



January 23, 2012

HOUSE BILL No. 1093

DIGEST OF HB 1093 (Updated January 17, 2012 12:52 pm - DI 87)

Citations Affected: IC 5-14; IC 34-30.

Synopsis: Public access issues. Requires a public agency to: (1) allow inspection or copying; or (2) make copies; of a public record within a reasonable time after the request is received by the agency. Provides that a court may impose a civil penalty against: (1) an officer of a public agency or an individual employed in a management level position with a public agency; or (2) the public agency; for violating the open door law with specific intent to violate the law if the plaintiff obtained an advisory opinion from the public access counselor before filing an action. Provides that a court may impose a civil penalty against an officer, management level employee, or the public agency for violating the public records law if the officer, management level employee, or agency: (1) continues to deny a request for a public record after the public access counselor has issued an advisory opinion that instructs the agency to allow access to the public record; and (2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure. Provides that an individual or agency could be subject to a civil penalty if the individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order. Provides that a court may not impose a civil penalty unless the public access counselor has issued an advisory opinion that instructs the public agency to allow access to the public record before the lawsuit is filed. Provides that it is a defense to the imposition of a civil penalty under this section for a violation of the open door law or public records law if the individual
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Effective: July 1, 2012.

Mahan, Richardson, Clere

January 9, 2012, read first time and referred to Committee on Government and Regulatory Reform.
January 23, 2012, amended, reported — Do Pass.

HB 1093—LS 6571/DI 87+



Digest Continued

acted in reliance on an opinion of the public agency's legal counsel or an opinion of the attorney general. Provides that a court may impose a civil penalty of: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations. Provides that a court may: (1) impose only one civil penalty against an individual in an action even if the court finds that the individual committed multiple violations; and (2) impose another civil penalty against the individual in a separate action. Provides that if an officer of a state or local government agency orders a management level employee to: (1) not give proper notice of a public meeting or executive session; or (2) deny or interfere with a person's request to inspect or copy a public document; the employee is not subject to a civil penalty for violating the statute. Provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Provides that a court may not declare a governmental action void for failure to give notice by electronic mail or posting on the local government agency's web site if the agency made a good faith effort to comply with the statute. Provides that a public agency may withhold personal information from public disclosure regarding an individual less than 18 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. Requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the public records act. Creates an education fund for a program administered by the public access counselor 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. Provides that a public agency has discretion as to whether to disclose a public record requested by an offender containing personal information relating to a judge, law enforcement officer, or family member of a judge or law enforcement officer.

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January 23, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1093

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 5-14-1.5-5, AS AMENDED BY P.L.177-2005,
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 5. (a) Public notice of the date, time, and place of
4 any meetings, executive sessions, or of any rescheduled or reconvened
5 meeting, shall be given at least forty-eight (48) hours (excluding
6 Saturdays, Sundays, and legal holidays) before the meeting. This
7 requirement does not apply to reconvened meetings (not including
8 executive sessions) where announcement of the date, time, and place
9 of the reconvened meeting is made at the original meeting and recorded
10 in the memoranda and minutes thereof, and there is no change in the
11 agenda.

12 (b) Public notice shall be given by the governing body of a public
13 agency ~~by~~ **as follows:**

14 (1) **The governing body of a public agency shall give public**
15 **notice by** posting a copy of the notice at the principal office of the

HB 1093—LS 6571/DI 87+



1 public agency holding the meeting or, if no such office exists, at
2 the building where the meeting is to be held. ~~and~~

3 **(2) The governing body of a public agency shall give public**
4 **notice by** delivering notice to all news media which deliver by
5 ~~January †~~ an annual written request for ~~such the~~ notices **not later**
6 **than December 31** for the next succeeding calendar year to the
7 governing body of the public agency. The governing body shall
8 give notice by one (1) of the following methods, **which shall be**
9 **determined by the governing body:**

10 (A) Depositing the notice in the United States mail with
11 postage prepaid.

12 (B) Transmitting the notice by electronic mail, **if the public**
13 **agency has the capacity to transmit electronic mail.**

14 (C) Transmitting the notice by facsimile (fax).

15 **(3) This subdivision applies only to the governing body of a**
16 **public agency of a political subdivision described in section**
17 **2(a)(2), 2(a)(4), or 2(a)(5) of this chapter that has the capacity**
18 **to send electronic mail or has an Internet web site. The**
19 **governing body of a public agency shall give public notice by**
20 **delivering notice to any person (other than news media) who**
21 **delivers to the governing body of the public agency an annual**
22 **written request for the notices not later than December 31 for**
23 **the next succeeding calendar year. The governing body shall**
24 **give notice by one (1) of the following methods, which shall be**
25 **determined by the governing body:**

26 (A) **Transmitting the notice by electronic mail, if the public**
27 **agency has the capacity to send electronic mail.**

28 (B) **Publishing the notice on the public agency's Internet**
29 **web site at least forty-eight (48) hours in advance of the**
30 **meeting, if the public agency has an Internet web site.**

31 **A court may not declare void any policy, decision, or final action**
32 **under section 7 of this chapter based on a failure to give a person**
33 **notice under subdivision (3) if the public agency made a good faith**
34 **effort to comply with subdivision (3).** If a governing body comes into
35 existence after ~~January †~~, **December 31**, it shall comply with this
36 ~~subdivision~~ **subsection** upon receipt of a written request for notice. In
37 addition, a state agency (as defined in IC 4-13-1-1) shall provide
38 electronic access to the notice through the computer gateway
39 administered by the office of technology established by IC 4-13.1-2-1.

