

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**HOUSE BILL 1111
RATIFIED BILL**

AN ACT TO MAKE CLARIFYING CHANGES TO THE STATE GOVERNMENT
ETHICS ACT, THE LEGISLATIVE ETHICS ACT, AND THE LOBBYING
LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-102(a)(5) reads as rewritten:

"(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, prepare advisory memoranda to legislators and legislative employees on specific ethical concerns, and ~~to~~ suggest rules of conduct that shall be adhered to by legislators and legislative employees."

SECTION 2. G.S. 120-103.1(a) reads as rewritten:

"§ 120-103.1. Investigations by the Committee.

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

- (1) The application or alleged violation of Chapter 138A of the General Statutes and ~~Part 1~~ of this Article.
- (2) ~~The application or alleged violation of rules adopted in accordance with G.S. 120-102.~~
- (3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process."

SECTION 2.5. G.S. 120-103.1(h) reads as rewritten:

"(h) Notice. – If at the end of its preliminary inquiry, the Committee determines that probable cause exists to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee."

SECTION 3. G.S. 120-103.1(i)(3) reads as rewritten:

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

- a. Oral evidence shall be taken only on oath or affirmation.
- b. The hearing shall be ~~held in closed session unless the public servant requests that the hearing be held in open session~~ open to the public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11, matters involving minors, or matters involving a personnel record. In any event, the deliberations by the Commission on a complaint may be held in closed session.
- c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel."

SECTION 4. G.S. 120-103.1(l) reads as rewritten:

"(l) Confidentiality. – Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee connected to an inquiry under this section shall be confidential and not matters of public record, except as otherwise provided in this section or when the legislator under inquiry requests in writing that the complaint, response, records, and findings be made public prior to the time the Committee recommends sanctions public. Once a hearing under this section commences the complaint, response, Committee's report to the house, and all other documents offered at the hearing in conjunction with the complaint, not otherwise privileged or confidential under law, shall be public records. ~~At~~ If no hearing is held, at such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public."

SECTION 5. G.S. 120-104(f) reads as rewritten:

"(f) The Committee shall submit its formal advisory opinions to the State Ethics Commission, and the State Ethics Commission shall publish the Committee's opinions under G.S. 138A-13(d). The Committee shall edit for publication purposes as necessary to protect the identities of the individuals requesting opinions prior to submission to the State Ethics Commission. The Committee may distribute the edited formal advisory opinion to members of the General Assembly prior to publication by the State Ethics Commission."

SECTION 6. G.S. 120-104 is amended by adding a new subsection to read:

"(h) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion."

SECTION 7. G.S. 120C-100(a)(6) reads as rewritten:

"(6) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, but not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages."

SECTION 8.(a) G.S. 120C-100(a)(10)a. is repealed.

SECTION 8.(b) G.S. 120C-100(a)(10)d. reads as rewritten:

"d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties in any 30-day period include engaging in lobbying as defined in subdivision (9)a. of this section-section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter."

SECTION 9. G.S. 120C-101 reads as rewritten:

"§ 120C-101. **Rules and forms.**

(a) The Commission shall adopt any rules or definitions necessary to interpret ~~and carry out~~ the provisions of this Chapter. Chapter and adopt any rules necessary to administer the provisions of this Chapter, except for Articles 2, 4 and 8 of this Chapter. The Secretary of State shall adopt any rules, ~~orders, forms, and definitions~~ orders, and forms as are necessary to ~~carry out~~ administer the provisions of Articles 2, 4 and 8 of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) With respect to the forms adopted under subsection (a) of this section, the Secretary of State shall adopt rules to protect from disclosure all confidential

information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall maintain a mailing list of interested persons as provided in G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

- (1) Publish the proposed rules in the North Carolina Register.
- (2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.
- (3) Notify persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
- (4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
- (5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this ~~section~~ subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

(d) For purposes of G.S. 150B-21.3(b2), a written objection filed by the Commission to a rule adopted by the Secretary of State pursuant to this Chapter shall be deemed written objections from 10 or more persons. Notwithstanding G.S. 150B-21.3(b2), a rule adopted by the Secretary of State pursuant to this Chapter objected to by the Commission under this subsection shall not become effective until an act of the General Assembly approving the rule has become law. If the General Assembly does not approve a rule under this subsection by the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule shall not become effective and any temporary rule associated with the permanent rule expires. If the General Assembly fails to approve a rule by the day of adjournment, the Secretary of State may initiate rulemaking for a new permanent rule, including by the adoption of a temporary rule."

