

Legislative Analysis



CONFLICTS OF INTEREST

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

House Bill 4680 (H-2) as passed by the House
Sponsor: Rep. Andrew Fink

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4681 as passed
Sponsor: Rep. Joe Tate

House Bill 4683 as passed
Sponsor: Rep. Timothy Beson

House Bill 4682 (H-1) as passed
Sponsor: Rep. John R. Roth

House Bill 4684 (H-1) as passed
Sponsor: Rep. Kyra Harris Bolden

Committee: Elections and Ethics
Complete to 7-26-21

SUMMARY:

House Bills 4680 and 4682 to 4684 would amend 1968 PA 318, also known as the conflicts of interest act, to create separate legislative committees charged with enforcing the act for the committee's respective house, specify the scope of the act, and require additional reporting on potential conflicts of interest. House Bill 4681 would amend the Open Meetings Act to exempt the conflict of interest committees from the requirements of that act.

House Bills 4680 to 4683 would take effect January 1, 2022. House Bill 4684 would take effect January 1, 2023.

House Bill 4680 would amend the conflicts of interest act. Currently, the act requires a joint committee on conflicts of interest, composed of three members of the Senate and three members of the House of Representatives, with one member of the minority party from each house.

HB 4680 would instead require a committee in each house to enforce ethics and conflict of interest laws and rules, composed of an equal number of members from each party and co-chaired by a representative from each party. The Speaker of the House and Minority Leader in the House and the Majority and Minority Leaders in the Senate would each select half of the members of their respective committee. Those leaders would also each designate a co-chairperson. The committee chairperson would alternate between the two parties every six months.

The Speaker of the House and Senate Majority Leader could remove a legislator from their house's respective committee for any reason. Vacancies would be filled in the same manner as the initial appointment.

The joint committee currently renders advisory opinions on a member's interest that may cause a substantial conflict of interest. The committees required by the bill also would

render advisory opinions on a member's interest that may constitute an ethical violation and accept a complaint from any individual that a member has willfully violated the act or the rules of the member's respective house. A member of the committee who improperly divulged confidential information acquired in the course of the committee's activities also would be in violation of the act. (Currently and under the bill, a legislator who willfully violates the act is subject to appropriate disciplinary action by his or her respective house.)

Additionally, the committees could do any of the following:

- Initiate an investigation, including in response to a complaint of a willful violation of the act or the rules of the member's house and determine whether there was a violation.
- Make recommendations for disciplinary action, if applicable.
- Extend for up to 90 days the deadline to file a report on potential conflict of interest described in House Bill 4684.

The Secretary of the Senate and the Clerk of the House would have to preserve all conflict of interest reports submitted pursuant to House Bill 4684 for at least 15 years.

Generally, the committee records and files would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA). However, within 10 days of a determination that a member willfully violated the act or the rules of the member's house, the committee would have to make available the determination, findings, evidence, and recommendations for disciplinary action. Additionally, a legislator could disclose his or own conflict of interest report, and the Secretary of the Senate and Clerk of the House would have to release a former legislator's reports within 10 days after a request.

The bill states that the legislature must appropriate the necessary funds for the committees to carry out their functions, operations, and activities. The bill would not limit the ability of the House or Senate to adopt more stringent conflict of interest standards than those in the act.

The bill is tie-barred to House Bills 4681, 4682, 4683, and 4685, which means that it could not take effect unless those bills were also enacted.¹

MCL 15.307

House Bill 4681 would amend the Open Meetings Act to exempt the committees created under House Bill 4680 and charged with enforcing conflict of interest and ethics laws and rules from the definition of "public body" under the act. With specified exceptions, the act provides that all meetings of a public body must be open to the public and held in a place available to the general public.

MCL 15.262

¹ House Bill 4685 would create the State Officer Financial Disclosure act to require financial disclosure by certain state officers. See the House Fiscal Agency summary of House Bills 4685 and 4686: <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4685-CCB773BA.pdf>

House Bill 4682 would amend the conflicts of interest act. Currently, the act states that it serves to implement the provisions of section 10 of Article IV of the state constitution. The bill would exempt sections 7, 7a, and 8a from that provision. (Section 7 would be amended by HB 4680 and concerns the conflict of interest and ethics committees. Section 7a would be amended by HB 4684 and would require legislators to file an annual conflict of interest report. Section 8a would be amended by HB 4001² and would require a member to abstain from a vote in which the member has knowledge that he or she has a personal or professional interest.)

