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Senate Bill 576 (as introduced 10-2-13)
Sponsor: Senator Tonya Schuitmaker
Committee: Reforms, Restructuring and Reinventing

Date Completed: 10-22-13

CONTENT

The bill would create the "Regulatory Boards and Commissions Ethics Act" to establish conflict of interest standards and procedures for members of regulatory bodies in the Department of Licensing and Regulatory Affairs (LARA).

Scope

The proposed requirements would apply in addition to any other standard of conduct or disclosure requirement that applied to a member or alternate member of a board. "Board" would mean a board, commission, or committee in LARA that has authority in regulatory actions concerning private individuals or entities.

Interest Disclosure Requirements

A board member would have to disclose to the board and the Director of the Department any pecuniary, contractual, business, employment, or personal interest that he or she had in a contract, grant, loan, or regulatory matter that was before the board. Disclosure also would be required if a board member's immediate family member were a director, officer, direct or indirect shareholder, or employee of an entity under consideration for a contract, grant, or loan or were the subject of a regulatory action before the board. These provisions would not apply to a 2% or smaller interest in a publicly traded company. ("Immediate family member" would mean a grandparent, parent, parent-in-law, stepparent, sibling, spouse, child, or stepchild.)

Participation & Abstention Requirements

If a board member had a direct or indirect interest in a matter before the board as described above, he or she would have to 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.
- 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.

Prohibited Actions

A board member would have to refrain from all of the following:

- 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 he or she performed official duties.
- Engaging in a business transaction in which he or she could profit from his or her official position or authority as a board member.
- Engaging in a business transaction in which he or she could benefit financially from confidential information that was obtained or could be obtained incident to the board membership.
- Providing service for a public or private interest if the service were incompatible or in conflict with the discharge of the member's official duties.

If a board member or his or her immediate family member had a pecuniary or personal interest in a business entity, the member also would be prohibited from participating in negotiating or executing contracts, making loans, granting subsidies, fixing rates, issuing permits or certificates, or other regulation or supervision, relating to the business entity. This provision would not apply if the interest were a 2% or smaller interest in a publicly traded company.

Voidable Board Actions

A contract, grant, or loan that a board entered into with or awarded to a board member or a board member's immediate family member with an interest in the matter would be adopted in violation of conflict of interest standards. The action would be voidable at the option of LARA unless the affected board member: 1) abstained from participating in discussion or voting (except as expressly permitted by law); and 2) promptly disclosed the interest in the manner required by the proposed Act or other law.

Failure to Disclose & Removal

A board member who failed to disclose an interest would be subject to immediate removal from the board by the Governor.

Within one year after a board took action on a matter, a person could request that the board consider the issue of a conflict of interest. The person would have to have reason to believe that a board member had failed to disclose an interest as required under the proposed Act or had an interest that was not required to be disclosed but that would have a tendency to affect the member's ability to make an impartial decision. Board members who were not the subject of the potential conflict of interest would have to investigate the matter and decide whether the member had such an interest.

If a board found that a member did not disclose an interest according to the requirements discussed above, the member would be subject to immediate removal by the Governor.

If a board found that a member had another interest that was sufficient to raise a reasonable doubt as to whether the interest would have a tendency to affect the member's ability to make an impartial decision, any action the board took regarding the matter in which the conflicted member participated would be void unless a majority of the board affirmed the action. The board would have to reconsider the action without the participation of the conflicted member.

Conflict Provisions

The bill states, "This act is intended to supplement existing ethics laws, and if there is a conflict, the following laws prevail[.]" The laws that could preempt the Act would be:

- 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.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would 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.