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SESSION 2013

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SENATE DRS15080-RNz-1A* (10/16)

Short Title: Clarify LEC Procedures/TC. (Public)

Sponsors: Senators Hartsell, Soucek, Newton (Primary Sponsors); and Blue.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE LEGISLATIVE ETHICS COMMITTEE'S INVESTIGATIVE
3 PROCEDURES AND TO MAKE OTHER TECHNICAL CHANGES AS
4 RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 120-103.1 reads as rewritten:

7 "§ 120-103.1. Investigations by the Committee.

8 (a) Institution of Proceedings. – On its own motion, upon receipt by the Committee of a
9 signed and sworn allegation of unethical conduct by a legislator, or upon receipt of a referral of
10 a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the
11 Committee shall conduct an investigation into any of the following:

12 (1) The application or alleged violation of Chapter 138A of the General Statutes
13 and of this Article.

14 (2) Repealed by Session Laws 2007-348, s. 2, effective August 9, 2007.

15 (3) The alleged violation of the criminal law by a legislator while acting in the
16 legislator's official capacity as a participant in the lawmaking process.

17 (a1) Complaints on Its Own Motion. – An investigation initiated by the Committee on its
18 own motion instituted under subsection (a) of this section shall be treated as a complaint for
19 purposes of this section and need not be sworn or verified. Any requirements under this section
20 that require the Committee to notify the complainant shall not apply to complaints taken up by
21 the Committee on its own motion. If the Committee is acting on a complaint referred to the
22 Committee by the Commission where the Commission was acting on its own motion, the
23 Committee shall be deemed to have satisfied the notice requirements by providing notice to the
24 Commission. Any notice provided to the Commission under this section is confidential and
25 shall not be disclosed by the Commission.

26 (a2) Notice of Allegation. – Upon receipt by the Committee of a complaint or the referral
27 of a complaint, or upon the initiation by the Committee of an inquiry under subsection (a1) of
28 this section, the Committee shall immediately provide written notice to the legislator who is the
29 subject of the allegation or inquiry.

30 (b) Initial Consideration of a Complaint. – All of the following shall apply to the
31 Committee's initial consideration of a complaint:

32 (1) The Committee may, in its sole discretion, request additional information to
33 be provided by the complainant within a specified period of time of no less
34 than seven business days.

35 (2) The Committee may decline to accept or further investigate a complaint if it
36 determines that any of the following apply:



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- 1 a. The complaint is frivolous or brought in bad faith.
- 2 b. The individuals and conduct complained of have already been the
- 3 subject of a prior complaint.
- 4 c. The conduct complained of is primarily a matter more appropriately
- 5 and adequately addressed and handled by other federal, State, or
- 6 local agencies or authorities, including law enforcement authorities.
- 7 If other agencies or authorities are conducting an investigation of the
- 8 same actions or conduct involved in a complaint filed under this
- 9 section, the Committee may stay its complaint investigation pending
- 10 final resolution of the other investigation.
- 11 (3) Repealed by Session Laws 2009-549, s. 1, effective August 28, 2009.
- 12 (4) Notwithstanding any other provisions of this section, complaints filed with
- 13 the Committee concerning the conduct of the Lieutenant Governor shall be
- 14 referred to the State Ethics Commission under Chapter 138A of the General
- 15 Statutes without investigation by the Committee.
- 16 (c) Investigation of Complaints. – The Committee shall investigate all complaints
- 17 properly before the Committee in a timely manner. If the Committee receives a complaint or a
- 18 referral of a complaint while the General Assembly is in Regular Session, the Committee shall
- 19 proceed under this subsection ~~Within~~ within 10 business days of receiving a ~~the~~ complaint or a
- 20 referral ~~the~~ referral. If the Committee receives a complaint or a referral of a complaint at any
- 21 other time, the Committee shall proceed under this subsection within 20 business days of
- 22 receiving the complaint or the referral. ~~of a complaint to the Committee, Within the applicable~~
- 23 time period, the Committee shall do at least one of the following:
- 24 (1) Dismiss the complaint.
- 25 (2) Initiate a preliminary investigation of the complaint.
- 26 (3) Refer the complaint for further investigation and a hearing in accordance
- 27 with subsection (i) of this section.
- 28 (4) Make recommendations to the house in which the legislator who is the
- 29 subject of the complaint is a member without further investigation, if either
- 30 of the following apply:
- 31 a. ~~the~~ The referral is from the State Ethics Commission.
- 32 b. The Committee determines it does not have jurisdiction over the
- 33 alleged conduct, but if true, the alleged conduct may be unethical.
- 34 (c1) Preliminary Investigation. – The Committee may initiate a preliminary investigation
- 35 if it determines that the complaint alleges facts sufficient to constitute a violation of matters
- 36 over which the Committee has jurisdiction as set forth in subsection (a) of this section. In
- 37 determining whether there is reason to believe that a violation has or may have occurred, a
- 38 member of the Committee may take general notice of available information even if not
- 39 formally provided to the Committee in the form of a complaint. The Committee may utilize the
- 40 services of a hired investigator when conducting investigations. The Committee shall provide
- 41 written notification of the initiation of ~~an~~ a preliminary investigation under this section
- 42 subsection to the legislator who is the subject of the complaint within 10 days of the date of the
- 43 Committee's decision to initiate an investigation. The ~~Commission~~ Committee shall conclude
- 44 the preliminary inquiry within 20 business ~~days~~ days of initiating the preliminary investigation
- 45 but may extend the amount of time if the Committee determines it does not have sufficient
- 46 information to proceed under subsection (g) or (h) of this section.
- 47 (d) Repealed by Session Laws 2009-549, s. 1, effective August 28, 2009.
- 48 (e) Investigation by the Committee of Matters Other Than Complaints. – The
- 49 Committee may investigate matters other than complaints properly ~~before~~ within the jurisdiction
- 50 of the Committee under subsection (a) of this section. For any investigation initiated under this
- 51 subsection, the Committee may take any action it deems necessary or appropriate to further

1 compliance with this Article, including the initiation of a complaint, the issuance of an advisory
2 opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities
3 pursuant to subdivision (j)(2) of this section.

4 (f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully
5 cooperate with the Committee in any Committee-related investigation. Failure to cooperate
6 fully with the Committee in any investigation shall be grounds for sanctions under this section.

7 (g) Dismissal of Complaint After Preliminary Investigation. – If the Committee
8 determines at the end of its preliminary investigation that the complaint does not allege facts
9 sufficient to constitute a violation of matters over which the Committee has jurisdiction as set
10 forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide
11 written notice of the dismissal to the individual who filed the complaint and to the legislator
12 against whom the complaint was filed.

13 (h) Probable Cause ~~Determination~~ Determination and Notice of Hearing. – If at the end
14 of its preliminary investigation, the Committee determines that probable cause exists to proceed
15 with further investigation into the conduct of a legislator, the Committee shall determine the
16 charges that will be the basis for further investigation of the complaint and provide written
17 notice to ~~the individual who filed the complaint and~~ the legislator that the Committee will
18 conduct further investigation and the charges against the legislator. The legislator shall be given
19 an opportunity to file a written response to the charges with the Committee.

20 ~~(h1) Consideration of Response and Notice of Hearing.~~ – The Committee shall give full
21 and fair consideration to the complaint and to the legislator's response to the complaint.
22 ~~Except as provided in subsection (h2) of this section, if~~ the Committee determines that the
23 complaint cannot be resolved without further investigation and a hearing, or if the legislator
24 requests a public hearing, the Committee shall hold a hearing on the charges against the
25 legislator. The Committee shall send a notice of the hearing to the complainant and to the
26 legislator. The notice shall contain the charges against the legislator and the time and place for
27 the hearing. The Committee shall begin the hearing no sooner than 15 days and no later than 90
28 days after the date of the notice of hearing.

