

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1843
Committee Substitute Favorable 5/16/06

Short Title: Revise Legislative Ethics Act - 1.

(Public)

Sponsors:

Referred to:

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 Article 14 of Chapter 120 of the General Statutes is repealed.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.

25 i. Every other business interest, including ownership or use of
26 land for income.

27 (2) Business associate. – A partner, or member or manager of a limited
28 liability company.

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

- 1 a. Owning, either individually or collectively, a legal, equitable, or
2 beneficial interest of ten thousand dollars (\$10,000) or more 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 legislator, the legislator's immediate family, or a business
8 with which associated in an aggregate amount of five thousand
9 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 legislator, the legislator's immediate
14 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 extended family member; or (iii) acting as a trustee
22 of a trust for the benefit of another.
- 23 d. Holding the position of associate, director, officer, business
24 associate, or proprietor of any business, irrespective of the
25 amount of compensation received.
- 26 (17) Public event. – An organized gathering of individuals open to the
27 general public or to which a legislator or legislative employee is
28 invited along with the entire membership of the House, the Senate, a
29 committee, a subcommittee, a county legislative delegation, a joint
30 committee or a legislative caucus and to which at least ten employees
31 or members of the principal actually attend.
- 32 (18) Vested trust. – A trust, annuity, or other funds held by a trustee or
33 other third party for the benefit of the legislator or a member of the
34 legislator's immediate family. A vested trust shall not include a widely
35 held investment fund, including a mutual fund, regulated investment
36 company, or pension or deferred compensation plan, if:
- 37 a. The legislator or a member of the legislator's immediate family
38 neither exercises nor has the ability to exercise control over the
39 financial interests held by the fund; and
- 40 b. The fund is publicly traded, or the fund's assets are widely
41 diversified.

42 "§ 120-282 through 120-285. [Reserved]

43 "Part 2. Ethical Standards for Legislators.

44 "§ 120-286. Bribery, etc.

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

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

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

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

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

23 **"§ 120-287. Use of public position for private gain.**

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

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

40 (c) No legislator shall use or permit the use of State funds for any advertisement
41 or public service announcement in a newspaper, on radio, or on television that contains
42 that legislator's name, picture, or voice, except in case of State or national emergency
43 and only if the announcement is reasonably necessary to their official function.

44 **"§ 120-288. Disclosure of confidential information.**

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

4 **"§ 120-289. Personnel-related action unethical.**

5 It shall be unethical for a legislator to take, promise, or threaten any legislative
6 action for the purpose of influencing or in retaliation for any action regarding the hiring,
7 promotion, grievance, or disciplinary action of a State employee subject to Chapter 126
8 of the General Statutes.

9 **"§ 120-290. Gifts.**

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

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

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

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

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

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

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

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

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

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

37 **"§ 120-291. Other rules of conduct.**

38 (a) A legislator shall make a due and diligent effort before taking any action,
39 including voting or participating in discussions with other legislators, to determine
40 whether the legislator has a conflict of interest. If the legislator is unable to determine
41 whether or not a conflict of interest may exist, the legislator has a duty to inquire of the
42 Committee as to that conflict.

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

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

3 **"§ 120-292. Participation in legislative actions.**

4 (a) Except as permitted by subsection (c) of this section, no legislator shall
5 knowingly participate in a legislative action if the legislator, a member of the legislator's
6 extended family, the legislator's client, or a business with which the legislator is
7 associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit
8 from, the matter under consideration, which would impair the legislator's independence
9 of judgment or from which it could reasonably be inferred that the interest or benefit
10 would influence the legislator's participation in the legislative action. A potential benefit
11 includes a detriment to (i) a business competitor of the legislator, (ii) a member of the
12 legislator's extended family, or (iii) a business with which the legislator is associated.

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

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

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

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

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

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

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

37 **"§ 120-293. Employment of members of legislator's extended family.**

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

42 **"§ 120-294 through 299. [Reserved]**

43 "Part 3. Legislative Ethics Committee.

44 **"§ 120-300. Legislative Ethics Committee established.**

1 There is established the Legislative Ethics Committee.

2 **"§ 120-301. Membership.**

3 (a) The Legislative Ethics Committee shall consist of 12 members of the General
4 Assembly, three elected by a caucus of the majority party of the Senate, three elected by
5 a caucus of the minority party of the Senate, three elected by a caucus of the majority
6 party of the House of Representatives, and three elected by a caucus of the minority
7 party of the House of Representatives.

