



HOUSE BILL No. 4256

February 11, 1993, Introduced by Rep. Harder 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) "Agency" means a county, township, city, village, dis-
5 trict, authority, or municipal officer, state department, bureau,
6 division, board, commission, or an elected, appointed or

1 constitutional officer, or any other unit or body, however
2 designated, of the executive, legislative, or judicial branches
3 of state government, or any political subdivision or separate
4 unit of government established by law, and any person acting on
5 behalf of a governmental unit. Agency does not include an indi-
6 vidual member of the legislature, or a person acting under the
7 direction or supervision of an individual member of the
8 legislature.

9 (b) "Archival value" means public records selected by the
10 state archives as having enduring worth for any of the following
11 reasons:

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

14 (ii) The records evidence the creation, organization, devel-
15 opment, operation, functions, or effects of an agency.

16 (iii) The records contain significant information about per-
17 sons, things, problems, or conditions relating to a state or
18 local agency.

19 (c) "Department" means the department of state.

20 (d) "Designated archival depository" means a depository or
21 depositories of local public records designated by the department
22 pursuant to section 9.

23 (e) "Essential record" means a public record, the mainte-
24 nance of which is necessary for the continued operation of state
25 or local government.

1 (f) "General records schedule" means a retention and
2 disposal schedule governing the disposition of a specified
3 recurring record series that is common to more than 1 agency.

4 (g) "Public official" means a representative or member of an
5 agency.

6 (h) "Public record" means a record created or possessed by
7 an agency pursuant to law or under color of law in connection
8 with an activity relating to or affecting the transaction of the
9 agency's business, and that is created or maintained by the
10 agency as evidence of the agency's organization, function,
11 policy, decisions, operation, or activity, or because of the
12 record's informational value. Public record does not include a
13 record loaned to an agency.

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

15 (i) A document, paper, book, letter, or writing, whether
16 prepared by handwriting, typewriting, printing, photostating,
17 photocopying, or other means.

18 (ii) A photograph, film, map, magnetic or paper tape, micro-
19 form, magnetic or punch card, disc, drum, sound or video record-
20 ing, electronic data processing material, or other recording
21 medium, regardless of physical form or characteristic.

22 (iii) Letters, words, pictures, sounds, impulses, or sym-
23 bols, individually or in combination, regardless of physical form
24 or characteristics.

25 (iv) A record series.

26 (j) "Record management officer" means a person responsible
27 for an agency's compliance with section 11.

1 (k) "Record series" means a discrete unit of records, or
2 records arranged by an agency in a systematic manner or main-
3 tained as a discrete filing category.

4 (l) "Retention and disposal schedule" means a list of
5 records that describes all public records of an agency.

6 (m) "State administrative board" means the state administra-
7 tive board of the state of Michigan created by section 1 of Act
8 No. 2 of the Public Acts of 1921, being section 17.1 of the
9 Michigan Compiled Laws.

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

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

14 (2) The state of Michigan archives is created within the
15 department of state and is under the direction and control of the
16 secretary of state. The state archives shall operate and be
17 maintained as a records depository to ensure the permanent pre-
18 servation of public records that have archival value.

19 Sec. 4. (1) In administering the state archives, the secre-
20 tary of state may do all of the following:

21 (a) Select and accept from an agency those public records
22 that are not in current use but which have archival value.

23 (b) Provide for the preservation, arrangement, description,
24 storage, indexing, and use of all public records selected and
25 accepted pursuant to subdivision (a).

26 (c) Inventory, on a periodic basis, the public records of
27 local agencies and the trial courts of this state.

1 (d) Examine the condition of the public records of local
2 agencies and trial courts, and do each of the following:

3 (i) Provide advice and assistance concerning the mainte-
4 nance, preservation, and disposal of those public records.

5 (ii) Provide training for record management officers and
6 other records maintenance personnel.

7 (e) Review each proposed retention and disposal schedule
8 submitted by an agency and determine whether a record listed in
9 that schedule has archival value.

