

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1843

Short Title: Revise Legislative Ethics Act - 1. (Public)

Sponsors: Representatives Hackney, Howard, Brubaker, Luebke (Primary Sponsors); Barnhart, Bell, Coates, Eddins, Fisher, Gibson, Harrison, Justice, Lucas, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Weiss, and Wiley.

Referred to: Judiciary I.

May 10, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY
3 THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL
4 REFORM.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 14 of Chapter 120 of the General Statutes is repealed.

7 **SECTION 2.** Chapter 120 of the General Statutes is amended by adding a
8 new article to read:

9 "Article 32.

10 "Legislative Ethics Act.

11 "Part 1. General Provisions.

12 **"§ 120-280. Title.**

13 This Article shall be known and may be cited as the 'Legislative Ethics Act.'

14 **"§ 120-281. Definitions.**

15 The following definitions apply in this Article:

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

17 a. Association.

18 b. Corporation.

19 c. Enterprise.

20 d. Joint venture.

21 e. Organization.

22 f. Partnership.

23 g. Proprietorship.

24 h. Vested trust.

- 1 i. Every other business interest, including ownership or use of
2 land for income.
- 3 (2) Business associate. – A partner, or member or manager of a limited
4 liability company.
- 5 (3) Business with which associated. – A business in which the legislator or
6 any member of the legislator's immediate family has a pecuniary
7 interest. For purposes of this subdivision, the term 'business' shall not
8 include a widely held investment fund, including a mutual fund,
9 regulated investment company, or pension or deferred compensation
10 plan, if all of the following apply:
- 11 a. The legislator or a member of the legislator's immediate family
12 neither exercises nor has the ability to exercise control over the
13 financial interests held by the fund.
- 14 b. The fund is publicly traded or the fund's assets are widely
15 diversified.
- 16 (4) Committee. – The Legislative Ethics Committee.
- 17 (5) Compensation. – Any money, thing of value, or economic benefit
18 conferred on or received by any person in return for services rendered
19 or to be rendered by that person or another. This term does not include
20 campaign contributions properly received and, if applicable, reported
21 as required by Article 22A of Article 163 of the General Statutes.
- 22 (6) Confidential information. – Information defined as confidential by
23 statute.
- 24 (7) Contract. – Any agreement including sales and conveyances of real
25 and personal property and agreements for the performance of services.
- 26 (8) Economic interest. – Matters involving a business with which the
27 person is associated or a nonprofit corporation or organization with
28 which the person is associated.
- 29 (9) Extended family. – Spouse, descendant, ascendant, or sibling of the
30 legislator or, descendant, ascendant, or sibling of the spouse of the
31 legislator.
- 32 (10) Immediate family. – An unemancipated child of the legislator residing
33 in the household, and the legislator's spouse, if not legally separated.
- 34 (11) Legislative action. – As the term is defined in G.S. 120-47.1.
- 35 (12) Legislative employee. – As the term is defined in G.S. 120-47.1.
- 36 (13) Legislator. – A member or presiding officer of the General Assembly,
37 or a person elected or appointed a member or presiding officer of the
38 General Assembly before taking office.
- 39 (14) Nonprofit corporation or organization with which associated. – Any
40 public or private enterprise, incorporated or otherwise, that is
41 organized or operating in the State primarily for religious, charitable,
42 scientific, literary, public health and safety, or educational purposes
43 and of which the person or any member of the person's immediate

1 family is a director, officer, governing board member, employee or
2 independent contractor as of December 31 of the preceding year.

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

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

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

9 b. Receiving, either individually or collectively, during the
10 preceding calendar year compensation that is or will be required
11 to be included as taxable income on federal income tax returns
12 of the legislator, the legislator's immediate family, or a business
13 with which associated in an aggregate amount of five thousand
14 dollars (\$5,000) from any business or combination of
15 businesses. A pecuniary interest exists in any client or customer
16 who pays fees or commissions, either individually or
17 collectively, of five thousand dollars (\$5,000) or more in the
18 preceding 12 months to the legislator, the legislator's immediate
19 family, or a business with which associated.

