CITIZENS RESEARCH COUNCIL OF MICHIGAN

"The right to criticize government is also an obligation to know what you're talking about."
Lent Upson, First Director of the Citizens Research Council

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New Financial Disclosure Law Shines a Half-Light on State Officials' Potential Conflicts

In a Nutshell

- Lawmakers created Michigan's first-ever personal financial disclosure law for the state's top public officials.
- Proposal 1, the constitutional amendment approved by voters in 2022, required the ethics reform legislation to be enacted by December 31.
- While the new law meets the bare minimum standards set by Proposal 1, Michigan is likely to continue to be rated as one of the worst states for government ethics, transparency, and accountability.

Before adjourning for the year, Lansing lawmakers enacted legislation to create Michigan's first-ever personal financial disclosure law for state government elected officials. Such laws require these public officials to make personal financial information public as a means of discouraging conflicts of interest between official duties and private interests. While Governor Whitmer has yet to sign the four-bill legislative package creating the new Public Officers Financial Disclosure Act, she has signaled her intention to do so.

When the new law is approved by the governor, Michigan will lose the distinction as being one of only two states (Idaho is the other) that doesn't require its top elected officials to publicly disclose their financial interests. The federal government enacted its disclosure law more than four decades ago in response to the Watergate scandal. Today, 48 states require legislators and elected executive branch officials to file some type of financial disclosure that lists information such as their occupation, income or business associations — information that can help reveal whether an official might benefit personally from supporting or opposing legislation, policy, or rules.

Proponents of the new law laud its passage and the sunlight it will shine on public decision making at the highest levels of state government. However, because several major loopholes in reporting for elected officials and candidates for office were left unaddressed in the legislation, the sunlight will be intentionally dim and will continue to shield important information from public view. Whether those loopholes will be dealt with in a future legislative session remains an open question, especially given the legislature's decades-long track record for inaction.

Proposal 1 Breaks the Logjam

One perspective is that the development and adoption of the new disclosure laws was not a voluntary act by the Michigan House of Representatives and the Michigan Senate. Despite a number of very high-profile criminal investigations involving former lawmakers accepting cash and other financial aid from lobbyists and interest groups attempting to sway their legislative support, getting a financial disclosure law over the end line has proved elusive for decades, regardless of the political party holding power in the legislature. Even previous bi-partisan attempts to craft a disclosure policy ran into stiff opposition from legislative leaders, with opponents

citing concerns over candidate recruitment and existing conflict of interest rules.

While each legislative chamber has adopted some conflict of interest provisions as part of its operating rules, those rules do not involve personal financial information nor do they carry the force of law. Further, reporting potential conflicts of interest is voluntary under the rules and requires a great deal of self-policing by the 148 individual members of the Michigan Legislature to truly provide effective oversight.

The legislature's sustained reluctance towards disclosure was finally broken by the will of the voting public. In the fall of 2022, voters overwhelmingly approved a constitutional amendment creating the broad framework for a future financial disclosure law. Proposal 1 was initiated legislatively and it must be noted that the Michigan Legislature packaged the financial disclosure reform with a less publicly-popular proposal to loosen the state's strictest-in-the-nation term limitations for state lawmakers.

Thus, a more cynical perspective is that long-time proponents of changing Michigan's term limits used the financial disclosure reform as a tradeoff for enacting term limit reforms. While term limits are set in the Michigan Constitution and require a constitutional amendment to modify them, the disclosure reforms could have been enacted legislatively without a constitutional amendment.

Regardless of the proponents' motivations, approval of Proposal 1 provided lawmakers with all of 2023 to draft the statutory details to implement the new constitutional disclosure provisions. That is because Proposal 1 stipulated that if the implementing legislation was not enacted by December 31, 2023, any Michigan resident could bring a suit against the legislature and governor in the Michigan Supreme Court to enforce the new requirements. And while they had the entire year to work on the implementing legislation, lawmakers waited until the last few weeks of the legislative session to share their work with the public before approving the bill package on the last voting day of the session. As such, public transparency and input was very limited during the development and adoption of the implementing legislation.

In the end, it took a statewide vote and a constitutional amendment to break the longstanding logjam and to effect statutory personal financial disclosure reforms for state officeholders.

Anatomy of the Reforms

While the new Public Officers Financial Disclosure Act represents Michigan's first-ever disclosure law for state elected officials, the reporting policy itself is hardly remarkable when compared to what other states require from their top elected state officials. In fact, according to the National Conference of State Legislatures (NCSL), the policy falls short of some of the basic safeguards other states have enacted as a means of discouraging conflicts between the official duties and private interests of their state officeholders.

The new law requires the governor, the lieutenant governor, the attorney general, the secretary of state, and state lawmakers in both chambers to file annual financial disclosure reports with the Michigan Department of State. Similarly, the new Candidate for Office Financial Disclosure Act, requires candidates for these offices to file the same reports if their candidate committee received or spent more than $1,000 during the election cycle. The first reports are due April 15, 2024, and May 15, 2024, respectively, with annual reports due May 15 each year following. According to NCSL, only half the states require candidates for office to provide such reporting.

