

# Outdated and Obfuscated

## The State of Public Financial Disclosure in Massachusetts

By Matthew F. Graves and Mary Z. Connaughton

### Introduction

In 2019, Massachusetts becomes the only state that requires photo identification to view the public financial disclosures of its elected officials.<sup>1</sup> Maryland is currently the only other state with such a requirement, but in 2019 the financial disclosures for Maryland's state officials, candidates for office as state officials, and cabinet secretaries will be made freely available online to the public.<sup>2</sup>

Every state except Idaho, Michigan and Vermont requires its elected officials and other significant policymakers to submit annual public financial disclosures. In Massachusetts, these disclosure forms are called Statements of Financial Interest ("SFIs"). Such disclosures are an essential tool for the public and press to protect against the potential intrusion of conflicts of interest into public policymaking.

Currently, 31 states post financial disclosures online for free and open viewing. Sixteen states require people to submit requests for individual financial disclosures and/or create an account online from which they can view disclosures. In many of those 16 states, obtaining access is as simple as sending an email to a state's ethics commission and — free-of-charge — the requester will receive a PDF of the requested record(s) within a few days. Massachusetts is not one of those states.

### Lack of transparency

SFIs are considered public records in the Commonwealth, but anyone seeking access to these public records must either visit the Ethics Commission in person with their photo ID, or request an online account by uploading a picture of their photo ID so the Ethics Commission can verify their identity before granting access to the online portal.

It is worth noting that Massachusetts does not require a photo ID to vote or register to vote. "Sufficient identification includes a copy of a...current utility bill, bank statement, government check, paycheck or other government document showing your name and address." <http://www.sec.state>.



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[ma.us/ele/elepdf/Voter-reg-mail-in.pdf](https://www.maine.gov/elections/elections/Voter-reg-mail-in.pdf). Voters should be well informed when making their decisions on Election day, but if they do not have a photo ID, then under Massachusetts state law, they cannot receive or inspect a copy of any SFIs. Remarkably, it is easier for a citizen of the Commonwealth to obtain copies of financial disclosures for state legislators in Alaska and Hawaii than for their own Governor.

## Recent Improvements

It is important to recognize that Massachusetts has recently made some progress on SFIs. In June 2017 the Ethics Commission opened its Public Inspection Module to allow registered individuals to view SFIs online.<sup>3</sup> Upon the opening of this online module, “more SFIs were viewed in one day than in the last three years [and] as a result the SFI Division received many calls from filers asking why their SFIs were viewed.”<sup>4</sup>

Prior to the opening of the Public Inspection Module, the only way to get a copy of an SFI was to visit the Ethics Commission in person. Today, most SFI filers (94 percent for reporting year 2017) do so electronically, which substantially eases the workload of the Ethics Commission.<sup>5</sup>

## How can Massachusetts enter the 21<sup>ST</sup> century?

The following recommendations are not overly complex and would, taken together, substantially improve the state’s public financial disclosure process.

### 1. Post all SFIs online for the public to view without requiring them to register and require a picture ID.

As the Commonwealth moves toward providing more public documents online to avoid using administrative time to respond to specific public records requests, requiring users to register and identify themselves serves no public purpose. The records should be freely accessible.

### 2. Eliminate filer notification.

The law requiring that filers be notified by the Ethics Commission of the name of the person requesting his or her SFI has a chilling effect on public disclosure. It is designed to intimidate the public into *not* making such requests out of fear of retribution.

### 3. Require Electronic Filing.

Now that Massachusetts has an electronically fileable and searchable form for SFI filers, it should require that all filers use the electronic form. Ethics Commission staff should not have to spend time making manual redactions to SFIs because elected officials would rather file a handwritten or hardcopy printout of their SFI. States such as Alaska,

Arkansas, Delaware, Maryland, Mississippi, Nevada and Virginia all require electronic filing.<sup>6</sup> Why can’t Massachusetts? This is an easy fix, and the legislature should make this change immediately.

### 4. Require disclosure of out-of-state real estate holdings.

If high-level state officials are negotiating an agreement with another state, the public should be able to easily check whether those officials have real estate interests in that state. This would help prevent possible conflicts of interest.

## SFI forms are badly out of date

The SFI process is not only behind the curve in terms of technology, but the forms are badly out of date. Filers do not report their exact income or the precise dollar value of assets like real estate, stocks or bonds. Instead, they report the value ‘bracket’ in which each of those falls.

These brackets have not been updated since 1978, when the law governing SFIs first went into effect.<sup>7</sup> Back then, the mean household income was less than \$20,000 per year; the mean home value was \$48,400 in 1980.<sup>8</sup> Back then, the mean household income was less than \$20,000 per year; the mean home value was \$48,400 in 1980. Today in Massachusetts the average income and home value are \$70,954 and \$388,300, respectively. These represent 255 percent and 702 percent increases.