10 (f) Direct that each record or record series determined to
11 have archival value be scheduled for transfer to the state
12 archives at the end of the administrative, fiscal, or legal use-
13 fulness of that record.

14 (g) Disapprove a retention and disposal schedule that fails
15 to list each agency record or record series or that proposes the
16 destruction of a record or record series having archival value.

17 (h) Approve a retention and disposal schedule meeting the
18 requirements of any of the following:

19 (i) This act.

20 (ii) Section 287 of the management and budget act, Act
21 No. 431 of the Public Acts of 1984, being section 18.1287 of the
22 Michigan Compiled Laws.

23 (iii) Other applicable provisions of law.

24 (i) Develop or assist in developing general records sched-
25 ules pertaining to the public records customarily maintained by
26 local agencies and trial courts.

1 (j) Make available to the public for inspection and copying
2 any public record that is not privileged or required by law to be
3 kept confidential, if the department determines that the record
4 is not likely to be damaged or put at risk by being made avail-
5 able to the public. A record determined by the department to be
6 likely damaged or put at risk by being made available to the
7 public is exempt from the freedom of information act, Act No. 442
8 of the Public Acts of 1976, being sections 15.231 to 15.246 of
9 the Michigan Compiled Laws.

10 (k) Conduct a program to store records consisting of master
11 negative microfilm and microforms that have archival value.

12 (l) Maintain a program of information, assistance, coordina-
13 tion, and guidance for public officials, educational institu-
14 tions, libraries, the educational community, and the general
15 public concerning archival practices in general and the state
16 archives and its uses.

17 (m) Provide education, training, and information programs to
18 state agencies regarding all phases of records preservation and
19 archival operations.

20 (n) Initiate legal action to recover public records that
21 have archival value and have been removed or are improperly main-
22 tained outside of agency custody.

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

25 (p) Designate archival depositories of local public records
26 pursuant to section 9.

1 (q) Upon the request of a legislator, advise and assist that
2 legislator in the maintenance and disposition of his or her
3 political records and personal papers.

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

8 (i) Prescribe registration procedures applicable to persons
9 who use the state archives and designated archival depositories,
10 including rules that may require a person to disclose his or her
11 name, business address, affiliation if applicable, and type of
12 use and other information relevant to the operation and programs
13 of the state archives and designated archival depositories or the
14 security of the public records maintained at the state archives
15 and designated archival depositories.

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

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

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

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

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

26 (2) If the department produces and sells microform and paper
27 publications pursuant to subsection (1)(o), a fund shall be

1 created within the department of treasury. The department shall
2 deposit revenues received under subsection (1)(o) into that fund,
3 and the fund shall additionally receive money as otherwise pro-
4 vided by law, and shall receive gifts and contributions. The
5 state treasurer shall retain money in the fund at the close of
6 the fiscal year and shall not return that money to the general
7 fund. The department shall expend money in the fund for neces-
8 sary expenses associated with the production and sale of micro-
9 forms and paper publications.

10 Sec. 5. (1) Except as otherwise provided in subsection (2),
11 a confidential or privileged record transferred to the state
12 archives by an agency that maintained the record on a confiden-
13 tial or privileged basis remains confidential or privileged on
14 the same basis as if retained by the agency. The department and
15 the transferring agency may execute a written agreement that
16 specifies the manner in which the record is to be kept confiden-
17 tial, the terms and conditions under which the record is to be
18 transferred, and the department's right to release the record for
19 research purposes if the names of persons identified in the
20 record are protected from disclosure.

21 (2) A confidential record obtained by the department under a
22 written agreement specifying that the record is for retention in
23 the state archives shall not be available for public inspection
24 or copying for a period set forth in the agreement. The period
25 set forth in the agreement is subject to subsection (4) and shall
26 not be longer than the later of either of the following:

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

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

3 (3) This section does not apply to a public record that
4 before delivery to the state archives fails to qualify for an
5 exemption from disclosure under the freedom of information act,
6 Act No. 442 of the Public Acts of 1976, being sections 15.231 to
7 15.246 of the Michigan Compiled Laws.

