

Legislative Analysis



PUBLIC OFFICER AND CANDIDATE FINANCIAL DISCLOSURE ACTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5272 as introduced
Sponsor: Rep. Angela Witwer

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

House Bill 5273 as introduced
Sponsor: Rep. Tyrone Carter

House Bill 5274 as introduced
Sponsor: Rep. Will Snyder

House Bill 5275 as introduced
Sponsor: Rep. Carol Glanville

Committee: Government Operations
Complete to 11-1-23

SUMMARY:

House Bill 5272 would create a new act, the Public Officers Financial Disclosure Act, to require the governor, the lieutenant governor, the attorney general, the secretary of state, state representatives, and state senators to file annual financial disclosure reports.

House Bill 5273 would create a new act, the Candidate for Office Financial Disclosure Act, to require candidates for governor, lieutenant governor, attorney general, secretary of state, state representative, and state senator to file annual financial disclosure reports if their candidate committee received or spent more than \$1,000 during the election cycle.

Although the provisions of House Bills 5272 and 5273 are largely identical, the bills are described separately below. Apart from who the bill applies to and when the first report is due, the principal difference between the bills is that House Bill 5273 does not have provisions concerning lobbyists and blind trusts that are included in House Bill 5272.

House Bills 5274 and 5275 would amend the Michigan Campaign Finance Act to allow a candidate committee to pay a late filing fee the candidate is required to pay under either House Bill 5272 or 5273.

House Bill 5272 would create the Public Officers Financial Disclosure Act to require the governor, the lieutenant governor, the attorney general, the secretary of state, state representatives, and state senators to file annual financial disclosure reports. The term *public officer* is used in the bill to refer to those officeholders.

Financial disclosure report

By April 15, 2024, and by May 15 of every following year, each public officer would have to file an annual financial disclosure report with the secretary of state. (This would not apply if the individual was a public officer on January 1 only.)

The report would have to include a complete statement of the following:

- The public officer's full name, mailing address, phone number, and email address.
- The name and address of the public officer's employer and each position held during the previous calendar year that the public officer received \$1,000 or more in income from.
- The name of the public officer's spouse and their occupation. (This would *not* include individuals in a registered domestic partnership, civil union, or similar relationship not called a marriage in the state where entered into.)
- A list of all positions the public officer currently holds as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any organization, corporation, firm, partnership, or other business enterprise, nonprofit organization, labor organization, or educational or other institution other than the state of Michigan, along with the organization's name. Positions held in a religious, social, fraternal, or political entity, or positions solely of an honorary nature, would be excluded from these requirements.
- The source of earned income¹ of \$1,000 or more the public officer received during the previous calendar year
- A list of each asset, except for business assets, with a fair market value of \$1,000 or more² held for investment or production of income during the previous calendar year.
- Any sources of unearned income³ of more than \$200 during the previous calendar year.
- A list of all liabilities⁴ of more than \$10,000 owed by the public officer to a creditor at any time during the previous calendar year.
- A list of any stocks, bonds, or other forms of securities with a total aggregate fair market value of \$1,000 or more⁵ that were held by the public officer or jointly with their spouse during the previous calendar year. However, a public officer would not have to disclose a stock in a widely held investment fund, such as a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund, if the fund is publicly traded or its assets are widely diversified *and* the public officer or their spouse does not exercise control over the financial interests held by the fund or have the ability to do so. In addition, a public officer would not have to report an item if it represents the exclusive financial interest and responsibility of their spouse about which they do not have control; it is not in any way derived from the income, assets, or activities of the public officer; and the public officer does not derive, or expect to derive, financial benefit from it.
- A list of any real property the public officer holds an ownership or other financial interest in, if that real property had a fair market value of \$1,000 or more during the previous calendar year. The public officer would not have to include the street number of a parcel of real property. In addition, a public officer would not have to report an item if it represents the exclusive financial interest and responsibility of their spouse

¹ Salaries, wages, tips, bonuses, commissions, or other compensation or earnings from employment.

