and "record" mean those completed forms, attachments and information submitted in paper or electronic form;
- (10) "Form" means a form or report required or permitted to be filed;
- (11) "Identify himself or herself as a lobbyist" means to affirmatively communicate that the person is a lobbyist. Note: Examples of such identification include: orally and affirmatively stating that the person is a lobbyist; or supplying a

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business card with the word "lobbyist"; or stating in correspondence that the person is a "lobbyist"; or visibly displaying a name tag containing the word "lobbyist" or words that affirmatively convey that the individual is a lobbyist and represents a disclosed, specific principal or principals;

- (12) "Invitation" means either an oral or written request seeking a person's presence, participation or attendance. Note: Examples include requests to attend events, meetings, or conferences;
- (13) "Leaving office" means the date on which an individual no longer holds office for any reason including those reasons set forth in Chapter 128 of the North Carolina General Statutes;
- (14) "Recruitment filer" means a person who files an economic development designation form;
- (15) "Registration" means submission of a complete registration form to the Department;
- (16) "Result or outcome" means conclusion or point in a process or activity at which either a decision is made to proceed or not to proceed; and
- (17) RESERVED
- (18) "Withhold" and "withheld" mean to remove or be removed from the public record pursuant to law and Rule.

*History Note: Authority G.S. 120C-100; 120C-101(a);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0103 TIME

(a) Calculation of time periods. Time periods are calculated according to the requirements of G.S. 1A-1, Rule 6.

(b) Quarters. When calculating a deadline for any filing required on a quarterly basis or for a quarterly reporting period:

- (1) The reporting period for the first quarter ends on March 31;
- (2) The reporting period for the second quarter ends on June 30;
- (3) The reporting period for the third quarter ends on September 30; and
- (4) The reporting period for the fourth quarter ends on December 31.

(c) Months. When calculating a deadline for any filing required on a monthly basis for a monthly reporting period, the reporting period ends on the last calendar day of the month.

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History Note: Authority G.S. 1A-1, Rule 6; 120C-101(a); 120C-401, 120C-402, 120C-403, 120C-404;

Temporary Adoption Eff. January 1, 2007.

SECTION .0200 – FILING

18 NCAC 12 .0201 FILING SUBMISSION LOCATIONS AND METHODS

Each required filing shall be submitted to the Department by one of the following methods:

- (1) By United States mail at the following address: Secretary of State, P. O. Box 29622, Raleigh, N. C. 27626-0622;
- (2) In person or by a designated delivery service authorized pursuant to G.S. 1A-1, Rule 4 at the following street address: Department of the Secretary of State, 2 South Salisbury Street, Raleigh, N. C. 27601-2903;
- (3) Electronically by electronic mail via the Internet site at the following address: lobbyistfiling@sosnc.com . Any document(s) attached to the filing other than the form or report shall be compatible with or convertible to the most recently issued version of Microsoft Word®. NOTE: Until such time as the Department is authorized to accept credit card payments, payment of fees must be submitted within two business days of an electronic filing or the filing shall be rejected; or
- (4) By facsimile for filings not requiring a fee, provided the original signed document is received by the Department within five business days following the Department's receipt of the faxed transmission. A filing for which the original is not received within five business days following the Department's receipt of the faxed transmission is void.

History Note: Authority G.S. 1A-1, Rule 4; 120C-101(a);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0202 FILERS MUST USE DEPARTMENT'S FORMS

Filers shall use departmental forms.

History Note: Authority G.S. 120C-101(a);

Temporary Adoption Eff. January 1, 2007.

Time – Sensitive Material

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FRI 12/15/2006

Page 5 of 24

18 NCAC 12 .0203 FORM COMPLETION REQUIREMENTS

- (a) All information requested on a form shall be completed by the filer whether requested by means of a block to be marked or a line to be completed.
- (b) If a question or item is not applicable to the filer, the filer shall not leave the question or item blank but shall enter "not applicable" or check the "not applicable" box.
- (c) Forms may be submitted in paper or electronic format.
- (d) A form is not complete unless it complies with all applicable filing requirements in this Chapter.

History Note: Authority G.S. 120C-101(a);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0204 FORM SIGNATURE REQUIRED

A form shall be legibly signed by the person required or authorized to file the form or, in the case of an entity, by an officer authorized to do so, and shall include the officer's title or indication of the officer's authority to sign the form.

History Note Authority G.S. 120C-101(a);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0205 FORM PREPARATION OR COMPLETION BY ANOTHER

Any person who prepares or completes all or part of a form on behalf of a filer shall sign the form in the space provided for a preparer's signature. This Rule does not apply if information is entered on a filer's form without the exercise of independent judgment or discretion by the person entering the information. For example, an administrative assistant who enters information supplied by and at the direction of a filer would not have to sign the form in the space provided for a preparer's signature.

