



Senate Fiscal Agency
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Senate Bills 232 through 241 (as reported without amendment)
Sponsor: Senator Jeremy Moss (S.B. 232, 235, 237, & 240)
Senator Ed McBroom (S.B. 233, 234, 236, 238, 239, & 241)
Committee: Oversight

CONTENT

Senate Bill 233 would rename the Freedom of Information Act (FOIA) as the "Freedom of Information and Legislative Open Records Act", designate Sections 1 through 16 of the Act as Part 1 (Freedom of Information Act) and amend various references to FOIA to refer instead to Part 1. The bill also would amend the Act to do the following:

- Modify the definition of "public body".
- Specify that a provision allowing a person to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis would not apply to the executive office of the Governor or Lieutenant Governor.

Senate Bill 234 would add Part 2 (Legislative Open Records Act) to FOIA to do the following:

- Allow a person to inspect, copy, or receive copies of the records of a public body after providing the public body's Legislative Open Records Act (LORA) coordinator with a written request, except as otherwise provided.
- Require an employee of a public body who received a request for a public body to forward it to the LORA coordinator within three business days.
- Require a LORA coordinator to keep a copy of all written requests for public records on file for at least one year.
- Prohibit a public body from destroying or altering a public record before it had been in its possession for 730 days if it would become a public record after it had been in the public body's possession for 15 days.

Senate Bill 237 would add Section 24 to Part 2 of FOIA to do the following:

- Allow a public body to charge a fee for a public record search, for the necessary copying of a public record, or for providing a copy of a record.
- Prescribe the limitations of a fee, the maximum fee that could be charged, and the process for calculating a fee.
- Allow a public body to charge a fee deposit.
- Require a public body to establish procedures and guidelines to implement Part 2 and to create a written public summary of the specific procedures and guidelines relevant to the general public.
- Require a public body to make its procedures and guidelines publicly available.
- Require the procedures and guidelines to include a detailed itemization of any fee amount.
- Require a response to a request for public records to contain a best efforts estimate by the public body regarding the time frame it would take it to provide the public records to the requestor.

- Require a public body that did not respond to a written request in a timely manner to take certain actions, including reducing the charges for labor costs.
- Specify that if a fee deposit were not received by a public body within 45 days after the requesting person received the notice that a deposit was required, and if the person had not filed an appeal, the request would be considered abandoned by the requesting person and the public body would no longer be required to fulfill the request.

Senate Bill 238 would add Section 25 to Part 2 of FOIA to do the following:

- Require a person to submit a written request to a public body's LORA coordinator to inspect or receive a copy of a public record.
- Require a public body to respond to a request for a public record within five business days after the public body received the request, unless otherwise agreed to in writing by the person making the request.
- Require a written notice denying a request for a public record to contain certain information, including an explanation of the basis for a determination that the public record was exempt from disclosure.
- Require a notice to specify the reasons for an extension and the date by which the public would respond, if a public body issued a notice extending the period for a response to the request.

Senate Bill 241 would add sections 26 through 29 to Part 2 of FOIA to do the following:

- Require the Administrator of the Legislative Council (Council Administrator) to designate an individual to serve as the LORA coordinator for all public bodies.
- Allow the Senate and the House to designate individuals as the LORA coordinators for the respective bodies.

Senate Bill 235 would add Sections 29a and 29b to Part 2 of FOIA to do the following:

- Allow a requesting person to submit a written request for reconsideration or to compel the public body's disclosure of the public records, if a public body made a final determination to deny all or a portion of a request.
- Require a public body's LORA coordinator to take certain action within 10 business days after receiving a written request for reconsideration of a request, including issuing a notice extending for not more than 10 business days the period during which the LORA coordinator would have to respond.
- Prohibit a LORA coordinator from issuing more than one notice of extension for a particular written request for reconsideration.
- Allow a requesting person to seek final review of a nondisclosure by submitting an appeal to the Council Administrator if a public body's LORA coordinator failed to respond to a written request or if the LORA coordinator upheld all or a portion of the disclosure denial that was subject of the written request.
- Require the public body to cease withholding or produce all or a portion of a public record wrongfully withheld if the Council Administrator determined that the public record was not exempt from disclosure.
- Allow the Council Administrator to require a reasonable fee not exceeding \$75 for an appeal commenced under the bill.
- Require the Council Administrator to recommend appropriate disciplinary action to the Speaker of the Michigan House of Representatives or the Majority Leader of the Michigan Senate if the Council Administrator determined in an appeal that the public body had arbitrarily and capriciously violated the bill's provisions by refusal of a public record or delay in disclosing or providing copies.

