

# HOUSE BILL NO. 4385

March 02, 2021, Introduced by Reps. Glenn, Berman, Borton, Bollin, Sneller, Cherry, Ellison, Hope, Scott, Posthumus, Paquette, Liberati, Steenland, Martin, Steckloff, Outman, Howell, Rabhi, Tyrone Carter, O'Neal, Kuppa, Breen, Puri, Young, Pohutsky, Brabec, Aiyash, Morse, Manoogian, Camilleri, LaGrand, Garza, Weiss, Hood, Cambensy, Steven Johnson, Sabo, Jones, Shannon, Sowerby, Haadsma, Reilly, Brenda Carter, Brixie, Lasinski, Yaroch, Stone, Calley, Witwer and Coleman and referred to the Committee on Oversight.

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
(MCL 15.231 to 15.246) by adding sections 29a and 29b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1       Sec. 29a. (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

1 "reconsideration", "appeal", "redetermination", or "reverse", and  
2 identifies the reason or reasons for reversal of the denial.

3 (b) Submit to the council administrator a written request to  
4 compel the public body's disclosure of the public records within  
5 180 days after a public body's final determination to deny a  
6 request. A request shall not be submitted under this subdivision  
7 unless 1 of the following applies:

8 (i) The public body's LORA coordinator failed to respond to a  
9 written request for reconsideration as required under subsection  
10 (2).

11 (ii) The public body's LORA coordinator issued a determination  
12 to a written request for reconsideration as required under  
13 subsection (2).

14 (2) Within 10 business days after receiving a written request  
15 for reconsideration pursuant to subsection (1)(a), the public  
16 body's LORA coordinator shall do 1 of the following:

17 (a) Reverse the disclosure denial.

18 (b) Issue a written notice to the requesting person upholding  
19 the disclosure denial.

20 (c) Reverse the disclosure denial in part and issue a written  
21 notice to the requesting person upholding the disclosure denial in  
22 part.

23 (d) Under unusual circumstances, issue a notice extending for  
24 not more than 10 business days the period during which the public  
25 body's LORA coordinator shall respond to the written request for  
26 reconsideration. The public body's LORA coordinator shall not issue  
27 more than 1 notice of extension for a particular written request  
28 for reconsideration.

29 (3) The public body's LORA coordinator is not considered to

1 have received a written request for reconsideration under  
2 subsection (2) until the first scheduled session day following  
3 submission of the written request under subsection (1)(a). If the  
4 public body's LORA coordinator fails to respond to a written  
5 request for reconsideration pursuant to subsection (2), or if  
6 public body's LORA coordinator upholds all or a portion of the  
7 disclosure denial that is the subject of the written request, the  
8 requesting person may seek final review of the nondisclosure by  
9 submitting an appeal to the council administrator under subsection  
10 (1)(b).

11 (4) In an appeal commenced under subsection (1)(b), if the  
12 council administrator determines that a public record is not exempt  
13 from disclosure, the public body must cease withholding or produce  
14 all or a portion of a public record wrongfully withheld, regardless  
15 of the location of the public record.

16 (5) An appeal commenced under subsection (1)(b) shall be  
17 reviewed and decided by the council administrator at the earliest  
18 practicable date and expedited in every way.

19 (6) The council administrator may require a reasonable fee,  
20 not to exceed \$75.00, for an appeal commenced under subsection  
21 (1)(b) unless the requesting person is eligible for a fee waiver or  
22 reduction under section 24 because of indigence.

23 (7) If the council administrator determines in an appeal  
24 commenced under this section that the public body has arbitrarily  
25 and capriciously violated this part by refusal of a public record  
26 or delay in disclosing or providing copies, the council  
27 administrator shall recommend appropriate disciplinary action to  
28 the speaker of the house of representatives or the senate majority  
29 leader, as applicable. The council administrator shall make any

1 recommendation for disciplinary action under this subsection  
2 publicly available on the internet not later than 5 business days  
3 after the recommendation is issued.

4 Sec. 29b. (1) If a public body requires a fee that exceeds the  
5 amount permitted under its publicly available procedures and  
6 guidelines or section 24, the requesting person may do any of the  
7 following:

8 (a) Submit to the public body's LORA coordinator a written  
9 request for a fee reduction that specifically states the word  
10 "reconsideration", "appeal", "redetermination", or "reverse", and  
11 identifies how the required fee exceeds the amount permitted under  
12 the public body's available procedures and guidelines or section  
13 24.

14 (b) Submit to the council administrator a written request for  
15 a fee reduction within 45 days after receiving either a notice of  
16 the required fee or a determination of a request for  
17 reconsideration. A request shall not be submitted under this  
18 subdivision unless 1 of the following applies:

19 (i) The public body's LORA coordinator failed to respond to a  
20 written request for a fee reduction as required under subsection  
21 (2).

22 (ii) The public body's LORA coordinator issued a determination  
23 upon a written request for a fee reduction as required under  
24 subsection (2).

25 (2) Within 10 business days after receiving a written request  
26 for a fee reduction pursuant to subsection (1)(a), the public  
27 body's LORA coordinator shall do 1 of the following:

28 (a) Waive the fee.

29 (b) Reduce the fee and issue a written determination to the

1 requesting person indicating the specific basis under section 24  
2 that supports the remaining fee. The determination must include a  
3 certification from the public body's LORA coordinator that the  
4 statements in the determination are accurate and that the reduced  
5 fee amount complies with its publicly available procedures and  
6 guidelines and section 24.

7 (c) Uphold the fee and issue a written determination to the  
8 requesting person indicating the specific basis under section 24  
9 that supports the required fee. The determination must include a  
10 certification from the public body's LORA coordinator that the  
11 statements in the determination are accurate and that the fee  
12 amount complies with the public body's publicly available  
13 procedures and guidelines and section 24.

14 (d) Issue a notice extending for not more than 10 business  
15 days the period during which the public body's LORA coordinator  
16 must respond to the written request for a fee reduction. The public  
17 body's LORA coordinator shall not issue more than 1 notice of  
18 extension for a particular written request for a fee reduction.

19 (3) The public body's LORA coordinator is not considered to  
20 have received a written request for reconsideration under  
21 subsection (2) until the first scheduled session day following  
22 submission of the written request under subsection (1)(a).

23 (4) If, in an appeal commenced under subsection (1)(b), the  
24 council administrator determines that the public body required a  
25 fee that exceeds the amount permitted under its publicly available  
26 procedures and guidelines or section 24, the public body shall  
27 reduce the fee to a permissible amount.

28 (5) An appeal commenced under subsection (1)(b) shall be  
29 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 24 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. The council  
15 administrator shall make any recommendation for disciplinary action  
16 under this subsection publicly available on the internet not later  
17 than 5 business days after the recommendation is issued.

18 (8) As used in this section, "fee" means the total fee or any  
19 component of the total fee calculated under section 24, including  
20 any deposit.

21 Enacting section 1. This amendatory act takes effect January  
22 1, 2022.

23 Enacting section 2. This amendatory act does not take effect  
24 unless Senate Bill No.\_\_\_\_ or House Bill No. 4383 (request no.  
25 00260'21 \*) of the 101st Legislature is enacted into law.