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HOUSE BILL 115
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Short Title: Public Conflicts of Interest.

(Public)

Sponsors:

Referred to:

February 15, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS
3 INVOLVING PUBLIC FUNDS AND CONFLICTS OF INTEREST.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 14-234 reads as rewritten:

6 "§ 14-234. Public officers or employees benefiting from public contracts;
7 exceptions. Director of public trust contracting for his own benefit;
8 participation in business transaction involving public funds; exemptions.

9 (a) (1) No public officer or employee who is involved in making or
10 administering a contract on behalf of a public agency may derive a
11 direct benefit from the contract except as provided in this section, or as
12 otherwise allowed by law.

13 (2) A public officer or employee who will derive a direct benefit from a
14 contract with the public agency he or she serves, but who is not
15 involved in making or administering the contract, shall not attempt to
16 influence any other person who is involved in making or administering
17 the contract.

18 (3) No public officer or employee may solicit or receive any gift, reward,
19 or promise of reward in exchange for recommending, influencing, or
20 attempting to influence the award of a contract by the public agency he
21 or she serves.

22 ~~If any person appointed or elected a commissioner or director to discharge any trust~~
23 ~~wherein the State or any county, city or town may be in any manner interested shall~~
24 ~~become an undertaker, or make any contract for his own benefit, under such authority,~~
25 ~~or be in any manner concerned or interested in making such contract, or in the profits~~
26 ~~thereof, either privately or openly, singly or jointly with another, he shall be guilty of a~~

1 ~~misdemeanor. Provided, that this section shall not apply to public officials transacting~~
2 ~~business with banks or banking institutions or savings and loan associations or public~~
3 ~~utilities regulated under the provisions of Chapter 62 of the General Statutes in regular~~
4 ~~course of business: Provided further, that such undertaking or contracting shall be~~
5 ~~authorized by said governing board by specific resolution on which such public official~~
6 ~~shall not vote.~~

7 (a1) For purposes of this section:

8 (1) As used in this section, the term "public officer" means an individual
9 who is elected or appointed to serve or represent a public agency, other
10 than an employee or independent contractor of a public agency.

11 (2) A public officer or employee is involved in administering a contract if
12 he or she oversees the performance of the contract or has authority to
13 make decisions regarding the contract or to interpret the contract.

14 (3) A public officer or employee is involved in making a contract if he or
15 she participates in the development of specifications or terms or in the
16 preparation or award of the contract. A public officer is also involved
17 in making a contract if the board, commission, or other body of which
18 he or she is a member takes action on the contract, whether or not the
19 public officer actually participates in that action, unless the contract is
20 approved under an exception to this section under which the public
21 officer is allowed to benefit and is prohibited from voting.

22 (4) A public officer or employee derives a direct benefit from a contract if
23 the person or his or her spouse: (i) has more than a ten percent (10%)
24 ownership or other interest in an entity that is a party to the contract;
25 (ii) derives any income or commission directly from the contract; or
26 (iii) acquires property under the contract.

27 (5) A public officer or employee is not involved in making or
28 administering a contract solely because of the performance of
29 ministerial duties related to the contract.

30 (b) Subdivision (a)(1) of this section does not apply to any of the following:

31 (1) Any contract between a public agency and a bank, banking institution,
32 savings and loan association, or with a public utility regulated under
33 the provisions of Chapter 62 of the General Statutes.

34 (2) An interest in property conveyed by an officer or employee of a public
35 agency under a judgment, including a consent judgment, entered by a
36 superior court judge in a condemnation proceeding initiated by the
37 public agency.

38 (3) Any employment relationship between a public agency and the spouse
39 of a public officer of the agency.

