



SENATE BILL No. 485

March 10, 1993, Introduced by Senators ARTHURHULTZ, STABENOW, FAUST, POLLACK and O'BRIEN and referred to the Committee on Government Operations.

A bill to prescribe standards of conduct for legislators, candidates for the legislature, legislative employees, and certain other persons; to create certain commissions, committees, and boards and prescribe their powers and duties; to prescribe the powers and duties of certain other persons; to provide protection for persons reporting violations of this act; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 101. This act shall be known and may be cited as the
2 "Michigan legislative ethics act".

3 Sec. 103. For the purposes of this act only, the words and
4 phrases defined in sections 105 to 109 have the meanings ascribed
5 to them in those sections.

1 Sec. 105. (1) "Candidate for the legislature" means a
2 person who has filed a nominating petition or paid a fee in lieu
3 of filing a nominating petition as a candidate for the office of
4 state senator or state representative pursuant to section 163 of
5 the Michigan election law, Act No. 116 of the Public Acts of
6 1954, being section 168.163 of the Michigan Compiled Laws.

7 (2) "Commissioner" means a duly appointed and certified
8 member of the legislative ethics commission.

9 (3) "Confidential information" means information made confi-
10 dential by law or information that is conveyed or accepted with
11 the understanding that the information will only be used for
12 official purposes.

13 Sec. 107. (1) "LEC" means the legislative ethics commission
14 established in section 111.

15 (2) "Legislative employee" means a person, other than a leg-
16 islator, who is compensated by the legislative branch in return
17 for regular or substantial personal services, regardless of the
18 person's pay level or technical status as a full-time or
19 part-time employee, independent contractor, or consultant.

20 Members and the staff of the LEC are legislative employees. An
21 individual who performs functions that are purely incidental to
22 legislative functions, such as a security, delivery, maintenance,
23 or printing, is not a legislative employee.

24 (3) "Oath or affirmation" means a statement to affirm,
25 swear, verify, or certify the truth under penalty of perjury.

26 Sec. 109. (1) "Person" means an individual, corporation,
27 business enterprise, or other entity either public or private and

1 any legal successor, representative, agent, or agency of that
2 individual, corporation, business enterprise, or other entity, or
3 any other organization or group of persons acting jointly,
4 including a state agency or a political subdivision of this
5 state.

6 (2) "Public official" means an official in the executive or
7 legislative branch of state government.

8 Sec. 111. (1) The legislative ethics commission is hereby
9 established in the legislative council and shall consist of 9
10 members selected as follows:

11 (a) Two members appointed jointly by the majority leader of
12 the senate and the minority leader of the senate.

13 (b) Two members appointed jointly by the speaker of the
14 house of representatives and the minority leader of the house of
15 representatives.

16 (c) One member appointed by the majority leader of the
17 senate.

18 (d) One member appointed by the minority leader of the
19 senate.

20 (e) One member appointed by the speaker of the house of
21 representatives.

22 (f) One member appointed by the minority leader of the house
23 of representatives.

24 (g) Not more than 30 days after the appointment of the mem-
25 bers appointed pursuant to subdivisions (a) through (f), the mem-
26 bers shall select 1 additional member.

1 (2) Not more than 120 days after the effective date of this
2 act, the members of the initial LEC shall be appointed.

3 (3) Each appointee, when appointed, shall execute, in writ-
4 ing, the oath or affirmation set forth in section 1 of article XI
5 of the state constitution of 1963. When the oath or affirmation
6 is executed, an appointee is certified as a commissioner of the
7 LEC and is immediately considered to have begun serving his or
8 her appointed term.

9 (4) Not more than 45 days after a commissioner is certified,
10 a commissioner may be decertified by a majority vote of both
11 houses of the legislature, if the legislature is in session, or
12 by a 2/3 vote of the members of the legislative council if the
13 legislature is not in session. A decertified commissioner is
14 disqualified from membership on the LEC and a replacement shall
15 be appointed to fill the vacancy in the same manner as the origi-
16 nal appointment was made.

17 (5) A commissioner appointed pursuant to subsection (1)(a),
18 (b), or (g) shall not be a legislator, a legislative employee, an
19 elected or appointed public official, a commissioner or director
20 of a governmental body, an officer of a political party, or, at
21 the time of the appointment, a candidate for public office.

22 (6) Commissioners appointed pursuant to subsection (1)(c)
23 through (f) shall be legislators.

