

HOUSE BILL No. 5982

April 25, 2006, Introduced by Reps. Kolb, Tobocman, Lipsey, Anderson, Hopgood, Alma Smith, Byrnes, Angerer, Donigan, Cushingberry, Vagnozzi, Polidori, Gonzales, Wojno and Bieda and referred to the Committee on House Oversight, Elections, and Ethics.

A bill to establish standards of ethical conduct for members of the state legislature; to impose certain conditions on members of the state legislature, former members of the state legislature, and associated businesses to enhance accountability; to require public disclosure by members of the state legislature of certain transactions and to require the filing of a transactional disclosure statement; to establish a legislative ethics committee and prescribe its powers and duties; and to prescribe sanctions and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 1. DEFINITIONS; GENERAL PROVISIONS

Sec. 101. This act shall be known and may be cited as the "legislative ethics act".

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1 Sec. 102. This act is intended to implement section 10 of
2 article IV of the state constitution of 1963. It is the intent of
3 the legislature that this act shall be taken into consideration in
4 determining the construction and effect of section 10 of article IV
5 of the state constitution of 1963.

6 Sec. 103. For the purposes of this act:

7 (a) "Anything of value" means a tangible or intangible item
8 that has economic value and that could reasonably be considered to
9 be an advantage or of worth, use, or service to the person upon
10 whom it is conferred. Anything of value does not include any of the
11 following:

12 (i) An unsolicited token or award with a value of less than
13 \$150.00.

14 (ii) An unsolicited advertising item with a value of less than
15 \$50.00.

16 (iii) An unsolicited publication with a market value of less
17 than \$50.00 on an annual basis.

18 (iv) A discount afforded to the general public or a specified
19 group or occupation under normal business conditions. However, the
20 discount may not be based on the fact of public service unless it
21 is a discount program approved by the committee.

22 (v) A contribution to a bona fide charity, made in response to
23 a direct solicitation from a member of the state legislature or a
24 person acting at his or her direction.

25 (vi) An unsolicited benefit conferred by a person if the
26 economic value totals less than \$100.00 per calendar year and if
27 there is no express or implied understanding or agreement that a

1 vote, official action, or decision of a member of the state
2 legislature will be influenced.

3 (vii) A tangible or intangible item for a legitimate
4 educational purpose or benefit.

5 (viii) A campaign contribution that is made and reported under
6 the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to
7 169.282.

8 (ix) Compensation or reimbursement from the state.

9 (b) "Confidential information" means information made
10 confidential by law or information that is conveyed or accepted
11 with the understanding that the information will be used only for
12 official purposes.

13 (c) "Conflict of interest" means a close economic association
14 or personal relationship between a member of the state legislature
15 and a person that is likely to be substantially affected by an
16 official action or decision of a member of the state legislature
17 that a reasonable person would believe conflicts with the public
18 duty or obligation of the member of the state legislature to
19 exercise objective independent judgment or that a reasonable person
20 would believe creates the appearance that the person may have undue
21 access to confidential information or may otherwise receive favored
22 treatment regarding a public action.

23 (d) "Immediate family" means a child residing in the
24 individual's household, a spouse of the individual, or a person
25 claimed by the individual or the individual's spouse as a dependent
26 for federal income tax purposes.

27 (e) "Legislative ethics committee" or "committee" means the

1 legislative ethics committee established under section 401, except
2 where the context clearly requires a different definition.

3 (f) "Outside employer or business" means any of the following:

4 (i) An activity, other than service to the state legislature,
5 if the member of the state legislature receives compensation for
6 services rendered or goods sold or produced.

7 (ii) An entity, other than the state legislature, if the member
8 of the state legislature is a member, official, director, or
9 employee of the entity and he or she receives compensation for
10 services rendered or goods sold or produced by the entity.
11 Compensation does not include reimbursement for necessary expenses,
12 including travel expenses.

13 (iii) An entity in which the member of the state legislature has
14 an ownership interest, except a corporation in which the member of
15 the state legislature owns less than 10% of the outstanding stock.

16 (g) "Person" means an individual, sole proprietorship,
17 partnership, limited partnership, limited liability company,
18 corporation, association, or other legal entity.

