

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE DRH60369-LB-192 (4/13)**

Short Title: State Ethics Act.

(Public)

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Sponsors: Representative Blust.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR LEGISLATORS, 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.

The General Assembly of North Carolina enacts:

**SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 138A.**

**"State Ethics Act.**

"Article 1.

"General Provisions.

**"§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Ethics Act.'

**"§ 138A-2. Definitions.**

The following definitions apply in this Chapter:

(1) Business. – Any of the following, whether or not for profit:

a. Association,

b. Corporation,

c. Enterprise,

d. Joint venture,

e. Organization,

f. Partnership,

g. Proprietorship,

h. Vested trust, or

- 1           i.       Every other business interest, including ownership or use of  
2               land for income.
- 3       (2)   Business with which associated. – A business of which the public  
4       servant or any member of the public servant's immediate family is:
- 5           a.       A director, employee, officer, owner, or partner; or  
6           b.       A holder, either individually or collectively, of securities (i)  
7               worth ten thousand dollars (\$10,000) or more at fair market  
8               value as of December 31 of the preceding year; or (ii)  
9               constituting five percent (5%) or more of the outstanding stock  
10              of the business. For purposes of this sub-subdivision, the term  
11              'business' shall not include a widely held investment fund,  
12              including, but not limited to, a mutual fund, regulated  
13              investment company, or pension or deferred compensation plan,  
14              if:
- 15                1.       The public servant or a member of the public servant's  
16                immediate family neither exercises nor has the ability to  
17                exercise control over the financial interests held by the  
18                fund; and
- 19                2.       The fund is publicly traded, or the fund's assets are  
20                widely diversified.
- 21       (3)   Commission. – The State Ethics Commission.
- 22       (4)   Compensation. – Any money, thing of value, or economic benefit  
23       conferred on or received by any person in return for services rendered  
24       or to be rendered by that person or another. This term does not include  
25       campaign contributions properly received and, if applicable, reported  
26       as required by Article 22A of Chapter 163 of the General Statutes.
- 27       (5)   Contract. – Any agreement including, but not limited to, sales and  
28       conveyances of real and personal property and agreements for the  
29       performance of services.
- 30       (6)   Employing entity. – Any of the following bodies of State government  
31       of which the public servant is a member, or over which the public  
32       servant exercises supervision: agencies, authorities, boards,  
33       commissions, committees, councils, departments, offices, institutions  
34       and their subdivisions, and constitutional officers of the State.
- 35       (7)   Immediate family. – An unemancipated child residing in the household  
36       of the public servant and the public servant's spouse, if not legally  
37       separated.
- 38       (8)   Official action. – Any decision, including, but not limited to,  
39       administration, approval, disapproval, decision, preparation,  
40       recommendation, the rendering of advice, and investigation, made or  
41       contemplated in any proceeding, application, submission, request for a  
42       ruling or other determination, contract, claim, controversy,  
43       investigation, charge, or rule making.
- 44       (9)   Participate. – To take part in, to influence, or to attempt to influence.

- 1           (10) Pecuniary interest. – Any of the following:  
2           a.    Owning, either individually or collectively, a legal, equitable, or  
3           beneficial interest exceeding ten thousand dollars (\$10,000) or  
4           five percent (5%), whichever is less, of any business.  
5           b.    Receiving, either individually or collectively, during the  
6           preceding calendar year compensation that is or will be required  
7           to be included as taxable income on federal income tax returns  
8           of the public servant, the public servant's immediate family, or a  
9           business with which associated in an aggregate amount of five  
10           thousand dollars (\$5,000) from any business or combination of  
11           businesses. A pecuniary interest exists in any client or customer  
12           who pays fees or commissions, either individually or  
13           collectively, of five thousand dollars (\$5,000) or more in the  
14           preceding 12 months to the public servant, the public servant's  
15           immediate family, or a business with which associated.  
16           c.    Receiving, either individually or collectively and directly or  
17           indirectly, in the preceding 12 months, gifts or honoraria having  
18           an unknown value or having an aggregate value of five hundred  
19           dollars (\$500.00) or more from any person. A pecuniary interest  
20           does not exist under this sub-subdivision by reason of (i) a gift  
21           or bequest received as the result of the death of the donor; (ii) a  
22           gift from an immediate family member; or (iii) acting as a  
23           trustee of a trust for the benefit of another.  
24           d.    Holding the position of associate, director, officer, partner, or  
25           proprietor of any business, irrespective of the amount of  
26           compensation received.  
27           (11) Public servants. – All members of the General Assembly,  
28           constitutional officers of the State, all employees of the Office of the  
29           Governor, all heads of all principal State agencies who are appointed  
30           by the Governor, the chief deputy or chief administrative assistant of  
31           each of the statewide elected public officials and heads of all principal  
32           State agencies, all confidential assistants and secretaries to the agency  
33           and department heads as defined in G.S. 126-5(c)(2), all employees in  
34           policy-making positions designated by the Governor pursuant to  
35           G.S. 126-5(b) and all confidential secretaries to these individuals, any  
36           other employees or appointees in the principal State agencies as may  
37           be designated by the Governor to the extent that the designation does  
38           not conflict with the State Personnel Act, all members appointed to  
39           State executive branch boards, commissions, and councils.

