

# HOUSE BILL No. 6013

April 27, 2006, Introduced by Reps. Elsenheimer, Jones, Hansen, Pearce, Booher, Robertson, Nitz, LaJoy, Baxter, Emmons, Schuitmaker, Gosselin, Hoogendyk, Palmer, Rocca, Ball, Mortimer, Ward, Moore, Van Regenmorter, Sheen, Gaffney, Amos, Vander Veen, Brandenburg, Casperson, Taub, Kahn, Marleau, Walker, Farhat, Caul and Wenke and referred to the Committee on House Oversight, Elections, and Ethics.

A bill to establish standards of ethical conduct for officers and employees in the executive branch of state government; to impose duties and requirements on executive branch officers and employees; to provide for enforcement through sanctions and remedies; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER 1 GENERAL

Sec. 101. This act shall be known and may be cited as the "executive branch ethics act".

Sec. 103. As used in this act:

(a) "Business" means any corporation, limited liability corporation, partnership, limited liability partnership, sole

1 proprietorship, firm, enterprise, franchise, association,  
2 organization, self-employed individual, holding company, joint  
3 stock company, receivership, trust, or any legal entity through  
4 which commerce is conducted for profit.

5 (b) "Compensation" means any money, thing of value, or  
6 economic benefit conferred on, or received by, a person in return  
7 for present or future services.

8 (c) "Directly involved" means working on the matter or  
9 supervising work of an individual who works on the matter.

10 (d) "Does business with" means contracting, entering into an  
11 agreement, leasing, or otherwise exchanging services or goods with  
12 a state agency in return for payment by the state, including  
13 accepting a grant, but not including accepting an entitlement  
14 disbursement.

15 (e) "Family" means all individuals with any of the following  
16 relationships to the identified individual: spouse, child, parent,  
17 brother, sister, grandparent, grandchild, father-in-law, mother-in-  
18 law, brother-in-law, sister-in-law, son-in-law, daughter-in-law,  
19 stepfather, stepmother, stepson, stepdaughter, stepbrother,  
20 stepsister, half brother, half sister.

21 (f) "Gift" means a payment, loan, subscription, advance,  
22 deposit of money, services, or anything of value, unless  
23 consideration of equal or greater value is received. Gift does not  
24 include gratuitous transfers from family members, campaign  
25 contributions, or door prizes available to the public.

26 (g) "Income" means money or a thing of value that a person  
27 receives or has a right to receive as a fee, salary, expense

1 allowance, forbearance, forgiveness, interest, dividend, royalty,  
2 rent, capital gain, or any other form of compensation.

3 (h) "Officer" means an individual holding an elective or non-  
4 civil-service-appointive position in the executive branch of state  
5 government.

6 (i) "Official duty" means any responsibility imposed on a  
7 public servant because of his or her position in state service.

8 (j) "Public servant" means an officer or employee in the  
9 executive branch of state government.

10 CHAPTER 2 ETHICAL STANDARDS

11 Sec. 201. A public servant who appears before a state agency  
12 shall avoid all conduct that creates the appearance of using the  
13 official position to further his or her professional or private  
14 interest.

15 Sec. 203. A public servant who abstains from action on an  
16 official decision because of the possibility of a personal or  
17 private interest in the matter shall disclose that fact in writing  
18 to his or her superior or the appropriate public body, who shall  
19 cause the decision on the matter to be made by an impartial  
20 decision maker.

21 Sec. 205. In determining whether abstention from action on an  
22 official decision because of a possible conflict of interest is  
23 required, the following apply:

24 (a) A material personal or private interest in a matter  
25 creates a real or apparent threat to independent judgment.

26 (b) Maintaining public confidence in the integrity of the  
27 executive branch outweighs the personal interests of a public

1 servant in participating in the matter.

2 (c) The degree to which a public servant's participation is  
3 likely to have a significant effect on the disposition of the  
4 matter requires corresponding attention to the degree of private  
5 interest the public servant has, or appears to have, in the matter.

