

HOUSE BILL No. 5895

September 12, 2012, Introduced by Rep. Opsommer and referred to the Committee on Oversight, Reform, and Ethics.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
(MCL 15.231 to 15.246) by adding section 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 10A. (1) THE OPEN GOVERNMENT COMMISSION IS CREATED WITHIN
2 THE DEPARTMENT OF CIVIL RIGHTS.

3 (2) THE OPEN GOVERNMENT COMMISSION SHALL CONSIST OF 9 MEMBERS
4 APPOINTED BY THE GOVERNOR, AS FOLLOWS:

5 (A) ONE FROM RECOMMENDATIONS BY THE SENATE MAJORITY LEADER.

6 (B) ONE FROM RECOMMENDATIONS BY THE SENATE MINORITY LEADER.

7 (C) ONE FROM RECOMMENDATIONS BY THE SPEAKER OF THE HOUSE.

8 (D) ONE FROM RECOMMENDATIONS BY THE HOUSE MINORITY LEADER.

9 (E) TWO FROM RECOMMENDATIONS BY THE MICHIGAN ASSOCIATION OF
10 BROADCASTERS.

11 (F) TWO FROM RECOMMENDATIONS BY THE MICHIGAN PRESS

1 ASSOCIATION.

2 (G) ONE AT THE GOVERNOR'S DISCRETION.

3 (3) THE MEMBERS FIRST APPOINTED TO THE OPEN GOVERNMENT
4 COMMISSION SHALL BE APPOINTED WITHIN 60 DAYS AFTER THE EFFECTIVE
5 DATE OF THIS SECTION.

6 (4) MEMBERS OF THE OPEN GOVERNMENT COMMISSION SHALL SERVE FOR
7 TERMS OF 4 YEARS OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS
8 LATER, EXCEPT THAT OF THE MEMBERS FIRST APPOINTED 2 SHALL SERVE FOR
9 1 YEAR, 2 SHALL SERVE FOR 2 YEARS, AND 2 SHALL SERVE FOR 3 YEARS.

10 (5) IF A VACANCY OCCURS ON THE OPEN GOVERNMENT COMMISSION, THE
11 GOVERNOR SHALL FILL THE VACANCY IN THE UNEXPIRED TERM IN THE SAME
12 MANNER AS THE ORIGINAL APPOINTMENT.

13 (6) THE GOVERNOR MAY REMOVE A MEMBER OF THE OPEN GOVERNMENT
14 COMMISSION FOR INCOMPETENCE, DERELICTION OF DUTY, MALFEASANCE,
15 MISFEASANCE, OR NONFEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

16 (7) THE FIRST MEETING OF THE OPEN GOVERNMENT COMMISSION SHALL
17 BE CALLED BY THE GOVERNOR. AT THE FIRST MEETING, THE OPEN
18 GOVERNMENT COMMISSION SHALL ELECT FROM AMONG ITS MEMBERS A
19 CHAIRPERSON AND OTHER OFFICERS AS IT CONSIDERS NECESSARY OR
20 APPROPRIATE. AFTER THE FIRST MEETING, THE OPEN GOVERNMENT
21 COMMISSION SHALL MEET AT LEAST MONTHLY, OR MORE FREQUENTLY AT THE
22 CALL OF THE CHAIRPERSON OR IF REQUESTED BY 3 OR MORE MEMBERS.

23 (8) A MAJORITY OF THE MEMBERS OF THE OPEN GOVERNMENT
24 COMMISSION CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS. A
25 MAJORITY OF THE MEMBERS SERVING ARE REQUIRED FOR OFFICIAL ACTION OF
26 THE OPEN GOVERNMENT COMMISSION.

