

HOUSE BILL No. 5900

September 20, 2016, Introduced by Rep. McBroom and referred to the Committee on Oversight and Ethics.

A bill to provide for standing committees on ethics in the senate and house of representatives; to provide for the adoption of a code of ethics in each legislative chamber; to create a procedure for handling and addressing ethical complaints against legislative members; to prescribe the powers and duties of certain state officers; and to address the funding of the ethics committees.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "legislative code of ethics and accountability act".

3 (2) As used in this act, "committee" means an ethics committee
4 authorized or created under section 2.

5 Sec. 2. (1) The senate and the house of representatives shall
6 each authorize or create a standing committee on ethics under this

1 act. This act does not preclude either legislative house from
2 establishing any additional standing or select committee or from
3 referring an issue to an established committee.

4 (2) A committee shall consist of any equal number of members
5 from the majority and minority parties appointed in the same manner
6 as a standing committee.

7 (3) The senate majority leader shall appoint the chairperson
8 of the committee of the senate, and the speaker of the house shall
9 designate the chairperson of the committee of the house.

10 Sec. 3. (1) The term of a committee member begins on the day
11 the member is appointed and ends at the close of the legislative
12 session. However, the appointing authority of each house may remove
13 and replace a committee member with or without cause at any time
14 during the committee member's term. A vacancy occurs if a committee
15 member ceases to serve in the legislative house from which he or
16 she was appointed.

17 (2) A legislator may be reappointed to a committee.

18 (3) A vacancy on a committee shall be filled in the same
19 manner as the original appointment.

20 Sec. 4. (1) The senate and the house of representatives shall
21 each incorporate a code of ethics into that house's rules. The code
22 of ethics may include the provisions under subsection (4) and any
23 additional provisions not inconsistent with this act.

24 (2) A committee may propose amendments to the code of ethics
25 for adoption by its respective chamber.

26 (3) Recommendations by the committee must be consistent with
27 the state constitution of 1963, this act, and any other applicable

1 law.

2 (4) The code of ethics for the members of each legislative
3 house may include all of the following provisions:

4 (a) Each member shall adhere to the spirit and the letter of
5 the rules of the member's house and to the rules of duly
6 constituted committees thereof.

7 (b) Each member shall conduct himself or herself at all times
8 in a manner that does not negatively reflect on the integrity of
9 the legislature.

10 (c) Each member shall conduct himself or herself to justify
11 the confidence placed in him or her by the people and shall, by
12 personal example, admonition to colleagues, and in faith to the
13 oath of office, maintain the integrity and responsibility of his or
14 her office.

15 (d) A member shall not engage in any conduct that materially
16 impairs the ability of the member to perform the duties of his or
17 her office or substantially impairs public confidence in the
18 legislature.

19 (e) Members shall be alert for and properly responsive to
20 conflicts of interest and shall not use the office to unduly
21 influence others or to obtain any material good or favor.

22 (f) A member shall not use his or her position in any manner
23 to solicit or obtain anything of value for himself or herself,
24 legislative employees, or any other member that tends to influence
25 the manner in which the member performs his or her official duties.

26 (g) A member shall not convert for personal, business, or
27 campaign use unrelated to legislative business any supplies,

1 services, facilities, or staff provided by this state.

2 (h) A member shall not use or disclose information officially
3 deemed confidential improperly or without appropriate authorization
4 if that information was acquired by the member in the course of his
5 or her official duties.

6 (i) A member shall not solicit or accept any type of campaign
7 contribution in any legislative facility or building.

8 (j) A member shall avoid personal and professional turpitude.

9 (k) Any violation of law or the code of ethics by a member is
10 subject to the legislative house's plenary authority to reprimand
11 or censure its members. A member may be reprimanded or censured by
12 any means necessary and proper to ensure strict adherence to the
13 law and rules. A reprimand or censure is in addition to any
14 potential civil or criminal penalties otherwise provided by law.

15 (l) A member may be expelled for any cause, including a
16 violation of law or rules, considered appropriate by a roll call
17 vote of 2/3 of the members elected and serving as provided in
18 section 16 of article IV of the state constitution of 1963.

19 Sec. 5. A committee may do any of the following:

20 (a) Act as an advisory body to the appropriate legislative
21 house and to its members on questions relating to the code of
22 ethics and possible conflicts of interest.