SECTION 10. G.S. 120C-102 reads as rewritten:

"§ 120C-102. Advisory opinions.

(a) At the request of any person affected by this Chapter, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. ~~Reliance~~ Good faith reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion from ~~both~~ all of the following:

- (1) Investigation by the Commission.
- (2) Any adverse action by the employing entity.
- (3) Investigation by the Secretary of State.

(b) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

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

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record. Staff to the Commission may share all information related to requests made under subsection (a) of this section with staff of the Office of the Secretary of State, and staff of the Office of the Secretary of State shall treat that information as confidential and not a public record. The Commission shall forward an unedited copy of each advisory opinion under this section to the Secretary of State at the time the advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.

(e) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion."

SECTION 11. G.S. 120C-215 is amended by adding a new subsection to read:

"(d) For purposes of this section, "incur" means the point at which a binding obligation arises."

SECTION 12.(a) G.S. 120C-303(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may ~~directly or indirectly do any of the following:~~

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift to a third party with the intent that a designated individual be the ultimate recipient."

SECTION 12.(b) G.S. 120C-303 is amended by adding new subsections to read:

"(d) Gifts made to a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that person's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization, shall not constitute a violation of subdivision (a)(2) of this section or of G.S. 138A-32(c).

(e) Gifts made to a nonpartisan state, regional, national, or international organization of which a public servant's agency is a member or a public servant is a member or participant of by virtue of that person's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization, shall not constitute a violation of subdivision (a)(2) of this section or of G.S. 138A-32(c)."

SECTION 12.(c) This section becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SECTION 13.(a) G.S. 120C-304(a)(2) reads as rewritten:

"(2) Before the later of the close of ~~the~~ session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months after leaving office."

SECTION 13.(b) This section becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SECTION 14. G.S. 120C-400 reads as rewritten:

"§ 120C-400. Reporting of reportable expenditures.

(a) For purposes of this Chapter, all reportable expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that individual's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that

person's immediate family member, in effect during the reporting period or the previous 12 months.

- (3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

(b) This section shall not apply to any reportable expenditure made directly to a State agency and that agency maintains an accounting of the reportable expenditure that is a public record."

SECTION 15.(a) G.S. 120C-401 is amended by adding two new subsections to read:

"(i) Any reportable expenditure promptly paid for at fair market value or promptly returned to a lobbyist or lobbyist's principal by a designated individual or a member of the designated individual's immediate family within the reporting period shall not be reported under G.S. 120C-402 or G.S. 120C-403, and if reported, the repayment or return of the expenditure at any time shall be reported by the lobbyist and lobbyist's principal on the next report due under this Article.

(j) The Secretary of State shall make available a report form that may be filed by a designated individual or a member of the designated individual's immediate family who promptly declines, returns, pays fair market value for, or donates a reportable expenditure in accordance with G.S. 138A-32(g). The Secretary of State shall index the filing of this form together with the lobbyist or lobbyist's principal who gave the reportable expenditure."

SECTION 15.(b) G.S. 138A-32(g) reads as rewritten:

"(g) A prohibited gift shall be be, and a permissible gift may be, promptly declined, returned, paid for at fair market value, or donated immediately to charity or the State."

SECTION 16. G.S. 120C-700 reads as rewritten:

"§ 120C-700. Persons exempted from this Chapter.

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following:

- (1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.
- (2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who ~~engages in no~~ does not act in any further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.
- (3) 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 acting~~ solely in connection with matters pertaining to the office and public duties, except for a person designated as liaison personnel under G.S. 120C-500. For purposes of this subdivision, an individual appointed as a county or city attorney under Part 7 of Article 5 of Chapter 153A of the General Statutes or Part 6 of Article 7 of Chapter 160A of the General Statutes, respectively, shall be considered an employee of the county or city.
- (4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending 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 an employee of any recognized news medium, while engaged in the acquisition and publication of

news or news and commentary on behalf of that recognized news medium.

