

STATE ETHICS COMMISSION

2007 – 2008 ANNUAL REPORT

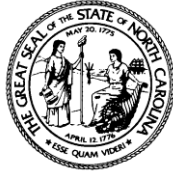


STATE ETHICS COMMISSION'S ANNUAL REPORT TO THE GOVERNOR & GENERAL ASSEMBLY

DECEMBER 2009

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CHAIRMAN

PERRY Y. NEWSON
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December 15, 2009

The Honorable Beverly Perdue
Governor
20301 Mail Service Center
Raleigh, NC 27699-0301

The Honorable Joe Hackney
Speaker, North Carolina House of Representatives
16 W. Jones Street, Room 2304
Raleigh, NC 27601-1096

The Honorable Marc Basnight
President Pro Tempore, North Carolina State Senate
16 W. Jones Street, Room 2007
Raleigh, NC 27601-2808

Re: Ethics Commission's 2007-2008 Annual Reports

Dear Governor Perdue, Speaker Hackney, & President Pro Tem Basnight:

Pursuant to section 138A-10(11) of Chapter 138A (the State Government Ethics Act), the State Ethics Commission hereby submits its combined 2007 – 2008 annual reports on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest.

Sincerely,

Robert L. Farmer, Chair

PART I EXECUTIVE SUMMARY

On January 1, 2007, the State Government Ethics Act (“SGEA”) became effective along with major revisions to the lobbying laws. The State Government Ethics Act created the State Ethics Commission (“SEC” or “the Commission”) and gave the Commission numerous powers and duties coupled with a great deal of responsibility. While the previous Board of Ethics was responsible for administering Executive Order Number One impacting only certain executive branch public officials, the newly created State Ethics Commission was given authority to interpret and administer a new and highly complex set of ethics and lobbying laws covering, to some extent, all three branches of State government. The Commission has the primary or exclusive responsibility for: evaluating Statements of Economic Interest for public servants; providing advice and advisory opinions to persons covered by the ethics and lobbying laws; developing and presenting education programs to public servants, their immediate staff, legislators, legislative employees, and lobbyists; and investigating complaints. While the ethics and lobbying laws have been clarified during the past two years, very few substantive revisions have been made.

Although the Commission was given additional resources, the enactment of the ethics and lobbying laws greatly increased the workload of the newly created Commission. For example, the number of persons required to file financial disclosures (Statements of Economic Interest or “SEIs”) more than doubled, education for most public officials and numerous employees became mandatory, and the Commission now has jurisdiction over interpretation of the lobbying laws. Furthermore, the Commission is providing significantly more advice and advisory opinions than the former Board of Ethics. For example, during 2007 and 2008, the Commission received over 2,000 requests for advice or advisory opinions. Therefore, despite

the existence of a previous Board of Ethics, with such greatly expanded duties and responsibilities, the State Ethics Commission was essentially a “start-up” agency.

The Commission's budget has increased from that of the predecessor Board of Ethics; however, although a good faith effort was made to provide sufficient resources, the staffing and other needs and demands could not be accurately projected when the law was initially enacted.

At the end of 2008, even though the Commission now had more than two years of experience, the Commission continued to be in a start-up phase. Because of the expanded scope of the Commission's duties and demands, the administrative staff developed a significant backlog in most major areas of responsibility. A two-year study by the Office of State Budget and Management (“OSBM”) confirmed the significantly increased workload. The final report concluded that the Commission's inability to keep pace with the expanded duties required by the new ethics and lobbying laws had resulted in a significant backlog of work in key areas (e.g., SEI evaluations, and advice and advisory opinions). In addition, over the past two years, the Commission's senior staff had accrued a great deal of overtime: 1,823 hours in 2007-2008. In short, the Commission simply did not and could not know the scope of the challenges associated with implementing the revised ethics and lobbying laws.

Notwithstanding these considerable challenges, the Commission has continued to move forward and has made significant progress. While the OSBM studies helped identify backlogs, the Commission's study on the implementation and effectiveness of the ethics act allowed the Commission to identify areas where the internal work process could be revised and improved. Toward that end, the Commission made several internal changes that will result in better “customer service” such as streamlining the advice and advisory opinion process and making opinions more “reader friendly.” Furthermore, the Commission continues to be mindful of its mission to educate public officials, employees and the lobbying community about their duties and responsibilities under the ethics and lobbying laws while recognizing the need for cost

effectiveness and efficient use of resources. Therefore, the Commission is continuing to explore other ways to meet its statutorily-mandated education duties.

Certainly, much remained to be done at the end of 2008. The Commission still faced a significant backlog of SEI evaluations and requests for advice and advisory opinions. Moreover, the questions requesting interpretations of the ethics and lobbying laws became more complex requiring extensive thought and research. Also, requesters often want formal advisory opinions in order to obtain statutory immunity. These opinions necessarily take longer to prepare and issue. Thus, the advice and advisory opinion process is much more demanding and time consuming than originally anticipated. Of course, the Commission has worked, and will continue to work, to meet its statutory obligations in the face of unprecedented budget cuts across State government during 2008. Nevertheless, the need for additional resources still remains, both in terms of staff and other resources such as additional technology.

PART II BACKGROUND

HISTORICAL CONTEXT.

