

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1087

Short Title: State Ethics Act.

(Public)

Sponsors: Representatives Wood; and Luebke.

Referred to: Ethics, if favorable, Appropriations.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, TO PROVIDE FOR ETHICS EDUCATION, TO MAKE CONFORMING CHANGES, AND TO MAKE AN APPROPRIATION THEREFOR.

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,

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

- 1 (8) Official Action. – Any decision, including, but not limited to,
2 administration, approval, disapproval, decision, preparation,
3 recommendation, the rendering of advice, and investigation, made or
4 contemplated in any proceeding, application, submission, request for a
5 ruling or other determination, contract, claim, controversy,
6 investigation, charge, or rule making.
- 7 (9) Participate. – To take part in, to influence, or to attempt to influence.
- 8 (10) Pecuniary Interest. – Any of the following:
- 9 a. Owning, either individually or collectively, a legal or equitable
10 interest exceeding ten thousand dollars (\$10,000) or five percent
11 (5%), whichever is less, of any business.
- 12 b. Receiving, either individually or collectively, during the
13 preceding calendar year compensation that is or will be required
14 to be included as taxable income on federal income tax returns of
15 the public servant, the public servant's immediate family, or a
16 business with which associated in an aggregate amount of five
17 thousand dollars (\$5,000) from any business or combination of
18 businesses. A pecuniary interest exists in any client or customer
19 who pays fees or commissions, either individually or
20 collectively, of five thousand dollars (\$5,000) or more in the
21 preceding 12 months to the public servant, the public servant's
22 immediate family, or a business with which associated.
- 23 c. Receiving, either individually or collectively and directly or
24 indirectly, in the preceding 12 months, gifts or honoraria having
25 an unknown value or having an aggregate value of five hundred
26 dollars (\$500.00) or more from any person. A pecuniary interest
27 does not exist under this sub-subdivision by reason of (i) a gift or
28 bequest received as the result of the death of the donor; (ii) a gift
29 from an immediate family member; or (iii) acting as a trustee of a
30 trust for the benefit of another.
- 31 d. Holding the position of associate, director, officer, partner, or
32 proprietor of any business, irrespective of the amount of
33 compensation received.
- 34 (11) Public Servants. – All constitutional officers of the State, all employees
35 of the Office of the Governor, all heads of all principal State agencies
36 who are appointed by the Governor, the chief deputy or chief
37 administrative assistant of each of the statewide elected public officials
38 and heads of all principal State agencies, all confidential assistants and
39 secretaries to the agency and department heads as defined in G.S. 126-
40 5(c)(2), all employees in policy-making positions designated by the
41 Governor pursuant to G.S. 126-5(b) and all confidential secretaries to
42 these individuals, any other employees or appointees in the principal
43 State agencies as may be designated by the Governor to the extent that

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

3 **"§ 138A-11. Gifts.**

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

9 **"§ 138A-12. Other compensation.**

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

19 **"§ 138A-13. Use of information for private gain.**

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

26 **"§ 138A-14. Appearance of conflict.**

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

32 **"§ 138A-15. Other rules of conduct.**

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

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

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

1 **"§ 138A-16. Participation in official actions.**

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

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

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

19 (1) The only pecuniary interest or reasonably foreseeable benefit that
20 accrues to the public servant, the public servant's immediate family, or
21 business with which associated as a member of a profession,
22 occupation, or large class, is no greater than that which could reasonably
23 be foreseen to accrue to all members of that profession, occupation, or
24 large class.

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

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

30 (4) Before participating in an official action, a public servant made full
31 written disclosure to the public servant's employing entity which then
32 made a written determination that the interest or benefit would neither
33 impair the public servant's independence of judgment nor influence the
34 public servant's participation in the official action. The employing
35 entity shall file a copy of that written determination with the
36 Commission.

