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BILL ANALYSIS

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Senate Bill 576 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Reforms, Restructuring and Reinventing
House Committee: Regulatory Reform

PUBLIC ACT 96 of 2014

Date Completed: 4-7-14

CONTENT

The bill enacted the "Regulatory Boards and Commissions Ethics Act" to do the following:

- **Establish conflict of interest disclosure requirements for members of regulatory boards in the Department of Licensing and Regulatory Affairs (LARA).**
- **Require a board member to abstain from voting on, and refrain from discussing with the board, a matter in which he or she has a conflict of interest.**
- **Require a board member to refrain from taking certain actions.**
- **Require LARA, upon request, to investigate a board member's undisclosed interest or conflict of interest.**
- **Provide for LARA to review a board member's vote on a matter.**
- **Require a board to reconsider an action without a member's participation, under certain circumstances.**

The Act will take effect on July 1, 2014.

Scope

Each member or designated alternate member of a board must comply with the standards set forth in the Act in addition to any other standard of conduct or disclosure requirement that applies to the member or alternate member. "Board" means a board, commission, committee, or subcommittee in LARA that has authority in regulatory actions concerning private individuals or entities.

Interest Disclosure Requirements

The Act requires a board member to disclose to the board and the Department Director any pecuniary, contractual, business, employment, or personal interest that the board member may have in a contract, grant, or loan, or a regulatory, enforcement, or disciplinary matter that is before the board. Disclosure also is required if a spouse, child, or stepchild of a board member is a director, officer, direct or indirect shareholder, or employee of an entity under consideration for a contract, grant, or loan or is the subject of a regulatory, enforcement, or disciplinary action before the board.

A board member must make a written disclosure of the conflict to the board unless the member verbally discloses the conflict at a meeting of the board and the disclosure is included in the official minutes of the meeting.

Conflict of Interest Requirements

If a board member has a conflict of interest as described above, he or she must do the following:

- Refrain from participating in any discussion, directly or indirectly, with other board members regarding the matter.
- Abstain from voting on any motion or resolution relating to the matter.

Additional Requirements

A board member must refrain from all of the following:

- Divulging to an unauthorized person any confidential information acquired in the course of the member's service on the board before the time prescribed or authorized for release to the public.
- Representing his or her personal opinion as that of the board or the Department.
- Soliciting or accepting a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization other than the State that could reasonably be expected to influence the manner in which the board member performs official duties.
- Engaging in a business transaction in which the board member may profit from his or her official position or authority as a board member.
- Engaging in a business transaction in which the board member may benefit financially from confidential information that he or she obtained or may obtain incident to the board membership.
- Providing services for a public or private interest if the services are incompatible or in conflict with the discharge of the member's official duties at the time the services are provided.

A board member also must refrain from participating in his or her official capacity as a board member 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 in which the board member or an immediate family member of the board member has a pecuniary or personal interest, other than a 2% or smaller interest in a publicly traded company. ("Immediate family member" means a grandparent, parent, parent-in-law, stepparent, sibling, spouse, child, or stepchild.)

In addition, the Act requires a board member to use State resources, property, and funds under his or her care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.

Investigation & Review

If a person has reason to believe that a board member has failed to disclose an interest that is subject to the Act's disclosure requirement, or has an interest that is not required to be disclosed but would have a tendency to affect the board member's ability to render an impartial decision on a matter, the person may request that the LARA Director or his or her designee consider the issue of a conflict of interest as to the matter. The request must be made within one year after the board takes any action on the matter.

The Director or his or her designee must investigate the matter and decide whether the board member has an undisclosed interest that is subject to the Act's disclosure requirement, or has another conflict of interest sufficient to raise a reasonable doubt as to whether the board member could render an impartial decision. The Director or designee may refer the matter to the Board of Ethics at his or her discretion. (The Board of Ethics is an advisory and investigatory body in the Governor's office, whose members are appointed by the Governor with the advice and consent of the Senate.)

If the LARA Director or his or her designee determines that a board member has an undisclosed interest or a conflict of interest that is sufficient to raise a reasonable doubt as to whether the board member could render an impartial decision, the Department must review the action to

determine if the board member cast a deciding vote in any action the board took regarding the matter in question. If the action did not depend on the vote of that board member, the action of the board will stand. If the board member was the deciding vote in an action regarding the matter, the board must reconsider the action without the participation of the member who was found to have an interest that was sufficient to raise a reasonable doubt as to whether he or she could have rendered an impartial decision.

Other Ethics Laws

The Act states that it is intended to supplement existing ethics laws, and if there is a conflict, the following laws prevail:

- Article IV, Section 10 of the State Constitution (which prohibits members of the Legislature and State officers from substantial conflicts of interest in contracts with the State or political subdivisions).
- Public Act 566 of 1978 (which generally prohibits a public officer or public employee from holding two or more incompatible offices at the same time).
- Public Act 318 of 1968 (which prohibits members of the Legislature and State officials from holding a direct or indirect interest in a contract with the State or any political subdivision that causes a substantial conflict of interest).
- Public Act 317 of 1968 (which generally prohibits a public servant from being a party to a contract with the public entity that he or she is an officer or employee of).
- Public Act 196 of 1973 (which governs standards of conduct for public officers and employees and provides for the Board of Ethics).

MCL 15.481-15.486

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.