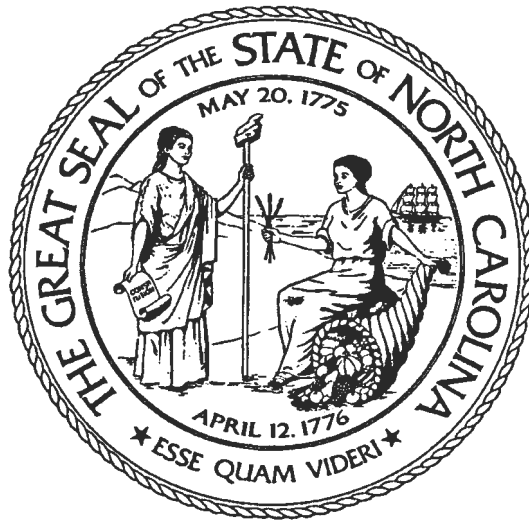


**LEGISLATIVE  
RESEARCH COMMISSION**

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**GOVERNMENTAL ETHICS AND LOBBYING**



**REPORT TO THE  
1993 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



January 15, 1993

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on Governmental Ethics and Lobbying. The report was prepared by the Legislative Research Commission's Committee on Governmental Ethics and Lobbying pursuant to Sections 2.5 and 2.6 of Chapter 754 of the 1991 Session Laws.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel T. Blue, Jr.", written over a horizontal line.

Daniel T. Blue, Jr.  
Speaker of the House

A handwritten signature in cursive script, appearing to read "Henson P. Barnes", written over a horizontal line.

Henson P. Barnes  
President Pro Tempore

Cochairmen  
Legislative Research Commission

1991-1992

LEGISLATIVE RESEARCH COMMISSION

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the Senate  
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## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1991 General Assembly and the cochairs of the Legislative Research Commission, the Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Governmental Ethics and of Lobbying was authorized by Section 2.5 and 2.6 of Chapter 917 of the 1991 Session Laws. That act states that the Commission may consider Senate Bill 259 of the 1991 Session, in determining the nature, scope and aspects of the governmental ethics study. The relevant portions of Chapter 917 are included in Appendix A. The Legislative Research Commission grouped this study in its Ethics, Lobbying, and Elections area under the direction of Representative Frank E.

Rhodes. The Committee was chaired by Senator Fountain Odom and Representative Marie Colton. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



## COMMITTEE PROCEEDINGS

The Committee on Governmental Ethics and Lobbying (hereafter "Committee") held six meetings. Midway through its work, the Committee appointed a subcommittee to expedite the Committee's work. The subcommittee held an additional three meetings.

Committee and subcommittee meetings were attended by members of the public, governmental officials, members of the press, lobbyists, and other interested groups. Among those making presentations before the Committee, its subcommittee, or both, were representatives of the following North Carolina governmental agencies -- the Office of the Governor, the Attorney General's Office, the North Carolina Board of Ethics, the Office of the Secretary of State, the Department of Environment, Health and Natural Resources, the Environmental Management Commission, the Administrative Rules Review Commission, the Banking Commission, and The University of North Carolina; administrators of the state ethics agencies of the States of Massachusetts and Ohio; representatives of local governmental organizations -- the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities; and officers and members of Common Cause of North Carolina.

A list of those mailed notices of meetings is attached as Appendix C. Lists of those attending the meetings of the Committee and its subcommittee, as well as the minutes of those meetings are contained in the Committee's records on file in the Legislative Library.

### February 15, 1992 Meeting

At its organizational meeting on February 15, 1992, the Committee first reviewed its study charge. Senator Odom explained that, with regard to one of the issues to be studied, lobbying legislation had been enacted in the prior year and that its implementation should be reviewed to determine and resolve any difficulties with it.

Mr. Sullivan, one of the counsels to the Committee, briefed the Committee on the present laws and structure relating to governmental ethics in North Carolina. He noted that for the last few years his office had distributed to legislators and had made available to the general public a publication entitled **Ethical Considerations in State Government**. The booklet, which is available in the Legislative Library, sets forth the regulatory structure for ethics for all three branches of State Government, with particular emphasis on the Legislative Branch.

He indicated that each branch has some regulatory structure in place to resolve ethical issues affecting that branch. The General Assembly has its Legislative Ethics Act, established by Article 14 of Chapter 120 of the General Statutes, which is overseen by the Legislative Ethics Committee, as well as the chambers themselves. The Supreme Court and the inferior courts have the Judicial Standards Commission, established by G.S. 7A-375, and the Code of Judicial Conduct. The North Carolina Board of Ethics was established to prevent the occurrence of conflicts of interest and to deal with these conflicts when they occur. Only certain executive officers and employees, primarily those under the Governor, are subject to the North Carolina Board of Ethics; although members of the Council of State may subject themselves and their employees to the Board. The legislative and executive ethics structures require certain persons to file statements of economic interest; the judicial branch structure

does not require statements of economic interest. Mr. Sullivan also outlined State and federal criminal statutes and State administrative rules that restrict the actions of State officials. He noted that the 1991 General Assembly required private, non-profit organizations to file notarized copies of their conflict of interest policies before any State funds may be disbursed to them.

Ms. Robin Johnson, the other counsel to the Committee, presented an overview of governmental ethics legislation in other states. A copy of her remarks is attached in Appendix D. In responding to a question, Ms. Johnson pointed out that 25 States have some nepotism policy in force. The Legislative Services Commission of the North Carolina General Assembly has an anti-nepotism policy for joint permanent legislative employees, and the State Personnel Manual sets forth the policy for employees subject to the State Personnel Act.

Senator George Daniel was then recognized to explain the history and purpose behind Senate Bill 259 of the 1991 Session, which he introduced. He said that he had been approached by Ms. Jane Gray of the Attorney General's Office, who shared with him a number of newspaper articles dealing with alleged ethical issues which had arisen in recent years. Senator Daniel explained that he introduced the bill to focus attention on the question of the need for a uniform code of conduct for public officials and employees. He suggested that his bill might be a good starting point for the Committee's deliberations on the issue.

Ms. Jane Gray, a Deputy Attorney General, was next recognized and spoke to the need for the adoption of ethical codes for State and local governmental officials and employees in North Carolina. She suggested that the Committee come up with at least

minimum standards -- a framework within which local governments could operate and develop more fully their own codes.

Ms. Millie Donavant, Administrative Assistant for the North Carolina Board of Ethics, was recognized to speak to the history and functioning of the Board, and to respond to Senate Bill 259. She explained that the Board's primary responsibility is to review 3400 financial disclosure statements annually and to advise the Governor as to any conflicts of interests. The Governor must effectuate any possible discipline, such as removal from an appointment. A copy of Ms. Donavant's remarks is attached as Appendix E.

Next, Mr. James Blackburn III, General Counsel for the North Carolina Association of County Commissioners, was recognized to discuss the need for codes of ethical conduct for local governmental officials in the State. Currently, he stated, there is no mandatory code of conduct for these officials. As a result of a growing interest in the past three years, however, the Association drafted a model code of ethics for county commissioners, which was first presented in 1991. A copy of the code is attached as Appendix F. This code attempts to emphasize the legitimacy of the advocacy function and the role that local elected officials play in advocating the interests with which they come to office. There are now 30 to 60 counties which have adopted an ethics code that applies to their respective boards of county commissioners or to the boards and their staff.

Mr. Ellis Hankins, General Counsel to the North Carolina League of Municipalities, was recognized next to present the League's position on the need for a mandatory code of ethics. He cautioned that the League and local officials are concerned with some of the original provisions of Senate Bill 259. He suggested that

the bill was overly stringent and might result in unintended consequences because it is already difficult to serve as a local elected official. He stated that the League believes that an ethical code should act as a minimum standard and should apply to members of the General Assembly in addition to local elected officials. Mr. Hankins also suggested that each governmental body be directed to adopt an ethics code that is appropriate for the local circumstances and that that body sit as the local ethics committee. He enumerated the following topics that should be considered in the development of an ethics code: disqualification from voting due to a financial conflict, gifts, donations for government meetings, representation of another before the governing body, use of official position for private gain, falsification of expense reports, participation in public business in the face of a financial interest, employment of consultants with financial conflicts, use of confidential information, disclosure statements, nepotism, procedures for investigation of potential violations, and remedies. He remarked that today there is some confusion in the law concerning whether a governing body, such as a city council or board of county commissioners, can involuntarily excuse a member from voting on a matter because it decides the member has a financial interest in the matter. Finally, he distributed a list of ethical situations that can arise with local elected officials. A copy of this checklist is attached as Appendix G.

The Committee discussed the presentations and determined that it would opt for a uniform, State-wide ethics code that would permit some local flexibility. It also considered whether all elected officials should be required to file economic disclosure statements in a uniform manner, similar to the procedure currently in effect for candidates for the General Assembly.

### March 24, 1992 Meeting

The Committee's second meeting began with a presentation by Mr. David Springer, a retired lawyer and former federal law judge. Mr. Springer discussed eight essentials for an ethics bill and submitted a proposed ethics bill. He stated that the bill would establish enforceable ethical standards and would give the existing State Board of Ethics the power to enforce its decisions. A copy of Mr. Springer's proposal is attached as Appendix H.

Next, the Chair recognized the Honorable Rufus L. Edmisten, Secretary of State, who responded to the 1991 changes to the lobbying law. Secretary Edmisten praised the high caliber of North Carolina lobbyists, and explained that the 1991 changes had caused some concern, particularly with what lobbyists should report. The position of his Office has been to encourage lobbyists to report, even if in doubt. He noted that the 1991 changes gave his Office greater discretion by authorizing it to issue rules. He commented, however, that he believes most questions need to be addressed on a case-by-case basis, rather than via uniform rules, which would cover everybody equally.

Mr. Richard Carlton, Chief Deputy Secretary of State, was recognized next to address some of the concerns with the 1991 changes. He explained that it remains difficult for the Office to enforce "goodwill lobbying" and urged the Committee to expand the definition of lobbying to include it. A copy of his remarks is attached as Appendix I.

Three registered lobbyists, Mr. Sam H. Johnson, Mr. John B. McMillan, and Mr. Bill Holman, were recognized to present their viewpoints concerning the 1991 changes to the lobbying law and to suggest improvements. Mr. Johnson, an attorney, disagreed with Mr. Carlton and emphasized his belief that expenditures made in connection with

"goodwill lobbying" clearly is reportable under the existing law. A copy of Mr. Johnson's remarks is attached as Appendix J. Mr. McMillan, an attorney, reacted to the change that requires lobbyists to report what they are paid for lobbying. He stated that the real issue is whether it is important for anyone other than tax authorities to know how much lobbyists bill their clients. He believes that that provision of the law requires the reporting of a very, very small percentage of lobbyists' wages or retainers and, therefore, is meaningless and should be repealed. Mr. Holman, who represents Sierra Club, recommended to the Committee that it consider expanding the lobbying law to cover lobbyists who lobby the executive branch of State government. He also commented on the need for a state ethics law.

Mr. Charles Baker, Chair of the Environmental Management Commission, Judge Joseph J. DeLuca, Jr., acting Director of the Administrative Rules Review Commission, and Mr. Harlan Britt, Deputy Director of the Department of Environment, Health and Natural Resources, Division of Environmental Management, were introduced next. Mr. Baker detailed how citizens approach members of a State Commission: (1) they testify, give evidence, or put forth an argument; (2) they appear at public hearings; (3) they write to the Commission; and (4) they make personal contact by telephone or in person. These three presenters argued that there is no need to expand the coverage of the lobbying law to those who lobby the executive branch because, in their opinions, it makes no difference who a person represents or if and how much that person is compensated; what matters the most is the substance and quality of an argument or presentation. A copy Judge DeLuca's remarks is attached as Appendix K.

April 28, 1992 Meeting

Mr. Sullivan was recognized to explain several handouts: (1) letters inviting Ms. Melissa A. Warheit, Executive Director of the Ohio Ethics Commission, and to Mr. Andrew Crane, Executive Director of the Massachusetts State Ethics Commission, to make presentations before the Committee; (2) Committee Considerations; and (3) Provisions Found in a Sampling of Other States' Personal Disclosure Statements that are not Used in North Carolina. Copies of these handouts are included in Appendices L, M, N, and O, respectively.

Mr. Sullivan then introduced Ms. Warheit, Executive Director of the Ohio Ethics Commission, who was invited to appear before the Committee to share Ohio's experience with a state ethics code. After giving the history and the make-up of the Ohio Ethics Commission, Ms. Warheit explained that Ohio's ethics code is uniform and comprehensive in that it applies to all three branches of State government and to local governments. It is also a criminal code. Interpretation and enforcement of the code is carried out by the Commission in connection with the executive branch and the localities, and by three other entities that deal with the judicial branch and each house of the General Assembly. The law makes no distinction between full- and part-time employees or between compensated and noncompensated positions. The only exception is for people who serve on purely advisory bodies where they have no discretion or decision-making authority. Additionally, the contents of some financial disclosure statements (for example, those of the members of The Ohio State University Board of Trustees) are not made public.

The Ohio Ethics Commission has four areas of responsibility: (1) public education and information; (2) review of financial disclosure statements; (3) advisory opinions;



and (4) investigation of violations. People who receive advisory opinions are immunized from civil or criminal liabilities and removal from office action. The Commission does not have prosecutorial power; it must refer a matter to the local prosecutor if it finds, by a preponderance of the evidence, that a violation has occurred. All information concerning a complaint, investigation, or hearing must be kept confidential. However, the issue of confidentiality is one with which the Commission currently is struggling.

The Commission's current 1992 budget is \$652,000 and the 1993 budget is \$671,000, all of which is appropriated by the General Assembly. In addition to an Executive Director and an Associate Director, the Commission has a staff of 15. Due to budgetary constraints, however, the Commission is understaffed and is backlogged by more than 300 pending investigations and over 500 pending advisory opinions, which has harmed its reputation. The Commission presently is looking at other potential sources of revenue, such as filing fees for financial disclosure forms, civil penalties that the Commission could retain, the authority to recover the costs of an investigation from those who are convicted, and forfeiture of illegally received profits or benefits.

Ms. Warheit noted that disclosure is a cornerstone of any ethics code, but that it is not enough. Clear standards are needed that apply to everyone. She also emphasized that any mandates must be funded adequately and that an ethics commission, if established in North Carolina, should be given sufficient independence in order to be effective and to be perceived as effective.

Next, Mr. Sullivan introduced Mr. Andrew Crane, Executive Director of the Massachusetts State Ethics Commission who was invited to appear before the

Committee to discuss his state's experience with an ethics code. Mr. Crane began by giving a brief history of the Commission and the ethics law in Massachusetts. He explained that Massachusetts uses a civil enforcement model, as opposed to Ohio's criminal enforcement model. However, the law provides for criminal penalties and allows for concurrent investigation with the Attorney General or a district attorney. The maximum civil penalty that the Commission can impose is \$2000, which he stated was too low -- many states have a maximum \$10,000 fine.

Massachusetts is similar to Ohio in that it also has a uniform and comprehensive system, except that the Commission has jurisdiction over everyone, including people in the legislature and the judiciary. He noted the difficulty with having jurisdiction over the legislature because it results in budget difficulty for the Commission. Mr. Crane also explained that there is a special provision for small communities that permits town counselors to designate certain individuals, such as members of the town's zoning board, as "special municipal employees." This designation allows these individuals to appear before any municipal board, other than the one of which they are members, and to contract with any department or agency other than their own.

Mr. Crane reviewed the Commission's four areas of responsibility: (1) advisory; (2) education; (3) financial disclosure; and (4) civil enforcement. Financial disclosure forms are public, but any person who reviews a form must sign a form that identifies and states the affiliation of that person. A copy of this form is sent to the public official whose statement is being inspected.

Massachusetts has 600-900 complaints annually, of which about 80% is at the municipal level. Investigations are completed on 200-300 cases, of which the Commission decides to resolve 30-40 publicly. At this point, most people opt to settle

the case with a "disposition agreement," which enumerates the facts, the applicable law, and the fine. The Commission holds very few hearings. The investigations are confidential until reasonable cause is found, at which time they become public and the hearings are public.

Even with a staff of 22, Mr. Crane observed that the Commission currently is understaffed and has a backlog. It currently takes 30-40 days to issue an advisory opinion; the goal is 10 days. The investigations are backlogged even more. He stressed that the Commission does have some discretion, based on precedent, as to which cases to investigate. He observed that the Commission is funded currently at \$900,000, of which 90% is personnel. It is asking for an additional \$125,000 for fiscal 1993.

Mr. Charles Cromer, Legislative Counsel in the Office of the Governor, and Dr. Jay M. Robinson, Vice President for Public Affairs for The University of North Carolina, were recognized to discuss lobbying from their perspectives as legislative liaisons. Mr. Cromer made the following recommendations: (1) extend the lobbying law to cover lobbyists who lobby the regulators, i.e., the executive branch; (2) explore the use of privately retained lobbyists who lobby on behalf of a State or other public entity; (3) adopt a statutory code mandating financial disclosure from all officials and employees who exercise discretion of the State and all appointees to boards; (4) establish a full-time board, either in the Governor's Office or free-standing, with the power to adopt rules, investigate, and enforce; (5) include all public, elected or appointed, officials in all three branches of State government and in local government; (6) consolidate all the laws that are scattered throughout the General Statutes; (7) impose a general prohibition on the receipt of honorariums, such as in Florida; (8)

mandate ethics training; and (9) prohibit gifts to all elected officials and State employees, or set a dollar limit.

Next, representatives of Common Cause - North Carolina, Ms. Patricia Watts, Executive Director, and Mr. Jeffrey B. Parsons, State Chair, were recognized to present Common Cause's position on ethics and lobbying issues under consideration by the Committee. Copies of their remarks are included in Appendices P and Q, respectively.

The Chairs announced at this time that they would appoint a subcommittee to produce draft legislation for the next meeting, which would be after the Short Session of the 1991 General Assembly.

#### October 7, 1992 Subcommittee Meeting

The subcommittee, chaired by Senator Howard Lee and including Senators Betsy Cochrane and George Daniel, and Representatives Richard Morgan and Wade Wilmoth, met to review and discuss the provisions of a draft ethics bill. The draft legislation was based on a draft of a bill that was prepared earlier for Representative Frank Rhodes, who offered his draft to the Committee to use as a starting point for discussion. After the review of the draft legislation, the subcommittee decided to recommend the draft to the full committee for its consideration.

#### October 7, 1992 Meeting

Senator Howard Lee was recognized to present the draft ethics bill that had been considered by the subcommittee. The Chairs recognized representatives from the following organizations to comment on this version of the draft bill: Office of Attorney General, Board of Ethics, Banking Commission, N.C. Association of County

Commissioners, Common Cause of North Carolina, and N.C. League of Municipalities. After a lengthy discussion, the Committee asked the staff to make a number of changes, including the following: (1) remove the exemption for the General Assembly and the judicial branch, except for those individuals who are subject to the Judicial Code of Conduct; (2) include public officials and employees in local governments, but set threshold sizes for municipalities and counties; (3) include civil penalties; (4) distinguish between gifts and honoraria; and (5) review all the thresholds. The Chairs asked the Subcommittee to meet before the next full Committee meeting to discuss the revised draft and to review a draft lobbying bill.

#### November 6, 1992 Subcommittee Meeting

The subcommittee reviewed the amended draft ethics bill and a draft lobbying bill, which was based on recommendations from the Secretary of State's Office. The subcommittee heard comments on both proposed bills from representatives of the following organizations: Office of Attorney General, Office of Secretary of State, Board of Ethics, North Carolina Press Association, Common Cause of North Carolina, N.C. Association of County Commissioners, The University of North Carolina, and N.C. League of Municipalities. Copies of letters sent to the subcommittee in response to the drafts are attached as Appendix R.

The subcommittee suggested several changes to the drafts. The more substantive changes include the following: (1) balance the need for confidentiality at the initial stage of an investigation against the need to make public full investigations and any hearings; (2) require the Commission, if established, to include written findings of fact; and (3) expand the list of people who should file statements of economic interests and

give Commission discretionary authority to further expand this list or to exclude others. Senator Lee announced that the subcommittee would meet one more time to review these changes, in order to make its recommendation to the Committee.

#### November 30, 1992 Subcommittee Meeting

The subcommittee reviewed and discussed the latest changes to the ethics and lobbying draft legislation. After its discussion, the subcommittee authorized its chair, Senator Lee, to recommend the drafts to the full Committee.

#### November 30, 1992 Meeting

At its fifth meeting, Senator Lee, on behalf of the subcommittee, recommended the proposed ethics bill, as amended, but raised the issue of whether there should be an exemption for entities that adopt their own ethics codes. He also reported out the proposed lobbying bill, with reservations concerning the goodwill provisions.

The Committee first reviewed and discussed the proposed lobbying bill, which would extend the registration and reporting requirements to lobbyists of the executive branch of State government and would require lobbyists to report personal expenses. Mr. Richard Carlton, Chief Deputy Secretary of State, and Ms. Susan Coward, who is in the Office of the Secretary of State, voiced their support of extending the registration and reporting requirements to executive branch lobbyists. However, neither approved the personal expense reporting requirement. Mr. Carlton also noted that his office would need additional personnel if the law is extended to executive branch lobbying. Mr. Hugh Stevens, General Counsel - NC Press Association, discussed the constitutional issues associated with extending lobbyist regulation to "goodwill"

lobbying. He believes that, constitutionally, there is a time when a person stops being a lobbyist, and that the broader the language is, the more likely it is to be unconstitutional.

The Committee approved the extension of the lobbying law to lobbyists of the executive branch, but rejected the goodwill provisions, including the requirement that lobbyists would have to file personal expense reports.

The Committee then reviewed the latest draft of the proposed ethics bill. After much discussion, the Committee voted to recommend the proposed legislation along with the following changes: (1) amend the section dealing with representation before employing entities; (2) apply the same standard to the Department of Community Colleges as to The University of North Carolina in Article 4 -- Public Disclosure of Economic Interests; and (3) require candidates to file statements of economic interests.

The chairs directed staff to prepare a draft report for its next meeting that would include draft legislation reflecting the suggested changes.

#### January 5, 1993 Meeting

The Committee met a final time on January 5, 1993. The Committee reviewed and approved its final report, with changes, to the Legislative Research Commission.

## FINDINGS

The Legislative Research Commission's Committee on Governmental Ethics and Lobbying and its subcommittee having met nine times and having heard presentations from officials in this State; other state's officials, who administer governmental ethics structures; lobbyists; representatives of North Carolina local governments; Common Cause of North Carolina, Inc.; and private citizens makes the following findings:

1. Good government continues to be a tradition in North Carolina. State and local officials and employees, for the most part, perform their respective duties ethically, above reproach, and in the public interest.
2. Despite the good government tradition, many citizens have lost their faith in governmental officials and employees generally.
3. The complexity of government at the State and local levels and the distance between officials and the citizenry sometimes result in unethical behavior or conflicts of interest or in their appearance.
4. Both the State and local governments in North Carolina have recognized the need for frameworks and structures to address and dispose of ethical questions raised both by public officials and employees, themselves, and by private citizens about acts or omissions by these officials and employees. The State government has recognized this need by establishment of the



Legislative Ethics Act, the North Carolina Board of Ethics for the Executive Branch, and the Judicial Standards Commission. Individually, certain municipal and county governments in North Carolina have adopted ethics standards and procedures for their officials and employees. These ethical structures serve to buttress public confidence in their government.

5. Ethics structures also serve to educate governmental officers and employees as to areas of conflicts of interest and other ethical difficulties and to advise these individuals of acceptable methods of dealing with or avoiding these difficulties.
6. Ethics agencies have been established in some form or another by statute in 26 states. Some of these agencies only receive and process financial disclosure statements. Some states have ethics agencies which have jurisdiction over personnel in all three branches of State government. At least 19 states have ethics agencies that have jurisdiction over local governmental personnel, also.
7. Ethical standards, if adopted, should be uniform and comprehensive, applying equally to officials and employees in the three branches of State government and in local governments.
8. Ethical codes generally address the following issues: conflicts of interest, gifts and honoraria, post-government employment, nepotism, representation

of third parties before the governing body, use of confidential information, and disclosure of economic interests.

9. Currently, the North Carolina lobbying law requires lobbyists and their principals to register and file biannual expense reports with the Secretary of State when they are in the business of lobbying members of the General Assembly. In recent years, the practice of lobbying executive agencies has grown, and there is now a need to subject these lobbyists to the requirements of the lobbying law.