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

28 d. Holding the position of associate, director, officer, business
29 associate, or proprietor of any business, irrespective of the
30 amount of compensation received.

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

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

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

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

3 **"§ 120-282 through 120-285. [Reserved]"**

4 "Part 2. Ethical Standards for Legislators.

5 **"§ 120-286. Bribery, etc.**

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

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

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

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

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

28 **"§ 120-287. Use of public position for private gain.**

29 (a) A legislator shall not knowingly use the legislator's public position in any
30 manner that will result in financial benefit, direct or indirect, to the legislator, a member
31 of the legislator's extended family, or a person with whom, or business with which, the
32 legislator is associated. The performance of usual and customary duties associated with
33 the public position or the advancement of public policy goals or constituent services,
34 without compensation, shall not constitute the use of public position for financial
35 benefit. This subsection shall not apply to financial or other benefits derived by a
36 legislator that the legislator would enjoy to an extent no greater than that which other
37 citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant,
38 or speculative that a reasonable person would conclude under the circumstances that the
39 legislator's ability to protect the public interest and perform the legislator's official
40 duties would not be compromised.

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

1 **"§ 120-288. Disclosure of confidential information.**

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

5 **"§ 120-289. Personnel-related action unethical.**

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

10 **"§ 120-290. Gifts.**

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

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

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

- 20 (1) Meals and beverages for immediate consumption in connection with
21 public events.
- 22 (2) Nonmonetary items, other than food or beverages, with a value not to
23 exceed ten dollars (\$10.00) provided by a single donor during a single
24 calendar day.
- 25 (3) Informational materials relevant to the duties of the legislator or
26 legislative employee.
- 27 (4) Reasonable actual expenses for food, registration, travel, and lodging
28 of the legislator or legislative employee for a meeting at which the
29 legislator or legislative employee participates in a panel or speaking
30 engagement at the meeting related to the legislator's or legislative
31 employee's duties and when expenses are incurred on the actual day of
32 participation in the engagement or incurred within a 24-hour time
33 period before or after the engagement.
- 34 (5) Items or services received in connection with a state, regional or
35 national legislative organization of which the General Assembly, the
36 legislator or legislative employee is a member by virtue of the person's
37 legislative position.
- 38 (6) Items and services received relating to an educational conference or
39 meeting.
- 40 (7) A plaque or similar nonmonetary memento recognizing individual
41 services in a field or specialty or to a charitable cause.
- 42 (8) Gifts accepted on behalf of the State.
- 43 (9) Anything generally available or distributed to the general public or all
44 other State employees.

- 1 (10) Anything for which fair market value is paid.
2 (11) Commercially available loans made on terms not more favorable than
3 generally available to the public in the normal course of business if not
4 made for the purpose of lobbying.
5 (12) Contractual arrangements or business relationships or arrangements
6 made in the normal course of business if not made for the purpose of
7 lobbying.
8 (13) Academic scholarships made on terms not more favorable than
9 scholarships generally available to the public.
10 (14) Political contributions properly received and reported as required
11 under Article 22A of Article 163 of the General Statutes.
12 (15) Gifts from the legislator's or the legislative employee's extended
13 family, or a member of the same household of the legislator or the
14 legislative employee, or gifts received in conjunction with a marriage,
15 birth, adoption, or death.

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

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

- 23 (1) The General Assembly reimburses the public servant for travel,
24 subsistence, and registration expenses.
25 (2) The General Assembly's work time or resources are used.
26 (3) The activity would be considered official duty or would bear a
27 reasonably close relationship to the legislative employee's official
28 duties.

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

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

36 **"§ 120-291. Appearance of conflict.**

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

43 **"§ 120-292. Other rules of conduct.**

1 (a) A legislator shall make a due and diligent effort before taking any action,
2 including voting or participating in discussions with other legislators, to determine
3 whether the legislator has a conflict of interest or an appearance of a conflict. If the
4 legislator is unable to determine whether or not a conflict of interest or the appearance
5 of a conflict may exist, the legislator has a duty to inquire of the Committee as to that
6 conflict or appearance of conflict.

