

INCOMPATIBLE OFFICES: LOCAL EXCEPTIONS

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Senate Bill 284 without House amendments

Sponsor: Sen. Gerald Van Woerkom

House Committee: Intergovernmental and Regional Affairs

Senate Committee: Local, Urban, and State Affairs

First Analysis (11-13-09)

BRIEF SUMMARY: The bill would allow a public officer or employee to serve on any of several authorities or districts that have been created by law, including a Neighborhood Improvement Authority, a Water Resource Improvement Tax Increment Finance Authority; an Historical Neighborhood Tax Increment Finance Authority; a Principal Shopping District; a Business Improvement Zone; a Metropolitan District; a Land Bank Fast Track Authority; or a Corridor Improvement Authority.

FISCAL IMPACT: The bill does not appear to have any direct fiscal impact on state or local government.

THE APPARENT PROBLEM:

The City of Linden, together with the City of Fenton and Fenton Township, has created a Park and Recreation District. The district levies one mill on property owners within its boundaries to support the services for residents of the communities. Although publicly elected officials created the district, they were advised by legal counsel to appoint others outside of government to serve on the district board of directors.

Since 1978, Michigan law has prohibited publicly elected and appointed officials from holding incompatible public offices, in order to avoid conflicts of interest. Although the law does not expressly forbid the appointment of public officers and employees to many local districts or authorities, neither does the law allow such appointments.

Legislation has been proposed that would allow the appointment of public officials to the boards of eight different community improvement authorities, districts, or zones created in state statute.

THE CONTENT OF THE BILL:

Public Act 566 of 1978 prohibits a public officer or public employee from holding two or more incompatible offices at the same time. The bill would amend Public Act 566 to specifically allow a public officer or employee to be appointed to and serve as a member of any of the following:

- A neighborhood improvement authority under the Neighborhood Improvement Authority Act.

- A water resource improvement tax increment finance authority (TIFA) under the Water Resource Improvement Tax Increment Finance Authority Act.
- A historical neighborhood TIFA under the Historical Neighborhood Tax Increment Finance Authority Act.
- A board of a principal shopping district or a board of directors of a business improvement zone under Public Act 120 of 1961, the Principal Shopping District Act.
- A board of directors of a land bank fast track authority under the Land Bank Fast Track Act.
- A corridor improvement authority under the Corridor Improvement Authority Act.

A public officer or employee also could be appointed to and serve as an officer of a metropolitan district under the Metropolitan District Act.

Under Public Act 566 the term "incompatible offices" refers to 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 the subordination of one public office to another, the supervision of one public office by another, or a breach of duty of public office with respect to those offices held.

"Public officer" is defined to mean a person who is elected or appointed to an office established by the State Constitution; a public office of a city, village, township, or county; or a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of the state or a city, village, township, or county. "Public employee" is defined to mean 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.

The act makes exceptions to the prohibition against holding incompatible public offices. Among other things, the act currently allows a public officer or public employee of a city, village, township, school district, community college district, or county to be appointed to and serve as a member of any of the following:

- The board of a TIFA under the Tax Increment Finance Authority Act.
- A downtown development authority under Public Act 197 of 1975, the Downtown Development Authority Act.
- A local development finance authority under the Local Development Financing Act.
- A brownfield redevelopment authority under the Brownfield Redevelopment Financing Act.

Under the bill, a public officer or public employee also would not be prohibited from being appointed to and serving as a member or officer of the authorities and districts listed above.

MCL 15.183

HOUSE COMMITTEE ACTION:

The House Committee on Intergovernmental and Regional Affairs reported out the Senate-passed version of the bill without amendments.

BACKGROUND INFORMATION:

During the 2007-2008 legislative session, an identical bill--House Bill 6243--passed the House of Representatives by a vote of 109 to 1 on September 11, 2008. That bill died in the Senate Committee on Local, Urban, and State Affairs at the end of the two-year legislative session.

ARGUMENTS:

For:

Currently the Incompatible Public Offices Act allows the appointment of publicly elected and appointed officials to local Tax Increment Finance Authorities, Downtown Development Authorities, Local Development Finance Authorities, and Brownfield Redevelopment Authorities. This bill represents a consistent application of that policy. It would extend the boards to which publicly elected and appointed officials could be appointed to include Neighborhood Improvement Authorities, Water Resource Improvement Tax Increment Finance Authorities; Historical Neighborhood Tax Increment Finance Authorities; Principal Shopping Districts; Business Improvement Zones; Metropolitan Districts; Land Bank Fast Track Authorities; and Corridor Improvement Authorities--all created by state statute in order to improve communities.

Local governments work well when the relationships among community leaders allow for trust and cooperation based on shared information, knowledge, and experience. Strengthening those relationships requires an ongoing effort, since local officials customarily serve their communities as volunteers, often for short periods of time with little remuneration. This bill allows publicly elected and appointed officials to share their knowledge and information with each other more frequently, as the officials serve their communities as the members of several volunteer districts and authorities.

Against:

Generally, overlapping boards of directors in either the public or private sectors should be avoided in order to avoid even the appearance of impropriety among office-holders.

Possible conflicts of interest arise when publicly elected or appointed officials also serve on the boards of local authorities whose funding and purpose depend upon decisions

made by elected officials. For example, a city mayor serving on a Tax Increment Finance Authority could exercise undue influence among city council members in efforts that advance the TIFA's agenda, at a cost to taxpayers citywide. The mayor's membership on the TIF might well stymie disagreement that would otherwise be expressed by citizens or by professional staff such as economists or land use planners working at city hall.

POSITIONS:

The Michigan Municipal League supports the bill. (11-10-09)

The Mayor of Linden supports the bill. (11-10-09)

Legislative Analyst: J. Hunault
Fiscal Analyst: Jim Stansell

■ 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.