

HOUSE BILL No. 5830

May 11, 1992, Introduced by Reps. Harder, Byrum, Baade, Pitoniak and DeMars and referred to the Committee on State Affairs.

A bill to establish the state archives; to prescribe the powers and duties of certain state and local officers; to regulate public access to archival records; to provide for the promulgation of rules; to create the state historical records advisory board and to prescribe the board's powers and duties; to prescribe penalties and remedies; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan archives act".

3 Sec. 2. As used in this act:

4 (a) "Archival value record" or "archival value records"
5 means public records selected by the state archives as having
6 enduring worth for any of the following reasons:

1 (i) The records document the development of this state from
2 earlier times, including the territorial period.

3 (ii) The records evidence the creation, organization, devel-
4 opment, operation, functions, or effects of a public body.

5 (iii) The records contain significant information about per-
6 sons, things, problems, or conditions relating to a public body's
7 duties.

8 (b) "Department" means the department of state.

9 (c) "Designated archival depository" means a depository or
10 depositories of local public records designated by the department
11 pursuant to section 9.

12 (d) "Essential record" means a public record, the mainte-
13 nance of which is necessary for the continued operation of state
14 or local government.

15 (e) "General records schedule" means a retention and dis-
16 posal schedule governing the disposition of a specified recurring
17 record series that is common to more than 1 public body.

18 (f) "Public body" means that term as defined in section 2 of
19 the freedom of information act, Act No. 442 of the Public Acts of
20 1976, being section 15.232 of the Michigan Compiled Laws. Public
21 body does not include an individual member of the legislature.

22 (g) "Public official" means a representative or member of a
23 public body.

24 (h) "Public record" means a record or a public record as
25 that term is defined in section 2 of the freedom of information
26 act, Act No. 442 of the Public Acts of 1976, being section 15.232
27 of the Michigan Compiled Laws.

1 (i) "Record" means any of the following:

2 (i) A document, paper, book, letter, or writing, including a
3 document, paper, book, letter, or writing prepared by handwrit-
4 ing, typewriting, printing, photostating, or photocopying.

5 (ii) A photograph, film, map, magnetic or paper tape, micro-
6 form, magnetic or punch card, disc, drum, sound or video record-
7 ing, electronic data processing material, or other recording
8 medium.

9 (iii) Letters, words, pictures, sounds, impulses, or sym-
10 bols, individually or in combination.

11 (iv) A record series.

12 (j) "Record management officer" means a person responsible
13 for a public body's compliance with section 11.

14 (k) "Record series" means a discrete unit of records, or
15 records arranged by a public body in a systematic manner or main-
16 tained as a discrete filing category.

17 (l) "Retention and disposal schedule" means a schedule that
18 describes all public records of a public body, specifies archival
19 value records, and identifies, on a continuing basis, the reten-
20 tion and ultimate disposition of 1 or more specified record
21 series.

22 (m) "State administrative board" means the state administra-
23 tive board of the state of Michigan created by section 1 of Act
24 No. 2 of the Public Acts of 1921, being section 17.1 of the
25 Michigan Compiled Laws.

26 (n) "State archives" means the state of Michigan archives
27 created in section 3.

1 Sec. 3. (1) The department is the official archival agency
2 of Michigan.

3 (2) The state of Michigan archives is created within the
4 department, and shall operate and be maintained as a records
5 depository to ensure the permanent preservation of archival value
6 records.

7 Sec. 4. (1) In administering the state archives, the
8 department may do all of the following:

9 (a) Select and accept from a public body archival value
10 records that are not in current use by the public body.

11 (b) Provide for the preservation, arrangement, description,
12 storage, indexing, and use of all public records in the state
13 archives.

14 (c) Inventory, on a periodic basis, the records of public
15 bodies and examine the condition of public records.

16 (d) Provide public bodies advice and assistance concerning
17 the maintenance, preservation, and disposal of the public records
18 in the custody of those public bodies, and provide training for
19 record management officers and other records maintenance
20 personnel.

21 (e) Review each proposed retention and disposal schedule
22 submitted by a public body pursuant to section 11(1)(d) and
23 determine whether a record identified in that schedule is an
24 archival value record.

25 (f) Direct that each record determined to be an archival
26 value record pursuant to subdivision (e) be scheduled for

1 transfer to the state archives at the end of the administrative,
2 fiscal, or legal usefulness of that record.

3 (g) Disapprove a retention and disposal schedule that fails
4 to list each public body record or record series or that proposes
5 the destruction of an archival value record.

