

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 115 (Fifth Edition)

**SHORT TITLE:** Public Conflicts of Interest

**SPONSOR(S):** Rep. Baker

**FISCAL IMPACT**

Yes ( )      No (X)      No Estimate Available ( )

FY 2001-02    FY 2002-03    FY 2003-04    FY 2004-05    FY 2005-06

**REVENUES**

**EXPENDITURES**

**POSITIONS:**

**PRINCIPAL DEPARTMENT(S) &  
PROGRAM(S) AFFECTED:** Judicial Branch

**EFFECTIVE DATE:** Section 10 and G.S. 14-234(d1) (the exemptions) would become effective April 1, 2001. The remainder of the act would become effective July 1, 2002 and apply to acts and offenses committed on or after that date. Prosecutions for offenses committed before the effective dates of the provisions of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

**BILL SUMMARY:**

**Section 1** rewrites the provision of G.S. 14-234 (Public officers or employees benefiting from public contracts; exceptions) to clarify the statute. Specifically, the revised statute contains three main prohibitions: (1) Public officer or employee who is involved in making or administering a contract may not derive a benefit from the contract, unless there is an exception provided by law. (2) Public officer or employee who will derive a benefit from a contract with the public agency served may not attempt to influence any person involving in making or administering the contract. (3) Public officer or employee may not solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract.

“Public officer” is defined as an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.

“Direct benefit” is defined as having more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract, (ii) derives any income or commission directly from the contract, and (iii) acquires property under the contract. Other definitions are provided in this section for what constitutes the “making” and “administering” of a contract.

Section one also outlines new exemptions that the prohibitions of the law do not apply, such as property conveyed under a public condemnation, (ii) employment relationship between the public agency and the spouse of the public officer, (iii) public hospitals subject to G.S. 131E-14.2, and (iv) public hospital authority subject to G.S. 131E-21. Additionally, Section 1 would raise the population and monetary caps set forth in a limited exemption allowing elected officers and specified appointed officers to enter into contracts with boards on which they may serve, provided the contract is not subject to Article 8 of Chapter 143, Public Building Contracts. New provisions specify that contracts made in violation of the law are void, but such voided contracts may stay in effect when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved by the Local Government Commission (for local agencies) or the Governor (for state agencies).

**Sections 2, 3, 4, and 5** would repeal inconsistent or outdated provisions, and make technical and other conforming changes.

**Section 6** would add a new section regarding conflicts of interest to Part A of Article 2 of Chapter 131E, which governs municipal hospitals. The new section would prohibit the following acts by a member of the board of directors or an employee:

- Acquisition of any interest, direct or indirect, in any hospital facility
- Acquisition of any interest, direct or indirect, of any property included or planned to be included in a hospital facility.
- Possessing any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility. Employment contracts are exempt. Additionally, contracts with banks or banking institutions, savings and loan associations and public utilities in the regular course of business are exempt if the member having an interest does not vote.

To have an interest, direct or indirect, a person would have to own more than 10 % of the stock of a corporation or of the business entity. If the person owns or controls an interest, direct or indirect, in property included or planned to be included in a hospital facility, then that person must immediately disclose that fact in writing to the board.

Exempt from the prohibitions stated above are contracts for medically related services not more than \$12,500 and contracts for other goods or services not more than \$25,000, provided the official with the conflict does not in an official capacity participate in any way or vote on the contract.

Contracts in violation of the section are void. The void contract may continue in effect with the approval of the Local Government Commission if the immediate termination would result in harm to the public health or welfare.

**Section 7** would amend Part B of Article 2 of Chapter 131E, which governs hospital authorities. G.S. 131E-21 would be amended to provide that a contract entered into in violation of that section would be void. The void contract could continue in effect with the approval of the Local Government Commission if the immediate termination would result in harm to the public health or welfare.

**Sections 8 and 9** would clarify that a member of a county board of commissioners or a municipal board of commissioners may be excused from voting when that member is prohibited from voting by G.S. 14-234.

**Section 10** and G.S. 14-234(d1) (the exemptions) would become effective April 1, 2001. The remainder of the act would become effective July 1, 2002 and apply to acts and offenses committed on or after that date.

*Source: HB115 Bill Analysis completed by Dianna Jessup, Staff Counsel*

**ASSUMPTIONS AND METHODOLOGY:**

This bill rewrites existing statutes governing conflict of interest by public officers. The result of violations of the revised statutes governing conflict or interest would be to (1) render such a contract void, subject to conditions that can allow continuation of the contract (new provision), and (2) make the violator guilty of a Class 1 Misdemeanor (as under current law).

While this bill is not intended to broaden the definition of conflict of interest because it clarifies, it could result in more charges. However, the Judicial Branch assumes there are relatively few charges under existing law and that the vast majority of public officers and employees would comply with the revised law. Because Class 1 misdemeanors rarely go to prison, there is no impact on the Department of Correction. While some Class 1 misdemeanors serve jail sentences. (In FY 1999/2000, 15% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence length imposed was 45 days and these would be in county jails.) There is no data to suggest that there will be many violations of these laws.

Many of the institutions affected by these laws also have internal policies on conflict of interest, in some cases more stringent than state law. These policies would tend to minimize violations.

**FISCAL RESEARCH DIVISION 733-4910**

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**DATE:** August 29, 2001



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