24 (7) A commissioner appointed pursuant to subsection (1)(a),
25 (b), or (g) shall serve a term of 2 years.

26 (8) A commissioner shall serve for not more than 10
27 consecutive years, except that a commissioner continues in office

1 until a successor is appointed. The appointment of commissioners
2 is not subject to the advice and consent of the senate.

3 (9) A vacancy for the remainder of an unexpired term of a
4 commissioner shall be filled not more than 30 days after the
5 occurrence of the vacancy in the same manner as the original
6 appointment. If the appointing authority does not make an
7 appointment not more than 30 days after the vacancy occurs, the
8 appointment shall be made by the LEC.

9 (10) At its first meeting in each even numbered year, the
10 LEC shall elect from its members a chairperson and a
11 vice-chairperson, each to serve for a 2-year term with a limit of
12 2 consecutive terms. The vice-chairperson shall act as chair-
13 person in the absence of the chairperson or if there is a vacancy
14 in the chair.

15 Sec. 113. The legislative council, at its sole discretion,
16 may employ staff necessary to carry out the functions, duties,
17 and responsibilities of the LEC under this act. All staff of the
18 LEC are at-will employees of the legislative council subject
19 solely to the legislative council.

20 Sec. 115. (1) A commissioner may be removed from office by
21 a vote of 2/3 of both houses of the legislature for good cause,
22 including, but not limited to, substantial neglect of duty,
23 inability to discharge the powers and duties of office, violation
24 of this act, gross misconduct, or conviction of a felony.

25 (2) A commissioner or LEC employee shall comply with this
26 act and shall be held to the same standards and requirements as a
27 legislative employee.

1 (3) In addition to being bound by this act and other
2 applicable statutes, a commissioner appointed pursuant to
3 section 111(1)(a), (b), or (g) shall not do any of the following
4 during his or her term as a commissioner:

5 (a) Participate in political management of a political cam-
6 paign or in a political campaign.

7 (b) Participate in the campaign of, attend campaign
8 fund-raising events for, or make a financial contribution to any
9 of the following:

10 (i) A candidate for the legislature.

11 (ii) A current legislator or legislative employee who is a
12 candidate for any other office.

13 (iii) A person running against a present legislator or leg-
14 islative employee who is a candidate for the legislature or any
15 other office.

16 (c) Register as a lobbyist or participate in lobbying activ-
17 ities that require the commissioner or employee to register as a
18 lobbyist.

19 (d) Take an action or make a statement that is likely to
20 create in the mind of a reasonable, objective observer a belief
21 that the commissioner is not impartial or independent or is oth-
22 erwise unable to properly perform public duties.

23 (4) A commissioner who violates this act shall be treated by
24 the LEC in the same manner as any person who violates this act.

25 (5) During the pendency of a complaint against a commis-
26 sioner or LEC employee, the commissioner or LEC employee shall
27 not participate in any official action of the LEC.

1 (6) A commissioner or LEC employee shall make no written or
2 verbal statement that may prejudice an issue or complaint before
3 the LEC prior to the issuance of a formal written advisory opin-
4 ion on that issue or final written opinion of findings on the
5 complaint.

6 (7) A commissioner shall be held to the standards of the
7 code of judicial conduct.

8 (8) A commissioner appointed pursuant to section 111(1)(a),
9 (b), or (g) or LEC employee shall not discuss any matter before
10 the LEC with, meet with, or accept any compensation, honoraria,
11 travel reimbursement, or food from a legislator, legislative
12 employee, or lobbyist.

13 Sec. 117. (1) The LEC shall meet at least once every 6
14 months. Additional meetings may be held at the call of the
15 chairperson or a majority of commissioners.

16 (2) A quorum of the LEC is 5 commissioners.

17 (3) A vote of the majority of commissioners serving is
18 required for any action on which a vote is required.

19 Sec. 119. The LEC shall administer this act and shall do
20 all of the following:

21 (a) Authorize and train staff to give informal or formal
22 written or oral advice regarding the spirit and requirements of
23 this act.

24 (b) On request issue formal written advisory opinions on a
25 specific situation or clarify a provision of this act.

26 (c) Consider a request for, and grant or deny, a waiver of a
27 provision of this act as provided in section 125.

1 (d) Investigate and adjudicate a complaint and recommend
2 disciplinary action to the legislature.

3 (e) Authorize research in the field of legislative ethics
4 and carry out any program necessary to effectuate the policy and
5 purpose of this act.

