

SUBSTITUTE FOR
HOUSE BILL NO. 4010

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
(MCL 15.231 to 15.246) by adding sections 29a and 29b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 29A. (1) IF A PUBLIC BODY MAKES A FINAL DETERMINATION TO**
2 **DENY ALL OR A PORTION OF A REQUEST, THE REQUESTING PERSON MAY DO**
3 **ANY OF THE FOLLOWING:**

4 **(A) SUBMIT TO THE PUBLIC BODY'S LORA COORDINATOR A WRITTEN**
5 **REQUEST FOR RECONSIDERATION THAT SPECIFICALLY STATES THE WORD**
6 **"RECONSIDERATION", "APPEAL", "REDETERMINATION", OR "REVERSE", AND**
7 **IDENTIFIES THE REASON OR REASONS FOR REVERSAL OF THE DENIAL.**

8 **(B) SUBMIT TO THE COUNCIL ADMINISTRATOR A WRITTEN REQUEST TO**
9 **COMPEL THE PUBLIC BODY'S DISCLOSURE OF THE PUBLIC RECORDS WITHIN**
10 **180 DAYS AFTER A PUBLIC BODY'S FINAL DETERMINATION TO DENY A**

1 REQUEST. A REQUEST SHALL NOT BE SUBMITTED UNDER THIS SUBDIVISION
2 UNLESS 1 OF THE FOLLOWING APPLIES:

3 (i) THE PUBLIC BODY'S LORA COORDINATOR FAILED TO RESPOND TO A
4 WRITTEN REQUEST FOR RECONSIDERATION AS REQUIRED UNDER SUBSECTION
5 (2).

6 (ii) THE PUBLIC BODY'S LORA COORDINATOR ISSUED A DETERMINATION
7 TO A WRITTEN REQUEST FOR RECONSIDERATION AS REQUIRED UNDER
8 SUBSECTION (2).

9 (2) WITHIN 10 BUSINESS DAYS AFTER RECEIVING A WRITTEN REQUEST
10 FOR RECONSIDERATION PURSUANT TO SUBSECTION (1) (A), THE PUBLIC
11 BODY'S LORA COORDINATOR SHALL DO 1 OF THE FOLLOWING:

12 (A) REVERSE THE DISCLOSURE DENIAL.

13 (B) ISSUE A WRITTEN NOTICE TO THE REQUESTING PERSON UPHOLDING
14 THE DISCLOSURE DENIAL.

15 (C) REVERSE THE DISCLOSURE DENIAL IN PART AND ISSUE A WRITTEN
16 NOTICE TO THE REQUESTING PERSON UPHOLDING THE DISCLOSURE DENIAL IN
17 PART.

18 (D) UNDER UNUSUAL CIRCUMSTANCES, ISSUE A NOTICE EXTENDING FOR
19 NOT MORE THAN 10 BUSINESS DAYS THE PERIOD DURING WHICH THE PUBLIC
20 BODY'S LORA COORDINATOR SHALL RESPOND TO THE WRITTEN REQUEST FOR
21 RECONSIDERATION. THE PUBLIC BODY'S LORA COORDINATOR SHALL NOT ISSUE
22 MORE THAN 1 NOTICE OF EXTENSION FOR A PARTICULAR WRITTEN REQUEST
23 FOR RECONSIDERATION.

24 (3) THE PUBLIC BODY'S LORA COORDINATOR IS NOT CONSIDERED TO
25 HAVE RECEIVED A WRITTEN REQUEST FOR RECONSIDERATION UNDER
26 SUBSECTION (2) UNTIL THE FIRST SCHEDULED SESSION DAY FOLLOWING
27 SUBMISSION OF THE WRITTEN REQUEST UNDER SUBSECTION (1) (A). IF THE

1 PUBLIC BODY'S LORA COORDINATOR FAILS TO RESPOND TO A WRITTEN
2 REQUEST FOR RECONSIDERATION PURSUANT TO SUBSECTION (2), OR IF
3 PUBLIC BODY'S LORA COORDINATOR UPHOLDS ALL OR A PORTION OF THE
4 DISCLOSURE DENIAL THAT IS THE SUBJECT OF THE WRITTEN REQUEST, THE
5 REQUESTING PERSON MAY SEEK FINAL REVIEW OF THE NONDISCLOSURE BY
6 SUBMITTING AN APPEAL TO THE COUNCIL ADMINISTRATOR UNDER SUBSECTION
7 (1) (B) .

