

HOUSE BILL No. 6499

September 24, 2008, Introduced by Reps. Corriveau, Bieda, Tobocman, Melton, Byrum,
Bauer and Ward and referred to the Committee on Ethics and Elections.

A bill to amend 1973 PA 196, entitled

"An act to prescribe standards of conduct for public officers and employees; to create a state board of ethics and prescribe its powers and duties; and to prescribe remedies and penalties,"

by amending the title and sections 1, 2, 2b, 3, 4, 5, and 6 (MCL 15.341, 15.342, 15.342b, 15.343, 15.344, 15.345, and 15.346), the title and sections 1 and 2b as amended by 1980 PA 481 and section 2 as amended by 1984 PA 53, and by adding section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to prescribe standards of conduct for public officers and employees; to create a state board of ethics and prescribe its powers and duties; **TO PROVIDE FOR THE CREATION OF LOCAL BOARDS OF ETHICS AND PRESCRIBE THEIR POWERS AND DUTIES;** and to prescribe remedies and penalties.

Sec. 1. As used in this act:

1 ~~—— (a) "Board" means the board of ethics.~~

2 (A) ~~(b)~~ "Employee" means an employee, classified or
3 unclassified, of the executive branch of this state ~~. For the~~
4 ~~purpose of section 2b, employee shall include an employee of this~~
5 ~~state or~~ **AND, AS PROVIDED IN SECTION 2(8), INCLUDES AN EMPLOYEE OF**
6 a political subdivision of this state.

7 (B) **"LOCAL BOARD" MEANS A BOARD OF ETHICS OF A POLITICAL**
8 **SUBDIVISION OF THIS STATE CREATED PURSUANT TO SECTION 6A.**

9 (c) "Public officer" means ~~a person appointed by the governor~~
10 ~~or another executive department official. For the purpose of~~
11 ~~section 2b, public officer shall include an elected or appointed~~
12 **official IN THE EXECUTIVE BRANCH** of this state ~~or~~ **AND, EXCEPT AS**
13 **PROVIDED IN SECTION 2, INCLUDES AN ELECTED OR APPOINTED OFFICIAL OF**
14 a political subdivision of this state.

15 (D) **"STATE BOARD" MEANS THE STATE BOARD OF ETHICS CREATED IN**
16 **SECTION 3.**

17 (E) ~~(d)~~ "Unethical conduct" means a violation of the standards
18 in section 2 **OR THE STANDARDS OF A LOCAL ETHICS CODE.**

19 Sec. 2. (1) A public officer or employee shall not divulge to
20 an unauthorized person, confidential information acquired in the
21 course of employment in advance of the time prescribed for its
22 authorized release to the public.

23 (2) A public officer or employee shall not represent his or
24 her personal opinion as that of an agency.

25 (3) A public officer or employee shall use personnel
26 resources, property, and funds under the officer or employee's
27 official care and control judiciously and solely in accordance with

1 prescribed constitutional, statutory, and regulatory procedures and
2 not for personal gain or benefit.

3 (4) A public officer or employee shall not solicit or accept a
4 gift or loan of money, goods, services, or other thing of value for
5 the benefit of a person or organization, other than the state,
6 which tends to influence the manner in which the public officer or
7 employee or another public officer or employee performs official
8 duties.

9 (5) A public officer or employee shall not engage in a
10 business transaction in which the public officer or employee may
11 profit from his or her official position or authority or benefit
12 financially from confidential information which the public officer
13 or employee has obtained or may obtain by reason of that position
14 or authority. Instruction which is not done during regularly
15 scheduled working hours except for annual leave or vacation time
16 shall not be considered a business transaction pursuant to this
17 subsection if the instructor does not have any direct dealing with
18 or influence on the employing or contracting facility associated
19 with his or her course of employment with this state.

20 (6) Except as provided in section 2a, a public officer or
21 employee shall not engage in or accept employment or render
22 services for a private or public interest when that employment or
23 service is incompatible or in conflict with the discharge of the
24 officer or employee's official duties or when that employment may
25 tend to impair his or her independence of judgment or action in the
26 performance of official duties.

