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Representative Smola supports public records reform

BOSTON – Representative Todd M. Smola (R-Warren, Ranking Member, Committee on Ways & Means) has endorsed legislation updating and reforming the state’s public records laws.

House Bill 4333, An Act to improve public records, was approved by the House of Representatives on May 25 on a vote of 154-0. The final language reflects a compromise reached by a six-member conference committee, which worked to reconcile the differences between the public records bill the House engrossed in November and the version the Senate passed in February.

The conference committee report sets new time limits for state agencies and municipalities to comply with requests for public records. It also caps the amount of money that can be charged for these documents, including copying and labor costs.

“This marks the first significant updating of the state’s public records law in over 40 years,” said Representative Smola. “I’m proud to support these changes, which I believe will help to promote more openness and transparency in state and local government.”

The bill requires cities, towns and state agencies to designate a Records Access Officer (RAO) to oversee all requests for public documents. RAOs will be required to produce documents within 10 business days, but agencies can extend this time frame to 15 business days and municipalities to 25 business days, as long as they provide the requester with written notification detailing the specific reasons additional time is needed.

To comply with more time-consuming requests, agency RAOs can petition the Supervisor of Records in the Secretary of State’s Public Records Division for a one-time

extension of 20 business days, while municipalities can request a one-time extension of 30 business days.

Photocopying costs for public records requests will be set at 5 cents per page, with a \$25 hourly wage allowed for labor. Agencies will be prohibited from charging labor costs for the first four hours spent fulfilling a request, while municipalities with a population of 20,000 or more cannot charge for the first two hours of work. Communities with a population of 20,000 or less are exempt from this restriction.

The conference committee report also retains language, sponsored by Assistant Minority Leader Brad Hill (R-Ipswich), to establish a special legislative commission to examine the constitutionality and practicality of subjecting the legislative, executive and judicial branches to the public records law. The commission will also consider expanding the definition of what constitutes a public record, and will report back to the Legislature with its recommendations by December 30, 2017.

The bill also:

- Sets legal procedures for appealing public records requests, and allows the superior court to assess punitive damages between \$1,000 and \$5,000 if an agency or municipality was determined to have improperly withheld public records, failed to produce the records in a timely fashion, assessed unreasonable fees or otherwise failed to act in good faith;
- Allows the superior court to award reasonable attorneys' fees and other litigation costs, in addition to waiving fees;
- Creates a Public Records Assistance Fund, overseen by the Massachusetts Office of Information Technology (Mass IT) and funded in part by punitive damages assessed for violations of the public records law, to assist municipalities with their compliance with the law;
- Requires RAOs, to the extent feasible, to provide commonly available public records on a website;
- Directs the Supervisor of Records to create education and training materials to improve public records access, as well as forms, guidelines, and reference materials that will be made available for free on a website maintained by the Secretary of State;
- Allows RAOs to deny public records requests made by individuals who failed to compensate the agency or municipality for previously produced public records, a provision that was added to the House version of the bill last November by House Minority Leader Bradley H. Jones, Jr. (R-North Reading) to protect municipalities from wasting precious resources without being adequately compensated; and

- Establishes a working group to review and evaluate the application of the public records law as it relates to law enforcement, with a report due by December 30, 2017.

The changes to the public records law are scheduled to take effect on January 1, 2017. Requests for public documents filed prior to this date will still be subject to the provisions of current state law.

The bill, which has also passed the Senate, now heads to Governor Baker's desk for his signature.

For additional information please contact Representative Smola at Todd.Smola@mahouse.gov or (617)722-2100.

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