History Note: Authority G.S. 120C-101(a);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0206 SIGNING PURSUANT TO POWER OF ATTORNEY

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FRI 12/15/2006

Page 6 of 24

A person signing a filing on behalf of another under a power of attorney granted pursuant to Chapter 32A of the General Statutes shall provide:

- (1) A legible copy of the power of attorney with each filing; and
- (2) For an entity, a legible copy with each filing of a resolution or evidence of other formal action granting the power of attorney.

*History Note: Authority G.S. 120C-101(a);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0207 SIGNING AND EXECUTING A FORM UNDER OATH

When the Act or this Chapter requires a report filed with the Department to be signed under oath, that report shall be signed by the filer or authorized person before a Notary Public or a person authorized to administer oaths by the state in which the report is being signed.

*History Note: Authority G.S. 120C-101(a); 120C-402(a); 120C-403(a); 120C-404(a);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0208 SIGNATURE VERIFIES INFORMATION IS TRUE

An individual's signature on a filing submitted to the Department constitutes that person's verification that all information entered on the report is true and complete.

*History Note: Authority G.S. 120C-101(a); 120C-402; 120C-403; 120C-404;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0209 SIGNATURE AND EXECUTION UNDER OATH OF AN ELECTRONIC FILING

If a form is filed electronically and is not electronically notarized pursuant to Article 2 of Chapter 10B of the General Statutes, an independent affidavit shall be delivered to the Department within seven days after the form is electronically filed. Failure to deliver the affidavit renders the filing void. The affidavit shall include the following information:

- (1) A statement that the person signing did electronically file a form required by the Act;
- (2) The date and time at which the electronic filing was transmitted;

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- (3) The email address from which the electronic filing was transmitted; and
- (4) A signature under oath pursuant to Rule .0207 of this Chapter.

History Note: Authority G.S. 120C-101(a); G.S. 10B-115; 120C-402(a); 120C-403(a); 120C-404(a);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0210 FILING SUBMISSION DATE AND TIME

A filing is submitted:

- (1) By hand-delivery, when it is received by the Department before 5:00 p.m. of that day; or
- (2) By mail, when the mailing is postmarked by the United States Postal Service or an equivalent marking used by a delivery service authorized pursuant to G.S. 1A-1, Rule 4; or
- (3) By facsimile (fax), when it is received by the Department before 5:00 p.m. of that day; or
- (4) Electronically, when it is transmitted to the Department by 11:59 p.m. of that day.

History Note: Authority G.S. 120C-101(a);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0211 PROOF OF SUBMISSION

A person may obtain proof of submission of a filing to the Department by:

- (1) Any means acceptable pursuant to G.S. 1A-1, Rules of Civil Procedure;
- (2) Requesting that the Department return a file stamped copy and supplying to the Department both a copy of the form and a self-addressed, stamped envelope or other prepaid delivery service envelope; or
- (3) Requesting that the Department file stamp a copy at the time of in person delivery.

History Note: Authority G.S. 120C-101(a);

Temporary Adoption Eff. January 1, 2007.

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18 NCAC 12 .0212 DEPARTMENT REVIEW OF SUBMITTED FILING

- (a) The Department shall examine each filing to determine whether the filing is complete.
- (b) The Department shall reject any filing which:
 - (1) Contains any illegible information; or
 - (2) Lacks any required information; or
 - (3) Contains any blank, unfilled, or unanswered questions or data entry areas.
- (c) The Department shall reject any filing which is not signed as required by the Act or the rules in this Chapter unless corrected in compliance with Rule .0213 or .0214 of this Chapter.
- (d) The Department shall reject any filing which is not submitted together with any required fee unless corrected in compliance with Rule .0201, .0213 or .0214 of this Chapter.

*History Note: Authority G.S. 120C-101(a);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0213 OMISSIONS REQUIRING CORRECTION WITHIN ONE BUSINESS DAY

- (a) Principal's authorization statement. The absence of the signature of the principal on the principal's authorization statement shall be corrected within one business day after notification by the Department or the filing shall be rejected as incomplete.
- (b) Filing under oath. The absence of notarization of quarterly principal, lobbyist and solicitor reports shall be corrected within one business day after notification by the Department or the filing shall be rejected as incomplete.

*History Note: Authority G.S. 120C-101(a); 120C-206;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0214 OMISSIONS REQUIRING CORRECTION WITHIN SEVEN DAYS

- (a) Omissions other than those set forth in Rule .0213 of this Chapter shall be corrected within seven days after notification by the Department or the filing shall be rejected.
- (b) A filing that contained an omission corrected pursuant to subparagraph (a) of this Rule shall be deemed filed pursuant to the provisions of Rule .0210 of this Chapter.

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*History Note: Authority G.S. 120C-101(a); 120C-401;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0215 EFFECTIVE DATE OF COMPLETE FILING

After the Department reviews a filing and determines that the filing is complete, the filing shall be deemed accepted and filed on the date on which it was submitted.

