

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 282*

Short Title: Estab. State Ethics Act.

(Public)

Sponsors: Representatives Colton, Gray, Morgan, Wilmoth; Hensley, Kuczmarski, Luebke, B. Miller, and Stamey.

Referred to: Ethics.

February 25, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A STATE ETHICS COMMISSION, TO ESTABLISH
3 ETHICAL STANDARDS FOR PUBLIC OFFICERS AND PUBLIC EMPLOYEES,
4 TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, TO MAKE
5 CONFORMING CHANGES, TO MAKE AN APPROPRIATION THEREFOR,
6 AND TO MAKE PERMANENT THE REQUIREMENT THAT NONPROFIT
7 ENTITIES RECEIVING STATE FUNDS ADOPT A CONFLICTS OF INTEREST
8 POLICY.

9 The General Assembly of North Carolina enacts:

10 Section 1. The General Statutes are amended by adding a new Chapter to
11 read:

12 **"CHAPTER 138A.**
13 **"STATE ETHICS ACT.**
14 **"ARTICLE 1.**
15 **"GENERAL PROVISIONS.**

16 **"§ 138A-1. Title.**

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

18 **"§ 138A-2. Definitions.**

19 The following definitions apply in this Chapter:

- 20 (1) Business. – Any of the following, whether or not for profit:
21 a. Association,
22 b. Corporation,
23 c. Enterprise,

- 1 d. Joint venture,
2 e. Organization,
3 f. Partnership,
4 g. Proprietorship,
5 h. Trust, or
6 i. Every other business interest, including ownership or use of
7 land for income.
- 8 (2) Business With Which Associated. – A business of which the public
9 servant or any member of the public servant's immediate family is:
- 10 a. A director, employee, officer, owner, or partner; or
11 b. A holder, either individually or collectively, of securities (i)
12 worth ten thousand dollars (\$10,000) or more at fair market
13 value as of December 31 of the preceding year; or (ii)
14 constituting five percent (5%) or more of the outstanding stock
15 of the business. For purposes of this sub-subdivision, the term
16 'business' shall not include a widely held investment fund,
17 including but not limited to a mutual fund, regulated investment
18 company, or pension or deferred compensation plan, if:
- 19 1. The public servant or a member of the public servant's
20 immediate family neither exercises nor has the ability to
21 exercise control over the financial interests held by the
22 fund; and
- 23 2. The fund is publicly traded, or the fund's assets are
24 widely diversified.
- 25 (3) Commission. – The State Ethics Commission.
- 26 (4) Compensation. – Any money, thing of value, or economic benefit
27 conferred on or received by any person in return for services rendered
28 or to be rendered by that person or another. This term does not include
29 campaign contributions properly received and, if applicable, reported
30 as required by Article 22A of Chapter 163 of the General Statutes.
- 31 (5) Contract. – Any agreement including, but not limited to, sales and
32 conveyances of real and personal property and agreements for the
33 performance of services.
- 34 (6) Employing Entity. – Any of the following bodies of State government,
35 a unit of 'local government' or a 'public authority' as they are defined in
36 G.S. 159-7(b), or any combination of them, or of which the public
37 servant is a member, or over which the public servant exercises
38 supervision: agencies, authorities, boards, commissions, committees,
39 councils, departments, offices, institutions and their subdivisions,
40 including, but not limited to, boards of education, boards of county
41 commissioners, city councils, constitutional officers of the State, the
42 North Carolina House of Representatives, and the North Carolina
43 Senate.

- 1 (7) Immediate Family. – An unemancipated child residing in the
2 household of the public servant and the public servant's spouse, if not
3 legally separated.
- 4 (8) Official Action. – Any decision, including, but not limited to,
5 administration, approval, disapproval, decision, preparation,
6 recommendation, the rendering of advice, and investigation, made or
7 contemplated in any proceeding, application, submission, request for a
8 ruling or other determination, contract, claim, controversy,
9 investigation, charge, or rule making.
- 10 (9) Participate. – To take part in, to influence, or to attempt to influence.
- 11 (10) Pecuniary Interest. – Any of the following:
- 12 a. Owning, either individually or collectively, a legal or equitable
13 interest exceeding ten thousand dollars (\$10,000) or five
14 percent (5%), whichever is less, of any business.
- 15 b. Receiving, either individually or collectively, during the
16 preceding calendar year compensation that is or will be required
17 to be included as taxable income on federal income tax returns
18 of the public servant, the public servant's immediate family, or a
19 business with which associated in an aggregate amount of five
20 thousand dollars (\$5,000) from any business or combination of
21 businesses. A pecuniary interest exists in any client or
22 customer who pays fees or commissions, either individually or
23 collectively, of five thousand dollars (\$5,000) or more in the
24 preceding 12 months to the public servant, the public servant's
25 immediate family, or a business with which associated.
- 26 c. Receiving, either individually or collectively and directly or
27 indirectly, in the preceding 12 months, gifts or honoraria having
28 an unknown value or having an aggregate value of five hundred
29 dollars (\$500.00) or more from any person. A pecuniary
30 interest does not exist under this sub-subdivision by reason of
31 (i) a gift or bequest received as the result of the death of the
32 donor; (ii) a gift from an immediate family member; or (iii)
33 acting as a trustee of a trust for the benefit of another.
- 34 d. Holding the position of associate, director, officer, partner, or
35 proprietor of any business, irrespective of the amount of
36 compensation received.
- 37 (11) Public Servants. – All elected and appointed public officers, including
38 members and officers of the House of Representatives and the Senate,
39 and public employees, whether full or part time, of an employing
40 entity. The term does not include the following individuals when
41 serving in the designated capacity:
- 42 a. Judges and justices of the General Court of Justice, and

- 1 b. Members of boards, committees, commissions, or councils
2 having solely advisory powers and not exercising any
3 executive, quasi-judicial, or quasi-legislative powers.
4 (12) Vested Trust. – A trust, annuity, or other funds held by a trustee or
5 other third party for the benefit of the public servant or a member of
6 the public servant's immediate family. A vested trust shall not include
7 a widely held investment fund, including but not limited to a mutual
8 fund, regulated investment company, or pension or deferred
9 compensation plan, if:
10 a. The public servant or a member of the public servant's
11 immediate family neither exercises nor has the ability to
12 exercise control over the financial interests held by the fund;
13 and
14 b. The fund is publicly traded, or the fund's assets are widely
15 diversified.