27 (7) Except as provided in section 2a, a public officer or

1 employee shall not participate in the negotiation or execution of
2 contracts, making of loans, granting of subsidies, fixing of rates,
3 issuance of permits or certificates, or other regulation or
4 supervision relating to a business entity in which the public
5 officer or employee has a financial or personal interest.

6 (8) THE REQUIREMENTS OF THIS SECTION AND SECTION 2A APPLY TO
7 AN OFFICER OR EMPLOYEE OF A POLITICAL SUBDIVISION OF THIS STATE IF
8 THE POLITICAL SUBDIVISION HAS NOT ADOPTED A LOCAL CODE OF ETHICS.

9 Sec. 2b. (1) A public officer or employee who has knowledge
10 that another public officer or employee ~~has violated section 2~~
11 **ENGAGED IN UNETHICAL CONDUCT** may report the existence of the
12 violation to a supervisor, person, agency, or organization. A
13 public officer or employee who reports or is about to report a
14 ~~violation of section 2 shall~~ **UNETHICAL CONDUCT IS** not be subject to
15 any of the following sanctions because they reported or were about
16 to report a ~~violation of section 2.~~ **UNETHICAL CONDUCT:**

17 (a) Dismissal from employment or office.

18 (b) Withholding of salary increases that are ordinarily
19 forthcoming to the employee.

20 (c) Withholding of promotions that are ordinarily forthcoming
21 to the employee.

22 (d) Demotion in employment status.

23 (e) Transfer of employment location.

24 (2) Whenever a public officer or employee who has reported or
25 who intends to report a ~~violation of section 2 may~~ **UNETHICAL**
26 **CONDUCT MIGHT** be subject to any of the sanctions under this section
27 for reasons other than the public officer's or employee's actions

1 in reporting or intending to report ~~a violation of section 2~~
2 **UNETHICAL CONDUCT**, the appointing or supervisory authority before
3 the imposition of a sanction shall establish by a preponderance of
4 evidence that the sanction to be imposed is not imposed because the
5 public officer or employee reported or intended to report a
6 ~~violation of section 2~~ **UNETHICAL CONDUCT**.

7 (3) A person who violates this section is ~~liable~~ **RESPONSIBLE**
8 for a civil **INFRACTION AND MAY BE ORDERED TO PAY A CIVIL** fine of
9 not more than \$500.00.

10 (4) A civil fine recovered under this section **FROM A STATE**
11 **OFFICER OR EMPLOYEE** shall be submitted to the state treasurer for
12 deposit in the general fund of this state. **A CIVIL FINE RECOVERED**
13 **UNDER THIS SECTION FROM AN OFFICER OR EMPLOYEE OF A POLITICAL**
14 **SUBDIVISION OF THIS STATE SHALL BE DEPOSITED INTO THE GENERAL FUND**
15 **OF THE POLITICAL SUBDIVISION**.

16 Sec. 3. (1) There is hereby created within the executive
17 office of the governor a **STATE** board of ethics.

18 (2) The function of the **STATE** board shall be advisory and
19 investigatory and the **STATE** board is not empowered to take direct
20 action against any person or agency.

21 Sec. 4. (1) The **STATE** board of ethics shall consist of 7
22 members appointed by the governor, with the advice and consent of
23 the senate, 1 of whom shall be designated as chairman and all of
24 whom shall be residents of ~~the~~ **THIS** state and not associated with
25 public employment. Not more than 4 members of the **STATE** board shall
26 be members of the same political party. Initial appointments shall
27 be made for terms commencing 30 days after the effective date of

1 this act. Of those first appointed 2 shall serve for 1 year, 2
2 shall serve for 2 years, and 3 shall serve for 3 years. For the 1
3 year, 2 year and 3 year terms, at least 1 member for each such term
4 shall be of the same political party. In the event of a vacancy,
5 the governor shall fill the vacancy for the remainder of the term.
6 Subsequent to the initial appointments, members shall be appointed
7 for terms of 4 years.