40           For The University of North Carolina, the term shall mean only  
41           members of the Board of Governors, the president, the vice-presidents,  
42           the chancellors, the vice-chancellors, and the members of the boards of  
43           trustees of the constituent institutions.

1           For the Department of Community Colleges, the term shall mean  
2           only members of the State Board of Community Colleges, the  
3           President of the North Carolina Community College System, the  
4           president or chief administrative officer of each community college,  
5           and members of the boards of trustees of each community college.

6           The term does not include the following individuals when serving  
7           in the designated capacity:

- 8           a.     Judges and justices of the General Court of Justice; or  
9           b.     Members of boards, commissions, or councils having solely  
10           advisory powers and not exercising any executive,  
11           quasi-judicial, or quasi-legislative powers.

12       (12) Vested trust. – A trust, annuity, or other funds held by a trustee or  
13       other third party for the benefit of the public servant or a member of  
14       the public servant's immediate family. A vested trust shall not include  
15       a widely held investment fund, including, but not limited, to a mutual  
16       fund, regulated investment company, or pension or deferred  
17       compensation plan, if:

- 18       a.     The public servant or a member of the public servant's  
19       immediate family neither exercises nor has the ability to  
20       exercise control over the financial interests held by the fund;  
21       and  
22       b.     The fund is publicly traded, or the fund's assets are widely  
23       diversified.

24                                    "Article 2.

25                                    "Ethical Standards For Public Servants.

26       **"§ 138A-10. Use of public position for private gain.**

27       (a)   A public servant shall not knowingly use the public servant's public position  
28       in any manner which will result in financial benefit, direct or indirect, to the public  
29       servant, a member of the public servant's immediate family, or an individual with  
30       whom, or business with which, the public servant is associated. The performance of  
31       usual and customary duties associated with the public position or the advancement of  
32       public policy goals or constituent services, without compensation, shall not constitute  
33       the use of public position for financial benefit. This subsection shall not apply to  
34       financial or other benefits derived by a public servant that the public servant would  
35       enjoy to an extent no greater than that which other citizens of the State would or could  
36       enjoy.

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

39       **"§ 138A-11. Gifts.**

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

**"§ 138A-12. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant for the State for acting in the public servant's official capacity, for advice or assistance given in the course of carrying out the public servant's duties. A public servant shall not accept honoraria except in accordance with the provisions of the State Budget Manual as adopted by the Office of State Budget and Management. An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

**"§ 138A-13. Use of information for private gain.**

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

**"§ 138A-14. Appearance of conflict.**

A public servant shall make every effort to avoid even the appearance of a conflict of interest. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by personal interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

**"§ 138A-15. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before participating in official actions to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant believes a potential for conflict of interest or the appearance of a conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict or appearance of conflict.

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

(c) A public servant shall obey all other civil and administrative requirements and criminal statutes governing conduct of State government appointees and employees provided by law.

**"§ 138A-16. Participation in official actions.**

(a) Except as permitted by subsection (c) of this section and notwithstanding any other law, no public servant acting in that capacity, who is authorized to perform an official act requiring the exercise of discretion, knowingly shall participate in an official action by the employing entity of the public servant if the public servant, a member of the public servant's immediate family, or a business with which the public is associated has a pecuniary interest in or a reasonably foreseeable benefit from the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence

1 the public servant's participation in the official action. A potential benefit includes a  
2 detriment to a business competitor of the public servant, a member of the public  
3 servant's immediate family, or a business with which the public is associated.

4 (b) A public servant described in subsection (a) of this section shall abstain from  
5 participation in the official action. The public servant shall submit in writing the reasons  
6 for the abstention to the employing entity. The abstention shall be recorded in the  
7 employing entity's minutes.

