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MICHIGAN FINANCIAL DISCLOSURE ACT

House Bill 4815

Sponsor: Rep. Paul Gieleghem

Committee: Constitutional Law and Ethics

Complete to 7-24-00

A SUMMARY OF HOUSE BILL 4815 AS INTRODUCED 6-17-99

The bill would create a new act, the “Michigan financial disclosure act,” to require state officials and candidates for state office to file certain financial reports -- or, instead of a report, a copy of their federal income tax returns -- with the secretary of state, who would be required to make such reports available for public use within 30 days of filing. Citizens could file complaints alleging violations of the bill’s provisions, which the secretary of state would be required to investigate. Violators would be subject to civil fines of up to \$5,000.

Definitions. “Candidate” would be defined as it is in the Michigan Campaign Finance Act (MCL 169.203), and “state official” or “candidate for state office” would mean all of the following, or a candidate for any of the following, offices, respectively: governor, lieutenant governor, attorney general, secretary of state, state senator, state representative, head of a principal department if the office were filled by election, judge of a court of record, regent of the University of Michigan, member of the Michigan State University board of trustees, or member of the Wayne State University board of governors.

State officials. The bill would require anyone who was a state official at any time during a calendar year to file a financial disclosure report with the secretary of state by May 1 of the following year (unless that individual were no longer a state official at that time).

Candidates. Someone who was a candidate for state office (and who had not already filed a report as the bill would require of state officials) would be required to file a report that included the same kinds of financial information as would be required of state officials. The report would have to be filed within 30 days after either (a) the candidate filed a fee, affidavit of incumbency, or nominating petition for the state office, or were nominated at a political party caucus or convention, or (b) the deadline for holding the caucus or convention as established by the Michigan Election Law.

Report. The bill would generally require, with certain exceptions, information on income, assets, and liabilities amounting to at least \$1,000 held or owed by the individual filing the report or by members of his or her immediate family (which the bill would define to mean an individual’s child residing in his or her household, his or her spouse, or anyone he or she -- or his or her spouse -- claimed as a dependent for federal income tax purposes). The value of all income (earned or otherwise), assets, and real property would have to be reported according to certain ranges of values, beginning with at least \$1,000 and up to \$2,500 (with the other ranges being from \$2,500 up to \$5,000, \$5,000 up to \$15,000, \$15,000 up to \$50,000, \$50,000 up to \$100,000, \$100,000 up to \$250,000, \$250,000 up to \$500,000, \$500,000 up to \$1 million, and \$1 million or more). The

amount or value of reported liabilities would also be reported according to certain ranges, beginning with \$10,000 up to \$15,000, and continuing with \$15,000 up to \$50,000, \$50,000 up to \$100,000, \$100,000 up to \$500,000, \$500,000 up to \$1 million, and \$1 million or more.

More specifically, the report would have to include the following:

- Both the source, type, and amount or value of earned income received during the preceding calendar year by the individual filing the report or, if applicable, by his or her spouse (the bill would define “earned income” to mean “salaries, tips, and other employee compensation, and net earnings from self-employment for the taxable year”).

- The source, type, and amount or value of all other income received during that calendar year by the individual filing the report or by a member of his or her immediate family (the bill would define “income” to mean “money or anything of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense that is considered income under the Internal Revenue Code”).

- The identity and value of each asset held during the preceding calendar year by the individual filing the report or by a member of his or her immediate family, including real or personal property or cash.

- The identity and value of each liability owed during the preceding year by the individual filing the report or by a member of his or her immediate family (other than loans on the individual’s personal residence, motor vehicle, household furniture, or appliances, so long as the loan were not greater than the purchase price of the item in question).

- A brief description of the value of a purchase, sale, or exchange of real property other than real property used solely as a personal residence, or of stocks, bonds, commodities, futures, or other forms of securities during the preceding calendar year by the individual filing the report or by members of his or her immediate family. However, if the purchase, sale, or exchange of stocks, bonds, commodities, or other forms of securities were part of a mutual fund – and if the mutual fund were otherwise reported under the bill – the bill would not require a description of the mutual fund activity.

- The identity of all positions during the preceding year, held by the individual filing the report, as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of (a) a corporation, partnership, or other business enterprise; (b) a nonprofit organization; (c) a labor organization; or (d) an educational or other institution. However, if the individual filing the report were required to have a license to practice or engage in a particular occupation or profession, he or she would not be required to identify a position he or she held as a consultant of a corporation unless the corporation were publicly held, with shares listed or traded over the counter or on an organized exchange or had gross revenues over \$4 million. The bill also would not require the reporting of positions held in religious, social, fraternal, or political entities, or solely honorary positions.

- A description – including the dates, parties, and terms – of an agreement or arrangement by or with the individual filing the report with respect to future employment, a leave of absence during his or her term of office, continuation of payments by a former employer, or continuation of participation in an employee benefit plan maintained by a former employer.

Report exemptions. In addition to the reporting exemptions listed above (such as loans on personal residences, activity on otherwise reported mutual funds, honorary positions, and so forth), the bill would allow any of the following to be omitted:

- Any information required to be reported under the Michigan Campaign Finance Act;
- Loans to relatives within the third degree on consanguinity (such as by a grandparent to a grandchild or vice versa);
- Assets, liabilities, or real property if all of the following were true of the item in question: (a) It represented the sole financial interest and responsibility of a member of the immediate family of the individual filing the report and that individual didn't know about it; (b) it was not in any way, past or present, derived from the income, assets, or activities of the individual filing the report; and (c) the individual filing the report did not derive, or expect to derive, financial benefit from the item.
- An item that concerned a spouse who was living separate and apart from the individual filing the report with the intention of terminating the marriage or maintaining a legal separation.
- An item that concerned income or obligations of the individual filing the report that arose from the dissolution of his or her marriage or a permanent legal separation from his or her spouse.
- Compensation from a publicly held corporation that had shares listed or traded over the counter or on an organized exchange, paid to a business owned by the individual filing the report (or in which the individual filing the report had an interest), if the report filed by the individual otherwise included a complete statement of the identity and value of that business and the individual were required to have a professional or occupational license.

Secretary of state. The bill would require the secretary of state to do all of the following:

- Prepare and make available appropriate forms and instructions for the required reports;
- Receive required reports;
- Make available, under the Freedom of Information Act, for public use a report filed under the bill within 30 days after the report were filed;
- Promulgate rules and issue declaratory rulings to implement the bill under the Administrative Procedures Act; and
- Conduct any investigations, under the Administrative Procedures Act, necessary to determine if there were reason to believe that a violation of the bill's provisions had occurred.

Complaints. Any state citizen could file a complaint with the secretary of state alleging a violation of the bill's provisions, and the secretary of state, upon receiving the complaint, would be required to investigate the allegations. If the secretary of state determined that there were reason to believe that a violation of the bill's provisions had occurred, he or she would be required to forward the results of his or her investigation to the attorney general for enforcement of the bill's provisions.

Penalties. An individual who knowingly falsified or knowingly failed to file a report required by the bill would be liable for a civil fine of up to \$5,000. A default in the payment (or an installment) of a civil fine ordered under the bill's provisions could be remedied by any means authorized by the Revised Judicature Act.

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.