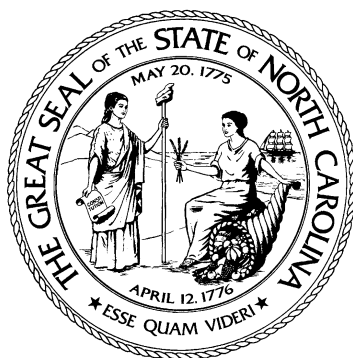


**HOUSE SELECT
COMMITTEE ON ETHICS AND
GOVERNMENTAL REFORM**



**FINAL REPORT
TO THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES**

May 8, 2006

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May 8, 2006

TO THE MEMBERS OF THE 2005-2006 HOUSE OF REPRESENTATIVES

The House Select Committee on Ethics and Governmental Reform respectfully submits for your consideration the following final report.

Respectfully submitted,

Representative Joe Hackney

Representative Julia C. Howard

Co-Chairs
House Select Committee on Ethics and Governmental Reform

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MEMBERSHIP

HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM 2006

Co-Chairs

Representative Joe Hackney, Co-Chair

Representative Julia C. Howard, Co-Chair

Subcommittee on Legislative & Executive Ethics **Rep. Harold J. Brubaker, Rep. Paul Luebke, Co-chairs**

Representative Beverly M. Earle

Representative Edd Nye

Representative Susan C. Fisher

Representative Mitchell S. Setzer

Representative Carolyn H. Justice (East)

Subcommittee on Campaign Finance/Reporting & Election Laws **Rep. Rick L. Eddins, Rep. Deborah K. Ross, Co-Chairs**

Representative Jeffrey L. Barnhart

Representative Marian McLawhorn

Representative Larry M. Bell

Representative Thomas Roger West

Representative Pricey Harrison

Subcommittee on Legislative & Executive Lobbying Reform **Rep. Pryor Gibson, Rep. Wilma M. Sherrill, Co-Chairs**

Representative Lorene T. Coates

Representative John I. Sauls

Representative Marvin W. Lucas

Representative Fred F. Steen, II

Representative Grier Martin

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HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM

Revised 2/20/06

**TO THE HONORABLE MEMBERS OF THE
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

Section 1. The **House Select Committee on Ethics and Governmental Reform** is established by the Speaker, effective December 5, 2005, as a select committee of the House pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

Section 2. The Select Committee consists of 23 members. The individuals listed below are appointed as members of the Select Committee. Members serve at the pleasure of the Speaker of the House of Representatives.

Representative Joe Hackney, Co-Chair	Representative Marvin W. Lucas
Representative Julia C. Howard, Co-Chair	Representative Marian N. McLawhorn
Representative Jeff Barnhart	Representative Paul Luebke
Representative Larry M. Bell	Representative Grier Martin
Representative Harold J. Brubaker	Representative Edd Nye
Representative Lorene Coates	Representative Deborah K. Ross
Representative Beverly M. Earle	Representative John Sauls
Representative Rick L. Eddins	Representative Mitchell S. Setzer
Representative Susan C. Fisher	Representative Wilma M. Sherrill
Representative Pryor Gibson	Representative Fred F. Steen
Representative Pricey Harrison	Representative Roger West
Representative Carolyn H. Justice	

Section 3. The Select Committee may meet during the interim period between regular sessions upon the call of its chair.

Section 4. The Select Committee shall:


1. Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign.
2. Examine the appropriateness of the scope of the State Ethics Board over executive branch actions, including the determination of whether this agency created by gubernatorial executive order should be codified into law and whether appointees made by any appointing authority to executive boards and commissions should be required under oath to submit to the State Ethics Board written statements of economic interest prior to assuming office.
3. Review needed changes to the Legislative Ethics Act, including reviewing the economic interest disclosure requirements for legislators to find ways to make these disclosures more comprehensive, improving the means by which this information is made available to the public, examining whether criminal punishments should be imposed for willfully providing false information or intentionally hiding information on a statement of economic interest, and assessing whether ethics training should be required for legislators and staff of the General Assembly on a regular basis.
4. Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including imposing restrictions on how a candidate can spend leftover funds from a political campaign, ending the practice of using blank payee checks to contribute to candidates, and lowering the threshold requirement for full disclosure on campaign reports for individual contributions from \$100 to \$50.

Section 5. The Select Committee shall report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before the convening of the 2006 Regular Session of the 2005 General Assembly, by filing a report with the Speaker's office, the House Principal Clerk, and the Legislative Library. The Select Committee terminates on May 9, 2006, or upon the filing of its final report, whichever occurs first.

Section 6. The Select Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

Section 7. Members of the Select Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.1.

Section 8. The expenses of the Select Committee are considered expenses incurred for the operation of the House of Representatives and shall be paid pursuant to G.S. 120-35 from funds available to the House for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.



James B. Black
Speaker

Revised 2/20/2006 to reflect an expanded charge to the Select Committee.

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COMMITTEE PROCEEDINGS

The full House Select Committee on Ethics and Governmental Reform met six times between January and May of 2006. In addition, the co-chairs appointed three subcommittees which met a total of nine times as follows. The Subcommittee on Legislative & Executive Ethics met one time on March 8, 2006. The Subcommittee on Campaign Finance/Reporting & Election Laws met five times between March 7, 2006 and May 8, 2006. The Subcommittee on Legislative & Executive Lobbying Reform met three times between April 25, 2006 and May 8, 2006.

Below is a compilation of all full Committee and Subcommittee meetings listed in chronological order.

January 6, 2006

On January 6, 2006, the full Committee met to review its duties and responsibilities under its authorization. Committee Co-Counsel, O. Walker Reagan, presented an overview and summary of North Carolina's ethics laws. In particular, he discussed how ethical issues are handled in each branch of government.

Jane F. Finch, Vice-Chair of the North Carolina State Ethics Board, and Perry Newson, Executive Director of the North Carolina State Ethics Board, made presentations on executive branch ethics in North Carolina. They explained the scope of Executive Order No. One and described the functions of the North Carolina State Ethics Board including: (1) reviewing statements of economic interest of covered officials, (2) rendering advisory ethics opinions, (3) conducting ethics complaint investigations, and (4) conducting ethics education programs.

Walker Reagan explained legal deficiencies of the Executive Order process and presented information on other states' laws for executive branch ethics.

Elizabeth McKay, a Special Deputy Attorney General in the Transportation Section of the Attorney General's Office, highlighted special statutory ethics provisions unique to the North Carolina Department of Transportation.

February 9, 2006

The second meeting of the full Committee was held on February 9, 2006. Erika Churchill, Committee Co-Counsel, presented a summary and overview of North Carolina's lobbying law. She compared the current lobbying law to changes scheduled to become effective January 1, 2007, as a result of legislation enacted during the 2005 Regular Session of the General Assembly (S.L. 2005-456, SB 612).

Elaine Marshall, Secretary of State, Haley Montgomery, Deputy Secretary of State, and Judge Robert Farmer, Consultant to the Secretary of State's Office, discussed implementation of lobbying law changes.

John McMillan, a registered lobbyist, offered his perspective on the changes to North Carolina's lobbying law. Mr. McMillan suggested that monthly reporting could be problematic, especially for lobbyist principals who are not regularly involved in ongoing matters at the General Assembly. He also discussed other problems and pitfalls in the new law.

February 22, 2006

The third full Committee meeting was held on February 22, 2006. Walker Reagan reviewed the Committee's revised authorization, presented further information on other states' executive branch ethics laws, and described policy issues that should be considered if the provisions in Executive Order No. One are to be codified.

Kory Goldsmith, Committee Co-Counsel, explained lobbyist gift restrictions and legislative ethics laws in other states.

Additional presentations on recommended reforms were made by North Carolina Attorney General Roy Cooper, Perry Newson, Executive Director of the North Carolina State Ethics Board, and Christie Barbee, President of the North Carolina Professional Lobbyist Association.

Commissioner of Insurance, Jim Long, presented the Department of Insurance's ethics policies and procedures and explained how those policies and procedures were more stringent than those required by Executive Order No. One.

The Co-Chairs announced the appointment of the three Subcommittees.

March 7, 2006

The Subcommittee on Campaign Finance/Reporting & Election Laws held its first meeting on March 7, 2006. Bill Gilkeson, Committee Co-Counsel, explained the Subcommittee's authorization. He presented three pieces of draft legislation that addressed the restricted uses of leftover campaign funds, the prohibition of blank contribution checks, and lowering from \$100 to \$50 the threshold reporting requirement for individual contributions.

March 8, 2006

The Subcommittee on Legislative & Executive Ethics met on March 8, 2006. O. Walker Reagan, Committee Co-Counsel, explained the Subcommittee's authorization and gave a presentation on the Executive Branch Ethics Act, a proposed bill draft that would codify Executive Order No. One into law. The Subcommittee approved a motion to send the Executive Branch Ethics Act, as amended, to the full Committee.

Kory Goldsmith, Committee Co-Counsel, gave an overview of the Legislative Ethics Act.

The Subcommittee directed staff to prepare a Legislative Ethics Act draft that would incorporate some of the same policies that were recommended in the Executive Branch Ethics Act draft.

Bob Phillips, Executive Director of Common Cause North Carolina, presented information on the West Virginia Ethics Commission. He urged the Subcommittee to consider the establishment of an independent ethics commission that is composed of citizens, not lawmakers or public officials, that would be responsible for both executive branch and legislative branch ethics.

March 23, 2006

The Subcommittee on Campaign Finance/Reporting & Election Laws held its second meeting on March 23, 2006. The purpose of the meeting was to learn about public financing of campaigns. Robert Joyce, professor at the UNC School of Government, discussed current public financing initiatives in North Carolina. Erika Churchill, Committee Co-Counsel, described introduced legislation about public financing. Bill Gilkeson, Committee Co-Counsel, presented research on public financing of campaigns in other states.

The Subcommittee held a public hearing and heard from the following people: Judge Wanda Bryant, North Carolina Court of Appeals, Beth Messersmith, volunteer board President of North Carolina Voters for Clean Elections, Heather Yandow, a board member of Democracy North Carolina, Peg Chapin, Campaign Finance and Election Reform Chair for the League of Women Voters, Chris Heagarty, North Carolina Center for Voter Education, and Don Hyatt, Former Candidate for Cary Town Council.

March 24, 2006

The fourth meeting of the full Committee was held on March 24, 2006. Roth Judd, Director of the Wisconsin State Ethics Board, discussed Wisconsin's gift restrictions from lobbyists to legislators and its "no cup of coffee" gift ban law. Wisconsin is one of three states that prohibit lobbyists from giving anything of value to legislators.

Representative Pryor Gibson explained that the Subcommittee on Legislative & Executive Lobbying Reform wanted to hear from all interested parties on the subject of legislative and executive lobbying reform in order to have a bill draft prior to the Subcommittee's first meeting.

Representative Deborah Ross noted that the Subcommittee on Campaign Finance/Reporting & Election Laws met twice and discussed six major issues. She explained that the Subcommittee considered bill drafts on the following topics: (1) the restricted uses of leftover campaign funds, (2) the prohibition of blank contribution checks, and (3) lowering from \$100 to \$50 the threshold reporting requirement for individual contributions.

Representative Ross stated that the Subcommittee also discussed (1) public financing of campaigns, (2) a comparison of other states' campaign contribution limits, and (3) the idea of clarifying the definition of "independent expenditure" in the North Carolina General Statutes.

Representative Paul Luebke reported that the Subcommittee on Legislative & Executive Ethics worked diligently on a draft bill that would codify Executive Order No. One into law. He stated that this bill draft would be presented later in the meeting. Representative Luebke asked the full Committee to review a handout discussing the Subcommittee's consideration of an independent ethics commission.

Walker Reagan, Committee Co-Counsel, presented the Executive Branch Ethics bill draft. He presented the bill's major provisions and distributed a summary to members of the Committee.

A public hearing on issues of governmental ethics reform was held. The Committee heard presentations from eleven people on topics including executive and legislative ethics, lobbying reform, and campaign finance and election laws:

- Mr. Rob Schofield, North Carolina Center for Nonprofits, urged the Committee to adopt common sense changes to North Carolina's lobbying laws.
- Mr. Tom Coulson, North Carolina Voters for Clean Elections, expressed his support for public financing of political campaigns or "voter-owned elections."
- Mr. Brian Irving, North Carolina Libertarian Party, suggested that North Carolina loosen its ballot access laws for minor parties.
- Mr. Chris Heagarty, North Carolina Center for Voter Education, advocated public financing of political campaigns in North Carolina.
- Mr. Don Hyatt, Former Candidate for Cary Town Council, asked the Committee to adopt substantive changes to North Carolina's campaign disclosure laws.
- Mr. Richard Hatch, AARP Advocate, recommended making the budget process more transparent, banning Committee meetings held on the chambers' floors, prohibiting gifts from lobbyists to legislators, creating an independent ethics commission, and implementing Senate Bill 612 immediately.
- Ms. Louisa Warren, North Carolina Coalition for Lobbying Reform, stated that the Committee should ban gifts from lobbyists to legislators, ban campaign fundraising by lobbyists, establish an independent ethics commission with authority over the legislative and executive branches of government, and close the goodwill lobbying loophole immediately.
- Mr. Adam Sotak, Democracy North Carolina, encouraged the adoption of publicly financed elections.
- Mr. Andrew Silver, citizen, spoke about the need for more public comment and discussed electronic voting machines.
- Mr. Richard Logan, North Carolina Fair Share, stated his support for cleaner elections through public financing of political campaigns.
- Mr. Dennis Burns, North Carolina Coalition for Verified Voting, explained that the Public Confidence in Elections Act (SB 223) passed last session, is being implemented, and is not in need of any revisions.

April 11, 2006

The Subcommittee on Campaign Finance/Reporting & Election Laws held its third meeting on April 11, 2006. Bill Gilkeson, Committee Co-Counsel, presented three amended bill drafts dealing with the restricted uses of campaign funds, the prohibition of blank contribution checks, and lowering from

\$100 to \$50 the threshold reporting requirement for individual contributions. He presented research that compared North Carolina's contribution limits with the contribution limits of other states.

Gina M. Winters, Associate Research Analyst for the New Jersey Legislature, spoke to the Subcommittee and described New Jersey's pilot program which allows public financing of some legislative campaigns.

Linda Millsaps, Fiscal Analyst with the Fiscal Research Division, presented her analysis of the Arizona checkoff if it was applied in North Carolina. The Arizona checkoff program allows taxpayers to designate a contribution to a fund which is used for public financing of political campaigns.

April 25, 2006

The Subcommittee on Legislative & Executive Lobbying Reform met for the first time on April 25, 2006. It discussed the idea of banning gifts from lobbyists to legislators. The Subcommittee discussed what does and does not constitute a gift. After this discussion, the Subcommittee decided to recommend a "no gifts rule" to the full Committee.

The Subcommittee also examined issues related to SB 612, the lobbying law enacted last session. Walker Reagan and Erika Churchill, Committee Co-Counsel, explained provisions of the law and passed out informational documents.

April 27, 2006

The Subcommittee on Campaign Finance/Reporting & Election Laws met for the fourth time on April 27, 2006. Erika Churchill, Committee Co-Counsel, explained what a 527 organization is and described North Carolina's laws on electioneering communications. Bill Gilkeson, Committee Co-Counsel, presented a history of North Carolina's issue-advocacy laws from 1974 to the present. Winnie Strzelecki, Field Director for the Reform Institute, presented additional information on 527's in other states and at the federal level.

The Subcommittee voted to make recommendations for a pilot program allowing the public financing of selected legislative elections. The program would have components from the current judicial program such as: (1) thresholds high enough to demonstrate the candidate's viability and voters' authorization before public funds are spent, (2) voluntary spending and fundraising requirements, and (3) rescue funds to help a qualified candidate stay competitive in the face of high-spending opposition.

The Subcommittee also recommended further inquiry into federal law and other states' actions related to reporting and regulation of electioneering communications and issue advocacy.

April 28, 2006

The Subcommittee on Legislative & Executive Lobbying Reform met a second time on April 28, 2006. It discussed the idea of limiting or preventing lobbyists from donating to candidates running for office in legislative or executive branch races. The Subcommittee acknowledged its desire to make this recommendation to the full Committee as long as the proposal was constitutional.

The Subcommittee also discussed the logistical challenges related to the new lobbying law. This included the inability to move up the effective date without additional funding to fill vacancies that are needed so that the Secretary of State's Office can administer the new lobbying law.

Based on these proceedings, the Subcommittee was prepared to report to the full Committee during the full Committee's meeting later on April 28, 2006.

The fifth meeting of the full Committee was held on April 28, 2006. The Subcommittee on Legislative & Executive Ethics reported to the full Committee. Walker Reagan, Committee Co-Counsel, presented two pieces of draft legislation, one involving legislative ethics and one involving executive branch ethics. Mr. Reagan explained that the two drafts were designed to mirror one another.

The Subcommittee on Campaign Finance/Reporting & Election Laws reported to the full Committee. Bill Gilkeson, Committee Co-Counsel, presented three pieces of draft legislation. The first bill would prohibit the use of candidates' campaign funds for personal purposes unrelated to campaigns and officeholding duties. The second bill would clarify the law regarding the use of "blank payee checks" by requiring that anyone making a contribution through an intermediary must designate the intended recipient of the contribution. The third bill would reduce from \$100 to \$50 the threshold for publicly reporting an individual campaign contributor's identity. The committee amended the bill to apply the \$50 reporting threshold only to contributions made by money order and for making and accepting a contribution in cash. In addition to these three draft bills, the Subcommittee also recommended the development of a pilot program that would provide public financing in selected legislative races and further inquiry into federal and other states' laws dealing with electioneering communications and issue advocacy.

The Subcommittee on Legislative & Executive Lobbying Reform also reported to the full Committee. Erika Churchill, Committee Co-Counsel, explained the Subcommittee's preliminary recommendations on executive and legislative lobbying law reforms, including a "no gifts rule" that would prohibit gifts from lobbyists to legislators.

May 8, 2006

The Subcommittee on Campaign Finance/Reporting & Election Laws met for the fifth time on May 8, 2006. Erika Churchill, Committee Co-Counsel, presented draft bills that would require training for campaign treasurers. Ms. Churchill also presented a draft bill that would strengthen electioneering communications.

Bill Gilkeson, Committee Co-Counsel, presented a draft bill that would create a pilot program for public financing of selected legislative campaigns.

The Subcommittee recommended sending these bills to the full Committee for consideration during the full Committee's meeting later in the day on May 8, 2006.

The Subcommittee on Legislative & Executive Lobbying Reform met a third time on May 8, 2006. Erika Churchill, Committee Co-Counsel, presented the Lobbying Reform 2006 bill draft. She explained that the bill would clarify and strengthen additional areas of lobbying regulation, including banning certain gifts from lobbyists to covered persons.

The Subcommittee recommended sending the bill to the full Committee for consideration during the full Committee's meeting later in the day on May 8, 2006.

The sixth meeting of the full Committee was held on May 8, 2006.

The Subcommittee on Legislative & Executive Ethics made its recommendations to the full Committee.

Walker Reagan, Committee Co-Counsel, presented the Revise Legislative Ethics Act bill draft. Mr. Reagan explained that the draft differs from previous versions because it gives a better definition of a "public event" and conforms the rules applied to legislators to the rules applied to members of the judicial and executive branches. Mr. Reagan noted that the draft allows legislative titles in political advertising, but prohibits them in commercial advertising. Mr. Reagan also explained that the draft would limit legislative staff from accepting honoraria in situations such as speaking engagements. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

Mr. Reagan also presented the Executive Branch Ethics Act bill draft. He explained that the changes in this draft mirror the alterations made to the Revise Legislative Ethics Act. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

The Subcommittee on Campaign Finance/Reporting & Election Laws made recommendations to the full Committee.

Erika Churchill, Committee Co-Counsel, presented the Treasurer Training bill draft. She explained that the draft would require all treasurers of political committees to participate in training within three months of appointment and at least once every four years thereafter. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

Ms. Churchill presented the Strengthen Electioneering Communications bill draft. She explained that the primary function of the bill is to decrease the disclosure requirement to mass communications reaching at or above 2,500 persons. The full Committee recommended sending this bill to the North Carolina General Assembly for adoption.

Bill Gilkeson, Committee Co-Counsel, presented the Legislative Campaign Pilot bill draft. He explained that the draft would establish a pilot program for public financing of campaigns for seats in the General Assembly. The pilot would begin in 2008 and would apply to two Senate and two House seats. The full Committee passed an amendment dealing with the selection of districts. The full Committee recommended sending this bill, as amended, to the North Carolina General Assembly for adoption.

The Subcommittee on Legislative & Executive Lobbying Reform made its recommendations to the full Committee.

Ms. Churchill presented the Lobbying Reform 2006 bill draft. She explained that this draft would combine and make a unified standard for both legislative and executive branch lobbyists. An amendment was offered to provide a 30-day reporting requirement while the legislature is in session. The amendment passed, and the full Committee recommended sending this bill, as amended, to the North Carolina General Assembly for adoption.

The final item for consideration was the Candidate Challenge Procedure bill draft. Bill Gilkeson, Committee Co-Counsel, explained that the draft would allow individuals to challenge the eligibility and qualifications of candidates. The bill was amended to include a severability clause in case the courts found one part of the bill to be unconstitutional. The full Committee recommended sending this bill, as amended, to the North Carolina General Assembly for adoption.

RECOMMENDATIONS

The Committee recommends that the General Assembly enact the following proposed legislation:

Recommendation 1:

“AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.”

FINDING: Although the Governor has issued Executive Order No. One to address Executive Branch Ethics, there is no comprehensive ethics law for the Executive Branch. After examining the appropriateness of the scope of the State Board of Ethics as set forth in Executive Order No. One, the Committee finds that the General Assembly should codify the provisions of Executive Order No. One and provide by statute: (1) the ability to prosecute those who knowingly make false or misleading statements on statements of economic interest, (2) investigative authority, including subpoena power, (3) coverage for Council of State Members and their appointees and appointees to boards and commissions made by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, (4) better enforcement options for ethics violations, (5) required submission, under oath, of written statements of economic interest for appointees to executive boards and commissions before these individuals take office, (6) implementation of a gift ban that prohibits public servants from accepting gifts, and (7) required ethics training.

Recommendation 2:

“AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENT REFORM.”

FINDING: North Carolina should revise its Legislative Ethics Act. After reviewing the economic interest disclosure requirements for legislators, the Committee finds the public would be well served if these disclosures were more comprehensive and the means by which this information is made available to the public was improved. Ethical standards applicable to public officials in the Executive Branch generally should apply to the Legislative Branch. The Committee also recognizes the need to impose criminal sanctions for willfully providing false information or intentionally hiding information on a statement of economic interest. Required ethics training for legislators and staff is an essential element in revising the Legislative Ethics Act, and the Legislative Ethics Committee should be given greater authority to advise on and enforce high ethical standards. Finally, the Legislative Ethics Act should implement a gift ban that prohibits legislators from accepting gifts from lobbyists.

Recommendation 3:

“AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.”

FINDING: The Committee has examined the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612), and finds that additional areas of lobbying regulation should be clarified or strengthened, including banning gifts from lobbyists to covered persons.

Recommendation 4:

“AN ACT TO PROHIBIT THE USE OF CANDIDATES' CAMPAIGN FUNDS FOR PERSONAL PURPOSES UNRELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.”

FINDING: Currently, North Carolina is one of 10 states that places no restrictions on how candidates may spend the funds in their campaign accounts. North Carolina should prohibit the use of campaign funds for personal purposes.

Recommendation 5:

“AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS BY MONEY ORDER; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; AND TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.”

FINDING: North Carolina should lower the threshold from \$100 to \$50 for accepting a political contribution in cash. It also should require the reporting of the identity of a contributor who makes a contribution of more than \$50 by money order. These changes would foster clarity and transparency in North Carolina's campaign finance and election laws.

Recommendation 6:

"AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

FINDING: Under current law, campaign treasurers are not required to receive any training. This lack of training has led to misunderstandings regarding what is and is not permissible under North Carolina's campaign finance and election laws. Required training for treasurers of political campaign committees would reduce mistakes, add clarity and transparency to North Carolina's campaign finance and election laws, and foster public trust in the system.

Recommendation 7:

"AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUNDRAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

FINDING: Currently, North Carolina campaign finance laws do not address "bundling," an apparently common practice in which an intermediary gathers up contribution checks from individuals and delivers them all together to a candidate or committee. The State Board of Elections has given the opinion that the practice is not illegal as long as the check is completed. Recently, it has been debated whether bundling is legal even if the intermediary completes a contribution check that the contributor has left blank. North Carolina should prohibit the use of blank payee checks to contribute to candidates.

Recommendation 8:

"AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

FINDING: North Carolina's law addressing electioneering communications is inadequate and should be strengthened. To improve its law, North Carolina should (1) reduce from 7,500 and 5,000 to 2,500 the number of persons in the definition of "targeted to the relevant electorate," (2) clarify that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a contribution from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only the allowable source's contributions, and (3) clarify that the trigger for disclosure dates is the time at which the obligation is incurred, not when the disbursement for the debt owed is made. These changes would strengthen North Carolina's campaign finance and election laws.

Recommendation 9:

"AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR SELECTED LEGISLATIVE SEATS WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A PUBLICLY SUPPORTED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

FINDING: In 2002, the North Carolina General Assembly established the Public Campaign Fund for public financing of campaigns of those candidates for Supreme Court and Court of Appeals who voluntarily accepted contribution and expenditure limits that are not applied to all candidates. The Public Campaign Fund is being used in judicial elections this year for the second time, and the Committee finds that this program has been successful. North Carolina should establish a pilot program for public financing of campaigns for selected seats in the General Assembly. New Jersey has conducted a similar pilot program for seats in its equivalent to the North Carolina House of Representatives.

Recommendation 10:

"AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM."

FINDING: In North Carolina, some people who are not qualified to serve may file as candidates for office. However, unlike the law that allows individuals to challenge the eligibility of registered voters, there is no statutory procedure for challenging the eligibility of candidates. The Committee finds that the public would be better served if the North Carolina General Statutes had a carefully constructed procedure allowing individuals to challenge the qualifications of candidates. This would improve North Carolina's election laws by filling in a gap in existing law.

1 adopting a stronger procedure to prevent the occurrence of conflicts of interest in
2 government and to resolve conflicts when they do occur.