"ARTICLE 2.

"ETHICAL STANDARDS FOR PUBLIC SERVANTS.

"§ 138A-10. Use of public position for private gain.

19 (a) A public servant may not knowingly and intentionally use the public servant's
20 public position for the private gain of the public servant or of a member of the public
21 servant's immediate family. The performance of usual and customary duties associated
22 with the public position or the advancement of public policy goals or constituent
23 services, without compensation, shall not constitute the use of public position for private
24 gain.

25 (b) A public servant shall not mention or permit another person to mention the
26 public servant's public position in commercial advertising.

"§ 138A-11. Gifts.

28 (a) A public servant may not solicit any gift unless the solicitation is for a
29 charitable purpose with no resulting direct pecuniary benefit conferred upon the public
30 servant, the public servant's immediate family, or a business with which associated.

31 (b) A public servant may not solicit for a charitable purpose any gift from any
32 other public servant whose position is subordinate to the soliciting public servant. This
33 subsection shall not apply to solicitations for the State Employees Combined Campaign
34 or to other charities for which payroll deductions are authorized under G.S. 143-3.3(i)
35 and (j).

36 (c) No public servant subject to this Chapter may knowingly accept any gift,
37 directly or indirectly, from a lobbyist as defined in G.S. 120-47.1, or a person whom the
38 public servant knows or has reason to know:

- 39 (1) Is doing or is seeking to do business of any kind with the public
40 servant's employing entity;
41 (2) Is engaged in activities that are regulated or controlled by the public
42 servant's employing entity; or

- 1 (3) Has financial interests that may be substantially and materially
2 affected, in a manner distinguishable from the public generally, by the
3 performance or nonperformance of the public servant's official duties.
- 4 (d) This section shall not apply to any of the following gifts:
- 5 (1) Meals and beverages;
6 (2) Ceremonial gifts or awards that have insignificant monetary value;
7 (3) Unsolicited gifts of nominal value or trivial items of informational
8 value;
9 (4) Reasonable expenses for food, travel, and lodging of the public servant
10 for a meeting at which the public servant participates in a panel or
11 speaking engagement at the meeting;
12 (5) Gifts of tickets or free admission extended to a public servant to attend
13 athletic, charitable, cultural, or political events, if the gift or admission
14 is a courtesy or ceremony customarily extended to public servants
15 generally;
16 (6) Political contributions properly received and reported as required
17 under Article 22A of Chapter 163 of the General Statutes;
18 (7) Gifts from relatives by blood or marriage, or a member of the same
19 household; or
20 (8) Honoraria or other compensation subject to G.S. 138A-12.

21 (e) The Governor or the Governor's designee may, in the name of the State,
22 accept and receive gifts from any public or private source. Any gift so obtained shall
23 become the property of the State and shall, within 30 days of its receipt, be registered
24 with the Commission.

25 **"§ 138A-12. Honoraria and other compensation.**

26 A public servant shall not accept an honorarium or other compensation from a
27 source other than the employing entity for conducting any activity where:

- 28 (1) The employing entity reimburses the public servant for travel,
29 subsistence, and registration expenses;
30 (2) The employing entity's work time or resources are used; or
31 (3) The activity would be considered official duty or would bear a
32 reasonably close relationship to the public servant's official duties.

33 An outside source may reimburse the employing entity for actual expenses incurred by a
34 public servant in conducting an activity within the duties of the public servant; or may
35 pay a fee to the employing entity, in lieu of an honorarium, for the services of the public
36 servant.

37 **"§ 138A-13. Participation in official actions.**

38 (a) Except as permitted by subsection (c) of this section and notwithstanding any
39 other law, no public servant acting in that capacity, who is authorized to perform an
40 official act requiring the exercise of discretion, knowingly shall participate in an official
41 action by the employing entity of the public servant if the public servant, a member of
42 the public servant's immediate family, or a business with which associated has a
43 pecuniary interest in or a reasonably foreseeable benefit from the matter under
44 consideration, which would impair the public servant's independence of judgment or

1 from which it could reasonably be inferred that the interest or benefit would influence
2 the public servant's participation in the official action. A potential benefit includes a
3 detriment to a business competitor of the public servant, a member of the public
4 servant's immediate family, or a business with which associated.

5 (b) A public servant described by subsection (a) of this section shall abstain from
6 participation in the official action. The public servant shall submit in writing the
7 reasons for the abstention to the employing entity. The abstention shall be recorded in
8 the employing entity's minutes.

9 (c) A public servant may participate in an official action under any of the
10 following circumstances:

11 (1) The only pecuniary interest or reasonably foreseeable benefit that
12 accrues to the public servant, the public servant's immediate family, or
13 business with which associated as a member of a profession,
14 occupation, or large class, is no greater than that which could
15 reasonably be foreseen to accrue to all members of that profession,
16 occupation, or large class.

17 (2) Where an official action affects or would affect the public servant's
18 compensation and allowances as a public servant.

19 (3) Before the public servant participated in the official action, the public
20 servant requested and received a written advisory opinion from the
21 Commission that authorized the participation.