When Pioneer last wrote on this subject, 181 out of 182 home-owning legislators reported their home values in the maximum bracket (\$100,000+).<sup>9</sup> These vague disclosures are not helpful to any member of the public or press who wishes to hold public officials accountable.

On the other end of the spectrum, New York’s Annual Statement of Financial Interest (form) has more than 100 income brackets<sup>10</sup> and Alabama — whose median home value is less than one-third of Massachusetts’s<sup>11</sup> — set its top income and home value brackets at \$250,000 or greater.<sup>12</sup> At the very least, the top home value bracket in Massachusetts should be greater than the state’s median home value. Florida requires filers to list their actual income amount down to the dollar, not a bracket. Such a move would put an end to the discussion of what bracket thresholds should be, how often they should be changed, who should change them, etc.

In fairness to Massachusetts state government, some states don’t have any brackets at all. It is a common practice of states to simply ask filers to list all income sources over a certain threshold (e.g. \$1,000 or \$5,000).

The easiest way to start fixing these shortcomings is for the legislature to simply give the State Ethics Commission discretion to change the brackets as it sees fit; or it could ask the

commission to submit regular recommendations every few years based on the Consumer Price Index or a similar measure. The word “amount” does not need a statutory definition that prevents the public from understanding the financial interests of its elected officials. There are a range of potential solutions, all of which would substantially improve the Commonwealth’s SFI forms.

## Task force on integrity in state and local government

In 2017, a state task force convened to review the state’s Conflict of Interest Law, Financial Disclosure Law and the regulations of the State Ethics Commission.<sup>13</sup> The Ethics Commission participated in the Task Force’s meetings and submitted written recommendations to the Task Force at each meeting. Many of their suggestions appear in this policy brief. Most of the ideas are not new, but rather echo ideas that government transparency advocates have for many years promoted to no avail.<sup>14</sup>

Unfortunately, the Task Force ultimately did not make specific, substantial recommendations in its final report. Its recommendations kicked the proverbial can down the road:

- (i) “Amendment of the General Laws to expand regulatory authority for the State Ethics Commission; the extent of such expansion, in form and scope, shall be determined by the General Court and the Governor; and
- (ii) Continued study by the House and Senate Committees on Ethics and by the Joint Committee on State Administration and Regulatory Oversight of the proposals presented to the Task Force to date.”<sup>15</sup>

Now over a year after the Task Force completed its recommendations, nothing has been done.

## Moving forward

Representative Carolyn Dykema (D-Holliston / 8<sup>th</sup> Middlesex) has filed legislation to improve public access to SFIs at the beginning of each new legislative session. Her most recent bill is House No. 2661, entitled “An Act relative to the electronic filing of and public access to statements of financial interests.”<sup>16</sup> An analysis of this proposal would be a good place to start for the legislature to move towards improving the public’s access to SFIs.

## Conclusion

Governor Charlie Baker has emphasized the importance of technology in making state government as thrifty as the people it serves. In 2017, the Governor submitted legislation under Article 87 of the state constitution to reorganize the Executive Branch to include an Executive Office of Technology Services & Security, whose secretary serves as a member of the Governor’s Cabinet.<sup>17</sup> Governor Baker said creating this new Secretariat would “allow state government to streamline state services, improve cybersecurity and better serve our constituents, [and] support the Commonwealth’s focus on providing modern, secure and stable technologies.”

With a few critical changes to its outdated approach, Massachusetts could progress from maintaining one of the least transparent and least constituent-friendly financial disclosure regimes in the nation to becoming a national leader in the accessibility and usefulness of its public officials’ statements of financial interest. Such a sea change in attitude would require sustained commitment from the state’s political leaders, but would have the overwhelming support of the public and media. In this way, it would be an excellent government reform initiative for Governor Baker to pursue during his second term in office.