23 (b) Issue advisory opinions interpreting the code of ethics
24 and possible conflicts of interest on the written request of a
25 member of the legislature or on its own initiative.

26 (c) Investigate a complaint filed under section 7.

27 (d) Recommend appropriate sanction with respect to a

1 particular member of the legislative house as will best maintain
2 the trust, respect, and confidence of the public in the
3 legislature.

4 (e) Recommend legislation relating to the conduct and ethics
5 of members.

6 (f) Recommend any disciplinary action against a member of the
7 legislative house, including reprimand, censure, expulsion, or
8 denial or limitation of any right, power, privilege, or immunity as
9 a member of the legislature that the state constitution of 1963
10 permits the legislature to deny or limit.

11 Sec. 6. The committee shall operate under the following rules:

12 (a) A quorum of the committee shall be a majority of the
13 members appointed and serving.

14 (b) All official communications from the committee shall be
15 made by the chairperson of the committee, or upon the written
16 request of a majority of committee members appointed and serving.

17 (c) The committee shall meet upon a call of the chairperson,
18 or upon written request of a majority of the members appointed and
19 serving. The requests must contain the date, time, place, and
20 subject of the meeting.

21 (d) A majority of the committee members appointed and serving
22 may recommend additional or revised rules for adoption by the
23 appropriate legislative house.

24 (e) The chairperson of the committee shall determine the
25 agenda for a committee hearing.

26 Sec. 7. Any legislator may submit a complaint alleging that
27 another legislator has violated the code of ethics, another law,

1 rule, or regulation, or another standard of conduct applicable to
2 the performance of duties as a member of the legislature. The
3 complaint shall be submitted to the clerk of the house or the
4 secretary of the senate, who shall forward the complaint to the
5 committee. The complaint must be in writing, dated, properly
6 verified, and include all of the following:

7 (a) The name and legal address of the party filing the
8 complaint.

9 (b) The name of the respondent.

10 (c) The nature of the alleged violation.

11 (d) The facts alleged to give rise to the violation. The
12 complaint must not contain innuendo, speculative assertions, or
13 conclusory statements.

14 Sec. 8. (1) A committee shall process complaints submitted
15 under section 7 as follows:

16 (a) When a complaint is filed with the committee, a copy shall
17 be sent to the respondent, the presiding officer of that house, and
18 each committee member.

19 (b) Subject to subdivision (c), if the chairperson determines
20 the complaint does not allege facts sufficient to constitute an
21 ethical or statutory violation, or upon written request of a
22 majority of members appointed and serving, the complaint shall be
23 dismissed and the complainant and respondent notified of the
24 dismissal of the complaint.

25 (c) If the chairperson determines that the complaint alleges
26 facts sufficient to constitute an ethical or statutory violation,
27 or upon written request of a majority of members appointed and

1 serving, the committee shall promptly investigate the alleged
2 violation.

3 (d) The committee may interview witnesses, examine documents,
4 and use other investigative measures in connection with a
5 complaint. The committee may, by a majority vote of members
6 appointed and serving, compel by subpoena the attendance and
7 testimony of witnesses and the production of documents it deems
8 necessary to conduct its investigation. Failure to comply with a
9 subpoena may be punished as contempt.

10 (e) The respondent and any witness in an investigation of a
11 complaint may be represented by counsel.

12 (f) Upon completion of its investigation of a complaint, the
13 committee may conclude 1 of the following:

14 (i) No violation occurred so no action is appropriate.

15 (ii) A violation occurred but was inadvertent, technical, or
16 of a de minimis nature and shall be addressed by informal methods,
17 such as a written warning to the member. The committee shall submit
18 a summary of its findings to the senate majority leader or speaker
19 of the house, as applicable. The report may contain specific
20 recommendations for further action, including disciplinary action
21 to be imposed.

22 (iii) A violation of a serious nature may have occurred, and
23 formal procedures shall be instituted to inquire further into the
24 complaint. The committee shall issue a statement of formal charges
25 and hold a public hearing on the complaint as provided in section
26 9.

27 (g) The committee may employ legal counsel and any other staff

1 to assist the committee in carrying out the committee's duties
2 under this act.

3 (2) All proceedings of the committee under this section prior
4 to issuing a statement of formal charges, including investigations
5 and witness interviews, shall be conducted in closed session under
6 section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268,
7 when considering matters made exempt from disclosure under section
8 10.

