

SUBCHAPTER II. ETHICS AND LOBBYING.

Article 5.

General Provisions.

§ 163A-150. Title.

This Subchapter shall be known and may be cited as the "State Government Ethics Act". (2006-201, s. 1; 2017-6, s. 3.)

§ 163A-151. Purpose.

The purpose of this Subchapter is to ensure that elected and appointed State agency officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. To this end, it is the intent of the General Assembly in this Subchapter to ensure that standards of ethical conduct and standards regarding conflicts of interest are clearly established for elected and appointed State agency officials, that the State continually educates these officials on matters of ethical conduct and conflicts of interest, that potential and actual conflicts of interests are identified and resolved, and that violations of standards of ethical conduct and conflicts of interest are investigated and properly addressed. (2006-201, s. 1; 2017-6, s. 3.)

§ 163A-152. Definitions.

The following definitions apply in this Subchapter:

- (1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets.
- (3) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the State Board, except for those public bodies that have only advisory authority.
- (5) Business. – Any of the following organized for profit:
 - a. Association.
 - b. Business trust.
 - c. Corporation.
 - d. Enterprise.
 - e. Joint venture.
 - f. Organization.
 - g. Partnership.
 - h. Proprietorship.
 - i. Vested trust.
 - j. Every other business interest, including ownership or use of land for income.

- (7) Business with which associated. – A business in which the covered person or filing person or any member of that covered person's or filing person's immediate family does any of the following:
- a. Is an employee.
 - b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
 - c. Owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.
 - d. Is a lobbyist registered under Article 8 of this Chapter.

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

 1. The covered person, filing person, or a member of the covered person's or filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
 2. The fund is publicly traded, or the fund's assets are widely diversified.
- (9) Reserved.
- (11) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.
- (13) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any covered person or filing person in return for services rendered or to be rendered by that covered person or filing person or another. This term does not include campaign contributions properly received and reported as required by Article 23 of this Chapter.
- (15) Confidential information. – Information defined as confidential by the law.
- (17) Constitutional officers of the State. – Officers whose offices are established by Article III of the North Carolina Constitution.
- (19) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.
- (21) Covered person. – A legislator, public servant, or judicial officer, as identified by the State Board under G.S. 163A-155.
- (23) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For legislative employees, it is the authority that hired the individual. For judicial employees, it is the Chief Justice.
- (25) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal descendant, spouse's lineal ascendant, spouse's sibling, and the spouse of any of these individuals.

- (27) Filing person. – An individual required to file a statement of economic interest under G.S. 163A-187.
- (28), (29) Reserved for future codification purposes.
- (30) Financial benefit. – A direct pecuniary gain or loss to the legislator, the public servant, or a person with which the legislator or public servant is associated, or a direct pecuniary loss to a business competitor of the legislator, the public servant, or a person with which the legislator or public servant is associated.
- (32) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 163A-212(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:
 - a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.
 - b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for lobbying.
 - c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for lobbying.
 - d. Academic or athletic scholarships based on the same criteria as applied to the public.
 - e. Anything of value properly reported as required under Article 23 of this Chapter.
 - f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:
 - 1. A sympathy card, letter, or note.
 - 2. Flowers.
 - 3. Food or beverages for immediate consumption.
 - 4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars (\$200.00) per death per donor.
- (33) through (35) Reserved for future codification purposes.
- (36) Governmental unit. – A political subdivision of the State, and any other entity or organization created by a political subdivision of the State.
- (38) Honorarium. – Payment for services for which fees are not legally or traditionally required.
- (40) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.
- (42) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other individual, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars (\$60,000) or more.

