

SENATE BILL REPORT

SB 6408

As of January 25, 2010

Title: An act relating to remedies for actions under the public records act.

Brief Description: Changing remedies for actions under the public records act.

Sponsors: Senators Fairley, Honeyford and Haugen.

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. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record must be awarded all costs, including reasonable

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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: If a requester prevails against an agency in a public records act claim, the court may award all costs, including reasonable attorney fees, and may impose a fine on the responsible agency. That fine is to be deposited in the archives and records management account, the purpose of which is to enhance the preservation and availability of the state's public records.

The court may award a portion of the fine to the prevailing requester in an amount that reimburses the requester for any demonstrated financial loss caused by the agency's failure to release a public record or respond to a request in a timely manner.

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.