40 (c) Notice of regular meetings need be given only once each year,
41 except that an additional notice shall be given where the date, time, or
42 place of a regular meeting or meetings is changed. This subsection does

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1 not apply to executive sessions.

2 (d) If a meeting is called to deal with an emergency involving actual
3 or threatened injury to person or property, or actual or threatened
4 disruption of the governmental activity under the jurisdiction of the
5 public agency by any event, then the time requirements of notice under
6 this section shall not apply, but:

7 (1) news media which have requested notice of meetings **under**
8 **subsection (b)(2)** must be given the same notice as is given to the
9 members of the governing body; and

10 (2) the public must be notified by posting a copy of the notice
11 according to ~~this section~~: **subsection (b)(1)**.

12 (e) This section shall not apply where notice by publication is
13 required by statute, ordinance, rule, or regulation.

14 (f) This section shall not apply to:

15 (1) the department of local government finance, the Indiana board
16 of tax review, or any other governing body which meets in
17 continuous session, except that this section applies to meetings of
18 these governing bodies which are required by or held pursuant to
19 statute, ordinance, rule, or regulation; or

20 (2) the executive of a county or the legislative body of a town if
21 the meetings are held solely to receive information or
22 recommendations in order to carry out administrative functions,
23 to carry out administrative functions, or confer with staff
24 members on matters relating to the internal management of the
25 unit. "Administrative functions" do not include the awarding of
26 contracts, the entering into contracts, or any other action creating
27 an obligation or otherwise binding a county or town.

28 (g) This section does not apply to the general assembly.

29 (h) Notice has not been given in accordance with this section if a
30 governing body of a public agency convenes a meeting at a time so
31 unreasonably departing from the time stated in its public notice that the
32 public is misled or substantially deprived of the opportunity to attend,
33 observe, and record the meeting.

34 SECTION 2. IC 5-14-1.5-7, AS AMENDED BY P.L.179-2007,
35 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2012]: Sec. 7. (a) An action may be filed by any person in any
37 court of competent jurisdiction to:

38 (1) obtain a declaratory judgment;

39 (2) enjoin continuing, threatened, or future violations of this
40 chapter; or

41 (3) declare void any policy, decision, or final action:

42 (A) taken at an executive session in violation of section 3(a) of

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- 1 this chapter;
 2 (B) taken at any meeting of which notice is not given in
 3 accordance with section 5 of this chapter;
 4 (C) that is based in whole or in part upon official action taken
 5 at any:
 6 (i) executive session in violation of section 3(a) of this
 7 chapter;
 8 (ii) meeting of which notice is not given in accordance with
 9 section 5 of this chapter; or
 10 (iii) series of gatherings in violation of section 3.1 of this
 11 chapter; or
 12 (D) taken at a meeting held in a location in violation of section
 13 8 of this chapter.

14 The plaintiff need not allege or prove special damage different from
 15 that suffered by the public at large.

16 (b) Regardless of whether a formal complaint or an informal inquiry
 17 is pending before the public access counselor, any action to declare any
 18 policy, decision, or final action of a governing body void, or to enter an
 19 injunction which would invalidate any policy, decision, or final action
 20 of a governing body, based on violation of this chapter occurring before
 21 the action is commenced, shall be commenced:

- 22 (1) prior to the delivery of any warrants, notes, bonds, or
 23 obligations if the relief sought would have the effect, if granted,
 24 of invalidating the notes, bonds, or obligations; or
 25 (2) with respect to any other subject matter, within thirty (30)
 26 days of either:

- 27 (A) the date of the act or failure to act complained of; or
 28 (B) the date that the plaintiff knew or should have known that
 29 the act or failure to act complained of had occurred;

30 whichever is later. If the challenged policy, decision, or final action is
 31 recorded in the memoranda or minutes of a governing body, a plaintiff
 32 is considered to have known that the act or failure to act complained of
 33 had occurred not later than the date that the memoranda or minutes are
 34 first available for public inspection.

35 (c) If a court finds that a governing body of a public agency has
 36 violated this chapter, it may not find that the violation was cured by the
 37 governing body by only having taken final action at a meeting that
 38 complies with this chapter.

39 (d) In determining whether to declare any policy, decision, or final
 40 action void, a court shall consider the following factors among other
 41 relevant factors:

- 42 (1) The extent to which the violation:

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- 1 (A) affected the substance of the policy, decision, or final
- 2 action;
- 3 (B) denied or impaired access to any meetings that the public
- 4 had a right to observe and record; and
- 5 (C) prevented or impaired public knowledge or understanding
- 6 of the public's business.
- 7 (2) Whether voiding of the policy, decision, or final action is a
- 8 necessary prerequisite to a substantial reconsideration of the
- 9 subject matter.
- 10 (3) Whether the public interest will be served by voiding the
- 11 policy, decision, or final action by determining which of the
- 12 following factors outweighs the other:
- 13 (A) The remedial benefits gained by effectuating the public
- 14 policy of the state declared in section 1 of this chapter.
- 15 (B) The prejudice likely to accrue to the public if the policy,
- 16 decision, or final action is voided, including the extent to
- 17 which persons have relied upon the validity of the challenged
- 18 action and the effect declaring the challenged action void
- 19 would have on them.
- 20 (4) Whether the defendant acted in compliance with an informal
- 21 inquiry response or advisory opinion issued by the public access
- 22 counselor concerning the violation.
- 23 (e) If a court declares a policy, decision, or final action of a
- 24 governing body of a public agency void, the court may enjoin the
- 25 governing body from subsequently acting upon the subject matter of
- 26 the voided act until it has been given substantial reconsideration at a
- 27 meeting or meetings that comply with this chapter.
- 28 (f) In any action filed under this section, a court shall award
- 29 reasonable attorney's fees, court costs, and other reasonable expenses
- 30 of litigation to the prevailing party if:
- 31 (1) the plaintiff prevails; or
- 32 (2) the defendant prevails and the court finds that the action is
- 33 frivolous and vexatious.
- 34 The plaintiff is not eligible for the awarding of attorney's fees, court
- 35 costs, and other reasonable expenses if the plaintiff filed the action
- 36 without first seeking and receiving an informal inquiry response or
- 37 advisory opinion from the public access counselor, unless the plaintiff
- 38 can show the filing of the action was necessary to prevent a violation
- 39 of this chapter.
- 40 (g) **A court may assess a civil penalty under section 7.5 of this**
- 41 **chapter only if the plaintiff obtained an advisory opinion from the**
- 42 **public access counselor before filing an action under this section as**

