

INCOMPATIBLE PUBLIC OFFICES Act 566 of 1978

AN ACT to encourage the faithful performance of official duties by certain public officers and public employees; to prescribe standards of conduct for certain public officers and public employees; to prohibit the holding of incompatible public offices; and to provide certain judicial remedies.

History: 1978, Act 566, Imd. Eff. Dec. 29, 1978.

The People of the State of Michigan enact:

15.181 Definitions.

Sec. 1. As used in this act:

(a) "Governing board" means a board of regents, board of trustees, board of governors, board of control, or other governing body of an institution of higher education.

(b) "Incompatible offices" means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

(i) The subordination of 1 public office to another.

(ii) The supervision of 1 public office by another.

(iii) A breach of duty of public office.

(c) "Institution of higher education" means a college, university, community college, or junior college described in section 4, 5, or 6 of article 8 of the state constitution of 1963 or established under section 7 of article 8 of the state constitution of 1963.

(d) "Public employee" means an employee of this state, an employee of a city, village, township, or county of this state, or an employee of a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or of a city, village, township, or county in this state, but does not include a person whose employment results from election or appointment.

(e) "Public officer" means a person who is elected or appointed to any of the following:

(i) An office established by the state constitution of 1963.

(ii) A public office of a city, village, township, or county in this state.

(iii) A department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or a city, village, township, or county in this state.

History: 1978, Act 566, Imd. Eff. Dec. 29, 1978.

15.182 Holding incompatible offices.

Sec. 2. (1) Except as provided in section 3, a public officer or public employee shall not hold 2 or more incompatible offices at the same time.

History: 1978, Act 566, Imd. Eff. Dec. 29, 1978.

***** 15.183 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 29, 2015: See 15.183.amended

15.183 Public employment or holding of public offices; scope of MCL 15.182.

Sec. 3. (1) Section 2 does not prohibit a public officer's or public employee's appointment or election to, or membership on, a governing board of an institution of higher education. However, a public officer or public employee shall not be a member of governing boards of more than 1 institution of higher education simultaneously, and a public officer or public employee shall not be an employee and member of a governing board of an institution of higher education simultaneously.

(2) Section 2 does not prohibit a member of a school board of 1 school district from being a superintendent of another school district.

(3) Section 2 does not prohibit a public officer or public employee of a city, village, township, school district, community college district, or county from being appointed to and serving as a member of the board of a tax increment finance authority under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830; a downtown development authority under 1975 PA 197, MCL 125.1651 to 125.1681; a local development finance authority under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174; a brownfield redevelopment authority under the brownfield redevelopment financing

act, 1996 PA 381, MCL 125.2651 to 125.2672; a housing commission created under 1933 (Ex Sess) PA 18, MCL 125.651 to 125.709c; a neighborhood improvement authority under the neighborhood improvement authority act, 2007 PA 61, MCL 125.2911 to 125.2932; a water resource improvement tax increment finance authority under the water resource improvement tax increment finance authority act, 2008 PA 94, MCL 125.1771 to 125.1793; a historical neighborhood tax increment finance authority under the historical neighborhood tax increment finance authority act, 2004 PA 530, MCL 125.2841 to 125.2866; a member of a board of a principal shopping district or a member of a board of directors of a business improvement zone under 1961 PA 120, MCL 125.981 to 125.990n; an officer of a metropolitan district under the metropolitan district act, 1929 PA 312, MCL 119.1 to 119.18; a member of a board of directors of a land bank fast track authority under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774; or a corridor improvement authority under the corridor improvement authority act, 2005 PA 280, MCL 125.2871 to 125.2899.

(4) Section 2 does not do any of the following:

(a) Prohibit public officers or public employees of a city, village, township, or county having a population of less than 25,000 from serving, with or without compensation, as emergency medical services personnel as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(b) Prohibit public officers or public employees of a city, village, township, or county having a population of less than 25,000 from serving, with or without compensation, as a firefighter in that city, village, township, or county if that firefighter is not any of the following:

(i) A full-time firefighter.

(ii) A fire chief.

(iii) A person who negotiates with the city, village, township, or county on behalf of the firefighters.

(c) Limit the authority of the governing body of a city, village, township, or county having a population of less than 25,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government.