² This threshold amount for reporting would have to be adjusted for inflation every four years using the Detroit Consumer Price Index and then rounded upward to the next \$1,000 increment.

³ Income not from employment, such as a financial prize, unemployment benefits, annuities, stock dividends, pension, profit sharing, deferred compensation, or retirement income. It would not include inheritance money or a familial gift.

⁴ What a person owes, such as mortgages or other debts. However, "debts" would not include a revolving debt, an unsecured debt from a financial institution or the federal government, or a debt owed by a business entity.

⁵ This threshold amount for reporting would have to be adjusted for inflation every four years using the Detroit Consumer Price Index and then rounded upward to the next \$1,000 increment.

about which they do not have control; it is not in any way derived from the income, assets, or activities of the public officer; and the public officer does not derive, or expect to derive, financial benefit from it.

- The general terms of any agreements or arrangements regarding future employment, a leave of absence while serving as a public officer, continuation or deferral of payments by a former or current employer other than the state, or continuing participation in an employee welfare or benefit plan maintained by a former employer, including the date of the agreement or arrangement and the identity of parties to it.
- A list of all gifts received and reported by a *lobbyist* or *lobbyist agent* under state law.⁶
- A list of all travel payments⁷ received and reported by a lobbyist or lobbyist agent under state law.
- A list of each payment made by a lobbyist or lobbyist agent to a charity instead of paying the public officer an honorarium.⁸

As defined in 1978 PA 472, known as the lobbyist registration act, *lobbyist* means any of the following:

- A person whose expenditures for *lobbying* exceed \$2,900 in value in any 12-month period.
- A person whose expenditures for lobbying exceed \$725 in value in any 12-month period, if the amount is spent on lobbying a single public official.
- For purposes of the above provisions, groups of 25 or more people must not have their personal expenditures for food, travel, and beverage included, as long as those expenditures are not reimbursed by a lobbyist or lobbyist agent.
- The state or a political subdivision that contracts for a lobbyist agent.

As defined in the lobbyist registration act, *lobbyist agent* means a person who receives compensation or reimbursement of actual expenses, or both, in a combined amount in excess of \$725 in any 12-month period for lobbying.

As defined in the lobbyist registration act, *lobbying* means communicating directly with an official in the executive or legislative branch of state government to influence legislative or administrative action. It does not include the provision of technical information by a person other than a lobbyist agent or their employee when appearing before an officially convened legislative committee or executive hearing panel.

⁶ Although this language is from the state constitution (see **Background**, below), it is unclear how this provision would be applied as law. Lobbyists and lobbyist agents are prohibited from providing gifts to public officials. The bill specifies that “gift” would have the meaning given in the Campaign Finance Act, rather than the lobbyist registration act, which defines “gift,” and specifies exceptions, for purposes of that prohibition. That act requires reporting of financial transactions of \$1,450 or more between a lobbyist or lobbyist agent and a public official, their immediate family member, or a business they are associated with. The bill presumably means “gifts received *from* and reported *by* a lobbyist,” rather than “received *and* reported *by* a lobbyist.” Monetary thresholds for lobbyists are adjusted annually for inflation. <https://www.michigan.gov/sos/elections/disclosure/lobby> and https://www.michigan.gov/sos/-/media/Project/Websites/sos/Lobby-Memos/2023_LobbyThresholds_508882_7.pdf

⁷ Under the lobbyist registration act, travel and lodging paid for or reimbursed to a public official, in connection with public business, in excess of \$950 must be reported.

⁸ An honorarium would mean a payment of money to a public officer in return for an appearance, speech, article, or activity related to the performance of duties as a public officer. An honorarium would not include an award; reimbursement for the cost of transportation, accommodations, or meals; or wages, salaries, other employee compensation, or expenses paid by the state or a political subdivision to the public officer.

Exclusions

A public officer would not have to disclose the value of any property or real property disclosed in the report.

A public officer who holds a beneficial⁹ interest in a blind trust¹⁰ would not have to include the interests or assets of the blind trust in the report. However, the public officer would have to indicate that they hold a beneficial interest in a blind trust.