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

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

42 (7) When a public servant notifies, in writing, the State Ethics Commission
43 that the public servant or someone whom the public servant appoints to

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

7 **"§ 138A-24. Powers and duties.**

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

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

32 **"§ 138A-25. Investigations by the Commission.**

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

- 36 (1) Of this Chapter, or of the rules adopted in accordance with G.S. 138A-
37 24; or
38 (2) Of the criminal law by a public servant in the performance of that
39 individual's official duties.

40 (b) Complaint. –

- 41 (1) A complaint filed under this Chapter shall state the name, address, and
42 telephone number of the person filing the complaint and include a
43 summary of the facts giving rise to the complaint.

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

3 (3) The filing of and the allegations in the verified complaint shall be
4 confidential and shall not be disclosed except as provided in this
5 section. Upon presentation of a copy of a verified complaint, the
6 Commission may verify that it is a true copy of a complaint filed with
7 the Commission.

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

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

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

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

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

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

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

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

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

4 (g) Settlement of Investigations. – The parties may meet by mutual consent before
5 the hearing to discuss the possibility of settlement of the investigation or the stipulation
6 of any issues, facts, or matters of law. Any proposed settlement of the investigation is
7 subject to the approval of the Commission.

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

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

13 (2) If the Commission finds that the alleged violation is not established by
14 clear and convincing evidence, the Commission shall dismiss the
15 complaint.

16 (3) If the Commission finds that the alleged violation is established by clear
17 and convincing evidence, the Commission shall:

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

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

24 c. Both.

25 (i) Findings and Record. – The Commission shall render formal and binding
26 opinions of its findings and recommendations made pursuant to complaints or
27 Commission investigations. In all matters the chair of the Commission shall ensure that a
28 complete record is made and preserved.

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

32 **"§ 138A-26. Advisory opinions.**

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

41 (1) Investigation by the Commission;

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

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

3 The Commission shall interpret the provisions of this Chapter and these
4 interpretations shall be binding on all public servants.

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

7 **"§ 138A-27. Ethics education program.**

8 (a) The Commission shall develop and administer an ethics educational program
9 designed to instill in all public servants a keen and continuing awareness of the ethical
10 obligations of public servants and sensitivity to situations that might result in real or
11 potential conflicts of interest or appearances of conflict.

12 (b) The Commission shall develop a workshop/seminar program that shall be
13 presented periodically to all agency heads and their chief deputies or assistants. The
14 program will stress the rules of conduct for public servants as set out in the Chapter and
15 will provide attendees with practical tools to aid in identifying and neutralizing real or
16 potential conflicts of interest.

17 (c) With the assistance of the Commission, each agency shall develop in-house
18 educational programs and procedures tailored to meet the agency's particular needs for
19 ethical education and conflict identification and avoidance.

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

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

28 (f) The head of each State agency shall maintain familiarity with and stay
29 knowledgeable of reports from the Commission regarding actual and potential conflicts
30 which involve public servants or his or her agency.

31 (g) The head of each State agency shall periodically remind public servants under
32 the head's authority of their duties to the public under the rules of conduct in this Chapter,
33 including the duty of each public servant to continually monitor, evaluate, and manage
34 the public servant's personal, financial, and professional affairs to ensure the absence of
35 conflicts of interest or appearances of conflict.

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

43 **"ARTICLE 4.**

"PUBLIC DISCLOSURE OF ECONOMIC INTERESTS.**"§ 138A-30. Statement of economic interest; filing required.**

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

(b) A candidate for the Council of State shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an independent candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following his nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an independent candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for himself or herself in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(c) The State Board of Elections shall provide for notification of the economic interest statement requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy with the Board.

(d) Once the candidate is certified as elected, the chair of the State Board of Elections shall forward a certified copy of the statement to the State Ethics Commission.

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

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

"§ 138A-32. 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 public servant. The form shall

1 include, but not be limited to, the following information about the public servant and the
2 public servant's immediate family:

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

5 (2) A list of each asset and liability of whatever nature of the filing
6 prospective or actual public servant, and the public servant's spouse,
7 with a value of at least ten thousand dollars (\$10,000). This list shall
8 contain, but shall not be limited to, the following:

9 a. All North Carolina real estate owned wholly or in part by the
10 public servant or the public servant's spouse, including specific
11 descriptions adequate to determine the location of each parcel
12 and the specific interest held by the public servant and the spouse
13 in each identified parcel.

