

# Legislative Analysis



## FINANCIAL DISCLOSURE

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

**House Bill 4642 (H-6) as referred to second committee**  
**Sponsor: Rep. David LaGrand**

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

**House Bill 4643 (H-6) as referred**  
**Sponsor: Rep. Graham Filler**

**House Bill 4644 (H-6) as referred**  
**Sponsor: Rep. Julie Calley**

**House Bill 4647 (H-6) as referred**  
**Sponsor: Rep. Tenisha Yancey**

**House Bill 4645 (H-6) as referred**  
**Sponsor: Rep. Mark E. Huizenga**

**House Bill 4648 (H-6) as referred**  
**Sponsor: Rep. Steve Marino**

**House Bill 4646 (H-5) as referred**  
**Sponsor: Rep. William J. Sowerby**

**House Bill 4649 (H-5) as referred**  
**Sponsor: Rep. Yousef Rabhi**

**1st Committee: Elections and Ethics**  
**2nd Committee: Ways and Means**  
**Complete to 12-8-19**

**BRIEF SUMMARY:** House Bills 4642 to 4649 would create a group of new acts requiring financial disclosure by elected officials and candidates for those positions. All eight bills would require substantially the same disclosure, including identifying information about the person and his or her immediate family, as well as financial holdings and certain involvement of the person or family members. The bills would take effect May 1, 2020.

**FISCAL IMPACT:** The bills would result in increased one-time and ongoing costs to the Department of State for additional administrative responsibilities and technology costs. For corrections and the judiciary, the bills would have an indeterminate fiscal impact on the state and on local units of government. For a detailed analysis, see *Fiscal Information*, below.

### **THE APPARENT PROBLEM:**

A 2015 study by the Center for Public Integrity and Global Integrity ranked Michigan 50th out of the 50 states based on transparency and accountability.<sup>1</sup> In addition to permissive disclosure and campaign spending rules, the report specifically cited the exemption of the Legislature and Executive Office from the state's FOIA rules as a reason for Michigan's low score.<sup>2</sup>

The National Conference of State Legislatures' chart of financial disclosure requirements broken down by state shows that 48 states require legislators to disclose their occupation and income, business associations, property, or amount categories, or some combination of those.<sup>3</sup> Michigan and Idaho are the only two states with no discernible financial disclosure requirements.

<sup>1</sup> <https://www.publicintegrity.org/2015/11/09/18822/how-does-your-state-rank-integrity>

<sup>2</sup> <https://www.publicintegrity.org/2015/11/09/18427/michigan-gets-f-grade-2015-state-integrity-investigation>

<sup>3</sup> <http://www.ncsl.org/research/ethics/financial-disclosure-for-legislators-income.aspx>

## ***THE CONTENT OF THE BILLS:***

House Bills 4642 to 4649 would create a series of new acts requiring financial disclosure by elected officials and candidates for those positions, as described below. All eight bills would require filing of a report with the Secretary of State (SOS) detailing specific financial matters.

- House Bill 4642: State Representative Financial Disclosure Act
- House Bill 4643: State Senator Financial Disclosure Act
- House Bill 4644: Candidate for State Representative Financial Disclosure Act
- House Bill 4645: Candidate for State Senator Financial Disclosure Act
- House Bill 4646: Executive Branch Personal Financial Disclosure Act
- House Bill 4647: Judicial Branch Personal Financial Disclosure Act
- House Bill 4648: University Board Member Financial Disclosure Act
- House Bill 4649: State Board of Education Financial Disclosure Act

For the two bills in which the person filing is a candidate—HBs 4644 and 4645—the person would have to file within 30 days after the later of May 15 or the date on which the individual formed a candidate committee.

For the remaining bills, in which the person filing is a state official or state judicial official, the person would have to file electronically by May 15 of the year following the year detailed in the report.

House Bills 4646 to 4649 would provide that, if an individual is a candidate for state office and has not already filed the report described, the individual must do so within 30 days after the later of May 15 or the date on which the individual formed a candidate committee.

