

Legislative Analysis



FREEDOM OF INFORMATION ACT OPEN GOVERNMENT COMMISSION

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4314
Sponsor: Rep. Tom McMillin
Committee: Oversight

Complete to 5-10-13

A SUMMARY OF HOUSE BILL 4314 AS INTRODUCED 2-26-13

House Bill 4314 would amend the Freedom of Information Act to establish the Open Government Commission within the Michigan Department of Civil Rights. A more detailed description of the bill follows.

Under the bill, an Open Government Commission would be created to do all of the following:

- Receive citizen complaints regarding responses to requests for information under the act;
- Investigate a public body's policies regarding freedom of information requests (in response to a citizen complaint);
- Investigate a public body's response to a citizen request under this act (in response to a citizen complaint);
- Investigate and issue an opinion that is binding and enforceable (in response to a citizen complaint and request for an opinion) resolving the following issues concerning the request: (1) the amount of the fee authorized; (2) the validity, applicability, or extent of any exemption or exclusion asserted; and (3) the documents that this act requires the public body to make available in response to the request.

Further, the Open Government Commission would be authorized (but not required) to:

- Refer a citizen complaint to the attorney general;
- Recommend policies or actions to the public body after investigating a citizen's complaint;
- Recommend changes to laws based on information gathered in receiving, investigating, and responding to a citizen's complaint.

The bill specifies that the Open Government Commission would consist of nine members appointed by the governor: one each selected from recommendations provided by the Senate Majority and Minority Leaders and the House Speaker and Minority Leader; two each selected from recommendations by the Michigan Association of Broadcasters and the Michigan Press Association; and one at the governor's discretion.

The members would be appointed within 60 days of the bill took effect. Commission members would serve four-year terms; however, the first appointees would have staggered one-, two-, and three-year terms, in order to ensure continuity. If a vacancy occurred, the governor would fill it in the same manner as the original appointment, and the governor could remove a commission member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in officer, or any other good cause.

The bill requires the governor to call the first meeting of the Open Government Commission, and at the first meeting the commission would elect a chair and other officers, as appropriate. After the first meeting, the commission would meet at least monthly, or more frequently at the call of the chair, or if requested to do so by three or more members.

A majority of the commission members would constitute a quorum for the transaction of business, and a majority of members serving would be required for official action. The Commission would conduct business at open meetings (subject to the Open Meetings Act); however, the commission could meet in closed session to deliberate on the merits of an asserted exemption, exclusion, or privilege from disclosure.

The bill specifies that a writing prepared, owned, used, in the possession of, or retained by the Commission in the performance of an official function would be subject to this act; however, if an exemption had been asserted, the writing would not be subject to disclosure until after the Commission determined the assertion was without merit.

Members of the commission would serve without compensation but they could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

Finally, the bill specifies that the 180-day period for filing a court action under Section 10 would be tolled while an appeal was pending before the Open Government Commission.

MCL 15.231-246

FISCAL IMPACT:

House Bill 4314 would establish a new Open Government Commission in the Department of Civil Rights. The bill requires the department to reimburse Commission members for their actual and necessary expenses. This requirement would result in additional costs to the department. The extent of the fiscal impact would depend on the nature of the Commission members' actual and necessary expenses.

Legislative Analyst: J. Hunault
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.