

Legislative Analysis



LOBBYING PROHIBITION

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

House Bill 4378 (Substitute H-1)
Sponsor: Rep. Timothy Bledsoe
Committee: Ethics and Elections

First Analysis (2-25-09)

BRIEF SUMMARY: The bill would amend the Lobbyist Registration Act to impose a two-year moratorium on lobbying on a former member of the Michigan House or Senate, or a former governor, lieutenant governor, attorney general, or secretary of state. Further, the bill would impose a one-year prohibition on a person leaving a non-elective position as the head of a principal department of the executive branch of state government.

FISCAL IMPACT: The bill would result in no costs to the state; the state could see revenue if violations occur and fines are assessed, but the amount of revenue is indeterminate.

THE APPARENT PROBLEM:

A majority of states reportedly have enacted "revolving door" prohibitions that prevent legislators and some high ranking public officials from lobbying for a specified amount of time after leaving office. According to a spokesperson for the Michigan Campaign Finance Network, 31 states have "cooling-off" periods for legislators. Six or seven of those feature a two-year moratorium, while most others have a one-year moratorium. (See [Background Information](#) for sources of additional information.)

Michigan, however, has yet to enact such a prohibition on legislators or high ranking state employees. Advocates for such a "cooling off" period say that it prevents influential public officials from having divided loyalties, or the appearance of divided loyalties, between the obligations of their public service and the interests of future clients or employers, and between public service and their own private gain.

Michigan law does prohibit a lawmaker from resigning from office mid-term and then lobbying during the remainder of that term of office, but does not impose any restrictions on lawmakers or key appointed officials once they have left office. Legislation has been introduced to accomplish that.

THE CONTENT OF THE BILL:

The bill would amend the Lobbyist Registration Act to impose a two-year moratorium on lobbying on a former member of the Michigan House or Senate, or a former governor, lieutenant governor, attorney general, or secretary of state.

Certain appointed officials such as department heads would be prohibited from lobbying for one year after leaving their positions.

Specifically, the bill prohibits these elected officials from making expenditures for or receiving compensation for lobbying that is equal to or exceeds the monetary threshold required for registering as a lobbyist agent, for two years immediately following the term of office to which they had been elected. (See Background Information, for the definition of "lobbying" in the act.)

Further, the bill would impose a one-year restriction on a person holding a non-elective position as the head of a principal department of the executive branch of state government.

Currently, a House or Senate member who resigns from office is prohibited from lobbying for the remainder of the term of office from which he or she resigned. House Bill 4378 would apply this same prohibition to a governor, lieutenant governor, attorney general, or secretary of state who resigns.

A violation of the section being amended is a misdemeanor punishable by imprisonment for not more than 90 days and/or a fine of not more than \$1,000. The attorney general enforces the act.

MCL 4.416a

BACKGROUND INFORMATION:

Previous Legislation

A substantially similar bill, House Bill 4313 (sponsored by Rep. Marc Corriveau), imposed a one-year moratorium on lobbying, and passed the House of Representatives 99-6 on March 1, 2007. It died in the Senate Committee on Campaign and Election Oversight at the end of the 2007-2008 legislative session.

Further, a similar bill, House Bill 4226 (sponsored by Rep. Chris Ward), passed the House in the 2005-2006 Legislative Session, but was not taken up in the Senate. As passed by the House, the bill prohibited 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.

Lawmakers as Lobbyists

According to the Center for Public Integrity, about 1,300 former state lawmakers were registered as lobbyists nationwide in 2005. The Center reports 43 former lawmakers serving as lobbyists in Michigan as of 2005. The states with the most were Texas (70), Florida (60), Minnesota (50), and Illinois (50). This report is available on the organization's website:

<http://store.publicintegrity.org/hiredguns/report.aspx?aid=747#>

For a list of state laws regulating lawmakers becoming lobbyists, see the website of the National Conference of State Legislatures at:

http://www.ncsl.org/programs/ethics/e_revolving.htm

Definitions

The term "lobbying" in the act means "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of *influencing* legislative or administrative action." (Emphasis added). The term "influencing" means "promoting, supporting, affecting, modifying, opposing or delaying by any means, including the providing of or use of information, statistics, studies, or analysis."

However, the term "lobbying" does not include "the providing of technical information by a person other than a person as defined in subsection (5) or an employee of a person as defined in subsection (5) when appearing before an officially convened legislative committee or executive department hearing panel. As used in this subsection, 'technical information' means empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related." (Subsection 5 deals with registered lobbyist-agents.)

Proposed Michigan Government Ethics Act

The Michigan Law Review Commission appointed a law professor in 1998 to study government ethics legislation in Michigan, which resulted in a "Proposed Government Ethics Act." One of the recommendations of the report to the commission was a "revolving door" prohibition to prevent public officials from appearing or practicing before the government body they had just left or from being paid for working on matters before that body for one year, except when they were representing themselves. The report can be found at: <http://council.legislature.mi.gov/files/mlrc/1998/ethics.html>

ARGUMENTS:

For:

One advocate for this approach has said that the "evil" being addressed is the prospect of a legislator or other highly placed and influential public official assembling clients or seeking work during the twilight of his or her term of office. This can lead to conflicts, or at least the appearance of conflicts, between the public responsibilities of the official and the interests of future clients or employers, or between the official's public obligations and private interests. Thirty-one states have a similar prohibition in recognition of this problem. A one or two-year moratorium, or "cooling off" period, according to one supporter, "protects against officials succumbing to inappropriate temptations to write laws or contracts with greater concern for personal gain than for public service. Such provisions also enhance the public trust in government." Similar arguments can be advanced in the case of executive department heads.

For:

During the 2006-2007 legislative session, a similar bill was amended on the House floor to establish a threshold at which "lobbying" would be prohibited. That provision has been retained in House Bill 4378. The added provision imposed the moratorium on lobbying if the compensation equaled or exceeded the monetary threshold required for registering as a lobbyist agent (then \$550). Consequently, this bill would allow a former

legislator or department head to influence legislative or administrative action on a one-time or occasional basis, without being a paid lobbyist. This provision was included in the bill that passed the House last session.

Against:

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. It also can be seen as a barrier to entry to a profession, protecting the current entrants from competition. The advent of term limits likely makes an ex-lawmaker's personal contacts less useful but other knowledge more valuable. Moreover, some lawmakers develop a particularly deep understanding of and passion for certain public policy ventures and are logical choices to give voice to those concerns (whether for pay or on a volunteer basis). It seems shortsighted to remove these voices from the public conversation.

Response:

Legislators occupy a unique position, with unique opportunities for effecting change in public policy; so, it is not unreasonable, for the sake of public confidence in government, to impose unique obligations on them. While it is true there is a tension in this case between the right to use one's talents and to use one's voice, on the one hand, and the interests of good government and public confidence in government on the other, the temporary moratorium on lobbying seems justifiable given the unique opportunity and privilege involved in serving as a state legislator. The same argument could be advanced in the case of other major elected officials and department heads.

Against:

Critics of bans on lobbying support the concept of the legislation, but point-out that while the laws often apply to department heads, they seldom apply to other key staff in the executive and legislative branches. For example, some advocate that all state officials should be prohibited from negotiating future employment with businesses affected by their official actions.

Further, such bills to stop the "revolving door" between legislators' and lobbyists' offices generally prohibit being compensated for "lobbying" but do not address the instances when a former legislator or department head becomes a behind-the-scenes strategist for a lobbying firm, employed one step back from lobbying.

POSITIONS:

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

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.