*History Note: Authority G.S. 120C-101(a);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0216 REJECTED FILINGS

A filing which is reviewed by the Department and rejected as incomplete is not filed and the filer is subject to sanctions pursuant to G.S. 120C-401.

*History Note: Authority G.S. 120C-101(a); 120C-401;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0217 EFFECTIVE DATE OF LATE FILING

For a late filing, there shall be no relation back of the filing to the date on which it was due.

*History Note: Authority G.S. 120C-101(a);
Temporary Adoption Eff. January 1, 2007.*

SECTION .0300 – FEES

18 NCAC 12 .0301 GENERAL

- (a) A required fee shall be submitted together with the filing to which the fee applies.
- (b) A fee shall be paid by cash, warrant, uncertified check, certified check, money order, credit card or another instrument freely negotiable at par through the Federal Reserve System. Checks, money orders, credit cards or other instruments must be drawn on U.S. financial institutions in U.S. dollars and cents. NOTE: The Department will post a notice on its website as soon as it is authorized to accept payment by credit card.

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(c) A filing is void if a check or other instrument for a required fee is returned by the institution upon which it was issued as "insufficient funds" or for other similar reason.

(d) A fee reduction or fee waiver applies only to the specific filing for which the request was submitted.

History Note: Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0302 NON-PROFITS TO WHICH NO FEE REDUCTION OR WAIVER SHALL BE GRANTED

The Department shall not grant a fee reduction or waiver if a nonprofit principal had annual revenues in its most recent fiscal year of more than three hundred thousand dollars (\$300,000) or is represented by more than two lobbyists.

History Note: Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0303 NON-PROFIT FEE REDUCTION PROCEDURE

(a) The Department shall reduce the fee to fifty dollars (\$50.00) if a nonprofit principal:

- (1) Had annual revenues in its most recent fiscal year of three hundred thousand dollars (\$300,000) or less; and
- (2) Is represented by no more than two lobbyists.

(b) The fifty dollar (\$50.00) fee shall be submitted together with the filing to which it applies.

(c) Documentation required in Rules .0305 and .0306 of this Chapter must be submitted together with the filing to which the fee reduction applies.

(d) The reduced fee shall apply to filing fees for both lobbyist and lobbyist's principal.

(e) If the Department finds that the non-profit principal does not qualify for fee reduction, the remaining fifty dollars (\$50.00) shall be paid by the filer within 10 business days of the date on the Department's denial letter. If the full fee is not paid, the registration is void and the filer shall not lobby after the tenth business day following the date on the Department's denial letter.

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FRI 12/15/2006

Page 11 of 24

History Note: Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0304 NON-PROFIT FEE WAIVER PROCEDURE

(a) The Department shall waive the fee if the non-profit principal:

- (1) Was formed within 12 months of filing;
- (2) Does not possess fund balance information or net assets for the immediately preceding fiscal year; and
- (3) Is represented by no more than two lobbyists.

(b) A non-profit principal shall submit a fee of fifty dollars (\$50.00) together with the filing for which it is requesting fee waiver. If fee waiver is granted, the Department shall refund the fee of fifty dollars (\$50.00).

(c) Documentation required in Rules .0305 and .0307 of this Chapter must be submitted together with the filing to which the fee waiver applies.

(d) The waiver shall apply to filing fees for both lobbyist and lobbyist's principal.

History Note: Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0305 PROOF OF NON-PROFIT STATUS

(a) "Non-profit" means an entity to which tax exempt status has been granted pursuant to 26 U.S.C. Sec. 501(c)(3), including those entities granted tax exempt status which are permitted but not required to obtain a tax exempt determination letter from the United States Internal Revenue Service.

(b) For purposes of the provisions of this Chapter relating to fee reduction or waiver, an "authorized officer":

- (1) For a non-profit corporation, is any person authorized to act on behalf of the corporation pursuant to Chapter 55A of the General Statutes of North Carolina;
- (2) For a non-profit trust, is any person authorized pursuant to law to act on behalf of the trust;
- (3) For an unincorporated association, is any person to whom the association has delegated authority to act on behalf of the association.

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(c) Federal tax-exempt determination letter. A non-profit principal which is required to obtain a federal tax-exempt determination letter shall submit a copy of that letter together with a filing for which fee reduction or waiver is requested.

(d) No federal tax-exempt determination letter. A non-profit principal which is not required to obtain a tax exempt determination letter under 26 U.S.C. Sec. 501(c)(3) shall submit the following information together with the filing for which fee reduction or waiver is requested:

- (1) A statement signed by an authorized officer verifying the non-profit's federal tax exempt status under 26 U.S.C. Sec. 501(c)(3); and
- (2) A statement signed by an authorized officer setting forth the reason(s) a tax exempt determination letter is not required under 26 U.S.C. Sec. 501(c)(3).