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

15 c. Personal property sold to or bought from the State within the
16 preceding two years.

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

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

20 f. The name of each non-publicly owned company or business
21 entity in which the value of securities or other equity interests
22 held exceeds ten thousand dollars (\$10,000), including but not
23 limited to, interests in partnerships, limited partnerships, joint
24 ventures, limited liability companies or partnerships, and closely
25 held corporations. For each company or business entity list
26 pursuant to this subdivision, the filing public servant shall
27 indicate whether the listed company or entity owns securities or
28 equity interests exceeding a value of ten thousand dollars
29 (\$10,000) in any other companies or entities. If so, then the other
30 companies or entities shall also be listed with a brief description
31 of the business activity of each.

32 g. If the filing public servant, the public servant's spouse, or
33 dependent children are beneficiary of a vested trust created,
34 established, or controlled by the public servant, then the name
35 and address of the trustee and a description of the trust shall be
36 provided. To the extent such information is available to the
37 public servant, the statement also shall include a list of
38 businesses in which the trust has an ownership interest exceeding
39 ten thousand dollars (\$10,000).

40 h. The filing public servant shall make a good faith effort to list any
41 individual or business entity with which the filing public servant
42 has a financial or professional relationship provided (i) a
43 reasonable person would conclude that the nature of the financial

1 or professional relationship presents a conflict of interest or the
2 appearance of a conflict of interest for the public servant; or (ii) a
3 reasonable person would conclude that any other financial or
4 professional interests of the individual or business entity would
5 present a conflict of interest or appearance of a conflict of
6 interest for the public servant. For each individual or business
7 entity listed under this subsection, the filing public servant shall
8 describe the financial or professional relationship and provide an
9 explanation of why the individual or business entity has been
10 listed.

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

14 j. A list of each source (not specific amounts) of income (including
15 capital gains) shown on the most recent federal and State income
16 tax returns of the person filing where ten thousand dollars
17 (\$10,000) or more was received from such source.

18 k. If the public servant is a practicing attorney, an indication of
19 whether the public servant, or the law firm with which the public
20 servant is affiliated, earned legal fees during any single year of
21 the past five years in excess of ten thousand dollars (\$10,000)
22 from any of the following categories of legal representation:

23 1. Administrative law

24 2. Admiralty

25 3. Corporation law

26 4. Criminal law

27 5. Decedent's estates

28 6. Insurance law

29 7. Labor law

30 8. Local government

31 9. Negligence - defendant

32 10. Negligence - plaintiff

33 11. Real property

34 12. Taxation

35 13. Utilities regulation.

36 l. A list of all non-publicly owned businesses with which, during
37 the past five years, the public servant has been associated,
38 indicating the time period of such association and the relationship
39 with each business as an officer, employee, director, partner, or
40 owner. The list also shall indicate whether or not each does
41 business with, or is regulated by, the State and the nature of the
42 business, if any, done with the State.

1 m. A list of all gifts of a value of more than two hundred dollars
2 (\$200.00) received during the 12 months preceding the date of
3 the statement from sources other than the public servant's family,
4 and a list of all gifts valued in excess of one hundred dollars
5 (\$100.00) received from any source having business with, or
6 regulated by, the State.

7 n. A list of all bankruptcies filed during the preceding five years by
8 the public servant, the public servant's spouse, or any entity in
9 which the public servant, or the public servant's spouse, has been
10 associated financially. A brief summary of the facts and
11 circumstances regarding each listed bankruptcy shall be
12 provided.

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

15 (3) In addition to the foregoing, the filing public servant shall provide in the
16 public servant's statement any other information which a reasonable
17 person would conclude is necessary either to carry out the purposes of
18 this Chapter or to fully disclose any potential conflict of interest or
19 appearance of conflict. If a public servant is uncertain of whether
20 particular information is necessary, then the public servant shall consult
21 the Commission for guidance.