6 (f) Prepare a biennial report to the legislature summarizing
7 the activity of the LEC for the 2 years immediately preceding the
8 report, evaluating the effectiveness of this act in accomplishing
9 the purpose of this act, and recommending any legislative reform
10 necessary to improve the administration of this act and to better
11 advance the goal of this act.

12 Sec. 121. The commissioners may give oral advice or provide
13 a written informal nonbinding advice letter to a person seeking
14 guidance as to the spirit or legal requirements of this act if
15 the advice is given with the following express conditions:

16 (a) The opinion of the employee who gives the oral or writ-
17 ten advice is not necessarily the opinion of the LEC.

18 (b) Although the advice is given in good faith, the person
19 seeking the advice relies on the advice at his or her own risk
20 because it is not binding on the LEC.

21 (c) Information voluntarily provided to an LEC employee is
22 not necessarily confidential and may be used against the person
23 seeking the advice if the information becomes material to a pro-
24 ceeding before the LEC. However, the LEC may grant approval for
25 an employee to assure, in writing, the confidentiality of oral
26 information given by a person who has requested a written
27 informal nonbinding advice letter seeking advice in advance of a

1 contemplated action on which the advice is sought if approved by
2 a majority of the commissioners serving.

3 Sec. 123. (1) The LEC may issue a formal written advisory
4 opinion at the request of a member of the legislature, candidate
5 for the legislature, or a legislative employee. The LEC shall
6 not accept a request for a formal written advisory opinion less
7 than 30 business days before an election in which the requester
8 is a candidate. The LEC shall not accept a request for a formal
9 written advisory opinion less than 30 days before any election if
10 the requester is a legislative employee or a member of the legis-
11 lature who is not a candidate in that election.

12 (2) A request for a formal written advisory opinion shall be
13 in writing and set forth with reasonable specificity the facts
14 and circumstances of a real or hypothetical case.

15 (3) The LEC shall expeditiously determine whether to issue a
16 formal written advisory opinion addressing the issue raised. The
17 LEC shall issue a requested formal written advisory opinion
18 unless the LEC or another person files a complaint on the issue
19 raised.

20 (4) A majority of the commissioners serving is required to
21 issue a formal written advisory opinion. The vote of each com-
22 missioner participating in the opinion shall be indicated on the
23 opinion. The LEC shall forward the opinion to the person
24 requesting the opinion and the opinion shall be part of the
25 public records of the LEC.

26 (5) A formal written advisory opinion issued by the LEC is
27 binding on the LEC in any subsequent proceedings concerning the

1 facts and circumstances of the particular case. If a fact
2 considered to be material by the LEC was omitted or misstated in
3 the request, the LEC is not bound by the opinion.

4 (6) The LEC shall issue its opinion not less than 10 busi-
5 ness days before an election.

6 (7) The LEC and all LEC employees shall keep the identity of
7 the requester of a formal written advisory opinion confidential
8 unless the request, the identity of the person making it, or any
9 information conveyed orally or in writing relating to the request
10 is or becomes material to a matter before the LEC.

11 (8) The requester of a formal written advisory opinion may
12 withdraw that request at any time prior to the issuance by the
13 LEC of the formal written advisory opinion.

14 Sec. 125. (1) If fundamental fairness is best served by
15 waiving applicability of a specific provision of this act as the
16 provision relates to a specific individual or action, the LEC may
17 grant a waiver.

18 (2) The person seeking a waiver shall submit a written peti-
19 tion under oath or affirmation stating all of the following:

20 (a) Each relevant provision of this act involved in the
21 waiver request.

22 (b) The essential facts on which a waiver is requested.

23 (c) The specific nature of the waiver sought.

24 (d) The anticipated unfair or unreasonable consequence that
25 would result from a failure to grant the waiver.

1 (3) A majority of the commissioners serving may grant a
2 waiver if they find that the person seeking the waiver has shown
3 all of the following by a preponderance of the evidence:

4 (a) The harm caused by strict application of the act sub-
5 stantially outweighs the benefit of its enforcement in the spe-
6 cific situation.

7 (b) Application of the guideline or provision of this act
8 under the circumstances presented would be inconsistent with the
9 spirit and purpose of the guideline or provision or of this act
10 as a whole.

11 (c) The purpose of this act and the public interest will be
12 best served by granting the applicant a waiver.