3 **"§ 138A-3. Definitions.**

4 The following definitions apply in this Chapter:

- 5 (1) Board. – Any non-advisory State executive branch board, commission,
6 council, committee, task force, authority, or similar public body,
7 however denominated.
- 8 (2) Business. – Any of the following, whether or not for profit:
9 a. Association.
10 b. Corporation.
11 c. Enterprise.
12 d. Joint venture.
13 e. Organization.
14 f. Partnership.
15 g. Proprietorship.
16 h. Vested trust.
17 i. Every other business interest, including ownership or use of
18 land for income.
- 19 (3) Business associate. – A partner, or member or manager of a limited
20 liability company.
- 21 (4) Business with which associated. – A business of which the public
22 servant or any member of the public servant's immediate family has a
23 pecuniary interest. For purposes of this sub-subdivision, the term
24 'business' shall not include a widely held investment fund, including a
25 mutual fund, regulated investment company, or pension or deferred
26 compensation plan, if all of the following apply:
27 1. The public servant or a member of the public servant's
28 immediate family neither exercises nor has the ability to
29 exercise control over the financial interests held by the fund.
30 2. The fund is publicly traded, or the fund's assets are widely
31 diversified.
- 32 (5) Commission. – The State Ethics Commission.
- 33 (6) Compensation. – Any money, thing of value, or economic benefit
34 conferred on or received by any person in return for services rendered
35 or to be rendered by that person or another. This term does not include
36 campaign contributions properly received and, if applicable, reported
37 as required by Article 22A of Chapter 163 of the General Statutes.
- 38 (7) Constitutional officers of the State. – Officers whose offices are
39 established in Article III of the Constitution.
- 40 (8) Contract. – Any agreement including sales and conveyances of real
41 and personal property and agreements for the performance of services.
- 42 (9) Employing entity. – Any of the following bodies of State government
43 of which the public servant is an employee or a member, or over which
44 the public servant exercises supervision: agencies, authorities, boards,

1 commissions, committees, councils, departments, offices, institutions
2 and their subdivisions, and constitutional offices of the State.

3 (10) Extended family. – Spouse, descendant, ascendant, or sibling of the
4 public servant or descendant, ascendant, or sibling of the spouse of the
5 public servant.

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

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

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

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

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

20 b. Receiving, either individually or collectively, during the
21 preceding calendar year compensation that is or will be required
22 to be included as taxable income on federal income tax returns
23 of the public servant, the public servant's immediate family, or a
24 business with which associated in an aggregate amount of five
25 thousand dollars (\$5,000) from any business or combination of
26 businesses. A pecuniary interest exists in any client or customer
27 who pays fees or commissions, either individually or
28 collectively, of five thousand dollars (\$5,000) or more in the
29 preceding 12 months to the public servant, the public servant's
30 immediate family, or a business with which associated.

31 c. Receiving, either individually or collectively and directly or
32 indirectly, in the preceding 12 months, gifts or honoraria having
33 an unknown value or having an aggregate value of five hundred
34 dollars (\$500.00) or more from any person. A pecuniary interest
35 does not exist under this sub-subdivision by reason of (i) a gift
36 or bequest received as the result of the death of the donor; (ii) a
37 gift from an extended family member; or (iii) acting as a trustee
38 of a trust for the benefit of another.

39 d. Holding the position of associate, director, officer, business
40 associate, or proprietor of any business, irrespective of the
41 amount of compensation received.

42 (15) Public event. – An organized gathering of individuals open to the
43 general public or to which at least ten public servants are invited to

1 attend and at least ten employees or members of the principal or
2 person actually attend.

3 (16) Public servants. – All of the following:

4 a. Constitutional officers of the State and persons elected or
5 appointed as constitutional officers of the State prior to taking
6 office.

7 b. Employees of the Office of the Governor.

8 c. Heads of all principal State departments, as set forth in
9 G.S. 143B-6, who are appointed by the Governor.

10 d. The chief deputy and chief administrative assistant of each
11 person designated under sub-subdivisions a. or c. of this
12 subdivision.

13 e. Confidential assistants and secretaries as defined in
14 G.S. 126-5(c)(2), to persons designated under sub-subdivisions
15 a., c., or d. of this subdivision.

16 f. Employees in exempt positions as defined in G.S. 126-5(b) and
17 employees in exempt positions designated in accordance with
18 G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to
19 these individuals.

20 g. Any other employees or appointees in the principal State
21 departments as may be designated by the Governor to the extent
22 that the designation does not conflict with the State Personnel
23 Act.

24 h. All voting members of boards, including ex officio members
25 and members serving by executive, legislative, or judicial
26 branch appointment.

27 i. For The University of North Carolina, the voting members of
28 the Board of Governors of The University of North Carolina,
29 the president, the vice-presidents, and the chancellors, the
30 vice-chancellors, and voting members of the boards of trustees
31 of the constituent institutions.

32 j. For the Community Colleges System, the voting members of
33 the State Board of Community Colleges, the President and the
34 chief financial officer of the Community Colleges System, the
35 president, chief financial officer, and chief administrative
36 officer of each community college, and voting members of the
37 boards of trustees of each community college.

38 k. Members of the Commission.

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

41 (17) Vested trust. – A trust, annuity, or other funds held by a trustee or
42 other third party for the benefit of the public servant or a member of
43 the public servant's immediate family. A vested trust shall not include

1 a widely held investment fund, including a mutual fund, regulated
2 investment company, or pension or deferred compensation plan, if:

3 a. The public servant or a member of the public servant's
4 immediate family neither exercises nor has the ability to
5 exercise control over the financial interests held by the fund;
6 and

7 b. The fund is publicly traded, or the fund's assets are widely
8 diversified.

9 "§ 138A-4 and 138A-5. [Reserved]

10 "Article 2.

11 "Ethical Standards for Public Servants.

12 "§ 138A-6. Use of public position for private gain.

13 (a) A public servant shall not knowingly use the public servant's public position
14 in any manner that will result in financial benefit, direct or indirect, to the public
15 servant, a member of the public servant's extended family, or a person with whom, or
16 business with which, the public servant is associated. The performance of usual and
17 customary duties associated with the public position or the advancement of public
18 policy goals or constituent services, without compensation, shall not constitute the use
19 of public position for financial benefit. This subsection shall not apply to financial or
20 other benefits derived by a public servant that the public servant would enjoy to an
21 extent no greater than that which other citizens of the State would or could enjoy, or that
22 are so remote, tenuous, insignificant, or speculative that a reasonable person would
23 conclude under the circumstances that the public servant's ability to protect the public
24 interest and perform the public servant's official duties would not be compromised.

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

29 "§ 138A-7. Gifts.

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

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

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

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- (1) Is doing or is seeking to do business of any kind with the public servant's employing entity.
- (2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.
- (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.
- (d) Subsection (c) of this section shall not apply to any of the following:
 - (1) Meals and beverages for immediate consumption in connection with public events.
 - (2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars (\$10.00) provided by a single donor during a single calendar day.
 - (3) Informational materials relevant to the duties of the public servant.
 - (4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.
 - (5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.
 - (6) Items and services received relating to an educational conference or meeting.
 - (7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
 - (8) Gifts accepted on behalf of the State.
 - (9) Anything generally available or distributed to the general public or all other State employees.
 - (10) Anything for which fair market value is paid.
 - (11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
 - (12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
 - (13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
 - (14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
 - (15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.

1 (16) Things of monetary value given to a public servant valued in excess of
2 ten dollars (\$10.00) where the thing of monetary value is entertainment
3 or related expenses associated with the public business of industry
4 recruitment, promotion of international trade, or the promotion of
5 travel and tourism, and the public servant is responsible for conducting
6 the business on behalf of the State, provided all the following
7 conditions apply:

8 a. The public servant did not solicit the thing of value, and the
9 public servant did not accept the thing of value in the
10 performance of the public servant's official duties.

11 b. The public servant reports electronically to the Commission
12 within 30 days of receipt of the thing of value. The report shall
13 include a description and value of the thing of value and a
14 description how the thing of value contributed to the public
15 business of industry recruitment, promotion of international
16 trade, or the promotion of travel and tourism. This report shall
17 be posted to the Commission's public Web site.

18 c. A tangible thing of value in excess of ten dollars (\$10.00), other
19 than meals or beverages, shall be turned over as State property
20 to the Department of Commerce within 30 days of receipt.

21 (17) Things of monetary value of personal property valued at less than one
22 hundred dollars (\$100.00) given to a public servant in the commission
23 of the public servant's official duties if the gift is given to the public
24 servant as a personal gift in another country as part of an overseas
25 trade mission, and the giving and receiving of such personal gifts is
26 considered a customary protocol in the other country.

27 (e) A prohibited gift shall be declined, returned, paid for at fair market value, or
28 accepted and donated immediately to the State. Perishable food items of reasonable
29 costs, received as gifts shall be donated to charity, destroyed, or provided for
30 consumption among the entire staff or the public.

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

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

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

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

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

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

44 "§ 138A-8. Other compensation.

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

5 **"§ 138A-9. Use of information for private gain.**

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

12 **"§ 138A-10. Appearance of conflict.**

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

19 **"§ 138A-11. Other rules of conduct.**

20 (a) A public servant shall make a due and diligent effort before taking any action,
21 including voting or participating in discussions with other public servants on a board on
22 which the public servant also serves, to determine whether the public servant has a
23 conflict of interest or an appearance of a conflict. If the public servant is unable to
24 determine whether or not a conflict of interest or the appearance of a conflict may exist,
25 the public servant has a duty to inquire of the Commission as to that conflict or
26 appearance of conflict.

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

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

32 **"§ 138A-12. Participation in official actions.**

33 (a) Notwithstanding any other law, except as permitted by subsection (e) of this
34 section, no public servant acting in that capacity, authorized to perform an official
35 action requiring the exercise of discretion, shall knowingly participate in an official
36 action by the employing entity if the public servant, a member of the public servant's
37 extended family, or a business with which the public servant is associated, has a
38 pecuniary interest in, or a reasonably foreseeable benefit from, the matter under
39 consideration, which would impair the public servant's independence of judgment or
40 from which it could reasonably be inferred that the interest or benefit would influence
41 the public servant's participation in the official action. A potential benefit includes (i) a
42 detriment to a business competitor of the public servant, (ii) a member of the public
43 servant's extended family, or (iii) a business with which the public servant is associated.

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

5 **(c) A public servant shall take reasonable and appropriate steps, under the**
6 **particular circumstances and considering the type of proceeding involved, to remove**
7 **himself or herself, to the extent necessary to protect the public interest and comply with**
8 **this Chapter, from any proceeding in which the public servant's impartiality might**
9 **reasonably be questioned due to the public servant's familial, personal, or financial**
10 **relationship with a participant in the proceeding. A participant includes (i) an owner,**
11 **shareholder, business associate, employee, agent, officer, or director of a business,**
12 **organization, or group involved in the proceeding, or (ii) an organization or group that**
13 **has petitioned for rulemaking or has some specific, unique, and substantial interest in**
14 **the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative**
15 **proceedings. A personal relationship includes one in a leadership or policy-making**
16 **position in a business, organization, or group.**

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

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

30 **(1) The only pecuniary interest or reasonably foreseeable benefit that**
31 **accrues to the public servant, the public servant's extended family, or**
32 **business with which the public servant is associated as a member of a**
33 **profession, occupation, or large class, is no greater than that which**
34 **could reasonably be foreseen to accrue to all members of that**
35 **profession, occupation, or large class.**

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

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

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

1 public servant's participation in the official action. The employing
2 entity shall file a copy of that written determination with the
3 Commission.

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

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

9 (7) When a public servant notifies, in writing, the Commission that the
10 public servant or someone whom the public servant appoints to act in
11 the public servant's stead, or both, are the only individuals having legal
12 authority to take an official action.

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

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

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

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

23 **"§ 138A-14. Employment and supervision of members of public servant's extended**
24 **family.**

25 A public servant shall not cause the employment, appointment, promotion, transfer,
26 or advancement of an extended family member of the public servant to a State or local
27 office or position to which the public servant supervises or manages. A public servant
28 shall not participate in an action relating to the discipline of a member of the public
29 servant's extended family.

30 **"§ 138A-15. Other ethics standards.**

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

35 **"§ 138A-16 through 19. [Reserved]**

36 "Article 3.

37 "State Ethics Commission.

38 **"§ 138A-20. State Ethics Commission established.**

39 There is established the State Ethics Commission.

40 **"§ 138A-21. Membership.**

41 (a) The Commission shall consist of seven members appointed by the Governor.
42 No more than four members may be of the same political party. Members shall serve for

1 four-year terms, beginning January 1, 2007, except for the initial terms that shall be as
2 follows:

- 3 (1) One member shall serve an initial term of one year.
- 4 (2) Two members shall serve initial terms of two years.
- 5 (3) Two members shall serve initial terms of three years.
- 6 (4) Two members shall serve initial terms of four years.

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

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

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

- 13 (1) Hold or be a candidate for any other office or place of trust or profit
14 under the United States, the State, or a political subdivision of the
15 State.
- 16 (2) Hold office in any political party.
- 17 (3) Participate in or contribute to the political campaign of any public
18 servant or any candidate for a public office as a public servant over
19 which the Commission would have jurisdiction or authority.
- 20 (4) Otherwise be an employee of the State, a community college, or a
21 local school system, or serve as a member of any other State board.

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

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

27 **"§ 138A-22. Meetings and quorum.**

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

31 **"§ 138A-23. Staff and offices.**

32 The Commission may employ professional and clerical staff, including an executive
33 director. The Commission shall be located within the Department of Administration for
34 administrative purposes only, but shall exercise all of its powers, including the power to
35 employ, direct, and supervise all personnel, independently of the Secretary of
36 Administration, and is subject to the direction and supervision of the Secretary of
37 Administration only with respect to the management functions of coordinating and
38 reporting.

39 **"§ 138A-24. Powers and duties.**

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

- 42 (1) Provide reasonable assistance to public servants in complying with this
43 Chapter.

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

26 **"§ 138A-25. Investigations by the Commission.**

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

- 32 (1) The application or alleged violation of this Chapter.
- 33 (2) The application or alleged violation of rules adopted in accordance
34 with G.S. 138A-24.
- 35 (3) The alleged violation of the criminal law by a public servant in the
36 performance of that individual's official duties.

37 (b) Complaint. –

- 38 (1) A complaint filed under this Chapter shall state the name, address, and
39 telephone number of the person filing the complaint, the name and job
40 title or appointive position of the public servant against whom the
41 complaint is filed, and a concise statement of the nature of the
42 complaint and specific facts indicating that a violation of this Chapter
43 has occurred, the date the alleged violation occurred, and either (i) that
44 the contents of the complaint are within the knowledge of the

1 individual verifying the complaint, or (ii) the basis upon which the
2 individual verifying the complaint believes the allegations to be true.

3 (2) Except as provided in subsection (c) of this section, a complaint filed
4 under this Chapter must be filed within one year of the date the
5 complainant knew or should have known of the conduct upon which
6 the complaint is based.

7 (3) The Commission may decline to accept or investigate any attempted
8 complaint that does not meet all of the requirements set forth in
9 subdivision (1) of this subsection, or the Commission may, in its sole
10 discretion, request additional information to be provided by the
11 complainant within a specified period of time of no less than seven
12 business days.

13 (4) In addition to subdivision (3) of this subsection, the Commission may
14 decline to accept or investigate a complaint if it determines that any of
15 the following apply:

16 a. The complaint is frivolous or brought in bad faith.

17 b. The individuals and conduct complained of have already been
18 the subject of a prior complaint.

19 c. The conduct complained of is primarily a matter more
20 appropriately and adequately addressed and handled by other
21 federal, State, or local agencies or authorities, including law
22 enforcement authorities. If other agencies or authorities are
23 conducting an investigation of the same actions or conduct
24 involved in a complaint filed under this section, the
25 Commission may stay its complaint investigation pending final
26 resolution of the other investigation.

27 (5) The Commission shall send a copy of the complaint to the public
28 servant who is the subject of the complaint within 30 days of the filing.

29 (c) Investigation of Complaints by the Commission. – The Commission shall
30 investigate all complaints properly before the Commission in a timely manner. The
31 Commission shall initiate an investigation of a complaint within 90 days of the filing of
32 the complaint, or the complaint shall be dismissed. The Commission is authorized to
33 initiate investigations upon request of any member if there is reason to believe that a
34 public servant has or may have violated this Chapter. There is no time limit on
35 Commission-initiated complaint investigations under this section. In determining
36 whether there is reason to believe that a violation has or may have occurred, a member
37 can take general notice of available information even if not formally provided to the
38 Commission in the form of a complaint. The Commission may utilize the services of a
39 hired investigator when conducting investigations.

40 (d) Investigation by the Commission of Matters Other Than Complaints. – The
41 Commission may investigate matters other than complaints properly before the
42 Commission under subsection (a) of this section. For any investigation initiated under
43 this subsection, the Commission may take any action it deems necessary or appropriate
44 to further compliance with this Chapter, including the initiation of a complaint, the

1 issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law
2 enforcement or other authorities pursuant to subsection (j)(1) of this section.

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

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

14 (g) Notice. – If at the end of its preliminary inquiry, the Commission determines
15 to proceed with further investigation into the conduct of an individual, the Commission
16 shall provide written notice to the individual who filed the complaint and the public
17 servant as to the fact of the investigation and the charges against the public servant. The
18 public servant shall be given an opportunity to file a written response with the
19 Commission. Upon the notice required under this subsection being sent, the complaint
20 and any written response shall be public records, and all other documents offered at the
21 hearing in conjunction with the complaint shall be public records.

22 (h) Hearing. –

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

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

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

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

34 b. The hearing shall be open to the public. The deliberations by
35 the Commission on a complaint may be held in closed session,
36 but the decision of the Commission shall be announced in open
37 session.

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

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

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

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

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

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

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

16 b. Refer the matter to the Governor, the employing entity that
17 appointed or employed the public servant or of which the public
18 servant is a member, or the General Assembly for constitutional
19 officers of the State, for appropriate action, and make
20 recommendations on sanctions under subsection (k) of this
21 section.

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

29 (l) Recommendations of Sanctions. – If the Commission determines, after proper
30 review and investigation, that action is appropriate, the Commission may recommend
31 sanctions or issue rulings as it deems necessary or appropriate to protect the public
32 interest and ensure compliance with this Chapter. In formulating appropriate sanctions,
33 the Commission may consider the following factors:

34 (1) The public servant's prior experience in an agency or on a board and
35 prior opportunities to learn the ethical standards for public servants as
36 set forth in Article 2 of this Chapter, including those dealing with
37 conflicts of interest and appearances of conflicts of interest.

38 (2) The number of ethics violations.

39 (3) The severity of the ethics violations.

40 (4) Whether the ethics violations involve the public servant's financial
41 interests or arise from an appearance of conflict of interest.

42 (5) Whether the ethics violations were inadvertent or intentional.

43 (6) Whether the public servant knew or should have known that the
44 improper conduct was a violation of this Chapter.

- 1 (7) Whether the public servant has previously been advised, warned, or
2 sanctioned by the Commission.
- 3 (8) Whether the conduct or situation giving rise to the ethics violation was
4 pointed out to the public servant in the Commission's Statement of
5 Economic Interest evaluation letter issued under G.S. 138A-38(c).
- 6 (9) The public servant's motivation or reason for the improper conduct or
7 actions, including whether the action was for personal financial gain
8 versus protection of the public interest.

9 If the Commission determines, after proper review and investigation, that sanctions
10 are appropriate, the Commission may recommend any action it deems necessary to
11 properly address and rectify any violation of this Chapter by a public servant, including
12 removal of the public servant from the public servant's State position. As it deems
13 necessary and proper, the Commission may make referrals to appropriate State officials,
14 including law enforcement officials, for investigation of wrongful conduct by State
15 employees or appointees discovered during the course of a complaint investigation,
16 regardless of whether the individual is a public servant under this Chapter. Nothing in
17 this subsection is intended, and shall not be construed, to give the Commission any
18 independent civil, criminal, or administrative investigative or enforcement authority
19 over public servants or other State employees or appointees.

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

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

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

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

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

43 **"§ 138A-26. Advisory opinions.**

1 (a) At the request of any public servant, any individual not otherwise the public
2 servant who is responsible for the supervision or appointment of a person who is a
3 public servant, legal counsel for any public servant, any ethics liaison under
4 G.S. 138A-27, or any member of the Commission, the Commission shall render
5 advisory opinions on specific questions involving the meaning and application of this
6 Chapter and the public servant's compliance therewith. The request shall be in writing,
7 electronic or otherwise, and relate prospectively to real or reasonably anticipated fact
8 settings or circumstances. The Commission shall issue advisory opinions having
9 prospective application only. Reliance upon a requested written advisory opinion on a
10 specific matter shall immunize the public servant, on that matter, from both of the
11 following:

12 (1) Investigation by the Commission.

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

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

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

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

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

24 **"§ 138A-27. Ethics education program.**

25 (a) The Commission shall develop and implement an ethics education and
26 awareness program designed to instill in all public servants and their immediate staffs a
27 keen and continuing awareness of their ethical obligations and a sensitivity to situations
28 that might result in real or potential conflicts of interest or appearances of conflicts of
29 interest. The Commission shall make basic ethics education and awareness
30 presentations to all public servants and their immediate staffs upon their election,
31 appointment or hiring, and shall offer periodic refresher presentations as the
32 Commission deems appropriate. Every public servant and the immediate staff of every
33 public servant shall participate in an ethics presentation approved by the Commission
34 within six months of the person's election, appointment, or hiring, and shall attend
35 refresher ethics education presentations at least every two years thereafter in a manner
36 as the Commission deems appropriate. Upon request, the Commission shall assist each
37 agency in developing in-house education programs and procedures necessary or
38 desirable to meet the agency's particular needs for ethics education, conflict
39 identification, and conflict avoidance.

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

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

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

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

11 **"§ 138A-28. Duties of heads of State agencies.**

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

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

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

33 (d) The head of each State agency, including the chair of each board subject to
34 this Chapter, shall periodically remind public servants under that person's authority of
35 the public servant's duties to the public under the ethical standards and rules of conduct
36 in this Chapter, including the duty of each public servant to continually monitor,
37 evaluate, and manage the public servant's personal, financial, and professional affairs to
38 ensure the absence of conflicts of interest or appearances of conflict.

39 (e) At the beginning of any official meeting of a board, the chair shall remind all
40 members of their duty to avoid conflicts of interest and appearances of conflict under
41 this Chapter. The chair also shall inquire as to whether there is any known conflict of
42 interest or appearance of conflict with respect to any matters coming before the board at
43 that time.

1 (f) The head of each State agency, including the chair of each board subject to
2 this Chapter, shall ensure that legal counsel employed by or assigned to their agency or
3 board are familiar with the provisions of this Chapter, including the **Ethical Standards**
4 **for Public Servants set forth in Article 2 of this Chapter,** and are available to advise
5 public servants on the ethical considerations involved in carrying out their public duties
6 in the best interest of the public. Legal counsel so engaged may consult with the
7 Commission, seek the Commission's assistance or advice, and refer public servants and
8 others to the Commission as appropriate.

9 (g) Taking into consideration the individual autonomy, needs, and circumstances
10 of each agency and board, the head of each State agency, including the chair of each
11 board subject to this Chapter, shall consider the need for the development and
12 implementation of in-house educational programs, procedures, or policies tailored to
13 meet the agency's or board's particular needs for ethics education, conflict identification,
14 and conflict avoidance. This includes the periodic presentation to all agency heads, their
15 chief deputies or assistants, other public servants under their supervision or control, and
16 members of boards, of the basic ethics education and awareness presentation outlined in
17 G.S. 138A-27 and any other workshop or seminar program the agency head or board
18 chair deems necessary in implementing this Chapter. Agency heads and board chairs
19 may request reasonable assistance from the Commission in complying with the
20 requirements of this subsection.

21 (h) As soon as reasonably practicable after the designation, hiring, or promotion
22 of their chief deputies, assistants, or other public servants under their supervision or
23 control, or learning of the appointment or election of other public servants to a board
24 covered under this Chapter, all agency heads and board chairs shall (i) notify the
25 Commission of such designation, hiring, promotion, appointment, or election and (ii)
26 provide these public servants with copies of this Chapter and all applicable financial
27 disclosure forms, if these materials and forms have not been previously provided to
28 these public servants by their appointing authorities. In order to avoid duplication of
29 effort, agency heads and board chairs shall coordinate this effort with the Commission's
30 staff.

31 "§ 138A-29 through 34. [Reserved]

32 "Article 4.

33 "Public Disclosure of Economic Interests.

34 "§ 138A-35. Purpose.

35 The purpose of disclosure of the financial and personal interests by public servants is
36 to assist public servants and those persons who appoint, elect, hire, supervise, or advise
37 them identify and avoid conflicts of interest and potential conflicts of interest between
38 the public servant's private interests and the public servant's public duties. It is critical to
39 this process that current and prospective public servants examine, evaluate, and disclose
40 those personal and financial interests that could be or cause a conflict of interest or
41 potential conflict of interest between the public servant's private interests and the public
42 servant's public duties. Public servants must take an active, thorough, and conscientious
43 role in the disclosure and review process, including having a complete knowledge of

1 how the public servant's public position or duties might impact the public servant's
2 private interests. Public servants have an affirmative duty to provide any and all
3 information that a reasonable person would conclude is necessary to carry out the
4 purposes of this Chapter and to fully disclose any conflict of interest or potential
5 conflict of interest between the public servant's public and private interests, but the
6 disclosure, review, and evaluation process is not intended to result in the disclosure of
7 unnecessary or irrelevant personal information.

8 **"§ 138A-36. Statement of economic interest; filing required.**

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

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

25 (c) Except as otherwise filed under subsection (a) of this section, a candidate for
26 the Council of State shall file the statement of economic interest at the same place and
27 in the same manner as the notice of candidacy for that office is required to be filed
28 under G.S. 163-106, within 10 days of the filing deadline for the office the candidate
29 seeks. A person who is nominated under G.S. 163-114 after the primary and before the
30 general election, and a person who qualifies under G.S. 163-122 as an unaffiliated
31 candidate in a general election, shall file a statement of economic interest with the
32 county board of elections of each county in the senatorial or representative district. A
33 person nominated under G.S. 163-114 shall file the statement within three days
34 following the person's nomination, or not later than the day preceding the general
35 election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate
36 under G.S. 163-122 shall file the statement of economic interest with the petition filed
37 under that section. A person seeking to have write-in votes counted for the person in a
38 general election shall file a statement of economic interest at the same time the
39 candidate files a declaration of intent under G.S. 163-123. A candidate of a new party
40 chosen by convention shall file a statement of economic interest at the same time that
41 the president of the convention certifies the names of its candidates to the State Board of
42 Elections under G.S. 163-98.

43 (d) The State Board of Elections shall provide for notification of the statement of
44 economic interest requirements of this Article to be given to any candidate filing for

1 nomination or election to those offices subject to this Article at the time of the filing of
2 candidacy.

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

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

10 **"§ 138A-37. Statements of economic interest as public records.**

11 The statements of economic interest filed by prospective public servants under this
12 Article for appointed or employed positions and written evaluations by the Commission
13 of these statements are not public records until the prospective public servant is
14 appointed or is employed by the State. All other statements of economic interest and all
15 other written evaluations by the Commission of those statements are public records.
16 After becoming public records, statements shall be made available for inspection and
17 copying by any person during normal business hours at the Commission's office.

18 **"§ 138A-38. Contents of statement.**

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

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

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

29 a. All real estate located in the State owned wholly or in part by
30 the public servant or the public servant's spouse, including
31 specific descriptions adequate to determine the location of each
32 parcel and the specific interest held by the public servant and
33 the spouse in each identified parcel.

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

35 c. Personal property sold to or bought from the State within the
36 preceding two years.

37 d. Personal property currently leased or rented to the State.

38 e. The name of each publicly owned company in which the value
39 of securities held exceeds ten thousand dollars (\$10,000).

