

# County Administrator's Digest

October 5, 2012

Alan G. Vanderberg, County Administrator

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## "QUADRANT" MEETINGS

We held the first quadrant meeting at the Fillmore Complex on Tuesday. We initiated these meetings with our Ottawa cities, village, and townships in 2004 and for many years held them twice per year in all four quadrants of the County. With the advent of sending the Digest to the local unit attendance began to wane and we decided to hold the meetings once per year in two County facility locations. We had 25 in attendance for Tuesdays meeting with attendees split evenly between County officials and local unit officials. We had fewer attendees on Thursday at the Ottawa County Courthouse in Grand Haven. The Michigan Municipal League had their annual conference on Mackinaw Island this week so we lost a large amount of the typical city/village attendance. The Michigan Townships Association also has a fall conference so schedule as to avoid both next year.

Several in attendance thought these sessions the most information yet. The agenda and PowerPoint are on miottawa.org for your review.

## HB 5879 AND 5895 – PROPOSED CHANGES TO FREEDOM OF INFORMATION ACT

**Greg Rappleye presented the following information at the quadrant meetings regarding changes to the Freedom Of Information Act that could have significant negative impacts on local government. We also believe that this could cause additional staffing requirements in a major department like the Sheriff's Office with the high number of requests that they receive and thus is yet another unfunded mandate per the Headlee Amendment to the Michigan Constitution.**

### MEMORANDUM

TO: Alan Vanderberg, Ottawa County Administrator

FROM: Gregory Rappleye, Ottawa County Corporation Counsel

DATE: October 5, 2012

RE: HB 5879 and HB 5895 –Proposed Changes in Freedom of Information Act



Attached are copies of HB 5879, introduced by Representative Mike Shirkey (R., Clarklake) and HB 5895, introduced by Representative Paul Opsommer (R., DeWitt). These proposals were initiated during September, 2012, and have been referred to the House Committee on Oversight, Reform and Ethics.

HB 5879 and HB 5895, if adopted into law, would substantially increase the potential costs, risks and workloads associated with responding to requests for access to public records under the Michigan Freedom of Information Act, Act 442 of the Public Acts of 1976, MCL 15.231 et seq. ("the Act").

HB 5879 would:

Require a public body to limit its per copy fee to ten cents (.10 cents) per page. The Act currently provides that a public body may set a cost for copies based upon "the actual incremental cost of duplication or publication..." See: MCL 15.243(1).

Prohibit a public body from charging a "copy cost" during an on-site inspection of public records, unless the requestor asks for copies and uses the public body's equipment to make the copies.

Add a new subsection (8) to Section 5 of the Act, MCL 15.235, to require that the public body actually produce copies or permit an inspection of the documents within five (5) days of a request being made, with no requirement that appropriate fees lawfully be paid prior to production or access.

The proposed Section 5(8) would also reduce any fee a public body may charge by 20% per day for each day that the public record are not available beyond the five day deadline. No fees could be charged if a public body took more than five (5) business days to produce or allow inspection of the documents.

Allow a requestor to appeal the amount of any fees charged, either by internal appeal or in a circuit court action. Currently, the amount of fees charged by a public body are not an express basis for appeal.

A public body would be prohibited from charging a requesting person more than \$100 in fees for complying with the Act over a six (6) month period. In other words, a person or entity paying a total \$100 fee for one request would have a virtually unlimited right to copies of public documents from that public body for a six (6) month time period. A circuit court action could be filed to enforce this \$100 limitation.

Under proposal amendments to Section 10(5) of the Act, MCL 15.240(5), if a public body asserts an erroneous basis for denial of a public record under Section 13 of the Act, MCL 15.243, it would be barred from subsequently asserting a proper basis for a denial under Section 13. If a mistake is made in the original claim of exemption, that mistake cannot be corrected and a lawful alternative basis for exemption cannot be asserted on appeal to the circuit court.

Amend Section 10(6) of the Act, MCL 15.240(6) to provide that attorney fees shall be paid to a requestor who prevails in part in any circuit court challenge concerning access to documents, copies of documents, or the costs of obtaining public records. Currently, the statute provides that the court may allow attorneys fees if a request was improperly denied in part. This proposed change could result in substantial financial risk to local governments.

Punitive damages for an “arbitrary and capricious” denial by a public body would be increased from \$500 to \$5,000.

HB 5895 would create an autonomous “Open Government Commission” under the Freedom of Information Act, by adding Section 10A to the Act.

