

HOUSE BILL No. 4139

February 3, 1999, Introduced by Reps. LaSata, Lockwood, Jelinek, Birkholz, Julian, DeWeese, Pumford and Mortimer and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1996 PA 462, entitled
"Enhanced access to public records act,"
by amending sections 2 and 3 (MCL 15.442 and 15.443).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Enhanced access" means a public record's immediate
3 availability for public inspection, purchase, or copying by digi-
4 tal means. Enhanced access does not include the transfer of
5 ownership of a public record.

6 (b) "Geographical information system" means an informational
7 unit or network capable of producing customized maps based on a
8 digital representation of geographical data.

9 (c) "Operating expenses" includes, but is not limited to, a
10 public body's direct cost of creating, compiling, storing,
11 maintaining, processing, upgrading, or enhancing information or

1 data in a form available for enhanced access, including the cost
2 of computer hardware and software, system development, employee
3 time, and the actual cost of supplying the information or record
4 in the form requested by the purchaser.

5 (d) "Person" means that term as defined in section 2 of the
6 freedom of information act, ~~Act No. 442 of the Public Acts of~~
7 ~~1976, being section 15.232 of the Michigan Compiled Laws~~ 1976 PA
8 442, MCL 15.232.

9 (e) "Public body" means that term as defined in section 2 of
10 ~~Act No. 442 of the Public Acts of 1976, being section 15.232 of~~
11 ~~the Michigan Compiled Laws~~ THE FREEDOM OF INFORMATION ACT, 1976
12 PA 442, MCL 15.232.

13 (f) "Public record" means that term as defined in section 2
14 of ~~Act No. 442 of the Public Acts of 1976, being section 15.232~~
15 ~~of the Michigan Compiled Laws~~ THE FREEDOM OF INFORMATION ACT,
16 1976 PA 442, MCL 15.232.

17 (g) "Reasonable fee" means a charge calculated to enable a
18 public body to recover over time only those operating expenses
19 directly related to the public body's provision of enhanced
20 access.

21 (h) "Software" means a set of statements or instructions
22 that when incorporated in a machine-usable medium is capable of
23 causing a machine or device having information processing capa-
24 bilities to indicate, perform, or achieve a particular function,
25 task, or result.

26 (I) "THIRD PARTY" MEANS A PERSON WHO REQUESTS A GEOGRAPHICAL
27 INFORMATION SYSTEM OR OUTPUT FROM A GEOGRAPHICAL INFORMATION

1 SYSTEM UNDER THIS ACT. HOWEVER, THIRD PARTY DOES NOT INCLUDE A
2 PERSON FOR WHOM A FEE AUTHORIZED UNDER THIS ACT IS WAIVED IN
3 ACCORDANCE WITH AN INTERGOVERNMENTAL AGREEMENT DESCRIBED IN SEC-
4 TION 3.

5 Sec. 3. (1) In accordance with this act, a public body may
6 do all of the following:

7 (a) Upon authorization of the governing body of the public
8 body, provide enhanced access for the inspection, copying, or
9 purchasing of a public record that is not confidential or other-
10 wise exempt by law from disclosure.

11 (b) Subject to ~~subsection~~ SUBSECTIONS (2) AND (3), charge
12 a reasonable fee established by the public body's governing body
13 for providing enhanced access.

14 (c) Charge a reasonable fee established by the public body's
15 governing body for providing access to either of the following:

16 (i) A geographical information system.

17 (ii) The output from a geographical information system.

18 (D) PROVIDE ANOTHER PUBLIC BODY WITH ACCESS TO OR OUTPUT
19 FROM ITS GEOGRAPHICAL INFORMATION SYSTEM FOR THE OFFICIAL USE OF
20 THAT OTHER PUBLIC BODY, WITHOUT CHARGING A FEE TO THAT OTHER
21 PUBLIC BODY, IF THE ACCESS TO OR OUTPUT FROM THE SYSTEM IS PRO-
22 VIDED IN ACCORDANCE WITH A WRITTEN INTERGOVERNMENTAL AGREEMENT
23 THAT CONTAINS ALL OF THE FOLLOWING:

24 (i) A STATEMENT SPECIFYING THAT THE PUBLIC BODY RECEIVING
25 ACCESS TO OR OUTPUT FROM THE SYSTEM WITHOUT CHARGE IS PROHIBITED
26 FROM PROVIDING ACCESS TO THE SYSTEM'S OUTPUT TO A THIRD PARTY
27 UNLESS THAT PUBLIC BODY DOES BOTH OF THE FOLLOWING:

1 (A) COLLECTS FROM THE THIRD PARTY A FEE DESCRIBED IN
2 SUBSECTION (2), OR WAIVES THAT FEE IN ACCORDANCE WITH THE WRITTEN
3 TERMS OF THE INTERGOVERNMENTAL AGREEMENT.

