

HOUSE BILL No. 4386

A bill to amend 1968 PA 317, entitled
"An act relating to the conduct of public servants in respect to
governmental decisions and contracts with public entities; to
provide penalties for the violation of this act; to repeal cer-
tain acts and parts of acts; and to validate certain contracts,"
by amending sections 3 and 8 (MCL 15.323 and 15.328), section 3 as
amended by 1984 PA 184.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Section 2 ~~shall~~ DOES not apply to either of
2 the following:

3 (a) A public servant who is paid for working an average of
4 25 hours per week or less for a public entity.

5 (b) A public servant who is an employee of a public commu-
6 nity college, junior college, or state college or university.

7 (2) A contract as defined in and limited by section 2
8 involving a public entity and a public servant described in
9 subsection (1) shall meet all of the following requirements:

1 (a) The public servant promptly discloses any pecuniary
2 interest in the contract to the official body ~~which~~ THAT has
3 power to approve the contract, which disclosure shall be made a
4 matter of record in its official proceedings. UNLESS THE PUBLIC
5 SERVANT MAKING THE DISCLOSURE WILL DIRECTLY BENEFIT FROM THE CON-
6 TRACT IN AN AMOUNT LESS THAN \$250.00 AND LESS THAN 5% OF THE
7 PUBLIC COST OF THE CONTRACT AND THE PUBLIC SERVANT FILES A SWORN
8 AFFIDAVIT TO THAT EFFECT WITH THE OFFICIAL BODY OR THE CONTRACT
9 IS FOR EMERGENCY REPAIRS OR SERVICES, THE DISCLOSURE SHALL BE
10 MADE IN EITHER OF THE FOLLOWING MANNERS:

11 (i) THE PUBLIC SERVANT PROMPTLY DISCLOSES IN WRITING TO THE
12 PRESIDING OFFICER, OR IF THE PRESIDING OFFICER IS THE PUBLIC SER-
13 VANT WHO IS A PARTY TO THE CONTRACT, TO THE CLERK, THE PECUNIARY
14 INTEREST IN THE CONTRACT AT LEAST 7 DAYS PRIOR TO THE MEETING AT
15 WHICH A VOTE WILL BE TAKEN. THE DISCLOSURE SHALL BE MADE PUBLIC
16 IN THE SAME MANNER AS A PUBLIC MEETING NOTICE.

17 (ii) THE PUBLIC SERVANT DISCLOSES THE PECUNIARY INTEREST AT
18 A PUBLIC MEETING OF THE OFFICIAL BODY. THE VOTE SHALL BE TAKEN
19 AT A MEETING OF THE OFFICIAL BODY HELD AT LEAST 7 DAYS AFTER THE
20 MEETING AT WHICH THE DISCLOSURE IS MADE. IF THE AMOUNT OF THE
21 DIRECT BENEFIT TO THE PUBLIC SERVANT IS MORE THAN \$5,000.00, DIS-
22 CLOSURE MUST BE MADE AS PROVIDED UNDER THIS SUBPARAGRAPH.

23 (b) The contract is approved by a vote of not less than 2/3
24 of the full membership of the approving body in open session
25 without the vote of the public servant making the disclosure.

26 (c) The official body discloses the following summary
27 information in its official minutes:

HB 4386, As Passed Senate, November 12, 1997

H.B. 4386 as amended April 10, 1997

3

1 (i) The name of each party involved in the contract.

2 (ii) The terms of the contract, including duration, finan-
3 cial consideration between parties, facilities or services of the
4 public entity included in the contract, and the nature and degree
5 of assignment of employees of the public entity for fulfillment
6 of the contract.

7 (iii) The nature of any pecuniary interest.

8 (3) This section and section 2 ~~shall~~ DO not prevent a
9 public servant from making or participating in making a govern-
10 mental decision to the extent that the public servant's partici-
11 pation is required by law. If 2/3 of the members are not eligi-
12 ble under this act to vote on a contract or to constitute a
13 quorum, a member may be counted for purposes of a quorum and may
14 vote on the contract if the member will directly benefit from the
15 contract in an amount less than \$250.00 and less than 5% of the
16 public cost of the contract and the member files a sworn affida-
17 vit to that effect with the official body. The affidavit shall
18 be made a part of the public record of the official proceedings.
19 As used in this subsection, "governmental decision" means a
20 determination, action, vote, or disposition upon a motion, pro-
21 posal, recommendation, resolution, ordinance, order, or measure
22 on which a vote by members of a local legislative or governing
23 body of a public entity is required and by which a public body
24 effectuates or formulates public policy.

[Sec. 8. ~~This act shall supersede all local charter provisions, whether incorporated in legislative acts or local charters, which relate to the matter of conflict of interest. It is the intention that this act shall constitute the sole law in this state and shall supersede 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, including but not limited to subsection (3) of section 30 of Act No. 156 of the Public Acts of 1851, as amended, being section 46.30 of the Compiled Laws of 1948-1851 PA 156, MCL 46.30. THIS ACT DOES 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.]~~

25 Enacting section 1. This amendatory act takes effect 90

26 days after the date of its enactment.