

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH80488-RU-47 (03/03)

Short Title: Executive Branch Ethics Act - 1. (Public)

Sponsors: Representatives Hackney, Howard, Brubaker, Luebke (Primary Sponsors);
Barnhart, Bell, Coates, Eddins, Fisher, Gibson, Harrison, Justice, Lucas,
Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Sherrill, Steen, and West.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE
3 THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS
4 FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND
5 APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS,
6 TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO
7 MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE
8 SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

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 "Executive Branch Ethics Act.

14 "Article 1.

15 "General Provisions.

16 "§ 138A-1. Title.

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

18 "§ 138A-2. Purpose.

19 The people of North Carolina entrust public power to elected and appointed officials
20 for the purpose of furthering the public, not private or personal, interest. To maintain the
21 public trust it is essential that government function honestly and fairly, free from all
22 forms of impropriety, threats, favoritism, and undue influence. Elected and appointed
23 officials must maintain and exercise the highest standards of duty to the public in
24 carrying out the responsibilities and functions of their positions. Acceptance of authority
25 granted by the people to elected and appointed officials imposes a commitment of

1 fidelity to the public interest, and this power cannot be used to advance narrow interests
2 for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no
3 place in decision-making for the public. Public officials must exercise their duties
4 responsibly with skillful judgment and energetic dedication. Public officials must
5 exercise discretion with sensitive information pertaining to public and private persons
6 and activities. To maintain the integrity of North Carolina's State government, those
7 citizens entrusted with authority must exercise it for the good of the public and treat
8 every citizen with courtesy, attentiveness, and respect. Because many public officials
9 serve on a part-time basis, it is inevitable that conflicts of interest and appearances of
10 conflict will occur. Often these conflicts are unintentional and slight, but at every turn
11 those public officials who represent the people of this State must be certain that it is the
12 interests of the people, and not their own, that are being served. Officials should be
13 prepared to remove themselves immediately from decisions, votes, or processes where
14 even the appearance of a conflict of interest exists. The State is committed to the
15 responsible exercise of authority by persons of honor and goodwill in government, by
16 adopting a stronger procedure to prevent the occurrence of conflicts of interest in
17 government and to resolve conflicts when they do occur.

18 **"§ 138A-3. Definitions.**

19 The following definitions apply in this Chapter:

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

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

3 (5) Commission. – The State Ethics Commission.

4 (6) Compensation. – Any money, thing of value, or economic benefit
5 conferred on or received by any person in return for services rendered
6 or to be rendered by that person or another. This term does not include
7 campaign contributions properly received and, if applicable, reported
8 as required by Article 22A of Chapter 163 of the General Statutes.

9 (7) Constitutional officers of the State. – Officers whose offices are
10 established in Article III of the Constitution.

11 (8) Contract. – Any agreement including sales and conveyances of real
12 and personal property and agreements for the performance of services.

13 (9) Employing entity. – Any of the following bodies of State government
14 of which the public servant is an employee or a member, or over which
15 the public servant exercises supervision: agencies, authorities, boards,
16 commissions, committees, councils, departments, offices, institutions
17 and their subdivisions, and constitutional offices of the State.

18 (10) Extended family. – Spouse, descendant, ascendant, or sibling of the
19 public servant or descendant, ascendant, or sibling of the spouse of the
20 public servant.

21 (11) Immediate family. – An unemancipated child of the public servant
22 residing in the household and the public servant's spouse, if not legally
23 separated.

24 (12) Official action. – Any decision, including administration, approval,
25 disapproval, preparation, recommendation, the rendering of advice,
26 and investigation, made or contemplated in any proceeding,
27 application, submission, request for a ruling or other determination,
28 contract, claim, controversy, investigation, charge, or rule making.

29 (13) Participate. – To take part in, influence, or attempt to influence,
30 including acting through an agent or proxy.