22 (4) Before participating in an official action, a public servant made full
23 written disclosure to the public servant's employing entity which then
24 made a written determination that the interest or benefit would neither
25 impair the public servant's independence of judgment nor influence the
26 public servant's participation in the official action. The employing
27 entity shall file a copy of that written determination with the
28 Commission.

29 (5) When action is ministerial only and does not require the exercise of
30 discretion.

31 (6) When a public body records in its minutes that it cannot obtain a
32 quorum in order to take the official action because members are
33 disqualified from acting under this section.

34 (7) When a public servant notifies, in writing, the State Ethics
35 Commission that the public servant or someone whom the public
36 servant appoints to act in the public servant's stead or both, are the
37 only individuals having legal authority to take an official action.

38 **§ 138A-14. Representation before employing entities.**

39 (a) No public servant nor associate, employee, partner, or spouse of the public
40 servant shall represent another person before the public servant's employing entity,
41 except in the course of the public servant's official duties.

42 (b) No former public servant shall represent any person other than the State, the
43 public servant's former employing entity, or a charitable or nonprofit organization in a
44 matter before the public servant's former employing entity for a period of one year after

1 the former public servant's service in the public position has ceased. This subsection
2 shall apply only to public servants who held office or were employed on or after
3 January 1, 1994.

4 (c) No former public servant shall represent another person in connection with
5 any official action in which the public servant personally and substantially participated
6 as a public servant for a period of five years after the former public servant's service in
7 the public position has ceased. This subsection shall apply only to public servants who
8 held office or were employed on or after January 1, 1994.

9 (d) This section shall not apply to the following:

- 10 (1) Purely ministerial matters that do not require discretion on the part of
11 the employing entity.
12 (2) Representation of the public servant or former public servant in that
13 individual's personal capacity.

14 **"§ 138A-15. Employment and supervision of members of public servants' extended**
15 **family.**

16 No public servant, in an employing entity, shall occupy a position which has
17 influence over the employment, appointment, promotion, transfer, or supervision of any
18 member of the public servant's extended family. For purposes of this section, 'extended
19 family' means the public servant's:

- 20 (1) Spouse, parent, child, sibling, grandparent, grandchild;
21 (2) The step-, half-, and in-law- relationships as appropriate to subdivision
22 (1) of this section;
23 (3) Others living in the same household as the public servant; and
24 (4) Any other person so closely identified with the public servant as would
25 reasonably suggest, because of the relationship between the public
26 servant and the person, that personnel difficulties might arise within
27 the individual work unit of the employing entity, or that the public's
28 confidence in the fair and equal treatment of applicants for public
29 employment and of public employees would be compromised.

30 **"ARTICLE 3.**

31 **"STATE ETHICS COMMISSION.**

32 **"§ 138A-20. State Ethics Commission established.**

33 There is established a State Ethics Commission composed of nine members.

34 **"§ 138A-21. Membership.**

35 (a) The membership of the Commission shall be appointed as follows:

- 36 (1) The Governor shall appoint the Chair and four other members, no
37 three or more of whom shall be members of the same political party.
38 (2) The General Assembly, in accordance with G.S. 120-121, shall appoint
39 four members: two, no more than one of whom is a member of the
40 same political party, upon the recommendation of the Speaker of the
41 House of Representatives and two, no more than one of whom is a
42 member of the same political party, upon the recommendation of the
43 President Pro Tempore of the Senate.

1 (b) Members of the Commission shall serve terms of four years, but no person
2 shall be appointed to more than one full four-year term.

3 (c) A person appointed to fill a vacancy shall qualify in the same manner as a
4 person appointed for a full term. The Governor shall fill any vacancies in appointments
5 made by the Governor. A vacancy in an appointment by the General Assembly shall be
6 filled in accordance with G.S. 120-122. A person appointed to fill a vacancy occurring
7 other than by the expiration of a term of office shall be appointed for the unexpired term
8 of the member which the new appointee succeeds, and is eligible for appointment to one
9 full four-year term.

10 (d) No member or employee of the Commission shall:

11 (1) Hold or be a candidate for any other office or place of trust or profit
12 under the United States, or this or another state;

13 (2) Hold office in any political party; or

14 (3) Participate in or contribute to the political campaign of any candidate
15 for political office.

16 (e) The Commission shall elect a vice-chair who shall act as the chair in the
17 chair's absence or a vacancy in that position.

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

21 **"§ 138A-22. Meetings and quorum.**

22 The Commission shall meet at least quarterly and at other times as called by its
23 chair; in the case of a vacancy in the Chair, by the Vice-Chair; or by five of its
24 members. Five members of the Commission constitute a quorum.

25 **"§ 138A-23. Staff and offices.**

26 The Commission may employ professional and clerical staff, including an Executive
27 Director. The Commission shall be located within the Department of Administration,
28 but shall exercise all of its powers, including the power to employ, direct, and supervise
29 all personnel, independently of the Secretary of Administration and, notwithstanding
30 any other law, is subject to the direction and supervision of the Secretary of
31 Administration only with respect to the management functions of coordinating and
32 reporting.

33 **"§ 138A-24. Powers and duties.**

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

36 (1) Conduct a continuing study of governmental ethics in North Carolina,
37 and propose changes to the General Assembly in the government
38 process and in the law as are conducive to promoting and continuing
39 high ethical behavior in governmental officers and employees.

40 (2) Adopt rules to implement the provisions of this Chapter, including
41 those establishing ethical standards and guidelines to be employed and
42 adhered to by public servants in attending to and performing their
43 duties.

44 (3) Investigate alleged violations under G.S. 138A-25.