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

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

12 **"§ 120-293. Participation in legislative actions.**

13 (a) Notwithstanding any other law, except as permitted by subsection (c) of this
14 section, no legislator shall knowingly participate in a legislative action if the legislator,
15 a member of the legislator's extended family, the legislator's client, or a business with
16 which the legislator is associated, has a pecuniary or economic interest in, or a
17 reasonably foreseeable benefit from, the matter under consideration, which would
18 impair the legislator's independence of judgment or from which it could reasonably be
19 inferred that the interest or benefit would influence the legislator's participation in the
20 legislative action. A potential benefit includes a detriment to (i) a business competitor of
21 the legislator, (ii) a member of the legislator's extended family, or (iii) a business with
22 which the legislator is associated.

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

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

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

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

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

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

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

4 **"§ 120-294. Employment of members of legislator's extended family.**

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

9 **"§ 120-295 through 299. [Reserved]**

10 "Part 3. Legislative Ethics Committee.

11 **"§ 120-300. Legislative Ethics Committee established.**

12 There is established the Legislative Ethics Committee.

13 **"§ 120-301. Membership.**

14 (a) The Legislative Ethics Committee shall consist of ten members, five Senators
15 appointed by the President Pro Tempore of the Senate, among them – two from a list of
16 four submitted by the Majority Leader and two from a list of four submitted by the
17 Minority Leader, and five members of the House of Representatives appointed by the
18 Speaker of the House, among them – two from a list of four submitted by the Majority
19 Leader and two from a list of four submitted by the Minority Leader.

20 (b) The President Pro Tempore of the Senate and the Speaker of the House as the
21 appointing officers shall each designate a cochair of the Legislative Ethics Committee
22 from the respective officer's appointees. The cochair appointed by the President Pro
23 Tempore of the Senate shall preside over the Legislative Ethics Committee during each
24 odd-numbered year, and the cochair appointed by the Speaker of the House shall preside
25 in each even-numbered year. However, a cochair may preside at any time during the
26 absence of the presiding cochair or upon the presiding cochair's designation. In the
27 event a cochair is unable to act as cochair on a specific matter before the Legislative
28 Ethics Committee, and so indicates in writing to the appointing officer and the
29 Legislative Ethics Committee, the respective officer shall designate from that officer's
30 appointees a member to serve as cochair for that specific matter.

31 **"§ 120-302. Term of office; vacancies.**

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

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

40 (c) In the event a member of the Legislative Ethics Committee is unable to act on
41 a specific matter before the Legislative Ethics Committee, and so indicates in writing to
42 the appointing officer and the Legislative Ethics Committee, the appointing officer may
43 appoint another member of the respective chamber from a list submitted by the majority
44 leader or minority leader who nominated the member who is unable to act on the matter

1 to serve as a member of the Legislative Ethics Committee for the specific matter only. If
2 on any specific matter, the number of members of the Legislative Ethics Committee
3 who are unable to act on a specific matter exceeds four members, the appropriate
4 appointing officer shall appoint other members of the General Assembly to serve as
5 members of the Legislative Ethics Committee for that specific matter only.

6 **"§ 120-303. Quorum; expenses of members.**

7 (a) Six members constitute a quorum of the Committee. A vacancy on the
8 Committee does not impair the right of the remaining members to exercise all the
9 powers of the Committee.

10 (b) The members of the Committee, while serving on the business of the
11 Committee, are performing legislative duties and are entitled to the subsistence and
12 travel allowances to which members of the General Assembly are entitled when
13 performing legislative duties.

