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HOUSE DRH10272-MM-118 (03/23)

Short Title: State Ethics Comm. Revisions. (Public)

Sponsors: Representative Glazier.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE REVISIONS TO THE PROCESS BY WHICH THE STATE ETHICS
3 COMMISSION INVESTIGATES AND ACTS UPON COMPLAINTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 138A-12 reads as rewritten:

6 "~~§ 138A-12. Inquiries by the Commission.~~Inquiries, investigations and hearings.

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

11 (a1) Notice of Allegation. – Upon receipt by the Commission of a written allegation of
12 unethical conduct by a covered person or legislative employee, or the initiation by the
13 Commission of an inquiry into unethical conduct under subsection (b) of this section, the
14 Commission shall immediately notify the covered person or legislative employee subject to the
15 allegation or inquiry in writing. This subsection does not apply to justices or judges of the
16 General Court of Justice.

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

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

28 Upon receipt of a referral under G.S. 147-64.6B or a report under G.S. 147-64.6(c)(19), the
29 Commission may conduct an inquiry under this section on its own motion. Allegations of
30 violations of the Code of Judicial Conduct shall be referred to the Judicial Standards
31 Commission without ~~investigation~~notification under subsection (a1) of this section or inquiry.
32 Allegations of violations of the criminal law, with the exception of G.S. 138A-26 and
33 G.S. 138A-27, shall be referred without inquiry to the Attorney General for investigation and
34 referral to the district attorney for possible prosecution.

35 (b1) ~~Complaints on Its Own Motion.~~Commission-Initiated Inquiry. – An investigation
36 inquiry initiated by the Commission on its own motion ~~is not subject to the requirements of~~



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1 subdivision (e)(1) of this section. An inquiry initiated upon written request of any public
2 servant or those responsible for the hiring, appointing, or supervising of a public servant
3 instituted under subsection (b) of this section ~~shall be treated as a complaint for purposes of this~~
4 ~~section and~~ need not be sworn or verified.

5 (c) Complaint. –

- 6 (1) A sworn complaint filed under this Chapter shall state the name, address,
7 and telephone number of the individual filing the complaint, the name and
8 job title or appointive position of the covered person or legislative employee
9 against whom the complaint is filed, and a concise statement of the nature of
10 the complaint and specific facts indicating that a violation of this Chapter or
11 Chapter 120 of the General Statutes or G.S. 126-14 or the criminal law in the
12 performance of that individual's official duties has occurred, the date the
13 alleged violation occurred, and either (i) that the contents of the complaint
14 are within the knowledge of the individual verifying the complaint, or (ii)
15 the basis upon which the individual verifying the complaint believes the
16 allegations to be true.
- 17 (2) Except as provided in subsection (d) of this section, a complaint filed under
18 this Chapter must be filed within two years of the date the complainant knew
19 or should have known of the conduct upon which the complaint is based.
- 20 (3) The Commission may decline to ~~accept, refer, refer~~ or conduct an inquiry
21 into any complaint that does not meet all of the requirements set forth in
22 subdivision (1) of this subsection, or the Commission may, in its sole
23 discretion, request additional information to be provided by the complainant
24 within a specified period of time of no less than five business days.
- 25 (4) In addition to subdivision (3) of this subsection, the Commission may
26 decline to ~~accept, refer, refer~~ or conduct an inquiry into a complaint if it
27 determines that any of the following apply:
- 28 a. The complaint is frivolous or brought in bad faith.
29 b. The covered person or legislative employee and conduct complained
30 of have already been the subject of a prior complaint.
31 c. The conduct complained of is primarily a matter more appropriately
32 and adequately addressed and handled by other federal, State, or
33 local agencies or authorities, including law enforcement authorities.
34 If other agencies or authorities are conducting an investigation of the
35 same actions or conduct involved in a complaint filed under this
36 section, the Commission may stay its complaint inquiry pending final
37 resolution of the other investigation.
- 38 (5) ~~The Commission shall send a copy of the complaint to the covered person or~~
39 ~~legislative employee who is the subject of the complaint and the employing~~
40 ~~entity, within 10 business days of the filing. Within 10 business days of the~~
41 acceptance of a complaint, the Commission shall send a copy of the
42 complaint to the covered person or legislative employee. For the purposes of
43 this subsection, a complaint is deemed accepted if it is timely, signed, sworn
44 if required, and against a covered person.

