

REGULATORY BOARDS & COMMISSIONS ETHICS ACT

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Senate Bill 576 (Substitute S-1)

Sponsor: Sen. Tonya Schuitmaker

House Committee: Regulatory Reform

Senate Committee: Reforms, Restructuring and Reinventing

Complete to 2-17-14

A SUMMARY OF SENATE BILL 576 AS PASSED BY THE SENATE 11-7-13

The bill would create a new act, known as the Regulatory Boards and Commissions Ethics Act, to establish new conflict of interest standards for regulatory boards and commissions within the Department of Licensing and Regulatory Affairs. The standards would apply to members of any board, commission, committee, or subcommittee in LARA that has regulatory authority over private individuals and entities.

Under the bill, members of regulatory bodies within LARA would be subject to disclosure for certain conflict of interest situations and would face removal from a board and the voiding of board action under certain conditions.

Section 2 – Compliance with the act

The bill would require members of regulatory boards and commissions to comply with all of the standards established under the bill, in addition to any other standard of conduct or disclosure requirements that already apply.

Section 3 - Required actions by members

Under the bill, board members would have to do all of the following:

- Disclose to the board and LARA director any pecuniary, contractual, business, employment, or personal interest the member may have in a matter before the board. Disclosure would also be required if an immediate family member is affiliated with an entity that is under consideration for a contract, grant, or loan, or is the subject of regulatory action before the board. Disclosure would not be required for board members or immediate family members for a two-percent or smaller ownership stake in a publicly traded company.
- Refrain from participating in discussions with other board members regarding matters before the board if the member has an interest as described above.
- Abstain from voting on any motion or resolution relating to a matter in which the member has an interest as described above.
- Use state resources, property, or funds that are under the member's official care and control judiciously and in accordance with all legal procedures, and not for personal gain or benefit.

Section 4 – Prohibited actions

Board members would be required to refrain from all of the following:

- Divulging any confidential information to unauthorized persons that is acquired in the course of service on the board before the time the information is legally allowed to be released to the public.
- Representing personal opinion as that of the board or LARA.
- Soliciting or accepting gifts or loans of money, goods, services, or other things of value for the benefit of someone other than the state that could reasonably be expected to influence the manner in which the member performs official duties.
- Engaging in business transactions in which the member may profit from the official position or authority as a board member, or benefit financially from confidential information that the member obtained incident to being on the board.
- Rendering services for a private or public interest if it is incompatible or in conflict with the discharge of the member's official duties.
- Participate in negotiating or executing contracts, making loans, granting subsidies, fixing rates, issuing permits or certificates, or other regulation or supervision relating to a business entity that the member or an immediate family member has a pecuniary or personal interest (except for a two-percent or smaller ownership stake in a publicly traded company).

Section 4 – Voiding of agreements

Under the bill, contracts, grants, or loans that a board enters into with or awards to a member or an immediately family member of a board member with an interest in the matter would be considered in violation of conflict of interest standards and would be voidable at the option of LARA, unless the affected member complies with both of the following:

- Except as expressly permitted by applicable law, the affected member has abstained from participating in the discussion or vote.
- The affected member promptly disclosed the pecuniary, contractual, business, employment, or personal interest in the matter as required by the act and all other applicable laws.

Section 5 – Removal and request for conflict ruling

Any board member that failed to disclose an interest described above would be subject to immediate removal from the board by the governor.

Additionally, anyone who has reason to believe a board member has failed to disclose a conflict of interest or has an interest that is not required to be disclosed but could have a tendency to affect the ability to render an impartial decision could request the board to consider the issue of a conflict of interest up to one year after the board has taken action on a matter.

A matter referred to the board as a potential conflict of interest would have to be investigated by the other members of the board who are not the subject(s) of a potential

conflict. In deciding the matter, members would have to decide if the member in question has an undisclosed interest or has another conflict of interest sufficient to raise a reasonable doubt as to whether the member could render an impartial decision.

If it is determined that a member has an undisclosed conflict in violation of the act, the member would be subject to immediate removal by the governor. If the board determines a member has another interest that is sufficient to raise reasonable doubt about the member's ability to act impartially, any action the board took regarding the matter in which the member participated would be void unless affirmed by a majority of the board. Actions reconsidered as a result of a conflict would have to be done without the participation of the conflicted member.

Section 6 - Applicable laws

This new act is intended to supplement existing ethics laws, and the following laws would prevail if this new act created any conflicts with existing law:

- Section 10 of Article IV of the State Constitution of 1963.
- MCL 15.181 to 15.185.
- MCL 15.301 to 15.310.
- MCL 15.321 to 15.330.
- MCL 15.341 to 15.348.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: Paul Holland

■ 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.