- (6) Designated individuals while acting in their official capacity.
- (7) A person responding to inquiries from a designated individual and who ~~engages in no~~ does not act in any further activities as a lobbyist in connection with that inquiry.
- (8) A person who is a political committee as defined in G.S. 163-278.6(14), that person's employee, or that person's contracted service provider."

SECTION 17. G.S. 120C-800(c) reads as rewritten:

"(c) If a designated individual accepts a scholarship related to that person's public service or position valued over two hundred dollars (\$200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value."

SECTION 18. G.S. 133-32(d) reads as rewritten:

"(d) This section is not intended to prevent a gift a public servant would be permitted to accept under G.S. 138A-32, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift."

SECTION 19. G.S. 138A-3(1) reads as rewritten:

"(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for the purpose of divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets.

(4)(1c) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority."

SECTION 20. G.S. 138A-3(3) reads as rewritten:

"(3) Business with which associated. – A business in which the person or any member of the person's immediate family does any of the following:

- a. Is an employee.
- b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
- c. Owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.
- d. Is a lobbyist registered under Chapter 120C of the General Statutes.

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

- a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
- b. The fund is publicly traded, or the fund's assets are widely diversified."

SECTION 21. G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3).

The following shall not be considered gifts under this subdivision:

- a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.
- b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.
- c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
- d. Academic or athletic scholarships based on the same criteria as applied to the public.
- e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
- f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:
 - 1. A sympathy card, letter, or note.
 - 2. Flowers.
 - 3. Food or beverages for immediate consumption.
 - 4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars (\$200.00) per death per donor."

SECTION 22. G.S. 138A-3 is amended by adding a new subdivision to

read:

"(26c) Permanent designee. – An individual designated by a public servant to serve and vote in the absence of the public servant on a regular basis on a board on which the public servant serves."

SECTION 23. G.S. 138A-3(27) reads as rewritten:

"(27) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together. The term "person" does not include the State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State."

SECTION 24. G.S. 138A-3(29) reads as rewritten:

"(29) Public event. – Any of the following:

a. ~~For legislators and legislative employees:~~

~~1.~~ An organized gathering of persons open to the general public to which all legislators or legislative employees are invited to attend.

~~b.~~2. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, a joint commission, or a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, and one of the following apply:

~~1.~~I. At least 10 individuals associated with the person actually attend, other than the legislator or legislative employee, or the immediate family of the legislator or legislative employee.

~~2.~~II. All shareholders, employees, board members, officers, members, or subscribers of the person located in North Carolina are notified and invited to attend.

~~3.~~III. The person is a governmental body and the gathering is subject to the open meetings law.

~~b.~~c. ~~For public servants:~~

~~1.~~ An organized gathering of individuals open to the general public to which at least 10 public servants are invited to attend.

~~d.~~2. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which the entire board of which the public servant is a member or at least 10 public servants are invited to attend.

~~e.~~3. An organized gathering of a person to which the entire board of which the public servant is a member or at least 10 public servants are invited to attend and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."

SECTION 25. G.S. 138A-3(30)i. reads as rewritten:

"i. All voting members of boards, including ex officio ~~members~~ members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment."

SECTION 26. G.S. 138A-3(31) reads as rewritten:

"(31) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate ~~family~~ family, except a blind trust. A vested trust shall not include a widely held investment fund, including

a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

- a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and
- b. The fund is publicly traded, or the fund's assets are widely diversified."

SECTION 27. G.S. 138A-12(f) reads as rewritten:

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

SECTION 28. G.S. 138A-12(i)(4) reads as rewritten:

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

- a. Oral evidence shall be taken only on oath or affirmation.
- b. The hearing shall be ~~held in closed session unless the public servant requests that the hearing be held in open session open to the public, except for matters involving minors, personnel records, or matters that could otherwise be considered in closed session under G.S. 143-318.11.~~ In any event, the deliberations by the Commission on a complaint may be held in closed session.
- c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel."