## RECOMMENDATIONS

The Legislative Research Commission's Committee on Governmental Ethics and Lobbying recommends the following actions to the 1993 General Assembly:

1. The passage of a State Ethics Act to cover officers and employees, except judges and justices, of all branches of State government and of certain local governments, establish a State Ethics Commission, enumerate ethical standards, require public disclosure of economic interests, and make an appropriation for this purpose. A copy of the proposed act, a brief analysis of it, and a fiscal note are attached as Appendix S.
2. The passage of an act that would amend the present lobbying law, Article 9A of Chapter 120 of the General Statutes, by including those who lobby the executive branch of State government in the definition of lobbyist, by making other clarifying changes, and by making an appropriation for this purpose. A copy of the proposed act, a brief analysis of it, and a fiscal note are attached as Appendix T.

**APPENDIX A**  
**CHAPTER 754**  
**SENATE BILL 917**

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES, AND TO MAKE OTHER AMENDMENTS TO THE LAW.

**PART I.-----TITLE**

Section 1. This act shall be known as "The Studies Act of 1991."

. . .

**PART II.-----LEGISLATIVE RESEARCH COMMISSION**

Sec. 2.5. Lobbyist Regulation Study (Odom). The Legislative Research Commission may study the implementation of House Bill 89, if ratified. The study, if undertaken, may include the following issues:

- (1) Whether additional changes should be made in Article 9A of Chapter 120 of the General Statutes concerning lobbying and lobbyists;
- (2) Whether the law governing lobbying and lobbyists should be expanded to cover lobbying of the executive branch, including administrative agencies, boards and the Council of State; and
- (3) Lobbying in the General Assembly by State departments, agencies, boards, local governments, or other organizations.

Sec. 2.6. Governmental Ethics Study (S.B. 259 - Daniel). The Legislative Research Commission may study the advisability of, by law, adopting or authorizing the adoption of ethical codes for State and local governmental officials and employees in North Carolina. If the study is undertaken, the Commission may investigate:

- (1) The strengths and weaknesses of the present systems of helping to insure ethical conduct for administrative officials and employees at the State and local level;
- (2) Whether a single agency should be established to coordinate the State and local efforts at insuring ethical administrative conduct, or whether local government units should have a separate mechanism or mechanisms to accomplish this end;
- (3) If coordinating agency or agencies should be created or authorized:
  - a. The agency or agencies' duties and powers, including the authority to create codes of ethics for those officials and employees, and to advise those affected on the conformity of conduct to those codes;
  - b. Adequate standards on which to base these codes;
  - c. The public officials and employees who should be subject to the jurisdiction of the agency or agencies;
  - d. The sanctions, if any, which should attend the violation of an established ethical code; and

(4) Whether the present criminal law is adequate to cover grossly offensive unethical conduct.

Sec. 2.7. Committee Membership. For each Legislative Research Commission Committee created during the 1991-93 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.8. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1992 Regular Session of the 1991 General Assembly or the 1993 General Assembly, or both.

Sec. 2.9. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.10. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

#### PART XXI.-----EFFECTIVE DATE

Sec. 21.1. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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1

SENATE BILL 259

Short Title: State Ethics Code.

(Public)

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Sponsors: Senator Daniel.

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Referred to: State Personnel and State Government.

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March 25, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE AN ETHICS CODE FOR PUBLIC OFFICERS AND  
3 EMPLOYEES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Chapter 128 of the General Statutes is amended to add a new  
6 Article to read:  
7 "ARTICLE 5.  
8 "Code of Ethics and Standard of Conduct  
9 for Public Officers and Employees.  
10 "§ 128-50. Legislative intent and declaration of policy.  
11 (a) It is essential to the proper conduct and operation of government that public  
12 officials be independent and impartial and that public office not be used for private  
13 gain other than the remuneration provided by law. The public interest, therefore,  
14 requires that the law protect against any conflict of interest and establish standards  
15 for the conduct of public officials and employees in situations where conflicts may  
16 exist.  
17 (b) It is also essential that government attract those citizens best qualified to serve.  
18 Thus, the law against conflict of interest must be so designed as not to impede  
19 unreasonably or unnecessarily the recruitment and retention by government of those  
20 best qualified to serve. Public officials should not be denied the opportunity,  
21 available to all other citizens, to acquire and retain private economic interests except  
22 when conflicts with the responsibility of such officials to the public cannot be  
23 avoided.

1 (c) It is likewise essential that the people be free to seek redress of their  
2 grievances and express their opinions to all public officials on current issues and past  
3 or pending executive actions at every level of government.

4 (d) It is hereby declared to be the policy of the State that no officer or employee  
5 of a State agency or of a county, city, or other political subdivision of the State, shall  
6 have any interest, financial or otherwise, direct or indirect; engage in any business  
7 transaction or professional activity; or incur any obligation of any nature which is in  
8 substantial conflict with the proper discharge of his duties in the public interest. To  
9 implement this policy and strengthen the faith and confidence of the people of the  
10 State in their government, there is enacted a code of ethics setting forth standards of  
11 conduct required of State, county, and city officers and employees, and of officers  
12 and employees of other political subdivisions of the State, in the performance of their  
13 official duties. It is the intent of the General Assembly that this code shall serve not  
14 only as a guide for the official conduct of public servants in this State, but also as a  
15 basis for discipline of those who violate the provisions of this Article.

16 (e) It is further declared to be the policy of the State that public officers and  
17 employees, State and local, are agents of the people and hold their positions for the  
18 benefit of the public. They are bound to uphold the Constitution of the United  
19 States and the State Constitution and to perform efficiently and faithfully their duties  
20 under the laws of the federal, State, and local governments. Such officers and  
21 employees are bound to observe, in their conduct, the highest standards of ethics  
22 consistent with this code and the advisory opinions rendered with respect hereto  
23 regardless of personal considerations, recognizing that promoting the public interest  
24 and maintaining the respect of the people in their government must be of foremost  
25 concern.

26 **"§ 128-51. Definitions and exceptions.**

27 Unless provided otherwise or the context otherwise requires, the definitions  
28 contained in this section govern the construction of this Article.

29 (a) The term 'officer or employee' includes any person employed, appointed, or  
30 elected to a position of the State or local government or to a board or commission of  
31 the State or local government or agency thereof. The term excludes members of the  
32 General Assembly.

33 (b) The term 'State or local government' includes all departments, agencies,  
34 boards, commissions, institutions, bureaus, and authorities of the State or county,  
35 municipality or political subdivision thereof.

36 (c) The term 'personal or financial interest' shall include: (i) the affairs of any  
37 person in the officer's or employee's immediate household; (ii) the affairs of any  
38 corporation, business, firm, or organization in which he is an officer, partner,  
39 director, or substantial owner or shareholder; (iii) any matter with the governmental  
40 agency by any other person, business, firm, or organization in which the officer or  
41 employee, or a person, corporation, business, firm, or organization described in  
42 subdivisions (i) or (ii) has or anticipates a contract for the performance of work or  
43 other transaction for pecuniary gain with such corporation, business, firm, or  
44 organization, arising out of or by reason of the matter with the governmental agency;

1 (c) It is likewise essential that the people be free to seek redress of their  
2 grievances and express their opinions to all public officials on current issues and past  
3 or pending executive actions at every level of government.

4 (d) It is hereby declared to be the policy of the State that no officer or employee  
5 of a State agency or of a county, city, or other political subdivision of the State, shall  
6 have any interest, financial or otherwise, direct or indirect; engage in any business  
7 transaction or professional activity; or incur any obligation of any nature which is in  
8 substantial conflict with the proper discharge of his duties in the public interest. To  
9 implement this policy and strengthen the faith and confidence of the people of the  
10 State in their government, there is enacted a code of ethics setting forth standards of  
11 conduct required of State, county, and city officers and employees, and of officers  
12 and employees of other political subdivisions of the State, in the performance of their  
13 official duties. It is the intent of the General Assembly that this code shall serve not  
14 only as a guide for the official conduct of public servants in this State, but also as a  
15 basis for discipline of those who violate the provisions of this Article.

16 (e) It is further declared to be the policy of the State that public officers and  
17 employees, State and local, are agents of the people and hold their positions for the  
18 benefit of the public. They are bound to uphold the Constitution of the United  
19 States and the State Constitution and to perform efficiently and faithfully their duties  
20 under the laws of the federal, State, and local governments. Such officers and  
21 employees are bound to observe, in their conduct, the highest standards of ethics  
22 consistent with this code and the advisory opinions rendered with respect hereto  
23 regardless of personal considerations, recognizing that promoting the public interest  
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33 (b) The term 'State or local government' includes all departments, agencies,  
34 boards, commissions, institutions, bureaus, and authorities of the State or county,  
35 municipality or political subdivision thereof.

36 (c) The term 'personal or financial interest' shall include: (i) the affairs of any  
37 person in the officer's or employee's immediate household; (ii) the affairs of any  
38 corporation, business, firm, or organization in which he is an officer, partner,  
39 director, or substantial owner or shareholder; (iii) any matter with the governmental  
40 agency by any other person, business, firm, or organization in which the officer or  
41 employee, or a person, corporation, business, firm, or organization described in  
42 subdivisions (i) or (ii) has or anticipates a contract for the performance of work or  
43 other transaction for pecuniary gain with such corporation, business, firm, or  
44 organization, arising out of or by reason of the matter with the governmental agency;



1 and (iv) any person, firm, or organization with whom the officer or employee is  
2 negotiating or has an arrangement concerning prospective employment.

3 (d) The term 'substantial owner or shareholder' shall mean ten percent (10%) or  
4 more of the stock of a corporation or ten percent (10%) or more of the ownership in  
5 other business.

6 (e) The term 'person' shall include individuals as well as corporations, businesses,  
7 and organizations unless the context clearly shows to the contrary.

8 (f) For the purpose of this Article, the terms 'conflict of interest' and 'personal or  
9 financial interest' shall have no application to members of Occupational Licensing  
10 Boards while engaged in rule-making activities.

11 "§ 128-52. Conflict of interest.

12 (a) Gratuities Prohibited.

13 No officer or employee shall:

14 (1) Solicit or accept, directly or indirectly, any gift, gratuity,  
15 honorarium, favor, entertainment, loan, or any other thing of  
16 monetary value, from any person or corporation, or indirectly from  
17 any industry organization, which (i) has, or is seeking to obtain,  
18 contractual or other business or financial relationships with his  
19 agency; or (ii) conducts operations or activities which are regulated  
20 by his agency; and (iii) interests or activities may be affected by the  
21 performance or nonperformance of the duty of the officer or  
22 employee;

23 (2) Accept any money, loan, gift, favor, service, travel, entertainment,  
24 hospitality, or business or professional opportunity or other thing  
25 or promise that could reasonably tend to influence him in the  
26 performance of his official duty;

27 (3) Solicit, accept, or agree to accept, any gift, benefit, or anything of  
28 value for or because of any official act performed, except as  
29 otherwise provided by law for the discharge of official duty.

30 There is excepted from the prohibition of this subdivision, customary gifts or favors  
31 between employees or officers and their friends and relatives or the friends and  
32 relatives of their spouses, minor children, or members of their household, where it is  
33 clear that it is that relationship, rather than the position of the officer or employee  
34 concerned, that is the motivating factor for the gift or favor.

35 (b) Donations for Government Meetings Prohibited. Persons, firms and  
36 companies, and related industry organizations, doing business with or regulated by  
37 the agency shall not be solicited for donations for the purpose of providing  
38 entertainment, hospitality, gifts, and meals for conferences or meetings attended by  
39 the governmental agency's officers or employees. Persons, firms and companies, and  
40 related industry organizations, doing business with or regulated by the governmental  
41 agency, are prohibited from sponsoring meals, drinks, and entertainment at  
42 professional conferences or meetings of such governmental agency.

43 (c) Restrictions on Outside Employment of Present Employees. No officer or  
44 employee may be employed by or contract to do business for any contracting party of

1 or company doing business with the particular governmental body in which the  
2 employee is employed, except as authorized by the governmental agency after  
3 determining no potential conflict of interest will exist. Each governmental agency  
4 shall regulate outside employment for the purpose of eliminating potential conflicts of  
5 interest.

6 (d) Contemplated Official Action. No government officer or employee shall  
7 engage in any transaction in anticipation of a pecuniary benefit or intentionally aid  
8 another in such a transaction, in contemplation of official action by himself or by the  
9 governmental unit with which he is associated.

10 (e) Policy Against Representing Adverse Claim. No public officer or employee  
11 shall represent outsiders in connection with claims, applications, or other matters or  
12 proceedings before the governmental agency in which such public official or  
13 employee is employed.

14 **"§ 128-53. Official misconduct.**

15 (c) Use of Position or Influence for Private Gain or Unwarranted Privileges  
16 Prohibited. No employee or officer shall use or attempt to use his official position or  
17 influence to secure unwarranted privileges or advantages for himself or others or to  
18 profit, directly or indirectly, or to otherwise use his position for private gain for  
19 himself or others or a company with which he is affiliated or has a personal or  
20 financial interest in.

21 (d) Falsification of Records or Reports. No public officer or employee shall  
22 knowingly falsify or permit to be falsified, any public record or report or expense  
23 account.

24 (e) Participation in Agency Matters. No officer or employee shall participate,  
25 either directly or indirectly, in any matter of the agency in which the officer or  
26 employee has a personal or financial interest.

27 (f) Receipt of Consideration Prohibited. No officer or employee shall solicit, offer  
28 or accept any money or anything of value or or in consideration of (i) obtaining  
29 employment, appointment, or promotion of any person with any governmental  
30 agency, or (ii) influencing the outcome of any disciplinary action involving any  
31 person employed by the State or local government, or (iii) using his public position to  
32 obtain a contract for any person or business with any governmental agency.

33 (g) Interest in Agency Contracts Prohibited. Except as expressly authorized by  
34 G.S. 128-53(a), no officer or employee of any governmental agency of the State shall  
35 have a personal or financial interest in any contract with the governmental agency of  
36 which he is an officer or employee, other than his own contract of employment.

37 **"§ 128-54. Disclosure of financial interest.**

38 Each elected and appointed officer of the State and each employee serving in  
39 exempt positions as designated pursuant to G.S. 126-5(d), shall file a disclosure  
40 statement of his personal interest and other information as specified on forms to be  
41 prepared by the Secretary of State and shall thereafter file a statement annually on or  
42 before January 31. The disclosure form shall be completed and filed and maintained  
43 as a public record for a period of five years in the Office of the Secretary of State.

44 **"§ 128-55. Disqualification from voting.**

1 or company doing business with the particular governmental body in which the  
2 employee is employed, except as authorized by the governmental agency after  
3 determining no potential conflict of interest will exist. Each governmental agency  
4 shall regulate outside employment for the purpose of eliminating potential conflicts of  
5 interest.

6 (d) Contemplated Official Action. No government officer or employee shall  
7 engage in any transaction in anticipation of a pecuniary benefit or intentionally aid  
8 another in such a transaction, in contemplation of official action by himself or by the  
9 governmental unit with which he is associated.

10 (e) Policy Against Representing Adverse Claim. No public officer or employee  
11 shall represent outsiders in connection with claims, applications, or other matters or  
12 proceedings before the governmental agency in which such public official or  
13 employee is employed.

14 **"§ 128-53. Official misconduct.**

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16 Prohibited. No employee or officer shall use or attempt to use his official position or  
17 influence to secure unwarranted privileges or advantages for himself or others or to  
18 profit, directly or indirectly, or to otherwise use his position for private gain for  
19 himself or others or a company with which he is affiliated or has a personal or  
20 financial interest in.

21 (d) Falsification of Records or Reports. No public officer or employee shall  
22 knowingly falsify or permit to be falsified, any public record or report or expense  
23 account.

24 (e) Participation in Agency Matters. No officer or employee shall participate,  
25 either directly or indirectly, in any matter of the agency in which the officer or  
26 employee has a personal or financial interest.

27 (f) Receipt of Consideration Prohibited. No officer or employee shall solicit, offer  
28 or accept any money or anything of value or or in consideration of (i) obtaining  
29 employment, appointment, or promotion of any person with any governmental  
30 agency, or (ii) influencing the outcome of any disciplinary action involving any  
31 person employed by the State or local government, or (iii) using his public position to  
32 obtain a contract for any person or business with any governmental agency.

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36 which he is an officer or employee, other than his own contract of employment.

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40 statement of his personal interest and other information as specified on forms to be  
41 prepared by the Secretary of State and shall thereafter file a statement annually on or  
42 before January 31. The disclosure form shall be completed and filed and maintained  
43 as a public record for a period of five years in the Office of the Secretary of State.

44 **"§ 128-55. Disqualification from voting.**

1 An officer or employee, who is a member of a board or commission, shall  
2 disqualify himself from participating in voting or the discussion of any matter before  
3 an agency of the State or local government in which he has a personal or financial  
4 interest.

5 **"§ 128-56. Activities of others restricted.**

6 (a) Giving of Gratuities Prohibited - Official Acts. No person shall, except as  
7 otherwise provided by law for the discharge of official duty, knowingly offer to, agree  
8 to or give to or confer on any present or former officer or employee any benefit or  
9 anything of value, for or because of any official act performed or with the intent to  
10 influence him in performing his duties.

11 (b) Employment of Consultant With a Potential Conflict of Interest Prohibited.  
12 No public agency shall employ, and no consultant or engineering firm shall contract  
13 for a public works project in which any director, officer, employee, major creditor, or  
14 a substantial owner or shareholder of such firm, has any landholding, options to  
15 purchase land, or plans for development or construction which may be affected by  
16 the project. Each firm submitting a proposal shall make known to the agency any  
17 interest it has that may be affected by the location or design of the proposed project.

18 **"§ 128-57. Fines and penalties.**

19 (a) Any person who knowingly violates any of the provisions of Article 5 of this  
20 Chapter shall be guilty of a misdemeanor. A knowing violation under this Article is  
21 one in which the person engages in conduct, performs an act, or refuses to perform  
22 an act when he knows, or should have reasonably known, that the conduct is  
23 prohibited or required by this Article.

24 (b) A State officer or employee shall not be prosecuted for a knowing violation of  
25 this Article if the alleged violation resulted from his good faith reliance on a written  
26 opinion of the Attorney General, and the opinion was made after a full disclosure of  
27 the facts. A local officer or employee shall not be prosecuted for a knowing violation  
28 of this Article if the alleged violation resulted from his good faith reliance on a  
29 written opinion of the District Attorney, and the opinion was made after a full  
30 disclosure of the facts.

31 (c) Any person who knowingly violates any of the provisions of this Article shall  
32 be guilty of malfeasance in office or employment. Upon conviction thereof, the  
33 judge, in addition to any other fine or penalty provided by law, may order the  
34 forfeiture of said office or employment.

35 (d) In addition to any penalty contained in this Article any such officer, member  
36 or employee who shall knowingly violate any of the provisions of this Article may be  
37 fined, suspended, or removed from office or employment in the manner otherwise  
38 provided by law.

39 (e) Any officer or employee found by the agency to have violated any provisions  
40 of this Article is subject to disciplinary action including dismissal and restitution of  
41 any agency losses resulting from such violation.

42 (f) The fines, remedies, and penalties provided for in this Article are not exclusive  
43 and are not intended to preclude any others available or provided for by law."

44 Sec. 2. G.S. 14-234 is recodified as G.S. 128-53(a).

- 1           Sec. 3. G.S. 14-234.1 is recodified as G.S. 128-53(b).  
2           Sec. 4. G.S. 14-235, 14-236, and 14-237 are hereby repealed.  
3           Sec. 5. This act is effective upon ratification.

- 1           Sec. 3. G.S. 14-234.1 is recodified as G.S. 128-53(b).  
2           Sec. 4. G.S. 14-235, 14-236, and 14-237 are hereby repealed.  
3           Sec. 5. This act is effective upon ratification.

## APPENDIX B

### MEMBERSHIP OF LRC COMMITTEE ON GOVERNMENTAL ETHICS AND LOBBYING

**LRC Member:** Rep. Frank E. Rhodes  
4701 Whitehaven Rd.  
Winston-Salem, NC 27106  
(919) 924-2878

#### Members:

##### President Pro Tempore's Appointments

Sen. T. L. "Fountain" Odom, Cochair  
1100 South Tryon Street  
Charlotte, NC 28203  
(704) 372-4800

Sen. Betsy L. Cochrane  
Box 517 BR  
Advance, NC 27006  
(919) 998-8893

Ms. Doris Cromartie  
200 Park Road  
Charlotte, NC 28203

Sen. George B. Daniel  
P.O. Box 1210  
Graham, NC 27253  
(919) 226-0683

Ms. Sarah Belk Gambrell  
6100 Fairview Road  
Charlotte, NC 28210

Sen. Herbert L. Hyde  
P.O. Box 7266  
Asheville, NC 28802  
(704) 255-0975

Sen. Howard N. Lee  
9 Riggsbee Road  
Chapel Hill, NC 27514  
(919) 942-6528

##### Speaker's Appointments

Rep. Marie W. Colton, Cochair  
392 Charlotte Street  
Asheville, NC 28801  
(704) 253-7350

Rep. Edward C. Bowen  
Route 1, Box 289  
Harrells, NC 28444  
(919) 532-4183

Rep. Jo Graham Foster  
1520 Maryland Avenue  
Charlotte, NC 28209  
(704) 332-8269

Rep. Lyons Gray  
P.O. Box 10887  
Winston-Salem, NC 27108  
(919) 773-1600

Rep. Walter B. Jones, Jr.  
P.O. Box 668  
Farmville, NC 27828  
(919) 753-2549

Rep. Richard T. Morgan  
570 Pinehurst South  
Pinehurst, NC 28374  
(919) 295-4575

Rep. Wade F. Wilmoth  
P.O. Box 268 DTS  
Boone, NC 28607

(704) 264-2969

Rep. Stephen W. Wood  
1221-E N. Main Street  
High Point, NC 27262  
(919) 883-9663

**Staff:**

Ms. Robin Johnson  
Mr. Terrence D. Sullivan  
(919) 733-2578

**Clerk:**

Ms. Judy Willis



APPENDIX C

LRG'S COMMITTEE ON GOVERNMENTAL ETHICS & LOBBYING ISSUES  
MAILING LIST

Jim Blackburn  
NC Association of County Commissioners  
PO Box 1488  
Raleigh, 27602

Colbin M. Cherney  
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Common Cause  
Patricia Watts  
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Stuart B. Dixon  
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NC Nat. Gas Corp.  
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Jeri Gray  
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NC Soft Drink Assoc.  
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Mike Okum  
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Linda Phillips  
Leg. Liaison  
Dept of Sec. of State  
300 N. Salisbury St.  
Raleigh 27603-5909

Mr. Bill Rustin  
North Carolina Merchants Association  
P.O. Box 176001  
Raleigh 27619

Mary Beach Shuping  
Special Assistant's Office  
Dept of Human Resources  
Div. of Social Services  
325 N. Salisbury St.  
Raleigh, 27603

## APPENDIX D

### OVERVIEW OF ETHICS LAWS IN OTHER STATES

I am going to give you a very brief and general overview of how other states are regulating the area of governmental ethics. As you probably are aware, this is currently a "hot" topic, and there has been a lot of activity in the past several years, both at the federal and state levels, some of which arose as a result of major federal sting investigations and convictions. For example, perhaps the most stringent new state ethics legislation is what passed in South Carolina early this fall.

I have prepared a handout, which is from the most recent publication of the Council on Governmental Ethics Laws. The handout has tables of governmental ethics regulations that were current through January 1, 1990. I want to emphasize that no two states appear to have the same types of regulations.

#### GOVERNMENTAL ETHICS ISSUES:

Let's look at the handout:

1. **Table 22 - Personal Disclosure Statements: Filing Requirements.** This table shows you who is required to file personal disclosure statements in each state. As you can see, most states require SOMEONE to file personal disclosure

statements, but who that someone is varies from state to state. For example, 28 states require officers of state offices, agencies, or departments to file; 13 states require state employees earning in excess of an annual dollar amount to file; and 25 states require county elective officials to file disclosure statements.

2. The second table is **Table 24 - Personal Disclosure Statements: Required Disclosures**. Again, what must be disclosed is different from state to state, ranging from 34 states that require disclosure of sources of personal income; 29 states that require disclosure of ownership interests in a business; 27 states that require disclosure of offices and/or directorships held; 26 states that require disclosure of fees & honoraria; 24 states that require disclosure of one's spouse's financial interests; and one state that requires disclosure of tax returns.

3. The last table in this packet is **Table 26 - Substantive Restraints on Activities of Government Officials/Employees**. You should note that the restraints can be statutory, constitutional, judicial, administrative, or via executive orders. Also, the restraints themselves can vary. For example, a restraint can be anything as simple as filing a disclosure statement. Or it can be disclosure with some additional restraints such as disallowing official action when there is a financial interest in a matter being considered. Or it can be

an outright prohibition. The activities that are restrained also vary. For example, you can see that 36 states have a restraint on using public position to obtain personal benefits; 30 states have a restraint on using confidential government information; 34 states restrain the receipt of gifts by officials or employee; and 25 states have a nepotism policy.