40 f. The name of each non-publicly owned company or business
41 entity in which the value of securities or other equity interests
42 held exceeds ten thousand dollars (\$10,000), including interests
43 in partnerships, limited partnerships, joint ventures, limited
44 liability companies or partnerships, and closely held

1 corporations. For each company or business entity listed under
2 this sub-subdivision, the filing public servant shall indicate
3 whether the listed company or entity owns securities or equity
4 interests exceeding a value of ten thousand dollars (\$10,000) in
5 any other companies or entities. If so, then the other companies
6 or entities shall also be listed with a brief description of the
7 business activity of each.

8 g. If the filing public servant, the members of the public servant's
9 immediate family are the beneficiaries of a vested trust created,
10 established, or controlled by the public servant, then the name
11 and address of the trustee and a description of the trust shall be
12 provided. To the extent such information is available to the
13 public servant, the statement also shall include a list of
14 businesses in which the trust has an ownership interest
15 exceeding ten thousand dollars (\$10,000).

16 h. The filing public servant shall make a good faith effort to list
17 any individual or business entity with which the filing public
18 servant, the public servant's extended family, or any business
19 with which the public servant or a member of the public
20 servant's extended family is associated, has a financial or
21 professional relationship provided (i) a reasonable person would
22 conclude that the nature of the financial or professional
23 relationship presents a conflict of interest or the appearance of a
24 conflict of interest for the public servant; or (ii) a reasonable
25 person would conclude that any other financial or professional
26 interest of the individual or business entity would present a
27 conflict of interest or appearance of a conflict of interest for the
28 public servant. For each individual or business entity listed
29 under this subsection, the filing public servant shall describe the
30 financial or professional relationship and provide an
31 explanation of why the individual or business entity has been
32 listed.

33 i. A list of all other assets and liabilities with a valuation of at
34 least ten thousand dollars (\$10,000), including bank accounts
35 and debts.

36 j. A list of each source (not specific amounts) of income
37 (including capital gains) shown on the most recent federal and
38 State income tax returns of the person filing where ten thousand
39 dollars (\$10,000) or more was received from that source.

40 k. If the public servant is a practicing attorney, an indication of
41 whether the public servant, or the law firm with which the
42 public servant is affiliated, earned legal fees during any single
43 year of the past five years in excess of ten thousand dollars

1 (\$10,000) from any of the following categories of legal
2 representation:

- 3 1. Administrative law.
- 4 2. Admiralty.
- 5 3. Corporation law.
- 6 4. Criminal law.
- 7 5. Decedent's estates.
- 8 6. Insurance law.
- 9 7. Labor law.
- 10 8. Local government.
- 11 9. Negligence – defendant.
- 12 10. Negligence – plaintiff.
- 13 11. Real property.
- 14 12. Taxation.
- 15 13. Utilities regulation.

- 16 l. A list of all nonpublicly owned businesses with which, during
17 the past five years, the public servant or the public servant's
18 immediate family has been associated, indicating the time
19 period of that association and the relationship with each
20 business as an officer, employee, director, business associate, or
21 owner. The list also shall indicate whether each does business
22 with, or is regulated by, the State and the nature of the business,
23 if any, done with the State.
- 24 m. A list of all gifts, and the sources of the gifts, of a value of more
25 than two hundred dollars (\$200.00) received during the 12
26 months preceding the date of the statement from sources other
27 than the public servant's extended family, and a list of all gifts,
28 and the sources of the gifts, valued in excess of one hundred
29 dollars (\$100.00) received from any source having business
30 with, or regulated by, the employing entity.
- 31 n. A list of all bankruptcies filed during the preceding five years
32 by the public servant, the public servant's spouse, or any entity
33 in which the public servant, or the public servant's spouse, has
34 been associated financially. A brief summary of the facts and
35 circumstances regarding each listed bankruptcy shall be
36 provided.
- 37 o. A list of all directorships on all business boards of which the
38 public servant or the public servant's immediate family is a
39 member.
- 40 (3) A list of the public servant's or the public servant's immediate family's
41 memberships or other affiliations with, including offices held in,
42 societies, organizations, or advocacy groups, pertaining to subject
43 matter areas over which the public servant's agency or board may have
44 jurisdiction.

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

10 (5) Each statement of economic interest shall contain sworn certification
11 by the filing public servant that the public servant has read the
12 statement and that, to the best of the public servant's knowledge and
13 belief, the statement is true, correct, and complete. The public servant's
14 sworn certification also shall provide that the public servant has not
15 transferred, and will not transfer, any asset, interest, or other property
16 for the purpose of concealing it from disclosure while retaining an
17 equitable interest therein.

18 (6) If the public servant believes a potential for conflict exists, the public
19 servant has a duty to inquire of the Commission as to that potential
20 conflict.

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

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

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

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

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

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

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

34 **"§ 138A-39. Failure to file.**

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

43 (b) Any public servant who fails to file or complete a statement of economic
44 interest within 30 days of the receipt of the notice, required under subsection (a) of this

1 section, shall be subject to a fine of two hundred fifty dollars (\$250.00), to be imposed
2 by the Commission.

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

7 **"§ 138A-40. Concealing or failing to disclose material information.**

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

12 **"§ 138A-41. Penalty for false or misleading information.**

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

17 **"§ 138A-42 through 44. [Reserved]**

18 "Article 5.

19 "Violation Consequences.

20 **"§ 138A-45. Violation consequences.**

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

25 (b) The willful failure of any public servant serving on a board to comply with
26 this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance,
27 malfeasance, or nonfeasance, the offending public servant serving on a board is subject
28 to removal from the board of which the public servant is a member. For appointees of
29 the Governor and members of the Council of State, the appointing authority may
30 remove the offending public servant. For appointees of the General Assembly, the
31 Commission shall exercise the discretion of whether to remove the offending public
32 servant.

33 (c) The willful failure of any public servant serving as a State employee to
34 comply with this Chapter is a violation of a written work order, thereby permitting
35 disciplinary action as allowed by the law, including termination from employment.
36 Except for employees of State departments headed by a member of the Council of State,
37 the Governor shall make all final decisions on the manner in which the offending public
38 servant shall be disciplined. For employees of State departments headed by a member of
39 the Council of State, the appropriate member of the Council of State shall make all final
40 decisions on the manner in which the offending public servant shall be disciplined.

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

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

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

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

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

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

10 "§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics
11 Commission.

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

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

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

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

LEGISLATIVE PROPOSAL # 1 SUMMARY



BILL ANALYSIS

HOUSE BILL 2005-RU-47: Executive Branch Ethics Act - 1

Committee:	House Select Committee on Ethics and Governmental Reform	Date:	April 26, 2006
Introduced by:		Summary by:	O. Walker Reagan Staff Attorney
Version:	First Edition 2005-RU-47		

SUMMARY: *This proposal, Executive Branch Ethics Act – 1, codifies Executive Order No. One that governs ethics in the executive branch. The Act creates the State Ethics Commission and subjects certain executive branch officials, appointees, and employees to economic interest disclosures and creates statutory ethical standards for these public servants. This proposal is a recommendation of the Subcommittee on Legislative and Executive Ethics.*

CURRENT LAW: Most of the regulation of ethics in the executive branch is pursuant to Executive Order No. One (Order) issued by the Governor, most recently on January 1, 2001. This Executive Order is the latest in a succession of similar executive orders governing this subject that have been in effect since January 1977. Under the Governor's limited authority in this area, the Governor has made the order applicable to appointees of the Governor. In addition, the Governor has offered the services of the State Ethics Board (created by the Order) to members of the Council of State and their appointees, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors.

The Order creates the State Ethics Board (Board). It requires covered officials to file statements of economic interests annually. It establishes rules of conduct for covered officials. The Board is authorized to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. The decisions of the Board are advisory, and enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority.

All records of the Board are public, including statements of economic interest filed by perspective appointees prior to their appointment. False statements made on statements of economic interest are not subject to the penalty of perjury. The Governor does not have the authority to require other constitutional officers of the State to participate under the Order or the authority to make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

BILL ANALYSIS: The Executive Branch Ethics Act – 1 bill draft codifies the Order. On certain matters the Order does not address, the Act incorporates ethics procedures and processes copied from the Legislative Ethics Act and statutory ethics provisions unique to the NC Board of Transportation. The draft also includes various policy options suggested by the House Select Committee on Ethics & Governmental Reform at its February 22, 2006 meeting, **and changes suggested at the March 24, 2006 and April 28, 2006 meetings.** The bill is divided into 4 primary sections.

ARTICLE 1 sets out the purpose of the Act and the applicable definitions. The following definitions are included in Article 1:

Board - Any non-advisory State executive branch board, commission, council, committee, task force, authority, or similar body.

Extended Family – Spouse, descendant, ascendant, or sibling of the public servant, or descendant, ascendant or sibling of the spouse of the public servant.

Public event – **An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.**

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the NC Community College System, and presidents, chief financial officers and trustees of local community colleges. Also added contract employees filling any of these positions.

ARTICLE 2 establishes ethical standards for public servants.

G.S. 138A-6 prohibits public servants from using their public position for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising **that advances the private interest of the public servant or others. Use of the legislative title is permitted for political advertising.**

G.S. 138A-7 restricts gifts that public servants can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinates. It prohibits public servants from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the State. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, gifts of less than \$10, expenses associated with a speech or panel related to the public servant's public duties, **a plaque or nonmonetary recognition memento**, gifts in excess of \$10 associated with travel and tourism and industry recruitment under certain conditions, gifts of less than \$100 received in a foreign country as part of a trade mission, anything for which fair market value was paid, legal campaign contributions, gifts from family members, and gifts received in conjunction with a wedding, birth, adoption or death.

G.S. 138A-8 prohibits public servants from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-9 prohibits public servants from using information gained in their official positions for personal financial gain.

G.S. 138A-10 requires public servants to avoid appearances of conflicts of interest.

G.S. 138A-11 requires public servants to use due diligence to determine if they have a conflict of interest or the appearance of a conflict and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-12 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has a pecuniary interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by

the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance. This section sets out numerous exceptions to the restrictions, primarily involving situations where the benefit is no greater to the public servant than the public in general, or when the public servant has received an ethics opinion that no conflict exists.

G.S. 138A-13 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-14 prohibits a public servant from hiring or supervising a member of his or her extended family.

G.S. 138A-15 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 3 establishes the State Ethics Commission as an independent, bipartisan commission of seven members appointed by the Governor for 4-year staggered terms. No more than 4 members may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-25 sets out the authority of the Commission to conduct ethics investigations and to hold hearings on alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties. An investigation must be initiated within 90 days of the receipt of the complaint or the complaint is to be dismissed. After a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a public admonishment, or recommend other sanctions to the employing or appointing authority. Complaints and initial (probable cause) investigations are not public records, but all documents considered in a hearing are public records. Hearings are held in open session while deliberations are in closed session. Decisions are announced in open session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-26 sets out the authority of the Commission to issue advisory opinions. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public.

G.S. 138A-27 sets out the authority for the Commission to provide for ethics education programs. All public servants **and their immediate staffs (individuals who report directly to the public servant)** are required to take ethics training within 6 months of the beginning of their employment, election, or appointment, and take a refresher course every 2 years thereafter. Each agency will designate an ethics liaison to coordinate ethics compliance and education within each agency. The Commission is also to publish ethics newsletters from time to time.

G.S. 138A-28 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws,

remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 4 sets out the requirements for filing statements of economic interests.

G.S. 138A-36 requires all public servants, except employees earning \$40,000 or less, to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than January 31st of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 60 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-37 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-38 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of \$10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, attorney's areas of practice; businesses owned in the previous 5 years; gifts in excess of \$200 from persons other than extended family members; bankruptcies; and directorships of businesses. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-39 requires the Commission to notify every public servant who fails to file or complete his or her required SEI within 30 days of the due date. Any public servant who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a \$250 fine. Any public servant who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-40 makes it a Class 2 misdemeanor for a public servant to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-41 makes it a Class F felony for a public servant to provide false or misleading information on a SEI knowing the information to be false or misleading. The level of punishment is the same as the penalty for perjury.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment.

SECTION 2 exempts the Commission from all provisions of Chapter 150B, The Administrative Procedure Act, except for Article 4, Judicial Review.

SECTION 3 directs the Codifier of Rules to publish the rules and advisory opinions of the Commission.

SECTION 4 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission.

EFFECTIVE DATE: The Act becomes effective October 1, 2006, and applies to public servants on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007.

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- 1 (5) Compensation. – Any money, thing of value, or economic benefit
2 conferred on or received by any person in return for services rendered
3 or to be rendered by that person or another. This term does not include
4 campaign contributions properly received and, if applicable, reported
5 as required by Article 22A of Article 163 of the General Statutes.
6 (6) Confidential information. – Information defined as confidential by
7 statute.
8 (7) Contract. – Any agreement including sales and conveyances of real
9 and personal property and agreements for the performance of services.
10 (8) Economic interest. – Matters involving a business with which the
11 person is associated or a nonprofit corporation or organization with
12 which the person is associated.
13 (9) Extended family. – Spouse, descendant, ascendant, or sibling of the
14 legislator or, descendant, ascendant, or sibling of the spouse of the
15 legislator.
16 (10) Immediate family. – An unemancipated child of the legislator residing
17 in the household, and the legislator's spouse, if not legally separated.
18 (11) Legislative action. – As the term is defined in G.S. 120-47.1.
19 (12) Legislative employee. – As the term is defined in G.S. 120-47.1.
20 (13) Legislator. – A member or presiding officer of the General Assembly,
21 or a person elected or appointed a member or presiding officer of the
22 General Assembly before taking office.
23 (14) Nonprofit corporation or organization with which associated. – Any
24 public or private enterprise, incorporated or otherwise, that is
25 organized or operating in the State primarily for religious, charitable,
26 scientific, literary, public health and safety, or educational purposes
27 and of which the person or any member of the person's immediate
28 family is a director, officer, governing board member, employee or
29 independent contractor as of December 31 of the preceding year.
30 (15) Participate. – To take part in, influence, or attempt to influence,
31 including acting through an agent or proxy.
32 (16) Pecuniary interest. – Any of the following:
33 a. Owning, either individually or collectively, a legal, equitable, or
34 beneficial interest of ten thousand dollars (\$10,000) or more or
35 five percent (5%), whichever is less, of any business.
36 b. Receiving, either individually or collectively, during the
37 preceding calendar year compensation that is or will be required
38 to be included as taxable income on federal income tax returns
39 of the legislator, the legislator's immediate family, or a business
40 with which associated in an aggregate amount of five thousand
41 dollars (\$5,000) from any business or combination of
42 businesses. A pecuniary interest exists in any client or customer
43 who pays fees or commissions, either individually or
44 collectively, of five thousand dollars (\$5,000) or more in the

1 preceding 12 months to the legislator, the legislator's immediate
2 family, or a business with which associated.

3 c. Receiving, either individually or collectively and directly or
4 indirectly, in the preceding 12 months, gifts or honoraria having
5 an unknown value or having an aggregate value of five hundred
6 dollars (\$500.00) or more from any person. A pecuniary interest
7 does not exist under this sub-subdivision by reason of (i) a gift
8 or bequest received as the result of the death of the donor; (ii) a
9 gift from an extended family member; or (iii) acting as a trustee
10 of a trust for the benefit of another.

11 d. Holding the position of associate, director, officer, business
12 associate, or proprietor of any business, irrespective of the
13 amount of compensation received.

14 (17) Public event. – An organized gathering of individuals open to the
15 general public or to which a legislator or legislative employee is
16 invited along with the entire membership of the House, the Senate, a
17 committee, a subcommittee, a county legislative delegation, a joint
18 committee or a legislative caucus and to which at least ten employees
19 or members of the principal actually attend.

20 (18) Vested trust. – A trust, annuity, or other funds held by a trustee or
21 other third party for the benefit of the legislator or a member of the
22 legislator's immediate family. A vested trust shall not include a widely
23 held investment fund, including a mutual fund, regulated investment
24 company, or pension or deferred compensation plan, if:

25 a. The legislator or a member of the legislator's immediate family
26 neither exercises nor has the ability to exercise control over the
27 financial interests held by the fund; and

28 b. The fund is publicly traded, or the fund's assets are widely
29 diversified.

30 **"§ 120-282 through 120-285. [Reserved]**

31 **"Part 2. Ethical Standards for Legislators.**

32 **"§ 120-286. Bribery, etc.**

33 (a) No person shall offer or give to a legislator or a member of a legislator's
34 immediate household, or to a business with which the legislator is associated, and no
35 legislator shall solicit or receive, anything of monetary value, including a gift, favor or
36 service or a promise of future employment, based on any understanding that the
37 legislator's vote, official actions or judgment would be influenced thereby, or where it
38 could reasonably be inferred that the thing of value would influence the legislator in the
39 discharge of the legislator's duties.

40 (b) It shall be unlawful for the business associate, client, customer, or employer
41 of a legislator or the agent of that partner, client, customer, or employer, directly or
42 indirectly, to threaten economically that legislator with the intent to influence the
43 legislator in the discharge of the legislator's duties.

1 (c) It shall be unlawful for any person, directly or indirectly, to threaten
2 economically another person in order to compel the threatened person to attempt to
3 influence a legislator in the discharge of the legislator's duties.

4 (d) It shall be unethical for a legislator to contact the business associate, client,
5 customer, or employer of another legislator if the purpose of the contact is to cause the
6 partner, client, customer, or employer, directly or indirectly, to threaten economically
7 that legislator with the intent to influence that legislator in the discharge of the
8 legislator's duties.

9 (e) A violation of subsection (a), (b), or (c) of this section is a Class F felony. A
10 violation of subsection (d) of this section is not a crime but is punishable under
11 G.S. 120-325.

12 **"§ 120-287. Use of public position for private gain.**

13 (a) A legislator shall not knowingly use the legislator's public position in any
14 manner that will result in financial benefit, direct or indirect, to the legislator, a member
15 of the legislator's extended family, or a person with whom, or business with which, the
16 legislator is associated. The performance of usual and customary duties associated with
17 the public position or the advancement of public policy goals or constituent services,
18 without compensation, shall not constitute the use of public position for financial
19 benefit. This subsection shall not apply to financial or other benefits derived by a
20 legislator that the legislator would enjoy to an extent no greater than that which other
21 citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant,
22 or speculative that a reasonable person would conclude under the circumstances that the
23 legislator's ability to protect the public interest and perform the legislator's official
24 duties would not be compromised.

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

29 **"§ 120-288. Disclosure of confidential information.**

30 No legislator shall use or disclose in any way confidential information gained in the
31 course of the legislator's official activities or by reason of the legislator's official
32 position that could result in financial gain for the legislator or any other person.

33 **"§ 120-289. Personnel-related action unethical.**

34 It shall be unethical for a legislator to take, promise, or threaten any legislative
35 action for the purpose of influencing or in retaliation for any action regarding State
36 employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126
37 of the General Statutes.

38 **"§ 120-290. Gifts.**

39 (a) A legislator shall not knowingly, directly or indirectly, ask, accept, demand,
40 exact, solicit, seek, assign, receive, or agree to receive anything of value for the
41 legislator, or for another person, in return for being influenced in the discharge of the
42 legislator's official responsibilities, other than that which is received by the legislator
43 from the State for acting in the legislator's official capacity.

1 (b) No legislator or legislative employee shall knowingly accept anything of
2 monetary value, directly or indirectly, from a legislative lobbyist or principal as defined
3 in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.

4 (c) Subsection (b) of this section shall not apply to any of the following:

- 5 (1) Meals and beverages for immediate consumption in connection with
6 public events.
- 7 (2) Nonmonetary items, other than food or beverages, with a value not to
8 exceed ten dollars (\$10.00) provided by a single donor during a single
9 calendar day.
- 10 (3) Informational materials relevant to the duties of the legislator or
11 legislative employee.
- 12 (4) Reasonable actual expenses for food, registration, travel, and lodging
13 of the legislator or legislative employee for a meeting at which the
14 legislator or legislative employee participates in a panel or speaking
15 engagement at the meeting related to the legislator's or legislative
16 employee's duties and when expenses are incurred on the actual day of
17 participation in the engagement or incurred within a 24-hour time
18 period before or after the engagement.
- 19 (5) Items or services received in connection with a state, regional or
20 national legislative organization of which the General Assembly, the
21 legislator or legislative employee is a member by virtue of the person's
22 legislative position.
- 23 (6) Items and services received relating to an educational conference or
24 meeting.
- 25 (7) A plaque or similar nonmonetary memento recognizing individual
26 services in a field or specialty or to a charitable cause.
- 27 (8) Gifts accepted on behalf of the State.
- 28 (9) Anything generally available or distributed to the general public or all
29 other State employees.
- 30 (10) Anything for which fair market value is paid.
- 31 (11) Commercially available loans made on terms not more favorable than
32 generally available to the public in the normal course of business if not
33 made for the purpose of lobbying.
- 34 (12) Contractual arrangements or business relationships or arrangements
35 made in the normal course of business if not made for the purpose of
36 lobbying.
- 37 (13) Academic scholarships made on terms not more favorable than
38 scholarships generally available to the public.
- 39 (14) Political contributions properly received and reported as required
40 under Article 22A of Article 163 of the General Statutes.
- 41 (15) Gifts from the legislator's or the legislative employee's extended
42 family, or a member of the same household of the legislator or the
43 legislative employee, or gifts received in conjunction with a marriage,
44 birth, adoption, or death.

1 (d) A prohibited gift shall be declined, returned, paid for at fair market value, or
2 accepted and immediately donated to the State. Perishable food items of reasonable
3 costs, received as gifts, shall be donated to charity, destroyed or provided for
4 consumption among the entire staff or the public.

5 (e) A legislative employee shall not accept an honorarium from a source other
6 than the General Assembly for conducting any activity where any of the following
7 apply:

8 (1) The General Assembly reimburses the public servant for travel,
9 subsistence, and registration expenses.

10 (2) The General Assembly's work time or resources are used.

11 (3) The activity would be considered official duty or would bear a
12 reasonably close relationship to the legislative employee's official
13 duties.

14 An outside source may reimburse the General Assembly for actual expenses incurred by
15 a legislative employee in conducting an activity within the duties of the legislative
16 employee, or may pay a fee to the General Assembly, in lieu of an honorarium, for the
17 services of the legislative employee.

18 (f) The offering, giving, soliciting or receiving a thing of value in compliance
19 with this section without corrupt intent shall not constitute a violation of G.S. 120-286,
20 G.S. 14-217 or G.S. 14-218.

21 **"§ 120-291. Appearance of conflict.**

22 A legislator shall make reasonable efforts to avoid even the appearance of a conflict
23 of interest in accordance with G.S. 120-292. An appearance of conflict exists when a
24 reasonable person would conclude from the circumstances that the legislator's ability to
25 protect the public interest, or perform public duties, is compromised by familial,
26 personal, or financial interest. An appearance of conflict could exist even in the absence
27 of an actual conflict of interest.

28 **"§ 120-292. Other rules of conduct.**

29 (a) A legislator shall make a due and diligent effort before taking any action,
30 including voting or participating in discussions with other legislators, to determine
31 whether the legislator has a conflict of interest or an appearance of a conflict. If the
32 legislator is unable to determine whether or not a conflict of interest or the appearance
33 of a conflict may exist, the legislator has a duty to inquire of the Committee as to that
34 conflict or appearance of conflict.

35 (b) A legislator shall continually monitor, evaluate, and manage the legislator's
36 personal, financial, and professional affairs to ensure the absence of conflicts of interest
37 and appearances of conflicts.

38 (c) A legislator shall obey all other civil laws, administrative requirements and
39 criminal statutes governing conduct of State government appointees and employees.

40 **"§ 120-293. Participation in legislative actions.**

41 (a) Notwithstanding any other law, except as permitted by subsection (c) of this
42 section, no legislator shall knowingly participate in a legislative action if the legislator,
43 a member of the legislator's extended family, the legislator's client, or a business with
44 which the legislator is associated, has a pecuniary or economic interest in, or a

1 reasonably foreseeable benefit from, the matter under consideration, which would
2 impair the legislator's independence of judgment or from which it could reasonably be
3 inferred that the interest or benefit would influence the legislator's participation in the
4 legislative action. A potential benefit includes a detriment to (i) a business competitor of
5 the legislator, (ii) a member of the legislator's extended family, or (iii) a business with
6 which the legislator is associated.

7 (b) A legislator described in subsection (a) of this section shall abstain from
8 participation in the legislative action. The legislator shall submit in writing the reasons
9 for the abstention to the principal clerk of the house of which the legislator is a member.

10 (c) Notwithstanding subsection (a) of this section, a legislator may participate in
11 a legislative action under any of the following circumstances:

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

18 (2) Where a legislative action affects or would affect the legislator's
19 compensation and allowances as a legislator.

20 (3) Before the legislator participated in the legislative action, the legislator
21 requested and received a written advisory opinion from the Committee
22 that authorized the participation. In authorizing the participation under
23 this subsection, the Committee shall consider the need for the
24 legislator's particular contribution, such as special knowledge of the
25 subject matter, to the effective functioning of the General Assembly.

26 (4) When action is ministerial only and does not require the exercise of
27 discretion.

28 (5) When a legislative body records in its minutes that it cannot obtain a
29 quorum in order to take the legislative action because legislators are
30 disqualified from acting under this section.

31 **"§ 120-294. Employment of members of legislator's extended family.**

32 A legislator shall not cause the employment, appointment, promotion, transfer, or
33 advancement of an extended family member of the legislator to a State or local office or
34 position, except for positions at the General Assembly as permitted by the Legislative
35 Services Commission.

36 **"§ 120-295 through 299. [Reserved]**

37 "Part 3. Legislative Ethics Committee.

38 **"§ 120-300. Legislative Ethics Committee established.**

39 There is established the Legislative Ethics Committee.

40 **"§ 120-301. Membership.**

41 (a) The Legislative Ethics Committee shall consist of ten members, five Senators
42 appointed by the President Pro Tempore of the Senate, among them – two from a list of
43 four submitted by the Majority Leader and two from a list of four submitted by the
44 Minority Leader, and five members of the House of Representatives appointed by the

1 Speaker of the House, among them – two from a list of four submitted by the Majority
2 Leader and two from a list of four submitted by the Minority Leader.

3 (b) The President Pro Tempore of the Senate and the Speaker of the House as the
4 appointing officers shall each designate a cochair of the Legislative Ethics Committee
5 from the respective officer's appointees. The cochair appointed by the President Pro
6 Tempore of the Senate shall preside over the Legislative Ethics Committee during each
7 odd-numbered year, and the cochair appointed by the Speaker of the House shall preside
8 in each even-numbered year. However, a cochair may preside at any time during the
9 absence of the presiding cochair or upon the presiding cochair's designation. In the
10 event a cochair is unable to act as cochair on a specific matter before the Legislative
11 Ethics Committee, and so indicates in writing to the appointing officer and the
12 Legislative Ethics Committee, the respective officer shall designate from that officer's
13 appointees a member to serve as cochair for that specific matter.

14 **"§ 120-302. Term of office; vacancies.**

15 (a) Appointments to the Legislative Ethics Committee shall be made
16 immediately after the convening of the regular session of the General Assembly in
17 odd-numbered years. Appointees shall serve until the expiration of the appointee's
18 then-current terms as members of the General Assembly.

19 (b) A vacancy occurring for any reason during a term shall be filled for the
20 unexpired term by the authority that made the original appointment. The person
21 appointed to fill the vacancy shall, if possible, be a member of the same political party
22 as the member who caused the vacancy.

