

# HOUSE BILL NO. 5532

November 04, 2021, Introduced by Reps. O'Malley, Beson, Roth, Cherry, Sneller, Paquette and Outman and referred to the Committee on Government Operations.

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending sections 4 and 10a (MCL 15.234 and 15.240a), section 4 as amended by 2020 PA 38 and section 10a as added by 2014 PA 563.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 4. (1) A public body may charge a fee for a public record  
2 search, for the necessary copying of a public record for  
3 inspection, or for providing a copy of a public record if it has  
4 established, makes publicly available, and follows procedures and

1 guidelines to implement this section as described in subsection  
2 (4). Subject to subsections (2), (3), (4), (5), and (9), the fee  
3 must be limited to actual mailing costs, and to the actual  
4 incremental cost of duplication or publication including labor, the  
5 cost of search, examination, review, and the deletion and  
6 separation of exempt from nonexempt information as provided in  
7 section 14. Except as otherwise provided in this act, if the public  
8 body estimates or charges a fee in accordance with this act, the  
9 total fee must not exceed the sum of the following components:

10 (a) That portion of labor costs directly associated with the  
11 necessary searching for, locating, and examining of public records  
12 in conjunction with receiving and fulfilling a granted written  
13 request. The public body shall not charge more than the hourly wage  
14 of its lowest-paid employee capable of searching for, locating, and  
15 examining the public records in the particular instance regardless  
16 of whether that person is available or who actually performs the  
17 labor. Labor costs under this subdivision ~~shall~~**must** be estimated  
18 and charged in increments of 15 minutes or more, with all partial  
19 time increments rounded down.

20 (b) That portion of labor costs, including necessary review,  
21 if any, directly associated with the separating and deleting of  
22 exempt information from nonexempt information as provided in  
23 section 14. For services performed by an employee of the public  
24 body, the public body shall not charge more than the hourly wage of  
25 its lowest-paid employee capable of separating and deleting exempt  
26 information from nonexempt information in the particular instance  
27 as provided in section 14, regardless of whether that person is  
28 available or who actually performs the labor. If a public body does  
29 not employ a person capable of separating and deleting exempt

1 information from nonexempt information in the particular instance  
2 as provided in section 14 as determined by the public body's FOIA  
3 coordinator on a case-by-case basis, it may treat necessary  
4 contracted labor costs used for the separating and deleting of  
5 exempt information from nonexempt information in the same manner as  
6 employee labor costs when calculating charges under this  
7 subdivision if it clearly notes the name of the contracted person  
8 or firm on the detailed itemization described under subsection (4).  
9 Total labor costs calculated under this subdivision for contracted  
10 labor costs must not exceed an amount equal to 6 times the state  
11 minimum hourly wage rate determined under section 4 of the improved  
12 workforce opportunity wage act, 2018 PA 337, MCL 408.934. Labor  
13 costs under this subdivision ~~shall~~**must** be estimated and charged in  
14 increments of 15 minutes or more, with all partial time increments  
15 rounded down. A public body shall not charge for labor directly  
16 associated with redaction under section 14 if it knows or has  
17 reason to know that it previously redacted the public record in  
18 question and the redacted version is still in the public body's  
19 possession.

20 (c) For public records provided to the requestor on any form  
21 of nonpaper physical media, the actual and most reasonably  
22 economical cost of the nonpaper physical media. The requestor may  
23 stipulate that the public records be provided on nonpaper physical  
24 media, ~~electronically mailed,~~**emailed**, or otherwise electronically  
25 provided to him or her in lieu of paper copies. This subdivision  
26 does not apply if a public body lacks the technological capability  
27 necessary to provide records on the particular nonpaper physical  
28 media stipulated in the particular instance.

29 (d) For paper copies of public records provided to the

1 requestor, the actual total incremental cost of necessary  
2 duplication or publication, not including labor. The cost of paper  
3 copies ~~shall~~**must** be calculated as a total cost per sheet of paper  
4 and ~~shall~~**must** be itemized and noted in a manner that expresses  
5 both the cost per sheet and the number of sheets provided. The fee  
6 must not exceed 10 cents per sheet of paper for copies of public  
7 records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper.  
8 A public body shall utilize the most economical means available for  
9 making copies of public records, including using double-sided  
10 printing, if cost saving and available.

