

# HOUSE BILL NO. 5425

February 07, 2024, Introduced by Reps. Tisdel, Steele, Jaime Greene, St. Germaine, Martin, Borton, Kuhn, 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," by amending sections 10b and 11 (MCL 15.240b and 15.241), section 10b as added by 2014 PA 563 and section 11 as amended by 2020 PA 37.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 10b. (1) ~~¶~~ **Subject to subsection (2), in an action**  
2 **commenced under this act, if** the court **or commission** determines ~~7~~  
3 ~~in an action commenced under this act,~~ that a public body willfully  
4 and intentionally failed to comply with this act, or otherwise

1 acted in bad faith **or with gross negligence**, the court **or**  
2 **commission** shall order the public body to pay, in addition to any  
3 other award or sanction, a civil fine of not less than \$2,500.00 or  
4 more than ~~\$7,500.00~~ **\$25,000.00** for each occurrence. In determining  
5 the amount of the civil fine, the court **or commission** shall  
6 consider the budget of the public body, **any endowment benefitting**  
7 **the public body, other economic factors affecting the public body's**  
8 **overall financial condition**, and whether the public body has  
9 previously been assessed penalties for violations of this act. The  
10 civil fine ~~shall~~ **must** be deposited in the general fund of the state  
11 treasury.

12 (2) If a public body has been previously found to have  
13 violated this act within the past 2 years, minimum fines under  
14 subsection (1) must be as follows:

15 (a) For a second violation: \$7,500.00.

16 (b) For a third violation: \$10,000.00.

17 (c) For a fourth or subsequent violation: \$15,000.00.

18 (3) In an action commenced under this act, if the court or  
19 commission determines that the public body has arbitrarily or  
20 capriciously violated this act, the court or commission shall order  
21 the public body to pay a civil fine of not less than \$5,000.00 or  
22 more than \$50,000.00, which must be deposited in the general fund  
23 of the state treasury. The court or commission may also award, in  
24 addition to any actual or compensatory damages, punitive damages in  
25 the amount of \$5,000.00. The civil fine and any damages must not be  
26 assessed against an individual, but must be assessed against the  
27 next succeeding public body that is not an individual and that kept  
28 or maintained the requested public record as part of its public  
29 function. Fines described in this subsection are in addition to any

1 other fines and costs permitted in this section. In determining the  
2 amount of the civil fine, the court or commission shall consider  
3 the budget of the public body, any endowment benefitting the public  
4 body, other economic factors affecting the public body's overall  
5 financial condition, and whether the public body has previously  
6 been assessed penalties for violations of this act. The civil fine  
7 must be deposited in the general fund of the state treasury.

8 (4) If a public body files a petition for an extension of time  
9 under section 5(11) and fails to obtain an extension, the public  
10 body must be fined \$100.00 per day for each day beyond the date  
11 records were required to be produced under section 5(2). If the  
12 court or commission determines that the petition for an extension  
13 of time was arbitrary, capricious, or made in bad faith, the court  
14 or commission shall award fines as provided in subsections (1) and  
15 (2). In determining the amount of the civil fine, the court or  
16 commission shall consider the budget of the public body, any  
17 endowment benefitting the public body, other economic factors  
18 affecting the public body's overall financial condition, and  
19 whether the public body has previously been assessed penalties for  
20 violations of this act. The civil fine must be deposited in the  
21 general fund of the state treasury.

22 Sec. 11. (1) A state agency shall publish and make available  
23 to the public all of the following:

24 (a) Final orders or decisions in contested cases and the  
25 records on which they were made.

26 (b) Promulgated rules.

27 (c) Other written statements that implement or interpret laws,  
28 rules, or policy, including but not limited to guidelines, manuals,  
29 and forms with instructions, adopted or used by the agency in the

1 discharge of its functions.

2 (2) Publications may be in electronic format or in pamphlet,  
3 loose-leaf, or other appropriate form in printed, mimeographed, or  
4 other written matter.

5 (3) Except to the extent that a person has actual and timely  
6 notice of the terms thereof, a person is not required to resort to,  
7 and ~~shall~~**must** not be adversely affected by, a matter required to  
8 be published and made available, if the matter is not so published  
9 and made available.

10 (4) This section does not apply to public records that are  
11 exempt from disclosure under section 13.

12 (5) A person may commence an action in the court of claims **or**  
13 **before the commission** to compel a state agency to comply with this  
14 section. If the court **or commission** determines that the state  
15 agency has failed to comply, the court **or commission** shall order  
16 the state agency to comply and shall award reasonable ~~attorneys'~~  
17 **attorney** fees, costs, and disbursements to the person commencing  
18 the action. ~~The court of claims has exclusive jurisdiction to issue~~  
19 ~~the order.~~

20 (6) **If an attorney appeals a request filed by that attorney to**  
21 **a court or the commission and prevails as provided in subsection**  
22 **(5), that attorney is entitled to whatever fees and costs would be**  
23 **awarded if the attorney had represented a client in that appeal,**  
24 **including the attorney fees that would have been awarded for that**  
25 **representation.**

26 (7) ~~(6)~~As used in this section, "state agency", "contested  
27 case", and "rule" mean "agency", "contested case", and "rule" as  
28 those terms are defined in the administrative procedures act of  
29 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

4           (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5427 (request no.  
5 04892'23).

6           (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5426 (request no.  
7 05111'23).

8           (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5422 (request no.  
9 05112'23).

10          (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 5424 (request no.  
11 05114'23).

12          (e) Senate Bill No. \_\_\_\_\_ or House Bill No. 5423 (request no.  
13 05115'23).