The information required to be disclosed on these new reports mirrors what is included in most other states' disclosure policies. This includes income (earned and unearned) above a de minimis amount, investment holdings (stocks, bonds, other securities), real property holdings, debts owed, and current employment and/or promises of future employment. The reports must also list all gifts, travel expenses, and other payments received from and reported by a lobbyist. The Department of State is tasked with administering reporting, complaint processing, taking enforcement action and issuing fines, as well as with issuing declaratory rulings to enable implementation. The civil penalties for non-disclosure or knowlying filing incomplete or inaccurate reports are relatively low ($1,000) compared to what other states authorize and well below the maximum penalty ($50,000) authorized under the federal Ethics in Government Act that applies to members of Congress.

Noticeably lacking from Michigan's new policy are provisions related to spousal disclosure, a common component of other states' ethics laws. Without similar disclosure requirements for spouses and other significant household members, the policy will not be fully effective because this loophole allows elected officials to avoid disclosure by transferring assets to their spouses or others in the same household.

Similarly, while the new policy obligates elected officials to disclose travel paid for by lobbyists (a requirement already found in the state's lobby registration law), it does not require them to report travel and entertainment expenses paid directly by non-profit accounts (so-called social welfare accounts) that are financed by lobbyist contributions. Those accounts don't have to divulge their donors, only amounts paid for travel and entertainment expenses. Media reports have documented that such accounts have been used by officeholders, most notably former Speaker of the House Lee Chatfield, to circumvent existing lobby disclosure.

Failure to close these well-publicized ethics loopholes within the Proposal 1 implementing legislation was a major missed opportunity by lawmakers to provide truly effective, robust disclosure requirements.

Do the Reforms Represent a Glass Half-Empty or Half-Full?

In addition to failing to address these disclosure loopholes, policymakers had little appetite for considering a broader menu of equally important ethics reforms for state government as they took up their Proposal 1 charge. As such, Michigan's new statutory disclosure reforms should leave most observers a bit pessimistic about policymakers' interest in self-policing their behavior to allow more sunlight to shine on public decision making.

The lack of substantive financial disclosure requirements for top state officeholders is part of the reason Michigan receives an "F" and ranks at the bottom of states in terms of government ethics, transparency, and accountability by the Center for Public Integrity. But, the Great Lakes State state also ranks poorly across other dimensions examined, including campaign finance laws, lobbyist registration and disclosure, and public access to information (open records). Enacting a personal financial disclosure law is unlikely to change the state's failing grade or improve its overall ranking among other states.

Similar to the longstanding void in financial disclosure policy, other good government reforms have been stymied over the years. This includes efforts to expand the scope of public access to government records for the whole of state government. Under the current Freedom of Information Act, neither the governor nor members of the Michigan Legislature are required to open their records for public scrutiny. While concerns over divulging private constituent communications and personal security information are valid, most states apply their public records laws to all corners of state government by providing disclosure carve outs and exemptions for specific sensitive information.

Voter approval of 2022's Proposal 1 constitutional amendment signaled hope that elected leaders of the Mitten State would finally get serious about improving the state's abysmal governmental ethics track record. Unfortunately, those hopes were dashed with adoption of the new financial disclosure laws. That is because the reporting requirements represent the bare minimum under the Proposal 1 constitutional framework and they are not as comprehensive as other states' laws. Further, a number of known reporting loopholes were not addressed, making the required disclosures less effective than they could be.

Even more concerning for advocates of greater open, transparent, and accountable state governance is the fact that lawmakers failed to use the opportunity presented by Proposal 1 to address the many other ethics reforms needed to elevate Michigan's last-in-the-nation ranking. Following enactment of the financial disclosure laws last month, the architects pledged to return to deal with the outstanding issues of public access to government information, lobby disclosure, and campaign finance. However, those commitments (not backed by Proposal 1's constitutional amendment to act) ring hollow given the decades-long track record of legislative inaction.

In the final analysis, the state's new ethics law cannot be viewed as anything more than a glass half-empty.

ABOUT THE AUTHOR

Craig Thiel - Research Director

Craig is the Research Council's Research Director and primary researcher of education and school finance issues. Prior to becoming Research Director, Craig served as the Director of State Affairs and as a Senior Research Associate. During his graduate school studies, he worked for the Council as a Lent Upson-Loren Miller Fellow from 1993 to 1995. Before joining the Council in 2006, Craig worked for ten years as a fiscal analyst at both the Senate Fiscal Agency and the House Fiscal Agency. He previously worked for the Michigan Department of State, Office of Policy and Planning and the United States Environmental Protection Agency in Chicago.

Craig holds a B.A. in Economics and Political Science from Kalamazoo College and a Masters in Public Administration from Wayne State University. He holds positions on various professional, nonprofit, and local government boards/associations.

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Southeast Michigan
38777 Six Mile Rd. Suite 208, Livonia, MI 48152
(734) 542-8001
Mid Michigan
115 W Allegan St. Suite 480, Lansing, MI 48933
(517) 485-9444
Detroit (313) 572-1840
West Michigan (616) 294-8359

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