SECTION 28.5. G.S. 138A-12(k)(3)e. reads as rewritten:

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

- ...
- e. Refer the matter for appropriate action to the principal clerk of the house of the General Assembly that elected the public servant for members of the Board of ~~Governors.~~ Governors and the State Board of Community Colleges."

SECTION 29. G.S. 138A-12(n) reads as rewritten:

"(n) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an inquiry under this section shall be confidential and not matters of public record, except as otherwise provided in this section or when the covered person or legislative employee under inquiry requests in writing that the records and complaint, response, and findings be made public prior to the time the employing entity imposes public sanctions. ~~public. At such time as public sanctions are imposed on a covered person~~ Once a hearing under this section commences, the complaint, response, and Commission's report to the employing entity shall be made public. ~~all other documents offered at the hearing in conjunction with the complaint, not otherwise privileged or confidential under law, shall be public records. If no hearing is held at such time as the Commission reports to the employing entity a recommendation of sanctions, the complaint and response shall be made public.~~"

SECTION 30. G.S. 138A-12(o) reads as rewritten:

"(o) Recommendations of Sanctions. – After referring a matter under subsection (k) of this section, if requested by the entity to which the matter was referred, the

Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

- (1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for a public servant as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.
- (2) The number of ethics violations.
- (3) The severity of the ethics violations.
- (4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.
- (5) Whether the ethics violations were inadvertent or intentional.
- (6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.
- (7) Whether the public servant has previously been advised or warned by the Commission.
- (8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(e).
- (9) The public servant's motivation or reason for the improper conduct or action, including whether the action was for personal financial gain versus protection of the public interest.

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

SECTION 31. G.S. 138A-13 reads as rewritten:

"§ 138A-13. Advisory opinions.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. On its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from ~~both~~ all of the following:

- (1) ~~Investigation by the Commission.~~ Investigation by the Commission, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the employing entity.
- (3) Investigation by the Secretary of State.

(b) At the request of a legislator, the Commission shall render recommended advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or

circumstances. The Commission shall issue advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from ~~both~~ all of the following:

- (1) Investigation by the Committee or ~~Commission~~ Commission, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the house of which the legislator is a member.
- (3) Investigation by the Secretary of State.

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

(c) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions. When the Commission issues a recommended opinion to a legislator under subsection (b) of this section, the Commission shall publish only the formal advisory opinion of the Committee upon its submission to the Commission.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions, and advisory opinions issued under this section, are confidential and not public records. Staff to the Commission may share all information related to requests made under subsection (b) of this section with staff to the Committee, and staff to the Committee shall treat that information as confidential and not a public record.

(f) This section shall not apply to judicial officers.

(g) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion."

SECTION 32. G.S. 138A-22(a) reads as rewritten:

"(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars (\$60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than ~~March 15th~~ April 15 of every year thereafter, except as otherwise filed under ~~subsections~~ subsections (c1) and (d) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection."

SECTION 33. G.S. 138A-22 is amended by adding a new subsection to read:

"(c1) A public servant reappointed to a board between January 1 and April 15 shall file a current statement of economic interest prior to the reappointment."

SECTION 34. G.S. 138A-24 reads as rewritten:

"§ 138A-24. **Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be

provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

- (1) Except as otherwise provided in this subdivision, the name, ~~home address, current mailing address,~~ occupation, employer, and business of the person. Any person holding or seeking elected office for which residence is a qualification for office shall include a home address. A judicial officer may use a ~~business current mailing~~ address instead of the home address on the form required in this subsection. The judicial officer may also use the initials instead of the name of any unemancipated child of the judicial officer who also resides in the household of the judicial officer. If the judicial officer ~~provides a business address or~~ provides the initials of an unemancipated child, the judicial officer shall concurrently provide a ~~home address and~~ the name of the unemancipated child to the Commission. The ~~home address and~~ the name of an unemancipated child provided by the judicial officer to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.
- (2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars (\$10,000) owned by the filing person and the filing person's immediate ~~family.~~ family, except assets or liabilities held in a blind trust. This list shall include the following:
 - a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.
 - b. Real estate that is currently leased or rented to or from the State.
 - c. Personal property sold to or bought from the State within the preceding two years.
 - d. Personal property currently leased or rented to or from the State.
 - e. The name of each publicly owned company. For purposes of this sub-subdivision, the term 'publicly owned company' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:
 1. The filing person or a member of the filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
 2. The fund is publicly traded, or the fund's assets are widely diversified.
 - f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.
 - g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars (\$10,000).
 - h. A list of all nonpublicly owned businesses of which the person is an officer, employee, director, partner, owner, or member or manager of a limited liability company.

- i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.
 - j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, excluding a blind trust, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.
 - k. A list of all liabilities, excluding indebtedness on the filing person's primary personal residence, by type of creditor and debtor.
 - ~~l. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, if known, and a brief description of the nature of the business, or which with due diligence could reasonably be known.~~
 - m. A list of all stock options in a company or business not otherwise disclosed on this statement.
- (3) ~~A list~~ The name of each source (not specific amounts) of income of more than five thousand dollars (\$5,000) received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains, and business income, if that source is not listed under subdivision (2) of this subsection. Income shall include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income from any source other than capital gains, federal government retirement, military retirement, or social security income.
- (4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars (\$10,000) from any of the following categories of legal representation:
- a. Administrative law.
 - b. Admiralty law.
 - c. Corporate law.
 - d. Criminal law.
 - e. Decedents' estates law.
 - f. Environmental law.
 - g. Insurance law.
 - h. Labor law.
 - i. Local government law.
 - j. Negligence or other tort litigation law.
 - k. Real property law.
 - l. Securities law.
 - m. Taxation law.
 - n. Utilities regulation law.

- (5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars (\$10,000).
- (6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator or a judicial officer.
- (7) ~~A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.~~ A list of the public servant's or a member of the public servant's immediate family is a director, officer, or governing board member. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.
- (8) ~~A list of all things of monetary value with a total value greater than of over two hundred dollars (\$200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, or from~~ excluding things given by a member of the person's extended family. The list shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.
- (9) ~~A list of any felony convictions of the filing person.~~ A list of any felony convictions for which a pardon of innocence or order of expungement has been granted.
- (10) Any other economic or financial information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.
- (11) A list of any nonprofit corporation or organization with which associated during the preceding calendar year, including a list of which of those nonprofit corporations or organizations with which associated do business with the State or receive State funds and a brief description of the nature of the business, if known or with which due diligence could reasonably be known.
- (12) A statement of whether the filing person or the filing person's immediate family is or has been a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes within the preceding 12 months.

(b) The Supreme Court, the Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall be subject to the provisions of G.S. 138A-25.

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

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

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

- (1) The filing person who submitted the statement.
- (2) The head of the agency in which the filing person serves.
- (3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
- (4) The Chief Justice for judicial officers and judicial employees.
- (5) The appointing or hiring authority for those public servants not under the Governor's authority.
- (6) The State Board of Elections for those filing persons who are elected.
- (7) The Committee, together with a copy of the statement of economic interest, for legislators."

SECTION 35. G.S. 138A-32(c) reads as rewritten:

"(c) No public servant, legislator, or legislative employee shall knowingly accept a ~~gift, directly or indirectly, gift~~ from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes as defined in G.S. 120C-100. No public servant, legislator, or legislative employee shall accept a gift from a third party knowing all of the following:

- (1) The third party obtained the gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes.
- (2) The lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes intended for the ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303."

SECTION 36. G.S. 138A-32(d) reads as rewritten:

"(d) No public servant shall knowingly accept a ~~gift, directly or indirectly, gift~~ from a person whom the public servant knows or has reason to know any of the following:

- (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."

SECTION 37. G.S. 138A-32 is amended by adding a new subsection to read:

"(d1) No public servant shall accept a gift from a third party knowing all of the following:

- (1) The third party obtained the gift from a person described under subdivisions (d)(1), (2), and (3) of this section.
- (2) The person described under subdivisions (d)(1), (2), and (3) of this section intended for the gift to benefit the public servant."

