

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

State

Bureau name:

Elections & Campaign Finance

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Rule Set Information:

ARD assigned rule set number:

2024-48 ST

Title of proposed rule set:

Gifts Under the Lobby Act

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel rules or standards set by a state or national licensing agency or accreditation association. The federal government does regulate gifting to members of Congress, but because these regulations do not govern Michigan's public officials, the department's position is that there are also no parallel federal rules.

A. Are these rules required by state law or federal mandate?

Yes. MCL 4.426 uses the mandatory term "shall," and states that "[t]he secretary of state shall promulgate rules and issue declaratory rules to implement this act pursuant to Act No. 306 of the Public Acts of 1969, as amended." The act referenced by MCL 4.426 is the lobbyists, lobbying agents, and lobbying activities act, 1978 PA 472, MCL 4.411 to 4.431. There is no federal mandate.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules do not exceed a federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

Other states vary in their approach to regulation of gifts from lobbyists to public officials and no state has a governing scheme that matches up to Michigan's in an exact way. The department looked at Ohio, and according to the Ohio Lobbying Handbook, published by their Joint Legislative Ethics Committee, Office of the Legislative Inspector General, Ohio allows "a reportable person" to reimburse a lobbyist before the end of the reporting period to avoid having an expenditure for their benefit reported. This appears to allow, albeit in a slightly different context, what the proposed rules propose to prohibit. In contrast, the Wisconsin Ethics Commission interpreted the Wisconsin statutes governing lobbying to prohibit public officials from accepting or purchasing a ticket from a lobbyist unless they can clearly and convincingly demonstrate multiple factors about the transaction demonstrating it had nothing to do with their official position. See Tickets and Access to Skyboxes and Other Premium Areas. The proposed rules in Michigan allow public officials to purchase tickets for fair market value without any additional showings. Finally, the New York State Commission on Ethics and Lobbying in Government has a gift guide published online that states that in NY, while complimentary attendance at a widely attended event is allowed but that this allowance "does not cover entertainment, recreational, or sporting activity unless the presentation addressing the public interest or concern is delivered during the entertainment, recreational, or sporting activity." This is somewhat analogous to the procedures under the proposed rules, though it does not address a public official's ability to reimburse the cost or purchase a ticket. The department is not aware of any other similarly situated states with regulations that are sufficiently analogous to the proposed rules for comparison purposes.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The rules arguably exceed the standard in Ohio; however, the Michigan lobby act does not have a statutory provision with the same kind of language allowing reimbursement to lobbyists by public officials so such a rule in Michigan would not have statutory support. Accordingly, the cost of not deviating would be rules that are against Michigan law. The benefit is rules that are aligned with the lobby act and rules that protect public officials from undue or perceived influence by lobbyists. The proposed rules do not exceed the standards in the other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The proposed rules seek to further explain gaps in Michigan's lobby act; accordingly, the rules do somewhat overlap with the lobbyists, lobbying agents, and lobbying activities act, 1978 PA 472, MCL 4.411 to 4.431 as both the rules and the act address gifting between lobbyists and public officials. No laws or rules or other legal requirements duplicate the rules. No laws, rules, or other legal requirements conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The Secretary of State is statutorily required to promulgate rules to implement Michigan's lobby act. The proposed rules would address the parameters around gifting by lobbyists/their agents in Michigan under the lobby act. The rules have not been coordinated with federal or local laws applicable to the same activity or subject matter because there are no relevant federal or local laws to coordinate with therefore there is no duplication. The rules have been coordinated with state law – the lobby act that they implement – in order to explain and define that law's requirements. This further explanation and definition does not duplicate the existing law in any way, rather, it provides needed clarity on issues that are not specifically addressed in the lobby act.

Purpose and Objectives of the Rule(s)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The behavior that the proposed rules address is the exchange of items and services between lobbyists/their agents and public officials. It is difficult to estimate the exact frequency of this behavior because these transactions are not generally reported and these rules do not seek to alter the frequency of the behavior but instead seek to clarify what kind of exchange is proper and improper.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

It is not estimated that the frequency of the targeted behavior will change, and the goal of the proposed rules is not to change the frequency but rather to clarify what is allowed and what is not allowed.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Currently, according to reports by the media, public officials reimburse lobbyists and their agents for the value of an item or service over the gift limit amount; this practice equates to lobbyists/their agents giving public officials prohibited gifts. The desired behavior/practice is for lobbyists and their agents to comply with the lobby act's ban on gifting and instead exchange items and services with public officials when those officials purchase those items or services for fair market value.

