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## GOVERNOR EASLEY ISSUES EXECUTIVE ORDER NUMBER ONE Board of Ethics Re-Established Financial Disclosure Required

Following a tradition started in 1977, Governor Michael F. Easley used his first executive order to establish the North Carolina Board of Ethics as the State's primary conflict of interest "watchdog" for high-level employees and appointees in the executive branch of State government.

Executive Order Number One (January 12, 2001) modifies, but largely leaves intact, the significant changes made by Governor Hunt in former Executive Order 127. There is a continued emphasis on conflict identification and avoidance through disclosure, education, and enforcement. The comprehensive financial and personal interest disclosure requirements in the form of a sworn "Statement of Economic Interest" have been retained virtually unchanged.

The new Order makes some major organizational changes (for example, collecting all duties and responsibilities of Agency Heads into one comprehensive section) which should make it easier for covered "Public Officials" to identify and follow applicable rules and guidelines. In addition, there are some important substantive changes (for example, rules relating to complaints and sanctions) which will be discussed later in this newsletter and in subsequent editions as well.

In the meantime, we urge all Public Officials to get a copy of the new Order, study it carefully, and call the Board's offices if you have any questions. The only "dumb question" is the one not asked!

### Have you filed your "Statement of Economic Interest" under the new Order?

As in the past, "Public Officials" covered by Executive Order Number One must file with the Board of Ethics a sworn "Statement of Economic Interest." See section 9 of the Order. The timing depends on whether you are a new or currently serving Public Official.

All **new** employees or appointees who are covered by the Order must file their Statement as soon as reasonably possible, the intent being to have a conflict evaluation prior to or contemporaneous with the commencement of public service where feasible.

All **currently serving** Public Officials who submitted a Statement under former Executive Order 127 must resubmit a new Statement on or before **May 15, 2001**. See section 9 (e).

Thereafter, all covered Officials must file an **updated Statement** between **April 15 and May 15** each year. See section 9 (b).

If you have not received a Statement of Economic Interest form, please call the Board's offices immediately: 733-2780.

View EO One and the Board's newsletters on-line at:

[www.doa.state.nc.us/doa/ethics](http://www.doa.state.nc.us/doa/ethics)

## Explanation of Major Changes from EO 127 to Executive Order Number One

While Executive Order Number One retains the basic philosophical approach of its predecessor (EO 127, as amended), the new Order makes some significant changes. The most obvious change is a **general reorganization of sections and subsections** in order to, among other things, combine all duties and responsibilities pertaining to individuals (e.g., Agency heads) or public bodies (e.g., the Board of Ethics) into comprehensive sections. For example, all duties and responsibilities of Agency heads are collected in one section. This should make it easier for Public Officials and others to identify and follow applicable rules and guidelines. The following chart identifies most of the major changes to former EO 127. However, it is NOT a comprehensive list of all changes. **READING THIS SUMMARY CHART IS NO SUBSTITUTE FOR A CAREFUL STUDY OF EXECUTIVE ORDER NUMBER ONE.** Call if you have any questions.

<b>EO One vs. EO 127 (Section Number and Title):</b>	<b>EO Number One:</b>	<b>Reason(s) for Changes:</b>
3: Persons covered by the Order  Former §3	Defines “principal departments” and exempt employees/positions	Clarify who is covered; define certain terms per other State laws; make sure the Board of Ethics (“BOE”) knows who covered officials are
4: Other Public Officials  Former §9	Requires “appointing authorities” to notify the BOE of their appointments	Clarify scope of coverage for voluntary Public Officials; make sure the BOE knows who covered officials are
5: Duties/Powers of the Board  Former §§4 & 6	Major reorganization & consolidation of all duties into one section	See introductory paragraph above; make it easier to identify all of the BOE’s powers and duties
5 (b): Review of Statements  Former §4	Make it clear that the BOE cannot accept statements from non-Public Officials	Clarify the Board’s scope of jurisdiction (some confusion has arisen in the past)
5 (c): Complaints  Former §4	The BOE may not accept complaints against non-Public Officials; complaints must be filed within 90 days of the allegedly wrongful action and must allege specific facts indicating a violation of the Order; the BOE may decline to accept frivolous, repetitive, or inappropriate complaints	Clarify the Board’s scope of disciplinary authority; establish filing requirements for complaints against Public Officials; set a time limit for filing third-party complaints; clarify circumstances under which the BOE will decline to hear a complaint; state intent to keep investigative materials confidential until investigation is concluded (to the extent allowed by the Public Records Law)
5 (e): Ethics Education Program  Former §6	Clarifies what the BOE must do in the way of ethics education presentations and programs; encourages Public Officials to attend a basic ethics education presentation as soon as possible; eliminates the requirement of appointing an “ethics liaison”	Stress the importance of ethics education as a means of addressing conflicts; stress the BOE’s availability to help Agency heads develop additional in-house educational programs, procedures, etc., as necessary or desired (but not make it mandatory); eliminate a redundant and potentially confusing requirement (ethics liaisons)

