

The House Committee on Governmental Affairs offers the following substitute to HB 1362:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 2 of Title 45 of the Official Code of Georgia Annotated,
2 relating to general provisions for eligibility and qualifications for office, so as to provide that
3 persons having certain financial interest shall be ineligible to hold certain public offices; to
4 amend Part 1 of Article 2 of Chapter 10 of Title 45 of the Official Code of Georgia
5 Annotated, relating to general provisions for conflicts of interest, so as to prohibit state public
6 officials from having financial interest in certain state contracts or from transacting business
7 with the state; to revise disclosure provisions; to revise definitions; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 2 of Title 45 of the Official Code of Georgia Annotated, relating to
12 general provisions for eligibility and qualifications for office, is amended by adding a new
13 Code section to read as follows:

14 "45-2-1.1.

15 (a) As used in this Code section, the terms 'agency,' 'family,' 'financial interest,' 'public
 16 official,' and 'transact business' or 'transact any business' shall have the same meanings as
 17 provided for in Code Section 45-10-20.

18 (b) In addition to the provisions of Code Section 45-2-1, the following persons are
 19 ineligible to hold any public offices provided for in subsection (c) of this Code section; and
 20 the existence of any of the following facts shall be a sufficient reason for vacating any
 21 office held by a public official, provided that the acts of such official, while holding a
 22 commission, shall be valid as the acts of an officer de facto when a person, for himself or
 23 herself or on behalf of any business, or for any business in which such person or member
 24 of his or her family has a financial interest, to:

25 (1) Transact any business with any agency or any federal agency or department; or

26 (2) Have a financial interest, directly or indirectly, in:

27 (A) A contract made by a state agency or any federal agency or department; or

28 (B) Which the state or a state agency or any federal agency or department is an
 29 interested party,

30 and of which interest such person has knowledge and reason to know.

31 (c) This Code section shall apply to the public offices of Governor, Lieutenant Governor,
 32 Secretary of State, Attorney General, State School Superintendent, and the Commissioners
 33 of Agriculture, Labor, and Insurance."

34 **SECTION 2.**

35 Part 1 of Article 2 of Chapter 10 of Title 45 of the Official Code of Georgia Annotated,
 36 relating to general provisions for conflicts of interest, is amended by revising Code
 37 Section 45-10-20, relating to definitions, as follows:

38 "45-10-20.

39 As used in this part, the term:

40 (1) 'Agency' means any agency, authority, department, board, bureau, commission,
 41 committee, office, or instrumentality of executive, legislative, or judicial branch of the
 42 State of Georgia but shall not mean a political subdivision of the State of Georgia.

43 (2) 'Business' means any corporation, partnership, proprietorship, firm, enterprise,
 44 franchise, association, organization, self-employed individual, trust, or other legal entity.

45 (3) 'Employee' means any person who, pursuant to a written or oral contract, is employed
 46 by an agency.

47 (4) 'Family' means spouse and dependents.

48 (5) 'Financial interest' means any direct or indirect ownership, interest in a partnership,
 49 or holding of stock in a corporation, except where such holding constitutes less than 3
 50 percent of the total proprietary interest of such corporation.

51 ~~(5)~~(6) 'Full-time' means 30 hours of work for the state per week for more than 26 weeks
 52 per calendar year.

53 ~~(6)~~(7) 'Limited powers' means those powers other than state-wide powers.

54 ~~(7)~~(8) 'Part-time' means any amount of work other than full-time work.

55 ~~(8)~~(9) 'Person' means any person, corporation, partnership, proprietorship, firm,
 56 enterprise, franchise, association, organization, or other legal entity.

57 ~~(9)~~(10) 'Public official' means any person elected to a state office and means any person
 58 appointed to a state office where in the conduct of such office the person so appointed has
 59 administrative and discretionary authority to receive and expend public funds and to
 60 perform certain functions concerning the public which are assigned to him or her by law,
 61 regardless of whether or not such person is serving with or without compensation on a
 62 full-time, part-time, intermittent, or consultant basis.

63 ~~(10) 'State-wide powers' means those powers exercised by public officials which affect~~
 64 ~~and influence all of state government. Public officials who exercise such powers include~~
 65 ~~but are not limited to the Governor, the Lieutenant Governor, members of the General~~
 66 ~~Assembly, Justices of the Supreme Court, Judges of the Court of Appeals, the Secretary~~

67 of State, the Attorney General, the state auditor, the state accounting officer, the
 68 commissioner of administrative services, members of the State Personnel Board, the
 69 director of the Office of Planning and Budget, judges of the superior courts, and district
 70 attorneys.

71 (11) 'Substantial interest' means the direct or indirect ownership of more than 25 percent
 72 of the assets or stock of any business.

73 (12) 'Transact business' or 'transact any business' means to sell or lease any personal
 74 property, real property, or services on behalf of oneself or on behalf of any third party as
 75 an agent, broker, dealer, or representative and means to purchase surplus real or personal
 76 property on behalf of oneself or on behalf of any third party as an agent, broker, dealer,
 77 or representative."

78 **SECTION 3.**

79 Said part is further amended by revising Code Section 45-10-22, relating to full-time public
 80 officials with state-wide powers prohibitions, and public officials or employees with limited
 81 powers prohibitions, as follows:

82 "45-10-22.

83 (a)(1) It shall be unlawful for any full-time public official who has state-wide powers, for
 84 himself or herself or on behalf of any business, or for any business in which such public
 85 official or member of his or her family has a substantial financial interest, to:

86 (1) Transact transact any business with any agency; or

87 (2) Have a financial interest, directly or indirectly, in:

88 (A) A contract made by a state agency; or

89 (B) Which the state or a state agency is an interested party,

90 and of which interest a public official has knowledge and reason to know.