You should also know that there are two other issues in governmental ethics regulation that vary from state to state and that don't appear on these tables. They are: (1) What body is going to oversee the activities of state officials and employees (and how does it do it?); and (2) What are the penalties, if any, for violations.



**NORTH CAROLINA BOARD OF ETHICS**

116 WEST JONES STREET

RALEIGH 27603-8003

(919) 733-5103

K. D. KENNEDY, JR.  
CHAIRMAN

**TO:           Legislative Research Commission's Committee on Ethics and  
              Lobbying Issues**

**DATE:        February 25, 1992**

Hello, I'm Millie Donavant, Administrative Assistant for the North Carolina Board of Ethics, since March 1977. Our Chairman, Mr. K. D. Kennedy, Jr. could not come today, and asked me to share our concerns and history with you. I will address the sections of Senate Bill 259 which are either unclear from the standpoint of administering the program or areas that deserve further debate.

First, Senate Bill 259 does not create a board to address allegations of conflict of interest against public officials. Who will address the complaints? It has been my experience that both public officials and citizens with complaints benefit under a system which either rules out, or confirms conflict of interest. For your information, information from other states and the North Carolina Board of Ethics is enclosed.

Second, are "revolving door" situations adequately addressed? After leaving public office, public officials should not act in such a manner as to take improper advantage of their previous public office. For example, should there be a "cooling-off" period between state employment, or board membership, and appearing before the same agency in a private capacity? Another example would be using information obtained from the public position before it became generally available to the public.

Third, is disclosure of financial interests, Section 128-54. It is clear that members of the General Assembly and local governments are excluded. It is not clear who is required to disclose at the state level.

Specifically, do the disclosure requirements cover the following?

1. Council of State members, department heads appointed by the Governor, all deputies and their assistants.
2. All members of boards, commissions, and councils, regardless of appointing authority.
3. Elected and appointed officials in the University System including the Board of Governors, Boards of Trustees of the institutions, and faculty members.
4. Board of Community College employees, trustees of the institutions, and faculty.
5. Employees in the Legislative Branch.
6. Employees in the Judicial Branch, including judges.

Section 128-51 - Definitions and Exceptions, defines the term "officer or employee" as a person employed, appointed, or elected to a position of the State, or to a board or commission, or agency thereof. The term excludes members of the General Assembly. The term "State Government" includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State or political subdivision thereof. Section 128-54 - Employees serving in exempt positions as designated pursuant to General Statute 126-5(d) means "policymaking positions" as designated by the Council of State.

It should be noted that many officers involved with setting standards and purchasing goods or services for state government are not serving in policymaking positions.

Is it wise to eliminate the disclosure requirements for local governments? Those decisions affect the public as much as, and sometimes more than, State Government decisions.

Financial disclosure discourages individuals from abusing public office for personal gain.

In summary, we believe that the public interest is best served under an independent ethics commission with the power to conduct investigations, recommend criminal prosecution, and levy civil penalties against individuals who violate the statutes. The public interest is best served when everyone connected with state and local governments including members of the General Assembly are covered under a uniform code of ethics.

Thank you for allowing us to express our opinion on this important legislation.



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## BRIEF SUMMARY OF ACTIVITIES

The North Carolina Board of Ethics is an advisory board to the Governor, and other officials who elect to have the terms of Executive Order Number One apply to employees or appointees under their jurisdiction. The Board deals with conflict of interest in the Executive Branch.

The seven board members serve at the pleasure of the Governor. They are:

Mr. K. D. Kennedy, Jr., Chairman (President, Electric Supply Company) Raleigh  
Mr. Stuart Dorsett, Vice Chairman (Attorney), New Bern  
Mr. Houston N. Brisson, Sr. (Owner, Peanut Processors, Inc.)  
Dublin  
Mr. John T. Brock (Attorney), Mocksville  
Mr. Myron T. Hill, Jr. (Attorney), Greenville  
Mr. Mason A. McCullough (owner, Iredell County News),  
Statesville  
Sister Mary Jerome Spradley (Administrator of Mercy Hospital)  
Charlotte

The Board has a two-person staff, and a budget of \$42,518.

The Board receives and evaluates approximately 3400 statements of economic interest annually. The Board issues advisory opinions upon request, providing it has jurisdiction. The Board accepts complaints, sorts out the facts, and advises appropriate officials on allegations of conflict of interest against public officials subject to Executive Order Number One.

Frequently, individuals seek advice before acting in a given situation. This is probably the most useful function of the Board of Ethics.

We receive calls alleging conflict of interest for the following, which is beyond our jurisdiction -- General Assembly members, employees in departments not covered by Executive Order Number One, lawyers, doctors, judges, county government, and city government.

The Board makes the statements of economic interest, evaluation letters, and summaries of advice letters and complaints available for public inspection. Since 1985, 176 individuals have reviewed 828 files. The files requested most often are:

University of North Carolina President  
Heads of State Agencies  
Hazardous Waste Management Commission  
Low-Level Radioactive Waste Management Authority  
Environmental Management Commission  
Coastal Resources Commission  
Board of Transportation  
Economic Development Board  
Banking Commission  
Wildlife Resources Commission

The following officials or employees are currently filing statements of economic interest.

1. Gubernatorial appointees to boards, commissions, and councils, plus a few appointees of the General Assembly.
2. Exempt employees in the Office of the Governor with an annual salary of at least \$30,000.
3. Exempt employees in the departments whose heads are appointed by the Governor, and their special deputies and assistants with a salary of at least \$30,000.
4. The President, Vice Presidents, Chancellors, and Vice Chancellors in the University system.
5. The Commissioner of Agriculture (not his employees).
6. The State Auditor (not his employees).
7. Four Division Heads in the Office of State Treasurer.

The major problem in administering the ethics program is the split membership coverage and split financial disclosure on boards, commissions, and councils. The Governor attempted to correct this problem by broadening the coverage of Executive Order Number One to include all members. However, the Attorney General issued an opinion concluding that only appointees of the Governor, or appointees that the Governor may remove from office are required to comply with the Order.

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INFORMATION FROM STATES ON ETHICS COVERAGE

STATE	AREAS OF AUTHORITY	DISCLOSURE	OPINIONS	CONDUCT	COVERAGE	BUDGET	BD MBR	STAFF
AL	ETHICS, LOBBYING	25,000+	76-100	51-100	ST,CTY,MUN	352,030	5	17
AK	ETHICS, LOBBYING, CAMPAIGN FIN	25,000+	26-50	0-5	ST,CTY,MUN	595,400	5	11
CA	ETHICS, LOBBYING, ELECTIONS	25,000+	100+	51-100	ST,CTY,MUN	4,600,000	5	75
CT	ETHICS, LOBBYING	501-1,000	26-50	11-50	STATE		7	8
FL	ETHICS, LOBBYING	25,000+	51-75		ST,CTY,MUN	734,180	9	15
GA	CAMPAIGN FINANCE		100+			171,219	5	3
HI	ETHICS, LOBBYING		0-10	11-50	STATE	290,366	5	8
IL	ETHICS	5,000-10,000	11-25		STATE	108,000	3	3
IN	ETHICS, LOBBYING	0-250	11-25	5-10	STATE	172,208		3
KS	ETHICS, LOBBYING, CAMPAIGN FIN	5,000-10,000	26-50	0-5	CTY,MUN	194,000	5	6
KY	CAMPAIGN FINANCE		11-25			369,300	7	15
LA	ETHICS, CAMPAIGN FINANCE	0-250	100+	101-300	ST,CTY,MUN	404,417	5	12
ME	ETHICS, CAMPAIGN FINANCE	0-250	0-10	0-5	ST,CTY,MUN	100,000	7	4
MD	ETHICS, LOBBYING	5,000,10,000	11-25	11-50	STATE	338,000	5	8
MA	ETHICS	5,000-10,000	101+	301+	ST,CTY,MUN	1,030,000	5	28
MI	ETHICS	0	0-10		STATE	3,600	7	2
MN	ETHICS, LOBBYING, CAMPAIGN FIN	1,000-5,000	0-10	0-5	STATE	233,955	6	
MS	ETHICS	5,000-10,000	100+	51-100	ST,CTY,MUN	361,000	8	
NE	ETHICS, LOBBYING	1,000-5,000	0-10	0-5	ST,CTY,MUN	241,228	9	6
NJ	ETHICS	251-500	76-100	101-300	STATE	298,000	7	7
NC	ETHICS	1,000-5,000	0-10	0-5	STATE	37,122	7	1
ND	ETHICS, LOBBYING, CAMPAIGN FIN			0-5	STATE	1,004,000		22
OH	ETHICS	5,000-10,000	76-100	100-300	ST,CTY,MUN	536,754	6	14
OR	ETHICS, LOBBYING	1,000-5,000	76-100	101-300	ST,CTY,MUN	185,228	7	5
PA	ETHICS	25,000	101+	51-100	ST,CTY,MUN	736,000	5	22
RI	ETHICS	5,000-10,000	76-100	11-50	STATE,MUN	421,745	15	8
SC	ETHICS, CAMPAIGN FINANCE	5,000-10,000	51-75	11-50	ST,CTY,MUN	229,332	6	8
TN	ETHICS, LOBBYING, CAMPAIGN FIN	501-1,000			ST,CTY,MUN		7	4
TX	ETHICS, LOBBYING, CAMPAIGN FIN	1,000-5,000			ST,CTY,MUN			
VA	ETHICS, LOBBYING	10,000-25,000			STATE			
WVA	ETHICS, LOBBYING	1,000-5,000	100+		ST,CTY,MUN			4
WY	ETHICS, LOBBYING	1,000-5,000	100+		STATE	174,900		7

Source: The Council of State Governments  
Blue Book, 8th Edition 1990

**PREAMBLE**

The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon the public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people. Government decisions and policy must be made and implemented through proper channels and processes of the governmental structure. The purpose of this code is to establish guidelines for ethical standards of conduct for county commissioners. It should not be considered a substitute for the law or a county commissioner's best judgement.

County commissioners must be able to act in a manner to maintain their integrity and independence, yet must be responsive to the interests and needs of those they represent. County commissioners serve in an important advocacy capacity in meeting the needs of their citizens and should recognize the legitimacy of this role as well as the intrinsic importance of this function to the proper functioning of representative government. At the same time, county commissioners must, at times, act in an adjudicatory or administrative capacity and must, when doing so, act in a fair and impartial manner. County commissioners must know how to distinguish these roles and when each role is appropriate and they must act accordingly. County commissioners must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each county commissioner must find within his or her own conscience the touchstone on which to determine appropriate conduct.

## **CANON ONE**

### **A County Commissioner Shall Obey the Law**

County commissioners shall support the Constitution of the United States, the Constitution of North Carolina and the laws enacted by the Congress of the United States and the General Assembly pursuant thereto.

## **CANON TWO**

### **A County Commissioner<sup>e</sup> Shall Uphold the Integrity and Independence of His Office**

County commissioners shall demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all their public activities in order to inspire public confidence and trust in county government. County commissioners shall participate in establishing, maintaining, and enforcing, and shall themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. The provisions of this Code should be construed and applied to further these objectives.

## **CANON THREE**

### **A County Commissioner Shall Avoid Impropriety and the Appearance of Impropriety in All His or Her Activities**

- A. It is essential that county government attract those citizens best qualified and willing to serve. County commissioners have legitimate interests - economic, professional and vocational - of a private nature. County commissioners shall not be denied, and shall not deny to other county

commissioners or citizens, the opportunity to acquire, retain and pursue private interests, economic or otherwise, except when conflicts with their responsibility to the public cannot be avoided. County commissioners must exercise their best judgement to determine when this is the case.

- B. County commissioners shall respect and comply with the law and shall conduct themselves at all times in a manner that promotes public confidence in the integrity of the office of county commissioner and of county government.
- C. County commissioners shall not allow family, social, or other relationships to unduly influence their conduct or judgement and shall not lend the prestige of the office of county commissioner to advance the private interests of others; nor shall they convey or permit others to convey the impression that they are in a special position to influence them.

#### CANON FOUR

##### A County Commissioner Shall Perform the Duties of the Office Diligently

County Commissioners shall, while performing the duties of the office as prescribed by law, give precedence to these duties over other activities. In the performance of these duties, the following standards shall apply:

- A. Legislative Responsibilities.
  - 1. County commissioners shall actively pursue policy goals they believe to be in the best interests of their constituents within the parameters of orderly decision-making, rules of the Board of County Commissioners and



open government.

2. County commissioners shall respect the legitimacy of the goals and interests of other county commissioners and shall respect the rights of others to pursue goals and policies different from their own.

**B. Adjudicative Responsibilities.**

1. County commissioners shall be faithful to the general and local laws pertaining to the office and strive for professional competence in them. They shall be unswayed by partisan interests, public clamor, or fear of criticism.
2. County commissioners shall demand and contribute to the maintenance of order and decorum in proceedings before the board of county commissioners.
3. County commissioners shall be honest, patient, dignified and courteous to those with whom they deal in their official capacity, and shall require similar conduct of their staff and others subject to their direction and control.
4. County commissioners shall accord to every person who is legally interested in a proceeding before the commission full right to be heard according to law.
5. County commissioners shall dispose promptly of the business of the county for which they are responsible.

**C. Administrative Responsibilities.**

1. County commissioners shall clearly distinguish legislative, adjudicatory and administrative

responsibilities and shall refrain from inappropriate interference in the impartial administration of county affairs by county employees. Commissioners shall diligently discharge those administrative responsibilities that are appropriate, shall maintain professional competence in the administration of these duties and shall facilitate the diligent discharge of the administrative responsibilities of fellow commissioners and other county officials.

2. County commissioners shall conserve the resources of the county in their charge. They shall employ county equipment, property, funds and personnel only in legally permissible pursuits and in a manner that exemplifies excellent stewardship.
3. County commissioners shall require county employees subject to their direction and control to observe the standards of fidelity and diligence that apply to commissioners as well as those appropriate for employees.
4. County commissioners shall take or initiate appropriate disciplinary measures against a county employee for improper conduct of which the commissioner may become aware.
5. County commissioners shall not employ or recommend the appointment of unnecessary employees and shall exercise the power of employment only on the basis of merit, avoid favoritism and refrain from illegal discrimination and nepotism. They shall not approve compensation of

employees beyond the fair value of services rendered.

## **CANON FIVE**

### **A County Commissioner Shall Conduct the Affairs of the Board in an Open and Public Manner**

County commissioners must be aware of the letter and intent of the State's Open Meetings Law, and conduct the affairs of the Board of County Commissioners consistent with the letter and spirit of that law and consistent with the need to inspire and maintain public confidence in the integrity and fairness of county government and the office of county commissioner. Consistent with this goal of preserving public trust, county commissioners shall be aware of the need for discretion in deliberations when the lack of discretion would pose a threat to the resources of the county, to the reputation of current or potential county employees, to orderly and responsible decision making, to the integrity of other governmental processes or to other legitimate interests of the county.

## **CANON SIX**

### **A County Commissioner Shall Regulate His or Her Extra-Governmental Activities to Minimize the Risk of Conflict With His or Her Official Duties**

- A. County commissioners shall inform themselves concerning campaign finance, conflict of interest and other appropriate state and federal laws and shall scrupulously comply with the provisions of such laws.
- B. County commissioners shall refrain from financial and business dealings that tend to reflect adversely on the Board or on county government or to interfere with the proper performance

of official duties.

- C. County commissioners shall manage their personal financial interests to minimize the number of cases in which they must ask to be excused from voting on matters coming before the Board.
- D. Information acquired by county commissioners in their official capacity shall not be used or disclosed in financial dealings or for any other purpose not related to official duties.

#### **CANON SEVEN**

##### **A County Commissioner Shall Refrain from Political Activity Inappropriate to His or Her Office**

- A. County commissioners have a civic responsibility to support good government by every available means, to continue to inform and educate the citizenry about the affairs and processes of county government, and to make themselves available to citizens of the county so that they may ascertain and respond to the needs of the community. In doing so, county commissioners may and should join or affiliate with civic organizations whether partisan or non-partisan, may and should attend political meetings, may and should advocate and support the principles or policies of civic or political organizations consistent with the Constitution and laws of the United States and North Carolina.
- B. Candidates for the office of county commissioner, including incumbents:
  - 1. Shall inform themselves concerning the laws of this state with regard to campaigns and relevant disclosure

requirements and shall scrupulously comply with the provisions of such laws;

2. Shall maintain the dignity appropriate to the office, and should encourage members of their families to adhere to the same standards of political conduct that apply to commissioners;
3. Shall not make pledges or promises of conduct in office that they will not or cannot perform or would be illegal if it were performed;
4. Shall not misrepresent their identity, qualifications, present position, or other fact; and
5. Shall avoid pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.

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## Public Officials Ethics Checklist

Areas of Potential Conflict  
NLC Congress of Cities, Las Vegas, Nevada  
December, 1991

- Self dealing, e.g., having the city purchase materials, supplies, services from a company you control or have an interest in.
- Using public office to attain direct personal benefits.
- Accepting any form of personal benefit for performing your duty to deal promptly, efficiently or fairly of for exercising appropriate but discretionary authority.
- Using your public office to gain influence or coerce activity benefitting an indirect interest.
- Using or letting others use the authority, title or prestige of your office to attain private financial, social or political benefits in any manner inconsistent with public interests.
- Personal conduct which could create an appearance of impropriety .
- Using the combination of your name and public status or official title for commercial purposes, thereby leading reasonable observers to believe that those who buy from that concern may receive special treatment or advantage from you as a result of that association.
- Voting on a matter in which you have a financial interest.
- Falsification of expense accounts and other records or reports.
- Employment of consultants with a financial interest.
- Observing political party, constituency and individual interests over loyalty to democratic principles and the broad public good
- Failure to disclose to appropriate authorities, government policies or actions thought to be unlawful or improper.
- Secretly revealing confidential governmental matters (i.e., leaking information) or alleging improprieties.
- Failing to be accessible to the concerns of constituents and others without regard to their willingness to provide personal benefits or political support.
- Using public employees for private benefit.
- Using official letterhead or referring to your public position as a means of inducing or intimidating persons to resolve disputes more favorably, provide preferential treatment or give free tickets, discounts, favors or other advantages.
- Use of campaign funds for private benefit, including personal loans or to others, whether or not interest is paid.
- Use of campaign funds for other than direct campaign expenses relating to a current election or for other political purposes (support of other candidates) without disclosing the possibility to potential donors.
- Failure to recuse and disqualify yourself from deciding an issue due to a conflict of interest or where you are not certain you can make a fair and objective decision.
- Using public authority to reward relatives, friends, political supporters or to diner or punish enemies and opponents.

- Intervening on behalf of constituents or friends (requires extra caution to limit activity to assuring fairness of the procedures and not to influencing the decision making process).
- Not exercising sufficient oversight of public servants to whom you have delegated public power, to assure their responsibilities are carried out efficiently, equitably and ethically.
- Not exercising a duty to improve the system — taking affirmative action to change a law or policy that is either not achieving its intended purpose, is creating unintended harms, or is wasteful or inefficient.
- Engaging in artifices or schemes to exploit loopholes or ambiguities in the laws in a way to undermine their spirit and purpose.
- Using procedural rules in a way which thwarts principles of representative democracy.
- Civil disobedience (extra caution should be used by a public official in their demonstration of conscientious objection by disobeying the law. The illegal behavior should be open and the official must be willing to bear the appropriate legal and political consequences).
- Private personal or professional conduct which is likely to bring discredit on yourself or the governmental body in which you serve including lying, cheating, deception, deviousness, hypocrisy.
- Campaigning in a way that frustrates the citizenry to make an informed choice on appropriate criteria and which casts discredit on government and the election process.
- Recognizing and observing the proper role of elected officials in council-manager plan localities, resisting encroachment on professional responsibilities.

Compiled by the North Carolina League of Municipalities and based in part on the Josephson Institute for the Advancement of Ethics, Government Ethics Center Survey and other material. — S. Ellis Hankins, General Counsel, North Carolina League of Municipalities.

1 of  
1 meeting



APPENDIX H

A BILL TO ESTABLISH  
ENFORCEABLE ETHICAL STANDARDS

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ARTICLE 1

1. SCOPE AND POLICY:

Public office must always be regarded as a public trust. The people of the United States have a fundamental right to the assurance that persons involved in the administration of the laws of North Carolina will not have personal interests that may conflict with that of the public interest. The Legislature and the Administration are committed to maintain the confidence of citizens in their government by creating standards of ethical conduct and a procedure for enforcing them.

ARTICLE 11

This Chapter shall apply to all persons involved in any manner in the administration of the laws of North Carolina including members of quasi-judicial Commissions but excluding all members of the Judiciary and the Legislature either elected or appointed.

ARTICLE 111

1. North Carolina Ethics Commission:

a. There is hereby established the North Carolina Ethics Commission consisting of eight (8) members four to be appointed by the Governor with the advise and consent of the Senate to serve for a period of five years and four to be appointed by the Speaker of the House to serve for a period of five years; that half the first appointments shall be for three years. Members shall elect a Chairman to serve at the pleasure of the Board.

b. One half the Members appointed by the Governor and one half those appointed by the Speaker of the House shall tenured university professors, emeritus or otherwise, and the other half with four years or more of judicial experience.

c. A member of the Commission shall be disqualified if:

1. If they at appointment or thereafter hold or be a candidate for any other public office.

2. hold office in any political party or political committee;

3. participate in or contribute to the political campaign of any candidate for State or Federal public office within the past two years; or

4. be an employee of or be directly responsible to his/her appointing authority;

5. no member shall serve on the Commission more than two terms or ten years;

d. Any member of the Commission may be removed by the Governor only for substantial neglect of duty, inability to discharge the powers and duties of office, gross misconduct or conviction of a felony. The office so vacated shall be filled by the original appointive authority for the balance of the term.

e. The Chairman shall appoint, with the approval of the majority of the full Commission, a vice-chairman and an executive director.

f. The executive director shall be responsible for the administrative operation of the Commission and shall perform such other tasks as the Commission shall determine. The Executive Director shall with the advise and consent of the full Commission and shall fix the compensation of employees and prescribe their duties.

g. The Executive Director shall with the advise and consent of the full Commission appoint a General Counsel. The General Counsel shall be the chief legal officer of the Commission and shall advise the Commission on all legal matters and, on instructions of the Commission, may commence civil or criminal actions as may be appropriate.

h. The Commission may employ the services of such technical, professional and clerical services experts and consultants; as are necessary to carry out its duties. The commission may also:

i. contract for services which cannot be satisfactorily performed by its employees.

j. The Commission shall meet at least once each month. Five members of the Commission shall constitute a quorum and the vote of a majority of the members present is required for any action or recommendation of the Commission. The chair or any four members of the commission may call a meeting at any time provided that advance written notice is mailed to each member and public notice is made 72 hours prior to such meeting.,

k. Members of the Commission shall be compensated for work performed for the commission at a rate of \$\_\_\_\_\_ per session day and shall be reimbursed for their reasonable and

necessary expenses.

1. The Commission shall annually report to the Governor and the Legislature concerning the actions it has taken, the names and salaries and duties of all individuals in its employ, and the money it has disbursed, and shall make such further reports on the matters within its jurisdiction as may be requested by the Governor or the Legislature.

#### ARTICLE 1V

##### 1. Duties and Powers of the Ethics Commission:

The Commission shall:

a. prescribe and publish rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of proceedings hereunder.

b. prepare and publish, after giving the public an opportunity to comment, forms for the statements and reports required to be filed by this chapter and make such forms available to any and all persons required to file statements and reports.

c. Prepare and publish uniform methods of accounting and reporting to be used by persons required to file statements.

d. To determine on receipt of complaint after investigation if the subject complained against is covered by this Statute and if so if he has direct or indirect conflict of interest as hereinafter defined.

e. Make nonconfidential statements and reports, as hereinafter defined, filed with the Commission available for public inspection and copying during office hours upon request of any individual free of charge or at a charge not to exceed the actual material costs incurred in reproducing said statements and reports.

f. Compile and maintain a computerized index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

g. In a timely fashion upon request from a person who is or may be subject to the provisions of this chapter, render advisory opinions on the requirements of said chapter.

h. To make, after adequate investigation, findings of facts and conclusions based upon said facts whether or not a conflict of interest as herein defined exists.

#### ARTICLE V

##### 1. Conflict of interest defined:

a. An actual conflict of interest is an interest in which the subject has a financial interest whose very existence poses a conflict with the public interest that he or she has an official duty to protect.

b. An indirect conflict of interest is a situation in which the subject can make specific decisions to benefit personal interests at the public expenses, or is in a position to use confidential information for private use, or can use influence to benefit personal interests at the public expense.

c. Any citizen and any organization all of whose members are United States citizens shall have standing to be a party or complainant in any proceeding before the Commission.