8 (4) IN AN APPEAL COMMENCED UNDER SUBSECTION (1) (B) , IF THE
9 COUNCIL ADMINISTRATOR DETERMINES THAT A PUBLIC RECORD IS NOT EXEMPT
10 FROM DISCLOSURE, THE PUBLIC BODY MUST CEASE WITHHOLDING OR PRODUCE
11 ALL OR A PORTION OF A PUBLIC RECORD WRONGFULLY WITHHELD, REGARDLESS
12 OF THE LOCATION OF THE PUBLIC RECORD .

13 (5) AN APPEAL COMMENCED UNDER SUBSECTION (1) (B) SHALL BE
14 REVIEWED AND DECIDED BY THE COUNCIL ADMINISTRATOR AT THE EARLIEST
15 PRACTICABLE DATE AND EXPEDITED IN EVERY WAY .

16 (6) THE COUNCIL ADMINISTRATOR MAY REQUIRE A REASONABLE FEE,
17 NOT TO EXCEED \$75.00, FOR AN APPEAL COMMENCED UNDER SUBSECTION
18 (1) (B) UNLESS THE REQUESTING PERSON IS ELIGIBLE FOR A FEE WAIVER OR
19 REDUCTION UNDER SECTION 24 BECAUSE OF INDIGENCE .

20 (7) IF THE COUNCIL ADMINISTRATOR DETERMINES IN AN APPEAL
21 COMMENCED UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY
22 AND CAPRICIOUSLY VIOLATED THIS PART BY REFUSAL OF A PUBLIC RECORD
23 OR DELAY IN DISCLOSING OR PROVIDING COPIES, THE COUNCIL
24 ADMINISTRATOR SHALL RECOMMEND APPROPRIATE DISCIPLINARY ACTION TO
25 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SENATE MAJORITY
26 LEADER, AS APPLICABLE. THE COUNCIL ADMINISTRATOR SHALL MAKE ANY
27 RECOMMENDATION FOR DISCIPLINARY ACTION UNDER THIS SUBSECTION

1 PUBLICLY AVAILABLE ON THE INTERNET NOT LATER THAN 5 BUSINESS DAYS
2 AFTER THE RECOMMENDATION IS ISSUED.

3 SEC. 29B. (1) IF A PUBLIC BODY REQUIRES A FEE THAT EXCEEDS THE
4 AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE PROCEDURES AND
5 GUIDELINES OR SECTION 24, THE REQUESTING PERSON MAY DO ANY OF THE
6 FOLLOWING:

7 (A) SUBMIT TO THE PUBLIC BODY'S LORA COORDINATOR A WRITTEN
8 REQUEST FOR A FEE REDUCTION THAT SPECIFICALLY STATES THE WORD
9 "RECONSIDERATION", "APPEAL", "REDETERMINATION", OR "REVERSE", AND
10 IDENTIFIES HOW THE REQUIRED FEE EXCEEDS THE AMOUNT PERMITTED UNDER
11 THE PUBLIC BODY'S AVAILABLE PROCEDURES AND GUIDELINES OR SECTION
12 24.

13 (B) SUBMIT TO THE COUNCIL ADMINISTRATOR A WRITTEN REQUEST FOR
14 A FEE REDUCTION WITHIN 45 DAYS AFTER RECEIVING EITHER A NOTICE OF
15 THE REQUIRED FEE OR A DETERMINATION OF A REQUEST FOR
16 RECONSIDERATION. A REQUEST SHALL NOT BE SUBMITTED UNDER THIS
17 SUBDIVISION UNLESS 1 OF THE FOLLOWING APPLIES:

18 (i) THE PUBLIC BODY'S LORA COORDINATOR FAILED TO RESPOND TO A
19 WRITTEN REQUEST FOR A FEE REDUCTION AS REQUIRED UNDER SUBSECTION
20 (2).

21 (ii) THE PUBLIC BODY'S LORA COORDINATOR ISSUED A DETERMINATION
22 UPON A WRITTEN REQUEST FOR A FEE REDUCTION AS REQUIRED UNDER
23 SUBSECTION (2).

24 (2) WITHIN 10 BUSINESS DAYS AFTER RECEIVING A WRITTEN REQUEST
25 FOR A FEE REDUCTION PURSUANT TO SUBSECTION (1) (A), THE PUBLIC
26 BODY'S LORA COORDINATOR SHALL DO 1 OF THE FOLLOWING:

27 (A) WAIVE THE FEE.

1 (B) REDUCE THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
2 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 24
3 THAT SUPPORTS THE REMAINING FEE. THE DETERMINATION SHALL INCLUDE A
4 CERTIFICATION FROM THE PUBLIC BODY'S LORA COORDINATOR THAT THE
5 STATEMENTS IN THE DETERMINATION ARE ACCURATE AND THAT THE REDUCED
6 FEE AMOUNT COMPLIES WITH ITS PUBLICLY AVAILABLE PROCEDURES AND
7 GUIDELINES AND SECTION 24.