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1 **set forth in section 7.5 of this chapter.**

2 ~~(g)~~ **(h)** A court shall expedite the hearing of an action filed under
3 this section.

4 SECTION 3. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2012]: **Sec. 7.5. (a) This section applies only
7 to an individual who is:**

8 **(1) an officer of a public agency; or**

9 **(2) employed in a management level position with a public
10 agency.**

11 **(b) If an individual with the specific intent to violate the law fails
12 to perform a duty imposed on the individual under this chapter by:**

13 **(1) failing to give proper notice of a regular meeting, special
14 meeting, or executive session;**

15 **(2) taking final action outside a regular meeting or special
16 meeting;**

17 **(3) participating in a secret ballot during a meeting;**

18 **(4) discussing in an executive session subjects not eligible for
19 discussion in an executive session;**

20 **(5) failing to prepare a memorandum of a meeting as required
21 by section 4 of this chapter; or**

22 **(6) participating in at least one (1) gathering of a series of
23 gatherings under section 3.1 of this chapter;**

24 **the individual and the public agency are subject to a civil penalty
25 under subsection (f).**

26 **(c) A civil penalty may only be imposed as part of an action filed
27 under section 7 of this chapter. A court may not impose a civil
28 penalty under this section unless the public access counselor has
29 issued an advisory opinion:**

30 **(1) to the complainant and the public agency;**

31 **(2) that finds that the individual or public agency violated this
32 chapter; and**

33 **(3) before the action under section 7 of this chapter is filed.**

34 **Nothing in this section prevents both the complainant and the
35 public agency from requesting an advisory opinion from the public
36 access counselor.**

37 **(d) It is a defense to the imposition of a civil penalty under this
38 section that the individual failed to perform a duty under
39 subsection (b) in reliance on either of the following:**

40 **(1) An opinion of the public agency's legal counsel.**

41 **(2) An opinion of the attorney general.**

42 **(e) Except as provided in subsection (i), in an action filed under**

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1 section 7 of this chapter, a court may impose a civil penalty against
2 one (1) or more of the following:

3 (1) The individual named as a defendant in the action.

4 (2) The public agency named as a defendant in the action.

5 (f) The court may impose against each defendant listed in
6 subsection (c) the following civil penalties:

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

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

11 A civil penalty imposed under this section is in addition to any
12 other civil or criminal penalty imposed. However, in any one (1)
13 action brought under section 7 of this chapter, a court may impose
14 only one (1) civil penalty against an individual, even if the court
15 finds that the individual committed multiple violations. This
16 subsection does not preclude a court from imposing another civil
17 penalty against an individual in a separate action, but an individual
18 may not be assessed more than one (1) civil penalty in any one (1)
19 action brought under this section.

20 (g) A court shall distribute monthly to the auditor of state any
21 penalties collected under this section for deposit in the education
22 fund established by IC 5-14-4-14.

23 (h) An individual is personally liable for a civil penalty imposed
24 on the individual under this section. A civil penalty imposed
25 against a public agency under this section shall be paid from the
26 public agency's budget.

27 (i) If an officer of a public agency directs an individual who is
28 employed in a management level position to fail to give proper
29 notice as described in subsection (b)(1), the management level
30 employee is not subject to civil penalties under subsection (f).

31 SECTION 4. IC 5-14-3-3, AS AMENDED BY P.L.2-2007,
32 SECTION 100, IS AMENDED TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Any person may inspect and
34 copy the public records of any public agency during the regular
35 business hours of the agency, except as provided in section 4 of this
36 chapter. A request for inspection or copying must:

37 (1) identify with reasonable particularity the record being
38 requested; and

39 (2) be, at the discretion of the agency, in writing on or in a form
40 provided by the agency.

41 No request may be denied because the person making the request
42 refuses to state the purpose of the request, unless such condition is

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1 required by other applicable statute.

2 (b) A public agency may not deny or interfere with the exercise of

3 the right stated in subsection (a). **Within a reasonable time after the**

4 **request is received by the agency,** the public agency shall either:

5 (1) provide the requested copies to the person making the request;

6 or

7 (2) allow the person to make copies:

8 (A) on the agency's equipment; or

9 (B) on the person's own equipment.

10 (c) Notwithstanding subsections (a) and (b), a public agency may or

11 may not do the following:

12 (1) In accordance with a contract described in section 3.5 of this

13 chapter, permit a person to inspect and copy through the use of

14 enhanced access public records containing information owned by

15 or entrusted to the public agency.