19 (h) "Transactional disclosure statement" means a report
20 required to be filed by a member of the state legislature under
21 chapter 2.

22 CHAPTER 2. CODE OF ETHICS.

23 Sec. 201. Except as otherwise provided by law, a member of the
24 state legislature shall not use his or her public position or take
25 or fail to take action to obtain anything of value for himself or
26 herself or another person in violation of this act.

27 Sec. 203. A member of the state legislature shall not solicit

1 or accept anything of value in connection with his or her official
2 responsibilities.

3 Sec. 205. A member of the state legislature shall not
4 represent for compensation a person in a matter that the person has
5 before the executive or legislative branch of state government.

6 Sec. 207. (1) A member of the state legislature or a former
7 member of the state legislature shall not use or disclose
8 confidential information to further his or her own or another
9 person's interests, except to the extent permitted by law.

10 (2) A member of the state legislature shall not engage in a
11 business transaction in which the member of the state legislature
12 may profit from his or her official position or authority or
13 benefit financially from confidential information that the member
14 of the state legislature has obtained or may obtain by reason of
15 that position or authority.

16 Sec. 209. (1) A member of the state legislature or an outside
17 employer or business with which the member of the state legislature
18 is associated shall not enter into a contract valued at \$1,500.00
19 or more with this state or a political subdivision of this state
20 unless the contract is awarded through an open and public
21 competitive process that includes prior public notice and
22 subsequent availability for public inspection of the proposals
23 considered and the contract awarded.

24 (2) A member of the state legislature who has or later
25 acquires an interest in an actual or proposed contract with this
26 state or a political subdivision of this state shall publicly
27 disclose the nature and extent of that interest as required by this

1 chapter.

2 (3) A contract or agreement that is executed in violation of
3 this section is voidable only if the person who entered into the
4 contract or took assignment of the contract had actual knowledge of
5 the prohibited conflict. If a person is other than an individual,
6 the actual knowledge must be that of an individual or body finally
7 approving the contract. A contract involving a prohibited conflict
8 of interest under this act is voidable only by a decree of a court
9 of proper jurisdiction. A decree of a court of proper jurisdiction
10 may provide for the reimbursement for the reasonable value of
11 money, goods, material, labor, or services furnished under the
12 contract, to the extent that the governmental entity has benefited.
13 This subsection does not prohibit the parties from reaching a
14 settlement outside of court.

15 Sec. 211. (1) A member of the state legislature shall abstain
16 from chairing a meeting of a legislative committee or subcommittee
17 or acting formally or informally on a matter before the state
18 legislature if he or she knows that chairing the meeting, acting on
19 the matter, or failing to act on the matter may result in a
20 conflict of interest or a violation of this chapter.

21 (2) If a member of the state legislature is required to
22 abstain from chairing a meeting or acting on a matter, he or she
23 shall file a transactional disclosure statement with the
24 legislative ethics committee within 10 days after the meeting.

25 (3) A transactional disclosure statement shall include all of
26 the information related to the conflict of interest and the reason
27 for the member of the state legislature's abstaining from chairing

1 a meeting or acting under subsection (1).

2 Sec. 213. A member of the state legislature shall not
3 represent his or her personal opinion as that of the house of
4 representatives, the senate, the legislature, or this state. This
5 section does not prohibit a member of the state legislature from
6 expressing his or her personal opinion on any matter.

7 Sec. 215. A member of the state legislature shall use
8 personnel resources, property, and funds under the member's
9 official care and control judiciously and solely in accordance with
10 prescribed constitutional, statutory, and regulatory procedures and
11 not for personal gain or benefit.

12 Sec. 217. A member of the state legislature shall not engage
13 in or accept employment or render services for a private or public
14 interest if that employment or service is incompatible or in
15 conflict with the discharge of the member's official duties or if
16 that employment may tend to impair his or her independence of
17 judgment or action in the performance of official duties.

18 Sec. 219. (1) A person shall not offer or give anything of
19 value in connection with the official responsibilities of a member
20 of the state legislature to any of the following:

21 (a) A member of the state legislature.

22 (b) An immediate family member of the member of the state
23 legislature.

24 (c) An outside employer or business with which the member of
25 the state legislature is associated.

