

SENATE BILL No. 174

February 23, 1989, Introduced by Senator SEDERBURG
and referred to the Committee on Government
Operations.

A bill to provide for the preservation of the public records, personal records, and memorabilia of the governor, lieutenant governor, and executive office; to prescribe the powers and duties of certain state officers with respect to those records; to regulate public access to those records; to provide for the promulgation of rules; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "executive office public records act".

3 Sec. 2. As used in this act:

4 (a) "Archival value" means to have enduring worth because
5 the record documents the growth and development of Michigan from
6 the earliest time, including the territorial period; the record
7 evidences the creation, organization, development, operation,
8 function, and effects of state agencies; or the record contains

1 significant information about persons, things, problems, and
2 conditions dealt with by state agencies. The state archives
3 shall determine which records have archival value under this
4 act.

5 (b) "Executive" means the governor and lieutenant governor
6 of this state.

7 (c) "Executive office public record" means a record, or any
8 reasonably segregable portion of a record, that is created, pre-
9 pared, received, owned, used, in the possession of, or retained
10 by an executive, a member of the executive's staff, or a person
11 or unit employed by the executive office of the executive whose
12 function is to advise and assist the executive in the course of
13 conducting activities that relate to or have an effect upon the
14 conduct of the constitutional, statutory, or other official or
15 ceremonial duties of the executive. Executive office public
16 record includes a record relating to the political activity of an
17 executive or a member of the executive's staff, if the activity
18 relates to or has a direct effect upon the conduct of a constitu-
19 tional, statutory, or other official or ceremonial duty of the
20 executive. Executive office public record does not include a
21 personal record, or the stock of publications and stationery.

22 (d) "Memorabilia" means mementos, artifacts, and similar
23 items received by an executive while in office.

24 (e) "Personal record" means a record, or any reasonably
25 segregable portion of a record, of a purely private or nonpublic
26 nature that does not relate to or have an effect upon the conduct
27 of the constitutional, statutory, or other official or ceremonial

1 duties of the executive. A personal record includes all of the
2 following:

3 (i) A diary, journal, or other personal note serving as the
4 functional equivalent of a diary or journal that is not circu-
5 lated or communicated in the course of transacting governmental
6 business.

7 (ii) Records relating to private political associations and
8 having no relation to or direct effect upon the conduct of con-
9 stitutional, statutory, or other official or ceremonial duties of
10 the executive.

11 (iii) Records relating exclusively to the executive's own
12 election to office.

13 (iv) Records that relate to the election of a person to fed-
14 eral, state, or local office and that do not have any relation to
15 or a direct effect upon the conduct of constitutional, statutory,
16 or other official or ceremonial duties of the executive.

17 (f) "Record" means a document, paper, book, letter, or writ-
18 ing, including documents, papers, books, letters, or writings
19 prepared by handwriting, typewriting, printing, photostating, or
20 photocopying; a photograph, film, map, magnetic or paper tape,
21 microfilm, microfiche, magnetic or punch card, disc, drum, sound
22 or video recording, electronic data processing material, or other
23 recording medium; and includes individual letters, words, pic-
24 tures, sounds, or symbols, or combinations thereof, regardless of
25 physical form or characteristics. If applicable, "record" also
26 means record series.

1 (g) "Record series" means a discrete file unit or documents
2 arranged in a systematic manner or maintained as a discrete
3 filing category because the records in the series relate to a
4 particular subject or function, result from the same activity, or
5 have a particular form, or because of some other relationship
6 arising out of their creation, receipt, or use.

7 (h) "State archives" means the Michigan state archives cre-
8 ated by section 3 of the Michigan archives act.

9 Sec. 3. (1) An executive office public record is and shall
10 remain the property of this state. This state reserves complete
11 ownership, possession, and control of each executive office
12 public record at all times.

13 (2) An executive office public record shall be created, pre-
14 pared, maintained, filed, stored, transferred, accessed, disposed
15 of, and otherwise managed in accordance with this act.