4 (B) CONVEYS TO THE PROVIDING PUBLIC BODY THAT PORTION OF ANY
5 FEE COLLECTED UNDER SUBSECTION (2) THAT IS DIRECTLY ATTRIBUTABLE
6 TO THE OPERATING EXPENSES OF THE PROVIDING PUBLIC BODY IN FUR-
7 NISHING THE OUTPUT FROM THE SYSTEM TO THE THIRD PARTY.

8 (ii) A STATEMENT SPECIFYING THE PUBLIC PURPOSE FOR WHICH
9 ACCESS TO OR OUTPUT FROM THE SYSTEM IS BEING PROVIDED.

10 (iii) A STATEMENT SPECIFYING THE PORTION OF ANY FEE COL-
11 LECTED UNDER SUBSECTION (2) AND COLLECTED FROM A THIRD PARTY THAT
12 THE RECEIVING PUBLIC BODY SHALL CONVEY TO THE PROVIDING PUBLIC
13 BODY.

14 (2) A PUBLIC BODY THAT RECEIVES ACCESS TO OR OUTPUT FROM A
15 SYSTEM UNDER AN INTERGOVERNMENTAL AGREEMENT DESCRIBED IN SUBSEC-
16 TION (1) MAY COLLECT FROM A THIRD PARTY TO WHOM IT PROVIDES
17 ACCESS TO THE OUTPUT FROM THE SYSTEM UNDER THIS ACT A REASONABLE
18 FEE THAT INCLUDES BOTH OF THE FOLLOWING:

19 (A) AN AMOUNT THAT ENABLES THE PUBLIC BODY PROVIDING ACCESS
20 TO OR OUTPUT FROM ITS SYSTEM TO RECOVER OVER TIME ITS OPERATING
21 EXPENSES DIRECTLY RELATED TO PROVIDING ACCESS TO OUTPUT FROM ITS
22 SYSTEM TO A THIRD PARTY.

23 (B) AN AMOUNT THAT ENABLES THE RECEIVING PUBLIC BODY TO
24 RECOVER OVER TIME ITS OPERATING EXPENSES DIRECTLY RELATED TO PRO-
25 VIDING TO A THIRD PARTY ACCESS TO OR OUTPUT FROM ITS SYSTEM.

26 (3) THE LANGUAGE OF THIS ACT RELATING TO THE SHARING OF
27 ACCESS TO OR OUTPUT FROM SYSTEMS AMONG PUBLIC BODIES SHALL BE

1 LIBERALLY CONSTRUED TO FACILITATE THE SHARING OF ACCESS TO AND
2 OUTPUT FROM SYSTEMS WITHOUT FINANCIAL DETRIMENT TO THE PUBLIC
3 BODIES.

4 (4) ~~(2) This~~ ACCESS TO OR OUTPUT FROM A GEOGRAPHICAL
5 INFORMATION SYSTEM SHALL BE MADE AVAILABLE ONLY IN ACCORDANCE
6 WITH SUBSECTIONS (1), (2), AND (3). EXCEPT AS OTHERWISE PROVIDED
7 IN SUBSECTIONS (1), (2), AND (3), THIS act does not limit ~~access~~
8 ~~to~~ THE INSPECTION AND COPYING OF a public record ~~under Act~~
9 ~~No. 442 of the Public Acts of 1976~~ PURSUANT TO THE FREEDOM OF
10 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. ~~A public~~
11 ~~record available by enhanced access shall be made available for~~
12 ~~inspection or copying in accordance with Act No. 442 of the~~
13 ~~Public Acts of 1976~~. This section does not apply to public
14 records prepared under an act or statute specifically authorizing
15 the sale of those public records to the public, or where the
16 amount of the fee for providing a copy of the public record is
17 otherwise specifically provided by an act or statute.

18 (5) ~~(3)~~ Before providing enhanced access to a member of
19 the general public, a public body that elects to provide enhanced
20 access shall adopt an enhanced access policy that complies with
21 this act.

22 (6) ~~(4)~~ This act does not require a public body to provide
23 enhanced access to a specific public record if that public body
24 has not established an enhanced access policy in accordance with
25 subsection ~~(3)~~ (5) with respect to that specific public
26 record.