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

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

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

18 (3) Before the public servant participated in the official action, the public  
19 servant requested and received a written advisory opinion from the  
20 Commission that authorized the participation.

21 (4) Before participating in an official action, a public servant made full  
22 written disclosure to the public servant's employing entity which then  
23 made a written determination that the interest or benefit would neither  
24 impair the public servant's independence of judgment nor influence the  
25 public servant's participation in the official action. The employing  
26 entity shall file a copy of that written determination with the  
27 Commission.

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

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

33 (7) When a public servant notifies, in writing, the State Ethics  
34 Commission that the public servant or someone whom the public  
35 servant appoints to act in the public servant's stead, or both, are the  
36 only individuals having legal authority to take an official action.

37 (d) For the purpose of this section, an official action in the case of a member of  
38 the General Assembly includes a vote on a bill or resolution.

39 **§ 138A-17. Employment and supervision of members of public servant's**  
40 **immediate family.**

41 A public servant shall not cause the employment, appointment, promotion, transfer,  
42 or advancement of an immediate family member of the public servant to a State or local  
43 office or position to which the public servant supervises or manages. A public servant

1 shall not participate in an action relating to the discipline of a member of the public  
2 servant's immediate family.

3 "Article 3.

4 "State Ethics Commission.

5 **"§ 138A-20. State Ethics Commission established.**

6 There is established a State Ethics Commission.

7 **"§ 138A-21. Membership.**

8 (a) The Commission shall consist of seven members appointed by the Governor  
9 for four-year terms, beginning January 1, 2006, except for the initial terms which shall  
10 be as follows:

11 (1) Three members shall serve initial terms of two years.

12 (2) Two members shall serve initial terms of three years.

13 (3) Two members shall serve initial terms of four years.

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

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

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

19 (1) Hold or be a candidate for any other office or place of trust or profit  
20 under the United States, or this or another state.

21 (2) Hold office in any political party.

22 (3) Participate in or contribute to the political campaign of any candidate  
23 for political office.

24 (4) Serve as a member of any other State board, commission, or council or  
25 be an employee of the State.

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

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

31 **"§ 138A-22. Meetings and quorum.**

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

35 **"§ 138A-23. Staff and offices.**

36 The Commission may employ professional and clerical staff, including an Executive  
37 Director. The Commission shall be located within the Department of Administration but  
38 shall exercise all of its powers, including the power to employ, direct, and supervise all  
39 personnel, independently of the Secretary of Administration and, notwithstanding any  
40 other law, is subject to the direction and supervision of the Secretary of Administration  
41 only with respect to the management functions of coordinating and reporting.

42 **"§ 138A-24. Powers and duties.**

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

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

24 **"§ 138A-25. Investigations by the Commission.**

25       (a) Institution of Proceedings. – On its own motion, or in response to a signed  
26 and sworn complaint of any individual filed with the Commission, the Commission  
27 shall make an inquiry into any alleged violation:

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

32       (b) Complaint. –

- 33           (1) A complaint filed under this Chapter shall state the name, address, and  
34 telephone number of the person filing the complaint and include a  
35 summary of the facts giving rise to the complaint.
- 36           (2) The Commission shall send a copy of the complaint to the public  
37 servant who is the subject of the complaint within 30 days of the filing.
- 38           (3) The filing of and the allegations in the verified complaint shall be  
39 confidential and shall not be disclosed except as provided in this  
40 section. Upon presentation of a copy of a verified complaint, the  
41 Commission may verify that it is a true copy of a complaint filed with  
42 the Commission.



1           (4) Any complaint against a member of the General Assembly shall not be  
2           handled by the Commission, and it shall refer that complaint to the  
3           Legislative Ethics Committee for investigation and potential action.

4           (c) Investigation by the Commission. – The Commission shall investigate all  
5           complaints. The Commission is authorized to initiate investigations upon request of any  
6           member if, in the member's discretion, there is reason to believe that a public servant  
7           has or may have violated the provisions of this Chapter. In determining whether there is  
8           reason to believe that a violation has or may have occurred, a member can take general  
9           notice of available information even if not formally provided to the Commission in the  
10           form of a complaint. The Commission may utilize the services of a hired investigator  
11           when conducting investigations.

