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**State Government & Tribal Affairs  
Committee**

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**HB 1139**

**Brief Description:** Concerning providing agencies notice of a dispute under the public records act and an opportunity to cure error in the production of public records.

**Sponsors:** Representatives Armstrong, Taylor, Eddy, Fagan, Hunt, Ross and Kenney; by request of Attorney General.

**Brief Summary of Bill**

- Creates an administrative claims process under which a person has the option of filing a formal claim with an agency before proceeding with court action for an alleged violation of the Public Records Act.

**Hearing Date:** 1/20/11

**Staff:** Thamas Osborn (786-7129).

**Background:**

Public Records Act.

The Public Records Act (PRA) 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

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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.

### **Summary of Bill:**

The Act creates a claims process under which a person (requester) has the option of filing a claim with an agency before proceeding with any court action for an alleged violation of the PRA. The requester may file a claim with the agency following an agency's denial of his/her records request but before initiating legal proceedings under the provisions of the PRA. The Attorney General's Office must provide a claim form on its website that requestors may choose to use.

### Procedural Requirements for Filing and Processing a Claim.

In order to meet specified procedural requirements, the requester's claim must:

- be in written form and filed with the agency;
- be addressed to the public records officer of the agency;
- explicitly state that it is a public records claim; and
- contain specified information necessary for the processing and consideration of the claim.

The information that must be stated on the claim includes:

- the name and address of the requester;
- the identification of the agency to which the the public records request was made;
- a copy of the public records request at issue;
- a description of the the nature of the claim, including specific information identifying the record or records alleged to have been improperly withheld; and
- an explanation as to why the requested records should be produced by the agency.

### Agency's Response to a Claim.

The agency must send a written response to the requester not later than 21 calendar days after the claim is filed. The failure of an agency to send a timely response is deemed to be a rejection of the claim. The response can be sent by post or by electronic means.

After consideration of the claim, the agency must take action on the claim by either:

- granting all or part of the claim by producing some or all of the requested records; or

- rejecting all or part of a claim, including an explanation of the rejection at the agency's option.

Effect of the Claim Process on Legal Proceedings and Legal Remedies.

The statute of limitations on the filing of a legal action under the PRA is tolled during the 21 day period following the submission of a claim by a requester. Once this 21 day tolling period has elapsed, the requester has an additional seven days to file a legal action, regardless of the statute of limitations on such actions.

An agency is not subject to the penalty provisions of the PRA if it provides the requested records in timely response to the claim.

A requester is not required to submit a public records claim to an agency before filing a court action. However, if a requester does not file such a claim, then the agency has 30 calendar days to produce the records following the filing of the court action. If the agency produces the records within this 30 day period, then the court cannot impose any penalty against the agency.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.