8 (2) The attorney general and the state personnel director
9 shall serve ex officio without the right to vote.

10 (3) Four members of the **STATE** board shall constitute a quorum
11 and the affirmative vote of 4 members shall be necessary for any
12 action. Members of the **STATE** board shall serve without compensation
13 but shall be reimbursed for their actual and necessary expenses
14 incurred in the performance of their duties. With the consent of
15 the civil service commission, the state personnel director shall
16 designate an employee of the department of civil service,
17 acceptable to the **STATE** board, to act as executive secretary of the
18 **STATE** board and shall provide clerical or administrative assistance
19 from the department of civil service as the **STATE** board may, from
20 time to time, request.

21 Sec. 5. (1) The **STATE** board shall:

22 (a) Receive complaints concerning alleged unethical conduct by
23 a public officer or employee from any person or entity, inquire
24 into the circumstances surrounding the alleged unethical conduct,
25 and make recommendations concerning individual cases to the
26 appointing authority with supervisory responsibility for the person
27 whose activities have been investigated. All departments of state

1 government shall cooperate with the board of ethics in the conduct
2 of its investigations.

3 (b) Initiate investigations of practices that could affect
4 ethical conduct of a public officer or employee.

5 (c) Hold public hearings.

6 (d) Administer oaths and receive sworn testimony.

7 (e) Issue and publish advisory opinions upon request from a
8 public officer or employee or their appointing or supervisory
9 authority relating to matters affecting ethical conduct of a public
10 officer or employee.

11 (2) In the issuance of investigative reports and
12 recommendations and advisory opinions, the **STATE** board shall be
13 advised as to legal matters by the attorney general.

14 (3) When a recommendation to an appointing authority is made
15 by the **STATE** board ~~which~~**THAT** affects a classified employee, the
16 appointing authority shall initiate appropriate proceedings in
17 accordance with ~~such~~**THE** recommendation and pursuant to the rules
18 of the civil service commission.

19 (4) When a recommendation to an appointing authority is made
20 by the **STATE** board concerning an unclassified employee or
21 appointee, the appointing authority shall take appropriate
22 disciplinary action, which may include dismissal.

23 Sec. 6. The **STATE** board may promulgate rules governing its own
24 procedures pursuant to ~~Act No. 306 of the Public Acts of 1969, as~~
25 ~~amended, being sections 24.201 to 24.315 of the Michigan Compiled~~
26 ~~Laws~~**THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL**
27 **24.201 TO 24.328.** ~~For a period of 1 year following the effective~~

1 ~~date of this act the board shall have full authority to exercise~~
2 ~~all of its functions in accordance with temporary rules of~~
3 ~~procedure promulgated by the board. Both the temporary and~~
4 ~~permanent rules~~ **RULES** of the **STATE** board shall provide that **ALL OF**
5 **THE FOLLOWING:**

6 (a) The **STATE** board may request the attendance of any witness
7 whose testimony, in the judgment of the **STATE** board, will aid in
8 the conduct of its investigations.

9 (b) A person appearing before the **STATE** board shall submit
10 either sworn or unsworn testimony as the **STATE** board may decide and
11 may at all times be represented and accompanied by counsel.

12 (c) A record of testimony taken before the **STATE** board or a
13 hearing officer designated by it shall be made in the manner
14 prescribed by the **STATE** board.

15 (d) The **STATE** board may, when it appears necessary for the
16 protection of individual rights, hold its meetings and hearings in
17 private. All other meetings and hearings shall be open to the
18 public.

19 **SEC. 6A. (1) A POLITICAL SUBDIVISION OF THIS STATE SHALL**
20 **ESTABLISH A LOCAL BOARD AS PROVIDED IN THIS SECTION. EXCEPT AS**
21 **OTHERWISE PROVIDED BY LOCAL CHARTER OR ORDINANCE, THE LOCAL BOARD**
22 **SHALL BE ESTABLISHED AS FOLLOWS:**

23 (A) A LOCAL BOARD SHALL CONSIST OF 4 TO 9 MEMBERS APPOINTED BY
24 THE POLITICAL SUBDIVISION'S CHIEF ELECTED OFFICIAL WITH THE
25 APPROVAL OF ITS LEGISLATIVE BODY. THE MEMBERS FIRST APPOINTED SHALL
26 BE APPOINTED WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY
27 ACT THAT ADDED THIS SECTION.