#### ARTICLE VI

##### 1. Appeal from decisions of the Ethics Commission:

a. Any complainant or any citizen or organization who is dissatisfied by a decision of the Ethics Commission, including a preliminary investigation, or the appointive or employing authority in response to a final decision or recommendation by the Board of Ethics may within 30 days from the publication of said determination and in accordance with the law and procedures of the Court of Appeals may file an appeal based on errors of law only including an interpretation of Article V hereof based on the facts found by the Commission. Reasonable attorney fees may be assessed payable to the successful litigant upon final disposition of said appeal.

b. The appointive authority and all parties to a proceeding shall be bound by the findings, recommendations and/or orders on the final disposition of a proceeding.

#### ARTICLE VII

##### Investigations by the Commission:

1. Not later than ten days after the commission receives a sworn complaint signed under pains and penalties of perjury, or not later than ten days after the receipt of evidence deemed sufficient by the commission, the commission shall initiate a preliminary inquiry into any alleged violation. At the beginning of a preliminary inquiry into any such alleged violation, the commission shall notify the Attorney General of such action. The commission shall notify any person who is the subject of a preliminary inquiry of the existence of such inquiry within 30 days of commencement of the inquiry.

2. All commission proceedings and records relating to a preliminary inquiry shall be confidential, except:

a. The commission may turn over to the Attorney

General, the appropriate U. S. District Attorney or a district attorney of competent jurisdiction, evidence which may be used in criminal proceedings; and,

b. If the complainant or alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which the Commission issued to either party.

3. If a preliminary inquiry fails to indicate reasonable cause for belief that there is a violation the Commission shall immediately terminate the inquiry and so notify, in writing, the complainant, if any, and the alleged violator. If the investigation fails to indicate reasonable cause, the commission may, in writing, confidentially inform the alleged violator of potential violations and provide the information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.

4. If the preliminary inquiry is determined due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such a resolution, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator; or

5. If the Commission's preliminary investigation finds a potential violation, not excepted by paragraph 4 hereinabove, it shall initiate an adjudicatory proceeding to determine whether there has been a violation.

6. For the purposes of carrying out a preliminary investigation and/or an adjudicatory proceeding, the Commission may require by subpoena the attendance and testimony of the witnesses and the production of books, papers and other records relating to any matter being investigated by it pursuant to this Chapter. Such subpoenas may be issued by the Chair or the majority of the members of the Commission and shall be served in the same manner as subpoenas for witnesses in civil cases, and all provisions of law relative to subpoenas issued in such cases, including compensation of witnesses, shall apply to subpoenas issued by the Commission. Upon petition by the Commission, any Superior Court in the jurisdiction of which any inquiry is being carried on may, in case of refusal to obey a subpoena or order of the Commission issue an order requiring compliance. Any failure to obey the order of the Court may punish by the Court as contempt thereof.

7. All testimony in a Commission adjudicatory proceeding shall be recorded under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel and any other due process rights, privileges and responsibilities of a witness appearing before the Federal District Courts. Before testifying, all witnesses shall be given a copy of regulations governing Commission proceedings. All witnesses shall be entitled to be represented by counsel.

8. Any person whose name is mentioned during adjudicatory proceedings of the Commission and who may be adversely affected thereby may appear personally before the Commission on said person's own behalf, with or without attorney, to give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation to the record of the proceeding.

9. All adjudicatory proceedings of the Commission carried out pursuant to the provisions of this section shall be public, unless members vote to go into executive session in accordance with State statutes existing at the time of said determination.

10. Within 30 days after the end of an adjudicatory proceeding pursuant to the provisions of this section, the Commission shall meet in executive deliberative session for the purpose of reviewing the evidence before it. Within 30 days after completion of deliberations, the Commission shall publish a written report of its findings of facts and conclusions of law on which its recommendations are based.

11. In addition to recommendations to the appointive authority any finding by the Commission of a violation that has substantially influenced the action taken by any State employee and/or State Agency in any particular matter, shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interests of the State and innocent third persons require. Any person, as defined in Article VI, 1 (a), shall have standing to institute a proceeding in the Superior Court of the residence of the complainant to enforce this sanction.

12. The Commission may bring a civil action against any person whose violation has resulted in economic loss to the Government to recover on behalf of the government damages in the amount of three times said economic advantage.

#### ARTICLE VI11

##### 1. Whistleblower Protection:

a A State Agency, appointive authority or any employee thereof shall not discharge, threaten, or otherwise discriminate against a complainant, or employee or official acting on behalf of a complainant, regarding compensation,

terms, conditions, location, or privileges of employment because:

b. The complainant, employee or official acting on behalf of the complainant, reports or is about to report, verbally or in writing, a violation or a suspected violation of this act or because;

1. A complainant, or employee or official acting on or on behalf of the complainant, is requested by the Commission to participate in an investigation, hearing, or inquiry held by the Commission or any related Court action;

2. provided, however, that this section shall not apply to a complainant, or employee or official acting on behalf of a complainant, who knowingly makes a false report.

c. complainant, or employee or official acting on behalf of a complainant, who alleges a violation of this Article may bring a civil action for appropriate injunctive relief, or actual damages, or both within 180 days after the occurrence of actions prohibited by this Article VIII.

d. A Court, in rendering a judgment in an action brought as provided in this Article shall order, as the Court considers appropriate, reinstatement of the complainant, or employee or official acting on behalf of the complainant, or employee or official acting on behalf of a complainant the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A Court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

June 27, 1991

NOTES ON THE EIGHT ESSENTIALS TO AN ETHICS BILL

The following eight provisions appears to be what the majority of students of ethics in government believe are essential to a good ethics bill.

We have tried to incorporate them into the enclosed draft but I would think that perhaps they can be improved.

These eight provisions are:

1. Drafted so that citizens have an economic (market place) interest in enforcing ethical conduct by government employees. For example if an State employee awards a contract to a company in which he has an interest a competitor company can meaningfully seek redress. There are of course, many other situations in which those who have been economically adversely affect by State action could seek redress.

2. Legislative, Judicial and Executive branches of government present different problems as to enforcement, operational area in which ethical violations occur and political structure a seperate ethical bill for each branch of government is desirable.

3. A proviso to prevent complaints without merit from becoming public;

4. A public forum where complaints with merit can be decided with the usual anglo-saxon provisions re witnesses, cross-examination, discovery, etc.

5. A requirement for findings of fact by a quasi-judicial authority with the requirements that the findings be supported by evidence.

6. A provision that any citizen or organization composed of citizens has standing to complain. Now many valid citizen complaints in many areas are now blocked because citizens do not have "standing".

7. A provision for attorney fees and other economic sanctions for anyone filing a successful complaint.

8. Contain no provision requiring employees to disclose their personal finance absent a valid complaint that they have engaged in unethical conduct. Historically such requirements are not complied sufficiently to be effective and cause many good people to refuse to serve. Such information is much more effectively obtained in any proceeding under para. 3, supra and is only material where there is reasonable grounds for believing there has been unethical conduct. H-8



## APPENDIX I

### **Introduction and Background**

On July 16, 1991, the North Carolina General Assembly ratified changes to the existing law regulating lobbying activities in the state. The new law which took effect on January 1, 1992, requires additional disclosure and more reporting. This was one of the most talked about pieces of legislation from the entire last session, as it marked the first significant changes in these laws since 1975.

The first laws regarding the regulation of lobbying activities in North Carolina were enacted in 1933. These early laws consisted of little more than the requirement for lobbyists to record their names, addresses, the names of the entities represented, and their purpose for lobbying to be kept in a docket in the Office of the Secretary of State. No major changes were made to this law during the next forty-two years.

The next major re-write of the statute occurred in 1975. Statutory definitions were expanded and more information was required to be disclosed by the legislative agents through detailed registration and expense reporting. Also, a separate bill was ratified which for the first time required legislative agents to pay a registration fee.

During the last decade, lobbying directed at legislatures and government agencies has grown into a substantial business across the nation. In North Carolina, the number of lobbying registrations has increased over 100% since the 1979 session of the General Assembly. At the end of the 1991 session, there were a total of 868 registered lobbyists in the state.

### **Why Changes to the Lobbying Laws?**

Most members of the General Assembly agree that North Carolina has many professional lobbyists, and that they serve a useful purpose. Lobbyists provide important facts and make meaningful arguments in helping lawmakers with their decision-making process. There were several reasons, however, why most members of the legislature felt there was a need for a new law.

First, it is becoming more and more difficult to know each of the lobbyists, much less all of the varied interests that they represent. Also, the number of registered

lobbyists is expected to continue to grow rapidly. In the last decade the federal government has shifted the burden of regulating business and other concerns to individual states. North Carolina is a changing state, thus requiring more legislative intervention in governing.

Secondly, many members of the legislature felt that additional disclosures and more frequent reporting would better show the public just what was being spent to oppose or promote a particular bill. There is an argument however, that this may not be as accurate as first perceived. Large groups of volunteer lobbyists have a voice considered to be just as influential as lobbyists with generous expense accounts.

Furthermore, the General Assembly reacted in part to the gross abuse by elected officials in states such as South Carolina and Arizona. In these two states members of their legislatures were filmed accepting cash for promising to vote a certain way on a bill. However, it is to be noted that North Carolina has enjoyed a long period of very few serious violations of the lobbying laws by registered lobbyists.

Finally, it was felt by lobbyists and members of the legislature that the statute needed to be clarified. Since there was much uncertainty as to what was required under the statute, especially regarding disclosure requirements, the Secretary of State's Office was called upon to interpret the provisions in the law. Many of those inquiries were concerning how to file the expense reports.

### **Major Changes to the Lobbying Laws**

The definitional section of the law regulating lobbying activities in North Carolina was extended. The term lobbying is now regarded as any activity which directly or indirectly effects legislative action. Legislative action includes all stages of the legislative process. Legislative action is considered to be conducted by both the members of the General Assembly and the legislative staff.

Other significant changes were made regarding expense reporting requirements of both the lobbyists and their principals. Under the former law, lobbyists and lobbyists' principals were required to file only one expense report per year. This report was to be filed within thirty days of adjournment of a legislative session. An expense report is now required to be filed with the Secretary of State within sixty days of adjournment of a regular session and a supplemental report by February 28 of the following calendar

year. The supplemental report will insure that any expenditures made in connection with lobbying during a calendar year are reported to the Secretary of State.

The third major area of change to the lobbying laws regards disclosure requirements. Lobbyists and principals are now required to report the names or basis of selection of any members of the General Assembly who benefit from an expenditure. Additionally, principals must disclose the estimated portion of their registered lobbyists salaries which can be attributed to lobbying.

### **Issues of Concern**

Since the new statutes became effective on January 1, 1992, many individuals involved in the lobbying process have brought up various issues directly or indirectly relating to the new law. The following serves as a summary of those issues and suggested changes which have been brought to the attention of the Secretary of State.

The definition of the terms "contribution", "compensation", and "expenditure" presents a problem in N.C.G.S. §120-47.1. The word compensation is used to define the term compensation. Also, it remains unclear as to which terms are effected by the one hundred dollar (\$100.00) limit in a calendar year. It is suggested that the \$100 exclusion define only compensation and be included in the section of the law which defines lobbying in N.C.G.S. §120-47.1(6).

The issue regarding goodwill lobbying has been raised on numerous occasions. The situation could be clarified by inserting the phrase "direct or indirect" before the word influence in N.C.G.S. §§120-47.(5)(a) and 120-47.1(5)(b).

In N.C.G.S. §120-47.1(9), the term "regular session" is currently defined in a manner that could include extra or special sessions of the General Assembly. This could cause problems with the expense reports due from both the lobbyist and the principal. The intent of the legislation was for two reports to be filed from each during a calendar year. This issue needs to be clarified.

N.C.G.S. §§120-47.6 and 120-47.7 required expense reports to be filed by both the principal and the lobbyist. Language should be added to the statute stating that these reports should be filed with the Office of the Secretary of State. It is also felt that the lobbyists and principals should be required to retain records corroborating their expenditures for a period of three years.

Also, in order to prevent the overstatement of expenditures, the principal should be required to label expenditures which are for reimbursement of expenses already reported by the lobbyist as such reimbursement. This directive could be added to N.C.G.S. §120-47.7 which deals with expense reporting by a principal.

Finally, there has been much discussion regarding the lobbying laws being extended to require individuals to register with the Secretary of State if they lobby state government agencies on issues concerning legislative action. This could be easily achieved by adding the term "state government agencies" to the definitions of "legislative action", "lobbying", and "lobbyist" in N.C.G.S. §120-47.1. The expense reporting requirements would subsequently need to be amended to reflect that the names of any state government official who benefits from an expenditure be disclosed.

APPENDIX J

JOHNSON, GAMBLE, MERCER, HEARN & VINEGAR

ATTORNEYS AT LAW

300 S. SALISBURY STREET, SUITE 400

P. O. BOX 1776

RALEIGH, NORTH CAROLINA 27602

March 24, 1992

TELEPHONE

(919) 832-8396

FACSIMILE

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SAMUEL H. JOHNSON  
RICHARD O. GAMBLE  
CHARLES H. MERCER, JR.  
GEORGE G. HEARN  
RICHARD J. VINEGAR  
M. BLEN GEE, JR.  
E. PARKER HERRING  
ANN STONE

Sen. Fountain Odom  
Rep. Marie Colton  
Rep. Frank Rhodes

Chair and Members of  
Ethics and Lobbying Issues Committee

Thank you for the invitation to appear before the Ethics and Lobbying Issues Committee to give my opinion based upon my experience as a lobbyist.

After serving 10 years in the General Assembly I voluntarily retired to devote full time to the practice of law, and to rebuild my law practice, and I did not intent to lobby. However, after two years, business groups invited me to represent them and I became an active lobbyist for several years, and at this time I still continue to represent about 18 groups at the General Assembly.

I have prepared an outline of the new lobbying law for my personal use, and I have adapted this below for your consideration, with a few comments and recommendations.

I

**REPORTING REQUIREMENTS**

**Registration** -- With Secretary of State prior to lobbying by lobbyist, and within ten days by principal, duration for biennium ending January 1, of even numbered year. G.S. 120-47.2(a).

**Recommendation** -- No change recommended.

**Reporting Requirements** -- Year round for duration of biennial session. (a) Jan. 1 thru last day regular session. (b) End of regular session thru December 31. No specific reference to second year of session. Reference is made to G.S. 163-278.13A(e). G.S.120-47.7.

**Recommendation** -- Amend statute to make specific reference to the second year of the session.

**Legislative Action** -- Broadened to include contact with member or staff of General Assembly. G.S. 120-47.1(4).

Recommendation -- No change recommended.

**Lobbying** -- Direct or indirect attempt to influence legislation, with members, or through others for compensation. G.S.120-47.1(5)(6)

Recommendation -- No change recommended.

**Lobbyist** -- Individual who receives compensation for purpose of lobbying. G.S. 120-47.1(6) unless exempt under G.S. 120-47.(8).

Recommendation -- No change recommended.

**Special Sessions** -- The lobbying statutes contemplate a long regular session in the odd year and a shorter special session in the even year. It is suggested that no reporting be triggered by other special sessions unless, due to extraordinary circumstances, it is desirable and in this event the extra reporting could be accomplished.

Recommendation -- Review statute to determine if clarification needed.

#### OBSERVATIONS

**Criteria** -- The criteria for reporting remains essentially the same, so we can draw on prior experience.

**Accuracy** -- Accurate reporting is expected. Just good, straight accounting information. Subjective decision about what is a fair allocation.

**Compensation** -- No circumstances under which a contract lobbyist does not report compensation, whether retainer or not. Compensation is prorated between legislative and non legislative matters for attorneys.

**Expenses** -- Legislative expenses are reported 100%, so good record keeping is essential.

**Year Round** -- Official business will include year round activities, not just during the session.

**During the Session** -- Practically every contact with legislators will be deemed lobbying by attorneys and governmental affairs staff.

Conventions -- When the legislature is not in session, convention speakers and study committee contacts and guest participation at seminars will be deemed lobbying.

Social visits -- Among old friends may occasionally be exempt.

Dragnet -- Official business is likely a dragnet that will capture all contacts between attorneys for hire and elected legislators and staff.

## II

### EXPENSE REPORTING

Expense Detailed -- Categories of transportation, lodging, entertainment, food, or \$25 value, and contributions. G.S. 120-47.666(b).

Recommendation -- See observations listed below.

Expense Report -- Due within 60 days after regular session from January 1, through end of regular session, and supplemental report due by February 28 for remainder of calendar year. G.S. 120-47.6.

Recommendation -- Review statute to determine if clarification needed.

Nameless Reports -- When ten or more legislators benefited or were invited, no names, only number or basis for selection. However, record keeping is needed for audit purposes. G.S.120-47(b).

Recommendation -- See observations listed below.

Official Capacity -- Legislative action expanded to include out of session and includes staff of General Assembly. G.S. 120-47.1(4)(5) (6).

Recommendation -- No change needed.

### OBSERVATIONS

Daily Log -- My recommendations are to maintain a daily log, keep receipts for expenditures, pay by check or credit card whenever possible. Some expenditures will be for a specific client and others require proration.

Record Keeping -- More detailed, year round, suggest five year retention of documents.

**Expenses** -- There is a loophole in the \$25 value that needs to be cumulative for the Session. For instance, if Lobbyist A takes Representative B to dinner every night during the Session and the cost is \$24 per night, should this be disclosed? There is some ambiguity.

Suppose travel expense for Lobbyist A is \$20 per day for the duration of the Session. Should this be reported?

Recommendation -- Amend statute to clarify.

**Duplication** -- Where the legislative agent incurs the expenditure for transportation, lodging, entertainment, food, etc., the expenditure is reported by the legislative agent. The employer should disclose reimbursement but not include in the total for the Secretary of State.

Recommendation -- Amend statute to clarify.

## I

### INCOME REPORTING

**Income** -- Fluctuation in income from year to year for the same client may be due to economic reasons. When I have represented a client for many years, it is my policy to try to maintain the same level of service even though the client's ability to pay is reduced.

If there is a substantial drop in income, there is an inference of reduced service. There is also the question of explaining to other clients who wonder why there is a difference in the level of fees.

**Theory of Open Meetings** -- The General Assembly has expanded the open meetings law to include legislative committees.

**Bill Drafting** -- The General Assembly has made confidential source material in bill drafting and the actual draft becomes public when released.

**Analogy** -- There is an analogy of privacy which should apply to disclosure of income.

Recommendation -- Study this issue for possible amendment of statute.



IV

CONCLUSION

**Income** -- Confidentiality of income is impaired by the new lobbying law. Income is irrelevant to the public interest issue of lobbyist reporting on expenditures that affect legislation.

Disclosure of the name and address and legislative concerns of the principal should be all that is needed to protect the public, and income amounts are irrelevant and should be privileged information in my opinion.

**Expenditures** -- Full reporting of expenditures that influence legislation is appropriate. Expenditures that influence legislation are properly reportable in as much detail as the General Assembly desires.

**Issue** -- This issue should be discussed or litigated to define the range of protection afforded to privileged information between lobbyist and client and privileged income information.

I appreciate the opportunity of making this presentation and will be happy to assist the committee in any way possible.

Sincerely,



Sam Johnson

SHJ/lpl

wp\leg-misc\OdomF-L

APPENDIX K

STATE OF NORTH CAROLINA  
ADMINISTRATIVE RULES REVIEW COMMISSION

1307 GLENWOOD AVENUE, SUITE 158  
RALEIGH, N. C. 27605  
919/733-2721 FAX 919/733-9415

RECEIVED

MAR 31 1992

JAMES P. CAIN,  
CHAIRMAN  
NANCY H. HEMPHILL,  
VICE CHAIRMAN  
DANIEL L. BRAWLEY  
GEORGE W. JACKSON  
THOMAS P. MCNAMARA  
JAMES B. MALLORY III  
K. CLAY PENDLETON  
VERNON H. ROCHELLE



GENERAL RESEARCH DIVISION  
SUSAN H. FROST  
STAFF DIRECTOR  
JOSEPH J. DELUCA, JR.  
RULES REVIEW SPECIALIST  
GLENDA GRUBER  
ADMINISTRATIVE ASSISTANT  
SANDRA C. WEBSTER  
SECRETARY

TO: Ethics and Lobbying Issues Committee of the  
Legislative Research Commission

FROM: Rules Review Commission  
James P. Cain, Chairman  
Joseph J. DeLuca, Jr., Acting Director

There are two overriding issues raised in the questions to us as presented by Ms. Johnson. The first of these is whether lobbying of state agencies should be regulated by statute. For a number of reasons this Commission does not wish to see that happen.

Although we do not make or enforce any rules affecting members of the public, we do approve or object to most of such rules that are promulgated by other agencies. As such we are lobbied, primarily by those opposed to a rule, and then, responsively, by members of the agency urging adoption. We have never had any problems with determining who people were or who they represented.

Any requirement that someone, paid to act for another or representing another before a state agency, register and make reports will compound problems members of the public have in dealing with state agencies. Already, private citizens often feel intimidated and afraid to challenge an agency at almost any level.

Even where they do not confront the agency itself, they often still seek out attorneys to speak for them. Frequently small business owners will hire an attorney to appear before our Commission to challenge rules proposed by an agency.

One example of this is recently the Board of Architects proposed a rule defining more explicitly (and restrictively) what constituted exemptions that did not subject someone to the architects' practice act. At least two attorneys appeared before our Commission on behalf of different interior designers arguing against the rule. The rule did not meet the statutory requirements and was changed. The point is that these private citizens felt the need to hire outside help to attain this.

The more common situation will be attorneys who regularly, or not so regularly, practice law before a state agency. The attorney who calls to determine why a benefit was denied or stopped, a check has not been mailed, an enforcement order issued, or a license to practice a trade suspended or application denied, all of these actions could be construed to be lobbying. That does not include the more intricate practices permitted or encouraged under the Administrative Procedure Act: petitioning an agency to adopt, amend, or repeal a rule; asking them to issue a declaratory ruling; or representing a client in a contested case hearing. However, all of those are the ordinary administrative ways of working within the boundaries of a state agency.

To further restrict this practice of law will restrict the number of attorneys who can or will engage in such practice; raise the cost of hiring an attorney; raise the cost of doing business; make clients' fees and payments a matter of public record; work against the spirit of Canon II of the Rules of Professional Conduct for attorneys that provides that clients should be free to select whomever they want to represent them; and create a trap for the unwary attorney who does not realize that the practice of law before a state agency is now considered lobbying.

The second issue raised is whether expanded ethical codes or laws governing state officials and employees are needed.

This agency is concerned that we are living more and more in a society where individual responsibility counts for less and less. At some point we have to stop expecting someone else to set all the rules for us and everyone else, and live out and up to the values we have learned.

It may be that there are specific state agencies with specialized situations where specific rules or practices must be established. If so, let those agencies do it themselves. They already have such authority in G.S. 143B-10(j)(3).



**North Carolina General Assembly**

Legislative Services Office  
Legislative Office Building  
300 N. Salisbury Street, Raleigh, N. C. 27603-5925

GEORGE R. HALL, JR., Legislative Administrative Officer  
(919) 733-7044

M. GLENN NEWKIRK, Director Automated Systems Division Suite 400, (919) 733-6834	GERRY F. COHEN, Director Bill Drafting Division Suite 100, (919) 733-6660	THOMAS L. COVINGTON, Director Fiscal Research Division Suite 619, (919) 733-4910	TERRENCE D. SULLIVAN, Director Research Division Suite 545, (919) 733-2578
---	---	--	--

April 16, 1992

Ms. Melissa A. Warheit, Executive Director  
Ohio Ethics Commission  
The Atlas Building  
8 East Long Street, Suite 1200  
Columbus, Ohio 43215-2940

Dear Ms. Warheit:

The General Assembly by Section 2.5 and 2.6, respectively, of Chapter 754 of the 1991 Session Laws authorized the Legislative Research Commission to study the issues of lobbyist regulation and governmental ethics (S.B. 259 - Daniel). I enclose copies of the relevant portions of the cited legislation. The LRC has established a committee to study these matters, chaired by Senator Fountain Odom and Representative Marie W. Colton.

The Committee is interested in learning of the experience of other states that have established codes of ethics and systems for their enforcement for the executive branch of government at the state and local level. In that Ohio has been identified to the Committee as having a well designed and comprehensive program of governmental ethics, the chairs of the Committee have asked me to invite you to speak to the Committee on the experience of your state in this regard.