23 (c) In the event a member of the Legislative Ethics Committee is unable to act on
24 a specific matter before the Legislative Ethics Committee, and so indicates in writing to
25 the appointing officer and the Legislative Ethics Committee, the appointing officer may
26 appoint another member of the respective chamber from a list submitted by the majority
27 leader or minority leader who nominated the member who is unable to act on the matter
28 to serve as a member of the Legislative Ethics Committee for the specific matter only. If
29 on any specific matter, the number of members of the Legislative Ethics Committee
30 who are unable to act on a specific matter exceeds four members, the appropriate
31 appointing officer shall appoint other members of the General Assembly to serve as
32 members of the Legislative Ethics Committee for that specific matter only.

33 **"§ 120-303. Quorum; expenses of members.**

34 (a) Six members constitute a quorum of the Committee. A vacancy on the
35 Committee does not impair the right of the remaining members to exercise all the
36 powers of the Committee.

37 (b) The members of the Committee, while serving on the business of the
38 Committee, are performing legislative duties and are entitled to the subsistence and
39 travel allowances to which members of the General Assembly are entitled when
40 performing legislative duties.

41 **"§ 120-304. Powers and duties of Committee.**

42 (a) In addition to the other powers and duties specified in this Article, the
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- (1) Prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.
- (2) Receive and file any information voluntarily supplied that exceeds the requirements of this Article.
- (3) Organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed the actual cost.
- (4) Preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.
- (5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative staff.
- (6) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.
- (7) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.
- (8) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.
- (9) Upon receipt of information that a legislator owes money to the State and is delinquent in repaying the obligation, to investigate and dispose of the matter according to the terms of this Article.
- (10) Receive and review all statements of economic interest filed with the Committee by prospective and actual legislators and evaluate whether (i) the statements conform to the law and the rules of the Committee, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.
- (11) Render advisory opinions in accordance with G.S. 120-307.
- (12) Investigate alleged violations in accordance with G.S. 120-306 and to hire separate legal counsel, through the Legislative Services Commission, for these purposes.
- (13) Initiate and maintain oversight of ethics educational programs for legislators and legislative employees consistent with G.S. 120-308.
- (14) Adopt rules to implement this Article, including those establishing ethical standards and guidelines governing legislators and legislative employees in attending to and performing their duties.

1 (15) Perform other duties as may be necessary to accomplish the purposes
2 of this Article.

3 (b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the
4 Legislative Ethics Committee as if it were a joint committee of the General Assembly,
5 except that both cochairs shall sign all subpoenas on behalf of the Committee.
6 Notwithstanding any other law, every State agency, local governmental agency, and
7 units and subdivisions thereof shall make available to the Committee any documents,
8 records, data, statements or other information, except tax returns or information relating
9 thereto, which the Committee designates as being necessary for the exercise of its
10 powers and duties.

11 **"§ 120-305. Continuing study of ethical questions.**

12 The Committee shall conduct continuing studies of questions of legislative ethics
13 including revisions and improvements of this Article as well as sections to cover the
14 executive branch of government. The Committee shall report to the General Assembly
15 from time to time recommendations for amendments to the statutes and legislative rules
16 that the Committee deems desirable in promoting, maintaining and effectuating high
17 standards of ethics in the legislative branch of State government.

18 **"§ 120-306. Investigations by the Committee.**

19 (a) Institution of Proceedings. – On its own motion, in response to a signed and
20 sworn complaint of any individual filed with the Committee, or upon the written request
21 of any legislator, the Committee shall conduct an investigation into any of the
22 following:

- 23 (1) The application or alleged violation of this Article.
24 (2) The application or alleged violation of rules adopted in accordance
25 with G.S. 120-304.
26 (3) The alleged violation of the criminal law by a legislator while acting in
27 the legislator's official capacity as a participant in the lawmaking
28 process.

29 (b) Complaint. –

- 30 (1) A complaint filed under this Article shall state the name, address, and
31 telephone number of the person filing the complaint, the name of the
32 legislator against whom the complaint is filed, and a concise statement
33 of the nature of the complaint and specific facts indicating that a
34 violation of this Article has occurred, the date the alleged violation
35 occurred, and either (i) that the contents of the complaint are within the
36 knowledge of the individual verifying the complaint, or (ii) the basis
37 upon which the individual verifying the complaint believes the
38 allegations to be true.
39 (2) The Committee may decline to accept or investigate any attempted
40 complaint that does not meet all of the requirements set forth in
41 subdivision (1) of this subsection, or the Committee may, in its sole
42 discretion, request additional information to be provided by the
43 complainant within a specified period of time of no less than seven
44 business days.

1 (3) In addition to subdivision (2) of this subsection, the Committee may
2 decline to accept or further investigate a complaint if it determines that
3 any of the following apply:

4 a. The complaint is frivolous or brought in bad faith.

5 b. The individuals and conduct complained of have already been
6 the subject of a prior complaint.

7 c. The conduct complained of is primarily a matter more
8 appropriately and adequately addressed and handled by other
9 federal, State or local agencies or authorities, including law
10 enforcement authorities. If other agencies or authorities are
11 conducting an investigation of the same actions or conduct
12 involved in a complaint filed under this section, the Committee
13 may stay its complaint investigation pending final resolution of
14 the other investigation.

15 (4) The Committee shall send a copy of the complaint to the legislator
16 who is the subject of the complaint within 30 days of the filing.

17 (c) Investigation of Complaints by the Committee. – The Committee shall
18 investigate all complaints properly before the Committee in a timely manner. The
19 Committee shall initiate an investigation of a complaint within 90 days of the filing of
20 the complaint, or the complaint shall then become a public record. In determining
21 whether there is reason to believe that a violation has or may have occurred, a member
22 of the Committee can take general notice of available information even if not formally
23 provided to the Committee in the form of a complaint. The Committee may utilize the
24 services of a hired investigator when conducting investigations.

25 (d) Investigation by the Committee of Matters Other Than Complaints. – The
26 Committee may investigate matters other than complaints properly before the
27 Committee under subsection (a) of this section. For any investigation initiated under this
28 subsection, the Committee may take any action it deems necessary or appropriate to
29 further compliance with this Article, including the initiation of a complaint, the issuance
30 of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement
31 or other authorities pursuant to subsection (i)(2) of this section.

32 (e) Legislator Cooperation With Investigation. – Legislators shall promptly and
33 fully cooperate with the Committee in any Committee-related investigation. Failure to
34 cooperate fully with the Committee in any investigation shall be grounds for sanctions
35 under G.S. 120-325.

36 (f) Dismissal of Complaint After Preliminary Inquiry. – If the Committee
37 determines at the end of its preliminary inquiry that (i) the individual who is the subject
38 of the complaint is not a legislator or (ii) the complaint does not allege facts sufficient to
39 constitute a violation of this Article, the Committee shall dismiss the complaint and
40 provide written notice of the dismissal to the individual who filed the complaint and the
41 person against whom the complaint was filed.

42 (g) Notice. – If at the end of its preliminary inquiry the Committee determines to
43 proceed with further investigation into the conduct of a legislator, the Committee shall
44 provide written notice to the individual who filed the complaint and the legislator as to

1 the fact of the investigation and the charges against the legislator. The legislator shall be
2 given an opportunity to file a written response with the Committee. Upon the notice
3 required under this subsection being sent, the complaint and any written response shall
4 be public records, and all other documents offered at the hearing in conjunction with the
5 complaint, shall be public records.

6 (h) Hearing. –

7 (1) The Committee shall give full and fair consideration to all complaints
8 and responses received. If the Committee determines that the
9 complaint cannot be resolved without a hearing, or if the legislator
10 requests a public hearing, a hearing shall be held.

11 (2) The Committee shall send a notice of the hearing to the complainant,
12 the legislator, and any other member of the public requesting notice.
13 The notice shall contain the time and place for a hearing on the matter,
14 which shall begin no less than 30 days and no more than 90 days after
15 the date of the notice.

16 (3) At any hearing held by the Committee:

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

18 b. The hearing shall be open to the public. The deliberations by
19 the Committee on a complaint may be held in closed session,
20 but the decision of the Committee shall be announced in open
21 session.

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

25 (i) Disposition of Investigations. – Except as permitted under subsection (f) of
26 this section, after the hearing the Committee shall dispose of a matter before the
27 Committee under this section, in any of the following ways:

28 (1) If the Committee finds that the alleged violation is not established by
29 clear and convincing evidence, the Committee shall dismiss the
30 complaint.

31 (2) If the Committee finds that the alleged violation of this Article is
32 established by clear and convincing evidence, the Committee shall do
33 one or more of the following:

34 a. Issue a public or private admonishment to the legislator.

35 b. Refer the matter to the Attorney General for investigation and
36 referral to the district attorney for possible prosecution or the
37 appropriate house for appropriate action, or both, if the
38 Committee finds substantial evidence of a violation of a
39 criminal statute.

40 c. Refer the matter to the appropriate house for appropriate action,
41 which shall include censure and expulsion, if the Committee
42 finds substantial evidence of a violation of this Article or other
43 unethical activities.

1 (3) If the Committee issues an admonishment as provided in subdivision
2 (2)a. of this subsection, the legislator affected may upon written
3 request to the Committee have the matter referred as provided under
4 subdivision (2)c. of this subsection.

5 (j) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or
6 private admonishment, the Committee shall retain its records or findings in confidence,
7 unless the legislator under inquiry requests in writing that the records and findings be
8 made public. If the Committee later finds that a legislator's subsequent unethical
9 activities were similar to and the subject of an earlier private admonishment then the
10 Committee may make public the earlier admonishment and the records and findings
11 related to it.

12 (k) Findings and Record. – The Committee shall render formal and binding
13 opinions of its findings and recommendations made pursuant to complaints or
14 Committee investigations. In all matters in which the complaint is a public record, the
15 Committee shall ensure that a complete record is made and preserved as a public record.

16 (l) Confidentiality. – All motions, complaints, written requests, investigations
17 and investigative materials shall be confidential and not a matter of public record,
18 except as otherwise provided in this section.

19 (m) Any action or lack of action by the Committee under this section shall not
20 limit the right of each house of the General Assembly to discipline or to expel its
21 members.

22 **"§ 120-307. Advisory opinions.**

23 (a) At the request of any legislator, the Committee may render advisory opinions
24 on specific questions involving the meaning and application of this Article and the
25 legislator's compliance with the requirements of this Article. The request shall be in
26 writing, electronic or otherwise, and relate prospectively to real or reasonably
27 anticipated fact settings or circumstances. The Committee shall issue advisory opinions
28 having prospective application only. Reliance upon a requested written advisory opinion
29 on a specific matter shall immunize the legislator, on that matter, from a finding by the
30 Committee of a violation of this Article.

31 (b) Staff to the Committee may issue informal, nonbinding advisory opinions
32 under rules adopted by the Committee.

33 (c) The Committee shall interpret this Article by rules, and these interpretations
34 are binding on all legislators upon publication.

35 (d) The Committee shall publish its advisory opinions at least once a year. These
36 advisory opinions shall be edited for publication purposes as necessary to protect the
37 identities of the individuals requesting opinions.

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

41 **"§ 120-308. Ethics education program.**

42 The Committee shall develop and implement an ethics education and awareness
43 program designed to instill in all legislators and legislative employees a keen and
44 continuing awareness of their ethical obligations and a sensitivity to situations that

1 might result in real or potential conflicts of interest or appearances of conflicts of
2 interest. The Committee shall make basic ethics education and awareness presentations
3 to all legislators and legislative employees upon their election or employment and shall
4 offer periodic refresher presentations as the Committee deems appropriate. Every
5 legislator and legislative employee shall participate in an ethics presentation approved
6 by the Committee within three months of the person's election, appointment or
7 employment in a manner as the Committee deems appropriate.

8 **"§ 120-309 through 314. [Reserved]**

9 **"Part 4. Public Disclosure of Economic Interests.**

10 **"§ 120-315. Purpose.**

11 The purpose of disclosure of the financial and personal interests by legislators is to
12 assist legislators and those persons who elect them to identify and avoid conflicts of
13 interest and potential conflicts of interest between the individual legislator's private
14 interests and the legislator's public duties. It is critical to this process that current and
15 prospective legislators examine, evaluate, and disclose those personal and financial
16 interests that could be or cause a conflict of interest or potential conflict of interest
17 between the legislator's private interests and the legislator's public duties. Legislators
18 must take an active, thorough and conscientious role in the disclosure and review
19 process, including having a complete knowledge of how the legislator's public position
20 or duties might impact the legislator's private interests. Legislators have an affirmative
21 duty to provide any and all information that a reasonable person would conclude is
22 necessary to carry out the purposes of this Article and to fully disclose any conflict of
23 interest or potential conflict of interest between the legislator's public and private
24 interests but the disclosure, review and evaluation process is not intended to result in the
25 disclosure of unnecessary or irrelevant personal information.

26 **"§ 120-316. Statement of economic interest; filing required.**

27 (a) Every legislator who is elected or appointed shall file a statement of
28 economic interest with the Committee before the legislator's initial election or
29 appointment and, except as otherwise filed under subsection (b) of this section, no later
30 than March 15 every year thereafter. A prospective legislator required to file a statement
31 under this Article shall not be appointed or receive a certificate of election, prior to
32 submission by the Committee of the Committee's evaluation of the statement in
33 accordance with this Article.

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

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

7 (c) The boards of elections shall provide for notification of the statement of
8 economic interest requirements of this Article to be given to any candidate filing for
9 nomination or election to those offices subject to this Article at the time of the filing of
10 candidacy.

11 (d) If a candidate for an office subject to this Article does not file the statement
12 of economic interest within the time required by this Article, the county board of
13 elections immediately shall notify the candidate by registered mail, restricted delivery to
14 addressee only, that, if the statement is not received within 15 days, the candidate shall
15 not be certified as the party nominee, or in the case of a candidate nominated by a new
16 party under G.S. 163-98 that the candidate shall be decertified by the State Board of
17 Elections. If the statement is not received within 15 days of notification, the board of
18 elections authorized to certify a candidate as nominee to the office shall not certify the
19 candidate as nominee under any circumstances, regardless of the number of candidates
20 for the nomination and regardless of the number of votes the candidate receives in the
21 primary. If the delinquent candidate was nominated by a new party under G.S. 163-98,
22 the State Board of Elections shall decertify the candidate, and no county board of
23 elections shall place the candidate's name on the general election ballot as nominee of
24 the party. A vacancy thus created on a party's ticket shall be considered a vacancy for
25 the purposes of G.S. 163-114, and shall be filled according to the procedures set out in
26 G.S. 163-114.

27 (e) Every person appointed to fill a vacant seat in the General Assembly under
28 G.S. 163-11 shall file with the Legislative Services Office and the county board of
29 elections of each county in the senatorial or representative district a statement of
30 economic interest as specified in this Article no later than 10 days after taking the oath
31 of office. If a person required to file a statement of economic interest as required under
32 this section fails to file the statement within the time required by this section, the
33 Legislative Services Officer shall notify the person that the statement must be received
34 within 15 days of notification. If the statement is not received within the time allowed in
35 this subsection, then the Legislative Services Officer shall notify the Legislative Ethics
36 Committee of the failure of the person to file the statement.

37 (f) The chair of the board of elections shall forward a certified copy of the
38 statement of economic interest to the Committee for evaluation within 10 days of the
39 date the statement of economic interest is filed with the board of elections.

40 (g) The Committee shall issue forms to be used for the statement of economic
41 interest and shall revise the forms from time to time as necessary to carry out the
42 purposes of this Article. Except as otherwise set forth in this section, the Committee
43 shall furnish the appropriate forms needed to comply with this Article to legislators.

44 **"§ 120-317. Statements of economic interest as public records.**

1 The statements of economic interest filed under this Article, and all other written
2 evaluations by the Committee of those statements, shall be filed with the Legislative
3 Services Office, made available in the Legislative Library, and be public records.

4 **"§ 120-318. Contents of statement.**

5 (a) Any statement of economic interest required to be filed under this Article
6 shall be on a form prescribed by the Committee and sworn to by the person required to
7 file. Answers must be provided to all questions. The form shall include the following
8 information about the person and the person's immediate family:

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

11 (2) A list of each asset and liability of whatever nature, including legal,
12 equitable, or beneficial interest, with a value of at least ten thousand
13 dollars (\$10,000) of the person, and that person's spouse. This list shall
14 include the following:

15 a. All real estate located in the State owned wholly or in part by
16 the person or the person's spouse, including specific
17 descriptions adequate to determine the location of each parcel
18 and the specific interest held by the person and the person's
19 spouse in each identified parcel.

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

21 c. Personal property sold to or bought from the State within the
22 preceding two years.

23 d. Personal property currently leased or rented to the State.

24 e. The name of each publicly owned company in which the value
25 of securities held exceeds ten thousand dollars (\$10,000).

26 f. The name of each nonpublicly owned company or business
27 entity in which the value of securities or other equity interests
28 held exceeds ten thousand dollars (\$10,000), including interests
29 in partnerships, limited partnerships, joint ventures, limited
30 liability companies or partnerships, and closely held
31 corporations. For each company or business entity listed under
32 this sub-subdivision, the person shall indicate whether the listed
33 company or entity owns securities or equity interests exceeding
34 a value of ten thousand dollars (\$10,000) in any other
35 companies or entities. If so, then the other companies or entities
36 shall also be listed with a brief description of the business
37 activity of each.

38 g. If the person or a member of the person's immediate family is
39 the beneficiary of a vested trust created, established, or
40 controlled by the person, then the name and address of the
41 trustee and a description of the trust shall be provided. To the
42 extent such information is available to the person, the statement
43 also shall include a list of businesses in which the trust has an
44 ownership interest exceeding ten thousand dollars (\$10,000).

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- h. The person shall make a good faith effort to list any individual or business entity with which the person, the person's extended family, or any business with which the person or a member of the person's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the person; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the person. For each individual or business entity listed under this subsection, the person shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.
- i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars (\$10,000), including bank accounts and debts.
- j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars (\$10,000) or more was received from that source.
- k. If the person is a practicing attorney, an indication of whether the person, or the law firm with which the person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars (\$10,000) from any of the following categories of legal representation:

 - 1. Administrative law.
 - 2. Admiralty.
 - 3. Corporation law.
 - 4. Criminal law.
 - 5. Decedents' estates.
 - 6. Insurance law.
 - 7. Labor law.
 - 8. Local government.
 - 9. Negligence – defendant.
 - 10. Negligence – plaintiff.
 - 11. Real property.
 - 12. Taxation.
 - 13. Utilities regulation.
- l. A list of all nonpublicly owned businesses with which, during the past five years, the person or the person's immediate family has been associated or has an economic interest, indicating the time period of that association and the relationship with each

1 business as an officer, employee, director, partner, or owner.
2 The list also shall indicate whether each does business with, or
3 is regulated by, the State and the nature of the business, if any,
4 done with the State.

5 m. A list of all gifts, and the sources of the gifts, of a value of more
6 than two hundred dollars (\$200.00) received during the 12
7 months preceding the date of the statement from sources other
8 than the person's extended family, and a list of all gifts, and the
9 sources of the gifts, valued in excess of one hundred dollars
10 (\$100.00) received from any source having business with, or
11 regulated by, the State.

12 n. A list of all bankruptcies filed during the preceding five years
13 by the person, the person's spouse, or any entity in which the
14 person, or the person's spouse, has been associated financially.
15 A brief summary of the facts and circumstances regarding each
16 listed bankruptcy shall be provided.

17 o. A list of all directorships on all business boards of which the
18 person or the person's immediate family is a member.

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

26 (4) If the person believes a potential for conflict exists, the person has a
27 duty to inquire of the Committee as to that potential conflict.

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

31 (c) The Committee shall prepare a written evaluation of each statement of
32 economic interest relative to conflicts of interest and potential conflicts of interest. The
33 Committee shall submit the evaluation to all of the following:

34 (1) The person who submitted the statement.

35 (2) The Legislative Services Office.

36 **"§ 120-319. Failure to file.**

37 (a) In addition to the provision of G.S. 120-316, within 30 days after the date due
38 in accordance with G.S. 120-316, for every person from whom a statement of economic
39 interest has not been received by the Committee, or whose statement of economic
40 interest has been received by the Committee but deemed by the Committee to be
41 incomplete, the Committee shall notify the person of the failure to file or complete and
42 shall notify the person that if the statement of economic interest is not filed or
43 completed within 30 days of receipt of the notice of failure to file or complete, the
44 person shall be subject to a fine under this section.

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LEGISLATIVE PROPOSAL # 2 SUMMARY



HOUSE BILL 1843: Revise Legislative Ethics Act - 1

BILL ANALYSIS

Committee:	House Judiciary I	Date:	May 10, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	Summary by:	O. Walker Reagan Staff Attorney
Version:	First Edition		

SUMMARY: *House Bill 1843 revises the current Legislative Ethics Act by conforming the ethical standards and ethical processes for the General Assembly to the ethical standards and ethical processes applicable to certain public officials in the Executive Branch through Executive Order No. One and as proposed in House Bill 1844 - Executive Branch Ethics Act. The proposal is a recommendation from the House Select Committee on Ethics and Governmental Reform.*

CURRENT LAW: The current Legislative Ethics Act was originally enacted in 1975. The Act is in three Parts. Part 1 is the Code of Legislative Ethics that defines certain conduct involving legislators that would be either criminal or unethical conduct. Part 1 also defines what constitutes a conflict of interest for legislators. Part 2 sets out the requirements for statements of economic interest required to be filed by legislators. Part 3 establishes the Legislative Ethics Committee and defines the powers and authority of the Committee including the responsibility for overseeing the statement of economic interest process, issuing ethics advisory opinions, and conducting investigations of alleged unethical conduct.

BILL ANALYSIS: House Bill 1843 retains all the provisions of the existing Legislative Ethics Act and supplements these provisions with more definitions of conflicts of interest, establishes a limit on gifts received by legislators from lobbyists and lobbyist principals, and provides for a more detailed and frequent statement of economic interest. The bill organizes the Act into 5 Parts.

Part 1 sets out the applicable definitions for the Act. It retains the existing definitions with a few changes and adds additional definitions.

Business with which associated – Changed to incorporate a pecuniary interest which changes the current law to apply to a business in which a person holds \$10,000 worth of securities (currently is \$5,000) or 5% of the outstanding stock of the business.

Extended Family – Spouse, descendant, ascendant, or sibling of the public servant, or descendant, ascendant or sibling of the spouse of the public servant.

Public Event – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

Part 2 establishes ethical standards for legislators.

G.S. 120-286 recodifies the existing legislative bribery statute found in G.S. 120-86.

G.S. 120-287 mirrors the Executive Branch Ethics Act and prohibits a legislator from using the legislator's public position for personal financial gain for the legislator, the

legislator's extended family, or a business with which the legislator is associated, or from using the legislator's title for non-governmental advertising that advances the private interests of the legislator or others. Use of the legislative title is permitted for political advertising.

G.S. 120-288 recodifies the existing statute prohibiting a legislator from disclosing confidential information found in G.S. 120-87.

G.S. 120-289 recodifies the existing statute making certain personnel-related actions by a legislator unethical as found in G.S. 120-86.1.

G.S. 120-290 mirrors the Executive Branch Ethics Act and restricts gifts that legislators can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits legislators from accepting gifts from lobbyists and lobbyist principals. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, gifts of less than \$10, informational materials relevant to the legislator's duties, expenses associated with a speech or panel related to the legislator's public duties, expenses received at an educational conference or meeting, a plaque or similar non-monetary recognition memento, items or services received from a state, regional or national legislative organization of which the General Assembly or legislator is a member by virtue of their legislative position, gifts accepted on behalf of the State, anything available to the general public or all other State employees, anything for which fair market value was paid, commercially available loans made on terms not more favorable than available to the public, contractual arrangements or business arrangements not made for the purpose of lobbying, academic scholarships made on terms not more favorable than scholarships available to the public, legal campaign contributions, gifts from family members, and gifts received in conjunction with a wedding, birth, adoption or death. This section also specifies that a gift offered, given, solicited or received in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 120-291 mirrors the Executive Branch Ethics Act and requires legislators to avoid appearances of conflicts of interest.

G.S. 120-292 mirrors the Executive Branch Ethics Act and requires legislators to use due diligence to determine if they have a conflict of interest or the appearance of a conflict and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 120-293 mirrors the Executive Branch Ethics Act and defines conflicts of interest for legislators. This section retains the existing criteria found in G.S. 120-88 for determining when a conflict of interest exists and adds additional clarification. A conflict of interest occurs when the legislator, his or her extended family, or a business with which he or she is associated, has a pecuniary interest or economic interest in, or would benefit from, the matter under consideration, and the legislator's independence of judgment would be influenced by the interest. When a conflict exists, the legislator must abstain from participation. If the legislator is unclear if a conflict exists, the legislator is required to seek guidance. This section sets out numerous exceptions to the restrictions, primarily involving situations where the benefit is no greater to the legislator than the public in general, or when the legislator has received an ethics opinion that no conflict exists.

An economic interest is defined to include the existing law which includes associations with non-profit corporations and associations with which the legislator or the legislator's immediate family serves as a director, officer, governing board member, employee or independent contractor.

G.S. 120-294 mirrors the Executive Branch Ethics Act and prohibits a legislator from causing members of the legislator's extended family to be employed or promoted in any State or local office or position, except for positions at the General Assembly as permitted by the Legislative Services Commission.

Part 3 recodifies the existing law establishing and defining powers of the Legislative Ethics Committee, adds definitions of the investigative powers and procedures for ethics violations to mirror similar provisions in the Executive Branch Ethics bill draft, and provides for mandatory ethics education.

G.S. 120-308 sets out the authority for the Committee to provide for ethics education programs. All legislators and legislative employees are required to take ethics training within 3 months of the beginning of their employment, election, or appointment.

Part 4 sets out the requirements for filing statements of economic interest. In addition to recodifying the existing time for legislative candidates to file statements of economic interest, new provisions are added to require legislators to file additional statements annually.

G.S. 120-316 continues to require candidates for the legislature to file statements of economic interest within 10 days of the end of the filing period of their candidacy and also requires legislators to file additional statements no later than March 15th of every year thereafter.

G.S. 129-318 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of \$10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, attorney's areas of practice; businesses owned in the previous 5 years; gifts in excess of \$200 from persons other than extended family members; bankruptcies; and directorships of businesses. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Committee is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 120-319 requires the Committee to notify every person who fails to file or complete his or her required SEI within 30 days of the due date. Any person who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a \$250 fine. Any person who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under G.S. 120-325.

G.S. 120-320 makes it a Class 2 misdemeanor for a person to knowingly conceal or fail to disclose required information on a SEI.

G.S. 120-321 makes it a Class F felony for a person to provide false or misleading information on a SEI knowing the information to be false or misleading. The level of punishment is the same as the penalty for perjury.

Part 5 sets out the sanctions for violation of the Act. Willful violations by a legislator are considered to be an unethical act and subject to sanctions as set forth in G.S. 120-325, which could include censure or expulsion.