91 (2) ~~It shall be unlawful for any public official who has limited powers, for himself or on~~
 92 ~~behalf of any business, or for any business in which such public official or member of his~~

93 family has a substantial interest to transact any business with the agency for which such
 94 public official serves.

95 ~~(b) The provisions of paragraph (1) of subsection (a) of this Code section shall not apply~~
 96 ~~to:~~

97 ~~(1) Any transaction made pursuant to sealed competitive bids;~~

98 ~~(2) Any transaction when the amount of a single transaction does not exceed \$250.00 and~~
 99 ~~when the aggregate of all such transactions does not exceed \$9,000.00 per calendar year;~~
 100 ~~and~~

101 ~~(3) Any transaction involving the lease of real property to or from any agency if such~~
 102 ~~transaction has been approved by the State Properties Commission or the Space~~
 103 ~~Management Division of the Department of Administrative Services.~~

104 ~~(c)(b)~~ Any person who knowingly violates subsection (a) of this Code section shall be
 105 subject to the penalties provided for in Code Section 45-10-28."

106 SECTION 4.

107 Said part is further amended by revising Code Section 45-10-24, relating to part-time public
 108 officials with state-wide powers prohibitions, part-time employees prohibitions, and
 109 exceptions to prohibitions, as follows:

110 "45-10-24.

111 ~~(a)(1) Except as provided in subsection (b) of this Code section, it shall be unlawful for~~
 112 ~~any part-time public official who has state-wide powers, for himself or on behalf of any~~
 113 ~~business, or for any business in which such public official or member of his family has a~~
 114 ~~substantial interest to transact any business with any agency.~~

115 ~~(2)(a)~~ Except as provided in subsection (b) of this Code section, it shall be unlawful for
 116 any part-time employee, for himself or on behalf of any business, or for any business in
 117 which such employee or member of his family has a substantial interest to transact any
 118 business with the agency by which such employee is employed.

- 119 (b) The provisions of subsection (a) of this Code section shall not apply to:
- 120 (1) Any transaction made pursuant to sealed competitive bids;
- 121 (2) Any transaction when the amount of a single transaction does not exceed \$250.00 and
- 122 when the aggregate of all such transactions does not exceed \$9,000.00 per calendar year;
- 123 (3) Any transaction involving the lease of real property to or from any agency if such
- 124 transaction has been approved by the State Properties Commission or the Space
- 125 Management Division of the Department of Administrative Services; and
- 126 (4) Any transaction involving the purchase of surplus state property at a public auction.
- 127 (c) Any person who knowingly violates subsection (a) of this Code section shall be subject
- 128 to the penalties provided for in Code Section 45-10-28."

129 **SECTION 5.**

130 Said part is further amended by revising Code Section 45-10-24.1, relating to exemption for

131 transactions by family owned business when university system employee has interest, and

132 requirements, as follows:

133 "45-10-24.1.

134 Subsection (a) of Code Section 45-10-23 and ~~paragraph (2)~~ of subsection (a) of Code

135 Section 45-10-24 shall not apply to a transaction with a unit of the University System of

136 Georgia by a family owned business in which an employee of the university system or a

137 member of the employee's family has an ownership interest where all of the following

138 apply:

- 139 (1) The employee or one or more members of the employee's family or both have an
- 140 ownership interest in a family owned business, but the employee is not actively engaged
- 141 in the day-to-day management of the business;
- 142 (2) The employee is employed by a department of the unit of the university system in a
- 143 position below that of department head; and
- 144 (3) The transaction is:

- 145 (A) With a unit of the university system different than the unit employing the
 146 employee; or
 147 (B) With a department of the employing unit of the university system different than the
 148 department employing the employee."

149 **SECTION 6.**

150 Said part is further amended by revising the introductory language of subsection (a) of Code
 151 Section 45-10-25, relating to exceptions to prohibitions on transactions with state agencies,
 152 as follows:

153 "45-10-25.

154 (a) The provisions of Code Sections ~~45-10-22~~, 45-10-23; and 45-10-24 shall not apply to:"

155 **SECTION 7.**

156 Said part is further amended by revising Code Section 45-10-26, relating to annual disclosure
 157 statements concerning business transactions with state and public records, as follows:

158 "45-10-26.

159 (a) Except as provided in subsection (b) of this Code section, any public ~~official or~~
 160 employee, whether for himself, herself, or on behalf of any business, or any business in
 161 which such public official or employee or any member of his or her family has a substantial
 162 interest who transacts business with the state or any agency thereof shall disclose such
 163 transactions. Such disclosure shall be submitted prior to January 31 each year to the State
 164 Ethics Commission on such forms as it shall prescribe and shall include an itemized list of
 165 the previous year's transactions with the dollar amount of each transaction reported and
 166 totaled. Such disclosure statements shall be public records.

167 (a.1) Except as provided in subsection (b) of this Code section, any public official, whether
 168 for himself, herself, or on behalf of any business, or any business in which such public
 169 official or employee or any member of his or her family has an interest less than a financial

170 interest who transacts business with the state or any agency thereof, shall disclose such
171 transactions. Such disclosure shall be made in the same manner as the disclosures required
172 by subsection (a) of this Code section.

173 (b) The requirement to disclose certain transactions as provided in subsection (a) of this
174 Code section shall not apply to any transaction when the amount of a single transaction
175 does not exceed \$250.00 and when the aggregate of all transactions does not exceed
176 \$9,000.00 per calendar year.

177 (c) Any person who fails to file a disclosure statement as required in subsection (a) of this
178 Code section shall be subject to the penalties provided for in Code Section 45-10-28."

179 **SECTION 8.**

180 All laws and parts of laws in conflict with this Act are repealed.