

# Legislative Analysis

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## **FREEDOM OF INFORMATION ACT: OPEN GOVERNMENT COMMISSION**

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5895**

**Sponsor: Rep. Paul Opsommer**

**Committee: Oversight, Reform, and Ethics**

**Complete to 9-24-12**

### **A SUMMARY OF HOUSE BILL 5895 AS INTRODUCED 9-12-12**

House Bill 5895 would amend the Freedom of Information Act (MCL 15.231 to 15.246) to create a nine-member Open Government Commission, appointed by the Governor, within the Department of Civil Rights, to investigate complaints about violations of the Freedom of Information Act. A more detailed description of the bill follows.

***Members and Appointment.*** The Open Government Commission would have to be created within 60 days after the effective date of this legislation. The Governor's appointees to the Open Government Commission would be recommended by the Senate Majority Leader and Minority Leader (one member, each), the House Speaker and Minority Leader (one member, each), the Michigan Association of Broadcasters (two members), and the Michigan Press Association (two members). One member would be appointed at the Governor's discretion. Members would serve without compensation, but could be reimbursed for expenses incurred during service.

***Duties.*** Under the bill, the Open Government Commission would do all of the following:

- receive citizen complaints regarding responses to requests for information under the Freedom of Information Act;
- investigate a public body's FOIA policies, in response to a citizen complaint;
- investigate a public body's response to a citizen request, in response to a complaint; and
- investigate and issue an opinion that is binding to resolve the following three issues concerning an FOIA request: (1) the amount of the fee authorized; (2) the validity, applicability, or extent of any exemption or exclusion asserted; and (3) the documents a public body must make available, by statute.

The bill specifies that the Open Government Commission may do one or more of the following:

- refer a citizen complaint to the Attorney General;
- recommend policies or actions to a public body after investigating a citizen's complaint; and
- recommend changes to laws based on information gathered while receiving, investigating, and responding to a citizen's complaint.

***Term of Office.*** The members of the commission would serve for a term of four years and be appointed on a staggered basis. Vacancies in office would be filled in the same manner as the original appointment. The Governor could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

***Meetings.*** The first meeting of the commission would be called by the Governor, and at the meeting the members would elect a chairperson and other officers. The commission would meet at least monthly. A majority of the members would constitute a quorum for the transaction of business, and a majority of the members serving would be required for official action of the commission.

***Open Meetings; Freedom of Information.*** The Open Government Commission would conduct its business at public meetings held in compliance with the Open Meetings Act, (although it could meet in closed session to deliberate the merits of an asserted exemption).

All writings used by the commission would be subject to the Freedom of Information Act. However, if an exemption from disclosure was asserted for a particular writing, that writing would not be subject to disclosure until after the commission determined that the assertion was without merit.

***Filing Court Action.*** The bill specifies that the 180-day period for filing a court action under Section 10 of the Freedom of Information Act would be tolled while an appeal was pending before the Open Government Commission.

## **FISCAL IMPACT:**

The fiscal impact to the state is indeterminate at this time. The bill would require the commission to take complaints from citizens against all public bodies, including local and municipal governments, school districts, state universities, and community colleges. This could result in a significant volume of complaints. According to the department, in order to staff the commission and conduct the required investigations, hiring additional investigators, attorneys, and administrative support positions will be necessary.

Legislative Analyst: J. Hunault  
Fiscal Analyst: Robin Risko

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.