

Legislative Analysis



FINANCIAL DISCLOSURE ACT

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House Bill 4285 as passed by the House
Sponsor: Rep. Steve Tobocman
Committee: Ethics and Elections

Revised First Analysis (8-6-07)

BRIEF SUMMARY: The bill, by creating a new Financial Disclosure Act to take effect May 2, 2008, would require candidates for state and some local elective offices, and also some state officials, to file financial disclosure reports by May 1 with the Bureau of Elections in the Department of State. In addition, the governor would be required to file copies of federal tax returns for the previous three years with the bureau by June 15, rather than with the secretary of state which is currently the case under the law.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

When citizens are elected or appointed to high office in the federal government they must file financial disclosure statements to make public their personal finances. The point of disclosing personal finances to the public is to establish whether a personal economic interest is significant enough to cause a conflict of interest when the officials make decisions that fund programs designed to mitigate public problems. These reports allow citizens, and the elected officials themselves, to know when they should refrain from voting on legislation or selecting a contractor because it would enhance their own interests.

According to the National Conference of State Legislatures, Michigan is one of only three states—joined by Vermont and Idaho—that does not require, in state statute, its state-level elected and appointed officials to file financial disclosure statements. (See [Background Information](#) below.)

Legislation has been introduced to require state candidates and officials to disclose their personal finances, holding them to the same standards as their counterparts at the federal level of government.

THE CONTENT OF THE BILL:

The bill would create a new act to be known as the Financial Disclosure Act. The bill would require candidates for state and some local elective offices, and also some state officials, to file financial disclosure reports with the Bureau of Elections in the Department of State.

Under the bill, "candidate for state or local office" means a candidate for the office of governor, lieutenant governor, secretary of state, attorney general, state senator, state representative, member of the State Board of Education, justice of the Supreme Court of a judge of a court of record, the regents, trustees, and board of governors of the University of Michigan, Michigan State University, and Wayne State University, respectively, and an elective public office for which the compensation is greater than two times the statewide median gross income as determined under section 143(f) of the Internal Revenue Code. [Note: In 2006, the most recent year for which information is available, the per capita personal income in Michigan was \$33,847. Double that amount would equal \$67,694. Source: U.S. Bureau of Economic analysis and Bureau of the Census]

"State or local official" is defined to mean the holders of the offices listed above, as well as the heads of the principal departments and the members of boards or commission heading principal departments, as provided in Section 3 of Article V of the State Constitution, if the offices are filled by appointment.

The bill would require any individual who was a state or local official at any time during a calendar year, to file with the Bureau of Elections by May 1, a report that made public the following information:

- The full name, address, occupation of, and the state office held or sought by, the individual filing the report.
- The name of each member of the immediate family.
- The name and address of each employer.
- Both of the following, as applicable: (1) the source, type, and amount or value of earned income received during the preceding calendar year, if the total equaled \$1,000 or more during the calendar year; and (2) the source and type of earned income received by the individual's spouse, if that source equaled \$1,000 or more during the year ("earned income" is defined to mean salaries, tips, and other employee compensation, and net earnings from self-employment for the taxable year).
- The source, type, and amount or value of all other income not reported above, earned by both the state official and the state official's spouse, if it equaled \$1,000 or more ("income" is defined to mean money or any thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense that is considered under the internal revenue code).
- The identity and value of each asset held during the preceding calendar year by the individual filing or a member of the immediate family (defined as a child residing in an individual's household, a spouse of an individual, or a person claimed by the

individual or the spouse as a dependent), including real or personal property or cash, if the asset had a fair market value of \$10,000 or more.

- The identity and value of each liability owed during the preceding calendar year by the individual or an immediate family member if the amount of the liability was \$10,000 or more. (However, this would not apply to a loan secured by the personal residence, or by a personal motor vehicle, household furniture, or appliance, if the loan did not exceed the purchase price of the item that secured the liability).
- A brief description and value of a purchase, sale, or exchange of real property, other than real property used solely as a personal residence by the individual filing the report and his or her immediate family, or of stocks, bonds, commodities, futures, or other forms of securities during the preceding calendar year by the individual or a member of the immediate family, if the value was \$1,000 or more. (However, this would not require a description if these items were part of a mutual fund, and that mutual fund was otherwise reported under this act).
- The identity of all positions held during the preceding year by the individual filing the report, as an officer, director, member, trustee, partner, proprietor, representative, employee, or consultant of a corporation, limited liability company, limited partnership, partnership, or other business enterprise; of a nonprofit organization; of a labor organization; or of an educational or other institution other than this state. (However, an individual who is required to have a license to practice an occupation or profession is not required to identify a position held as a consultant of a corporation unless the corporation is a publicly held corporation that has shares that are listed or traded over the counter or on an organized exchange, or has gross revenues over \$4,000,000. Further, this provision would not require the reporting of a position held in a religious, social, fraternal, or political entity, or of a position solely of an honorary nature).
- A description (including the dates, parties, and terms) of any agreement or arrangement the individual had with respect to future employment, a leave of absence during the term of office, continuation of payments by a former employer, or continuation in an employee benefit plan.

The bill specifies that an amount or value that is disclosed be reported by categories, and describes them. The bill also describes the kinds of information that need *not* be disclosed; these would include, among other things, information required to be reported under the Michigan Campaign Finance Act, and items that concern a spouse who is living separate and apart from the state officer.

Under the bill, the Bureau of Elections would be required to do all of the following:

- Prepare and make available appropriate forms and instructions for the reports.
- Receive reports.

