

# HOUSE BILL No. 5473

March 16, 2016, Introduced by Reps. Chatfield, McBroom, Moss, Webber, Kivela, Runestad, Dianda, Plawewski, Lane, Hoadley, Rutledge, Pagan, Irwin, Chang, Barrett, Somerville, LaVoy, Darany, Hughes, Brinks, Howrylak, LaGrand, Bizon, Glenn, Lyons, Sarah Roberts, Hovey-Wright, Cox, Wittenberg, Townsend, Price, Tedder, Hooker, Howell, Phelps and Lucido and referred to the Committee on Oversight and Ethics.

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

1 REQUEST. A REQUEST SHALL NOT BE SUBMITTED UNDER THIS SUBDIVISION  
2 UNLESS 1 OF THE FOLLOWING APPLIES:

3 (i) THE PUBLIC BODY'S LORA COORDINATOR FAILED TO RESPOND TO A  
4 WRITTEN REQUEST FOR RECONSIDERATION AS REQUIRED UNDER SUBSECTION  
5 (2) .

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

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

12 (A) REVERSE THE DISCLOSURE DENIAL.

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

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

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

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

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

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

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

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

20 (7) IF THE COUNCIL ADMINISTRATOR DETERMINES IN AN APPEAL  
21 COMMENCED UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY  
22 AND CAPRICIOUSLY VIOLATED THIS PART BY REFUSAL OF A PUBLIC RECORD  
23 OR DELAY IN DISCLOSING OR PROVIDING COPIES, THE COUNCIL  
24 ADMINISTRATOR SHALL RECOMMEND APPROPRIATE DISCIPLINARY ACTION TO  
25 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SENATE MAJORITY  
26 LEADER, AS APPLICABLE.

27 SEC. 59B. (1) IF A PUBLIC BODY REQUIRES A FEE THAT EXCEEDS THE

1 AMOUNT PERMITTED UNDER ITS PUBLICLY AVAILABLE PROCEDURES AND  
2 GUIDELINES OR SECTION 54, THE REQUESTING PERSON MAY DO ANY OF THE  
3 FOLLOWING:

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

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

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

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

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

24 (A) WAIVE THE FEE.

25 (B) REDUCE THE FEE AND ISSUE A WRITTEN DETERMINATION TO THE  
26 REQUESTING PERSON INDICATING THE SPECIFIC BASIS UNDER SECTION 54  
27 THAT SUPPORTS THE REMAINING FEE. THE DETERMINATION SHALL INCLUDE A

1 CERTIFICATION FROM THE PUBLIC BODY'S LORA COORDINATOR THAT THE  
2 STATEMENTS IN THE DETERMINATION ARE ACCURATE AND THAT THE REDUCED  
3 FEE AMOUNT COMPLIES WITH ITS PUBLICLY AVAILABLE PROCEDURES AND  
4 GUIDELINES AND SECTION 54.

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

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

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

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

26 (5) AN APPEAL COMMENCED UNDER SUBSECTION (1) (B) SHALL BE  
27 REVIEWED AND DECIDED BY THE COUNCIL ADMINISTRATOR AT THE EARLIEST

1 PRACTICABLE DATE AND EXPEDITED IN EVERY WAY.

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

9 (7) IF THE COUNCIL ADMINISTRATOR DETERMINES IN AN APPEAL  
10 COMMENCED UNDER THIS SECTION THAT THE PUBLIC BODY HAS ARBITRARILY  
11 AND CAPRICIOUSLY VIOLATED THIS PART BY CHARGING AN EXCESSIVE FEE,  
12 THE COUNCIL ADMINISTRATOR SHALL RECOMMEND APPROPRIATE DISCIPLINARY  
13 ACTION TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE  
14 MAJORITY LEADER OF THE SENATE, AS APPLICABLE.

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

18 Enacting section 1. This amendatory act takes effect January  
19 1, 2017.

20 Enacting section 2. This amendatory act does not take effect  
21 unless Senate Bill No. \_\_\_\_ or House Bill No. 5469 (request no.  
22 05429'16) of the 98th Legislature is enacted into law.