A public officer could omit any of the following from the report:

- Information required to be reported under the Michigan Campaign Finance Act.
- An item concerning a spouse who is living separate and apart from the public officer with the intention of terminating the marriage or maintaining a legal separation.
- An item concerning income of the public officer arising from the dissolution of their marriage or a permanent legal separation from their spouse.

Certification

The report would have to include the following certification: “I certify that the statements I have made on this financial disclosure form are true, complete, and correct to the best of my knowledge and belief, and that I have not moved assets during the reporting period for the purpose of avoiding disclosure under the Public Officers Financial Disclosure Act.”

Duties of the secretary of state

The secretary of state would have to do all of the following:

- Within 30 days after the bill takes effect, create a standard financial disclosure form for a public officer to use in filing the required financial disclosure report.
- Within 30 days after creating the standard form, make it easily accessible on the secretary of state’s website.
- Make appropriate forms, instructions, and manuals available through the secretary of state’s offices.
- Create and operate an electronic, internet-accessible system to receive all statements and reports required to be filed under the bill.
- Create all forms, instructions, and manuals required under the bill.
- Issue declaratory rulings to implement the bill.
- Waive payment of a late filing fee upon receiving a written request and the required filing, as long as the request for the waiver is based on good cause¹¹ and accompanied by adequate documentation.
- Make a report or all of its contents publicly available for free on the secretary of state’s website homepage or a separate webpage no later than five business days after the report is received.

⁹ This would include the interest in a trust of a *qualified trust beneficiary* or *trust beneficiary* as defined in section 7103 of the Estates and Protected Individuals Code. <http://legislature.mi.gov/doc.aspx?mcl-700-7103>

¹⁰ A qualified blind trust or qualified diversified trust as defined in 5 CFR 2634.402: <https://www.ecfr.gov/on/2023-10-26/title-5/chapter-XVI/subchapter-B/part-2634/subpart-D/section-2634.402>

¹¹ Good cause would include if the public officer or someone essential to preparing the report is incapacitated due to physical illness or other medical reasons, hospitalized, involved in an accident, or dead. It would also include unique, unintentional factors beyond the public officer’s control that would lead a reasonably prudent person to temporarily excuse the filing, such as the loss or unavailability of records because of a fire, flood, theft, etc., or difficulties (such as exceptionally bad weather) related to transmitting the filing.

- Within nine business days after the filing deadline, notify a public officer, by email or registered mail, that they failed to file the required report or of any error or omission in their report. The public officer would have nine business days after receiving the notification to file the report or file corrections, as applicable.

Complaints

The secretary of state would have to investigate allegations brought under the provisions of the bill. If an allegation involves the secretary of state or their spouse, the secretary of state would have to refer the matter to the attorney general.

A person could file with the secretary of state a complaint that alleges a violation of the bill. A complaint would have to meet all of the following:

- Be signed by the complainant.
- Provide the complainant's name, address, and phone number.
- Include the complainant's certification that, to the best of their knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence. However, if, after a reasonable inquiry under the circumstances, the complainant is unable to certify that certain factual contentions are supported by evidence, the complainant could certify that, to the best of their knowledge, information, or belief, there are grounds to conclude that those specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. (A person could not file a complaint with a false certification. Doing so could be the basis for a complaint.)

Within five business days after a complaint is filed, the secretary of state would have to mail notice to the person the complaint is filed against, including a copy of the complaint.

Within 15 business days after the notice is mailed, the person the complaint was filed against could submit a response to the secretary of state. The secretary of state could extend this period for an additional 15 business days for good cause. Upon receiving the response, the secretary of state would have to mail a copy to the complainant.

Within 10 business days after the response is mailed, the complainant could submit a rebuttal statement to the secretary of state. The secretary of state could extend this period for an additional 10 business days for good cause. Upon receiving the rebuttal statement, the secretary of state would have to provide a copy of the rebuttal to the person the complaint was filed against.