16 (2) Permit a governmental entity to use an electronic device to

17 inspect and copy public records containing information owned by

18 or entrusted to the public agency.

19 (d) Except as provided in subsection (e), a public agency that

20 maintains or contracts for the maintenance of public records in an

21 electronic data storage system shall make reasonable efforts to provide

22 to a person making a request a copy of all disclosable data contained

23 in the records on paper, disk, tape, drum, or any other method of

24 electronic retrieval if the medium requested is compatible with the

25 agency's data storage system. This subsection does not apply to an

26 electronic map.

27 (e) A state agency may adopt a rule under IC 4-22-2, and a political

28 subdivision may enact an ordinance, prescribing the conditions under

29 which a person who receives information on disk or tape under

30 subsection (d) may or may not use the information for commercial

31 purposes, including to sell, advertise, or solicit the purchase of

32 merchandise, goods, or services, or sell, loan, give away, or otherwise

33 deliver the information obtained by the request to any other person for

34 these purposes. Use of information received under subsection (d) in

35 connection with the preparation or publication of news, for nonprofit

36 activities, or for academic research is not prohibited. A person who

37 uses information in a manner contrary to a rule or ordinance adopted

38 under this subsection may be prohibited by the state agency or political

39 subdivision from obtaining a copy or any further data under subsection

40 (d).

41 (f) Notwithstanding the other provisions of this section, a public

42 agency is not required to create or provide copies of lists of names and

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1 addresses (including electronic mail account addresses) unless the
 2 public agency is required to publish such lists and disseminate them to
 3 the public under a statute. However, if a public agency has created a
 4 list of names and addresses (excluding electronic mail account
 5 addresses) it must permit a person to inspect and make memoranda
 6 abstracts from the list unless access to the list is prohibited by law. The
 7 lists of names and addresses (including electronic mail account
 8 addresses) described in subdivisions (1) through (3) may not be
 9 disclosed by public agencies to any individual or entity for political
 10 purposes and may not be used by any individual or entity for political
 11 purposes. In addition, the lists of names and addresses (including
 12 electronic mail account addresses) described in subdivisions (1)
 13 through (3) may not be disclosed by public agencies to commercial
 14 entities for commercial purposes and may not be used by commercial
 15 entities for commercial purposes. The prohibition in this subsection
 16 against the disclosure of lists for political or commercial purposes
 17 applies to the following lists of names and addresses (including
 18 electronic mail account addresses):

- 19 (1) A list of employees of a public agency.
 20 (2) A list of persons attending conferences or meetings at a state
 21 educational institution or of persons involved in programs or
 22 activities conducted or supervised by the state educational
 23 institution.
 24 (3) A list of students who are enrolled in a public school
 25 corporation if the governing body of the public school corporation
 26 adopts a policy:
 27 (A) with respect to disclosure related to a commercial purpose,
 28 prohibiting the disclosure of the list to commercial entities for
 29 commercial purposes;
 30 (B) with respect to disclosure related to a commercial purpose,
 31 specifying the classes or categories of commercial entities to
 32 which the list may not be disclosed or by which the list may
 33 not be used for commercial purposes; or
 34 (C) with respect to disclosure related to a political purpose,
 35 prohibiting the disclosure of the list to individuals and entities
 36 for political purposes.

37 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform
 38 and may not discriminate among similarly situated commercial entities.
 39 For purposes of this subsection, "political purposes" means influencing
 40 the election of a candidate for federal, state, legislative, local, or school
 41 board office or the outcome of a public question or attempting to solicit
 42 a contribution to influence the election of a candidate for federal, state,

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1 legislative, local, or school board office or the outcome of a public
2 question.

3 (g) A public agency may not enter into or renew a contract or an
4 obligation:

- 5 (1) for the storage or copying of public records; or
- 6 (2) that requires the public to obtain a license or pay copyright
7 royalties for obtaining the right to inspect and copy the records
8 unless otherwise provided by applicable statute;

9 if the contract, obligation, license, or copyright unreasonably impairs
10 the right of the public to inspect and copy the agency's public records.

11 (h) If this section conflicts with IC 3-7, the provisions of IC 3-7
12 apply.

13 SECTION 5. IC 5-14-3-4, AS AMENDED BY P.L.170-2011,
14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2012]: Sec. 4. (a) The following public records are excepted
16 from section 3 of this chapter and may not be disclosed by a public
17 agency, unless access to the records is specifically required by a state
18 or federal statute or is ordered by a court under the rules of discovery:

- 19 (1) Those declared confidential by state statute.
- 20 (2) Those declared confidential by rule adopted by a public
21 agency under specific authority to classify public records as
22 confidential granted to the public agency by statute.
- 23 (3) Those required to be kept confidential by federal law.
- 24 (4) Records containing trade secrets.
- 25 (5) Confidential financial information obtained, upon request,
26 from a person. However, this does not include information that is
27 filed with or received by a public agency pursuant to state statute.
- 28 (6) Information concerning research, including actual research
29 documents, conducted under the auspices of a state educational
30 institution, including information:
 - 31 (A) concerning any negotiations made with respect to the
32 research; and
 - 33 (B) received from another party involved in the research.
- 34 (7) Grade transcripts and license examination scores obtained as
35 part of a licensure process.
- 36 (8) Those declared confidential by or under rules adopted by the
37 supreme court of Indiana.
- 38 (9) Patient medical records and charts created by a provider,
39 unless the patient gives written consent under IC 16-39 or as
40 provided under IC 16-41-8.
- 41 (10) Application information declared confidential by the board
42 of the Indiana economic development corporation under

