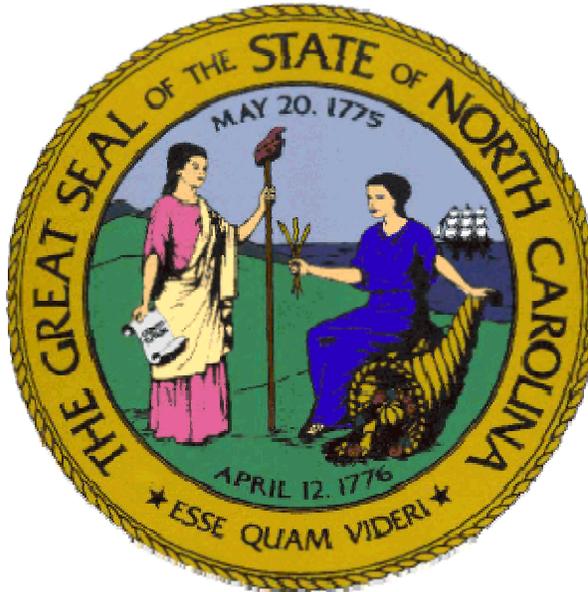


**Staffing Analysis of the North Carolina
State Ethics Commission**

Management Study

As Directed by Session Law 2008-107, Section 22.1

March 1, 2009



Prepared By:

Office of State Budget and Management

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INTRODUCTION

Scope of Study

Section 22.1 of Session Law 2008-107 directed the Office of State Budget and Management (OSBM) to conduct a staffing analysis of the Ethics Commission¹ to determine if the staffing is appropriate for the workload volume that has been generated by the enactment of Session Law 2006-201. OSBM must submit a final report outlining its findings and staffing recommendations to the House Appropriations Subcommittee on General Government, Senate Appropriations Subcommittee on General Government and Information Technology, and the Fiscal Research Division by March 1, 2009.

Methodology

In order to conduct the staffing analysis, the OSBM study team performed the following tasks:

- Examined and analyzed the organizational structure of the Commission,
- Analyzed employee time and resource allocation data for 2007 and 2008 provided by management and staff,
- Interviewed Commission employees,
- Reviewed the statutory requirements of the State Government Ethics Act (Ethics Act) and Lobbying Law, and
- Analyzed various other data.

BACKGROUND

In January 1977, Governor Hunt issued an Executive Order creating the North Carolina Board of Ethics, which established jurisdiction over employees in the Governor's office, department heads and their chief assistants, employees in exempt policy-making positions, and appointees to non-advisory boards and commissions. The Board's main duties and responsibilities in 1977 were reviewing Statements of Economic Interest (SEIs), rendering advisory opinions, and investigating complaints. The Board did not have the power to issue sanctions against public officials found in violation of the Executive Order. With only minor changes, Governor Martin issued his own Executive Order establishing a Board of Ethics in January 1985 and amended the order in 1990 to include all members of boards, commissions, and councils within the executive branch. When Governor Hunt returned to office in 1993, he again established the Board of Ethics with his own Executive Order with substantially no changes. In early 1998, Governor Hunt revised his Ethics Executive Order, greatly expanding the Board's powers and duties, particularly in the areas of ethics education, financial disclosure, evaluation, and enforcement. The Executive Order's "rules of conduct" were also expanded; directing public officials to avoid "even the appearance of a conflict of interest." Governor Easley's 2001 Executive Order established the Board of Ethics that retained the powers and authority previously established by Governors Hunt and Martin.

Prior to January 1, 2007, the Board of Ethics was the State's primary conflict of interest "watchdog" for high-level employees and appointees in the executive branch of State government. The Board's overall mission was to protect the public interest and maintain the public trust by helping public officials and members of boards and commissions avoid conflicts of interest and the appearance of conflicts of interest as they performed their public duties. The Board pursued its duties primarily through education, evaluation, and enforcement.

The Ethics Act (G.S. 138A, effective January 1, 2007) and the Lobbying Law (G.S. 120C, effective January 1, 2007) created the State Ethics Commission with an overall mission of protecting the public interest and maintaining public trust, by helping covered persons² identify, address, and avoid conflicts of interest and appearances of conflict

¹ Hereafter, the North Carolina State Ethics Commission will be referred to as "the Commission".

² Covered Persons include certain elected officials, judicial officers and employees, certain State employees, and appointees to non-advisory state boards and commissions. The Commission's web site <http://www.ethicscommission.nc.gov/cpersons.htm> provides details on the general categories of covered persons and the names of the persons covered by the Ethics Act and Lobbying Law.

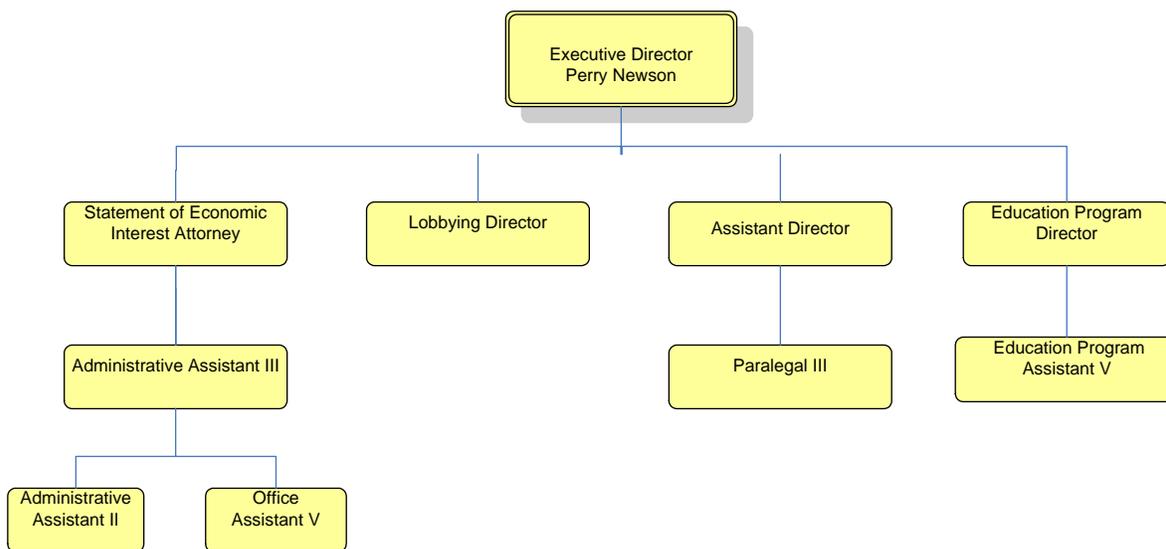
of interest as they perform their duties throughout the State. The number of covered persons was greatly expanded with the inclusion of elected legislators and their staff and judicial officers. The Commission accomplishes its mission primarily through evaluating SEIs, providing advisory opinions, education, enforcement, and investigation efforts. Both statutes were amended in August 2007 by S. L. 2007-347 (HB 1110) and S. L. 2007-348 (HB 1111). The statutes were amended a second time in August 2008 by S. L. 2008-213 (HB 2542) and S. L. 2008-215 (SB 1875). The changes and clarifications made by the 2008 amendments are explained on the Commission's web site (<http://www.ethicscommission.nc.gov>). Appendix A shows the obligations of all persons covered by the Ethics Act.

