

# Legislative Analysis



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**House Bills 4444 and 4445 as reported from committee**

**Sponsor: Rep. Steven Johnson**

**1st Committee: Oversight**

**2nd Committee: Ways and Means**

**Complete to 5-14-19**

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*(Enacted as Public Acts 37 and 38 of 2020)*

**BRIEF SUMMARY:** House Bills 4444 and 4445 would amend the Freedom of Information Act (FOIA) to clarify that the fee for providing public records in response to a FOIA request could include the costs of providing the information on any physical media that is not paper and also to allow state agencies to use an electronic format when publishing certain types of information required to be published and made available to the public.

**FISCAL IMPACT:** House Bill 4444 would lower costs for state agencies by a minimal amount. Any fiscal impact would be the result of reduced printing costs associated with making the required publications available to the public. House Bill 4445 would have no fiscal impact on state and local governments. The bill could lower costs associated with FOIA compliance, thereby leading to lower costs for FOIA requestors. However, since the act authorizes a public body to charge a fee that includes “the actual and most reasonably economic cost,” a public body would realize no overall fiscal impact.

### **THE APPARENT PROBLEM:**

Sometimes statutory language needs to be updated to keep up with advances in technology. As an example, FOIA authorizes a copy of requested documents or publications to be provided in mimeograph form or on computer discs, but does not authorize the same material to be provided in an electronic format or on a flash drive. Similarly, the public agency providing the material lacks statutory authority to charge the fee for newer technologies that is allowed for the outdated methods. Legislation has been offered to update terminology in the act.

### **THE CONTENT OF THE BILLS:**

House Bill 4444 would amend section 11 of FOIA. Currently, a state agency is required to publish and make available to the public certain information—for example, promulgated rules and other written statements that implement or interpret laws, rules, or policy (e.g., guidelines, manuals, and certain forms adopted or used by an agency in the discharge of its functions). Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

The bill would allow, in addition to the above, the publications to be *in electronic format*.

MCL 15.241

House Bill 4445 would amend section 4 of FOIA. Currently, a public body may charge a fee for a public record search, for a copy of the record for inspection, for the necessary copying of public records for inspection, or for providing a copy of the record. The fee is limited to actual

mailing costs and to the actual incremental cost of duplication or publication, including labor, the cost of the search, examination, review, and separation of information that is exempt from disclosure under FOIA from that which is not exempt. If the public body estimates or charges a fee, the total fee cannot exceed the sum of components listed in FOIA. The components include such things as the portion of labor costs directly associated with the search to locate the requested public records.

The list of components that may be included in the total fee also allows a public body to include—when public records are provided to a requestor on nonpaper physical media—the actual and most reasonably economical cost of computer discs, computer tapes, or other digital or similar media.

The bill would revise this provision to refer instead to public records provided to a requestor on *any form of nonpaper physical media* and to the actual and most reasonably economical cost of the *nonpaper physical media*.

MCL 15.234

#### ***BACKGROUND INFORMATION:***

House Bills 4445 and 4444 are identical to House Bills 5412 and 5413, respectively, of the 2017-18 legislative session. Both bills were passed by the House but failed to see Senate action.

#### ***ARGUMENTS:***

##### ***For:***

The bills simply update FOIA to reflect and include the current practice of disseminating documents via email and posting downloadable information on websites. For example, few, if any, public agencies still provide copies of requested materials on computer discs or tapes, though allowed by statute. Further, the bills' provisions do not preclude agencies from providing information in a paper format, if requested, for those who are not digitally inclined. HB 4444 would allow certain publications to be published in an electronic format in addition to a paper format, and HB 4445 would allow an agency to charge a fee for costs associated with providing requested materials via nonpaper means, such as by thumb drive.

##### ***Against:***

No arguments opposing the bills were offered in committee.

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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.