By 45 business days after receiving a rebuttal statement or, if no response or rebuttal is received, by 45 business days after receiving a complaint, the secretary of state would have to post on its website whether there may be reason to believe that a violation occurred.

Within 30 calendar days after determining that there may be reason to believe a violation occurred or determining to terminate its proceedings, the secretary of state would have to post on its website any complaint, response, or rebuttal statement regarding the violation or alleged violation and any correspondence between the secretary of state and the complainant or the person the complaint was filed against that is dispositive of the violation or alleged violation.

Procedures for determinations

The secretary of state would have to review a report or statement filed under the bill and could investigate an apparent violation of the bill. If the secretary of state determines that there may be reason to believe a violation occurred and the prescribed procedures concerning informal methods described below have been complied with, the secretary of state could commence a hearing to determine whether a violation occurred.

If the secretary of state determines that there may be reason to believe that a violation occurred (including in response to a complaint), the secretary of state would have to endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion. The secretary of state also could enter into a conciliation agreement with the person involved. A conciliation agreement, unless violated, would be a complete bar to any further civil action with respect to matters covered in it. Within 30 calendar days after a conciliation agreement is signed, the secretary of state would have to post it on its website.

If, after 90 business days, the secretary of state is unable to correct or prevent further violation by the informal methods described above, the secretary of state could commence a hearing, conducted in accordance with Chapter 4 of the Administrative Procedures Act, to determine whether a violation occurred.

A final decision or order issued by the secretary of state would be subject to judicial review as provided under Chapter 6 of the Administrative Procedures Act. The secretary of state could bring an action in circuit court to recover the amount of a civil fine. The secretary of state would have to deposit a civil fine imposed under the bill in the general fund.

There would be no private right of action, either in law or in equity, under the bill. The remedies provided in the bill would be the exclusive means by which the bill could be enforced and by which any harm resulting from a violation could be redressed.

Declaratory rulings

The secretary of state could issue a declaratory ruling only if the person requesting it has provided a reasonably complete statement of necessary facts or has, with the secretary of state's permission, supplied necessary supplemental facts.

Within two calendar days after receiving a request for a declaratory ruling, the secretary of state would have to make the request publicly available for free on its website homepage or a separate webpage. An interested person could submit written comments regarding the request within 10 business days after it is made available.

Within 45 business days after receiving a declaratory ruling request, the secretary of state would have to make a proposed response publicly available for free on its website homepage or a separate internet webpage. An interested person could submit written comments regarding the proposal within five business days after it is made available.

Within 60 business days after receiving a declaratory ruling request, the secretary of state would have to do either of the following:

- Issue a declaratory ruling.

- If refusing to issue a declaratory ruling, notify the requestor of the reasons for the refusal and issue an interpretative statement providing an informational response to the question presented.

Under extenuating circumstances, the secretary of state could issue a notice extending the period to respond to a declaratory ruling request for up to 30 business days, but only once per request. A person requesting a declaratory ruling also could waive, in writing, time limitations described above.

A declaratory ruling or interpretative statement could not state a general rule of law, other than as stated in the bill or under judicial order.

The secretary of state would have to make an annual summary of issued declaratory rulings and interpretative statements available to the public.

Preservation of reports

The secretary of state would have to preserve a report for 15 years after the date it is filed. If the secretary of state or the attorney general determines that a violation occurred, the secretary of state would have to preserve all complaints, orders, decisions, or other documents related to that violation for 15 years after the later of the date of the determination or the date the violation is corrected. Reports could be reproduced under the Records Reproduction Act.¹²

After the required preservation period, the reports, or their reproductions, could be disposed of in the manner prescribed in the Management and Budget Act¹³ and section 11 of the Michigan History Center Act.¹⁴

Fees and fines

An individual who fails to file a report as required would have to pay a late filing fee of \$25 for each business day after the first 10 business days the report remains unfiled, up to a maximum of \$500. The fees would be deposited into the general fund.

An individual who knowingly files an incomplete or inaccurate report in violation of the bill could be ordered to pay a civil fine of up to \$1,000.