6 (d) The need for the public servant's particular contribution  
7 to the effective functioning of the executive branch, such as  
8 special knowledge of the subject matter, can outweigh the potential  
9 harm from a real or apparent conflict of interest only if the  
10 public servant's private interest in the matter is adequately  
11 disclosed.

12 (e) If the official decision will affect the public servant in  
13 a manner differently from the public or will affect him or her as a  
14 member of a business, profession, occupation, or group to a greater  
15 extent generally than other members of the business, profession,  
16 occupation, or group, the public servant shall request an advisory  
17 opinion from the appropriate administrative body authorized to  
18 enforce this act in accordance with that body's rules of procedure  
19 before participating in the decision.

20 Sec. 207. A public servant shall not knowingly do any of the  
21 following, either directly or indirectly:

22 (a) Use or attempt to use any means to influence any matter  
23 that involves a substantial conflict between his or her personal or  
24 private interest and the public interest.

25 (b) Use or attempt to use any means to influence a public  
26 agency in derogation of the interest of the state.

27 (c) Use the official position or office to obtain personal

1 financial gain or financial gain for any member of his or her  
2 family.

3 (d) Use or attempt to use the official position to secure or  
4 create privileges, exemptions, advantages, or treatment in  
5 derogation of the public interest.

6 Sec. 209. A public servant shall not knowingly disclose or use  
7 confidential information acquired in the course of official duties  
8 to further his or her own economic interests or those of any other  
9 person.

10 Sec. 211. A public servant shall not knowingly receive,  
11 directly or indirectly, any interest or profit arising from the use  
12 or loan of public funds in his or her custody or to be raised  
13 through any state agency.

14 Sec. 213. A public servant shall not knowingly act as a  
15 representative or agent for the state or any state agency in any  
16 transaction or regulatory action with himself or herself or with  
17 any business in which he or she or a family member has a greater  
18 than 5% interest.

19 Sec. 215. During tenure and for 6 months after leaving the  
20 state office or employment, a public servant shall not directly or  
21 by any other person knowingly undertake, execute, hold, bid on,  
22 negotiate, or enjoy, in whole or in part, any contract, agreement,  
23 lease, sale, or purchase made, entered into, awarded, or granted by  
24 the agency that employs the public servant or that he or she  
25 supervises. This prohibition does not apply to any of the  
26 following:

27 (a) A contract, purchase, or good-faith negotiation made

1 relating to eminent domain.

2 (b) An agreement that directly or indirectly involves public  
3 funds disbursed through an entitlement program.

4 (c) A public servant's family member doing business with a  
5 state agency other than the agency of which the public servant is  
6 an officer, employee, or supervisor.

7 (d) Purchases from a state agency that are available on the  
8 same terms to the general public or that are made at public  
9 auction.

10 Sec. 217. Unless an administrative agency authorized by law to  
11 enforce this act has granted prior approval, a public servant shall  
12 not knowingly accept compensation for performing official duties,  
13 other than that provided by law for public servants.

14 Sec. 219. While serving and for 6 months after leaving the  
15 office or employment, a public servant shall not knowingly accept  
16 employment, compensation, or other economic benefit from any person  
17 or business that contracts with, does business with, or is  
18 regulated by the state in matters in which he or she was directly  
19 involved during the last 36 months of tenure. This provision does  
20 not prohibit an individual from returning to a business,  
21 occupation, or profession in which the individual was involved  
22 before becoming a public servant, or for which the individual  
23 received a professional degree or license prior to public service,  
24 if, for a period of 6 months, the individual refrains from working  
25 on any matter with which the individual was directly involved  
26 during the last 36 months of tenure in state government. This  
27 section does not prohibit receipt of public funds disbursed through

1 entitlement programs or performing ministerial functions,  
2 including, but not limited to, filing tax returns, filing  
3 applications for permits or licenses, or filing incorporation  
4 papers.