31 (14) Pecuniary interest. – Any of the following:

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

35 b. Receiving, either individually or collectively, during the
36 preceding calendar year compensation that is or will be required
37 to be included as taxable income on federal income tax returns
38 of the public servant, the public servant's immediate family, or a
39 business with which associated in an aggregate amount of five
40 thousand dollars (\$5,000) from any business or combination of
41 businesses. A pecuniary interest exists in any client or customer
42 who pays fees or commissions, either individually or
43 collectively, of five thousand dollars (\$5,000) or more in the

- 1 preceding 12 months to the public servant, the public servant's
2 immediate family, or a business with which associated.
- 3 c. Receiving, either individually or collectively and directly or
4 indirectly, in the preceding 12 months, gifts or honoraria having
5 an unknown value or having an aggregate value of five hundred
6 dollars (\$500.00) or more from any person. A pecuniary interest
7 does not exist under this sub-subdivision by reason of (i) a gift
8 or bequest received as the result of the death of the donor; (ii) a
9 gift from an extended family member; or (iii) acting as a trustee
10 of a trust for the benefit of another.
- 11 d. Holding the position of associate, director, officer, business
12 associate, or proprietor of any business, irrespective of the
13 amount of compensation received.
- 14 (15) Public event. – An organized gathering of individuals open to the
15 general public or to which at least ten public servants are invited to
16 attend and at least ten employees or members of the principal or
17 person actually attend.
- 18 (16) Public servants. – All of the following:
- 19 a. Constitutional officers of the State and persons elected or
20 appointed as constitutional officers of the State prior to taking
21 office.
- 22 b. Employees of the Office of the Governor.
- 23 c. Heads of all principal State departments, as set forth in
24 G.S. 143B-6, who are appointed by the Governor.
- 25 d. The chief deputy and chief administrative assistant of each
26 person designated under sub-subdivisions a. or c. of this
27 subdivision.
- 28 e. Confidential assistants and secretaries as defined in
29 G.S. 126-5(c)(2), to persons designated under sub-subdivisions
30 a., c., or d. of this subdivision.
- 31 f. Employees in exempt positions as defined in G.S. 126-5(b) and
32 employees in exempt positions designated in accordance with
33 G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to
34 these individuals.
- 35 g. Any other employees or appointees in the principal State
36 departments as may be designated by the Governor to the extent
37 that the designation does not conflict with the State Personnel
38 Act.
- 39 h. All voting members of boards, including ex officio members
40 and members serving by executive, legislative, or judicial
41 branch appointment.
- 42 i. For The University of North Carolina, the voting members of
43 the Board of Governors of The University of North Carolina,
44 the president, the vice-presidents, and the chancellors, the

vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges 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.

k. Members of the Commission.

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

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant'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 public servant or a member of the public servant'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 and 138A-5. [Reserved]

"Article 2.

"Ethical Standards for Public Servants.

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

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. 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 public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant 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 public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

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

"§ 138A-7. Gifts.

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

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

11 (c) No public servant shall knowingly accept anything of monetary value,
12 directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1
13 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the
14 public servant knows or has reason to know any of the following:

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

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

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

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

23 (1) Meals and beverages for immediate consumption in connection with
24 public events.

25 (2) Nonmonetary items, other than food or beverages, with a value not to
26 exceed ten dollars (\$10.00) provided by a single donor during a single
27 calendar day.

28 (3) Informational materials relevant to the duties of the public servant.

29 (4) Reasonable actual expenses for food, registration, travel, and lodging
30 of the public servant for a meeting at which the public servant
31 participates in a panel or speaking engagement at the meeting related
32 to the public servant's duties and when expenses are incurred on the
33 actual day of participation in the engagement or incurred within a
34 24-hour time period before or after the engagement.

35 (5) Items or services received in connection with a state, national or
36 regional organization in which the public servant or the public
37 servant's agency is a member.

38 (6) Items and services received relating to an educational conference or
39 meeting.

40 (7) A plaque or similar nonmonetary memento recognizing individual
41 services in a field or specialty or to a charitable cause.

42 (8) Gifts accepted on behalf of the State.

43 (9) Anything generally available or distributed to the general public or all
44 other State employees.

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

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

3 (1) The employing entity reimburses the public servant for travel,
4 subsistence, and registration expenses.

