
State Government & Tribal Affairs
Committee

HB 1017

Brief Description: Creating a committee to study the feasibility of creating a board with public records act and open public meetings act responsibilities.

Sponsors: Representatives Kessler, Ross, Johnson, Parker, Springer, Miloscia, Chandler, Newhouse, Armstrong, Williams, Morrell, Lias, Anderson, Sullivan, Blake, Hudgins and Wallace; by request of Attorney General and State Auditor.

Brief Summary of Bill

- Creates a committee to study and make recommendations related to the creation of an administrative board to oversee and administer the Public Records Act and the Open Public Meetings Act.

Hearing Date: 1/16/09

Staff: Tracey O'Brien (786-7196)

Background:

Public Records Act

The Public Records Act (PRA) requires that all 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 and that a denial should be

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made as to all or part of the request. For practical purposes, 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.

Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in Superior Court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

Open Public Meetings Act

The Open Public Meetings Act (OPMA) requires that all meetings of the governing body of a public agency be open to and public and all persons shall be allowed to attend. For the purposes of the OPMA, a public agency is defined broadly and includes, but is not limited to, any state board, commission, department, education institution, agency, local government, and special purposes district. A governing body is defined as the multimember board, commission, committee, council, or other policy or rulemaking body of a public agency or any committee thereof that is acting on behalf of the public agency.

A governing body may meet without the public for portions of a regular or special meeting to discuss certain issues. "Executive session" is not expressly defined in the OPMA, but according to the Attorney General's Deskbook, the term is commonly understood to mean that part of a regular or special meeting of the governing body that is closed to the public. A governing body may hold an executive session only for purposes specified in statute and only during a regular or special meeting. Washington courts have held that because an executive session is an exception to the OPMA's overall provisions requiring open meetings, a court will narrowly construe the grounds for an executive session in favor of requiring an open meeting.

Some of the matters that may be discussed in an executive session include: matters affecting national security; the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price; and the qualifications of an applicant for public employment or to review the performance of a public employee.

The Public Records Exemption Accountability Committee (also known as "The Sunshine Committee")

The Public Records Exemption Accountability Committee (Sunshine Committee) is created. The 13-member Sunshine Committee is charged with reviewing all exemptions from public disclosure.

Members of the Sunshine Committee must include two representatives appointed by the Governor, two appointed by the Attorney General, four members of the public, and four members of the Legislature. The Sunshine Committee meets several times per year to discuss

the exemptions and recommend the repeal or amendment of any exemption.

For each public disclosure exemption, the Sunshine Committee must provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15 of each year, the Sunshine Committee must transmit its recommendations to the Governor, the Attorney General, and the appropriate committees of the Legislature.

Summary of Bill:

A 13 member committee is created to study and report on the creation of a board to adjudicate complaints alleging violations of the PRA and the OPMA.

The 13 members will be appointed as follows:

- three will be appointed by the Governor--one representing local government and one representing the public;
- three members will be appointed by the Attorney General--one representing a statewide media association and one representing the public;
- three members will be appointed by the State Auditor--one of whom represents the auditor and two representing the public;
- two members will be appointed by the President of the Senate--one member from each of the two largest caucuses of the Senate; and
- two members appointed by the Speaker of the House of Representatives--one member from each of the two largest caucuses of the House of Representatives.

A committee chair will be selected by the committee membership. Committee members shall be reimbursed for their travel expenses in accordance with current law.

All meetings shall be open to the public, and the committee must consider input from all interested parties. A majority of the committee members shall provide notice of a special meeting for the purpose of convening the initial meeting. This must be held no later than August 1, 2009. The committee must meet at least once per month; however, they may hold additional meetings at the call of the chair or by a majority vote of the committee members.

The committee is tasked with studying, preparing a draft report with recommendations, and seeking prompt comment on the draft on the creation of a state board with the independent authority to:

- review and adjudicate complaints alleging violations of the PRA and the OPMA in an expeditious and inexpensive process;
- enforce the provisions of the PRA and the OPMA;
- offer and provide alternative methods for dispute resolution under the PRA and OPMA;
- issue interpretative opinions of the PRA and the OPMA;
- provide confidential consultation regarding duties under the PRA and the OPMA;
- provide public training on the PRA and the OPMA;

- recommend legislative improvements to the PRA and the OPMA; and
- adopt the necessary rules.

The committee shall also consider how a state board might further the goals of the PRA. In addition, the committee shall consider and report on the efficacy of other state's laws and programs with similar goals administered by state agencies or public officers. The report must detail potential costs or savings, and organizational structure and functions of the proposed administrative tribunal. The report must also recommend for or against the creation of an administrative tribunal. The final report from the committee is due to the Legislature, the Governor, the State Auditor and the Attorney General no later than November 15, 2009.

Staff support to the committee will be provided by the Office of the Attorney General and the Office of the State Auditor.

This act expires June 1, 2010.

Appropriation: None.

Fiscal Note: Requested on January 16, 2009.

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