- 1 (4) Render advisory opinions under G.S. 138A-27.
2 (5) Institute a civil action against a public servant or former public servant
3 under G.S. 138A-26(b).
4 (6) Receive and review statements of economic interests filed with the
5 Commission for potential conflicts of interest.

6 **§ 138A-25. Investigations by the Commission.**

7 (a) Institution of Proceedings. – On its own motion, or in response to a signed
8 and sworn complaint of any individual filed with the Commission, the Commission
9 shall make a preliminary inquiry into any alleged violation:

- 10 (1) Of this Chapter, or of the rules adopted in accordance with G.S. 138A-
11 24; or
12 (2) Of the criminal law by a public servant in the performance of that
13 individual's official duties.

14 (b) Complaint. –

- 15 (1) A complaint filed under this Chapter shall state the nature of the
16 violation, the date the alleged violation occurred, and either (i) that the
17 contents of the complaint are within the knowledge of the individual
18 verifying the complaint, or (ii) the basis upon which the individual
19 verifying the complaint believes the allegations to be true.
20 (2) Any individual who verifies a complaint knowing the allegations in the
21 complaint to be untrue may be prosecuted for perjury under G.S. 14-
22 209.
23 (3) The filing of and the allegations in the verified complaint shall be
24 confidential and shall not be disclosed except as provided in this
25 section. Upon presentation of a copy of a verified complaint, the
26 Commission may verify that it is a true copy.
27 (4) The Commission shall send a copy by certified mail, return receipt
28 requested, of the complaint to the public servant who is the subject of
29 the complaint within 30 days of the filing.

30 (c) Dismissal of Complaint. – If the Commission determines at the end of its
31 preliminary inquiry that: (i) the complaint does not allege facts sufficient to constitute a
32 violation of this Chapter, or (ii) the evidence is insufficient to substantiate the claim, the
33 Commission shall dismiss the complaint and provide written notice of the dismissal to
34 the individual who filed the complaint and the public servant. Upon presentation of a
35 copy of a written notice of dismissal, the Commission may verify that it is a true copy.

36 (d) Notice and Hearing. – If the Commission determines to proceed with an
37 investigation into the conduct of an individual, the complaint shall no longer be
38 confidential and may be disclosed. At this time, the Commission shall provide written
39 notice to the individual who filed the complaint and the public servant as to the fact of
40 the investigation and the charges against the public servant. The notice shall contain the
41 time and place for a hearing on the matter, which shall begin no less than 30 days and
42 no more than 90 days after the date of the notice. At any hearing held by the
43 Commission:

- 44 (1) Oral evidence shall be taken only on oath or affirmation.

- 1 (2) The hearing shall be open to the public.
- 2 (3) The public servant being investigated shall have the right to present
3 evidence, call and examine witnesses, cross-examine witnesses,
4 introduce exhibits, and be represented by counsel.
- 5 (4) Admissibility of evidence shall be governed by the rules of evidence
6 applicable in the superior court.
- 7 (e) Subpoenas. – The Commission may issue subpoenas to compel the
8 attendance of witnesses or the production of documents, books, or other records. The
9 Commission may apply to the superior court to compel obedience to the subpoenas of
10 the Commission. Notwithstanding any other law, every State agency, local
11 governmental agency, and units and subdivisions thereof shall make available to the
12 Commission any documents, records, data, statements, or other information, except tax
13 returns or information relating to tax returns, which the Commission designates as being
14 necessary for the exercise of its powers and duties.
- 15 (f) Settlement of Investigations. – The parties may meet by mutual consent
16 before the hearing to discuss the possibility of settlement of the investigation or the
17 stipulation of any issues, facts, or matters of law. Any proposed settlement of the
18 investigation is subject to the approval of the Commission.
- 19 (g) Disposition of Investigations. – The Commission shall dispose of the matter
20 in one or more of the following ways:
- 21 (1) If the Commission finds substantial evidence of a violation of a
22 criminal statute, the Commission may refer the matter to the Attorney
23 General for possible prosecution through appropriate channels.
- 24 (2) If the Commission finds that the alleged violation is not established by
25 clear and convincing evidence, the Commission shall dismiss the
26 complaint.
- 27 (3) If the Commission finds that the alleged violation is established by
28 clear and convincing evidence, the Commission shall:
- 29 a. Issue a public admonishment to the public servant and notify
30 the employing entity, if applicable;
- 31 b. Refer the matter to the employing entity that appointed or
32 employed the public servant, or of which the public servant is a
33 member, for appropriate action, which may include censure,
34 expulsion, or termination of an appointment or employment; or
35 c. Both.
- 36 (h) Findings and Record. – The Commission shall document its disposition of the
37 investigation by filing an order that includes the Commission's findings of facts. In all
38 matters the Chair of the Commission shall ensure that a complete record is made and
39 preserved.
- 40 (i) Authority of Employing Entity. – Any action or failure to act by the
41 Commission under this Chapter, except G.S. 138A-27, shall not limit any authority of
42 the applicable employing entity to discipline the public servant.
- 43 **§ 138A-26. Additional remedies; civil action for damages.**

1 (a) In addition to any other remedies provided by law, upon a determination that
2 a public servant or former public servant has violated this Chapter by substantially
3 influencing an action taken by the public servant's employing entity, that employing
4 entity may void the action on any terms that the interests of the State and innocent third
5 persons require.

6 (b) The Commission may bring a civil action against any public servant or
7 former public servant who has acted to the economic advantage of the public servant in
8 violation of this Chapter and may recover on behalf of the State damages in the amount
9 of the economic advantage or five hundred dollars (\$500.00), whichever is greater.