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

13 Sec. 6. (1) Upon the request of an agency, the state
14 archives may accept and retain public records, including vital
15 records, that possess ongoing administrative, fiscal, or legal
16 value.

17 (2) The department shall not destroy a public record trans-
18 ferred to the state archives under subsection (1) without first
19 consulting with the agency that originally transferred the record
20 to the state archives, unless the agency provided a written
21 waiver of its right to consultation at the time of the record's
22 transfer to the archives. If after consultation the agency
23 desires the return of the record, the state archives shall return
24 the record to the agency.

25 Sec. 7. (1) The department shall collect a copying fee
26 described in section 4 of the freedom of information act,
27 Act. No. 442 of the Public Acts of 1976, being section 15.234 of

1 the Michigan Compiled Laws, for each copy of a public record made
2 pursuant to a request under that act. For all other copies or
3 certifications made under this act, the department shall collect
4 a fee of \$1.00 per page for a certified copy of a public record,
5 and a fee of \$1.00 for each certification.

6 (2) Notwithstanding the fee reduction and waiver provision
7 in the freedom of information act, Act No. 442 of the Public Acts
8 of 1976, being sections 15.234 to 15.246 of the Michigan Compiled
9 Laws, a fee described in this section shall not be waived or
10 reduced.

11 (3) If a public record requires special reproduction, the
12 department shall establish and charge a reasonable copying fee
13 not to exceed the actual cost for the special reproduction
14 service. If a requester desires copies of a voluminous quantity
15 of records, the department may require the requester to provide
16 the labor necessary to duplicate the records.

17 (4) A copy of a state archives document certified by the
18 department has the same legal force and effect as the original
19 document.

20 Sec. 8. The department may accept from any nongovernmental
21 person or entity a record donated to the state archives, if the
22 department determines that the record has archival value or his-
23 torical value. A written agreement may be executed concerning
24 the terms and conditions of acceptance, maintenance, and the
25 public availability of the record.

26 Sec. 9. (1) The department may designate an institution
27 operated by an agency as an archival depository for public

1 records produced or maintained by a local agency in a geographic
2 area of the state in which the institution exists, if the insti-
3 tution does all of the following:

4 (a) Maintains a fire resistant and waterproof records stor-
5 age area.

6 (b) Documents and maintains a temperature and humidity pre-
7 scribed by the department in the records storage area.

8 (c) Maintains a security and alarm system.

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

11 (e) Uses steel shelving.

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

14 (g) Complies with all rules promulgated by the department
15 governing the operation of a designated archival depository for
16 public records of a local agency.

17 (2) To receive designation as an archival depository for
18 public records of a local agency, a public institution shall
19 apply to the department on a form approved by the department.
20 The applicant shall provide all information and documentation
21 requested by the department.

22 (3) The department may furnish technical assistance from the
23 state archives to a designated archival depository to maintain or
24 enhance depository programs.

25 (4) The department may revoke an archival depository desig-
26 nation if the department determines that the depository no longer
27 meets the requirements of subsection (1). A depository may

1 voluntarily relinquish its designation. Upon revocation or
2 relinquishment, the archival depository shall immediately trans-
3 fer the public records in its custody to the state archives, or,
4 upon direction of the department, to another designated archival
5 depository. The designated archival depository transferring the
6 public records is responsible for the costs of the transfer.

7 Sec. 10. (1) A public record that is made or received by a
8 local agency remains public property until final disposition of
9 that public record pursuant to this act.

10 (2) A local agency remains responsible for a public record
11 in its possession until the record is transferred to the state
12 archives or a regional depository, or until the record is dis-
13 posed of pursuant to this act.

14 Sec. 11. (1) A local agency shall do all of the following:

15 (a) Create, accept, and maintain only those public records
16 that are necessary for the continued effective operation of the
17 local agency, for an adequate and proper recording of local
18 agency activities, or for the protection of a legal or financial
19 interest of the public or of the local agency.