45 (d) ~~Conduct of Inquiry of Complaints~~Inquires by the Commission. – The Commission
46 shall conduct an inquiry into all complaints properly before the Commission in a timely
47 manner. The Commission shall initiate an inquiry into a complaint within 10 business days of
48 the filing~~acceptance~~ of the complaint. The Commission is authorized to initiate inquiries upon
49 request of any member of the Commission if there is reason to believe that a covered person or
50 legislative employee has or may have violated this Chapter. Commission-initiated ~~complaint~~
51 inquiries under this section shall be initiated within two years of the date the Commission knew

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

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

11 (f) Dismissal of Complaint After ~~Preliminary~~ Inquiry. – The Commission shall
12 conclude the ~~preliminary~~ inquiry within ~~20–30~~ business days of the acceptance of a
13 complaint. The Commission shall dismiss the complaint, if at the end of its ~~preliminary~~ inquiry
14 the Commission determines that any of the following apply:

15 (1) The individual who is the subject of the complaint is not a covered person or
16 legislative employee subject to the Commission's jurisdiction and authority
17 under this Chapter.

18 (2) The complaint does not allege facts sufficient to constitute a violation within
19 the jurisdiction of the Commission under subsection (b) of this section.

20 (3) The complaint is determined to be frivolous or brought in bad faith.

21 (g) ~~Commission Inquiries.~~ Probable Cause Investigations. –

22 (1) If at the end of its ~~preliminary~~ inquiry, the Commission determines to
23 proceed with ~~further inquiry~~ an investigation into the conduct of a covered
24 person or legislative employee, the Commission shall provide written notice
25 to the ~~individual who filed the complaint and the~~ covered person or
26 legislative ~~employee as to~~ employee, the employing entity, and appointing
27 authority of the fact of the inquiry investigation and the charges/allegations
28 against the covered person or legislative employee. The covered person or
29 legislative employee shall be given an opportunity to file a written response
30 with the Commission.

31 (h) ~~Action on Inquiries.~~ –

32 (2) The Commission shall conduct ~~inquiries~~ an investigation into ~~complaints~~ a
33 complaint to the extent necessary to either dismiss the complaint for lack of
34 probable cause ~~of a violation under this section, or~~ or upon a finding of
35 probable cause:

36 (1) ~~a.~~ For public servants, ~~decide to~~ proceed with a hearing under
37 subsection (i) of this section.

38 (2) ~~b.~~ For legislators, except the Lieutenant Governor, refer the
39 ~~complaint~~ matter to the Committee.

40 (3) ~~c.~~ For judicial officers, refer the ~~complaint~~ matter to the Judicial
41 Standards Commission for complaints against justices and judges, to
42 the senior resident superior court judge of the district or county for
43 complaints against district ~~attorneys, or to the chief district court~~
44 ~~judge for the district or county for complaints against~~ attorneys or
45 clerks of court.

46 (4) ~~d.~~ For legislative employees, refer the ~~complaint~~ matter to the
47 employing entity.

48 (h1) Settlement of Inquiries Against Public Servants. – The public servant who is the
49 subject of the inquiry or the public servant's legal counsel, and the staff of the Commission,
50 may meet by mutual consent at any time before the hearing to discuss the possibility of
51 settlement or the stipulation of facts, issues of law, or other pertinent matters. Any proposed

1 settlement is subject to the approval of the Commission. Upon the Commission's approval of a
2 settlement, the matter shall be closed, subject to reopening by the Commission upon any breach
3 of the settlement agreement. The Commission shall provide written notice of the fact of the
4 settlement to the individual who filed the complaint, the public servant who was the subject of
5 the inquiry, and the public servant's employing entity and appointing authority.

