

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Chairperson Carlos Mayans at 3:30 p.m. on March 16, 2000 in Room 519-S of the State Capitol.

All members were present.

Committee staff present: Michael Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee: None

Others attending: See Guest List, Attachment 1

The Chair welcomed everyone to the meeting.

He stated a copy of the minutes of the committee minutes of March 9, March 14, and today's meeting will be delivered to members next week and approval requested.

The Chair then stated a copy of a draft **Substitute Bill for HB 2864** (Powers and duties of attorney general and agencies subject to the open public records act and the open public meetings act) was before each committee member. He explained the draft includes passages and ideas from committee members and other legislators for shared "ownership."

Theresa Kiernan then explained each section of the proposed bill, describing the newly-defined position and responsibilities of a Public Access Officer; the administrative authority for public education and the right to open records, issuance of non-binding appealable opinions, subpoena powers in investigating alleged violations; definition of "public record" and the "custodian" responsible for such record; establishes records exempt from the statute; establishes legislative intent relating to open records; and "sunsets" all exemptions on July 1, 2005 unless the Legislature acts to reenact each exemption.

The substitute bill also establishes: a legislator's right to an exempt or confidential record and its use; causes private entities or organizations receiving public moneys to be subject to the act to the extent records for such public money would be subject if the entity was a public agency. Imposition of a civil penalty may be imposed on the agency (not on an officer or employee) if an open records is not disclosed. Ms. Kiernan noted the bill amends the Open Meetings statute by requiring closed or executive meetings to be taped or otherwise recorded, and the recording to be maintained for a period of at least six months.

Representative Dahl questioned the imposition of a \$500 fine and its payment into the Open Records/Open Meetings fund. Ms. Kiernan stated the payment would be earmarked into an Attorney General's budget account for the education required by this act.

Representative Dahl moved that section 13 of the draft bill (relating to penalties for failure to disclose a public record in violation of the act) be deleted. In discussion of the motion, Representative Shriver stated the bill establishes a separate dedicated fund for the Attorney General for fines collected and specifies its use only for educational purposes. Representative Huff stated his belief that fines would not be a significant factor when the new statute becomes operable. There was no second to Representative Dahl's motion.

Representative Jeff Peterson moved to delete sections 14 and 15. Asked the reason for his motion, he stated he would like the committee to have more time to discuss the sections and his belief that inclusion would open criticism of the committee and belief that the Public Access Officer should not have access to records that are not accessible by the public. The Chair asked Representative Peterson if he would divide his motion. Representative Peterson agreed and moved to delete section 14. Representative Hermes seconded the motion. On voice vote, the motion passed. Division was called. On a show of hands, the motion carried 9-8. Representative Huff stated, for the record, he believes lawmakers should have access

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to records. Representative Peterson withdrew his motion to delete section 15.

A question was again raised about section 13. Mr. Phillips stated cases involving those covered in the section are now interpreted narrowly, especially in those cases concerning grants made strictly for a contract for service. There is existing case law to support this interpretation.

Representative Peterson asked if the committee wanted to retain the sunset provision of the bill. Representative O'Connor responded she wanted the provision and if she had her way, the sunset would be one year. The Chair reminded members that the committee held a very healthy discussion on the exemptions and sunset clause during last Tuesday's meeting. No further discussion was held on the issue.

Representative Toplikar moved that the committee adopt **Substitute HB 2864** and pass it out favorably, as amended. Representative Shriver seconded the motion. On voice vote, the motion carried.

The Chair announced this was the last meeting of the committee this session.

The meeting was adjourned at 5:15 p.m.