13 (4) The LEC may require or permit the personal appearance of
14 the applicant before the LEC and hold a hearing regarding the
15 waiver request.

16 (5) Unless a shortened or expanded time is considered neces-
17 sary or appropriate by the LEC, the LEC shall decide on a peti-
18 tion for a waiver not more than 30 days after the petition is
19 filed. Unless the person seeking the waiver consents, an exten-
20 sion of time ordered by the LEC shall not exceed an additional 60
21 days.

22 (6) A decision on a petition for a waiver shall be placed on
23 the record setting forth the petition and the specific rationale,
24 based on the facts and the law, for the decision.

25 (7) The LEC may qualify a waiver granted under this section
26 in any manner that the LEC considers appropriate.

1 Sec. 127. It is a violation of this act if a legislator, a
2 candidate for the legislature, or a legislative employee engages
3 in any conduct that creates a conflict of interest or constitutes
4 an impropriety because the conduct is in violation of any of the
5 following:

6 (a) The Michigan campaign finance act, Act No. 388 of the
7 Public Acts of 1976, being sections 169.201 to 169.282 of the
8 Michigan Compiled Laws.

9 (b) Act No. 472 of the Public Acts of 1978, being sections
10 4.411 to 4.431 of the Michigan Compiled Laws.

11 (c) A rule of the senate or house of representatives or a
12 joint rule of the senate and house of representatives, a viola-
13 tion of which the LEC determines is a violation of this act.

14 (d) A guideline promulgated by the legislative council.

15 Sec. 129. (1) A complaint alleging a violation of this act
16 arising from conduct that occurred after the effective date of
17 this act may be filed by a member of the senate against a member
18 of the senate, a candidate for the senate, an employee of a
19 member of the senate or of the senate, or an employee who is
20 employed jointly by the senate and house of representatives, or
21 by a member of the house of representatives against a member of
22 the house of representatives, a candidate for the house of repre-
23 sentatives, an employee of a member of the house of representa-
24 tives or of the house of representatives, or an employee who is
25 employed jointly by the senate and house of representatives. A
26 complaint shall not be filed less than 48 hours immediately
27 preceding the filing deadline for an election in which the person

1 accused of misconduct in the complaint is eligible to be a
2 candidate.

3 (2) The LEC shall provide a simple form for complaints that
4 includes all of the following:

5 (a) The name and address of the complainant.

6 (b) A statement of the facts known or believed to be true
7 that are the basis of the complaint including the name of the
8 person accused of misconduct, the approximate date of the alleged
9 misconduct, and names and addresses of persons with personal
10 knowledge of each alleged fact.

11 (c) A statement that the person filing the complaint veri-
12 fies under penalty of perjury that the facts stated are true to
13 the best of his or her knowledge and that he or she knows that to
14 intentionally initiate a false complaint is a violation of the
15 law.

16 (3) The LEC shall send a copy of the complaint, marked
17 "CONFIDENTIAL", by certified mail to the person accused by the
18 complaint of misconduct not more than 1 day after the complaint
19 is received by the LEC unless a majority of the commissioners
20 serving approves a delay and determines the conditions under
21 which the person accused will be informed.

22 (4) The existence and substance of a complaint shall be kept
23 confidential until a preliminary finding is made on the validity
24 of the complaint except that the complaint shall be sent to the
25 person accused and members of the LEC and necessary staff of the
26 LEC may be informed.

1 (5) Not more than 5 days after receipt of a complaint, the
2 LEC or staff of the LEC shall review the complaint for formal
3 sufficiency. If a complaint is deficient on its face, the com-
4 plaint shall be returned to the complainant with a statement of
5 the nature of the deficiency.

6 (6) When a complaint is determined to be formally suffi-
7 cient, the LEC or staff of the LEC shall evaluate the complaint
8 and advise the chairperson of the LEC whether the complaint
9 alleges conduct or violations of this act that should be
10 investigated. To be valid, the complaint shall allege at least
11 all of the following:

12 (a) Facts that, if true, establish a violation of this act.

13 (b) That the conduct that is the basis of the complaint
14 occurred after the effective date of this act and not more than 5
15 years before the date on which the complaint was filed with the
16 LEC or that the person accused of misconduct intentionally con-
17 cealed or otherwise prevented discovery of relevant facts. If
18 the person accused intentionally concealed or otherwise prevented
19 discovery of relevant facts, the complaint shall be filed not
20 more than 5 years after the facts are discovered.

