

RESTRICT LOBBYING BY FORMER STATE OFFICIALS

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House Bill 4226 as passed by the House

Sponsor: Rep. Chris Ward

Committee: House Oversight, Elections, and Ethics

Second Analysis (2-16-05)

BRIEF SUMMARY: The bill would amend the lobbyist registration act to prohibit state officials (a representative, senator, governor, lieutenant governor, attorney general, and secretary of state, as well as heads of principal executive branch departments) from lobbying for one year after their terms of office ended.

FISCAL IMPACT: The bill would have no fiscal implications to the state or to local units of government.

THE APPARENT PROBLEM:

In 1999 the Michigan Law Review Commission completed its work on "The Proposed Government Ethics Act," authored for the commission by law school professor Michael Lawrence of Michigan State University. The commission undertook the 18-month study to better define what was and was not a conflict of interest, provide procedures for determining whether a conflict exists, and prescribe penalties for violations. The members of the commission were particularly interested in knowing how Michigan's ethics laws compared with those of other states. Overall, the report found that among the 50 states, Michigan had the 37th most comprehensive ethics laws. (See [Background Information](#) below.) However, the model act drafted for the commission was never introduced in the legislature.

Among the model law's many proposed provisions is section 207, entitled "Revolving Door." That provision would prohibit a former public official from appearing or practicing before the government body with which he or she was affiliated, except on his or her own behalf, or from receiving compensation for working on any matter before that government body, for a period of one year after the termination of his official service. Exceptions were made for those who performed only ministerial acts or who served in an unpaid capacity. A violation of this proposed section would have been punishable by a fine of no more than \$1,000, or imprisonment for up to 90 days, or both.

Four years later in 2003, the Center for Public Integrity, a national watchdog group, conducted a comprehensive survey of lobby disclosure laws in all 50 states. The survey focused on the registration, spending reports, public access, and enforcement regulations governing state-level lobbyists. The report found that lobbyists and their employers in 39 states spent more than \$715 million to influence lawmakers. More than 34,000 special interest groups—companies, issue organizations, labor unions, and others—hired 42,000 individuals to lobby, averaging almost six lobbyists (and about \$130,000) per legislator.

Michigan's total number of lobbyists was 2,753, and the total lobbying expenditure tabulated by the Center for Public Integrity was \$23,846,534.

In Michigan, the state Lobby Disclosure Act is administered by the Office of the Secretary of State. Based on the secretary of state's reports, the Center for Public Integrity determined that Michigan scored 61 of a possible 100 points, ranking 20th among the 50 states in the effectiveness of its lobby disclosure laws. (See Background Information below.) Michigan's low marks come in part from the fact that the state is one of only three states that has no financial interest disclosure requirements for legislators (47 states require such disclosure), and because there is no "cooling off" period required before legislators can register as lobbyists upon finishing their terms.

Legislation has been introduced to require a "cooling off period" for legislators and other state officials.

THE CONTENT OF THE BILL:

House Bill 4226 would amend the lobbyist registration act, Public Act 472 of 1978, (MCL 4.416a) to prohibit a former member of the Michigan Senate or House of Representatives, as well as a former governor, lieutenant governor, attorney general, or secretary of state from making expenditures for, or receiving compensation for, lobbying for the period of one year immediately following the end of the term of office to which the official had been elected, if that compensation equaled or exceeded the monetary threshold required for registering as a lobbyist agent. (The threshold is indexed and increases with inflation. For 2005 the threshold is equal to \$500.)

The same prohibition would apply to a person who holds a non-elective position of head of a principal department of the executive branch of state government for one year after leaving that position.

Currently under the law, a legislator who resigns from office is prohibited from lobbying for the remainder of the term of office from which he or she resigned. The bill would add the governor, lieutenant governor, attorney general, and secretary of state to that list.

A violation would be a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment for not more than 90 days, or both.

The bill would take effect January 1, 2006.

BACKGROUND INFORMATION:

To read more about the final report to the Michigan Law Revision Commission on "The Proposed Government Ethics Act" authored by Michael Lawrence, visit www.freep.com/news/locmac/0312_ethicsact.htm. The website of the Center for Public Integrity is at www.publicintegrity.org.

Michigan's lobby registration and disclosure law is enforced by the Office of the Secretary of State. To find more reports about Michigan's registered lobbyists and

lobbyable state officials, as well as to find the annual monetary thresholds that trigger disclosure, visit www.michigan.gov/sos and select "lobby disclosure" from the left sidebar menu.

ARGUMENTS:

For:

Currently 28 states have lobby disclosure laws that require a "cooling off period" for legislators before they take jobs as lobbyists. In addition, the federal government has ethics laws that prevent high-ranking officials from taking jobs with an employer whose work they regulated. This proposed legislation, like those statutory provisions in other states and at the federal level, attempts to address the possible impropriety, or even its appearance, that could arise when a legislator or other high state official takes work as a lobbyist immediately after leaving office. The bill seeks to avoid instances in which an elected or appointed official—knowing of (or hoping for) imminent employment as a lobbyist—jeopardizes his or her objectivity during the final weeks in office or government employment. It also seeks to avoid instances of a lobbyist, during the first weeks of employment, jeopardizing his or her integrity by using insider information for personal gain.

Response:

A standard criticism of such legislation is that it unfairly limits employment opportunities for ex-legislators (particularly in an era of term limits), some of whom might be particularly well qualified for work as lobbyists due to their knowledge of legislative process and state public policy issues.

Against:

This bill purports to legislate integrity—an impossibility. What's more it sends a signal to citizens that legislators are not to be trusted, despite the fact that no specific conflict of interest has been brought to light.

Response:

Although a law *cannot legislate* integrity, it *can regulate* integrity. In doing so, it will serve to prevent conflicts of interest by setting a clear ethical standard, making visible those who fall short of that standard, and setting a penalty for behavior that violates that standard.

POSITIONS:

The Michigan Chamber of Commerce supports the bill as amended. (2-9-05)

The Michigan Campaign Finance Network supports the bill. (2-9-05)

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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.