

HOUSE BILL No. 5939

March 30, 2006, Introduced by Reps. Walker, Mortimer, Gosselin, Rocca, Marleau, LaJoy, Booher, Byrum, Murphy, Kathleen Law, Moolenaar, Wojno, Angerer, Byrnes, Espinoza, McDowell, Vander Veen, Newell, Stakoe, Taub, Sheltroun, Ward, Palsrok, Hansen, Elsenheimer, Kooiman, Bieda, Clemente, Kahn, Proos, Caul, Robertson, Casperson, Pastor, Emmons, Huizenga, Gaffney, Sak, Stahl, Stewart, Gillard, Adamini, Farrah, Brandenburg and Schuitmaker and referred to the Committee on House Oversight, Elections, and Ethics.

A bill to establish an ethics board and prescribe its powers and duties; to prescribe powers and duties for certain state officers and agencies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "governmental ethics board act".

3 Sec. 3. For the purposes of this act:

4 (a) "Ethics board" means the governmental ethics board
5 established under section 5.

6 (b) "Governmental entity" means an officer, employee, agency,
7 department, division, bureau, board, commission, council,
8 authority, or other body in the executive or legislative branch of
9 the government of this state.

10 (c) "Person" means an individual, sole proprietorship,

1 partnership, corporation, association, or other legal entity.

2 (d) "State elected public official" means the governor,
3 lieutenant governor, secretary of state, attorney general, or
4 member of the state legislature. A person who is appointed to fill
5 a vacancy in a state elected public office that is ordinarily
6 elective is a state elected public official.

7 Sec. 5. (1) The governmental ethics board is created as an
8 autonomous entity within the department of state.

9 (2) The ethics board shall consist of 7 members, appointed as
10 follows:

11 (a) Two members appointed by the governor from candidates
12 recommended by the speaker of the house of representatives, 1 from
13 the majority party and 1 from the minority party.

14 (b) Two members appointed by the governor from candidates
15 recommended by the majority leader of the senate, 1 from the
16 majority party and 1 from the minority party.

17 (c) Two members appointed by the governor, 1 from the majority
18 party and 1 from the minority party.

19 (d) One member selected by majority vote of the members
20 appointed under subdivisions (a) to (c).

21 (3) A term of a member of the ethics board expires on March 31
22 of the year that the term is designated to expire. The 7 members
23 first appointed to the ethics board shall be appointed within 90
24 days after the effective date of this act.

25 (4) A member of the ethics board shall serve for a 4-year term
26 or until a successor is appointed, whichever is later. A person
27 shall not serve more than 2 full 4-year terms on the ethics board.

1 (5) If a vacancy occurs on the ethics board, the vacancy for
2 the remainder of the unexpired term shall be filled in the same
3 manner as the original appointment.

4 (6) The governor may remove a member of the ethics board for
5 incompetency, dereliction of duty, malfeasance, misfeasance, or
6 nonfeasance in office or any other good cause.

7 (7) At the first meeting, the ethics board shall elect from
8 among its members a chairperson and vice-chairperson. The vice-
9 chairperson shall serve as chairperson in the absence of the
10 chairperson. After the first meeting, the ethics board shall meet
11 at least quarterly, or more frequently at the call of the
12 chairperson or if requested by 4 or more members.

13 (8) Four members of the ethics board constitute a quorum for
14 the transaction of business. A majority of the members present and
15 serving are required for official action of the ethics board. A
16 vote shall be by record roll call.

17 (9) The business conducted by the ethics board shall be
18 conducted in compliance with the open meetings act, 1976 PA 267,
19 MCL 15.261 to 15.275. Notice of the meetings of the board shall be
20 made public in compliance with the open meetings act, 1976 PA 267,
21 MCL 15.261 to 15.275.

22 (10) Except as provided in this act, a writing prepared,
23 owned, used, in the possession of, or retained by the ethics board
24 in the performance of an official function is subject to the
25 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

26 (11) A member of the ethics board shall serve without
27 compensation. However, a member of the ethics board may be

1 reimbursed for his or her actual and necessary expenses incurred in
2 the performance of official duties as a member of the ethics board.

3 (12) The ethics board shall do all of the following:

4 (a) Promulgate rules in accordance with the administrative
5 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to carry
6 out the provisions of this act and to govern its own procedures.

7 (b) Appoint hearing officials, an executive director, if
8 necessary, and other staff necessary to carry out its duties under
9 this act. The ethics board may delegate authority to the executive
10 director to act in the name of the board between meetings of the
11 board, if the delegation is in writing and the specific powers to
12 be delegated are enumerated. The board shall not delegate the power
13 to determine violations, recommend disciplinary action, refer a
14 matter to the attorney general, or render an advisory opinion. An
15 executive director is subject to the restrictions of an ethics
16 board member as specified in section 7.

17 (c) Examine disclosure statements required of state elected
18 public officials under state law and the supporting records and
19 other documents. The ethics board shall index and maintain on file
20 for at least 7 years all disclosure statements and supporting
21 records filed under this act.

22 (d) Review, index, maintain on file, and dispose of sworn
23 complaints alleging unethical actions by state elected public
24 officials in the performance of official duties and make
25 notifications and conduct investigations. In conducting an
26 investigation, the ethics board may administer oaths or
27 affirmations, subpoena witnesses, compel witness attendance, and

1 require the production of books or records that it considers
2 relevant and material.

3 (e) Conduct hearings, recommend disciplinary action, refer
4 potential violations of the law to the prosecutor or appropriate
5 administrative tribunal, or initiate appropriate actions and
6 proceedings under this act.