EFFECTIVE DATE: The Act becomes effective October 1, 2006, applies to person holding office and employed on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

**Brad Krehely contributed to the drafting of this summary.*

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LEGISLATIVE PROPOSAL # 3

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGISLATIVE LOBBYING LAWS BY ESTABLISHING WAITING PERIODS BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY BANNING CERTAIN GIFTS; BY ESTABLISHING QUARTERLY REPORTING OF EXPENDITURES WITH ADDITIONAL INTERIM REPORTING; BY EXPANDING THE COVERAGE OF THE LOBBYING LAWS TO INCLUDE EXECUTIVE BRANCH OFFICERS; BY LIMITING CAMPAIGN CONTRIBUTIONS BY REGISTERED LOBBYISTS; AND BY MAKING OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"§ 120-47.7C. Prohibitions.

(a) No member or former member of the General Assembly may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after the end of that member's service in the General Assembly.

(b) No person serving, or formerly having served, as Governor, a member of the Council of State, or a head of a principal State department listed in G.S. 143B-6 may be employed as a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article within one year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19) for a campaign for election as a member of the General Assembly, Governor, or Council of State.

(d) A legislative lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the legislative lobbyist currently represents or has represented within 60 days after the expiration of the legislative lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative lobbyist or another acting on the legislative lobbyist's behalf shall permit a covered person, legislative employee, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 2. Article 9A of Chapter 120 of the General Statutes is amended to add a new section to read:

"§ 120-47.7B. Powers and duties of the Secretary of State.

- 1 d. The chief deputy or chief administrative assistant of each
2 person designated under sub-subdivisions a. and c. of this
3 subdivision.
- 4 e. Confidential assistants and secretaries as defined in
5 G.S. 126-5(c)(2), to persons designated under sub-subdivisions
6 a., c., and d. of this subdivision.
- 7 f. Employees in exempt positions as defined in G.S. 126-5(b) and
8 employees in exempt positions designated in accordance with
9 G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to
10 these individuals.
- 11 g. Any other employees or appointees in the principal State
12 departments as may be designated by the Governor to the extent
13 that the designation does not conflict with the State Personnel
14 Act.
- 15 h. All voting members of boards, including ex officio members
16 and members serving by executive, legislative, or judicial
17 branch appointment.
- 18 i. For The University of North Carolina, the voting members of
19 the Board of Governors of The University of North Carolina,
20 the president, the vice-presidents, and the chancellors, the
21 vice-chancellors, and voting members of the boards of trustees
22 of the constituent institutions.
- 23 j. For the System of Community Colleges, the voting members of
24 the State Board of Community Colleges, the President and chief
25 financial officer of the System of Community Colleges, the
26 president, chief financial officer and chief administrative officer
27 of each community college, and voting members of the boards
28 of trustees of each community college.
- 29 ~~(1a)~~(1e) The term "expenditure" means any Expenditure. – Any advance,
30 contribution, conveyance, deposit, distribution, payment, gift, retainer,
31 fee, salary, honorarium, reimbursement, loan, pledge or thing of value
32 greater than ten dollars ~~(\$10.00);(\$10.00) per single calendar day~~ or a
33 contract, agreement, promise or other obligation whether or not legally
34 enforceable, that directly or indirectly is made to, at the request of, for
35 the benefit of, or on the behalf of a covered ~~person, legislative~~
36 ~~employee, person~~ or that person's immediate family member.
- 37 (1f) Extended family. – Spouse, descendant, ascendant, or sibling of the
38 covered person or, descendant, ascendant, or sibling of the spouse of
39 the covered person.
- 40 ~~(1b) The term "executive lobbyist" means a lobbyist registered pursuant to~~
41 ~~Article 4C of Chapter 147 of the General Statutes.~~
- 42 (2),(3) Repealed by Session Laws 1991, c. 740, s. 1.1.
- 43 (2a) Gift. – Anything of value without valuable consideration.

- 1 (3a) ~~The term "immediate family member" means spouse, descendant, or~~
2 ~~ascendant.~~Immediate family member. – An unemancipated child of the
3 covered person residing in the household, and the covered person's
4 spouse, if not legally separated.
- 5 (4) ~~The term "legislative action" means the~~Legislative action. – The
6 preparation, research, drafting, introduction, consideration,
7 modification, amendment, approval, passage, enactment, tabling,
8 postponement, defeat, or rejection of a bill, resolution, amendment,
9 motion, report, nomination, appointment, or other matter, whether or
10 not the matter is identified by an official title, general title, or other
11 specific reference, by the legislature or by a member or employee of
12 the legislature acting or purporting to act in an official capacity. It also
13 includes the consideration of any bill by the Governor for the
14 Governor's approval or veto under Article II, Section 22(1) of the
15 Constitution or for the Governor to allow the bill to become law under
16 Article II, Section 22(7) of the Constitution.
- 17 (4a) ~~The term "legislative employee" means employees~~Legislative
18 employee. – Employees and officers of the General Assembly.
- 19 (4b) ~~The term "legislative liaison personnel" means any~~Liaison personnel. –
20 Any State employee or officer whose principal duties, in practice or as
21 set forth in that person's job description, include lobbying the General
22 Assembly.Assembly or executive branch officers.
- 23 (4c) ~~The term "legislative lobbyist" means any lobbyist for or against~~
24 ~~legislative action.~~
- 25 (4d) ~~The term "legislator" means a~~Legislator. – A member or presiding
26 officer of the General ~~Assembly or~~Assembly, a person elected or
27 appointed a member or presiding officer of the General Assembly
28 prior to taking ~~office~~office, or a person having filed a notice of
29 candidacy for such office under G.S. 163-106 or Article 11 of Chapter
30 163 of the General Statutes.
- 31 (5) ~~The term "lobbying" means any~~Lobbying. – Any of the following:
32 a. Influencing or attempting to influence legislative or executive
33 action, or both, through direct communication or activities with
34 a covered ~~person, legislative employee,~~person or that person's
35 immediate family member.
- 36 b. Solicitation of others by ~~legislative~~-lobbyists or lobbyists'
37 principals to influence legislative or executive action.action, or
38 both.
- 39 c. Developing goodwill through communications or activities,
40 including the building of relationships, with a covered ~~person,~~
41 ~~legislative employee,~~person or that person's immediate family
42 member with the intention of influencing current or future
43 legislative action, but does not include communications or
44 activities with a covered ~~person, legislative employee,~~person or

1 that person's immediate family member in a business, civic,
2 religious, fraternal, or commercial relationship which is not
3 connected to legislative ~~or executive action~~ action, or both.

4 (6) ~~The term "lobbyist" means an~~ Lobbyist. – An individual who meets any
5 of the following criteria:

6 a. Is employed and receives compensation, or who contracts for
7 economic consideration, for the purpose of lobbying.

8 b. Represents another person and receives compensation for the
9 purpose of lobbying.

10 ~~e. Is legislative liaison personnel.~~

11 The term "lobbyist" shall not include those individuals who are
12 specifically exempted from this Article by G.S. 120-47.8. For the
13 purpose of determining whether an individual is a lobbyist under this
14 subdivision, reimbursement of actual travel and subsistence expenses
15 shall not be considered compensation; provided, however, that
16 reimbursement in the ordinary course of business of these expenses
17 shall be considered compensation if a significant part of the
18 individual's duties involve lobbying before the General
19 ~~Assembly.~~ Assembly or executive branch officers.

20 (7) ~~The terms "lobbyist's principal" and "principal" mean the~~ Lobbyist
21 principal and principal. – The person on whose behalf the ~~legislative~~
22 lobbyist lobbies. In the case where a lobbyist is compensated by a law
23 firm, consulting firm, or other entity retained by a person for
24 ~~legislative~~ lobbying, the principal is the person whose interests the
25 lobbyist represents in lobbying. In the case of a lobbyist employed or
26 retained by an association or other organization, the lobbyist's
27 principal is the association or other organization, not the members of
28 the association or other organization.

29 (7a) ~~The term "news medium" means mainstream~~ News medium. –
30 Mainstream media providers whose sole purpose is to report events
31 and that does not involve research or advocacy.

32 (8) ~~The term "person" means any~~ Person. – Any individual, firm,
33 partnership, committee, association, corporation, business entity, or
34 any other organization or group of persons which has an independent
35 legal existence.

36 (8a) Public event. – Either of the following:

37 a. An organized gathering of individuals open to the general
38 public or to which a legislator or legislative employee is invited
39 along with the entire membership of the House, Senate, a
40 committee, a subcommittee, a county legislative delegation, a
41 joint committee or legislative caucus and to which at least 10
42 employees or members of the principal actually attend.

43 b. An organized gathering of individuals open to the general
44 public or to which at least ten executive branch officers are

1 invited to attend and at least 10 employees or members of the
2 principal actually attend.

- 3 (9) ~~The General Assembly is in "regular session" from the~~ In regular
4 session. – The date set by law or resolution that the General Assembly
5 convenes until the General Assembly either:
6 a. Adjourns sine die; or
7 b. Recesses or adjourns for more than 10 days.

8 **§ 120-47.2. Registration procedure.**

9 (a) A ~~legislative~~ lobbyist shall file a registration statement with the Secretary of
10 State in a manner prescribed by the Secretary before engaging in any lobbying. It shall
11 be unlawful for a person to lobby without registering unless exempted by this Article. A
12 lobbyist shall file a separate registration statement for each principal the lobbyist
13 represents. ~~The registration shall indicate whether it is registration as a legislative~~
14 ~~lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for~~
15 ~~each separate type of registration.~~

16 (b) The form of the registration shall be prescribed by the Secretary of State and
17 shall include the registrant's full name, firm, complete address and telephone number;
18 the registrant's place of business; the full name, complete address and telephone number
19 of each person by whom the registrant is employed or retained; and a general
20 description of the matters on which the registrant expects to act as a ~~legislative~~ lobbyist.
21 The Secretary of State shall make available as soon as practicable the registrations of
22 the lobbyists and lobbyists' principals in an electronic, searchable format.

23 (c) Each ~~legislative~~ lobbyist shall file an amended registration form with the
24 Secretary of State no later than 10 business days after any change in the information
25 supplied in the ~~legislative~~ lobbyist's last registration under subsection (b). Each
26 supplementary registration shall include a complete statement of the information that
27 has changed.

28 (d) Within 20 days after the convening of each session of the General Assembly,
29 the Secretary of State shall furnish each member of the General ~~Assembly~~ Assembly,
30 Constitutional officers of the State, the head of each principal department of the
31 Executive Branch, and the State Legislative Library a list of all persons who have
32 registered as ~~executive or legislative~~ lobbyists and whom they represent. ~~Within 20 days~~
33 ~~after the beginning of the term of a Governor, the Secretary of State shall furnish the~~
34 ~~Governor, each other member of the Council of State, the head of each principal~~
35 ~~department of the Executive Branch, and the State Legislative Library a list of all~~
36 ~~persons who have registered as executive or legislative lobbyists and whom they~~
37 ~~represent.~~ A supplemental list of ~~legislative~~ lobbyists shall be furnished periodically
38 each 20 days ~~thereafter as the session progresses.~~ while the General Assembly is in
39 session, and every 60 days thereafter. ~~A supplemental list of executive lobbyists shall be~~
40 ~~furnished periodically each 60 days thereafter.~~ For each special session of the General
41 Assembly, a supplemental list of ~~legislative~~ lobbyists shall be furnished to the State
42 Legislative Library. All lists required by this section may be furnished electronically.

43 (e) Each registration statement of a ~~legislative~~ lobbyist required under this
44 Article shall be effective from the date of filing until January 1 of the following year.

1 The ~~legislative~~-lobbyist shall file a new registration statement after that date, and the
2 applicable fee shall be due and payable.

3 **"§ 120-47.3. Registration fee.**

4 A fee of one hundred dollars (\$100.00) is due and payable to the Secretary of State
5 by either the lobbyist or the lobbyist's principal at the time of each lobbyist registration.
6 Fees so collected shall be deposited in the General Fund of the State. The Secretary of
7 State shall allow fees required under this section to be paid electronically but may not
8 require the fees to be paid electronically. The Secretary of State shall adopt rules
9 providing for the waiver or reduction of the fees required by this section in cases of
10 hardship.

11 **"§ 120-47.4. Authorization from lobbyist's principal; fee from principal.**

12 (a) Each ~~legislative~~-lobbyist or lobbyist's principal shall file with the Secretary of
13 State within 10 business days after the ~~legislative~~-lobbyist's registration a written
14 authorization signed by the lobbyist's principal authorizing the lobbyist to represent the
15 principal.

16 (b) The form of the authorization shall be prescribed by the Secretary of State
17 and shall include the lobbyist's principal's full name, complete address and telephone
18 number, name and title of the official signing for the lobbyist's principal, and the name
19 of each lobbyist registered to represent the lobbyist's principal. The Secretary of State
20 shall make available as soon as practicable the authorization of the lobbyists' principals
21 in an electronic, searchable format.

22 (c) An amended authorization shall be filed with the Secretary of State no later
23 than 10 days after any change in the information supplied for the lobbyist's principal on
24 the previous authorization. Each supplementary authorization shall include a complete
25 statement of the information that has changed.

26 (d) Except as provided for in subsection (e) of this section, a fee of one hundred
27 dollars (\$100.00) is due and payable to the Secretary of State at the time the lobbyist's
28 principal's first authorization statement is filed each calendar year for a legislative
29 lobbyist. ~~The fee for the legislative lobbyist's authorization shall be seventy-five dollars~~
30 ~~(\$75.00) if an authorization for the principal to be represented by an executive lobbyist~~
31 ~~is filed at the same time. No additional fee is due for additional authorizations filed for~~
32 ~~legislative lobbyists.~~

33 (e) The Secretary of State shall adopt rules providing for the waiver or reduction
34 of the fees required by fee in subsection (d) of this section. The rules shall provide that
35 the fees be reduced to a total of twenty-five dollars (\$25.00) if the lobbyist's principal
36 had annual revenues in its most recent fiscal year of three hundred thousand dollars
37 (\$300,000) or less and is represented by no more than two different lobbyists. ~~This~~
38 ~~reduced fee covers authorizations filed for the principal's legislative and executive~~
39 ~~lobbyists.~~

40 **"§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

41 (a) No person shall act as a ~~legislative~~-lobbyist for compensation that is
42 dependent upon the result or outcome of any legislative action.

43 (b) No ~~legislative lobbyist or legislative lobbyist's principal person~~ shall attempt
44 to influence the action of any covered person by the promise of financial support of the

1 covered person's candidacy, or by threat of financial support in opposition to the
2 covered person's candidacy in any future election.

3 **"§ 120-47.5A. Certain gifts by lobbyists and lobbyist's principals prohibited;**
4 **Exemptions and inclusions for reporting purposes.exemptions.**

5 (a) No lobbyist or lobbyist's principal may give a gift to a covered person.

6 ~~(a)(a1) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures~~
7 ~~need not be reported.~~ Subsection (a) of this section shall not apply to:

8 (1) ~~Gifts between an immediate family member or person who is the~~
9 ~~stepchild, sibling, mother in law, father in law, son in law,~~
10 ~~daughter in law, or members of the household of the covered person or~~
11 ~~legislative employee~~

12 (2) ~~Lawful campaign contributions.~~

13 (3) ~~Commercially available loans made on terms not more favorable than~~
14 ~~generally available to the public in the normal course of business if not~~
15 ~~made for the purpose of lobbying.~~

16 (4) ~~Contractual arrangements or business relationships or arrangements~~
17 ~~made in the normal course of business if not made for the purpose of~~
18 ~~lobbying.~~

19 (5) ~~The cost of attendance or participation provided by the sponsoring~~
20 ~~entity of lodging, and of food and beverages consumed, at events~~
21 ~~sponsored by or in conjunction with a civic, charitable, community, or~~
22 ~~diplomatic event if the activity or event does not last longer than three~~
23 ~~hours.~~

24 (6) ~~Academic scholarships made on terms not more favorable than~~
25 ~~scholarships generally available to the public.~~

26 (1) Meals and beverages for immediate consumption in connection with
27 public events.

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

31 (3) Informational materials relevant to the duties of the covered person.

32 (4) Reasonable actual expenses for food, registration, travel, and lodging
33 of the covered person for a meeting at which the covered person
34 participates in a panel or speaking engagement at the meeting related
35 to the public servant's duties and when expenses are incurred on the
36 actual day of participation in the engagement or incurred within a
37 24-hour time period before or after the engagement.

38 (5) Items or services received in connection with a state, national, or
39 regional organization in which the covered person or the covered
40 person's agency is a member.

41 (6) Items and services received relating to an educational conference or
42 meeting.

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

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

1 receiving of such personal gifts is considered a customary protocol in
2 the other country.

3 (b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for
4 the purpose of lobbying shall be reported, including the following:

5 (1) Expenditures benefiting or made on behalf of a covered person, ~~a~~
6 ~~legislative employee,~~ or those persons' immediate family members, in
7 the regular course of that person's ~~nonlegislative~~-employment.

8 (2) Contractual arrangements or direct business relationships between a
9 ~~legislative~~-lobbyist or ~~legislative~~-lobbyist's principal and a covered
10 person, ~~legislative employee,~~ or that person's immediate family
11 member, in effect during the reporting period or the previous 12
12 months.

13 (3) Expenditures reimbursed to a ~~legislative~~-lobbyist in the ordinary
14 course of business by the lobbyist's principal or other employer.
15 Expenditures reimbursed by the lobbyist's principal or other employer
16 are reported only by the lobbyist.

17 (4) Expenditures for items exempted by subsection (a1) of this section.

18 ~~(e) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative~~
19 ~~lobbying with respect to only the legislative actions of the Governor and Lieutenant~~
20 ~~Governor shall be reported.~~

21 (d) The offering or giving of a gift in compliance with this Article without
22 corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

23 **"§ 120-47.6. Statements of ~~legislative~~-lobbyist's lobbying expenditures required.**

24 (a) Each ~~legislative~~-lobbyist shall file ~~monthly~~-quarterly expenditure reports
25 under oath with the Secretary of State, in a manner prescribed by the Secretary of State,
26 which may include electronic reports, with respect to each lobbyist's ~~principal, while the~~
27 ~~General Assembly is in regular session, and quarterly thereafter.~~ principal. The
28 expenditure report shall include all expenditures during the reporting period and shall be
29 due 10 business days after the end of the reporting period. The ~~legislative~~-lobbyist shall
30 file ~~expense~~-expenditure reports whether or not expenditures are made.

31 (a1) In addition to the reports required by subsection (a) of this section, each
32 lobbyist incurring expenditures with respect to lobbying legislators and legislative
33 employees shall file a monthly expenditure report while the General Assembly is in
34 regular session. The monthly expenditure report shall contain information required by
35 this section with respect to all lobbying of legislators and legislative employees, and is
36 due within 10 business days of the end of the month. The information on the monthly
37 expenditure report shall also be included in each quarterly report required by subsection
38 (a) of this section.

39 (b) Each expenditure report shall set forth the fair market ~~value,~~value or face
40 value if shown, date, a description of the expenditure, name and address of the payee, or
41 beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's
42 immediate family member benefiting from the expenditure. Such expenditures shall be
43 reported using the following categories:

44 (1) Transportation and lodging.

- 1 (2) Entertainment, food, and beverages.
2 (3) Meetings and events.
3 (4) Gifts.
4 (5) Other expenditures.
5 (6) Solicitation of others to lobby, including if such expenditures are
6 incurred in connection or in concert with other reportable
7 expenditures.

8 ~~In addition, expenses for the solicitation of others to lobby, whether or not a covered~~
9 ~~person, legislative employee, or family member is affected, shall be reportable if such~~
10 ~~expenses are incurred in connection, or in concert, with other expenditures reportable~~
11 ~~under this subsection.~~

12 (c) All reports shall be in the form prescribed by the Secretary of State and shall
13 be open to public inspection upon filing. When more than 15 covered persons benefit
14 from an expenditure, no names of individuals need be reported provided that the report
15 identifies the approximate number of covered persons benefiting and, with particularity,
16 the basis for their selection, including the name of the legislative body, committee,
17 caucus, or other group whose membership list is a matter of public record in accordance
18 with G.S. 132-1 or including a description of the group that clearly distinguishes its
19 purpose or composition from the general membership of the General Assembly. The
20 approximate number of ~~legislative employees and~~ immediate family members of
21 covered persons ~~and legislative employees~~ who benefited from the expenditure shall be
22 listed separately.

23 (d) When a ~~legislative~~ lobbyist fails to file an expenditure report as required in
24 this section, the Secretary of State shall send a certified or registered letter advising the
25 ~~legislative~~ lobbyist of the delinquency and the penalties provided by law. Within 20
26 days of the receipt of the letter, the ~~legislative~~ lobbyist shall deliver or post by United
27 States mail to the Secretary of State the required report and an additional late filing fee
28 in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

29 (e) Filing of the required report and payment of the additional fee within the time
30 extended shall constitute compliance with this section. Failure to file an expenditure
31 report in one of the manners prescribed in this section shall result in revocation of any
32 and all registrations of a legislative lobbyist under this Article. No ~~legislative~~ lobbyist
33 may register or reregister under this Article until the ~~legislative~~ lobbyist has fully
34 complied with this section.

35 (f) Appeal of a decision by the Secretary of State under this section shall be in
36 accordance with Article 3 of Chapter 150B of the General Statutes.

37 (g) The Secretary of State may adopt rules to facilitate complete and timely
38 disclosure of expenditures, including the format of reports and additional categories of
39 information, and to protect the addresses of payees under protective order issued
40 pursuant to Chapter 50B of the General Statutes or participating in the Address
41 Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary
42 of State shall not impose any penalties or late filing fees upon a ~~legislative~~ lobbyist for
43 subsequent failures to comply with the requirements of this section if the Secretary of
44 State failed to provide ~~to~~ the lobbyist with required notifications of the initial violation.

1 This provision shall not apply to a failure by the lobbyist to file an expenditure report in
2 a timely manner.

3 "**§ 120-47.7. Statements of ~~legislative~~ lobbyist's principal lobbying expenditures**
4 **required.**

5 (a) Each ~~legislative~~ lobbyist's principal shall file ~~monthly~~ quarterly expenditure
6 reports under oath with the Secretary of State, in a manner prescribed by the Secretary
7 of State, which may include electronic ~~reports, while the General Assembly is in regular~~
8 ~~session, and quarterly thereafter reports.~~ The expenditure report shall include all
9 expenditures during the reporting period and shall be due 10 business days after the end
10 of the reporting period. The lobbyist's principal shall file the expenditure reports
11 whether or not expenditures are made during a reporting period.

12 (a1) In addition to the reports required by subsection (a) of this section, each
13 lobbyist's principal incurring expenditures with respect to lobbying legislators and
14 legislative employees shall file a monthly expenditure report while the General
15 Assembly is in regular session. The monthly expenditure report shall contain
16 information required by this section with respect to all lobbying of legislators and
17 legislative employees, and is due within 10 business days of the end of the month. The
18 information on the monthly expenditure report shall also be included in each quarterly
19 report required by subsection (a) of this section.

20 (b) Each expenditure report shall set forth the fair market ~~value,~~ value or face
21 value if shown, date, a description of the expenditure, name and address of the payee, or
22 beneficiary, and name of any covered person, ~~legislative employee,~~ or that person's
23 immediate family member affected by the expenditure. Such expenditures shall be
24 reported using the following categories:

25 (1) Transportation and lodging.

26 (2) Entertainment, food, and beverages.

27 (3) Meetings and events.

28 (4) Gifts.

29 (5) Other expenditures.

30 (6) Solicitation of others to lobby, including if such expenditures are
31 incurred in connection or in concert with other expenditures reportable
32 under this Article.

33 (7) Compensation paid to all lobbyists during the reporting period. If a
34 legislative lobbyist is a full-time employee of the lobbyist's principal,
35 or is compensated by means of an annual fee or retainer, the lobbyist's
36 principal shall estimate and report the portion of the salary, fee, or
37 retainer that compensates for lobbying.

38 (8) Expenditures reimbursed or paid to lobbyists for lobbying that are not
39 reported on the lobbyist's report, with an itemized description of those
40 expenditures.

41 ~~In addition, expenses for the solicitation of others to lobby, whether or not a covered~~
42 ~~person, legislative employee, or family member is affected, shall be reportable if such~~
43 ~~expenses are incurred in connection, or in concert, with other expenditures reportable~~
44 ~~under this subsection.~~

1 ~~In addition, the compensation paid or agreed to be paid to all legislative lobbyists~~
2 ~~shall be reported, whether or not a covered person, legislative employee, or family~~
3 ~~member is affected. If a legislative lobbyist is a full time employee of the lobbyist's~~
4 ~~principal, or is compensated by means of an annual fee or retainer, the lobbyist's~~
5 ~~principal shall estimate and report the portion of the salary, fee, or retainer that~~
6 ~~compensates for lobbying. The lobbyist's principal's expenditure report shall include an~~
7 ~~itemized description of all expenditures reimbursed or paid to legislative lobbyists for~~
8 ~~lobbying that are not reported on the legislative lobbyists' reports.~~

9 (c) All reports shall be in the form prescribed by the Secretary of State and open
10 to public inspection upon filing. When more than 15 covered persons benefit from an
11 expenditure, no names of individuals need be reported provided that the report identifies
12 the approximate number of covered persons benefiting and, with particularity, the basis
13 for their selection, including the name of the legislative body, committee, caucus, or
14 other group whose membership list is a matter of public record in accordance with
15 G.S. 132-1 or including a description of the group that clearly distinguishes its purpose
16 or composition from the general membership of the General Assembly. The
17 approximate number of ~~legislative employees and~~ immediate family members of
18 covered persons ~~and legislative employees~~ who benefited from the expenditure shall be
19 listed separately.

20 (d) When a lobbyist's principal fails to file an expenditure report as required in
21 this section, the Secretary of State shall send a certified or registered letter advising the
22 lobbyist's principal of the delinquency and the penalties provided by law. Within 20
23 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United
24 States mail to the Secretary of State the required report and a late filing fee in an amount
25 equal to the late filing fee under G.S. 163-278.34(a)(2).

26 (e) Filing of the required report and payment of the late fee within the time
27 extended shall constitute compliance with this section. Failure to file an expenditure
28 report in one of the manners prescribed in this section shall result in revocation of any
29 and all registrations of a lobbyist's principal under this Article. No lobbyist's principal
30 may register or reregister under this Article until the lobbyist's principal has fully
31 complied with this section.

32 (f) Appeal of a decision by the Secretary of State under this section shall be in
33 accordance with Article 3 of Chapter 150B of the General Statutes.

34 (g) The Secretary of State may adopt rules to facilitate complete and timely
35 disclosure of expenditures, including the format of reports and additional categories of
36 information, and to protect the addresses of payees under protective order issued
37 pursuant to Chapter 50B of the General Statutes or participating in the Address
38 Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary
39 of State shall not impose any penalties or late filing fees upon a principal for subsequent
40 failures to comply with the requirements of this section if the Secretary of State failed to
41 provide to the ~~lobbyist's~~ principal with required notifications of the initial violation.
42 This provision shall not apply to a failure by the principal to file an expenditure report
43 in a timely manner.

44 "§ 120-47.7A. Reserved for future codification purposes.

1 **"§ 120-47.7B. Powers and duties of the Secretary of State.**

2 (a) The Secretary of State shall perform systematic reviews of reports required to
3 be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete
4 and timely disclosure of allowable expenditures.

