

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1442

Short Title: State Ethics Act.

(Public)

Sponsors: Representatives Blust; Capps, Current, and Setzer.

Referred to: Ethics.

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE STATE ETHICS ACT, TO CREATE THE STATE
3 ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR
4 LEGISLATORS, STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND
5 APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS,
6 TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO
7 MAKE CONFORMING CHANGES.

8 The General Assembly of North Carolina enacts:

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

11 "Chapter 138A.

12 "State Ethics Act.

13 "Article 1.

14 "General Provisions.

15 "§ 138A-1. Title.

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

17 "§ 138A-2. Definitions.

18 The following definitions apply in this Chapter:

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

20 a. Association,

21 b. Corporation,

22 c. Enterprise,

23 d. Joint venture,

24 e. Organization,

25 f. Partnership,

26 g. Proprietorship,

27 h. Vested trust, or

28 i. Every other business interest, including ownership or use of
29 land for income.

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

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

1 President of the North Carolina Community College System, the
2 president or chief administrative officer of each community college,
3 and members of the boards of trustees of each community college.

4 The term does not include the following individuals when serving
5 in the designated capacity:

6 a. Judges and justices of the General Court of Justice; or

7 b. Members of boards, commissions, or councils having solely
8 advisory powers and not exercising any executive,
9 quasi-judicial, or quasi-legislative powers.

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

16 a. The public servant or a member of the public servant's
17 immediate family neither exercises nor has the ability to
18 exercise control over the financial interests held by the fund;
19 and

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

22 "Article 2.

23 "Ethical Standards For Public Servants.

24 "**§ 138A-10. Use of public position for private gain.**

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

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

37 "**§ 138A-11. Gifts.**

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

43 "**§ 138A-12. Other compensation.**

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

10 **"§ 138A-13. Use of information for private gain.**

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

17 **"§ 138A-14. Appearance of conflict.**

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

23 **"§ 138A-15. Other rules of conduct.**

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

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

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

35 **"§ 138A-16. Participation in official actions.**

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

1 detriment to a business competitor of the public servant, a member of the public
2 servant's immediate family, or a business with which the public is associated.

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

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

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

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

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

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

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

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

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

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

38 **§ 138A-17. Employment and supervision of members of public servant's**
39 **immediate family.**

40 A public servant shall not cause the employment, appointment, promotion, transfer,
41 or advancement of an immediate family member of the public servant to a State or local
42 office or position to which the public servant supervises or manages. A public servant
43 shall not participate in an action relating to the discipline of a member of the public
44 servant's immediate family.

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

22 **§ 138A-25. Investigations by the Commission.**

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

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

30 (b) Complaint. –

- 31 (1) A complaint filed under this Chapter shall state the name, address, and
32 telephone number of the person filing the complaint and include a
33 summary of the facts giving rise to the complaint.
- 34 (2) The Commission shall send a copy of the complaint to the public
35 servant who is the subject of the complaint within 30 days of the filing.
- 36 (3) The filing of and the allegations in the verified complaint shall be
37 confidential and shall not be disclosed except as provided in this
38 section. Upon presentation of a copy of a verified complaint, the
39 Commission may verify that it is a true copy of a complaint filed with
40 the Commission.
- 41 (4) Any complaint against a member of the General Assembly shall not be
42 handled by the Commission, and it shall refer that complaint to the
43 Legislative Ethics Committee for investigation and potential action.

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) If the Commission finds that the alleged violation is not established by
5 clear and convincing evidence, the Commission shall dismiss the
6 complaint.

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

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

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

15 c. Both.

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

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

23 **"§ 138A-26. Advisory opinions.**

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

32 (1) Investigation by the Commission;

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

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

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

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

40 **"§ 138A-27. Ethics education program.**

41 (a) The Commission shall prepare a compilation of relevant State law, including
42 provisions from the Constitution, General Statutes, and administrative rules, that set
43 forth ethical standards applicable to public servants. The compilation also shall include
44 the text of this Chapter, as amended from time to time, policies and procedures adopted

1 by the Commission, and any other ethics-related information deemed by the
2 Commission to be necessary and appropriate for inclusion. This compilation shall be
3 published and provided to public servants.

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

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

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

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

20 "Article 4.

21 "Public Disclosure Of Economic Interests.