Organizational Structure and Program Process

The Commission has eight members that are appointed by the Governor and the General Assembly.³ Further, the Commission is supported by ten staff members that handle the day-to-day duties and responsibilities mandated by the Ethics Act and Lobbying Law. Exhibit 1 depicts the organizational structure of the Commission's staff and their direct lines of supervision as of February 2009.

Exhibit 1

STATE ETHICS COMMISSION STAFF



February 25, 2009

The primary duties and responsibilities of the Commission staff are to:

- 1) Review and approve SEIs submitted by covered persons,
- 2) Evaluate and respond to requests for advice and advisory opinions⁴,
- 3) Educate all covered persons and persons that report directly to covered persons about the requirements of the State Ethics Act and Lobbying Law,
- 4) Educate the lobbying community, legislative liaison personnel and others affected by the Lobbying Law about the Lobbying law and the applicable provisions of the State Ethics Act,
- 5) Investigate complaints of ethics violations by covered persons, and
- 6) Enforce the requirements of the statutes.

³ Of the eight members, four are appointed by the Governor and four are appointed by the General Assembly—two based upon the recommendation of the Speaker of the House of Representatives and two based upon the recommendation of the President Pro Tempore of the Senate.

⁴ G.S. 120C-102 (b) and G.S. 138A-13 (c) clarify that the Commission staff can only issue advice (also referred to internally as “informal advice”) and all formal advisory opinions must be issued by the Ethics Commission which meets at least quarterly.

The staff also performs a number of other duties related to the overall operation of the Commission, including preparing for and participating in Commission meetings, monitoring and interacting with the General Assembly, answering telephone calls, responding to e-mail inquiries, managing the office, and supervising the Commission staff. Even though the Commission was authorized nine FTE positions during 2007 and 2008, some positions were vacant during this time. Table 1 shows all of the duties and responsibilities of the Commission's staff, brief descriptions of their duties and responsibilities, and the FTEs they reported using in each area for 2007 and 2008.

Table 1

Duties and Responsibilities of the Staff of the State Ethics Commission Staff and Actual FTEs for 2007 and 2008^a

Duties/Responsibilities	Description	2007 FTE	2008 FTE
Statements of Economic Interest	Review SEIs for completeness, research information reported, review applicable General Statutes, answer questions via telephone, e-mail, and walk-ins, and generate correspondence to filers.	2.57	2.13
Education—Initial & Refresher	Provide education courses for all legislators, legislative employees, public servants, and immediate staff of of public servants that are required to comply with the Ethics Act and Lobbying Law.	1.51	.59
Advisory Opinions--Ethics and Lobbying	Review, research, and respond to requests from covered persons regarding conflicts of interest and/or compliance with the Ethics Act and Lobbying Law.	2.56	2.30
Commission Meetings	Prepare for and participate in Commission meetings.	.14	.15
Complaints and Investigations	Receive, review, and acknowledge receipt of complaints, route to appropriate senior staff, maintain tracking system for complaints, and handle correspondence related to complaints.	.02	.29
Rules and Rulemaking	Prepare Commission rules. Review and comment on rules proposed by the Department of the Secretary of State, and attend public hearings related to rules.	.01	.01
Office Support	Answer and route telephone calls, handle incoming and outgoing mail, and assist senior staff with special projects.	.58	.87
Management, Supervision, & Human Resources	Oversee office operations, supervise administrative staff, interact with contractors, and manage human resource activities.	.11	.24
Commission E-mail	Receive, review, and route e-mail messages to appropriate staff, draft responses for some e-mail requests, and maintain files of e-mail messages.	.28	.48
Legislative Interaction	Appear before various legislative committees, meet with legislative staff, and monitor ethics and lobbying related bills in the General Assembly.	.06	.23
Commission Newsletter & Web Site	Prepare newsletter and create and maintain updates for web site.	.004	.20
Database Management	Develop and maintain various databases related to education, SEIs, advisory opinions, list of covered persons, and other Commission information.	.02	.01
Public Record Requests	Handle requests for copies of public records, supervise public review of records, and invoice and receive payments for copies of public records.	.08	.05
Reporting	Prepare, review, revise, and submit reports to Fiscal Research and Joint Subcommittee on General Government, Budget. Prepare the Commission's annual report.	.03	.05
Coordination with the Department of the Secretary of State	Interact with the Department of the Secretary of State on issues related to advisory opinions, education, and rulemaking.	.004	.01
Other	Respond to media inquiries, publication of Commission "Law Book", etc	.06	.25
	Total FTEs	8.03	7.86

^a FTEs are based on the actual months that Commission staff worked during 2007 and 2008, thus factoring in the periods that several positions were vacant.