History Note: Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0306 ADDITIONAL INFORMATION FOR FEE REDUCTION

(a) If the non-profit principal has non-profit status pursuant to a tax exempt determination letter under 26 U.S.C. Sec. 501(c)(3), the fee reduction request shall include:

- (1) A statement signed by an authorized officer verifying that the non-profit has no more than two lobbyists; and
- (2) A copy of the non-profit's most recent federal Form 990, Form 990-EZ or Form 990-PF.

(b) If the non-profit has non-profit status pursuant to a tax exempt determination letter under 26 U.S.C. Sec. 501(c)(3) and is not required to file a federal Form 990, Form 990-EZ or Form 990-PF, then the fee reduction request shall include:

- (1) A statement signed by an authorized officer verifying that the non-profit has no more than two lobbyists;
- (2) A statement signed by an authorized officer containing a copy of the non-profit's annual financial statement for the preceding tax year; and
- (3) A copy of the notice filed pursuant to Section 1223 of the United States Pension Protection Act of 2006 (PL 109-280) for notices and returns associated with annual periods beginning on or after January 1, 2007.

(c) If the non-profit principal has non-profit status and a tax exempt determination letter is not required under 26 U.S.C. Sec. 501(c)(3), the fee reduction request shall include:

- (1) A statement signed by an authorized officer verifying that the non-profit has no

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more than two lobbyists;

- (2) A statement signed by an authorized officer containing a copy of the non-profit's annual financial statement for the preceding tax year.

History Note: Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b);

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0307 ADDITIONAL INFORMATION FOR FEE WAIVER

If the non-profit was formed within 12 months of filing and has no net assets or fund balance information, the fee waiver request shall include the following information:

- (1) A statement signed by an authorized officer verifying that the non-profit has no more than two lobbyists;
- (2) A statement signed by an authorized officer verifying the non-profit's formation date; and
- (3) A statement signed by an authorized officer verifying that the non-profit has no fund balance information or net assets.

History Note: Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b);

Temporary Adoption Eff. January 1, 2007.

SECTION .0400 – ECONOMIC DEVELOPMENT DESIGNATION

18 NCAC 12 .0401 WITHHOLDING PUBLIC RECORD PURSUANT TO ECONOMIC DEVELOPMENT DESIGNATION

- (a) If Economic Development Designation is requested, a lobbyist and lobbyist's principal shall attach to and incorporate in their registration an Economic Development Designation form.
- (b) Both the lobbyist and the lobbyist's principal shall file an Economic Development Designation request for an economic development activity.
- (c) A lobbyist and lobbyist principal shall file an Economic Development Designation confirmation form with each quarterly or monthly report.
- (d) All lobbying activity and expenses related to the Economic Development Designation are confidential until disclosure is required by law. Lobbying activity and expense filings unrelated to the Economic Development Designation shall be disclosed as if the Economic Development

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FRI 12/15/2006

Page 14 of 24

Designation did not exist.

*History Note: Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0402 EFFECT OF FAILURE TO REQUEST DESIGNATION

Failure to request Economic Development Designation shall result in the disclosure of information as a public record.

*History Note: Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0403 ONE DESIGNATION FORM PER ACTIVITY

An Economic Development Designation form shall cover only one economic development activity. A recruitment filer shall file a separate Economic Development Designation form for each economic development activity as if for a separate principal.

*History Note: Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0404 DESCRIPTION OF ECONOMIC DEVELOPMENT ACTIVITY

A recruitment filer shall provide on or submit with the Economic Development Designation form a description of the economic development activity sufficient to enable the Department to determine whether and to what extent a public records request is applicable.

*History Note: Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0405 IDENTIFICATION OF AUTHORIZED INDIVIDUAL

A recruitment filer shall designate and authorize at least one other individual to file a release authorizing disclosure of the economic development designation information. The recruitment filer shall provide the name, title, address, telephone number and email address of the authorized

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individual(s).

*History Note: Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9;
Temporary Adoption Eff. January 1, 2007.*

**18 NCAC 12 .0406 IDENTIFICATION OF AUTHORIZED GOVERNMENT
EMPLOYEE, OFFICIAL OR PUBLIC SERVANT**

(a) A recruitment filer shall identify at least one government employee or official or public servant who:

- (1) Is involved in or aware of the economic development activity;
- (2) Is knowledgeable about the circumstances that give rise to the need for confidentiality and the economic development designation for the activity;
- (3) Has the authority to make a determination as to whether and when a release of records or an announcement of the activity would be appropriate and proper; and
- (4) Has authority to file a request for release of economic development activity information or to make an announcement regarding the activity.