6 (i) Hearing. –

7 (1) The Commission shall give full and fair consideration to all accepted
8 complaints received against a public servant. If the Commission determines
9 that the complaint cannot be resolved without a hearing, or if the public
10 servant requests a hearing, a hearing shall be held.

11 (2) The Commission shall send a notice of the hearing to the complainant, and
12 the public servant. The notice shall contain the ~~time~~-date, time, and place for
13 a hearing on the matter, which shall begin no less than 30 days and no more
14 than 90 days after the date of the notice.

15 (3) ~~The~~At least 30 days prior to the date of the hearing, the Commission shall
16 make available to the public servant or that public servant's private legal
17 counsel all documents or other evidence which are intended to be presented
18 at the hearing to the Commission or which a reasonable person would
19 believe might exculpate the accused public servant ~~at least 30 days prior to~~
20 ~~the date of the hearing held in connection with the investigation of a~~
21 ~~complaint.~~servant. Any documents or other evidence discovered within less
22 than 30 days of the hearing shall be furnished as soon as possible after
23 discovery but prior to the hearing.

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

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

26 b. The hearing shall be open to the public, except for matters involving
27 minors, personnel records, or matters that could otherwise be
28 considered in closed session under G.S. 143-318.11. In any event, the
29 deliberations by the Commission on a complaint may be held in
30 closed session.

31 c. The public servant being investigated shall have the right to present
32 evidence, call and examine witnesses, cross-examine witnesses,
33 introduce exhibits, and be represented by counsel.

34 (j) Settlement of Inquiries. – ~~The public servant who is the subject of the complaint and~~
35 ~~the staff of the Commission may meet by mutual consent before the hearing to discuss the~~
36 ~~possibility of settlement of the inquiry or the stipulation of any issues, facts, or matters of law.~~
37 ~~Any proposed settlement of the inquiry is subject to the approval of the Commission.~~

38 (k) ~~Disposition of Inquiries.~~ Post-Hearing Dispositions. – After the hearing, the
39 Commission shall dispose of the matter in one or more of the following ways:

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

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

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

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

- 1 b. Refer the matter for appropriate action to the Governor and the
2 employing entity that appointed or employed the public servant or of
3 which the public servant is a member.
4 c. Refer the matter for appropriate action to the Chief Justice for
5 judicial employees.
6 d. Refer the matter to the Principal Clerks of the House of
7 Representatives and Senate of the General Assembly for
8 constitutional officers of the State.
9 e. Refer the matter for appropriate action to the principal clerk of the
10 house of the General Assembly that elected the public servant for
11 members of the Board of Governors and the State Board of
12 Community Colleges.

13 (l) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the
14 Commission shall provide written notice of the dismissal to the individual who filed the
15 complaint and the covered person or legislative employee against whom the complaint was
16 filed. ~~The~~For dismissals pursuant to subdivision (2) of subsection (g) or subdivision (2) of
17 subsubsection (k) of this section, the Commission shall forward copies of complaints and notices
18 of dismissal of complaints against public servants to the employing entity and appointing
19 authority, against legislators to the Committee, against legislative employees to the employing
20 entity for legislative employees, and against judicial officers to the Judicial Standards
21 Commission for complaints against justices and judges, and the senior resident superior court
22 judge of the district or county for complaints against district ~~attorneys,~~attorneys or ~~the chief~~
23 ~~district court judge of the district or county for complaints against clerks of court. The~~
24 ~~Commission shall also forward a copy of the notice of dismissal to the employing entity of the~~
25 ~~covered person against whom a complaint was filed if the employing entity received a copy of~~
26 ~~the complaint under subdivision (5) of subsection (e) of this section.~~ Except as provided in
27 subsection (n) of this section, the complaint and notice of dismissal are confidential and not
28 public records.