22 "**§ 138A-30. Statement of economic interest; filing required.**

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

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

1 interest at the same time that the president of the convention certifies the names of its
2 candidates to the State Board of Elections under G.S. 163-98.

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

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

9 **"§ 138A-31. Statements of economic interest as public records.**

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

17 **"§ 138A-32. Contents of statement.**

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

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

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

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

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

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

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

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

40 f. The name of each nonpublicly owned company or business
41 entity in which the value of securities or other equity interests
42 held exceeds ten thousand dollars (\$10,000), including but not
43 limited to, interests in partnerships, limited partnerships, joint
44 ventures, limited liability companies or partnerships, and

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

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

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

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

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

37 k. If the public servant is a practicing attorney, an indication of
38 whether the public servant, or the law firm with which the
39 public servant is affiliated, earned legal fees during any single
40 year of the past five years in excess of ten thousand dollars
41 (\$10,000) from any of the following categories of legal
42 representation:

- 43 1. Administrative law
- 44 2. Admiralty

- 1 3. Corporation law
- 2 4. Criminal law
- 3 5. Decedent's estates
- 4 6. Insurance law
- 5 7. Labor law
- 6 8. Local government
- 7 9. Negligence – defendant
- 8 10. Negligence – plaintiff
- 9 11. Real property
- 10 12. Taxation
- 11 13. Utilities regulation.
- 12 l. A list of all nonpublicly owned businesses with which, during
13 the past five years, the public servant has been associated,
14 indicating the time period of such association and the
15 relationship with each business as an officer, employee,
16 director, partner, or owner. The list also shall indicate whether
17 or not each does business with, or is regulated by, the State and
18 the nature of the business, if any, done with the State.
- 19 m. A list of all gifts of a value of more than two hundred dollars
20 (\$200.00) received during the 12 months preceding the date of
21 the statement from sources other than the public servant's
22 family, and a list of all gifts valued in excess of one hundred
23 dollars (\$100.00) received from any source having business
24 with, or regulated by, the State.
- 25 n. A list of all bankruptcies filed during the preceding five years
26 by the public servant, the public servant's spouse, or any entity
27 in which the public servant, or the public servant's spouse, has
28 been associated financially. A brief summary of the facts and
29 circumstances regarding each listed bankruptcy shall be
30 provided.
- 31 o. The filing public servant shall list all directorships on all boards
32 of which the public servant is a member.
- 33 (3) In addition to the foregoing, the filing public servant shall provide in
34 the public servant's statement any other information which a
35 reasonable person would conclude is necessary either to carry out the
36 purposes of this Chapter or to fully disclose any potential conflict of
37 interest or appearance of conflict. If a public servant is uncertain of
38 whether particular information is necessary, then the public servant
39 shall consult the Commission for guidance.
- 40 (4) Each statement of economic interest shall contain sworn certification
41 by the filing public servant that the public servant has read the
42 statement and that, to the best of the public servant's knowledge and
43 belief, the statement is true, correct, and complete. The public servant's
44 sworn certification also shall provide that the public servant has not

1 transferred, and will not transfer, any asset, interest, or other property
2 for the purpose of concealing it from disclosure while retaining an
3 equitable interest therein.

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

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

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

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

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

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

15 "Article 5.

16 "Violation Consequences.

17 "**§ 138A-40. Violation consequences.**

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

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

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

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

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

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

41 "**§ 143-318.18. Exceptions.**

42 This Article does not apply to:

43 (1) Grand and petit juries.

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

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

32 "(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and

33 Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics

34 Commission."

35 **SECTION 4.** Part 4 of Article 2A of Chapter 150B of the General Statutes is

36 amended by adding the following section:

37 "**§ 150B-21.20A. Publication of rules, standards and guidelines, and advisory**

38 **opinions of State Ethics Commission.**"

39 Notwithstanding any other law, the Codifier of Rules shall publish unedited the rules

40 and advisory opinions issued by the State Ethics Commission under Chapter 138A of

41 the General Statutes in the North Carolina Register as they are received from the State

42 Ethics Commission, in the format required by the Codifier.

43 Notwithstanding any other law, the Codifier of Rules shall publish unedited in the

44 North Carolina Administrative Code the rules as codified and issued by the State Ethics

1 Commission under Chapter 138A of the General Statutes, in the format required by the
2 Codifier."

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

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