6 (h) Approve a retention and disposal schedule meeting the
7 requirements of this act, and section 287 of the management and
8 budget act, Act No. 431 of the Public Acts of 1984, being
9 section 18.1287 of the Michigan Compiled Laws, and other applica-
10 ble provisions of law.

11 (i) Develop or assist in developing general records sched-
12 ules pertaining to the public records customarily maintained by
13 public bodies and trial courts.

14 (j) Make available to the public for inspection and copying
15 any public record that is not privileged or required by law to be
16 kept confidential, if the department determines that the record
17 is not likely to be damaged or put at risk by being made avail-
18 able to the public. A record determined by the department to be
19 likely damaged or put at risk by being made available to the
20 public is exempt from the freedom of information act, Act No. 442
21 of the Public Acts of 1976, being sections 15.231 to 15.246 of
22 the Michigan Compiled Laws.

23 (k) Conduct a program to store master negative microfilm and
24 microforms of archival value records.

25 (l) Maintain a program of information, assistance, coordina-
26 tion, and guidance for governmental officials, educational
27 institutions, libraries, the educational community, and the

1 general public concerning archival practices in general and the
2 state archives and its uses.

3 (m) Provide education, training, and information programs to
4 state public bodies regarding all phases of records preservation
5 and archival operations.

6 (n) Initiate legal action to recover public records that
7 have archival value and have been removed or are improperly main-
8 tained outside of state archive or public body custody.

9 (o) Subject to subsection (2), produce and sell microform
10 and paper publications at a price established by the department.

11 (p) Designate archival depositories of local public records
12 pursuant to section 9.

13 (q) Upon request, advise and assist members of the legisla-
14 ture in the maintenance and disposition of political records.

15 (r) Promulgate rules pursuant to the administrative proce-
16 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
17 sections 24.201 to 24.328 of the Michigan Compiled Laws, that do
18 each of the following:

19 (i) Prescribe registration procedures applicable to persons
20 who use the state archives and designated archival depositories,
21 including rules that may require a person who uses the state
22 archives or a designated archival depository to disclose his or
23 her name, business address, affiliation if applicable, type of
24 use, and other information relevant to the operation and programs
25 of the state archives or the security of the public records main-
26 tained at the state archives.

1 (ii) Regulate copying methods and storage standards for
2 public records determined to have archival value.

3 (iii) Govern the operation of a designated archival deposi-
4 tory for the public records of local government.

5 (iv) Prescribe standards for the repair or restoration of
6 state and local public records.

7 (v) Implement the department's powers and duties prescribed
8 in this act.

9 (s) Perform any other duty or activity necessary to fulfill
10 the purposes of this act.

11 (2) If the department produces and sells microform and paper
12 publications pursuant to subsection (1)(o), a fund shall be cre-
13 ated within the department of treasury. The department shall
14 deposit revenues received under subsection (1)(o) into that fund,
15 and the fund shall additionally receive money as otherwise pro-
16 vided by law, and shall receive gifts and contributions to the
17 fund. The state treasurer shall retain money in the fund at the
18 close of the fiscal year and shall not return that money to the
19 general fund. The department shall expend money in the fund for
20 necessary expenses associated with the production and sale of
21 microforms and paper publications.

22 Sec. 5. (1) Except as otherwise provided in subsection (2),
23 a confidential or privileged record transferred to the state
24 archives by a public body that maintained the record remains con-
25 fidential or privileged. The department and the transferring
26 public body may execute a written agreement that specifies the
27 manner in which the record is to be kept confidential, the terms

1 and conditions under which the record is to be transferred, and
2 the department's right to release the record for research pur-
3 poses if the names of persons identified in the record are pro-
4 tected from disclosure.

5 (2) A confidential record obtained by the department under a
6 written agreement specifying that the record is for retention in
7 the state archives shall not be available for public inspection
8 or copying for a period set forth in the agreement. The period
9 set forth in the agreement shall not be longer than the later of
10 either of the following:

11 (a) Thirty years from the date of the agreement.

12 (b) Ten years after the death of the donor.

13 (3) This section does not apply to a public record that may
14 be disclosed to the public under the freedom of information act,
15 Act No. 442 of the Public Acts of 1976, being sections 15.231 to
16 15.246 of the Michigan Compiled Laws.

17 (4) Notwithstanding any other provision of law, a limitation
18 on access to a public record shall not extend more than 80 years
19 after creation of the record, unless the department determines in
20 writing that the record should remain confidential for an addi-
21 tional period.