<b>EO One vs. EO 127 (Section Number and Title):</b>	<b>EO Number One:</b>	<b>Reason(s) for Changes:</b>
6: Duties of “Agency Heads”  Former §§5 & 6	Major reorganization & consolidation of all duties into one section; makes Agency Heads leaders in following the Order and maintaining high ethical standards in public service; requires Agency Heads & board chairs to notify the BOE when new Public Officials are hired or appointed	See introductory paragraph above; clarify Agency Heads’ responsibilities and stress their leadership role in identifying and preventing conflicts of those serving under them; help ensure that the BOE learns who Public Officials are at the time of their appointment, hiring, or designation and that the Public Officials receive copies of the Order and any necessary financial disclosure forms
7: Rules of Conduct  Former §7	States that the conflict provision does not apply to remote, tenuous or insignificant financial benefits that could not reasonably be construed as making a difference; clarifies that the Order covers both quasi-judicial and quasi-legislative decision-making by Public Officials; appearances of conflict can include financial, familial, or personal interests; provides that Public Officials may disclose a situation and seek guidance from the Agency head and rely on the good-faith decision of the extent to which he or she may participate; deletes incorporation of honorarium rules	Make the Order consistent with the BOE’s recent major advisory opinions on “personal interests,” bias, and disqualification; add a reasonable person <i>de minimis</i> standard to the definition of conflict of interest; provide Public Officials with a “safe harbor” regarding good-faith determinations of difficult appearance of conflict questions; eliminate a redundant and potentially superseded requirement (honoraria) more directly handled elsewhere (Office of State Budget & Management); clarify the scope of the Board’s investigative authority (ethical violations under the Order, not other civil, criminal, or administrative requirements) (some people have interpreted the Order to make the Board an investigative body for any and all perceived misconduct in State government, rather than for conflicts of interest and the appearance of conflict)
8: Sanctions  Former §10	Gives the BOE more leeway/discretion to structure appropriate remedies for ethics violations (eliminates the rigidity of the former Order); sets out relevant factors to consider in formulating appropriate sanctions	Allow the BOE to craft appropriate sanctions based upon the particular facts and circumstances of a given situation; clarify the BOE’s scope of investigative & disciplinary authority (see §7 above)
9: “Statements of Economic Interest” – Financial Disclosure and Conflict of Interest Identification form  Former §8	This section is substantially identical to former section 8. All financial disclosure and conflict of interest identification questions are the same as under Executive Order 127, as amended.	Retain Public Officials’ financial disclosure requirement but avoid technical (and unavoidable) violation of the Order for those Officials already appointed before the new Order was issued. Intent is still for all Officials to file their Statements prior to or as soon after beginning public service as possible.

## IMPORTANT INFORMATION ON-LINE

Due to the current State budget situation, all non-essential travel and other expenditures have been severely curtailed. This impacts the Board of Ethics in two significant ways: (1) making out-of-town ethics education and awareness presentations and (2) publishing periodic newsletters.

Hopefully this is a short-term situation, and we will be able to resume business as usual next fiscal year. In the meantime, we will continue to produce our **newsletters** and make them available **on-line** at the Board's web site:

**[www.doa.state.nc.us/doa/ethics](http://www.doa.state.nc.us/doa/ethics)**.

Alternatively, you can access the Board's web site through the North Carolina home page. Just click on "NC Agencies" at the top of the page and "go" to the Department of Administration "Quick Link." Then select "Boards and Commissions" where you will find the Board of Ethics listed. The Board of Ethics' "home page" will give you access to Executive Order Number One, the Board's Rules and Regulations, Statement of Economic Interest forms, and all newsletters. Eventually, advisory opinions will be available through the site as well.

Travel for basic ethics education and awareness presentations is more problematic. For the time being, we will only be able to make "local" presentations (those in or around the Raleigh area). Again, we hope to resume a vigorous presentation schedule next fiscal year. **KEEP IN MIND WE ARE ALWAYS AVAILABLE FOR TELEPHONE CONSULTATION IF NECESSARY.**