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

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

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

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

14 **"§ 138A-8. Other compensation.**

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

19 **"§ 138A-9. Use of information for private gain.**

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

26 **"§ 138A-10. Appearance of conflict.**

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

33 **"§ 138A-11. Other rules of conduct.**

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

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

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

3 **§ 138A-12. Participation in official actions.**

4 (a) Notwithstanding any other law, except as permitted by subsection (e) of this
5 section, no public servant acting in that capacity, authorized to perform an official
6 action requiring the exercise of discretion, shall knowingly participate in an official
7 action by the employing entity if the public servant, a member of the public servant's
8 extended family, or a business with which the public servant is associated, has a
9 pecuniary interest in, or a reasonably foreseeable benefit from, the matter under
10 consideration, which would impair the public servant's independence of judgment or
11 from which it could reasonably be inferred that the interest or benefit would influence
12 the public servant's participation in the official action. A potential benefit includes (i) a
13 detriment to a business competitor of the public servant, (ii) a member of the public
14 servant's extended family, or (iii) a business with which the public servant is associated.

15 (b) A public servant described in subsection (a) of this section shall abstain from
16 participation in the official action. The public servant shall submit in writing to the
17 employing entity the reasons for the abstention. When the employing entity is a board,
18 the abstention shall be recorded in the employing entity's minutes.

19 (c) A public servant shall take reasonable and appropriate steps, under the
20 particular circumstances and considering the type of proceeding involved, to remove
21 himself or herself, to the extent necessary to protect the public interest and comply with
22 this Chapter, from any proceeding in which the public servant's impartiality might
23 reasonably be questioned due to the public servant's familial, personal, or financial
24 relationship with a participant in the proceeding. A participant includes (i) an owner,
25 shareholder, business associate, employee, agent, officer, or director of a business,
26 organization, or group involved in the proceeding, or (ii) an organization or group that
27 has petitioned for rulemaking or has some specific, unique, and substantial interest in
28 the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative
29 proceedings. A personal relationship includes one in a leadership or policy-making
30 position in a business, organization, or group.

31 (d) If a public servant is uncertain whether the relationship described in
32 subsection (c) of this section justifies removing the public servant from the proceeding
33 under subsection (c) of this section, the public servant shall disclose the relationship to
34 the person presiding over the proceeding and seek appropriate guidance. The presiding
35 officer, in consultation with legal counsel if necessary, shall then determine the extent to
36 which the public servant will be permitted to participate. If the affected public servant is
37 the person presiding, then the vice-chair or any other substitute presiding officer shall
38 make the determination. A good-faith determination under this subsection of the
39 allowable degree of participation by a public servant is presumptively valid and only
40 subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake,
41 fraud, abuse of discretion, or willful disregard of this Chapter.

42 (e) Notwithstanding subsections (a) and (c) of this section, a public servant may
43 participate in an official action under any of the following circumstances:

- 1 (1) The only pecuniary interest or reasonably foreseeable benefit that
2 accrues to the public servant, the public servant's extended family, or
3 business with which the public servant is associated as a member of a
4 profession, occupation, or large class, is no greater than that which
5 could reasonably be foreseen to accrue to all members of that
6 profession, occupation, or large class.
- 7 (2) Where an official action affects or would affect the public servant's
8 compensation and allowances as a public servant.
- 9 (3) Before the public servant participated in the official action, the public
10 servant requested and received from the Commission a written
11 advisory opinion that authorized the participation.
- 12 (4) Before participating in an official action, a public servant made full
13 written disclosure to the public servant's employing entity which then
14 made a written determination that the interest or benefit would neither
15 impair the public servant's independence of judgment nor influence the
16 public servant's participation in the official action. The employing
17 entity shall file a copy of that written determination with the
18 Commission.
- 19 (5) When action is ministerial only and does not require the exercise of
20 discretion.
- 21 (6) When a public body records in its minutes that it cannot obtain a
22 quorum in order to take the official action because members are
23 disqualified from acting under this section.
- 24 (7) When a public servant notifies, in writing, the Commission that the
25 public servant or someone whom the public servant appoints to act in
26 the public servant's stead, or both, are the only individuals having legal
27 authority to take an official action.

28 **"§ 138A-13. Disqualification to serve.**

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

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

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

38 **"§ 138A-14. Employment and supervision of members of public servant's extended**
39 family.

40 A public servant shall not cause the employment, appointment, promotion, transfer,
41 or advancement of an extended family member of the public servant to a State or local
42 office or position to which the public servant supervises or manages. A public servant
43 shall not participate in an action relating to the discipline of a member of the public
44 servant's extended family.

1 **"§ 138A-15. Other ethics standards.**

2 Nothing in this Chapter shall prevent constitutional officers of the State, heads of
3 principal departments, the Board of Governors of The University of North Carolina,
4 State Board of Community Colleges, or other State executive boards from adopting
5 more stringent ethics standards applicable to that public agency's operations.

