

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

1

HOUSE BILL 1194

Short Title: Reform Legislative Ethics. (Public)

Sponsors: Representatives Blust; Current and Starnes.

Referred to: Ethics, if favorable, Judiciary I.

April 8, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT THE STATE ETHICS COMMISSION SHALL HEAR  
3 ETHICS COMPLAINTS AGAINST LEGISLATORS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 138A-10(a) is amended by adding a new subdivision to read:

6 "(5a) Issue and refer recommendations for punishments of legislators to the  
7 Committee and of legislative employees to the employing entity."

8 **SECTION 2.** G.S. 138A-12 reads as rewritten:

9 "**§ 138A-12. Inquiries by the Commission.**

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

14 (a1) Notice of Allegation. – Upon receipt by the Commission of an written allegation of  
15 unethical conduct by a covered person or legislative employee, or the initiation by the  
16 Commission of an inquiry into unethical conduct under subsection (b) of this section, the  
17 Commission shall immediately notify the covered person or legislative employee subject to the  
18 allegation or inquiry in writing.

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

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

29 Upon receipt of a referral under G.S. 147-64.6B or a report under G.S. 147-64.6(c)(19), the  
30 Commission may conduct an inquiry under this section on its own motion. Allegations of  
31 violations of the Code of Judicial Conduct shall be referred to the Judicial Standards  
32 Commission without investigation.

33 (b1) Complaints on Its Own Motion. – An investigation initiated by the Commission on  
34 its own motion or upon written request of any public servant or those responsible for the hiring,  
35 appointing, or supervising of a public servant instituted under subsection (b) of this section  
36 shall be treated as a complaint for purposes of this section and need not be sworn or verified.

37 (c) Complaint. –



- 1 (1) A sworn complaint filed under this Chapter shall state the name, address,  
2 and telephone number of the individual filing the complaint, the name and  
3 job title or appointive position of the covered person or legislative employee  
4 against whom the complaint is filed, and a concise statement of the nature of  
5 the complaint and specific facts indicating that a violation of this Chapter or  
6 Chapter 120 of the General Statutes has occurred, the date the alleged  
7 violation occurred, and either (i) that the contents of the complaint are within  
8 the knowledge of the individual verifying the complaint, or (ii) the basis  
9 upon which the individual verifying the complaint believes the allegations to  
10 be true.
- 11 (2) Except as provided in subsection (d) of this section, a complaint filed under  
12 this Chapter must be filed within two years of the date the complainant knew  
13 or should have known of the conduct upon which the complaint is based.
- 14 (3) The Commission may decline to accept, refer, or conduct an inquiry into any  
15 complaint that does not meet all of the requirements set forth in subdivision  
16 (1) of this subsection, or the Commission may, in its sole discretion, request  
17 additional information to be provided by the complainant within a specified  
18 period of time of no less than seven business days.
- 19 (4) In addition to subdivision (3) of this subsection, the Commission may  
20 decline to accept, refer, or conduct an inquiry into a complaint if it  
21 determines that any of the following apply:
- 22 a. The complaint is frivolous or brought in bad faith.
- 23 b. The covered person or legislative employee and conduct complained  
24 of have already been the subject of a prior complaint.
- 25 c. The conduct complained of is primarily a matter more appropriately  
26 and adequately addressed and handled by other federal, State, or  
27 local agencies or authorities, including law enforcement authorities.  
28 If other agencies or authorities are conducting an investigation of the  
29 same actions or conduct involved in a complaint filed under this  
30 section, the Commission may stay its complaint inquiry pending final  
31 resolution of the other investigation.
- 32 (5) The Commission shall send a copy of the complaint to the covered person or  
33 legislative employee who is the subject of the complaint and the employing  
34 entity, within 30 days of the filing.
- 35 (d) Conduct of Inquiry of Complaints by the Commission. – The Commission shall  
36 conduct an inquiry into all complaints properly before the Commission in a timely manner. The  
37 Commission shall initiate an inquiry into a complaint within 60 days of the filing of the  
38 complaint. The Commission is authorized to initiate inquiries upon request of any member of  
39 the Commission if there is reason to believe that a covered person or legislative employee has  
40 or may have violated this Chapter. Commission-initiated complaint inquiries under this section  
41 shall be initiated within two years of the date the Commission knew of the conduct upon which  
42 the complaint is based, except when the conduct is material to the continuing conduct of the  
43 duties in office. In determining whether there is reason to believe that a violation has or may  
44 have occurred, a member of the Commission may take general notice of available information  
45 even if not formally provided to the Commission in the form of a complaint. The Commission  
46 may utilize the services of a hired investigator when conducting inquiries.
- 47 (e) Covered Person and Legislative Employees Cooperation With Inquiry. – Covered  
48 persons and legislative employees shall promptly and fully cooperate with the Commission in  
49 any Commission-related inquiry. Failure to cooperate fully with the Commission in any inquiry  
50 shall be grounds for sanctions as set forth in G.S. 138A-45.

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

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

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

16 (1) For public ~~servants, servants, legislators, and legislative employees~~, decide to  
17 proceed with a hearing under subsection (i) of this section.