10 **"§ 138A-27. Advisory opinions.**

11 At the request of any public servant, the Commission shall render advisory opinions
12 on specific questions involving governmental ethics. Reliance upon a requested written
13 advisory opinion on a specific matter shall immunize the public servant, on that matter,
14 from:

- 15 (1) Investigation by the Commission;
- 16 (2) Suit from the Commission, under G.S. 138A-26(b); and
- 17 (3) Any adverse action by the employing entity.

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

20 **"ARTICLE 4.**

21 **"PUBLIC DISCLOSURE OF ECONOMIC INTERESTS.**

22 **"§ 138A-30. Statement of economic interest; filing required.**

23 (a) Every public servant subject to this Article, who is appointed, including one
24 appointed to fill a vacancy in elective office, or employed, shall file a statement of
25 economic interest within 30 days of the initial appointment or employment and no later
26 than January 31 every year thereafter in one of the following offices, as applicable:

- 27 (1) The State Ethics Commission, in the case of a State officer or
28 employee;
- 29 (2) The clerk of the municipality in the case of a municipal officer or
30 employee; or
- 31 (3) The clerk of the board of commissioners in the county of residence, in
32 the case of a county officer or employee, or any other covered officer
33 not mentioned in subdivisions (1) and (2) of this subsection.

34 (b) Every candidate for nomination or election to a public office subject to this
35 Article shall file a statement of economic interest as specified in this Article within 10
36 days of the filing deadline for that office. Every candidate elected during the term of
37 office shall file a statement of economic interest by January 31 every subsequent year.

38 (c) A candidate for the Council of State, State Senate, State House, or an office
39 of a county subject to G.S. 138A-33, shall file the statement of economic interest at the
40 same place and in the same manner as the notice of candidacy for that office is required
41 to be filed under G.S. 163-106. A person who is nominated under G.S. 163-114 after
42 the primary and before the general election, and a person who qualifies under G.S. 163-
43 122 as an independent candidate in a general election, shall file a statement of economic
44 interest with the county board of elections of each county in the senatorial or

1 representative district. A person nominated under G.S. 163-114 shall file the statement
2 within three days following his nomination, or not later than the day preceding the
3 general election, whichever occurs first. A person seeking to qualify as an independent
4 candidate under G.S. 163-122 shall file the statement of economic interest with the
5 petition filed under that section. A person seeking to have write-in votes counted for
6 himself or herself in a general election shall file a statement of economic interest at the
7 same time the candidate files a declaration of intent under G.S. 163-123. A candidate of
8 a new party chosen by convention shall file a statement of economic interest at the same
9 time that the president of the convention certifies the names of its candidates to the State
10 Board of Elections under G.S. 163-98.

11 (d) This subsection shall apply only to offices filled by election of the people in
12 cities, as defined in G.S. 160A-1(2) and subject to G.S. 138A-33, and in special
13 districts, subject to G.S. 138A-33. A candidate for an office shall file the statement of
14 economic interest in the same place and in the same manner as the notice of candidacy
15 required to be filed under G.S. 163-291, in the case of partisan primary elections, and
16 G.S. 163-294.2, in the case of nonpartisan municipal elections. A person nominated
17 under G.S. 163-114 shall file the statement within three days following his nomination,
18 or not later than the day preceding the general election, whichever occurs first. A
19 person who seeks to be nominated by petition under G.S. 163-296 shall file the
20 statement of economic interest with the petition filed under that section. A person
21 seeking to qualify as an independent candidate under G.S. 163-122 shall file the
22 statement of economic interest with the petition filed under that section. A person
23 seeking to have write-in votes counted for himself or herself in a general election shall
24 file a statement of economic interest at the same time the candidate files a declaration of
25 intent under G.S. 163-123.

26 (e) The State Board of Elections and the county board of elections shall provide
27 for notification of the economic-interest-statement requirements of this Article to be
28 given to any candidate filing for nomination or election to those offices subject to this
29 Article at the time of the filing of candidacy with the board.

30 (f) Once the candidate is certified as elected, the Chair of the State or county
31 board of elections with which a statement of economic interest is filed shall forward a
32 certified copy of the statement to the following office, as applicable:

- 33 (1) The State Ethics Commission, in the case of an office which is elected
34 on a statewide basis;
- 35 (2) The clerk of the board of commissioners in the county of residence, in
36 the case of a county office;
- 37 (3) The clerk of the municipality in the case of a municipal officer.

38 **"§ 138A-31. Statements of economic interest are public records.**

39 The statements of economic interest are public records and shall be made available
40 for inspection and copying by any person during normal business hours at the office
41 where filed.

42 **"§ 138A-32. Contents of statement.**

43 Any statement of economic interest filed under this Article shall be on a form
44 prescribed by the Commission and sworn to by the public servant. The form shall

1 include, but not be limited to, the following information about the public servant and the
2 public servant's immediate family:

- 3 (1) The name, occupation, nature of business, and type of clients served;
- 4 (2) The name and address of any business with which associated as of the
5 date of the filing of the statement;
- 6 (3) Any business listed under subdivision (2) of this section which the
7 public servant knows or has reason to believe does business with or is
8 regulated by the public servant's employing entity;
- 9 (4) The character and location of all real estate, other than the personal
10 residence of the public servant or of a member of the public servant's
11 immediate family, that:
 - 12 a. Is located within North Carolina,
 - 13 b. Has a fair market value of ten thousand dollars (\$10,000) or
14 more, and
 - 15 c. Of which the public servant or any member of the public
16 servant's immediate family has any beneficial interest, including
17 an option to buy or lease for 10 or more years; provided,
18 however, if the public servant's personal residence is a part of a
19 larger tract, the land on which the personal residence and that
20 part of the surrounding land used for residential purposes by the
21 family need not be listed.
- 22 (5) The name and address of each creditor to whom the public servant or a
23 member of the immediate family owes more than ten thousand dollars
24 (\$10,000), except for debts secured by lien upon the personal
25 residence;
- 26 (6) The name of each vested trust in which the public servant or a member
27 of the immediate family has a financial interest in excess of ten
28 thousand dollars (\$10,000);
- 29 (7) For professional persons and associations, a list of classifications of
30 business clients which classes were charged or paid more than five
31 thousand dollars (\$5,000) or more during the previous calendar year;
32 however, individual clients need not be identified, but the type of
33 business of the client or class of the client and a description of the
34 nature of the services rendered must be listed.

