

# HOUSE BILL REPORT

## HB 1134

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**As Reported by House Committee On:**  
State Government Operations & Accountability

**Title:** An act relating to an open government ombudsman.

**Brief Description:** Creating an open government ombudsman.

**Sponsors:** Representatives Nixon, Haigh, Williams, P. Sullivan, Shabro and Linville.

**Brief History:**

**Committee Activity:**

State Government Operations & Accountability: 2/1/05, 3/2/05 [DPS].

**Brief Summary of Substitute Bill**

- Creates the Office of Open Government Ombudsman within the Office of the Attorney General.

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### HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; McDermott, Miloscia, Schindler and Sump.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Hunt.

**Staff:** Marsha Reilly (786-7135).

**Background:**

Initiative 276, passed by voters in 1972, requires public access to government records, unless the record is exempt from disclosure. Within five business days of a request for a public record, an agency must (1) provide the record; (2) acknowledge the request and provide a reasonable estimate of the time needed to respond to the request; or (3) deny the request.

If the request is denied, the person making the request may ask the Attorney General for a written opinion on whether or not the record is exempt. Such a request does not establish an attorney-client relationship. The requester may seek court action and, if successful, shall be awarded all costs, including reasonable attorney fees, in connection with the legal action. The

court also has the discretion to award an amount between \$5 and \$100 for each day that the requestor was denied the right to the public record.

One of the specific exemptions from disclosure relates to records relevant to a controversy in which an agency is a party (RCW 42.17.310(j)). However, in the recent *Hangartner* case, the Washington Supreme Court interpreted that the attorney-client privilege in RCW 5.60.060(2) applies regardless of the controversy exemption.

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**Summary of Substitute Bill:**

An Office of Open Government Ombudsman (ombudsman) is created for the purpose of providing information on public records and open public meetings to state and local agencies and the public, and to represent the public in obtaining public records. The ombudsman must be a member of the Washington State Bar Association and must have training or experience in issues of public disclosure and public records. The ombudsman reports to and is appointed by the Attorney General and shall serve a term of three years unless reappointed. The ombudsman may be removed from office only for neglect of duty, misconduct, or inability to perform duties.

The ombudsman is directed to:

- provide training and legal advice to public agencies and the public regarding the provisions of the Public Records Act;
- investigate the refusal of an agency to provide public records;
- provide legal representation to individuals that have a legal claim to public records;
- provide training to state and local agencies on agency responsibilities under open public meetings;
- establish and maintain a public records clearinghouse and an informational web site; and
- submit annual reports to the Attorney General and the appropriate committees of the Legislature analyzing the work of the office.

The ombudsman must adopt rules to establish a formal complaint process. A complaint is considered legally sufficient if it includes the grounds and factual basis of the complaint and is signed by the complainant..

**Substitute Bill Compared to Original Bill:**

The substitute bill moves the Office of Open Government Ombudsman from the jurisdiction of the state auditor to the jurisdiction of the Attorney General.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** The Attorney General has a dual mission and that is to defend agencies and enforce the law. This conflict would be alleviated by moving some of the responsibilities to the state auditor. An office like this exists in other states and works very well. Citizens should not have to pay to take legal claims forward through the courts. The Allied Daily Newspapers is in favor of the bill. The Evergreen Freedom Foundation (EFF) is in favor of the bill. The EFF makes frequent requests for public records and also helps the public by answering questions on how to make requests. Creating a public records advocate and public records clearinghouse would ease the frustration some governmental entities feel in responding to records requests. I would also ease the suspicion the public sometimes justifiably holds in how their records requests are being handled. Many abuses to Washington's public records law have been well documented. When even the state auditor has been denied access to records by agencies as cited in last year's statewide accountability report, the obstacles facing the public are only multiplied. Texas' public records activities have been met with great support and serve as a model. Though Texas has placed these activities in the Attorney General's office, a similar undertaking in Washington may prove to create a conflict of interest. While Attorney General McKenna has made compliance with public records law a priority, that office has faced public records violations in the past and the proposed advocate seems better suited within the state auditor's office. There is a lot of abuse in what agencies do and agency lawyers are a part of the stonewalling. It is unfortunate that we need to have this conversation about an ombudsman. The benefits would outweigh the costs. The open records act is a way to find out about public agency rules and legal actions. An ombudsman is very important. Officials need to be reminded of their responsibilities and citizens need to find out what their government is doing. There should be reconsideration about whether the ombudsman needs to be an attorney. Costs saved in litigation are enough to fund the position.

(Neutral) The State Auditor is a staunch supporter of the Public Records Act and will carry out the intent of the act if the Legislature decides it is appropriate to put the ombudsman in the State Auditor's Office.

**Testimony Against:** None.

**Persons Testifying:** Representative Nixon, prime sponsor; Dan Wood, Washington State Farm Bureau; Rowland Thompson, Allied Daily Newspapers of Washington; Jason Mercier, Evergreen Freedom Foundation; and Armen Yousoufian.

(Neutral) Brian Sontag, State Auditor.

**Persons Signed In To Testify But Not Testifying:** None.