Prior to the enactment of the State Government Ethics Act (“SGEA,” “Ethics Act,” or “the Act) in 2006,¹ there was no comprehensive ethics regulation in North Carolina. Rather, each branch of State government implemented and enforced its own set of laws, rules, policies, and guidelines. In the executive branch, Governor Jim Hunt issued Executive Order Number One in 1977 creating the Board of Ethics to regulate conflicts of interest for certain executive branch appointees.² This Executive Order was renewed by each successive governor, and many of the provisions found in the current SGEA are from this Executive Order.³ In addition, in 1975 the General Assembly passed the Legislative Ethics Act governing the conduct of legislators.⁴ Likewise, the Code of Judicial Conduct governed the conduct of justices and judges. Thus, while all three branches of State government had some form of ethics regulation, each operated independently of the other with regard to personal and financial interest disclosures, conflict of interest standards, and education. However, the enactment of the SGEA unified many of the central components of ethics regulation into a single State agency: the State Ethics Commission.

ENACTMENT OF THE STATE GOVERNMENT ETHICS ACT & LOBBYING LAWS.

BACKGROUND. On July 27, 2006, the General Assembly overwhelmingly passed House Bill 1843, the State Government Ethics Act, and on August 4, 2006, Governor Easley signed the bill into law. The SGEA draws heavily from Executive Order Number One along with other

¹ S.L. 2006-201.

² A copy of Executive Order Number One in effect immediately prior to the enactment of the SGEA can be found in **Attachment A**.

³ See **Attachment B** for a complete history of the Board of Ethics.

⁴ Article 14 of Chapter 120 of the General Statutes.

sources. Indeed, many of the core components of Executive Order Number One provide the basis for the disclosure and conflicts of interest provisions contained in the SGEA (Chapter 138A of the General Statutes). In addition to unifying ethics regulation, the SGEA significantly broadened the scope of ethics laws in several ways, including instituting a “gift ban” and expanding the jurisdiction of ethics regulation to include certain public officials and employees in all three branches of government.⁵ Thus, for the first time in history, North Carolina had a statutorily-mandated ethics law covering, to some extent, executive branch officials and employees, legislators and legislative employees, and judicial officers (justices, judges, district attorneys and clerks of court).

PRIMARY GOALS. While the Act is comprehensive in nature, it embodies two primary goals: 1) establishing a code of conduct; and 2) ensuring transparency. These goals are achieved in a variety of ways. For example, the code of conduct includes the identification and avoidance of conflicts of interest by certain public officials and employees as well as the prohibition on accepting gifts from certain persons. Transparency is achieved principally in two ways: 1) for public officials and employees subject to the SGEA, the disclosure of certain personal and financial interests through a Statement of Economic Interest (“SEI”) filing; and 2) for third parties who make expenditures relating to persons covered by the ethics laws, filing reports of those expenditures with the Secretary of State’s office. Both of these filings are public record under North Carolina law and thus are available for review by anyone. In addition, because of the comprehensiveness and complexity of these laws, education and enforcement are also critical components.

Integral companions of the SGEA include lobbying and campaign finance laws. In addition to strengthening ethics regulation, the General Assembly also significantly revised the lobbying law along with certain provisions of the campaign finance laws relating to lobbyists. In

⁵ See **Attachment C** for a table of officials and employees covered by the SGEA.

particular, the 2006 revisions to the lobbying law included: 1) instituting a ban on giving most gifts to public servants, legislators, and legislative employees; 2) regulating lobbying in the executive branch;⁶ and 3) providing for additional restrictions on lobbyists, especially with regard to certain types of campaign participation.⁷ Perhaps the most significant amendment to the lobbying laws was the inclusion of “goodwill” lobbying. The 2006 revisions to the lobbying law expanded the definition of “lobbying” to include “developing goodwill through communications or activities, including the building of relationships, with a [public servant, legislator, or legislative employee] or that person’s immediate family.”⁸

STATE ETHICS COMMISSION MEMBERSHIP. The SGEA also established the State Ethics Commission as the agency charged with interpreting both the ethics and lobbying laws. While the Commission itself is new, its basic mission continues to be to protect the public interest and maintain the public trust by helping public officials adhere to the requirements of the ethics laws as they perform their public duties. The Commission fulfills its mission in varying degrees by the implementation, administration, and enforcement of the ethics and lobbying laws through education, issuing advice and advisory opinions, evaluating Statements of Economic Interest, and investigating complaints.

The State Ethics Commission is made up of eight members. Four members are appointed by the Governor, no more than two of whom may be of the same political party. Four members are appointed by the General Assembly.⁹ Commission members serve staggered four-year terms and cannot: hold or run for any political office; hold any office in any political party above the precinct level; or, participate in or contribute to the political campaign of any

⁶ Prior to January 1, 2007, lobbying was regulated only in the legislative branch.

⁷ These provisions were originally contained in the lobbying laws; however, in 2007 they were recodified in Article 22A of Chapter 163 regarding regulation of election campaigns.

⁸ G.S. 120C-100(a)(9)b.