In addition, HB 4646 would provide that a person who is a candidate for state office (defined in that bill as a candidate for governor, lieutenant governor, secretary of state, or attorney general) also must file federal tax returns for the three preceding calendar years with the SOS by June 15.

### **Report**

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.
- The address of property owned by the person (with the exception of the person's primary residence) 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.
- Certain compensated positions by the person or his or her immediate family members for certain organizations or institutions if the total compensation was \$1,000 or more.
- If the person or his or her immediate family members were required to register as lobbyists, the name, address, and principal activity of persons who gave compensation for lobbying. (For the purposes of this provision, "immediate family" would include the child or parent of the person and the spouse of the person's child.)
- Any interest the person or his or her immediate family had in a legal entity conducting business in Michigan, if the interest had a book value of \$10,000 or more, unless the entity had shares that were listed or traded over the counter or on an organized exchange.

*Immediate family of an individual* would mean, except as otherwise provided in the act, a dependent child or spouse of the individual or a person claimed by the individual or the individual's spouse as a dependent for federal income tax purposes.

The report would have to include the holdings of and income from trusts and other qualifying financial arrangements and would have to disclose if an individual had a beneficial interest in a blind trust.

#### **Information that could be omitted from the report**

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

- Information the person must report under the Michigan Campaign Finance Act.
- Information about property or stocks or other forms of securities if all of the following apply:
  - 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, or an item arising from a divorce or separation.
- Compensation from certain publicly held corporations.
- Benefits received under the Social Security Act.

#### **Requirements for Secretary of State**

The SOS would have to prepare and make available the appropriate forms, instructions, and manuals, create and operate an electronic system to receive reports, receive reports, promulgate rules and issue declaratory rulings to implement the act, and conduct investigations of potential violations as needed. Additionally, the SOS would waive late fees for filing delays that qualify as good cause delays.

Also, no later than five business days after the due date of a report required under the act, the SOS would have to make the report available free of charge on a single website and provide a

copy of a report required under the act at a reasonable charge. The SOS would also have to notify the filer of errors, omissions, or a failure to file within nine business days of the report's deadline.

The SOS would have to issue declaratory rulings to implement the act only if the person requesting the ruling had provided a reasonably complete statement of necessary facts (or supplemental facts with the permission of the SOS). The SOS would have to make such a ruling or refuse and provide reasons for the refusal to the requestor within 60 business days of receiving the request. (The deadline could be extended by 30 business days for extenuating circumstances.)

### **Complaints of violations**

A citizen could file a complaint with the SOS alleging a violation of the act, and the SOS would have to give notice to the person against whom the complaint was filed and receive and mail any response or rebuttal to the applicable party. A complaint would have to be signed by the complainant and include identifying information and the complainant's contentions.

Within 45 days after the SOS received a rebuttal statement or, if no rebuttal or response was received, within 45 days after the SOS received the complaint, the SOS would have to post on its website whether there may be reason to believe a violation occurred. Within 30 days of a determination, the SOS would also have to post on its website the complaint, response, and rebuttal, as well as any dispositive correspondence. If it found a violation, the SOS would have to attempt to correct the violation or prevent further violations by using methods such as a conference, conciliation, or persuasion. If this were unsuccessful, the SOS would have to commence a hearing to determine whether a violation occurred. A final decision or order issued by the SOS would be subject to judicial review.

### **State Official Financial Disclosure Fund**

House Bill 4642 would create within the state treasury the State Official Financial Disclosure Fund, into which late filing fees would be deposited. The state treasurer could receive money or other assets from any source for deposit into the fund and would be its administrator for auditing purposes. The treasurer would also direct investment of the fund and credit any interest and earnings from investments. Money in the fund would not lapse into the general fund at the close of the fiscal year. The SOS could expend money from the fund, upon appropriation, only to implement and enforce the acts created by House Bills 4642 to 4649.

