

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

HOUSE BILL 115  
RATIFIED BILL

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 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) As used in this section, the term "public officer" means 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.
- (2) A public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.
- (3) A public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is

approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.

- (4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has 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; or (iii) acquires property under the contract.
- (5) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.

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

- (1) Any contract between a public agency and a bank, banking institution, savings and loan association, or with a public utility regulated under the provisions of Chapter 62 of the General Statutes.
- (2) An interest in property conveyed by an officer or employee of a public agency under a judgment, including a consent judgment, entered by a superior court judge in a condemnation proceeding initiated by the public agency.
- (3) Any employment relationship between a public agency and the spouse of a public officer of the agency.
- (4) Nothing in this section nor in any general principle of common law shall render unlawful the acceptance of remuneration Remuneration from a governmental board, public agency or commission for services, facilities, or supplies furnished directly to needy individuals by a member of said board, agency or commission a public officer or employee of the agency under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by such board, the agency or commission; provided, however, that such if: (i) the programs of public assistance to needy persons are open to general participation on a nondiscriminatory basis to the practitioners of any given profession, professions or occupation; and provided further that the board, (ii) neither the agency or commission, nor any of its employees or agents, shall have no control over who, among licensed or qualified providers, shall be selected by the beneficiaries of the assistance, and that assistance; (iii) the remuneration for such the services, facilities or supplies shall be are in the same amount as would be paid to any other provider; and (iv) provided further that, although the board, agency or commission member public officer or employee may participate in making determinations of eligibility of needy persons to receive the assistance, he or she shall take takes no part in approving his or her own bill or claim for remuneration.

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

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

(c1) The fact that a person owns ten percent (10%) or less of the stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of said corporation or other business entity does not make the person "in any manner interested" or "concerned or interested in making such contract, or in the

~~profits thereof," as such phrase is used in subsection (a) of this section, and does not make the person one who "had a financial association," as defined in subsection (c) of this section; provided that in order for the exception provided by this subsection to apply, such undertaking or contracting must be authorized by the governing board by specific resolution on which such public official shall not vote.~~

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

~~(d1) The first sentence of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 7,50015,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 7,50015,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 7,50015,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 7,50015,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than 7,50015,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital ~~if~~ if all of the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"§ 115D-26. Conflict of interest.**

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

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

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

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

- (1) Acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital facility.
- (2) Have 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, except an employment contract for an employee. This restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business provided that the contract, undertaking, or other transaction shall be

authorized by the board by specific resolution on which no director having an interest, direct or indirect, shall vote.

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

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

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

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

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

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

**"§ 131E-21. Conflict of interest.**

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

- (1) Acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital facility;  
~~or facility.~~
- (2) Have 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, except an employment contract for an employee. The foregoing restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business; Provided that any such contract, undertaking, or other transaction shall be authorized by the commissioners by specific resolution on which no commissioner having an interest, direct or indirect, shall vote.

(b) The fact that a person or that person's spouse owns ten percent (10%) or less stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of that corporation or other business entity does not make the

person have an "interest, direct or indirect" as this phrase is used in ~~subsections (1) and (2)~~ subsection (a) of this section; provided that, in order for the exception to apply, the contract, undertaking or other transaction shall be authorized by the commissioners by specific resolution on which no commissioner or employee having an interest, direct or indirect, shall vote.

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

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

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

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

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

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

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

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

**"§ 160A-75. Voting.**

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

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue ~~(including issue, including~~ the mayor's vote in case of an equal division) ~~division,~~ shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats ~~(not~~

and not including the mayor unless ~~he~~ the mayor has the right to vote on all questions before the ~~council~~ council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

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

In the General Assembly read three times and ratified this the 6<sup>th</sup> day of September, 2001.

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Marc Basnight  
President Pro Tempore of the Senate

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James B. Black  
Speaker of the House of Representatives

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Michael F. Easley  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2001