20 (b) Cooperate with the department in complying with this
21 act.

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

24 (d) Create record retention and disposal schedules or gen-
25 eral record schedules pertaining to each public record or record
26 series over which the local agency has legal responsibility.

1 (e) Install safeguards against the improper disposal,
2 transfer, retention, or sale of public records, including
3 notification of agency employees that the public records over
4 which the agency has responsibility may not be sold or otherwise
5 transferred or destroyed except pursuant to this act or other
6 applicable law.

7 (f) Designate in writing a record management officer who is
8 responsible for the local agency's compliance with this section.

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

12 (h) Permit a department representative, upon request, to
13 examine or inventory local public records, or both, as provided
14 in section 4.

15 (i) Retain control of local public records except under the
16 following circumstances:

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

19 (ii) The record is required by law to be transferred to
20 another person or agency.

21 (iii) A court of competent jurisdiction orders the transfer
22 of the record or issues an order compelling production of the
23 record.

24 (iv) The record is required for audit, accounting, budget,
25 or audit-connected investigative purposes pursuant to law, and
26 the record management officer is given or maintains a receipt
27 listing the record being removed.

1 (v) The record is loaned to another agency, an educational,
2 scientific, or research institution, or other public entity, and
3 each of the following conditions is met:

4 (A) A detailed written loan agreement specifying the dura-
5 tion of the loan and describing the record is executed.

6 (B) A copy of the written loan agreement described in
7 sub-subparagraph (A) is provided to the state archives.

8 (vi) The record is being repaired or restored in another
9 location.

10 (2) Nothing in this act limits the authority of a local
11 agency to determine the nature, form, or identity of records con-
12 sidered necessary for the effective management of that local
13 agency.

14 Sec. 12. (1) A local agency that implements a program for
15 the maintenance of public records as provided in section 11 shall
16 do all of the following:

17 (a) Keep public records under control of the person in
18 charge of the local agency having responsibility for the record.

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

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

23 (2) A local agency may do both of the following:

24 (a) Loan records to other agencies for a public purpose
25 under a detailed written agreement pursuant to section 11.

26 (b) Initiate legal action to recover local public records
27 that have archival value.

1 Sec. 13. (1) If a record of a local agency requires repair
2 or restoration, the custodian of the record may arrange for
3 repair or restoration of the record. If the record cannot be
4 repaired at the place in which it is ordinarily kept, the record
5 management officer or his or her designee may authorize the
6 removal of the record from the place where it is ordinarily kept
7 for the length of time necessary to accomplish repair or
8 restoration.

9 (2) If a public record is copied, the custodian of the
10 record, or his or her designee, may certify in writing in an
11 attachment to the copy that the copy is a true and accurate
12 duplicate of the original. A certified copy of a local agency's
13 public record or a certified copy of a microform or printout copy
14 of a computer maintained record has the same legal force and
15 effect as the original record.

16 Sec. 14. If a local agency's public record no longer has
17 administrative, fiscal, or legal value, the public record shall
18 be disposed of pursuant to this act, unless another means of dis-
19 position is specified by law.

20 Sec. 15. (1) A public record or record series maintained by
21 a local agency shall be listed on a record retention and disposal
22 schedule or on a general records schedule.

23 (2) Trial court records shall be disposed of pursuant to
24 section 2137 of the revised judicature act of 1961, Act No. 236
25 of the Public Acts of 1961, being section 600.2137 of the
26 Michigan Compiled Laws. Other court records may be listed on a

1 retention and disposal schedule or general records schedule
2 pursuant to order of the supreme court.

3 Sec. 16. (1) Before adopting a proposed records retention
4 and disposal schedule or general records schedule, a local agency
5 shall submit the proposed schedule to the attorney general or the
6 attorney general's designee, the auditor general or the auditor
7 general's designee, the department, and the state administrative
8 board, each of which shall review and approve or disapprove the
9 proposal.

