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SFA**BILL ANALYSIS**

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House Bill 4386 (as passed by the House)
Sponsor: Representative Kirk A. Profit
House Committee: House Oversight and Ethics
Senate Committee: Government Operations

Date Completed: 5-7-97

CONTENT

The bill would amend Public Act 317 of 1968 (which governs the conduct of public servants in regard to governmental decisions and contracts) to specify the manner in which a public servant would have to disclose his or her pecuniary interest in a contract between the public servant and a public entity. The bill also would replace language in the Act concerning local ordinances. The bill would take effect 90 days after the date of its enactment.

With certain exceptions, the Act prohibits a public servant from being a party to any contract between himself or herself and the public entity of which he or she is an officer or employee. "Public entity" includes the State, all State agencies, all public bodies in the State, and all agencies of public bodies. "Public servant" includes all persons serving any public entity, except legislators and State officers who are within Article 4, Section 10 of the State Constitution (which prohibits legislators and State officers from having an interest in any contract with the State or a political subdivision that would cause a substantial conflict of interest).

The prohibition against contracts between public servants and public entities does not apply to a public servant who either is paid for working an average of 25 hours per week or less, or is an employee of a public community college, junior college, or State college or university. A contract under this exception must meet the following requirements:

- The public servant promptly discloses any pecuniary interest in the contract to the official body that has power to approve the contract, and the disclosure is made a matter of record in its official proceedings.
- The contract is approved by a vote of at least two-thirds of the full membership of the approving body in open session without the vote of the public servant making the disclosure.
- The official body discloses certain information (including the name of each party, the terms of the contract, and the nature of the pecuniary interest) in its official minutes.

The bill would retain these requirements but describe how disclosure would have to be made, unless the public servant making the disclosure would directly benefit from the contract in an amount less than \$250 and less than 5% of the public cost of the contract and the public servant filed a sworn affidavit to that effect with the official body or the contract was for emergency repairs or services. If those circumstances did not apply, the disclosure would have to be made in either of the following manners:

- At least seven days before the meeting at which a vote would be taken, the public servant promptly disclosed in writing to the presiding officer, or to the clerk if the presiding officer were

the public servant who was a party to the contract, the pecuniary interest in the contract. The disclosure would have to be made public in the same manner as a public meeting notice.

- The public servant disclosed the pecuniary interest at a public meeting of the official body. The vote would have to be taken at a meeting of the 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 were more than \$5,000, disclosure would have to be made in this manner.

In addition, the bill would delete a statement that the Act supersedes all local charter provisions, whether incorporated in legislative acts or local charters, that relate to the matter of conflict of interest. The bill would retain a statement that the Act supersedes all other acts in respect to conflicts of interest relative to public contracts, involving public servants other than members of the Legislature and State officers. The bill also provides that the Act would not prohibit a unit of local government from adopting an ordinance or enforcing an existing ordinance relating to conflict of interest in subjects other than public contracts involving public servants.

MCL 15.323 & 15.328

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: R. Ross

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