
**State Government & Tribal Affairs
Committee**

HB 1299

Brief Description: Regarding conferences for public records requests disputes.

Sponsors: Representatives Takko, Armstrong, Hunt, Nealey, Haigh, Angel and Rolfes.

Brief Summary of Bill

- Establishes under the Public Records Act (PRA) an informal procedure for the requester of a public record and the responding agency to confer for the purpose of dispute resolution and thus avoid litigation.

Hearing Date: 1/31/11

Staff: Thamas Osborn (786-7129).

Background:

The Public Records Act requires that state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally, and the exemptions narrowly, in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt. In effect, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person who is denied a public record or who believes an agency's time estimate for production is unreasonable may appeal the agency decision in the superior court of the county in which the record is maintained. The burden of proof rests with the agency to establish that its failure to produce the requested records is consistent with the statute that exempts or prohibits disclosure. If the person prevails in the court action, he or she must be awarded all costs of maintaining the action, including reasonable attorney fees. In addition, it is within the courts discretion to award such person an amount of not less that \$5 and not more than \$100 for each day he or she was denied the opportunity to inspect or copy the requested records.

Court actions against an agency for noncompliance with the records production requirements of the PRA are subject to a one year statute of limitations, after which no appeal may be filed. This one year limitation period begins to run either on:

- the date of an agency's claim of exemption; or
- the date of the last production of a record being provided by an agency on a partial or installment basis.

Summary of Bill:

Prior to filing court action alleging a violation of the PRA, the requester of a public record and the agency may confer in person or by telephone in an effort to resolve any dispute regarding the agency's production of the records. For court claims requiring an agency to show cause for refusal to produce a record, no such action may be commenced until 15 days after the conference. The one-year statute of limitation and daily penalties shall be tolled during this period. "Conference" means an in person meeting or telephone conversation between the agency and the person requesting the records.

The requestor or agency filing suit must include a certification that a conference was held or the reasons why a conference was not held. Neither party is required to initiate or participate in a conference and neither party has a right to file a court action based on the denial of a request for a conference.

If a requester or agency elects to file suit without conducting the conference, or if the lawsuit is filed before the 15 day post-conference waiting period, the court has the discretion to reduce or eliminate any award for costs, including daily penalties. Otherwise, the award of daily penalties and costs is mandatory. In making the discretionary decision to reduce or eliminate an award for costs or penalties, the court may consider the following nonexclusive factors:

- whether the requester had need to obtain the records in less than 15 days;
- whether a conference would have been futile;
- whether the agency's initial response was in bad faith; and
- whether the records request serves the public interest.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.