⁹ Two members are appointed upon recommendation of the Speaker of the House, neither of whom shall be of the same political party, and two members are appointed upon recommendation of the President Pro Tempore of the Senate, neither of whom shall be of the same political party. (See G.S. 138A-7(a)).

person over whom the Commission has jurisdiction or authority. Commission members can only be removed for misfeasance, malfeasance, or nonfeasance. The Commission is required to meet at least quarterly. As of December 31, 2008, the Commission had met 11 times:

Year	Number of Meetings
2007	6
2008	5

POWERS & DUTIES OF THE COMMISSION. The Commission's primary powers and duties are:

Administering the SEI Process. Administering the mandatory financial and personal interest disclosure process applicable to all three branches of State government, primarily through the filing and evaluation of Statements of Economic Interest ("SEIs").

- **Advice & Advisory Opinions.** Providing advice and formal advisory opinions.
- **Education.** Educating public servants and their immediate staff as well as legislators and legislative employees on the ethics and lobbying laws.
- **Administration & Investigation.** Administering and enforcing the ethics law and portions of the lobbying law, including investigating complaints of alleged violations.

The Commission also has additional powers and duties, including:

- Conducting a continuing study of governmental ethics and propose changes to the General Assembly when necessary.
- Developing forms, policies, and procedures.
- Adopting policies and procedures interpreting the Act.
- Adopting rules necessary to interpret the lobbying law.
- Publishing necessary reports.

Finally, as part of the revisions to the lobbying law, the General Assembly vested additional authority in the Commission for the interpretation of Chapter 120C of the General Statutes. The Commission shares administrative responsibilities for the lobbying law with the Secretary of State. The Commission's complete statutory powers and duties are included in ***Attachment D.***

PART III LEGISLATIVE MODIFICATIONS: 2007 & 2008

Although there have been technical and clarifying revisions to the ethics and lobbying laws since their enactment, there were few substantive revisions in 2007 and 2008.

2007 CHANGES. Some of the 2007 modifications¹⁰ included:

- **SEI Disclosures.** Revising and clarifying several of the SEI disclosure requirements.
- **Gift Ban.**
 - Clarifying the indirect gift ban.
 - Allowing food and beverage for immediate consumption at certain gatherings.
 - Allowing gifts made directly to certain nonpartisan organizations.
- **Complaints & Investigations.**
 - Making investigatory hearings conducted by the Commission or the Legislative Ethics Committee open to the public.
 - Providing that documents related to an investigation become public records once a hearing commences.
- **Lobbying.** Clarifying the definition of an employee-lobbyist.

¹⁰ The 2007 legislative modifications to the ethics and lobbying laws (S.L. 2007-347 & S.L. 2007-348) can be found on the Commission's website at <http://www.ethicscommission.nc.gov/2007legislativeChangeshtm.html>.

2008 CHANGES. The 2008 legislative changes included:¹¹

- **Commission Jurisdiction.**
 - Clarifying that the Commission is the sole State agency with the authority to determine compliance with or violations of the SGEA and that the Commission's decisions are binding on other State agencies.
 - Directing that the State Auditor refer alleged violations of the ethics or lobbying laws to the Commission.
- **SEI Disclosures.**
 - Clarifying that a filer may disclose any other information the filer believes would assist the Commission.
 - Providing that the Commission only evaluates the SEIs of public servants.
- **Advice & Advisory Opinions.**
 - Allowing the State Auditor to request an advisory opinion as to whether or not a person complied with the ethics and lobbying laws.
 - Clarifying that only the Commission may issue formal advisory opinions.
 - Requiring publication of redacted formal advisory opinions within 30 days.
- **Complaints & Investigations.**
 - Requiring the Commission to notify a covered person immediately upon receipt of a written allegation of unethical conduct.
- **Conflicts of Interest.**
 - Clarifying the circumstances under which a public servant or legislator may have a conflict of interest.
 - Allowing certain officers or board members of community colleges to also serve on non-profit boards established to aid the community college under certain circumstances.

¹¹ Some of these amendments were effective retroactively to January 1, 2007. For a complete report on the 2008 legislative changes to the ethics and lobbying laws, including the effective dates, please refer to the Commission's newsletter, Vol. 11, Issue 1, at http://www.ethicscommission.nc.gov/documents/aug_08_legislative_rpt.pdf.

- Allowing legislators who are also employees or independent contractors of a local government to take legislative action affecting that local government under certain circumstances.
- **Gift Ban.**
 - Clarifying the exception relating to food and beverage for immediate consumption.
- **Lobbying.**
 - Clarifying that local governments may hire contract lobbyists.
 - Defining “payment for services” to lobbyists and providing that payment for services does not include certain reimbursements.
 - Allowing lobbyist principals to rely on statements from lobbyists estimating the portion of the lobbyist’s fee reasonably allocated for lobbying.

PART IV STRUCTURE, BUDGET & STAFF

STRUCTURE & OPERATION. The Commission is located within the Department of Administration for administrative purposes only. In all substantive respects, the Commission operates totally independently of the Secretary of Administration and other State agencies.

APPROPRIATED BUDGET. In 2006 when the State Ethics Commission was created, the General Assembly appropriated a reserve to implement the ethics legislation. For State Fiscal Year (SFY) 2007-2008, the Commission's budget was \$740,610. In 2008, as part of his recommended budget adjustments, Governor Easley recommended an additional \$242,282 appropriation to fund two positions (an attorney and a paralegal). Ultimately, the General Assembly funded the Attorney II position and appropriated an additional \$230,000 in nonrecurring funds for contractual services to reduce the backlog of work.