5       Sec. 221. A former public servant shall not knowingly  
6 represent a person before a state agency or act as a lobbyist or  
7 lobbyist's principal in matters in which the public servant was  
8 directly involved during the last 36 months of his or her tenure  
9 until not less than 1 year after the later of the following:

10       (a) The date of leaving office or terminating employment.

11       (b) The date the term of office to which the public servant  
12 was elected expires.

13       Sec. 223. (1) A public servant shall not knowingly accept  
14 outside employment from any individual or entity that does business  
15 with or is regulated by the state agency that the public servant  
16 works for or supervises without prior approval of the appointing  
17 authority.

18       (2) The appointing authority shall not approve outside  
19 employment for a public servant if the public servant is involved  
20 in decision making or recommendations concerning the individual or  
21 entity with which the public servant seeks outside employment.

22       (3) Each quarter, the appointing authority shall file with the  
23 administrative body authorized to enforce this act the name of each  
24 public servant who has been approved for outside employment and the  
25 employer.

26       Sec. 225. A public servant and his or her spouse or dependent  
27 child shall not knowingly accept a gift or gratuity, including

1 travel expenses, meals, alcoholic beverages, or honoraria with a  
2 cumulative value greater than \$25.00 in a single calendar year from  
3 any individual or entity that does business with, is regulated by,  
4 is seeking grants from, is involved in litigation against, or is  
5 lobbying or attempting to influence the actions of the agency in  
6 which the public servant is employed or which he or she supervises.  
7 The prohibition in this section extends to receipt of a gift or  
8 gratuity from any group or association that has as its primary  
9 purpose representing an individual or entity from which gifts and  
10 gratuities are limited. The administrative body authorized to  
11 enforce this act may authorize an exemption to this section if the  
12 exemption would not create an appearance of impropriety.

### 13 CHAPTER 3 PENALTIES AND REMEDIES

14 Sec. 301. (1) Except as otherwise provided in the law creating  
15 the administrative body, following an administrative hearing and a  
16 finding of a violation of this act by clear and convincing  
17 evidence, an administrative body authorized by law to enforce this  
18 act may do any 1 or more of the following in addition to any other  
19 criminal and civil remedies that may be imposed in other  
20 proceedings:

21 (a) Order the violator to discontinue the violation or refrain  
22 from further violation.

23 (b) Order the violator to file any report, statement, or other  
24 information required by law.

25 (c) Issue a written reprimand to the violator for a violation  
26 of the act and provide a copy to any relevant appointing authority.

27 (d) Issue a written recommendation to the appropriate



1 appointing authority that the violator be removed from office or  
2 employment.

3 (e) Issue a written recommendation to the appropriate  
4 appointing authority that the violator be suspended from office or  
5 employment, including the recommended length of suspension.

6 (f) Order the violator to pay a civil fine of not more than  
7 \$5,000.00 for each violation of the act to recover the expenses of  
8 the investigation and hearing.

9 (2) An administrative body authorized by law to enforce this  
10 act shall refer evidence of a violation of sections 209 to 225 to  
11 the attorney general for prosecution. The attorney general may  
12 request that the administrative body provide all evidence collected  
13 in its investigation. The administrative body may have legal  
14 counsel represent its interests in any proceeding to enforce this  
15 act.

16 Sec. 303. A violation of sections 207 to 225 that causes  
17 financial gain for the public servant or a member of the public  
18 servant's family or a loss to the state of \$500.00 or more is a  
19 misdemeanor punishable by imprisonment for not more than 90 days or  
20 a fine of not more than \$2,000.00, or both.

21 Sec. 305. In addition to any other remedies provided by law,  
22 if a violation of this act substantially influenced the action  
23 taken by any state agency in a particular matter, the state agency  
24 may void, rescind, or cancel the action on terms that protect the  
25 interests of the state and third parties who acted in good faith.

26 Enacting section 1. The following acts and parts of acts are  
27 repealed:

- 1** (a) 1973 PA 196, MCL 15.341 to 15.348.
- 2** (b) Section 8 of 1968 PA 317, MCL 15.328.