



**House
Legislative
Analysis
Section**

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CREATE MICHIGAN ARCHIVES ACT

House Bill 4256 as introduced
First Analysis (3-18-93)

Sponsor: Rep. Clark Harder
Committee: State Affairs

THE APPARENT PROBLEM:

In Michigan, statutory authority for management of current state records lies with the Records Management Services Section of the Department of Management and Budget, while responsibility for archives rests with the State Archives in the Department of State, which identifies and preserves state records of permanent value. The management of current local government records is the responsibility of local governments, while the Local Records Programs of the State Archives is statutorily responsible for insuring the preservation of permanently valuable local records. Michigan also has a number of historical records and manuscript repositories that collect and preserve non-governmental records produced by private organizations and individuals. The State Archives also collects and manages some non-governmental historical records.

Because legislation regarding public records is outdated, scattered, and inadequate, legislation has been introduced at the request of the Department of State that would create an adequate statutory basis for the state's archives program.

THE CONTENT OF THE BILL:

The bill would create a new act, the "Michigan archives act," to statutorily regulate the collection, preservation, and disposal of historically important state and local public records. It would create the State of Michigan Archives in the Department of State, specify the powers and duties of the department and of state and local governments with regard to the archives and the preservation of public records, regulate public access to archival records, create a state historical records advisory board, and provide penalties for certain violations.

Currently, under Public Act 271 of 1913, the Michigan Historical Commission is responsible for collecting, preserving, and disposing of public records from state, county, city, village, school, and

township offices, and for making these records available for use by the public. The records may be stored at county depositories, and in the possession of public institutions that have fireproof buildings in which to store the records and suitable arrangements for keeping them safe. Before disposing of public records no longer needed by a particular unit of government, the act requires that the commission be given a list or description of the records and allowed to take possession of any of the documents it deems valuable. Once the commission obtains the records it has chosen, the disposal schedule of the remainder of the records is submitted to the state administrative board, which must approve or disapprove of the disposal schedule and order the destruction of the records. In 1980, an amendment (Public Act 319, enrolled House Bill 4853) to the act allowed the secretary of state to keep privately donated records confidential for up to 20 years, if that is the donor's wish. Materials obtained from government agencies also can be kept confidential under a written agreement between the secretary of state and the donating agency, so long as such records are not otherwise subject to the Freedom of Information Act.

State of Michigan archives. The bill would repeal the above provisions of the historical commission act (MCL 399.4a and 399.5) and instead create a new act establishing the State of Michigan archives in the Department of State. The department would be the official archival agency of the state and the secretary of state would administer the state archives. The state archives would "operate and be maintained as a records depository to ensure the permanent preservation of public records that ha[d] archival value."

The bill also would allow the state archives, at the request of a state or local agency, to accept and keep public records (including vital records) that had ongoing administrative, fiscal, or legal value. Unless the originating agency had given a waiver with the record, the Department of State wouldn't

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be able to destroy any of these records without first consulting with the originating agency to see whether it wanted the record returned.

Donations. The bill would allow the Department of State to accept donations of private records that it considered to be of archival value and to enter into written agreements regarding the terms and conditions of the record's acceptance, maintenance, and public availability.

The department also could accept gifts, grants, donations, bequests, and endowments, and to use these donations to carry out its duties as prescribed in the bill.

Confidential records. The bill would allow the state archives to keep certain public records confidential, but would impose limits on how long the records could be kept as such. If a state or local agency transferred a public record that it had kept on a confidential or privileged basis, the state archives would keep the record confidential or privileged. The Department of State and the transferring agency could enter into a written agreement specifying how the record was to be kept confidential, the terms and conditions under which the record would be transferred, and the department's right to release the record for research purposes so long as names identified in the record would be protected from disclosure.