12           (d) Public Servant Cooperation With Investigation. – Public servants shall  
13           promptly and fully cooperate with the Commission in any Commission-related  
14           investigation. Failure to cooperate fully with the Commission in any investigation shall  
15           be grounds for sanctions as set forth in G.S. 138A-40.

16           (e) Dismissal of Complaint. – If the Commission determines at the end of its  
17           preliminary inquiry that (i) the complaint does not allege facts sufficient to constitute a  
18           violation of this Chapter, or (ii) the evidence is insufficient to substantiate the claim, the  
19           Commission shall dismiss the complaint and provide written notice of the dismissal to  
20           the individual who filed the complaint and the public servant. Upon presentation of a  
21           copy of a written notice of dismissal, the Commission may verify that it is a true copy.

22           (f) Notice and Hearing. – If the Commission determines to proceed with an  
23           investigation into the conduct of an individual, the complaint shall no longer be  
24           confidential and may be disclosed. At this time, the Commission shall provide written  
25           notice to the individual who filed the complaint and the public servant as to the fact of  
26           the investigation and the charges against the public servant. The public servant shall be  
27           given an opportunity to file a written response with the Commission.

28           The Commission shall give full and fair consideration to all complaints and  
29           responses received. If the Commission determines that the complaint cannot be resolved  
30           without a hearing, or if the public servant requests a public hearing, a hearing shall be  
31           held.

32           The Commission shall send a notice of the hearing to the complainant, the public  
33           servant, and any other member of the public requesting notice. The notice shall contain  
34           the time and place for a hearing on the matter, which shall begin no less than 30 days  
35           and no more than 90 days after the date of the notice. At any hearing held by the  
36           Commission:

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

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

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

42           (g) Settlement of Investigations. – The parties may meet by mutual consent  
43           before the hearing to discuss the possibility of settlement of the investigation or the

1 stipulation of any issues, facts, or matters of law. Any proposed settlement of the  
2 investigation is subject to the approval of the Commission.

3 (h) Disposition of Investigations. – The Commission shall dispose of the matter  
4 in one or more of the following ways:

5 (1) If the Commission finds substantial evidence of a violation of a  
6 criminal statute, the Commission may refer the matter to the Attorney  
7 General for possible prosecution through appropriate channels.

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 is established by  
12 clear and convincing evidence, the Commission shall:

13 a. Issue a public admonishment to the public servant and notify  
14 the employing entity, if applicable;

15 b. Refer the matter to the employing entity that appointed or  
16 employed the public servant, or of which the public servant is a  
17 member, for appropriate action, which may include censure,  
18 expulsion, or termination of an appointment or employment; or

19 c. Both.

20 (i) 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 the chair of the Commission shall ensure that  
23 a complete record is made and preserved.

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

27 **§ 138A-26. Advisory opinions.**

28 At the request of any public servant, any individual not otherwise a public servant  
29 who is responsible for the supervision or appointment of someone who is a public  
30 servant, and any member of the public, the Commission shall render advisory opinions  
31 on specific questions involving governmental ethics. The request shall be in writing and  
32 relate prospectively to real or reasonably anticipated fact settings or circumstances. The  
33 Commission shall issue advisory opinions having prospective application only. Reliance  
34 upon a requested written advisory opinion on a specific matter shall immunize the  
35 public servant, on that matter, from:

36 (1) Investigation by the Commission;

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

38 Staff to the Commission may issue advisory opinions under such circumstances and  
39 procedures as may be prescribed by the Commission.

40 The Commission shall interpret the provisions of this Chapter, and these  
41 interpretations shall be binding on all public servants.

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

44 **§ 138A-27. Ethics education program.**

1        (a) The Commission shall prepare a compilation of relevant State law, including  
2 provisions from the Constitution, General Statutes, and administrative rules, that set  
3 forth ethical standards applicable to public servants. The compilation also shall include  
4 the text of this Chapter, as amended from time to time, policies and procedures adopted  
5 by the Commission, and any other ethics-related information deemed by the  
6 Commission to be necessary and appropriate for inclusion. This compilation shall be  
7 published and provided to public servants.

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

13        (c) The Commission shall publish a newsletter containing copies of the  
14 Commission's opinions, policies, procedures, and interpretive bulletins as issued from  
15 time to time. The newsletter shall be distributed to all public servants.

16        (d) The head of each State agency shall maintain familiarity with and stay  
17 knowledgeable of reports from the Commission regarding actual and potential conflicts  
18 which involve public servants or his or her agency.