26 (d) A customer or client of the member of the state
27 legislature.

1 (2) A person shall not induce or attempt to induce a member of
2 the state legislature to violate any of the provisions of this
3 chapter.

4 (3) Nothing in this section shall be construed to prohibit a
5 person from receiving a service or benefit, or from using a
6 facility, that is generally available to the public, if the person
7 does so in the same manner or degree that is available to the
8 general public.

9 (4) Under this section, a corporation, partnership, limited
10 liability company, or other entity is not vicariously liable for
11 the actions of an employee unless the employee acted in the
12 execution of company policy or custom.

13 Sec. 221. This chapter does not prohibit or require conduct
14 specifically authorized by statute, rule, regulation, the state
15 constitution of 1963, or the constitution of the United States.

16 CHAPTER 3. SANCTIONS.

17 Sec. 301. The committee shall initiate appropriate proceedings
18 and may recommend that the senate or the house of representatives
19 take appropriate disciplinary action concerning a member of the
20 state legislature who violates this act.

21 Sec. 303. A member of the state legislature who has knowledge
22 that another member of the state legislature has violated chapter 2
23 may report the existence of the violation to the committee.

24 Sec. 305. (1) A member of the state legislature who violates
25 this act is subject to a civil fine of not more than \$1,000.00 for
26 each violation, in addition to any other sanction provided in this
27 act or other law of this state. The civil fine shall be imposed by

1 the senate for a member of the senate or by the house of
2 representatives for a member of the house of representatives.

3 (2) A person other than a member of the state legislature who
4 violates this act is subject to a civil fine of not more than
5 \$1,000.00 for each violation, in addition to any other sanction
6 provided in this act. The civil fine shall be imposed by a court of
7 proper jurisdiction.

8 (3) A civil fine recovered under this section shall be
9 deposited in the general fund of this state.

10 Sec. 307. A person who violates this act is liable for damages
11 to this state for losses or increased costs incurred by this state
12 as a result of the violation. Damages may be imposed by a court of
13 proper jurisdiction in addition to any other sanction contained in
14 another provision of law.

15 Sec. 309. A person required under chapter 2 to file a
16 transactional disclosure statement who willfully files a false or
17 incomplete transactional disclosure statement or who willfully
18 fails to file a transactional disclosure statement within the time
19 prescribed is guilty of a misdemeanor punishable by imprisonment
20 for not more than 90 days or a fine of not more than \$1,000.00, or
21 both.

22 CHAPTER 4. LEGISLATIVE ETHICS COMMITTEE.

23 Sec. 401. (1) The legislative ethics committee is established
24 within the legislative council and shall consist of 4 members of
25 the senate and 4 members of the house of representatives. The
26 senate majority leader shall appoint 2 members of the senate to
27 serve as members of the committee during the senate majority

1 leader's tenure. The senate minority leader of the largest minority
2 caucus shall appoint 2 members of the senate to serve as members of
3 the committee during the senate minority leader's tenure. The
4 speaker of the house of representatives shall appoint 2 members of
5 the house of representatives to serve as members of the committee
6 during the speaker's tenure. The house minority leader representing
7 the largest minority caucus in the house shall appoint 2 members of
8 the house of representatives to serve as members of the committee
9 during the house minority leader's tenure. The committee shall
10 select a member of the house of representatives to serve as
11 chairperson of the committee during odd-numbered years and a member
12 of the senate to serve as chairperson during even-numbered years.

13 (2) The committee may establish its rules and procedures
14 consistent with this act.

15 (3) Five members of the committee constitute a quorum for the
16 transaction of business, and the affirmative vote of 5 voting
17 members shall be necessary for any action. All votes of the
18 committee shall be by record roll call.

19 (4) The committee shall conduct business in compliance with
20 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Notice of
21 the meetings of the committee shall be made public in compliance
22 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

23 Sec. 403. (1) The committee shall do all of the following:

24 (a) Receive complaints concerning alleged violations of this
25 act from any person, inquire into the circumstances surrounding the
26 alleged violation, and make recommendations concerning individual
27 cases to the house of representatives for members of the house of

1 representatives and to the senate for members of the senate. The
2 committee shall review, index, maintain on file, and dispose of
3 complaints and shall make notifications and conduct investigations.

