



North Carolina General Assembly
Legislative Ethics Committee
Advisory Memorandum
AM-LEC-11-001

May 16, 2011

To: The Members of the General Assembly

From: Senator Fletcher Hartsell, Cochair, Legislative Ethics Committee
Representative Paul Stam, Cochair, Legislative Ethics Committee

Re: HB 493 (Landlord Tenant Law Changes) - Duty to Vote, Conflict of Interest Analysis, and Recusal Process

Question: House Bill 493 amends the laws related to the landlord and tenant relationship. How does a legislator determine whether he or she may vote for or against the bill if the legislator is a landlord, a tenant, or both?

[NOTE: Under the State Government Ethics Act, a legislator may be considered to be a landlord or a tenant due to certain familial or business relationships even if the legislator is not personally a landlord or a tenant. This memo does not address *how* a legislator determines whether a relationship creates a conflict of interest. This memo assumes the legislator has made that determination and must now decide whether it is permissible to vote.]

Answer: As a member of the General Assembly, each legislator has a duty to assist in the enactment of laws. A legislator who is a landlord or a tenant is a member of a general class. If the financial benefit or detriment that accrues to the legislator from the changes in the law is no greater than the financial benefit or detriment that could reasonably be foreseen to accrue to all landlords or tenants, then the legislator may vote on the bill. If, however, the legislator determines that his or her independence of judgment is impaired, the legislator may request to be excused from voting, but must provide a written statement to the Clerk explaining the reason for the request.

Discussion: Legislators have a duty to assist in the enactment of laws¹ by appearing at session² and by voting when the question is put.³ Although there are situations where legislators may request to be excused from voting, the State Government Ethics Act is designed to allow legislators to fulfill the duties of their offices while also protecting the public's interest.

¹ Art. II, Sec. 1, NC Constitution.

² G.S. 120-7.

³ SR 29(a) and HR 24(b).

G.S. 138A-38(a)(1) allows a legislator to participate in a legislative action if (1) the reasonably foreseeable financial benefit or detriment that accrues to the legislator (2) who is a member of a profession, occupation or general class (3) is no greater than that which could reasonably be foreseen to accrue (4) to all other members of the same profession, occupation, or general class. G.S. 138A-31(a) allows a legislator to participate in a legislative action that will result in a financial benefit or detriment to the legislator if (1) the financial or other benefits the legislator would enjoy are (2) no greater than that which other citizens of the State (3) would or could enjoy. Although the language of these two statutes differ in some respects, we believe they must be read together to mean that if the financial impact of a piece of legislation on an individual legislator is the same as it will be on a sufficiently large and definable group, then the legislator may take legislative action. Clearly, all landlords, all tenants, or both are sufficiently large enough groups to fall within the exceptions under the law.

G.S. 138A-31(a) provides that a legislator shall not knowingly use the legislator's public position in a legislative action that will result in financial benefit to the legislator. G.S. 138A-37(a) provides that a legislator shall not participate in a legislative action if: (1) the legislator knows he or she (2) may incur a reasonably foreseeable financial benefit or detriment from the action and, (3) after considering the chamber's need for that legislator's special knowledge or expertise, (4) the legislator determines his or her independence of judgment will be impaired. It is up to the individual legislator to make the subjective determination whether his or her independence of judgment will be impaired by a conflict of interest.

The general class exception discussed above allows a legislator to act even in instances where the action will result in a financial benefit to the legislator and the legislator determines his or her independence of judgment is impaired.⁴ However, if a legislator decides his or her independence of judgment is impaired, the legislator may request to be excused from voting. The procedure request to be excused from voting is as follows:

1. The legislator moves to be excused from voting under the applicable rule (House Rule 24.1A or Senate Rule 29).
2. The member gives the Principal Clerk a written statement giving the reason for the request. (See attached forms.) If the ethical standards of a profession prohibit a legislator from disclosing the reason for seeking to be excused, the legislator may reference that ethical standard in the written statement.
3. The statement is included in that chamber's Journal.

A member may request that his or her request to be excused from deliberations be withdrawn.⁵

⁴ G.S. 138A-38(a) provides that "notwithstanding G.S. 138A-37", the general class exception applies. G.S. 138A-37(a) provides the "except as permitted in G.S. 138A-38". G.S. 138A-31(a) also references G.S. 138A-38, but neither G.S. 138A-37 or G.S. 138A-38 cross-reference G.S. 138A-31.

⁵ HR 24.1A(d) and SR 29(d).

EXCUSED FROM VOTING REQUEST

[illegible]

on this reading, any subsequent reading, and any amendments for the following reason(s):

Senator

Date _____

House Journal Memo

EXCUSE FROM VOTING REQUEST

Representative _____ requests that he/she be
excused from voting on ____ B. _____ for the following reason(s):

Representative

Date _____