

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 922

Short Title: Conflict of Interest.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING 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) 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. 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. 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 business with banks or banking institutions or savings and loan associations or public utilities regulated under the provisions of Chapter 62 of the General Statutes in regular course of business: Provided further, that such undertaking or contracting shall be authorized by said governing board by specific resolution on which such public official shall not vote.~~

(a1) For purposes of this section:

- 1           (1) A public officer or employee is involved in making a contract if he or  
2           she participates in the development of specifications or terms or in the  
3           preparation or award of the contract. A public officer is also involved  
4           in making a contract if the board, commission, or other body of which  
5           he or she is a member takes action on the contract, whether or not the  
6           public officer actually participates in that action.
- 7           (2) A public officer or employee derives a direct benefit from a contract if  
8           the person or his or her spouse: (i) has more than a ten percent (10%)  
9           ownership or other interest in an entity that is a party to the contract;  
10          (ii) derives any income or commission directly from the contract; or  
11          (iii) acquires property under the contract.
- 12         (b) Exceptions. This section does not apply to any of the following:
- 13           (1) Any contract between a public agency and a bank, banking institution,  
14           savings and loan association, or with a public utility regulated under  
15           the provisions of Chapter 62 of the General Statutes.
- 16           (2) Real property conveyed by an officer or employee of a public agency  
17           under a court order in a condemnation proceeding initiated by the  
18           public agency.
- 19           (3) ~~Nothing in this section nor in any general principle of common law~~  
20           ~~shall render unlawful the acceptance of remuneration.~~ Remuneration  
21           from a governmental board, public agency or commission for services,  
22           facilities, or supplies furnished directly to needy individuals by a  
23           ~~member of said board, agency or commission~~ an officer or employee  
24           of the agency under any program of direct public assistance being  
25           rendered under the laws of this State or the United States to needy  
26           persons administered in whole or in part by such board, the agency or  
27           ~~commission; provided, however, that such~~ if: (i) the programs of  
28           public assistance to needy persons are open to general participation on  
29           a nondiscriminatory basis to the practitioners of any given profession,  
30           professions or occupation; and provided further that the board, (ii)  
31           neither the agency or commission, nor any of its employees or agents,  
32           ~~shall have no control over who, among licensed or qualified providers,~~  
33           shall be selected by the beneficiaries of the assistance, and that (iii) the  
34           remuneration for such the services, facilities or supplies shall be are in  
35           the same amount as would be paid to any other provider; and (iv)  
36           ~~provided further that, although the board, agency or commission~~  
37           ~~member~~ public officer or employee may participate in making  
38           determinations of eligibility of needy persons to receive the assistance,  
39           he or she shall take takes no part in approving his or her own bill or  
40           claim for remuneration.

41           No public officer who will derive a direct benefit from a contract entered into under  
42           this subsection may deliberate or vote on the contract.

43           ~~(e) No director, board member, commissioner, or employee of any State~~  
44           ~~department, agency, or institution shall directly or indirectly enter into or otherwise~~

1 ~~participate in any business transaction involving public funds with any firm,~~  
2 ~~corporation, partnership, person or association which at any time during the preceding~~  
3 ~~two-year period had a financial association with such director, board member,~~  
4 ~~commissioner or employee.~~

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

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

17 ~~(d1) The first sentence of subsection (a) shall does not apply to (i) any elected~~  
18 ~~official or person appointed to fill an elective office of a village, town, or city having a~~  
19 ~~population of no more than 7,500 according to the most recent official federal census,~~  
20 ~~(ii) any elected official or person appointed to fill an elective office of a county within~~  
21 ~~which there is located no village, town, or city with a population of more than 7,500~~  
22 ~~according to the most recent official federal census, (iii) any elected official or person~~  
23 ~~appointed to fill an elective office on a city board of education in a city having a~~  
24 ~~population of no more than 7,500 according to the most recent official federal census,~~  
25 ~~(iv) any elected official or person appointed to fill an elective office as a member of a~~  
26 ~~county board of education in a county within which there is located no village, town or~~  
27 ~~city with a population of more than 7,500 according to the most recent official federal~~  
28 ~~census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse~~  
29 ~~appointed to a county social services board, local health board, or area mental health,~~  
30 ~~developmental disabilities, and substance abuse board serving one or more counties~~  
31 ~~within which there is located no village, town, or city with a population of more than~~  
32 ~~7,500 according to the most recent official federal census, and (vi) any member of the~~  
33 ~~board of directors of a public hospital if:~~

- 34 (1) ~~The undertaking or contract or series of undertakings or contracts~~  
35 ~~between the village, town, city, county, county social services board,~~  
36 ~~county or city board of education, local health board or area mental~~  
37 ~~health, developmental disabilities, and substance abuse board, or~~  
38 ~~public hospital and one of its officials is approved by specific~~  
39 ~~resolution of the governing body adopted in an open and public~~  
40 ~~meeting, and recorded in its minutes and the amount does not exceed~~  
41 ~~ten thousand dollars (\$10,000) for medically related services and~~  
42 ~~fifteen thousand dollars (\$15,000) for other goods or services within a~~  
43 ~~12-month period; and~~

- 1           (2) The official entering into the contract ~~or undertaking~~ with the unit or  
2           agency does not ~~in his official capacity~~ participate in any way or vote;  
3           and  
4           (3) The total annual amount of ~~undertakings or~~ contracts with each  
5           official, shall be specifically noted in the audited annual financial  
6           statement of the village, town, city, or county; and  
7           (4) The governing board of any village, town, city, county, county social  
8           services board, county or city board of education, local health board,  
9           area mental health, developmental disabilities, and substance abuse  
10          board, or public hospital which ~~undertakes or~~ contracts with any of the  
11          officials of their governmental unit shall post in a conspicuous place in  
12          its village, town, or city hall, or courthouse, as the case may be, a list  
13          of all such officials with whom such ~~undertakings or~~ contracts have  
14          been made, briefly describing the subject matter of the undertakings or  
15          contracts and showing their total amounts; this list shall cover the  
16          preceding 12 months and shall be brought up-to-date at least quarterly.

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

20          (d3) ~~The first sentence of Subsection-subsection~~ (a) of this section does not apply  
21 to an application for or the receipt of a grant under the Agriculture Cost Share Program  
22 for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 by a  
23 member of the Soil and Water Conservation Commission if the requirements of G.S.  
24 139-4(e) are met, and does not apply to a district supervisor of a soil and water  
25 conservation district if the requirements of G.S. 139-8(b) are met.

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

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

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

- 38           (1) Local governments, as defined in G.S. 159-7(15), public authorities, as  
39 defined in G.S. 159-7(10), local school administrative units, and  
40 community colleges may request approval from the chairman of the  
41 Local Government Commission.  
42           (2) All other public agencies may request approval from the State Director  
43 of the Budget.

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

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

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

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

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

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

9 **"§ 115D-26. Conflict of interest.**

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

12 **SECTION 6.** G.S. 153A-44 reads as rewritten:

13 **"§ 153A-44. Members excused from voting.**

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

19 **SECTION 7.** G.S. 160A-75 reads as rewritten:

20 **"§ 160A-75. Voting.**

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

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

40 **SECTION 8.** This act becomes effective December 1, 2001, and applies to  
41 offenses committed on or after that date. Prosecutions for offenses committed before  
42 the effective date of this act are not abated or affected by this act, and the statutes that  
43 would be applicable but for this act remain applicable to those prosecutions.