29 (h2) Private Admonishment. – The Committee may issue a private admonishment
30 without holding a hearing, subject to the requirements of subsection (k) of this section.

31 (i) Hearing. – All the following shall apply to any hearing on a complaint held by the
32 Committee:

33 (1)-(3) Repealed by Session Laws 2009-549, s. 1, effective August 28, 2009.

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

35 (5) The hearing shall be open to the public, except for matters that could
36 otherwise be considered in closed session under G.S. 143-318.11, matters
37 involving minors, or matters involving a personnel record. In any event, the
38 deliberations by the ~~Commission~~ Committee on a complaint may be held in
39 closed session.

40 (6) The legislator being investigated shall have the right to present evidence, call
41 and examine witnesses, cross-examine witnesses, introduce exhibits, and be
42 represented by counsel.

43 (j) Disposition of ~~Investigations~~ Investigations After Hearing. – Except as permitted
44 under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of
45 the matter before the Committee under this section, in any of the following ways:

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

48 (2) If the Committee finds that the alleged violation is established by clear and
49 convincing evidence, the Committee shall do one or more of the following:

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

1 b. Refer the matter to the Attorney General for investigation and
2 referral to the district attorney for possible prosecution or the
3 appropriate house for appropriate action, or both, if the Committee
4 finds substantial evidence of a violation of a criminal statute.

5 c. Refer the matter to the appropriate house for appropriate action,
6 which may include censure and expulsion.

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

11 (k) Effect of Dismissal or Private Admonishment. – If the Committee dismisses a
12 complaint or issues a private admonishment prior to commencing a hearing under subsection (i)
13 of this section, the Committee shall retain its records or findings in confidence, unless the
14 legislator under inquiry requests in writing that the records and findings be made public. If the
15 Committee later finds that a legislator's subsequent unethical activities were similar to and the
16 subject of an earlier private admonishment, then the Committee may make public the earlier
17 admonishment and the records and findings related to it.

18 (l) Confidentiality. – ~~Except as provided under subsection (k) of this section, the~~ The
19 complaint, response, records, and findings of the Committee connected to an inquiry under this
20 section shall be confidential and not matters of public record, except as otherwise provided in
21 this section or when the legislator under inquiry requests in writing that the complaint,
22 response, and findings be made public. Once a hearing under subsection (i) of this section
23 commences the complaint, response, Committee's report to the house, and all other documents
24 offered at the hearing in conjunction with the complaint, that are not otherwise privileged or
25 confidential under law, shall be public records. If no hearing is held, at such time as the
26 Committee recommends sanctions to the house of which the legislator is a member, the
27 complaint, response, and Committee's report to the house shall be made public.

28 (m) Concurrent Jurisdiction. – Any action or lack of action by the Committee under this
29 section shall not limit the right of each house of the General Assembly to discipline or to expel
30 its members.

31 (n) Reports. – The Committee shall publish annual statistics on complaints filed with or
32 considered by the Committee, including the number of complaints filed, the number of
33 complaints dismissed, the number of complaints resulting in admonishment, the number of
34 complaints referred to the appropriate house for appropriate action, the number of complaints
35 referred for criminal prosecution, and the number and age of complaints pending action by the
36 Committee."

37 **SECTION 2.** G.S. 120-104(e) reads as rewritten:

38 "(e) The Committee may interpret this Article and Chapter 138A of the General Statutes
39 as it applies to legislators, except the Lieutenant Governor, and these interpretations are binding
40 on all legislators upon publication."

41 **SECTION 3.** Section 2 of this act becomes effective January 1, 2007, and applies
42 to Advisory Opinions issued by the Legislative Ethics Committee on or after that date. The
43 remainder of the act is effective when it becomes law.