

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1058

Short Title: State Ethics Code.

(Public)

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Sponsors: Representatives Luebke and R. Hunter.

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Referred to: Judiciary III.

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April 22, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE AN ETHICS CODE FOR PUBLIC OFFICERS AND  
3 EMPLOYEES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 128 of the General Statutes is amended to add a new  
6 Article to read:

7 **ARTICLE 5.**  
8 **"CODE OF ETHICS AND STANDARD OF CONDUCT**  
9 **FOR PUBLIC OFFICERS AND EMPLOYEES.**

10 **"§ 128-50. Declaration of policy.**

11 It is hereby declared to be the policy of the State that no officer or employee of a  
12 State agency or of a county, city, or other political subdivision of the State, shall have  
13 any interest, financial or otherwise, direct or indirect; engage in any business transaction  
14 or professional activity; or incur any obligation of any nature which is in substantial  
15 conflict with the proper discharge of his duties in the public interest. To implement this  
16 policy and strengthen the faith and confidence of the people of the State in their  
17 government, there is enacted a code of ethics setting forth standards of conduct required  
18 of State, county, and city officers and employees, and of officers and employees of  
19 other political subdivisions of the State, in the performance of their official duties. It is  
20 the intent of the General Assembly that this code shall serve not only as a guide for the  
21 official conduct of public servants in this State, but also as a basis for discipline of those  
22 who violate the provisions of this Article.

23 It is further declared to be the policy of the State that public officers and employees,  
24 State and local, are agents of the people and hold their positions for the benefit of the

1 public. They are bound to uphold the Constitution of the United States and the State  
2 Constitution and to perform efficiently and faithfully their duties under the laws of the  
3 federal, State, and local governments. Such officers and employees are bound to  
4 observe, in their conduct, the highest standards of ethics consistent with this code  
5 regardless of personal considerations, recognizing that promoting the public interest and  
6 maintaining the respect of the people in their government must be of foremost concern.

7 **"§ 128-51. Definitions.**

8 Unless provided otherwise or the context otherwise requires, the following  
9 definitions govern the construction of this Article:

10 (a) The term 'officer or employee' includes any person employed, appointed, or  
11 elected to a position of the State or local government or to an agency thereof. The term  
12 excludes members of the General Assembly.

13 (b) The term 'agency' shall mean State and local government including all  
14 departments, agencies, boards, commissions, institutions, and authorities of the State or  
15 county, municipality or political subdivision thereof.

16 (c) The term 'personal or financial interest' shall include: (i) the affairs of any  
17 person in the officer's or employee's immediate household; (ii) the affairs of any  
18 corporation, business, firm, or organization in which he is an officer, partner, director,  
19 or substantial owner or shareholder; (iii) any matter with the agency by any other person  
20 in which the officer or employee, or a person described in subdivisions (i) or (ii) has or  
21 anticipates a contract for the performance of work or other transaction for pecuniary  
22 gain with such person, arising out of or by reason of the matter with the agency; and (iv)  
23 any person with whom the officer or employee is negotiating or has an arrangement  
24 concerning prospective employment.

25 (d) The term 'substantial owner or shareholder' shall mean ten percent (10%) or  
26 more of the stock of a corporation or ten percent (10%) or more of the ownership in the  
27 business.

28 (e) The term 'person' shall include individuals as well as corporations,  
29 businesses, and organizations.

30 (f) The term 'benefit' includes any gift, favor, gratuity, meal, alcoholic beverage,  
31 honorarium, entertainment, loan, service, business or professional opportunity or any  
32 other thing of monetary value. There is excluded from the term advertising items or  
33 souvenirs of nominal value and customary gifts between employees or officers and their  
34 friends and relatives or the friends and relatives of their spouses, minor children, or  
35 members of their household, where it is clear that it is that relationship, rather than the  
36 position of the officer or employee concerned, that is the motivating factor for the gift.

37 **"§ 128-52. Gifts prohibited.**

38 No officer or employee shall solicit or accept, any benefit from any person who (i)  
39 has, or is seeking to obtain, contractual or other business or financial  
40 relationships with the officer's or employee's agency; or (ii) conducts operations or  
41 activities which are regulated by his agency; and (iii) the interests or activities may be  
42 affected by the performance or nonperformance of the duty of the officer or employee.  
43 No officer or employee shall accept any benefit that could reasonably tend to influence

1 him in the performance of his official duties, or because of any official act performed,  
2 except as otherwise provided by law for the discharge of official duty.

3 **"§ 128-53. Donations for government meetings prohibited.**

4 No person including related industry associations, doing business with or regulated  
5 by the agency shall be solicited for or provide any benefit, including any food or drink,  
6 at conferences or meetings called for the primary purpose of conducting agency  
7 business.

8 **"§ 128-54. Restrictions on outside employment of present employees.**

9 No officer or employee shall engage in any employment that is incompatible with  
10 the proper discharge of that officer's or employee's official duties or impairs  
11 independence of judgment in the performance of those duties. No regularly employed  
12 officer or employee may be employed by, or contract to do business with any  
13 contracting party or company doing business with the particular agency which employs  
14 the officer or employee, except as authorized by the agency after determining no  
15 potential conflict of interest will exist. Each agency shall regulate outside employment  
16 for the purpose of eliminating potential conflicts of interest.