- (44) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any individual elected or appointed to any of these positions prior to taking office.
- (46) Legislative action. – As the term is defined in G.S. 163A-250.
- (48) Legislative employee. – As the term is defined in G.S. 163A-250.
- (50) Legislator. – A member or presiding officer of the General Assembly, or an individual elected or appointed a member or presiding officer of the General Assembly before taking office.
- (52) Lobbying. – As the term is defined in G.S. 163A-250.
- (54) Nonprofit corporation or organization with which associated. – Any not for profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the covered person, filing person, or any member of the covered person's or filing person's immediate family is a director, officer, governing board member, employee, lobbyist registered under Article 8 of this Chapter, or independent contractor. "Nonprofit corporation or organization with which associated" shall not include any board, entity, or other organization created by this State or by any political subdivision of this State.
- (56) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.
- (58) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.
- (60) Permanent designee. – An individual designated by a public servant to serve and vote in the absence of the public servant on a regular basis on a board on which the public servant serves.
- (62) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together. The term "person" does not include the State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State.
- (63), (64) Reserved for future codification purposes.
- (65) Person with which the legislator is associated. – Any of the following:
 - a. A member of the legislator's extended family.
 - b. A client of the legislator.
 - c. A business with which the legislator or a member of the legislator's immediate family is associated.
 - d. A nonprofit corporation or association with which the legislator or a member of the legislator's immediate family is associated.
 - e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the legislator or a member of the legislator's immediate family.

- (67) Person with which the public servant is associated. – Any of the following:
 - a. A member of the public servant's extended family.
 - b. A client of the public servant.
 - c. A business with which the public servant or a member of the public servant's immediate family is associated.
 - d. A nonprofit corporation or association with which the public servant or a member of the public servant's immediate family is associated.
 - e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the public servant or a member of the public servant's immediate family.
- (69) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.
- (70) Public servants. – All of the following:
 - a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.
 - b. Employees of the Office of the Governor.
 - c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
 - d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.
 - e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to individuals designated under sub-subdivision a., c., or d. of this subdivision.
 - f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
 - g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
 - h. Judicial employees.
 - i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.
 - j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
 - k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
 - l. Members of the State Board, the executive director, and the assistant executive director of the State Board.

- m. Individuals under contract with the State working in or against a position included under this subdivision.
 - n. The director of the Office of State Human Resources.
 - o. The State Controller.
 - p. The State Chief Information Officer, deputy chief information officers, chief financial officers, and general counsel of the Department of Information Technology.
 - q. The director of the State Museum of Art.
 - r. The executive director of the Agency for Public Telecommunications.
 - s. The Commissioner of Motor Vehicles.
 - t. The Commissioner of Banks and the chief deputy commissioners of the Banking Commission.
 - u. The executive director of the North Carolina Housing Finance Agency.
 - v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority.
- (71) through (80) Reserved for future codification purposes.
- (81) State agency. – An agency in the executive branch of the government of this State, including the Governor's Office, a board, a department, a division, and any other unit of government in the executive branch.
- (83) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family, except a blind trust. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:
- a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and
 - b. The fund is publicly traded, or the fund's assets are widely diversified. (2006-201, s. 1; 2007-347, ss. 7, 8; 2007-348, ss. 19-26; 2008-187, s. 44; 2008-213, ss. 40-54, 84(c); 2010-169, ss. 10, 17(n), (o); 2010-170, s. 14; 2013-382, s. 9.1(c); 2015-241, s. 7A.4(n); 2017-6, s. 3.)

§ 163A-153. Application to Lieutenant Governor.

For purposes of this Subchapter, the Lieutenant Governor shall be considered a legislator when carrying out the Lieutenant Governor's duties under Sec. 13 of Article II of the Constitution, and a public servant for all other purposes. (2006-201, s. 1; 2017-6, s. 3.)

§ 163A-154. Powers and duties.

(a) In addition to other powers and duties specified in this Subchapter, the State Board shall:

- (1) Provide reasonable assistance to covered persons in complying with this Subchapter.
- (2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of the Subchapter.
- (3) Identify and publish the following:
 - a. A list of nonadvisory boards.

- b. The names of individuals subject to this Subchapter as covered persons and legislative employees under G.S. 163A-155.
- (4) Receive and review all statements of economic interest filed with the State Board by prospective and actual covered persons as provided in G.S. 163A-193. Pursuant to G.S. 163A-189(c), this subdivision does not apply to statements of economic interest of legislators and judicial officers.
 - (5) Conduct inquiries of alleged violations against judicial officers, legislators, and legislative employees in accordance with G.S. 163A-156.
 - (6) Conduct inquiries into alleged violations against public servants in accordance with G.S. 163A-156.
 - (7) Render advisory opinions in accordance with G.S. 163A-157 and G.S. 163A-252.
 - (8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 163A-158.
 - (9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.
 - (10) Adopt procedures and guidelines to implement this Subchapter.
 - (11) Report annually to the General Assembly and the Governor on the State Board's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the State Board deems appropriate.
 - (12) Publish annually statistics on complaints filed with or considered by the State Board, including the number of complaints filed, the number of complaints referred under G.S. 163A-156(c), the number of complaints dismissed under G.S. 163A-156(e)(4), the number of complaints dismissed under G.S. 163A-156(h), the number of complaints referred for criminal prosecution under G.S. 163A-156, the number of complaints dismissed under G.S. 163A-156(j), the number of complaints referred for appropriate action under G.S. 163A-156(j) or G.S. 163A-156(m)(3), and the number and age of complaints pending action by the State Board.
 - (13) Perform other duties as may be necessary to accomplish the purposes of this Subchapter.