(b) The recruitment filer shall ensure that any government employee or official or public servant who is identified pursuant to this Rule signs the Economic Development Designation form:

- (1) Agreeing to identification as a person who meets the criteria set out in Paragraph (a) of this Rule;
- (2) Confirming that the economic development activity qualifies for Economic Development Designation pursuant to G.S. 120C-101(b) and G.S. 132-6(d); and
- (3) Confirming that he or she has authority to file a request for release or make an announcement pursuant to G.S. 120C-101(b) and G.S. 132-6(d).

(c) The identification of government employees or officials or public servants pursuant to this Rule shall include the following information for each identified person: name, title, address, email address, telephone number.

(d) If the recruitment filer is himself or herself a government employee or official or public servant, an additional government employee(s) or official(s) or public servant(s) shall be identified pursuant to this Rule.

*History Note: Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9;
Temporary Adoption Eff. January 1, 2007.*

Time – Sensitive Material

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18 NCAC 12 .0407 DISCLOSURE AT REQUEST OF RECRUITMENT FILER

(a) For purposes of this Rule, "recruitment filer" includes the authorized person(s), government employee(s) or official(s) or public servant(s) designated pursuant to Rules .0405 and .0406 of this Chapter.

(b) The Department shall disclose economic development activity information filed with the Department one year from the date of filing unless:

- (1) Specified date. The recruitment filer specifies an earlier date on the Economic Development Designation form; or
- (2) Early Request for Release. The recruitment filer files a request for release of Economic Development Designation information before a year has elapsed; or
- (3) Request for Extension. A recruitment filer may extend an Economic Development Designation for one year by filing an Economic Development Designation confirmation form together with the recruitment filer's annual registration form; or
- (4) Change in Information. For purposes of Economic Development Designation, a change in information occurs because the circumstances no longer exist which qualified the information for Economic Development Designation. Filing of a request for release of the information within 10 days shall constitute compliance with the notice of change of information requirements in the Act. Note: For example, the circumstances which qualified the information for Economic Development Designation would cease to exist if: an economic development activity is publicly announced, and communicated to the appropriate governmental entity as having been located in another State and that North Carolina is no longer under consideration for that economic development activity. The circumstances which qualified the information for Economic Development Designation would cease to exist. The recruitment filer would be required to file the request for release of information within 10 business days after the public announcement.

(c) A request for release of Economic Development Designation information shall bear the signature of at least one of the government representatives identified pursuant to Rule .0406 of this Chapter and shall include a statement that the business has communicated to the State or local government agency involved with the project either:

- (1) A commitment to expand or locate the economic development project in this State; or
- (2) A decision not to expand or locate the economic development project in this State.

History Note: Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9;

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Temporary Adoption Eff. January 1, 2007.

SECTION .0500 –GENERAL REGISTRATION REQUIREMENTS

18 NCAC 12 .0501 MATTERS ON WHICH THE REGISTRANT EXPECTS TO ACT AS LOBBYIST

- (a) An individual registering as a lobbyist shall specify on the registration form one or more categories in which the registrant expects to act as lobbyist.
- (b) Any changes in the matters on which the individual expects to act as a lobbyist shall be reported pursuant to G.S. 120C-200(c).

History Note: Authority G.S. 120C-101(a); 120C-200;

Temporary Adoption Eff. January 1, 2007.

SECTION .0600 – LOBBYISTS

18 NCAC 12 .0601 CALCULATION OF TIME TO DETERMINE REGISTRATION REQUIREMENTS

- (a) For purposes of determining whether an employee has engaged in lobbying within the meaning of G.S. 120C-100(a)(10).d, the employee's actual duties shall include:
 - (1) Actual time communicating with designated individuals; and
 - (2) Actual time spent in goodwill lobbying as defined in 120C-100(a)(9).b, including time traveling with designated individuals.
- (b) The 30 day period within which an employee's actual duty time is calculated shall be calculated in consecutive days and not by month. NOTE: For example, based on a 40 hour work week, an employee who lobbies 8 hours on January 31 and then 8 hours on February 1 will not be exempt from classification as a lobbyist by virtue of the exception in G.S. 120C-100(a)(10).d.

History Note: Authority G.S. 120C-101(a); 120C-200;

Temporary Adoption Eff. January 1, 2007.

18 NCAC 12 .0602 QUARTERLY REPORT MAY INCLUDE LAST MONTH OF QUARTER REPORT

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FRI 12/15/2006

Page 18 of 24

Instead of filing the monthly report for the last month of the quarter, a lobbyist may incorporate by reference that monthly report within the quarterly report.

*History Note: Authority G.S. 120C-101(a); 120C-402;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0603 QUARTERLY REPORT MAY INCORPORATE SEPARATELY FILED MONTHLY REPORTS BY REFERENCE

Instead of entering separately filed monthly report information on the quarterly report form, a lobbyist may incorporate the separately filed monthly reports by reference in the applicable quarterly report form.