Confidential records that the department got under a written agreement would not be available for public inspection or copying for the length of time specified in the agreement, though the period of confidentiality could not be for more than 30 years from the date of the agreement or for ten years after the death of the donor. In any case, no public document could be kept confidential for more than 80 years unless the department decided to extend this period, and no public document subject to the Freedom of Information Act could be kept confidential.

Records of public officials. The bill would require that at the end of any public official's term, all of the official's public records be transferred to his or her successors, or (if there were no successor) to the Department of State. Violations of this requirement would be misdemeanors punishable by imprisonment for up to six months and a fine of \$1,000. ("Public official" would mean a representative or member of an "agency," which, in

turn, would be defined as "a county, township, city, village, district, authority, or municipal officer, state department, bureau, division, board, commission, or an elected, appointed or constitutional officer, or any other unit or body, however designated, of the executive, legislative, or judicial branches of state government, or any political subdivision or separate unit of government established by law, and any person acting on behalf of a governmental unit." "Agency" would specifically not include an individual member of the legislature or someone acting under a legislator's direction or supervision.)

Powers of the secretary of state. In administering the state archives, the secretary of state could:

- * select or accept and keep state, local, and non-governmental records of archival value, and accept donations of private records;
- * provide for the preservation, arrangement, description, storage, indexing, and use of all records selected and accepted for the state archives;
- * periodically inventory the public records of local state agencies and trial courts;
- * give advice and help to local agencies and trial courts on how to keep and dispose of their records, develop (or help them develop) general records schedules for public records they customarily keep, and provide training for record management officers;
- * review and approve or disapprove retention and disposal schedules of state and local agencies;
- * provide public access to records for inspection and copying;
- * educate and help public officials, the educational community, libraries, and the general public on archival practices;
- * initiate legal action to recover records;
- * designate local archival depositories;
- * produce and sell publications and deposit the revenues into a fund that can be used for the production and sale of those publications; and
- * promulgate any rules, and perform other functions, necessary to carry out the bill's provisions.

Copies and fees. Copy requests made under the Freedom of Information Act (Public Act 422 of 1976) would have copying fees as described in that act, except there would be no fee reductions or waivers. All other copies of state archives documents or certifications of such documents would cost a dollar a page and a dollar for each certification. The department could establish and charge a "reasonable" fee (not to exceed the actual cost for the special reproduction service) for

copying public records requiring special kinds of copying. If a lot of copies ("copies of a voluminous quantity") are requested, the department could require the requester to provide the labor necessary to do the copying.

Copies of state archives documents certified by the department would have the same legal force and effect as the original document.

Recovery of records. The bill would allow the secretary of state (and other proper records custodians) to initiate legal action to recover records from unauthorized holders.

Designated archival depositories. The secretary of state could designate regional depositories for local records ("designated archival depositories"), provided that the depository met certain storage and public access requirements. The secretary of state could revoke a depository's designation if it failed to properly maintain or provide access to records, and depositories also could relinquish their designations. In either case, records would immediately have to be transferred to the state archives or to another regional depository.

State historical records advisory board. The bill would create a "state historical records advisory board" in the Department of State, consisting of 7 to 21 members appointed by the governor in accordance with federal regulations. Members would have to have experience in administering historical records or archives, and would not be paid. The board would be able to do everything the federal government allowed such boards to do, and would have to meet within 30 days after the last member was appointed. The board would have to meet in accordance with the Open Meetings Act (Public Act 267) and its records would be subject to the Freedom of Information Act.

Local government records. The bill would specify the powers and duties of local governments regarding their public records. Public records made or received by local agencies would remain public property until the final disposition of the record under the bill's provisions. Local agencies would remain responsible for public records in their possession until the record either was transferred to the state archives (or a regional depository) or properly disposed of. Local agencies couldn't sell public records, though they could furnish copies of them under the Freedom of Information Act or

under the bill and could certify copies (which would have the same legal force and effect as the original).