SECTION 37.5. G.S. 138A-32(e) reads as rewritten:

"(e) Subsections ~~(e) and (d)(c)~~, (d), and (d1) of this section shall not apply to any of the following:

....
SECTION 38. G.S. 138A-32(e)(3) reads as rewritten:

"(3) Reasonable actual expenditures of the ~~covered person~~ legislator, public servant, or legislative employee for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) a ~~covered person's~~ legislator's, public servant's, or legislative employee's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the ~~covered person~~ legislator, public servant, or legislative employee; (ii) a legislator's, public servant's, or legislative employee's ~~or in order for the covered person or legislative employee to participate~~ participation as a speaker or member of a ~~panel~~ panel at a meeting; ~~(iii)~~ (iii) a legislator's or legislative employee's attendance and participation in meetings of a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or that the legislator or legislative employee is a member or participant of by virtue of that person's public position, or as a member of a board, agency, or committee of such organization; or ~~(iii)~~ (iv) a public servant's attendance and participation in meetings as a member of a board, agency, or committee of a nonpartisan state, regional, national, or international ~~legislative~~ organization of which the public servant's agency is a member or the public servant is a member by virtue of that person's public position, provided the following conditions are met:

- a. The reasonable actual expenditures shall be made by a lobbyist's principal, and not a lobbyist.
- b. Any ~~educational~~ meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.
- c. Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more ~~attendees~~ attendees as part of the meeting or in conjunction with the meeting.
- d. Any entertainment must be incidental to the principal agenda of the ~~educational~~ meeting.
- e. If the legislator, public servant, or legislative employee is participating as a speaker or member of a panel, then that legislator, public servant, or legislative employee must be a bona fide speaker or participant."

SECTION 39. G.S. 138A-32(e)(6) reads as rewritten:

"(6) Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist's ~~principals~~ principals, or persons described in subdivisions (d)(1), (2), or (3) of this section."

SECTION 40. G.S. 138A-32(e)(10) reads as rewritten:

"(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

- a. The relationship is not related to the person's public service or position and position.
- b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying."

SECTION 41.(a) G.S. 138A-32(e) is amended by adding a new subdivision

to read:

"(11) Food and beverages for immediate consumption and related transportation provided all of the following conditions are met:

- a. The food, beverage, or transportation is given by a lobbyist principal and not a lobbyist.
- b. The food, beverage, or transportation is provided during a conference, meeting, or similar event and is available to all attendees of the same class as the recipient.
- c. The recipient of the food, beverage, or transportation is a director, officer, governing board member, employee, or independent contractor of one of the following:
 1. The lobbyist principal giving the food, beverage, or transportation.
 2. A third party that received the funds to purchase the food, beverages, or transportation.

(12) Food and beverages for immediate consumption at an organized gathering of a person to which a public servant is invited to attend for purposes primarily related to the public servant's public service or position, and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."

SECTION 41.(b) G.S. 120C-402(b)(4) reads as rewritten:

"(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) — G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10). G.S. 138A-32(e)(10) with a value of more than ten dollars (\$10.00)."

SECTION 41.(c) G.S. 120C-403(b)(5) reads as rewritten:

"(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars (\$200.00)."

SECTION 42. G.S. 138A-36 is amended by adding a new subsection to

read:

"(e) This section shall not allow participation in an official action prohibited by G.S. 14-234."

SECTION 43. G.S. 160A-480.3 is amended by adding a new subsection to

read:

"(h) Any authority created under this Part shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 44. Sections 17, 23, 39, 40 and 41 of this act are effective January 1, 2007. Section 9 of this act is effective July 1, 2007. Sections 8, 11, 15, 20, 22, 25, 34 and 42 of this act become effective October 1, 2007. Section 18 of this act becomes effective December 1, 2007. Section 34 of this act becomes effective January 1, 2008. The remainder of this act is effective when this act becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

Charlie S. Dannelly
Deputy President Pro Tempore of the Senate

Joe Hackney
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2007