



MICHIGAN
HOUSE OF REPRESENTATIVES
P.O. Box 30014
LANSING, MICHIGAN 48909-7514

Minutes of the House Standing Committee
on
Oversight

Tuesday, November 12, 2013 4:35 p.m. Room 326 House Office Building

The House Standing Committee on Oversight was called to order by Representative Tom McMillin, Chair.

The Clerk called the roll; members present were Representatives McMillin, Kelly, O'Brien, Leonard, Townsend, and Robinson. (6/6)

Representative Kelly moved to adopt the minutes of October 15, 2013 as printed. There being no objection, the motion prevailed by unanimous consent of the members present; the minutes were adopted as printed.

The Chair laid before the committee House Bill 4001:

HB 4001 (Shirkey) Civil rights; public records; statewide standards for freedom of information act costs; modify.

Substitute (H-1) was adopted to HB 4001 on May 21, 2013.

Representative Kelly moved to adopt substitute (H-2) to House Bill 4001:

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives McMillin, Kelly, O'Brien, Leonard, Townsend, and Robinson.
(6/6)

Nays: None. (0/6)

Pass: None. (0/6)

Representative Shirkey and Greg Ostrander, from Representative Shirkey's office, explained the changes made in substitute (H-2).

Representative Kelly moved to adopt the following amendment to HB 4001 (H-2):

1. Amend page 14, line 27, after "**CAUSE**" by striking out the balance of the line through "**STATED**" on line 1 of page 15.

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives McMillin, Kelly, O'Brien, Leonard, Townsend, and Robinson.
(6/6)

Nays: None. (0/6)

Pass: None. (0/6)

Representative Townsend moved to adopt the following amendment to HB 4001 (H-2):

1. Amend page 8, line 26, after "**TOTAL**" by inserting "**ESTIMATED**".

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives McMillin, Kelly, O'Brien, Leonard, Townsend, and Robinson.
(6/6)

Nays: None. (0/6)

Pass: None. (0/6)

Representative Townsend moved to adopt the following amendment to HB 4001 (H-2):

1. Amend page 1, following "**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**" by inserting:

"Sec. 2. As used in this act:

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

(b) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

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

(c) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) "Public body" means any of the following:

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

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body,

council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(e) "Public record" **OR "RECORD"** means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records **OR RECORDS** into the following 2 classes:

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

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

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

(g) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

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

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means."

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives McMillin, Kelly, O'Brien, Leonard, and Townsend. (5/6)

Nays: Representative Robinson. (1/6)

Pass: None. (0/6)

Representative Townsend moved to adopt the following amendments to HB 4001 (H-2):

1. Amend page 2, line 8, after "**WAGE**" by striking out the balance of the line through "**BENEFITS**," on line 9.

2. Amend page 2, line 21, after "**WAGE**" by striking out the balance of the line through "**BENEFITS**," on line 22.

3. Amend page 4, line 3, after "**WAGE**" by striking out the comma and "**EXCLUDING THE COST OF BENEFITS,**".

The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representative Townsend. (1/6)

Nays: Representatives McMillin, Kelly, O'Brien, Leonard, and Robinson. (5/6)

Pass: None. (0/6)

Representative Townsend moved to adopt the following amendment to HB 4001 (H-2):

1. Amend page 1, following "**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**" by inserting:

"Sec. 2. As used in this act:

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

(b) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

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

(c) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) "Public body" means any of the following:

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

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof. **SCHOOL DISTRICT INCLUDES A PUBLIC SCHOOL ACADEMY, AN URBAN HIGH SCHOOL ACADEMY, A SCHOOL OF EXCELLENCE, A CYBERSCHOOL, THE EDUCATION ACHIEVEMENT AUTHORITY, AND ANY OTHER ENTITY IDENTIFIED AS A SCHOOL DISTRICT IN THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852, AND ANY EDUCATIONAL MANAGEMENT ORGANIZATION OR OTHER PERSON THAT BY CONTRACT EXERCISES 1 OR MORE OF THE POWERS OF A SCHOOL DISTRICT AUTHORIZED UNDER THAT ACT.**

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(e) "Public record" means a writing prepared, owned, used, in the possession of, or

retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

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

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

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

(g) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

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

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means."

The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representative Townsend. (1/6)

Nays: Representatives McMillin, Kelly, O'Brien, Leonard, and Robinson. (5/6)

Pass: None. (0/6)

Representative Townsend moved to adopt the following amendment to HB 4001 (H-2):

1. Amend page 1, following "**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**" by inserting:

"Sec. 2. As used in this act:

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

(b) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

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

(c) "Person" means an individual, corporation, limited liability company, partnership,

firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) "Public body" means any of the following:

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

(ii) An agency, board, commission, or council in the legislative branch of the state government.

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

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, **INCLUDING THE MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION.**

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(e) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

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

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

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

(g) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

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

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means."

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The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives Townsend and Robinson. (2/6)

Nays: Representatives McMillin, Kelly, O'Brien, and Leonard. (4/6)

Pass: None. (0/6)

Representative Leonard moved to report House Bill 4001, substitute (H-2) as amended, as substitute (H-4), with recommendation that the bill pass.

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives McMillin, Kelly, O'Brien, Leonard, Townsend, and Robinson. (6/6)

Nays: None. (0/6)

Pass: None. (0/6)

The following submitted testimony cards on HB 4001:

Jerry Griffin, Wayne County, in opposition.

Gail Madziar, Michigan Library Association, in opposition.

Dennis Kolar, Managing Director of the Road Commission for Oakland County, in opposition.

Ed Noyola, County Road Association of Michigan, in opposition.

Daniel M. Levy, Michigan Department of Civil Rights, neutral.

Herschel P. Fink, Detroit Free Press and Gannett Michigan Newspapers, in support.

Deena Bosworth, Michigan Association of Counties, in opposition.

Michael Boulus, Presidents Council, State Universities of Michigan, in opposition.

Dave Murley, Deputy Legal Counsel for Governor Rick Snyder, neutral.

Nell Kuhnmuensch, Governmental Consultant Services Inc., representing the City of Grand Rapids, in opposition.

Joe Sontag and Fred Wurtzel, National Federation of the Blind of Michigan, in support.

Judy Allen, Michigan Townships Association, in opposition.

Abigail Elias, City of Ann Arbor, in opposition.

Christopher Frost, City of Ann Arbor, in opposition.

Nikki Brown, Michigan Municipal League, in opposition.

The Chair laid before the committee Senate Bill 94:

SB 94	(Jones)	Military affairs; other; restriction of activities by Michigan national guard and state and local employees; provide for under certain circumstances.
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Representative Kelly moved to adopt the following amendment to SB 94:

1. Amend page 2, following line 14, by inserting:

"Enacting section 1. This act takes effect upon the expiration of 90 days after the date it is enacted into law.".

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives McMillin, Kelly, O'Brien, Leonard, Townsend, and Robinson.
(6/6)

Nays: None. (0/6)

Pass: None. (0/6)

Representative Robinson moved to report Senate Bill 94, as amended, as substitute (H-1) with recommendation that the bill pass.

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee voting as follows:

Yeas: Representatives McMillin, Kelly, O'Brien, Leonard, Townsend, and Robinson.
(6/6)

Nays: None. (0/6)

Pass: None. (0/6)

There being no other business before the committee, the Chair declared the meeting adjourned, the time being 5:05 p.m.

Tom McMillin, Chair
House Standing Committee on Oversight

Doug Simon, Committee Clerk

Date approved by the committee