

Legislative Analysis



STATE EMPLOYMENT CONTRACT REGULATION ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4591 (H-3) as reported from committee

Sponsor: Rep. John R. Roth

Committee: Oversight

Complete to 4-29-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4591 would create a new act, the State Employment Contract Regulation Act, which would regulate certain provisions in an employment contract with a state employee or state officer, limit the amount of severance pay that may be paid to a state employee or state officer, and require disclosure or publication of certain public employment contracts.

State employees

The bill would prohibit the state from doing either of the following, subject to the exception described below:

- Entering into an employment contract with a *state employee* that does any of the following:
 - Provides for *severance pay* in an amount greater than that equal to 12 weeks of the state employee's normal wages.
 - Prohibits the state employee from disclosing any of the following:
 - Factual information about an alleged violation of law, including discrimination and sexual harassment, in his or her workplace.
 - The existence of the employment contract.
 - The full text, or any portion, of the employment contract.
 - Does not state that the employment contract represents the complete and exclusive agreement between the parties to the contract.
- Paying to a state employee severance pay in an amount greater than that equal to 12 weeks of the employee's normal wages.

Severance pay would mean compensation that is payable or paid upon or after the termination of employment and is in addition to wages or benefits earned and generally applicable retirement benefits.

State employee would mean an individual employed in the executive or legislative branch of state government. The term would not include an employee in the state classified civil service.

Exception

If it is determined that severance pay in an amount greater than that equal to 12 weeks of the state employee's normal wages is necessary to serve the best interests of the state based on the risk of litigation and the need to minimize the expenditure of public funds, the state could enter into an employment contract that provides for severance pay in that greater

amount, and pay the severance pay under that contract, as long as the employment contract releases, to the extent allowed by law, all claims the employee may have against the state.

The attorney general would make the determination described above for a state employee in the executive branch. For a state employee in the legislative branch, the determination would be made by the legal counsel for the public body that employs the state employee.

State officers

The bill would also prohibit the state from doing any of the following, subject to the exception described below:

- Entering into an employment contract with a *state officer* that does any of the following:
 - Provides severance pay to the state officer.
 - Prohibits the state officer from disclosing any of the following:
 - Factual information about an alleged violation of law, including discrimination and sexual harassment, in his or her workplace.
 - The existence of the employment contract.
 - The full text, or any portion, of the employment contract.
 - Does not state that the employment contract represents the complete and exclusive agreement between the parties to the contract.
- Paying severance pay to a state officer.
- Entering into a nondisclosure or confidentiality agreement with a state officer regarding the performance of his or her official duties, unless confidentiality is required by law.

State officer would mean an individual who is elected or appointed to an office created by law in the executive or legislative branch of state government.

Exception

If it is determined that severance pay is necessary to serve the best interests of the state based on the risk of litigation and the need to minimize the expenditure of public funds, the state could enter into an employment contract with a state officer that provides for severance pay, and pay severance pay under that contract, as long as the employment contract releases, to the extent allowed by law, all claims the state officer may have against the state.

The attorney general would make the determination described above for a state officer in the executive branch. For a state officer in the legislative branch, the determination would be made by the legal counsel for the public body that employs the state officer.

In the case of such a determination, within three days after the employment contract is entered into and to the extent allowed by law, the public body in which the public officer serves would have to submit by electronic means the full text of the state officer's employment contract to the speaker and minority leader of the House of Representatives and the Senate majority and minority leaders.

Publication of certain state employment contracts

The bill would provide that if the state enters into an employment contract with a state employee or state officer that provides for severance pay in an amount equal to or greater than six weeks of the state employee's or officer's normal wages, the public body that employs the state employee or in which the state officer serves must make the full text of the employment contract available to the public on the public body's website within 28 days after the employment contract is entered into and to the extent allowed by law.

Applicability of the act

The State Employment Contract Regulation Act would apply to an employment contract entered into, amended, extended, or renewed on or after the date it takes effect.

FISCAL IMPACT:

House Bill 4591 likely would reduce state costs by an indeterminate amount. Generally, the bill would cap the costs associated with severance pay agreements for state employees and state officers unless the severance pay agreement was shown to reduce the risk of litigation and minimize the expenditure of public funds. However, without a record of past severance pay agreements, or knowledge of future severance pay agreements, an estimate of reduced costs is not possible.

The Department of the Attorney General would incur marginal administrative expenses related to determining whether providing severance pay to a state officer or to a state employee in excess of 12 weeks of that employee's normal wages would be in the best interest of the state, as described by the bill. Administrative expenses would correspond to the amount of personnel hours spent on these determinations and would likely be supported through ongoing appropriations to the department. If the workload requires additional personnel resources, the annual cost of one attorney FTE position is approximately \$200,000.

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Ben Gielczyk
Michael Cnossen

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.