

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 600

Short Title: Reform Legislative Ethics. (Public)

Sponsors: Representatives Blust; Current, Dollar, Gulley, Hilton, Samuelson, and Setzer.

Referred to: Ethics, if favorable, Judiciary I.

March 13, 2007

A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT THE STATE ETHICS COMMISSION SHALL HEAR
ETHICS COMPLAINTS AGAINST LEGISLATORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-10(a) is amended by adding a new subdivision to read:

"(5a) Send recommendations for punishment of legislators and legislative employees to the Committee."

SECTION 2. G.S. 138A-12 reads as rewritten:

"§ 138A-12. **Inquiries by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall conduct inquiries of complaints alleging unethical conduct by covered persons and legislative employees, as set forth in this section.

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an inquiry into any of the following:

- (1) The application or alleged violation of this Chapter.
- (2) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.
- (3) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.
- (4) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

- 1 (1) A sworn complaint filed under this Chapter shall state the name,
2 address, and telephone number of the person filing the complaint, the
3 name and job title or appointive position of the person against whom
4 the complaint is filed, and a concise statement of the nature of the
5 complaint and specific facts indicating that a violation of this Chapter
6 or Chapter 120 of the General Statutes has occurred, the date the
7 alleged violation occurred, and either (i) that the contents of the
8 complaint are within the knowledge of the individual verifying the
9 complaint, or (ii) the basis upon which the individual verifying the
10 complaint believes the allegations to be true.
- 11 (2) Except as provided in subsection (d) of this section, a complaint filed
12 under this Chapter must be filed within two years of the date the
13 complainant knew or should have known of the conduct upon which
14 the complaint is based.
- 15 (3) The Commission may decline to accept, refer, or conduct an inquiry
16 into any complaint that does not meet all of the requirements set forth
17 in subdivision (1) of this subsection, or the Commission may, in its
18 sole discretion, request additional information to be provided by the
19 complainant within a specified period of time of no less than seven
20 business days.
- 21 (4) In addition to subdivision (3) of this subsection, the Commission may
22 decline to accept, refer, or conduct an inquiry into a complaint if it
23 determines that any of the following apply:
- 24 a. The complaint is frivolous or brought in bad faith.
25 b. The individuals and conduct complained of have already been
26 the subject of a prior complaint.
27 c. The conduct complained of is primarily a matter more
28 appropriately and adequately addressed and handled by other
29 federal, State, or local agencies or authorities, including law
30 enforcement authorities. If other agencies or authorities are
31 conducting an investigation of the same actions or conduct
32 involved in a complaint filed under this section, the
33 Commission may stay its complaint inquiry pending final
34 resolution of the other investigation.
- 35 (5) The Commission shall send a copy of the complaint to the covered
36 person or legislative employee who is the subject of the complaint and
37 the employing entity, within 30 days of the filing.
- 38 (d) Conduct of Inquiry of Complaints by the Commission. – The Commission
39 shall conduct an inquiry into all complaints properly before the Commission in a timely
40 manner. The Commission shall initiate an inquiry into a complaint within 60 days of the
41 filing of the complaint. The Commission is authorized to initiate inquiries upon request
42 of any member of the Commission if there is reason to believe that a covered person or
43 legislative employee has or may have violated this Chapter. Commission-initiated
44 complaint inquiries under this section shall be initiated within two years of the date the

1 Commission knew of the conduct upon which the complaint is based, except when the
2 conduct is material to the continuing conduct of the duties in office. In determining
3 whether there is reason to believe that a violation has or may have occurred, a member
4 of the Commission may take general notice of available information even if not
5 formally provided to the Commission in the form of a complaint. The Commission may
6 utilize the services of a hired investigator when conducting inquiries.

7 (e) Covered Person and Legislative Employees Cooperation With Inquiry. –
8 Covered persons and legislative employees shall promptly and fully cooperate with the
9 Commission in any Commission-related inquiry. Failure to cooperate fully with the
10 Commission in any inquiry shall be grounds for sanctions as set forth in G.S. 138A-45.

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

17 (g) Commission Inquiries. – If at the end of its preliminary inquiry, the
18 Commission determines to proceed with further inquiry into the conduct of a covered
19 person or legislative employee, the Commission shall provide written notice to the
20 individual who filed the complaint and the covered person or legislative employee as to
21 the fact of the inquiry and the charges against the covered person or legislative
22 employee. The covered person or legislative employee shall be given an opportunity to
23 file a written response with the Commission.