1 (B) THE MEMBERS SHALL SERVE FOR TERMS OF 4 YEARS OR UNTIL A
2 SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT THAT OF THE
3 MEMBERS FIRST APPOINTED, AT LEAST 1 SHALL SERVE FOR 1 YEAR, AT
4 LEAST 1 SHALL SERVE FOR 2 YEARS, AT LEAST 1 SHALL SERVE FOR 3
5 YEARS, AND AT LEAST 1 SHALL SERVE FOR 4 YEARS.

6 (C) A VACANCY IN THE LOCAL BOARD SHALL BE FILLED FOR THE
7 REMAINDER OF THE TERM IN THE SAME MANNER AS THE INITIAL
8 APPOINTMENT.

9 (D) THE FIRST MEETING SHALL BE CALLED BY THE POLITICAL
10 SUBDIVISION'S CHIEF ELECTED OFFICIAL WITHIN 60 DAYS AFTER THE LOCAL
11 BOARD MEMBERS ARE APPOINTED. AT THE FIRST MEETING, THE MEMBERS
12 SHALL ELECT A CHAIRPERSON AND OTHER OFFICERS THAT IT CONSIDERS
13 NECESSARY OR APPROPRIATE. AFTER THE FIRST MEETING, THE LOCAL BOARD
14 SHALL MEET AS NECESSARY AT THE CALL OF THE CHAIRPERSON.

15 (E) A MAJORITY OF THE MEMBERS OF THE LOCAL BOARD CONSTITUTE A
16 QUORUM FOR THE TRANSACTION OF BUSINESS. A MAJORITY OF THE MEMBERS
17 PRESENT AND SERVING ARE REQUIRED FOR OFFICIAL ACTION OF THE LOCAL
18 BOARD.

19 (2) A LOCAL BOARD SHALL APPLY THE LOCAL ETHICS STANDARDS THAT
20 THE POLITICAL SUBDIVISION HAS ADOPTED BY CHARTER OR ORDINANCE. IF
21 NO LOCAL ETHICS POLICY HAS BEEN ADOPTED BY 1 YEAR AFTER THE
22 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A
23 LOCAL BOARD SHALL APPLY THE STANDARDS IN SECTIONS 2 AND 2A.

24 (3) A LOCAL BOARD SHALL RECEIVE COMPLAINTS CONCERNING ALLEGED
25 UNETHICAL CONDUCT BY A PUBLIC OFFICER OR EMPLOYEE IN THE POLITICAL
26 SUBDIVISION FROM ANY PERSON OR ENTITY, INQUIRE INTO THE
27 CIRCUMSTANCES SURROUNDING THE ALLEGED UNETHICAL CONDUCT, AND MAKE

1 RECOMMENDATIONS CONCERNING INDIVIDUAL CASES TO THE APPOINTING OR
2 SUPERVISORY AUTHORITY OF THE PERSON WHOSE ACTIVITIES HAVE BEEN
3 INVESTIGATED.

4 (4) A LOCAL BOARD MAY DO ANY OF THE FOLLOWING:

5 (A) INITIATE INVESTIGATIONS OF PRACTICES THAT COULD AFFECT
6 ETHICAL CONDUCT OF A PUBLIC OFFICER OR EMPLOYEE OF THE POLITICAL
7 SUBDIVISION.

8 (B) HOLD PUBLIC HEARINGS.

9 (C) ADMINISTER OATHS AND RECEIVE SWORN TESTIMONY.