35 **§ 138A-33. Public servants to whom the Article is applicable.**

36 Notwithstanding any other law, only the following public servants are subject to this
37 Article:

- 38 (1) The Governor, the Lieutenant Governor, and other members of the
39 Council of State.
- 40 (2) The heads of all principal departments of State government who are
41 appointed by the Governor.
- 42 (3) The chief deputy or chief administrative assistant of:
 - 43 a. The heads of all principal State departments who are appointed
44 by the Governor; and

- 1 b. The members of the Council of State.
- 2 (4) Members of the General Assembly.
- 3 (5) The members of all State executive branch authorities, boards,
4 commissions, and councils, except members of those authorities,
5 boards, commissions, and councils that perform solely advisory
6 functions.
- 7 (6) Any other public servants of the State not covered otherwise by this
8 section who exercise substantial discretionary or supervisory authority
9 as designated by rule of the Commission.
- 10 (7) In any county having a population of more than 25,000 persons
11 according to the last federal decennial census, members of the county
12 board of commissioners, the county manager, heads of departments of
13 county government, and any county employee who exercises
14 substantial discretionary or supervisory authority as designated by rule
15 of the Commission.
- 16 (8) In any municipality having a population of more than 7,500 persons
17 according to the last federal decennial census, members of the city
18 council, the city manager, and any municipal employee who exercises
19 substantial discretionary or supervisory authority as designated by rule
20 of the Commission.
- 21 (9) Members of local boards of education.
- 22 (10) Members of any board, commission, committee, or council of any
23 municipality having a population of more than 7,500 persons
24 according to the last federal decennial census or county having a
25 population of more than 25,000 persons according to the last federal
26 decennial census, of any combination of any municipalities or of any
27 counties, or of any combination of one or more municipalities and one
28 or more counties, unless the board, commission, committee, or council
29 exercises advisory functions only and does not exercise quasi-
30 legislative, quasi-judicial, or executive functions.
- 31 (11) Notwithstanding any other law, for The University of North Carolina,
32 only members of the Board of Governors, the president, the vice-
33 presidents, the chancellors, the vice-chancellors, and the members of
34 the boards of trustees of the constituent institutions.
- 35 (12) Notwithstanding any other law, for the Department of Community
36 Colleges, only members of the State Board of Community Colleges,
37 the President of the North Carolina Community College System, the
38 president or chief administrative officer of each community college,
39 and members of the boards of trustees of each community college.
- 40 (13) A member of a 'public authority' or of a 'unit of local government' as
41 they are defined in G.S. 159-7(b), if not otherwise covered in
42 subdivisions (7) through (10) of this section, whose appropriations in
43 its last annual budget were five hundred thousand dollars (\$500,000)
44 or more.

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"ARTICLE 5.

"VIOLATION CONSEQUENCES.

"§ 138A-40. Violation consequences.

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. No criminal penalty shall attach for any violation of this Chapter, except perjury under G.S. 138A-25 and G.S. 138A-20.

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

(c) The State Ethics Commission may seek to enjoin violations of G.S. 138A-14."

Sec. 2. G.S. 53-92 reads as rewritten:

"§ 53-92. Appointment of Commissioner of Banks; State Banking Commission.

On or before April 1, 1983, and quadrennially thereafter, the Governor shall appoint a Commissioner of Banks subject to confirmation by the General Assembly by joint resolution. The name of the Commissioner of Banks shall be submitted to the General Assembly on or before February 1, of the year in which the term of his office begins. The term of office for the Commissioner of Banks shall be four years. In case of a vacancy in the office of Commissioner of Banks for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the Commissioner of Banks shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, 12 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical bankers and seven persons selected primarily as representatives of the borrowing public. The person appointed by the General Assembly upon the recommendation of the President of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent (1/2 of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be

1 appointed by the person appointing them, for terms of four years each. Any vacancy
2 occurring in the membership of the Commission shall be filled by the appropriate
3 appointing officer for the unexpired term, except that vacancies among members
4 appointed by the General Assembly shall be filled in accordance with G.S. 120-122.
5 The appointed members of the Commission shall receive as compensation for their
6 services the same per diem and expenses as is paid to the members of the Advisory
7 Budget Commission. This compensation shall be paid from the fees collected from the
8 examination of banks as provided by law.

9 The Banking Commission shall meet at such time or times, and not less than once
10 every three months, as the Commission shall, by resolution, prescribe, and the
11 Commission may be convened in special session at the call of the Governor, or upon the
12 request of the Commissioner of Banks. The State Treasurer shall be chairman of the
13 said Commission.

14 ~~No member of said Commission shall act in any matter affecting any bank in which~~
15 ~~he is financially interested, or with which he is in any manner connected.~~ No member
16 of said Commission shall divulge or make use of any information coming into his
17 possession as a result of his service on such Commission, and shall not give out any
18 information with reference to any facts coming into his possession by reason of his
19 services on such Commission in connection with the condition of any State banking
20 institution, unless such information shall be required of him at any hearing at which he
21 is duly subpoenaed, or when required by order of a court of competent jurisdiction.