7 (f) Render, index, and maintain on file advisory opinions
8 under section 15 and prepare and publish nonconfidential special
9 reports and technical studies to further the purposes of this act.
10 The attorney general shall advise the board concerning legal
11 matters as the board issues advisory opinions, investigative
12 reports, recommendations, and other reports.

13 (g) Provide training and education to state elected public
14 officials under section 19.

15 (h) Prepare an annual report and recommend changes to this act
16 under section 21.

17 (i) Provide for public inspection of certain records as
18 provided by law.

19 (13) The department of state shall provide clerical or
20 administrative assistance as the board may request.

21 Sec. 7. A member of the ethics board shall not do any of the
22 following while a member of the board:

23 (a) Hold elective public office or elective political party
24 office.

25 (b) Accept appointment to or become a candidate for public
26 office or political party office.

27 (c) Be employed as or act as a lobbyist.

1 (d) Participate in an election campaign. An ethics board
2 member may make campaign contributions.

3 Sec. 9. (1) The ethics board may act with respect to only the
4 state elected public officials who are subject to this act.

5 (2) The termination of a state elected public official's term
6 of office does not affect the jurisdiction of the ethics board with
7 respect to the requirements imposed on him or her by this act.

8 Sec. 11. (1) If a majority vote of the board determines that
9 there is reason to believe that a state elected public official
10 acted unethically in the performance of official duties, the board
11 shall initiate an investigative proceeding to determine whether an
12 unethical action occurred. The board shall mail a notice of the
13 investigation and the nature of the alleged violation to a person
14 under investigation within 5 days after the decision to undertake
15 an investigation is made. Every 60 days until a final determination
16 is made, the board shall mail to the complainant and to the person
17 under investigation notice of the action that the board has taken
18 to date along with the reasons for the action or nonaction.

19 (2) Except as otherwise required by law, the board's actions
20 and the records concerning an investigation shall be confidential
21 and exempt from release under the freedom of information act, 1976
22 PA 442, MCL 15.231 to 15.246, until the board makes either a final
23 determination or recommendation under this act.

24 (3) All governmental entities shall cooperate with the board
25 when it is conducting an investigation.

26 (4) If the ethics board's investigation produces no credible
27 evidence of unethical action in the performance of official duties,

1 the records and actions concerning the investigation and
2 determination shall remain confidential unless the person
3 investigated requests in writing that the records and actions be
4 made public. If the ethics board's investigation produces credible
5 evidence of unethical action in the performance of official duties,
6 the duty of confidentiality under this section is removed when the
7 ethics board makes its determination or recommendation.

8 Sec. 13. (1) After a hearing comporting with due process
9 procedural requirements and subject to applicable provisions of
10 law, the ethics board may recommend disciplinary action to the
11 person or body authorized by law to impose or recommend discipline.

12 (2) The ethics board shall conduct and complete the hearing
13 with reasonable promptness. If the ethics board refers the matter
14 to the person or body authorized by law to impose disciplinary
15 action or if the ethics board refers the matter to the attorney
16 general, the ethics board may adjourn the matter pending
17 determination by the person, body, or attorney general.

18 (3) After a hearing comporting with due process procedural
19 requirements, the ethics board may recommend that sanctions be
20 imposed upon a state elected public official found by the board to
21 have violated this act. The recommendation of the ethics board
22 shall be made to the person or body authorized by law to impose or
23 recommend sanctions.

24 (4) The attorney general on behalf of the governmental entity
25 with which the state elected public official is affiliated or the
26 ethics board on behalf of the governmental entity may initiate an
27 action or special proceeding in the court of appropriate

1 jurisdiction to obtain damages allowed by law.

2 (5) The ethics board may refer to the attorney general
3 information concerning possible criminal violations that the ethics
4 board obtains during an investigation. This act shall not be
5 construed to restrict the authority of the attorney general to
6 prosecute a person.

7 Sec. 15. (1) Upon the written request of a state elected
8 public official, the ethics board shall render a written advisory
9 opinion regarding ethical standards for performing official duties.

10 (2) Advisory opinions and requests for advisory opinions shall
11 be indexed and maintained on file by the ethics board.

12 (3) An advisory opinion rendered by the ethics board, until
13 and unless amended or revoked, is binding on the ethics board in a
14 subsequent proceeding concerning the person who requested the
15 opinion and who acted in good faith, unless the person omitted or
16 misstated a material fact. The opinion may also be relied upon by
17 the person, and may be introduced and used as evidence of good
18 faith, in a civil action against the person.

19 Sec. 17. A person aggrieved by a decision of the ethics board
20 may seek judicial review and relief in a court of proper
21 jurisdiction.

22 Sec. 19. The ethics board shall do both of the following:

23 (a) Make information concerning this act available to each
24 state elected public official, to the public, and to persons
25 interested in doing business with this state, through the secretary
26 of state and by other necessary means.

27 (b) Develop educational materials and an educational program

1 for state elected public officials to inform them of their ethical
2 duties and responsibilities as a state elected public official.

3 Sec. 21. (1) The ethics board shall prepare and submit an
4 annual report to the governor and legislature, summarizing the
5 activities of the board. The report may also recommend statutory or
6 administrative changes to this act.

7 (2) The ethics board shall annually review this act and the
8 board's rules, regulations, and administrative procedures to
9 determine whether they promote integrity, public confidence, and
10 participation in state government and whether they promote clear
11 and enforceable common sense standards of conduct.

12 Enacting section 1. Sections 3 to 7 of 1973 PA 196, MCL 15.343
13 to 15.347, are repealed.

14 Enacting section 2. This act takes effect January 1, 2007.

15 Enacting section 3. Pursuant to section 8 of article III of
16 the state constitution of 1963, the state supreme court is
17 requested to rule on the constitutionality of this act before
18 January 1, 2007.