C. What is the desired outcome?

The desired outcome is for lobbyists and their agents to comply with the lobby act's regulation of gifts to public officials. Because the parameters of what the lobby act allowed and did not allow was not clearly spelled out these rules seek to clarify those parameters.

5. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The harm that results from the current behavior is the potential gifting in violation of the lobby act. The rules are designed to better explain how to comply with the lobby act's prohibition on gifting. The harm that will occur in the absence of the rules is that lobbyists and their agents might impermissibly give gifts to public officials in violation of the lobby act.

A. What is the rationale for changing the rules instead of leaving them as currently written?

This is a new rule set so there are no current rules that exist to address this issue.

6. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules would make the legal requirements around gifting by lobbyists/their agents to public officials clear so that lobbyists and their agents can comply with the law. This does not affect health and safety, but it generally protects the welfare of Michigan citizens because it is in everyone's interest to have lobbyists and their agents follow the laws that are in place to promote ethical behaviors between public officials and lobbyists and their agents. Making the legal requirements clear so that they can be complied with promotes public confidence in the integrity of public officials' actions. The rules promote the least burdensome alternative for those required to comply because they do not impose any regulations that are not already required by the law; rather, they explain the existing legal requirements in the lobby act in practical terms so that affected parties can comply.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

This is a new rule set and there are no obsolete or unnecessary rules that can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

It is not expected that the promulgation of these rules will have a fiscal impact on the Department of State so there is no estimated cost or savings.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made, and no funding source has been provided, as it is not anticipated that the Department of State will have any expenditures associated with the proposed rules. The department estimates that there will be no cost increases or reductions for other state or local governmental units as a result of the rules.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules will clarify current law and are not expected to place any additional fiscal burdens on individuals. The rules do not require any duplicative acts. Similarly, because the rules merely clarify current law, they are not expected to place any significant additional administrative burdens on individuals. The only potential administrative burden the rules impose is the requirement to determine the fair market value of an item or service. The rules place this burden on lobbyists and their agents; however, lobbyists/ their agents are not required to engage in these transactions, and accordingly, are not required to make the determination.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The potential administrative burden is the requirement to identify an item or service's fair market value; however, this burden can be completely avoided if lobbyists/their agents do not sell or otherwise make exchanges involving items or services valued higher than the gift limit with public officials. Nothing in the law requires lobbyists/their agents to engage in these transactions, and this requirement to determine fair market value to comply with the law is only imposed if the lobbyist/their agent voluntarily decides to do a transaction of this type. The fair market value determination is needed to ensure compliance with the lobby act's prohibition on gifting and is reasonable compared to the burden it imposes because lobbyists/their agents who do not want to take on this burden are not compelled to do these transactions and can decide to opt out of the entire process.

Impact on Other State or Local Governmental Units

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no estimated increases or decreases in revenue to other state or local governmental units. There are no estimated cost increases or decreases for other state or local governmental units as a result of the rule. The agency does not estimate any impact on revenues or costs related to equipment, supplies, labor, or administrative costs during both initial imposition of the rule and ongoing monitoring.

12. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed rules do not impose any program, service, duty, or responsibility on any city, county, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

Governmental units do not need to take any actions to comply with the rules; the rules regulate lobbying.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

An appropriation has not been made because additional expenditures associated with the rules are not anticipated.

Rural Impact

14. In general, what impact will the rules have on rural areas?

The proposed rules are not expected to impact rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules are not expected to have any impact on public or private interests in rural areas.

Environmental Impact

15. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules will not have an impact on the environment.

Small Business Impact Statement

16. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules do not apply to small businesses; accordingly, the agency did not consider exempting small businesses because there is nothing to exempt them from.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not apply to small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The proposed rules do not apply to small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rules do not apply to small businesses and will not have an impact on their reporting requirements.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify the compliance and reporting requirements for small businesses as the proposed rules do not apply to small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules do not apply to performance, design, or operation standards.

18. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules do not apply to small businesses.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

20. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are no costs of compliance as the proposed rules do not apply to small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There are no estimated costs to the agency for administration or enforcement against small businesses as the proposed rules do not apply to small businesses.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules do not apply to small businesses so there should be no impact on the standards of compliance.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The agency has not involved small businesses in the development because the proposed rules do not apply to small businesses.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were involved because the proposed rules do not apply to small businesses.

