

LEGISLATORS: CONFLICTS OF INTEREST

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House Bill 4379 (Substitute H-1)
Sponsor: Rep. Vicki Barnett
Committee: Ethics and Elections

First Analysis (3-10-10)

BRIEF SUMMARY: The bill would prohibit a legislator with a substantial conflict of interest from voting on a bill, and require the legislator to state that fact on the record. 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 significant fiscal impact.

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.

In March 2007, when a nearly identical bill was heard by the House Ethics and Elections Committee, Professor Peter Henning of Wayne State University Law School 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 in March 2007, "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."

The National Conference of State Legislators has compiled the conflict of interest rules, statutes, and constitutional requirements that govern voting in each of the 50 states. See <http://www.ncsl.org/Default.aspx?TabId=15357>

Unlike many states, 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:

House Bill 4379 (H-1) would amend Public Act 318 of 1968, which concerns conflicts of interest, to prohibit a legislator with a substantial conflict of interest from voting on a bill. A legislator with such a conflict would be required to state that fact on the record.

Legislators violating this provision would be subject to appropriate disciplinary action by the legislative body of which they are a member.

The bill would define ***substantial conflict of interest*** to mean a legislator has a personal interest in legislation and by reason of participating in the enactment or defeat of any legislation will derive a direct pecuniary gain or suffer a direct pecuniary loss (or a "related person" will). 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 would define "*related person*" to mean a legislator's spouse, dependent child, or any other individual residing in the same household as the legislator.

MCL 15.301 et al

BACKGROUND INFORMATION:

Legislative history. The bill is nearly identical to House Bill 4315 that passed the Michigan House of Representatives by a vote of 101 to 6 on March 22, 2007. The single difference is the amendment passed by the House Committee on Ethics and Elections changing the word "monetary" to the word "pecuniary." House Bill 4315 of 2007 died in the Senate Committee on Campaign and Election Oversight at the end of the 2007-2008 legislative session.

Michigan House of Representatives Rule 31. This rule deals with Vote Explanations, and reads as follows.

(1) A Member may dissent from and protest against any act, proceeding or resolution which the Member deems injurious to any person or the public, and have the reason for

dissent, referred to as a "no vote explanation", printed in the House Journal. (See Const1963, Art 4 § 18)

(2) If a Member desires to abstain from voting because of a potential conflict of interest, the Member may rise, announce his or her intent not to vote, and reserve the right to explain the abstention. The Member shall be granted the right to have the explanatory statement printed in the House Journal. To be printed in the House Journal, the abstention from voting explanation shall be submitted to the Clerk.

(3) "No vote explanations" or explanations of abstention from voting shall not be substantively edited by the Clerk before publication in the House Journal.

ARGUMENTS:

For:

Three years ago, a spokesman for the Michigan Campaign Network noted during committee testimony in favor of a nearly identical bill: "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 pecuniary 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.

Michigan should have a conflict of interest disclosure law as many states already do, according to the National Conference of State Legislatures. This legislation, if enacted into law, would increase the public confidence in the integrity of the Legislature, and help to overcome the growing cynicism among citizens who fear that legislators do not act to promote the public good.

Against:

Opponents of the bill note that the definition of the term "substantial conflict of interest" is overly broad, and will be subject to confusing interpretations if not outright political mischief. They also point out that House Rule 31, one of the rules adopted by the members at the beginning of each two-year legislative session, already prohibits a state representative from voting on a bill if he or she has a conflict of interest. See [Background Information](#).

Response:

Proponents respond that public citizens and those who seek public office should know, in advance of any election, that the law requires ethical voting behavior of all publicly elected legislators. They also note that House Rule 31 is permissive, and not required. Proponents say that every legislator's voting record should pass the so-called "smell test": a common-sense test that alerts citizens to the presence of suspected and inappropriate pecuniary conflicts of interest. To pass that test, conflicts must be publicly

acknowledged and voting must be prohibited. Otherwise, the fiduciary responsibility that legislators have to all citizens to advance the public good will be compromised.

POSITIONS:

The Michigan Campaign Finance Network supports the bill. (3-10-10)

Common Cause of Michigan supports the bill. (3-10-10)

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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.