4 (b) Initiate investigations of practices that might affect the
5 ethical conduct of a member of the state legislature.

6 (c) Hold public hearings.

7 (d) Administer oaths or affirmations, subpoena and compel
8 attendance of witnesses, require the production of books or records
9 the committee considers relevant or material, and receive sworn or
10 unsworn testimony.

11 (e) Render, index, and maintain on file as provided under this
12 chapter advisory opinions upon request of a member of the state
13 legislature.

14 (f) Grant waivers under section 411.

15 (g) Prepare and publish nonconfidential special reports and
16 technical studies to further the purposes of this act.

17 (h) Provide training and education to members of the state
18 legislature regarding the requirements of this act.

19 (i) Prepare reports as required under this act and recommend
20 proposed changes to this act.

21 (j) Provide for public inspection of records required under
22 this act as authorized by law.

23 (k) Select provisions of this act, special reports, and
24 technical studies for reproduction and distribution under this act.

25 (l) Examine transactional disclosure statements filed under
26 section 211, the supporting records, and other documents. The
27 committee shall index and maintain on file for at least 7 years a

1 transactional disclosure statement filed under this act.

2 (2) If the committee makes a recommendation to the house of
3 representatives or the senate that affects a member of the state
4 legislature, the house of representatives for a member of the house
5 of representatives or the senate for a member of the senate shall
6 take appropriate disciplinary action against the member of the
7 state legislature.

8 (3) In any matter before the committee, if the committee
9 determines that there may have been a violation of a law of this
10 state, the committee shall forward the matter to the attorney
11 general or another appropriate law enforcement authority.

12 Sec. 405. (1) The committee may act only with respect to
13 members of the state legislature and former members of the state
14 legislature covered by this act.

15 (2) The termination of a member of the state legislature's
16 term of office does not affect the jurisdiction of the committee
17 with respect to the requirements imposed on him or her by this act.

18 Sec. 407. (1) If a majority vote of the committee determines
19 that there is reason to believe that this act was violated, the
20 committee shall initiate an investigative proceeding to determine
21 whether a violation occurred. The committee shall mail a notice of
22 the investigation and the nature of the alleged violation to a
23 person under investigation within 5 days after the decision to
24 undertake an investigation is made. Every 60 days until a final
25 determination is made, the committee shall mail to the complainant
26 and to the person under investigation notice of the action taken to
27 date by the committee along with the reasons for the action or

1 nonaction.

2 (2) Except as otherwise required by law, the committee's
3 actions and the records related to an investigation shall be
4 confidential until the committee makes a final determination under
5 this section.

6 (3) All legislative offices, legislative agencies, state
7 departments, and state agencies shall cooperate with the committee
8 when it is conducting an investigation.

9 (4) If the committee determines that this act was not
10 violated, the records and actions related to the investigation and
11 determination shall remain confidential unless the person
12 investigated requests in writing that the records and actions be
13 made public. If the committee determines that this act was
14 violated, the committee shall make a recommendation of sanctions to
15 the senate if the person investigated is a state senator or to the
16 house of representatives if the person investigated is a state
17 representative.

18 Sec. 409. (1) After a hearing providing for due process
19 procedural requirements and subject to applicable provisions of
20 law, the committee may recommend disciplinary action to the
21 appropriate chamber of the state legislature. The recommendation of
22 the committee shall be made to the chamber of the state legislature
23 authorized by law to impose or recommend sanctions for a member of
24 the state legislature.

25 (2) The committee shall conduct and complete the hearing with
26 reasonable promptness. If the committee refers the matter to the
27 senate or to the house of representatives to impose disciplinary

1 action, the committee may adjourn the matter pending determination
2 by the senate or house of representatives.

3 (3) The senate, the house of representatives, or the committee
4 on behalf of the senate or house of representatives may initiate an
5 action or special proceeding in the court of appropriate
6 jurisdiction to obtain damages under section 307.

7 Sec. 411. (1) Upon written application and upon a showing of
8 compelling need by a member of the state legislature, the committee
9 may grant the member of the state legislature a waiver of a
10 provision of this act.