29 (m) Reports and Records. – The Commission shall render the results of its ~~inquiry~~
30 investigation in writing. When a matter is referred under ~~subdivision (h)(2) and (3),~~
31 ~~sub-subdivisions (g)(2)b. and (g)(2)c.,~~ or subsection (k) of this section, the Commission's report
32 shall consist of the complaint, response, and detailed results of its ~~inquiry~~ investigation in
33 support of the Commission's finding of a violation under this Chapter.

34 (n) Confidentiality. –

- 35 (1) Complaints and responses filed with the ~~Commission and reports~~
36 Commission, settlement agreements, referrals, recommendations, reports,
37 and other investigative documents and records of the Commission connected
38 to an ~~inquiry~~ investigation under this section, including information provided
39 pursuant to G.S. 147-64.6B or G.S. 147-64.6(c)(19), shall be confidential
40 and not matters of public ~~record,~~record and may be released only by order of
41 a court of competent jurisdiction except as otherwise provided in this section
42 or when the covered person or legislative employee under inquiry requests in
43 writing that the complaint, response, and findings be made public. Once a
44 hearing under this section commences, the complaint, response, and all other
45 documents offered at the hearing in conjunction with the complaint, not
46 otherwise privileged or confidential under law, shall be public records. ~~If no~~
47 ~~hearing is held at such time as the Commission reports to the employing~~
48 ~~entity a recommendation of sanctions, the complaint and response shall be~~
49 ~~made public.~~If confidential material or information is released in violation of
50 this section by any person, State agency, or governmental unit other than the

1 Commission, then the Commission may release confidential material or
2 information pertaining to the same matter.

3 ~~(n1)~~(2) Staff to the Commission may share with staff to the Committee information
4 connected to an inquiry into the conduct of a legislator under this section.
5 The Commission shall provide to the Committee copies of all reports,
6 investigative documents, information, and other documents used by the
7 Commission when it refers a complaint to the Committee under ~~subdivision~~
8 ~~(2)~~ sub-subdivision (2)b. of subsection ~~(h)~~(g) of this section. Upon written
9 request by staff to the Committee, the Commission shall provide copies of
10 all reports, investigative documents, information, and other documents used
11 by the Commission when it dismisses a complaint against a legislator under
12 subsection (l) of this section. The information and documents provided to the
13 Committee and staff to the Committee and the written request provided to
14 the Commission are confidential and are not public records as defined in
15 G.S. 132-1.

16 (3) When referring a matter to another State or local agency or authority, staff to
17 the Commission may share related information and documents with the
18 agency or authority receiving the referral. The information and documents
19 provided shall remain confidential, are not public records, and may only be
20 released according to the terms of this Chapter.

21 (o) Recommendations of ~~Sanctions.~~ After Sanctions after Hearing. – When referring a
22 matter under subsection (k) of this section, ~~if requested by the entity to which the matter was~~
23 ~~referred,~~ the Commission may recommend sanctions or issue rulings as it deems necessary or
24 appropriate to protect the public interest and ensure compliance with this Chapter. In
25 recommending appropriate sanctions, the Commission may consider the following factors:

- 26 (1) The public servant's prior experience in an agency or on a board and prior
27 opportunities to learn the ethical standards for a public servant as set forth in
28 Article 4 of this Chapter, including those dealing with conflicts of interest.
- 29 (2) The number of ethics violations.
- 30 (3) The severity of the ethics violations.
- 31 (4) Whether the ethics violations involve the public servant's financial interest.
- 32 (5) Whether the ethics violations were inadvertent or intentional.
- 33 (6) Whether the public servant knew or should have known that the improper
34 conduct was a violation of this Chapter.
- 35 (7) Whether the public servant has previously been advised or warned by the
36 Commission.
- 37 (8) Whether the conduct or situation giving rise to the ethics violation was
38 pointed out to the public servant in the Commission's Statement of
39 Economic Interest evaluation letter issued under G.S. 138A-24(e).
- 40 (9) The public servant's motivation or reason for the improper conduct or action,
41 including whether the action was for personal financial gain versus
42 protection of the public interest.