(d) Prohibit a public officer or public employee of a city, village, township, or county having a population of less than 3,000 from serving, with or without compensation, as a fire chief in that city, village, township, or county.

(5) This section does not relieve a person from otherwise meeting statutory or constitutional qualifications for eligibility to, or the continued holding of, a public office.

(6) This section does not allow or sanction activity constituting conflict of interest prohibited by the constitution or laws of this state.

(7) This section does not allow or sanction specific actions taken in the course of performance of duties as a public official or as a member of a governing body of an institution of higher education that would result in a breach of duty as a public officer or board member.

(8) Section 2 does not prohibit a public officer or public employee of a community mental health services program as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, from serving as a public officer or public employee of a separate legal or administrative entity created by 2 or more community mental health services programs under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, a joint board or commission created under 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, or a regional entity created under section 204b of the mental health code, 1974 PA 258, MCL 330.1204b, whether or not the separate legal or administrative entity, joint board or commission, or regional entity may enter into contracts or agreements with 1 or more of the community mental health services programs.

(9) Section 2 does not prohibit a member of a school board from being appointed to or serving as a volunteer coach or supervisor of a student extracurricular activity if all of the following conditions are present:

(a) The school board member receives no compensation for service as a volunteer coach or supervisor.

(b) During the period he or she serves as a volunteer, the school board member abstains from voting on issues before the school board concerning that program.

(c) There is no qualified applicant available to fill a vacant position if the school board member is excluded.

(d) The appointing authority has received the results of a criminal history check and a criminal records check from the department of state police or the federal bureau of investigation for the school board member.

(10) Section 2 does not prohibit a superintendent of an intermediate school district from serving simultaneously as superintendent of a local school district, or prohibit an intermediate school district from contracting with another person to serve as superintendent of a local school district, even if the local school district is a constituent district of the intermediate school district. As used in this subsection, "constituent

district" means that term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(11) Section 2 does not prohibit a public officer or public employee of an authority created under the public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479, from serving as a public officer or public employee of another public transportation authority if each public transportation authority has members consisting of identical political subdivisions.

(12) Section 2 does not prohibit a township supervisor from being appointed as a member of a county board of public works as provided in section 2(2)(c) of 1957 PA 185, MCL 123.732.

(13) Section 2 does not prohibit the mayor, the chief executive officer, or a member of the governing body of a qualified city from serving as a member of a financial review commission for that qualified city as established under the Michigan financial review commission act. As used in this subsection, "qualified city" means that term as defined in section 3 of the Michigan financial review commission act.

History: 1978, Act 566, Imd. Eff. Dec. 29, 1978;—Am. 1984, Act 72, Imd. Eff. Apr. 18, 1984;—Am. 1992, Act 10, Imd. Eff. Mar. 10, 1992;—Am. 1994, Act 317, Imd. Eff. Oct. 6, 1994;—Am. 2000, Act 455, Imd. Eff. Jan. 9, 2001;—Am. 2004, Act 110, Imd. Eff. May 20, 2004;—Am. 2008, Act 22, Imd. Eff. Mar. 12, 2008;—Am. 2009, Act 210, Imd. Eff. Jan. 4, 2010;—Am. 2011, Act 104, Imd. Eff. July 19, 2011;—Am. 2011, Act 122, Imd. Eff. July 20, 2011;—Am. 2011, Act 196, Imd. Eff. Oct. 18, 2011;—Am. 2014, Act 190, Imd. Eff. June 20, 2014.

***** 15.183.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 29, 2015 *****

15.183.amended Public employment or holding of public offices; scope of MCL 15.182.

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(4) Section 2 does not do any of the following:

(a) Prohibit public officers or public employees of a city, village, township, or county having a population of less than 40,000 from serving, with or without compensation, as emergency medical services personnel as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(b) Prohibit public officers or public employees of a city, village, township, or county having a population of less than 40,000 from serving, with or without compensation, as a firefighter, police chief, fire chief, police officer, or public safety officer in that city, village, township, or county if that firefighter, police chief, fire chief, police officer, or public safety officer is not a person who negotiates a collective bargaining agreement with the city, village, township, or county on behalf of the firefighters, police chiefs, fire chiefs, police officers, or public safety officers.

(c) Limit the authority of the governing body of a city, village, township, or county having a population of less than 40,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government.

(5) This section does not relieve a person from otherwise meeting statutory or constitutional qualifications for eligibility to, or the continued holding of, a public office.