Cost-Benefit Analysis of Rules (independent of statutory impact)

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

It is not anticipated that there will be any statewide compliance costs.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Lobbyists and their agents represent the group that will be directly affected by, bear the cost of, or directly benefit from the proposed rules. The agency estimates that there is no cost associated with the rules. Lobbyists and their agents will benefit from the proposed rules because the rules will make clear the parameters that control the exchange of items and services between lobbyists/their agents and public officials. Improper gift giving is a crime (misdemeanor or felony depending on various factors) so clarity in this area will be beneficial.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There will be no costs imposed as a result of the proposed rules. It is anticipated that the rules can be followed with the current equipment, supplies, labor, accounting, and recordkeeping that lobbyists/their agents and public officials already possess since the rules simply clarify what is already required by law.

27. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The agency does not estimate that there will be any statewide compliance costs imposed on individuals, either regulated or general members of the public. No additional education, training, fees, equipment, supplies, or labor is required. The rules may require lobbyists/their agents to do some additional accounting or recordkeeping if they voluntarily choose to participate in transactions with public officials that constitute sales/purchases, but that would be minimal and the agency estimates it will be easily absorbed without affecting their current costs. And again, the rules simply provide clarity about what the law requires when lobbyists/their agents choose to engage in certain transactions – the rules do not compel lobbyists/their agents to engage in these transactions.

A. How many and what category of individuals will be affected by the rules?

The rules regulate lobbying. There are 1,844 active registered lobbyists in Michigan and 1,634 active registered lobbyist agents.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

Qualitatively, lobbyists and their agents will have clear guidance about how they can exchange items and services with public officials without violating the law when those items and services are worth more than the gift limit. It is not anticipated that the rules would have a quantitative impact.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

It is not anticipated that there would be any cost reductions to businesses, individuals, groups of individuals, or governmental as a result of the proposed rules.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The benefit of the rules is that lobbyists and their agents will have clear guidance about how they can exchange items and services with public officials without violating the law when those items and services are worth more than the gift limit. The benefit of clearer guidance about legal requirements is not something that can be quantitatively measured and so the agency did not make any quantitative assumptions and has no quantitative estimates. The agency assumes that having clear guidance provides a qualitative benefit to lobbyists and their agents because it will no longer be unclear when impermissible gifting is occurring and when their actions are permitted under the lobby act. A secondary, qualitative benefit and assumption by the agency is that the public will have greater confidence in the actions and judgements of their elected officials when they know the laws around lobbying are clear and lobbyists/their agents are not giving improper gifts to public officials.

30. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth and job creation in Michigan.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

It is not anticipated that individuals or businesses will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The agency relied upon comments submitted by the public in reference to two interpretive statements that cover the same subject matter as these rules: Interpretive Statement issued on August 8, 2024, to Robert LaBrant and Interpretive Statement issued on August 8, 2024, to Michigan Association of Health Plans. The agency relied upon agency staff and its regulatory experience to formulate estimates and assumptions and determine the need for the proposed rules. Additionally, the agency received a request from a member of the public under Section 38 of the Administrative Procedures Act, 1969 PA 306, MCL 24.238, to promulgate these rules, and relied on the reasoning in that request to determine the necessity of the proposed rules.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The agency relied upon agency staff and its regulatory and administrative experience to determine the impact of the proposed rules. The agency also looked to the comments from the public and the reasoning in that request for rule promulgation.

Alternative to Regulation

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There is no reasonable alternative to achieve the same or similar goals as these proposed rules.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

In order to clarify the lobby act's rules around gifting, there is no reasonable alternative to achieve the same or similar goals. Thus, there are no relevant statutory amendments that may be necessary.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

A regulatory program established by a private third-party is not feasible because the subject of the rules concerns the regulation of lobbying in Michigan, a task expressly assigned to the Secretary of State. See, e.g., MCL 4.417, MCL 4.418, MCL 4.423, MCL 4.424, MCL 4.426, MCL 4.429. The agency is not aware of a private market-based system, as opposed to a state regulatory body, for regulation of lobbying utilized in other states.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Due to the nature of regulating lobbying, no significant alternatives to reasonable regulation were considered during the development of the proposed rules. The agency solicited feedback from the public during its consideration of the requests for declaratory rulings/interpretive statements on this issue and received feedback from the public in the form of the request to promulgate these rules. The agency incorporated some of that feedback into these proposed rules.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The rules inform persons of requirements and methods of compliance.