

Mr. Chairman and members of the committee, thank you for the opportunity to discuss the FOIA reform package, HB 4007- HB 4016 and thank you to the sponsors of the bills for working toward more transparency in our state.

My name is Lonnie Scott, I'm the executive director of Progress Michigan and we've been the leading organization pushing for changes to the Freedom of Information Act in Michigan so our state can have a truly transparent and accountable government.

I may sound like a broken record at this point, but everyone knows Michigan has the worst transparency and ethics rankings in the entire country

Being at the bottom of the barrel is not only an embarrassment for our state, it represents a system that is unaccountable to the people

This desperately needs to change, namely, making sure the governor's office and legislature are open to the Freedom of Information Act

We were thrilled when Gov. Gretchen Whitmer called for this needed change during her state of the state address a few weeks ago and it's an effort we are committed to seeing through

Unfortunately, the bipartisan package of bills you are considering today fails to live up to the mantra of extending full FOIA to both the legislature and Governor's office.

House Bills 4007 and 4008 rightly open up the governor's office to FOIA, but the bills establishing the Legislative Open Records Act do not follow all the components of the current FOIA law, most importantly the option for judicial review when access to records is denied. There is also a lack of the retention schedule that exists in FOIA.

To dive deeper into the issues with these bills:

First, the administrator of LORA is not totally independent of the legislature

The council which will oversee the administrator is appointed by the speaker and majority leader, and while it is bi-partisan, the council itself is made up of legislators.

In addition, these bills strip away the ability for citizens whose FOIA requests have been denied by LORA to challenge denials in court, which takes away an important check and balance in our government. FOIA works, in part, because there is the option of independent judicial review, LORA sorely lacks any form of independent review which is not connected to the Legislature in some way.

Another issue with these bills in current form is that they do not follow the same retention policies as FOIA. Under current law, school board, municipalities and state departments are required to keep documents for a period of time up to several years based on the type of document it is. Under LORA the Legislature is only required to keep documents for 30 days, regardless of type of document.

Through our own experience with FOIA, Progress Michigan can tell you that the 30-day timeframe is not nearly long enough – as evidenced by the Flint Water Crisis. By the time that issue came to light, any relevant documents in the Legislature could have legally been destroyed.

We can also tell you firsthand how important judicial review is after an appeal has been denied. In fact, Progress Michigan has a case pending before the Supreme Court that started as a denial to an internal appeal in Bill Schuette's Attorney General's office.

Checks and balances are what make our system work and Judicial review is a critical step for real transparency in Government.

What this bill package does is hold the governor to a higher standard than the legislature is attempting to hold themselves, which is not what the citizens of Michigan want and deserve.

We should also be clear that for the reasons I have already stated, these bills are NOT the same as extending FOIA to the legislature..

Again, we are thankful that the legislature is taking up FOIA reform, but the legislature should not get its own special rules when it comes to FOIA, they should be subject to the same judicial review and retention policies just like local governments, school boards, state departments and — like outlined in this bill package — the governor's office

The time for real FOIA reform is now, we should not settle for incremental steps and special legislative carve-outs when bold action and real transparency is what is needed. Thank you.