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# SENATE BILL No. 371

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14.

**Synopsis:** Penalties imposed by public access counselor. Establishes an education fund to fund programs to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. Allows the public access counselor to assess civil penalties against a public agency for violating the public records law. Requires any civil penalties collected to be deposited in the education fund. Allows the public access counselor to obtain an administrative subpoena to compel production of public records denied by a public agency if the public access counselor determines that the records were wrongfully withheld.

**Effective:** July 1, 2011.

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**Mrvan**

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January 11, 2011, read first time and referred to Committee on Rules and Legislative Procedure.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 371



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-14-3-11 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2011]: **Sec. 11. (a) In addition to any other civil or criminal**
- 4 **penalty imposed, if an officer or employee of a public agency**
- 5 **knowingly, intentionally, or recklessly does any of the following,**
- 6 **the public access counselor may impose a civil penalty against the**
- 7 **public agency under this section:**
- 8 (1) **Denies or interferes with a person's request for inspection**
- 9 **or copying of a public record if:**
- 10 (A) **the person's request meets the requirements of this**
- 11 **chapter; and**
- 12 (B) **the record is subject to disclosure by law.**
- 13 (2) **Charges a copying fee that exceeds the amount permitted**
- 14 **by this chapter.**
- 15 (3) **Discloses without authorization or fails to protect**
- 16 **information classified as confidential by state statute.**
- 17 (b) **If the public access counselor determines that a public**



1 agency is subject to a civil penalty under subsection (a), the public  
2 access counselor may assess the following civil penalties against the  
3 public agency:

4 (1) Not more than one hundred dollars (\$100) for the first  
5 violation.

6 (2) Not more than five hundred dollars (\$500) for each  
7 additional violation.

8 A civil penalty imposed against a public agency shall be paid from  
9 the public agency's budget.

10 (c) Any penalties assessed under this section shall be deposited  
11 in the education fund established by IC 5-14-4-14.

12 (d) A public official or an employee of a public agency is not  
13 personally liable for a civil penalty imposed under this section.

14 SECTION 2. IC 5-14-4-10 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. The counselor has  
16 the following powers and duties:

17 (1) To establish and administer a program to train public officials  
18 and educate the public on the rights of the public and the  
19 responsibilities of public agencies under the public access laws.  
20 The counselor may contract with a person or a public or private  
21 entity to fulfill the counselor's responsibility under this  
22 subdivision.

23 (2) To conduct research.

24 (3) To prepare interpretive and educational materials and  
25 programs in cooperation with the office of the attorney general.

26 (4) To distribute to newly elected or appointed public officials the  
27 public access laws and educational materials concerning the  
28 public access laws.

29 (5) To respond to informal inquiries made by the public and  
30 public agencies by telephone, in writing, in person, by facsimile,  
31 or by electronic mail concerning the public access laws.

32 (6) To issue advisory opinions to interpret the public access laws  
33 upon the request of a person or a public agency. However, the  
34 counselor may not issue an advisory opinion concerning a specific  
35 matter with respect to which a lawsuit has been filed under  
36 IC 5-14-1.5 or IC 5-14-3.

37 (7) To make recommendations to the general assembly  
38 concerning ways to improve public access.

39 (8) To impose civil penalties against a public agency under  
40 IC 5-14-3-11.

41 (9) To compel the production of public records of a public  
42 agency by a subpoena enforceable by the circuit or superior

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1           **court of the county where the subpoena is to be issued.**  
 2           SECTION 3. IC 5-14-4-14 IS ADDED TO THE INDIANA CODE  
 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 4 1, 2011]: **Sec. 14. (a) An education fund is established to fund a**  
 5 **program under section 10(1) of this chapter to train public officials**  
 6 **and educate the public on the rights of the public and the**  
 7 **responsibilities of public agencies under the public access laws.**

8           **(b) The fund consists of the following:**  
 9           **(1) Civil penalties collected under IC 5-14-3-11.**  
 10           **(2) Money appropriated by the general assembly.**  
 11           **(3) Grants, gifts, contributions, and money received from any**  
 12 **other source.**

13           **(c) The treasurer of state shall administer the fund. The**  
 14 **following may be paid from money in the fund:**  
 15           **(1) Expenses of administering the fund.**  
 16           **(2) Nonrecurring administrative expenses incurred to carry**  
 17 **out the purposes of this section.**

18           **(d) Money in the fund at the end of a state fiscal year does not**  
 19 **revert to the state general fund.**

20           **(e) The treasurer of state shall invest the money in the fund not**  
 21 **currently needed to meet the obligations of the fund in the same**  
 22 **manner as other public funds may be invested. Interest that**  
 23 **accrues from these investments shall be deposited in the fund.**

24           SECTION 4. IC 5-14-5-13 IS ADDED TO THE INDIANA CODE  
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 26 1, 2011]: **Sec. 13. (a) This section applies if the public access**  
 27 **counselor issues an advisory opinion on a formal complaint finding**  
 28 **that a public agency wrongfully denied access to a public record.**  
 29 **On behalf of the person filing the formal complaint, the public**  
 30 **access counselor may compel production of the records from the**  
 31 **public agency under an administrative subpoena issued under**  
 32 **IC 4-21.5-3.**

33           **(b) If a public agency refuses to produce the records that are the**  
 34 **subject of an administrative subpoena, the public access counselor**  
 35 **may petition for a court order compelling compliance with the**  
 36 **subpoena under IC 4-21.5-6.**

37           **(c) If the public access counselor requests a subpoena under this**  
 38 **section, the public agency shall notify each person who supplied**  
 39 **any part of the public record at issue that:**  
 40           **(1) a request for release of the public record has been denied;**  
 41 **and**  
 42           **(2) the public access counselor has requested the issuance of**

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1                    **an administrative subpoena.**  
2                    **A person notified under this subsection is entitled to intervene in**  
3                    **any litigation that results from the denial.**

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