5 (b) The Secretary of State may petition the Superior Court of Wake County for
6 the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct
7 investigations of violations of this Article. The court shall authorize subpoenas under
8 this subsection when the court determines they are necessary for the enforcement of this
9 Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court
10 through contempt powers. Venue shall be with the Superior Court of Wake County for
11 any nonresident person, or that person's agent, who makes a reportable expenditure
12 under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

13 (c) Complaints of violations of this Article and all other records accumulated in
14 conjunction with the investigation of these complaints shall be considered records of
15 criminal investigations under G.S. 132-1.4.

16 **"§ 120-47.7C. Prohibitions.**

17 (a) No member or former member of the General Assembly may be employed as
18 ~~an executive or legislative a~~ lobbyist by a lobbyist's principal to lobby as defined in this
19 Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one year
20 after the end of that member's service in the General Assembly.

21 (b) No person serving as ~~Governor, as a member of the Council of State, a~~
22 Constitutional officer of the State or as a head of a principal State department listed in
23 G.S. 143B-6 may be employed as ~~an executive or legislative a~~ lobbyist by a lobbyist's
24 principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General~~
25 ~~Statutes~~ within ~~six months~~one year after separation from employment or leaving office.

26 (c) No individual registered as a ~~legislative~~ lobbyist shall serve as a campaign
27 treasurer ~~under Chapter 163 of the General Statutes as defined in G.S. 163-278.6(19)~~ for
28 a campaign for election as a member of the General ~~Assembly.~~Assembly or a
29 Constitutional officer of the State.

30 (d) A ~~legislative or executive~~ lobbyist shall not be eligible for appointment by a
31 State official to any body created under the laws of this State that has regulatory
32 authority over the activities of a person that the lobbyist currently represents or has
33 represented within 60 days after the expiration of the lobbyist's registration representing
34 that person. Nothing herein shall be construed to prohibit appointment by any unit of
35 local government.

36 (e) No ~~legislative or executive~~ lobbyist or another acting on the lobbyist's behalf
37 shall permit a covered ~~person person, legislative employee, executive branch officer,~~ or
38 that person's immediate family member, to use the cash or credit of the lobbyist for the
39 purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

40 **"§ 120-47.8. Persons exempted from provisions of Article.**

41 Except as otherwise provided in this Article, the provisions of this Article shall not
42 be construed to apply to any of the ~~following:~~following lobbying activities:

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- (1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to members of the General Assembly and not acting as a legislative lobbyist.
- (2) A person appearing before a legislative committee, committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist.
- (3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.
b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, Constitutional officers of the State and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State.
- (4) A person performing professional services in drafting bills-bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation—legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.
- (5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.
- (6) Repealed by Session Laws 1991, c. 740, s. 1.1.
- (7) Covered persons and legislative employees. persons while acting in their official capacity.
- (8) A person responding to inquiries from a member of the General Assembly or a legislative employee, covered person and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter or executive action.
- (9) An employee who represents the employer's interests in action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1. individual while participating in an advocacy day.
- (10) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

1 (11) A person appearing before an executive branch officer on behalf of
2 another person with respect to a proposed sale or lease of real property,
3 goods or services to the State, or construction of property by the State.

4 (12) A person appearing before an executive branch agency or department
5 or an executive branch officer on behalf of another person or entity in
6 connection with an application for a grant, loan, determination or
7 eligibility, or certification.

8 **"§ 120-47.8A. Expenditures made by persons exempted or not covered by this**
9 **Article.**

10 (a) If a covered person ~~or a legislative employee~~ accepts an expenditure made for
11 the purpose of lobbying valued over two hundred dollars (\$200.00) from a person or
12 group of persons acting together, exempted or not otherwise covered by this Article, the
13 person, or group of persons, making the expenditure shall report the date, a description
14 of the expenditure, the name and address of the person, or group of persons, making the
15 expenditure, the name of the covered person ~~or legislative employee~~ accepting the
16 expenditure, and the estimated fair market value of the expenditure.

17 (b) If the person making the expenditure in subsection (a) of this section is
18 outside North Carolina, and the covered person ~~or legislative employee~~ accepting the
19 expenditure is also outside North Carolina at the time the person accepts the
20 expenditure, then the person accepting the expenditure shall be responsible for filing the
21 report using available information.

22 (c) If a covered person ~~or a legislative employee~~ accepts a scholarship valued
23 over two hundred dollars (\$200.00) from a person, or group of persons, acting together,
24 exempted or not covered by this Article, the person, or group of persons, granting the
25 scholarship shall report the date of the scholarship, a description of the event involved,
26 the name and address of the person, or group of persons, granting the scholarship, the
27 name of the covered person ~~or legislative employee~~ accepting the scholarship, and the
28 estimated fair market value.

29 (d) If the person granting the scholarship in subsection (c) of this section is
30 outside North Carolina, the covered person ~~or legislative employee~~ accepting the
31 scholarship shall be responsible for filing the report.

32 (e) This section shall not apply to any of the following:

33 (1) Lawful campaign ~~contributions.~~ contributions properly received and
34 reported as required under Article 22A of Chapter 163 of the General
35 Statutes.

36 (2) Any gift from ~~a~~ an extended family member to a covered person.
37 person or legislative employee.

38 (3) Gifts associated primarily with the covered ~~person's, legislative~~
39 ~~employee's, person's~~ or that person's immediate family member's
40 ~~nonlegislative~~ employment.

41 (4) Gifts, other than food, beverages, travel, and lodging, which are
42 received from a person who is a citizen of a country other than the
43 United States or a state other than North Carolina and given during a
44 ceremonial presentation or as a custom.

1 (5) A thing of value that is paid for by the State.

2 (f) Reports required by this section shall be filed within 10 business days after
3 the end of the quarter in which the expenditure was made, with the Secretary of State in
4 a manner prescribed by the Secretary of State, which may include electronic reports.

5 **"§ 120-47.8B. Advocacy Day.**

6 (a) No lobbyist's principal may conduct more than one advocacy day per
7 calendar year.

8 (b) All advocacy days to lobby the General Assembly must be scheduled through
9 the Legislative Services Office.

10 (c) All advocacy days to lobby executive branch officers must be scheduled
11 through the Governor's Office.

12 (d) All lobbyists' principals conducting an advocacy day shall comply with this
13 Article while conducting the advocacy day.

14 **"§ 120-47.9. Punishment for violation.**

15 (a) Whoever willfully violates any provision of this Article shall be guilty of a
16 Class 1 misdemeanor. In addition, no ~~legislative~~-lobbyist who is convicted of a violation
17 of the provisions of this Article shall in any way act as a ~~legislative or executive~~
18 lobbyist for a period of two years following conviction.

19 (b) In addition to the criminal penalties set forth in this section, the Secretary of
20 State may levy civil fines for willful false or incomplete reporting up to five thousand
21 dollars (\$5,000) per violation.

22 **"§ 120-47.10. Enforcement of Article by Attorney General.**

23 (a) The Secretary of State may investigate complaints of violations of this
24 Article, ~~The Secretary of State and~~ shall report apparent violations of this Article to the
25 Attorney General. The Attorney General shall, upon complaint, make an appropriate
26 investigation thereof, and the Attorney General shall forward a copy of the investigation
27 to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which
28 Wake County is a part, who shall prosecute any person who violates any provisions of
29 this Article.

30 (b) Complaints of violations of this Article involving the Secretary of State or
31 any member of the Department of the Secretary of State shall be referred to the
32 Attorney General for investigation in accordance with G.S. 120-47.7B. Any portion of
33 the complaint not involving alleged violations of this Article by the Secretary of State or
34 any member of the Department of the Secretary of State shall remain with the Secretary
35 of State for investigation. The Attorney General shall, upon receipt of a complaint,
36 make an appropriate investigation thereof, and the Attorney General shall forward a
37 copy of the investigation to the District Attorney of the prosecutorial district as defined
38 in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who
39 violates any provisions of this Article.

40 (c) Complaints of improper lobbying involving the Attorney General or any
41 member of the Department of Justice shall be investigated by the Secretary of State and
42 any apparent violations reported to the District Attorney of that prosecutorial district as
43 defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that

1 prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any
2 person who violates any provisions of this Article.

3 **"§ 120-47.11. Rules and forms.**

4 (a) The Secretary of State shall adopt any rules, orders, forms, and definitions as
5 are necessary to carry out the provisions of this Article. The Secretary of State may
6 appoint a council to advise the Secretary in adopting rules under this section.

7 (b) The Secretary of State shall adopt rules to protect from disclosure all
8 confidential information under Chapter 132 related to economic development initiatives
9 or to industrial or business recruitment activities. The information shall remain
10 confidential until the State, a unit of local government or the business has announced a
11 commitment by the business to expand or locate a specific project in this State or a final
12 decision not to do so and the business has communicated that commitment or decision
13 to the State or local government agency involved with the project.

14 **"§ 120-47.12. Limitations on agency ~~legislative~~ liaison personnel.**

15 (a) No State department may use State funds to contract with persons who are
16 not employed by the State to lobby the General Assembly.

17 (b) No more than two persons in each State department and constituent
18 institution of The University of North Carolina may be registered to lobby the General
19 Assembly or designated as ~~legislative~~ liaison personnel pursuant to this Article.

20 (c) All persons designated as ~~legislative~~ liaison personnel pursuant to this Article
21 and the State department or constituent institution of The University of North Carolina
22 that employs the ~~legislative~~ liaison personnel shall report all expenditures made for
23 lobbying purposes in the same manner as required for ~~legislative~~ lobbyists under
24 G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and
25 authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to
26 ~~legislative~~ liaison personnel or the State department or constituent institution that
27 employs the ~~legislative~~ liaison personnel."

28 **"§ 120-47.13. Advisory opinions.**

29 (a) At the request of any person affected by this Article, the Secretary of State
30 shall render advisory opinions on specific questions involving the meaning and
31 application of this Article and the covered person's compliance therewith. The request
32 shall be in writing and relate prospectively to real or reasonably anticipated fact settings
33 or circumstances. The Secretary of State shall issue advisory opinions having
34 prospective application only. Reliance upon a requested written advisory opinion on a
35 specific matter shall immunize the covered person, on that matter, from both of the
36 following:

37 (1) Investigation by the Secretary of State.

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

39 (b) Staff to the Secretary of State may issue advisory opinions under rules
40 adopted by the Secretary of State.

41 (c) The Secretary of State shall interpret the provisions of this Article by rules,
42 and these interpretations shall be binding on all covered persons, lobbyists, and
43 lobbyists' principal upon publication.

1 (d) The Secretary of State shall publish its advisory opinions at least once a year,
2 edited as necessary to protect the identities of the individuals requesting opinions.

3 (e) Except as provided under subsection (d) of this section, requests for advisory
4 opinions and advisory opinions issued pursuant to this section are confidential and not
5 matters of public record.

6 **"§ 120A-14. Lobbying education program.**

7 (a) The Secretary of State shall develop and implement a lobbying education and
8 awareness program designed to instill in all covered persons, lobbyists, and lobbyists'
9 principals a keen and continuing awareness of their obligations and a sensitivity to
10 situations that might result in real or potential violation of this Article or other related
11 laws. The Secretary shall make basic lobbying education and awareness presentations to
12 all covered persons upon their election, appointment or hiring and shall offer periodic
13 refresher presentations as the Secretary deems appropriate. Every covered person shall
14 participate in a lobbying presentation approved by the Secretary within six months of
15 the person's election, appointment or hiring, and shall attend refresher ethics education
16 presentations at least every two years thereafter in a manner the Secretary deems
17 appropriate. Upon request, the Secretary shall assist each agency in developing in-house
18 education programs and procedures necessary or desirable to meet the agency's
19 particular needs for lobbying education.

20 (b) The Secretary shall publish a newsletter containing summaries of the
21 Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time
22 to time. The newsletter shall be distributed to all covered persons, lobbyists, and
23 lobbyists' principals. Publication under this subsection may be done electronically.

24 (c) The Secretary shall assemble and maintain a collection of relevant State laws,
25 rules, and regulations that set forth lobbying standards applicable to covered persons.
26 The collection of laws, rules and regulations shall be made available electronically as
27 resource material to covered persons, lobbyists and lobbyists' principals, upon request.

28 **"§ 120-15. No gift registry.**

29 (a) The Secretary of State shall establish a "No Gifts" registry for persons subject
30 to this Article. The "No Gifts" registry shall be published and updated with the list of
31 lobbyists and lobbyists' principals required under G.S. 120-47.2.

32 (b) Except as provided in this subsection, lobbyists and lobbyists' principals shall
33 not give unsolicited gifts allowed under G.S. 120-47.5A(a1)(2) to persons placing their
34 names on the registry, without the persons' expressed consent. Gifts of informational
35 directories may be given to persons placing their names on the registry.

36 (c) The Secretary shall have the authority to adopt rules to implement this section
37 in compliance with the following criteria:

38 (1) The registration is valid from the time the person registers until
39 January 1 of the following year, unless the person requests in writing
40 the removal of that person's name.

41 (2) The registration shall be in writing.

42 (d) Violations of this section shall not constitute a crime but shall be subject to
43 civil fines of up to five hundred dollars (\$500.00) as levied by the Secretary of State."

44 **SECTION 4.** Sections 2 and 3 of S.L. 2005-456 are repealed.

1 **SECTION 5.1.** G.S. 163-278.6 is amended by adding a new subsection to
2 read:

3 **"§ 163-278.6. Definitions.**

4 When used in this Article:

5 ...

6 (5a) The term 'Constitutional officers of the State' means officers whose
7 offices are established in Article III of the Constitution.

8 ..."

9 **SECTION 5.2.** Article 22A of Chapter 163 of the General Statutes is
10 amended by adding a new section G.S. 163-278.19A to read:

11 **"§ 163-278.13C. Limitation on contributions by registered lobbyists.**

12 (a) No lobbyist registered under Article 9A of Chapter 120 shall do any of the
13 following:

14 (1) Make or offer to make a contribution to a legislator, executive branch
15 official, or candidate campaign committee.

16 (2) Make a contribution to any candidate, officeholder, or political
17 committee, directing or requesting that the contribution be made in
18 turn to a legislator, executive branch official, or candidate campaign
19 committee.

20 (3) Transfer any amount of money or anything of value to any entity,
21 directing or requesting that the entity use what was transferred to
22 contribute to a legislator, executive branch officer, or candidate
23 campaign committee.

24 (4) Solicit a contribution from any individual, political committee, or other
25 entity on behalf of a legislator, executive branch official, or candidate
26 campaign committee. This subdivision does not apply to a registered
27 lobbyist soliciting a contribution on behalf of a political party
28 executive committee if the solicitation is solely for a separate
29 segregated fund kept by the political party limited to use for activities
30 that are not candidate-specific, including generic voter registration and
31 get-out-the-vote efforts, pollings, mailings, and other general activities
32 and advertising that do not refer to a specific individual candidate.

33 (b) No legislator, executive branch official, or candidate campaign committee or
34 the real or purported agent of that legislator, executive branch official, or candidate
35 campaign committee shall do any of the following:

36 (1) Solicit a contribution from a lobbyist registered under Article 9A of
37 Chapter 120 of the General Statutes.

38 (2) Solicit a third party, requesting or directing that the third party directly
39 or indirectly solicit a contribution from a lobbyist registered under
40 Article 9A of Chapter 120 of the General Statutes or relay to the
41 lobbyist registered under Article 9A of Chapter 120 of the General
42 Statutes the legislator's, executive branch official's, or candidate
43 campaign committee's solicitation of a contribution.

1 (3) Accept a contribution from a lobbyist registered under Article 9A of
2 Chapter 120 of the General Statutes.

3 (c) It shall not be deemed a violation of this section for a legislator or executive
4 branch official to serve on a board or committee of an organization that makes a
5 solicitation of a lobbyist registered under Article 9A of Chapter 120 of the General
6 Statutes as long as that legislator or executive branch official does not directly
7 participate in the solicitation and that legislator or executive branch official does not
8 directly benefit from the solicitation.

9 (d) As used in this section, the following terms mean:

10 (1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and
11 that candidate has filed a notice of candidacy for office as a member of
12 the General Assembly or a Constitutional officer of the State.

13 (2) Executive branch official. – As defined in G.S. 120-47.1(1d)(a).

14 (3) Legislator. – As defined in G.S. 120-47.1(4d).

15 (e) A violation of this section is a Class 2 misdemeanor.

16 **SECTION 5.3.** G.S. 163-278.13B(a)(1) reads as rewritten:

17 "(1) "Limited contributor" means a ~~lobbyist registered pursuant to Article~~
18 ~~9A of Chapter 120 of the General Statutes, that lobbyist's agent, that~~
19 lobbyist's principal as defined in ~~G.S. 120-47.1(7), G.S. 120-47~~ or a
20 political committee that employs or contracts with or whose parent
21 entity employs or contracts with a lobbyist registered pursuant to
22 Article 9A of Chapter 120 of the General Statutes."

23 **SECTION 6.** If any section or provision of this act is declared
24 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
25 whole or any part other than the part so declared to be unconstitutional or invalid.

26 **SECTION 7.** Sections 1, 2, 6, and 7 of this act are effective when the act
27 becomes law, and the new G.S. 120-47.7C(d) applies to appointments made on or after
28 that date. The remainder of this act becomes effective January 1, 2007.

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LEGISLATIVE PROPOSAL # 3 SUMMARY



HOUSE BILL 1849: Lobbying Reforms 2006

BILL ANALYSIS

Committee:	House Judiciary I	Date:	May 11, 2006
Introduced by:	Reps. Hackney, Howard, Gibson, Sherrill	Summary by:	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: *House Bill 1849 amends North Carolina's lobbying laws to do all of the following:*

- 1. Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities.*
- 2. Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).*
- 3. Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.*
- 4. Bans campaign contributions by registered lobbyists.*
- 5. Permits the issuance of advisory opinions and requires lobbying education programs.*

CURRENT LAW:

Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of \$25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over \$10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff are included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS:

House Bill 1849 amends the current lobbying laws in the following ways (Effective when the bill becomes law):

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

House Bill 1849 amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one.
- Changes the definition of covered person to mean legislators, executive branch officers, and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving gifts to covered persons. The following exceptions apply:
 - Gifts from lobbyists to their family members who are legislators or legislative employees.
 - Lawful campaign contributions.
 - Commercially available loans made in the normal course of business and not made for the purpose of lobbying.
 - Meals and beverages for immediate consumption in connection with public events.
 - Scholarships with terms not more favorable than scholarships available to the public.
 - Nonmonetary items, other than food or beverages, with a value not to exceed \$10 by a lobbyist or principal in a single calendar day.
 - Informational materials related to the covered person's public duties.
 - Reasonable actual expenses when a covered person speaks at a meeting relating to the covered person's duties.
 - Items valued at less than \$100 given to a covered person when the covered person is in another country as part of an overseas trade mission and the giving of gifts is customary protocol in the other country.
 - Gifts accepted on behalf of the State, anything generally available to the general public or all State employees,
 - Anything for which fair market value is paid.
- Expands the definition of executive branch officer to correlate those persons covered by the Executive Branch Ethics Act (House Bill 1844).
- Expenditures by liaison personnel and State agencies have to be reported the same as expenditures.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that either the lobbyist or the principal must pay a separate fee for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session.
- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the expenditure, name and address of the payee or beneficiary, name of

any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:

- Transportation and lodging
- Entertainment, food, and beverages
- Meetings and events
- Gifts
- Solicitation of others to lobby
- Other expenditures

The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories.

- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires expenditures of \$200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.
- Bans campaign contributions by lobbyists to candidates or candidate's committees if the candidate has filed for office as a member of the General Assembly or a Constitutional officer of the State. ****This prohibition may have constitutional implications.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

** Walker Reagan and Brad Krehely contributed substantially to the drafting of this summary.*

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LEGISLATIVE PROPOSAL # 4

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF CANDIDATES' CAMPAIGN FUNDS FOR PERSONAL PURPOSES UNRELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.16B. Use of contributed amounts for certain purposes.

(a) Permitted Uses. – A contribution accepted by a candidate or candidate's committee may be used only for the following purposes:

- (1) Ordinary expenditures in connection with the campaign for public office of the candidate.
- (2) Ordinary expenses in connection with the duties and activities of the individual as holder of an elective office.
- (3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)).
- (4) Contributions to a national, State, or local committee of a political party.
- (5) Contributions to another candidate for office in North Carolina or to a candidate's committee.
- (6) To return all or a portion of a contribution to the contributor.
- (7) Payment of any penalties against the committee imposed by a board of elections or a court of competent jurisdiction.

(b) Prohibited Use. –

- (1) In general. – A contribution described in subsection (a) of this section shall not be converted by any individual to personal use.
- (2) Conversion. – For purposes of subdivision (1) of this subsection, a contribution shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of an individual or other entity that would exist irrespective of the candidate's election campaign or duties and activities as officeholder, including the following:
 - a. A home mortgage, rent, or utility payment.
 - b. A clothing purchase.
 - c. A noncampaign-related automobile expense.
 - d. A country club membership.
 - e. A vacation or other noncampaign-related trip.
 - f. A household food item.

- 1 g. A tuition payment.
- 2 h. Admission to a sporting event, concert, theater, or other form of
- 3 entertainment not associated with an election campaign.
- 4 i. Dues, fees, and other payments to a health club or recreational
- 5 facility.
- 6 j. A retirement account or other retirement purpose.

7 (c) Rules. – The State Board of Elections shall adopt rules for the
8 implementation of this section."

9 **SECTION 2.** G.S. 163-278.11(a)(2) reads as rewritten:

10 "(2) Expenditures. – A list of all expenditures required under
11 G.S. 163-278.8 made by or on behalf of a candidate, political
12 committee, or referendum committee. The statement shall list the name
13 and complete mailing address of each payee, the amount paid, the
14 purpose, and the date such payment was made. The total sum of all
15 expenditures to date shall be plainly exhibited. Forms for required
16 reports shall be prescribed by the Board. When a payment is made in a
17 lump sum to one payee for several goods or services or both, the
18 statement shall itemize with a reasonable degree of specificity the
19 amount paid for each purpose. In the case of a payment to a credit card
20 company, the statement shall provide a reasonably specific itemization
21 of the bills the credit card was used to pay. In the case of a payment to
22 a provider of services, the statement shall itemize any media
23 advertising purchases made on behalf of the campaign and, with a
24 reasonable degree of specificity, itemize other payments the provider
25 has made on behalf of the campaign. The State Board of Elections
26 shall adopt rules for the implementation of this subdivision."

27 **SECTION 3.** G.S. 163-278.27(a) reads as rewritten:

28 "(a) Any individual, candidate, political committee, referendum committee,
29 treasurer, person or media who intentionally violates the applicable provisions of
30 G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12,
31 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17,
32 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B,
33 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The
34 statute of limitations shall run from the day the last report is due to be filed with the
35 appropriate board of elections for the election cycle for which the violation occurred."

36 **SECTION 4.** This act becomes effective January 1, 2007, and applies to all
37 candidates, officeholders, and political committees with accounts that are active with
38 the State Board of Elections or a county board of elections on or after that date

LEGISLATIVE PROPOSAL # 4 SUMMARY



HOUSE DRAFT 2005-RR-65: Permitted Use of Campaign Funds

BILL ANALYSIS

Committee:	House Select Committee on Ethics and Governmental Reform	Date:	April 28, 2006
Introduced by:		Summary by:	William R. Gilkeson Committee Co-Counsel
Version:	2005-RR-65 [v.11]		

SUMMARY: *This proposal would prohibit the use of candidates' campaign funds for personal purposes unrelated to campaigns and officeholding duties. It would also amend the reporting statutes to require that when a payment is made to one payee for several goods or services, the statement must itemize the amount paid for each purpose. It was recommended by this committee's subcommittee on Campaign Finance/Reporting and Election Laws. Effective January 1, 2007.*

CURRENT LAW: Currently North Carolina is one of 10 states that places no restrictions on how candidates may spend the funds in their campaign accounts that have been contributed to support their candidacies. Converting those funds to personal use, such as mortgage payments, personal consumer purchases, and retirement accounts, is not prohibited. Such personal use may trigger tax liability for the candidate, but does not violate the campaign finance laws as long as the personal use is publicly reported.

Exceptions to this rule are candidates and political parties whose campaigns receive public funding. Candidates for appellate judge who receive payments from the NC Public Campaign Fund must limit their use of those funds to "campaign-related purposes only." *GS 163-278.64.* The State Board of Elections is required to publish guidelines for what that term means. It has done so. Also, parties that receive money from the NC Political Parties Financing Fund must use the grants "only for legitimate campaign expenses," examples of which are listed in the statute. *GS 163-278.42.*

BILL ANALYSIS: This proposal would add a new statute to Article 22A of GS Chapter 163, the NC Campaign Finance Law. *Section 1 of proposal.* The new statute would set forth what are permitted uses of money contributed to a candidate or candidate's committee, and what are prohibited uses.

Permitted uses would be the following:

- Ordinary expenditures in connection with the campaign for public office of the candidate.
- Ordinary expenses in connection with the duties and activities of the individual as holder of an elective office.
- Donations to charitable organizations.

- Contributions to political party committees.
- Contributions to other candidates.
- Return of all or part of a contribution to a contributor.
- Payment of penalties against the committee.

Prohibited uses would be conversion of a candidate's campaign fund to person use. Conversion to personal use is described generally as meaning use to fulfill any commitment, obligation, or expense that would exist irrespective of the candidate's election campaign or duties and activities as officeholder. Specific examples are listed:

- Mortgage, rent, or utility payment.
- Clothing purchase.
- Noncampaign-related car expense.
- County club membership.
- Vacation or other noncampaign-related trip.
- Household food item.
- Tuition payment.
- Ticket to sports event, concert, theater, or other entertainment not associated with the campaign.
- Health club or recreational facility dues.
- Retirement.

The State Board of Elections would be directed to adopt rules to implement the statute.

Section 2 of the draft would add language to the statute that spells out how campaign expenditures must be reported. It says that when a payment is made in a lump sum to a payee for several goods or services or both, the statement must itemize the amount paid for each purpose with reasonable specificity. When a payment is made to a credit card company, the campaign report must detail what the credit card was used to pay for, rather than simply name the credit card company. Also, if a payment is made to a provider of services such as a political consultant, the report would need to say with reasonable specificity what the provider used the payment for, rather than simply saying the payment was made for "professional services." The draft specifically says the itemization needs to include media advertising. The State Board of Elections would be required to adopt rules to implement the statute.

BACKGROUND: The amended authorization for the House Select Committee on Ethics and Governmental Reform included the charge to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including imposing restrictions on how a candidate can spend leftover funds from a political campaign, . . ."

Much of the wording of this proposal comes from the Federal Election Campaign Act, 2 USC 439a, which was added in the late 1970s to restrict personal use of campaign funds for federal candidates.

After looking at an initial draft of this proposal at the March 7 meeting of the subcommittee, the members gave the following directions:

- Instead of prohibiting personal use of leftover funds, prohibit person use of campaign funds at any time.
- Add as a permitted use contributions to other candidates.

Get input from the State Board of Elections about wording on itemizing lump sum payments

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1 or value received for any single service or item of goods does not exceed one hundred
2 dollars (\$100.00), the treasurer may report only those services or goods rendered or sold
3 at a value that does not exceed one hundred dollars (\$100.00), the nature of the services
4 or goods, the amount received in the aggregate for the services or goods, and the date of
5 the receipt. For purposes of the reporting threshold of this subsection, the one hundred
6 dollars (\$100.00) shall be an amount contributed during any election cycle."