Source: OSBM's analysis of data provided by the Commission

All persons holding covered positions on January 1, 2007 were required to file SEIs by March 15th in 2007. S.L. 2007-348 changed the SEI filing date to April 15th for 2008 and subsequent years. Further, persons appointed, employed, or needing a certificate of election after January 1, 2007, had to file SEIs and have them evaluated by the Commission prior to taking their respective positions. Persons who fail to file their SEIs on time are subject to sanctions and fines. The Ethics Act and Lobbying Law require covered persons to disclose financial and personal interests on their SEIs and to have their SEI notarized prior to mailing it to the Commission. SEIs are then reviewed by the Commission's professional staff, thus enabling filers to avoid conflicts of interest or potential conflicts of interest between their private interests and public duties. The SEIs also enable persons who appoint, elect, hire, supervise, or advise covered persons to be aware of and avoid conflicts of interest for covered persons. Additional changes made to the SEI process by S.L. 2008-213 include:

- Revised question 19 of the SEI form to require all persons to disclose any other information they believe will assist the Commission in advising persons regarding compliance with the Ethics Act,
- Discontinue the requirement that the Commission prepare SEI evaluations for legislators and judicial officers, and
- Required evaluations of SEIs for nominees to the University of North Carolina Board of Governors and the State Board of Community Colleges within 7 days.

Covered persons, registered lobbyists, lobbyist principals, and any other persons affected by the Lobbying Law can also request advice or advisory opinions from the Commission. The Commission's opinions respond to specific questions about the meaning and application of the Ethics Act and Lobbying Law, and requesters' compliance with the statutes. The requests must be in writing (regular mail or e-mail) and related to real or reasonably anticipated facts or circumstances. A request can be for a written formal advisory opinion issued by the Commission, written advice from the staff, verbal advice from the staff, or a combination of these. Prior to the 2008 amendments to the Lobbying Law, the staff, through the authority of the Commission, was allowed to provide written formal advisory opinions and informal advisory opinions. As a result of the 2008 amendments, the staff can only issue advice (also referred to internally as "informal advice") and all formal advisory opinions must be issued by the Ethics Commission which meets quarterly. The requirement that only the Commission members can approve a formal advisory opinion creates delays in the Commission responding to the requestors.

The Commission's education program includes developing and implementing educational courses for all legislators, legislative employees, public servants and their immediate staff, the lobbying community, and legislative liaison personnel. The education courses cover the requirements of the Ethics Act and the Lobbying Law, and provide the initial mandatory education for legislators, legislative employees, public servants, and their immediate staff. Biennial refresher courses are required for all of these individuals who have previously taken the initial education course. The education program also includes producing periodic newsletters and providing information about State laws, rules, procedures, and other information relevant to the Ethics Act and Lobbying Law. Additionally, the Commission must identify and publish at least quarterly a listing of the names and positions of all persons subject to the Ethics Act.

In its enforcement capacity, the Commission is responsible for interpreting, investigating, and enforcing the Ethics Act and Lobbying Law. The Commission has the authority to pursue fines and/or sanctions against persons who fail to file their SEIs on time or file improperly. Further, it may investigate potential criminal actions against any person who conceals, fails to disclose required information, or knowingly provides false or misleading information to the Commission. Additionally, the Commission may investigate complaints of unethical conduct by covered persons and legislative employees to determine the applicability to the Ethics Act and Lobbying Law or criminal laws, and whether legal action should be taken.

RESULTS

The Ethics Act and Lobbying Law greatly increased the workload of the Commission over the duties and responsibilities of the Commission's predecessor, the North Carolina Board of Ethics. With any new agency or organization there is usually a certain amount of time and effort related to start up which comes on top of the staff's normal day-to-day workload. This has occurred with the Commission in that it has been faced with start up efforts, dealing with several position vacancies, and the additional statutory changes mandated by the 2007 and 2008

amendments to the original Ethics Act and Lobbying Law, all of which have had a direct impact on the Commission's first two years of operation. Table 2 shows the statutory changes that have impacted the Commission's workload. The Board of Ethics had some of the same duties and responsibilities; however, they were not as comprehensive and did not include as many covered persons as the Commission. For example, the Ethics Act and Lobbying Law cover more than twice as many persons, have enforcement authority for SEIs, and have a gift ban that the Board of Ethics did not cover. Further, the ethics requirements of the Lobbying Law were not covered by the Board of Ethics. The Commission is also providing significantly more advice and advisory opinions under the Ethics Act and Lobbying Law than the Board of Ethics. With each of the added or expanded responsibilities, the Commission has been faced with expanding its staff to meet the increased demands and new enforcement requirements of the Ethics Act and Lobbying Law, providing ethics training for about 13,000 persons biennially, and familiarizing new staff with their respective duties.

Table 2

Statutes Impacting Commission's Workload

Statute	Statute Citation	Effective Date
Ethics Act	General Statute 138A	January 1, 2007
Lobbying Law	General Statute 120C	January 1, 2007
House Bill 11 10	Session Law 2007-347	August 9, 2007
House Bill 11 11	Session Law 2007-348	August 9, 2007
House Bill 2542	Session Law 2008-213	August 15, 2008
Senate Bill 1875	Session Law 2008-215	August 15, 2008

Source: North Carolina General Assembly

Statements of Economic Interest

The expanded reporting requirements and enforcement authority granted the Commission for the SEIs greatly increased its workload. The number of covered persons required to submit SEIs more than doubled with the inclusion of legislators, legislative employees, and the judiciary as well as a significant increase in the number of members of boards and commissions, and the university and community college boards of trustees subject to the SEI requirement. The Ethics Act also required all state and local candidates—approximately 650 persons—to submit a complete SEI as a condition of their candidacy. Most of the SEIs submitted by candidates occur biennially. Table 3 shows the added requirements for SEIs for the Commission. Previously, covered persons in the executive branch and persons appointed by the governor only had to submit the completed SEI forms when they were first employed or appointed by the governor. The Board's staff performed limited reviews and verifications of the information reported. Also, the Board had no enforcement authority relative to assessing fines or penalties. In subsequent years covered persons could submit supplemental SEIs that only showed changes from the previous year or a "no change" SEIs and the Board's staff did not have to review them or send evaluation confirmation letters for the supplemental and no change SEIs.

