



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bill 4591 (Substitute H-3 as passed by the House)  
Sponsor: Representative John R. Roth  
House Committee: Oversight  
Senate Committee: Oversight

Date Completed: 3-15-22

**CONTENT**

**The bill would enact the "State Employment Contract Regulation Act" to do the following:**

- **Prohibit the State from entering into certain employment contracts with a State employee or a State officer.**
- **Prohibit the State from paying to a State employee severance pay in an amount greater than was authorized under the Act except under certain circumstances.**
- **Prohibit the State from paying severance pay to a State officer except under certain circumstances.**
- **Require the text of a State officer's employment contract to be submitted to the Legislature under certain circumstances.**
- **Require certain employment contracts to be made available to the public on a public body's website.**

**Definitions**

The Act would define "State employee" as an individual employed in the executive or legislative branch of government of the State. The term would not include an employee in the State Classified Civil Service.

"State officer" would an individual who is elected or appointed to an office created by law in the executive or legislative branch of government of the State.

"Severance pay" would mean compensation that is both of the following:

- Payable or paid upon or after the termination of employment.
- In addition to either of the following: a) wages or benefits earned and b) generally applicable retirement benefits.

**State Employees**

Under the Act, except as otherwise provided, the State could not enter into an employment contract with a State employee if any of the following conditions applied:

- The employment contract prohibited the State employee from disclosing any of the following: a) factual information about an alleged violation of law, including discrimination

and sexual harassment, in the State employee's workplace; b) the existence of the employment contract; or c) a portion of or the full text of the employment contract.

- The employment contract did not state that it represented the complete and exclusive agreement between the parties to the contract.
- The employment contract provided for severance pay to the State employee in an amount that was greater than an amount equal to 12 weeks of the State employee's normal wages.

The State could not pay to a State employee severance pay in an amount greater than was authorized under the Act.

For a State employee in the executive or legislative branch, if the Attorney General or the legal counsel for the public body that employed the State employee, as applicable, determined that severance pay for the State employee in an amount greater than was authorized was necessary to serve the best interests of the State based on the risk of litigation and the need to minimize the expenditure of public funds, the State could do either of the following:

- Enter into an employment contract with the State employee that provided for severance pay to him or her in an amount greater than was authorized if the employment contract released, to the extent allowed by law, all claims the State employee could have against the State.
- Pay to the State employee severance pay as provided for in the employment contract.

#### State Officers

Under the Act, except as otherwise provided, the State could not enter into an employment contract with a State officer if any of the following conditions applied:

- The employment contract provided for severance pay to the State officer.
- The employment contract prohibited the State officer from disclosing any of the following:
  - a) factual information about an alleged violation of law, including discrimination and sexual harassment, in the State officer's workplace; b) the existence of the employment contract; or c) a portion of or the full text of the employment contract.
- The employment contract did not state that it represented the complete and exclusive agreement between the parties to the contract.

The State could not pay severance pay to a State officer or enter into a nondisclosure or confidentiality agreement with a State officer regarding the performance of his or her official duties, unless confidentiality was required by law.

For a State officer in the executive or legislative branch, if the Attorney General or the legal counsel for the public body in which the public officer served, as applicable, determined that severance pay for the State officer was necessary to serve the best interests of the State based on the risk of litigation and the need to minimize the expenditure of public funds, the State could do either of the following:

- Enter into an employment contract with the State officer that provided for severance pay to him or her if the employment contract released, to the extent allowed by law, all claims the State officer could have against the State.
- Pay to the State officer severance pay as provided for in the employment contract.

If a determination were made that severance pay for a State officer was necessary to serve the best interests of the State based on the risk of litigation and the need to minimize the expenditure of public funds, the public body in which the public officer served would have to,

within three days after the employment contract was entered into and to the extent allowed by law, submit by electronic means the full text of the State officer's employment contract to all of the following:

- The Speaker of the House of Representatives.
- The Minority Leader of the House.
- The Senate Majority Leader.
- The Senate Minority Leader.

#### Disclosure

If the State entered into an employment contract with a State employee or State officer that provided for severance pay to the State employee or State officer in an amount equal to or greater than an amount equal to six weeks of the State employee's or State officer's normal wages, the public body that employed the State employee or in which the State officer served would have to, within 28 days after the employment contract was entered into and to the extent allowed by law, make the full text of the employment contract available to the public on the public body's website.

#### Applicability

The Act would apply to an employment contract that was entered into, amended, extended, or renewed on or after the bill's effective date.

#### **BACKGROUND**

In January 2021, Robert Gordon resigned as the Director of the Department of Health and Human Services. In March 2021, several news outlets reported that as part of his separation agreement, Gordon received over \$155,000 in severance pay.<sup>1</sup> The agreement also includes a confidentiality clause that bars Gordon or the State from sharing details about his departure, unless required by law.

A March 9, 2021, article from *The Detroit News* reported that the Michigan Senate had paid out over \$370,000 in severance pay through 20 separation agreements over the previous five years.<sup>2</sup> The article also stated that separate disclosures to Progress Michigan showed that the Michigan House of Representatives paid almost \$60,000 in three separation agreements over the previous seven years, and the Senate paid over \$630,000 in 30 agreements over that same period.

Legislative Analyst: Stephen Jackson

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<sup>1</sup> See Boucher, Dave, "Ex-Michigan health department director receives \$155K as part of separation agreement", *Detroit Free Press*, 3-1-21; Hicks, Justin, "Former Michigan health director given \$155K severance pay after abrupt resignation", *MLive*, 3-2-21; Oosting, Jonathan, "Michigan GOP to probe Whitmer \$155K 'hush money' deal as new severances emerge", *Bridge Michigan*, 3-2-21.

<sup>2</sup> Mauer, Craig, "Michigan Senate paid \$373K in 20 secret severance deals", *The Detroit News*, 3-9-21. See also Boucher, Dave, "Michigan Legislature spent more than \$690K on confidential settlements in recent years", *Detroit Free Press*, 3-9-21; Eggert, David, "Legislature had over \$600K in confidential severance deals", *Associated Press*, 3-9-21.

## **FISCAL IMPACT**

The bill could result in savings for the State by limiting the amount of severance pay in most cases to a maximum of 12 weeks of the employee's normal wages. The average total cost for salary, benefits, and retirement for a State civil servant is an estimated \$121,600 Gross, \$65,900 General Fund/General Purpose (GF/GP). Based on that average, the severance payment for 12 weeks would be an estimated \$28,100 Gross, \$11,800 GF/GP. The estimated potential savings is indeterminate and would depend on the number of severance packages authorized under the bill. Previous severance agreements generally have not been made public, so a comparison between those agreements and an agreement that could be reached under the bill is not possible.

The Department of Attorney General also could experience some additional costs. The Department could incur additional administrative costs to determine if a severance package greater than the 12 weeks would be in the best interest of the State. The additional administrative costs should be minimal and would be absorbed within the Department's annual appropriations; however, if the Department needed to hire additional attorneys, the average cost for one attorney FTE is an estimated \$200,000.

Fiscal Analyst: Joe Carrasco

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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.