



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET  
LANSING

JOHN E. NIXON, CPA  
DIRECTOR

September 19, 2012

**MEMORANDUM**

TO: Senator Mark Jansen and members of the Reforms, Restructuring and Reinventing Committee

FROM: Christopher Harkins  
Legislative Liaison

SUBJECT: HB 5196 and HB 5274 (Rep. McMillin)

---

The Department of Technology, Management and Budget has identified some concerns regarding the bills HB 5196 (H-1) and HB 5274 (H-3) as they were passed by the House and wanted to ensure that such concerns were properly shared with committee members. The following is a list of those issues as well as suggested changes.

**Overall Concerns/Questions:**

The Department has two major overarching concerns with these bills. The first relates to the risk of the State being sued under the Headlee law for requiring data from public entities without the funding to pay for the collection, usage and maintenance of those data. Internal DTMB estimates suggest that compliance for the Department will cost at least \$150,000 annually to oversee and maintain proper information. If a lawsuit regarding cost to other units of government is successfully brought against the state, there could be significant budget implications. A recent example of this risk involves the State of Michigan being sued (CEPI) by the public schools for almost \$175M spread over multiple years.

The second overarching concern with the bills relates to outstanding questions of enforcement. The bills require compliance with posting/submitting information but no mechanism is included to verify compliance, nor is an enforcement agent mentioned. DTMB estimates that over 7,000 entities may fall under the purview of the bills and without an enforcement mechanism it will be difficult to ensure that compliance with the statute is met.

**HB 5196 (H-1)**

**Concerns/Questions:**

- Definition of "public employee": Included in that definition is the phrase "or any other public entity of this state or of a political subdivision of this state." (Page 2,

line 5-6). The concern with such language is that it does not allow for a finite list of entities which are to comply with this transparency requirement. There are public entities which are not enumerated and may or may not be considered to fall under this definition such as libraries or public transportation providers. Without a clear definition it may be difficult to ensure that intended entities report their documents to the Department.

- Recommendation: In an effort to ensure a finite list, it is recommended that the referenced language be removed and on page 2, line 5 a period be placed after 1963.
- Definition of "severance payment": The Department believes it may be best to clarify this definition to address concerns related to privacy and issues of standard compensation. The posting of some severance agreements could present legal complications for the State if they are posted publicly due to the subsequent implications on other legal actions such as divorces, bankruptcies, and legal agreements that those payouts not be disclosed. Additionally, while the definition does exempt retirement plans that are generally applicable, the language does not address annual sick leave payments which are separate from retirement plan payments.
  - Recommendations:
    - Page 2, line 9 after "terminates", insert "unless otherwise prohibited".
    - Page 2, line 10 after the second "a" insert "compensation or".

### **HB 5274 (H-3)**

#### **Concerns/Questions:**

- Definition of "public entity": This definition is the same as that of "public employee" in HB 5196. The same concern and recommendation is suggested for this bill.
- Sec. 3(c): This new section was included upon House passage and requires motor vehicle leasing information. The question related to this section is: what is the definition of a motor vehicle?

Please contact me with any question you may have regarding these comments.