22 Sec. 6. (1) Subject to the public health code, Act No. 368
23 of the Public Acts of 1978, being sections 333.1101 to 333.25211
24 of the Michigan Compiled Laws, and upon the request of a public
25 body, the state archives may accept and retain public records,
26 including vital records, that possess ongoing administrative,
27 fiscal, or legal value.

1 (2) The department shall not destroy a public record
2 transferred to the state archives under subsection (1) before
3 consulting the public body that originally transferred the record
4 to the state archives, unless the public body waived the right to
5 consultation in writing at the time of the record's transfer to
6 the archives. If after consultation the public body desires the
7 return of the record, the state archives shall return the record
8 to the public body.

9 Sec. 7. (1) The department shall collect a copying fee
10 described in section 4 of the freedom of information act,
11 Act. No. 442 of the Public Acts of 1976, being section 15.234 of
12 the Michigan Compiled Laws, for each copy of a public record made
13 pursuant to a request under that act. For all other copies or
14 certifications made under this act, the department shall collect
15 a fee of \$1.00 per page for a certified copy of a public record,
16 and a fee of \$1.00 for each certification. Except as otherwise
17 provided in the freedom of information act, Act No. 442 of the
18 Public Acts of 1976, being sections 15.234 to 15.246 of the
19 Michigan Compiled Laws, a fee described in this section shall not
20 be waived or reduced. If a public record requires special repro-
21 duction, the department shall establish and charge a reasonable
22 copying fee not to exceed the actual cost for the special repro-
23 duction service. If a requester desires copies of a voluminous
24 quantity of records, the department may require the requester to
25 provide the labor necessary to duplicate the records.

1 (2) A copy of a state archives document certified by the
2 department has the same legal force and effect as the original
3 document.

4 Sec. 8. The department may accept from any nongovernmental
5 person or entity an archival value record donated to the state
6 archives. A written agreement may be executed concerning the
7 terms and conditions of acceptance, maintenance, and the public
8 availability of the record.

9 Sec. 9. (1) The department may designate an institution
10 operated by a state or local agency as an archival depository for
11 public records produced or maintained by a public body in a geo-
12 graphic area of the state in which the public institution exists,
13 if the public institution does all of the following:

14 (a) Maintains a fire resistant and waterproof records stor-
15 age area.

16 (b) Documents and maintains a temperature and humidity pre-
17 scribed by the department in the records storage area described
18 in subdivision (a).

19 (c) Maintains a security and alarm system.

20 (d) Provides adequate space for the processing and storage
21 of records, including a public access area.

22 (e) Uses steel shelving.

23 (f) Remains open to the public not less than 20 hours per
24 week.

25 (g) Complies with all rules promulgated by the department
26 governing the operation of a designated archival depository for
27 public records of a local public body.

1 (2) To receive designation as an archival depository for
2 public records of a public body, a public institution shall apply
3 to the department on a form approved by the department. The
4 applicant shall provide all information and documentation
5 requested by the department.

6 (3) The department may furnish technical assistance from the
7 state archives to a designated archival depository to maintain or
8 enhance depository programs.

9 (4) The department may revoke an archival depository designation if the department determines that the depository no longer
10 meets the requirements of subsection (1). A depository may voluntarily relinquish its designation. Upon revocation or relinquishment, the archival depository shall immediately transfer the
11 public records in its custody to the state archives, or, upon
12 direction of the department, to another designated archival
13 depository. The designated archival depository transferring the
14 public records is responsible for the costs of the transfer.

15 Sec. 10. (1) A public record that is made or received by a
16 public body remains public property until final disposition of
17 that public record pursuant to this act.

18 (2) A public body remains responsible for a public record in
19 its possession until the record is transferred to the state
20 archives or a regional depository, or until the record is disposed of pursuant to this act.

21 Sec. 11. (1) Subject to subsection (3), a public body shall
22 do all of the following:

1 (a) Create, accept, and maintain only those public records
2 that are necessary for the continued effective operation of the
3 public body, for an adequate and proper recording of public body
4 activities, or for the protection of a legal or financial inter-
5 est of the public or of the public body.

6 (b) Cooperate with the department in complying with this
7 act.

8 (c) Implement a program for the efficient, economical, and
9 effective maintenance of public records.

10 (d) Establish record retention and disposal schedules per-
11 taining to each public record or record series over which the
12 public body has legal responsibility, and submit each schedule to
13 the department for department review and approval.