8 (C) UPHOLD THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
9 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 24
10 THAT SUPPORTS THE REQUIRED FEE. THE DETERMINATION SHALL INCLUDE A
11 CERTIFICATION FROM THE PUBLIC BODY'S LORA COORDINATOR THAT THE
12 STATEMENTS IN THE DETERMINATION ARE ACCURATE AND THAT THE FEE
13 AMOUNT COMPLIES WITH THE PUBLIC BODY'S PUBLICLY AVAILABLE
14 PROCEDURES AND GUIDELINES AND SECTION 24.

15 (D) ISSUE A NOTICE EXTENDING FOR NOT MORE THAN 10 BUSINESS
16 DAYS THE PERIOD DURING WHICH THE PUBLIC BODY'S LORA COORDINATOR
17 MUST RESPOND TO THE WRITTEN REQUEST FOR A FEE REDUCTION. THE PUBLIC
18 BODY'S LORA COORDINATOR SHALL NOT ISSUE MORE THAN 1 NOTICE OF
19 EXTENSION FOR A PARTICULAR WRITTEN REQUEST FOR A FEE REDUCTION.

20 (3) THE PUBLIC BODY'S LORA COORDINATOR IS NOT CONSIDERED TO
21 HAVE RECEIVED A WRITTEN REQUEST FOR RECONSIDERATION UNDER
22 SUBSECTION (2) UNTIL THE FIRST SCHEDULED SESSION DAY FOLLOWING
23 SUBMISSION OF THE WRITTEN REQUEST UNDER SUBSECTION (1) (A).

24 (4) IF, IN AN APPEAL COMMENCED UNDER SUBSECTION (1) (B), THE
25 COUNCIL ADMINISTRATOR DETERMINES THAT THE PUBLIC BODY REQUIRED A
26 FEE THAT EXCEEDS THE AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE
27 PROCEDURES AND GUIDELINES OR SECTION 24, THE PUBLIC BODY SHALL

1 REDUCE THE FEE TO A PERMISSIBLE AMOUNT.

2 (5) AN APPEAL COMMENCED UNDER SUBSECTION (1) (B) SHALL BE
3 REVIEWED AND DECIDED BY THE COUNCIL ADMINISTRATOR AT THE EARLIEST
4 PRACTICABLE DATE AND EXPEDITED IN EVERY WAY.

5 (6) THE COUNCIL ADMINISTRATOR MAY REQUIRE A REASONABLE FEE,
6 NOT TO EXCEED \$50.00, FOR AN APPEAL COMMENCED UNDER SUBSECTION
7 (1) (B) UNLESS THE REQUESTING PERSON IS ELIGIBLE FOR A FEE WAIVER OR
8 REDUCTION UNDER SECTION 24 BECAUSE OF INDIGENCE. IF THE REQUESTING
9 PERSON PREVAILS IN AN APPEAL COMMENCED UNDER SUBSECTION (1) (B) BY
10 RECEIVING A REDUCTION OF 50% OR MORE OF THE TOTAL FEE, THE COUNCIL
11 ADMINISTRATOR SHALL WAIVE THE FEE REQUIRED UNDER THIS SUBSECTION.

12 (7) IF THE COUNCIL ADMINISTRATOR DETERMINES IN AN APPEAL
13 COMMENCED UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY
14 AND CAPRICIOUSLY VIOLATED THIS PART BY CHARGING AN EXCESSIVE FEE,
15 THE COUNCIL ADMINISTRATOR SHALL RECOMMEND APPROPRIATE DISCIPLINARY
16 ACTION TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE
17 MAJORITY LEADER OF THE SENATE, AS APPLICABLE. THE COUNCIL
18 ADMINISTRATOR SHALL MAKE ANY RECOMMENDATION FOR DISCIPLINARY ACTION
19 UNDER THIS SUBSECTION PUBLICLY AVAILABLE ON THE INTERNET NOT LATER
20 THAN 5 BUSINESS DAYS AFTER THE RECOMMENDATION IS ISSUED.

21 (8) AS USED IN THIS SECTION, "FEE" MEANS THE TOTAL FEE OR ANY
22 COMPONENT OF THE TOTAL FEE CALCULATED UNDER SECTION 24, INCLUDING
23 ANY DEPOSIT.

24 Enacting section 1. This amendatory act takes effect January
25 1, 2020.

26 Enacting section 2. This amendatory act does not take effect
27 unless House Bill No. 4011 of the 100th Legislature is enacted into

1 law.