

CONTRACTS BETWEEN PUBLIC SERVANTS AND PUBLIC ENTITIES THEY SERVE

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House Bill 5811 as introduced
Sponsor: Rep. Amanda Price
Committee: Oversight and Ethics
Complete to 11-7-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would make changes to provisions in law that allow public servants to enter into contracts with the public entities they serve under certain specified conditions.

Generally speaking, Public Act 317 of 1968 prohibits public servants from being a party to any contract between themselves and the public entity of which they are an officer or employee. There is also a prohibition on soliciting any contract between that public entity and (1) themselves; (2) entities of which they are partners, members, or employees; (3) entities in which they own stock; and (4) trusts of which they are beneficiaries or trustees. Also, regarding such contracts, public servants cannot take part in negotiations or represent parties to the transaction.

New Exception

Currently, there are exceptions to these prohibitions in Section 3 of PA 317 for (1) public servants working an average of 25 hours or less for a public entity, and (2) public servants who are employees of a public community college, junior college, or state college or university.

House Bill 5811 would amend PA 317 to add an additional exception that would apply to:

Contracts between a public community college, junior college, or state college and university and a public servant who is an employee for the purchase of goods or services that are available for purchase at the same price by the general public.

Changes to Current Exceptions: Disclosure and Voting

To use a current exception, a public servant must disclose any pecuniary interest in the contract to the official body that has power to approve the contract either in writing at least seven days prior to the meeting or at a public meeting at least seven days prior to the meeting at which the contract is subject to a vote. Further, the contract must be approved by a vote of at least two-thirds of the full membership of the approving body in open session, and information about the contract must be disclosed in the official minutes.

House Bill 5811 would make several changes to these provisions, as follows:

- Currently, the disclosure need not be made in writing or at a public meeting if the benefit from the contract is less than \$250 and less than 5% of the public cost of

the contract. The bill would raise the threshold to \$1,500 (and retain the 5% requirement).

- The option of disclosing the pecuniary interest at a public meeting (rather than in writing) would be eliminated. (Currently this method must be employed if the amount of direct benefit exceeds \$5,000.)
- Currently, if two-thirds of the members of the official body are not eligible to vote on a contract or to constitute a quorum, then the public servant (serving on the body) could be counted towards a quorum and could vote on the contract, if the benefit from the contract is less than \$250 and less than 5% of the public cost of the contract. The bill would raise the threshold to \$1,500 (and retain the 5% requirement).

The term "Public Servant" in the act includes all persons serving any public entity, except members of the legislature and state officers who are within the provisions of Section 10 of Article 4 of the State Constitution.

MCL 15.323

FISCAL IMPACT:

The bill would not have a fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.