21 (c) That the person accused of misconduct is a legislator,
22 candidate for the legislature, or legislative employee at the
23 time the complaint is filed.

24 (7) The LEC shall make a determination on the substantive
25 validity of the complaint not more than 20 days after the com-
26 plaint is filed. The LEC shall dismiss the complaint or certify
27 the complaint for further consideration. The chairperson or

1 other commissioner may request a hearing on the validity of the
2 complaint at a meeting of the LEC.

3 (8) If a complaint is dismissed because of substantive inva-
4 lidity, the LEC shall return the complaint to the complainant
5 with a notice of dismissal stating in detail the reason for dis-
6 missal and shall send a copy of the notice of dismissal to the
7 person accused.

8 (9) If the LEC finds that the complaint was frivolous, mali-
9 cious, or filed in bad faith, the LEC shall recommend an appro-
10 priate sanction against the complainant as authorized by guide-
11 lines issued by the legislative council.

12 (10) If the LEC determines that the complaint alleges a vio-
13 lation outside the scope of this act, it shall so state in the
14 notice of dismissal. The LEC shall send the notice of dismissal
15 to the person accused, and it is a public record.

16 (11) If the LEC determines that some or all of the allega-
17 tions of the complaint, if proven, would constitute a violation
18 of this act or if the LEC has initiated the complaint, the LEC
19 shall certify the complaint for further consideration and factual
20 investigation. The record of certification for further consider-
21 ation is confidential, subject to later actions that make it part
22 of the public record.

23 (12) A person who files a complaint may withdraw that com-
24 plaint at anytime prior to the issuance by the LEC of a written
25 opinion pursuant to section 141. The LEC may, on its own initia-
26 tive, determine if a complaint withdrawn pursuant to this
27 subsection was frivolous, malicious, or filed in bad faith.

1 (13) A complaint shall not be filed under this act if a
2 complaint has been filed under the Michigan campaign finance act,
3 Act No. 388 of the Public Acts of 1976, being sections 169.201 to
4 169.282 of the Michigan Compiled Laws, alleging the same miscon-
5 duct by the same person.

6 (14) A complaint filed under this act shall be dismissed if
7 a complaint alleging the same misconduct by the same person is
8 filed under Act No. 388 of the Public Acts of 1976.

9 Sec. 131. (1) An investigation by the LEC shall be under-
10 taken in a manner that assures the public an impartial and com-
11 prehensive review, is fair to the person accused, and elicits the
12 information the LEC needs to make a decision.

13 (2) Before an investigation begins, the LEC shall adopt a
14 written resolution defining the scope of the investigation and
15 give a copy of the resolution to the complainant and the person
16 accused. If, during the investigation, additional facts are dis-
17 covered that justify an expansion of the investigation and that
18 make an additional charge beyond the violations alleged in the
19 complaint a possibility, the LEC shall amend the resolution
20 accordingly and send a copy to the complainant and to the person
21 accused.

22 (3) The LEC shall keep the resolution and the fact that an
23 investigation has been undertaken confidential except that, when
24 asked, the LEC may state that it is investigating a complaint, a
25 finding of probable cause has not been made, and an adverse
26 inference of impropriety or guilt should not be drawn from the
27 decision to investigate. The LEC shall not reveal any other fact

1 concerning the nature or result of the investigation except as
2 provided in this act until after a determination that there is
3 probable cause to believe that a violation of this act has
4 occurred has been made.

5 Sec. 133. A legislator, candidate for the legislature, or
6 legislative employee may request in writing that the LEC investi-
7 gate a charge of impropriety made against himself or herself.
8 The request shall state with specificity the nature of the inves-
9 tigation requested. The LEC shall determine if it will undertake
10 the investigation. If the LEC agrees to investigate, the inves-
11 tigation is not limited in scope by the request and, once begun,
12 shall be handled as any other investigation, with the person
13 requesting the investigation treated as a person accused.

14 Sec. 135. (1) An investigation shall be conducted by the
15 LEC, outside counsel, investigators, or staff as the LEC consid-
16 ers necessary. The purpose of a preliminary investigation is to
17 determine whether or not there is probable cause to believe that
18 a violation of this act has occurred and, if a violation has
19 occurred, to proceed with a full adjudicatory hearing.

