

Legislative Analysis



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House Bill 4301 (reported from committee as H-3)

Sponsor: Rep. Brandt Iden

Committee: Oversight

Complete to 4-20-17

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

BRIEF SUMMARY: With some exceptions, the bill would require employee salary and benefit information, updated monthly, to be listed on the state's website, in addition to the information currently required to be posted under the Electronic Open Access to Government Act (Public Act 370 of 2016).

FISCAL IMPACT: The bill will result in costs to the Michigan Department of Technology, Management and Budget. See **FISCAL INFORMATION** below for details.

THE APPARENT PROBLEM:

Some people maintain that as "a government of the people, by the people, and for the people", the level of transparency for government operations—in particular expenditures of taxpayer dollars—is not always what it should be. In particular, some feel that the salaries of state employees who work for the executive branch should be easily accessible to the public. Such information is public, but not easily obtainable. Legislation has been offered to require that the name, position title, salary and other information for each employee of the various departments and agencies of the executive branch be posted on the website of the Department of Technology, Management and Budget.

THE CONTENT OF THE BILL:

Public Act 370 requires the Department of Technology, Management, and Budget (DTMB), by January 1, 2018, and at no cost to the public, to include links on the state's website to function and contact information for each executive branch department and its major divisions and subunits. Among other things, the act currently requires a description of the primary functions of each major division or subunit of the department and the telephone numbers and electronic mail addresses to be included in the information listed. This information must be updated quarterly.

House Bill 4301 amends the Electronic Open Access to Government Act to also require, for each executive branch department and each major division or subunit with the department, that the information include a list of the department's employees as well as the employee's name, position title, classified or nonclassified civil service distinction, salary, and benefits information for each employee. Updates to this information would have to be made monthly.

However, the MDTMB could not post an employee's information if the department determined, based on a request made by the employee's department, that doing so would

endanger the safety of the employee. The department's request must include sufficient information for the MDTMB to make a determination.

The bill would take effect 90 days after enactment.

MCL 15.451

FISCAL INFORMATION:

House Bill 4301 would have a negative fiscal impact to the MDTMB due to the initial costs of technological changes, and the potential need to cover the ongoing cost of an additional full-time employee to administer the monthly updated list. According to an estimate from the Office of Financial Management, the bill would cost \$128,000 in the first year and \$110,000 for each subsequent year.

This estimate does not include potential cost factors associated with requiring "benefits information" to be added to the published list as provided in the H-3 substitute bill. It is not yet known what would be included within the scope of "benefits information" or whether the collection and maintenance of this information would accord with the current cost estimate.

ARGUMENTS:

For:

Though the salaries of state workers can be obtained by filing a Freedom of Information request, the process is slow, laborious, and beyond the means of many citizens. More recently some non-governmental entities have created databases using information on employee salaries obtained from FOIA requests. However, a new request must be submitted each time the entity wishes to update the database. Thus, the information presented may not be very current as to employees or their individual salaries. Plus, the database may not provide benefit information or whether the employee is a classified or an unclassified civil service worker.

House Bill 4169 addresses the issue by requiring the state department responsible for implementing the Electronic Open Access to Government Act to gather information from the various state agencies and post that information regarding employees and their salary and benefits, as well as position titles and civil service distinction. Thus, the bill will provide greater transparency and increase the executive branch's accountability to taxpayers. By including the names and salaries, rather than just a position title and salary range for that position as the executive branch currently provides, the bill helps protect against patronage, such as someone getting paid more for the same job that is not reflected by seniority, responsibility, or job performance.

The bill also allows a department to request that the information pertaining to individuals in sensitive job positions, such as a warden of a prison or corrections officers and state troopers, not be posted if the employee's safety could be endangered by inclusion in the database.

The requirements of the bill should not be overly burdensome for the DTMB, as the state House of Representatives and many local governmental units and universities already provide such information on easily accessible websites. While this information is already available to the public through various means, the bill provides easier access to it, and provides greater transparency and accountability in the process.

Against:

Opponents say there are several reasons the bill should not be enacted. These include the following:

- ❖ The bill is not needed. This information is public information and can be accessed through the FOIA process or via websites offered by several entities, for example, the Mackinac Center. In addition, a FOIA request creates a public record of the request.
- ❖ The term "benefits information" is not defined. If not defined, would the DTMB have discretion to select information appropriate to include as "benefits"? The House website, for example, posts general information regarding the provision of health, dental, and vision benefits and the percentage of the cost that is borne by employees, but not the exact amounts paid on behalf of or by specific employees. Such things as pensions, 401K contributions, and mileage were mentioned during Committee discussion on the bill as pertinent benefits information that was being missed. However, mileage is not a true benefit—it is a reimbursement for costs associated with using personal property in the scope of employment. Specific pension information could be difficult to interpret or compare among employees as some may be in the older defined benefit pension system (closed since early 1997) and others in the 401K or 457 plans, and the latter may also receive matching contributions above the base state contribution amount. Moreover, would such information be considered too personally intrusive and therefore an invasion of privacy?
- ❖ The bill allows a department to request that certain employees not be included in the database if their safety could be endangered by such disclosures (for example, corrections officers or state troopers). But what about child protection services workers, who often are threatened by parents in child abuse/neglect cases? Or an employee who is being stalked or is a victim of domestic violence and has changed jobs within state employment as a safety measure? Inclusion in the database could increase the risk of them being followed to or from work. And, the bill does not appear to allow employees in those situations to request to be excluded from the database. Nor does the bill explain how a determination would be made whether an employee's safety or health was in danger.
- ❖ The bill does not apply to salaries and benefits of contract workers. Many positions in state government are filled by temporary workers or workers supplied by third party vendors who won a bid. Their salaries are also paid by taxpayers. Some feel that if the goal of the bill is to be more transparent and accountable to taxpayers, then information pertaining to contract workers should also be available.

- ❖ Some feel that the types of information required to be posted on each employee could subject public employees to an increased risk of identity theft. Working in public service should not expose a person to having their identity stolen.

POSITIONS:

A representative of the Michigan Freedom Fund testified in support of the bill. (3-9-17)

A representative of the Michigan Press Association testified in support of the bill. (3-9-17)

The Michigan Coalition for Open Government submitted testimony in support of the bill. (3-8-17)

The Department of Technology, Management and Budget has not taken a position on the bill. (3-9-17)

A representative of UAW Local 6000 State Employees testified in opposition to the bill. (3-16-17)

A representative of Service Employees International Union 517M testified in opposition to the bill. (3-16-17)

The Association of State Employees in Management (ASEM) submitted testimony in opposition to the bill. (3-9-17)

The American Federation of State, County, and Municipal Employees (AFSCME) indicated opposition to the bill. (3-16-17)

MI AFL-CIO indicated opposition to the bill. (3-16-17)

The Michigan State Employee Association indicated opposition to the bill. (3-16-17)

The State Employees Retiree Association indicated opposition to the bill. (3-9-17)

Michigan Corrections Organization indicated opposition to the bill. (3-9-17)

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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.