

1-26-16

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michigan league of conservation voters

Date: January 25, 2016

To: Members of the House Natural Resources Committee

From: Charlotte Jameson, Government Affairs Director, Michigan League of Conservation Voters

Re: Testimony in opposition to House Bill 4540 (H-8)

Please note that Michigan LCV intends to score a committee vote on HB 4540 on our Environmental Scorecard.

Michigan League of Conservation Voters (LCV) is the non-partisan, political voice for Michigan's land, air, and water. On behalf of our statewide membership, Michigan LCV expresses our opposition to House Bill 4540 (H-8). This bill exempts information about existing and proposed energy infrastructure from the Michigan Freedom of Information Act (FOIA) public disclosure requirements. As written, HB 4540 is a broad, blanket exemption from FOIA that would effectively prevent Michigan stakeholders and landowners from accessing a large array of information on pipelines and other energy infrastructure, including safety records, data on pipeline corrosion and leaks, condition of wells, and rate and outcome of inspections. **Michigan LCV urges you to oppose HB 4540 (H-8).**

Michigan has received national scrutiny for its failing grades on government transparency. Recently, the Center of Public Integrity gave Michigan an "F" rating for public access to information and there is mounting criticism in the wake of the Flint crisis of the limits placed on Michigan's FOIA. Transparency and public oversight are paramount to protecting our health and environment. Strong disclosure policies hold companies and government bodies accountable by lowering barriers to open access and enabling public scrutiny.

Close to 70,000 miles of natural gas and hazardous liquid underground pipelines crisscross Michigan, including those running through urban and environmentally sensitive areas. Pipeline safety has been the subject of increased public concern in Michigan since 2010, when an oil pipeline owned by Enbridge Energy spilled more than a million gallons of oil into a tributary of the Kalamazoo River. The safety of Michigan residents and our natural resources from accidents like the Kalamazoo oil spill is critical. Recently, attention has turned to another Enbridge Pipeline— the 63 year old Line 5 pipeline transports nearly 23 million gallons of oil every day under the Straits of Mackinac. To date almost no information on the aging pipeline has been made public, leaving Michiganders in the dark on the potential threat it poses to our Great Lakes, important tourist destinations, fisheries, and local communities. If enacted, the sweeping exemption language in HB 4540 would effectively veil even more safety information on energy infrastructure in secrecy and severely limit the public's fundamental right to know what is running through their backyards and neighborhoods.

Supporters of HB 4540 have pointed to the need to shield information in order to protect public safety. Security is important to factor into decision making around FOIA exemptions. However, given existing federal and Michigan state provisions for security, Michigan LCV believes HB 4540 is unnecessary to address the safety concerns that have been raised. Federal FOIA law

already includes exemptions for disclosure of information related to energy infrastructure and provides consistent coverage across all states. Michigan's FOIA law also contains exemptions for safety and security that carefully balance those concerns with the public interest in disclosure.

House Bill 4540 goes well beyond current federal FOIA exemptions for critical energy infrastructure.

- Federal regulation (18 CFR 388.113) includes provisions that allow landowners "whose property is crossed by or in the vicinity of a project" to receive information without submitting a non-disclosure agreement. No such provision exists in HB 4540.
- On the federal level there is an established process for stakeholders and organizations to access critical energy infrastructure information by signing non-disclosure agreements. This process is not created under HB 4540.
- Finally, federal regulations include language within the CEII definition that ensures no new exemption is created. CEII is defined as only that information already exempt under federal FOIA. Again HB 4540 (H-8) does not include language mirroring the federal provisions on this point. The bill creates a broad, new exemption to Michigan FOIA.

Recently, the Michigan Legislature recognized the importance of public disclosure through our Freedom of Information Act (FOIA) and took the important step to increase government transparency by reducing FOIA fees and delays. Additionally, Governor Snyder's Pipeline Safety Taskforce directly called for increasing transparency and public participation in pipeline issues in Michigan. The Legislature should continue to look for ways to facilitate public requests for information, not place additional and sweeping restrictions on them. Making information more accessible makes all Michiganders safer. It allows the light of day to create incentives for businesses to engage in environmentally responsible behavior that safeguards our natural resources and our communities. It helps the public make more informed decisions about their health, housing, and communities. And disclosure provides landowners the information they need to gauge what dangers exist and to protect their private property.

HB 4540 (H-8) would restrict exactly the kind of information that the public needs in order to hold companies and state agencies accountable to protect our health and natural resources. **Michigan LCV urges members of the House Natural Resources Committee to oppose HB 4540 (H-8).**

Sincerely,

Charlotte Jameson
Government Affairs Director
Michigan League of Conservation Voters