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**State Government Operations &  
Accountability Committee**

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**HB 1134**

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

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

<p><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Creates the Office of Open Government Ombudsman.</li></ul>
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**Hearing Date:** 2/1/05

**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.

**Summary of 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 State Auditor.

The Ombudsman is directed to:

- Provide training and legal advice to public agencies and the public 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 those records;
- Provide training to state and local agencies regarding agency responsibilities under open public meetings;
- Establish and maintain a public records clearinghouse and an informational web site; and
- Submit annual reports to the State Auditor and the appropriate committees of the legislature analyzing the work of the office.

The duties of reviewing denied public records requests and publishing and updating provisions of the public records act are moved from the Attorney General to the Ombudsman.

**Appropriation:** None.

**Fiscal Note:** Requested on January 24, 2005.

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