In addition, a portion of the Commission's budget goes directly to support its statutorily mandated educational activities, including rental of facilities, coordination of distance highway presentations, and any related travel. A portion of the Commission's budget also goes to the publication of the Commission's *Ethics, Lobbying, and Related Laws & Rules of North Carolina*.

Finally, the General Assembly appropriated funds for the Commission to relocate its offices. From its inception, the Commission had occupied office space in the Administration Building. However, this space was inadequate to meet the Commission's needs for personnel, equipment, files and Commission meetings.¹²

STAFF. The Commission is authorized to employ a professional and administrative staff, including an executive director. Adequacy of staffing has been an issue for the

¹² Note: On March 1, 2009, the Commission relocated its offices to 424 N. Blount Street (the Capehart-Crocker house).

Commission over the past two years. Because it was essentially a start-up agency implementing a new and very complex set of laws, the Commission's exact staffing needs could not be accurately predicted at its establishment. Therefore, good faith estimates of those needs fell short, particularly in the areas of advice and compliance. In addition, several positions were vacant for significant periods of time due to turnover, thus negatively impacting overall productivity. For example, the Education Officer position was vacant from September 1, 2007, until April 28, 2008 – a period of eight months. Likewise, there was also high turnover in the SEI evaluation and review section.

CHRONOLOGY & ANALYSIS OF COMMISSION'S STAFFING

2006-2007 Initial Staffing. When the SGEA was enacted in 2006, the Board of Ethics' staff consisted of an executive director and an administrative assistant. The Act immediately expanded the staff to nine consisting of an Executive Director, who served seven years in that capacity under the former Board of Ethics, an Assistant Director/Compliance Officer, and a Lobbying Director, both of whom are attorneys, an Education Officer, a paralegal, and four administrative staff.

During 2007, the Office of State Budget and Management (OSBM) conducted a staffing analysis of the Commission to determine the appropriate staffing requirements based on the workload generated by the new ethics and lobbying laws.¹³ Additional information on this study can be found in Part V of this Report. Among other things, OSBM recommended that the Commission fill the two vacant education positions and that the Education Officer should be reclassified as an attorney so that time not spent on educational activities could be applied toward handling advisory opinions. OSBM further recommended that the Commission request funding for two additional positions (an attorney and paralegal) from the General Assembly.

¹³ *Staffing Analysis of the North Carolina State Ethics Commission: Management Study*, ("OSBM I"), Office of State Budget and Management, January 2008. Additional information on OSBM studies can be found in Part V of this report.

2007-2008 Staffing. Per OSBM's recommendation, the Education Officer position was reclassified as an Attorney II position. This position was filled on April 28, 2008. In addition, the Education Program Assistant position was filled on April 1, 2008.

In 2008, the Commission also requested that the General Assembly fund an Attorney II position and a Paralegal III position. Ultimately, the legislature appropriated funds for only the attorney position¹⁴. However, the General Assembly did appropriate \$230,000 in non-recurring funds for contractual services to reduce the backlog of work.

In addition to permanent full-time staff members, the Commission utilized the services of temporary employees and independent contractors. The Commission had two main types of contracts for outside services in 2007 and 2008: one for legal services and the other for information technology (IT) services. These contracts were initially funded through carry-forward lapsed salary funds as well as the non-recurring \$230,000 appropriation.

- **Legal Services Contract: Advisory Opinions & Investigations.** In April 2007, the Commission began contracting with The Avery P.C. to provide independent legal services. Mr. Avery assisted primarily with the research and drafting of advisory opinions but also assisted in the investigation of complaints, defense of SEI fine appeals, and other matters on an as-needed basis.¹⁵ In its study, OSBM found that these legal services amounted to a .42 full-time equivalent ("FTE") position.
- **Information Technology Contract: Development of Database.** In May 2007, the Commission contracted with an information technology provider to develop a custom database to track advice given and advisory opinions issued under the ethics and lobbying laws. This database also tracks complaints. This database was completed and became operational in late 2008.
- **Legal Services Contract: Covered Board Criteria.** In the fall of 2008, the Commission contracted with an attorney to conduct a review and analysis of covered and non-covered boards, i.e., independent State boards that either are or are not subject to the State Government Ethics Act.¹⁶

¹⁴ The attorney in this position oversees the Statement of Economic Interest (SEI) compliance functions of the Commission and began work on January 1, 2009.

¹⁵ The initial contract was extended through fiscal year 2008-2009 and expired on June 30, 2009.

¹⁶ See Part V. Also, the initial contract was extended through fiscal year 2008-2009 and expires on June 30, 2009, unless terminated earlier.

- **Temporary Employees.** Finally, in addition to the independent contractors, the Commission also utilized the services of temporary employees, primarily during the peak SEI filing period.

2008-2009 Staffing. The General Assembly required OSBM to conduct a follow-up staffing analysis of the Commission (OSBM II).¹⁷ Additional information on this study can be found in Part V of this Report. The study recommended several process and internal efficiencies to improve production, but did not recommend additional staff.¹⁸

At this time, all permanent positions are filled.¹⁹ The Commission's current staff includes an Executive Director, and four attorneys who are responsible for providing advice and advisory opinions under both the State Government Ethics Act and the Lobbying Laws, administering the Statement of Economic Interest process, conducting mandatory ethics and lobbying education programs, and reviewing complaints. The Commission also employs a paralegal and four administrative staff. The Commission continued to use the services of contract attorneys (through the end of SFY 2008-2009) and temporary employees on an as-needed basis.

