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APPEAL TO HEAD OF PUBLIC BODY FOR FOIA DENIALS

House Bill 4849 (Substitute H-1)
Sponsor: Rep. Greg Kaza
Committee: Judiciary and Civil Rights

Complete to 6-23-95

A SUMMARY OF HOUSE BILL 4849 (SUBSTITUTE H-1)

Under the Freedom of Information Act, a public body must respond to a request for a public record within five business days by either granting the request, providing a written denial of the request, granting the request in part and issuing a written denial on the remaining portion, or, under unusual circumstances, extending the time within which it is required to act for up to ten days. The failure to respond to a request is considered to have the effect of a denial.

After a request has been denied by a public body, the individual has the right to seek judicial review of the public body's decision in a circuit court. The circuit court hearing the complaint is required expedite the hearing and trial of the matter and schedule it for the earliest practicable date. The circuit court is required to assess damages against the public body where the court determines that the public body did not comply with the request and the court has ordered the public body to turn over all or part of the record requested. If the court hearing the complaint concludes that the public body should have released the requested records, the public body is required to turn them over to the individual. In cases where the individual was found to be wholly in the right, he or she is entitled to reasonable attorneys' fees, costs, and disbursements. If the individual prevails only in part, then the state agency may, at its own discretion, award an appropriate portion of the person's costs. Furthermore, if the court concludes that the public body acted arbitrarily or capriciously in denying the individual's request, the court is required to award \$500 in punitive damages in addition to the other costs and damages.

Currently, a written notice of the denial of a request must include a full explanation of the person's right to seek judicial review of the denial. It must also include notice of the individual's right to receive attorneys' fees if the circuit court concludes that the denial was improper and orders the public body to disclose all or part of the records requested. The notice of denial must also include either an explanation of why the record is exempt from disclosure, a certificate indicating that the record does not exist, or a description of the records or information that were separated or withheld as is appropriate given the circumstances of the denial.

House Bill 4849 (Substitute H-1) would amend the act to give an individual whose request for records or information was denied the opportunity to appeal to the head of the public body that denied the request. The individual would have the opportunity to make a written appeal to the head of the public body; the appeal would have to specifically identify itself as an "appeal" and explain the reasons the disclosure denial should be

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reversed. The head of a public body would be required to respond to a written appeal within ten days after receiving it, by either reversing the denial, sending a written notice to the requesting person that the denial would be upheld, reversing the denial in part and issuing a written statement upholding part of the denial, or under unusual circumstances extend the time to respond for up to ten business days. If the head of the public body failed to respond to a written appeal, or upheld all or part of the denial, the person requesting the record or information would then be allowed to seek judicial review of the denial in circuit court.

MCL 15.235 and 15.240