

# Legislative Analysis

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## FINANCIAL DISCLOSURE ACT

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**House Bill 4381 as passed by the House**  
**Sponsor: Rep. Kate Ebli**  
**Committee: Ethics and Elections**

### Second Analysis (3-26-09)

**BRIEF SUMMARY:** The bill would require candidates for, and holders of, state and some local elective offices, and also some state appointed officials, to file financial disclosure reports annually with the Bureau of Elections in the Department of State. Information that identified the precise location of real or personal property could be redacted, if its release to the public jeopardized the personal safety of the official. 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.

**FISCAL IMPACT:** House Bill 4381 would increase costs to the Secretary of State by an indeterminate amount. In addition, the bill provides that a violation is a misdemeanor punishable by imprisonment or a fine of up to \$1,000. If fines are assessed, the state may receive additional revenue, but the amount of any increased revenue is indeterminate. See *FISCAL INFORMATION* below.

### **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—along with Vermont and Idaho—that do not require, in state statute, state-level elected and appointed officials to file financial disclosure statements. (See *BACKGROUND INFORMATION*.)

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, and holders of, state and some local elective offices, and

also some appointed state officials, to file financial disclosure reports with the Bureau of Elections in the Department of State. If enacted, the bill would go into effect May 2, 2010.

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, and the regents, trustees, and board of governors of the University of Michigan, Michigan State University, and Wayne State University.

The term also applies to an elective public office for which the compensation is greater than 1.5 times the "statewide median gross income" as determined under Section 143(f) of the Internal Revenue Code, excluding a judge of a court of record. [This appears to refer to a family income figure produced each year by the federal Department of Housing and Urban Development (HUD) and used in housing programs in Michigan by the Michigan State Housing Development Authority (MSHDA). This figure for 2009 is understood to be \$43,520 for a family of one. That would make the bill apply to unspecified elected officials when the compensation for the office was greater than \$65,280.]

"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.

### **Required filing**

With the exception of judges of courts of record, 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 principal residence by the person filing the report, 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 of each purchase, sale, or exchange, 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 million. 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.

Finally, the bill specifies that the information required to be reported need not be identified to a particular member of the immediate family of the individual filing the report.

### **Judges of courts of record**

For judges of courts of record, the bill requires they report the date, place, and nature of any activity for which they received compensation, the name of the payor, and the amount of compensation received. A judge's report must be made annually and be filed as a public document in the office of the court administrator.

### **Duties of Bureau of Elections**

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.
- Redact information that could identify the precise location of real or personal property before making the report available to the public, if the information provider so requested.
- Promulgate rules and issue declaratory rulings to implement the act under the Administrative Procedure Act (including rules to provide for the redaction of information in a report before release to the public, if the information could jeopardize the personal safety of a person identified in the report).
- Conduct investigations as necessary to determine whether there is reason to believe that a violation of the act occurred.

### **Citizen complaints**

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, the Bureau of Elections would be required to forward the results of the investigation to the prosecuting attorney for Ingham County for enforcement.

### **Penalties**

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 unfiled; \$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 due or ordered under the act, or an installment of the fee, could be remedied by any means available under the Revised Judicature Act.

### **Governor's tax returns**

Under the bill, an individual who is a candidate for the office of governor must file a copy of his or her federal tax returns for the three preceding calendar years with the Bureau of Elections on June 15 of the year in which the election for governor is held. (Some gubernatorial candidates already release their tax returns to the public, but it is not now a requirement under state law.)

### ***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) based 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](http://www.ncsl.org/programs/ethics/fd_income_requirements.htm)

### ***FISCAL INFORMATION:***

House Bill 4381 would increase the costs of the Secretary of State by an indeterminate amount.

The bill would increase costs of the Secretary of State due to additional administrative workload from the bill's requirements that the Bureau of Elections do all the following: prepare forms and instructions for financial disclosure reports, receive reports, make

reports available on the internet on the day they are received, promulgate any necessary rules, and conduct investigations.

While the bill allows the Secretary of State to retain any late filing fees, it is not currently possible to determine how much revenue might be collected from these fees. The bill establishes the following fee schedule:

| <b>Late Filing Fee</b>            |                             |
|-----------------------------------|-----------------------------|
| \$25 / day                        | First 3 business days       |
| \$50 / day                        | Next 7 business days        |
| \$100 / day until report is filed | After first 10 business day |

In addition, the bill provides that a violation is a misdemeanor punishable by imprisonment or a fine of up to \$1,000. If fines are assessed, the state may receive additional revenue, but the amount of any increased revenue is indeterminate.

***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.

***Against:***

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.

***Response:***

In its amended form, the bill would allow the judges of courts of record to file their financial disclosure reports with the State Court Administrator's Office. However, candidates for the state Supreme Court, and Supreme Court justices would be required to make full financial disclosure under the bill. To offer a degree of protection, the bill does allow all candidates and officials to redact information that could identify the precise location of real or personal property before making the contents of a report available to the public.

***Against:***

Some who voted against the bill argued that the bill promoted incumbency and the political class under the guise of promoting transparency. Among their objections to this bill were the following: (1) *Like many campaign finance laws, the bill disproportionately harms non-incumbent candidates who have few resources.* The level of precise documentation required would be burdensome and complicated, giving increased advantage to candidates, particularly incumbents, who have lawyers, accountants, and advisors to spare. Consequently, independent, third-party, non-establishment, low-income, and low-resource candidates will be further discouraged from entering a race. (2) *The bill does little to prevent actual malfeasance.* Any candidate with a conflict of interest or who intentionally engages in inappropriate activity may conceal that conflict or activity simply by not disclosing it. Consequently, this bill will serve primarily to produce and then punish honest mistakes. (3) *Because honest mistakes in trying to fulfill the bill's requirements are inevitable, this bill also opens the door to arbitrary enforcement.* Opponents are reluctant to give the government greater latitude to determine which candidates are acceptable. (4) *Judges are inexplicably exempt* from many of the bill's requirements, but impropriety on the part of a judge holds much greater

potential for harm than impropriety on the part of a legislator. A legislator in Michigan is one of 148 to decide on a matter before the Legislature, whereas a judge is often the lone decision maker in a matter before the court.

***Against:***

Some proponents of financial disclosure argue that this bill falls far short of its goal: full and complete disclosure. For example, a veteran investigative reporter who worked for CNN to uncover political corruption in states outside Michigan testified that all high level, decision-making civil servants who have an authority to influence policy should be required to disclose their financial interests. He also said that full disclosure requires public access to *all* documents and information, and that no information should ever be redacted.

***POSITIONS:***

The Michigan Campaign Finance Network supports the bill. (2-25-09)

Common Cause supports the bill. (3-4-09)

The Secretary of State is neutral on the bill. (2-25-09)

The Michigan Township Association is neutral on the bill. (3-4-09)

The Michigan Judges Association opposes the bill. (3-4-09)

The Michigan Probate Judges Association opposes the bill. (3-4-09)

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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.