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**SUBSTITUTE SENATE BILL 6408**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Government Operations & Elections (originally sponsored by Senators Fairley, Honeyford, and Haugen)

READ FIRST TIME 02/01/10.

1       AN ACT Relating to remedies for actions under the public records  
2 act; reenacting and amending RCW 42.56.550; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       **Sec. 1.** RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are  
5 each reenacted and amended to read as follows:

6       (1) Upon the motion of any person having been denied an opportunity  
7 to inspect or copy a public record by an agency, the superior court in  
8 the county in which a record is maintained may require the responsible  
9 agency to show cause why it has refused to allow inspection or copying  
10 of a specific public record or class of records. The burden of proof  
11 shall be on the agency to establish that refusal to permit public  
12 inspection and copying is in accordance with a statute that exempts or  
13 prohibits disclosure in whole or in part of specific information or  
14 records.

15       (2) Upon the motion of any person who believes that an agency has  
16 not made a reasonable estimate of the time that the agency requires to  
17 respond to a public record request, the superior court in the county in  
18 which a record is maintained may require the responsible agency to show

1 that the estimate it provided is reasonable. The burden of proof shall  
2 be on the agency to show that the estimate it provided is reasonable.

3 (3) Judicial review of all agency actions taken or challenged under  
4 RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take  
5 into account the policy of this chapter that free and open examination  
6 of public records is in the public interest, even though such  
7 examination may cause inconvenience or embarrassment to public  
8 officials or others. Courts may examine any record in camera in any  
9 proceeding brought under this section. The court may conduct a hearing  
10 based solely on affidavits.

11 (4) Any person who prevails against an agency in any action in the  
12 courts seeking the right to inspect or copy any public record or the  
13 right to receive a response to a public record request within a  
14 reasonable amount of time shall be awarded all costs, including  
15 reasonable attorney fees, incurred in connection with such legal  
16 action. In addition, it shall be within the discretion of the court to  
17 ~~((award such person))~~ impose a fine on the responsible agency an amount  
18 not less than five dollars and not to exceed one hundred dollars for  
19 each day that ~~((he or she))~~ the prevailing person was denied the right  
20 to inspect or copy said public record. The fine shall be deposited in  
21 the archives and records management account established in RCW  
22 40.14.025 to enhance the preservation and availability of the state's  
23 public records. However, the court may award a portion of the fine to  
24 the prevailing person in an amount that reimburses the person for any  
25 demonstrated financial loss caused by the failure of the agency to  
26 timely release the public record or respond to the request.

27 (5) For actions under this section against counties, the venue  
28 provisions of RCW 36.01.050 apply.

29 (6) Actions under this section must be filed within one year of the  
30 agency's claim of exemption or the last production of a record on a  
31 partial or installment basis.

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