18 (2) ~~For legislators, except the Lieutenant Governor, refer the complaint to the~~  
19 ~~Committee.~~

20 (3) For judicial officers, refer the complaint to the Judicial Standards  
21 Commission for complaints against justices and judges, to the senior resident  
22 superior court judge of the district or county for complaints against district  
23 attorneys, or to the chief district court judge for the district or county for  
24 complaints against clerks of court.

25 (4) ~~For legislative employees, refer the complaint to the employing entity.~~

26 (i) Hearing. –

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

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

37 (3) The Commission shall make available to the public ~~servant, servant,~~  
38 ~~legislator, or legislative employee~~ prior to a hearing all relevant information  
39 collected by the Commission in connection with its investigation of a  
40 complaint.

41 (4) At any hearing held by the Commission:

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

43 b. The hearing shall be open to the public, except for matters involving  
44 minors, personnel records, or matters that could otherwise be  
45 considered in closed session under G.S. 143-318.11. In any event, the  
46 deliberations by the Commission on a complaint may be held in  
47 closed session.

48 c. The public ~~servant, servant, legislator, or legislative employee~~ being  
49 investigated shall have the right to present evidence, call and  
50 examine witnesses, cross-examine witnesses, introduce exhibits, and  
51 be represented by counsel.

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

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

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

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

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

17 a. Issue a private admonishment to the public servant and notify the  
18 employing entity, if applicable. Such notification shall be treated as  
19 part of the personnel record of the public servant.

20 b. Refer the matter for appropriate action to the Governor and the  
21 employing entity that appointed or employed the public servant or of  
22 which the public servant is a member.

23 c. Refer the matter for appropriate action to the Chief Justice for  
24 judicial employees.

25 d. Refer the matter to the Principal Clerks of the House of  
26 Representatives and Senate of the General Assembly for  
27 constitutional officers of the State.

28 e. Refer the matter for appropriate action to the principal clerk of the  
29 house of the General Assembly that elected the public servant for  
30 members of the Board of Governors and the State Board of  
31 Community Colleges.

32 f. Issue recommendations for punishment of the legislator or legislative  
33 employee under subsection (o) of this section and refer the matter to  
34 the Committee for legislators and the employing entity for legislative  
35 employees.

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

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

49 (n) Confidentiality. – Complaints and responses filed with the Commission and reports  
50 and other investigative documents and records of the Commission connected to an inquiry  
51 under this section, including information provided pursuant to G.S. 147-64.6B or

1 G.S. 147-64.6(c)(19), shall be confidential and not matters of public record, except as otherwise  
2 provided in this section or when the covered person or legislative employee under inquiry  
3 requests in writing that the complaint, response, and findings be made public. Once a hearing  
4 under this section commences, the complaint, response, and all other documents offered at the  
5 hearing in conjunction with the complaint, not otherwise privileged or confidential under law,  
6 shall be public records. If no hearing is held at such time as the Commission reports to the  
7 employing entity a recommendation of sanctions, the complaint and response shall be made  
8 public.

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

- 14 (1) The public servant's prior experience in an agency or on a board and prior  
15 opportunities to learn the ethical standards for a public servant as set forth in  
16 Article 4 of this Chapter, including those dealing with conflicts of interest.
- 17 (2) The number of ethics violations.
- 18 (3) The severity of the ethics violations.
- 19 (4) Whether the ethics violations involve the public ~~servant's~~servant's,  
20 legislator's, or legislative employee's financial interest.
- 21 (5) Whether the ethics violations were inadvertent or intentional.
- 22 (6) Whether the public ~~servant~~servant, legislator, or legislative employee knew  
23 or should have known that the improper conduct was a violation of this  
24 Chapter.
- 25 (7) Whether the public ~~servant~~servant, legislator, or legislative employee has  
26 previously been advised or warned by the Commission.
- 27 (8) Whether the conduct or situation giving rise to the ethics violation was  
28 pointed out to the public servant in the Commission's Statement of  
29 Economic Interest evaluation letter issued under G.S. 138A-24(e).
- 30 (9) The public ~~servant's~~servant's, legislator's, or legislative employee's  
31 motivation or reason for the improper conduct or action, including whether  
32 the action was for personal financial gain versus protection of the public  
33 interest.

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

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

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

50 (r) Subpoena Authority. – The Commission may petition the Superior Court of Wake  
51 County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct

1 investigations of alleged violations of this Chapter. The court shall authorize subpoenas under  
2 this subsection when the court determines the subpoenas are necessary for the enforcement of  
3 this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through  
4 contempt powers. Venue shall be with the Superior Court of Wake County for any person or  
5 governmental unit covered by this Chapter, and personal jurisdiction may be asserted under  
6 G.S. 1-75.4.

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

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

13 **SECTION 3.** G.S. 138A-8 reads as rewritten:

14 "**§ 138A-8. Meetings and quorum.**

15 The Commission shall meet at least quarterly and at other times as called by its chair or by  
16 four of its members. In the case of a vacancy in the chair, meetings may be called by the  
17 vice-chair. Five members of the Commission constitute a quorum. All meetings of the  
18 Commission shall be subject to Article 33C of Chapter 143 of the General Statutes."

19 **SECTION 4.** This act becomes effective January 1, 2010, and applies to  
20 complaints filed on or after that date.