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- 1 IC 5-28-16.
- 2 (11) A photograph, a video recording, or an audio recording of an
- 3 autopsy, except as provided in IC 36-2-14-10.
- 4 (12) A Social Security number contained in the records of a
- 5 public agency.
- 6 (13) The following information that is part of a foreclosure action
- 7 subject to IC 32-30-10.5:
- 8 (A) Contact information for a debtor, as described in
- 9 IC 32-30-10.5-8(d)(2)(B).
- 10 (B) Any document submitted to the court as part of the debtor's
- 11 loss mitigation package under IC 32-30-10.5-10(a)(3).
- 12 (b) Except as otherwise provided by subsection (a), the following
- 13 public records shall be excepted from section 3 of this chapter at the
- 14 discretion of a public agency:
- 15 (1) Investigatory records of law enforcement agencies. However,
- 16 certain law enforcement records must be made available for
- 17 inspection and copying as provided in section 5 of this chapter.
- 18 (2) The work product of an attorney representing, pursuant to
- 19 state employment or an appointment by a public agency:
- 20 (A) a public agency;
- 21 (B) the state; or
- 22 (C) an individual.
- 23 (3) Test questions, scoring keys, and other examination data used
- 24 in administering a licensing examination, examination for
- 25 employment, or academic examination before the examination is
- 26 given or if it is to be given again.
- 27 (4) Scores of tests if the person is identified by name and has not
- 28 consented to the release of the person's scores.
- 29 (5) The following:
- 30 (A) Records relating to negotiations between the Indiana
- 31 economic development corporation, the ports of Indiana, the
- 32 Indiana state department of agriculture, the Indiana finance
- 33 authority, an economic development commission, a local
- 34 economic development organization (as defined in
- 35 IC 5-28-11-2(3)), or a governing body of a political
- 36 subdivision with industrial, research, or commercial prospects,
- 37 if the records are created while negotiations are in progress.
- 38 (B) Notwithstanding clause (A), the terms of the final offer of
- 39 public financial resources communicated by the Indiana
- 40 economic development corporation, the ports of Indiana, the
- 41 Indiana finance authority, an economic development
- 42 commission, or a governing body of a political subdivision to

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1 an industrial, a research, or a commercial prospect shall be
 2 available for inspection and copying under section 3 of this
 3 chapter after negotiations with that prospect have terminated.
 4 (C) When disclosing a final offer under clause (B), the Indiana
 5 economic development corporation shall certify that the
 6 information being disclosed accurately and completely
 7 represents the terms of the final offer.

8 (6) Records that are intra-agency or interagency advisory or
 9 deliberative material, including material developed by a private
 10 contractor under a contract with a public agency, that are
 11 expressions of opinion or are of a speculative nature, and that are
 12 communicated for the purpose of decision making.

13 (7) Diaries, journals, or other personal notes serving as the
 14 functional equivalent of a diary or journal.

15 (8) Personnel files of public employees and files of applicants for
 16 public employment, except for:

17 (A) the name, compensation, job title, business address,
 18 business telephone number, job description, education and
 19 training background, previous work experience, or dates of
 20 first and last employment of present or former officers or
 21 employees of the agency;

22 (B) information relating to the status of any formal charges
 23 against the employee; and

24 (C) the factual basis for a disciplinary action in which final
 25 action has been taken and that resulted in the employee being
 26 suspended, demoted, or discharged.

27 However, all personnel file information shall be made available
 28 to the affected employee or the employee's representative. This
 29 subdivision does not apply to disclosure of personnel information
 30 generally on all employees or for groups of employees without the
 31 request being particularized by employee name.

32 (9) Minutes or records of hospital medical staff meetings.

33 (10) Administrative or technical information that would
 34 jeopardize a record keeping or security system.

35 (11) Computer programs, computer codes, computer filing
 36 systems, and other software that are owned by the public agency
 37 or entrusted to it and portions of electronic maps entrusted to a
 38 public agency by a utility.

39 (12) Records specifically prepared for discussion or developed
 40 during discussion in an executive session under IC 5-14-1.5-6.1.
 41 However, this subdivision does not apply to that information
 42 required to be available for inspection and copying under

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- 1 subdivision (8).
- 2 (13) The work product of the legislative services agency under
- 3 personnel rules approved by the legislative council.
- 4 (14) The work product of individual members and the partisan
- 5 staffs of the general assembly.
- 6 (15) The identity of a donor of a gift made to a public agency if:
- 7 (A) the donor requires nondisclosure of the donor's identity as
- 8 a condition of making the gift; or
- 9 (B) after the gift is made, the donor or a member of the donor's
- 10 family requests nondisclosure.
- 11 (16) Library or archival records:
- 12 (A) which can be used to identify any library patron; or
- 13 (B) deposited with or acquired by a library upon a condition
- 14 that the records be disclosed only:
- 15 (i) to qualified researchers;
- 16 (ii) after the passing of a period of years that is specified in
- 17 the documents under which the deposit or acquisition is
- 18 made; or
- 19 (iii) after the death of persons specified at the time of the
- 20 acquisition or deposit.
- 21 However, nothing in this subdivision shall limit or affect contracts
- 22 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 23 (17) The identity of any person who contacts the bureau of motor
- 24 vehicles concerning the ability of a driver to operate a motor
- 25 vehicle safely and the medical records and evaluations made by
- 26 the bureau of motor vehicles staff or members of the driver
- 27 licensing medical advisory board regarding the ability of a driver
- 28 to operate a motor vehicle safely. However, upon written request
- 29 to the commissioner of the bureau of motor vehicles, the driver
- 30 must be given copies of the driver's medical records and
- 31 evaluations.
- 32 (18) School safety and security measures, plans, and systems,
- 33 including emergency preparedness plans developed under 511
- 34 IAC 6.1-2-2.5.
- 35 (19) A record or a part of a record, the public disclosure of which
- 36 would have a reasonable likelihood of threatening public safety
- 37 by exposing a vulnerability to terrorist attack. A record described
- 38 under this subdivision includes:
- 39 (A) a record assembled, prepared, or maintained to prevent,
- 40 mitigate, or respond to an act of terrorism under IC 35-47-12-1
- 41 or an act of agricultural terrorism under IC 35-47-12-2;
- 42 (B) vulnerability assessments;