11 (e) The cost of labor directly associated with duplication or  
12 publication, including making paper copies, making digital copies,  
13 or transferring digital public records to be given to the requestor  
14 on nonpaper physical media or through the internet or other  
15 electronic means as stipulated by the requestor. The public body  
16 shall not charge more than the hourly wage of its lowest-paid  
17 employee capable of necessary duplication or publication in the  
18 particular instance, regardless of whether that person is available  
19 or who actually performs the labor. Labor costs under this  
20 subdivision may be estimated and charged in time increments of the  
21 public body's choosing; however, all partial time increments ~~shall~~  
22 **must** be rounded down.

23 (f) The actual cost of mailing, if any, for sending the public  
24 records in a reasonably economical and justifiable manner. The  
25 public body shall not charge more for expedited shipping or  
26 insurance unless specifically stipulated by the requestor, but may  
27 otherwise charge for the least expensive form of postal delivery  
28 confirmation when mailing public records.

29 (2) When calculating labor costs under subsection (1) (a), (b),

1 or (e), fee components ~~shall~~**must** be itemized in a manner that  
2 expresses both the hourly wage and the number of hours charged. The  
3 public body may also add up to 50% to the applicable labor charge  
4 amount to cover or partially cover the cost of fringe benefits if  
5 it clearly notes the percentage multiplier used to account for  
6 benefits in the detailed itemization described in subsection (4).  
7 Subject to the 50% limitation, the public body shall not charge  
8 more than the actual cost of fringe benefits, and overtime wages  
9 ~~shall~~**must** not be used in calculating the cost of fringe benefits.  
10 Overtime wages ~~shall~~**must** not be included in the calculation of  
11 labor costs unless overtime is specifically stipulated by the  
12 requestor and clearly noted on the detailed itemization described  
13 in subsection (4). A search for a public record may be conducted or  
14 copies of public records may be furnished without charge or at a  
15 reduced charge if the public body determines that a waiver or  
16 reduction of the fee is in the public interest because searching  
17 for or furnishing copies of the public record can be considered as  
18 primarily benefiting the general public. A public record search  
19 ~~shall~~**must** be made and a copy of a public record ~~shall~~**must** be  
20 furnished without charge for the first \$20.00 of the fee for each  
21 request by either of the following:

22 (a) An individual who is entitled to information under this  
23 act and who submits an affidavit stating that the individual is  
24 indigent and receiving specific public assistance or, if not  
25 receiving public assistance, stating facts showing inability to pay  
26 the cost because of indigency. If the requestor is eligible for a  
27 requested discount, the public body shall fully note the discount  
28 on the detailed itemization described under subsection (4). If a  
29 requestor is ineligible for the discount, the public body shall

1 inform the requestor specifically of the reason for ineligibility  
2 in the public body's written response. An individual is ineligible  
3 for this fee reduction if any of the following apply:

4 (i) The individual has previously received discounted copies of  
5 public records under this subsection from the same public body  
6 twice during that calendar year.

7 (ii) The individual requests the information in conjunction  
8 with outside parties who are offering or providing payment or other  
9 remuneration to the individual to make the request. A public body  
10 may require a statement by the requestor in the affidavit that the  
11 request is not being made in conjunction with outside parties in  
12 exchange for payment or other remuneration.

13 (b) A nonprofit organization formally designated by the state  
14 to carry out activities under subtitle C of the developmental  
15 disabilities assistance and bill of rights act of 2000, Public Law  
16 106-402, and the protection and advocacy for individuals with  
17 mental illness act, Public Law 99-319, or their successors, if the  
18 request meets all of the following requirements:

19 (i) Is made directly on behalf of the organization or its  
20 clients.

21 (ii) Is made for a reason wholly consistent with the mission  
22 and provisions of those laws under section 931 of the mental health  
23 code, 1974 PA 258, MCL 330.1931.

24 (iii) Is accompanied by documentation of its designation by the  
25 state, if requested by the public body.

26 (3) A fee as described in subsection (1) ~~shall~~**must** not be  
27 charged for the cost of search, examination, review, and the  
28 deletion and separation of exempt from nonexempt information as  
29 provided in section 14 unless failure to charge a fee would result

1 in unreasonably high costs to the public body because of the nature  
2 of the request in the particular instance, and the public body  
3 specifically identifies the nature of these unreasonably high  
4 costs.