6 **"§ 138A-16 through 19. [Reserved]**

7 "Article 3.

8 "State Ethics Commission.

9 **"§ 138A-20. State Ethics Commission established.**

10 There is established the State Ethics Commission.

11 **"§ 138A-21. Membership.**

12 (a) The Commission shall consist of seven members appointed by the Governor.
13 No more than four members may be of the same political party. Members shall serve for
14 four-year terms, beginning January 1, 2007, except for the initial terms that shall be as
15 follows:

16 (1) One member shall serve an initial term of one year.

17 (2) Two members shall serve initial terms of two years.

18 (3) Two members shall serve initial terms of three years.

19 (4) Two members shall serve initial terms of four years.

20 (b) Members shall be removed from the Commission only for misfeasance,
21 malfeasance, or nonfeasance as determined by the Governor.

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

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

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

29 (2) Hold office in any political party.

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

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

35 (e) The Commission shall elect a chair and vice-chair annually. The vice-chair
36 shall act as the chair in the chair's absence or if there is a vacancy in that position.

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

40 **"§ 138A-22. Meetings and quorum.**

41 The Commission shall meet at least quarterly and at other times as called by its
42 chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members.
43 Four members of the Commission constitute a quorum.

44 **"§ 138A-23. Staff and offices.**

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

8 **"§ 138A-24. Powers and duties.**

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

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

38 **"§ 138A-25. Investigations by the Commission.**

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

- 44 (1) The application or alleged violation of this Chapter.

- 1 (2) The application or alleged violation of rules adopted in accordance
2 with G.S. 138A-24.
- 3 (3) The alleged violation of the criminal law by a public servant in the
4 performance of that individual's official duties.
- 5 (b) Complaint. –
- 6 (1) A complaint filed under this Chapter shall state the name, address, and
7 telephone number of the person filing the complaint, the name and job
8 title or appointive position of the public servant against whom the
9 complaint is filed, and a concise statement of the nature of the
10 complaint and specific facts indicating that a violation of this Chapter
11 has occurred, the date the alleged violation occurred, and either (i) that
12 the contents of the complaint are within the knowledge of the
13 individual verifying the complaint, or (ii) the basis upon which the
14 individual verifying the complaint believes the allegations to be true.
- 15 (2) Except as provided in subsection (c) of this section, a complaint filed
16 under this Chapter must be filed within one year of the date the
17 complainant knew or should have known of the conduct upon which
18 the complaint is based.
- 19 (3) The Commission may decline to accept or investigate any attempted
20 complaint that does not meet all of the requirements set forth in
21 subdivision (1) of this subsection, or the Commission may, in its sole
22 discretion, request additional information to be provided by the
23 complainant within a specified period of time of no less than seven
24 business days.
- 25 (4) In addition to subdivision (3) of this subsection, the Commission may
26 decline to accept or investigate a complaint if it determines that any of
27 the following apply:
- 28 a. The complaint is frivolous or brought in bad faith.
- 29 b. The individuals and conduct complained of have already been
30 the subject of a prior complaint.
- 31 c. The conduct complained of is primarily a matter more
32 appropriately and adequately addressed and handled by other
33 federal, State, or local agencies or authorities, including law
34 enforcement authorities. If other agencies or authorities are
35 conducting an investigation of the same actions or conduct
36 involved in a complaint filed under this section, the
37 Commission may stay its complaint investigation pending final
38 resolution of the other investigation.
- 39 (5) The Commission shall send a copy of the complaint to the public
40 servant who is the subject of the complaint within 30 days of the filing.
- 41 (c) Investigation of Complaints by the Commission. – The Commission shall
42 investigate all complaints properly before the Commission in a timely manner. The
43 Commission shall initiate an investigation of a complaint within 90 days of the filing of
44 the complaint, or the complaint shall be dismissed. The Commission is authorized to

1 initiate investigations upon request of any member if there is reason to believe that a
2 public servant has or may have violated this Chapter. There is no time limit on
3 Commission-initiated complaint investigations under this section. In determining
4 whether there is reason to believe that a violation has or may have occurred, a member
5 can take general notice of available information even if not formally provided to the
6 Commission in the form of a complaint. The Commission may utilize the services of a
7 hired investigator when conducting investigations.

