

LEGISLATORS' CONFLICTS OF INTEREST

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House Bill 4315 (Substitute H-1)
Sponsor: Rep. Steve Bieda
Committee: Ethics and Elections

First Analysis (3-22-07)

BRIEF SUMMARY: The bill would prohibit state legislators from voting on bills when they have a substantial conflict of interest. A legislator with a substantial conflict of interest would have to state that fact on the record, and if a violation occurred, the legislator would be subject to disciplinary action by the house of which he or she was a member.

FISCAL IMPACT: The bill would have no fiscal impact on the state.

THE APPARENT PROBLEM:

As ethical elected officials well-know, putting the public good before one's personal economic gain is the first rule of governing while holding public office. If an elected official puts personal gain first and there are apparent and severe conflicts of interest when he or she votes, then constituents are the ultimate judge of the propriety of those votes.

Professor Peter Henning of Wayne State University Law School who testified before the House Committee on Ethics and Elections, put it this way: "Acting in one's self-interest is not necessarily wrong, except when a person is required to put the interests of another first. Conflicts of interest are viewed as problematic when a fiduciary responsibility is overridden by an effort at self-enrichment, even if the person owed the fiduciary obligation is not directly harmed. The usual remedy to prevent—or at least mitigate—the effect of a conflict of interest is to mandate full disclosure so that it is transparent that a person is acting in a way that might call into question whether the conduct fulfills the fiduciary obligation."

The focal point of most conflict of interest policies is on personal financial conflicts. However, there are other types of conflicts, rooted in familial relations, competing fiduciary obligations, and the demands of differing constituencies.

As the spokesperson for the Michigan Campaign Finance Networks pointed out during committee testimony, "When private or personal economic interest is distinct from that of the general public, then the public official must eliminate the conflict. If that is not possible, then the official must consider abstaining from official action in the area of substantial conflict of interest. *The official should evaluate: the conflict as a threat to his or her judgment; the effect his or her participation in a conflicted situation will have on public confidence in the integrity of the legislature; and the need for his or her contribution, such as specialized knowledge of subject matter, to the effective functioning*

of the legislature...if a person does abstain from official action, that fact should be reported to his or her legislative body."

Unlike the neighboring states of Illinois and Wisconsin, Michigan has neither a statute to define "substantial conflict of interest," nor to require that legislators disclose a conflict of interest when voting. Legislation has been introduced that would do both.

THE CONTENT OF THE BILL:

The bill would amend Public Act 318 of 1968 to prohibit state legislators from voting on bills when they have a substantial conflict of interest. A legislator with a substantial conflict of interest would have to state that fact on the record.

Currently, the act says a member of the legislature and a state officer shall not be interested directly or indirectly in any contract with the state or any of its political subdivisions that causes a substantial conflict of interest.

The bill would define the term "substantial conflict of interest" as:

A legislator having a personal interest in legislation and, by reason of his or her participation in the enactment or defeat of any legislation, he or she, or a related person, will derive a direct monetary gain or suffer a direct monetary loss. A personal interest can be inferred if a benefit or detriment could reasonably be expected to accrue to the legislator, or a related person, as a member of a business, profession, occupation, or group, to a greater extent than to any other member of that business, profession, occupation, or group.

The bill specifies that any member of the legislature violating the provisions of this section of the act would be subject to appropriate disciplinary action by the house of which he or she was a member.

The term "related person" is defined to mean a legislator's spouse, dependent child, or any other individual residing in the same household as the legislator. [The term "state officer" in the act refers to the governor, lieutenant governor, secretary of state, state treasurer, attorney general, auditor general, superintendent of public instruction, university trustees, supreme court justices, court of appeals judges, director of the State Highway Commission, and state personnel director. The term also includes, among others, members of the State Highway Commission, Liquor Control Commission, Board of State Canvassers, and Civil Rights Commission.]

ARGUMENTS:

For:

As the spokesman for the Michigan Campaign Network noted during committee testimony, "conflicts of interest are a predictable occurrence in a complex economic

world, and...they are not, in and of themselves, an indication of some character defect. The critical issue is how conflicts of interest are managed."

To manage conflicts of interest, this bill would 1) define the term "substantial conflict of interest" to mean direct monetary gain or loss that is greater than other members of the group; 2) require legislators to declare conflicts of interest on the public record, and 3) specify that failure to declare conflicts of interest would subject the legislator to disciplinary action by the chamber of the legislature in which he or she served. That disciplinary action could include reprimand, censure, or expulsion.

Michigan should have a conflict of interest disclosure law, as do the neighboring states of Illinois and Wisconsin. This legislation, if enacted into law, would increase the public confidence in the integrity of the legislature.

POSITIONS:

The Michigan Campaign Finance Network supports the bill. (3-6-07)

The Michigan State Chamber of Commerce is neutral on the bill. (3-6-07)

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■ 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.