The bill would specify local agencies' responsibilities for creating, accepting, retaining control of, and maintaining their public records and would require local agencies to cooperate with the Department of State in complying with the bill. It would require local agencies to create (and get approval from specified state officers and agencies) record retention and disposal schedules for (and list on these schedules) records it was legally responsible for. Local agencies also would have to designate "record management officers" (that is, someone responsible for the local agency's compliance with its responsibilities regarding records) and submit brief reports (on forms provided by the department) every five years to the department on their records management. Local agencies could loan their records to other agencies under certain circumstances and initiate legal action to recover local public records that had archival value.

The bill also would:

- * specify requirements for local agencies to repair or restore their records;
- * require that local public records be disposed of in accordance with the bill (that is, either transfer them to the state archives or destroy them) when the records no longer had administrative, fiscal, or legal value;
- * make local officials who destroyed records under the bill's provisions immune from civil liability;
- * require that trial court records be disposed of under the Revised Judicature Act; and
- * allow other court records to be listed on records schedules under orders from the state supreme court.

Nothing in the bill would limit the authority of local agencies to decide the nature, form, or identity of records a local agency considered necessary for its effective management.

Penalties for mishandling records. The bill would make it a misdemeanor (punishable by imprisonment for up to one year and a fine of up to \$1,000) to destroy, mutilate, convert, carry away, sell without legal authority, or refuse to hand over public records to someone legally entitled to them.

FISCAL IMPLICATIONS:

There is no fiscal information at present.

ARGUMENTS:**For:**

As a 1986 report by the State Historical Records Advisory Board notes, the current law governing the state archives (Public Act 271 of 1913) is antiquated, lacks necessary statutory statements of authority and responsibility regarding state and local governments, provides inadequate (or no) definitions, and does not provide clear interconnections between the state archives and other state agencies. The bill would provide needed statutory provisions for prescribing archives responsibilities, identifying program functions, and clarifying the state archives' relationship with the state records management program. It also would establish an adequate legal basis for the identification and preservation of public records having historical and other enduring value, and would specifically address the management and disposition of local government records. Since the 1988 amendments to the Department of Management and Budget act limit records management services to state government only, the bill would specify that the state archives would offer records management services for local government. Records management help will contribute to the effectiveness and efficiency of local government operations, as well as identifying and preserving records with archival value.

The state of Michigan is rightly proud of the fact that it has one of the nation's premier archive facilities, the Michigan Historical Museum and State Archives. It is time now to give Michigan the modern statutory framework necessary to enable the state's archival program to operate well into the next century.

Against:

The bill would appear to add requirements for local governments (such as designating record management officers and making reports to the state every five years), which raises the question of the possibility of Headlee implications. Instead of mandating that local governments meet certain requirements it would be better to offer financial incentives for locals to participate in archival programs and to upgrade their record keeping.

Response:

There already is existing legislation (Public Act 271 of 1913) that imposes some requirements on local units of government with regard to the state archives program. The intent of the bill, moreover, is not to impose new duties on local governments so much as to make sure that there is good communication between the state and local governments regarding good record keeping. Designation of a "record management officer," for example, should not involve the addition of any staff for local governments. It simply would mean that someone at the local level would be designated as being responsible for seeing that the local unit meet its archival and record keeping responsibilities, while the report would ensure that these responsibilities would not get lost in the pressures of local government activity. Much of what the bill would do would be to implement some of the things (such as advice by the state archives to local units of government regarding record management) that already are being done.

With regard to financial incentives, there are federal dollars available for archival programs, but only provided that there are state matching funds. It would be highly desirable to offer local units of government financial incentives, and if the Department of State had the funds it would certainly do so. However, given current state budget constraints, it is unlikely that state general fund money will become available soon to do this.

POSITIONS:

The Department of State supports the bill. (3-17-93)

The Michigan Association of Counties has not yet taken a position on the bill. (3-17-93)

The Michigan Municipal League has no position on the bill. (3-17-93)

The Michigan Township Association has no position on the bill. (3-17-93)