

Legislative Analysis



LOBBYING BY FORMER AND CURRENT PUBLIC OFFICIALS

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<http://www.house.mi.gov/hfa>

House Bill 4062 as reported from committee
Sponsor: Rep. Mark A. Tisdell

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

House Bill 4063 as reported from committee
Sponsor: Rep. David W. Martin

House Bill 4064 as reported from committee
Sponsor: Rep. Jerry Neyer

Committee: Government Operations
Complete to 2-19-25

SUMMARY:

House Bills 4062, 4063, and 4064 would each amend 1978 PA 472, the lobbyist registration act, to do the following:

- Expand a current prohibition against **lobbying** by former state legislators to apply to all former state legislators for two years after they leave office. (It now applies only to those who resign, and only for the balance of the term they resigned from.) (HB 4062)
- Apply the same two-year lobbying ban to former governors, lieutenant governors, and heads of principal executive branch departments. (HB 4063)
- Prohibit current state legislators from receiving compensation to lobby government officials in Michigan or elsewhere. (HB 4064)

Lobbying means communicating directly with an **official in the executive branch** or an **official in the legislative branch** for the purpose of **influencing legislative action** or **administrative action**.

Official in the executive branch means the governor, lieutenant governor, secretary of state, attorney general; or an individual who is in the executive branch of state government and not under civil service; a classified director, chief deputy director, or deputy director of a state department. This includes an individual who is elected or appointed and has not yet taken, or an individual who is nominated for appointment to, any of the offices or agencies listed in this definition. An **official in the executive branch** does not include a person serving in a clerical, nonpolicy-making, or nonadministrative capacity. (The act further lists several specific officials who are also considered **officials in the executive branch**.¹)

Official in the legislative branch means a member of the legislature, the auditor general, the deputy auditor general, an employee of the Consumer's Council, the director of the Legislative Retirement System, or any other employee of the legislature other than an individual employed by the state in a clerical or nonpolicy-making capacity.

¹ See <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-4-415>

Influencing means promoting, supporting, affecting, modifying, opposing, or delaying by any means, including the provision or use of information, statistics, studies, or analysis. The provision of technical information (empirically verifiable data provided by a person recognized as an expert in the subject area the information is related to) by a person who is not a lobbyist agent under the act, or a lobbyist agent's employee, when appearing before an officially convened legislative committee or executive department hearing panel, is not lobbying.

Legislative action means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature. Legislative action does not include the representation of a person who has been subpoenaed to appear before the legislature or an agency of the legislature.

Administrative action means the proposal, drafting, development, consideration, amendment, enactment, or defeat of a nonministerial action or rule by an executive agency or an official in the executive branch. Administrative action does not include a quasi-judicial determination as authorized by law.

House Bill 4062 would amend section 6a of the act, which currently prohibits a former state legislator who has resigned from office from making ***expenditures*** for lobbying, or being ***compensated*** or reimbursed for lobbying, for the remainder of the term of office they resigned from.

Expenditure means an advance, compensation for labor, honorarium, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, or subscription of money or anything of value including a contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure. Expenditure does not include the payment of a membership fee otherwise reported under the act or the cost of travel to visit and return from visiting, for the purpose of communicating with, an official in the executive branch or an official in the legislative branch.

Compensation means anything of monetary value received or to be received from a person, whether in the form of a fee, salary, forbearance, forgiveness, or another form of recompense.

The bill would instead prohibit a former state legislator from making expenditures for lobbying, or being compensated or reimbursed for lobbying, in an amount that requires registration as a lobbyist agent under the act, for two years after they leave or resign from office.² Violation would be a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both. (This is the current penalty for violating section 6a.) The bill's provisions would apply to legislators whose term of office begins on or after January 1, 2025.

MCL 4.416a

² For 2025, this amount is \$800.01 or more during any 12-month period. The amount is adjusted for inflation annually.

House Bill 4063 would similarly prohibit a former governor, lieutenant governor, or head of a principal executive branch department from making expenditures for lobbying, or being compensated or reimbursed for lobbying, in an amount that requires registration as a lobbyist agent, for two years after they leave office. Violation would be a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both. This provision would apply to legislators whose term of office begins on or after January 1, 2025.

Proposed MCL 4.416b

House Bill 4064 would prohibit a currently serving state legislator from being compensated for communicating directly with any of the following for the purpose of influencing legislative action or administrative action:

- An official in the executive branch.
- An official in the legislative branch.
- An official in the executive branch of any other government (such as the government of another state).
- An official in the legislative branch of any other government.

Violation would be a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both. The bill would take effect January 1, 2026.

Proposed MCL 4.416c

BACKGROUND:

The bills are similar to House Bills 4687, 4688, and 4689 of the 2021-22 legislative session as passed by the House (with the notable difference that the earlier bills would not have applied to the governor or lieutenant governor). Legislation to prescribe a time-limited lobbying ban for former legislators or executive branch officials has been introduced with some regularity since the 1993-94 legislative session, and in every session from 2007-08 on.

According to the National Council of State Legislatures, 38 states prescribe a waiting period before former legislators can become lobbyists (including Michigan's law that applies only to legislators who resign). Arkansas, Idaho, Kansas, Louisiana, Minnesota, Mississippi, Nebraska, New Hampshire, Oklahoma, Texas, Washington, and Wyoming do not. The waiting periods range from six months to six years, but most are one year or two years in length.³

In July 2024, in *Miller v Ziegler*, the United States Court of Appeals for the Eighth Circuit found Missouri's two-year ban on lobbying by former state legislators and legislative staff unconstitutional on First Amendment grounds.⁴ The ban had been passed by voters in 2018 as part of a ballot initiative known as Clean Missouri. The Eighth Circuit comprises Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

³ As of January 2025. See <https://www.ncsl.org/ethics/legislator-revolving-door-prohibitions> For other comparisons of state laws on this topic, see: <https://www.multistate.us/insider/2024/10/1/revolving-door-laws-by-state> and <https://www.citizen.org/wp-content/uploads/Revolving-Door-Restrictions-by-State-2019.pdf>

⁴ <https://media.ca8.uscourts.gov/opndir/24/07/231902P.pdf>

FISCAL IMPACT:

The bills would have no fiscal impact on the state but would have an indeterminate fiscal impact on local units of government. The number of convictions that would result under provisions of the bills is not known. New misdemeanor convictions would increase costs related to county jails or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bills affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

The following entities indicated support for the bills (2-13-25):

- Department of State
- Michigan League of Conservation Voters

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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.