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- 1 (C) risk planning documents;
- 2 (D) needs assessments;
- 3 (E) threat assessments;
- 4 (F) intelligence assessments;
- 5 (G) domestic preparedness strategies;
- 6 (H) the location of community drinking water wells and
- 7 surface water intakes;
- 8 (I) the emergency contact information of emergency
- 9 responders and volunteers;
- 10 (J) infrastructure records that disclose the configuration of
- 11 critical systems such as communication, electrical, ventilation,
- 12 water, and wastewater systems; and
- 13 (K) detailed drawings or specifications of structural elements,
- 14 floor plans, and operating, utility, or security systems, whether
- 15 in paper or electronic form, of any building or facility located
- 16 on an airport (as defined in IC 8-21-1-1) that is owned,
- 17 occupied, leased, or maintained by a public agency. A record
- 18 described in this clause may not be released for public
- 19 inspection by any public agency without the prior approval of
- 20 the public agency that owns, occupies, leases, or maintains the
- 21 airport. The public agency that owns, occupies, leases, or
- 22 maintains the airport:
- 23 (i) is responsible for determining whether the public
- 24 disclosure of a record or a part of a record has a reasonable
- 25 likelihood of threatening public safety by exposing a
- 26 vulnerability to terrorist attack; and
- 27 (ii) must identify a record described under item (i) and
- 28 clearly mark the record as "confidential and not subject to
- 29 public disclosure under IC 5-14-3-4(b)(19)(J) without
- 30 approval of (insert name of submitting public agency)".
- 31 This subdivision does not apply to a record or portion of a record
- 32 pertaining to a location or structure owned or protected by a
- 33 public agency in the event that an act of terrorism under
- 34 IC 35-47-12-1 or an act of agricultural terrorism under
- 35 IC 35-47-12-2 has occurred at that location or structure, unless
- 36 release of the record or portion of the record would have a
- 37 reasonable likelihood of threatening public safety by exposing a
- 38 vulnerability of other locations or structures to terrorist attack.
- 39 (20) The following personal information concerning a customer
- 40 of a municipally owned utility (as defined in IC 8-1-2-1):
- 41 (A) Telephone number.
- 42 (B) Address.

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- 1 (C) Social Security number.
- 2 (21) The following personal information about a complainant
- 3 contained in records of a law enforcement agency:
- 4 (A) Telephone number.
- 5 (B) The complainant's address. However, if the complainant's
- 6 address is the location of the suspected crime, infraction,
- 7 accident, or complaint reported, the address shall be made
- 8 available for public inspection and copying.
- 9 (22) Notwithstanding subdivision (8)(A), the name,
- 10 compensation, job title, business address, business telephone
- 11 number, job description, education and training background,
- 12 previous work experience, or dates of first employment of a law
- 13 enforcement officer who is operating in an undercover capacity.
- 14 (23) Records requested by an offender that:
- 15 (A) contain personal information relating to:
- 16 (i) a correctional officer (as defined in IC 5-10-10-1.5);
- 17 **(ii) a law enforcement officer (as defined in**
- 18 **IC 35-41-1-17);**
- 19 **(iii) a judge (as defined in IC 33-38-12-3);**
- 20 ~~(ii)~~ (iv) the victim of a crime; or
- 21 ~~(iii)~~ (v) a family member of a correctional officer, **law**
- 22 **enforcement officer (as defined in IC 35-41-1-17), judge**
- 23 **(as defined in IC 33-38-12-3), or the** victim of a crime; or
- 24 (B) concern or could affect the security of a jail or correctional
- 25 facility.
- 26 **(24) Information concerning an individual less than eighteen**
- 27 **(18) years of age who participates in a conference, meeting,**
- 28 **program, or activity conducted or supervised by a state**
- 29 **educational institution, including the following information**
- 30 **regarding the individual or the individual's parent or**
- 31 **guardian:**
- 32 (A) Name.
- 33 (B) Address.
- 34 (C) Telephone number.
- 35 (D) Electronic mail account address.
- 36 (c) Nothing contained in subsection (b) shall limit or affect the right
- 37 of a person to inspect and copy a public record required or directed to
- 38 be made by any statute or by any rule of a public agency.
- 39 (d) Notwithstanding any other law, a public record that is classified
- 40 as confidential, other than a record concerning an adoption or patient
- 41 medical records, shall be made available for inspection and copying
- 42 seventy-five (75) years after the creation of that record.

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1 (e) Only the content of a public record may form the basis for the
2 adoption by any public agency of a rule or procedure creating an
3 exception from disclosure under this section.