Table 3

Comparison of Statement of Economic Interest Requirements for the Ethics Board and the Ethics Commission

Board of Ethics	Ethics Commission
Covered Persons – approximately 2,000	Covered Persons – 4,500
Executive branch employees	Constitutional officers and employees
Governor's appointees to University System Board of Trustees	All members of the University of North Carolina System Board of Governors and the 16 universities' Board of Trustees
Governor's appointees to Community College System Boards of Trustees	All voting members of the State Board of Trustees of the Community College System and the Boards of Trustees of the 58 community colleges
Governor, House, & Senate appointees to covered Boards & Commissions	All members of covered Boards & Commissions
	Legislators
	Justices, judges, district attorneys, & clerks of court

Source: State Government Ethics Act

As of January 1, 2007, there were 4,367 covered persons who were required to file SEIs with the Commission. The number of covered persons increased to 4,500 as of December 31, 2008, however, the number of covered persons is subject to change each year due to new positions, vacant positions and other appointment changes. The 4,500 covered persons include 801 judicial officials and legislators that are not required to have their SEIs evaluated. As of December 31, 2008, the Commission staff had completed its review, research, and evaluation for 815 of the 3,699 SEIs that require evaluation. For the remaining 2,884 SEIs, the Commission staff reviewed approximately 1,000

which await final approval. Based on the average time spent by Commission staff reviewing and approving SEIs, OSBM projects that it will take nine months (.75 FTE) of staff time, at the present rate of review, to complete the review and approval of the December 31, 2008 backlog of SEIs. In addition to the SEIs that were initially submitted by persons covered by the Ethics Act and Lobbying Law, the Commission will continue to receive additional SEIs from covered persons that are elected, appointed, or hired during 2009 and subsequent years. Another responsibility of the Commission staff is to track covered persons who are in “non-compliance” status. The tracking entails generating letters of non-compliance and e-mailing the letters, answering phone calls, and keeping Commission management and the Commission aware of the status of these persons. The staff tracked 550 non-compliant persons during 2008. With the addition of an SEI attorney in January 2009, the Commission should be able to eliminate the SEI backlog by the end of 2009. This will also free up the time previously spent by the Assistant Director addressing SEI legal issues.

The Commission had planned to allow filers who have little or no change in their financial and personal holdings to submit a “Short SEI Form” in subsequent years rather than the lengthy multi-question forms. However, Section 34 of S.L. 2007-348, changed the SEI form in such a way that filers could not rely on merely changing their prior year data. Due to these legislative changes all filers were required to submit the “Long SEI Form” annually even if they had little or no change in their financial and personal interest. Further, there will continue to be new covered persons (elected, appointed, or employed) whose SEIs will require more time to review and research as well as the previous filers who have significant changes in their financial and personal holdings in subsequent years. At this point, it is not possible to project how much the SEI workload may decrease/increase in future years. Furthermore, changes to the SEI process by S.L. 2008-213 resulted in the Commission staff recommending additional changes to the SEI form and the filing requirements. At its February 2009 meeting the Commission modified the SEI forms for 2009 to allow filers to use the Long form, Amendment Form, or No Change Form. Exhibit 2 on page 7 illustrates the Commission’s overall review, evaluation, and approval process for SEIs.

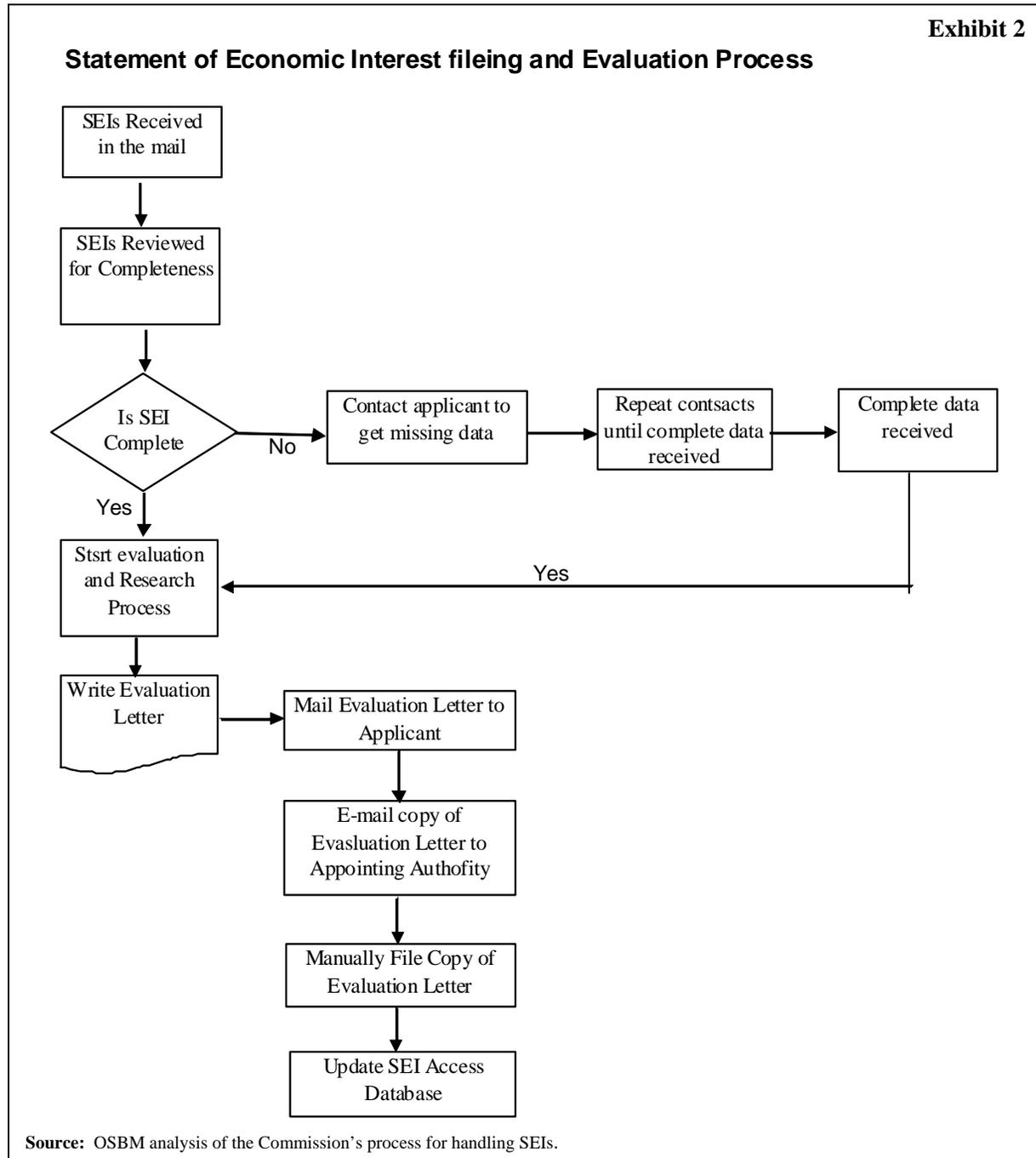
Another issue related to the SEI filing process is that when a filer responds to any of the 19 questions on the SEI form as “No Change” the Commission staff must refer to filers’ previous years’ SEIs to ensure they are reviewing and evaluating all of the filer’s financial interests. As this process continues into future years—such as 2010, 2011, etc.—the staff will be faced with having to retrieve filers’ SEIs from several previous years which will increase their workload, although electronic review will be less time-consuming than retrieving paper files. The Commission staff’s responsibilities of reviewing and approving SEIs will be less complicated and decrease their workload. One issue that would have to be addressed, if electronic filing is permitted, is notarizing the SEI electronically. While electronic notarization is currently allowed by the State, this is not addressed by the Ethics Act. Therefore, the statutory requirement that SEIs be notarized will need to be changed. The accuracy and completeness of an SEI is dependent upon the integrity of the filer, having the form notarized in no way guarantees the accuracy and completeness.