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

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

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

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

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

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

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

"ARTICLE 5.

"VIOLATION CONSEQUENCES.

"§ 138A-40. Violation consequences.

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

4 (b) The failure of any public servant serving on a board, commission, or council to
5 comply with the provisions of this Chapter shall be deemed to be misfeasance,
6 malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance,
7 the offending public servant shall be subject to removal from the board, commission, or
8 council of which the public servant is a member. The appointing authority shall exercise
9 the discretion of whether to remove the offending public servant.

10 (c) The failure of any public servant serving as a State employee to comply with
11 the provisions of this Chapter shall be a violation of a written work order thereby
12 permitting disciplinary action as allowed by the law, including termination from
13 employment. Except for employees of State departments headed by a member of the
14 Council of State, the Governor shall make all final decisions on the manner in which the
15 offending public servant shall be disciplined. For employees of State departments headed
16 by a member of the Council of State, the appropriate Council of State member shall make
17 all final decisions on the manner in which the offending public servant shall be
18 disciplined.

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

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

22 Section 2. G.S. 143-318.18 reads as rewritten:

23 **"§ 143-318.18. Exceptions.**

24 This Article does not apply to:

25 (1) Grand and petit juries.

26 (2) Any public body that is specifically authorized or directed by law to
27 meet in executive or confidential session, to the extent of the
28 authorization or direction.

29 (3) The Judicial Standards Commission.

30 (4) Repealed by Session Laws 1991, c. 694, s. 9.

31 (4a) The Legislative Ethics Committee.

32 (4b) A conference committee of the General Assembly.

33 (4c) A caucus by members of the General Assembly; however, no member
34 of the General Assembly shall participate in a caucus which is called for
35 the purpose of evading or subverting this Article.

36 (5) Law enforcement agencies.

37 (6) A public body authorized to investigate, examine, or determine the
38 character and other qualifications of applicants for professional or
39 occupational licenses or certificates or to take disciplinary actions
40 against persons holding such licenses or certificates, (i) while preparing,
41 approving, administering, or grading examinations or (ii) while meeting
42 with respect to an individual applicant for or holder of such a license or
43 certificate. This exception does not amend, repeal, or supersede any

1 other statute that requires a public hearing or other practice and
2 procedure in a proceeding before such a public body.

3 (7) Any public body subject to the Executive Budget Act (G.S. 143-1 et.
4 seq.) and exercising quasi-judicial functions, during a meeting or
5 session held solely for the purpose of making a decision in an
6 adjudicatory action or proceeding.

7 (8) The boards of trustees of endowment funds authorized by G.S. 116-36
8 or G.S. 116-238.

9 (9) Repealed by Session Laws 1991, c. 694, s. 9.

10 (10) The Board of Awards.

11 (11) The General Court of Justice.

12 (12) The State Ethics Commission."

13 Section 3. A new subsection is added to G.S. 150B-1 to read as follows:

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

17 Section 4. Part 4 of Article 2A of Chapter 150B of the General Statutes is
18 amended by adding the following section:

19 "**§ 150B-21.20A. Publication of rules, standards and guidelines, and advisory**
20 **opinions of State Ethics Commission.**

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

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

29 Section 5.(a) The authority, powers, duties and functions, records, personnel,
30 property, unexpended balances of appropriations, allocations, or other funds, including
31 the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the
32 Office of the Governor are transferred to the State Ethics Commission created in Section
33 1 of this act. Any disputes arising out of this transfer shall be resolved by the Director of
34 the Budget.

35 Section 5.(b) There is appropriated from the General Fund to the Department of
36 Administration for the 1999-2000 fiscal year the sum of two hundred fifty-three thousand
37 eight hundred twenty-one dollars (\$253,821) to fund the State Ethics Commission created
38 in Section 1 of this act.

39 Section 6. Section 5 of this act becomes effective July 1, 1999. The remaining
40 sections become effective January 1, 2000.