Specifically, we would like you to address the following matters:

1. A brief history of the efforts to establish an ethics program in your state, including:
  - a. Major players (supporters and opponents) in the effort.
  - b. Whether the program was established under the impetus of scandal, and
  - c. Any procedural or structural impediments which had to be eliminated or minimized in order to create the program:
2. The comprehensiveness of your ethical code, its perceived strengths and weaknesses;

April 16, 1992

Page 2

Ms. Melissa A. Warheit

3. Your program's:
  - a. Structure, what is its governing body, and how is its chief administrator chosen, and what are the allocation of duties and responsibilities between them;
  - b. Major components -- for example:
    - i. education and publicity,
    - ii. processing and reviewing economic interest statements,
    - iii. producing advisory opinions,
    - iv. investigations into alleged ethical violations, and
    - v. adjudicatory hearings;
  - c. An estimate of the amount of effort of your agency's personnel expended in each of the major components;
  - d. The number of employees, the cost of the program, including appropriations, grants, fines or penalties awarded to the agency, and the adequacy of that funding for the duties assigned to your agency; and
  - e. Strengths and weaknesses.
4. Any other matter that you feel would help a sister state contemplating establishing an ethics structure in:
  - a. Analyzing what is essential in an ethics structure for the administrative functions of state and local government, and
  - b. Avoiding any pitfalls which might be encountered from a legal, conceptual or an administrative viewpoint;
5. Your assessment of the public's and press's acceptance and support of your present program.

For your information, I attach to the copy of this letter a brief outline of a speech I gave on the ethical structure existent in North Carolina's State Government and a publication entitled Ethical Considerations in State Government containing relevant laws and rules relating to these matters.

The next meeting of the Legislative Research Commission's Committee on Ethics and Lobbying Issues will be held on Tuesday, April 28, 1992 at 10:00 a.m. in Room 1425 of the State Legislative Building in Raleigh. This letter confirms our conversation earlier this week in which I invited you on the Committee's behalf to address it.

The Committee Cochairs are appreciative of your willingness to appear and discuss the Ohio program. They have authorized me to reimburse you for your actual expenses for air fare, taxi, lodging, and meals upon your presentation of a statement for the expenses incurred with the actual receipts.

April 16, 1992  
Page 3  
Ms. Melissa A. Warheit

I thank you in advance for your help in this matter. If you have any questions, please contact me.

Yours truly,

A handwritten signature in black ink that reads "Terrence D. Sullivan". The signature is written in a cursive style with a long horizontal flourish at the end.

Terrence D. Sullivan  
Committee Counsel

Enclosures

cc: The Honorable Fountain Odom  
The Honorable Marie Colton  
The Honorable Frank Rhodes  
✓ Ms. Robin Johnson  
Ms. Elaine Robinson



**North Carolina General Assembly**

Legislative Services Office  
Legislative Office Building  
300 N. Salisbury Street, Raleigh, N. C. 27603-5925

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April 16, 1992

**FAXED TO (617) 723-5851**  
**HARD COPY TO FOLLOW BY MAIL**

Mr. Andrew Crane, Executive Director  
State Ethics Commission  
1 Ashburton Place, Room 1413  
Boston, Massachusetts 02108

Dear Mr. Crane:

The General Assembly by Section 2.5 and 2.6, respectively, of Chapter 754 of the 1991 Session Laws authorized the Legislative Research Commission to study the issues of lobbyist regulation and governmental ethics (S.B. 259 - Daniel). I enclose copies of the relevant portions of the cited legislation. The LRC has established a committee to study these matters, chaired by Senator Fountain Odom and Representative Marie W. Colton.

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1. A brief history of the efforts to establish an ethics program in your state, including:
  - a. Major players (supporters and opponents) in the effort.
  - b. Whether the program was established under the impetus of scandal, and
  - c. Any procedural or structural impediments which had to be eliminated or minimized in order to create the program:
2. The comprehensiveness of your ethical code, its perceived strengths and weaknesses:



April 16, 1992  
Page 2  
Mr. Andrew Crane

3. Your program's:
  - a. Structure, what is its governing body, and how is its chief administrator chosen, and what are the allocation of duties and responsibilities between them;
  - b. Major components -- for example:
    - i. education and publicity,
    - ii. processing and reviewing economic interest statements,
    - iii. producing advisory opinions,
    - iv. investigations into alleged ethical violations, and
    - v. adjudicatory hearings;
  - c. An estimate of the amount of effort of your agency's personnel expended in each of the major components;
  - d. The number of employees, the cost of the program, including appropriations, grants, fines or penalties awarded to the agency, and the adequacy of that funding for the duties assigned to your agency; and
  - e. Strengths and weaknesses.
4. Any other matter that you feel would help a sister state contemplating establishing an ethics structure in:
  - a. Analyzing what is essential in an ethics structure for the administrative functions of state and local government. and
  - b. Avoiding any pitfalls which might be encountered from a legal, conceptual or an administrative viewpoint;
5. Your assessment of the public's and press's acceptance and support of your present program.

For your information, I attach to the copy of this letter a brief outline of a speech I gave on the ethical structure existent in North Carolina's State Government and a publication entitled Ethical Considerations in State Government containing relevant laws and rules relating to these matters.

The next meeting of the Legislative Research Commission's Committee on Ethics and Lobbying Issues will be held on Tuesday, April 28, 1992 at 10:00 a.m. in Room 1425 of the State Legislative Building in Raleigh. This letter confirms our conversation earlier this week in which I invited you on the Committee's behalf to address it.

The Committee Cochairs are appreciative of your willingness to appear and discuss the Massachusetts program. They have authorized me to reimburse you for your actual expenses for air fare, taxi, lodging, and meals upon your presentation of a statement for the expenses incurred with the actual receipts. As you requested, I have made a



April 16, 1992  
Page 3  
Mr. Andrew Crane

reservation in your name with the Radisson Plaza Downtown on the Fayetteville Street Mall for the evening of April 27. Should you wish to modify this reservation, the confirmation number is 9016 and the telephone number is 1-800-333-3333.

I thank you in advance for your help in this matter. If you have any questions, please contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Terrence D. Sullivan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Terrence D. Sullivan  
Committee Counsel

Enclosures

cc: The Honorable Fountain Odom  
The Honorable Marie Colton  
The Honorable Frank Rhodes  
Ms. Robin Johnson  
Ms. Elaine Robinson

**COMMITTEE CONSIDERATIONS**

- I. **Ethics Reform**
  - A. **Is the State in need of ethics reform?**
    - 1. At the executive level?
    - 2. At the administrative level?
    - 3. At the local level?
    - 4. Executive officers and members of boards of directors or trustees of non-profit, charitable organizations that receive public funds?
  - B. **What are the abuses that the reform should address?**
  - C. **Should the reform extend to the legislative and judicial branches?**
  
- II. **Should an ethics code be established?**
  - A. **If yes, what areas should be included?**
    - 1. Anti-nepotism?
    - 2. Conflicts of interest?
    - 3. Receiving gifts, honorariums, campaign contributions?
    - 4. Business transactions -- and with whom?
    - 5. Misuse of confidential information?
    - 6. Private use of State property?
    - 7. Lobbying?
  - B. **Should one uniform code be established, or should governmental units be directed to adopt their own individual ethics policies? Should ethical mandates recognize, and take into account, and vary with the population of the local governmental unit?**
  - C. **What enforcement provisions should be included?**
    - 1. Warnings?
    - 2. Removal from office; termination or suspension of employment?
    - 3. Administrative fines?
    - 4. Criminal provisions?
  - D. **How should the rights of involved parties (those who complain and those against whom complaints are lodged) be protected?**
  
- III. **Should an ethics body be established to oversee the functioning of a code?**
  - A. **What should its powers be?**
    - 1. Advisory only? (Review statements of financial interests? Issue advisory opinions?)
    - 2. Quasi-legislative? (make rules, interpret the code, etc.)
    - 3. Quasi-judicial? (investigate complaints, gather evidence, hold hearings, impose penalties, etc.)
  - B. **Composition of the body**
    - 1. Who makes the appointments?

2. How many members?
3. How long should the terms be, should they be staggered, should there be a limit on terms?
4. Should there be restrictions on the members' own outside interests?
5. Should there be qualifications for members? (retired judges; former legislators; former cabinet members; former Council of State officials; university professors; retired State employees; partisan vs. nonpartisan; etc.)

**IV. Evaluate current criminal laws governing ethical conduct of governmental officers and employees.**

- A. What, if anything, is in need of modification?
- B. Should all the laws affecting public officials/employees be recodified into one place in the General Statutes?
- C. Should there be any corresponding modification of the law governing lobbying? or campaign finance?

**V. Evaluate disclosures of financial interests?**

- A. How extensive should the disclosure of the officer's or employee's interests be?
- B. Which officers and employees should file reports?
- C. Should family members and others of officers and employees be covered?
- D. How often should the reports be filed or updated?

\*Prepared by staff

**Provisions Found in a Sampling of Other States'  
Personal Disclosure Statements that are not used in N.C.\***

- + **The financial disclosure statement shall include all names under which the filer does business and the name and address of each employer.**
- + **When listing the businesses or organizations that the filer has been associated with as an employee, officer, director, partner, or a material owner of a security or other equity interest, the name of any state or local agency that licenses, regulates, does a regular and significant part of activity with the listed business, or has had matters other than ministerial matters before it, must also be listed.**
- + **Report all interests (direct or indirect) in continuing contractual agreements with the State, a county, or a municipality including competitive and non-competitive bids. Also report all continuing interests in non-competitively bid contracts with local agencies. Indicate if the interest is held by the filer, spouse, or dependent children.**
- + **List any position held as an officer of any political party or political organization, as a member of any political party committee, or as a political party district leader. Not required to report a position with a candidate's campaign committee.**
- + **Longer and more specific list of licensed professions and practices that must give a general description of the principal subject areas of matters undertaken. Does not require that clients, customers, or patients be listed.**
- + **Report business entities in which the filer or spouse had an investment of more than \$1,000. The investment should not be in either securities or real property.**
- + **When listing gifts include the name and address of the donor, the date and the exact amount of the gift. Indicate all gifts that are from lobbyists.**
- + **Report reimbursements of travel expenses of more than \$1,000, in the aggregate from each source, which were provided by non-governmental sources for activities related to official duties.**
- + **Report the parties and terms of any contract, promise, or agreement between the filer and any person or entity for future employment.**

- + Report the parties and terms of any agreements by a former employer that continues benefits or payments in excess of \$1,000.
- + Report the notes and accounts receivable in excess of \$1,000 that are owed to the filer.
- + When reporting values or amounts, the values and amounts are reported as being within certain categories. For example, the following categories can be used: Category A - under \$5,000; Category B - \$5,000 to under \$20,000; Category C - \$20,000 to under \$60,000; Category D - \$60,000 to under \$100,000; Category E - \$100,000 to under \$250,000; and Category F - \$250,000 or over.
- + Longer list of tangible and intangible assets in which the filer, spouse, or dependent children held an interest including: cash on hand and in bank; Government bonds - U.S. Government, state and local government, and out of state and foreign government; life insurance with accumulated cash value; pension funds - including IRA, Keough, and annuities; household effects; and motor and recreational vehicles.
- + Individuals owning more than 10% of the stock of any company must disclose the percentage of ownership.
- + List all real estate interests of the filer, spouse, and dependent children. For the holdings in the home state include the location, municipality, block and lot number, size, and current use of the real property. Also name the individuals and entities that share a direct or indirect interest in the real property. Identify any individuals that work for the same State agency as the filer and share a real estate interest with the filer, spouse or dependent children.
- + List the name of any governmental instrument that is a tenant in any of the real property listed. Also list any government instrumentality that is considering any application, complaint, or proceeding affecting any of the listed real property.
- + When listing capital gains provide more specific information such as the address of the property or name of the stock, date acquired and sold, and name of the purchaser.
- + When listing creditors include the original amount of the debt, the amount outstanding on the debt and the rate of interest charged.
- + The amount and names and addresses of all clients represented by the filer before a state, county, or municipal regulatory agency for a fee, reward, gift or other compensation in excess of \$250.00

- + **The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of \$500 or more.**
- + **The amount of every loan made by the filer or immediate family in an amount of \$500 or more, the original amount of the loan and amount outstanding, rate of interest, payment schedule, and the name and address of the person receiving the loan.**
- + **List any State professional or occupational permits or licenses held.**
- + **List the name of a lobbyist who is:  
an immediate family member; or  
partner or employee of the filer or an immediate family member; or  
an officer or director of the filer or employer of the filer or an immediate family member**

\* The states sampled included West Virginia, New York, New Jersey, Kentucky and Minnesota.

# Common Cause - North Carolina

Post Office Box 482  
Raleigh, North Carolina 27602

28 April 1992

## STATEMENT OF COMMON CAUSE/NORTH CAROLINA TO THE LRC ON ETHICS & LOBBYING ISSUES

My name is Patricia Watts and I am the executive director of Common Cause/North Carolina. CC/NC State Chair Jeff Parsons has explained the need for ethics legislation; my task is to explain the recommendations for change developed by our State Issues Committee. Also, at the end of this presentation, I will include remarks about the new lobbying regulations.

After careful study and research we offer recommendations addressing six areas of concern in ethics legislation:

- (1) Coverage
- (2) Code of conduct
- (3) Conflict of interest & disclosure
- (4) Post government employment
- (5) Ethics commission
- (6) Enforcement.

(1) First, a basic issue in framing an ethics law is the scope of coverage. Which public officials and employees should be covered by the law? CC/NC recommends that a new ethics law in North Carolina cover all executive branch officials (including members of boards and commissions) and employees. Currently, the legislative branch is covered by the Legislative Ethics Act and the judicial branch by the Rules of the Judicial Standards Commission.

The scope of ethics laws in some states, e.g., West Virginia, extends to elected officials and administrative employees on the county and municipal level. CC/NC, however, recommends that counties and municipalities be allowed and encouraged to develop their own codes of ethics.

(2) Second, CC believes that a code of conduct is an important component of an ethics law. A positive statement of expectations for public servants would provide a framework for what constitutes responsible official behavior. The Council on Governmental Ethics Law proposes the following:

The proper operation of democratic government requires that a public employee be independent and impartial; that a government policy and decisions be made through the established processes of government; that a public employee not use public office to obtain private benefits; that a public employee avoid action which creates the appearance of using public office to obtain a benefit; and that the public have confidence in the integrity of its government and public employees.

SB259 begins with a statement of legislative intent and declaration of policy. A general statement of the intent and purpose of the act affirms ethical behavior by clarifying expectations.

(3) Our third area of recommendation is conflict of interest and personal financial disclosure. Conflict of interest statutes should contain clear enforceable directives.

Financial disclosure is the cornerstone of any law intended to prevent abuse of public office for personal financial gain. Although their comprehensiveness and effectiveness vary widely, financial disclosure requirements have become an accepted part of public service in many parts of the country.

We recommend that certain classes of public employees (identified by function rather than setting a salary cutoff) and family members be required to file economic interest statements which may identify potential conflicts of interest as well as deter violations.

Financial disclosure must be comprehensive in order to reveal any potential conflicts of interest. Since the objective of disclosure is not to determine a person's net worth, categories of value usually are sufficient to determine potential conflicts while avoiding being unnecessarily intrusive.

Financial disclosure reports, of course, should be readily available to the public.

Substantive prohibitions for public officials and employees should be part of the law. Currently, there is substantial existing specification of activities prohibited for some or all executive branch employees in existing orders, regulations, and laws. We propose bringing all provisions into a comprehensive statute providing uniform coverage for all executive branch officials and employees.

We also recommend adding provisions to protect public servants who act in good faith by reporting violations of ethics laws. The Common Cause "Model Ethics Law for State Government" outlines the fundamental elements necessary for effective whistleblower protection.

(4) An area not currently covered in N.C. law is post-government employment. Substantive prohibitions and restrictions on post-government employment are a vital component of a comprehensive ethics law. Clearly defined prohibitions on the post-employment activity of former public officials and employees prevents the potential for serious abuse of the public trust. The intent of "revolving door" legislation is to prevent former state employees and officials from using their past friendships and associations within government to derive unfair advantage for themselves or others.

(5) Our most important recommendation is the establishment of an ethics commission through statutory authority. The N.C. Board of Ethics has done a good job with the resources and authority it has. It is now time, however, for the General Assembly to put into state law



ongoing requirements for an adequately funded ethics commission.

CC/NC recommends a 7-member, independent ethics commission clearly empowered to enforce the law. Responsibilities of an effective ethics commission include reviewing economic interest statements, issuing advisory opinions, studying allegations of violations, informing the public when standards have been violated, and ensuring enforcement when violations have been found. The commission must have adequate budget and staff support.

To the commission's responsibilities we would add an additional task. We believe that employee education is an important element in raising the awareness of employees as to ethical requirements and the procedures for advisory opinions. We refer you to "A Practical Guide to the Conflict of Interest Law & Financial Disclosure Law for State Employees" developed by the State Ethics Commission in Massachusetts.

(6) Our final recommendation is in the area of enforcement. The purpose of an ethics law is to prevent unethical conduct and to rectify problems. The emphasis is not on punishment but on creating an ethical climate where everyone knows what the rules are.

If, after investigation, reasonable or probable cause is determined, the ethics commission conducts a full hearing. If the person is found in violation of the law, the commission may order corrective action or penalty such as: issue a public reprimand; order the violator to cease and desist improper conduct; require restitution of money or anything received illegally; recommend employment of the violator be terminated; impose a fine; recommend criminal action by a district attorney or petition the court to appoint a special prosecutor.

North Carolina needs a comprehensive, uniform law for executive branch employees, officials and appointees. In order to provide adequate standards of conduct by public officials and to effectively enforce such standards, major new legislation is required. North Carolina should join the majority of other states by enacting stronger ethics/conflict of interest legislation.

CC/NC offers you our assistance and suggests that the development of ethics legislation be a broad-based process involving elected officials, administrative staff and a diverse group of citizens.

Now, I would like to comment briefly on the expanded lobbyist regulations. CC/NC urges you to keep the new regulations in place and give them a chance to work. Only clarifying revisions should be considered at this time.

We do support further strengthening the law by extending the regulations to those who lobby the executive branch. CC/NC is also in favor of post-government restrictions for the legislative branch; we believe that at least a one-year "cooling off" period before former state officials may register as lobbyists to be fair.

CC/NC affirms the work of this committee. Thank you.

APPENDIX Q

TESTIMONY BEFORE LEGISLATIVE ETHICS COMMISSION

- I. Why is a comprehensive ethics code important for North Carolina?
  - A. Government is a public trust
    1. Ethics code dignifies government by showing North Carolinians how government officials must act when fulfilling the public's trust.
    2. Allows public officials to say to public: "Hold us to this code!"
    3. Ethics code is analogous to a professional ethics code or to corporate ethics statements: citizens are fiduciaries of government and government owes fiduciary duty to the citizen.
  - B. Requiring some government officials and not others to abide by that trust creates confusion.
    1. Public already has negative view in general of elected officials, example: U.S. Congress.
    2. How much of that filters down to the state and local level?
    3. When all government officials and employees pledge to uphold a code of ethics, at least citizens in North Carolina see that its state government does not want to betray this trust, rather it wants to earn it.
  - C. Public interest requires a perpetual, comprehensive code of ethics.
    1. General Assembly as the instrument of public may enact a code which will protect the public interest.
      - a. Although North Carolina is lucky that its government has had few scandals in its history, the recent situation with the Department of Correction provides a good example of why we now need a code of ethics.
      - b. Only the General Assembly can enact legislation which is both permanent and covers all divisions of the executive branch, counsel of state as well as the departments under the auspices of the Governor's cabinet.

- II. What does Common Cause recommend within a code of ethics?
- A. Code of conduct - every government employee must be held to an equal ethical standard forming the public's trust in equal government from citizen to government official.
  - B. Coverage - we have already discussed the need for consistent and even coverage, and such consistency will serve to further reaffirm the public's trust in equal government.
  - C. Conflict of interest and disclosure - the heart of ethics legislation must require disclosure of all conflicts and interest and financial disclosure by decision makers.
  - D. Post-government employment - a sensitive area, but in order to show the public that North Carolinians do not profit from public service, a cooling off period is needed between public employment and private employment concerning past government service.
  - E. Ethics commission - to review complaints, financial disclosures, and issue sanctions to offenders.
  - F. Enforcement - in order to deter further violations of ethical standards, an appropriate penalty must accompany the violation.
- III. The need for intensive study, while time consuming, is necessary to formulate fair and workable ethics legislation.
- A. To answer all questions raised about the mechanics and enforcement of equitable standards, this commission should not rush into enacting ethics legislation just to satisfy supporters.
  - B. Rather, Common Cause commends the legislative ethics commission for the study it has undertaken and continues to undertake to formulate the best possible ethics legislation for North Carolina. Common Cause appreciates the commission members' commitment to study this important issue, to raise these questions, and to move forward to reaffirm the public's trust in government.

North  
Carolina  
Press  
Association



North  
Carolina  
Press  
Services, Inc.

October 23, 1992

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Dennis Tharrington  
*Henderson Daily Dispatch*  
Henderson, N.C.

**DIRECTORS**

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*The Wake Weekly*  
Wake Forest, N.C. (1993)
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William C. Lassiter

Ms. Robin S. Johnson  
Staff Attorney, Research Division  
Legislative Office Building  
300 N. Salisbury Street  
Raleigh, NC 27603-5925

Dear Robin:

We have made a preliminary review the proposed draft of the ethics bill and would like to give you some feedback.

As you might expect, we are most concerned about the bill's provision to exempt the Ethics Commission from the provisions of the state's Open Meetings Law. If this legislation is aimed at maintaining public confidence in public servants, then the proceedings of the commission must be open to the public.

We firmly believe that all ethics complaints should be public and any meeting of the Ethics Commission should be open -- just like judicial proceedings in our state.

I am confident that unless this provision is removed, the NCPA's board of directors will actively oppose this legislation.

**Other Issues**

Exempting the University of North Carolina is extremely troublesome. Increased consulting business and entrepreneurial ventures in which many faculty and staff are engaged present numerous potential conflicts of interest. Also, many of our highest-paid state employees are employed at state-owned hospitals or medical schools. Those employees should be covered by ethics legislation.

The "public admonishment" mentioned on page 11 is vague. Could the term be more specifically defined, to include the kinds of information that might be made public?

Ms. Robin Johnson  
October 16, 1992  
Page Two

For example, will the public admonishment include the specific charge? Will testimony be made available? Documents? What is the timing of the release of the public admonishment? Must it occur within a certain time frame after the commission determines that violations have occurred?

Does the language on page 11, lines 35-39 mean that records will be made public if a matter before the Ethics Commission is not dismissed? If so, what is the time frame for making records public?

Regarding advisory opinions, we take it that they are public record once they are written. Is that the bill's intent?

The N.C. Press Association is concerned about access to public records any time statutes require those records to be maintained in Raleigh. It is not easy for citizens in Cherokee or Chocowinity to make the trip to Raleigh to obtain records in person.

We would like to see a provision for easier access to economic disclosure records by publishing those disclosures at least yearly, along with advisory opinions, and by distributing copies to public libraries or to clerks of court.

In summary, the press association has noted that public opinion surveys show that confidence in government is at an all-time low. This legislation is a laudable effort to restore that confidence. Much of this remedy, however, would be defeated by permitting the Ethics Commission to do its business behind closed doors.

Robin, thanks for taking time to review our concerns. Our general counsel, Hugh Stevens, or I would be happy to discuss our concerns further.

I also plan to meet with Senator Howard Lee to discuss our concerns prior to the next subcommittee meeting. Please feel free to call if I can be of help.

Sincerely,



Ken Eudy  
Lobbyist

cc: Rich Oppel  
Bill Hawkins  
Hugh Stevens

# Common Cause - North Carolina

Post Office Box 482  
Raleigh, North Carolina 27602  
2 November 1992

TO: MEMBERS OF THE SUBCOMMITTEE OF THE LEGISLATIVE RESEARCH  
COMMISSION'S COMMITTEE ON ETHICS & LOBBYING ISSUES

Senator Betsy L. Cochrane  
Senator George B. Daniel  
Senator Howard N. Lee  
Representative Richard T. Morgan  
Representative Wade F. Wilmoth

FROM: Patricia A. Watts, Executive Director

RE: Proposed Legislation for a State Ethics Act

Common Cause/North Carolina affirms your efforts toward providing for the establishment of a state ethics act for North Carolina.

We believe the CC/NC recommendations, presented to the LRC Committee on Ethics & Lobbying Issues on April 28, 1992, are still the best approach for ethics legislation to be addressed by the 1993 Session of the North Carolina General Assembly.

Common Cause strongly endorses uniform and comprehensive ethics laws, and yet, realizes the importance of focusing first on North Carolina's most critical needs in the area of ethics legislation.

We are concerned that portions of proposed legislation may not be practical at this time, thereby possibly jeopardizing passage of an ethics reform bill.

Scope of coverage of ethics laws is of utmost importance -- so important and complex that CC/NC believes that to include more than executive branch officials and employees in a new ethics law would require a separate study.

We believe our recommendation is sound because the Legislative Ethics Act and Judicial Commission Standards are now in place. Certainly municipalities and counties, however, should be strongly encouraged to establish codes of ethics.

