

§ 138A-38. Permitted participation exception.

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

- (1) The only interest or reasonably foreseeable benefit or detriment that accrues to the covered person, the covered person's extended family, business with which the covered person is associated, or nonprofit corporation or organization with which the covered person is associated as a member of a profession, occupation, or general class is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.
- (2) When an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.
- (3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission or Committee a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the Commission or Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.
- (4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.
- (5) When action is ministerial only and does not require the exercise of discretion.
- (6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under G.S. 138A-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.
- (7) When a public servant notifies the Commission in writing that the public servant, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

(b) This section shall not allow participation in an official action prohibited by G.S. 14-234.

(c) Notwithstanding G.S. 138A-37, if a legislator is employed or retained by, or is an independent contractor of, a governmental unit, and the legislator is the only member of the house elected from the district where that governmental unit is located, then the legislator may take legislative action on behalf of that governmental unit provided the legislator discloses in writing to the principal clerk the nature of the relationship with the governmental unit prior to, or at the time of, taking the legislative action.

(d) Notwithstanding G.S. 138A-36, service by the president, chief financial officer, chief administrative officer, or voting member of the board of trustees of a community college as an officer, employee, or member of the board of directors of a nonprofit corporation established under G.S. 115D-20(9) to support the community college shall not constitute a conflict of interest under G.S. 138A-36, provided that the majority of the nonprofit corporation's board of directors

is not comprised of the president, chief financial officer, and chief administrative officer, or voting members of the board of trustees of the community college which the nonprofit corporation was created to support. (2006-201, s. 1; 2007-347, s. 14; 2008-213, s. 85; 2010-169, s. 22(d); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)