House
Legislative
Analysis
Section

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CONFLICT OF INTEREST LAW

House Bill 4386 as introduced
First Analysis (3-19-97)

Sponsor: Rep. Kirk A.Profit
Committee: House Oversight and Ethics

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 or 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 must 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, including the nature of the pecuniary interest. (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 has prompted legislation to amend the conflict of interest statute. In that case, a school board reportedly purchased land that had been for sale for several years not long after one of the board members acquired the listing as a real estate agent. 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 at that meeting. The controversy that followed these events led to a recall of some board members. It has also led to a proposal that there be a required waiting period between the disclosure of a financial conflict of interest and any vote on the contract in question so that there is an opportunity for the public to become aware of the conflict and respond to it.

THE CONTENT OF THE BILL:

The bill would amend Public Act 317 of 1968 to require that a public servant disclose a conflict of interest on a contract in one of two ways.

1) The public servant would have to promptly disclose in writing to the presiding officer any pecuniary interest in the contract at least seven days prior to the meeting at which a vote was to be taken. The disclosure would be made public in the same manner as a public meeting notice and would also be a matter of record in the official proceedings. (If the public servant with the pecuniary interest was the presiding officer, the disclosure would have to be made in writing to the clerk.)

2) The public servant would have to disclose the pecuniary interest at a public meeting. The vote would have to be at a meeting of the official body held at least seven days after the meeting at which the disclosure was made.

If the amount of the direct benefit to the public servant was more than $5,000, disclosure would have to made using the second method.

Neither of the two methods of disclosure would be required if the amount of the direct benefit to the public servant was less than $250 and less than five percent of the public cost of the contract, and the public servant filed a sworn affidavit to that effect with the official body, or if the contract involved was for emergency repairs or services. In those cases, the public servant would be required to promptly disclose any pecuniary interest in the contract to the official body with power to approve the contract and the disclosure would be made a matter of record in the official proceedings.

As now, where a pecuniary interest in a contract had been disclosed, the contract would have to be approved by a vote of two-thirds of the full membership of the approving body in open session without the vote of the person making the disclosure. The bill would add that the vote could not be taken until after allowing for public testimony on the contract.

The bill's provisions would take effect 90 days after the

bill's enactment.

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:

The House Fiscal Agency reports that the bill would have no fiscal impact at the state or local level. (Fiscal Note dated 3-17-97)

ARGUMENTS:

For:

The bill would provide additional safeguards against public officials benefitting financially from contracts entered into by the bodies on which they serve without proper public notice of the potential financial benefit. It offers public bodies two options: either a written notice of the conflict of interest seven days in advance of the meeting on which the matter is to be voted on, with that notice to be publicized as the meeting itself is publicized, or disclosure at an official meeting with the vote not to take place on the matter for at least seven days. When a public official's financial interest exceeds $5,000, disclosure must be made using the second method (at a public meeting). For smaller contracts (under $250), and for emergencies, these new requirements would not apply and the current requirement of disclosure at the meeting on which the matter is to be voted on applies. The bill is attempting to balance the need for appropriate public notice of financial conflicts of interest with the need for the various local governmental units to carry out essential business. It recognizes that some units meet infrequently, making a multiple meeting requirement a possible hardship. The bill also would carry a delayed effective date to give local units time to become aware of the new procedural requirements.

POSITIONS:

The Michigan Municipal League supports the bill. (3-17-97)

The Michigan Townships Association supports the bill. (3-18-97)

Analyst: C. Couch

their deliberations, and does not constitute an official statement of legislative intent.