*History Note: Authority G.S. 120C-101(a); 120C-402;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0604 QUARTERLY REPORT VERIFICATION OF MONTHLY REPORT INFORMATION

By signing the quarterly report, a lobbyist verifies the information contained in the incorporated monthly reports for that quarter and any amendments to the monthly reports, including those previously filed and those specified in the quarterly report.

*History Note: Authority G.S. 120C-101(a); 120C-402, 120C-403, 120C-404;
Temporary Adoption Eff. January 1, 2007.*

SECTION .0700 – PRINCIPALS

18 NCAC 12 .0701 SEPARATE REPORTS

A principal shall report the compensation paid to each lobbyist separately on the quarterly report.

*History Note: Authority G.S. 120C-101(a); 120C-403;
Temporary Adoption Eff. January 1, 2007.*

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18 NCAC 12 .0702 QUARTERLY REPORT MAY INCLUDE LAST MONTH OF QUARTER REPORT

Instead of filing the monthly report for the last month of the quarter, a principal may incorporate that monthly report within the quarterly report.

*History Note: Authority G.S. 120C-101(a); 120C-403;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0703 QUARTERLY REPORT MAY INCORPORATE SEPARATELY FILED MONTHLY REPORTS BY REFERENCE

Instead of entering separately filed monthly report information on the quarterly report form, a principal may incorporate the separately filed monthly reports by reference in the applicable quarterly report form.

*History Note: Authority G.S. 120C-101(a); 120C-403;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0704 QUARTERLY REPORT VERIFICATION OF MONTHLY REPORT INFORMATION

By signing the quarterly report, a principal verifies the information contained in the incorporated monthly reports for that quarter and any amendments to the monthly reports, including those previously filed and those specified in the quarterly report.

*History Note: Authority G.S. 120C-101(a); 120C-403;
Temporary Adoption Eff. January 1, 2007.*

SECTION .0800 – SOLICITORS

18 NCAC 12 .0801 SOLICITOR REGISTRATION

When registering, solicitors shall provide the following:

- (1) The full legal name of the solicitor;
- (2) The full legal name of any firm or organization, if applicable;

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- (3) If applicable, the name and title of the solicitor's representative authorized to sign a report;
- (4) The complete mailing and physical address of the solicitor;
- (5) The telephone number at which the solicitor can be reached between 8:00 a.m. and 5:00 p.m. on weekdays; and
- (6) The electronic mail address of the solicitor.

*History Note: Authority G.S. 120C-100; 120C-101(a); 120C-215; 120C-404;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0802 REGISTRATION

- (a) A solicitor must register within 10 days after the total expense for solicitation of others exceeds three thousand dollars (\$3,000) during any 90 day period.
- (b) The 90 day period within which the triggering expenditure is calculated shall be calculated in consecutive days and not by quarter. NOTE: For example, an individual who solicits others and spends \$2900 on March 31 and \$200 on April 2 shall be required to register as a solicitor.

*History Note: Authority G.S. 120C-100; 120C-101(a); 120C-215; 120C-404;
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .0803 RESERVED

*History Note: Authority G.S. 120C-101(a); 120C-215; 120C-404;
Temporary Adoption Eff. January 1, 2007.*

SECTION .1100 – PROVISION OF LISTS TO DESIGNATED INDIVIDUALS

18 NCAC 12 .1101 METHOD OF FURNISHING LOBBYIST LISTS

The Department shall furnish lobbyist lists to designated individuals for whom it has no current e-mail address by electronically mailing a copy to the head of the employing entity and requesting that it be forwarded to the designated individual.

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*History Note: Authority G.S. 120C-101(a);
Temporary Adoption Eff. January 1, 2007.*

SECTION .1500 – CONFIDENTIALITY AND RECORDS

18 NCAC 12 .1501 GENERAL REQUIREMENTS

- (a) A person who requests that information be held confidential ("confidentiality request") pursuant to G.S. 120C-401 shall make the request prior to or at the time of filing.
- (b) A person who makes a "confidentiality request" pursuant to G.S. 120C-401 shall include a cover sheet marked: "Confidentiality Requested" with any documents submitted.

*History Note: Authority G.S. 120C-101(a); 120C-401(h);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .1502 CONFIDENTIALITY REQUEST CONTENTS

The following information shall be included with a confidentiality request pursuant to G.S. 120C-401:

- (1) Identification of all filings which contain information to which the confidentiality request applies;
- (2) Identification of any attachments to filings which contain information to which a confidentiality request applies; and
- (3) A copy of either:
 - (a) The protective order pursuant to Chapter 50B of the General Statutes which orders that a payee's actual address be kept confidential; or
 - (b) The Address Confidentiality Program authorization card issued to the payee by the Attorney General under G.S. 15C-8.