40 (4) ~~Nothing in this section nor in any general principle of common law~~
41 ~~shall render unlawful the acceptance of remuneration. Remuneration~~
42 ~~from a governmental board, public agency or commission for services,~~
43 ~~facilities, or supplies furnished directly to needy individuals by a~~

1 ~~member of said board, agency or commission~~ a public officer or
2 ~~employee of the agency~~ under any program of direct public assistance
3 being rendered under the laws of this State or the United States to
4 needy persons administered in whole or in part by ~~such board, the~~
5 ~~agency or commission; provided, however, that such~~ if: (i) the
6 programs of public assistance to needy persons are open to general
7 participation on a nondiscriminatory basis to the practitioners of any
8 given profession, professions or occupation; and ~~provided further that~~
9 ~~the board,~~ (ii) neither the ~~agency or commission,~~ nor any of its
10 employees or agents, shall have ~~no~~ control over who, among licensed
11 or qualified providers, shall be selected by the beneficiaries of the
12 assistance, and that ~~assistance;~~ (iii) the remuneration for ~~such~~ the
13 services, facilities or supplies ~~shall be~~ are in the same amount as would
14 be paid to any other provider; and (iv) ~~provided further that,~~ although
15 the ~~board, agency or commission member~~ public officer or employee
16 may participate in making determinations of eligibility of needy
17 persons to receive the assistance, he or she shall ~~take~~ takes no part in
18 approving his or her own bill or claim for remuneration.

19 (b1) No public officer who will derive a direct benefit from a contract entered into
20 under subsection (b) of this section may deliberate or vote on the contract or attempt to
21 influence any other person who is involved in making or administering the contract.

22 (c) ~~No director, board member, commissioner, or employee of any State~~
23 ~~department, agency, or institution shall directly or indirectly enter into or otherwise~~
24 ~~participate in any business transaction involving public funds with any firm,~~
25 ~~corporation, partnership, person or association which at any time during the preceding~~
26 ~~two-year period had a financial association with such director, board member,~~
27 ~~commissioner or employee.~~

28 (c1) ~~The fact that a person owns ten percent (10%) or less of the stock of a~~
29 ~~corporation or has a ten percent (10%) or less ownership in any other business entity or~~
30 ~~is an employee of said corporation or other business entity does not make the person "in~~
31 ~~any manner interested" or "concerned or interested in making such contract, or in the~~
32 ~~profits thereof," as such phrase is used in subsection (a) of this section, and does not~~
33 ~~make the person one who "had a financial association," as defined in subsection (c) of~~
34 ~~this section; provided that in order for the exception provided by this subsection to~~
35 ~~apply, such undertaking or contracting must be authorized by the governing board by~~
36 ~~specific resolution on which such public official shall not vote.~~

37 (d) ~~The provisions of subsection (c) shall not apply to any transactions meeting~~
38 ~~the requirements of Article 3, Chapter 143 of the General Statutes or any other~~
39 ~~transaction specifically authorized by the Advisory Budget Commission.~~

40 (d1) ~~The first sentence of subsection (a) shall~~ Subdivision (a)(1) of this section
41 does not apply to (i) any elected official or person appointed to fill an elective office of
42 a village, town, or city having a population of no more than 7,50015,000 according to
43 the most recent official federal census, (ii) any elected official or person appointed to

1 fill an elective office of a county within which there is located no village, town, or city
2 with a population of more than ~~7,500~~15,000 according to the most recent official federal
3 census, (iii) any elected official or person appointed to fill an elective office on a city
4 board of education in a city having a population of no more than ~~7,500~~15,000 according
5 to the most recent official federal census, (iv) any elected official or person appointed to
6 fill an elective office as a member of a county board of education in a county within
7 which there is located no village, town or city with a population of more than
8 ~~7,500~~15,000 according to the most recent official federal census, (v) any physician,
9 pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social
10 services board, local health board, or area mental health, developmental disabilities, and
11 substance abuse board serving one or more counties within which there is located no
12 village, town, or city with a population of more than ~~7,500~~15,000 according to the most
13 recent official federal census, and (vi) any member of the board of directors of a public
14 hospital ~~if~~if all of the following apply:

- 15 (1) The undertaking or contract or series of undertakings or contracts
16 between the village, town, city, county, county social services board,
17 county or city board of education, local health board or area mental
18 health, developmental disabilities, and substance abuse board, or
19 public hospital and one of its officials is approved by specific
20 resolution of the governing body adopted in an open and public
21 meeting, and recorded in its minutes and the amount does not exceed
22 ~~ten thousand dollars (\$10,000)~~ twelve thousand five hundred dollars
23 (\$12,500) for medically related services and ~~fifteen thousand dollars~~
24 ~~(\$15,000)~~ twenty-five thousand dollars (\$25,000) for other goods or
25 services within a 12-month ~~period; and~~ period.
- 26 (2) The official entering into the contract ~~or undertaking~~ with the unit or
27 agency does not ~~in his official capacity~~ participate in any way or ~~vote;~~
28 ~~and~~ vote.
- 29 (3) The total annual amount of ~~undertakings or~~ contracts with each
30 official, shall be specifically noted in the audited annual financial
31 statement of the village, town, city, or ~~county; and~~ county.
- 32 (4) The governing board of any village, town, city, county, county social
33 services board, county or city board of education, local health board,
34 area mental health, developmental disabilities, and substance abuse
35 board, or public hospital which ~~undertakes or~~ contracts with any of the
36 officials of their governmental unit shall post in a conspicuous place in
37 its village, town, or city hall, or courthouse, as the case may be, a list
38 of all such officials with whom such ~~undertakings or~~ contracts have
39 been made, briefly describing the subject matter of the undertakings or
40 contracts and showing their total amounts; this list shall cover the
41 preceding 12 months and shall be brought up-to-date at least quarterly.

1 (d2) ~~The provision of subsection~~Subsection (d1) shall of this section does not
2 apply to contracts ~~required by that are subject to~~ Article 8 of Chapter 143 of the General
3 Statutes, Public Building Contracts.

4 (d3) Subsection (a) of this section does not apply to an application for or the
5 receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source
6 Pollution Control created pursuant to G.S. 143-215.74 by a member of the Soil and
7 Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does
8 not apply to a district supervisor of a soil and water conservation district if the
9 requirements of G.S. 139-8(b) are met.

10 (d4) Subsection (a) of this section does not apply to an application for, or the
11 receipt of a grant or other financial assistance from, the Tobacco Trust Fund created
12 under Article 75 of Chapter 143 of the General Statutes by a member of the Tobacco
13 Trust Fund Commission or an entity in which a member of the Commission has an
14 interest provided that the requirements of G.S. 143-717(g) are met.

15 (d5) This section does not apply to a public hospital subject to G.S. 131E-14.2 or a
16 public hospital authority subject to G.S. 131E-21.

17 (e) Anyone violating this section shall be guilty of a Class 1 misdemeanor.

18 (f) A contract entered into in violation of this section is void. A contract that is
19 void under this section may continue in effect until an alternative can be arranged when:
20 (i) immediate termination would result in harm to the public health or welfare, and (ii)
21 the continuation is approved as provided in this subsection. A public agency that is a
22 party to the contract may request approval to continue contracts under this subsection as
23 follows:

24 (1) Local governments, as defined in G.S. 159-7(15), public authorities, as
25 defined in G.S. 159-7(10), local school administrative units, and
26 community colleges may request approval from the chairman of the
27 Local Government Commission.

28 (2) All other public agencies may request approval from the State Director
29 of the Budget.

30 Approval of continuation of contracts under this subsection shall be given for the
31 minimum period necessary to protect the public health or welfare."

32 **SECTION 2.** G.S. 14-236 is repealed.

33 **SECTION 3.** G.S. 14-237 is repealed.

34 **SECTION 4.** G.S. 115C-48(a) reads as rewritten:

35 "(a) Members of local boards of education are criminally liable for certain
36 conduct as provided in G.S. 14-234.~~G.S. 14-234 through 14-237.~~"

37 **SECTION 5.** G.S. 115D-26 reads as rewritten:

38 "**§ 115D-26. Conflict of interest.**

39 All local trustees and employees of community colleges covered under this Chapter
40 ~~must adhere~~ are subject to the conflict of interest provisions found in G.S. 14-234.~~G.S.~~
41 ~~14-236.~~"

42 **SECTION 6.** Part A of Article 2 of Chapter 131E of the General Statutes is
43 amended by adding the following new section to read:

1 "§ 131E-14.2. Conflict of interest.

2 (a) No member of the board of directors or employee of a public hospital, as
3 defined in G.S. 159-39(a), or that person's spouse shall do either of the following:

4 (1) Acquire any interest, direct or indirect, in any hospital facility or in
5 any property included or planned to be included in a hospital facility.