- Allow a requesting person to submit to a public body's LORA coordinator a written request for a fee reduction if a public body required a fee that exceeded the amount permitted under its publicly available procedures and guidelines or under the Act.
- Require a public body's LORA coordinator to take certain action within 10 business days after receiving a written request for a fee reduction.
- Require a public body to reduce a fee to a permissible amount if the Council Administrator determined that the public body required a fee that exceeded the amount permitted.
- Allow the Council Administrator to require a reasonable fee not exceeding \$50 for an appeal commenced related to fee reduction.
- Require the Council Administrator to recommend appropriate disciplinary action to the Speaker of the House or the Senate Majority Leader if it determined in an appeal that a public body charged an excessive fee.

Senate Bill 239 would add Sections 29c and 29d to Part 2 of FOIA to specify records and information that a public body could exempt from disclosure as a public record, including those of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy, those pertaining to an ongoing internal or legislative investigation, and those subject to attorney-client privilege or any other privilege recognized by the constitution, statute, or court rule, among others.

Senate Bill 240 would add Sections 29e and 29f to Part 2 of FOIA to do the following:

- Require a public body to separate exempt and nonexempt material contained in a public record and make the nonexempt material available for examination and copying.
- Require a public body to facilitate the separation of exempt from nonexempt information when designing a public record.
- Require the Attorney General to counsel and advise a public body on the administration of Part 2.

Senate Bill 236 would amend the Legislative Council Act to require the Council Administrator to receive and decide appeals of public records requests, as provided in LORA.

Senate Bill 232 would amend FOIA to exempt a public body from disclosing as a public record certain records or information pertaining to the executive offices of the Governor and Lieutenant Governor.

Each bill would take effect on January 1, 2022. Senate Bills 232, 233, and 235 through 241 are tie-barred to Senate Bill 234. Senate Bill 234 is tie-barred to Senate Bills 232, 233, and 235 through 241.

MCL 15.243 (S.B. 232)
 15.231 et al. (S.B. 233)
 4.1104a (S.B. 236)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would not have a significant fiscal impact on the State and would have no fiscal impact on local units of government. The bills' requirement for the Executive Office and the Legislature to comply with FOIA requests and to designate a FOIA or LORA coordinator could require the Executive Office and the Legislature to hire additional staff.

While the Executive Office and the Legislature likely would incur initial costs to implement the provisions in the bills, Senate Bill 237 would authorize a public body to charge fees for the actual cost of mailing, duplication, or publication of records to reimburse those costs. The

revenue from these fees could be used for costs associated with labor wages, including legal counsel if necessary, and any other administrative costs associated with responding to FOIA or LORA requests. Based on information from other State departments and agencies currently responding to FOIA requests, the revenues collected for FOIA requests are almost always sufficient to cover the costs to fulfill those requests. Any additional costs not covered by the fees collected should be minimal and would be absorbed within annual appropriations.

Current law allows a requesting person to file an action in circuit court for a fee reduction or to compel a public body to disclose information under FOIA. The requesting person also may be awarded attorney fees and costs and the court may levy a civil fine on a public body for a failure to comply. Revenue from these fines is deposited into the State's General Fund. Entities covered under the proposed Legislative Open Records Act would not be subject to these provisions. The effect that this would have on the General Fund is indeterminate.

Date Completed: 3-25-21

Fiscal Analyst: Joe Carrasco