

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

• (517) 373-5383

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Senate Bill 9 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator William Sederburg  
Committee: State Affairs, Tourism, and Transportation

Date Completed: 6-27-89

**RATIONALE**

Most would probably agree that public records with archival value, such as the original Michigan Constitution of 1835 and films and papers of the Constitutional Convention of 1961-62, are priceless State resources that should be preserved. And, in fact, the Michigan Library and Historical Center now has a specially designed facility specifically for the preservation and use of archival records and manuscripts. The problem, some claim, is that Public Act 271 of 1913, which authorizes the operation of the State's archives program, is obsolete, ineffective, and inadequate to protect and preserve vital archival records. They cite a 1984 study of the State's archives and records management program by independent consultants that found that Public Act 271 lacks the necessary statements of authority and responsibility for the protection and preservation of archival documents, fails to provide or provides inadequate definitions of such terms as "public record" and "agency", and fails to clarify the relationship between the State's Archives Program, the State's record management program, and archival programs of other State and local agencies.

**CONTENT**

The bill would create the "Michigan Archives Act" to designate the Department of State as the official archival agency of Michigan, to create the Michigan State Archives within the Department, and to:

- Specify powers of the Secretary of State in administering the State Archives and require the Secretary to designate a State Archivist.
- Provide for the confidentiality of certain records.
- Provide for the retention of nonpublic records having archival value.
- Authorize the Secretary of State to designate an archival depository for public records of local agencies in a geographic area of the State.

The bill also would repeal current provisions pertaining to the confidentiality of records in the State Archives (MCL 399.4a), and requiring the Michigan Historical Commission to collect and preserve records and documents that are of value (MCL 399.5). The bill is tie-barred to Senate Bill 174, which would create the "Executive Office Public Records Act".

**State Archives**

The Michigan State Archives would be created in the Department of State subject to the direction and control of the Secretary of State. The Archives would have to operate and be maintained as a records depository to ensure the permanent preservation of State and local public records that had archival value. ("Public record" would mean a record made or received under law or color of law or in connection with an activity relating to or having an effect upon the transaction of business by an agency, and

S.B. 9 (6-27-89)

that was kept by an agency on any basis other than loan as evidence of its organization, function, policy, decisions, operation, or other activity, or its informational value. "Agency" would include a county; township; city; village; district; authority or municipal officer; State department, bureau, division, board or commission; an elected, appointed, or constitutional officer; any other unit or body of the executive, legislative, or judicial branch of State government, or any of its political subdivisions or other separate units of government created or established by law; and any other person acting on behalf of a governmental unit; it would not include an individual legislator.)

A public record in the custody of the State Archives could not be destroyed before consultation with the agency that originally transferred the record to the Archives.

#### Secretary of State

The Secretary of State would be required to promulgate rules to prescribe registration procedures for persons who used the State Archives and designated archival depositories; to regulate copying methods and storage standards for public records with archival value; and to govern the operation of a designated archival depository for the public records of local government.

The Secretary of State also would be required to designate a qualified civil servant as the State Archivist, who would have to administer the State Archives and archival programs.

In administering the State Archives, the Secretary of State could do the following:

- Select and accept from an agency public records that were not in current use but had archival value.
- Provide for the preservation, arrangement, description, storage, indexing, and use of all accepted public records.
- Periodically inventory the records of local agencies and the State's trial courts; examine the condition of local public records, and, subject to the availability of funding and staff, provide advice and assistance to local governments

concerning the maintenance, preservation, and disposal of their public records; and train records maintenance personnel.