16 Sec. 4. An executive office public record is not subject to
17 the freedom of information act, Act No. 442 of the Public Acts of
18 1976, being sections 15.231 to 15.246 of the Michigan Compiled
19 Laws, during the period of time that the record is in the posses-
20 sion and control of the executive presently in office, unless the
21 executive voluntarily subjects the record to Act No. 442 of the
22 Public Acts of 1976.

23 Sec. 5. (1) The executive shall, with the advice and
24 assistance of the department of management and budget, develop
25 and utilize a formal executive office public record system. The
26 system shall be based upon efficient and economical management
27 methods and established so that executive office public records

1 and personal records, to the extent practicable, are filed
2 separately.

3 (2) To the extent practicable, a record produced or received
4 by an executive, a member of the executive's staff, or a person
5 or unit in the office of the executive whose function is to
6 advise and assist the executive, shall, at the time of the
7 record's production or receipt, be categorized as an executive
8 office public record or a personal record.

9 Sec. 6. (1) The executive shall adopt a retention and dis-
10 posal schedule for executive office public records and record
11 series.

12 (2) The executive maintaining an executive office public
13 record or record series shall list the executive office public
14 record or record series on the retention and disposal schedule.

15 Sec. 7. (1) Before adoption, the executive shall submit a
16 proposed retention and disposal schedule to the attorney general,
17 the auditor general, the secretary of state, the department of
18 management and budget, and the state administrative board for
19 review.

20 (2) A state officer reviewing a proposed retention and dis-
21 posal schedule under subsection (1) may require modification of
22 the proposed retention and disposal schedule. The state officer
23 shall not approve a proposed retention and disposal schedule
24 until satisfied that it protects the public interest. The secre-
25 tary of state may disapprove a proposed retention and disposal
26 schedule that proposes the destruction or improper disposition of

1 an executive office public record that has archival value as
2 determined by the state archives.

3 (3) A retention and disposal schedule shall become effective
4 upon approval of the state administrative board unless otherwise
5 disapproved under this section. The retention and disposal
6 schedule may be amended by the executive to account for program
7 changes and legislative action affecting executive office public
8 records.

9 (4) The executive shall review the retention and disposal
10 schedule not less than once every 4 years and shall notify the
11 secretary of state and the department of management and budget in
12 writing each time the review process is begun.

13 Sec. 8. (1) At the conclusion of an executive's tenure in
14 office, or earlier at the executive's discretion, the executive
15 shall relinquish custody and control over his or her executive
16 office public records to the secretary of state. The secretary
17 of state shall assume responsibility for the preservation, clas-
18 sification, arrangement, storage, and indexing of each executive
19 office public record and shall make, subject to any access
20 restrictions, the records available for public inspection and
21 copying.

22 (2) Upon receipt of an executive office public record from
23 the executive, the secretary of state shall deposit the executive
24 office public record in the Michigan state archives created by
25 section 3 of the Michigan archives act.

26 (3) After consulting with the executive and the state
27 archives, the secretary of state may destroy any executive office

1 public record that has insufficient archival value to warrant its
2 continued preservation.

3 Sec. 9. (1) Before the conclusion of an executive's tenure
4 in office, the executive may direct the secretary of state to
5 restrict access to the following categories of executive office
6 public records for a period of up to 12 years after the executive
7 office public record is transferred to the secretary of state:

8 (a) A medical, personnel, or appointments file or similar
9 record of a personal nature, the disclosure of which would con-
10 stitute an unwarranted invasion of a person's privacy.

11 (b) A record containing a trade secret or commercial or
12 financial information voluntarily provided to the executive.

13 (c) A record containing information provided to the execu-
14 tive upon a promise of confidentiality and identified as such.

15 (d) A record containing confidential communications between
16 the executive and an advisor to the executive, or between 2 or
17 more advisors to the executive.

18 (e) Classified and restricted records received from the fed-
19 eral government.

