

HOUSE BILL No. 4010

January 9, 2019, Introduced by Reps. Glenn, Hauck, Berman, Filler, Lasinski, Schroeder, Allor and Guerra and referred to the Committee on Government Operations.

A bill to amend 1976 PA 442, entitled "Freedom of information act," (MCL 15.231 to 15.246) by adding sections 59a and 59b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 59A. (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**
11 **REQUEST. A REQUEST SHALL NOT BE SUBMITTED UNDER THIS SUBDIVISION**

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1 UNLESS 1 OF THE FOLLOWING APPLIES:

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

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

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

11 (A) REVERSE THE DISCLOSURE DENIAL.

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

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

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

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

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

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

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

15 (6) THE COUNCIL ADMINISTRATOR MAY REQUIRE A REASONABLE FEE,
16 NOT TO EXCEED \$75.00, FOR AN APPEAL COMMENCED UNDER SUBSECTION
17 (1) (B) UNLESS THE REQUESTING PERSON IS ELIGIBLE FOR A FEE WAIVER OR
18 REDUCTION UNDER SECTION 54 BECAUSE OF INDIGENCE.

19 (7) IF THE COUNCIL ADMINISTRATOR DETERMINES IN AN APPEAL
20 COMMENCED UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY
21 AND CAPRICIOUSLY VIOLATED THIS PART BY REFUSAL OF A PUBLIC RECORD
22 OR DELAY IN DISCLOSING OR PROVIDING COPIES, THE COUNCIL
23 ADMINISTRATOR SHALL RECOMMEND APPROPRIATE DISCIPLINARY ACTION TO
24 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SENATE MAJORITY
25 LEADER, AS APPLICABLE. THE COUNCIL ADMINISTRATOR SHALL MAKE ANY
26 RECOMMENDATION FOR DISCIPLINARY ACTION UNDER THIS SUBSECTION
27 PUBLICLY AVAILABLE ON THE INTERNET NOT LATER THAN 5 DAYS AFTER THE

1 RECOMMENDATION IS ISSUED.

2 SEC. 59B. (1) IF A PUBLIC BODY REQUIRES A FEE THAT EXCEEDS THE
3 AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE PROCEDURES AND
4 GUIDELINES OR SECTION 54, THE REQUESTING PERSON MAY DO ANY OF THE
5 FOLLOWING:

6 (A) SUBMIT TO THE PUBLIC BODY'S LORA COORDINATOR A WRITTEN
7 REQUEST FOR A FEE REDUCTION THAT SPECIFICALLY STATES THE WORD
8 "RECONSIDERATION", "APPEAL", "REDETERMINATION", OR "REVERSE", AND
9 IDENTIFIES HOW THE REQUIRED FEE EXCEEDS THE AMOUNT PERMITTED UNDER
10 THE PUBLIC BODY'S AVAILABLE PROCEDURES AND GUIDELINES OR SECTION
11 54.

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

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

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

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

26 (A) WAIVE THE FEE.

27 (B) REDUCE THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE

1 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 54
2 THAT SUPPORTS THE REMAINING FEE. THE DETERMINATION SHALL INCLUDE A
3 CERTIFICATION FROM THE PUBLIC BODY'S LORA COORDINATOR THAT THE
4 STATEMENTS IN THE DETERMINATION ARE ACCURATE AND THAT THE REDUCED
5 FEE AMOUNT COMPLIES WITH ITS PUBLICLY AVAILABLE PROCEDURES AND
6 GUIDELINES AND SECTION 54.

7 (C) UPHOLD THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE
8 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 54
9 THAT SUPPORTS THE REQUIRED FEE. THE DETERMINATION SHALL INCLUDE A
10 CERTIFICATION FROM THE PUBLIC BODY'S LORA COORDINATOR THAT THE
11 STATEMENTS IN THE DETERMINATION ARE ACCURATE AND THAT THE FEE
12 AMOUNT COMPLIES WITH THE PUBLIC BODY'S PUBLICLY AVAILABLE
13 PROCEDURES AND GUIDELINES AND SECTION 54.

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

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

23 (4) IF, IN AN APPEAL COMMENCED UNDER SUBSECTION (1) (B), THE
24 COUNCIL ADMINISTRATOR DETERMINES THAT THE PUBLIC BODY REQUIRED A
25 FEE THAT EXCEEDS THE AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE
26 PROCEDURES AND GUIDELINES OR SECTION 54, THE PUBLIC BODY SHALL
27 REDUCE THE FEE TO A PERMISSIBLE AMOUNT.

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

4 (6) THE COUNCIL ADMINISTRATOR MAY REQUIRE A REASONABLE FEE,
5 NOT TO EXCEED \$50.00, FOR AN APPEAL COMMENCED UNDER SUBSECTION
6 (1) (B) UNLESS THE REQUESTING PERSON IS ELIGIBLE FOR A FEE WAIVER OR
7 REDUCTION UNDER SECTION 54 BECAUSE OF INDIGENCE. IF THE REQUESTING
8 PERSON PREVAILS IN AN APPEAL COMMENCED UNDER SUBSECTION (1) (B) BY
9 RECEIVING A REDUCTION OF 50% OR MORE OF THE TOTAL FEE, THE COUNCIL
10 ADMINISTRATOR SHALL WAIVE THE FEE REQUIRED UNDER THIS SUBSECTION.

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

20 (8) AS USED IN THIS SECTION, "FEE" MEANS THE TOTAL FEE OR ANY
21 COMPONENT OF THE TOTAL FEE CALCULATED UNDER SECTION 54, INCLUDING
22 ANY DEPOSIT.

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

25 Enacting section 2. This amendatory act does not take effect
26 unless Senate Bill No. ____ or House Bill No. 4011 (request no.
27 00015'19 *) of the 100th Legislature is enacted into law.