

May 9, 2006

H 1844. EXECUTIVE BRANCH ETHICS ACT - 1. Filed 5/9/06. *TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.* Enacts new GS Chapter 138A, entitled the "Executive Branch Ethics Act." Currently, executive ethics is regulated by Executive Order No. One. The Order creates the State Ethics Board, requires that covered officials file annual economic interest statements, and authorizes the Board to issue advisory opinions, investigate ethics complaints filed with the Board, and conduct ethics education programs. The Board does not have enforcement authority, and enforcement of the Board's recommendations is left to the discretion of individual appointing authorities. New GS Chapter 138A codifies and expands Executive Order No. One as follows:

Article 1 – Definitions. Defines public servants covered by act to include constitutional officers of the State and certain of their staff members; employees of the Office of the Governor; State department heads appointed by the Governor; employees in certain exempt managerial and policymaking positions; all voting members of public boards; the UNC Board of Governors, voting members of the boards of trustees of UNC constituent institutions, and the president, vice-presidents, and chancellors of those institutions; voting members of the State Board of Community Colleges, the President and chief financial officer of that System, voting members of the boards of trustees of each community college, and the president and chief financial officer of each community college; and members of the State Ethics Commission.

Article 2 - Ethical Standards for Public Servants. Prohibits public servants from the following activities: (1) using their position for their personal financial benefit or for the benefit of their extended family or a business with which they are associated, or using their public position in nongovernmental advertising intended to advance their personal interests; (2) receiving anything of value in return for being influenced in the exercise of their official responsibilities, soliciting charitable gifts from subordinates, or accepting anything of monetary value from an executive or legislative lobbyist or principal or other individuals with certain business relationships with the public servant's employer (sets forth limited exceptions to general prohibition against gifts, including nonmonetary items worth \$10 and under and meals and beverages provided for immediate consumption in connection with public events); and (3) receiving an honorarium or other compensation from an outside source for fulfilling their public duties or using information gained through their position for their personal gain. Requires that public servants use due diligence to determine if they have a conflict of interest and to avoid conflicts. GS 138A-12 defines conflicts of interest for public servants, requires that public servants abstain from participating in decisions in which they may have a conflict, and provides examples of situations in which there is no conflict of interest. GS 138A-13 sets forth a process for the Ethics Commission to require that a public servant eliminate a conflict of interest. Public servants are also prohibited from hiring or supervising a member of their extended family. Authorizes each State agency to adopt more stringent ethics standards.

Article 3 – State Ethics Commission. Establishes the independent, bipartisan, seven-member State Ethics Commission. Sets forth the powers and duties of the Commission, including the authority to investigate ethics or criminal violations; establishes procedures for the filing of ethics complaints, the investigation of those complaints, and the consideration of complaints in public hearings; authorizes the issuance of advisory opinions; and requires that the Commission conduct ethics education programs. Requires that all public servants and their immediate staff participate in an ethics presentation within six months of the person's hiring or appointment or election to office and in a refresher class every two years thereafter. Requires that all heads of state agencies take an active role in ensuring compliance with GS Chapter 138A and lists specific responsibilities of agency heads with respect to ethics compliance.

Article 4 – Public Disclosure of Economic Interests. Requires that all public servants who are entitled to more than \$40,000 in annual compensation file a statement of economic interest with the Commission prior to their initial hiring, appointment, or election and annually by January 31

thereafter. Provides that statements are public records. Details information that must be provided in the statement and requires that the Commission prepare a written evaluation of each statement and provide copies of that evaluation to certain listed persons, including the public servant and the head of the agency served by the individual. Establishes a penalty for a public servant's failure to submit a timely statement. Makes concealing or failing to disclose information required on an economic interest statement a Class 2 misdemeanor and providing false or misleading information on statement a Class F felony.

Article 5 – Violation consequences. Provides that violation of GS Chapter 138A is grounds for disciplinary action. Further states that willful violations by board members subjects them to removal and willful violations by State employees may be grounds for termination.

The Commission is specifically exempted from GS Chapter 150B (the Administrative Procedure Act). Effective October 1, 2006, and applicable to public servants beginning January 1, 2007.

Intro. by Hackney, Howard, Brubaker, Luebke. GS 138A, 150B

May 11, 2006

H 1844. EXECUTIVE BRANCH ETHICS ACT - 1. Filed 5/10/06. House committee substitute makes the following changes to 1st edition. Proposed GS 138A-7(b) prohibits public servants from soliciting subordinates for charitable solicitations. The committee substitute deletes the exemption for State Employees Combined Campaign solicitations and replaces it with an exemption for generic written solicitations transmitted to all members of a class of subordinates. Clarifies that the GS 138A-7(d)(10) exception from the gift ban applies to items for which fair market value was paid by the public servant (was, paid). Amends proposed GS 138A-25(c) to require that the State Ethics Commission initiate the investigation of a complaint within 60 (was, 90) days. GS 138A-36 requires that public servants file a statement of economic interest and obtain an evaluation of that statement prior to servant's assumption of servant's position. GS 138A-36(b) provides that for appointments made during the first 60 days of a constitutional officer's initial term, the officer's employees and appointees may file a statement of economic interest after their appointment. House committee substitute amends this subsection to allow those individuals to file the statement within 30 (was, 60) days of their appointment. Reduces penalty for providing false and misleading information on a statement of economic interest from a Class F to a Class H felony. Makes technical changes to GS 138A-3 definition of "Board" and "Constitutional officers of the State" and deletes "notwithstanding any other law" from proposed GS 138A-12(a) and GS 150B-21.20A.

May 15, 2006

H 1844. EXECUTIVE BRANCH ETHICS ACT - 1. Filed 5/9/06. House amendment makes the following changes to 2nd edition. Adds new GS 138A-6(c) to prohibit public servants from allowing the use of State funds for a newspaper, radio, or television advertisement or public service announcement that includes the public servant's name, picture, or voice, unless the advertisement or announcement is made in connection with a State or national emergency and is related to the public servant's official duties.

May 16, 2006

H 1844. EXECUTIVE BRANCH ETHICS ACT - 1. Filed 5/9/06. House amendment makes the following changes to 2nd edition. Amendment #3 makes a technical change to GS 138A-12(a). Amendment #4 amends GS 138A-40 to increase the penalty for knowingly concealing or failing to disclose required information on a statement of economic interest from a Class 2 to a Class 1 misdemeanor. Amendment #5 adds new GS 138A-25(a)(4) to specifically require that the State Ethics Commission investigate complaints that allege a violation of GS 126-14 (prohibiting State employees from coercing other State employees or applicants to contribute to a political candidate, committee, or political party by threatening adverse employment consequences).