19        (e) The head of each State agency shall periodically remind public servants under  
20 the head's authority of their duties to the public under the rules of conduct in this  
21 Chapter, including the duty of each public servant to continually monitor, evaluate, and  
22 manage the public servant's personal, financial, and professional affairs to ensure the  
23 absence of conflicts of interest or appearances of conflict.

24    "Article 4.

25    "Public Disclosure Of Economic Interests.

26        **"§ 138A-30. Statement of economic interest; filing required.**

27        (a) Every public servant subject to this Article who is elected or appointed,  
28 including one appointed to fill a vacancy in elective office, or employed, shall file a  
29 statement of economic interest prior to the initial appointment or employment and no  
30 later than January 31 every year thereafter with the State Ethics Commission. A  
31 prospective public servant required to file a statement under this Article shall not be  
32 appointed, employed, or receive a certificate of election, prior to submission by the  
33 Commission of the Commission's evaluation of the statement in accordance with this  
34 Article.

35        (b) A candidate for the Council of State shall file the statement of economic  
36 interest at the same place and in the same manner as the notice of candidacy for that  
37 office is required to be filed under G.S. 163-106. 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 independent 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 his nomination, or not later than the day  
43 preceding the general election, whichever occurs first. A person seeking to qualify as an  
44 independent candidate under G.S. 163-122 shall file the statement of economic interest

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

7 (c) The State Board of Elections shall provide for notification of the economic  
8 interest statement 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) Once the candidate is certified as elected, the chair of the State Board of  
12 Elections shall forward a certified copy of the statement to the State Ethics Commission.

13 **"§ 138A-31. Statements of economic interest as public records.**

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

21 **"§ 138A-32. Contents of statement.**

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

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

28 (2) A list of each asset and liability of whatever nature (including legal,  
29 equitable, or beneficial interest) of the filing prospective or actual  
30 public servant, and the public servant's spouse, with a value of at least  
31 ten thousand dollars (\$10,000). This list shall contain, but shall not be  
32 limited to, the following:

33 a. All North Carolina real estate owned wholly or in part by the  
34 public servant or the public servant's spouse, including specific  
35 descriptions adequate to determine the location of each parcel  
36 and the specific interest held by the public servant and the  
37 spouse in each identified parcel.

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

39 c. Personal property sold to or bought from the State within the  
40 preceding two years.

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

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

- 1           f.     The name of each nonpublicly owned company or business  
2           entity in which the value of securities or other equity interests  
3           held exceeds ten thousand dollars (\$10,000), including but not  
4           limited to, interests in partnerships, limited partnerships, joint  
5           ventures, limited liability companies or partnerships, and  
6           closely held corporations. For each company or business entity  
7           list pursuant to this subdivision, the filing public servant shall  
8           indicate whether the listed company or entity owns securities or  
9           equity interests exceeding a value of ten thousand dollars  
10           (\$10,000) in any other companies or entities. If so, then the  
11           other companies or entities shall also be listed with a brief  
12           description of the business activity of each.
- 13           g.     If the filing public servant, the public servant's spouse, or  
14           dependent children are beneficiary of a vested trust created,  
15           established, or controlled by the public servant, then the name  
16           and address of the trustee and a description of the trust shall be  
17           provided. To the extent such information is available to the  
18           public servant, the statement also shall include a list of  
19           businesses in which the trust has an ownership interest  
20           exceeding ten thousand dollars (\$10,000).
- 21           h.     The filing public servant shall make a good faith effort to list  
22           any individual or business entity with which the filing public  
23           servant has a financial or professional relationship provided (i)  
24           a reasonable person would conclude that the nature of the  
25           financial or professional relationship presents a conflict of  
26           interest or the appearance of a conflict of interest for the public  
27           servant; or (ii) a reasonable person would conclude that any  
28           other financial or professional interests of the individual or  
29           business entity would present a conflict of interest or  
30           appearance of a conflict of interest for the public servant. For  
31           each individual or business entity listed under this subsection,  
32           the filing public servant shall describe the financial or  
33           professional relationship and provide an explanation of why the  
34           individual or business entity has been listed.
- 35           i.     A list of all other assets and liabilities with a valuation of at  
36           least ten thousand dollars (\$10,000), including bank accounts  
37           and debts.
- 38           j.     A list of each source (not specific amounts) of income  
39           (including capital gains) shown on the most recent federal and  
40           State income tax returns of the person filing where ten thousand  
41           dollars (\$10,000) or more was received from such source.
- 42           k.     If the public servant is a practicing attorney, an indication of  
43           whether the public servant, or the law firm with which the  
44           public servant is affiliated, earned legal fees during any single

1                    year of the past five years in excess of ten thousand dollars  
2                    (\$10,000) from any of the following categories of legal  
3                    representation:

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

17                   l.     A list of all nonpublicly owned businesses with which, during  
18                   the past five years, the public servant has been associated,  
19                   indicating the time period of such association and the  
20                   relationship with each business as an officer, employee,  
21                   director, partner, or owner. The list also shall indicate whether  
22                   or not each does business with, or is regulated by, the State and  
23                   the nature of the business, if any, done with the State.