20 (2) Upon a majority vote of the members serving, the LEC may
21 order a hearing, subpoena witnesses and documents, conduct depo-
22 sitions under oath or affirmation, require the participation of
23 the person accused, and issue interrogatories to be answered
24 under oath or affirmation on issues defined in the resolution
25 adopted pursuant to section 131(2).

1 (3) In preparing the investigation report, the LEC shall not
2 consider an oral or a written statement, whether incriminating or
3 exculpating, unless made under oath or affirmation.

4 (4) The person accused shall be given an adequate opportu-
5 nity to provide testimonial and documentary evidence and, if the
6 person accused requests, he or she may inspect and make copies of
7 all evidence relating to the allegations.

8 (5) When the investigation is complete, the LEC, the staff
9 of the LEC, and the investigator shall submit confidential writ-
10 ten reports summarizing the evidence, evaluating its credibility,
11 and detailing findings on each of the allegations investigated to
12 the LEC with a recommendation that the complaint, or any portion
13 of the complaint, be dismissed or that the matter proceed to a
14 hearing.

15 (6) Unreliable information or an irresponsible allegation
16 shall be excluded from the report. The notes of the LEC, staff
17 of the LEC, and investigator, records of interviews, and other
18 investigatory material considered unreliable or unduly prejudic-
19 ial by the LEC shall remain confidential.

20 Sec. 137. (1) The LEC shall consider an investigation
21 report in closed session and if it determines that substantial
22 credible evidence exists that establishes probable cause to
23 believe that a violation of the act has occurred and, unless it
24 finds that the complaint is frivolous or does not constitute a
25 substantive violation of this act or the person accused acknowl-
26 edges a violation pursuant to section 139(4), it shall order a
27 full adjudicatory hearing.

1 (2) If the LEC does not find that a full adjudicatory
2 hearing is warranted, the LEC shall dismiss the complaint. If
3 the LEC finds that the charge is frivolous, malicious, or made in
4 bad faith or that the person accused should be exonerated of the
5 charge, the LEC shall so state in the notice of dismissal. The
6 LEC shall send a notice of dismissal to the person accused and
7 the complainant.

8 (3) If the LEC finds that the evidence supports a violation
9 outside the scope of this act, the LEC shall state that in its
10 report and forward the complaint and the report to the appropri-
11 ate enforcement body for disposition.

12 (4) The LEC shall make public a notice of dismissal but
13 shall not make public the investigation report containing find-
14 ings or recommendations or the underlying investigatory materi-
15 als, unless the LEC determines that this would unfairly prejudice
16 either the person accused or the complainant. This act does not
17 prevent a complainant or person accused from making the notice of
18 dismissal and the report public.

19 Sec. 139. (1) If the LEC finds that substantial credible
20 evidence exists establishing probable cause that a violation of
21 this act has occurred, the LEC shall serve on the person accused,
22 in a manner consistent with the service of summons under the
23 Michigan rules of court, a formal notice that states the specific
24 allegations and schedules a hearing.

25 (2) The LEC shall schedule the hearing to commence not less
26 than 10 days after service of the formal charge on the person
27 accused. If the person accused requests and the LEC consents, an

1 earlier hearing may be scheduled. If requested, the LEC shall
2 grant the person accused reasonable additional time to prepare a
3 defense.

4 (3) The person accused may file a responsive pleading admit-
5 ting, denying, or otherwise responding to the allegations.

6 (4) If the person accused acknowledges a violation of this
7 act, the LEC may suspend further proceedings and recommend cor-
8 rective action or sanctions that it considers appropriate. If
9 the LEC suspends the proceedings or dismisses the charges as a
10 result of a negotiated settlement, the terms and conditions of
11 the settlement and the reasons for entering into the agreement
12 shall be stated in a written report that shall be sent to the
13 complainant and made part of the public record.

14 (5) Except as provided in subsection (4), when a determina-
15 tion is made that there is probable cause that a violation of
16 this act has occurred, a full adjudicatory hearing shall be
17 conducted. The LEC shall make public the investigation report
18 containing findings and recommendations, but not the underlying
19 investigatory materials.

20 Sec. 141. (1) A hearing held pursuant to this act against a
21 legislator, candidate for the legislature, or legislative
22 employee shall be conducted in a manner that inspires confidence
23 in the integrity and objectivity of the process and demonstrates
24 full consideration for the rights and reputation of the person
25 accused.

