



**House
Legislative
Analysis
Section**

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**CREATE LEGISLATIVE ETHICS
COMMISSION**

**House Bill 5660 as passed by the House
Second Analysis (8-5-96)**

**Sponsor: Rep. Frank M. Fitzgerald
Committee: House Oversight and Ethics**

THE APPARENT PROBLEM:

Michigan has a campaign finance act that regulates some aspects of campaign finance. And while numerous campaign finance reforms have been both enacted and proposed, until recently little existed in Michigan law regarding the conduct of legislators, other than campaigning for reelection, once they assume office. In the 1993-94 legislative session, a number of recommendations from the 1991 House Republican Policy Committee Task Force Report on Campaign Finance Reform were enacted into law. These laws addressed specific areas of legislative conduct that had been under criticism. Public Act 411 of 1994 eliminated so-called officeholder expense funds (OEFs), which had long been criticized for being little more than frequently abused political "slush funds" full of surplus campaign cash and able to receive corporate contributions. Public Act 385 of 1994 banned all cash honoraria for legislators as of January 1, 1995, making violations misdemeanors punishable by fines of up to \$1,000 or imprisonment for up to 90 days, or both. In the wake of considerable public criticism over a case in which a state senator who chaired a Senate committee that dealt with insurance issues resigned five months after being reelected in order to become an insurance lobbyist, Public Act 383 of 1994 prohibits lawmakers who resign from office from becoming lobbyists or lobbyist agents during their term of office. And Public Act 412 lowered the amount of money -- from \$750 to \$500 -- that lobbyists are required to report when they spend money on trips and gifts for public officials.

However, as an article in the Michigan Monthly (October 1995) written by one of the Pulitzer prize-winning journalists who exposed the House Fiscal Agency scandal points out, despite the legislation last session the most politically sensitive ethics issues -- including financial disclosure, a permanent independent ethics commission, and public financing of legislative campaigns -- remained unresolved. Legislation has been proposed that would begin to implement a scaled-down version of an ethics commission proposed in last two legislative sessions.

THE CONTENT OF THE BILL:

The bill would create a new law, the "Michigan Legislative Ethics Act," to create a legislative ethics commission consisting of legislators and public members charged with developing an ethics code for the legislature.

Legislative ethics commission. The bill would create an eight-member legislative ethics commission (LEC) in the Legislative Council. Within thirty days after the bill's effective date, one public member and one legislator would be appointed by each of the caucus leaders in the Senate and the House of Representatives. Public members couldn't be former legislators, nor current or former legislative employees or lobbyist agents, though legislator-members could be former legislators. If a public member were elected to the legislature, he or she would be disqualified to be a public member of the commission.

Public members would serve for four-year terms or until a successor were appointed, whichever were later, though the first four public members appointed to the board would serve varying terms (one for one year, one for two years, and one for three years). Legislator members would serve for two-year terms (or until a successor were appointed, whichever were later), except for the first legislative members, who would serve until December 31, 1998. Vacancies would be filled for the unexpired term in the same way as the original appointment.

The Legislative Council could remove an LEC member for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for "any other good cause." The commission's first meeting would be called by the Legislative Council, which also would decide which public members would serve which initial term.

At its first meeting, the commission would elect a chair from among its public members and other officers as it saw fit. After the first meeting, the commission would

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have to meet at least quarterly, or more frequently at the call of the chair or at the request of at least four members. A majority of the members would constitute a quorum for the transaction of business at meetings, while a majority of members present and serving would be required for official action. Members would serve without compensation, though they could be reimbursed for their actual and necessary expenses incurred in performing their official duties as members of the commission. The commission's business would have to be conducted at public meetings that complied with the Open Meetings Act, and commission writings prepared, owned, used, in the possession of, or kept by the commission in the performance of official functions would be subject to the Freedom of Information Act.