24                   m.    A list of all gifts of a value of more than two hundred dollars  
25                   (\$200.00) received during the 12 months preceding the date of  
26                   the statement from sources other than the public servant's  
27                   family, and a list of all gifts valued in excess of one hundred  
28                   dollars (\$100.00) received from any source having business  
29                   with, or regulated by, the State.

30                   n.     A list of all bankruptcies filed during the preceding five years  
31                   by the public servant, the public servant's spouse, or any entity  
32                   in which the public servant, or the public servant's spouse, has  
33                   been associated financially. A brief summary of the facts and  
34                   circumstances regarding each listed bankruptcy shall be  
35                   provided.

36                   o.     The filing public servant shall list all directorships on all boards  
37                   of which the public servant is a member.

38                   (3)   In addition to the foregoing, the filing public servant shall provide in  
39                   the public servant's statement any other information which a  
40                   reasonable person would conclude is necessary either to carry out the  
41                   purposes of this Chapter or to fully disclose any potential conflict of  
42                   interest or appearance of conflict. If a public servant is uncertain of  
43                   whether particular information is necessary, then the public servant  
44                   shall consult the Commission for guidance.

1           (4) Each statement of economic interest shall contain sworn certification  
2 by the filing public servant that the public servant has read the  
3 statement and that, to the best of the public servant's knowledge and  
4 belief, the statement is true, correct, and complete. The public servant's  
5 sworn certification also shall provide that the public servant has not  
6 transferred, and will not transfer, any asset, interest, or other property  
7 for the purpose of concealing it from disclosure while retaining an  
8 equitable interest therein.

9           (b) The Commission shall issue a form to be used for the statement of economic  
10 interest and shall revise the form from time to time as necessary to carry out the  
11 purposes of this Chapter.

12           (c) The Commission shall prepare a written evaluation of each statement of  
13 economic interest. The Commission shall submit the evaluation to:

14                   (1) The public servant who submitted the statement;

15                   (2) The head of the agency in which the public servant serves;

16                   (3) The Governor for gubernatorial appointees and employees in agencies  
17 under the Governor's authority; and

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

20                                   "Article 5.

21                                   "Violation Consequences.

22 **"§ 138A-40. Violation consequences.**

23           (a) Violation of this Chapter by any public servant other than by a member of the  
24 General Assembly is grounds for disciplinary action. No criminal penalty shall attach  
25 for any violation of this Chapter, except perjury under G.S. 138A-25 and G.S. 138A-20.

26           (b) The failure of any public servant serving on a board, commission, or council  
27 to comply with the provisions of this Chapter shall be deemed to be misfeasance,  
28 malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance,  
29 the offending public servant shall be subject to removal from the board, commission, or  
30 council of which the public servant is a member. The appointing authority shall exercise  
31 the discretion of whether to remove the offending public servant.

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

41           (d) Nothing in this Chapter affects the power of the State to prosecute any person  
42 for any violation of the criminal law.

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

1           **SECTION 2.** G.S. 143-318.18 reads as rewritten:

2   **"§ 143-318.18. Exceptions.**

3       This Article does not apply to:

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

35       **SECTION 3.** A new subsection is added to G.S. 150B-1 to read as follows:

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

39       **SECTION 4.** Part 4 of Article 2A of Chapter 150B of the General Statutes is  
40       amended by adding the following section:

41       **"§ 150B-21.20A. Publication of rules, standards and guidelines, and advisory**  
42       **opinions of State Ethics Commission.**

43       Notwithstanding any other law, the Codifier of Rules shall publish unedited the rules  
44       and advisory opinions issued by the State Ethics Commission under Chapter 138A of



1 the General Statutes in the North Carolina Register as they are received from the State  
2 Ethics Commission, in the format required by the Codifier.

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

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

13 **SECTION 6.** This act becomes effective January 1, 2006.