The bill is tie-barred to House Bill 4680, which means that it could not take effect unless HB 4680 were also enacted.

MCL 15.301

House Bill 4683 would amend the conflicts of interest act to remove language that states that it is the legislature's intent that section 10 of Article IV of the state constitution, as implemented by the conflicts of interest act, constitutes the sole law on conflicts of interest for legislators and state officers.

The bill is tie-barred to House Bills 4001 and 4680, which means that it could not take effect unless HBs 4001 and 4680 were also enacted.

MCL 15.309

House Bill 4684 would add a new section to the conflicts of interest act to require legislators to file an annual conflict of interest report.

Under the bill, by February 1 of each year, legislators would have to file the confidential report with the member's respective conflict of interest committee (described in HB 4680) and with the Secretary of the Senate or the Clerk of the House, as applicable.

The report would have to include all of the following:

- The full name, mailing address, and occupation of the person filing the report.
- The names of members of the *immediate family of an individual* who are not dependent children and the number of dependent children.
- Employers' names, addresses, and principal activities for the person and the person's immediate family members for the year covered by the report, if the amount earned was \$5,000 or more.
- For any source of income of more than \$5,000 in the covered year (earned by either the person or the person's immediate family members), the source and type of earned income received.
- The source and type of all other income if the total income was more than \$5,000 in the covered year.

² House Fiscal Agency summary of House Bill 4001: <http://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4001-B6896812.pdf>

- The address of each parcel of real property (except for the primary residence) held during that calendar year by the person and immediate family members if the property had a fair market value of \$50,000 or more.
- The address of property owned by the person (with the exception of the person’s primary residence) or immediate family member if the property had a fair market value of \$50,000 or more.
- A description of stocks, bonds, commodities, futures, shares in mutual funds, or any other forms of securities held by the person or the person’s immediate family members if the total value of the security had a fair market value of \$10,000 or more.
- A description of interest in another kind of specified asset if the interest in the asset had a value of \$10,000 or more on the filing date.
- The identity of certain compensated positions held by the person and immediate family members for certain entities if the compensation in that calendar year was \$1,000 or more.
- If the person or immediate family members were required to register as a lobbyist or lobbyist agent, the name, address, and principal activity of all who compensated or reimbursed the person for lobbying. (For purposes of this provision, “immediate family” would include the child or parent of the person and the spouse of the person’s child.)
- A description of any interest the person or an immediate family member had in a legal entity conducting business in Michigan in the calendar year, if the interest had a book value of \$10,000 or more, unless the entity had shares that are listed or traded over the counter or on an organized exchange.

Immediate family of an individual would mean a spouse, dependent child, or a person claimed as a dependent by the individual or the individual’s spouse for federal income tax purposes.

The person would not be required to disclose any value of any real or personal property disclosed under the bill.

The person also would not be required to report on the interests or assets of a blind trust—aside from identifying that the interest exists—but would have to include information on other trusts or financial arrangements.

A person filing a report could omit any of the following:

- Information the person must report under the Michigan Campaign Finance Act.
- If all of the following apply, information about property or stocks or other forms of securities:
 - The person filing the report did not have actual knowledge of the item and the item was the exclusive financial interest and responsibility of the person’s immediate family member.
 - The item was not derived from the income, assets, or activities of the person filing the report.

- The person filing did not derive, or expect to derive, financial benefit from the item.
- An item concerning the person's spouse if the spouse is living separate and apart and his or her intent is divorce or separation.
- An item arising from a divorce or separation.
- Compensation from certain publicly held corporations.
- Benefits received under the Social Security Act.

The bill is tie-barred to House Bill 4680, which means that it could not take effect unless HB 4680 were also enacted.

Proposed MCL 15.307a

FISCAL IMPACT:

House Bill 4680 likely would increase costs for the state legislature by an unknown amount. Any cost increases would be related to the needs of the committees established to enforce ethics and conflict of interest laws and rules. Costs could include staffing, information technology, and file storage. While the bill states that the legislature shall appropriate funds necessary for the committee to carry out its functions, statute cannot mandate an appropriation. Therefore, any future funding to support the committees would be subject to legislative appropriations in any given fiscal year.

House Bills 4681 through 4684 would have no discernible fiscal impact on state or local government.

POSITIONS:

Voters Not Politicians indicated support for the bills. (5-11-21)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.