8 (b) The President Pro Tempore of the Senate and the Speaker of the House, as
9 the appointing officers, shall each designate a cochair of the Legislative Ethics
10 Committee from the membership of the Committee. The cochair appointed by the
11 President Pro Tempore of the Senate shall preside over the Committee during each
12 odd-numbered year, and the cochair appointed by the Speaker of the House shall preside
13 in each even-numbered year. However, a cochair may preside at any time during the
14 absence of the presiding cochair or upon the presiding cochair's designation. In the
15 event a cochair is unable to act as cochair on a specific matter before the Committee,
16 and so indicates in writing to the appointing officer and the Committee, the respective
17 appointing officer shall designate a member of the Committee to serve as cochair for
18 that specific matter.

19 **"§ 120-302. Term of office; vacancies.**

20 (a) Appointments to the Legislative Ethics Committee shall be made
21 immediately after the convening of the regular session of the General Assembly in
22 odd-numbered years. The respective caucuses shall have seven days immediately
23 following the day of the convening of the regular session of the General Assembly in
24 odd-numbered years to meet and elect members to the Committee. If any caucus fails to
25 elect all members of the Committee as provided in G.S. 120-301(a) within the
26 seven-day period, the President Pro Tempore of the Senate shall make appointments to
27 the Committee from the Senate for the unfilled positions and the Speaker of the House
28 shall make appointments to the Committee from the House for the unfilled positions,
29 with appointees from the political party of the caucus that failed to elect the member.
30 Appointees shall serve until the expiration of the appointee's then-current terms as
31 members of the General Assembly.

32 (b) A vacancy occurring for any reason during a term shall be filled for the
33 unexpired term by the authority that made the original appointment within seven days in
34 a manner consistent with subsection (a) of this section. The person appointed to fill the
35 vacancy shall, if possible, be a member of the same political party as the member who
36 caused the vacancy.

37 (c) In the event a member of the Committee is unable to act on a specific matter
38 before the Committee, and so indicates in writing to the appointing authority and the
39 Committee, the appointing authority may appoint another member of the respective
40 caucus to serve as a member of the Committee for the specific matter only. If on any
41 specific matter, the number of members of the Committee who are unable to act on a
42 specific matter exceeds four members and the respective caucus fails to fill the position
43 under this subsection within seven days of notice, the appropriate appointing officer

1 shall appoint other members of the General Assembly to serve as members of the
2 Committee for that specific matter only, consistent with provisions of this section.

3 **"§ 120-303. Quorum; expenses of members.**

4 (a) Eight members constitute a quorum of the Committee. A vacancy on the
5 Committee does not impair the right of the remaining members to exercise all the
6 powers of the Committee.

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

11 **"§ 120-304. Powers and duties of Committee.**

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

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

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

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

25 "**§ 120-305. Continuing study of ethical questions.**"

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

32 "**§ 120-306. Investigations by the Committee.**"

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

- 37 (1) The application or alleged violation of this Article.
38 (2) The application or alleged violation of rules adopted in accordance
39 with G.S. 120-304.
40 (3) The alleged violation of the criminal law by a legislator while acting in
41 the legislator's official capacity as a participant in the lawmaking
42 process.

43 (b) Complaint. –

1 (1) A complaint filed under this Article shall state the name, address, and
2 telephone number of the person filing the complaint, the name of the
3 legislator against whom the complaint is filed, and a concise statement
4 of the nature of the complaint and specific facts indicating that a
5 violation of this Article has occurred, the date the alleged violation
6 occurred, and either (i) that the contents of the complaint are within the
7 knowledge of the individual verifying the complaint, or (ii) the basis
8 upon which the individual verifying the complaint believes the
9 allegations to be true.

10 (2) The Committee may decline to accept or investigate any attempted
11 complaint that does not meet all of the requirements set forth in
12 subdivision (1) of this subsection, or the Committee may, in its sole
13 discretion, request additional information to be provided by the
14 complainant within a specified period of time of no less than seven
15 business days.

16 (3) In addition to subdivision (2) of this subsection, the Committee may
17 decline to accept or further investigate a complaint if it determines that
18 any of the following apply:

19 a. The complaint is frivolous or brought in bad faith.

20 b. The individuals and conduct complained of have already been
21 the subject of a prior complaint.

22 c. The conduct complained of is primarily a matter more
23 appropriately and adequately addressed and handled by other
24 federal, State or local agencies or authorities, including law
25 enforcement authorities. If other agencies or authorities are
26 conducting an investigation of the same actions or conduct
27 involved in a complaint filed under this section, the Committee
28 may stay its complaint investigation pending final resolution of
29 the other investigation.

30 (4) The Committee shall send a copy of the complaint to the legislator
31 who is the subject of the complaint within 30 days of the filing.

32 (c) Investigation of Complaints by the Committee. – The Committee shall
33 investigate all complaints properly before the Committee in a timely manner. The
34 Committee shall initiate an investigation of a complaint within 60 days of the filing of
35 the complaint, or the complaint shall then become a public record. In determining
36 whether there is reason to believe that a violation has or may have occurred, a member
37 of the Committee can take general notice of available information even if not formally
38 provided to the Committee in the form of a complaint. The Committee may utilize the
39 services of a hired investigator when conducting investigations.