8 (d) Investigation by the Commission of Matters Other Than Complaints. – The
9 Commission may investigate matters other than complaints properly before the
10 Commission under subsection (a) of this section. For any investigation initiated under
11 this subsection, the Commission may take any action it deems necessary or appropriate
12 to further compliance with this Chapter, including the initiation of a complaint, the
13 issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law
14 enforcement or other authorities pursuant to subsection (j)(1) of this section.

15 (e) Public Servant Cooperation With Investigation. – Public servants shall
16 promptly and fully cooperate with the Commission in any Commission-related
17 investigation. Failure to cooperate fully with the Commission in any investigation shall
18 be grounds for sanctions as set forth in G.S. 138A-45.

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

26 (g) Notice. – If at the end of its preliminary inquiry, the Commission determines
27 to proceed with further investigation into the conduct of an individual, the Commission
28 shall provide written notice to the individual who filed the complaint and the public
29 servant as to the fact of the investigation and the charges against the public servant. The
30 public servant shall be given an opportunity to file a written response with the
31 Commission. Upon the notice required under this subsection being sent, the complaint
32 and any written response shall be public records, and all other documents offered at the
33 hearing in conjunction with the complaint shall be public records.

34 (h) Hearing. –

35 (1) The Commission shall give full and fair consideration to all complaints
36 and responses received. If the Commission determines that the
37 complaint cannot be resolved without a hearing, or if the public
38 servant requests a public hearing, a hearing shall be held.

39 (2) The Commission shall send a notice of the hearing to the complainant,
40 the public servant, and any other member of the public requesting
41 notice. The notice shall contain the time and place for a hearing on the
42 matter, which shall begin no less than 30 days and no more than 90
43 days after the date of the notice.

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

- 1 a. Oral evidence shall be taken only on oath or affirmation.
2 b. The hearing shall be open to the public. The deliberations by
3 the Commission on a complaint may be held in closed session,
4 but the decision of the Commission shall be announced in open
5 session.
6 c. The public servant being investigated shall have the right to
7 present evidence, call and examine witnesses, cross-examine
8 witnesses, introduce exhibits, and be represented by counsel.

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

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

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

20 (2) If the Commission finds that the alleged violation is not established by
21 clear and convincing evidence, the Commission shall dismiss the
22 complaint.

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

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

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

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

41 (k) Recommendations of Sanctions. – If the Commission determines, after proper
42 review and investigation, that action is appropriate, the Commission may recommend
43 sanctions or issue rulings as it deems necessary or appropriate to protect the public

1 interest and ensure compliance with this Chapter. In formulating appropriate sanctions,
2 the Commission may consider the following factors:

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

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

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

38 (m) Authority of Employing Entity. – Any action or failure to act by the
39 Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of
40 the applicable employing entity to discipline the public servant.

41 (n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction
42 to investigate possible criminal violations of this Chapter for a period of one year
43 following the date a person who was formerly a public servant ceases to be a public
44 servant.

1 (o) Confidentiality. – All motions, complaints, written requests, investigations
2 and investigative materials shall be confidential and not matters of public record, except
3 as otherwise provided in this section.

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

12 **"§ 138A-26. Advisory opinions.**

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

24 (1) Investigation by the Commission.

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

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

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

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

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

36 **"§ 138A-27. Ethics education program.**

37 (a) The Commission shall develop and implement an ethics education and
38 awareness program designed to instill in all public servants and their immediate staffs a
39 keen and continuing awareness of their ethical obligations and a sensitivity to situations
40 that might result in real or potential conflicts of interest or appearances of conflicts of
41 interest. The Commission shall make basic ethics education and awareness
42 presentations to all public servants and their immediate staffs upon their election,
43 appointment or hiring, and shall offer periodic refresher presentations as the
44 Commission deems appropriate. Every public servant and the immediate staff of every

1 public servant shall participate in an ethics presentation approved by the Commission
2 within six months of the person's election, appointment, or hiring, and shall attend
3 refresher ethics education presentations at least every two years thereafter in a manner
4 as the Commission deems appropriate. Upon request, the Commission shall assist each
5 agency in developing in-house education programs and procedures necessary or
6 desirable to meet the agency's particular needs for ethics education, conflict
7 identification, and conflict avoidance.