¹⁷ *Staffing Analysis of the North Carolina State Ethics Commission: Management Study*, Office of State Budget and Management, March 1, 2009.

¹⁸ The recommendations from the reports issued by OSBM are contained in other sections of this report.

¹⁹ **Attachment E** contains the Commission's organizational chart.

PART V INTERNAL & EXTERNAL STUDIES

OSBM STUDIES. As mentioned previously, in the period of time since the effective date of the State Government Ethics Act, the Office of State Budget and Management has conducted two management studies of the Commission. The primary purpose of both of these studies was to conduct a staffing analysis to judge the impact of the changes to the ethics and lobbying laws on the workload of the Commission. In both studies, OSBM concluded that the passage of the ethics and lobbying laws greatly increased the Commission's workload compared with its predecessor entity, the Board of Ethics.

OSBM I

The initial OSBM study (OSBM I) was initiated by the State Budget Director. The methodology of the study included review of the statutory requirements; examination and analysis of the Commission's organizational structure; analysis of employees' time and resource allocation; and, interviews with staff members. Among other things identified in the report, OSBM noted that the number of SEI filings more than doubled, education became mandatory for well over 10,000 people, and the number and complexity of advisory opinions increased dramatically. Notably, the significant increase in the Commission's workload became effective immediately on January 1, 2007. Such a drastic increase, coupled with much more complex and far-reaching ethics and lobbying laws, resulted in considerable backlog in 1) SEI evaluations; 2) issuance of advisory opinions and advice; 3) ethics education; and 4) complaint investigations. OSBM concluded that the Commission's workload had increased significantly, and the staff was unable to keep up with the volume of work.

As stated earlier, OSBM I contained a recommendation for reclassifying the Education Officer position as an attorney/educator as well as requesting two additional staff positions (an

attorney and a paralegal) from the General Assembly. The Commission reclassified the Education Officer position and requested the two additional positions. The General Assembly appropriated funds for one staff attorney and contract services to reduce the backlog of work.

OSBM II

The subsequent OSBM study (OSBM II) was required by the General Assembly in Section 22.1 of S.L. 2008-107. The OSBM II report concluded that the Commission’s backlog was still present, and the Commission staff was unable to keep up with the expanded duties. Specifically, at the rate of review, there was a nine-month backlog in the SEI evaluations equaling a .75 full-time equivalent (“FTE”) employee. More significantly, the report noted a 17.9 month backlog in the issuance of lobbying advice and advisory opinions. The report further identified 150 State boards and commissions that could ultimately come under the Commission’s jurisdiction. OSBM found that senior staff accrued a considerable amount of overtime during the two years studied. The breakdown is as follows:²⁰

Task	Number of Months	FTE
Workload Backlog		
Statements of Economic Interest	9.0	.75
Ethics Advisory Opinions	1.8	.15
Lobbying Advisory Opinions	17.9	1.49
Overtime		
Hours		
Executive Director	980	.56
Assistant Director/ Compliance Officer	382	.22
Lobbying Director	328	.18
Education Director	133 ²¹	.08
Total Overtime Hours	1,823	
Total FTE Requirements		3.43

The study concluded that the workload backlog and overtime accrued during 2007 and 2008 amounted to 3.43 FTEs of additional staff needed. This number equates to 1.72 FTEs per year over the two-year period. If the .42 FTE work performed by the Commission’s independent

²⁰ Source: OSBM’s analysis of Commission’s data as presented in OSBM II, Table 5, pg. 11.

²¹ This position was vacant for 8 months.

legal contractor is included, the Commission was understaffed by over two full-time positions. While OSBM concluded that it was too early to determine the extent to which the Commission's workload may increase in the future, it did acknowledge that the Commission had been unable to keep pace with the expanded duties created by the passage of the ethics and lobbying laws. The study also contained recommendations concerning efficiencies and processes within the Commission. These recommendations included:

- Eliminating SEI notarization requirement.
- Filing SEIs electronically
- Registering online for education programs
- Continuing to explore other ways of offering education presentations.
- Developing FAQs and creating and maintaining an internal advice database.

OSBM also acknowledged that the workload will likely continue at its current rate or increase in the future, although it is unclear to what degree. OSBM therefore would, if necessary, support the Commission's creation of an additional paralegal position using existing contractual services funds. OSBM also recommended that the Commission continue to routinely document the staff's workload and identify further internal efficiencies.

COMMISSION STUDIES & REPORTS

During this period, the State Ethics Commission also performed two studies. One of those studies was mandated by the General Assembly and required the Commission to examine the implementation and effectiveness of the SGEA. The other study was initiated by the Commission and involved developing and adopting criteria by which boards would be classified as advisory or non-advisory and therefore, covered by the SGEA. Those studies are detailed below.