- Review each proposed retention and disposal schedule submitted by a State or local agency; determine whether a record or record series had archival value; direct that each record or record series with archival value be transferred to the State Archives at the end of its usefulness; disapprove retention and disposal schedules that failed to list each agency record or record series or that proposed the destruction of a series that had archival value; and approve schedules meeting the requirements set forth in the proposed Executive Office Public Records Act.
- Develop general records schedules pertaining to the public records customarily maintained by local governmental agencies and trial courts.
- Make available to the public for inspection and copying any public record that was not privileged or required by law to be confidential, if the record were not likely to be damaged by public availability.
- Conduct a program to store master negative microfilm and microforms with archival value.
- Maintain a program of information, assistance, coordination, and guidance for governmental officials, educational institutions, libraries, the educational community, and the general public concerning archival practices in general and the State Archives and its uses.
- Initiate legal action to recover public records that had been removed from State custody and that had archival value.
- Produce and sell microform and paper publications.
- Designate archival depositories of local public records as provided below.
- Upon request, advise and assist legislators in maintaining and disposing of their personal or political records that had archival value.
- Accept a gift, grant, donation, devise, or endowment of money, or personal or real property for use in fulfilling a power or duty prescribed in the proposed Michigan

## Archives Act.

### Confidentiality

A public record transferred to the Secretary of State by an agency that maintained the record on a confidential or privileged basis would have to be kept confidential if a written agreement to that effect were executed concerning the transfer. The agreement would have to be signed by the State Archivist and an representative of the agency, specify the conditions under which the record was to be transferred, and provide for the release of the record for research purposes if the names of persons identified in the record were protected from disclosure. This provision would not apply to a public record that failed to qualify for an exemption from the Freedom of Information Act before receipt by the Secretary of State.

### Nonpublic Records

The Secretary of State could accept from any nongovernmental person or entity a record donated to the State Archives if the record were determined to have archival value. A written agreement concerning the condition of acceptance, maintenance, and availability could be executed.

A record obtained under a written agreement specifying that the record was for retention in the State Archives but was confidential would have to be kept confidential and could not be open to public inspection or copying for a period set forth in the agreement. The period could not exceed 20 years from the date of the agreement or the donor's death, whichever occurred first.

### Archival Depository

The Secretary of State could designate an archival depository for public records produced or maintained by a local agency in a geographic area of the State where there was a public institution meeting the bill's requirements. To qualify as a designated archival depository, an institution would have to do all of the following:

- Maintain a fire resistant and waterproof records' storage area.

- Have the means of maintaining and documenting maintenance of a prescribed temperature and humidity in the storage area.
- Operate a security and alarm system.
- Have adequate space for the processing and storage of records, including a public access area.
- Use steel shelving.
- Comply with all pertinent rules promulgated by the Secretary of State.

To receive designation, a public institution would have to apply to the Secretary of State and provide all requested information and documentation. The Secretary could revoke a designation if he or she determined that the depository no longer met the qualifications, or that it wished voluntarily to relinquish its designation. Upon revocation, the depository would have to transfer the public records in its custody to the State Archives, or, upon the Secretary's direction, to another designated depository.

### Copies

Upon request, the State Archivist would have to produce and furnish a copy of any public record maintained in the State Archives upon payment of a copying fee as described in the Freedom of Information Act. When certified by the Archivist or the Secretary of State, a copy would have the same legal force and effect as if made by the agency from which the record was transferred. A fee of \$1 per page would have to be charged for providing a certified copy of a public record. If a public record were provided in other than a page format, the Secretary of State would have to establish and charge a reasonable fee not to exceed the actual cost for the special reproduction service.

### FISCAL IMPACT

The bill would have an indeterminate impact on State and local units of government. In the short run, costs cannot be identified nor estimated. However, over the long run, it is presumed that costs to the State would rise as new procedures and systems were developed for the preservation of State archives.

## **ARGUMENTS**

### **Supporting Argument**

The bill would provide needed clarification concerning the functions and responsibilities of the State's archives and records management program, and establish an adequate legal basis for the identification and preservation of public records possessing historical value. In addition, the bill would provide for the management and disposition of local government records, which are not covered by Public Act 504 of 1988. (Public Act 504 made numerous changes in the Management and Budget Act, including clarifying the Department's responsibilities in managing the records of the State; clarifying the procedures for disposal of State records; and providing that the legal custody of a record is vested in the State agency that created it until the record is transferred to the State Archives.)

Legislative Analyst: L. Burghardt  
Fiscal Analyst: F. Sanchez

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.