14 **"§ 120-304. Powers and duties of Committee.**

15 (a) In addition to the other powers and duties specified in this Article, the
16 Committee may:

- 17 (1) Prescribe forms for the statements of economic interest and other
18 reports required by this Article, and to furnish these forms to persons
19 who are required to file statements or reports.
- 20 (2) Receive and file any information voluntarily supplied that exceeds the
21 requirements of this Article.
- 22 (3) Organize in a reasonable manner statements and reports filed with it
23 and to make these statements and reports available for public
24 inspection and copying during regular office hours. Copying facilities
25 shall be made available at a charge not to exceed the actual cost.
- 26 (4) Preserve statements and reports filed with the Committee for a period
27 of 10 years from the date of receipt. At the end of the 10-year period,
28 these documents shall be destroyed.
- 29 (5) Prepare a list of ethical principles and guidelines to be used by
30 legislators and legislative employees to identify potential conflicts of
31 interest and prohibited behavior and to suggest rules of conduct that
32 shall be adhered to by legislators and legislative staff.
- 33 (6) Advise each General Assembly committee of specific danger areas
34 where conflicts of interest may exist and to suggest rules of conduct
35 that should be adhered to by committee members in order to avoid
36 conflict.
- 37 (7) Advise General Assembly members or render written opinions if so
38 requested by the member about questions of ethics or possible points
39 of conflict and suggested standards of conduct of members upon
40 ethical points raised.
- 41 (8) Propose rules of legislative ethics and conduct. The rules, when
42 adopted by the House of Representatives and the Senate, shall be the
43 standards adopted for that term.

- 1 (9) Upon receipt of information that a legislator owes money to the State
2 and is delinquent in repaying the obligation, to investigate and dispose
3 of the matter according to the terms of this Article.
- 4 (10) Receive and review all statements of economic interest filed with the
5 Committee by prospective and actual legislators and evaluate whether
6 (i) the statements conform to the law and the rules of the Committee,
7 and (ii) the financial interests and other information reported reveals
8 actual or potential conflicts of interest.
- 9 (11) Render advisory opinions in accordance with G.S. 120-307.
- 10 (12) Investigate alleged violations in accordance with G.S. 120-306 and to
11 hire separate legal counsel, through the Legislative Services
12 Commission, for these purposes.
- 13 (13) Initiate and maintain oversight of ethics educational programs for
14 legislators and legislative employees consistent with G.S. 120-308.
- 15 (14) Adopt rules to implement this Article, including those establishing
16 ethical standards and guidelines governing legislators and legislative
17 employees in attending to and performing their duties.
- 18 (15) Perform other duties as may be necessary to accomplish the purposes
19 of this Article.

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

28 **"§ 120-305. Continuing study of ethical questions.**

29 The Committee shall conduct continuing studies of questions of legislative ethics
30 including revisions and improvements of this Article as well as sections to cover the
31 executive branch of government. The Committee shall report to the General Assembly
32 from time to time recommendations for amendments to the statutes and legislative rules
33 that the Committee deems desirable in promoting, maintaining and effectuating high
34 standards of ethics in the legislative branch of State government.

35 **"§ 120-306. Investigations by the Committee.**

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

- 40 (1) The application or alleged violation of this Article.
41 (2) The application or alleged violation of rules adopted in accordance
42 with G.S. 120-304.