26 (2) Except as otherwise provided in this act and
27 notwithstanding any other provision of law to the contrary, a

1 hearing under this act shall be held pursuant to the contested
2 case provisions of the administrative procedures act of 1969, Act
3 No. 306 of the Public Acts of 1969, being sections 24.201 to
4 24.328 of the Michigan Compiled Laws. For purposes of a hearing
5 held pursuant to this act and upon the affirmative vote of a
6 majority of the members serving, the LEC has the authority to
7 issue subpoenas.

8 (3) A hearing shall be before the LEC. The chairperson or
9 his or her designee shall conduct a hearing with the advice and
10 counsel of the staff or other legal counsel as directed by the
11 LEC.

12 (4) Not more than 10 days after the completion of a hearing,
13 the LEC shall vote on each charge to determine if each charge was
14 established by a preponderance of the evidence and shall prepare
15 a written opinion with recommendations, if any.

16 (5) As to each charge on which the evidence was found to be
17 insufficient to establish a violation, the LEC shall issue a
18 written opinion stating that finding. If the LEC finds that a
19 charge is frivolous, malicious, or made in bad faith or that the
20 person accused should be exonerated of the charge, the LEC shall
21 state that finding in the opinion. If the LEC finds that the
22 person accused should be exonerated, the LEC may recommend that
23 the legislature reimburse the person accused for all or part of
24 reasonable legal fees incurred as a result of the charge. Unless
25 the LEC makes such a recommendation, legal fees shall not be paid
26 from public funds. A charge is not frivolous, malicious, or made

1 in bad faith based only upon the fact that there was insufficient
2 evidence to establish a violation.

3 (6) As to each charge on which the evidence is found to be
4 sufficient to establish a violation of this act, the LEC shall
5 issue a written opinion stating its findings of fact and conclu-
6 sions of law.

7 Sec. 143. Notwithstanding any other provision of this act,
8 a written opinion required by section 141 shall be issued not
9 less than 10 business days before the election immediately fol-
10 lowing the filing of the complaint and in which the person
11 accused is a candidate.

12 Sec. 145. If the person who is found by the LEC or by
13 acknowledgment to the LEC to have violated this act is or was a
14 member of the legislature at the time a violation occurred, the
15 chairperson of the LEC shall forward the LEC's conclusions to the
16 presiding officer of the house of the legislature to which the
17 member belongs or if the person is a former member of the legis-
18 lature, the LEC shall forward its opinion to the house of the
19 legislature to which the former member belonged at the time the
20 violation is found to have occurred and the following apply:

21 (a) If the legislature is in session at the time the opinion
22 is received, the entire house of the legislature shall determine
23 what sanctions, if any, are to be imposed. The vote shall be
24 taken not more than 30 days after receipt of the LEC's opinion.
25 If the opinion is received in December, the house shall have 60
26 days to complete its determination.

1 (b) If the legislature is not in session, the presiding
2 officer may either call a special session to put the matter to a
3 vote not more than 60 days after receipt of the LEC's opinion or
4 submit the opinion to the legislative council.

5 (c) Except in the case of expulsion, which requires a 2/3
6 vote, a sanction shall be determined by a majority vote. A vote
7 taken pursuant to this section shall be a record roll call vote.

8 (d) In determining what sanctions, if any, to impose, the
9 legislature is not required to review the basic facts or question
10 the procedures or findings of fact of the LEC. The primary issue
11 before the legislature is the determination of the appropriate
12 sanction based on the findings of the LEC.

13 Sec. 147. (1) If a document filed with or produced by the
14 LEC pertains to a candidate for the legislature or legislative
15 employee, the LEC shall retain the document as a public record
16 for not less than 6 years. If a document filed with or produced
17 by the LEC pertains to a legislator, the LEC shall retain the
18 document as a public record while the legislator remains a member
19 of the state legislature.

20 (2) The LEC may require the cooperation of a state agency or
21 an official, an employee, or other person whose conduct is regu-
22 lated by this act. A person whose conduct is regulated by this
23 act shall make available to the LEC any information reasonably
24 related to an investigation when requested in writing to do so by
25 the LEC subject to applicable constitutional and statutory pro-
26 tections unless the confidential nature of the communication or
27 of the relationship through which the information was obtained,

1 or both, make that information not subject to the freedom of
2 information act, Act No. 442 of the Public Acts of 1976, being
3 sections 15.231 to 15.246 of the Michigan Compiled Laws. The LEC
4 may request and shall receive from an officer, department, divi-
5 sion, board, bureau, commission, house of the legislature, or
6 other agency of this state, cooperation and assistance in the
7 performance of its duties.