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

(c) Except as otherwise provided in this Subchapter, the State Board shall be the sole State agency with authority to determine compliance with or violations of this Subchapter and to issue interpretations and advisory opinions under this Subchapter. Decisions and advisory opinions by the State Board under this Subchapter shall be binding on all other State agencies. (2006-201, s. 1; 2008-213, s. 55; 2008-215, s. 7; 2009-549, s. 8; 2013-360, s. 30.4(a); 2017-6, s. 3.)

§ 163A-155. Identify and publish names of covered persons and legislative employees.

The State Board shall identify and publish at least quarterly a listing of the names and positions of all individuals subject to this Subchapter as covered persons or legislative employees. The State Board shall also identify and publish at least annually a listing of all boards to which this Subchapter applies. This listing may be published electronically on a public Internet Web site maintained by the State Board. (2006-201, s. 1; 2008-213, s. 56; 2017-6, s. 3.)

§ 163A-156. Inquiries by the State Board.

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

(b) Notice of Allegation. – Upon receipt by the State Board of a written allegation of unethical conduct by a covered person or legislative employee, or the initiation by the State Board of an inquiry into unethical conduct under subsection (c) of this section, the State Board shall immediately notify the covered person or legislative employee subject to the allegation or inquiry in writing.

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

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

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

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

(e) Complaint. –

- (1) A sworn complaint filed under this Subchapter shall state the name, address, and telephone number of the individual filing the complaint, the name and job title or appointive position of the covered person or legislative employee against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Subchapter or Chapter 120 of the General Statutes or G.S. 126-14 or the criminal law in the performance of that individual's official duties has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

- (2) Except as provided in subsection (f) of this section, a complaint filed under this Subchapter must be filed within two years of the date the complainant knew or should have known of the conduct upon which the complaint is based.
- (3) The State Board may decline to accept, refer, or conduct an inquiry into any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the State Board may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than five business days.
- (4) In addition to subdivision (3) of this subsection, the State Board may decline to accept, refer, or conduct an inquiry into a complaint if it determines that any of the following apply:
 - a. The complaint is frivolous or brought in bad faith.
 - b. The covered person or legislative employee and conduct complained of have already been the subject of a prior complaint.
 - c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the State Board may stay its complaint inquiry pending final resolution of the other investigation.
- (5) The State Board shall send a copy of the complaint to the covered person or legislative employee who is the subject of the complaint and the employing entity, within 10 business days of the filing.

(f) **Conduct of Inquiry of Complaints by the State Board.** – The State Board shall conduct an inquiry into all complaints properly before the State Board in a timely manner. The State Board shall initiate an inquiry into a complaint within 10 business days of the filing of the complaint. The State Board is authorized to initiate inquiries upon request of any member of the State Board if there is reason to believe that a covered person or legislative employee has or may have violated this Subchapter. State-Board-initiated complaint inquiries under this section shall be initiated within two years of the date the State Board knew of the conduct upon which the complaint is based, except when the conduct is material to the continuing conduct of the duties in office. In determining whether there is reason to believe that a violation has or may have occurred, a member of the State Board may take general notice of available information even if not formally provided to the State Board in the form of a complaint. The State Board may utilize the services of a hired investigator when conducting inquiries.

(g) **Covered Person and Legislative Employees Cooperation With Inquiry.** – Covered persons and legislative employees shall promptly and fully cooperate with the State Board in any State-Board-related inquiry. Failure to cooperate fully with the State Board in any inquiry shall be grounds for sanctions as set forth in G.S. 163A-415.