- 1 (3) The alleged violation of the criminal law by a legislator while acting in
2 the legislator's official capacity as a participant in the lawmaking
3 process.
- 4 (b) Complaint. –
- 5 (1) A complaint filed under this Article shall state the name, address, and
6 telephone number of the person filing the complaint, the name of the
7 legislator against whom the complaint is filed, and a concise statement
8 of the nature of the complaint and specific facts indicating that a
9 violation of this Article has occurred, the date the alleged violation
10 occurred, and either (i) that the contents of the complaint are within the
11 knowledge of the individual verifying the complaint, or (ii) the basis
12 upon which the individual verifying the complaint believes the
13 allegations to be true.
- 14 (2) The Committee may decline to accept or investigate any attempted
15 complaint that does not meet all of the requirements set forth in
16 subdivision (1) of this subsection, or the Committee may, in its sole
17 discretion, request additional information to be provided by the
18 complainant within a specified period of time of no less than seven
19 business days.
- 20 (3) In addition to subdivision (2) of this subsection, the Committee may
21 decline to accept or further investigate a complaint if it determines that
22 any of the following apply:
- 23 a. The complaint is frivolous or brought in bad faith.
- 24 b. The individuals and conduct complained of have already been
25 the subject of a prior complaint.
- 26 c. The conduct complained of is primarily a matter more
27 appropriately and adequately addressed and handled by other
28 federal, State or local agencies or authorities, including law
29 enforcement authorities. If other agencies or authorities are
30 conducting an investigation of the same actions or conduct
31 involved in a complaint filed under this section, the Committee
32 may stay its complaint investigation pending final resolution of
33 the other investigation.
- 34 (4) The Committee shall send a copy of the complaint to the legislator
35 who is the subject of the complaint within 30 days of the filing.
- 36 (c) Investigation of Complaints by the Committee. – The Committee shall
37 investigate all complaints properly before the Committee in a timely manner. The
38 Committee shall initiate an investigation of a complaint within 90 days of the filing of
39 the complaint, or the complaint shall then become a public record. In determining
40 whether there is reason to believe that a violation has or may have occurred, a member
41 of the Committee can take general notice of available information even if not formally
42 provided to the Committee in the form of a complaint. The Committee may utilize the
43 services of a hired investigator when conducting investigations.

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

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

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

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

26 (h) Hearing. –

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

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

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

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

38 b. The hearing shall be open to the public. The deliberations by
39 the Committee on a complaint may be held in closed session,
40 but the decision of the Committee shall be announced in open
41 session.

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

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

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

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

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

11 b. Refer the matter to the Attorney General for investigation and
12 referral to the district attorney for possible prosecution or the
13 appropriate house for appropriate action, or both, if the
14 Committee finds substantial evidence of a violation of a
15 criminal statute.

16 c. Refer the matter to the appropriate house for appropriate action,
17 which shall include censure and expulsion, if the Committee
18 finds substantial evidence of a violation of this Article or other
19 unethical activities.

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

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

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

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

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

41 **"§ 120-307. Advisory opinions.**

42 (a) At the request of any legislator, the Committee may render advisory opinions
43 on specific questions involving the meaning and application of this Article and the
44 legislator's compliance with the requirements of this Article. The request shall be in

1 writing, electronic or otherwise, and relate prospectively to real or reasonably
2 anticipated fact settings or circumstances. The Committee shall issue advisory opinions
3 having prospective application only. Reliance upon a requested written advisory opinion
4 on a specific matter shall immunize the legislator, on that matter, from a finding by the
5 Committee of a violation of this Article.

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

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

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

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

16 **"§ 120-308. Ethics education program.**

17 The Committee shall develop and implement an ethics education and awareness
18 program designed to instill in all legislators and legislative employees a keen and
19 continuing awareness of their ethical obligations and a sensitivity to situations that
20 might result in real or potential conflicts of interest or appearances of conflicts of
21 interest. The Committee shall make basic ethics education and awareness presentations
22 to all legislators and legislative employees upon their election or employment and shall
23 offer periodic refresher presentations as the Committee deems appropriate. Every
24 legislator and legislative employee shall participate in an ethics presentation approved
25 by the Committee within three months of the person's election, appointment or
26 employment in a manner as the Committee deems appropriate.

27 **"§ 120-309 through 314. [Reserved]**

28 "Part 4. Public Disclosure of Economic Interests.