### **Penalties**

A person who failed to file a report as required would have to pay \$25 a day for each of the first 10 business days the report went unfiled and \$50 for each subsequent day. If the report remained unfiled for more than 105 business days, there would be an additional fee of \$5,000.

If a person filed a complaint falsely certifying that the contentions were true and could be supported by evidence, the SOS could require the person to pay the SOS any expenses incurred because of that action or pay attorney costs or other expenses incurred by the person against whom the complaint was filed, or both. If a person required to file a report knowingly filed an incomplete or inaccurate report, the person would have to pay a civil fine of up to \$10,000.

A late filing fee that remained unpaid for more than 180 days would be referred to the Department of Treasury.

## ***FISCAL INFORMATION:***

### **Department of State**

The bills would result in increased one-time and ongoing costs to the Department of State for additional administrative responsibilities and technology costs. The administrative responsibilities would require additional staff members to administer the requirements of the bills. The department estimates that up to three additional staff members would be required for:

- Developing forms, manuals, and instructions for disclosure reports.
- Issuing reports and notifications.
- Promulgating rules and issuing declaratory rulings.
- Technology costs for posting information on a website.
- Conducting investigations.
- Commencing hearings to determine violations of the bills' provisions.

The annual cost of three FTE positions is estimated to be \$375,000.

The Department of State would incur information technology (IT) costs necessary for the creation and maintenance of an electronic system and website for receiving statements, reports, and information required by the bills. One-time costs for the system's creation are not yet determined. Based on data on state IT projects and systems, the median cost for a state IT project is approximately \$260,000.

IT maintenance costs could be supported through ongoing appropriations to the department for IT. Personnel costs may require an increase in ongoing appropriated funding, and one-time technology costs may require an additional one-time appropriation depending on the project's work requirements.

### **Department of Corrections and Courts**

For corrections and the judiciary, the bills would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of offenders who would be required to pay late filing fees and/or civil fines. An individual who fails to file a report as required under the bills would be required to pay a late filing fee. An increase in late filing fee revenue would be used by filing officials responsible for collecting fee revenue to offset costs related to administering campaign finance. Also, under the bills, an individual who knowingly files an incomplete or inaccurate report would be ordered to pay a civil fine of not more than \$10,000. Under section 6(11) of each bill, the Secretary of State would be required to deposit revenue from civil fines imposed under the bill into the general fund.

The fiscal impact on local court systems would depend on how provisions of the bills affect caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated.

**ARGUMENTS:**

***For:***

Supporters advanced the bills as a way to increase transparency and accountability for elected officials in Michigan. As mentioned above, as a state Michigan ranks at the bottom in these categories. It is hoped that requiring certain disclosures would allow potential candidates to decline to run if they knew that the information they would have to disclose could be disqualifying. Additionally, voters would be able to make a more informed decision on their elected officials and have confidence that those officials had been sufficiently transparent about their dealings.

***Against:***

Critics argued that the required disclosures could deter otherwise qualified individuals from running for public office. After all, candidates lose significant privacy when running and serving—must we really require them to lay bare their financial situation when they first enter the race?

***Response:***

Bill sponsors testified that the proposed form would only take about 5 to 10 minutes to fill out and that some of the more potentially invasive questions, such as the names of minor children and the value of real estate holdings, have been removed due to privacy concerns. Moreover, if potential candidates have interests that they are ashamed to disclose, perhaps those interests are worthy of reconsideration. Besides, 48 states already have similar requirements, and if it has not been a significant deterrent in those states, there is no reason to believe that it would be one in Michigan.

**POSITIONS:**

A representative of Voters Not Politicians testified in support of the bills. (6-12-19)

The following entities indicated support for the bills:

- Michigan Executive Office of the Governor (6-12-19)
- Michigan Secretary of State (9-3-19)
- Michigan League of Conservation Voters (6-12-19)
- Michigan Sierra Club (6-12-19)
- League of Women Voters (9-4-19)

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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.