9 Sec. 9. (1) If formal procedures are instituted under section
10 8, the committee shall hold a public hearing. The committee shall
11 receive all admissible evidence, determine any factual or legal
12 issues presented during the hearing, and make findings of fact
13 based on the evidence.

14 (2) Any hearing concerning a statement of formal charges
15 issued under section 8 shall be open to the public as provided by
16 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, unless
17 the committee, by a majority vote of its members, closes the
18 hearing to the public as provided in that act or as otherwise
19 provided by law.

20 (3) The committee shall employ a rule of evidence that admits
21 and gives probative effect to evidence of a type commonly relied
22 upon by a reasonably prudent person. Irrelevant, immaterial, or
23 unduly repetitious evidence may be excluded. The committee shall
24 respect the rules of privilege recognized by law.

25 (4) All public testimony must be directly relevant to the
26 committee's investigatory duties and submitted in writing. Any
27 public testimony shall be collected at the end of each committee

1 meeting.

2 (5) The committee may rule that an item or topic of discussion
3 is irrelevant or immaterial if the item or topic of discussion does
4 not directly relate to the committee's investigatory duties. The
5 committee may further rule that an attempt by a witness or legal
6 counsel to discuss an item or topic of conversation previously
7 ruled to be irrelevant or immaterial is out of order.

8 (6) If the committee holds a hearing, the respondent shall be
9 allowed to examine and make copies of all relevant evidence in the
10 committee's possession relating to the complaint. At the hearing, a
11 respondent shall be afforded the right to be represented by
12 counsel.

13 (7) Upon completion of the hearing, the committee may conclude
14 any of the following:

15 (a) No action is appropriate because no improper conduct
16 occurred.

17 (b) No action is appropriate because there is not sufficient
18 evidence that improper conduct occurred.

19 (c) There was improper conduct based on sufficient evidence,
20 but that conduct does not justify disciplinary action and should be
21 resolved by informal methods such as by written warning to a
22 member. The committee shall submit a summary of its findings to the
23 senate majority leader or speaker of the house, as applicable. The
24 report may contain specific recommendations for further action,
25 including disciplinary actions to be imposed. Action under this
26 subdivision requires an affirmative vote of a majority of the
27 members appointed and serving.

1 (d) There was improper conduct based on sufficient evidence,
2 and the improper conduct was of a serious nature so as to warrant
3 formal disciplinary action including reprimand, censure, or
4 expulsion. The committee shall submit a summary of its findings to
5 the senate majority leader or speaker of the house, as applicable.
6 The report shall contain specific recommendations for further
7 action, including disciplinary actions to be imposed. Action under
8 this subdivision requires an affirmative vote of a majority of the
9 members appointed and serving.

10 (8) The committee may employ legal counsel or any other staff
11 to assist the committee in carrying out the committee's duties
12 under this act.

13 Sec. 10. Except as provided in section 9, all complaints,
14 information, communications, materials, papers, files, and
15 transcripts received or developed by the committee in the course of
16 its duties, whether written or oral, shall be confidential and
17 exempt from disclosure with the freedom of information act, 1976 PA
18 442, MCL 15.231 to 15.246. The committee shall investigate breaches
19 of this confidentiality, except that breaches of confidentiality by
20 members of the committee shall be investigated by the senate
21 majority leader or speaker of the house, as applicable. A breach of
22 confidentiality may be punished by appropriate action, including as
23 contempt.

24 Sec. 11. A committee member may recuse himself or herself from
25 participating in any proceeding upon submission of a written
26 statement that the committee member cannot render an impartial and
27 unbiased decision in a case. A committee member is ineligible to

1 participate in committee meetings, as a committee member, in any
2 proceeding relating to the member's own conduct. A committee member
3 may be disqualified by a unanimous vote of the remaining eligible
4 members of the committee. If a committee member is disqualified
5 from or is ineligible to participate in any committee proceedings,
6 the authority responsible for the original appointment of the
7 disqualified or ineligible committee member shall appoint a
8 replacement member who shall serve during the period of the
9 original member's disqualification or ineligibility.

10 Sec. 12. All expenses of the committee, including costs for
11 legal counsel and staff, shall be paid out of appropriations to the
12 legislature.

13 Enacting section 1. This act takes effect 90 days after the
14 date it is enacted into law.