

Legislative Analysis



PUBLIC EMPLOYERS: POST CONTRACTS, COMPENSATION & SEVERANCE PAYMENTS

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House Bill 5196 (Substitute H-1)
House Bill 5274 (Substitute H-2)
Sponsor: Rep. Tom McMillin
Committee: Oversight, Reform, and Ethics

First Analysis (3-12-12)

BRIEF SUMMARY: House Bill 5196 would create the Public Employee Compensation Disclosure Act, to require that public employers annually and publicly post, for each job classification: the number of their employees; total annual wages paid; the annual cost of benefits; and the terms of each severance agreement.

House Bill 5274 would create the Public Contract Disclosure Act to require that, beginning June 30, 2012, all government contracts of \$25,000 or more be publicly posted, either on the public entity's homepage, or submitted to the Department of Technology, Management and Budget for posting on the department's webpage.

FISCAL IMPACT: The bills would increase administrative costs for state and local governments, schools, community colleges, and universities, as well as other public entities as defined in the bills. The Department of Technology, Management, and Budget would realize increased administrative costs associated with maintaining the publicly accessible websites, in addition to any initial website development costs. (A more detailed discussion is found later in *Fiscal Information*.)

THE APPARENT PROBLEM:

The Pew Center on the States has tracked the ways in which the 50 states have worked to achieve greater "transparency" in government. The Pew Center notes that the Internet makes it possible for states to provide citizens with easy access to information. And they argue that creating a transparent government helps to overcome the inherent mistrust people harbor about their leaders, whether elected or not.

What is a transparent government? According to the Pew Center, a transparent government means that citizens can easily find information about how their money is being spent and whether their money is being spent effectively. For example, at the federal level, the U.S. Congress recently passed the Federal Funding Accountability and Transparency Act, which requires disclosure of all entities or organizations receiving federal funds so that citizens know where their federal tax dollars are being spent. To provide this disclosure, the federal Office of Management and Budget developed *USAspending.gov*, which provides searchable information on all federal government contracts and assistance (loans, grants, etc.). This way, citizens can search websites to follow the money trail and see exactly in whose hands their money ends up.

According to the Pew Center on the States, about 20 states have also passed laws or administrative rules to develop similar websites for citizens. They argue that citizen websites should meet the following standards:

- Ensure that citizens can search through all expenditures, including contracts, grants and assistance from various angles, such as by agency, spending category, program, and vendor. Citizens should be able to find out what their money is being spent on and which companies or organizations are receiving their dollars, including all sub-grants and sub-contracts.
- Include features to allow citizens to search other financial information, such as state employee salaries and who is receiving economic development tax credits.
- Update the information as often as possible. (They note that the data on both the Texas and Missouri websites are updated every business day.)
- Develop a transparency board similar to the Kansas Public Finance Transparency Board that includes members of the public and advises the state about how they can become more transparent.

Legislation has been introduced in Michigan to require all public employers to post on either their local or a State of Michigan website all salary and benefit information, the terms of severance agreements, and the text of all contracts that are valued at \$25,000 or more.

THE CONTENT OF THE BILLS:

The Public Employee Compensation Disclosure Act

House Bill 5196 (H-1) would create a new law to be known as the Public Employee Compensation Disclosure Act. The new act would require public employers to annually post, for public review, and for each job classification: the number of fulltime equivalent employees; the total annual wages paid within each job classification; and the total annual cost of the benefits within each classification. Additionally, the public employer would be required to post each severance payment agreement entered into since the last reporting period, the terms of that agreement, and the employee's job classification.

Under the bill, a public employer would be required to provide the state Department of Technology, Management and Budget with that information by June 1 of each year; or to post the information on the public employer's website with an access link on the employer's homepage.

The bill would require that those reports submitted to the DTMB be submitted electronically (in a format specified by the department), and that department officials post the information on a website accessible to the public within 90 days after receiving the information.

The bill would define ***public employee*** to mean an individual who is employed by this state; a department or agency of this state; a city, village, township, county, or other

political subdivision of this state; a school district, intermediate school district, or special district; a community college or junior college; an public institution of higher education, or any other public entity of this state or of a political subdivision of this state.

The bill would define *severance payment* to mean a payment that is additional compensation paid or payable by the public employer if a public employee's employment terminates. Severance payment does not include a payment under a retirement plan that is generally applicable to employees of the public employer.

The Public Contract Disclosure Act

House Bill 5274 (H-2) would create a new act to be known as the Public Contract Disclosure Act, to require that all government contracts of \$25,000 or more be publicly posted, either on the public entity's homepage, or submitted to the Department of Technology, Management and Budget for posting on the department's webpage. A more detailed description of the bill follows.