## Endnotes

1. MGL 268B §5(a) requires “[e]very candidate for public office [to] file a statement of financial interest for the preceding calendar year with the [Ethics] [C]ommission”. MGL 268B §3(d) requires the Ethics Commission to make SFIs “available for public inspection...upon the written request of any individual who provides *identification acceptable to the commission* (emphasis added).” Regulations authored by the Ethics Commission, 930 CMR 4.01(4) (most recently updated on 09/06/2014), define sufficient documentation identifying the requestor as “a driver’s license, registry of motor vehicles identification card, student identification, social security card or passport”. (<https://www.mass.gov/regulations/930-CMR-400-state-ments-of-financial-interests-inspections>). The Commission’s website states that a picture ID is required – “If you would like to view a redacted copy of a CY 2015 SFI for any filer(s), you will be required to register online as a user and provide a picture ID.”
2. Maryland’s Public Ethics Law defines a “State official” as “(1) a constitutional officer or officer–elect in an executive unit; (2) a member or member–elect of the General Assembly; (3) a judge or judge–elect of a court under Article IV, § 1 of the Maryland Constitution; (4) a judicial appointee as defined in Maryland Rule 18–200.3; (5) a State’s Attorney; (6) a clerk of the circuit court; (7) a register of wills; or (8) a sheriff.” (<http://ethics.maryland.gov/wp-content/uploads/filebase/general/Public-Ethics-Law.pdf>) <https://ethics.maryland.gov/employeeofficials/financial-disclosure/>
3. The module opened on June 22, 2017. <https://www.mass.gov/event/july-24-2017-state-ethics-commission-meeting-minutes-public-session-2017-07-24t100000-0400>
4. <https://www.mass.gov/event/july-24-2017-state-ethics-commission-meeting-minutes-public-session-2017-07-24t100000-0400>
5. According to the Ethics Commission Statements of Financial Interest Page, for the year 2017, 3812 out of 3974 filers to date did so electronically; only 162 filed by paper. [47 have not yet filed their SFI, total filers should reach 4021.] (<https://www.sfi.eth.state.ma.us/Public/GlobalStatistics.aspx>). Out of 344 filers classified as a “Public Official”, only 45 filed by paper; and as of 5/31/2018, seven filers had not yet filed, including Deborah Goldberg. Galvin, DeLeo, Baker all filed by paper; Goldberg filed by paper for 2016. (<https://www.sfi.eth.state.ma.us/Public/PublicHome.aspx>)
6. There are some exceptions. Virginia allows *local* officials to file by paper. Mississippi may grant an exception “if you have no access to the Internet in your home or your workplace and no public Internet terminal within five (5) miles of your residence or if you do not have a valid Mississippi driver’s license.” [http://www.ethics.state.ms.us/ethics/ethics.nsf/webpage/A\\_stmt\\_econ\\_int?OpenDocument](http://www.ethics.state.ms.us/ethics/ethics.nsf/webpage/A_stmt_econ_int?OpenDocument)
7. MGL C. 268B, Sec. 1: "Amount", a category of value, rather than an exact dollar figure, as follows: greater than \$1,000 but not more than \$5,000; greater than \$5,000 but not more than \$10,000; greater than \$10,000 but not more than \$20,000; greater than \$20,000 but not more than \$40,000; greater than \$40,000 but not more than \$60,000; greater than \$60,000 but not more than \$100,000; greater than \$100,000.”
8. <https://www.census.gov/hhes/www/housing/census/historic/values.html>
9. <https://pioneerinstitute.org/news/massachusetts-financial-disclosures-weak-and-out-of-reach/>
10. See Table I & II. (<https://www.jcope.ny.gov/system/files/documents/2018/02/fds-form-2016-clean-version-1-18-18writeable-tables.pdf>)
11. U.S. Census Bureau, 2012–2016 American Community Survey 5-year Estimates
12. Alabama Statement of Economic Interest Form: <http://ethics.alabama.gov/docs/SOEI/StatementofEconomicInterestsForm-2017filedin2018RevisedDecember2017.pdf>
13. The Task Force was established per Resolve H.4627 [Chapter 4 of the Resolves of 2016] (<https://malegislature.gov/Laws/Session-Laws/Resolves/2016/Chapter4>). The Task Force was charged with “conduct[ing] an investigation and study of the existing legal and regulatory framework governing the conduct of state, county and municipal elected officials and appointed public employees, including a review of: (i) the Conflict of Interest Law, [chapter 268A of the General Laws](#); (ii) the Financial Disclosure Law, chapter 268B of the General Laws; and (iii) the regulations of the state ethics commission, 930 CMR 1.00 et seq., and associated processes.”
14. The Ethics Commission, for instance, recommended:
  - changing the amount brackets on SFI forms to include the following brackets: \$100,000–\$250,000; \$250,000–\$500,000; \$500,000–\$1,000,000; \$1,000,000–\$5,000,000; and \$5,000,000 or more;
  - requiring the reporting of out-of-state real estate; and
  - requiring electronic filing for public officials.
15. Report and Recommendations of the Task Force on Integrity in State and Local Government, page 2.
16. <https://malegislature.gov/Bills/190/H2661>
17. <https://www.mass.gov/news/baker-polito-administration-announces-the-executive-office-of-technology-services-and-security>  
 ... “Establishing the Executive Office of Technology Service and Security will allow state government to streamline state services, improve cybersecurity and better serve our constituents,” **said Governor Baker**. “We look forward to developing this secretariat to support the Commonwealth’s focus on providing modern, secure and stable technologies.”

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