40 (d) Investigation by the Committee of Matters Other Than Complaints. – The
41 Committee may investigate matters other than complaints properly before the
42 Committee under subsection (a) of this section. For any investigation initiated under this
43 subsection, the Committee may take any action it deems necessary or appropriate to
44 further compliance with this Article, including the initiation of a complaint, the issuance

1 of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement
2 or other authorities pursuant to subsection (i)(2) of this section.

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

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

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

21 (h) Hearing. –

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

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

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

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

33 b. The hearing shall be open to the public. The deliberations by
34 the Committee on a complaint may be held in closed session,
35 but the decision of the Committee shall be announced in open
36 session.

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

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

- 1 (1) If the Committee finds that the alleged violation is not established by
2 clear and convincing evidence, the Committee shall dismiss the
3 complaint.
- 4 (2) If the Committee finds that the alleged violation of this Article is
5 established by clear and convincing evidence, the Committee shall do
6 one or more of the following:
- 7 a. Issue a public or private admonishment to the legislator.
8 b. Refer the matter to the Attorney General for investigation and
9 referral to the district attorney for possible prosecution or the
10 appropriate house for appropriate action, or both, if the
11 Committee finds substantial evidence of a violation of a
12 criminal statute.
- 13 c. Refer the matter to the appropriate house for appropriate action,
14 which shall include censure and expulsion, if the Committee
15 finds substantial evidence of a violation of this Article or other
16 unethical activities.
- 17 (3) If the Committee issues an admonishment as provided in subdivision
18 (2)a. of this subsection, the legislator affected may upon written
19 request to the Committee have the matter referred as provided under
20 subdivision (2)c. of this subsection.

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

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

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

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

38 **"§ 120-307. Advisory opinions.**

39 (a) At the request of any legislator, the Committee may render advisory opinions
40 on specific questions involving the meaning and application of this Article and the
41 legislator's compliance with the requirements of this Article. The request shall be in
42 writing, electronic or otherwise, and relate prospectively to real or reasonably
43 anticipated fact settings or circumstances. The Committee shall issue advisory opinions
44 having prospective application only. Reliance upon a requested written advisory opinion

1 on a specific matter shall immunize the legislator, on that matter, from a finding by the
2 Committee of a violation of this Article.

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

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

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

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

13 **"§ 120-308. Ethics education program.**

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

24 **"§ 120-309 through 314. [Reserved]**

25 "Part 4. Public Disclosure of Economic Interests.

26 **"§ 120-315. Purpose.**

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

42 **"§ 120-316. Statement of economic interest; filing required.**

43 (a) Every legislator who is elected or appointed shall file a statement of
44 economic interest with the Committee before the legislator's initial election or

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

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

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

27 (d) If a candidate for an office subject to this Article does not file the statement
28 of economic interest within the time required by this Article, the county board of
29 elections immediately shall notify the candidate by certified mail, restricted delivery to
30 addressee only, that, if the statement is not received within 15 days, the candidate shall
31 not be certified as the party nominee, or in the case of a candidate nominated by a new
32 party under G.S. 163-98 that the candidate shall be decertified by the State Board of
33 Elections. If the statement is not received within 15 days of notification, the board of
34 elections authorized to certify a candidate as nominee to the office shall not certify the
35 candidate as nominee under any circumstances, regardless of the number of candidates
36 for the nomination and regardless of the number of votes the candidate receives in the
37 primary. If the delinquent candidate was nominated by a new party under G.S. 163-98,
38 the State Board of Elections shall decertify the candidate, and no county board of
39 elections shall place the candidate's name on the general election ballot as nominee of
40 the party. A vacancy thus created on a party's ticket shall be considered a vacancy for
41 the purposes of G.S. 163-114, and shall be filled according to the procedures set out in
42 G.S. 163-114.

43 (e) Every person appointed to fill a vacant seat in the General Assembly under
44 G.S. 163-11 shall file with the Legislative Services Office and the county board of

1 elections of each county in the senatorial or representative district a statement of
2 economic interest as specified in this Article no later than 10 days after taking the oath
3 of office. If a person required to file a statement of economic interest as required under
4 this section fails to file the statement within the time required by this section, the
5 Legislative Services Officer shall notify the person that the statement must be received
6 within 15 days of notification. If the statement is not received within the time allowed in
7 this subsection, then the Legislative Services Officer shall notify the Legislative Ethics
8 Committee of the failure of the person to file the statement.

