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HOUSE BILL 115  
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Short Title: Public Conflicts of Interest.

(Public)

Sponsors:

Referred to:

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS  
INVOLVING PUBLIC FUNDS AND CONFLICTS OF INTEREST.

The General Assembly of North Carolina enacts:

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

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

- (a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.
- (2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.
- (3) No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.

~~If any person appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor. Provided, that this section shall not apply to public officials transacting~~

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

6 (a1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (1) The undertaking or contract or series of undertakings or contracts  
15 between the village, town, city, county, county social services board,  
16 county or city board of education, local health board or area mental  
17 health, developmental disabilities, and substance abuse board, or  
18 public hospital and one of its officials is approved by specific  
19 resolution of the governing body adopted in an open and public  
20 meeting, and recorded in its minutes and the amount does not exceed  
21 ~~ten thousand dollars (\$10,000)~~twelve thousand five hundred dollars  
22 (\$12,500) for medically related services and ~~fifteen thousand dollars~~  
23 ~~(\$15,000)~~twenty-five thousand dollars (\$25,000) for other goods or  
24 services within a 12-month ~~period; and~~period.

25 (2) The official entering into the contract ~~or undertaking~~ with the unit or  
26 agency does not ~~in his official capacity~~ participate in any way or ~~vote;~~  
27 ~~and~~vote.

28 (3) The total annual amount of ~~undertakings or~~ contracts with each  
29 official, shall be specifically noted in the audited annual financial  
30 statement of the village, town, city, or ~~county; and~~county.

31 (4) The governing board of any village, town, city, county, county social  
32 services board, county or city board of education, local health board,  
33 area mental health, developmental disabilities, and substance abuse  
34 board, or public hospital which ~~undertakes or~~ contracts with any of the  
35 officials of their governmental unit shall post in a conspicuous place in  
36 its village, town, or city hall, or courthouse, as the case may be, a list  
37 of all such officials with whom such ~~undertakings or~~ contracts have  
38 been made, briefly describing the subject matter of the undertakings or  
39 contracts and showing their total amounts; this list shall cover the  
40 preceding 12 months and shall be brought up-to-date at least quarterly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 "**§ 115D-26. Conflict of interest.**

36 All local trustees and employees of community colleges covered under this Chapter  
37 ~~must adhere~~ are subject to the conflict of interest provisions found in G.S. 14-234.~~G.S.~~  
38 ~~14-236."~~

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

41 "**§ 131E-14.2. Conflict of interest.**

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

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

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

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

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

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

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

37           (f) A contract entered into in violation of this section is void. A contract that is  
38 void under this section may continue in effect until an alternative can be arranged when:  
39 (i) immediate termination would result in harm to the public health or welfare, and (ii)  
40 the continuation is approved as provided in this subsection. A public hospital that is a  
41 party to the contract may request approval to continue contracts under this subsection  
42 from the chairman of the Local Government Commission. Approval of continuation of

1 contracts under this subsection shall be given for the minimum period necessary to  
2 protect the public health or welfare."

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

4 **"§ 131E-21. Conflict of interest.**

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

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

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

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

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

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

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

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

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

12 **"§ 153A-44. Members excused from voting.**

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

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

19 **"§ 160A-75. Voting.**

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

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

39 **SECTION 10.** Section 10 and G.S. 14-234(d1), as rewritten in Section 1 of  
40 this act, are effective April 1, 2001, and apply to actions taken and offenses committed  
41 on or after that date. The remainder of this act becomes effective July 1, 2002, and  
42 applies to actions taken and offenses committed on or after that date. Prosecutions for  
43 offenses committed before the effective dates of the provisions of this act are not abated



- 1 or affected by this act, and the statutes that would be applicable but for this act remain
- 2 applicable to those prosecutions.