(h) **Dismissal of Complaint After Preliminary Inquiry.** – The State Board shall conclude the preliminary inquiry within 20 business days. The State Board shall dismiss the complaint, if at the end of its preliminary inquiry the State Board determines that any of the following apply:

- (1) The individual who is the subject of the complaint is not a covered person or legislative employee subject to the State Board's jurisdiction and authority under this Subchapter.

- (2) The complaint does not allege facts sufficient to constitute a violation within the jurisdiction of the State Board under subsection (c) of this section.
- (3) The complaint is determined to be frivolous or brought in bad faith.
- (i) State Board Inquiries. – If at the end of its preliminary inquiry, the State Board determines to proceed with further inquiry into the conduct of a covered person or legislative employee, the State Board shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the inquiry and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the State Board.
- (j) Action on Inquiries. – The State Board shall conduct inquiries into complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:
 - (1) For public servants, decide to proceed with a hearing under subsection (k) of this section.
 - (2) For legislators, except the Lieutenant Governor, refer the complaint to the Committee.
 - (3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, to the senior resident superior court judge of the district or county for complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.
 - (4) For legislative employees, refer the complaint to the employing entity.
- (k) Hearing. –
 - (1) The State Board shall give full and fair consideration to all complaints received against a public servant. If the State Board determines that the complaint cannot be resolved without a hearing, or if the public servant requests a hearing, a hearing shall be held.
 - (2) The State Board shall send a notice of the hearing to the complainant, and the public servant. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.
 - (3) The State Board shall make available to the public servant or that public servant's private legal counsel all documents or other evidence which are intended to be presented at the hearing to the State Board or which a reasonable person would believe might exculpate the accused public servant at least 30 days prior to the date of the hearing held in connection with the investigation of a complaint. Any documents or other evidence discovered within less than 30 days of the hearing shall be furnished as soon as possible after discovery but prior to the hearing.
 - (4) At any hearing held by the State Board:
 - a. Oral evidence shall be taken only on oath or affirmation.
 - b. The hearing shall be open to the public, except for matters involving minors, personnel records, or matters that could otherwise be considered in closed session under G.S. 143-318.11. In any event, the deliberations by the State Board on a complaint may be held in closed session.

- c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

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

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

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

(n) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the State Board shall provide written notice of the dismissal to the individual who filed the complaint and the covered person or legislative employee against whom the complaint was filed. The State Board shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, against legislative employees to the employing entity for legislative employees, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court. The State Board shall also forward a copy of the notice of dismissal to the employing entity of the covered person against whom a complaint was filed if the employing entity received a copy of the complaint under subdivision (5) of subsection (e) of this section. Except as provided in subsection (p) of this section, the complaint and notice of dismissal are confidential and not public records.

(o) Reports and Records. – The State Board shall render the results of its inquiry in writing. When a matter is referred under subdivision (j)(2) and (3), or subsection (m) of this section, the

State Board's report shall consist of the complaint, response, and detailed results of its inquiry in support of the State Board's finding of a violation under this Subchapter.

(p) Confidentiality. – Complaints and responses filed with the State Board and reports and other investigative documents and records of the State Board connected to an inquiry under this section, including information provided pursuant to G.S. 147-64.6B or G.S. 147-64.6(c)(19), shall be confidential and not matters of public record, except as otherwise provided in this section or when the covered person or legislative employee under inquiry requests in writing that the complaint, response, and findings be made public. Once a hearing under this section commences, the complaint, response, and all other documents offered at the hearing in conjunction with the complaint, not otherwise privileged or confidential under law, shall be public records. If no hearing is held at such time as the State Board reports to the employing entity a recommendation of sanctions, the complaint and response shall be made public.

(q) Staff to the State Board may share with staff to the Committee information connected to an inquiry into the conduct of a legislator under this section. The State Board shall provide to the Committee copies of all reports, investigative documents, information, and other documents used by the State Board when it refers a complaint to the Committee under subdivision (2) of subsection (j) of this section. Upon written request by staff to the Committee, the State Board shall provide copies of all reports, investigative documents, information, and other documents used by the State Board when it dismisses a complaint against a legislator under subsection (n) of this section. The information and documents provided to the Committee and staff to the Committee and the written request provided to the State Board are confidential and are not public records as defined in G.S. 132-1.

