



KEY COMPONENTS OF TRANSPARENCY LEGISLATION SENATE BILL 189

- **Establishes a Presumption of Transparency.** Creates a presumption that all records are public and confirms if a public body asserts an exemption from disclosure, it has the burden of proving that the record is exempt by clear and convincing evidence.
- **Creates a Clear Process for FOIA Requests.** Creates an easy process for submitting FOIA requests and requires that public bodies designate trained FOIA officers to ensure proper responses.
- **Shortens the Time for Public Bodies to Respond.** Shortens the initial time to respond to a FOIA request from 7 to 5 business days and the time allowed in an extension from 7 to 5 business days.
- **Authorizes Enforcement by Public Access Counselor.** Codifies the Public Access Counselor (PAC) within the Attorney General's Office. Provides the PAC with the authority to review and determine whether documents should have been disclosed under FOIA or whether a public body violated the Open Meetings Act. The PAC will have subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions to resolve disputes, and may sue to enforce the binding opinions.
- **Narrows and Clarifies the Personal Privacy Exemption.** Significantly limits and defines the personal privacy exemption by eliminating "per se" privacy exemptions, creating a clear, narrow category of "private information" that is exempt from disclosure, such as Social Security numbers, and creating a clear definition of "unwarranted invasion of personal privacy."
- **Requires Heightened Scrutiny When Public Bodies Seek to Use the Privacy or Preliminary Draft Exemptions.** Whenever a public body intends to deny access to a record by asserting the personal privacy exemption or the preliminary draft exemption, the public body must notify the Public Access Counselor who can review the assertion of the exemption and deem if it is proper.
- **Limits Copying Charges.** Provides the first 50 pages for black and white, letter or legal sized copies are free and caps the charge for the remaining black and white, letter/legal sized pages at 15 cents per page. For copies in color or in a size other than letter or legal, the bill provides that the public body may not charge more than its actual cost for reproducing the records.

- **Ensures Significant Consequences for Failing to Respond to FOIA Requests.** By failing to respond to a FOIA request, a public body waives the ability to later assert that the request is unduly burdensome or to charge for copying.
- **Establishes Stiff Civil Penalties for FOIA Violations.** Allows courts to impose civil penalties between \$2,500 and \$5,000 against public bodies that willfully and intentionally fail to comply with the law or otherwise act in bad faith. The current law contains *no penalties* for failing to comply with FOIA.
- **Requires that Courts Award Attorneys' Fees to FOIA Requesters Who Prevail in Litigation.** Requires a court to award attorneys' fees to requesters who are forced to file lawsuits to obtain access to public records. The current law permits, but does not require, courts to award attorneys' fees.
- **Requires Public Bodies to Produce Records in Electronic Format.** Requires that if a requester asks for a document that is maintained in an electronic format, the public body "shall furnish it in the electronic format specified by the requester, if feasible."
- **Requires Annual FOIA and Open Meetings Act Training.** Requires public bodies to designate employees, officers or members to complete an annual Open Meetings Act training prepared by the PAC. Also requires public bodies to designate FOIA officers who must successfully complete an annual FOIA training prepared by the PAC.