8 (3) The LEC may perform other acts, duties, and functions
9 authorized by or in connection with the administration of this
10 act.

11 (4) A person shall not knowingly or improperly disclose con-
12 fidential information acquired in the course of official duties
13 under this act.

14 (5) The LEC may publicly respond to a statement or interpre-
15 tation made by a person who requested an informal advice letter
16 or a formal written advisory opinion or by a person who is the
17 subject of a decision of the LEC concerning the contents of that
18 informal advice letter, advisory opinion, or decision issued or
19 purported to have been issued. The LEC, to the degree necessary
20 to respond to an untrue public statement by a person who
21 requested a letter or opinion or who is the subject of a deci-
22 sion, may reveal information that would otherwise have been con-
23 fidential if failure to reveal the information would leave unan-
24 swered a serious allegation against the LEC or a serious distor-
25 tion of the procedure, letter, opinion, or decision of the LEC.

26 Sec. 149. Except as otherwise provided in this act, the
27 business that the LEC performs shall be conducted at a public

1 meeting held in compliance with the open meetings act, Act
2 No. 267 of the Public Acts of 1976, being sections 15.261 to
3 15.275 of the Michigan Compiled Laws. Public notice of the time,
4 date, and place of a meeting shall be given in the manner
5 required by Act No. 267 of the Public Acts of 1976.

6 Sec. 151. Except as otherwise provided in this act, a writ-
7 ing prepared, owned, used, in the possession of, or retained by
8 the LEC in the performance of an official function shall be made
9 available to the public in compliance with the freedom of infor-
10 mation act, Act No. 442 of the Public Acts of 1976, being sec-
11 tions 15.231 to 15.246 of the Michigan Compiled Laws.

12 Sec. 153. A legislator, candidate for the legislature, or
13 legislative employee shall not, directly or indirectly, subject a
14 person to reprisal, retaliation, harassment, discrimination, or
15 ridicule for reporting to the LEC or other government entity,
16 conduct the person reasonably believes is a violation of this act
17 or other state law.

18 Sec. 155. (1) If the LEC finds that a violation of this act
19 has occurred, the LEC may recommend, and the house of the legis-
20 lature of which the person accused is a member or for which the
21 person accused is a candidate may order, an appropriate sanction
22 as authorized by guidelines issued by the legislative council
23 designed to fit the offense and assure both fair treatment of the
24 offender and deterrence to others who might consider a similar
25 act.

1 (2) If the LEC finds that a legislative employee has
2 violated this act, the LEC may recommend either of the
3 following:

4 (a) That the house of the legislature of which the employer
5 of the legislative employee is a member issue a written
6 reprimand. If the employee is employed jointly by the senate and
7 house of representatives, the reprimand shall be issued jointly
8 by both houses.

9 (b) That the employer of the legislative employee impose
10 sanctions authorized by guidelines issued by the legislative
11 council.

12 (3) A person who makes a false, deliberately misleading or
13 incomplete, or unnecessarily delayed disclosure of a violation of
14 this act to the LEC is subject to the sanctions authorized by
15 guidelines issued by the legislative council.

16 Sec. 157. (1) The right to proceed in a separate civil suit
17 under this section is independent of any proceeding conducted by
18 the LEC.

19 (2) Information acquired by the LEC shall be made available,
20 on request, to litigants in the civil action provided the release
21 of the information does not jeopardize an action before the LEC,
22 cause unfair prejudice to the person accused, or violate a legal
23 obligation of confidentiality.

24 (3) A civil fine ordered pursuant to this act shall be paid
25 to the state treasurer for deposit in the general fund.

26 Sec. 159. (1) Conduct that is criminal under this act or
27 another state law may be separately prosecuted without regard to

1 the resolution or pendency of a charge before the LEC or a civil
2 court.

3 (2) Information acquired by the LEC shall be made available,
4 on request, to the defendant and prosecutor in a criminal action
5 provided that the release of the information does not prejudice
6 the person accused or violate a legal obligation of
7 confidentiality.

8 Sec. 161. Nothing in this act shall be construed to prevent
9 a member of the senate or house of representatives from taking
10 independent action against 1 of the member's own employees or
11 impacting, in any other way, the at-will employment status of the
12 employee.

13 Sec. 163. This act shall take effect January 1, 1995.