The Maryland State Ethics Commission has similar responsibilities as the North Carolina Ethics Commission. The Maryland Commission, unlike North Carolina’s, encourages officials and employees to file annual disclosure statements electronically. During 2007 the Maryland Commission reported that 71 percent of the disclosure statements were filed electronically. Additionally, the Maryland Commission made all lobbying registrations, activity reports, and special events reports available electronically.

Advisory Opinions

Prior to the 2008 legislative changes, the staff could issue two types of advisory opinions—formal and informal. The formal advisory opinions are letters provided in response to requests from non-legislators to the Commission for the meaning and application of the Ethics Act or the Lobbying Law to specific facts and advising requesters whether their personal or business activities or future actions comply with the requirements of the Ethics Act or Lobbying Law. As noted earlier, effective with the 2008 legislative changes, only the Commission can issue formal advisory opinions. The staff is only allowed to issue advice, informal advisory opinions, or informal advice responses that relate to a requestor’s compliance with the Ethics Act or the Lobbying Law. Thus, all formal advisory opinions are presented to the Commission for approval and formal issuance. All formal advisory opinions are written and provide limited immunity to the requestor. Staff advice can be verbal, written, or both, depending on what is requested. Staff advice is not presented to the Commission and does not provide any immunity to the requestor. Generally, it takes the Commission staff considerably more time to complete a formal advisory opinion than it does

for an informal opinion, and the length of time before an answer is given to the requestor can be longer because the Commission only meets quarterly.



If the written request for a formal advisory opinion is from a legislator, the Commission has the authority to issue recommended formal advisory opinions to legislators. These opinions are initially presented to the Commission for approval. Once approved by the Commission, these formal advisory opinions are presented to the Legislative Ethics Committee by Commission staff for consideration. The Legislative Ethics Committee has authority to accept, modify, or overrule the Commission’s recommended advisory opinion. Furthermore, these formal advisory opinions provide limited immunity to the legislators requesting the opinions until the Legislative Ethics Committee approves the opinions.

The Commission staff had expected the number of requests for advice and formal advisory opinions from legislators, legislative employee, public servants, legislative liaison personnel, and the lobbying community to decline with the adjournment of the legislature each year; however the number of advice and advisory opinion requests remained about the same throughout 2007 and 2008. Staff also noted that the number of questions and the complexity of the questions in the more recent requests have increased. For example, earlier opinion requests usually had two to three questions, whereas some of the recent requests had numerous questions and are more complex. According to the Commission’s staff, their review and response to advice and advisory opinions have proven to be very time consuming—ranging from less than an hour for the simple informal request to as much as 15 days for the formal requests with multiple questions and complex issues. Based on the time expended during 2007 and 2008 in reviewing advisory opinions, OSBM projects that the Commission will require 19.7 months (1.64 FTEs) of staff time to complete the review and approval of the December 31, 2008 backlog of pending advisory opinions. With the addition of an SEI attorney, the time (.56 FTE) previously spent by the Assistant Director addressing SEI legal issues can now be dedicated to advice and formal advisory opinions. The Commission staff anticipates that the number of requests for advice and formal advisory opinions will remain at the current level or increase in future years. Legislators, legislative employees, public servants, legislative liaison personnel, and members of the lobbying community will continue to request formal advisory opinions as they come to realize the immunity that these formal advisory opinions can offer them relative to not being fined, sanctioned, or disciplined by the Commission, the Department of the Secretary of State, or, where applicable, their employing entity. The Commission is also required to publish an edited version of each formal advisory opinion within 30 days after it is issued. It appears that the numbers of formal advisory opinions requested are significantly higher from lobbyists that covered persons.

Ethics Education

With the enactment of the Ethics Act and Lobbying Law in January 2007, the Commission’s staff was faced with developing and providing ethics and lobbying education courses to an estimated 10,000 covered persons and their immediate staff, legislative employees, lobbying community, and legislative liaison personnel. All “public servants” and their immediate staff, legislators, and legislative employees must participate in the ethics and lobbying portions of the education courses within specific timeframes. The courses are optional for others, such as lobbyists and lobbyist principals.