- Make the report available without charge to the public on the Internet not later than the end of the business day the report is received, and within three days, make the report available for inspection and reproduction.
- Promulgate rules and issue declaratory rulings to implement the act under the Administrative Procedure Act.
- Conduct investigations as necessary to determine whether there is reason to believe that a violation of the act occurred.

The bill also specifies that a citizen could file a complaint with the Bureau of Elections alleging a violation of the act. If the secretary of state determined there was reason to believe a violation had occurred, the results of the investigation would be forwarded to the attorney general for enforcement. If the attorney general were the subject of the complaint, and the Bureau of Elections, upon investigation, determined that there was reason to believe the attorney general had violated the act, then the bureau of elections would be required to forward the results of the investigation to the prosecuting attorney for Ingham county for enforcement.

An individual who failed to file a report would be required to pay a late filing fee not to exceed \$1,000, determined as follows: \$25 for each of the first three business days that the report remained un-filed; \$50 for each of the next seven business days; and \$100 for each business day after the first 10 days. An individual who knowingly filed an incomplete report would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both. The same penalty would apply if an individual failed to file two reports for more than 30 days. The bill specifies that a default in the payment of a fee or civil fine due or ordered under the act, or an installment of the fee or fine, could be remedied by any means available under the Revised Judicature Act.

Currently under the law, an individual who is a candidate for the office of governor must file with the secretary of state, on June 15 of the year in which the election for governor is held, a copy of his or her federal tax returns for the three preceding calendar years. Under House Bill 4285, the candidates for governor would file their federal tax returns with the Bureau of Elections.

BACKGROUND INFORMATION:

Judges' Financial Reporting. Although they are not required to do so by state statute, Michigan's judges file an annual financial report with the State Court Administrative Office, as required under the Michigan Code of Judicial Conduct. Several of the seven canons in the Code of Judicial Conduct—most especially Canon 6C—govern the reporting of compensation for services, campaign contributions, and gifts having a value exceeding \$100. Canon 6C, Financial Reports, Michigan Code of Judicial Conduct, effective September 1, 1995, provides: "A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and

the amount of compensation so received. The judge's report shall be made at least annually and shall be filed as a public document in the office of the State Court Administrator, or other office designated by law." To review a copy of the complete six-page Code of Judicial Conduct, visit <http://www.courts.michigan.gov/mji/wbt/ethics/mcjc.htm>

NCSL Center for Ethics in Government. The National Conference of State Legislatures (NCSL) headquartered in both Denver, Colorado and Washington, D.C., includes a Center for Ethics in Government. Contact the Center by visiting <http://www.ncsl.org>

To learn more about the personal finance reporting requirements for legislators in 47 of the 50 states that have reporting requirements, visit the NCSL website.

A chart entitled "Ethics: Personal Financial Disclosure for State Legislators: Income Requirements," allows comparisons among the states, at http://www.ncsl.org/programs/ethics/fd_income_requirements.htm

ARGUMENTS:

For:

Proponents of financial disclosure for public officials note that conflict of interest issues highlight a tension that has been at the heart of citizen legislatures since their founding: elected officials and high-level state executives appointed by governors leave (or in some instances continue part-time) real-world jobs, in order to serve for a short while in state capitals, often bringing them into close contact with issues that affect their personal interests and financial holdings. Consequently, as the director of the Center for Ethics in Government of the National Conference of State Legislatures points out, having a conflict of interest is not a bad thing. Indeed, it is to be expected in a citizen legislature where people serve for a while, then return to their jobs. However, proponents of financial disclosure warn that it's what an elected or appointed officeholder *does* with a conflict of interest that really matters.

What must be done to avoid any potential conflict arising between the public's best interest and an individual official's best interest (or the best interest of a class or category to which he or she belongs) is to abstain from voting on all issues that could increase the individual's wealth or financial holdings. For example, in 64 of 99 state legislatures, lawmakers must abstain from voting in conflict situations, while in 21 others, legislators must vote, but have the option of asking fellow lawmakers to let them abstain.

Most, but not all, of the legislatures that require lawmakers to abstain from voting in order to prevent any personal financial gain also require those state officials to disclose their financial holdings to the public. In that way, citizens can scrutinize the decisions elected and appointed officials make, in order to assure they are not enriching themselves at the expense of the taxpayers.

Proponents note that Michigan is one of only three states that do not require financial disclosure for public officials. This bill would require financial disclosure, and it should be enacted into law.

Against:

Generally, opponents of financial disclosure argue that ethics bills should not become too onerous. Given the ever-present conflicts of interest among short-term citizen-legislators, the rules and regulations that govern their terms of office should not become so burdensome that those making laws cannot also make a living.

Opponents of this bill argue that the requirements to disclose financial holdings are overly broad and an unfair invasion of privacy that will dissuade well-qualified citizens from seeking public office. They note that the bill's provisions include disclosure of financial holdings for the spouses and dependent children of state and some local elected officials, and also some appointed state officials. They argue that requiring financial disclosure for dependent children is unfair to those children, and extends the state's regulatory reach much too far.

Some critics have noted that judges already file annual financial reports with the State Court Administrative Office. Reports must be filed each year before April 15, and must record a judge's compensation for services, judicial campaign contributions, and gifts over \$100. The financial reporting requirement is a part of the Michigan Code of Judicial Conduct, not state statute. They also note that judges sometimes are threatened, harassed, and sued by sentenced defendants and disgruntled parties, in retaliation for their treatment under the law. Judges face more risk than other officials from the divulging of personal information.

POSITIONS:

The Michigan Campaign Finance Network supports the bill. (3-14-07)

The Secretary of State is neutral on the bill. (3-14-07)

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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.