27 (9) THE BUSINESS THAT THE OPEN GOVERNMENT COMMISSION PERFORMS

1 SHALL BE CONDUCTED AT A PUBLIC MEETING HELD IN COMPLIANCE WITH THE
2 OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275. THE
3 COMMISSION MAY MEET IN CLOSED SESSION TO DELIBERATE ON THE MERITS
4 OF AN ASSERTED EXEMPTION, EXCLUSION, OR PRIVILEGE FROM DISCLOSURE
5 FOR A WRITING.

6 (10) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
7 RETAINED BY THE OPEN GOVERNMENT COMMISSION IN THE PERFORMANCE OF AN
8 OFFICIAL FUNCTION IS SUBJECT TO THIS ACT. HOWEVER, IF AN EXEMPTION,
9 EXCLUSION, OR PRIVILEGE FROM DISCLOSURE HAS BEEN ASSERTED FOR A
10 WRITING, THE WRITING IS NOT SUBJECT TO DISCLOSURE UNTIL AFTER THE
11 COMMISSION DETERMINES THAT THE ASSERTION IS WITHOUT MERIT.

12 (11) MEMBERS OF THE OPEN GOVERNMENT COMMISSION SHALL SERVE
13 WITHOUT COMPENSATION. HOWEVER, MEMBERS OF THE OPEN GOVERNMENT
14 COMMISSION MAY BE REIMBURSED FOR THEIR ACTUAL AND NECESSARY
15 EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES AS
16 MEMBERS OF THE OPEN GOVERNMENT COMMISSION.

17 (12) THE OPEN GOVERNMENT COMMISSION SHALL DO ALL OF THE
18 FOLLOWING:

19 (A) RECEIVE CITIZEN COMPLAINTS REGARDING RESPONSES TO REQUESTS
20 FOR INFORMATION UNDER THIS ACT.

21 (B) IN RESPONSE TO A CITIZEN COMPLAINT, INVESTIGATE A PUBLIC
22 BODY'S POLICIES REGARDING FREEDOM OF INFORMATION REQUESTS.

23 (C) IN RESPONSE TO A CITIZEN COMPLAINT, INVESTIGATE A PUBLIC
24 BODY'S RESPONSE TO A CITIZEN REQUEST UNDER THIS ACT.

25 (D) IN RESPONSE TO A CITIZEN COMPLAINT AND REQUEST FOR AN
26 OPINION, INVESTIGATE AND ISSUE AN OPINION THAT IS BINDING AND
27 ENFORCEABLE AS TO THE PUBLIC BODY AND THE PERSON BRINGING THE

1 COMPLAINT ABSENT APPEAL TO THE COURT, RESOLVING THE FOLLOWING
2 ISSUES CONCERNING A FOIA REQUEST:

3 (i) THE AMOUNT OF THE FEE AUTHORIZED UNDER THIS ACT.

4 (ii) THE VALIDITY, APPLICABILITY, OR EXTENT OF ANY EXEMPTION OR
5 EXCLUSION ASSERTED.

6 (iii) THE DOCUMENTS THAT THE ACT REQUIRES THE PUBLIC BODY TO
7 MAKE AVAILABLE IN RESPONSE TO THE REQUEST.

8 (13) THE OPEN GOVERNMENT COMMISSION MAY DO 1 OR MORE OF THE
9 FOLLOWING:

10 (A) REFER A CITIZEN COMPLAINT TO THE ATTORNEY GENERAL.

11 (B) RECOMMEND POLICIES OR ACTIONS TO A PUBLIC BODY AFTER
12 INVESTIGATING A CITIZEN'S COMPLAINT.

13 (C) RECOMMEND CHANGES TO LAWS BASED ON INFORMATION GATHERED IN
14 RECEIVING, INVESTIGATING, AND RESPONDING TO A CITIZEN'S COMPLAINT.

15 (14) THE 180-DAY PERIOD FOR FILING A COURT ACTION UNDER
16 SECTION 10 IS TOLLED WHILE AN APPEAL IS PENDING BEFORE THE OPEN
17 GOVERNMENT COMMISSION.