House Bill 5273 would create a new act, the Candidate for Office Financial Disclosure Act, to require candidates for governor, lieutenant governor, attorney general, secretary of state, state representative, and state senator to file annual financial disclosure reports if their candidate committee received or spent more than \$1,000 during the election cycle. The term *candidate for office* is used in the bill to refer to those candidates.

Financial disclosure report

By May 15, 2024, and by May 15 of every following year, each candidate for office would have to file an annual financial disclosure report with the secretary of state. (If the candidate for office files a statement of organization for their candidate committee after May 15 to be nominated at a political party's nominating convention, the report would have to be filed then.)

¹² <http://legislature.mi.gov/doc.aspx?mcl-Act-116-of-1992>

¹³ <http://legislature.mi.gov/doc.aspx?mcl-Act-431-of-1984>

¹⁴ <http://legislature.mi.gov/doc.aspx?mcl-399-811>

The report would have to include a complete statement of the following:

- The candidate's full name, mailing address, phone number, and email address.
- The name and address of the candidate's employer and each position held during the previous calendar year that the candidate received \$1,000 or more in income from.
- The name of the candidate's spouse and their occupation. (This would not include individuals in a registered domestic partnership, civil union, or similar relationship not called a marriage in the state where entered into.)
- A list of all positions the candidate for office currently holds as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any organization, corporation, firm, partnership, or other business enterprise, nonprofit organization, labor organization, or educational or other institution other than the state of Michigan, along with the organization's name. Positions held in a religious, social, fraternal, or political entity, or positions solely of an honorary nature, would be excluded from these requirements.
- The source of earned income¹⁵ of \$1,000 or more the candidate received during the previous calendar year
- A list of each asset, except for business assets, with a fair market value of \$1,000 or more¹⁶ held for investment or production of income during the previous calendar year.
- Any sources of unearned income¹⁷ of more than \$200 during the previous calendar year.
- A list of all liabilities¹⁸ of more than \$10,000 owed by the candidate to a creditor at any time during the previous calendar year.
- A list of any stocks, bonds, or other forms of securities with a total aggregate fair market value of \$1,000 or more¹⁹ that were held by the candidate for office or jointly with their spouse during the previous calendar year. However, a candidate would not have to disclose a stock in a widely held investment fund, such as a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund, if the fund is publicly traded or its assets are widely diversified *and* the candidate or their spouse does not either exercise control over the financial interests held by the fund or have the ability to do so. In addition, a candidate would not have to report an item if it represents the exclusive financial interest and responsibility of their spouse about which they do not have control; it is not in any way derived from the income, assets, or activities of the candidate; and the candidate does not derive, or expect to derive, financial benefit from it.
- A list of any real property the candidate holds an ownership or other financial interest in, if that real property had a fair market value of \$1,000 or more during the previous calendar year. The candidate would not have to include the street number of a parcel of real property. In addition, a candidate would not have to report an item if it represents the exclusive financial interest and responsibility of their spouse about which they do

¹⁵ Salaries, wages, tips, bonuses, commissions, or other compensation or earnings from employment.

¹⁶ This threshold amount for reporting would have to be adjusted for inflation every four years using the Detroit Consumer Price Index and then rounded upward to the next \$1,000 increment.

¹⁷ Income not from employment, such as a financial prize, unemployment benefits, annuities, stock dividends, pension, profit sharing, deferred compensation, or retirement income. It would not include inheritance money or a familial gift.

¹⁸ What a person owes, such as mortgages or other debts. However, "debts" would not include a revolving debt, an unsecured debt from a financial institution or the federal government, or a debt owed by a business entity.

¹⁹ This threshold amount for reporting would have to be adjusted for inflation every four years using the Detroit Consumer Price Index and then rounded upward to the next \$1,000 increment.

not have control; it is not in any way derived from the income, assets, or activities of the candidate; and the candidate does not derive, or expect to derive, financial benefit from it.