20 (f) A record that could be exempted from disclosure pursuant
21 to section 13 of the freedom of information act, Act No. 442 of
22 the Public Acts of 1976, being section 15.243 of the Michigan
23 Compiled Laws.

24 Sec. 10. (1) An executive office public record within, or
25 containing information within, a category restricted by the exec-
26 utive shall be so designated by the secretary of state. Access
27 to an executive office public record designated as restricted by

1 the secretary of state shall be restricted until the earliest of
2 the following:

3 (a) The date on which the former executive waives the
4 restriction.

5 (b) Twelve years after expiration of the term in office of
6 the former executive.

7 (c) A determination by the secretary of state that the
8 record has been placed in the public domain through publication
9 by a former executive or a designated representative of the
10 former executive.

11 (2) An executive office public record that is not within, or
12 that does not contain information within, a category restricted
13 by the executive or former executive shall be made available to
14 the public on the date on which the secretary of state completes
15 the processing and organizing of the record, or an integral file
16 segment of the records.

17 Sec. 11. (1) Upon receipt of a request for inspection of a
18 restricted executive office public record, the secretary of state
19 shall determine, after consultation with the former executive or
20 his or her personal representative, whether access to the record
21 shall be granted or denied.

22 (2) A determination made by the secretary of state under
23 this section is not subject to judicial review.

24 (3) If a person is denied access to an executive office
25 public record in the custody of the secretary of state because
26 access to the record is restricted, the secretary of state shall
27 establish a procedure providing for an administrative appeal of

1 the decision. This procedure shall require a written
2 determination by the secretary of state concerning the appeal.

3 Sec. 12. (1) Notwithstanding the restrictions on access to
4 executive office public records prescribed in this act, access to
5 an executive office public record in the custody of the secretary
6 of state shall be available to 1 or more of the following
7 persons:

8 (a) The secretary of state and employees of the secretary of
9 state engaged in archival work.

10 (b) An incumbent executive, if the record contains informa-
11 tion that is needed for the conduct of current governmental busi-
12 ness and if the information is not otherwise available to the
13 incumbent executive.

14 (c) A former executive, or a designated representative of a
15 former executive, for those executive office public records orig-
16 inally created or received by that former executive while in
17 office.

18 (d) A person authorized by subpoena or other judicial pro-
19 cess issued by a court of competent jurisdiction for the purpose
20 of a civil or criminal prosecution or investigation.

21 (e) A designee of the secretary of state, if an administra-
22 tive appeal has been filed by a person because the secretary of
23 state has denied access to the record due to the restricted
24 nature of the record.

25 (2) A state employee who releases a copy of a restricted
26 executive office public record, any part of the record, or any
27 information in the record, to a person except as provided in this

1 act shall be guilty of a felony punishable by imprisonment for
2 not more than 2 years, a fine of not more than \$2,000.00, or
3 both.

4 Sec. 13. The secretary of state, through representation by
5 the department of attorney general, may bring an action against a
6 former executive or any other person or entity to compel the
7 transfer to the state archives of a document that the secretary
8 of state believes to be an executive office public record and
9 that is in the possession of the former executive or any other
10 person or entity.

11 Sec. 14. (1) At any time during or after a term in office,
12 an executive or former executive may donate a personal record,
13 memorabilia, or both, to the state archives. The donation shall
14 be evidenced by a document of transfer that is signed by the
15 executive or former executive and describes the item donated.

16 (2) A personal record may be transferred by an executive or
17 former executive to the state archives pursuant to the provisions
18 of a written agreement that specifies that the record, or any
19 portion of the record, shall be kept confidential and shall not
20 be open to the public for inspection or copying for a period that
21 shall not be more than 20 years, until the death of the execu-
22 tive, or until the death of a specified member of the executive's
23 family, whichever occurs first.

24 Sec. 15. The secretary of state may promulgate rules to
25 implement this act pursuant to the administrative procedures act
26 of 1969, Act No. 306 of the Public Acts of 1969, being sections
27 24.201 to 24.328 of the Michigan Compiled Laws.