*History Note: Authority G.S. 120C-101(a); 120C-401(h);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .1503 DISCLOSURE OF CONFIDENTIAL INFORMATION

- (a) Unless the provisions of Paragraph (b) of this Rule apply, the Department shall disclose

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information for which there is not a confidentiality request presented to the Department pursuant to G.S. 120C-401 before or at the time of filing.

(b) If the Department has not already made a filing(s) public and a confidentiality request pursuant to G.S. 120C-401 is submitted, the Department shall hold the covered information confidential as requested.

(c) A payee address designated as confidential pursuant to a 50B order and pursuant to G.S. 120C-401(h) remains confidential until the Department receives:

- (1) A signed, notarized request from the payee to remove the confidentiality designation, or
- (2) A copy of a court order directing removal of confidential address status.

(d) A payee address designated as confidential pursuant to the Address Confidentiality Program under Chapter 15C of the General Statutes and pursuant to G.S. 120C-401(h) remains confidential until the Department receives:

- (1) A signed, notarized request from the payee to remove the confidentiality designation, or
- (2) A written notification from the Attorney General issued pursuant to Chapter 15C modifying the payee's address under the program or canceling the payee's participation in the program.

*History Note: Authority G.S. 120C-101(a); 120C-401(h);
Temporary Adoption Eff. January 1, 2007.*

18 NCAC 12 .1504 CONFIDENTIALITY OF INVESTIGATIVE RECORDS

Public access to investigative records shall be governed by Chapter 132 of the General Statutes and G.S. 120C-600(c).

*History Note: Authority G.S. 120C-101(a); 120C-600;
Temporary Adoption Eff. January 1, 2007.*

SECTION .1600 – PRESERVATION OF RECORDS

18 NCAC 12 .1601 GENERAL REQUIREMENTS

(a) A filer shall retain copies of all filings, forms, information and supporting documentation

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related to filings generated in response to the requirements of the Act and this Chapter for a period of three years after the date on which the record was made or the report submitted.

(b) If a filer knows or has reason to believe that an official investigation or inquiry related to a filing has been initiated for any reason, the filer shall preserve and maintain all filings and associated documents until three years from the later of:

- (1) Receipt of notice that the investigation has been closed and that no further action will be taken by the investigating authority and no other related investigation or inquiry is open, or
- (2) Termination or closure of any judicial or quasi-judicial proceeding related to the investigation or inquiry.

(c) A filer retaining information pursuant to this Rule must retain the information in the original form in which the information was created, or in any other form that accurately captures and retains information contained in the original form in which the information was created.

History Note: Authority G.S. 120C-101(a); 120C-603;

Temporary Adoption Eff. January 1, 2007.

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NOTE: The Department provides this unofficial reader's text as a public service. This text may include typographical or other errors. The official rule text when published by the Codifier of Rules supersedes this document.

*Former FBI agent to police new ethics laws The News & Observer (Raleigh, North Carolina)
November 28, 2006 Tuesday*

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The News & Observer (Raleigh, North Carolina)

November 28, 2006 Tuesday
Final Edition

SECTION: NEWS; Under the Dome; Pg. B5

LENGTH: 763 words

HEADLINE: Former FBI agent to police new ethics laws

BYLINE: J. Andrew Curliss, Wade Rawlins, Rob Christensen, Andrea Weigl, Staff Writers

BODY:

The state's beefed-up **ethics commission** has three new top staffers to help enforce new legislation aimed at preventing ethical lapses in North Carolina government.

The hires include Frank Perry, the former chief agent of the FBI in Raleigh.

Perry is now education director at the **ethics commission**, a job that will put him on the front lines of teaching public officials about their responsibilities.

Perry founded and headed the FBI's Office of Law Enforcement Ethics at the FBI Academy -- and trained agents across the country on ethics.

After retiring from the FBI in 2005, he taught at N.C. State University.

Perry will be paid \$82,000 a year.

Other hires, according to the **ethics commission**:

- Kathleen S. Edwards as assistant director/compliance officer at \$87,500 a year.

Edwards, a Harvard law grad, has worked in private legal practice for the state Attorney General's Office and for the UNC-Chapel Hill School of Government.

She was an assistant vice president and senior corporate counsel for Liberty Mutual, where she managed the company's business ethics program.

- Susan R. Lundberg as lobbying director at \$84,000 a year.

Lundberg has worked for the N.C. Department of Justice for the past nine years, most recently in the property area.

She has represented and advised the State Purchase and Contract Office, the State Property Office, the State Construction Office and various other state boards and commissions under the state Department of Administration's umbrella.

Before that, she represented the state Department of Labor.

Clean water fund seeks chief

The board of trustees of the Clean Water Management Trust Fund plans to search for a new director to replace Bill Holman, who is leaving for Duke University.

"It's my opinion that we'll follow the same practice as when we hired Mr. Holman," said Robert Howard, chairman of the trust fund, a state agency that gives grants for projects that address water pollution problems and protect waterways. "We'll appoint a search committee that would work through the process."