5 (4) A public body shall establish procedures and guidelines to  
6 implement this act and shall create a written public summary of the  
7 specific procedures and guidelines relevant to the general public  
8 regarding how to submit written requests to the public body and  
9 explaining how to understand a public body's written responses,  
10 deposit requirements, fee calculations, and avenues for challenge  
11 and appeal. The written public summary ~~shall~~**must** be written in a  
12 manner so as to be easily understood by the general public. If the  
13 public body directly or indirectly administers or maintains an  
14 official internet presence, it shall post and maintain the  
15 procedures and guidelines and its written public summary on its  
16 website. A public body shall make the procedures and guidelines  
17 publicly available by providing free copies of the procedures and  
18 guidelines and its written public summary both in the public body's  
19 response to a written request and upon request by visitors at the  
20 public body's office. A public body that posts and maintains  
21 procedures and guidelines and its written public summary on its  
22 website may include the website link to the documents in lieu of  
23 providing paper copies in its response to a written request. A  
24 public body's procedures and guidelines must include the use of a  
25 standard form for detailed itemization of any fee amount in its  
26 responses to written requests under this act. The detailed  
27 itemization must clearly list and explain the allowable charges for  
28 each of the 6 fee components listed under subsection (1) that  
29 compose the total fee used for estimating or charging purposes.

1 Other public bodies may use a form created by the department of  
2 technology, management, and budget or create a form of their own  
3 that complies with this subsection. A public body that has not  
4 established procedures and guidelines, has not created a written  
5 public summary, or has not made those items publicly available  
6 without charge as required in this subsection is not relieved of  
7 its duty to comply with any requirement of this act and shall not  
8 require deposits or charge fees otherwise permitted under this act  
9 until it is in compliance with this subsection. Notwithstanding  
10 this subsection and despite any law to the contrary, a public  
11 body's procedures and guidelines under this act are not exempt  
12 public records under section 13.

13 (5) If the public body directly or indirectly administers or  
14 maintains an official internet presence, any public records  
15 available to the general public on that internet site at the time  
16 the request is made are exempt from any charges under subsection  
17 (1) (b). If the FOIA coordinator knows or has reason to know that  
18 all or a portion of the requested information is available on its  
19 website, the public body shall notify the requestor in its written  
20 response that all or a portion of the requested information is  
21 available on its website. The written response, to the degree  
22 practicable in the specific instance, must include a specific  
23 webpage address where the requested information is available. On  
24 the detailed itemization described in subsection (4), the public  
25 body shall separate the requested public records that are available  
26 on its website from those that are not available on the website and  
27 shall inform the requestor of the additional charge to receive  
28 copies of the public records that are available on its website. If  
29 the public body has included the website address for a record in



1 its written response to the requestor and the requestor thereafter  
2 stipulates that the public record be provided to him or her in a  
3 paper format or other form as described under subsection (1)(c),  
4 the public body shall provide the public records in the specified  
5 format but may use a fringe benefit multiplier greater than the 50%  
6 limitation in subsection (2), not to exceed the actual costs of  
7 providing the information in the specified format.

8 (6) A public body may provide requested information available  
9 in public records without receipt of a written request.

10 (7) If a verbal request for information is for information  
11 that a public body believes is available on the public body's  
12 website, the public employee shall, where practicable and to the  
13 best of the public employee's knowledge, inform the requestor about  
14 the public body's pertinent website address.

15 (8) In either the public body's initial response or subsequent  
16 response as described under section 5(2)(d), the public body may  
17 require a good-faith deposit from the person requesting information  
18 before providing the public records to the requestor if the entire  
19 fee estimate or charge authorized under this section exceeds  
20 \$50.00, based on a good-faith calculation of the total fee  
21 described in subsection (4). Subject to subsection (10), the  
22 deposit must not exceed 1/2 of the total estimated fee, and a  
23 public body's request for a deposit must include a detailed  
24 itemization as required under subsection (4). The response must  
25 also contain a ~~best efforts~~ **best-efforts** estimate by the public  
26 body regarding the time frame it will take the public body to  
27 comply with the law in providing the public records to the  
28 requestor. ~~The time frame estimate is nonbinding upon the public~~  
29 ~~body, but the~~ **The** public body shall provide the **time-frame** estimate

1 in good faith and strive to be reasonably accurate. ~~and~~ **A time-**  
 2 **frame estimate required of a local public body under this**  
 3 **subsection is nonbinding upon the local public body, but the local**  
 4 **public body shall strive** to provide the public records **within that**  
 5 **time frame and** in a manner based on this state's public policy  
 6 under section 1 and the nature of the request in the particular  
 7 instance. **A time-frame estimate required of a state public body**  
 8 **under this subsection is binding upon the state public body, and if**  
 9 **the state public body does not provide the public records within**  
 10 **the estimated time frame, the state public body shall not charge**  
 11 **the requestor any fee under this section, shall return any deposit**  
 12 **received from the requestor under this subsection, and remains**  
 13 **obligated to provide the public records in a manner based on this**  
 14 **state's public policy under section 1 and the nature of the request**  
 15 **in the particular instance.** If a public body does not respond in a  
 16 timely manner as described under section 5(2), it is not relieved  
 17 from its requirements to provide proper fee calculations and ~~time~~  
 18 ~~frame~~ **time-frame** estimates in any tardy responses. Providing an  
 19 estimated time frame does not relieve a public body from any of the  
 20 other requirements of this act.

