January 9, 2013, Introduced by Rep. Shirkey and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending sections 4, 5, and 10 (MCL 15.234, 15.235, and 15.240),
as amended by 1996 PA 553.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 4. (1) A public body may charge a fee for a public record
search, the necessary copying of a public record for inspection, or
for providing a copy of a public record. Subject to subsections (3)
and (4) AND SECTION 5(8), the fee shall be limited to actual
mailing costs; and to the actual incremental cost of duplication
or publication including labor, NOT TO EXCEED 10 CENTS PER PAGE;
the cost of search, examination, AND review; and the deletion and
separation of COST OF DELETING AND SEPARATING exempt from nonexempt
information as provided in section 14. A PUBLIC BODY SHALL PERMIT
AND SHALL NOT CHARGE A FEE FOR COPYING DURING AN ON-SITE INSPECTION OF PUBLIC RECORDS UNLESS THE REQUESTOR REQUESTS THE PUBLIC BODY TO PROVIDE THE COPIES OR THE REQUESTOR REQUESTS AND USES THE PUBLIC BODY'S EQUIPMENT TO MAKE THE COPIES. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds $50.00. The deposit shall not exceed 1/2 of the total fee.

(3) In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall
utilize the most economical means available for making copies of 
public records. A fee shall not be charged for the cost of search, 
examination, OR review, and the deletion and separation of OR FOR 
DELETING AND SEPARATING exempt from nonexempt information as 
provided in section 14 unless failure to charge a fee would result 
in unreasonably high costs to the public body because of the nature 
of the request in the particular instance, and the public body 
specifically identifies the nature of these unreasonably high 
costs. A public body shall establish and publish procedures and 
guidelines to implement this subsection.

(4) This section does not apply to public records prepared 
under an act or statute specifically authorizing the sale of those 
public records to the public, or if the amount of the fee for 
providing a copy of the public record is otherwise specifically 
provided by an act or statute.

Sec. 5. (1) Except as provided in section 3, a person desiring 
to inspect or receive a copy of a public record shall make a 
written request for the public record to the FOIA coordinator of a 
public body. A written request made by facsimile, electronic mail, 
or other electronic transmission is not received by a public body's 
FOIA coordinator until 1 business day after the electronic 
transmission is made.

(2) Unless otherwise agreed to in writing by the person making 
the request, a public body shall respond to a request for a public 
record within 5 business days after the public body receives the 
request by doing 1 of the following:

(a) Granting the request.
(b) Issuing a written notice to the requesting person denying the request.

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.

(d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request. In a circuit court action to compel a public body's disclosure of a public record under section 10, the circuit court shall assess damages against the public body pursuant to section 10(8) if the circuit court has done both of the following:

(a) Determined that the public body has not complied with subsection (2).

(b) Ordered the public body to disclose or provide copies of all or a portion of the public record.

(4) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice shall contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

(b) A certificate that the public record does not exist under
the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted pursuant to section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

   (i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

   (ii) Seek judicial review of the denial under section 10.

(e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the circuit court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

(5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(6) If a public body issues a notice extending the period for a response to the request, the notice shall specify the reasons for the extension and the date by which the public body will do 1 of the following:

   (a) Grant the request.

   (b) Issue a written notice to the requesting person denying the request.

   (c) Grant the request in part and issue a written notice to
the requesting person denying the request in part.

(7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

(a) Appeal the denial to the head of the public body pursuant to section 10.

(b) Commence an action in circuit court, pursuant to section 10.

(8) IF A PUBLIC BODY DOES NOT DENY A REQUEST FOR RECORDS, BUT FAILS TO MAKE THE REQUESTED RECORDS AVAILABLE FOR INSPECTION OR TO PROVIDE A COPY OF THE REQUESTED RECORDS UNTIL AFTER THE TIME SPECIFIED IN SUBSECTION (2), THE FEE PERMITTED UNDER SECTION 4 IS REDUCED BY 20% OF THE ORIGINAL FEE FOR EACH DAY AFTER THE DEADLINE THAT THE RECORD OR COPY IS NOT MADE AVAILABLE. A PUBLIC BODY SHALL NOT CHARGE A FEE FOR A RECORD PRODUCED MORE THAN 5 DAYS AFTER THE DEADLINE. THE DEADLINES IN SUBSECTION (2) ARE EXTENDED AND NO CHARGE REDUCTION IS REQUIRED UNDER THIS SUBSECTION DURING THE TIME THAT A DEPOSIT REQUIRED UNDER SECTION 4(2) REMAINS UNPAID, EXCEPT THAT WHILE AN APPEAL REQUESTING A FEE REDUCTION IS PENDING, THE REQUIRED DEPOSIT SHALL NOT EXCEED $500.00.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request OR TO IMPOSE A FEE IN EXCESS OF THE FEE PERMITTED UNDER SECTION 4, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the
reason or reasons for reversal of the denial OR FOR A REDUCTION IN THE FEE.

(b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(C) IF THE AMOUNT OF THE FEE EXCEEDS 10 CENTS PER PAGE OR IF THE FEES FOR SEARCH, EXAMINATION, REVIEW, AND DELETING AND SEPARATING EXEMPT FROM NONEXEMPT INFORMATION EXCEEDS $100.00 CUMULATIVELY FOR ALL REQUESTS SUBMITTED BY THE REQUESTING PERSON TO THE PUBLIC BODY IN A 6-MONTH PERIOD, COMMENCE AN ACTION IN THE CIRCUIT COURT FOR A FEE REDUCTION WITHIN 180 DAYS OF THE PUBLIC BODY'S NOTIFICATION TO THE PERSON OF THE FEE AMOUNT.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial OR GRANT THE REQUESTED FEE REDUCTION, AS APPLICABLE.

(b) Issue a written notice to the requesting person upholding the disclosure denial OR THE AMOUNT OF THE FEE, AS APPLICABLE.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(D) GRANT A PARTIAL FEE REDUCTION AND ISSUE A WRITTEN NOTICE TO THE REQUESTING PERSON INDICATING THE BASIS FOR SUPPORTING THE FEE PERMITTED.

(E) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head
of the public body shall respond to the written appeal. The head of
a public body shall not issue more than 1 notice of extension for a
particular written appeal.

(3) A board or commission that is the head of a public body is
not considered to have received a written appeal under subsection
(2) until the first regularly scheduled meeting of that board or
commission following submission of the written appeal under
subsection (1)(a). If the head of the public body fails to respond
to a written appeal pursuant to subsection (2), or if the head of
the public body upholds all or a portion of the disclosure denial
that is the subject of the written appeal, the requesting person
may seek judicial review of the nondisclosure by commencing an
action in circuit court under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court
that determines a public record is not exempt from disclosure shall
order the public body to cease withholding or to produce all or a
portion of a public record wrongfully withheld, regardless of the
location of the public record. The circuit court for the county in
which the complainant resides or has his or her principal place of
business, or the circuit court for the county in which the public
record or an office of the public body is located has venue over
the action. THE PUBLIC BODY SHALL NOT ASSERT AN EXEMPTION UNDER
SECTION 13 THAT IT DID NOT ASSERT IN EITHER A WRITTEN DENIAL OF THE
REQUEST UNDER SECTION 5 OR AN APPEAL UNDER SUBSECTION (1)(A). The
court shall determine the matter de novo and the burden is on the
public body to sustain its denial. The court, on its own motion,
may view the public record in controversy in private before
reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record OR THE RIGHT TO A REDUCTION IN THE FEE prevails IN ALL OR PART in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00–$5,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.