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

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

4 (q) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to
5 ~~investigate possible criminal violations of this Chapter~~ refer evidence of a possible criminal
6 violation of this Chapter to the Attorney General for investigation and referral to the district
7 attorney for possible prosecution for a period of one year following the date an individual, who
8 was formerly a public servant or legislative employee, ceases to be a public servant or
9 legislative employee for any investigation that commenced prior to the date the public servant
10 or legislative employee ceases to be a public servant or legislative employee.

11 (r) Subpoena Authority. – The Commission may petition the Superior Court of Wake
12 County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct
13 investigations of alleged violations of this Chapter. The court shall authorize subpoenas under
14 this subsection when the court determines the subpoenas are necessary for the enforcement of
15 this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through
16 contempt powers. Venue shall be with the Superior Court of Wake County for any person or
17 governmental unit covered by this Chapter, and personal jurisdiction may be asserted under
18 G.S. 1-75.4.

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

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

25 **SECTION 2.** G.S. 138A-10(a) reads as rewritten:

26 "**§ 138A-10. Powers and duties.**

27 (a) In addition to other powers and duties specified in this Chapter, the Commission
28 shall:

29 ...

30 (5) Conduct ~~inquiries of~~ inquiries, investigations, and hearings on alleged
31 violations against judicial officers, legislators, and legislative employees in
32 accordance with G.S. 138A-12.

33 (6) Conduct ~~inquiries into~~ inquiries, investigations, and hearings on alleged
34 violations against public servants in accordance with G.S. 138A-12.

35 ...

36 (12) Publish annually statistics on complaints filed with or considered by the
37 Commission, including the number of complaints filed, the number of complaints
38 dismissed under G.S. 138A-12(b), the number of complaints dismissed
39 under G.S. 138A-12(c)(4), the number of complaints dismissed
40 under G.S. 138A-12(f), the number of complaints referred for criminal
41 prosecution under G.S. 138A-12, the number of complaints dismissed under
42 ~~G.S. 138A-12(h)~~, G.S. 138A-12(g)(2) the number of complaints referred for
43 appropriate action under ~~G.S. 138A-12(h)~~ G.S. 138A-12(g)(2) or
44 G.S. 138A-12(k)(3), and the number and age of complaints pending action
45 by the Commission.

46"

47 **SECTION 3.** G.S. 138A-13(a2) reads as rewritten:

48 "(a2) A request for a formal advisory opinion under subsection (a) of this section shall be
49 in writing, electronic or otherwise. The Commission shall issue formal advisory opinions
50 having prospective application only. A public servant or legislative employee who relies upon

1 the advice provided to that public servant or legislative employee on a specific matter
2 addressed by the requested formal advisory opinion shall be immune from all of the following:

3 (1) Investigation by ~~the Commission, except for an inquiry under~~
4 ~~G.S. 138A-12(b)(3).Commission.~~

5 (2) Any adverse action by the employing entity.

6 (3) Investigation by the Secretary of State."

7 **SECTION 4.** G.S. 138A-13(b1) reads as rewritten:

8 "(b1) A request by a legislator for a recommended formal advisory opinion shall be in
9 writing, electronic or otherwise. The Commission shall issue recommended formal advisory
10 opinions having prospective application only. Until action is taken by the Committee under
11 G.S. 120-104, a legislator who relies upon the advice provided to that legislator on a specific
12 matter addressed by the requested recommended formal advisory opinion shall be immune
13 from all of the following:

14 (1) Investigation by the Committee or ~~Commission, except for an inquiry under~~
15 ~~G.S. 138A-12(b)(3).Commission.~~

16 (2) Any adverse action by the house of which the legislator is a member.

17 (3) Investigation by the Secretary of State."

18 **SECTION 5.** This act is effective when it becomes law.