At this time, we recommend that new legislation focus on state level executive branch officials (as well as members of boards and commissions) and employees. Universal coverage would require substantial provisions as to how the State Ethics Commission would function with regard to investigating cases involving members of the legislature, judiciary, and local government officials.

Furthermore, the experience of Massachusetts and Ohio tells us that full coverage requires a sizable appropriation to sustain

adequate staffing of the Ethics Commission. Budget cuts in both states resulted in loss of staff, backlogged cases and less effective commissions. Bear in mind that most requests for investigations and advisory opinions originate at the local level in both Massachusetts and Ohio.

It is imperative that the 1993 Session of the N.C. General Assembly enact legislation establishing a State Ethics Commission. The citizens of North Carolina should neither be dependent on a new governor's issuing an executive order every four to eight years, nor have an ethics policy limited to staff in departments which report to the governor. It is time for a bi-partisan ethics commission under statutory authority, with ongoing requirements for adequate funding and staffing, to oversee all executive branch staff and officials.

Also, we agree with the committee recommendation that civil penalties should be incorporated in the legislation.

Regarding post-employment restrictions, CC recommends precise wording in regard to the nature of the activity that is prohibited. Substantive prohibitions and restrictions on post-government employment are a vital component of a comprehensive ethics law. The COGEL Model Law for Campaign Finance, Ethics, and Lobbying Regulation (Page 52, Sec.222 Representation of Clients After Government Service) outlines a reasonable approach.

CC/NC recognizes that shaping ethics legislation is a difficult and complex task. We must ensure a balance whereby the law is strong and enforceable without being unduly restrictive, and yet not so weak and unenforceable as to make it meaningless.

CC/NC will continue to work for an ethics law which affirms ethical behavior and protects the integrity of North Carolina State Government.

We hope that our comments will be helpful as you continue your work at the November 6 Subcommittee meeting.

cc: Rep. Frank L. Rhodes  
Sen. T.L. Odom  
Rep. Marie Colton  
✓Ms. Robin Johnson

## JOHNSON, GAMBLE, MERCER, HEARN &amp; VINEGAR

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November 5, 1992

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M. BLEN OEE, JR.  
E. PARKER HERRING  
ANN STONE

Fax #: 733-3113

Ms. Robin S. Johnson  
Mr. Terrence D. SullivanRe: LRC's Committee on Ethics & Lobbying Issues:  
Ethics & Lobbying Bill Drafts

I have reviewed the draft legislation to amend the lobbyist law and comment as follows:

BACKGROUND

North Carolina has a history of honesty in government and honesty in all matters between the General Assembly and lobbyists.

Because of the events that occurred in South Carolina, it is good that we are frequently reminded of the importance of integrity in all of our relationships.

GOOD WILL LOBBYING

It is appropriate to include good will lobbying as part of the definition of lobbying as is proposed. I have always thought that this is appropriate and have included my annual reception at the Kerr Scott Building as part of my report for 1992.

EXECUTIVE BRANCH LOBBYING

Where does lobbying end and the practice of law in a quasi judicial forum begin. Are rule making hearings included, are quasi judicial proceedings included, are the numerous letters we write to staff of state agencies included, and if so, I see this as creating difficulty in record keeping and reporting.

CONTINGENT FEES

Contingent fees are prohibited and have been for year in lobbying the General Assembly. Now there is added "the outcome of any executive action" which could conflict with judicial proceedings and negotiations with the Department of Transportation and other executive branch agencies.



Ms. Robin S. Johnson  
Mr. Terrence D. Sullivan  
November 5, 1992  
Page 2

COMPENSATION

I have found that the tabulation of compensation by the principal is not as difficult as I first imagined, but I am still of the opinion that compensation should be personal between principal and lobbyist and should not be reportable under the lobbyist law.

If I can respond further to specifics, please let me know and I would appreciate your distributing this letter to the sub-committee and other interested parties.

Sincerely



Sam Johnson

SHJ/lpl

w\Misc-Act\JohnSulli-L

APPENDIX S

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

H

D

93-RHX-060(5.27.92)

THIS IS A DRAFT 25-JAN-93 08:53:16

Short Title: Estab. State Ethics Act.

(Public)

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Sponsors:

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Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A STATE ETHICS COMMISSION, TO ESTABLISH  
3 ETHICAL STANDARDS FOR PUBLIC OFFICERS AND PUBLIC EMPLOYEES, TO  
4 REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, TO MAKE  
5 CONFORMING CHANGES, TO MAKE AN APPROPRIATION THEREFOR, AND TO  
6 MAKE PERMANENT THE REQUIREMENT THAT NONPROFIT ENTITIES  
7 RECEIVING STATE FUNDS ADOPT A CONFLICTS OF INTEREST POLICY.  
8 The General Assembly of North Carolina enacts:  
9           Section 1. The General Statutes are amended by adding a  
10 new chapter to read:  
11                                   "Chapter 138A.  
12                                   State Ethics Act.  
13  
14                                   "ARTICLE 1.  
15                                   GENERAL PROVISIONS.  
16  
17       "§ 138A-1. Title.  
18       This Chapter shall be known and may be cited as the 'State  
19 Ethics Act.'  
20       "§ 138A-2. Definitions.  
21       The following definitions apply in this Chapter:  
22               (1) Business. -- Any of the following, whether or not  
23               for profit:  
24               a.   association,

- 1            b. corporation,  
2            c. enterprise,  
3            d. joint venture,  
4            e. organization,  
5            f. partnership,  
6            g. proprietorship,  
7            h. trust, or  
8            i. every other business interest, including  
9            ownership or use of land for income.
- 10        (2) Business with which associated. -- A business of  
11        which the public servant or any member of the  
12        public servant's immediate family is:
- 13            a. a director, employee, officer, owner, or  
14            partner; or
- 15            b. a holder, either individually or collectively,  
16            of securities (i) worth ten thousand dollars  
17            (\$10,000) or more at fair market value as of  
18            December 31 of the preceding year; or (ii)  
19            constituting five percent (5%) or more of the  
20            outstanding stock of the business. For  
21            purposes of this sub-subdivision, the term  
22            'business' shall not include a widely-held  
23            investment fund, including but not limited to  
24            a mutual fund, regulated investment company,  
25            or pension or deferred compensation plan, if:
- 26                i. the public servant or a member of the  
27                public servant's immediate family neither  
28                exercises nor has the ability to exercise  
29                control over the financial interests held  
30                by the fund; and
- 31                ii. the fund is publicly traded, or the  
32                fund's assets are widely diversified.
- 33        (3) Commission. -- The State Ethics Commission.
- 34        (4) Compensation. -- Any money, thing of value, or  
35        economic benefit conferred on or received by any  
36        person in return for services rendered or to be  
37        rendered by that person or another. This term does  
38        not include campaign contributions properly  
39        received and, if applicable, reported as required  
40        by Article 22A of Chapter 163 of the General  
41        Statutes.
- 42        (5) Contract. -- Any agreement including, but not  
43        limited to, sales and conveyances of real and

- 1           personal property and agreements for the  
2           performance of services.
- 3           (6) Employing entity. -- Any of the following bodies of  
4           State government, a unit of 'local government' or a  
5           'public authority' as they are defined in G.S. 159-  
6           7(b), or any combination of them, or of which the  
7           public servant is a member, or over which the  
8           public servant exercises supervision: agencies,  
9           authorities, boards, commissions, committees,  
10           councils, departments, offices, institutions and  
11           their subdivisions, including, but not limited to,  
12           boards of education, boards of county  
13           commissioners, city councils, constitutional  
14           officers of the State, and the North Carolina House  
15           of Representatives and the North Carolina Senate."
- 16           (7) Immediate family. -- An unemancipated child  
17           residing in the household of the public servant,  
18           and the public servant's spouse, if not legally  
19           separated.
- 20           (8) Official action. -- Any decision, including, but  
21           not limited to, administration, approval,  
22           disapproval, decision, preparation, recommendation,  
23           the rendering of advice, and investigation, made or  
24           contemplated in any proceeding, application,  
25           submission, request for a ruling or other  
26           determination, contract, claim, controversy,  
27           investigation, charge, or rulemaking.
- 28           (9) Participate. -- To take part in, to influence, or  
29           to attempt to influence.
- 30           (10) Pecuniary interest. -- Any of the following:
- 31           a.    Owning, either individually or collectively, a  
32           legal or equitable interest exceeding ten  
33           thousand dollars (\$10,000) or five percent  
34           (5%), whichever is less, of any business.
- 35           b.    Receiving, either individually or  
36           collectively, during the preceding calendar  
37           year compensation that is or will be required  
38           to be included as taxable income on federal  
39           income tax returns of the public servant, the  
40           public servant's immediate family, or a  
41           business with which associated in an aggregate  
42           amount of five thousand dollars (\$5,000) from  
43           any business or combination of businesses. A  
44           pecuniary interest exists in any client or

- 1                    customer who pays fees or commissions, either  
2                    individually or collectively, of five thousand  
3                    dollars (\$5,000) or more in the preceding 12  
4                    months to the public servant, the public  
5                    servant's immediate family, or a business with  
6                    which associated.
- 7                    c. Receiving, either individually or collectively  
8                    and directly or indirectly, in the preceding  
9                    12 months, gifts or honoraria having an  
10                   unknown value or having an aggregate value of  
11                   five hundred dollars (\$500.00) or more from  
12                   any person. A pecuniary interest does not  
13                   exist under this sub-subdivision by reason of  
14                   (i) a gift or bequest received as the result  
15                   of the death of the donor; (ii) a gift from an  
16                   immediate family member; or (iii) acting as a  
17                   trustee of a trust for the benefit of another.
- 18                   d. Holding the position of associate, director,  
19                   officer, partner, or proprietor of any  
20                   business, irrespective of the amount of  
21                   compensation received.
- 22                   (11) Public servants. -- All elected and appointed  
23                   public officers, including members and officers of  
24                   the State House of Representatives and the State  
25                   Senate, and public employees, whether full or part  
26                   time, of an employing entity. The term does not  
27                   include the following individuals when serving in  
28                   the designated capacity:
- 29                   a. judges and justices of the General Court of  
30                   Justice, and
- 31                   b. members of boards, committees, commissions, or  
32                   councils having solely advisory powers and not  
33                   exercising any executive, quasi-judicial, or  
34                   quasi-legislative powers.
- 35                   (12) Vested Trust. -- A trust, annuity, or other funds  
36                   held by a trustee or other third party for the  
37                   benefit of the public servant or a member of the  
38                   public servant's immediate family. A vested trust  
39                   shall not include a widely-held investment fund,  
40                   including but not limited to a mutual fund,  
41                   regulated investment company, or pension or  
42                   deferred compensation plan, if:
- 43                   a. the public servant or a member of the public  
44                   servant's immediate family neither exercises

1 nor has the ability to exercise control over  
2 the financial interests held by the fund; and  
3 b. the fund is publicly traded, or the fund's  
4 assets are widely diversified.

5  
6 "ARTICLE 2.

7 "ETHICAL STANDARDS FOR PUBLIC SERVANTS.

8  
9 "§ 138A-10. Use of public position for private gain.

10 (a) A public servant may not knowingly and intentionally use  
11 the public servant's public position for the private gain of the  
12 public servant or of a member of the public servant's immediate  
13 family. The performance of usual and customary duties associated  
14 with the public position or the advancement of public policy  
15 goals or constituent services, without compensation, shall not  
16 constitute the use of public position for private gain.

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

20 "§ 138A-11. Gifts.

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

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

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

35 (1) Is doing or is seeking to do business of any kind  
36 with the public servant's employing entity;

37 (2) Is engaged in activities that are regulated or  
38 controlled by the public servant's employing  
39 entity; or

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

- 1     (d) This section shall not apply to any of the following  
2 gifts:
- 3             (1) Meals and beverages;
  - 4             (2) Ceremonial gifts or awards that have insignificant  
5             monetary value;
  - 6             (3) Unsolicited gifts of nominal value or trivial items  
7             of informational value;
  - 8             (4) Reasonable expenses for food, travel, and lodging  
9             of the public servant for a meeting at which the  
10            public servant participates in a panel or speaking  
11            engagement at the meeting;
  - 12            (5) Gifts of tickets or free admission extended to a  
13            public servant to attend athletic, charitable,  
14            cultural, or political events, if the gift or  
15            admission is a courtesy or ceremony customarily  
16            extended to public servants generally;
  - 17            (6) Political contributions properly received and  
18            reported as required under Article 22A of Chapter  
19            163 of the General Statutes; or
  - 20            (7) Gifts from relatives by blood or marriage, or a  
21            member of the same household.
  - 22            (8) Honoraria or other compensation subject to G.S.  
23            138A-12.

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

29     "§ 138A-12. Honoraria and other compensation.

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

- 33             (1) the employing entity reimburses the public servant  
34             for travel, subsistence and registration expenses;
- 35             (2) the employing entity's work time or resources are  
36             used; or
- 37             (3) the activity would be considered official duty, or  
38             would bear a reasonably close relationship to the  
39             public servant's official duties.

40     An outside source may reimburse the employing entity for actual  
41 expenses incurred by an public servant in conducting an activity  
42 within the duties of the public servant; or may pay a fee to the  
43 employing entity, in lieu of an honorarium, for the services of  
44 the public servant.

1     "§ 138A-13. Participation in official actions.

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

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

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

24             (1) The only pecuniary interest or reasonably  
25             foreseeable benefit that accrues to the public  
26             servant, the public servant's immediate family, or  
27             business with which associated as a member of a  
28             profession, occupation, or large class, is no  
29             greater than that which could reasonably be  
30             foreseen to accrue to all members of that  
31             profession, occupation, or large class.

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

35             (3) Before the public servant participated in the  
36             official action, the public servant requested and  
37             received a written advisory opinion from the  
38             Commission that authorized the participation.

39             (4) Before participating in an official action, a  
40             public servant made full written disclosure to the  
41             public servant's employing entity which then made a  
42             written determination that the interest or benefit  
43             would neither impair the public servant's  
44             independence of judgment nor influence the public



- 1 servant's participation in the official action.  
2 The employing entity shall file a copy of that  
3 written determination with the Commission.  
4 (5) When action is ministerial only and does not  
5 require the exercise of discretion.  
6 (6) When a public body records in its minutes that it  
7 cannot obtain a quorum in order to take the  
8 official action because members are disqualified  
9 from acting under this section.  
10 (7) When a public servant notifies, in writing, the  
11 State Ethics Commission that the public servant or  
12 someone whom the public servant appoints to act in  
13 the public servant's stead or both, are the only  
14 individuals having legal authority to take an  
15 official action.

16 "§ 138A-14. Representation before employing entities.

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

21 (b) No former public servant shall represent any person other  
22 than the State, the public servant's former employing entity, or  
23 a charitable or non-profit organization in a matter before the  
24 public servant's former employing entity for a period of one year  
25 after the former public servant's service in the public position  
26 has ceased. This subsection shall apply only to public servants  
27 who held office or were employed on or after January 1, 1994.

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

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

- 36 (1) Purely ministerial matters that do not require  
37 discretion on the part of the employing entity.  
38 (2) Representation of the public servant or former  
39 public servant in that individual's personal  
40 capacity.

41 "§ 138A-15. Employment and Supervision of Members of Public  
42 Servants' Extended Family.

43 No public servant, in an employing entity, shall occupy a  
44 position which has influence over the employment, appointment,

1 promotion, transfer, or supervision of any member of the public  
2 servant's extended family. For purposes of this section,  
3 'extended family' means the public servant's:

- 4 (1) spouse, parent, child, sibling, grandparent,  
5 grandchild;
- 6 (2) the step-, half-, and in law- relationships as  
7 appropriate to subdivision (1) of this section;
- 8 (3) others living in the same household as the public  
9 servant; and
- 10 (4) any other person so closely identified with the  
11 public servant as would reasonably suggest, because  
12 of the relationship between the public servant and  
13 the person, that personnel difficulties might arise  
14 within the individual work unit of the employing  
15 entity, or that the public's confidence in the fair  
16 and equal treatment of applicants for public  
17 employment and of public employees would be  
18 compromised.

19  
20 "ARTICLE 3.

21 "STATE ETHICS COMMISSION.

22  
23 "§ 138A-20. State Ethics Commission established.

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

26 "§ 138A-21. Membership.

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

- 29 (1) The Governor shall appoint the chair and four other  
30 members, no three or more of whom shall be members  
31 of the same political party.
- 32 (2) The General Assembly, in accordance with G.S. 120-  
33 121, shall appoint four members: two, no more than  
34 one of whom is a member of the same political  
35 party, upon the recommendation of the Speaker of  
36 the House of Representatives and two, no more than  
37 one of whom is a member of the same political  
38 party, upon the recommendation of the President Pro  
39 Tempore of the Senate.

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

43 (c) A person appointed to fill a vacancy shall qualify in the  
44 same manner as a person appointed for a full term. The Governor

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

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

- 9 (1) hold or be a candidate for any other office or  
10 place of trust or profit under the United States,  
11 or this or another state;  
12 (2) hold office in any political party; or  
13 (3) participate in or contribute to the political  
14 campaign of any candidate for political office.

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

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

21 "§ 138A-22. Meetings and Quorum.

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

26 "§ 138A-23. Staff and Offices.

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

36 "§ 138A-24. Powers and Duties.

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

- 39 (1) Conduct a continuing study of governmental ethics  
40 in North Carolina, and propose changes to the  
41 General Assembly in the government process and in  
42 the law as are conducive to promoting and  
43 continuing high ethical behavior in governmental  
44 officers and employees.

- 1           (2) Adopt rules to implement the provisions of this  
2           Chapter, including those establishing ethical  
3           standards and guidelines to be employed and adhered  
4           to by public servants in attending to and  
5           performing their duties.  
6           (3) Investigate alleged violations under G.S. 138A-25.  
7           (4) Render advisory opinions under G.S. 138A-27.  
8           (5) Institute a civil action against a public servant  
9           or former public servant under G.S. 138A-26(b).  
10          (6) Receive and review statements of economic interests  
11          filed with the Commission for potential conflicts  
12          of interest.

13          "§ 138A-25. Investigations by the Commission.

14          (a) Institution of Proceedings. -- On its own motion, or in  
15          response to a signed and sworn complaint of any individual filed  
16          with the Commission, the Commission shall make a preliminary  
17          inquiry into any alleged violation:

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

22          (b) Complaint. --

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

42          (c) Dismissal of Complaint. -- If the Commission determines at  
43          the end of its preliminary inquiry that: (1) the complaint does  
44          not allege facts sufficient to constitute a violation of this

1 chapter, or (2) the evidence is insufficient to substantiate the  
2 claim, the Commission shall dismiss the complaint and provide  
3 written notice of the dismissal to the individual who filed the  
4 complaint and the public servant. Upon presentation of a copy of  
5 a written notice of dismissal, the Commission may verify that it  
6 is a true copy.

7 (d) Notice and Hearing. -- If the Commission determines to  
8 proceed with an investigation into the conduct of an individual,  
9 the complaint shall no longer be confidential and may be  
10 disclosed. At this time, the Commission shall provide written  
11 notice to the individual who filed the complaint and the public  
12 servant as to the fact of the investigation and the charges  
13 against the public servant. The notice shall contain the time  
14 and place for a hearing on the matter, which shall begin no less  
15 than 30 days and no more than 90 days after the date of the  
16 notice. At any hearing held by the Commission:

17 (1) Oral evidence shall be taken only on oath or  
18 affirmation.

19 (2) The hearing shall be open to the public.

20 (3) The public servant being investigated shall have  
21 the right to present evidence, call and examine  
22 witnesses, cross-examine witnesses, introduce  
23 exhibits, and be represented by counsel.

24 (4) Admissibility of evidence shall be governed by the  
25 rules of evidence applicable in the superior court.

26 (e) Subpoenas. -- The Commission may issue subpoenas to compel  
27 the attendance of witnesses or the production of documents, books  
28 or other records. The Commission may apply to the superior court  
29 to compel obedience to the subpoenas of the Commission.  
30 Notwithstanding any other law, every State agency, local  
31 governmental agency, and units and subdivisions thereof shall  
32 make available to the Commission any documents, records, data,  
33 statements or other information, except tax returns or  
34 information relating to tax returns, which the Commission  
35 designates as being necessary for the exercise of its powers and  
36 duties.

37 (f) Settlement of Investigations. -- The parties may meet by  
38 mutual consent before the hearing to discuss the possibility of  
39 settlement of the investigation or the stipulation of any issues,  
40 facts, or matters of law. Any proposed settlement of the  
41 investigation is subject to the approval of the Commission.

42 (g) Disposition of Investigations. -- The Commission shall  
43 dispose of the matter in one or more of the following ways:

- 1           (1) If the Commission finds substantial evidence of a  
2           violation of a criminal statute, the Commission may  
3           refer the matter to the Attorney General for  
4           possible prosecution through appropriate channels.
- 5           (2) If the Commission finds that the alleged violation  
6           is not established by clear and convincing  
7           evidence, the Commission shall dismiss the  
8           complaint.
- 9           (3) If the Commission finds that the alleged violation  
10          is established by clear and convincing evidence,  
11          the Commission shall:
- 12           a. issue a public admonishment to the public  
13           servant and notify the employing entity, if  
14           applicable;
- 15           b. refer the matter to the employing entity that  
16           appointed or employed the public servant, or  
17           of which the public servant is a member, for  
18           appropriate action, which may include censure,  
19           expulsion, or termination of an appointment or  
20           employment; or
- 21           c. both.
- 22          (h) Findings and Record.--The Commission shall document its  
23          disposition of the investigation by filing an order that includes  
24          the Commission's findings of facts. In all matters the Chair of  
25          the Commission shall ensure that a complete record is made and  
26          preserved.
- 27          (i) Authority of Employing Entity.--Any action or failure to  
28          act by the Commission under this Chapter, except G.S. 138A-27,  
29          shall not limit any authority of the applicable employing entity  
30          to discipline the public servant.
- 31          "§ 138A-26. Additional remedies; civil action for damages.
- 32          (a) In addition to any other remedies provided by law, upon a  
33          determination that a public servant or former public servant has  
34          violated this Chapter by substantially influencing an action  
35          taken by the public servant's employing entity, that employing  
36          entity may void the action on any terms that the interests of the  
37          State and innocent third persons require.
- 38          (b) The Commission may bring a civil action against any public  
39          servant or former public servant who has acted to the economic  
40          advantage of the public servant in violation of this Chapter and  
41          may recover on behalf of the State damages in the amount of the  
42          economic advantage or five hundred dollars (\$500.00), whichever  
43          is greater.
- 44          "§ 138A-27. Advisory opinions.

1 At the request of any public servant, the Commission shall  
2 render advisory opinions on specific questions involving  
3 governmental ethics. Reliance upon a requested written advisory  
4 opinion on a specific matter shall immunize the public servant,  
5 on that matter, from:

- 6 (1) Investigation by the Commission;
- 7 (2) suit from the Commission, under G.S. 138A-26(b);  
8 and
- 9 (3) any adverse action by the employing entity.

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

13  
14 "ARTICLE 4.

15 "PUBLIC DISCLOSURE OF ECONOMIC INTERESTS.

16  
17 "§ 138A-30. Statement of economic interest; filing required.

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

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

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

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

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

18 (d) This subsection shall apply only to offices filled by  
19 election of the people in cities, as defined in G.S. 160A-1(2)  
20 and subject to G.S. 138A-33, and in special districts, subject to  
21 G.S. 138A-33. A candidate for an office shall file the statement  
22 of economic interest in the same place and in the same manner as  
23 the notice of candidacy required to be filed under G.S. 163-291,  
24 in the case of partisan primary elections, and G.S. 163-294.2, in  
25 the case of nonpartisan municipal elections. A person nominated  
26 under G.S. 163-114 shall file the statement within three days  
27 following his nomination, or not later than the day preceding the  
28 general election, whichever occurs first. A person who seeks to  
29 be nominated by petition under G.S. 163-296 shall file the  
30 statement of economic interest with the petition filed under that  
31 section. A person seeking to qualify as an independent candidate  
32 under G.S. 163-122 shall file the statement of economic interest  
33 with the petition filed under that section. A person seeking to  
34 have write-in votes counted for him- or herself in a general  
35 election shall file a statement of economic interest at the same  
36 time the candidate files a declaration of intent under G.S. 163-  
37 123.

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



1 (f) Once the candidate is certified as elected, the chair of  
2 the State or county board of elections with which a statement of  
3 economic interest is filed shall forward a certified copy of the  
4 statement to the following office, as applicable:

- 5 (1) the State Ethics Commission, in the case of an  
6 office which is elected on a state-wide basis;  
7 (2) the clerk of the board of commissioners in the  
8 county of residence, in the case of an county  
9 office;  
10 (3) the clerk of the municipality in the case of a  
11 municipal officer.