- The general terms of any agreements or arrangements regarding future employment, a leave of absence while serving as a candidate, continuation or deferral of payments by a former or current employer other than the state, or continuing participation in an employee welfare or benefit plan maintained by a former employer, including the date of the agreement or arrangement and the identity of parties to it.

Exclusions

A candidate for office would not have to disclose the value of any property or real property disclosed in the report. In addition, a candidate could omit any of the following from the report:

- Information required to be reported under the Michigan Campaign Finance Act.
- An item concerning a spouse who is living separate and apart from the candidate with the intention of terminating the marriage or maintaining a legal separation.
- An item concerning income of the candidate arising from the dissolution of their marriage or a permanent legal separation from their spouse.

Certification

The report would have to include the following certification: “I certify that the statements I have made on this financial disclosure form are true, complete, and correct to the best of my knowledge and belief, and that I have not moved assets during the reporting period for the purpose of avoiding disclosure under the Candidate for Office Financial Disclosure Act.”

Duties of the secretary of state

The secretary of state would have to do all of the following:

- Within 30 days after the bill takes effect, create a standard financial disclosure form for a candidate’s use in filing the required financial disclosure report.
- Within 30 days after creating the standard form, make it easily accessible on the secretary of state’s website.
- Make appropriate forms, instructions, and manuals available through the secretary of state’s offices.
- Create and operate an electronic, internet-accessible system to receive all statements and reports required to be filed under the bill.
- Create all forms, instructions, and manuals required under the bill.
- Issue declaratory rulings to implement the bill.
- Waive payment of a late filing fee upon receiving a written request and the required filing, as long as the request for the waiver is based on good cause²⁰ and accompanied by adequate documentation.
- Make a report or all of its contents publicly available for free on the secretary of state’s website homepage or a separate webpage no later than five business days after the report is received.

²⁰ Good cause would include if the candidate or someone essential to preparing the report is incapacitated due to physical illness or other medical reasons, hospitalized, involved in an accident, or dead. It would also include unique, unintentional factors beyond the candidate’s control that would lead a reasonably prudent person to temporarily excuse the filing, such as the loss or unavailability of records because of a fire, flood, theft, etc., or difficulties (such as exceptionally bad weather) related to transmitting the filing.

- Within nine business days after the filing deadline, notify a candidate, by email or registered mail, that they failed to file the required report or of any error or omission in their report. The candidate would have nine business days after receiving the notification to file the report or file corrections, as applicable.

Complaints

The secretary of state would have to investigate allegations brought under the provisions of the bill. If an allegation involves the secretary of state or their spouse, the secretary of state would have to refer the matter to the attorney general.

A person could file with the secretary of state a complaint that alleges a violation of the bill. A complaint would have to meet all of the following:

- Be signed by the complainant.
- Provide the complainant's name, address, and phone number.
- Include the complainant's certification that, to the best of their knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence. However, if, after a reasonable inquiry under the circumstances, the complainant is unable to certify that certain factual contentions are supported by evidence, the complainant could certify that, to the best of their knowledge, information, or belief, there are grounds to conclude that those specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. (A person could not file a complaint with a false certification. Doing so could be the basis for a complaint.)

Within five business days after a complaint is filed, the secretary of state would have to mail notice to the person the complaint is filed against, including a copy of the complaint.

Within 15 business days after the notice is mailed, the person the complaint was filed against could submit a response to the secretary of state. The secretary of state could extend this period for an additional 15 business days for good cause. Upon receiving the response, the secretary of state would have to mail a copy to the complainant.

Within 10 business days after the response is mailed, the complainant could submit a rebuttal statement to the secretary of state. The secretary of state could extend this period for an additional 10 business days for good cause. Upon receiving the rebuttal statement, the secretary of state would have to provide a copy of the rebuttal to the person the complaint was filed against.

By 45 business days after receiving a rebuttal statement or, if no response or rebuttal is received, by 45 business days after receiving a complaint, the secretary of state would have to post on its website whether there may be reason to believe that a violation occurred.