24 (h) Action on Inquiries. – The Commission shall conduct inquiries into
25 complaints to the extent necessary to either dismiss the complaint for lack of probable
26 cause of a violation under this section, or:

27 (1) For public ~~servants,~~servants, legislators, and legislative employees,
28 decide to proceed with a hearing under subsection (i) of this section.

29 ~~(2) For legislators, except the Lieutenant Governor, refer the complaint to~~
30 ~~the Committee.~~

31 ~~(3)~~(2) For judicial officers, refer the complaint to the Judicial Standards
32 Commission for complaints against justices and judges, to the senior
33 resident superior court judge of the district or county for complaints
34 against district attorneys, or to the chief district court judge for the
35 district or county for complaints against clerks of court.

36 ~~(4) For legislative employees, refer the complaint to the employing entity.~~

37 (i) Hearing. –

38 (1) The Commission shall give full and fair consideration to all complaints
39 received against a public ~~servant,~~servant, legislator, or legislative
40 employee. If the Commission determines that the complaint cannot be
41 resolved without a hearing, or if the public ~~servant,~~servant, legislator,
42 or legislative employee requests a hearing, a hearing shall be held.

43 (2) The Commission shall send a notice of the hearing to the complainant,
44 and the public ~~servant,~~servant, legislator, or legislative employee. The

1 notice shall contain the time and place for a hearing on the matter,
2 which shall begin no less than 30 days and no more than 90 days after
3 the date of the notice.

4 (3) The Commission shall make available to the public ~~servant~~servant,
5 legislator, or legislative employee prior to a hearing all relevant
6 information collected by the Commission in connection with its
7 investigation of a complaint.

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

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

10 b. The hearing shall be held in closed session unless the public
11 ~~servant~~servant, legislator, or legislative employee requests that
12 the hearing be held in open session. In any event, the
13 deliberations by the Commission on a complaint may be held in
14 closed session.

15 c. The public ~~servant~~servant, legislator, or legislative employee
16 being investigated shall have the right to present evidence, call
17 and examine witnesses, cross-examine witnesses, introduce
18 exhibits, and be represented by counsel.

19 (j) Settlement of Inquiries. – The public ~~servant~~servant, legislator, or legislative
20 employee who is the subject of the complaint and the staff of the Commission may meet
21 by mutual consent before the hearing to discuss the possibility of settlement of the
22 inquiry or the stipulation of any issues, facts, or matters of law. Any proposed
23 settlement of the inquiry is subject to the approval of the Commission.

24 (k) Disposition of Inquiries. – After hearing, the Commission shall dispose of the
25 matter in one or more of the following ways:

26 (1) If the Commission finds substantial evidence of an alleged violation of
27 a criminal statute, the Commission shall refer the matter to the
28 Attorney General for investigation and referral to the district attorney
29 for possible prosecution.

30 (2) If the Commission finds that the alleged violation is not established by
31 clear and convincing evidence, the Commission shall dismiss the
32 complaint.

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

36 a. Issue a private admonishment to the public servant and notify
37 the employing entity, if applicable. Such notification shall be
38 treated as part of the personnel record of the public servant.

39 b. Refer the matter for appropriate action to the Governor and the
40 employing entity that appointed or employed the public servant
41 or of which the public servant is a member.

42 c. Refer the matter for appropriate action to the Chief Justice for
43 judicial employees.

- 1 d. Refer the matter to the Principal Clerks of the House of
2 Representatives and Senate of the General Assembly for
3 constitutional officers of the State.
- 4 e. Refer the matter for appropriate action to the principal clerk of
5 the house of the General Assembly that elected the public
6 servant for members of the Board of Governors.
- 7 f. Issue recommendations for punishment of the legislator or
8 legislative employee under subsection (o) of this section and
9 refer the matter to the Committee.

10 (l) Notice of Dismissal. – Upon the dismissal of a complaint under this section,
11 the Commission shall provide written notice of the dismissal to the individual who filed
12 the complaint and the person against whom the complaint was filed. The Commission
13 shall forward copies of complaints and notices of dismissal of complaints against
14 legislators to the Committee, against legislative employees to the employing entity for
15 legislative employees, and against judicial officers to the Judicial Standards
16 Commission for complaints against justices and judges, and the senior resident superior
17 court judge of the district or county for complaints against district attorneys, or the chief
18 district court judge of the district or county for complaints against clerks of court.

