



## MICHIGAN CHAPTER

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Comments on HB 5469, HB 5470, HB 5471, HB 5472, HB 5473, HB 5474, HB 5475 and HB 5476 (create the Legislative Open Records Act, or LORA) and HB 5477 and HB 5478 expanding FOIA to the governor's office

April 27, 2016

To: Chair McBroom and members of the House Oversight and Ethics Committee

RE: HB 5469-5478

On behalf of our 80,000 members and supporters in Michigan, the Sierra Club expresses our support for House Bill 5477 and House Bill 5478, expanding FOIA to the governor's office. We also express our concern with key elements of the package of House Bills 5469 through 5476 that create the Legislative Open Records Act or LORA.

House Bills 5477 and 5478 extend, in a clean way, existing open records provisions to the governor's office. These bills are long overdue. Michigan is one of only two states that currently exempts the governor's office from open records laws and it is past time our state joined the rest of the country in subjecting the entire executive branch to the cleansing effect of sunshine laws. The approach taken, of extending our existing Freedom of Information Act to the governor's office, is the right approach in our view and we wish that same approach had been taken when lawmakers drafted legislation that would bring their branch of government into the sunshine.

Unfortunately, that is not the case. We are particularly concerned that LORA eliminates judicial relief for legislative entities (agencies, commissions, boards) currently covered by FOIA, specifically Section 59c(2) ("This part does not create or imply a private cause of action for a violation of this part.") This concern is heightened by the fact that the proposed LORA keeps all decisionmaking on records request entirely within the Legislature's control. What is needed in Michigan is an independent FOIA commission to handle records requests like those established by Connecticut and other states. The Connecticut FOIA commission has binding authority that is subject to state court review, has subpoena power, and can hold hearings and examine witnesses. It also has the ability to simply dismiss a complaint prior to holding a hearing if there appears to be only a technical violation. The Connecticut FOIA Commission prohibits more than 5 of its 9 members from being from the same party. This model ensures independence in that any appropriation request goes directly to the legislature, and the Governor cannot reduce the commission's budget. The Connecticut commission is charged with conducting training sessions, at least annually, for members of public agencies. It may also employ employees to carry out its duties. For example, staff attorneys might be employed to make sure that the record is fair and complete for appeal, and that a pro-se plaintiff is not disadvantaged.

Also of concern is the (H) Exemption in Section 59D ("Records or information relating to a civil action in which the public body is a party until such litigation or claim has been finally adjudicated or otherwise settled.") As others have pointed out, If the Flint water scandal were to happen again,



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the (H) Exemption may be a tool used to prevent dissemination of public information, for example, after the filing of a class action or any other action. It effectively shuts out public discourse over a challenged controversy. Moreover, such an exemption does not appear in the current FOIA law.

For these reasons, we urge you to vote YES on HB5477 and HB5478 and to amend the proposed LORA to eliminate provisions outlawing judicial review and to incorporate a more independent review process as outlined in this letter. Votes pertaining to these bills will be included in the Sierra Club's legislative scorecard.

Sincerely,

Mike Berkowitz  
Legislative and Political Director  
Sierra Club Michigan Chapter