21 (9) If a public body does not respond to a written request in  
 22 a timely manner as required under section 5(2), the public body  
 23 shall do the following:

24 (a) Reduce the charges for labor costs otherwise permitted  
 25 under this section by 5% for each day the public body exceeds the  
 26 time permitted under section 5(2) for a response to the request,  
 27 with a maximum 50% reduction, if either of the following applies:

28 (i) The late response was willful and intentional.

29 (ii) The written request included language that conveyed a

1 request for information within the first 250 words of the body of a  
2 letter, facsimile, ~~electronic mail, email~~, or ~~electronic mail-email~~  
3 attachment, or specifically included the words, characters, or  
4 abbreviations for "freedom of information", "information", "FOIA",  
5 "copy", or a recognizable misspelling of such, or appropriate legal  
6 code reference for this act, on the front of an envelope, or in the  
7 subject line of an ~~electronic mail, email~~, letter, or facsimile  
8 cover page.

9 (b) If a charge reduction is required under subdivision (a),  
10 fully note the charge reduction on the detailed itemization  
11 described under subsection (4).

12 (10) This section does not apply to public records prepared  
13 under an act or statute specifically authorizing the sale of those  
14 public records to the public, or if the amount of the fee for  
15 providing a copy of the public record is otherwise specifically  
16 provided by an act or statute.

17 (11) Subject to subsection (12), after a public body has  
18 granted and fulfilled a written request from an individual under  
19 this act, if the public body has not been paid in full the total  
20 amount under subsection (1) for the copies of public records that  
21 the public body made available to the individual as a result of  
22 that written request, the public body may require a deposit of up  
23 to 100% of the estimated fee before it begins a full public record  
24 search for any subsequent written request from that individual if  
25 all of the following apply:

26 (a) The final fee for the prior written request was not more  
27 than 105% of the estimated fee.

28 (b) The public records made available contained the  
29 information being sought in the prior written request and are still

1 in the public body's possession.

2 (c) The public records were made available to the individual,  
3 subject to payment, within the ~~time frame~~**time-frame** estimate  
4 described under subsection (8).

5 (d) Ninety days have passed since the public body notified the  
6 individual in writing that the public records were available for  
7 pickup or mailing.

8 (e) The individual is unable to show proof of prior payment to  
9 the public body.

10 (f) The public body calculates a detailed itemization, as  
11 required under subsection (4), that is the basis for the current  
12 written request's increased estimated fee deposit.

13 (12) A public body shall no longer require an increased  
14 estimated fee deposit from an individual as described under  
15 subsection (11) if any of the following apply:

16 (a) The individual is able to show proof of prior payment in  
17 full to the public body.

18 (b) The public body is subsequently paid in full for the  
19 applicable prior written request.

20 (c) Three hundred sixty-five days have passed since the  
21 individual made the written request for which full payment was not  
22 remitted to the public body.

23 (13) A deposit required by a public body under this act is a  
24 fee.

25 (14) If a deposit that is required under subsection (8) or  
26 (11) is not received by the public body within 45 days from receipt  
27 by the requesting person of the notice that a deposit is required,  
28 and if the requesting person has not filed an appeal of the deposit  
29 amount pursuant to section 10a, the request ~~shall~~**must** be

1 considered abandoned by the requesting person and the public body  
 2 is no longer required to fulfill the request. Notice of a deposit  
 3 requirement under subsection (8) or (11) is considered received 3  
 4 days after it is sent, regardless of the means of transmission.  
 5 Notice of a deposit requirement under subsection (8) or (11) must  
 6 include notice of the date by which the deposit must be received,  
 7 which date is 48 days after the date the notice is sent.

8       Sec. 10a. (1) If a public body requires a fee that exceeds the  
 9 amount permitted under its publicly available procedures and  
 10 guidelines or section 4, **or is a state public body subject to the**  
 11 **remedies described in section 4(8) for failing to provide public**  
 12 **records within its estimated time frame,** the requesting person may  
 13 do any of the following:

14       (a) If the public body provides for fee appeals to the head of  
 15 the public body in its publicly available procedures and  
 16 guidelines, submit to the head of the public body a written appeal  
 17 for a fee reduction that specifically states the word "appeal" and  
 18 identifies how the required fee exceeds the amount permitted under  
 19 the public body's available procedures and guidelines or section 4.