12 "§ 138A-31. Statements of economic interest are public  
13 records.

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

17 "§ 138A-32. Contents of statement.

18 Any statement of economic interest filed under this Article  
19 shall be on a form prescribed by the Commission and sworn to by  
20 the public servant. The form shall include, but not be limited  
21 to, the following information about the public servant and the  
22 public servant's immediate family:

- 23 (1) the name, occupation, nature of business and type  
24 of clients served;  
25 (2) the name and address of any business with which  
26 associated as of the date of the filing of the  
27 statement;  
28 (3) any business listed under subdivision (2) of this  
29 section which the public servant knows or has  
30 reason to believe does business with or is  
31 regulated by the public servant's employing entity;  
32 (4) the character and location of all real estate,  
33 other than the personal residence of the public  
34 servant or of a member of the public servant's  
35 immediate family, that:  
36 a. is located within North Carolina,  
37 b. has a fair market value of ten thousand  
38 dollars (\$10,000) or more, and  
39 c. of which the public servant or any member of  
40 the public servant's immediate family has any  
41 beneficial interest, including an option to  
42 buy or a lease for 10 or more years; Provided,  
43 however, if the public servant's personal  
44 residence is a part of a larger tract, the

- 1                   land on which the personal residence and that  
2                   part of the surrounding land used for  
3                   residential purposes by the family need not be  
4                   listed.
- 5           (5) the name and address of each creditor to whom the  
6           public servant or a member of the immediate family  
7           owes more than ten thousand dollars (\$10,000),  
8           except for debts secured by lien upon the personal  
9           residence;
- 10          (6) the name of each vested trust in which the public  
11          servant or a member of the immediate family has a  
12          financial interest in excess of ten thousand  
13          dollars (\$10,000);
- 14          (7) for professional persons and associations, a list  
15          of classifications of business clients which  
16          classes were charged or paid more than five  
17          thousand dollars (\$5,000) or more during the  
18          previous calendar year; however, individual clients  
19          need not be identified but the type of business of  
20          the client or class of the client and a description  
21          of the nature of the services rendered must be  
22          listed.
- 23   "§ 138A-33. Public servants to whom the Article is applicable.  
24   Notwithstanding any other law, only the following public  
25   servants are subject to this Article:
- 26           (1) The Governor, the Lieutenant Governor, and other  
27           members of the Council of State.
- 28           (2) The heads of all principal departments of State  
29           government who are appointed by the Governor.
- 30           (3) The chief deputy or chief administrative assistant  
31           of:
- 32           a. the heads of all principal State departments  
33           who are appointed by the Governor; and
- 34           b. the members of the Council of State.
- 35           (4) Members of the General Assembly.
- 36           (5) The members of all State executive branch  
37           authorities, boards, commissions, and councils,  
38           except members of those authorities, boards,  
39           commissions, and councils that perform solely  
40           advisory functions.
- 41           (6) Any other public servants of the State not covered  
42           otherwise by this section who exercise substantial  
43           discretionary or supervisory authority as  
44           designated by rule of the Commission.

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

1 through (10) of this section, whose appropriations  
2 in its last annual budget was \$500,000 or more.  
3

4 "ARTICLE 5.  
5 "VIOLATION CONSEQUENCES  
6

7 "§ 138A-40. Violation consequences.

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

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

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

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

17 "§ 53-92. Appointment of Commissioner of Banks; State Banking  
18 Commission.

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

34 The State Banking Commission, which has heretofore been  
35 created, shall consist of the State Treasurer, who shall serve as  
36 an ex officio member thereof, 12 members appointed by the  
37 Governor, and two members appointed by the General Assembly under  
38 G.S. 120-121, one of whom shall be appointed upon the  
39 recommendation of the President of the Senate and one of whom  
40 shall be appointed upon the recommendation of the Speaker of the  
41 House of Representatives. The Governor shall appoint five  
42 practical bankers and seven persons selected primarily as  
43 representatives of the borrowing public. The person appointed by  
44 the General Assembly upon the recommendation of the President of

1 the Senate shall be a practical banker. The person appointed by  
2 the General Assembly upon the recommendation of the Speaker of  
3 the House shall be a person selected primarily as a  
4 representative of the borrowing public. The persons selected  
5 primarily as representatives of the borrowing public shall not be  
6 employees or directors of any financial institution nor shall  
7 they have any interest in any regulated financial institution  
8 other than as a result of being a depositor or borrower. Under  
9 this section, no person shall be considered to have an interest  
10 in a financial institution whose interest in any financial  
11 institution does not exceed one-half of one percent (1/2 of 1%)  
12 of the capital stock of that financial institution. These members  
13 of the Commission shall be selected so as to fully represent the  
14 consumer, industrial, manufacturing, professional, business and  
15 farming interests of the State. No person shall serve on the  
16 Commission for more than two complete consecutive terms. As the  
17 terms of office of the appointive members of the Commission  
18 expire, their successors shall be appointed by the person  
19 appointing them, for terms of four years each. Any vacancy  
20 occurring in the membership of the Commission shall be filled by  
21 the appropriate appointing officer for the unexpired term, except  
22 that vacancies among members appointed by the General Assembly  
23 shall be filled in accordance with G.S. 120-122. The appointed  
24 members of the Commission shall receive as compensation for their  
25 services the same per diem and expenses as is paid to the members  
26 of the Advisory Budget Commission. This compensation shall be  
27 paid from the fees collected from the examination of banks as  
28 provided by law.

29 The Banking Commission shall meet at such time or times, and  
30 not less than once every three months, as the Commission shall,  
31 by resolution, prescribe, and the Commission may be convened in  
32 special session at the call of the Governor, or upon the request  
33 of the Commissioner of Banks. The State Treasurer shall be  
34 chairman of the said Commission.

35 ~~No member of said Commission shall act in any matter affecting~~  
36 ~~any bank in which he is financially interested, or with which he~~  
37 ~~is in any manner connected.~~ No member of said Commission shall  
38 divulge or make use of any information coming into his possession  
39 as a result of his service on such Commission, and shall not give  
40 out any information with reference to any facts coming into his  
41 possession by reason of his services on such Commission in  
42 connection with the condition of any State banking institution,  
43 unless such information shall be required of him at any hearing

1 at which he is duly subpoenaed, or when required by order of a  
2 court of competent jurisdiction.

3 A quorum shall consist of a majority of the total membership of  
4 the Banking Commission. A majority vote of the members qualified  
5 with respect to a matter under review present at that meeting  
6 shall constitute valid action of the Banking Commission. The  
7 State Treasurer and all disqualified members who are present  
8 shall be counted to determine whether a quorum is present at a  
9 meeting.

10 The Commissioner of Banks shall act as the executive officer of  
11 the Banking Commission, but the Commission shall provide, by  
12 rules and regulations, for hearings before the Commission upon  
13 any matter or thing which may arise in connection with the  
14 banking laws of this State upon the request of any person  
15 interested therein, and review any action taken or done by the  
16 Commissioner of Banks.

17 The Banking Commission is hereby vested with full power and  
18 authority to supervise, direct and review the exercise by the  
19 Commissioner of Banks of all powers, duties, and functions now  
20 vested in or exercised by the Commissioner of Banks under the  
21 banking laws of this State; any party to a proceeding before the  
22 Banking Commission may, within 20 days after final order of said  
23 Commission and by written notice to the Commissioner of Banks,  
24 appeal to the Superior Court of Wake County for a final  
25 determination of any question of law which may be involved. The  
26 cause shall be entitled "State of North Carolina on Relation of  
27 the Banking Commission against (here insert name of appellant)."  
28 It shall be placed on the civil issue docket of such court and  
29 shall have precedence over other civil actions. In the event of  
30 an appeal the Commissioner shall certify the record to the Clerk  
31 of Superior Court of Wake County within 15 days thereafter."

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

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

36 "(59) The State Ethics Commission as established in G.S. 138A-  
37 20."

38 Sec. 5. G.S. 143-8 is rewritten to read:

39 "§ 143-8. Reporting of legislative and judicial expenditures and  
40 financial needs. On or before the first day of September,  
41 biennially, in the even-numbered years the Legislative  
42 Administrative Officer shall furnish the Director a detailed  
43 statement of expenditures of the General Assembly for the current  
44 fiscal biennium, and an estimate of its financial needs, itemized

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

24           Sec. 6. Article 1 of Chapter 143 of the General Statutes  
25 is amended by adding a new section to read as follows:  
26 "§ 143-31.6. Private nonprofit entities receiving State funds,  
27 conflicts of interest policy. Each private, nonprofit entity  
28 eligible to receive State funds, either by General Assembly  
29 appropriation, or by grant, loan, or other allocation from a  
30 State agency, before funds may be disbursed to the entity, shall  
31 file with the disbursing agency a notarized copy of that entity's  
32 policy addressing conflicts of interest that may arise involving  
33 the entity's management employees and the members of its board of  
34 directors or other governing body. The policy shall address  
35 situations where any of these individuals may directly or  
36 indirectly benefit, except as the entity's employees or members  
37 of the board or other governing body, from the entity's  
38 disbursing of State funds, and shall include actions to be taken  
39 by the entity or the individual, or both, to avoid conflicts of  
40 interest and the appearance of impropriety.'"

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

42       "§ 143-318.18. Exceptions.

43       This Article does not apply to:

44           (1) Grand and petit juries.

- 1 (2) Any public body that is specifically authorized or  
2 directed by law to meet in executive or  
3 confidential session, to the extent of the  
4 authorization or direction.
- 5 (3) The Judicial Standards Commission.
- 6 (4) Repealed by Session Laws 1991, c. 694, s. 9.
- 7 ~~(4a) The Legislative Ethics Committee.~~
- 8 (4b) A conference committee of the General Assembly.
- 9 (4c) A caucus by members of the General Assembly;  
10 however, no member of the General Assembly shall  
11 participate in a caucus which is called for the  
12 purpose of evading or subverting this Article.
- 13 (5) Law enforcement agencies.
- 14 (6) A public body authorized to investigate, examine,  
15 or determine the character and other qualifications  
16 of applicants for professional or occupational  
17 licenses or certificates or to take disciplinary  
18 actions against persons holding such licenses or  
19 certificates, (i) while preparing, approving,  
20 administering, or grading examinations or (ii)  
21 while meeting with respect to an individual  
22 applicant for or holder of such a license or  
23 certificate. This exception does not amend,  
24 repeal, or supersede any other statute that  
25 requires a public hearing or other practice and  
26 procedure in a proceeding before such a public  
27 body.
- 28 (7) Any public body subject to the Executive Budget Act  
29 (G.S. 143-1 et seq.) and exercising quasi-judicial  
30 functions, during a meeting or session held solely  
31 for the purpose of making a decision in an  
32 adjudicatory action or proceeding.
- 33 (8) The boards of trustees of endowment funds  
34 authorized by G.S. 116-36 or G.S. 116-238.
- 35 (9) Repealed by Session Laws 1991, c. 694, s. 9.
- 36 (10) The Board of Awards.
- 37 (11) The General Court of Justice.
- 38 (12) The State Ethics Commission."
- 39 Sec. 8. Part 3 of Article 6 of Chapter 143 of the  
40 General Statutes is repealed.
- 41 Sec. 9. A new subsection is added to G.S. 150B-1 to  
42 read as follows:



1 "(g) Exemption of State Ethics Commission.--Except for G.S.  
2 150B-21.20A and Article 4 of this Chapter, no other provision of  
3 this Chapter applies to the State Ethics Commission."

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

6 "§ 150B-21.20A. Publication of Rules, Standards and Guidelines,  
7 and Advisory Opinions of State Ethics Commission.

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

13 Notwithstanding any other law, the Codifier of Rules shall  
14 publish unedited, in the North Carolina Administrative Code, the  
15 rules as codified and issued by the State Ethics Commission under  
16 Chapter 138A of the General Statutes. The State Ethics  
17 Commission shall consult with the Codifier of Rules on the form  
18 and codification of its rules."

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

20 "§ 153A-43. Quorum.

21 A majority of the membership of the board of commissioners  
22 constitutes a quorum. The number required for a quorum is not  
23 affected by vacancies. If a member has withdrawn from a meeting  
24 without being excused by majority vote of the remaining members  
25 present, he shall be counted as present for the purposes of  
26 determining whether a quorum is present. The board may compel the  
27 attendance of an absent member by ordering the sheriff to take  
28 the member into custody. A member who is present and is  
29 prohibited from participation under Chapter 138A of the General  
30 Statutes shall not be counted as present for the purposes of  
31 determining whether a quorum is present, unless the board of  
32 commissioners cannot obtain a quorum in order to take official  
33 action because members are prohibited from acting under Chapter  
34 138A of the General Statutes."

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

36 "§ 153A-44. Members excused from voting.

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

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

2    "§ 160A-74. Quorum.

3    A majority of the actual membership of the council plus the  
4 mayor, excluding vacant seats, shall constitute a quorum. A  
5 member who has withdrawn from a meeting without being excused by  
6 majority vote of the remaining members present shall be counted  
7 as present for purposes of determining whether or not a quorum is  
8 present. A member who is present and who is prohibited from  
9 participation under Chapter 138A of the General Statutes shall  
10 not be counted as present for purposes of determining the  
11 presence of a quorum, unless the Council cannot obtain a quorum  
12 in order to take official action because members are disqualified  
13 from acting under Chapter 138A of the General Statutes."

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

15    "§ 160A-75. Voting.

16    No member shall be excused from voting except upon matters  
17 involving the consideration of his own financial interest or  
18 official conduct. The council shall excuse a member who has a  
19 pecuniary interest in the action and is prohibited from  
20 participation under Chapter 138A of the General Statutes. In all  
21 other cases, a failure to vote by a member who is physically  
22 present in the council chamber, or who has withdrawn without  
23 being excused by a majority vote of the remaining members  
24 present, shall be recorded as an affirmative vote. ~~The question~~  
25 ~~of the compensation and allowances of members of the council is~~  
26 ~~not a matter involving a member's own financial interest or~~  
27 ~~official conduct.~~

28    An affirmative vote equal to a majority of all the members of  
29 the council not excused from voting on the question in issue  
30 (including the mayor's vote in case of an equal division) shall  
31 be required to adopt an ordinance, take any action having the  
32 effect of an ordinance, authorize or commit the expenditure of  
33 public funds, or make, ratify, or authorize any contract on  
34 behalf of the city. In addition, no ordinance nor any action  
35 having the effect of any ordinance may be finally adopted on the  
36 date on which it is introduced except by an affirmative vote  
37 equal to or greater than two thirds of all the actual membership  
38 of the council, excluding vacant seats (not including the mayor  
39 unless he has the right to vote on all questions before the  
40 council). For purposes of this section, an ordinance shall be  
41 deemed to have been introduced on the date the subject matter is  
42 first voted on by the council."

43           Sec. 15. Notwithstanding G.S. 138A-21 contained in  
44 Section 1 of this act, the Governor shall initially appoint two

1 members for two year terms and three members for four year terms,  
2 and the Speaker and President Pro Tempore, each, shall recommend  
3 to the General Assembly for initial appointment one member for a  
4 two year term and one member for a four year term.

5           Sec. 16. (a) The authority, powers, duties, and  
6 functions, records, personnel, property, unexpended balances of  
7 appropriations, allocations, or other funds, including the  
8 functions of budgeting and purchasing, of the North Carolina  
9 Board of Ethics of the Office of the Governor is transferred to  
10 the State Ethics Commission created in section 1 of this act.  
11 Any disputes arising out of this transfer shall be resolved by  
12 the Director of the Budget.

13 (b) There is appropriated from the General Fund to the  
14 Department of Administration for the 1993-1994 fiscal year the  
15 sum of one hundred twenty-three thousand two hundred dollars  
16 (\$123,200); and for the 1994-95 fiscal year the sum of one  
17 hundred ninety-seven thousand three hundred dollars (\$197,300) to  
18 fund the State Ethics Commission created in section 1 of this  
19 act.

20           Sec. 17. Section 16 of this act becomes effective on  
21 July 1, 1993. The remaining sections become effective on January  
22 1, 1994, except that the initial statements of economic interest  
23 required under Article 4 of Chapter 138A of the General Statutes  
24 shall be filed not later than September 1, 1994.

25



# North Carolina General Assembly

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December 16, 1992

## MEMORANDUM

**TO:** Members of Subcommittee of the LRC's Committee on Governmental Ethics and Lobbying

**FROM:** Robin S. Johnson *Robin S.*  
Terrence D. Sullivan *T.D.S.*  
Committee Counsel

**RE:** Summary of Draft Ethics Act (92-RHX-059) -- **A BILL TO BE ENTITLED AN ACT TO ESTABLISH A STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR PUBLIC OFFICERS AND PUBLIC EMPLOYEES, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, TO MAKE CONFORMING CHANGES, TO MAKE AN APPROPRIATION THEREFOR, AND TO MAKE PERMANENT THE REQUIREMENT THAT NONPROFIT ENTITIES GIVEN STATE FUNDS ADOPT A CONFLICTS OF INTEREST POLICY.**

Section 1 of the proposed bill would establish the State Ethics Act, as a new Chapter 138A of the General Statutes. In brief, the bill would establish a State Ethics Commission and a system to advise North Carolina governmental employees and officers, rule on ethical matters relating to their employment, and specify ethical standards in conducting governmental business. The bill would apply to all officers and employees in all three branches of State Government, except judges and justices of the General Court of Justice, and to officers and employees of specified local governments depending on population. The new Chapter would be divided into four articles.

### Article I - General Provisions

contains the title of and definitions employed in the new Chapter. The proposed §138A-2(11) defines "public servants" to whom the bill would apply as all officers and employees of the State, except judges and justices, and of specified certain local governments.

### Article 2 - Ethical Standards for Public Servants

would establish ethical standards on the following matters:

1. Use of public position for private gain (§138A-10),
2. Gifts (§138A-11),
3. Honoraria and other compensation (§138A-12),
4. Participation in official actions (§138A-13),
5. Representation before employing entities (§138A-14), and



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6. Employment and supervision of members of public servant's extended family (§138A-15).

**Article 3, State Ethics Commission**

would establish a nine member State Ethics Commission (§138A-20 et seq.): five appointed by the Governor, one of whom the Governor is to designate as the chair; and four appointed by the General Assembly, two upon the recommendation of the Speaker of the House and two upon the recommendation of the President Pro Tempore of the Senate. The members will be appointed to staggered four-year terms (see Section 15 of the bill). Members may not be appointed to more than one full four-year term. Nor may Commission members and employees hold or be a candidate for any other public office, hold office in any political party, or participate in or contribute to the campaign of any political candidate (§138A-21(d)).

The proposed §138A-24 lists the following powers and duties of the Commission:

1. the continuing study of governmental ethics,
2. adopting rules implementing the Act, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties,
3. investigating specified alleged ethical violations,
4. giving advisory opinions on ethical questions,
5. instituting civil actions against a public servant or former public servant profiting from an ethics violation, and
6. receiving and reviewing statements of economic interest.

The Commission could investigate, on its own motion or in response to a signed and sworn complaint, alleged violations of the Ethics Act or of the criminal law by a public servant in the performance of that person's official duties. The complaint and preliminary inquiry are confidential. If, after this inquiry, the Commission decides to proceed with an investigation, the complaint is no longer confidential and the Commission must hold a public hearing. The procedural rights of the person being investigated are detailed in the Act (§138A-25). At the conclusion of its investigation, the Commission may:

1. dismiss the complaint if the alleged violation is not established by clear and convincing evidence;
2. refer the matter to the Attorney General, if there is substantial evidence of a violation of a criminal statute; or
3. if the Commission finds that the alleged violation is established by clear and convincing evidence:
  - a. issue a public admonishment to the individual and notify the employing entity; or
  - b. refer the matter to the individual's employing entity for appropriate action, which may include censure or termination of an appointment or employment, or
  - c. both.

The proposed §138A-26 would allow an employing entity to void an earlier action upon a determination that a public servant violated this Chapter by substantially influencing that action and would permit the Commission to bring a civil action for damages against a public servant for the amount of the economic advantage or \$500, whichever is greater..

## MEMORANDUM

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The proposed §138A-27 would permit the Commission, at the request of any public servant, to issue an advisory opinion on a specific question. A requested written advisory opinion from the Commission would insulate the public servant from investigation by the Commission or adverse action by the employing entity. Edited advisory opinions will be published at least once a year.

### **Article 4 - Public Disclosure of Economic Interests**

would provide for public disclosure of enumerated economic interests by certain specific public servants, held by themselves or members of their immediate family (including spouses, unemancipated children and anyone claimed as a dependent for federal income tax purposes by the public servant or his or her spouse (§138A-2(7)). These public servants are those exercising substantial discretionary or supervisory authority. Among those specifically covered would be members of the Council of State and their immediate advisors; members of the General Assembly; members of Executive Branch councils, commissions and the like, except those performing solely advisory functions; for the Department of Community Colleges and the University of North Carolina, only certain specified officers and administrators; other public servants exercising substantial discretionary or supervisory authority, as designated by the Commission; and certain public servants in municipalities with populations of more than 7,500 and in counties with populations of more than 25,000 (§138A-33).

The statements would be filed with the Commission or with local government officials and would be available for public inspection (§§138A-30 and 31). Generally, candidates for covered offices elected by the people would have to file a statement of economic interest at the time they file for office. The interests reportable in the statements are contained in §138A-32.

### **Article 5 - Violation Consequences**

would provide that violation of the new Act would be grounds for disciplinary action but that no criminal penalty, except that relating to perjury, will attach for any violation (§138A-40). The Act would not limit the State from prosecuting any person for a violation of criminal law.

**Section 2** of the bill would amend G.S. 53-92 to clarify that the members of the State Banking Commission are to be subject to the Ethics Act when determining whether they may "participate" in an "official action."

**Section 3** of the bill would repeal the Legislative Ethics Act, as legislators and their employees would be subject to the new Act.

**Section 4** would amend G.S. 120-123 to prohibit members of the General Assembly from serving on the Ethics Commission.

**Section 5** would amend G.S. 143-8, **Reporting of legislative and judicial expenditures and financial needs**, to require the Governor, as Director of the Budget, to report directly the expenditures and fiscal needs of the State Ethics Commission, as determined by the Commission, to the General Assembly.

**Section 6** would add a new section to Article 1 of Chapter 143 to make permanent the temporary provision in the 1991 Budget Bill that requires private, nonprofit entities that receive State funds to file a conflicts of interest policy with the disbursing agency.

**MEMORANDUM**

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**Section 7** would amend G.S. 143-318.18, **Exceptions**, to exempt the Ethics Commission from the Open Meetings Law.

**Section 8** is a conforming change.

**Sections 9 and 10** would amend G.S. Chapter 150B to exempt the Ethics Commission from all but the judicial procedure established under the Administrative Procedures Act, and publication of its rules and advisory opinions.

**Sections 11-14** would amend the sections in Chapters 153A and 160A concerning quorums and excusing members from voting that apply to county boards of commissioners and city councils. Currently, a member may be excused from voting on a matter when there is a question involving the member's own financial interests or official conduct, but the member is counted as present for the purpose of determining a quorum. In order to conform to the proposed Ethics Act, these sections would prohibit a member from participating, which is broader than simply casting a vote, and would not count the member as present for purposes of establishing a quorum - unless the board or council is unable to act because members are prohibited from acting under the Ethics Act.

**Section 15** would initiate staggered terms for the initial appointments to the Ethics Commission.

**Section 16** would make appropriations for each year of the next biennium to the Department of Administration to implement the provisions of this act.

**Section 17** would make Section 16 (appropriations) effective on July 1, 1993, and the remaining sections effective on January 1, 1994, except that the first statements of economic interests would be required to be filed by September 1, 1994.

**\*\*92RJ068\*\***





3. Board will conduct hearings in panels of three commissioners per hearing or will hear three cases per session.

4. Continuation budget authority of the current Ethics Board (\$41,000) and all existing assests of the Ethics Board will be transferred to the Ethics Commission. Thus the net expenditure impact on the General Fund (shown above) is \$41,000 less than total costs of operation in each year of the five year period.