6 (2) Have any interest, direct or indirect, in any contract or proposed
7 contract for materials or services to be furnished or used in connection
8 with any hospital facility, except an employment contract for an
9 employee. This restriction shall not apply to any contract, undertaking,
10 or other transaction with a bank or banking institution, savings and
11 loan association or public utility in the regular course of its business
12 provided that the contract, undertaking, or other transaction shall be
13 authorized by the board by specific resolution on which no director
14 having an interest, direct or indirect, shall vote.

15 (b) The fact that a person or that person's spouse owns ten percent (10%) or less
16 stock of a corporation or has a ten percent (10%) or less ownership in any other business
17 entity or is an employee of that corporation or other business entity does not make the
18 person have an "interest, direct or indirect" as this phrase is used in subsection (a) of this
19 section; provided that, in order for the exception to apply, the contract, undertaking, or
20 other transaction shall be authorized by the board of directors by specific resolution on
21 which no director or employee having an interest, direct or indirect, shall vote.

22 (c) If a member of the board of directors or an employee of a public hospital or
23 that person's spouse owns or controls an interest, direct or indirect, in any property
24 included or planned to be included in any hospital facility, the member of the board of
25 directors or the employee shall immediately disclose the same in writing to the board
26 and the disclosure shall be entered upon the minutes of the board. Failure to disclose
27 shall constitute misconduct in office and shall be grounds for removal.

28 (d) Subsection (a) of this section shall not apply to any member of the board of
29 directors of a public hospital if (i) the undertaking or contract or series of undertakings
30 or contracts between the public hospital and one of its officials is approved by specific
31 resolution of the governing body adopted in an open and public meeting and recorded in
32 its minutes and the amount does not exceed twelve thousand five hundred dollars
33 (\$12,500) for medically related services and twenty-five thousand dollars (\$25,000) for
34 other goods or services within a 12-month period; and (ii) the official entering into the
35 contract or undertaking with the public hospital does not in an official capacity
36 participate in any way or vote.

37 (e) Subsection (a) of this section shall not apply to any employment relationship
38 between a public hospital and the spouse of a member of the board of directors of the
39 public hospital.

40 (f) A contract entered into in violation of this section is void. A contract that is
41 void under this section may continue in effect until an alternative can be arranged when:
42 (i) immediate termination would result in harm to the public health or welfare, and (ii)
43 the continuation is approved as provided in this subsection. A public hospital that is a

1 party to the contract may request approval to continue contracts under this subsection
2 from the chairman of the Local Government Commission. Approval of continuation of
3 contracts under this subsection shall be given for the minimum period necessary to
4 protect the public health or welfare."

5 SECTION 7. G.S. 131E-21 reads as rewritten:

6 "§ 131E-21. Conflict of interest.

7 (a) No commissioner or employee of the hospital authority or that person's
8 spouse shall; shall do either of the following:

9 (1) Acquire any interest, direct or indirect, in any hospital facility or in
10 any property included or planned to be included in a hospital ~~facility;~~
11 ~~or facility.~~

12 (2) Have any interest, direct or indirect, in any contract or proposed
13 contract for materials or services to be furnished or used in connection
14 with any hospital facility, except an employment contract for an
15 employee. The foregoing restriction shall not apply to any contract,
16 undertaking, or other transaction with a bank or banking institution,
17 savings and loan association or public utility in the regular course of
18 its business; Provided that any such contract, undertaking, or other
19 transaction shall be authorized by the commissioners by specific
20 resolution on which no commissioner having an interest, direct or
21 indirect, shall vote.

22 (b) The fact that a person or that person's spouse owns ten percent (10%) or less
23 stock of a corporation or has a ten percent (10%) or less ownership in any other business
24 entity or is an employee of that corporation or other business entity does not make the
25 person have an "interest, direct or indirect" as this phrase is used in ~~subsections (1) and~~
26 ~~(2)-~~ subsection (a) of this section; provided that, in order for the exception to apply,
27 the contract, undertaking or other transaction shall be authorized by the commissioners
28 by specific resolution on which no commissioner or employee having an interest, direct
29 or indirect, shall vote.

