

FINANCIAL DISCLOSURE ACT

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

House Bill 4381

Sponsor: Rep. Kate Ebli

Committee: Ethics and Elections

Complete to 3-3-09

A REVISED SUMMARY OF HOUSE BILL 4381 AS INTRODUCED 2-19-09

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 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 or a judge of a court of record, 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 two times the "statewide median gross income" as determined under Section 143(f) of the Internal Revenue Code. [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 \$87,040.]

"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 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.

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, 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 due or ordered under the act, or an installment of the fee, 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 4381, the candidates for governor would file their federal tax returns with the Bureau of Elections.

FISCAL IMPACT:

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:

Late Filing Fee	
\$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.

Legislative Analyst: J. Hunault
Fiscal Analyst: Viola Bay Wild

■ 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.