**LEGISLATIVELY MANDATED STUDY ON IMPLEMENTATION & EFFECTIVENESS OF THE
STATE GOVERNMENT ETHICS ACT.**

In 2008, the General Assembly mandated that the Commission study the implementation and effectiveness of the State Government Ethics Act.²² The study conducted by the Commission sought to review the ethics and lobbying laws and determine their effectiveness, not only from a substantive aspect but also to determine areas in which the Commission is doing well and areas where improvements could be made. This study was a significant undertaking for the Commission and entailed a survey, acceptance of public comment, analysis of both written and oral comments, compiling and reviewing the information and issuing directives to address some of the issues that were identified. A complete copy of the study, with detailed analysis and recommendations, is on the Commission's website at <http://www.ethicscommission.nc.gov/documents/SECStudy2009.PDF>. A comparison of the recommendations contained in OSBM II and the Commission's directives can be found in ***Attachment F***.

INTERNAL COMMISSION STUDY ON COVERED BOARDS & ADOPTION OF COVERAGE CRITERIA.

The Commission used a portion of the contract funds it received from the General Assembly to contract for a study, analysis, and report on covered boards and recommended coverage criteria. The definition of "board" includes those non-advisory State boards which the Commission has designated as covered.²³ Therefore, an integral part of the study was to recommend standards for determining which boards are covered by the State Government Ethics Act as well as identifying existing boards which may meet those standards. The report recommended that the Commission adopt coverage criteria for determining whether a board is subject to the State Government Ethics Act; evaluate the approximately 150 State boards that

²² See Section 15 of S.L. 2008-181.

²³ "Board" – "Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority." G.S. 138A-3(1c).

are not currently covered; and review the existing 270 boards that are covered to determine whether they should continue to be covered under the new criteria. The addition of any new boards would increase the Commission's workload, especially in the areas of SEI evaluation and education. A copy of the study, *Criteria for Identifying Covered Boards Under the State Government Ethics Act*, is on the Commission's website at <http://www.ethicscommission.nc.gov/>. A list of covered boards for 2008 is included in ***Attachment G.***

PART VI KEY RESPONSIBILITIES & PROCESS ASSESSMENT

STATEMENTS OF ECONOMIC INTEREST. The SGEA generally requires that most covered persons (legislators, public servants, and judicial officers) file a Statement of Economic Interest containing certain financial and other types of disclosures. The primary purpose of the SEI is to assist these persons in avoiding conflicts of interest between their private interests and their public duties. The statements also provide an important aspect of transparency for the public since the SEIs are public record. Approximately 4,500 individuals are subject to the filing requirement on an annual basis. Statements of Economic Interest must be filed annually no later than April 15th.

The Commission must also prepare an evaluation of public servants' Statements of Economic Interest relative to any actual or potential conflicts of interest. The evaluation requirement is inapplicable to legislators and judicial officers.

The SGEA also requires that the Commission notify anyone who has either not filed an SEI or filed an incomplete SEI within 30 days of the annual filing deadline. The person has an additional 30 days to file or complete the SEI or be subject to a possible \$250 fine. Failure to properly file within 60 days of receipt of a notice may be grounds for disciplinary action. SEI compliance statistics for 2007 and 2008 are as follows:

Year	Number of Filers²⁴	Number of Evaluations Completed
2007	4,367	1,290
2008	4,525	815

²⁴ This number reflects the total number of SEI filers. However, effective August 15, 2008, the Commission no longer evaluates SEIs for judicial officers or legislators.

Year	Number Receiving an Initial 30-Day Notification	Number Fined \$250	Amount Collected ²⁵
2007	667	19	\$2,000
2008	530	33	\$3,750

Over the past two years, the Commission has made several revisions to the SEI administration process.

- **Revisions.** The Commission developed a new form in 2006 because of statutory changes to the filing requirements.
- **Development of a Web-Based, Fillable “No Change” Form.** In 2008, the Commission developed two short forms for filing year 2009. These forms were available to filers who had no changes from their previous SEI disclosures (“No-Change” Form) or who had changes to only a few questions (“Amendment to SEI” Form).
- **Evaluations.** The SEI evaluation backlog was identified in OSBM I and II as significant. As of December 1, 2008, the Commission staff had completed its review, research and evaluation for 815 of the 3,699 SEIs requiring evaluation. For the remaining 2,884 SEIs, the Commission staff had reviewed approximately 1,000 which were awaiting final approval. The backlog of evaluations was due in part to staff turnover, the need for additional staff in the SEI section, and revised filing requirements. OSBM predicted that it would take nine months (or .75 FTE) of staff time to eliminate the 2008 backlog. In addition, the Commission will be responsible for evaluating the SEIs of public servants who are hired, elected, or appointed in 2009 as well as being responsible for tracking persons who are non-compliant with the filing requirements. In order to help alleviate this backlog, and streamline the process for SEI filings in 2009 and beyond, the Commission hired a full-time attorney who will begin work on January 1, 2009, whose primary duties will be focused on the SEI process.

