

PROHIBIT PUBLIC BODY FROM TAKING CIVIL ACTION AGAINST THOSE MAKING FOIA REQUESTS

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House Bill 5826 (Substitute H-1 as adopted by committee)

Sponsor: Rep. Klint Kesto

Committee: Oversight and Ethics

Complete to 9-14-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would amend the Freedom of Information Act (FOIA) to prohibit a public body that receives a request for information from commencing a civil action under the act against the requesting person.

Freedom of Information Act (MCL 15.231-236)

Generally speaking, FOIA establishes procedures and requirements for the disclosure of *public records* by all *public bodies* in the state. The term "public record" refers to a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created, but does not include computer software. There are two classes of public records: those subject to disclosure and those exempt from disclosure. Generally, all records are subject to disclosure unless specifically exempted.

The term "public body" applies currently to a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, (but does not include the executive office of governor or lieutenant governor); an agency, board, commission, or council in the legislative branch of the state government (but apparently not the legislature itself); a county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or their boards, departments, commissions, councils, and agencies; and any other body created by state or local authority or primarily funded by or through state or local authority. The term does not include the judiciary, including the office of the county clerk when acting in the capacity of clerk to the circuit court.

FISCAL IMPACT:

House Bill 5826 would have an indeterminate, but likely minimal, fiscal impact on the state and local units of government. While there is some argument that a public body could minimize its FOIA liabilities by receiving a declaratory judgment against a person making a FOIA request, it is unknown if any public body has filed and subsequently won a civil suit against a FOIA requestor. Therefore, it is unclear if prohibiting civil suits by public bodies over FOIA requests would increase costs to local units of government compared to current practice.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.