

HOUSE BILL NO. 5424

February 07, 2024, Introduced by Reps. Kuhn, Steele, Jaime Greene, St. Germaine, Tisdell, Martin, Borton, Wozniak, Kunse, Bierlein, Paquette, Bruck, BeGole, Bollin and Lightner and referred to the Committee on Government Operations.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
(MCL 15.231 to 15.246) by adding section 10c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 10c. (1) The open government commission is created as an**
2 **executive agency in the department of state.**

3 **(2) The commission must consist of 9 members appointed as**
4 **follows:**

5 **(a) 1 appointed by the senate majority leader.**

1 (b) 1 appointed by the senate minority leader.

2 (c) 1 appointed by the speaker of the house.

3 (d) 1 appointed by the house minority leader.

4 (e) 1 appointed by the governor from recommendations by the
5 Michigan Association of Broadcasters.

6 (f) 1 appointed by the governor from recommendations by the
7 Michigan Press Association.

8 (g) 1 appointed by the governor from recommendations by the
9 Michigan Coalition for Open Government.

10 (h) 2 appointed by the governor.

11 (3) The members first appointed to the commission must be
12 appointed within 60 days after the effective date of the amendatory
13 act that added this section.

14 (4) Members of the commission shall serve for terms of 4 years
15 or until a successor is appointed, whichever is later, except that
16 for members first appointed, 3 shall serve for 1 year, 2 shall
17 serve for 2 years, and 2 shall serve for 3 years, as follows:

18 (a) For members first appointed under subsection (2) (e), (f),
19 and (g), 1 year.

20 (b) For members first appointed under subsection (2) (h), 2
21 years.

22 (c) For members appointed under subsection (2) (c) and (d), 3
23 years.

24 (5) If a vacancy occurs on the commission, the vacancy must be
25 filled for the balance of the term in the same manner as the
26 original appointment.

27 (6) The senate majority leader, senate minority leader,
28 speaker of the house, and house minority leader, acting in
29 agreement, may remove a member of the commission for incompetence,

1 dereliction of duty, malfeasance, misfeasance, or nonfeasance in
2 office.

3 (7) The governor shall call the first meeting of the
4 commission no later than 90 days after the effective date of the
5 amendatory act that added this section. At the first meeting, the
6 commission shall elect a member as chairperson and may elect other
7 officers that it considers necessary or appropriate. After the
8 first meeting, the commission shall meet at least monthly, or more
9 frequently at the call of the chairperson or at the request of 3 or
10 more members.

11 (8) A majority of the members of the commission constitute a
12 quorum for transacting business. A vote in favor by a majority of
13 the members of the commission serving is required for any action of
14 the commission.

15 (9) The commission shall conduct its business in compliance
16 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The
17 commission may meet in closed session to deliberate on the merits
18 of an asserted exemption, exclusion, or privilege from disclosure
19 for a writing.

20 (10) A writing that is prepared, owned, used, possessed, or
21 retained by the commission in performing an official function is
22 subject to this act, except that, notwithstanding any provision of
23 this act to the contrary, unredacted records provided to the
24 commission for purposes of appellate review are not subject to
25 disclosure under this act.

26 (11) In addition to any other duties prescribed in this act,
27 the commission may do all of the following:

28 (a) Receive complaints from requestors regarding responses to
29 requests for public records under this act.

1 (b) In response to a citizen complaint, investigate a public
2 body's policies regarding requests under this act.

3 (c) In response to a citizen complaint, investigate a public
4 body's response to a citizen request under this act.

5 (d) In response to a citizen complaint and request for an
6 opinion, investigate and issue an opinion that is binding and
7 enforceable as to the public body and the person bringing the
8 complaint absent judicial appeal, resolving the following issues
9 concerning a request under this act:

10 (i) The amount of the fee authorized under this act.

11 (ii) Whether a writing is subject to disclosure under this act,
12 including any issue as to the validity, applicability, or extent of
13 any asserted exemption or exclusion. When considering issues under
14 this subparagraph, the commission may review unmodified versions of
15 all responsive writings at issue in order to judge the
16 appropriateness of any claimed exemption or exclusion.

17 (iii) The timeliness of a public body's response to a request,
18 or the propriety of an extension of the deadlines taken for a
19 response, as provided in this act.

20 (e) Hear appeals as provided in sections 10 and 10a of this
21 act.

22 (f) Order a public body to pay fines, fees, or other monetary
23 penalties as provided in this act, including, but not limited to,
24 monetary penalties described in section 10b.

25 (g) Offer training opportunities at least annually to ensure
26 FOIA coordinators are proficient in this act's requirements.

27 (h) Investigate and hear any case that the commission
28 determines, in its discretion, warrants review.

29 (i) Recommend policies or remedial actions to a public body

1 after investigating a citizen's complaint.

2 (j) Recommend changes to this act based on information
3 gathered in receiving, investigating, and responding to a citizen's
4 complaint.

5 (k) Notwithstanding any other provision of this subsection,
6 elect not to investigate or conduct a hearing on a complaint
7 submitted to the commission.

8 (12) The statutory period for filing a court action under this
9 act is tolled while an appeal is pending before the commission.

10 Enacting section 1. This amendatory act does not take effect
11 unless all of the following bills of the 102nd Legislature are
12 enacted into law:

13 (a) Senate Bill No. ____ or House Bill No. 5427 (request no.
14 04892'23).

15 (b) Senate Bill No. ____ or House Bill No. 5426 (request no.
16 05111'23).

17 (c) Senate Bill No. ____ or House Bill No. 5422 (request no.
18 05112'23).

19 (d) Senate Bill No. ____ or House Bill No. 5425 (request no.
20 05113'23).

21 (e) Senate Bill No. ____ or House Bill No. 5423 (request no.
22 05115'23).