20       (b) Commence a civil action in the circuit court, or if the  
 21 decision of a state public body is at issue, in the court of  
 22 claims, for a fee reduction. The action must be filed within 45  
 23 days after receiving the notice of the required fee or a  
 24 determination of an appeal to the head of a public body. If a civil  
 25 action is commenced against the public body under this subdivision,  
 26 the public body is not obligated to complete the processing of the  
 27 written request for the public record at issue until the court  
 28 resolves the fee dispute. An action ~~shall~~**may** not be filed under  
 29 this subdivision unless 1 of the following applies:

1 (i) The public body does not provide for appeals under  
2 subdivision (a).

3 (ii) The head of the public body failed to respond to a written  
4 appeal as required under subsection (2).

5 (iii) The head of the public body issued a determination to a  
6 written appeal as required under subsection (2).

7 (2) Within 10 business days after receiving a written appeal  
8 under subsection (1)(a), the head of a public body shall do 1 of  
9 the following:

10 (a) Waive the fee.

11 (b) Reduce the fee and issue a written determination to the  
12 requesting person indicating the specific basis under section 4  
13 that supports the remaining fee. The determination ~~shall~~**must**  
14 include a certification from the head of the public body that the  
15 statements in the determination are accurate and that the reduced  
16 fee amount complies with its publicly available procedures and  
17 guidelines and section 4.

18 (c) Uphold the fee and issue a written determination to the  
19 requesting person indicating the specific basis under section 4  
20 that supports the required fee. The determination ~~shall~~**must**  
21 include a certification from the head of the public body that the  
22 statements in the determination are accurate and that the fee  
23 amount complies with the public body's publicly available  
24 procedures and guidelines and section 4.

25 (d) Issue a notice extending for not more than 10 business  
26 days the period during which the head of the public body must  
27 respond to the written appeal. The notice of extension ~~shall~~**must**  
28 include a detailed reason or reasons why the extension is  
29 necessary. The head of a public body shall not issue more than 1

1 notice of extension for a particular written appeal.

2 (3) A board or commission that is the head of a public body is  
3 not considered to have received a written appeal under subsection  
4 (2) until the first regularly scheduled meeting of that board or  
5 commission following submission of the written appeal under  
6 subsection (1)(a).

7 (4) In an action commenced under subsection (1)(b), a court  
8 that determines the public body required a fee that exceeds the  
9 amount permitted under its publicly available procedures and  
10 guidelines or section 4 shall reduce the fee to a permissible  
11 amount. Venue for an action against a local public body is proper  
12 in the circuit court for the county in which the public record or  
13 an office of the public body is located. The court shall determine  
14 the matter de novo, and the burden is on the public body to  
15 establish that the required fee complies with its publicly  
16 available procedures and guidelines and section 4. Failure to  
17 comply with an order of the court may be punished as contempt of  
18 court.

19 (5) An action commenced under this section and an appeal from  
20 an action commenced under this section ~~shall~~**must** be assigned for  
21 hearing and trial or for argument at the earliest practicable date  
22 and expedited in every way.

23 (6) If the requesting person prevails in an action commenced  
24 under this section by receiving a reduction of 50% or more of the  
25 total fee, the court may, in its discretion, award all or an  
26 appropriate portion of reasonable attorneys' fees, costs, and  
27 disbursements. The award ~~shall~~**must** be assessed against the public  
28 body liable for damages under subsection (7).

29 (7) If the court determines in an action commenced under this

1 section that the public body has arbitrarily and capriciously  
2 violated this act by charging an excessive fee, the court shall  
3 order the public body to pay a civil fine of \$500.00, which ~~shall~~  
4 **must** be deposited in the general fund of the state treasury. The  
5 court may also award, in addition to any actual or compensatory  
6 damages, punitive damages in the amount of \$500.00 to the person  
7 seeking the fee reduction. The fine and any damages ~~shall~~**must** not  
8 be assessed against an individual, but ~~shall~~**must** be assessed  
9 against the next succeeding public body that is not an individual  
10 and that kept or maintained the public record as part of its public  
11 function.

12 (8) As used in this section, "fee" means the total fee or any  
13 component of the total fee calculated under section 4, including  
14 any deposit.