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

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

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

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

23 **"§ 138A-28. Duties of heads of State agencies.**

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

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

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

1 **"§ 138A-35. Purpose.**

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

18 **"§ 138A-36. Statement of economic interest; filing required.**

19 (a) Every public servant subject to this Chapter who is elected, appointed, or
20 employed and entitled to annual compensation from the State of more than forty
21 thousand dollars (\$40,000), including one appointed to fill a vacancy in elective office,
22 shall file a statement of economic interest with the Commission prior to the public
23 servant's initial appointment, election, or employment and no later than January 31
24 every year thereafter. A prospective public servant required to file a statement under this
25 Chapter shall not be appointed, employed, or receive a certificate of election, prior to
26 submission by the Commission of the Commission's evaluation of the statement in
27 accordance with this Article. The requirement for an annual filing under this subsection
28 also shall apply to public servants whose terms have expired but who continue to serve
29 until their replacement is appointed.

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

35 (c) Except as otherwise filed under subsection (a) of this section, a candidate for
36 the Council of State shall file the statement of economic interest at the same place and
37 in the same manner as the notice of candidacy for that office is required to be filed
38 under G.S. 163-106, within 10 days of the filing deadline for the office the candidate
39 seeks. A person who is nominated under G.S. 163-114 after the primary and before the
40 general election, and a person who qualifies under G.S. 163-122 as an unaffiliated
41 candidate in a general election, shall file a statement of economic interest with the
42 county board of elections of each county in the senatorial or representative district. A
43 person nominated under G.S. 163-114 shall file the statement within three days
44 following the person's nomination, or not later than the day preceding the general

1 election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate
2 under G.S. 163-122 shall file the statement of economic interest with the petition filed
3 under that section. A person seeking to have write-in votes counted for the person in a
4 general election shall file a statement of economic interest at the same time the
5 candidate files a declaration of intent under G.S. 163-123. A candidate of a new party
6 chosen by convention shall file a statement of economic interest at the same time that
7 the president of the convention certifies the names of its candidates to the State Board of
8 Elections under G.S. 163-98.

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

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

15 (f) The Commission shall issue forms to be used for the statement of economic
16 interest and shall revise the forms from time to time as necessary to carry out the
17 purposes of this Chapter. Except as otherwise set forth in this section, the Commission
18 shall furnish to all other public servants the appropriate forms needed to comply with
19 this Article.

20 **"§ 138A-37. Statements of economic interest as public records.**

21 The statements of economic interest filed by prospective public servants under this
22 Article for appointed or employed positions and written evaluations by the Commission
23 of these statements are not public records until the prospective public servant is
24 appointed or is employed by the State. All other statements of economic interest and all
25 other written evaluations by the Commission of those statements are public records.
26 After becoming public records, statements shall be made available for inspection and
27 copying by any person during normal business hours at the Commission's office.

28 **"§ 138A-38. Contents of statement.**

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

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

35 (2) A list of each asset and liability of whatever nature (including legal,
36 equitable, or beneficial interest) with a value of at least ten thousand
37 dollars (\$10,000) of the prospective or actual public servant, and the
38 public servant's spouse. This list shall include the following:

39 a. All real estate located in the State owned wholly or in part by
40 the public servant or the public servant's spouse, including
41 specific descriptions adequate to determine the location of each
42 parcel and the specific interest held by the public servant and
43 the spouse in each identified parcel.

