

SENATE BILL REPORT

SB 6368

As of January 18, 2010

Title: An act relating to conferences regarding public records requests violations.

Brief Description: Concerning conferences prior to filing actions alleging a public records request violation.

Sponsors: Senators Hatfield and Regala.

Brief History:

Committee Activity: Government Operations & Elections: 1/19/10.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Staff: Alison Mendiola (786-7483)

Background: The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either: (1) provide the records; (2) provide a reasonable estimate of the time the agency will take to respond to this request; or (3) deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial. Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is *de novo* and the court may examine the record in camera.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 and no more than \$100 for each day the person was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

Summary of Bill: Prior to filing a court action alleging a violation of the PRA, the requester and the agency may confer in person or by telephone regarding any dispute.

No motion for having been denied an opportunity to inspect or copy a public record by an agency should be filed until 15 days after such a conference. The one-year statute of limitations and daily penalties are tolled during this 15-day period.

The requester or the agency filing suit must include a certification that they have met, or an explanation of why they have not met. A requester is not required to explain any purpose or reason for requesting the records.

If a requester or any agency files suit without conducting a conference in good faith, or if the requester files suit without waiting 15 days after the conference, the court has the discretion to reduce or eliminate any award for costs, including daily penalties. The court may consider, among other things, whether the requester needed the records in less than 15 days or whether a conference would have been futile.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.