5. Cost to local governments of receiving statements of economic interest from local officials will be insignificant.

6. Estimated Annual Expenditures by Category FY 93-98:

	FY 93-94	FY 94-95	FY 95-98
Personnel	119,000	177,000	177,000
Office Equipment	3,000	6,000	1,500
Other Operating	<u>42,200</u>	<u>55,300</u>	<u>55,300</u>
TOTAL	<u>164,200</u> =====	<u>238,300</u> =====	<u>233,800</u> =====

SOURCES OF DATA: Ethics Board, State Property Office, Association of County Commissioners, League of Municipalities, Council of State Governments

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Lynn Muchmore

APPROVED BY: 

DATE: 12/17/92

[FRD#001]

APPENDIX T

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

93-RHX-010(10.12.92)

THIS IS A DRAFT 25-JAN-93 09:13:35

Short Title: Amend Lobbyist Law

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE LOBBYISTS OF THE EXECUTIVE BRANCH OF STATE  
3 GOVERNMENT TO REGISTER AND FILE EXPENSE REPORTS WITH THE  
4 SECRETARY OF STATE, TO MAKE OTHER CLARIFYING AMENDMENTS TO THE  
5 LOBBYING LAW, AND TO MAKE AN APPROPRIATION THEREFOR.  
6 The General Assembly of North Carolina enacts:  
7                   Section 1. Article 9A of Chapter 120 of the General  
8 Statutes reads as rewritten:  
9                                   "ARTICLE 9A.  
10                                  "Lobbying.  
11  
12       "§ 120-47.1. Definitions.  
13 For the purposes of this Article, the following terms shall  
14 have the meanings ascribed to them in this section unless the  
15 context clearly indicates a different meaning:  
16           (1) ~~The terms "contribution," "compensation" and~~  
17           ~~"expenditure" mean any advance, conveyance,~~  
18           ~~deposit, payment, gift, retainer, fee, salary,~~  
19           ~~honorarium, reimbursement, loan, pledge or anything~~  
20           ~~of value and any contract, agreement, promise or~~  
21           ~~other obligation whether or not legally~~  
22           ~~enforceable, but those terms do not include prizes,~~  
23           ~~awards, or compensation not exceeding one hundred~~  
24           ~~dollars (\$100.00) in a calendar year.~~

- 1           (1a) Compensation. -- Any money, thing of value, or  
2           economic benefit conferred on or received by any  
3           person in return for services rendered or to be  
4           rendered. The term includes, but is not limited  
5           to, salaries, fees, retainers, and commissions. The  
6           term does not include reimbursement of actual  
7           travel and subsistence expenses unless lobbying is  
8           a significant part of the duties of the individual  
9           who receives the reimbursement.
- 10          (1b) Executive action. -- The proposal, drafting,  
11          development, consideration, amendment, adoption,  
12          approval, issuance, modification, rejection, or  
13          postponement of a rule, license, contract, order,  
14          determination, or other quasi-judicial action or  
15          proceeding by (i) a State agency, or (ii) an  
16          officer or employee of a State agency acting or  
17          purporting to act in an official capacity.
- 18          (1c) Expenditure. -- Any advance, compensation,  
19          contribution, conveyance, deposit, gift,  
20          honorarium, loan, payment, pledge, reimbursement,  
21          retainer, salary, or any thing of value, and any  
22          agreement, contract, or other obligation whether or  
23          not enforceable. The term does not include: (i) a  
24          prize or award with a value not exceeding one  
25          hundred dollars (\$100.00); (ii) compensation to one  
26          individual not exceeding one hundred dollars  
27          (\$100.00) in a calendar year; or (iii)  
28          reimbursement of actual travel and subsistence  
29          expenses unless lobbying is a significant part of  
30          the duties of the individual who receives the  
31          reimbursement.
- 32          (2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.
- 33          (4) ~~The term "legislative action" means the~~  
34          Legislative action. -- The preparation, research,  
35          drafting, introduction, consideration,  
36          modification, amendment, approval, passage,  
37          enactment, tabling, postponement, defeat, or  
38          rejection of a bill, resolution, amendment, motion,  
39          report, nomination, appointment, or other matter by  
40          the legislature or by a member or ~~employee of the~~  
41          legislature a legislative employee acting or  
42          purporting to act in an official capacity.
- 43          (4a) Legislative employee. -- Defined in G.S. 120-  
44          129(2).

- 1           (5) ~~The term 'lobbying' means: Lobbying. -- The term~~  
2           ~~includes:~~  
3           a. ~~Influencing or attempting to influence~~  
4           ~~influence:~~  
5            ~~1. legislative action through direct oral or~~  
6            ~~written communication with a member of~~  
7            ~~the General Assembly; or~~  
8            ~~2. executive action through direct oral or~~  
9            ~~written communication with an officer or~~  
10           ~~employee of the State agency that is~~  
11           ~~authorized to take that executive action;~~  
12           ~~or~~  
13           b. ~~Solicitation of others by lobbyists to~~  
14           ~~influence directly or indirectly (i)~~  
15           ~~legislative action, action, or (ii) executive~~  
16           ~~action taken or to be taken by a State agency.~~  
17         (6) ~~The term 'lobbyist' means an Lobbyist. -- An~~  
18         ~~individual who:~~  
19           a. ~~Is employed and receives compensation, or who~~  
20           ~~contracts for economic consideration,~~  
21           ~~compensation, for the purpose of lobbying; or~~  
22           b. ~~Represents another person and receives~~  
23           ~~compensation for the purpose of lobbying.~~  
24           ~~The term 'lobbyist' shall not include those~~  
25           ~~individuals who are specifically exempted from this~~  
26           ~~Article by G.S. 120-47.8. For the purpose of~~  
27           ~~determining whether an individual is a lobbyist~~  
28           ~~under this subdivision, reimbursement of actual~~  
29           ~~travel and subsistence expenses shall not be~~  
30           ~~considered compensation; provided, however, that~~  
31           ~~reimbursement in the ordinary course of business of~~  
32           ~~these expenses shall be considered compensation if~~  
33           ~~a significant part of the individual's duties~~  
34           ~~involve lobbying before the General Assembly.~~  
35         (7) ~~The terms 'lobbyist's principal' and 'principal'~~  
36         ~~mean the entity in whose behalf the lobbyist~~  
37         ~~influences or attempts to influence legislative~~  
38         ~~action. Principal. -- The person whom the lobbyist~~  
39         ~~represents or in whose behalf the lobbyist is~~  
40         ~~lobbying.~~  
41         (8) ~~The term 'person' means any Person. -- Any~~  
42         ~~individual, firm, partnership, committee,~~  
43         ~~association, corporation, or any other organization~~  
44         ~~or group of persons.~~

- 1           (9) ~~The General Assembly is in 'regular session' from~~  
2           ~~the date set by law or resolution that the General~~  
3           ~~Assembly convenes~~ Regular session. -- The period of  
4           time between the date set by the General Assembly  
5           on which it shall convene until the General  
6           Assembly either:  
7           a. Adjourns sine die; or  
8           b. Recesses or adjourns for more than 10 days.  
9           (10) State agency. -- An agency, board, commission,  
10           committee, department, office or other body of the  
11           executive branch of State government.

12   "§ 120-47.2. Registration procedure.

13   (a) A lobbyist shall file a registration statement with the  
14 Secretary of State before engaging in any lobbying. A separate  
15 registration statement is required for each lobbyist's principal.

16   (b) The form of the registration shall be prescribed by the  
17 Secretary of State and shall include the registrant's full name,  
18 firm, and complete address; the registrant's place of business;  
19 the full name and complete address of each person by whom the  
20 registrant is employed or retained; and a general description of  
21 the matters on which the registrant expects to act as a lobbyist.

22   (c) Each lobbyist shall register again with the Secretary of  
23 State no later than 10 days after any change in the information  
24 supplied in his last registration under subsection ~~(b)~~ (b) of  
25 this section. Each supplementary registration shall include a  
26 complete statement of the information that has changed.

27   (d) Within 20 days after the convening of each session of the  
28 General Assembly, the Secretary of State shall furnish each State  
29 agency, each member of the General Assembly Assembly, and the  
30 State Legislative Library a list of all persons who have  
31 registered as lobbyists and whom they represent. A supplemental  
32 list shall be furnished periodically each 20 days thereafter as  
33 the session progresses.

34   (e) Each registration statement required under this Article  
35 shall be effective from the date of filing until January 1 of the  
36 following odd-numbered year. The lobbyist shall file a new  
37 registration statement after that date, and the applicable fee  
38 shall be due and payable.

39   "§ 120-47.3. Registration fee.

40   Every lobbyist's principal shall pay to the Secretary of State  
41 a fee of seventy-five dollars (\$75.00) which fee shall be due and  
42 payable by either the lobbyist or the lobbyist's principal at the  
43 time of registration.

1 A separate registration, together with a separate registration  
2 fee of seventy-five dollars (\$75.00), shall be required for each  
3 lobbyist's principal for which a person acts as a lobbyist. Fees  
4 so collected shall be deposited in the General Fund of the State.

5 "§ 120-47.4. Written authority from lobbyist's principal to be  
6 filed.

7 Each lobbyist shall file with the Secretary of State within 10  
8 days after his registration a written authorization to act as  
9 such, signed by the lobbyist's principal.

10 "§ 120-47.5. Contingency lobbying fees and election influence  
11 prohibited.

12 (a) No person shall act as a lobbyist for compensation which  
13 is dependent in any manner upon (i) the passage or defeat of any  
14 proposed legislation or upon any other contingency connected with  
15 any action of the General Assembly, the House, the Senate or any  
16 committee thereof, thereof, or (ii) the outcome of any executive  
17 action.

18 (b) No person shall attempt to influence the action of any  
19 member of the General Assembly or any elected officer or employee  
20 of the executive branch of State government by the promise of  
21 financial support of the ~~member's~~ individual's candidacy, or by  
22 threat of financial contribution in opposition to the ~~member's~~  
23 individual's candidacy in any future election.

24 "§ 120-47.6. Statements of lobbyist's lobbying expenses  
25 required.

26 (a) Each lobbyist shall file an expense report with the  
27 Secretary of State with respect to each principal ~~within 60 days~~  
28 ~~after the last day of the regular session, no later than~~  
29 September 30 of each year. This expense report shall include all  
30 expenditures made between January 1 and ~~the last day of the~~  
31 ~~regular session, July 31 of that year.~~ The lobbyist shall file a  
32 supplemental report including all expenditures made ~~after the~~  
33 ~~last day of the regular session, but during the calendar year,~~  
34 between August 1 and December 31 by February 28 of the following  
35 year. The lobbyist shall file both expense reports whether or  
36 not expenditures are made.

37 (b) Each expense report shall set forth the date of each  
38 lobbying expenditure, to whom paid, the name of any legislator or  
39 any officer or employee of a State agency who benefitted from  
40 each expenditure, and the amount of each expenditure made during  
41 the previous reporting period in connection with lobbying, in  
42 each of the following categories: (1) transportation, (2)  
43 lodging, (3) entertainment, (4) food, (5) any item having a cash  
44 equivalent value of more than twenty-five dollars (\$25.00) and

1 (6) contributions made, ~~paid, incurred or promised,~~ directly or  
2 indirectly. It shall not be necessary to report ~~expenditures of~~  
3 ~~twenty-five dollars (\$25.00) or less, nor shall it be necessary~~  
4 ~~to report~~ any expenditures made in connection with the  
5 attendance of a legislator or an officer or employee of a State  
6 agency at any fund-raising function or event sponsored by a  
7 nonprofit organization qualified under 26 U.S.C. § 501(c). When  
8 more than 10 members of the General Assembly benefitted or were  
9 invited to benefit from an expenditure, the lobbyist shall not be  
10 required to report the name of any legislator, but shall be  
11 required to report the number of legislators ~~or, and,~~ with  
12 particularity, the basis for their selection. The lobbyist shall  
13 retain the records corroborating the expenditures reported under  
14 this subsection for a period of three years after the filing  
15 deadline for each report.

16 (c) All reports shall be in the form prescribed by the  
17 Secretary of State and shall be open to public inspection.

18 (d) When a lobbyist fails to file a lobbying expense report as  
19 required herein, the Secretary of State shall send a certified or  
20 registered letter advising the lobbyist of the delinquency and  
21 the penalties provided by law. Within 20 days of the receipt of  
22 the letter, the lobbyist shall deliver or post by United States  
23 mail to the Secretary of State the required report and an  
24 additional late filing fee of ten dollars (\$10.00). Filing of  
25 the required report and payment of the additional fee within the  
26 time extended shall constitute compliance with this section.  
27 Failure to file an expense report in one of the manners  
28 prescribed herein shall result in revocation of any and all  
29 registrations of a lobbyist under this Article. No lobbyist may  
30 register or reregister under this Article until he has fully  
31 complied with this section.

32 "§ 120-47.7. Statements of lobbyist's principal lobbying  
33 expenses required.

34 (a) Each lobbyist's principal shall file an expense report  
35 with the Secretary of State ~~within 60 days after the last day of~~  
36 ~~the regular session, no later than September 30 of each year.~~  
37 This expense report shall include all expenditures made between  
38 January 1 and ~~the last day of the regular session, July 31 of~~  
39 that year. The principal shall file a supplemental expense  
40 report, including all expenditures made ~~after the last day of the~~  
41 ~~regular session, but during the calendar year, between August 1~~  
42 and December 31 by February 28 of the following year. The  
43 principal shall file both expense reports whether or not  
44 expenditures are made during a reporting period.

1 (b) Each expense report shall set forth the name and address  
2 of each lobbyist employed, appointed, or retained by the  
3 lobbyist's principal, the date of each expenditure made, to whom  
4 paid, name of any legislator or any officer or employee of a  
5 State agency who benefitted from each expenditure, and amount of  
6 each expenditure made during the previous reporting period in  
7 connection with lobbying, in each of the following categories:  
8 (1) transportation, (2) lodging, (3) entertainment, (4) food, (5)  
9 any item having a cash equivalent value of more than twenty-five  
10 dollars (\$25.00), (6) contributions made, ~~paid, incurred or~~  
11 ~~promised,~~ directly or indirectly, and (7) compensation to  
12 lobbyists in connection with their lobbying activities. It shall  
13 not be necessary to report ~~expenditures of twenty-five dollars~~  
14 ~~(\$25.00) or less, nor shall it be necessary to report~~ any  
15 expenditures made in connection with the attendance of a  
16 legislator or an officer or employee of a State agency at any  
17 fund-raising function ~~or event~~ sponsored by a nonprofit  
18 organization qualified under 26 U.S.C. § 501(c). When more than  
19 10 members of the General Assembly benefitted or were invited to  
20 benefit from an expenditure, the principal shall not be required  
21 to report the name of any legislator, but shall be required to  
22 report the number of legislators ~~or~~ and, with particularity, the  
23 basis for their selection. In the category of compensation to  
24 lobbyists the principal shall estimate and report the  
25 compensation paid or promised directly or indirectly, to all  
26 lobbyists based on the estimated time, effort and expense in  
27 connection with lobbying activities on behalf of the principal.  
28 If a lobbyist is a full-time employee of the principal, or is  
29 compensated by means of an annual fee or retainer, the principal  
30 shall estimate and report the portion of all such lobbyists'  
31 salaries or retainers that compensate the lobbyists for lobbying.  
32 The principal shall designate on the report the amounts paid in  
33 reimbursement of expenditures made on behalf of the principal by  
34 each lobbyist. The principal shall retain records corroborating  
35 the expenditures reported under this subsection for a period of  
36 three years after the filing deadline for each report.

37 (c) All reports shall be in the form prescribed by the  
38 Secretary of State and open to public inspection.

39 (d) When a lobbyist's principal fails to file a lobbying  
40 expense report as required herein, the Secretary of State shall  
41 send a certified or registered letter advising the lobbyist's  
42 principal of the delinquency and the penalties provided by law.  
43 Within 20 days of the receipt of the letter, the lobbyist's  
44 principal shall deliver or post by United States mail to the



1 Secretary of State the required report and a late filing fee of  
2 ten dollars (\$10.00). Filing of the required report and payment  
3 of the late fee within the time extended shall constitute  
4 compliance with this section.

5 "§ 120-47.8. Persons exempted from provisions of Article.

6 The provisions of this Article shall not be construed to apply  
7 to any of the following:

8 (1) An individual, not acting as a lobbyist, solely  
9 engaged in expressing a personal ~~opinion on~~  
10 ~~legislative matters to his own legislative~~  
11 ~~delegation or other members of the General~~  
12 ~~Assembly.~~ opinion:

13 a. on legislative action to members or employees  
14 of the General Assembly, or

15 b. on executive action to officers or employees  
16 of a State agency.

17 (2) A person appearing before a legislative committee  
18 at the invitation or request of the committee or a  
19 member thereof and who engages in no further  
20 activities as a lobbyist in connection with that or  
21 any other legislative ~~matter.~~ action.

22 (2a) A person appearing before a State agency at the  
23 invitation or request of the State agency or of an  
24 officer or employee of that State agency and who  
25 engages in no further activities as a lobbyist in  
26 connection with that or any other executive action.

27 (3) a. A duly elected or appointed official or  
28 employee of the State, the United States, a  
29 county, municipality, school district or other  
30 governmental agency, when appearing solely in  
31 connection with matters pertaining to his  
32 office and public duties.

33 b. Notwithstanding the persons exempted in this  
34 Article, the Governor, Council of State, and  
35 all appointed heads of State departments,  
36 agencies and institutions, shall designate all  
37 authorized official legislative liaison  
38 personnel and shall file and maintain current  
39 lists of designated legislative liaison  
40 personnel with the Secretary of State and  
41 shall likewise file with the Secretary of  
42 State a full and accurate accounting of all  
43 money expended on lobbying, other than the  
44 salaries of regular full-time employees, at

- 1 the same times lobbyists are required to file  
2 expense reports under G.S. 120-47.5.
- 3 (4) A person performing professional services in  
4 drafting bills or in advising and rendering  
5 opinions to clients, or to legislators on behalf of  
6 clients, as to the construction and effect of  
7 proposed or pending legislation or executive action  
8 where the professional services are not otherwise,  
9 directly or indirectly, connected with legislative  
10 action. action or executive action.
- 11 (5) A person who owns, publishes or is employed by any  
12 news medium while engaged in the acquisition or  
13 dissemination of news on behalf of the news medium.
- 14 (6) Repealed by Session Laws 1991, c. 740, s. 1.1.
- 15 (7) Members of the General Assembly. When in discharge  
16 of their legislative duties, members of the General  
17 Assembly and legislative employees.
- 18 (8) A person responding to inquiries ~~from~~ from:
- 19 a. a member of the General Assembly or a  
20 legislative employee, and who engages in no  
21 further activities as a lobbyist in connection  
22 with that or any other legislative ~~matter.~~  
23 action, or
- 24 b. an officer or employee of a State agency, and  
25 who engages in no further activities as a  
26 lobbyist in connection with that or any other  
27 executive action.
- 28 (9) An individual giving facts or recommendations  
29 pertaining to legislative ~~matters to his~~ action to  
30 the individual's own legislative delegation only.
- 31 (10) A person who submits written comments, oral  
32 comments, or both, on a proposed rule at a public  
33 hearing held by a State agency or during the period  
34 of time set by a State agency for written comments  
35 and who engages in no further activities as a  
36 lobbyist in connection with that executive action.
- 37 (11) An attorney who represents a party in a request for  
38 a declaratory ruling or in an administrative  
39 hearing under Chapter 150B of the General Statutes  
40 or any other quasi-judicial proceeding.

41 "§ 120-47.9. Punishment for violation.

42 Whoever willfully violates any provision of this Article shall  
43 be guilty of a misdemeanor and upon conviction shall be fined not  
44 less than fifty dollars (\$50.00) nor more than one thousand

1 dollars (\$1,000), or imprisoned not exceeding two years, or both.  
2 In addition, no lobbyist who is convicted of a violation of the  
3 provisions of this Article shall in any way act as a lobbyist for  
4 a period of two years following his conviction.

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7 be guilty of a misdemeanor and upon conviction shall be fined not  
8 less than fifty dollars (\$50.00) nor more than one thousand  
9 dollars (\$1,000), or imprisoned not exceeding two years, or both.  
10 In addition, no lobbyist who is convicted of a violation of the  
11 provisions of this Article shall in any way act as a lobbyist for  
12 a period of two years following his conviction.

13 **"§ 120-47.10. Enforcement of Article by Attorney General.**

14 The Secretary of State shall report apparent violations of this  
15 Article to the Attorney General. The Attorney General shall,  
16 upon complaint made to him of violations of this Article, make an  
17 appropriate investigation thereof, and he shall forward a copy of  
18 the investigation to the district attorney of the prosecutorial  
19 district as defined in G.S. 7A-60 of which Wake County is a part,  
20 who shall prosecute any person who violates any provisions of  
21 this Article.

22 **"§ 120-47.11. Rules and forms.**

23 The Secretary of State shall make, amend, and rescind any  
24 rules, orders, forms, and definitions as are necessary to carry  
25 out ~~the provisions of this Article.~~ this Article to effectively  
26 protect the public interest from undue influence in the  
27 governmental processes of the State."

28 Sec. 2. In addition to other funds appropriated to the  
29 Office of the Secretary of State, there is appropriated from the  
30 General Fund to the Office of the Secretary of State for the  
31 1993-94 fiscal year the sum of sixty-five thousand two hundred  
32 thirty-nine dollars (\$65,239); and for the 1994-95 fiscal year  
33 the sum of fifty-eight thousand five hundred thirty-nine dollars  
34 (\$58,539).

35 Sec. 3. This act becomes effective on January 1, 1994.



# North Carolina General Assembly

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December 16, 1992

## MEMORANDUM

**TO:** Members of Subcommittee of the LRC's Committee on Governmental Ethics and Lobbying

**FROM:** Robin S. Johnson *Robin*  
Terrence D. Sullivan *TDS*  
Committee Counsel

**RE:** Summary of Draft Lobbyist Bill (93-RH-010) -- **A BILL TO BE ENTITLED AN ACT TO REQUIRE LOBBYISTS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT TO REGISTER AND FILE EXPENSE REPORTS WITH THE SECRETARY OF STATE, TO MAKE OTHER CLARIFYING AMENDMENTS TO THE LOBBYING LAW, AND TO MAKE AN APPROPRIATION THEREFOR.**

This bill would amend Article 9A of Chapter 120, which governs lobbying. The bill would make technical or conforming changes. The substantive changes are based on requests from the Office of the Secretary of State and from presenters at earlier committee or subcommittee meetings.

**G.S. 120-47.1, Definitions,** would be amended to separate and clarify the definitions of "compensation" and "expenditure", and to add the definitions of "executive action", "legislative employee", and "State agency". The definition of "lobbying" would now include influencing or attempting to influence, or solicitation of others to influence or attempt to influence, executive action through direct oral or written communication. Currently, only lobbyists who lobby members and employees of the General Assembly are required to register and file expenditure reports. This change would expand these requirements to lobbyists who lobby officers or employees in the Executive Branch.

**G.S. 120-47.5, Contingent lobbying fees and election influence prohibited,** prohibits contingency lobbying fees in connection with legislative actions and campaign contribution threats by lobbyists against members of the General Assembly. This section would be amended to make these prohibitions also applicable to contracting on lobbying fees contingent on executive actions and campaign contribution threats by lobbyists against executive officers.

**G.S. 120-47.6, Statements of lobbyist's lobbying expenses required,** and **G.S. 120-47.7, Statements of lobbyist's principal lobbying expenses required,** would be amended to require lobbyists and their principals to file their expense statements by



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September 30 (which covers expenses made between January 1 and July 31) and by February 28 (which covers expenses made between August 1 and December 31 of the previous year). Currently, the first expense report is required to be filed within 60 days after the last day of the regular session of the General Assembly. These sections would also require expense reports to name any officer or employee of a State agency who benefitted from each expenditure.

If more than ten legislators benefitted or were invited to benefit from a lobbying expenditure, the individual legislators need not be named but the number and the basis of their selection must be reported. Under current law, either the number or the basis is to be reported.

Lobbyists and their principals would be required to keep corroborating records for three years after the filing deadline for each report.

G.S. 120-47.7 also would require principals to designate on their reports the amounts they reimburse their lobbyists.

G.S. 120-47.8, Persons exempt from provisions of Article, would make conforming changes to those exempt to take into account the additional regulation of Executive Branch lobbying. Specifically, exempt from lobbying registration and reporting would be the following persons appearing before the Executive Branch officials:

1. a person submitting comments on a proposed rule at a public hearing or during the period of time set for written comments and who engages in no further activities as a lobbyist in connection with that executive action (Subdivision 10); and
2. an attorney who represents a party in a request for a declaratory ruling or in an administrative hearing or other quasi-judicial proceeding (Subdivision 11).

Legislators and legislative employees would be exempt from the lobbying regulation while they are discharging their legislative duties (Subdivision 7).

Section 2 of the proposed draft would make appropriations for each year of the next biennium to the Secretary of State's Office to implement the provisions of this act.

Section 3 of the proposed draft would make the act effective on January 1, 1994.

\*\*92RJ067\*\*



Receipts: A \$75 registration fee is effective from time of registration until January 1 of the following odd-numbered year. Receipts reflect full payment of registration fee on effective date of January 1, 1994 and again on January 1, 1995. Receipts in subsequent years reflect biennial registration in odd-numbered year.

SOURCES OF DATA: Office of Secretary of State

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Louise Young

APPROVED BY:

DATE: December 17, 1992

[FRD#003]

*Louise Young*