Ethics code. By January 1, 1997, the legislative ethics commission would be required to present an ethics code to the Secretary of the Senate and the Clerk of the House of Representatives. The code developed by the commission would be incorporated into the joint rules of the legislature, and would have to include all of the following:

- (1) Procedures for providing formal opinions to persons (defined in the bill to mean individuals, partnerships, corporations, associations, governmental entities, or other legal entities) who sought guidance on possible violations of the ethics code.
- (2) Methods to investigate complaints initiated by the legislative ethics commission or filed by others.
- (3) Ethics training for legislators and legislative staff.
- (4) Specific sanctions and procedures for the legislative Ethics commission to recommend to the House of Representatives or Senate, as appropriate (that is, depending on whether the violator was a state representative or senator), to impose on legislators who violated the code; and
- (5) Specific sanctions and procedures for the legislative ethics commission to recommend to the appropriate caucus (depending on the caucus of the employing legislator) to be imposed on legislative employees who violated the code.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

As the October 1995 Michigan Monthly article pointed out, "Judges who commit unethical acts are subject to investigation and prosecution by the Judicial Tenure Commission. But Michigan has no independent body to provide other elected state officials with ethics advice, to investigate alleged misconduct and to take action against violators." Another article, in the January 1994 Governing magazine, also points out that a "new wave of legislative reform is spreading through the states in the 1990s. The first wave, a quarter-century ago, was centered in the largest states, and produced the full-time professional legislatures that most of those places have been living under ever since. This one is different. It is about ethics, and the ethical climate in which politicians operate." Yet another article in the July 1994 State Legislatures characterizes "a new and far more aggressive round of efforts aimed at ethics oversight in the '90s," where "[i]ncreasingly, peer review is giving way to independent review by third-party 'outsiders'" -- average citizens outside the legislative process. In fact, a former director of the Eagleton Institute of Politics at Rutgers University notes that the present trend in ethics oversight reform increasingly involves putting public members on legislative ethics committees or creating independent ethics commissions. Currently a number of other states already have such ethics commissions or committees, including Wisconsin, an early pioneer that has maintained a citizen-dominated ethics board for more than two decades that oversees not just members of the legislature but all state officials; Rhode Island, which established an independent state-level ethics commission in 1977 to oversee all state and municipal appointed and elected officials, and which, under intense public pressure, passed major ethics and campaign finance reforms in 1992; Alaska, whose Legislative Ethics Committee was established early in 1993; Kentucky, which, in the wake of a 1993 federal sting operation involving bribery and lobbying improprieties, revitalized its state ethics commission and enacted tough new ethics reforms; and New Jersey, which reconfigured its Joint Committee on Ethical Standards to include citizen members five years ago, based on reforms stemming from allegations of improper campaign fund raising by legislative leaders. Other states with ethics commissions include South Carolina, New Mexico, Arizona, and Texas. The bill would implement many of the features found in existing ethics commissions or committees in other states. For example, like Alaska's Legislative Ethics Committee, the bill would allow the

issuing of advisory opinions interpreting the state's ethics law; an ethics code (Alaska has a Standards of Conduct handbook that is distributed to legislative offices, along with a regular ethics newsletter); and ongoing ethics training for legislators and staff (in 1994 Alaska was laying the groundwork for educational seminars to keep lawmakers up to speed on ethical questions). Given the current public disillusionment and cynicism with electoral politics, a legislative ethics commission and a legislative code of ethics could go a long way to improve public confidence in the electoral system.

Against:

It is already in the legislature's power to create such an ethics commission, as well as a code of legislative ethics, without subjecting either to the uncertainties of the legislative process. Rather than propose something that sounds good, but that can be held up indefinitely legislatively, perhaps the legislature should move to directly implement these suggestions. That way, an ethics commission could be up and operating almost immediately.

Response:

While it is true that the legislature -- or, in fact, either house of the legislature -- could establish a non-statutory legislative ethics commission, the trend in other states certainly is to give their commissions the statutory standing -- and security -- that establishing them by law would provide. Without statutory authority, there would be no guarantee that such a commission would survive possible future changes in legislative leaders, and surely such an important commission shouldn't be subject to the vagaries of partisan politics.

POSITIONS:

The League of Women Voters of Michigan supports the bill. (8-7-96)

Michigan Citizen Action supports the bill. (8-7-96)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.