



## **LEGISLATIVE BRIEF: OPEN GOVERNMENT**

### **Background**

H1134 would “create the Open Government Unit of the Department of Justice, establish a fee for services of moderation and mediation by the Open Government Unit, and provide that the successful plaintiff in a public records dispute is entitled to reasonable attorneys’ fees.” The bill was approved by the House and sent to the Senate in July 2009.

It would create a new unit under the supervision of the Attorney General to develop programs to educate the public, help resolve “public records and open meetings issues” or “open government disputes,” maintain a collection of “relevant state laws, opinions, rules and regulations related to public records and open meetings laws,” and develop policies and procedures to accomplish these functions. The bill also makes it easier for plaintiffs successfully compelling disclosure of public records to collect attorneys’ fees from public bodies, including local governments, by eliminating the ability of the public body to rely on its own attorney in refusing to release records and by limiting judicial discretion in awarding attorneys’ fees.

### **Outlook for 2010**

The Association opposed this legislation in 2009 and sought an amendment to the bill to restore governmental bodies’ ability to rely on their attorneys in making good faith judgments to withhold records. We are concerned that the requirement that a body seek an Attorney General’s opinion to shield itself from liability (for attorneys’ fees awards) will result in unnecessary delay and cost (if the request for an Attorney General’s opinion is handled by the newly created Open Government Unit, to be supported by fees). The bill as written is not eligible for consideration by the Senate in the short session because it did not “cross over” from the House to the Senate before the deadline stated in the Senate rules. It could, however, be altered or inserted into other legislation in order to circumvent the rule.