EDUCATION. One of the core essential functions of the Commission is providing ethics and lobbying education to numerous elected and appointed public officials and their immediate staff. The SGEA requires that the Commission develop and implement an ethics education and awareness program. All public servants, their immediate staff, legislators and legislative employees are required to attend an initial ethics education and awareness presentation within a certain period of time after assuming their public duties and must attend refresher presentations at least every two years. The Commission is also required to develop a

²⁵ As of April 1, 2009.

lobbying education and awareness program. Over the past two years, the Commission has made hundreds of presentations to thousands of public officials and employees as follows:

Year	Sessions	Locations	Attendees
2006-2007 ²⁶	145	345	Approx. 13,000 ²⁷
2008	26	83	1,313 ²⁸

The method of presentation has been either live on-site or live broadcast to various sites via distance education. Commission staff has worked with Information Technology Services (“ITS”) staff to sponsor remote sessions in as many locations as possible across the State. These remote locations include university and community college sites across North Carolina. Currently, there is one staff member (the Education Officer) who is primarily responsible for conducting the education sessions. In addition, Commission staff has worked closely with the General Assembly staff to provide ethics and lobbying education to all legislators and legislative employees.

Over the past 2 years, the Commission has recognized the need to offer different ethics education presentation options while still ensuring that the goal of instilling a “keen and continuing awareness of the ethical obligations” in persons subject to the ethics act is met. The Commission is exploring the following possible education options:

- **Online Training.** In the study completed by the Commission, the primary request was that the Commission offer online ethics education presentations. Furthermore, given the State’s current budget situation, offering online or other remote based

²⁶ Although the effective date of the education requirement was January 1, 2007, approved education sessions began in September 2006.

²⁷ Beginning in 2007, all public servants, their immediate staffs, legislators, and legislative employees were required to attend basic ethics education and lobbying awareness presentations. Those public servants holding positions on January 1, 2007, had until January 1, 2008, to satisfy their ethics education requirement.

²⁸ All public servants, their immediate staffs, legislators, and legislative employees are required to attend a refresher ethics presentation at least every two years. (G.S. 138A-14(b)-(c)). Most public servants in the State attended an education session during late 2006 and 2007. Therefore, since most individuals attended a session in 2007, there were fewer participants in 2008. However, persons who attended a basic ethics presentation in 2006 or 2007 will be required to attend a refresher in 2009. Thus, the numbers of attendees in 2009 will significantly increase.

education presentations would save the expenditure of State funds not only for the Commission but also for other agencies as well. The Commission staff has met with ITS and others in an effort to determine the types of online products that are available and that would ensure that public officials and employees obtain an understanding of the ethics law requirements. The OSBM II study was also supportive of the Commission's efforts to find ways to offer education presentations more efficiently.

- **Online Registration.** Currently, registration is done either by phone or by e-mail through direct contact with Commission staff. OSBM suggested, and the Commission supports, implementing a simple, web-based registration process.
- **Train-the-Trainer.** The Commission also directed staff to develop criteria for third party or train-the-trainer education options.

ADVICE & FORMAL ADVISORY OPINIONS. The advice and advisory opinion process is an essential function of the Commission because it provides guidance to individuals who are regulated by the State Government Ethics Act ("Ethics Act") and the Lobbying Law, enhancing understanding and compliance with those laws..

The Ethics Act and Lobbying Law authorize Commission staff to issue informal advice, both written and oral, and the Commission to issue written formal advisory opinions, on specific issues regarding the meaning and applicability of the Ethics Act and Lobbying Law. That advice addresses the gifts ban and the Statement of Economic Interest and conflict of interest provisions of the Ethics Act. Advice interpreting the Lobbying Law addresses the registration and expenditure reporting requirements and gifts ban applicable to registered lobbyists and lobbyist principals and the miscellaneous reporting requirements applicable to person otherwise exempted from the Lobbying Law.

Individuals who may request advice concerning the Ethics Act include public servants, legislative employees, individuals responsible for supervising or appointing a public servant or legislative employee, legal counsel, and ethics liaisons. Legislators may request advice concerning the Ethics Act and certain provisions of the Legislative Ethics Act. Lobbyists, lobbyist principals, and other persons affected by the Lobbying Law may also request advice. Finally, the State Auditor may request an advisory opinion on specific questions involving the meaning

and application of the Ethics Act, certain provisions of the Legislative Ethics Act, or the Lobbying Law.

Requests for advice must relate to real or reasonably anticipated facts or circumstances. All requests for advice, advice given, and related information are confidential and may not be disclosed without the permission of the requester.

Generally, a formal written advisory opinion issued by the Commission gives the requester immunity from investigation by the Commission, adverse action by the requester's board or agency, and investigation by the Secretary of State. However, a formal advisory opinion does not grant immunity for violations of the criminal law in the performance of the individual's official duties. Informal advice issued by Commission staff grants no immunity. The Commission publishes formal advisory opinions on its website within 30 days of issuance. Those opinions are edited as necessary to protect the identity of the requester.

The Commission also issues recommended formal advisory opinions to legislators. However, those opinions are transmitted to the Legislative Ethics Committee ("LEC"), which has sole authority to issue formal advice to legislators. A legislator who relies on a recommended formal advisory opinion is immune from investigation by the Commission or LEC (unless it involves an alleged violation of criminal law in the performance of the legislator's official duties), adverse action by the house of which the legislator is a member, and investigation by the Secretary of State.

While there has been some fluctuation in the number of requests, the complexity of the questions has increased. Furthermore, because of their desire for immunity, many requesters want formal advisory opinions. The 2007 – 2008 statistics are as follows:

Requests Received²⁹	Advice/Formal Advisory Opinions Issued	Backlog as of 12/31/08
2,005 (estimated)	1,828	177

²⁹ Includes requests for both ethics law and lobbying law advice and formal advisory opinions.