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

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

16 **"§ 120-317. Statements of economic interest as public records.**

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

20 **"§ 120-318. Contents of statement.**

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

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

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

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

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

37 c. Personal property sold to or bought from the State within the
38 preceding two years.

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

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

42 f. The name of each nonpublicly owned company or business
43 entity in which the value of securities or other equity interests
44 held exceeds ten thousand dollars (\$10,000), including interests

1 in partnerships, limited partnerships, joint ventures, limited
2 liability companies or partnerships, and closely held
3 corporations. For each company or business entity listed under
4 this sub-subdivision, the person shall indicate whether the listed
5 company or entity owns securities or equity interests exceeding
6 a value of ten thousand dollars (\$10,000) in any other
7 companies or entities. If so, then the other companies or entities
8 shall also be listed with a brief description of the business
9 activity of each.

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

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

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

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

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

44 1. Administrative law.

- 1 2. Admiralty.
- 2 3. Corporation law.
- 3 4. Criminal law.
- 4 5. Decedents' estates.
- 5 6. Insurance law.
- 6 7. Labor law.
- 7 8. Local government.
- 8 9. Negligence – defendant.
- 9 10. Negligence – plaintiff.
- 10 11. Real property.
- 11 12. Taxation.
- 12 13. Utilities regulation.
- 13 l. A list of all nonpublicly owned businesses with which, during
14 the past five years, the person or the person's immediate family
15 has been associated or has an economic interest, indicating the
16 time period of that association and the relationship with each
17 business as an officer, employee, director, partner, or owner.
18 The list also shall indicate whether each does business with, or
19 is regulated by, the State and the nature of the business, if any,
20 done with the State.
- 21 m. A list of all gifts, and the sources of the gifts, of a value of more
22 than two hundred dollars (\$200.00) received during the 12
23 months preceding the date of the statement from sources other
24 than the person's extended family, and a list of all gifts, and the
25 sources of the gifts, valued in excess of one hundred dollars
26 (\$100.00) received from any source having business with, or
27 regulated by, the State.
- 28 n. A list of all bankruptcies filed during the preceding five years
29 by the person, the person's spouse, or any entity in which the
30 person, or the person's spouse, has been associated financially.
31 A brief summary of the facts and circumstances regarding each
32 listed bankruptcy shall be provided.
- 33 o. A list of all directorships on all business boards of which the
34 person or the person's immediate family is a member.
- 35 (3) Each statement of economic interest shall contain the person's sworn
36 certification that the person has read the statement and that, to the best
37 of the person's knowledge and belief, the statement is true, correct, and
38 complete. The person's sworn certification also shall provide that the
39 person has not transferred, and will not transfer, any asset, interest, or
40 other property for the purpose of concealing it from disclosure while
41 retaining an equitable interest therein.
- 42 (4) If the person believes a potential for conflict exists, the person has a
43 duty to inquire of the Committee as to that potential conflict.

1 **(b)** All information provided in the statement of economic interest shall be
2 current as of the last day of December of the year preceding the date the statement of
3 economic interest was signed.

4 **(c)** The Committee shall prepare a written evaluation of each statement of
5 economic interest relative to conflicts of interest and potential conflicts of interest. The
6 Committee shall submit the evaluation to all of the following:

7 **(1)** The person who submitted the statement.

8 **(2)** The Legislative Services Office.

9 **"§ 120-319. Failure to file.**

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

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

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

26 **"§ 120-320. Concealing or failing to disclose material information.**

27 A person who knowingly conceals or fails to disclose information that is required to
28 be disclosed on a statement of economic interest under this Article shall be punished as
29 a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

30 **"§ 120-321. Penalty for false or misleading information.**

31 A person who provides false or misleading information on a statement of economic
32 interest as required under this Article knowing that the information is false or
33 misleading shall be punished as a Class H felon and shall be subject to disciplinary
34 action under G.S. 120-325.

35 **"§ 120-322 through 324. [Reserved]**

36 "Part 5. Violation Consequences.

37 **"§ 120-325. Violation consequences.**

38 **(a)** Violation of this Article by any legislator or legislative employee is grounds
39 for disciplinary action. Except as specifically provided in this Article or for perjury
40 under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation
41 of this Article.

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

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

3 (d) The Legislative Ethics Committee may request the Office of the Attorney
4 General to seek to enjoin violations of G.S. 120-288."

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

7 **"§ 120-32.6. Certain employment authority.**

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

9 **SECTION 4.** Section 1 of this act becomes effective January 1, 2007. The
10 remainder of this act becomes effective October 1, 2006, applies to persons holding
11 office and employed on or after January 1, 2007, to acts and conflicts of interest that
12 arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007.
13 Prosecutions for offenses or ethics violations committed before January 1, 2007, are not
14 abated or affected by this act and the statutes that would be applicable but for this act
15 remain applicable to those prosecutions.