



**House
Legislative
Analysis
Section**

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LOBBYING RESTRICTIONS

House Bill 4326 (Substitute H-4)
First Analysis (4-1-93)

Sponsor: Rep. Tracey Yokich
Committee: House Oversight & Ethics

THE APPARENT PROBLEM:

Sometimes legislators who leave office become lobbyists and make use of their knowledge of government and governmental processes, their understanding of public policy, and their familiarity with former colleagues and staff members. Officials in the executive branch occasionally do this as well. In April of 1991, a state senator who had only just been re-elected the previous November for a four-year term resigned to become the head of an insurance company trade association. Some people argue that it would improve the reputation of the legislature and legislative process, as well as guard against corruption and appearances of corruption, if there was a "cooling off" period between legislative service and employment as a lobbyist (or between certain executive branch positions and employment as a lobbyist), and some people feel even more strongly about a legislator leaving in the midst of a term to lobby his or her colleagues.

THE CONTENT OF THE BILL:

The bill would amend the lobby registration act to:

**** Prohibit a person who resigns from a state elective office from making expenditures for or receiving compensation or reimbursement for actual expenses for lobbying for the remainder of the term of office from which the person resigned.**

(The term "state elective office" would be adopted from the Campaign Finance Act to refer to the offices of governor, lieutenant governor, secretary of state, attorney general, supreme court justice, member of the state board of education, regent of the University of Michigan, trustee of Michigan State University, governor of Wayne State University, and members of the state legislature.)

**** Prohibit a person who was an official in the executive branch or an official in the legislative branch from making expenditures for or receiving compensation or reimbursement for actual expenses**

for lobbying during the period beginning on the last day of the official's term of office or last day of employment and ending on the 180th day following that.

**** Prohibit a person who was an official in the executive branch of government from making expenditures for or receiving compensation or reimbursement for actual expenses for lobbying an official in the executive branch of government during the period beginning on the 181st day after their last day of their term of office or last day of employment and ending on the 365th day after their last day of their term of office or employment.**

**** Prohibit, similarly, a former legislative branch official from lobbying the legislative branch during that time period.**

A violation of the bill's provisions would be a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment for not more than 90 days or both.

In the act, the term "official of the legislative branch" refers to a member of the legislature, the auditor general and deputy, an employee of the (now defunct) consumers' council, the director of the legislative retirement system, or any other employee of the legislature other than an individual employed by the state in a clerical or nonpolicy-making capacity.

The term "official in the executive branch" refers to the governor, lieutenant governor, secretary of state, and attorney general; a person in the executive branch who is not under civil service; a classified director, chief deputy director, or deputy director of a state department; the governor's chief and deputy chief of staff, press secretary, director of job training, and director of personnel; the racing commissioner; a member of the agriculture commission; a member of the civil rights

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commission; a member of the civil service commission; the commissioner of financial institutions and the insurance commissioner; the executive director of the housing development authority; a member of the liquor control commission, state housing development authority, travel commission, public service commission, or strategic fund board; a member of the state board of education, higher education facilities commission, higher education assistance authority, higher education student loan authority, and state tenure commission; the director of the bureau of workers' disability compensation, the director of the employment security commission, and members of the construction code commission, employment relations commission, employment security board of review, employment security commission, and wage deviation board; the lottery commissioner; director of the office of services to the aging; the director of the office of state employer; the chair of the crime victims compensation board, and members of the council for the arts, state administrative board, state building authority, toxic substance control commission, and utility consumer participation board; the supervisor of wells; members of the air pollution control commission, natural resources commission, or water resources commission; a member of the occupational health standards commission; a member of the aeronautics commission and state transportation commission; and a member of the hospital finance authority, investment advisory committee, and state tax commission.

The term "lobbying" is defined as communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action. The term "influencing" means promoting, supporting, affecting, modifying, opposing, or delaying by any means, including the providing of or use of information, statistics, studies, or analysis.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

Legislators ought to be held to higher standards than those in other professions if public trust in government is to be maintained. It is not too much

to ask that legislators do not resign their offices to take positions that involve lobbying their former colleagues and staff. The state constitution prohibits a person elected to the legislature from receiving any civil appointments within the state from the governor during the term for which he or she is elected. This is understood to prevent legislators from being appointed judges, for example, and in one case may have prevented a legislator from being selected for a college presidency. The same sort of restriction at least ought to exist for lobbying positions. To have one of their colleagues one day discussing a certain issue among them as a representative and then turn around the next day and lobby on the same issue puts legislators in an uncomfortable position.

For:

It is more common for legislators to take positions that involve lobbying after their terms of offices are over. This, too, should be regulated. While it may seem unfair to limit future employment opportunities, measures should at least be taken that prevent the immediate transition from legislator to lobbyist by imposing a "cooling-off period." This would reduce the undue use of personal influence. The bill would impose a two-step limitation: six months during which no lobbying could take place and an additional six months when a person could not lobby the branch of government he or she just left. This would apply not only to legislators but also to some key legislative staffers and certain executive branch officials. As written, the bill does not aim at preventing former state legislators or other government officials who have returned to private life from speaking out on issues or talking to state legislators or administration policymakers. It aims at preventing them from getting paid for doing so.

Response:

If there is going to be a "cooling-off period", it ought to be more straightforward than the bill's approach, which is an attempt at compromise. The two-step approach might arouse public suspicion that it is an attempt to create loopholes rather than an attempt, as it is, to find a middle ground between the need to reduce opportunities for improper influence or the appearance of improper influence and the need to maintain a person's freedom to earn a living. A straight one-year prohibition on lobbying would be preferable.

Against:

It is not fair to restrict the future employment of legislators and other state employees in this way. It unfairly reduces a person's economic freedom and erects a barrier to public service. This would seem even more onerous, as it applies to legislators, with the enactment of term limits. It should be noted that this bill applies to a great many positions in state government, not just elected officials or prominent department heads. People serving voluntarily on state boards without significant compensation, for example, would be covered. Some of these people conceivably could already be employed as lobbyists while serving on various state boards or commissions.

Against:

A related problem that needs to be addressed at some point is the manner in which lobbying is regulated under the state law. The law regulates direct communications for the purpose of influencing legislative or administrative action by anyone who is compensated or reimbursed above certain amounts in the process. The state needs a law that focuses more on people engaged in regular and routine lobbying and then regulates their activities or makes them report in a useful way on their activities. Some people believe that not much that is useful is reported now under the lobby law.

Response:

This bill addresses some specific problems of a "revolving door" nature. It does not aim at rewriting the lobby law in general.

POSITIONS:

Common Cause of Michigan supports the concept of the bill but prefers a full one-year "cooling-off period" between legislative service and employment as a lobbyist. (3-29-93)

A representative of the Michigan State Chamber of Commerce indicated support for the bill as introduced addressing only mid-term resignations. (3-29-93)