



MACKINAC CENTER
FOR PUBLIC POLICY

March 8, 2017

Rep. Lee Chatfield, Chair
House Competitiveness Committee
Anderson House Office Building
124 North Capitol Avenue
Lansing, MI 48933

Dear Rep. Chatfield and committee members:

The Mackinac Center supports the expansion of record disclosure requirements to include the Michigan Legislature and the Office of the Governor. We commend you for considering House Bills 4148-57.

We respectfully offer several comments to improve the legislation.

First, the nondisclosure of a public record deserves a private right of action and an independent appeal. Existing FOIA law provides for eventual judicial review and the same review should exist for legislative records. Concerns about separation of powers are immaterial; under your proposed legislation the governor would be subject to a judicial review if a requestor was denied a record. Other states have recognized that a denial of records is appropriately within the province of the courts.

Second, HB 4150 states that a record does not become a public record until it has been in the possession of the legislature for 15 days or more. This does not mirror existing law and would create an additional delay for individuals seeking records. The legislature should not have a “maturity” period for records – public records are public records on day one.

Third, HB 4155 allows the House to adopt rules to exempt records from disclosure. New exemptions to LORA should be the subject of legislation, not internal House rules.

Finally, in keeping with the stated public policy intent of LORA, the people are entitled to “full and complete information regarding the affairs of government,” and any exemptions to disclosure should be scrutinized carefully and construed narrowly. HB 4155 proposes several exemptions that would keep numerous documents from the public light. Employee internet records, advisory communications and other records would give Michigan residents full and complete information about the affairs of the legislature and should be subject to disclosure.

Thank you for your consideration,

Michael Reitz
Executive Vice President