

~~Draft 1~~

**SUBSTITUTE FOR  
SENATE BILL NO. 1**

A bill to amend 1976 PA 442, entitled  
"Freedom of information act,"  
by amending section 2 (MCL 15.232), as amended by 2018 PA 68.

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

1       Sec. 2. As used in this act:

2       (a) "Cybersecurity assessment" means an investigation  
3 undertaken by a person, governmental body, or other entity to  
4 identify vulnerabilities in cybersecurity plans.

5       (b) "Cybersecurity incident" includes, but is not limited to,  
6 a computer network intrusion or attempted intrusion; a breach of  
7 primary computer network controls; unauthorized access to programs,  
8 data, or information contained in a computer system; or actions by  
9 a third party that materially affect component performance or,



1 because of impact to component systems, prevent normal computer  
2 system activities.

3 (c) "Cybersecurity plan" includes, but is not limited to,  
4 information about a person's information systems, network security,  
5 encryption, network mapping, access control, passwords,  
6 authentication practices, computer hardware or software, or  
7 response to cybersecurity incidents.

8 (d) "Cybersecurity vulnerability" means a deficiency within  
9 computer hardware or software, or within a computer network or  
10 information system, that could be exploited by unauthorized parties  
11 for use against an individual computer user or a computer network  
12 or information system.

13 (e) "Field name" means the label or identification of an  
14 element of a computer database that contains a specific item of  
15 information, and includes but is not limited to a subject heading  
16 such as a column header, data dictionary, or record layout.

17 (f) "FOIA coordinator" means either of the following:

18 (i) An individual who is a public body.

19 (ii) An individual designated by a public body in accordance  
20 with section 6 to accept and process requests for public records  
21 under this act.

22 (g) "Legislator" means a member of the senate or the house of  
23 representatives of this state or a member of the independent  
24 citizens redistricting commission created in section 6 of article  
25 IV of the state constitution of 1963.

26 (h) ~~(g)~~ "Person" means an individual, corporation, limited  
27 liability company, partnership, firm, organization, association,  
28 governmental entity, or other legal entity. Person does not include  
29 an individual serving a sentence of imprisonment in a state or



1 county correctional facility in this state or any other state, or  
2 in a federal correctional facility.

3 (i) ~~(h)~~ "Public body" means any of the following:

4 (i) A state officer, employee, agency, department, division,  
5 bureau, board, commission, council, authority, or other body in the  
6 executive branch of the state government. ~~but does not include~~  
7 ~~the governor or lieutenant governor, the executive office of the~~  
8 ~~governor or lieutenant governor, or employees thereof.~~

9 (ii) ~~An agency, board, commission, or council in the~~  
10 ~~legislative branch of the state government.~~ **A state officer,**  
11 **legislator, employee, agency, department, division, bureau, board,**  
12 **commission, committee, council, authority, or other body in the**  
13 **legislative branch of the state government. Public body does not**  
14 **include the legislative service bureau, the senate fiscal agency,**  
15 **or the house fiscal agency.**

16 (iii) A county, city, township, village, intercounty, intercity,  
17 or regional governing body, council, school district, special  
18 district, or municipal corporation, or a board, department,  
19 commission, council, or agency thereof.

20 (iv) Any other body that is created by state or local authority  
21 or is primarily funded by or through state or local authority,  
22 except that **public body does not include** the judiciary ~~including~~  
23 **or** the office of the county clerk and its employees when acting in  
24 the capacity of clerk to the circuit court. ~~is not included in~~  
25 ~~the definition of public body.~~ **For purposes of this subparagraph,**  
26 **revenue earned by a body pursuant to a fee-for-service transaction**  
27 **with a governmental entity does not count as funds provided by or**  
28 **through state or local authority.**

29 (j) ~~(i)~~ "Public record" means a writing prepared, owned, used,



1 in the possession of, or retained by a public body in the  
 2 performance of an official function, from the time it is created.  
 3 Public record does not include computer software. **Public record**  
 4 **does not include notes taken or made by a member of a public body,**  
 5 **including notes taken or made during a meeting of the public body,**  
 6 **if the notes are for that member's personal use, are not circulated**  
 7 **among other members, are not used in the creation of any meeting**  
 8 **minutes, and are retained or destroyed at that member's sole**  
 9 **discretion.** This act separates public records into the following 2  
 10 classes:

11 (i) Those that are exempt from disclosure under section 13.

12 (ii) All public records that are not exempt from disclosure  
 13 under section 13 and that are subject to disclosure under this act.

14 **(k)** ~~(j)~~ "Software" means a set of statements or instructions  
 15 that when incorporated in a machine usable medium is capable of  
 16 causing a machine or device having information processing  
 17 capabilities to indicate, perform, or achieve a particular  
 18 function, task, or result. Software does not include computer-  
 19 stored information or data, or a field name if disclosure of that  
 20 field name does not violate a software license.

21 **(l)** ~~(k)~~ "Unusual circumstances" means any 1 or a combination of  
 22 the following, but only to the extent necessary for the proper  
 23 processing of a request:

24 (i) The need to search for, collect, or appropriately examine  
 25 or review a voluminous amount of separate and distinct public  
 26 records pursuant to a single request.

27 (ii) The need to collect the requested public records from  
 28 numerous field offices, facilities, or other establishments ~~which~~  
 29 **that** are located apart from the particular office receiving or



1 processing the request.

2       **(m)** ~~(l)~~ "Writing" means handwriting, typewriting, printing,  
3 photostating, photographing, photocopying, and every other means of  
4 recording, and includes letters, words, pictures, sounds, or  
5 symbols, or combinations thereof, and papers, maps, magnetic or  
6 paper tapes, photographic films or prints, microfilm, microfiche,  
7 magnetic or punched cards, discs, drums, hard drives, solid state  
8 storage components, **hybrid drives, cloud storage, quantum networks**  
9 **and computing systems**, or other means of recording or retaining  
10 meaningful content.

11       **(n)** ~~(m)~~ "Written request" means a writing that asks for  
12 information, and includes a writing transmitted by facsimile,  
13 ~~electronic mail, email~~, or other electronic means.

14       Enacting section 1. This amendatory act takes effect on  
15 January 1 of the first odd-numbered year that begins at least 6  
16 months after the date it is enacted into law.

17       Enacting section 2. This amendatory act does not take effect  
18 unless Senate Bill No. 2 of the 103rd Legislature is enacted into  
19 law.