Judicial officers are not covered by the education requirements of the Ethics Act and Lobbying Law. Table 4 shows the timeframes in which all persons subject to the mandatory education requirements must participate in educational courses. The initial ethics courses consist of 2-hour sessions. All legislators, legislative employees, public servants, and immediate staff of public servants are required to attend refresher training every two years thereafter. The refresher courses, as well as the basic course, are currently being offered by the Commission during 2009. All newly elected, re-elected, appointed, employed public servants and their immediate staff are required to receive the initial 2-hour education courses within 6 months. The educational responsibilities of the Commission also include (1) preparing newsletters, (2) developing educational information for the Commission’s web site, and (3) preparing other educational information, such as lists of “Frequently Asked Questions” related to SEIs, advisory opinions, lobbying, and complaints. Because the requirement for attending an education course is on a 2-year cycle, the Commission’s

Table 4

Educational Conditions and Timeframes

Persons/Groups	Education	Condition	Timeframe
Legislators	Ethics	Election, re-election, or appointment	Within 3 months
	Lobbying	Election, re-election, or appointment	Within 6 months
Legislative Employees	Ethics	Appointment or employment	Within 3 months
	Lobbying	Appointment or hiring	Within 6 months
Public Servants & Immediate Staff ^a	Ethics	Election, re-election, appointment, or employment	Within 6 months
Public Servants	Lobbying	Election, re-election, appointment, or hiring	Within 6 months
Lobbying Community and Legislative Liaisons	Lobbying	Optional	
Judicial Officers ^b	Not required		

^a Immediate staff are individuals who report directly to a public servant
^b Justices, judges, district attorneys, and clerks of court

Source: State Government Ethics Act and Lobbying Law

education workload for 2008 was significantly less than it was for 2007. The education workload will be significantly higher in 2009 because of the 2-year mandatory refresher requirement. This imbalance in the education workload should continue into the future.

During 2007, the Commission provided 127 education courses to approximately 11,000 legislators, legislative employees, public servants, their immediate staff, and the lobbying community.⁵ The number of individuals who participated in the 26 education courses offered during 2008 was about 1,300. With the resignation of the Education Director on August 31, 2007, the Commission's Executive Director and other staff assumed the responsibility for completing the scheduled education courses for the remainder of 2007 and early 2008. During the first 8 months of 2007, the courses were offered at multiple locations and usually in relatively small group settings across the State. The Education Director position was vacant for 8 months (September 2007 through April 2008). Most of the education courses that were provided during the last 4 months of 2007 and all of 2008 were offered in a large auditorium setting in Raleigh or via the Information Highway Distance Education program on community college campuses across the state.

Currently, all persons registering for ethics and lobbying educational courses must call or email the Commission staff to schedule their education courses. The current process for registering persons for the education courses is very labor and paper intensive in that all registration requests are handled manually via telephone or e-mail. All telephone call or e-mail contacts are documented with paper copies. Further, persons who have already scheduled their education may ask to reschedule their education courses which add to the workload of the Commission staff. One way the Commission can reduce the workload of its staff is to implement an on-line registration process that allows persons to register for ethics and lobbying education courses electronically through the Commission's web site. On-line registrations would be easier and more efficient for the Commission's staff as well as the persons registering for the courses than the Commission's current manual process. In fact, many other State agencies are currently using on-line technology for registering persons for education courses.

The Maryland State Ethics Commission is similar to the North Carolina Commission. However, Maryland has an on-line registration system that eliminates much of the staff time and paperwork of manually registering persons. The on-line system assures registrants that they are automatically confirmed by just submitting the training request form. Maryland registrants also receive a reminder that they are scheduled for the training a few days prior to the date of the course.

Investigation and Enforcement

The Commission has investigation and enforcement responsibilities under the Ethics Act and Lobbying Law, including the investigation of complaints filed by citizens. The Commission's enforcement role consists of ensuring all persons who are subject to any parts of the Ethics Act and Lobbying Law comply with these statutory requirements. The Commission is also tasked with receiving complaints⁶ that allege unethical conduct by covered persons and legislative employees and investigating the complaints. The Commission and its staff investigate the following types of complaints:

- The application of or alleged violation of the Ethics Act or the Lobbying Law,
- The application of or alleged violation by legislators of Part 1 of Article 14 of Chapter 120 of the General Statutes, and
- Alleged violations of criminal statutes by covered persons in the performance of their official duties.

The Commission received 73 complaints during 2007 and 72 during 2008. The staff anticipates that the number of complaints will increase as the public becomes more aware of the complaint process. In addition, to investigating complaints, the Commission staff is responsible for pursuing all complaints that it considers to have merit through one of three prosecutorial steps; (1) an administrative hearing, (2) the Legislative Ethics Committee, or (3) the Judicial Standards Commission. Because of the expected increase in the number of complaints and the need to

⁵ Prior to the January 1, 2007 effective date of the Ethics Act and Lobbying Law, the commission provided 18 education courses to about 2,100 persons between September and December 2006.

⁶ Sworn and signed complaints to the Commission can come from individuals, public servants, or any person responsible for the hiring, appointing, or supervising a public servant.

prosecute some complaints, the staff anticipates an increased workload in this area. However, OSBM can not quantify the potential increase in the Commission's workload at this time.

Other Duties

In addition to the primary duties of the Commission previously addressed, there are a wide range of other duties that command the time and attention of the Commission staff. While each of these duties may seem minor in themselves, when considered as a whole, they required 1.4 FTEs during 2007 and 2.5 FTEs during 2008, or an average of 2.0 FTEs per year. These include,

- Preparing for and participating in Commission meetings,
- Answering and handling phone calls and e-mails,
- Overseeing office operations,
- Managing human resource activities,
- Receiving, reviewing, and acknowledging receipt of complaints,
- Interacting with the General Assembly and monitoring ethics and lobbying related bills,
- Preparing newsletters and maintaining Commission's web site,
- Developing and maintaining various Commission databases,
- Preparing Commission rules,
- Interacting with the Department of the Secretary of State on rules and other issues,
- Handling requests for copies of public records and media inquiries, and
- Preparing and submitting various reports.