29 **"§ 120-315. Purpose.**

30 The purpose of disclosure of the financial and personal interests by legislators is to
31 assist legislators and those persons who elect them to identify and avoid conflicts of
32 interest and potential conflicts of interest between the individual legislator's private
33 interests and the legislator's public duties. It is critical to this process that current and
34 prospective legislators examine, evaluate, and disclose those personal and financial
35 interests that could be or cause a conflict of interest or potential conflict of interest
36 between the legislator's private interests and the legislator's public duties. Legislators
37 must take an active, thorough and conscientious role in the disclosure and review
38 process, including having a complete knowledge of how the legislator's public position
39 or duties might impact the legislator's private interests. Legislators have an affirmative
40 duty to provide any and all information that a reasonable person would conclude is
41 necessary to carry out the purposes of this Article and to fully disclose any conflict of
42 interest or potential conflict of interest between the legislator's public and private
43 interests but the disclosure, review and evaluation process is not intended to result in the
44 disclosure of unnecessary or irrelevant personal information.

1 **"§ 120-316. Statement of economic interest; filing required.**

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

9 (b) A candidate for an office subject to this Article shall file the statement of
10 economic interest at the same place and in the same manner as the notice of candidacy
11 for that office is required to be filed under G.S. 163-106, within 10 days of the filing
12 deadline for the office the candidate seeks. A person who is nominated under
13 G.S. 163-114 after the primary and before the general election, and a person who
14 qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file
15 a statement of economic interest with the county board of elections of each county in
16 the senatorial or representative district. A person nominated under G.S. 163-114 shall
17 file the statement within three days following the person's nomination, or not later than
18 the day preceding the general election, whichever occurs first. A person seeking to
19 qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of
20 economic interest with the petition filed under that section. A person seeking to have
21 write-in votes counted for the person in a general election shall file a statement of
22 economic interest at the same time the candidate files a declaration of intent under
23 G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of
24 economic interest at the same time that the president of the convention certifies the
25 names of its candidates to the State Board of Elections under G.S. 163-98.

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

30 (d) If a candidate for an office subject to this Article does not file the statement
31 of economic interest within the time required by this Article, the county board of
32 elections immediately shall notify the candidate by registered mail, restricted delivery to
33 addressee only, that, if the statement is not received within 15 days, the candidate shall
34 not be certified as the party nominee, or in the case of a candidate nominated by a new
35 party under G.S. 163-98 that the candidate shall be decertified by the State Board of
36 Elections. If the statement is not received within 15 days of notification, the board of
37 elections authorized to certify a candidate as nominee to the office shall not certify the
38 candidate as nominee under any circumstances, regardless of the number of candidates
39 for the nomination and regardless of the number of votes the candidate receives in the
40 primary. If the delinquent candidate was nominated by a new party under G.S. 163-98,
41 the State Board of Elections shall decertify the candidate, and no county board of
42 elections shall place the candidate's name on the general election ballot as nominee of
43 the party. A vacancy thus created on a party's ticket shall be considered a vacancy for

1 the purposes of G.S. 163-114, and shall be filled according to the procedures set out in
2 G.S. 163-114.

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

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

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

20 **"§ 120-317. Statements of economic interest as public records.**

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

24 **"§ 120-318. Contents of statement.**

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

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

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

35 a. All real estate located in the State owned wholly or in part by
36 the person or the person's spouse, including specific
37 descriptions adequate to determine the location of each parcel
38 and the specific interest held by the person and the person's
39 spouse in each identified parcel.

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

41 c. Personal property sold to or bought from the State within the
42 preceding two years.