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

- (1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for a public servant as set forth in Article 7 of this Chapter, including those dealing with conflicts of interest.
- (2) The number of ethics violations.
- (3) The severity of the ethics violations.
- (4) Whether the ethics violations involve the public servant's financial interest.
- (5) Whether the ethics violations were inadvertent or intentional.
- (6) Whether the public servant knew or should have known that the improper conduct was a violation of this Subchapter.
- (7) Whether the public servant has previously been advised or warned by the State Board.
- (8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the State Board's Statement of Economic Interest evaluation letter issued under G.S. 163A-189(e).
- (9) The public servant's motivation or reason for the improper conduct or action, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the State Board determines, after proper review and investigation, that sanctions are appropriate, the State Board may recommend any

action it deems necessary to properly address and rectify any violation of this Subchapter by a public servant, including removal of the public servant from the public servant's State position. Nothing in this subsection is intended, and shall not be construed, to give the State Board any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(s) Authority of Employing Entity. – Any action or failure to act by the State Board under this Subchapter, except G.S. 163A-157, shall not limit any authority of any of the applicable employing entities to discipline the covered person or legislative employee.

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

(u) Reports. – The number of complaints referred under this section shall be reported under G.S. 163A-154(a)(12).

(v) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission. (2006-201, s. 1; 2007-348, ss. 27-30; 2008-187, s. 21; 2008-213, ss. 1(b), 57; 2008-215, ss. 4, 5; 2009-549, ss. 9, 10, 11; 2010-169, s. 23(a)-(e), (h); 2012-182, s. 3; 2017-6, ss. 3, 5(e).)

§ 163A-157. Request for advice.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a public servant or legislative employee, legal counsel for any public servant or legislative employee, any ethics liaison under G.S. 163A-158, or any member of the State Board, the State Board shall render advice on specific questions involving the meaning and application of this Subchapter and the public servant's or legislative employee's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(b) On its own motion, the State Board may render advisory opinions on specific questions involving the meaning and application of this Subchapter.

(c) A request for a formal advisory opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The State Board shall issue formal advisory opinions having prospective application only. A public servant or legislative employee who relies upon the advice provided to that public servant or legislative employee on a specific matter addressed by the requested formal advisory opinion shall be immune from all of the following:

(1) Investigation by the State Board, except for an inquiry under G.S. 163A-156(c)(3).

(2) Any adverse action by the employing entity.

(d) At the request of a legislator, the State Board shall render advice on specific questions involving the meaning and application of this Subchapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(e) A request by a legislator for a recommended formal advisory opinion shall be in writing, electronic or otherwise. The State Board shall issue recommended formal advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, a legislator who relies upon the advice provided to that legislator on a specific matter addressed by the requested recommended formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the Committee or State Board, except for an inquiry under G.S. 163A-156(c)(3).
- (2) Any adverse action by the house of which the legislator is a member.

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

(f) At the request of the Auditor, the State Board shall render advisory opinions on specific questions involving the meaning and application of this Subchapter, Article 14 of Chapter 120 of the General Statutes, and Article 8 of this Chapter and an affected person's compliance therewith. The request shall be in writing, electronic or otherwise, and relate to real fact settings and circumstances. Except when the question involves a question governed by subsection (d) or (e) of this section, the State Board shall issue an advisory opinion under this subsection within 60 days of the receipt of all information deemed necessary by the State Board to render an opinion. If the question involves a question governed by subsection (d) or (e) of this section, the State Board shall comply with the provisions of that section [subsection] prior to responding to the Auditor by delivering the recommended advisory opinion to the Committee within 60 days of the receipt of all information deemed necessary by the State Board to render an opinion. The Committee shall act on the opinion within 30 days of receipt and the State Board shall deliver the opinion to the Auditor. If the Committee fails to act on a recommended advisory opinion under this subsection with 30 days of receipt, the State Board shall deliver its recommended advisory opinion to the Auditor. Notwithstanding G.S. 163A-157(i), the Auditor may only release those portions of the advisory opinion necessary to comply with the requirements of G.S. 147-64.6(c)(1).

(g) Staff to the State Board may issue advice, but not formal or recommended formal advisory opinions, under procedures adopted by the State Board.

(h) The State Board shall publish its formal advisory opinions within 30 days of issuance. These formal advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting formal advisory opinions. When the State Board issues a recommended formal advisory opinion to a legislator under subsection (e) of this section, the State Board shall publish only the edited formal advisory opinion of the Committee within 30 days of receipt of the edited opinion from the Committee.