The Commission had a number of additional tasks that the staff was unable to complete or had been unable to start as of December 31, 2008. Specifically, the Commission is required to identify and publish a list of all boards and commissions that must comply with the Ethics Act. The 270 boards and commissions that were previously subject to Governor Easley's 2001 Executive Order are the only ones currently required to comply with the Ethics Act. In addition to reviewing the purposes and missions for the 270 boards and commissions, the Commission must also review the purpose and mission of other State boards and commissions to determine whether they are subject to the Ethics Act. OSBM identified 420 State boards and commissions that may be subject to the requirements of the Ethics Act and Lobbying Law—150 more than the ones the Commission has identified. The Commission is using some of the contract services funding approved by the General Assembly in 2008 to identify additional boards and commissions and perform the mission and purpose reviews. Much of the information related to the tracking and review and approval of SEIs and advisory opinions have not been entered into the Commission's databases. Because these tasks had not been performed by the Commission's staff or included in duties and responsibilities reported in Table 1 on page 3 at the time of OSBM's analysis, OSBM could not quantify the amount of time the Commission's staff will have to devote to these additional tasks.

Work Backlog and Overtime

During 2007 and 2008, the Commission's senior management accrued a considerable amount of overtime. Further, because of the increase in the number of persons covered by the Ethics Act and Lobbying Law, the Commission's administrative staff developed a significant backlog in its workload, especially in the review and approval of SEIs. Senior management also had a significant backlog related to reviewing and responding to requests for advice and advisory opinions. Our analysis of the time and resource allocation data provided by the Commission's staff indicate that workload backlog and overtime accrued during 2007 and 2008 amounted to 3.43 FTEs of additional staffing needed by the Commission to keep up with its overall workload during this period. This equates to 1.72 FTE per year when averaged over the two year period. Table 5 on page 11 shows the details regarding the workload backlog and overtime for the Commission for 2007 and 2008. During 2007 and 2008, the Commission contracted for legal services to research, draft, and issue advisory opinions and assist with complaint investigations and SEI fine appeals. These legal services were for 740 hours (.42 FTE) and cost \$55,461.

The SEI review and approval workload will also be heavy for 2009 because of the need to complete the backlog and address changes made to the Ethics Act and Lobbying Law during the 2008 session. The Commission's educational courses will continue to be cyclical for the next several years. Continuing to use the Information Highway Distance Education courses and online registration for ethics education will reduce the time the educational staff devotes to

registering persons and conducting the educational courses. Further, even though some advisory opinions have already been issued by the Commission, the staff has to review them to determine whether the Commission needs to notify the requestors of the impact of the recent changes (S. L. 2008-213 and S. L. 2008-215) to the Ethics Act and Lobbying Law.

According to the Commission’s senior staff, there are other duties and responsibilities that are reflected in the time and resource data provided by the Commission staff that will require additional staffing resources or realignment of its current staffing duties and responsibilities. For example:

- The number and complexity of advisory opinion requests are expected to increase in the future, which will require more time of the Commission’s legal staff.
- The number of complaints and investigations are also expected to increase, which will have to be handled by the Commission’s legal staff, and eventually have to be pursued through the administrative hearings process, the Legislative Ethics Committee, or the Judicial Standards Commission.
- Much of the information supporting the Commission’s advisory opinion decisions and SEIs research has still not been entered in the Commission database, and will require additional staff time to enter the information in the database.

Table 5

Workload Backlog and Accrued Overtime for 2007 and 2008

Task	Number of	FTE^a
Workload Backlog:		
	Months	
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	.08
	Total	3.43

^a FTEs based on 1,760 available work hours per year.

Source: OSBM’s analysis of Commission data

The General Assembly increased the Commission’s authorized staffing level to 10 as of January 1, 2009 and as of January 5, 2009, the Commission was fully staffed. Further, the General Assembly appropriated \$230,000 for fiscal year 2009 for contractual services for the Commission to accomplish some of the tasks which it had not completed, such as reviewing the missions and purposes of all boards and commissions. While it is possible that the duties and responsibilities of the Commission will continue to increase, OSBM can not quantify the number of additional FTEs the Commission may need beyond the ones based on the overtime and workload backlog accrued during 2007 and 2008.

CONCLUSIONS

The Commission’s staff has been unable to keep up with the expanded duties and responsibilities created by the Ethics Act and Lobbying Law that became effective January 1, 2007. These additional duties and responsibilities have resulted in a significant backlog in the review and approval of SEIs and responding to requests for advisory opinions. Further, the Commission’s senior managers also accrued a 1.04 FTE of overtime and the Commission staff had a workload backlog of 2.39 FTEs during 2007 and 2008, resulting in a total of 3.43 FTEs.

While the number and complexity of advice and advisory opinion requests may increase in future years, it is too early to determine the extent that the Commission’s workload may increase. It is also too early to know the staff time necessary for the overall complaint process and the number of complaints that the Commission may have to investigate and pursue through administrative hearings, the Legislative Ethics Committee, or the Judicial Standards Commission. Similarly, the time needed for editing and publishing issued formal advisory opinions and reviewing the missions and purposes of all boards and commissions cannot be quantified at this time. While the Commission’s

senior manager's predicted increased workload may be valid, the amount of additional staff time required cannot be quantified until the Commission can show that the numbers of advice, advisory opinions, and complaints have increased and document the time needed to review the missions and purposes of all boards and commissions.

RECOMMENDATIONS

As noted earlier in the report, the Ethics Act and Lobbying Law greatly increased the workload of the Commission when it was created in 2006, and as with any new agency there is a certain amount of time and effort spent related to start up which comes on top of the staff's normal day-to-day workload. This has certainly been the case with the Commission: it has not only been faced with start up efforts, but also with several position vacancies, and additional statutory changes mandated by the 2007 and 2008 amendments to the original Ethics Act and Lobbying Law. However, since last year's report, vacancies have been filled; a new SEI attorney position was created and was recently filled to handle SEIs issues. The Commission is now at the point where it needs to modify work processes to enable staff to work more efficiently so it can begin to eliminate the backlog and reduce overtime. As such, the recommendations which follow are a combination of automation and process improvements, as well as statutory changes that we believe should be undertaken immediately in order to have maximum benefit for the Commission.