With the implementation of the advice and advisory opinion database, the Commission will be able to more accurately track the number and status of requests for formal and informal advisory opinions. The database will also be a resource for researching and responding to future requests.

The timeliness of responses was an issue identified both by OSBM and by the Commission in its internal study. Review and response time to requests for advice may be very time-consuming depending upon the complexity of the issues. The OSBM II study projected that the Commission would require 17.9 months of staff time to complete the review and approval of the backlog as of December 31, 2008. The Commission has identified several ways in which to improve the response time, including centralizing and streamlining the process for responding to requests for both ethics and lobbying advice. However, based on the number and difficulty of the questions, the Commission may still require additional staff in the future.

LOBBYING LAW ACTIVITIES. The Lobbying Law (Chapter 120C of the General Statutes) gives specific authority to both the Commission and the Secretary of State (“SOS”). The Commission has sole authority over Article 3 (Prohibitions and Restrictions), Article 5 (Liaison Personnel), and Article 7 (Persons Exempted). In addition, the Commission has the sole authority for and is charged with issuing advisory opinions interpreting the meaning and application of the entire Lobbying Law and a person’s compliance therewith. (*See Advice & Formal Advisory Opinions above.*) The Commission also has the sole authority to develop and implement a lobbying education and awareness program. The SOS has authority to adopt rules, orders, and forms necessary to administer the provisions of Article 2 (Registration), Article 4 (Reporting), and Article 8 (Miscellaneous Reporting) of the Lobbying Law.

In late 2006, the SOS proposed temporary rules concerning the administration of portions of the lobbying law. The Commission provided written comments and some of the Commission’s suggestions were incorporated into the temporary rules. Thereafter, in 2007, the

SOS went forward with permanent rulemaking. In August of 2007, the Commission staff presented oral and written comments. The SOS incorporated some of the Commission's proposed changes into the permanent rules, and the rules were then submitted to the Rules Review Commission ("RRC"). The Commission also submitted written comments to the RRC. Prior to review by the RRC, the SOS and the Commission agreed upon a final version of the SOS permanent lobbying rules. In November, the RRC approved the SOS's permanent lobbying rules which became effective on December 1, 2007.

Finally, with regard to violations and enforcement under Article 6, both the Commission and the SOS have specific authority to address complaints alleging violations of the lobbying law. The Commission investigates complaints involving Articles 3, 5, and 7, while the SOS investigates complaints alleging violations of Articles 2, 4, and 8.

COMPLAINTS. The Commission also has varying degrees of investigative and enforcement powers concerning alleged unethical conduct by covered persons and legislative employees, depending upon which branch of State government is involved. Complaints may be filed by anyone; however, certain statutory requirements must be met in order for the complaint to be valid. Complaints must be in writing and must include the date of the alleged violation, specific facts indicating a violation of the ethics laws, and generally must be signed and sworn.³⁰ If the Commission finds no probable cause, the complaint is dismissed. If the Commission finds probable cause, public servants are entitled to a public hearing before the Commission. For legislators, if probable cause is found, the complaint is referred to the Legislative Ethics Committee. For judicial officers, if probable cause is found, the complaint is referred to the appropriate entity. If probable cause is found involving a complaint against a legislative employee, the complaint is referred to the General Assembly. The Commission has the authority settle complaints involving public servants.

³⁰ The Commission has adopted a complaint form which is posted on the Commission's website at http://www.ethicscommission.nc.gov/documents/Complaint_%20Form_082808.pdf.

The number of complaints has remained constant for 2007 and 2008: 72 and 73 per year respectively. These numbers include all attempted complaints; however, not all complaints have met the statutory requirements for a valid complaint (e.g., against a covered person, signed, sworn, etc.). Complaint statistics for 2007 and 2008 can be found in ***Attachment H***.

The Commission is authorized under G.S. 138A-12(d) to utilize the services of a hired investigator when conducting inquiries. Because the complaint investigations utilize a tremendous amount of staff resources and there is no full-time investigator on staff, the Commission has used a portion of its contract funds to contract with an attorney to assist with these investigations as needed.

PART VII CONCLUSIONS

The State Government Ethics Act and revisions to the Lobbying Law are highly complex and necessitated the devotion of a significant amount of staff resources to the SEI, education, advice and advisory opinion, and complaint processes. The additional duties and responsibilities created by these laws resulted in a significant backlog of work. Thus, despite working large amounts of overtime and utilizing the services of contract employees, Commission staff was unable to keep pace with the expanded duties and responsibilities created by these laws. Furthermore, the requests for advice and advisory opinions have become increasingly complex. These factors, which were also noted by two OSBM studies, necessitated the addition of staff during 2008.

Notwithstanding these challenges and although the Commission continues to be in a “start-up” phase and the workload has not yet stabilized, the Commission made significant progress in 2007 and 2008. The Commission worked and continues to work with the persons subject to the ethics and lobbying law as well as the general public to improve services, including:

- Improving response time to requests for advice and advisory opinions.
- Examining other education options.
- Making opinions more “reader friendly.”
- Providing access to more information through newsletters and web-site postings.