14 (e) Install safeguards against the improper disposal, trans-
15 fer, retention, or sale of public records, including notification
16 of public body employees that the public records over which the
17 public body has responsibility may not be sold or otherwise
18 transferred or destroyed except pursuant to this act or other
19 applicable law.

20 (f) Designate a record management officer in writing.

21 (g) Submit a brief report to the department once every 5
22 years on a form provided by the department, outlining records
23 management accomplishments.

24 (h) Upon the department's request, a public body shall
25 permit a department representative to examine or inventory public
26 records, or both, as provided in section 4.

1 (i) Retain control of public records in the custody of that
2 public body except under the following circumstances:

3 (i) The record is destroyed or transferred pursuant to a
4 records retention and disposal schedule.

5 (ii) The record is required by law to be transferred to
6 another person or public body.

7 (iii) A court of competent jurisdiction orders the transfer
8 of the record or issues an order compelling production of the
9 record.

10 (iv) The record is required for audit, accounting, budget,
11 or audit-connected investigative purposes pursuant to law, and
12 the record management officer is given or maintains a receipt
13 listing the records being removed.

14 (v) The record is loaned to another public body or govern-
15 mental body, or to an educational, scientific, or research insti-
16 tution, or other public entity, a detailed written loan agreement
17 specifying the duration of the loan and describing the record is
18 executed, and a copy of that written loan agreement is provided
19 to the state archives.

20 (vi) The record is being repaired or restored in another
21 location.

22 (2) Nothing in this act limits the authority of a public
23 body to determine the nature, form, or identity of records con-
24 sidered necessary for the effective management of the public
25 body.

26 (3) A public body that is not engaged in an activity
27 described in subsection (1) on the effective date of this act is

1 not required to engage in that activity absent the receipt of
2 state funding for the activity.

3 Sec. 12. (1) A public body that implements a program for
4 the maintenance of public records as provided in section 11 shall
5 do all of the following:

6 (a) Keep public records under control of the public body's
7 record management officer.

8 (b) Store records in orderly filing systems designed to make
9 the records conveniently accessible for use.

10 (c) Identify and protect essential records in a manner
11 designed to ensure the safety of those records.

12 (2) A public body may do both of the following:

13 (a) Loan records to another public body for a public purpose
14 under a detailed written agreement pursuant to section 11.

15 (b) Initiate legal action to recover public archival value
16 records that belong to that public body.

17 Sec. 13. (1) If a record of a public body requires repair
18 or restoration, the custodian of the record may arrange for
19 repair or restoration of the record. If the record cannot be
20 repaired at the place in which it is ordinarily kept, the record
21 management officer or his or her designee may authorize the
22 removal of the record from the place where it is ordinarily kept
23 for the length of time necessary to accomplish repair or
24 restoration.

25 (2) If a public record is copied, the custodian of the
26 record, or his or her designee, may certify in writing in an
27 attachment to the copy that the copy is a true and accurate

1 duplicate of the original. A certified copy of a public record
2 or of a microform or printout copy of a computer maintained
3 record has the same legal force and effect as the original
4 record.

5 Sec. 14. A public record that no longer has administrative,
6 fiscal, or legal value shall be disposed of pursuant to this act,
7 unless another means of disposition is specified by law.

8 Sec. 15. (1) A public record or record series maintained by
9 a public body shall be listed on a record retention and disposal
10 schedule or on a general records schedule.

11 (2) Trial court records shall be disposed of pursuant to
12 section 2137 of the revised judicature act of 1961, Act No. 236
13 of the Public Acts of 1961, being section 600.2137 of the
14 Michigan Compiled Laws. Other court records may be listed on a
15 retention and disposal schedule or general records schedule pur-
16 suant to order of the supreme court.

17 Sec. 16. (1) Before adopting a proposed public body records
18 retention and disposal schedule or general records schedule, a
19 public body shall submit the proposal to the attorney general or
20 the attorney general's designee, the auditor general or the audi-
21 tor general's designee, the department, and the state administra-
22 tive board, each of which shall review and approve or disapprove
23 the proposal.

24 (2) A reviewing body described in subsection (1) may require
25 modification of a schedule and shall not approve a schedule until
26 reasonably satisfied that the schedule protects the public
27 interest. A reviewing body described in subsection (1) may

1 disapprove a schedule that proposes to destroy an archival value
2 record.

3 (3) A retention and disposal schedule is effective upon
4 approval by all of the reviewing bodies described in subsection
5 (1).