11 (2) The committee may grant a waiver only at an open meeting
12 after public notice as provided in the open meetings act, 1976 PA
13 267, MCL 15.261 to 15.275. The notice shall state that a waiver is
14 being considered. A waiver shall be in writing and shall state the
15 grounds upon which it is granted. Within 10 days after granting a
16 waiver, the committee shall send a copy of the decision granting
17 the waiver to the member of the state legislature; the secretary of
18 the senate, if the member of the state legislature is a member of
19 the senate; or the clerk of the house of representatives, if the
20 member of the state legislature is a member of the house of
21 representatives. The decision shall state the name of the person
22 requesting the waiver and a general description of the
23 circumstances of the waiver. The committee shall index and maintain
24 on file all applications, decisions, and other records and
25 proceedings relating to a waiver.

26 Sec. 413. (1) Upon the written request of a member of the
27 state legislature, the committee shall render a written advisory

1 opinion regarding the interpretation or application of this act.

2 (2) The committee shall index and maintain on file all
3 advisory opinions and requests for advisory opinions.

4 (3) If an advisory opinion of the committee has not been
5 amended or revoked, it is binding on the committee in a subsequent
6 proceeding concerning the person who requested the opinion and who
7 acted in good faith, unless the person omitted or misstated a
8 material fact. The person may rely on the advisory opinion and may
9 offer the advisory opinion in the defense of a civil action brought
10 by the senate, the house of representatives, or the committee on
11 behalf of the senate or the house of representatives.

12 Sec. 415. The committee shall do both of the following:

13 (a) Make information concerning this act available to each
14 member of the state legislature, to the public, and to persons
15 interested in doing business with this state, through the secretary
16 of the senate, the clerk of the house of representatives, the
17 legislative council, and other necessary means.

18 (b) Develop educational materials and an educational program
19 to inform members of the state legislature of their duties and
20 responsibilities under this act.

21 Sec. 417. (1) The committee shall prepare and submit an annual
22 report to the majority leader of the senate, the minority leader of
23 the senate, the speaker of the house of representatives, and the
24 minority leader of the house of representatives summarizing the
25 activities of the committee. The report may also recommend
26 statutory or administrative changes to this act.

27 (2) The committee shall annually review this act and any

1 rules, regulations, or procedures of the committee to determine
2 whether they promote integrity, public confidence, and
3 participation in state government and whether they set forth clear
4 and enforceable common sense standards of conduct.

5 Sec. 419. (1) Within 90 days after the first meeting of the
6 committee, and after then as appropriate, the committee shall
7 transmit to the secretary of the senate, the clerk of the house of
8 representatives, and the legislative council, in a suitable form,
9 copies of the provisions of this act that the committee considers
10 necessary for posting and distribution. Within 10 days after
11 receipt of those copies, the secretary of the senate, the clerk of
12 the house of representatives, and the legislative council shall do
13 all of the following:

14 (a) Conspicuously post the copies received from the committee
15 in each public building under the jurisdiction of the state
16 legislature.

17 (b) Distribute the copies received from the committee to each
18 member of the state legislature.

19 (c) Make the copies received from the committee available to
20 the public.

21 (2) The secretary of the senate or the clerk of the house of
22 representatives shall furnish a member of the state legislature
23 elected after the effective date of this act with a copy of the
24 provisions distributed under subsection (1) within 10 days after
25 entering upon the duties of the office.

26 (3) Failure of the secretary of the senate, the clerk of the
27 house of representatives, or the legislative council to comply with

1 the provisions of this section or failure of a member of the state
2 legislature to receive a copy of the provisions of this act does
3 not affect the duty of compliance with this act or the enforcement
4 of this act's provisions.

5 (4) The committee shall transmit to the secretary of the
6 senate, the clerk of the house of representatives, and the
7 legislative council, in a form suitable for distribution, copies of
8 special reports and technical studies relating to this act and its
9 administration.

10 Enacting section 1. This act does not take effect unless all
11 of the following bills of the 93rd Legislature are enacted into
12 law:

13 (a) Senate Bill No.____ or House Bill No. 5981(request no.
14 04823'05 **).

15 (b) Senate Bill No.____ or House Bill No. 5980(request no.
16 04826'05).