1. OSBM recommends that the General Assembly eliminate the requirement that SEIs be notarized before filers submit them to the Commission as it does not add value to the process; it does not attest to the accuracy or completeness of the submitted records; and it is an additional effort for board and commission members to locate a notary, and many of the filers are citizens who are serving on boards and commissions pro bono.
2. OSBM further recommends that the Commission implement an electronic filing system for SEIs that will allow filers to submit their SEIs electronically, and eliminate the need for hard copy files. An un-editable copy should be maintained for the public file, and the editable copy would remain with the permanent Commission files. Eliminating the paper submissions will not only save on storage space, but will also reduce the number of copies that must be made for public inquiries, and make government more transparent. It will reduce filing time of staff, and will make submissions much easier for the filers who must submit them. Cost estimates are being sought at this time.
3. OSBM recommends that the Commission explore implementing a simple web-based on-line registration system for its ethics and lobbying education courses. This will eliminate all email printing and associated paper costs; it will reduce the staff time currently spent reading emails, entering data on multiple linked spreadsheets, and making changes; it will eliminate typing and mailing confirmation emails to all participants; and it will simplify registration for those who must take courses, because they will immediately know whether a course/location is full and can explore alternate dates and sites. They can make their own changes as well. This will allow staff working in this area to carry out other duties. An additional option to consider is that class materials can be posted on the website, and in the system-generated email (a feature of on-line registration systems), a link could be included so that people will receive their materials automatically.
4. OSBM supports the efforts of staff and the Commission who are currently looking at ways to offer education courses more efficiently to include on-line, self paced courses through other State organizations, such as community colleges, and private vendors. However, the on-line, self pace courses will need a verification system to ensure persons actually complete the courses.
5. Further, the Commission should continue to develop information related to frequently asked questions and create an internal database of information related to previously issued advice and advisory opinions that can be used in responding to future advisory opinions.
6. OSBM recommends that the additional administrative support capacity made available by implementing electronic solutions be used to help meet the many needs of the Commission, such as entering information

into the database on prior opinions. However, in the areas where growth is expected to continue, OSBM will work with the Commission, if necessary, to create an additional paralegal position using existing funds from its contractual services. The paralegal could assist with the advisory opinion workload and continue the review of the missions and purposes of all boards and commissions to determine whether they fall under the statutory requirements of the Ethics Act.

7. For the next two years (since the Commission continues to be in a “start-up” phase due to the numerous statutory changes), OSBM recommends that the Commission routinely document the workload of staff, including their overtime, to enable it to identify other opportunities for automation, for elimination of unnecessary steps, for streamlining, or to justify any additional staffing needs should the Commission continue to have backlog of SEIs and advisory opinions.

OSBM believes that by implementing on-line registration for education courses, electronic filing of SEIs, and the relatively minor statutory changes, the Commission’s workload backlog and accrued overtime can be significantly reduced within the next 12 months. Thus, the staff currently reviewing, evaluating, and approving SEIs would be able to catch up with the SEI backlog. The elimination of the statutory requirement for SEIs to be notarized will also make it easier for SEIs to be filed electronically. The educational staff time that will be saved by implementing on-line registration can be reallocated to other duties. Further, with the addition of an SEI attorney in January 2009, the .56 FTE previously spend by the Assistant Director addressing SEI legal issues can now be dedicated toward formal advisory opinions, thus helping to reduce the advisory opinion backlog.

OSBM recognizes that there is still significant work to be accomplished in the coming two years due in large part to the number of covered persons, the number of requests for advice and formal advisory opinions, and the new training initiatives—new refresher courses, direct report training, possible web-based training, etc.

OSBM will be willing to work with the Commission and Information Technology Services in developing requirements for implementing the electronic SEI filing and the on-line education registration, as well as reviewing modified processes so efficiencies can be achieved.

ACKNOWLEDGEMENTS

OSBM wishes to express its appreciation to the management and staff of the North Carolina State Ethics Commission for their cooperation during the performance of this study.

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**North Carolina State Ethics Commission
Obligation of Officials and Employees
Covered by the State Government Ethics Act**

Public Officials and Employees Subject to Chapter 138A (State Government Ethics Act)	Ethical Standards (Conflict Provisions)	Gifts from Lobbyists and Lobbyist Principals	Gifts from "Interested Persons"	Gifts from Legislative Liaison Personnel	Disclosure (Statements of Economic Interest)	Inquiries and Complaints	Full Hearings of Complaints	Advisory Opinions	Mandatory Education	Consequences/ Penalties
Judicial Officers	•				•	•				•
Legislators	•	•		•	•	•		•	•	•
Legislative Employees	•	•		•		•		•	•	•
"Public Servants"										
Constitutional Officers and their Chief Deputies/Administrative Assistants	•	•	•		•	•	•	•	•	•
Confidential Assistants/Secretaries	•	•	•		•	•	•	•	•	•
Governor's Office Employees	•	•	•		•	•	•	•	•	•
Exempt Employees Designated by Governor	•	•	•		•	•	•	•	•	•
Heads of Principal Departments and their Chief Deputies/Administrative Assistants	•	•	•		•	•	•	•	•	•
Confidential Assistants/Secretaries	•	•	•		•	•	•	•	•	•
Exempt Employees and their Secretaries	•	•	•		•	•	•	•	•	•
Judicial Employees	•	•	•		•	•	•	•	•	•
Boards and Commissions										
Voting members of Non-Advisory boards	•	•	•		•	•	•	•	•	•
State Ethics Commission Members	•	•	•		•	•	•	•	•	•
University of North Carolina System										
Board of Governors -- Voting Members	•	•	•		•	•	•	•	•	•
President and Vice-Presidents	•	•	•		•	•	•	•	•	•
Chancellors & Vice Chancellors of all Institutions	•	•	•		•	•	•	•	•	•
Trustees--Voting Members of all Institutions	•	•	•		•	•	•	•	•	•
NC Community College System (NCCCS)										
State Board -- Voting Members	•	•	•		•	•	•	•	•	•
President & Chief Financial Officers of NCCCS	•	•	•		•	•	•	•	•	•
President, Chief Financial Officer of each College	•	•	•		•	•	•	•	•	•
Trustees – Voting Members of each College	•	•	•		•	•	•	•	•	•
Other Public Servants										
Contract Employees working in or against covered positions	•	•	•		•	•	•	•	•	•

Source: North Carolina State Ethics Commission

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