Within 30 calendar days after determining that there may be reason to believe a violation occurred or determining to terminate its proceedings, the secretary of state would have to post on its website any complaint, response, or rebuttal statement regarding the violation or alleged violation and any correspondence between the secretary of state and the complainant or the person the complaint was filed against that is dispositive of the violation or alleged violation.

Procedures for determinations

The secretary of state would have to review a report or statement filed under the bill and could investigate an apparent violation of the bill. If the secretary of state determines that there may be reason to believe a violation occurred and the prescribed procedures concerning informal methods described below have been complied with, the secretary of state could commence a hearing to determine whether a violation occurred.

If the secretary of state determines *that* there may be reason to believe that a violation occurred (including in response to a complaint), the secretary of state would have to endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion. The secretary of state also could enter into a conciliation agreement with the person involved. A conciliation agreement, unless violated, would be a complete bar to any further civil action with respect to matters covered in it. Within 30 calendar days after a conciliation agreement is signed, the secretary of state would have to post it on its website.

If, after 90 business days, the secretary of state is unable to correct or prevent further violation by the informal methods described above, the secretary of state could commence a hearing, conducted in accordance with Chapter 4 of the Administrative Procedures Act, to determine whether a violation occurred.

A final decision or order issued by the secretary of state would be subject to judicial review as provided under Chapter 6 of the Administrative Procedures Act. The secretary of state could bring an action in circuit court to recover the amount of a civil fine. The secretary of state would have to deposit a civil fine imposed under the bill in the general fund.

There would be no private right of action, either in law or in equity, under the bill. The remedies provided in the bill would be the exclusive means by which the bill could be enforced and by which any harm resulting from a violation could be redressed.

Declaratory rulings

The secretary of state could issue a declaratory ruling only if the person requesting it has provided a reasonably complete statement of necessary facts or has, with the secretary of state's permission, supplied necessary supplemental facts.

Within two calendar days after receiving a request for a declaratory ruling, the secretary of state would have to make the request publicly available for free on its website homepage or a separate internet webpage. An interested person could submit written comments regarding the request within 10 business days after it is made available.

Within 45 business days after receiving a declaratory ruling request, the secretary of state would have to make a proposed response publicly available for free on its website homepage or a separate internet webpage. An interested person could submit written comments regarding the proposal within five business days after it is made available.

Within 60 business days after receiving a declaratory ruling request, the secretary of state would have to do either of the following:

- Issue a declaratory ruling.

- If refusing to issue a declaratory ruling, notify the requestor of the reasons for the refusal and issue an interpretative statement providing an informational response to the question presented.

Under extenuating circumstances, the secretary of state could issue a notice extending the period to respond to a declaratory ruling request for up to 30 business days, but only once per request. A person requesting a declaratory ruling also could waive, in writing, time limitations described above.

A declaratory ruling or interpretative statement could not state a general rule of law, other than as stated in the bill or under judicial order.

The secretary of state would have to make an annual summary of issued declaratory rulings and interpretative statements available to the public.

Preservation of reports

The secretary of state would have to preserve a report for 15 years after the date it is filed. If the secretary of state or the attorney general determines that a violation occurred, the secretary of state would have to preserve all complaints, orders, decisions, or other documents related to that violation for 15 years after the later of the date of the determination or the date the violation is corrected. Reports could be reproduced under the Records Reproduction Act.²¹

After the required preservation period, the reports, or their reproductions, could be disposed of in the manner prescribed in the Management and Budget Act²² and section 11 of the Michigan History Center Act.²³

Fees and fines

An individual who fails to file a report as required would have to pay a late filing fee of \$25 for each business day after the first 10 business days the report remains unfiled, up to a maximum of \$500. The fees would be deposited into the general fund.

An individual who knowingly files an incomplete or inaccurate report in violation of the bill could be ordered to pay a civil fine of up to \$1,000.

House Bills 5274 and 5275 would amend the Michigan Campaign Finance Act to allow a candidate committee to pay a late filing fee the candidate is required to pay under either the Public Officers Financial Disclosure Act or the Candidate for Office Financial Disclosure Act, which would be newly created by House Bills 5272 and 5273.