Holman has accepted a one-year appointment as a visiting scholar at the Nicholas Institute for Environmental Policy Solutions at Duke University. His last day with the state is Dec. 27.

Holman has been executive director of the trust fund for six years but had conflicts with some trust fund board members.

Holman was put on probation earlier this year for several months. He has remained director since the probation expired.

"I wasn't looking until these issues came up," Holman said. "It was a good time to make a transition."

"I turned 50 this year," he said. "Instead of buying a convertible, I'm changing jobs."

At Duke, he will focus on a project to connect students and faculty at the Nicholas Institute to state decision-making on environmental issues.

The Nicholas Institute was established last year to bridge the gap between academic research and policy-making.

"Bill's unparalleled depth of expertise on North Carolina environmental policy ideally suits him to lead this initiative," said Tim Profeta, director of the Nicholas Institute.

Holman previously was secretary of the Department of Environment and Natural Resources in the Hunt administration and a lobbyist for the Sierra Club and other environmental groups for 18 years.

Edwardses hit airwaves

It was a tossup whether John or Elizabeth Edwards got the most national publicity over the Thanksgiving holidays.

Elizabeth Edwards was on the "CBS Evening News" on Friday with a guest essay on how we need to treat service workers better.

"It is the first step in civility to acknowledge our fellow citizens, to use their names, to look them in the face and to thank them for making your life not just easier, but possible," said Elizabeth Edwards, a retired lawyer living in Chapel Hill.

The same day, she was on NPR's "All Things Considered," talking about her book, "Saving Graces."

"I'd like him to be my president," she said when asked whether her husband would run.

John Edwards, the Democratic vice presidential nominee in 2004, appeared on Tim Russert's


CNBC show Saturday, where he was asked about his presidential ambitions. Russert noted that John Edwards had previously said people should watch his Web site in the coming weeks.


"There's going to be some interesting things on there," John Edwards said. "I'll just leave it at that."

Judge concedes tight race

N.C. Court of Appeals Judge Linda Stephens has conceded the race to her opponent, Wake District Court Judge Donna Stroud. After the recount in the statewide race, Stroud received 774,819 votes, while Stephens secured 771,353 votes.

LOAD-DATE: November 28, 2006

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Farmer, Finch appointed to new NC ethics commission The Associated Press State & Local Wire November 3, 2006 Friday

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The Associated Press State & Local Wire

November 3, 2006 Friday 10:20 PM GMT

SECTION: STATE AND REGIONAL

LENGTH: 202 words

HEADLINE: Farmer, Finch appointed to new NC **ethics commission**

DATELINE: RALEIGH N.C.

BODY:

Gov. Mike Easley on Friday appointed state ethics board chairman Robert Farmer and vice-chair Jane Finch to serve on a new North Carolina **Ethics Commission** that is replacing the existing panel.

Farmer, a former Wake County Superior Court judge, was appointed to lead the board in March and will remain chairman of the new commission. Finch, a Raleigh-area attorney, has been a board member since 1993.


The General Assembly this year approved a new state ethics bill, signed into law by Easley, that creates a new eight-member **ethics commission**. Easley gets to choose four of the eight members, but only two can be of the same political party. Finch and Farmer are Democrats.


The Senate president pro tempore and House speaker split the remaining appointments.

The previous ethics board had authority mostly over executive branch officials and state board appointees. The new commission can investigate all three branches of government, although cases would be referred to other panels when credible complaints are made against judges and lawmakers.

The commission also would collect and review expanded economic disclosure statements of government officials for potential conflicts of interest and issue advisory opinions.

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*Stubbs appointed to N.C. ethics commission The Associated Press State & Local Wire
November 10, 2006 Friday*

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November 10, 2006 Friday 8:21 PM GMT

SECTION: STATE AND REGIONAL

LENGTH: 185 words

HEADLINE: Stubbs appointed to N.C. **ethics commission**

DATELINE: RALEIGH N.C.

BODY:

Alice Stubbs, a Raleigh attorney and former Wake County District Court judge, has been appointed by Gov. Mike Easley to the new North Carolina **Ethics Commission**.

Stubbs, a Republican, received one of four seats on the eight-member board allocated to the Democrat Easley. No more than two can be from the same political party.


Last week, Easley appointed retired Judge Robert Farmer and Jane Finch, both Democrats, to the commission. Farmer had been chairman of the State Board of Ethics, the precursor to the new commission created in August. Finch had been the board's vice-chair.


The Senate president pro tempore and House speaker split the remaining appointments.

The previous ethics board had authority mostly over executive branch officials and state board appointees. The new commission can investigate all three branches of government, although cases would be referred to other panels when credible complaints are made against judges and lawmakers.

The commission also will collect and review economic disclosure statements of government officials for potential conflicts of interest and issue advisory opinions.

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