



**House
Legislative
Analysis
Section**

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CONFLICT OF INTEREST LAW

**House Bill 4680 (Substitute H-2)
First Analysis (2-14-96)**

**Sponsor: Rep. Kirk A. Profit
Committee: Education**

THE APPARENT PROBLEM:

Public Act 317 of 1968 addresses conflicts of interest that can occur for persons serving on the boards of public entities. The act generally prohibits a public servant from being a party, directly or indirectly, to any contract between himself and herself and the public entity of which he or she is an officer or employee. Exceptions to this prohibition are provided, however, and procedural requirements are laid out governing such contracts. The act establishes the following requirements for a contract involving a public entity and a public servant: 1) the public servant must promptly disclose any pecuniary interest to the official body and the disclosure is to be made a matter of record; 2) the contract must be approved by a vote of at least two-thirds of the full membership of the body in open session without the vote of the member making the disclosure; and 3) the body must put certain specified information in its official minutes. (If two thirds of the members are not eligible to vote and the member with a pecuniary interest in a contract stands to gain less than \$250 and less than five percent of the public cost of the contract, then the member with an interest may be counted for purposes of a quorum and vote.)

A recent occurrence in which a school board reportedly purchased land for which one of the board members was the realtor has prompted legislation to amend the conflict of interest statute. In that case, the member with a conflict announced the conflict at a school board meeting and then the remainder of the board approved the purchase of the land. The controversy that followed these events has led to a proposal that there be a waiting period between the meeting at which a member of a public body discloses a conflict of interest and the meeting at which the contract in question is voted upon.

THE CONTENT OF THE BILL:

The bill would amend Public Act 317 of 1968 to require that, where there is a conflict of interest, the vote on a contract must be taken at a meeting of the body held at least seven days after the meeting at which the disclosure of a conflict of interest was made, and that the vote could not be taken until after allowing for public testimony on the contract. This provision would

not apply if the member making the disclosure would directly benefit from the contract in an amount less than \$250 and less than 5 percent of the public cost of the contract and the member files a sworn affidavit to that effect with the official body.

MCL 15.323

BACKGROUND INFORMATION:

The term "public servant" in Public Act 317 refers to "all persons serving any public entity, except members of the legislature and state officers who are within the provisions of section 10 of article 4 of the state constitution as implemented by legislative act." The term "public entity" means "the state including all agencies thereof, any public body corporate within the state, including all agencies thereof, or any non-incorporated public body within the state of whatever nature, including all agencies thereof."

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill would prevent a public body from voting to approve a contract at the same meeting at which one of the members of the body disclosed that he or she had a financial conflict of interest in the contract. At the very least, the body would have to wait seven days after the meeting at which the conflict was disclosed to vote on the contract. (This would not apply in cases of small contracts.) This would provide opportunity for public comment on the proposed contract. It would provide a "cooling-off period." While this may be common practice in some communities now, it is not required by law.

Response:

There is some question as to whether the bill is necessary; the matter of how to deal with these conflicts could just as well be left to the public bodies themselves to resolve within the current statute. Also, there is

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some concern about how emergencies are to be handled with a seven-day waiting period. Some public boards meet only once each month or even less frequently.

Against:

Some people have proposed specifically including the governing boards of charter schools in the conflict of interest statute so that it will be clear that the law applies to these unusual kinds of boards. Such boards are neither elected nor appointed by officials who are elected.

Response:

Some people familiar with the act say that it is understood to include the boards of all public entities unless specifically exempted. So, they say, it would not be a good precedent to begin specifying who is included under the act.

POSITIONS:

The Michigan Municipal League is not opposed to the bill as written. (2-13-96)

The Michigan Townships Association does not oppose the bill. (2-13-96)

The Michigan Association of School Boards has no position on the bill. (2-13-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.