2005 Public Disclosure Act Legislation
SUMMARY OF HB 1758 AND SB 5735:

- Primary goal is to increase the public's access to public records.
- Clarifies that state agencies and municipalities can protect their attorney-client communications, but clearly defines the attorney-client privilege to ensure agencies and municipalities only invoke the privilege in the appropriate circumstances.
- Provides that agencies and municipalities can provide large records requests to the public on a "rolling basis" - that is, provide a small batch of records first and then another batch when the next batch is ready.
- Clarifies that agencies and municipalities cannot just tell a requestor that his or her request is "overbroad." Instead, agencies and municipalities must seek clarifications, if possible, from the requestor of the records he or she is seeking.
- Allows the State Auditor to audit agencies and municipalities when they claim that their actual cost of providing a copy of a record is more than the standard $0.15 per page.
- Provides that an agency or municipality must designate a public records officer who can assist the public in making requests, but does not require an extra person be hired.
- Allows the Attorney General to draft model guidelines for agencies and municipalities on the details of providing public records. These guidelines, which are essentially "best practices" for agencies and municipalities, would be voluntary.
- Adjusts the penalty an agency or municipality must pay for violating the public records act. The current amount is between $5 and $100 per day (the exact amount is set by a judge). The new amount is between $50 and $500 per day.

SECTION-BY-SECTION ANALYSIS OF HB 1758 AND SB 5735:

Sec. 1: Provides that the attorney-client privilege is an exemption from disclosure. Defines the privilege and limits its use to the parameters described in 2004 by the Solicitor General.

Sec. 2: Adds the "rolling basis" provision and eliminates the "overbroad" response.

Sec. 3: Provides that if an agency charges more than the standard $0.15 per page for copying, based on the agency's actual cost of copying, that the agency will document its actual costs, and this documentation will be subject to audit by the State Auditor for accuracy.

Sec. 4: Provides that an agency must appoint a public disclosure officer.

Sec. 5: Requires an agency to publicize the contact information for the public disclosure officer. Grants the Attorney General authority to adopt a model public records rule by February 1, 2006 that would address the following: providing the fullest assistance to requestors, indexing public records, fulfilling large requests in the most timely manner, fulfilling requests for electronic records, and other issues as determined by the Attorney General.

Sec. 6: Addresses the penalty and venue for cases against counties, and provides a one-year statute of limitation. The penalty, set in 1992, is increased from $5 to $100

per day to $50 to $500 per day.