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

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

- 1 k. If the person is a practicing attorney, an indication of whether
2 the person, or the law firm with which the person is affiliated,
3 earned legal fees during any single year of the past five years in
4 excess of ten thousand dollars (\$10,000) from any of the
5 following categories of legal representation:
6 1. Administrative law.
7 2. Admiralty.
8 3. Corporation law.
9 4. Criminal law.
10 5. Decedents' estates.
11 6. Insurance law.
12 7. Labor law.
13 8. Local government.
14 9. Negligence – defendant.
15 10. Negligence – plaintiff.
16 11. Real property.
17 12. Taxation.
18 13. Utilities regulation.
19 l. A list of all nonpublicly owned businesses with which, during
20 the past five years, the person or the person's immediate family
21 has been associated or has an economic interest, indicating the
22 time period of that association and the relationship with each
23 business as an officer, employee, director, partner, or owner.
24 The list also shall indicate whether each does business with, or
25 is regulated by, the State and the nature of the business, if any,
26 done with the State.
27 m. A list of all gifts, and the sources of the gifts, of a value of more
28 than two hundred dollars (\$200.00) received during the 12
29 months preceding the date of the statement from sources other
30 than the person's extended family, and a list of all gifts, and the
31 sources of the gifts, valued in excess of one hundred dollars
32 (\$100.00) received from any source having business with, or
33 regulated by, the State.
34 n. A list of all bankruptcies filed during the preceding five years
35 by the person, the person's spouse, or any entity in which the
36 person, or the person's spouse, has been associated financially.
37 A brief summary of the facts and circumstances regarding each
38 listed bankruptcy shall be provided.
39 o. A list of all directorships on all business boards of which the
40 person or the person's immediate family is a member.
41 (3) Each statement of economic interest shall contain the person's sworn
42 certification that the person has read the statement and that, to the best
43 of the person's knowledge and belief, the statement is true, correct, and
44 complete. The person's sworn certification also shall provide that the

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

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

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

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

12 (1) The person who submitted the statement.

13 (2) The Legislative Services Office.

14 **"§ 120-319. Failure to file.**

15 (a) In addition to the provision of G.S. 120-316, within 30 days after the date due
 16 in accordance with G.S. 120-316, for every person from whom a statement of economic
 17 interest has not been received by the Committee, or whose statement of economic
 18 interest has been received by the Committee but deemed by the Committee to be
 19 incomplete, the Committee shall notify the person of the failure to file or complete and
 20 shall notify the person that if the statement of economic interest is not filed or
 21 completed within 30 days of receipt of the notice of failure to file or complete, the
 22 person shall be subject to a fine under this section.

23 (b) Any person who fails to file or complete a statement of economic interest
 24 within 30 days of the receipt of the notice required under subsection (a) of this section,
 25 shall be subject to a fine of two hundred fifty dollars (\$250.00), to be imposed by the
 26 Committee.

27 (c) Failure by any person to file or complete a statement of economic interest
 28 within 60 days of the receipt of the notice required under subsection (a) of this section
 29 shall be deemed to be a violation of this Article and shall be grounds for disciplinary
 30 action under G.S. 120-325.

31 **"§ 120-320. Concealing or failing to disclose material information.**

32 A person who knowingly conceals or fails to disclose information that is required to
 33 be disclosed on a statement of economic interest under this Article shall be punished as
 34 a Class 2 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

35 **"§ 120-321. Penalty for false or misleading information.**

36 A person who provides false or misleading information on a statement of economic
 37 interest as required under this Article knowing that the information is false or
 38 misleading shall be punished as a Class F felon and shall be subject to disciplinary
 39 action under G.S. 120-325.

40 **"§ 120-322 through 324. [Reserved]**

41 "Part 5. Violation Consequences.

42 **"§ 120-325. Violation consequences.**

43 (a) Violation of this Article by any legislator or legislative employee is grounds
 44 for disciplinary action. Except as specifically provided in this Article or for perjury

1 under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation
2 of this Article.

3 (b) The willful failure of any legislator to comply with this Article shall be
4 deemed a violation of this Article for purposes of G.S. 120-306.

5 (c) Nothing in this Article affects the power of the State to prosecute any person
6 for any violation of the criminal law.

7 (d) The Legislative Ethics Committee may seek to enjoin violations of
8 G.S. 120-288."

9 **SECTION 3.** Article 7 of Chapter 120 of the General Statutes is amended by
10 adding the following new section to read:

11 "**§ 120-32.6. Certain employment authority.**

12 G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

13 **SECTION 4.** Section 1 of this Act becomes effective January 1, 2007. The
14 remainder of this act becomes effective October 1, 2006, and applies to persons holding
15 office and employed on or after January 1, 2007, and acts and conflicts of interest that
16 arise on or after January 1, 2007.