Under the bill, beginning June 30, 2012, a *public entity* would be required to prepare a list with information concerning each of its contracts, entered into or in effect, during the past 12 months, and update it monthly.

The bill would define *public entity* to mean this state; a department or agency of this state; a city, village, township, county, or other political subdivision of this state; a school district, intermediate school district, cyber school, public school academy, or special district; a public community college or junior college; a public institution of higher education,; or any other public entity of this state or of a political subdivision of this state.

The bill would define *contract* to mean an agreement for a public entity to procure goods or services from a private entity for \$25,000 or more, or estimated to total \$25,000 or more. The term does not include an employment contract for a position filled through a civil service or similar merit system or a position normally filled by a vote of the electors.

Under the bill, the information listed for each contract would include all of the following:

- The name of the contracting private entity.
- The dollar amount of the contract. However, if the dollar amount of a contract is not easily ascertainable, the public entity shall include the estimated amount of the contract, and shall update the estimated dollar amount each month until the actual dollar amount is ascertainable.

The bill requires that the public entity either post the information on its website with a link to its homepage; or submit the information to the state Department of Technology, Management, and Budget electronically (in a format specified by the department). The department would then be required to post the information on its website within 90 days after receiving it.

The bill specifies that the public entity must update, at least monthly, the information that is to be posted.

BACKGROUND INFORMATION:

For more information about severance practices for certain employees in Wayne County government, visit these reports from the *Detroit Free Press*, entitled "Key Moments in the Wayne County Severance Scandal" (11-1-11) and "Feds' Microscope Zeroing In on Wayne County" (3-8-12).

<http://www.freep.com/article/20111101/NEWS06/111010373/Key-moments-Wayne-County-severance-scandal>

<http://www.freep.com/article/20120308/NEWS02/203080709>

FISCAL INFORMATION:

House Bill 5196 (H-1) would increase administrative costs for state and local governments, schools, as well as other public entities as defined in the bill. Specifically, a public entity would be required to compile and annually update information regarding the compensation of each of its employees that receive wages and benefits, by job classification. The public entity would also be required to report on the terms of each severance payment agreement entered into since the last reporting period. The public entity would then be required to submit this information by June 1 of each year to the Department of Technology, Management, and Budget (DTMB) in a format specified by the department, or post it on its own website. If the information were sent to DTMB, the the department would be required to post the information on its public website. Public entities would realize some increased administrative costs associated with compiling and maintaining an updated employee compensation and severance payment list. DTMB would realize increased administrative costs associated with maintaining the publicly accessible website in addition to any initial website development costs.

House Bill 5274 (H-2) would increase administrative costs for state and local governments, as well as other public entities as defined in the bill. Specifically, a public entity would be required to compile and update monthly a list of all contracts to procure goods and services for \$25,000 or more, as well as those estimated to be \$25,000 or more. The public entity would then be required either to post this information on its website, or to submit the information, updated on a monthly basis, to the Department of Technology, Management, and Budget (DTMB) in a format specified by the department. DTMB would be required to post this information on its public website. Public entities would realize increased administrative costs associated with compiling and maintaining an updated contract list. DTMB would realize increased administrative costs associated with maintaining the publicly accessible website in addition to any initial website development costs.

ARGUMENTS:

For:

Proponents of these bills argue that greater government transparency will enable taxpayers to rebuild their trust in government. They say that greater access to information about personnel costs and government contracts will help taxpayers know both how effectively and how efficiently their taxes are spent. Proponents also argue that greater transparency in government decision-making helps to prevent extortion, fraud and abuse. They point to the excessive compensation levels and wasteful severance payout policy implemented in Wayne County, without the approval of the county commissioners. (See ***Background Information.***) Proponents say these bills could prevent these kinds of unwise and wasteful decisions in the future, giving taxpayers more information and oversight.

Against:

Opponents of the bills say while they generally favor greater government transparency, these bills constitute an unfunded state mandate for local governments. They argue that if the state supports greater citizen access to data and documents at all levels of local government (including schools, community colleges, universities, cities, villages, townships, and counties), then the state should pay to give these public entities the technology to make the data retrieval and display possible.

Some opponents also note that these bills were introduced in response to the alleged excessive and wasteful personnel practices in Wayne County. These opponents say that those high salaries and self-serving practices are not found in any of Michigan's other 82 county governments.

POSITIONS:

The Michigan Association of School Boards supports the bills as amended. (3-6-12)

The Michigan Campaign Finance Network supports House Bill 5274. (3-6-12)

The Michigan Employees Retirement System opposes the bills. (3-6-12)

The Michigan Municipal League opposes the bills. (2-14-12)

The Michigan Association of Counties expressed concerns that House Bill 5274 is an unfunded mandate. (2-14-12)

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■ 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.