7 **SECTION 3.** G.S. 163-278.15 reads as rewritten:

8 "**§ 163-278.15. No acceptance of contributions made by corporations, foreign and**
9 **domestic-domestic, or other prohibited sources; best efforts.**

10 (a) No Acceptance. – No candidate, political committee, political party, or
11 treasurer shall accept any contribution made by any corporation, foreign or domestic,
12 regardless of whether such corporation does business in the State of North ~~Carolina.~~
13 Carolina, or made by any labor union, professional association, insurance company, or
14 business entity. This section does not apply with regard to entities permitted to make
15 contributions by G.S. 163-278.19(f).

16 (b) Best Efforts. – When a treasurer shows that best efforts have been made to
17 ensure that contributions are from legal contributors and not from a prohibited source,
18 acceptance of the contribution shall not be the basis for imposition of civil penalties,
19 other than forfeiture of the contribution itself, or for criminal prosecution. The State
20 Board of Elections shall adopt rules that specify what are "best efforts" for purposes of
21 this section. Those rules shall recognize that in some instances contribution checks and
22 other instruments clearly disclose to the contributee that the contribution comes from a
23 prohibited source and must not be accepted, but that in other instances a contribution
24 from a prohibited source is not clearly disclosed on the instrument and the contributee
25 may reasonably believe the contribution is from an individual's personal funds. The
26 State Board shall coordinate the rules with rules required by G.S. 163-278.11(b) for best
27 efforts to obtain, maintain, and submit information on reports required by this Article,
28 so that the contributee can comply with the rules by using one form or a minimal
29 number of forms to try to obtain needed statements from the contributor. If, despite the
30 use of best efforts, the State Board of Elections determines that a contribution was made
31 from the account of a prohibited contributor, the State Board may order that the amount
32 unlawfully received be paid to the State Board by check, and any money so received by
33 the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North
34 Carolina."

35 **SECTION 4.** This act becomes effective January 1, 2007, and applies to all
36 contributions made and accepted on and after that date.

LEGISLATIVE PROPOSAL # 5 SUMMARY



HOUSE DRAFT 2005-RR-61: Contribution Changes

BILL ANALYSIS

Committee:	House Select Committee on Ethics and Governmental Reform	Date:	May 8, 2006
Introduced by:		Summary by:	William R. Gilkeson
Version:	2005-RR-61		Committee Counsel

SUMMARY: *This proposal would drop from \$100 to \$50 the amount of a contribution that could be accepted in cash. It would add a penalty for acceptance of a contribution from any source that is prohibited from making a contribution, and it would provide a "best efforts" method for contributees to use to protect themselves from accepting illegal contributions and from prosecution. It would also would reduce from \$100 to \$50 the threshold for publicly reporting an individual contributor's identity if that contributor made the contribution by money order. It would also specify the time period during which cumulative contributions would count toward that \$50 threshold or the standard \$100 threshold for reporting the contributor's identity: the "election cycle." The proposal was recommended by this committee's subcommittee on Campaign Finance/Reporting and Election Laws. Effective January 1, 2007.*

CURRENT LAW: Currently, North Carolina's campaign finance law has a \$100 threshold for contributions that may be accepted in cash. *GS 163-278.14.* Any contribution above that must be "in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification."

Current law also requires that treasurers must keep records of contributors, but they are only required to identify an individual contributor on the campaign finance report if the individual's contribution is more than \$100. *GS 163-278.8*

If a contributor's identity must be reported, that contributor must be identified by name, address, and principal occupation. "Principal occupation" is defined to mean job title or profession, plus employer's name or employer's specific field of business activity. *GS 163-278.11.* When a treasurer shows that "best efforts" have been made to obtain, maintain and submit that information, any report by shall be considered to be in compliance with the law. *GS 163-278.11(c).* The State Board of Elections is directed by statute to adopt rules to specify what are "best efforts." Although the State Board has not adopted such rules, it provides a form that can be sent to contributors asking for the information and it provides a drop-down menu on its electronic filing software showing names of fields of business activity used by the IRS.

The law speaks of the \$100 reporting threshold in terms of "total contribution," implying that if one contributor makes more than one contribution of \$100 or less, but those contributions add

up to more than \$100, the contributor's identity must be reported. *GS 163-278.8*. But the statute does not specify during which time period a donor's cumulative contributions count toward the threshold. In enforcing the threshold, the State Board of Elections uses as the measuring period the "election cycle." For a candidate, the "election cycle" runs from January 1 after an election for the office through December 31 after the election for the next term of the office. If the contribution is not specific to any one office, the "election cycle" is based on the 2-year term of members of the General Assembly and US House.

Corporations, other business entities, unions, professional associations are all prohibited from making contributions. (*GS 163-278.19*). However, of those prohibited sources, only from corporations does the law provide a penalty for accepting a contribution. (*GS 163-278.15*).

ANALYSIS OF PROPOSAL: The proposal would do the following:

- Drop from \$100 to \$50 the threshold for accepting a contribution in cash. *Section 1*.
- For contributions made by money order, reduce the threshold for reporting a contributor's identity from \$100 to \$50. *Section 2*.
- Codify in statute the State Board of Elections' practice of using as a measuring period for the reporting threshold the "election cycle." *Section 2*
- Prohibit the acceptance of contributions by non-corporate business entities, insurance companies, labor unions, and professional associations. *Section 3*.
- Bar prosecution for anyone who accepts a contribution from any prohibited source if they have made "best efforts" to determine that the contribution does not come from a prohibited source. The State Board would be required to adopt rules outlining what those "best efforts" would be. The State Board would be required to coordinate those rules with the "best efforts" rules it is already required to adopt for obtaining information from contributors, to the end that a treasurer could send one form or a minimal number of forms to get all the needed information and statements from the contributor. *Section 3*.

BACKGROUND: The amended authorization for the House Select Committee on Ethics and Governmental Reform included the charge to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including . . . lowering the threshold requirement for full disclosure on campaign reports for individual contributions from \$100 to \$50."

In 1976, the US Supreme Court in the landmark decision of *Buckley v. Valeo* upheld a federal law requiring identification of all contributors over \$100. In doing so, the Court recognized that compelled disclosure can potentially infringe on privacy of association and belief, but said the public value of disclosure was sufficient to outweigh the possibility of infringement. The Court said disclosure of contributors:

- Gives the electorate information about where a candidate stands on the political spectrum and identify the interests to which the candidate is likely to be responsive.
- Deters the reality and appearance of corruption by exposing large transactions to the light of publicity.
- Provides the data necessary to detect violation of contribution limits.

The Court expressed an attitude of deference to the legislative branch in determining what level of contribution should result in disclosure of the contributor.

At the March 24 meeting of the full House Select Committee on Ethics and Governmental Reform, Rep. Pryor Gibson asked if the subcommittee had looked into the problem candidates have of determining whether their contributions come from business accounts rather than personal accounts. His question gave rise to the provisions that are in Section 3 of the proposal.

At the April 28 meeting of the committee, the bill was amended to remove the general \$100-to-\$50 drop in the threshold and drop the threshold only for contributions made by money order. The State Board of Elections has said that contributions through money orders have been a problem for it in the past. In the 2005 session, the General Assembly added this language to GS 163-278.14: "For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined."

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LEGISLATIVE PROPOSAL # 6 SUMMARY



HOUSE DRAFT: Treasurer Training

BILL ANALYSIS

Committee:	House Select Committee on Ethics and Governmental Reform	Date:	May 5, 2006
Introduced by:		Summary by:	R. Erika Churchill
Version:	2005-ST-20		Committee Co-Counsel

SUMMARY: *The proposed draft would require all treasurers of political committees to participate in training as to the duties of the office within 3 months of appointment, and at least once every 4 years thereafter. The training would be either in person or electronically. Effective July 1, 2007.*

CURRENT LAW:

Current law requires that all treasurers of referendum committees must receive training from the State Board of Elections. The law specifically says the training must include instruction that referendum committees that have received corporate or union contributions may not in turn contribute to political committees or candidates.

Current law also provides that political committee treasurers must receive State Board training, prior to the election in which the political committee is involved. The State Board is to provide each treasurer with a CD-ROM, DVD, videotape or other electronic document containing training as to the duties of the office. The State Board is also required to conduct regional seminars for in-person training. There is no requirement that the treasurer attend an in-person training. All training is free of charge to the treasurer.

BILL ANALYSIS:

The bill would require all political committee treasurers to participate in training as to the duties of the office within 3 months of the appointment to the office, and at least once every 4 years thereafter. The State Board of Elections would provide the training, either in-person through regional seminars or by interactive electronic means.

The political committee treasurer would have the option to participate in training prior to every election in which the political committee was involved. The training would remain free of charge to the treasurer.

EFFECTIVE DATE:

The act would become effective July 1, 2006.

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LEGISLATIVE PROPOSAL # 7

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUND-RAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.20A. Making a contribution through an intermediary.

(a) Lawful Contributions Through Intermediaries. – It is lawful for any entity that is not otherwise prohibited from making the contribution to make one through an intermediary as long as all the following conditions are satisfied:

(1) The original contributor, on the instrument with which the contribution is made, makes a complete designation of the amount of the contribution, the date the contribution is made, and the political committee, candidate, or other lawful entity that the contributor intends to be the recipient of the contribution. If the contribution is by check, the contributor must sign and date the check and must complete the amount and payee spaces on the check. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in completing it, but the substance of the completion shall be entirely at the direction of the contributor.

(2) The contribution is within the limits provided in G.S. 163-278.13.

(3) The transaction is reported by the contributee and the contributor if reporting is required by this Article.

(4) The intermediary is not prohibited from soliciting contributions by G.S. 163-278.13B.

(5) The contribution is delivered to the contributee within 20 days after the intermediary takes possession of the instrument by which the contribution is made.

(b) Unlawful Contributions Through Intermediaries. – It is unlawful for any entity to make a contribution through an intermediary if the conditions of subsection (a) of this section are not satisfied. No one but the contributor shall complete any portion of a contribution check or other contribution instrument. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in completing it, but the substance of the completion shall be entirely at the direction of the contributor.

1 (c) No Reporting Required of Intermediary. – If a contribution involving an
2 intermediary satisfies the conditions of subsection (a) of this section, the participation of
3 an intermediary of a contribution is not required to be reported.

4 (d) Duty of Intermediary to Deliver or Return Contribution. – If an intermediary
5 takes possession of a contribution and agrees to forward that contribution to another
6 entity, that intermediary shall forward the contribution to the donee entity or return the
7 contribution to the donor within 20 days of taking possession.

8 (e) Definition of "Intermediary". – As used in this Article, the term
9 "intermediary" means an entity that receives money or anything of value from an entity
10 with the understanding that it will be forwarded as a contribution by the donor entity to
11 a candidate, political committee, or other entity intended to accept a contribution.

12 (f) Penalties. – A violation of this section is a Class 2 misdemeanor. A violation
13 of this section constitutes "mak[ing] or accept[ing] a contribution in violation of this
14 Article" for purposes of the imposition of civil penalties under G.S. 163-278.34.

15 (g) Rules. – The State Board of Elections shall adopt rules for the
16 implementation of this section."

17 **SECTION 2.** G.S. 163-278.27(a) reads as rewritten:

18 "(a) Any individual, candidate, political committee, referendum committee,
19 treasurer, person or media who intentionally violates the applicable provisions of
20 G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12,
21 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.17, 163-278.18,
22 163-278.19, 163-278.20, 163-278.20A, 163-278.39, 163-278.40A, 163-278.40B,
23 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The
24 statute of limitations shall run from the day the last report is due to be filed with the
25 appropriate board of elections for the election cycle for which the violation occurred."

26 **SECTION 3.** G.S. 163-278.20 reads as rewritten:

27 **"§ 163-278.20. Disclosure before soliciting contributions.**

28 (a) It shall be unlawful for one or more individuals acting in concert, or for any
29 group, committee, club or organization, of any type or nature, of two or more
30 individuals, to solicit, attempt to solicit, or receive contributions for the purpose of
31 supporting a candidate, political committee, referendum committee, or political party
32 without first clearly advising those solicited as follows:

33 (1) The name of the candidate(s) for whom the contribution will be used;

34 or

35 (2) The name of the political committee or party for which the funds will
36 be used; or

37 ~~(3) That a decision will be reached later as to the candidate(s), political~~
38 ~~committee(s), or political party(ies) to be supported and that the~~
39 ~~contributions solicited will be expended in a manner and for a purpose~~
40 ~~to be determined at a future date but no later than 20 days prior to the~~
41 ~~pending primary or general election; or~~

42 (4) The name of the referendum committee for which the funds will be
43 used.

44 (b) A violation of this section is a Class 2 misdemeanor."

1 **SECTION 4.** This act becomes effective January 1, 2007, and applies to any
2 contribution made or accepted on or after that date and to any contribution received or
3 forwarded on or after that date.

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LEGISLATIVE PROPOSAL # 7 SUMMARY



HOUSE DRAFT : No Blank Contribution Checks

BILL ANALYSIS

Committee:	House Select Committee on Ethics and Governmental Reform	Date:	April 28, 2006
Introduced by:		Summary by:	William R. Gilkeson
Version:	2005-RR-63 [v.9]		Co-Committee Counsel

SUMMARY: *This proposal would require that anyone making a contribution through an intermediary must designate the intended recipient of the contribution. If the contribution is by check, the contributor must fill in the payee space and the date on the check. If the contributor does so, the contributor may rely on an intermediary to deliver the check to the recipient. The involvement of the intermediary in that case would not have to be reported. However, the proposal would not allow an intermediary to fill in any portion of the check. It was recommended by this committee's subcommittee on Campaign Finance/Reporting and Election Laws. Effective January 1, 2007.*

CURRENT LAW: Currently, NC campaign finance law does not address the practice of "bundling," an apparently common practice in which an intermediary gathers up contribution checks from individuals and delivers them all together to a candidate or committee. The State Board of Elections has given the opinion that the practice is not illegal as long as the check is completed.

It has recently been debated whether bundling is legal even if the intermediary completes a contribution check that the contributor has left blank. An old NC statute, dating to the enactment of the current Campaign Finance Law in 1974, states that no one may solicit contributions unless they first advise those solicited the name of the candidate or political committee for whom the contribution will be used, or that a decision will be reached later how the contribution will be used, but no later than 20 days prior to the pending primary or general election. That statute, GS 163-278.20, has been cited as authority that intermediaries may fill in blank contributor checks.

BILL ANALYSIS: This proposal adds a statute to Article 22A of GS Chapter 163 spelling out what is the legal way and what is the illegal way to make a contribution through an intermediary. *Section 1 of the proposal.* It states that making a contribution through an intermediary is legal if all the following are true:

- The contributor completely designates the amount, date, and intended recipient of the contribution. If the contribution is by check, all the blanks in the check must be filled in by the contributor.
- The contribution is within the \$4,000 limit or whatever limit is applicable.

- All required reporting of the contribution is done.
- The intermediary is not prohibited from soliciting the contribution. GS 163-278.13B prohibits lobbyists, their principals, and political committees connected with lobbyists and their principals from soliciting contributions for legislative or statewide executive candidates while the General Assembly is in regular session.
- The contribution is delivered to the contributee within 20 days after the intermediary takes possession of it.

If the contribution through an intermediary satisfies all those requirements, the involvement of the intermediary is not required to be reported.

Making a contribution through an intermediary would not be legal if the conditions above are not met. No one but the contributor would be allowed to complete any portion of a contribution check. If because of disability, lack of knowledge of the specific name of the contributee, or another justifiable reason, the contributor cannot complete the check, the contributor may receive assistance, but the substance of the completion must be entirely at the direction of the contributor.

The proposal gives the intermediary the duty to either give the check to the contributee or return it to the contributor within 20 days of accepting it. *GS 163-278.20A(d) in Section 1 of the proposal.*

The proposal applies the Class 2 misdemeanor and civil penalties of the Campaign Finance Law to violations of the new statute. *Sections 1 and 2.*

Section 3 of the bill amends GS 163-278.20, the 1974 statute about disclosure before solicitation, to remove the provision saying that person solicited may be told that the destination of the contribution will be decided at a later time.

BACKGROUND: The amended authorization for the House Select Committee on Ethics and Governmental Reform included the charge to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including . . . ending the practice of using blank payee checks to contribute to candidates . . ."

After looking at an initial draft of the proposal at the March 7 meeting of the subcommittee, the members gave the following directions:

- Add some language to protect innocent contributors.
- Increase to 20 days the time the intermediary has to deliver the check.

The State Board of Elections, at a meeting in late March, voted to recommend to the General Assembly that it require that anyone who accepts the duty to forward somebody else's contribution to a candidate must deliver the contribution within 21 days of receiving it or return it to the giver. The subcommittee considered that recommendation when it added subsection (d) of GS 163-278.20A to Section 1 of the bill.

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1 promotes that debate or forum and is made by or on behalf of
2 the person sponsoring the debate or forum.

3 d. A communication made while the General Assembly is in
4 session which, incidental to advocacy for or against a specific
5 piece of legislation pending before the General Assembly, urges
6 the audience to communicate with a member or members of the
7 General Assembly concerning that piece of legislation.

8 (4) The term "prohibited source" means any corporation, insurance
9 company, labor union, or professional association. The term
10 "prohibited source" does not include an entity that meets all the criteria
11 set forth in G.S. 163-278.19(f).

12 (5) The term "targeted to the relevant electorate" means a communication
13 which refers to a clearly identified candidate for statewide office or the
14 General Assembly and which can be received by 50,000 or more
15 individuals in the State in the case of a candidacy for statewide office
16 and ~~7,500~~2,500 or more individuals in the district in the case of a
17 candidacy for General Assembly.

18 (6) The term "501(c)(4) organization" means either of the following:

19 a. An organization described in section 501(c)(4) of the Internal
20 Revenue Code of 1986 and exempt from taxation under section
21 501(a) of that Code.

22 b. An organization that has submitted an application to the Internal
23 Revenue Service for determination of its status as an
24 organization described in sub-subdivision a. of this subdivision.

25 (7) Except as otherwise provided in this Article, the definitions in Article
26 22A of this Chapter apply in this Article."

27 **SECTION 2.** G.S. 163-278.82(a) reads as rewritten:

28 "(a) Prohibition. – No prohibited source may make any disbursement for the costs
29 of producing or airing any electioneering communication. No individual, committee,
30 association, or any other organization or group of individuals, including but not limited
31 to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code
32 of 1986), which has received any payment from a prohibited source may make any
33 disbursement for the costs of producing and airing any electioneering ~~communication.~~
34 communication, unless that individual, committee, association, or other organization or
35 group of individuals maintains a segregated bank account that consists of funds
36 contributed solely by entities other than prohibited sources.~~For the purpose of this~~
37 ~~section, the term "electioneering communication" does not include a communication by~~
38 ~~a section 501(c)(4) organization or a political organization (as defined in section~~
39 ~~527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for~~
40 ~~exclusively by funds provided by individuals and the disbursements for costs of~~
41 ~~producing and airing the communication are paid out of a segregated bank account that~~
42 ~~consists of funds contributed solely by entities other than prohibited sources directly to~~
43 ~~that account.~~ For purposes of this section, the term "payment" shall not include monies

1 paid to an individual, committee, association, or other organization or group of
2 individuals for services rendered or other payment of debt owed."

3 **SECTION 3** G.S. 163-278.90 reads as rewritten:

4 **"§ 163-278.90. Definitions.**

5 As used in this Article, the following terms have the following definitions:

- 6 (1) The term "disclosure date" means either of the following:
- 7 a. The first date during any calendar year when an electioneering
8 communication is transmitted after an entity has ~~made~~
9 ~~disbursements~~incurred expenses for the direct costs of
10 producing or transmitting electioneering communications
11 aggregating in excess of ten thousand dollars (\$10,000).
 - 12 b. Any other date during that calendar year by which an entity has
13 made disbursements for the direct costs of producing or
14 transmitting electioneering communications aggregating in
15 excess of ten thousand dollars (\$10,000) since the most recent
16 disclosure date for that calendar year.
- 17 (2) The term "electioneering communication" means any mass mailing or
18 telephone bank that has all the following characteristics:
- 19 a. Refers to a clearly identified candidate for a statewide office or
20 the General Assembly.
 - 21 b. Is made within one of the following time periods:
 - 22 1. 60 days before a general or special an election for the
23 office sought by the candidate, or
 - 24 2. 30 days before a primary election or a convention of a
25 political party that has authority to nominate a candidate
26 for the office sought by the candidate.
 - 27 c. Is targeted to the relevant electorate.
- 28 (3) The term "electioneering communication" does not include any of the
29 following:
- 30 a. A communication appearing in a news story, commentary, or
31 editorial distributed through any newspaper or periodical,
32 unless that publication is owned or controlled by any political
33 party, political committee, or candidate.
 - 34 b. A communication that constitutes an expenditure or
35 independent expenditure under Article 22A of this Chapter.
 - 36 c. A communication that constitutes a candidate debate or forum
37 conducted pursuant to rules adopted by the Board or that solely
38 promotes that debate or forum and is made by or on behalf of
39 the person sponsoring the debate or forum.
 - 40 d. A communication that is distributed by a corporation solely to
41 its shareholders or employees, or by a labor union or
42 professional association solely to its members.
 - 43 e. A communication made while the General Assembly is in
44 session which, incidental to advocacy for or against a specific

1 piece of legislation pending before the General Assembly, urges
2 the audience to communicate with a member or members of the
3 General Assembly concerning that piece of legislation.

- 4 (4) The term "mass mailing" means any mailing by United States mail or
5 ~~facsimile that is targeted to the relevant electorate and is made by a~~
6 ~~commercial vendor or made from any commercial list.~~ facsimile. Part
7 1A of Article 22A of this Chapter has its own internal definition of
8 "mass mailing" under the definition of "print media," and that
9 definition does not apply in this Article.
- 10 (5) The term "prohibited source" means any corporation, insurance
11 company, labor union, or professional association. The term
12 "prohibited source" does not include an entity that meets all the criteria
13 set forth in G.S. 163-278.19(f).
- 14 (6) The term "targeted to the relevant electorate" means a communication
15 which refers to a clearly identified candidate for statewide office or the
16 General Assembly and which:
- 17 a. If transmitted by mail or facsimile in connection with a clearly
18 identified candidate for statewide office, is transmitted to
19 50,000 or more addresses in the State, by the transmission of
20 identical or substantially similar matter within any 30-day
21 period, or, in connection with a clearly identified candidate for
22 the General Assembly, is transmitted to ~~5,000~~2,500 or more
23 addresses in the district, by the transmission of identical or
24 substantially identical matter within any 30-day period.
- 25 b. If transmitted by telephone, in connection with a clearly
26 identified candidate for statewide office, more than 50,000
27 telephone calls in the State of an identical or substantially
28 similar nature within any 30-day period, or in the case of a
29 clearly identified candidate for the General Assembly, more
30 than ~~5,000~~2,500 calls in the district of an identical or
31 substantially similar nature within any 30-day period.
- 32 (7) The term "telephone bank" means telephone calls that are targeted to
33 the relevant electorate, except when those telephone calls are made by
34 volunteer workers, whether or not the design of the telephone bank
35 system, development of calling instructions, or training of volunteers
36 was done by paid professionals.
- 37 (8) The term "501(c)(4) organization" means either of the following:
- 38 a. An organization described in section 501(c)(4) of the Internal
39 Revenue Code of 1986 and exempt from taxation under section
40 501(a) of that Code.
- 41 b. An organization that has submitted an application to the Internal
42 Revenue Service for determination of its status as an
43 organization described in sub-subdivision a. of this subdivision.

1 (9) Except as otherwise provided in this Article, the definitions in Article
2 22A of this Chapter apply in this Article."

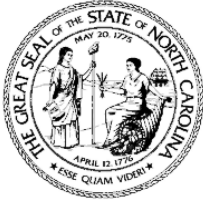
3 **SECTION 4.** G.S. 163-278.92(a) reads as rewritten:

4 "(a) Prohibition. – No prohibited source may make any disbursement for the costs
5 of producing or airing any electioneering communication. No individual, committee,
6 association, or any other organization or group of individuals, including but not limited
7 to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code
8 of 1986), which has received any payment from a prohibited source may make any
9 disbursement for the costs of producing and airing any electioneering ~~communication.~~
10 communication, unless that individual, committee, association, or other organization or
11 group of individuals maintains a segregated bank account that consists of funds
12 contributed solely by entities other than prohibited sources. For the purpose of this
13 section, the term "electioneering communication" does not include a communication by
14 a section 501(c)(4) organization or a political organization (as defined in section
15 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for
16 exclusively by funds provided by individuals and the disbursements for costs of
17 producing and airing the communication are paid out of a segregated bank account that
18 consists of funds contributed solely by entities other than prohibited sources directly to
19 that account. For purposes of this section, the term "payment" shall not include monies
20 paid to an individual, committee, association, or other organization or group of
21 individuals for services rendered or other payment of debt owed."

22 **SECTION 5.** This act is effective when it becomes law.

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LEGISLATIVE PROPOSAL # 8 SUMMARY



BILL ANALYSIS

HOUSE DRAFT: Strengthen Electioneering Communications.

Committee:	House Select Committee on Ethics and Governmental Reform	Date:	May 5, 2006
Introduced by:		Summary by:	R. Erika Churchill
Version:	2005-ST-16		Committee Co-Counsel

SUMMARY: *Effective when it becomes law, the proposed draft would do the following with respect to electioneering communications:*

- *Decrease the targeted relevant electorate with respect to legislative races to 2,500 persons within the district, and amend the definition of mass mailing.*
- *Clarify the disclosure date is triggered by the expense being incurred, rather than the payment for the costs being made by the entity producing the electioneering communication.*
- *Clarify that that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a contribution from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only allowable source's contributions.*

CURRENT LAW:

Electioneering communications are governed by Articles 22E and 22F of Chapter 163 of the General Statutes. Electioneering communications are broken down into two major categories, mass mailings and telephone banks, and broadcast, cable or satellite communications. For either, the electioneering communication is a communication that refers to a clearly identified candidate for statewide office or General Assembly, is made either 30 days before the primary or 60 days before the general election, and is to the targeted relevant electorate. For broadcast, cable or satellite communications, the targeted relevant electorate is defined as 50,000 persons for a statewide office or 7,500 persons within the district for a General Assembly race. For mass mailings and telephone banks, the targeted relevant electorate is defined as 50,000 persons for a statewide office or 5,000 persons within the district for a General Assembly race. Mass mailings are defined as "any mailing by United States mail or facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list." G.S. 163-278.90(4)

If an entity is producing and communicating an electioneering communication, the entity is required to report the expenditures following the first date in a calendar year when that entity has made disbursements in excess of \$10,000.

In producing and communicating an electioneering communication, prohibited sources are not allowed to make disbursements for electioneering communications. Prohibited sources are

generally corporations, insurance companies, labor unions, and professional associations. No individual, committee, association, or any other organization or group of individuals that has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. However, if the organization is a section 501(c)(4) organization or a 527 political organization, that organization can make a disbursement for an electioneering communication if they have taken a contribution from a prohibited source if all of the following conditions are met:

- The communication is paid for exclusively by funds provided by individuals
- The disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.