22 A quorum shall consist of a majority of the total membership of the Banking
23 Commission. A majority vote of the members qualified with respect to a matter under
24 review present at that meeting shall constitute valid action of the Banking Commission.
25 The State Treasurer and all disqualified members who are present shall be counted to
26 determine whether a quorum is present at a meeting.

27 The Commissioner of Banks shall act as the executive officer of the Banking
28 Commission, but the Commission shall provide, by rules and regulations, for hearings
29 before the Commission upon any matter or thing which may arise in connection with the
30 banking laws of this State upon the request of any person interested therein, and review
31 any action taken or done by the Commissioner of Banks.

32 The Banking Commission is hereby vested with full power and authority to
33 supervise, direct and review the exercise by the Commissioner of Banks of all powers,
34 duties, and functions now vested in or exercised by the Commissioner of Banks under
35 the banking laws of this State; any party to a proceeding before the Banking
36 Commission may, within 20 days after final order of said Commission and by written
37 notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for
38 a final determination of any question of law which may be involved. The cause shall be
39 entitled 'State of North Carolina on Relation of the Banking Commission against (here
40 insert name of appellant).' It shall be placed on the civil issue docket of such court and
41 shall have precedence over other civil actions. In the event of an appeal the
42 Commissioner shall certify the record to the Clerk of Superior Court of Wake County
43 within 15 days thereafter."

44 Sec. 3. Article 14 of Chapter 120 of the General Statutes is repealed.

1 Sec. 4. G.S. 120-123 is amended by adding a new subdivision to read:

2 "(59) The State Ethics Commission as established in G.S. 138A-20."

3 Sec. 5. G.S. 143-8 reads as rewritten:

4 **"§ 143-8. Reporting of legislative and judicial expenditures and financial needs.**

5 On or before the first day of September, biennially, in the even-numbered years the
6 Legislative Administrative Officer shall furnish the Director a detailed statement of
7 expenditures of the General Assembly for the current fiscal biennium, and an estimate
8 of its financial needs, itemized in accordance with the budget classification adopted by
9 the Director and approved and certified by the President pro tempore of the Senate and
10 the Speaker of the House for each year of the ensuing biennium, beginning with the first
11 day of July thereafter. The Administrative Officer of the Courts shall furnish the
12 Director a detailed statement of expenditures of the judiciary, and for each year of the
13 current fiscal biennium an estimate of its financial needs as provided by law, itemized in
14 accordance with the budget classification adopted by the Director and approved and
15 certified by the Chief Justice for each year of the ensuing biennium, beginning with the
16 first day of July thereafter. On or before the first day of September, biennially, in the
17 even-numbered years, the Chair of the State Ethics Commission shall furnish the
18 Director a detailed statement of expenditures of the State Ethics Commission for the
19 current fiscal biennium, and an estimate of its financial needs, itemized in accordance
20 with the budget classification adopted by the Director and approved and certified by the
21 Commission's Chair for each year of the ensuing biennium, beginning with the first day
22 of July thereafter. The Director shall include these estimates and accompanying
23 explanations in the budget submitted with such recommendations as the Director may
24 desire to make in reference thereto."

25 Sec. 6. Article 1 of Chapter 143 of the General Statutes is amended by adding
26 a new section to read as follows:

27 **"§ 143-31.6. Private nonprofit entities receiving State funds, conflicts of interest**
28 **policy.**

29 Each private, nonprofit entity eligible to receive State funds, either by General
30 Assembly appropriation, or by grant, loan, or other allocation from a State agency,
31 before funds may be disbursed to the entity, shall file with the disbursing agency a
32 notarized copy of that entity's policy addressing conflicts of interest that may arise
33 involving the entity's management employees and the members of its board of directors
34 or other governing body. The policy shall address situations where any of these
35 individuals may directly or indirectly benefit, except as the entity's employees or
36 members of the board or other governing body, from the entity's disbursing of State
37 funds, and shall include actions to be taken by the entity or the individual, or both, to
38 avoid conflicts of interest and the appearance of impropriety."

39 Sec. 7. G.S. 143-318.18 reads as rewritten:

40 **"§ 143-318.18. Exceptions.**

41 This Article does not apply to:

- 42 (1) Grand and petit juries.

- 1 (2) Any public body that is specifically authorized or directed by law to
2 meet in executive or confidential session, to the extent of the
3 authorization or direction.
- 4 (3) The Judicial Standards Commission.
- 5 (4) Repealed by Session Laws 1991, c. 694, s. 9.
- 6 - ~~(4a) The Legislative Ethics Committee.~~
- 7 (4b) A conference committee of the General Assembly.
- 8 (4c) A caucus by members of the General Assembly; however, no member
9 of the General Assembly shall participate in a caucus which is called
10 for the purpose of evading or subverting this Article.
- 11 (5) Law enforcement agencies.
- 12 (6) A public body authorized to investigate, examine, or determine the
13 character and other qualifications of applicants for professional or
14 occupational licenses or certificates or to take disciplinary actions
15 against persons holding such licenses or certificates, (i) while
16 preparing, approving, administering, or grading examinations or (ii)
17 while meeting with respect to an individual applicant for or holder of
18 such a license or certificate. This exception does not amend, repeal, or
19 supersede any other statute that requires a public hearing or other
20 practice and procedure in a proceeding before such a public body.
- 21 (7) Any public body subject to the Executive Budget Act (G.S. 143-1 **et**
22 **seq.**) and exercising quasi-judicial functions, during a meeting or
23 session held solely for the purpose of making a decision in an
24 adjudicatory action or proceeding.
- 25 (8) The boards of trustees of endowment funds authorized by G.S. 116-36
26 or G.S. 116-238.
- 27 (9) Repealed by Session Laws 1991, c. 694, s. 9.
- 28 (10) The Board of Awards.
- 29 (11) The General Court of Justice.
- 30 (12) The State Ethics Commission."

