

SENATE BILL No. 978

July 13, 1988, Introduced by Senators SEDERBURG and DE GROW and referred to the Committee on Government Operations.

A bill to provide for the preservation of the governor, lieutenant governor, and executive office public records, personal records, and memorabilia; to prescribe the powers, duties, and responsibilities of certain state officers with respect to those records; to regulate public access to executive office records; to provide for the promulgation of rules; to prescribe record maintenance and filing systems; 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 records that have been selected
5 by the state archives as having enduring worth because they
6 document the growth and development of Michigan from the earliest

1 time, including the territorial period, or because they evidence
2 the creation, organization, development, operation, function, and
3 effects of agencies, or because they contain significant informa-
4 tion about persons, things, problems, and conditions dealt with
5 by state agencies.

6 (b) "Executive office public record" means a record, or any
7 reasonably segregable portion of a record, which is created, pre-
8 pared, received, owned, used, in the possession of, or retained
9 by the governor, a member of the governor's staff, or person or
10 unit employed by the executive office of the governor of this
11 state whose function is to advise and assist the governor in the
12 course of conducting activities which relate to or have an effect
13 upon the conduct of the constitutional, statutory, or other offi-
14 cial or ceremonial duties of the governor. Executive office
15 public record includes a record relating to the political activ-
16 ity of the governor or a member of the governor's staff if the
17 activity relates to or has a direct effect upon the conduct of a
18 constitutional, statutory, or other official or ceremonial duty
19 of the governor. Executive office public record does not include
20 either of the following:

21 (i) A personal record.

22 (ii) Stocks of publications and stationery.

23 (c) "Memorabilia" means mementos, artifacts, and similar
24 items received by a governor or lieutenant governor while in
25 office.

26 (d) "Personal record" means a record, or any reasonably
27 segregable portion of a record, of a purely private or nonpublic

1 nature which does not relate to or have an effect upon the
2 conduct of the constitutional, statutory, or other official or
3 ceremonial duties of the governor of this state. A personal
4 record includes all of the following:

5 (i) A diary, journal, or other personal note serving as the
6 functional equivalent of a diary or journal which is not circu-
7 lated or communicated in the course of transacting government
8 business.

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

13 (iii) Records relating exclusively to the governor's or
14 lieutenant governor's own election to office.

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

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

1 physical form or characteristics. If applicable, "record" also
2 means record series.

3 (f) "Record series" means file units or documents arranged
4 in accordance with a filing system or maintained as a discrete
5 filing category because they relate to a particular subject func-
6 tion, result from the same activity, or have a particular form,
7 or because of some other relationship arising out of this cre-
8 ation, receipt, or use.

9 (g) "State archives" means the Michigan state archives cre-
10 ated in section 3 of the Michigan archives act.

11 Sec. 3. (1) An executive office public record is and shall
12 remain the property of the state, and this state reserves com-
13 plete ownership, possession, and control of each executive office
14 record at all times.

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

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

24 Sec. 5. (1) The governor shall, with the advice and assist-
25 ance of the department of management and budget, develop and uti-
26 lize a formal executive office public record system which shall
27 be based upon efficient and economical management methods, and

1 established in such a way that executive office public records
2 and personal records, to the extent practicable, are filed
3 separately.

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

10 Sec. 6. (1) Every executive office public record or record
11 series shall be listed on a retention and disposal schedule.

12 (2) The governor maintaining an executive office public
13 record or record series shall cause the executive office public
14 record or record series to be listed on a retention and disposal
15 schedule.

16 Sec. 7. (1) Before adoption, a proposed retention and dis-
17 posal schedule shall be submitted to and reviewed by the attorney
18 general, the auditor general, the secretary of state, the depart-
19 ment of management and budget, and the state administrative
20 board.

21 (2) A reviewer under subsection (1) may require modification
22 of a proposed retention and disposal schedule and shall not
23 approve a proposed retention and disposal schedule until satis-
24 fied that it protects the public interest. The secretary of
25 state may disapprove a proposed retention and disposal schedule
26 which proposes the destruction or improper disposition of an
27 executive office public record which has archival value.

1 (3) A retention and disposal schedule shall become effective
2 upon approval of the state administrative board. The retention
3 and disposal schedule may be amended to account for program
4 changes and legislative action affecting executive office public
5 records.

6 (4) The executive office shall review the retention and dis-
7 posal schedule not less than once every 4 years and shall notify
8 the secretary of state and the department of management and
9 budget in writing each time the review process is begun.

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

19 (2) Upon receipt of an executive office public record from
20 the governor, the secretary of state shall deposit the executive
21 office public record in the Michigan state archives created in
22 section 3 of the Michigan archives act.

23 (3) After consulting with the governor, the secretary of
24 state may destroy any executive office public record which has
25 insufficient administrative, historical, informational, eviden-
26 tiary, or other value to the public to warrant its continued
27 preservation.

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

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

9 (b) A record containing a trade secret, or commercial or
10 financial information, voluntarily provided to the governor.

11 (c) A record containing information provided to the governor
12 upon a promise of confidentiality and identified as such.

13 (d) A record containing confidential communications between
14 the governor and an advisor to the governor, or between 2 or more
15 advisors to the governor.

16 (e) Classified and restricted records received from the fed-
17 eral government.

18 (f) A record which could be exempted from disclosure pursu-
19 ant to section 13 of the freedom of information act, Act No. 442
20 of the Public Acts of 1976, being section 15.243 of the Michigan
21 Compiled Laws.

22 Sec. 10. (1) An executive office public record within, or
23 containing information within, a category restricted by the gov-
24 ernor shall be so designated by the secretary of state. Access
25 to an executive office public record designated as restricted by
26 the secretary of state shall be restricted until the earliest of
27 the following:

1 (a) The date on which the former governor waives the
2 restriction.

3 (b) Twelve years after expiration of the term in office of
4 the former governor.

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

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

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

20 (2) A determination made by the secretary of state pursuant
21 to this section is not subject to judicial review.

22 (3) If a person is denied access to an executive office
23 public record in the custody of the secretary of state because
24 access to the record is restricted, the secretary of state shall
25 establish a procedure providing for an administrative appeal of
26 the decision. This procedure shall require a written
27 determination by the secretary of state concerning the appeal.

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

6 (a) The secretary of state and employees of the secretary of
7 state engaged in archival work.

8 (b) An incumbent governor, if the record contains informa-
9 tion which is needed for the conduct of current government busi-
10 ness and if the information is not otherwise available.

11 (c) A former governor, or a designated representative of a
12 former governor, for those executive office public records origi-
13 nally created or received by that former governor while in
14 office.

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

18 (e) A designee of the secretary of state, if an administra-
19 tive appeal has been filed by a person because the secretary of
20 state has denied access, due to the restricted nature of the
21 record, to an executive office public record in the custody of
22 the secretary of state.

23 (2) A state employee who releases a copy of a restricted
24 executive office public record, any part of the record, or any
25 information in the record, to a person except pursuant to the
26 procedures set forth in this act shall be guilty of a felony

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

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

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

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

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

1 Sec. 16. A record of a lieutenant governor shall be subject
2 to this act in the same manner as an executive office public
3 record. The duties and responsibilities of the lieutenant gover-
4 nor concerning a record of the lieutenant governor shall be the
5 same as the duties and responsibilities of the governor under
6 this act concerning an executive office public record. The
7 authority of the secretary of state under this act concerning a
8 record of the lieutenant governor shall be the same as the
9 authority of the secretary of state under this act concerning an
10 executive office public record.

11 Sec. 17. This act shall not take effect unless Senate Bill
12 No. 929 the
13 84th Legislature is enacted into law.