BILL ANALYSIS:

The bill would:

1. Decrease the targeted relevant electorate with respect to legislative races to 2,500 persons within the district.
2. Amend the definition of mass mailing to delete the requirement that it be made by a commercial vendor or from any commercial list.
3. Clarify the disclosure date is triggered by the expense being incurred, rather than the payment for the costs being made by the entity producing the electioneering communication.
4. Clarify that that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a contribution from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only allowable source's contributions.

EFFECTIVE DATE:

The act would become effective when it becomes law.

- 1 by the candidate for that candidate's election.
- 2 (5) Certified candidate. – A candidate for office who chooses to receive
3 campaign funds from the Fund and who is certified under
4 G.S. 163-278.98(c).
- 5 (6) Contested primary and contested general election. – An election in
6 which there are more candidates than the number to be elected.
- 7 (7) Contribution. – Defined in G.S. 163-278.6. A distribution from the
8 Fund pursuant to this Article is not a 'contribution' and is not subject to
9 the limitations of G.S. 163-278.13 or the prohibitions of
10 G.S. 163-278.15 or G.S. 163-278.19.
- 11 (8) Expenditure. – Defined in G.S. 163-278.6.
- 12 (9) Fund. – The North Carolina Legislative Campaigns Pilot Fund
13 established in G.S. 163-278.97.
- 14 (10) Independent expenditure. – Defined in G.S. 163-278.6.
- 15 (11) Nonparticipating candidate. – A candidate for office who is not
16 seeking to be certified under G.S. 163-278.98(c).
- 17 (12) Office. – The two Senate seats and two House of Representatives seats
18 designated pursuant to G.S. 163-278.97A.
- 19 (13) Participating candidate. – A candidate for office who has filed a
20 declaration of intent to participate under G.S. 163-278.98(a).
- 21 (14) Political committee. – Defined in G.S. 163-278.6.
- 22 (15) Qualifying contribution. – A contribution of not less than ten dollars
23 (\$10.00) and not more than one hundred dollars (\$100.00) in the form
24 of a check or money order to the candidate or the candidate's
25 committee that meets both of the following conditions:
- 26 a. Made by any registered voter who resides in the district in
27 which the candidate seeks office.
- 28 b. Made only during the qualifying period and obtained with the
29 approval of the candidate or candidate's committee.
- 30 c. Acknowledged by a written receipt, on a multicopy form
31 approved by the Board, which identifies the complete name,
32 residence address, and county of residence of the contributor
33 and the amount and date of the contribution made; states that
34 the contributor is a registered voter; states that the contributor
35 authorizes the candidate to use the contribution to qualify to
36 receive funds from the Fund; and is signed by the candidate or
37 the candidate's representative.
- 38 (16) Qualifying period. – The period beginning September 1 of the day
39 before the election and ending on the day of the primary.
- 40 (17) Trigger for rescue funds. – The dollar amount at which rescue funds
41 are released for certified candidates. In the case of a primary, the
42 trigger equals the maximum amount a participating candidate is
43 permitted by G.S. 163-278.98(b) to raise in qualifying contributions.
44 In the case of a general election, the trigger equals the funding

1 available under G.S. 163-278.99(b)(4).

2 **"§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

3 (a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot
4 Fund is established to finance the election campaigns of certified candidates for office
5 and to pay administrative and enforcement costs of the Board related to this Article. The
6 Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by
7 the Fund is credited to the Fund. The Board shall administer the Fund.

8 (b) Sources of Funding. – Money received from all the following sources must be
9 deposited in the Fund:

10 (1) Unspent Fund revenues distributed for an election that remain unspent
11 or uncommitted at the time the recipient is no longer a certified
12 candidate in the election.

13 (2) Voluntary donations made directly to the Fund.

14 (3) Appropriations by the General Assembly.

15 (c) Determination of Fund Amount. – By April 1, 2007, and every two years
16 thereafter, the Board, in conjunction with the Advisory Council, shall prepare and
17 provide to the Joint Legislative Commission on Governmental Operations of the
18 General Assembly a report documenting, evaluating, and making recommendations
19 relating to the administration, implementation, and enforcement of this Article. In its
20 report, the Board shall set out the funds received to date and the expected needs of the
21 Fund during the next election cycle.

22 **"§ 163-278.97A. Selection of districts for pilot program.**

23 Four districts shall be selected for the pilot program every two years as follows:

24 (1) The majority and minority leaders of the Senate shall each select a
25 different district in the Senate from a list of districts in which the
26 candidates have volunteered to participate.

27 (2) The majority and minority leaders of the House of Representatives
28 shall each select a different district in the House from a list of districts
29 in which the candidates have volunteered to participate.

30 Those leaders report their selections to the Executive Director of the State Board of
31 Elections no later than August 1 of the year before the election. If any one of the leaders
32 fails to report a selection by August 1, the State Board of Elections by August 10 shall
33 make the selection that leader was authorized to make.

34 **"§ 163-278.98. Requirements for participation.**

35 (a) Declaration of Intent to Participate. – Any individual choosing to receive
36 campaign funds from the Fund shall first file with the Board a declaration of intent to
37 participate in the act as a candidate for a stated office. The declaration of intent shall be
38 filed before or during the qualifying period and before collecting any qualifying
39 contributions. In the declaration, the candidate shall swear or affirm that only one
40 political committee, identified with its treasurer, shall handle all contributions,
41 campaign-related expenditures, and obligations for the participating candidate and that
42 the candidate will comply with the contribution and expenditure limits set forth in
43 subsection (e) of this section and all other requirements set forth in this Article or
44 adopted by the Board. Failure to comply is a violation of this Article.

1 **(b) Demonstration of Support of Candidacy. – Participating candidates who seek**
2 **certification to receive campaign funds from the Fund shall first, during the qualifying**
3 **period, obtain qualifying contributions from at least 300 registered voters in the case of**
4 **a Senate candidate and at least 150 registered voters in the case of a House candidate in**
5 **an aggregate sum that at least equals six thousand dollars (\$6,000) in the case of a**
6 **Senate candidate and three thousand dollars (\$3,000) in the case of a House candidate,**
7 **but that does not exceed forty thousand dollars (\$40,000) in the case of a Senate**
8 **candidate and twenty-five thousand dollars (\$25,000) in the case of a House candidate.**

9 **(c) Certification of Candidates. – Upon receipt of a submittal of the record of**
10 **demonstrated support by a participating candidate, the Board shall determine whether or**
11 **not the candidate has complied with all the following requirements:**

- 12 **(1) Signed and filed a declaration of intent to participate in this Article.**
- 13 **(2) Submitted a report itemizing the appropriate number of qualifying**
14 **contributions received from registered voters, which the Board shall**
15 **verify through a random sample or other means it adopts. The report**
16 **shall include the county of residence of each registered voter listed.**
- 17 **(3) Filed a valid notice of candidacy pursuant to this Chapter.**
- 18 **(4) Otherwise met the requirements for participation in this Article.**

19 **The Board shall certify candidates complying with the requirements of this section**
20 **as soon as possible and no later than five business days after receipt of a satisfactory**
21 **record of demonstrated support.**

22 **(d) Final Report for Qualifying Contributions. – No later than five business days**
23 **after the end of the qualifying period, all participating candidates shall submit a report**
24 **to the Board of all previously unreported qualifying contributions, together with copies**
25 **of the contribution forms described in G.S. 163-278.96(15), in accordance with**
26 **procedures developed by the Board. Within seven business days after submittal of the**
27 **final report, the Board shall determine, through a random audit or other means it adopts,**
28 **whether the contributions abide by the definition of qualifying contributions, whether**
29 **they must be returned to the donor, and whether they exceed the maximum amount of**
30 **qualifying contributions.**

31 **(e) Restrictions on Contributions and Expenditures for Participating and Certified**
32 **Candidates. – The following restrictions shall apply to contributions and expenditures**
33 **with respect to participating and certified candidates:**

- 34 **(1) Beginning January 1 of the year before the election and before the**
35 **filing of a declaration of intent, a candidate for office may accept in**
36 **contributions up to five thousand dollars (\$5,000) from sources and in**
37 **amounts permitted by Article 22A of this Chapter and may expend up**
38 **to five thousand dollars (\$5,000) for any campaign purpose related to**
39 **the upcoming election. A candidate who exceeds either of these limits**
40 **shall be ineligible to file a declaration of intent or receive funds from**
41 **the Public Campaign Fund.**
- 42 **(2) From the filing of a declaration of intent through the end of the**
43 **qualifying period, a candidate may accept only qualifying**
44 **contributions, contributions under ten dollars (\$10.00) from voters**

1 residing in the candidate's district, and personal and family
2 contributions permitted under subdivision (4) of this subsection. The
3 total contributions the candidate may accept during this period shall
4 not exceed the maximum qualifying contributions for that candidate.
5 In addition to these contributions, the candidate may only expend
6 during this period the remaining money raised pursuant to subdivision
7 (1) of this subsection and possible rescue funds received pursuant to
8 G.S. 163-278.101.

9 (3) After the qualifying period and through the date of the general
10 election, the candidate shall expend only the funds the candidate
11 receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any
12 funds remaining from the qualifying period and possible rescue funds.
13 In addition, during that period a candidate may accept in-kind
14 contributions from political party executive committees, up to an
15 aggregate value of ten percent (10%) of the amount the candidate is
16 entitled to receive under G.S. 163-278.99(b)(4).

17 (4) During the qualifying period, the candidate may contribute up to one
18 thousand dollars (\$1,000) of that candidate's own money to the
19 campaign. Debt incurred by the candidate for a campaign expenditure
20 shall count toward that limit. During the qualifying period, the
21 candidate may accept in contributions up to one thousand dollars
22 (\$1,000) from each member of that candidate's family consisting of
23 spouse, parent, child, brother, and sister, as long as the candidate
24 accepts no more than two thousand dollars (\$2,000) from all those
25 family members combined.

26 (5) A candidate and the candidate's committee shall limit the use of all
27 revenues permitted by this subsection to expenditures for
28 campaign-related purposes only related to the upcoming election. The
29 Board shall publish guidelines outlining permissible campaign-related
30 expenditures. In establishing those guidelines, the Board shall
31 differentiate expenditures that reasonably further a candidate's
32 campaign from expenditures for personal use that would be incurred in
33 the absence of the candidacy. In establishing the guidelines, the Board
34 shall review relevant provisions of G.S. 163-278.42(e), the Federal
35 Election Campaign Act, and rules adopted pursuant to it, and similar
36 provisions in other states.

37 (6) Any contribution received by a participating or certified candidate that
38 falls outside that permitted by this subsection shall be returned to the
39 donor as soon as practicable. Contributions intentionally made,
40 solicited, or accepted in violation of this Article are subject to civil
41 penalties as specified in G.S. 163-278.70. The funds involved shall be
42 forfeited to the Civil Penalty and Forfeiture Fund.

43 (7) A candidate shall return to the Fund any amount distributed for an
44 election that is unspent and uncommitted at the date of the election, or

1 at the time the individual ceases to be a certified candidate, whichever
2 occurs first. For accounting purposes, all qualifying, personal, and
3 family contributions shall be considered spent before revenue from the
4 Fund is spent or committed.

5 (f) Revocation. – A candidate may revoke, in writing to the Board, a decision to
6 participate in the Fund at anytime. After a revocation, that candidate may accept and
7 expend outside the limits of this Article without violating this Article. Within 10 days
8 after revocation, a candidate shall return to the Board all money received from the Fund.
9 **"§ 163-278.99. Distribution from the Fund.**

10 (a) Timing of Fund Distribution. – The Board shall distribute to a certified
11 candidate revenue from the Fund in an amount determined under subdivision (b)(4) of
12 this section within five business days after the certified candidate's name is approved to
13 appear on the ballot in a contested general election, but no earlier than five business
14 days after the primary.

15 (b) Amount of Fund Distribution. – By August 1, 2007, and no less frequently
16 than every two years thereafter, the Board shall determine the amount of funds, rounded
17 to the nearest one hundred dollars (\$100.00), to be distributed to certified candidates as
18 follows:

19 (1) Uncontested primaries. – No funds shall be distributed.

20 (2) Contested primaries. – No funds shall be distributed except as
21 provided in G.S. 163-278.101.

22 (3) Uncontested general elections. – No funds shall be distributed.

23 (4) Contested general elections. – Funds shall be distributed to a certified
24 candidate for the Senate in an amount equal to the median amount of
25 campaign-related expenditures made by all major party candidates
26 who reported campaign expenditures for contested general election
27 races for the Senate for the immediately preceding two general
28 elections, but not less than seventy-five thousand dollars (\$75,000).
29 Funds shall be distributed to a certified candidate for the House in an
30 amount equal to the median amount of campaign-related expenditures
31 made by all major party candidates who reported campaign
32 expenditures for contested general election races for the House for the
33 immediately preceding two general elections, but not less than fifty
34 thousand dollars (\$50,000).

35 (c) Method of Fund Distribution. – The Board, in consultation with the State
36 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
37 funds to certified candidates. In all cases, the Board shall distribute funds to certified
38 candidates in a manner that is expeditious, ensures accountability, and safeguards the
39 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
40 candidates, then the available money shall be distributed proportionally, according to
41 each candidate's eligible funding, and the candidate may raise additional money in the
42 same manner as a noncertified candidate for the same office up to the unfunded amount
43 of the candidate's eligible funding.

44 **"§ 163-278.100. Reporting requirements.**

1 (a) Reporting by Noncertified Candidates and Independent Expenditure
2 Entities. –

3 Any noncertified candidate with a certified opponent shall report total income,
4 expenses, and obligations to the Board by facsimile machine or electronically within 24
5 hours after the total amount of campaign expenditures or obligations made, or funds
6 raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as
7 defined in G.S. 163-278.96(17). Any entity making independent expenditures in support
8 of or opposition to a certified candidate or in support of a candidate opposing a certified
9 candidate, or paying for electioneering communications, as defined in G.S. 163-278.80
10 or G.S. 163-278.90, that refer to one of those candidates, shall report the total funds
11 received, spent, or obligated for those expenditures or electioneering communications to
12 the Board by facsimile machine or electronically within 24 hours after the total amount
13 of expenditures or obligations made, or funds raised or borrowed, for the purpose of
14 making the independent expenditures or electioneering communications, exceeds three
15 thousand dollars (\$3,000). After this 24-hour filing, the noncertified candidate or
16 independent expenditure or electioneering communications entity shall comply with an
17 expedited reporting schedule by filing additional reports after receiving each additional
18 amount in excess of one thousand dollars (\$1,000) or after making or obligating to make
19 each additional expenditure(s) in excess of one thousand dollars (\$1,000). The schedule
20 and forms for reports required by this subsection shall be made according to procedures
21 developed by the Board.

22 (b) Reporting by Participating and Certified Candidates. – Notwithstanding other
23 provisions of law, participating and certified candidates shall report any money
24 received, including all previously unreported qualifying contributions, all campaign
25 expenditures, obligations, and related activities to the Board according to procedures
26 developed by the Board. A certified candidate who ceases to be certified or ceases to be
27 a candidate or who loses an election shall file a final report with the Board and return
28 any unspent revenues received from the Fund. In developing these procedures, the
29 Board shall utilize existing campaign reporting procedures whenever practical.

30 (c) Timely Access to Reports. – The Board shall ensure prompt public access to
31 the reports received in accordance with this Article. The Board may utilize electronic
32 means of reporting and storing information.

33 **"§ 163-278.101. Rescue funds.**

34 (a) When Rescue Funds Become Available. – When any report or group of
35 reports shows that 'funds in opposition to a certified candidate or in support of an
36 opponent to that candidate' as described in this section, exceed the trigger for rescue
37 funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that
38 certified candidate an additional amount equal to the reported excess within the limits
39 set forth in this section. 'Funds in opposition to a certified candidate or in support of an
40 opponent to that candidate' shall be equal to the sum of the following:

- 41 (1) Campaign expenditures or obligations made, or funds raised or
42 borrowed, whichever is greater, reported by any one uncertified
43 opponent of a certified candidate. Where a certified candidate has

1 more than one uncertified opponent, the measure shall be taken from
2 the uncertified candidate showing the highest relevant dollar amount.

3 (2) The sum of all expenditures and electioneering communications
4 reported in accordance with G.S. 163-278.100(a) of entities making
5 independent expenditures in opposition to the certified candidate or in
6 support of any opponent of that certified candidate.

7 (b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a
8 certified candidate in a contested primary shall be limited to an amount equal to two
9 times the maximum qualifying contributions.

10 (c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to
11 a certified candidate in a contested general election shall be limited to an amount equal
12 to two times the amount described in G.S. 163-278.99(b)(4).

13 **"§ 163-278.102. Unaffiliated and new-party candidates.**

14 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
15 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the
16 same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated
17 candidates and new-party candidates not certified to appear on the ballot by noon on the
18 last business day in February, the deadline for seeking certification to receive revenue
19 from the Fund is noon on the first business day of July of the election year.

20 **"§ 163-278.103. Enforcement by the Board; civil penalty.**

21 The Board, with the advice of the Advisory Council, shall administer the provisions
22 of this Article in the same manner as described in Article 22D of this Chapter. In
23 addition to any other penalties that may be applicable, any individual, political
24 committee, or other entity that violates any provision of this Article is subject to a civil
25 penalty in the same manner as described in Article 22D of this Chapter."

26 **SECTION 2.** G.S. 163-278.13(e) reads as rewritten:

27 "(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this
28 section shall not apply to any national, State, district or county executive committee of
29 any political party. For the purposes of this section only, the term "political party"
30 means only those political parties officially recognized under G.S. 163-96."

31 **SECTION 3.** G.S. 163-278.13 is amended by adding a new subsection to
32 read:

33 "(e3) In order to make meaningful the provisions of the North Carolina Legislative
34 Campaigns Pilot Program, as set forth in Article 22G of this Chapter, no candidate for
35 any office that is in that current election subject to the provisions of Article 22G of this
36 Chapter shall accept, and no contributor shall make to that candidate, a contribution
37 during the period beginning 21 days before the day of the general election and ending
38 the day after the general election if that contribution causes the candidate to exceed the
39 "trigger for rescue funds" defined in G.S. 163-278.96(17). The prohibitions in this
40 subsection shall also apply to a political committee the principal purpose of which is to
41 support a candidate for those offices. Nothing in this subsection shall prohibit a
42 candidate from making a contribution or loan secured entirely by that candidate's assets
43 to that candidate's own campaign or to a political committee the principal purpose of
44 which is to support that candidate's campaign. This subsection applies with respect to a

1 candidate only if both of the following statements are true regarding that candidate:

2 (1) That candidate is opposed in the general election by a certified
3 candidate as defined in Article 22G of this Chapter.

4 (2) That certified candidate has not received the maximum rescue funds
5 available under G.S. 163-278.101(c).

6 The recipient of a contribution that apparently violates this subsection has three days
7 to return the contribution or file a detailed statement with the State Board of Elections
8 explaining why the contribution does not violate this subsection."

9 **SECTION 4.** The provisions of this act are severable. If any provision of
10 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
11 other provisions of this act that can be given effect without the invalid provision.

12 **SECTION 5.** This act applies to elections for the seats representing two
13 districts in the House of Representatives and two districts in the Senate selected in
14 accordance with G.S. 163-278.97A, as enacted by Section 1 of this act in, 2008 and
15 thereafter. Section 5 of this act becomes effective July 1, 2006. The remainder of this
16 act is effective when it becomes law.

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LEGISLATIVE PROPOSAL # 9 SUMMARY



HOUSE DRAFT 2005-RR-68: Legislative Campaign Pilot

BILL ANALYSIS

Committee:	House Select Committee on Ethics and Governmental Reform	Date:	May 8, 2006
Introduced by:		Summary by:	William R. Gilkeson
Version:	2005-RR-68		Committee Co-Counsel

SUMMARY: *This proposal would establish a pilot program for public financing of campaigns for seats in the General Assembly. The pilot would begin in 2008 and would apply to two Senate seats and two House seats. The four caucus leaders of Senate and House would each select one district in their chamber to be part of the program. The structure of the public funding pilot would be similar to that of the existing Public Campaign Fund, which applies to races for Supreme Court and Court of Appeals. The major source of funding would be an appropriation from the General Assembly. The appropriation section of this draft is left blank.*

CURRENT LAW: In 2002 the General Assembly established the Public Campaign Fund for public financing of campaigns of those candidates for Supreme Court and Court of Appeals who voluntarily accepted contribution and expenditure limits that are not applied to all candidates. The Public Campaign Fund is an adaptation of the full-funding model of public campaign funding that was pioneered by Maine and Arizona rather than the older partial-funding models used by other states. Candidates qualify for the program by pledging to abide by the limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants. If a participating candidate is faced with an opponent who spends more than he/she can match, or independent expenditures targeted at him/her beyond what they can spend, the Public Campaign Fund is supposed to come through with "rescue funds" with which to defend themselves. The Public Campaign is being used in judicial elections this year for the second time.

BILL ANALYSIS: This bill would establish a pilot program that attempts to adapt the Public Campaign Fund model to public financing of campaigns in four legislative districts.

- **Selection of Districts.** The pilot program would begin in the 2008 election. It would be conducted in 4 districts, one selected by each of the 4 caucus leaders, the House and Senate majority and minority leaders. They would make their selections from a list of districts where the candidates volunteer to participate. Those caucus leaders would be required to make their selections by August 1 of the year before the election. If a leader did not make a selection by that deadline, the State Board of Elections would be required to pick a district instead. *Section 1 of bill. GS 163-278.97A.*

- Opting in and Qualifying. The requirements for participation follow essentially the same pattern as the Judicial Fund. Candidates could decide whether to opt in during the qualifying period, which would run from September 1 of the year before through the day of the primary. Before opting in, they may raise and spend up to \$5,000 toward their campaign the same way other candidates can without foreclosing their eligibility to opt in. Opting in would consist of making a declaration of intent in which they pledge to run their campaign out of one account and to abide by the contribution and expenditure limits in the act. They would then qualify by raising, by primary day, qualifying contributions in individual contributions from voters in their district of between \$10 and \$100. A Senate candidate would have to get at least 300 such contributions, amounting to at least \$6,000 but no more than \$40,000. A House candidate would have to get at least 150 qualifying contributions, amounting to at least \$3,000 but not more than \$25,000. (These amounts are lower than the equivalents for Supreme Court and Court of Appeals, which are of course statewide races.) *Section 1 of the bill, 163-278.98(b)*.
- Raising and Spending While Qualifying. During the qualifying period after opting in, a candidate can accept only qualifying contributions, contributions under \$10 from voters in the district, contributions from the candidate him/herself up to \$1,000, and contributions from certain close family members up to \$1,000 each subject to a cap of \$2,000 from all family members together. All of that may not exceed the candidate's maximum for qualifying contributions. During the qualifying period after opting in, the candidate may spend all that, plus any leftover money raised before opting in. They may also qualify for rescue funds during this period due to the level of opposition spending. *Section 1 of the bill, 163-278.98(e)*.
- Grants from the Fund. No basic grant money would be distributed in a primary -- only in a general election. The distribution for the Senate would be the median amount spent for contested seats in the Senate in the past two general elections, with a floor of \$75,000. The distribution for the House would be the median amount spent for contested seats in the House in the past two general elections, with a floor of \$50,000. *Section 1 of the bill, 163-278.99*.
- Spending Limits in General Election. In a general election a candidate would be limited to spending the money received from the Fund, plus any remaining funds from the qualifying period and any rescue funds. In addition, the candidate's party could give in-kind contributions up to 10% of the amount of the candidate's Fund grant. *Section 1 of the bill, 163-278.98(e)*.
- Rescue Funds. Rescue funds would be available in a primary if a non-participating opponent outspent a participating candidate. This is the same as the judicial Fund -- no basic grant money for a primary, only rescue funds. Rescue funds would be triggered in a primary by opposition spending that exceeded the maximum amount a participating candidate could raise in qualifying contributions. Rescue funds would be triggered in the general election by opposition spending that exceeded the participating candidate's basic grant entitlement from the Fund. The opposition spending would be subject to special expedited reporting so the rescue fund provision could be administered. Rescue funds would be available in amounts matching the opposition spending, up to twice the trigger amount. In this bill, unlike in the judicial program, the reporting for rescue funds and the trigger for rescue funds would include not just spending by opposition candidates and independent expenditures, but also spending for electioneering communications. *Section 1 of the bill, 163-278.101*.

- Limit on Nonparticipating Candidates. As in the judicial Fund, a nonparticipating candidate with a participating opponent may not receive a contribution within 21 days before the general election if that contribution would cause the candidate to exceed the trigger for rescue funds. *Section 2 of the bill*.
- Source of Funding. The funding for the pilot program would basically be a General Assembly appropriation. The amount is left blank in Section 5 of the bill.

BACKGROUND: New Jersey has conducted a similar pilot program for seats in its equivalent of NC's House. The Subcommittee on Campaign Finance heard a report about that program.

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LEGISLATIVE PROPOSAL # 10

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE
QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter V of Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 11B.

"Challenge to a Candidacy.

"§ 163-127.1. Definitions.

As used in this Article, the following terms mean:

- (1) Board. – State Board of Elections.
- (2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.
- (3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.
- (4) Office. – The elected office for which the candidate has filed or petitioned.

"§ 163-127.2. When and how a challenge to a candidate may be made.

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the candidate has filed a notice of candidacy or petitioned.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge include the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"§ 163-127.3. Panel to conduct the hearing on a challenge.

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

- (1) Single county. – If the district for the office subject to the challenge covers all or part of only one county, the panel shall be the county board of elections of that county.
- (2) Multicounty but less than entire state. – If the district for the office subject to the challenge covers more than one county but less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the

office. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel.

- (3) Entire state. – If the district for the office subject to the challenge covers the entire State, the panel shall be the Board.

"§ 163-127.4. Conduct of hearing by panel.

(a) The panel conducting a hearing under this Article shall do all of the following:

- (1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to residents in all parts of the district for the office. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.
- (2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.
- (3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.
- (4) Render a decision within 20 business days after the challenge is filed.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, to the county chair of each political party in every county in the district for the office, and to those persons likely to have a significant interest in the resolution of the challenge. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

- (1) The panel may allow evidence to be presented at the hearing in the form of affidavits, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to every panel.
- (2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence by affidavit. The panel may allow evidence to be presented by a person who has received notice of the hearing, if present.
- (3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order based upon the findings of fact and conclusions of law.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"§ 163-127.5. Burden of proof.

(a) No challenge may be sustained by the panel absent clear and convincing evidence of the record as a whole. The burden of proof shall be upon the candidate.

(b) If the challenge is based upon a question of residency, the candidate must show, by clear and convincing evidence, all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

"§ 163-127.6. Appeals.

(a) Appeals From Single- or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

(b) Notice of Appeal. – Appeal must be taken within two business days after the panel files the written decision with the county board of elections in which the candidate filed notice of candidacy or petitioned. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis.

(c) Appeals to Superior Court from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Superior Court of Wake County by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Superior Court of Wake County by the end of the second business day after the written decision was filed by the panel. The superior court shall base its appellate decision on the whole record of the hearing conducted by the panel and hear the appeal on an expedited basis. From the final order or decision by the superior court under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the superior court files its final order or

decision. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who ~~is not eligible under subsection (e) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the ~~sheriff~~ sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 6. This act becomes effective January 1, 2007.