MCL 169.244 (HB 5274)

MCL 168.244a (HB 5275)

Effectiveness

House Bills 5272 and 5273 each cannot take effect unless both are enacted. House Bills 5274 and 5275 each cannot take effect unless all four bills are enacted.

²¹ <http://legislature.mi.gov/doc.aspx?mcl-Act-116-of-1992>

²² <http://legislature.mi.gov/doc.aspx?mcl-Act-431-of-1984>

²³ <http://legislature.mi.gov/doc.aspx?mcl-399-811>

BACKGROUND:

Ballot Proposal 1 of 2022, among other things, amended section 10 of Article IV of the state constitution to require certain state elected officials to file an annual financial disclosure report describing such things as their assets, liabilities, sources of income, gifts from lobbyists, and other positions held.²⁴ Section 10 requires the legislature to further implement its financial disclosure provisions by appropriate legislation that does not limit or restrict how the provisions are applied. If legislation implementing the above provisions has not been enacted by December 31, 2023, any Michigan resident can sue the legislature and the governor in the supreme court to enforce those requirements.

Section 10 of Article IV of the state constitution reads as follows:

Sec. 10. (1) No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest.

(2) By April 15, 2024, and by a date each year thereafter as prescribed by state law, each member of the legislature, the governor, the lieutenant governor, the secretary of state, and the attorney general shall electronically file an annual financial disclosure report with the department of state that complies with this section. A report required to be filed under this section must include information regarding all of the following:

- (a) Description of assets and sources of unearned income.
- (b) Sources of earned income.
- (c) Description of liabilities.
- (d) Positions currently held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any organization, corporation, firm, partnership, or other business enterprise, nonprofit organization, labor organization, or educational or other institution other than the state of Michigan. The positions required to be disclosed under this subdivision do not include positions held in any religious, social, fraternal, or political entity, or positions that are solely of an honorary nature.
- (e) Agreements or arrangements with respect to future employment, a leave of absence while serving as a legislator or state officer, continuation or deferral of payments by a former or current employer other than the state of Michigan, or continuing participation in an employee welfare or benefit plan maintained by a former employer.
- (f) Gifts received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.
- (g) Travel payments and reimbursements received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.

²⁴ See https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_1_of_2022.pdf

(h) Payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.

(3) The financial disclosure report required under subsection (2) must be filed with the department of state in a form and manner prescribed by state law. The department of state shall make the report available to the public online.

(4) The legislature shall further implement this section by appropriate legislation. Legislation implementing this section must not limit or restrict the application of subsections (2) and (3).

(5) If legislation implementing this section is not enacted by December 31, 2023, a resident of this state may initiate a legal action against the legislature and the governor in the Michigan supreme court to enforce the requirements of this section.

FISCAL IMPACT:

House Bills 5272 to 5275 would codify in statute provisions of Proposal 22-1 regarding financial disclosure that entail costs to the state as well as make additional provisions. Costs from Proposal 22-1 are already required of the state independently of the bills. However, this summary provides details of cost estimates of both the bills and the ballot proposal for transparency.

The requirements in the bills entail one-time implementation costs as well as ongoing costs to the Department of State, which will likely require an increase in ongoing appropriations for staffing. The department currently staffs around 12 employees responsible for administering reporting and requirements of existing statutes on campaign finance and lobbying activities. The department believes it will need 8.0 additional FTE positions and \$1.1 million annually to comply with the bills' requirements. A total of \$400,000 has already been appropriated to the department in FY 2022-23 and FY 2023-24 to help implement Proposal 22-1. These funds are to support IT programming staff to develop the computer system needed for online financial reporting.

The bills would result in nominal increases to the state's general fund to the extent that incumbents and candidates for public office must submit late filing fees.

The bills would have no fiscal impact on local units of government.

Legislative Analyst: Rick Yuille
Fiscal Analyst: Michael Clossen

■ 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.