

# HOUSE BILL ANALYSIS

## SSB 6316

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**Title:** An act relating to discovery in actions or proceedings against the state.

**Brief Description:** Revising procedures for discovery in actions or proceedings for damages against the state.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Zarelli and Kline).

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Trudes Hutcheson (786-7384).

**Background:** Discovery is the pretrial procedure used by parties in a civil action to obtain information from each other in order to assist the parties in preparing for trial. Generally, court rules govern discovery. Parties may obtain discovery regarding any matter that is not privileged and that is relevant to the subject matter involved in the case.

The tools of discovery include depositions, written interrogatories, requests for the production of documents or things, inspections, examinations, and requests for admissions. A party may request information on the existence, description, nature, custody, condition, and location of any documents or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. Discovery usually occurs between the parties without court intervention unless problems arise that cannot be resolved. If one party fails to cooperate with discovery, the other party may obtain a court order to compel discovery.

Certain communications and documents may be privileged, and therefore are protected from discovery. While a party's discovery request for such information may be denied based on privilege, there are limited exceptions to the privileges. For example, attorney and client communications that are otherwise privileged may be discoverable if the communication pertains to ongoing or future fraudulent conduct. A party challenging the other party's assertion of privilege may sometimes ask the court to review the material in private. In addition, a party may discover communications where the privilege has been properly waived.

**Summary of Bill:** Certain requirements are placed on the state when responding to a discovery request from a party who is not represented by an attorney and who has brought a civil suit for damages against the state.

When a plaintiff who is not represented by counsel and who has brought a civil suit against the state requests discovery, the state's response must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the state rejects the request. If the state rejects a request, the state must state its reasons for the objection along with instructions on how to legally acquire documents withheld based on confidentiality or privilege.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

Office of Program Research