30 (c) If a commissioner or employee of an authority or that person's spouse owns
31 or controls an interest, direct or indirect, in any property included or planned to be
32 included in any hospital facility, the commissioner or employee shall immediately
33 disclose the same in writing to the authority and the disclosure shall be entered upon the
34 minutes of the authority. Failure to disclose shall constitute misconduct in office and
35 shall be grounds for a commissioner's removal from office under G.S. 131E-22.

36 (d) Subsection (a) of this section shall not apply to any commissioner of a
37 hospital authority if (i) the undertaking or contract or series of undertakings or contracts
38 between the hospital authority and one of its officials is approved by specific resolution
39 of the governing body adopted in an open and public meeting and recorded in its
40 minutes and the amount does not exceed twelve thousand five hundred dollars
41 (\$12,500) for medically related services and twenty-five thousand dollars (\$25,000) for
42 other goods or services within a 12-month period; and (ii) the official entering into the

1 contract or undertaking with the hospital authority does not in an official capacity
2 participate in any way or vote.

3 (e) Subsection (a) of this section shall not apply to any employment relationship
4 between a hospital authority and the spouse of a commissioner of the hospital authority.

5 (f) A contract entered into in violation of this section is void. A contract that is
6 void under this section may continue in effect until an alternative can be arranged when:
7 (i) immediate termination would result in harm to the public health or welfare, and (ii)
8 the continuation is approved as provided in this subsection. A hospital authority that is a
9 party to the contract may request approval to continue contracts under this subsection
10 from the chairman of the Local Government Commission. Approval of continuation of
11 contracts under this subsection shall be given for the minimum period necessary to
12 protect the public health or welfare."

13 **SECTION 8.** G.S. 153A-44 reads as rewritten:

14 **"§ 153A-44. Members excused from voting.**

15 The board may excuse a member from voting, but only upon questions involving ~~his~~
16 the member's own financial interest or his official conduct. ~~conduct or on matters on~~
17 which the member is prohibited from voting under G.S. 14-234. ~~(For~~ For ~~purposes of~~
18 this section, the question of the compensation and allowances of members of the board
19 does not involve a member's own financial interest or official ~~conduct.~~ conduct."

20 **SECTION 9.** G.S. 160A-75 reads as rewritten:

21 **"§ 160A-75. Voting.**

22 No member shall be excused from voting except upon matters involving the
23 consideration of ~~his~~ the member's own financial interest or official conduct. ~~conduct or~~
24 on matters on which the member is prohibited from voting under G.S. 14-234. In all
25 other cases, a failure to vote by a member who is physically present in the council
26 chamber, or who has withdrawn without being excused by a majority vote of the
27 remaining members present, shall be recorded as an affirmative vote. The question of
28 the compensation and allowances of members of the council is not a matter involving a
29 member's own financial interest or official conduct.

30 An affirmative vote equal to a majority of all the members of the council not
31 excused from voting on the question in ~~issue (including~~ issue, including ~~the mayor's~~
32 vote in case of an equal division) ~~division~~, shall be required to adopt an ordinance, take
33 any action having the effect of an ordinance, authorize or commit the expenditure of
34 public funds, or make, ratify, or authorize any contract on behalf of the city. In addition,
35 no ordinance nor any action having the effect of any ordinance may be finally adopted
36 on the date on which it is introduced except by an affirmative vote equal to or greater
37 than two thirds of all the actual membership of the council, excluding vacant seats ~~(not~~
38 and not including the mayor unless he ~~the mayor~~ has the right to vote on all questions
39 before the council). ~~council.~~ For purposes of this section, an ordinance shall be deemed
40 to have been introduced on the date the subject matter is first voted on by the council."

41 **SECTION 10.** Section 10 and G.S. 14-234(d1), as rewritten in Section 1 of
42 this act, are effective April 1, 2001, and apply to actions taken and offenses committed
43 on or after that date. The remainder of this act becomes effective July 1, 2002, and

- 1 applies to actions taken and offenses committed on or after that date. Prosecutions for
- 2 offenses committed before the effective dates of the provisions of this act are not abated
- 3 or affected by this act, and the statutes that would be applicable but for this act remain
- 4 applicable to those prosecutions.