

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 922

SHORT TITLE: Amend the Laws Regarding Conflict of Interest

SPONSOR(S): Senator Clodfelter

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: December 1, 2001: Applies to offenses committed on or after that date.

BILL SUMMARY: Clarifies and updates several criminal statutes that prohibit public officials from benefiting. Revised statute contains three main prohibitions: (1) A public official or employee is prohibited from obtaining a direct benefit from any contract in which he or she is involved on behalf of the public agency. (2) Even if a public official or employee is not involved in making a contract in which he has a direct benefit, he is prohibited from influencing or attempting to influence anyone in the agency who is involved in making the contract. (3) All public officers and employees are prohibited from soliciting or receiving any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract. "Direct benefit" is defined as meaning that the person or spouse (i) has a 10% or more 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. A public officer is "involved" in the making of the contract if he or she participates in the development of specifications or terms, or 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. A new provision makes clear that the prohibitions of the law do not apply to a real property conveyance pursuant to a court order in a condemnation proceeding. New provisions

specify that contracts made in violation of the law are void, but such voided contracts may stay in effect if immediate termination would result in harm to the public health or welfare and continuation is approved by the Local Government Commission (for local agencies) or the Governor (for state agencies). Repeals outdated or inconsistent provisions and makes technical and other conforming changes.

ASSUMPTIONS AND METHODOLOGY:

This bill clarifies and updates some existing statutes governing conflict of interest by “directors of the public trust”, members of boards of various government institutions and their employees. The revisions are meant to be more specific but consistent with the general understanding of existing law. The definition of ‘deriving direct benefit’ as more than a 10% ownership is consistent with existing law. The bill does add a prohibition against influencing another person who is involved in administering a contract and provides consistent language for both public officers and employees.

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 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.

TECHNICAL CONSIDERATIONS: None

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