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January 26, 2016

House Natural Resources Committee  
Lansing, Michigan

Re: HB 4540 – Critical Energy Infrastructure FOIA exemption

Dear Representatives,

The Michigan Environmental Council is an umbrella group of more than 70 environmental, conservation and faith-based groups located across the state of Michigan. A number of those groups are dedicated to the protection of water resources, either statewide, or within their local communities. As part of those protection activities, the groups monitor activities within their communities which pose a risk to public health and natural resources.

Energy infrastructure represents one of those risks. The Enbridge spill in the Kalamazoo River is still a vivid reminder of the devastation that can be caused by improperly maintained infrastructure and negligent or ineffectual operations of those systems. It also highlighted shortfalls in the current regulatory program overseeing pipeline operation. Property owners and watchdog organizations play a crucial role in protecting our natural resources. Unfortunately, HB 4540, with an extremely broad definition of critical energy infrastructure eliminates the ability of property owners and organizations to play this important role. We therefore oppose the H-8 version of HB 4540.

The Michigan legislation should be patterned after a federal program which acknowledges the need for FOIA protection for some information regarding critical energy infrastructure, but also includes a bypass procedure for homeowners and organizations that can demonstrate a legitimate need for information. Unfortunately, HB 4540 by not including this alternative procedure is reducing transparency and oversight and thus places Michigan residents and natural resources at risk. Nothing in HB 4540 allows the state to balance the need for protection against the potential benefits of making some information either public or limited disclosure to potentially impacted individuals.

The Michigan Environmental Council offers the attached amendment to ensure that any state program mimics the federal program and does not act to reduce transparency in government body decision making. Virtually 100% of the language comes directly from the federal law. The state's focus should be placed on the elimination of any infrastructure that can't be adequately protected and that the failure or destruction of which would cause catastrophic damage.

Sincerely,

Sean Hammond, Deputy Policy Director

Representative \_\_\_\_\_ offered the following amendment to HB 4540 (H-8):

1. Amend page 13, after line 2, by inserting:

“(AA) A RECORD, A DOCUMENT, OR INFORMATION DETERMINED TO BE CRITICAL ENERGY INFRASTRUCTURE INFORMATION PURSUANT TO THE PROCESS OUTLINED IN SUBSECTION (5)-(9). “

2. Amend page 15, after line 8 after “INFORMATION.” by inserting:

“ALONG WITH THE CONTACT INFORMATION FOR THE MICHIGAN AGENCY FOR ENERGY”.

3. Amend page 15, after line 13, by striking subsection (A), and inserting:

(A) A LANDOWNER WHOSE PROPERTY IS **PROPOSED TO BE OR IS** CROSSED BY OR IN THE VICINITY OF A PROJECT MAY RECEIVE DETAILED ALIGNMENT SHEETS CONTAINING CRITICAL ENERGY INFRASTRUCTURE INFORMATION DIRECTLY FROM MICHIGAN AGENCY FOR ENERGY STAFF WITHOUT SUBMITTING A NON-DISCLOSURE AGREEMENT AS OUTLINED IN PARAGRAPH (9)(A) OF THIS SECTION. A LANDOWNER MUST PROVIDE MICHIGAN AGENCY FOR ENERGY STAFF WITH PROOF OF HIS OR HER PROPERTY INTEREST IN THE VICINITY OF A PROJECT.

(B) IF ANY OTHER REQUESTER HAS A PARTICULAR NEED FOR INFORMATION DESIGNATED AS CRITICAL ENERGY INFRASTRUCTURE INFORMATION, THE REQUESTER MAY REQUEST THE INFORMATION USING THE FOLLOWING PROCEDURES:

(i) FILE A SIGNED, WRITTEN REQUEST WITH THE COMMISSION'S CRITICAL ENERGY INFRASTRUCTURE INFORMATION COORDINATOR. THE REQUEST MUST CONTAIN THE FOLLOWING: REQUESTER'S NAME (INCLUDING ANY OTHER NAME(S) WHICH THE REQUESTER HAS USED AND THE DATES THE REQUESTER USED SUCH NAME(S)), TITLE, ADDRESS, AND TELEPHONE NUMBER; THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON OR ENTITY ON WHOSE BEHALF THE INFORMATION IS REQUESTED; A DETAILED STATEMENT EXPLAINING THE PARTICULAR NEED FOR AND INTENDED USE OF THE INFORMATION; AND A STATEMENT AS TO THE REQUESTER'S WILLINGNESS TO ADHERE TO LIMITATIONS ON THE USE AND DISCLOSURE OF THE INFORMATION REQUESTED. A REQUESTER SHALL PROVIDE HIS OR HER DATE AND PLACE OF BIRTH UPON REQUEST, IF IT IS DETERMINED BY THE CRITICAL ENERGY INFRASTRUCTURE INFORMATION COORDINATOR THAT THIS INFORMATION IS NECESSARY TO PROCESS THE REQUEST.

**(ii) UNLESS OTHERWISE PROVIDED IN SECTION (9), A REQUESTER MUST ALSO AGREE TO FILE AN EXECUTED NON-DISCLOSURE AGREEMENT IF REQUESTED.**

**4. Amend page 16, line 1 by striking subsection (D) and inserting:**

**(C) AFTER THE REQUEST IS RECEIVED, THE CRITICAL ENERGY INFRASTRUCTURE INFORMATION COORDINATOR WILL DETERMINE IF THE INFORMATION IS CRITICAL ENERGY INFRASTRUCTURE INFORMATION, AND, IF IT IS, WHETHER TO RELEASE THE CRITICAL ENERGY INFRASTRUCTURE INFORMATION TO THE REQUESTER. THE CRITICAL ENERGY INFRASTRUCTURE INFORMATION COORDINATOR WILL BALANCE THE REQUESTER'S NEED FOR THE INFORMATION AGAINST THE SENSITIVITY OF THE INFORMATION CONSISTENT WITH THE INTENT OF THIS ACT. IF THE REQUESTER IS DETERMINED TO BE ELIGIBLE TO RECEIVE THE INFORMATION REQUESTED, THE CRITICAL ENERGY INFRASTRUCTURE INFORMATION COORDINATOR WILL DETERMINE WHAT CONDITIONS, IF ANY, TO PLACE ON RELEASE OF THE INFORMATION.**

**(D) ONCE A CRITICAL ENERGY INFRASTRUCTURE INFORMATION REQUESTER HAS BEEN VERIFIED BY COMMISSION STAFF AS A LEGITIMATE REQUESTER WHO DOES NOT POSE A SECURITY RISK, HIS OR HER VERIFICATION WILL BE VALID FOR THE REMAINDER OF THAT CALENDAR YEAR. SUCH A REQUESTER IS NOT REQUIRED TO PROVIDE DETAILED INFORMATION ABOUT HIM OR HERSELF WITH SUBSEQUENT REQUESTS DURING THE CALENDAR YEAR. HE OR SHE IS ALSO NOT REQUIRED TO FILE A NON-DISCLOSURE AGREEMENT WITH SUBSEQUENT REQUESTS DURING THE CALENDAR YEAR BECAUSE THE ORIGINAL NON-DISCLOSURE AGREEMENT WILL APPLY TO ALL SUBSEQUENT RELEASES OF CRITICAL ENERGY INFRASTRUCTURE INFORMATION.**

**(E) THE TIME FOR RESPONSE BY THE PUBLIC BODY AND THE MICHIGAN AGENCY FOR ENERGY ARE AS FOLLOWS:**

**(i) ON REQUEST FOR VERIFICATION IN BY A PERSON SUBMITTING A REQUEST FOR INFORMATION IN ACCORDANCE WITH THIS ACT, THE PUBLIC BODY SHALL NOTIFY THE REQUESTER WITHIN 10 DAYS, AND IF IT APPROVES SEND THE FORM NON DISCLOSURE AGREEMENT FOR SIGNATURE AND SUBMISSION. ON SUBMISSION OF THE SIGNED NON DISCLOSURE AGREEMENT, THE INFORMATION SHALL BE MADE AVAILABLE OR PROVIDED TO THE REQUESTER WITHIN 5 DAYS FROM THE DATE THE SIGNED AGREEMENT IS SUBMITTED.**

**(ii) THE ABOVE TIME REQUIREMENTS CAN BE EXTENDED AN ADDITIONAL 10 DAYS AS PROVIDED IN SECTION 15.235(2)(D) OF THIS ACT.**