6 (4) Subject to the review requirements described in subsec-
7 tion (1), a retention and disposal schedule may be amended to
8 account for programmatic changes and legislative action affecting
9 public records.

10 Sec. 17. At the end of the retention period prescribed in a
11 retention and disposal schedule or a general records schedule, a
12 public body may dispose of a public record or record series as
13 provided in the schedule. If a record is not scheduled for
14 transfer to the state archives or a designated archival deposito-
15 ry, the public body shall destroy the record. The public body
16 may not sell a record. Copies of records may be furnished pursu-
17 ant to this act or section 4 of the freedom of information act,
18 Act No. 442 of the Public Acts of 1976, being section 15.234 of
19 the Michigan Compiled Laws.

20 Sec. 18. (1) At the expiration of a public official's term
21 of office, the public official shall deliver to his or her suc-
22 cessor or, if there is no successor, deliver to the department
23 each public record in his or her possession or control.

24 (2) A person who violates this section is guilty of a misde-
25 meanor punishable by imprisonment for not more than 6 months, or
26 a fine of not more than \$1,000.00, or both.

1 Sec. 19. A person required under this act to maintain a
2 public record that is not in his or her possession or control may
3 petition the Ingham county circuit court or the circuit court for
4 the county in which the record, or any part of the record, is
5 situated for possession of the record. The court shall order the
6 record to be delivered to the petitioner upon determining that
7 the record is a public record, that the petitioner is the proper
8 legal custodian of the record, and that the person who possesses
9 the record is not authorized by law to continue possession.

10 Sec. 20. A person who destroys, mutilates, converts, car-
11 ries away, or without legal authority sells a public record or
12 who refuses to deliver a public record to a person entitled to
13 legal custody of the record is guilty of a misdemeanor punishable
14 by imprisonment for not more than 1 year, or a fine of not more
15 than \$1,000.00, or both.

16 Sec. 21. The department may accept a gift, grant, donation,
17 bequest, or endowment of money or other personal or real property
18 for use in fulfilling the powers and duties prescribed in this
19 act.

20 Sec. 22. (1) The state historical records advisory board is
21 created within the department and shall consist of 7 members
22 appointed by the governor. The governor shall appoint each
23 member within 90 days after the effective date of this act, and
24 each member shall serve for a term of 3 years, except that of the
25 members first appointed, 2 shall serve for 1 year, 2 shall serve
26 for 2 years, and 3 shall serve for 3 years.

1 (2) If a vacancy occurs on the state historical records
2 advisory board, the governor shall make an appointment for the
3 balance of the unexpired term in the same manner as the original
4 appointment.

5 (3) The governor may remove a member of the state historical
6 records advisory board for incompetency, dereliction of duty,
7 malfeasance, misfeasance, or for any other good cause.

8 (4) The state historical records advisory board shall con-
9 sist of members with experience in the administration of histori-
10 cal records or archives.

11 (5) The state historical records advisory board shall meet
12 within 30 days after all members have been appointed. At the
13 first meeting, the state historical records advisory board shall
14 elect from its members a chairperson who shall also serve as the
15 state historical records coordinator described in 36
16 C.F.R. 1206.38.

17 (6) A majority of the state historical records advisory
18 board constitutes a quorum for the transaction of business at a
19 meeting of the board. A majority vote of the members present and
20 serving is required for official action of the state historical
21 records advisory board.

22 (7) The business of the state historical records advisory
23 board shall be conducted at a public meeting of that board, held
24 in compliance with the open meetings act, Act No. 267 of the
25 Public Acts of 1976, being sections 15.261 to 15.275 of the
26 Michigan Compiled Laws.

1 (8) A writing prepared, owned, used, in the possession of,
2 or retained by the state historical records advisory board in the
3 performance of an official function is subject to the freedom of
4 information act, Act No. 442 of the Public Acts of 1976, being
5 sections 15.231 to 15.246 of the Michigan Compiled Laws.

6 (9) Members of the state historical records advisory board
7 shall serve without compensation. However, members of that board
8 may be reimbursed for their actual and necessary expenses
9 incurred in the performance of their official duties as members
10 of the state historical records advisory board, pursuant to the
11 standard travel regulations of the department of management and
12 budget.

13 (10) The state historical records advisory board may perform
14 all of the functions of a state historical records advisory board
15 described in 36 C.F.R. 1206.38.

16 Sec. 23. Sections 4a and 5 of Act No. 271 of the Public
17 Acts of 1913, being sections 399.4a and 399.5 of the Michigan
18 Compiled Laws, are repealed.