19 (m) Reports and Records. – The Commission shall render the results of its inquiry
20 in writing. When a matter is referred under subdivision (h)(2) ~~and (3)~~, or subsection (k)
21 of this section, the Commission's report shall consist of the complaint, response, and
22 detailed results of its inquiry in support of the Commission's finding of a violation under
23 this Chapter.

24 (n) Confidentiality. – Complaints and responses filed with the Commission and
25 reports and other investigative documents and records of the Commission connected to
26 an inquiry under this section shall be confidential and not matters of public record,
27 except when the covered person or legislative employee under inquiry requests in
28 writing that the records and findings be made public prior to the time the employing
29 entity imposes public sanctions. At such time as public sanctions are imposed on a
30 covered person, the complaint, response, and Commission's report to the employing
31 entity shall be made public.

32 (o) Recommendations of Sanctions. – After referring a matter under subsection
33 (k) of this section, if requested by the entity to which the matter was referred, the
34 Commission may recommend sanctions or issue rulings as it deems necessary or
35 appropriate to protect the public interest and ensure compliance with this Chapter. In
36 recommending appropriate sanctions, the Commission may consider the following
37 factors:

- 38 (1) The public servant's prior experience in an agency or on a board and
39 prior opportunities to learn the ethical standards for a public servant as
40 set forth in Article 4 of this Chapter, including those dealing with
41 conflicts of interest.
- 42 (2) The number of ethics violations.
- 43 (3) The severity of the ethics violations.

- 1 (4) Whether the ethics violations involve the public ~~servant's~~ servant's,
2 legislator's, or legislative employee's financial interests or arise from
3 an appearance of conflict of interest.
- 4 (5) Whether the ethics violations were inadvertent or intentional.
- 5 (6) Whether the public ~~servant~~ servant, legislator, or legislative employee
6 knew or should have known that the improper conduct was a violation
7 of this Chapter.
- 8 (7) Whether the public ~~servant~~ servant, legislator, or legislative employee
9 has previously been advised or warned by the Commission.
- 10 (8) Whether the conduct or situation giving rise to the ethics violation was
11 pointed out to the public ~~servant~~ servant, legislator, or legislative
12 employee in the Commission's Statement of Economic Interest
13 evaluation letter issued under G.S. 138A-24(e).
- 14 (9) The public ~~servant's~~ servant's, legislator's, or legislative employee's
15 motivation or reason for the improper conduct or action, including
16 whether the action was for personal financial gain versus protection of
17 the public interest.

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

26 (p) Authority of Employing Entity. – Any action or failure to act by the
27 Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of
28 any of the applicable employing entities to discipline the covered person or legislative
29 employee.

30 (q) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction
31 to investigate possible criminal violations of this Chapter for a period of one year
32 following the date a person, who was formerly a public servant or legislative employee,
33 ceases to be a public servant or legislative employee for any investigation that
34 commenced prior to the date the public servant or legislative employee ceases to be a
35 public servant or legislative employee.

36 (r) Subpoena Authority. – The Commission may petition the Superior Court of
37 Wake County for the approval to issue subpoenas and subpoenas duces tecum as
38 necessary to conduct investigations of alleged violations of this Chapter. The court shall
39 authorize subpoenas under this subsection when the court determines the subpoenas are
40 necessary for the enforcement of this Chapter. Subpoenas issued under this subsection
41 shall be enforceable by the court through contempt powers. Venue shall be with the
42 Superior Court of Wake County for any person covered by this Chapter, and personal
43 jurisdiction may be asserted under G.S. 1-75.4.

1 (s) Reports. – The number of complaints referred under this section shall be
2 reported under G.S. 138A-10(a)(12).

3 (t) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction
4 of the Committee or the Judicial Standards Commission with regards to legislative or
5 judicial misconduct, and jurisdiction under this section shall be concurrent with the
6 jurisdiction of the Committee and the Judicial Standards Commission."

7 **SECTION 3.** G.S. 138A-8 reads as rewritten:

8 "**§ 138A-8. Meetings and quorum.**

9 The Commission shall meet at least quarterly and at other times as called by its chair
10 or by four of its members. In the case of a vacancy in the chair, meetings may be called
11 by the vice-chair. Five members of the Commission constitute a quorum. All meetings
12 of the Commission shall be subject to Article 33C of Chapter 143 of the General
13 Statutes."

14 **SECTION 4.** This act becomes effective January 1, 2008.