31 Sec. 8. Part 3 of Article 6 of Chapter 143 of the General Statutes is repealed.

32 Sec. 9. A new subsection is added to G.S. 150B-1 to read as follows:

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

36 Sec. 10. Part 4 of Article 2A of Chapter 150B of the General Statutes is
37 amended by adding the following section:

38 "§ 150B-21.20A. Publication of rules, standards and guidelines, and advisory
39 opinions of State Ethics Commission.

40 Notwithstanding any other law, the Codifier of Rules shall publish unedited the
41 rules, and advisory opinions issued by the State Ethics Commission under Chapter
42 138A of the General Statutes in the North Carolina Register as they are received from
43 the State Ethics Commission.

1 Notwithstanding any other law, the Codifier of Rules shall publish unedited, in the
2 North Carolina Administrative Code, the rules as codified and issued by the State Ethics
3 Commission under Chapter 138A of the General Statutes. The State Ethics
4 Commission shall consult with the Codifier of Rules on the form and codification of its
5 rules."

6 Sec. 11. G.S. 153A-43 reads as rewritten:

7 **"§ 153A-43. Quorum.**

8 A majority of the membership of the board of commissioners constitutes a quorum.
9 The number required for a quorum is not affected by vacancies. If a member has
10 withdrawn from a meeting without being excused by majority vote of the remaining
11 members present, he shall be counted as present for the purposes of determining
12 whether a quorum is present. The board may compel the attendance of an absent
13 member by ordering the sheriff to take the member into custody. A member who is
14 present and is prohibited from participation under Chapter 138A of the General Statutes
15 shall not be counted as present for the purposes of determining whether a quorum is
16 present, unless the board of commissioners cannot obtain a quorum in order to take
17 official action because members are prohibited from acting under Chapter 138A of the
18 General Statutes."

19 Sec. 12. G.S. 153A-44 reads as rewritten:

20 **"§ 153A-44. Members excused from voting.**

21 The board may excuse a member from voting, but only upon questions involving his
22 own financial interest or his official conduct. ~~(For purposes of this section, the question of~~
23 ~~the compensation and allowances of members of the board does not involve a member's own~~
24 ~~financial interest or official conduct.)~~ The board shall excuse a member from voting when
25 the member has a pecuniary interest in the action and is prohibited from participation
26 under Chapter 138A of the General Statutes."

27 Sec. 13. G.S. 160A-74 reads as rewritten:

28 **"§ 160A-74. Quorum.**

29 A majority of the actual membership of the council plus the mayor, excluding vacant
30 seats, shall constitute a quorum. A member who has withdrawn from a meeting without
31 being excused by majority vote of the remaining members present shall be counted as
32 present for purposes of determining whether or not a quorum is present. A member who
33 is present and who is prohibited from participation under Chapter 138A of the General
34 Statutes shall not be counted as present for purposes of determining the presence of a
35 quorum, unless the council cannot obtain a quorum in order to take official action
36 because members are disqualified from acting under Chapter 138A of the General
37 Statutes."

38 Sec. 14. G.S. 160A-75 reads as rewritten:

39 **"§ 160A-75. Voting.**

40 No member shall be excused from voting except upon matters involving the
41 consideration of his own financial interest or official conduct. The council shall excuse
42 a member who has a pecuniary interest in the action and is prohibited from participation
43 under Chapter 138A of the General Statutes. In all other cases, a failure to vote by a
44 member who is physically present in the council chamber, or who has withdrawn

1 without being excused by a majority vote of the remaining members present, shall be
2 recorded as an affirmative vote. ~~The question of the compensation and allowances of~~
3 ~~members of the council is not a matter involving a member's own financial interest or official~~
4 ~~conduct.~~

5 An affirmative vote equal to a majority of all the members of the council not
6 excused from voting on the question in issue (including the mayor's vote in case of an
7 equal division) shall be required to adopt an ordinance, take any action having the effect
8 of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or
9 authorize any contract on behalf of the city. In addition, no ordinance nor any action
10 having the effect of any ordinance may be finally adopted on the date on which it is
11 introduced except by an affirmative vote equal to or greater than two thirds of all the
12 actual membership of the council, excluding vacant seats (not including the mayor
13 unless he has the right to vote on all questions before the council). For purposes of this
14 section, an ordinance shall be deemed to have been introduced on the date the subject
15 matter is first voted on by the council."

16 Sec. 15. Notwithstanding G.S. 138A-21 contained in Section 1 of this act, the
17 Governor shall initially appoint two members for two-year terms and three members for
18 four-year terms, and the Speaker of the House of Representatives and President Pro
19 Tempore of the Senate, each, shall recommend to the General Assembly for initial
20 appointment one member for a two-year term and one member for a four-year term.

21 Sec. 16. (a) The authority, powers, duties and functions, records, personnel,
22 property, unexpended balances of appropriations, allocations, or other funds, including
23 the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the
24 Office of the Governor is transferred to the State Ethics Commission created in Section
25 1 of this act. Any disputes arising out of this transfer shall be resolved by the Director
26 of the Budget.

27 (b) There is appropriated from the General Fund to the Department of
28 Administration for the 1993-94 fiscal year the sum of one hundred twenty-three
29 thousand two hundred dollars (\$123,200); and for the 1994-95 fiscal year the sum of
30 one hundred ninety-seven thousand three hundred dollars (\$197,300) to fund the State
31 Ethics Commission created in Section 1 of this act.

32 Sec. 17. Section 16 of this act becomes effective on July 1, 1993. The
33 remaining sections become effective on January 1, 1994, except that the initial
34 statements of economic interest required under Article 4 of Chapter 138A of the
35 General Statutes shall be filed not later than September 1, 1994.