10 (2) A reviewing body described in subsection (1) may require
11 modification of a schedule and shall not approve a schedule until
12 reasonably satisfied that the schedule protects the public
13 interest.

14 (3) A retention and disposal schedule, including a general
15 records schedule, is effective upon approval by all of the
16 reviewing bodies described in subsection (1).

17 (4) Subject to the review requirements described in subsec-
18 tion (1), a retention and disposal schedule or general records
19 schedule may be amended to account for programmatic changes and
20 legislative action affecting public records.

21 Sec. 17. (1) At the end of the retention period prescribed
22 in a retention and disposal schedule or a general records sched-
23 ule, a local agency may dispose of a public record or record
24 series as provided in the schedule. If a record is not scheduled
25 for transfer to the state archives or a designated archival
26 depository, the local agency shall destroy the record.

1 (2) A local agency may not sell a record. Copies of records
2 may be furnished pursuant to this act or section 4 of the freedom
3 of information act, Act No. 442 of the Public Acts of 1976, being
4 section 15.234 of the Michigan Compiled Laws.

5 (3) The destruction of a record pursuant to this act is the
6 exercise or discharge of a governmental function, and the custo-
7 dian of the record who destroys a record pursuant to this act and
8 the agency employing the services of that custodian are immune
9 from civil liability pursuant to Act No. 170 of the Public Acts
10 of 1964, being sections 691.1401 to 691.1415 of the Michigan
11 Compiled Laws.

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

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

19 Sec. 19. (1) The proper custodian of a public record that
20 is in the possession of a person or entity not authorized by the
21 custodian to possess or continue possession of the record may
22 petition the Ingham county circuit court or the circuit court for
23 the county in which the record, or any part of the record, is
24 situated for the return of the record. The court shall order the
25 record to be delivered to the petitioner upon deciding that the
26 record is a public record, that the petitioner is the proper
27 legal custodian of the record, and that the person who possesses

1 the record is not authorized by law to continue possession. If
2 an order of delivery is not obeyed within 14 days after service
3 of the order, the petitioner may request enforcement of the order
4 through court contempt powers.

5 (2) A person who files a petition pursuant to subsection (1)
6 may request the court to grant 1 of the following temporary ex
7 parte remedies:

8 (a) An order directing a sheriff or another local law
9 enforcement officer to seize the record and deliver it to the
10 court or another agency pending decision of the court.

11 (b) A temporary restraining order prohibiting the sale,
12 removal, transfer, disposal, or destruction of the record pending
13 decision of the court.

14 (3) The court shall issue an order of seizure or grant a
15 temporary restraining order under subsection (2) upon receipt of
16 an affidavit from the petitioner alleging that the record is a
17 public record and that unless 1 of the temporary remedies is
18 ordered, a significant likelihood exists that the record will be
19 sold, secreted, removed from the state, or otherwise disposed of
20 before the decision of the court, or that the record will be
21 destroyed or materially damaged if immediate relief is not
22 granted.

23 Sec. 20. A person who destroys, mutilates, converts, car-
24 ries away, or without legal authority sells a public record or
25 who refuses to deliver a public record to a person entitled to
26 legal custody of the record is guilty of a misdemeanor punishable

1 by imprisonment for not more than 1 year, or a fine of not more
2 than \$1,000.00, or both.

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

7 Sec. 22. (1) The state historical records advisory board is
8 created within the department and shall consist of not less than
9 7 or more than 21 members appointed by the governor, including 1
10 member designated by the governor as the state historical records
11 coordinator described in 36 C.F.R. 1206.36. The governor shall
12 appoint each member in accordance with 36 C.F.R. 1206.38.

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

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

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

23 (5) The state historical records advisory board shall meet
24 within 30 days after all members have been appointed.

25 (6) A majority of the state historical records advisory
26 board constitutes a quorum for the transaction of business at a
27 meeting of the board. A majority vote of the members present and

1 serving is required for official action of the state historical
2 records advisory board.

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

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

13 (9) Members of the state historical records advisory board
14 shall serve without compensation.

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

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