(6) This section does not allow or sanction activity constituting conflict of interest prohibited by the constitution or laws of this state.

(7) This section does not allow or sanction specific actions taken in the course of performance of duties as a public official or as a member of a governing body of an institution of higher education that would result in a breach of duty as a public officer or board member.

(8) Section 2 does not prohibit a public officer or public employee of a community mental health services program as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, from serving as a public officer or public employee of a separate legal or administrative entity created by 2 or more community mental health services programs under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, a joint board or commission created under 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, or a regional entity created under section 204b of the mental health code, 1974 PA 258, MCL 330.1204b, whether or not the separate legal or administrative entity, joint board or commission, or regional entity may enter into contracts or agreements with 1 or more of the community mental health services programs.

(9) Section 2 does not prohibit a member of a school board from being appointed to or serving as a volunteer coach or supervisor of a student extracurricular activity if all of the following conditions are present:

(a) The school board member receives no compensation for service as a volunteer coach or supervisor.

(b) During the period he or she serves as a volunteer, the school board member abstains from voting on issues before the school board concerning that program.

(c) There is no qualified applicant available to fill a vacant position if the school board member is excluded.

(d) The appointing authority has received the results of a criminal history check and a criminal records check from the department of state police or the Federal Bureau of Investigation for the school board member.

(10) Section 2 does not prohibit a superintendent of an intermediate school district from serving simultaneously as superintendent of a local school district, or prohibit an intermediate school district from contracting with another person to serve as superintendent of a local school district, even if the local school district is a constituent district of the intermediate school district. As used in this subsection, "constituent district" means that term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(11) Section 2 does not prohibit a public officer or public employee of an authority created under the public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479, from serving as a public officer or public employee of another public transportation authority if each public transportation authority has members consisting of identical political subdivisions.

(12) Section 2 does not prohibit a township supervisor from being appointed as a member of a county board of public works as provided in section 2(2)(c) of 1957 PA 185, MCL 123.732.

(13) Section 2 does not prohibit the mayor, the chief executive officer, or a member of the governing body of a qualified city from serving as a member of a financial review commission for that qualified city as established under the Michigan financial review commission act, 2014 PA 181, MCL 141.1631 to 141.1643. As used in this subsection, "qualified city" means that term as defined in section 3 of the Michigan financial review commission act, 2014 PA 181, MCL 141.1633.

History: 1978, Act 566, Imd. Eff. Dec. 29, 1978;—Am. 1984, Act 72, Imd. Eff. Apr. 18, 1984;—Am. 1992, Act 10, Imd. Eff. Mar. 10, 1992;—Am. 1994, Act 317, Imd. Eff. Oct. 6, 1994;—Am. 2000, Act 455, Imd. Eff. Jan. 9, 2001;—Am. 2004, Act 110, Imd. Eff. May 20, 2004;—Am. 2008, Act 22, Imd. Eff. Mar. 12, 2008;—Am. 2009, Act 210, Imd. Eff. Jan. 4, 2010;—Am. 2011, Act 104, Imd. Eff. July 19, 2011;—Am. 2011, Act 122, Imd. Eff. July 20, 2011;—Am. 2011, Act 196, Imd. Eff. Oct. 18, 2011;—Am. 2014, Act 190, Imd. Eff. June 20, 2014;—Am. 2015, Act 134, Eff. Dec. 29, 2015.

15.184 Injunction or other judicial relief or remedy.

Sec. 4. The attorney general or a prosecuting attorney may apply to the circuit court for Ingham county or to the circuit court for the county in which the alleged act or practice in violation of this act is alleged to have occurred or in which a party to the alleged violative act or practice resides, for injunctive or other appropriate judicial relief or remedy. However, this act shall not create a private cause of action.

History: 1978, Act 566, Imd. Eff. Dec. 29, 1978.

15.185 Action of public officer or employee; validity; judicial relief or remedy.

Sec. 5. An action of a public officer or public employee shall not be absolutely void by reason of this act. An action of a public officer or public employee shall be voidable only by discretionary action of a court of

competent jurisdiction, as prescribed in section 4. However, any judicial relief or judicial remedy shall operate prospectively only.

History: 1978, Act 566, Imd. Eff. Dec. 29, 1978.

CAUTION!
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