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

- 1 c. Personal property sold to or bought from the State within the
2 preceding two years.
- 3 d. Personal property currently leased or rented to the State.
- 4 e. The name of each publicly owned company in which the value
5 of securities held exceeds ten thousand dollars (\$10,000).
- 6 f. The name of each non-publicly owned company or business
7 entity in which the value of securities or other equity interests
8 held exceeds ten thousand dollars (\$10,000), including interests
9 in partnerships, limited partnerships, joint ventures, limited
10 liability companies or partnerships, and closely held
11 corporations. For each company or business entity listed under
12 this sub-subdivision, the filing public servant shall indicate
13 whether the listed company or entity owns securities or equity
14 interests exceeding a value of ten thousand dollars (\$10,000) in
15 any other companies or entities. If so, then the other companies
16 or entities shall also be listed with a brief description of the
17 business activity of each.
- 18 g. If the filing public servant, the members of the public servant's
19 immediate family are the beneficiaries of a vested trust created,
20 established, or controlled by the public servant, then the name
21 and address of the trustee and a description of the trust shall be
22 provided. To the extent such information is available to the
23 public servant, the statement also shall include a list of
24 businesses in which the trust has an ownership interest
25 exceeding ten thousand dollars (\$10,000).
- 26 h. The filing public servant shall make a good faith effort to list
27 any individual or business entity with which the filing public
28 servant, the public servant's extended family, or any business
29 with which the public servant or a member of the public
30 servant's extended family is associated, has a financial or
31 professional relationship provided (i) a reasonable person would
32 conclude that the nature of the financial or professional
33 relationship presents a conflict of interest or the appearance of a
34 conflict of interest for the public servant; or (ii) a reasonable
35 person would conclude that any other financial or professional
36 interest of the individual or business entity would present a
37 conflict of interest or appearance of a conflict of interest for the
38 public servant. For each individual or business entity listed
39 under this subsection, the filing public servant shall describe the
40 financial or professional relationship and provide an
41 explanation of why the individual or business entity has been
42 listed.

1 been associated financially. A brief summary of the facts and
2 circumstances regarding each listed bankruptcy shall be
3 provided.

4 o. A list of all directorships on all business boards of which the
5 public servant of the public servant's immediate family is a
6 member.

7 (3) A list of the public servant's or the public servant's immediate family's
8 memberships or other affiliations with, including offices held in,
9 societies, organizations, or advocacy groups, pertaining to subject
10 matter areas over which the public servant's agency or board may have
11 jurisdiction.

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

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

29 (6) If the public servant believes a potential for conflict exists, the public
30 servant has a duty to inquire of the Commission as to that potential
31 conflict.

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

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

38 (1) The public servant who submitted the statement.

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

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

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

44 (5) The State Board of Elections for those public servants who are elected.

1 **"§ 138A-39. Failure to file.**

2 (a) Within 30 days after the date due in accordance with G.S. 138A-36, for every
3 public servant from whom a statement of economic interest has not been received by the
4 Commission, or whose statement of economic interest has been received by the
5 Commission but deemed by the Commission to be incomplete, the Commission shall
6 notify the public servant of the failure to file or complete and shall notify the public
7 servant that if the statement of economic interest is not filed or completed within 30
8 days of receipt of the notice of failure to file or complete, the public servant shall be
9 subject to a fine as provided for in this section.

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

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

18 **"§ 138A-40. Concealing or failing to disclose material information.**

19 A public servant who knowingly conceals or fails to disclose information that is
20 required to be disclosed on a statement of economic interest under this Article shall be
21 punished as a Class 2 misdemeanor and shall be subject to disciplinary action under
22 G.S. 138A-45.

23 **"§ 138A-41. Penalty for false or misleading information.**

24 A public servant who provides false or misleading information on a statement of
25 economic interest as required under this Article knowing that the information is false or
26 misleading shall be punished as a Class F felon and shall be subject to disciplinary
27 action under G.S. 138A-45.

28 **"§ 138A-42 through 44. [Reserved]**

29 "Article 5.

30 "Violation Consequences.

31 **"§ 138A-45. Violation consequences.**

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

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

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

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

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

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

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

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

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

20 "§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics
21 Commission.

22 Notwithstanding any other law, the Codifier of Rules shall publish unedited the rules
23 and advisory opinions issued by the State Ethics Commission under Chapter 138A of
24 the General Statutes in the North Carolina Register as they are received from the State
25 Ethics Commission, in the format required by the Codifier.

26 Notwithstanding any other law, the Codifier of Rules shall publish unedited in the
27 North Carolina Administrative Code the rules as codified and issued by the State Ethics
28 Commission under Chapter 138A of the General Statutes, in the format required by the
29 Codifier."

30 **SECTION 4.** The authority, powers, duties and functions, records,
31 personnel, property, unexpended balances of appropriations, allocations, or other funds,
32 including the functions of budgeting and purchasing, of the North Carolina Board of
33 Ethics of the Office of the Governor are transferred to the State Ethics Commission
34 created in Section 1 of this act. The Director of the Budget shall resolve any disputes
35 arising out of this transfer.

36 **SECTION 5.** This act becomes effective October 1, 2006, applies to public
37 servants on or after January 1, 2007, and acts and conflicts of interest that arise on or
38 after January 1, 2007.