



**House
Legislative
Analysis
Section**

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DISCLOSE GOVT. SETTLEMENT

**House Bill 4577 (Substitute H-2)
First Analysis (11-10-93)**

**Sponsor: Rep. Michael J. Griffin
Committee: Judiciary**

THE APPARENT PROBLEM:

For some time, there have been periodic calls for more public disclosures regarding lawsuits settled out of court. Sometimes questions surround the safety of a product or practice that was the subject of a lawsuit, and sometimes questions arise over the wisdom of settlements reached by governmental units. Many find secrecy in the settlement of governmental lawsuits to be especially troublesome, as it interferes with taxpayers' ability to evaluate the decisions and expenditures of their representatives.

The issue received fresh attention in 1991 following the settlement of a lawsuit brought by two former inmates of the Jackson county jail. The inmates had been beaten while in jail and sued the county for failing to protect them, seeking damages into six figures. With the civil trial nearly over, the county settled out of court for an undisclosed sum, prompting an outcry in the local media and elsewhere.

Legislation has been proposed to bar governmental settlement agreements from containing provisions that prohibit disclosure of a settlement or its terms.

THE CONTENT OF THE BILL:

The bill would create the Governmental Settlement Disclosure Act, which would make void any nondisclosure clause of an agreement to settle a claim or lawsuit against the state or a local unit of government. (Such clauses also would be declared to be against public policy.) A "local unit of government" would be a county, city, village, township, authority created under state law or municipal charter, special assessment district, or municipal board or commission established under state law or municipal charter. The bill would apply to agreements entered into after December 31, 1993.

FISCAL IMPLICATIONS:

There is no fiscal information at present. (11-9-93)

ARGUMENTS:

For:

When a governmental unit settles a dispute out of court, it is the taxpayers who pay for it, whether payment takes the form of cash paid to a plaintiff, higher premiums paid to a liability insurer, or cash paid to buy out the contract of an incompetent teacher or governmental employee. However, such settlements frequently are conditioned on the agreement of both parties not to disclose any information about the settlement. Even though the state constitution declares financial records involving public moneys to be public information, expenditures arising from secret settlements can be difficult to identify; they may be lumped together or with other items in budget reports, or reflected indirectly in rising insurance premiums. And, even though some legal experts maintain that municipalities are acting outside the scope of their authority by keeping government documents secret, nondisclosure agreements have yet to be challenged in court. By declaring nondisclosure clauses to be void and against public policy, the bill would help to ensure that taxpayers would be able to evaluate agreements in which their governmental representatives spent tax money. Taxpayers have a right to know how their money is being spent.

Response:

The bill arguably would not guarantee disclosure, as court rules would continue to allow parties to ask the court to seal the records, and the court could continue to do so, as long as certain conditions were met. Those conditions require that a party identify in writing a specific interest to be protected, that the court make an on-the-record finding of good

cause to close the records, and that there be no less restrictive means to adequately and effectively protect the specific interest asserted. In making its determination, the court must additionally consider the interests of the public as well as the parties. What the bill would do is bar certain clauses in agreements; it would not bar parties from pursuing court-ordered closure of records.

Against:

It is for good reason that settlements often include nondisclosure agreements. Sometimes sensitive personnel issues are involved, such as when an employee develops psychological problems; sometimes nondisclosure protects innocent parties, such as when a public employee's family members or others are spared embarrassment. Further, nondisclosure in general helps to prevent "copycat" lawsuits; if terms and settlement amounts became generally known, many who otherwise might not have sued would instead bring lawsuits, engendering much greater expenses for local governments and their taxpayers. Widely publicized settlements could lead to an avalanche of unfounded claims that unnecessarily strained local resources.

Response:

Many would question whose interests are being protected when secrecy surrounds settlements involving a teacher accused of child molestation, an administrator accused of sexual harassment, or a truck driver who habitually drives drunk. It may be expeditious for a public employer to get rid of such employees by paying them off and promising not to tell, but such employees can present problems in their next place of employment. Further, secrecy in payments in many civil lawsuits, such as those to employees who charge racial or gender bias in promotion decisions, helps to protect bad managers from public scrutiny. Where there truly was good reason not to disclose the terms of a settlement, a party could ask the court to seal the records.

POSITIONS:

The Michigan Press Association supports the bill. (11-9-93)

The Michigan Trial Lawyers Association has no position at this time, although it supports the concept of public disclosure of public hazards. (11-9-93)

The Michigan Municipal League is reviewing the bill and has not yet taken a position. (11-9-93)

The Michigan Townships Association has concerns that the bill would increase litigation and force details of sensitive issues contained in the agreement. (11-9-93)