

Legislative Analysis



LOBBYING BY FORMER AND CURRENT PUBLIC OFFICIALS

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

House Bill 4062 as passed by the House
Sponsor: Rep. Mark A. Tisdell

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

House Bill 4063 as passed by the House
Sponsor: Rep. David W. Martin

House Bill 4064 as passed by the House
Sponsor: Rep. Jerry Neyer

Committee: Government Operations
Revised 2-24-25

SUMMARY:

House Bills 4062, 4063, and 4064 would together amend 1978 PA 472, the lobbyist registration act, to do all of 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 anywhere else. (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* (not counting their legislative pay) 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 AND DISCUSSION:

The so-called “revolving door” between the public and private sectors refers to the situation where elected or appointed officials or other government employees become lobbyists shortly after leaving that office or job.³ Their knowledge of government and governmental processes, their understanding of public policy, and their familiarity with former colleagues and staff members are typically attractive assets in their new positions. According to committee testimony, this knowledge is valuable in Michigan not only to those new employers, but also to the legislature itself, as term limits guarantee the departure of certain numbers of legislators each session, which makes for a correspondingly diminished pool of institutional and historical knowledge among those still (or newly) serving.

However, some feel that the revolving door can sometimes spin so quickly as to raise uncomfortable questions. For example, was a legislator, while in office, representing their constituents or acting primarily to advance their own personal interests and opportunities? When they championed those big bills with huge stakeholder impacts, were they positioning themselves for, or already negotiating, their next big job? Could a former state department director exercise any undue personal influence on former staff and colleagues in their new position? Could that influence lead to lax or unfairly biased regulatory enforcement?

According to the National Council of State Legislatures (NCSL), at least 38 states slow down the revolving door by mandating a waiting period—a “cooling-off” period—before former

³ It can also refer to when individuals leave a business or other private sector organization to take a government position, often one with oversight or regulatory authority over the field they were just employed in.

legislators can become lobbyists.⁴ The periods range from six months to six years, but most are one or two years in length. (The states that do not have such a waiting period are Arkansas, Idaho, Kansas, Louisiana, Minnesota, Mississippi, Nebraska, New Hampshire, Oklahoma, Texas, Washington, and Wyoming.)⁵

Supporters of House Bills 4062 and 4063 argue that creating a two-year cooling-off period in Michigan between holding certain legislative or executive branch offices and being employed as a lobbyist would help to ensure that public officials focus on the public interest and serving constituents while in office, rather than on positioning themselves for their own future employment. In addition, it is hoped that the bills might improve public trust in the integrity and credibility of lawmakers, the legislature, and the legislative process.⁶ This can be as easily damaged by the appearance of corruption as it can by actual instances of corruption—the mere existence of the questions described above, regardless of their real answers, is often enough to damage public trust. The cooling-off period would function as a kind of proxy for transparency in a zone of activity where actual transparency is not attainable.

While no opposition to the bills was presented in committee, a common criticism of the cooling-off period is that it is not fair to restrict the future employment of legislators or other state employees in this way, and that prohibiting these activities, even for a fixed amount of time, unfairly reduces a person’s economic freedom and presents a barrier to public service. Along similar lines, in July 2024, 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.⁷

The third bill in the package, House Bill 4064, would expressly prohibit currently serving legislators from being paid (beyond their regular pay as legislators) to lobby legislative or executive officials in other states, the federal government, or any other government. (The act already prohibits public officials from accepting compensation for lobbying in Michigan, with the same penalties as proposed by the bill.)

The three bills are similar to House Bills 4687, 4688, and 4689 of the 2021-22 legislative session as those bills were passed by the House.⁸ Legislation to prescribe a waiting period before former legislators or executive branch officials can become lobbyists has been introduced with some regularity since the 1993-94 legislative session, and in every session from 2007-08 on.

⁴ As of January 2025. This figure includes Michigan’s law that applies only to legislators who resign. NCSL does not address restrictions on executive officials. <https://www.ncsl.org/ethics/legislator-revolving-door-prohibitions>

⁵ For other state-by-state comparisons on this topic, see: <https://www.multistate.us/insider/2024/10/1/revolving-door-laws-by-state> (which counts 43 states as having a cooling-off period for legislators) and <https://www.citizen.org/wp-content/uploads/Revolving-Door-Restrictions-by-State-2019.pdf> (which counts 38, not including Michigan).

⁶ Michigan was one of 11 states to receive an “F” grade in a 2015 study by the Center for Public Integrity and Global Integrity, which graded states based on the laws and systems they have in place to prevent corruption. The study ranked Michigan last out of the 50 states overall, as well as specifically in legislative and executive accountability. <https://publicintegrity.org/politics/state-politics/state-integrity-investigation/michigan-gets-f-grade-in-2015-state-integrity-investigation/>

⁷ *Miller v Ziegler*: <https://media.ca8.uscourts.gov/opndir/24/07/231902P.pdf> The lobbying 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.

⁸ However, the 2021-22 bills would not have applied to the governor or lieutenant governor.

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.