This proposal would allow the Open Government Commission to independently investigate the Freedom of Information Act policies and responses of public bodies, to issue binding determinations of citizen complaints regarding such matters, and to thereafter refer such complaints and investigations to the Michigan Attorney General’s Office. In effect, the HB 5895 would create an independent state-level agency to investigate and determine Freedom of Information Act matters independently of (whatever) substantive and procedural due process protections might still be available for public bodies following the adoption of HB 5879.

These proposals are alarming, and would substantially increase the costs and risks and workloads for a public body which exist under the current terms of the Act. I know of no justification in Ottawa County practices (or in the Freedom of Information Act practices of other local public bodies) which would justify the adoption of these onerous and punitive measures.

As Ottawa County’s Freedom of Information Act Coordinator, I want to be on the record as opposing HB 5879, and I urge the County to contract its legislative consultant, the Michigan Association of Counties, and other relevant bodies (County Clerk’s Association, Michigan Municipal League, Michigan Sheriff’s Association, etc.) to oppose HB 5879.

### **INDIGENT DEFENSE LEGISLATION**

The House has not passed House Bill 5804 Indigent Defense legislation yet but it is anticipated that it will yet this fall. In lieu of an anticipated busy fall schedule, the Senate will hear testimony before the Judiciary Committee on Tuesday and I plan to be on hand to offer testimony. Ben Bodkin of MAC, mentioned that he, and representatives from Allegan County, Eaton County, and Oakland County are also likely to testify.

### **GVMC EXECUTIVE DIRECTOR JOHN WEISS WEEKLY UPDATE**

**[John Weiss will be attending the October 23<sup>rd</sup> Board of Commissioners meeting to update the Board on the status of metro council activities.](#)**

[Click here](#) to read the latest weekly update from GVMC Executive Director John Weiss.



October 4, 2012

**Board Meeting/ & Luncheon****Monday October 8th at 10:30**

We have a short agenda for our meeting on Monday. We will begin at 10:30 at the Prince Center. We will have approximately 1/2 hour for our business meeting.

At approximately 11:00 am we will be joined by Attorney General Bill Schuette for an informal conversation and question and answer period. Please do not hesitate to ask the Attorney General any questions you may have.

At the business meeting we will have an action item regarding the Unified Planning Work Program Amendment for The Rapid.

We will also have a report from our Legislative Committee. On October 18th the committee met to discuss the ballot issues. As I previously reported also in attendance were experts on the ballot issues from the Grand Rapids Chamber of Commerce, Michigan Municipal League and Governor's Office. There was only time available to review proposals 1, 5 and 6. Mike DeVries, chairman of committee will make a report.

We will also need a motion to officially set the schedule for our meetings during the upcoming fiscal year. These dates are available in your packets.

**GVMC On the Road**

On Wednesday I had the opportunity to be the guest speaker at the Lowell Rotary Club.

It was a very enjoyable luncheon and I had the opportunity to talk about our Strategic Initiatives, GVMC and Transportation, REGIS and our efforts with LGROW and Clean Air Programs.

I also focused on our legislative and cooperation/collaboration initiatives. Former City Manager Dave Pasquale invited me to attend to inform his Rotary Club of the many activities of GVMC. I want to thank Dave for the invite and his continued support of GVMC.

If you would like me to speak at your Rotary, Lions, Kiwanis or other service clubs, do not hesitate to contact me.

**Membership Dues  
Have Been Sent**

As part of the reorganization of our Finance Department, our membership invoices for GVMC, LGROW, NPEDS and Transportation have been sent out. It was a goal to do this in a timely manner at the beginning of our fiscal year. REGIS dues will be coming shortly.

If you have any questions about your invoices, do not hesitate to contact Chris Brown.

**"The Van" Will Be At Our  
Next Board Meeting**

Several of our members have not had the opportunity take a close look at our Pavement Condition Data Collection Vehicle. Purchased in 2005, using federal and local funds, this technically sophisticated van is used to survey and collect pavement conditions and sign data.



The data from the van is shared with all members of GVMC. Pavement Management and Sign Management are critical and essential parts of the asset management system required by the state and federal governments.

Each year, GVMC collects data on 1,620 miles of the federal aid system, (mainly major roads). We also assist local governments with their roadway systems by analyzing 800 miles annually. This scientific data is used to program and prioritize future road improvement projects.

Please feel free to take a closer look. We will also have staff available to answer your questions and demonstrate "The Van".