(i) Except as provided under subsections (f), (h) and (j) of this section, a request for advice, any advice provided by State Board staff, any formal or recommended formal advisory opinions, any supporting documents submitted or caused to be submitted to the State Board or State Board staff, and any documents prepared or collected by the State Board or State Board staff in connection with a request for advice are confidential. The identity of the individual making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual who requests advice or receives advice, including a formal or recommended formal advisory opinion, may authorize the release to

any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

(j) Staff to the State Board may share all information and documents related to requests for advice, made by legislators under this section with staff to the Committee. The information and documents in the possession of staff to the Committee are confidential and are not public records.

(k) This section shall apply to judicial officers only for advice related to Article 6 of this Chapter.

(l) Requests for advice may be withdrawn by the requestor at any time prior to the issuance of the advice. (2006-201, s. 1; 2007-348, s. 31; 2008-213, ss. 2(b), 91.5; 2008-215, s. 6; 2009-570, s. 17; 2010-169, s. 17(p); 2016-125, 4th Ex. Sess., s. 3(e); 2017-6, ss. 2, 3, 5(f).)

§ 163A-158. Ethics education program.

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

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

(c) A public servant appointed to a board determined and designated as nonadvisory under G.S. 163A-154(a)(3) shall attend an ethics presentation approved by the State Board within six months of notification of the designation by the State Board and at least every two years thereafter in a manner as the State Board deems appropriate.

(d) The State Board, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the State Board and the Committee deem appropriate. Every legislator shall participate in an ethics presentation approved by the State Board and Committee within two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. Every legislative employee shall participate in an ethics presentation approved by the State Board and Committee within three months of employment, and shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the State Board and Committee deem appropriate.

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

(f) Each agency head shall designate an ethics liaison who shall maintain active communication with the State Board on all agency ethical issues. The ethics liaison shall attend ethics education and awareness programs as provided under this section and lobbying education

and awareness programs as provided under G.S. 163A-253 and continuously assess and advise the State Board of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the State Board as to their appropriate resolution.

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

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

(i) This section shall not apply to judicial officers. (2006-201, s. 1; 2007-347, s. 9(a); 2008-213, ss. 59, 60; 2009-10, s. 4; 2009-549, s. 12; 2010-169, s. 22(a); 2017-6, s. 3.)

§ 163A-159. Duties of heads of State agencies.

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

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

(c) When an actual or potential conflict of interest is cited by the State Board under G.S. 163A-189(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Subchapter.

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

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

(f) The head of each State agency, including the chair of each board subject to this Subchapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Subchapter, including the Ethical Standards for Covered

Persons set forth in Article 7 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the State Board, seek the State Board's assistance or advice, and refer public servants and others to the State Board as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Subchapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 163A-158 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Subchapter. Agency heads and board chairs may request reasonable assistance from the State Board in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Subchapter, all agency heads and board chairs shall (i) notify the State Board of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Subchapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment, or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the State Board's staff. (2006-201, s. 1; 2007-347, s. 9(b); 2008-213, ss. 61, 62; 2017-6, s. 3.)

§ 163A-160: Reserved for future recodification.

§ 163A-161: Reserved for future recodification.

§ 163A-162: Reserved for future recodification.

§ 163A-163: Reserved for future recodification.

§ 163A-164: Reserved for future recodification.

§ 163A-165: Reserved for future recodification.

§ 163A-166: Reserved for future recodification.

§ 163A-167: Reserved for future recodification.

§ 163A-168: Reserved for future recodification.

§ 163A-169: Reserved for future recodification.

§ 163A-170: Reserved for future recodification.

§ 163A-171: Reserved for future recodification.

§ 163A-172: Reserved for future recodification.

§ 163A-173: Reserved for future recodification.

§ 163A-174: Reserved for future recodification.

§ 163A-175: Reserved for future recodification.

§ 163A-176: Reserved for future recodification.

§ 163A-177: Reserved for future recodification.

§ 163A-178: Reserved for future recodification.

§ 163A-179: Reserved for future recodification.

§ 163A-180: Reserved for future recodification.

§ 163A-181: Reserved for future recodification.

§ 163A-182: Reserved for future recodification.

§ 163A-183: Reserved for future recodification.

§ 163A-184: Reserved for future recodification.

§ 163A-185: Reserved for future recodification.