10 (D) ISSUE AND PUBLISH ADVISORY OPINIONS UPON REQUEST FROM A
11 PUBLIC OFFICER OR EMPLOYEE OF THE POLITICAL SUBDIVISION OR THE
12 OFFICER'S OR EMPLOYEE'S APPOINTING OR SUPERVISORY AUTHORITY
13 RELATING TO MATTERS AFFECTING ETHICAL CONDUCT OF A PUBLIC OFFICER
14 OR EMPLOYEE OF THE POLITICAL SUBDIVISION.

15 (E) REQUEST THE ATTENDANCE OF ANY WITNESS WHOSE TESTIMONY, IN
16 THE JUDGMENT OF THE LOCAL BOARD, WILL AID IN THE CONDUCT OF ITS
17 INVESTIGATIONS, BUT THE LOCAL BOARD SHALL NOT DENY THE PERSON THE
18 OPTION OF BEING ACCOMPANIED AND REPRESENTED BY COUNSEL AT ALL
19 TIMES.

20 (F) AT THE OPTION OF THE LOCAL BOARD, ACCEPT EITHER SWORN OR
21 UNSWORN TESTIMONY FROM A PERSON APPEARING BEFORE IT.

22 (5) A RECORD OF TESTIMONY TAKEN BEFORE THE LOCAL BOARD OR A
23 HEARING OFFICER DESIGNATED BY IT SHALL BE MADE IN THE MANNER
24 PRESCRIBED BY THE BOARD.

25 (6) THE LOCAL BOARD MAY, WHEN IT APPEARS NECESSARY FOR THE
26 PROTECTION OF INDIVIDUAL RIGHTS, HOLD ITS MEETINGS AND HEARINGS IN
27 PRIVATE. ALL OTHER MEETINGS AND HEARINGS SHALL BE OPEN TO THE

1 PUBLIC.

2 (7) IN ISSUING INVESTIGATIVE REPORTS AND RECOMMENDATIONS AND
3 ADVISORY OPINIONS, THE LOCAL BOARD MAY BE ADVISED AS TO LEGAL
4 MATTERS BY THE LEGAL COUNSEL FOR THE POLITICAL SUBDIVISION.

5 (8) WHEN THE LOCAL BOARD MAKES A RECOMMENDATION TO AN
6 APPOINTING OR SUPERVISORY AUTHORITY THAT AFFECTS AN EMPLOYEE WHO IS
7 EMPLOYED UNDER A MERIT SYSTEM ADOPTED BY THE POLITICAL SUBDIVISION,
8 THE AUTHORITY SHALL INITIATE APPROPRIATE PROCEEDINGS IN ACCORDANCE
9 WITH THE RECOMMENDATION AND PURSUANT TO THE RULES OF THAT MERIT
10 SYSTEM.

11 (9) WHEN THE LOCAL BOARD MAKES A RECOMMENDATION TO AN
12 APPOINTING OR SUPERVISORY AUTHORITY CONCERNING AN EMPLOYEE OR
13 APPOINTEE WHO IS NOT EMPLOYED UNDER A MERIT SYSTEM ADOPTED BY THE
14 POLITICAL SUBDIVISION, THE AUTHORITY SHALL TAKE APPROPRIATE
15 DISCIPLINARY ACTION, WHICH MAY INCLUDE DISMISSAL.

16 (10) A LOCAL ETHICS BOARD SHALL NOT APPLY A LOCAL ETHICS CODE
17 OR AN AMENDMENT OF A LOCAL ETHICS CODE TO CHANGE OR SUPPLEMENT THE
18 TERMS OF A BARGAINING AGREEMENT FOR EMPLOYEES SUBJECT TO COMPULSORY
19 ARBITRATION OF LABOR DISPUTES UNDER 1969 PA 312, MCL 423.231 TO
20 423.247, IF THE AGREEMENT IS IN EFFECT ON THE DATE OF ADOPTION OF
21 THE LOCAL ETHICS CODE OR AMENDMENT. A LOCAL ETHICS BOARD SHALL
22 APPLY THE LOCAL ETHICS CODE AND ANY AMENDMENT TO THE LOCAL ETHICS
23 CODE TO ANY RENEWAL OR RENEGOTIATION OF THAT BARGAINING AGREEMENT.