4 (f) Except as provided by law, a public agency may not adopt a rule
5 or procedure that creates an exception from disclosure under this
6 section based upon whether a public record is stored or accessed using
7 paper, electronic media, magnetic media, optical media, or other
8 information storage technology.

9 (g) Except as provided by law, a public agency may not adopt a rule
10 or procedure nor impose any costs or liabilities that impede or restrict
11 the reproduction or dissemination of any public record.

12 (h) Notwithstanding subsection (d) and section 7 of this chapter:

13 (1) public records subject to IC 5-15 may be destroyed only in
14 accordance with record retention schedules under IC 5-15; or

15 (2) public records not subject to IC 5-15 may be destroyed in the
16 ordinary course of business.

17 SECTION 6. IC 5-14-3-9, AS AMENDED BY P.L.22-2005,
18 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2012]: Sec. 9. (a) A denial of disclosure by a public agency
20 occurs when the person making the request is physically present in the
21 office of the agency, makes the request by telephone, or requests
22 enhanced access to a document and:

23 (1) the person designated by the public agency as being
24 responsible for public records release decisions refuses to permit
25 inspection and copying of a public record when a request has
26 been made; or

27 (2) twenty-four (24) hours elapse after any employee of the public
28 agency refuses to permit inspection and copying of a public
29 record when a request has been made;

30 whichever occurs first.

31 (b) If a person requests by mail or by facsimile a copy or copies of
32 a public record, a denial of disclosure does not occur until seven (7)
33 days have elapsed from the date the public agency receives the request.

34 (c) If a request is made orally, either in person or by telephone, a
35 public agency may deny the request orally. However, if a request
36 initially is made in writing, by facsimile, or through enhanced access,
37 or if an oral request that has been denied is renewed in writing or by
38 facsimile, a public agency may deny the request if:

39 (1) the denial is in writing or by facsimile; and

40 (2) the denial includes:

41 (A) a statement of the specific exemption or exemptions
42 authorizing the withholding of all or part of the public record;

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1 and
2 (B) the name and the title or position of the person responsible
3 for the denial.

4 (d) This subsection applies to a board, a commission, a department,
5 a division, a bureau, a committee, an agency, an office, an
6 instrumentality, or an authority, by whatever name designated,
7 exercising any part of the executive, administrative, judicial, or
8 legislative power of the state. If an agency receives a request to inspect
9 or copy a record that the agency considers to be excepted from
10 disclosure under section 4(b)(19) of this chapter, the agency may
11 consult with the counterterrorism and security council established by
12 IC 10-19-8-1. If an agency denies the disclosure of a record or a part of
13 a record under section 4(b)(19) of this chapter, the agency or the
14 counterterrorism and security council shall provide a general
15 description of the record being withheld and of how disclosure of the
16 record would have a reasonable likelihood of threatening the public
17 safety.

18 (e) A person who has been denied the right to inspect or copy a
19 public record by a public agency may file an action in the circuit or
20 superior court of the county in which the denial occurred to compel the
21 public agency to permit the person to inspect and copy the public
22 record. Whenever an action is filed under this subsection, the public
23 agency must notify each person who supplied any part of the public
24 record at issue:

25 (1) that a request for release of the public record has been denied;
26 and
27 (2) whether the denial was in compliance with an informal inquiry
28 response or advisory opinion of the public access counselor.

29 Such persons are entitled to intervene in any litigation that results from
30 the denial. The person who has been denied the right to inspect or copy
31 need not allege or prove any special damage different from that
32 suffered by the public at large.

33 (f) The court shall determine the matter de novo, with the burden of
34 proof on the public agency to sustain its denial. If the issue in de novo
35 review under this section is whether a public agency properly denied
36 access to a public record because the record is exempted under section
37 4(a) of this chapter, the public agency meets its burden of proof under
38 this subsection by establishing the content of the record with adequate
39 specificity and not by relying on a conclusory statement or affidavit.

40 (g) If the issue in a de novo review under this section is whether a
41 public agency properly denied access to a public record because the
42 record is exempted under section 4(b) of this chapter:

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1 (1) the public agency meets its burden of proof under this
2 subsection by:

3 (A) proving that the record falls within any one (1) of the
4 categories of exempted records under section 4(b) of this
5 chapter; and

6 (B) establishing the content of the record with adequate
7 specificity and not by relying on a conclusory statement or
8 affidavit; and

9 (2) a person requesting access to a public record meets the
10 person's burden of proof under this subsection by proving that the
11 denial of access is arbitrary or capricious.

12 (h) The court may review the public record in camera to determine
13 whether any part of it may be withheld under this chapter. **However,**
14 **if the complaint alleges that a public agency denied disclosure of a**
15 **public record by redacting information in the public record, the**
16 **court shall conduct an in camera inspection of the public record**
17 **with the redacted information included.**

18 (i) In any action filed under this section, a court shall award
19 reasonable attorney's fees, court costs, and other reasonable expenses
20 of litigation to the prevailing party if:

21 (1) the plaintiff substantially prevails; or

22 (2) the defendant substantially prevails and the court finds the
23 action was frivolous or vexatious.

24 The plaintiff is not eligible for the awarding of attorney's fees, court
25 costs, and other reasonable expenses if the plaintiff filed the action
26 without first seeking and receiving an informal inquiry response or
27 advisory opinion from the public access counselor, unless the plaintiff
28 can show the filing of the action was necessary because the denial of
29 access to a public record under this chapter would prevent the plaintiff
30 from presenting that public record to a public agency preparing to act
31 on a matter of relevance to the public record whose disclosure was
32 denied.