17 **"§ 128-55. Contemplated official action.**

18 No officer or employee shall engage in any transaction in anticipation of a  
19 pecuniary benefit or intentionally aid another in such a transaction, in contemplation of  
20 official action by the officer, employee, or the agency with which he is associated.

21 **"§ 128-56. Policy against representing adverse claims.**

22 No officer or employee shall represent outsiders in connection with claims,  
23 applications, or other matters or proceedings before the agency by which the official or  
24 employee is employed.

25 **"§ 128-57. Use of position or influence for private gain or unwarranted privileges**  
26 **prohibited.**

27 No employee or officer shall use or attempt to use his official position or influence  
28 to secure unwarranted privileges or advantages for himself or others, or to otherwise use  
29 his position for private gain for himself or others or a company with which he is  
30 affiliated or has a personal or financial interest.

31 **"§ 128-58. Falsification of records or reports.**

32 No officer or employee shall knowingly falsify or permit to be falsified, any public  
33 record or report or expense account.

34 **"§ 128-59. Participation in agency matters.**

35 No officer or employee shall participate, either directly or indirectly, in any matter  
36 of the agency in which the officer or employee has a personal or financial interest.

37 **"§ 128-60. Disclosure of financial interest.**

38 (a) Each elected and appointed officer of the State and each employee serving in  
39 an exempt position designated pursuant to G.S. 126-5(d), shall file a disclosure  
40 statement annually on or before January 31 on forms to be prepared by the Secretary of  
41 State which statement shall be maintained as a public record by the Secretary of State.  
42 The statement shall contain the same information as is now required by Executive Order  
43 Number 1, promulgated January 31, 1988. The person filing a disclosure form shall list  
44 as specified, the assets, liabilities, and the sources of income of his or her spouse which

1 are derived from the assets or income of the person filing, controlled by the person  
2 filing, or for which the person filing is jointly and severally liable.

3 (b) Members of City Councils, Boards of County Commissioners, Boards of  
4 Adjustment, Planning Boards, Housing Authorities, and Redevelopment Authorities  
5 shall file annually by January 31 of each year a financial disclosure statement that shall  
6 include the following information:

7 (1) A listing of all real estate holdings (including legal, equitable,  
8 beneficial, and contractual interests) in the city or county, including  
9 any extraterritorial jurisdiction, owned in whole or in part by the  
10 member or a member of his or her household;

11 (2) A listing of all businesses, firms, corporations, and/or partnerships, of  
12 whatever nature, operating within the city or county for which the  
13 member or a member of his or her household has either a ten percent  
14 (10%) or greater ownership interest or an ownership interest valued at  
15 five thousand dollars (\$5,000) or more; and

16 (3) A listing of all employers and employees from which or to which the  
17 member or a member of his or her household paid or received pay of  
18 five thousand dollars (\$5,000) or more in the previous year.

19 The city or county clerk shall maintain copies of all required financial statements  
20 available for public inspection during regular business hours.

21 **"§ 128-61. Disqualification from voting.**

22 An officer or employee of an agency shall be excused from voting and participating  
23 in the discussion of any matter before an agency of which he is a member and in which  
24 he has a personal or financial interest. The disqualification is expressly applicable to  
25 the participation in any matter, such as a grant approval, involving an organization or  
26 entity in which he is an officer or employee. Notwithstanding any other provision of  
27 law, upon disqualification of officers or employees in accordance with this section, the  
28 remaining member or members shall have authority to act in the same manner as if the  
29 position(s) were vacant. This section shall not apply to members of Occupational  
30 Licensing Boards while engaged in rule-making activities.

31 **"§ 128-62. Giving of gratuities prohibited for official acts.**

32 No person shall, except as otherwise provided by law for the discharge of official  
33 duty, knowingly offer to, agree to or give to or confer on any present or former  
34 employee any benefit for or because of any official act performed or with the intent to  
35 influence him in performing his duties.

36 **"§ 128-63. Employment of consultant with a potential conflict of interest**  
37 **prohibited.**

38 No architectural or engineering firm shall be employed for a public building or  
39 public works project, in which any director, officer, employee, major creditor, or a  
40 substantial owner or shareholder of such firm, has any landholding, options to purchase  
41 land, or plans for development or construction which may be affected by the project.  
42 Each firm submitting a proposal shall make known to the agency any interest it has that  
43 may be affected by the location or design of the proposed project.

44 **"§ 128-64. Fines and penalties.**

1       (a) Any person who knowingly violates any of the provisions of Article 5 shall  
2 be guilty of a misdemeanor. In addition to any penalty provided, any such officer,  
3 member, or employee who shall knowingly violate any of the provisions of this Article  
4 may be fined, suspended, or removed from office or employment in the manner  
5 otherwise provided by law. The fines, remedies, and penalties provided for in this  
6 Article are not exclusive and are not intended to preclude any others available or  
7 provided for by law.

8       (b) An officer or employee shall not be prosecuted for a knowing violation of this  
9 Article if the alleged violation resulted from his good faith reliance on a written opinion  
10 of the Attorney General or local government attorney and the opinion was made after a  
11 full disclosure of the facts."

12               Sec. 2. G.S. 14-235, 14-236, and 14-237 are hereby repealed.

13               Sec. 3. G.S. 133-32 is repealed.

14               Sec. 4. This act becomes effective July 1, 1991, except G.S. 128-60, which  
15 becomes effective January 1, 1992.