33 **(j) A court may assess a civil penalty under section 9.5 of this**
34 **chapter only if the plaintiff obtained an advisory opinion from the**
35 **public access counselor before filing an action under this section as**
36 **set forth in section 9.5 of this chapter.**

37 **(k)** A court shall expedite the hearing of an action filed under this
38 section.

39 SECTION 7. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
41 1, 2012]: **Sec. 9.5. (a) As used in this section, "individual" means:**

42 **(1) an officer of a public agency; or**

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1 (2) an individual employed in a management level position
2 with a public agency.
3 **(b) If an individual:**
4 (1) continues to deny a request that complies with section 3(a)
5 of this chapter for inspection or copying of a public record
6 after the public access counselor has issued an advisory
7 opinion:
8 (A) regarding the request for inspection or copying of the
9 public record; and
10 (B) that instructs the public agency to allow access to the
11 public record; and
12 (2) denies the request with the specific intent to unlawfully
13 withhold a public record that is subject to disclosure under
14 this chapter;
15 the individual and the public agency employing the individual are
16 subject to a civil penalty under subsection (g).
17 (c) If an individual intentionally charges a copying fee that the
18 individual knows exceeds the amount set by statute, fee schedule,
19 ordinance, or court order, the individual is subject to a civil
20 penalty under subsection (g).
21 (d) A civil penalty may only be imposed as part of an action filed
22 under section 9 of this chapter. A court may not impose a civil
23 penalty under this section unless the public access counselor has
24 issued an advisory opinion:
25 (1) to the complainant and the public agency;
26 (2) that instructs the public agency to allow access to the
27 public record; and
28 (3) before the action under section 9 of this chapter is filed.
29 Nothing in this section prevents both the person requesting the
30 public record and the public agency from requesting an advisory
31 opinion from the public access counselor.
32 (e) It is a defense to the imposition of a civil penalty under this
33 section that the individual denied access to a public record in
34 reliance on either of the following:
35 (1) An opinion of the public agency's legal counsel.
36 (2) An opinion of the attorney general.
37 (f) A court may impose a civil penalty for a violation under
38 subsection (b) against one (1) or more of the following:
39 (1) The individual named as a defendant in the action.
40 (2) The public agency named as a defendant in the action.
41 (g) In an action under this section, a court may impose the
42 following civil penalties:

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1 (1) Not more than one hundred dollars (\$100) for the first
 2 violation.
 3 (2) Not more than five hundred dollars (\$500) for each
 4 additional violation.
 5 A civil penalty imposed under this section is in addition to any
 6 other civil or criminal penalty imposed. However, in any one (1)
 7 action brought under this section, a court may impose only one (1)
 8 civil penalty against an individual, even if the court finds that the
 9 individual committed multiple violations. This subsection does not
 10 preclude a court from imposing another civil penalty against an
 11 individual in a separate action, but an individual may not be
 12 assessed more than one (1) civil penalty in any one (1) action
 13 brought under this section.
 14 (h) A court shall distribute monthly to the auditor of state any
 15 penalties collected under this section for deposit in the education
 16 fund established by IC 5-14-4-14.
 17 (i) An individual is personally liable for a civil penalty imposed
 18 on the individual under this section. A civil penalty imposed
 19 against a public agency under this section shall be paid from the
 20 public agency's budget.
 21 (j) If an officer of a public agency directs an individual who is
 22 employed in a management level position to deny a request as
 23 described in subsection (b)(1), the management level employee is
 24 not subject to civil penalties under subsection (g).
 25 SECTION 8. IC 5-14-4-14 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2012]: Sec. 14. (a) An education fund is established to provide
 28 funds for the program established under section 10(1) of this
 29 chapter.
 30 (b) The fund consists of the following:
 31 (1) Civil penalties collected under IC 5-14-1.5-7.5 and
 32 IC 5-14-3-9.5.
 33 (2) Money appropriated by the general assembly.
 34 (3) Grants, gifts, contributions, and money received from any
 35 other source.
 36 (c) The treasurer of state shall administer the fund. The
 37 following may be paid from money in the fund:
 38 (1) Expenses of administering the fund.
 39 (2) Nonrecurring administrative expenses incurred to carry
 40 out the purposes of this section.
 41 (d) Money in the fund at the end of a state fiscal year does not
 42 revert to the state general fund.

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1 **(e) The treasurer of state shall invest the money in the fund not**
2 **currently needed to meet the obligations of the fund in the same**
3 **manner as other public funds may be invested. Interest that**
4 **accrues from these investments shall be deposited in the fund.**
5 SECTION 9. IC 34-30-2-14.1 IS ADDED TO THE INDIANA
6 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
7 **[EFFECTIVE JULY 1, 2012]: Sec. 14.1. IC 5-14-1.5-7.5 (Concerning**
8 **a public employee who, acting on the orders of a superior or on the**
9 **advice of the agency attorney or the attorney general, fails to**
10 **provide proper notice of a public meeting or executive session).**
11 SECTION 10. IC 34-30-2-14.2 IS ADDED TO THE INDIANA
12 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
13 **[EFFECTIVE JULY 1, 2012]: Sec. 14.2. IC 5-14-3-9.5 (Concerning**
14 **a public employee who, acting on the orders of a superior or on the**
15 **advice of the agency attorney or the attorney general, denies or**
16 **interferes with a person's request for inspection or copying of a**
17 **public record).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1093, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, delete lines 40 through 41, begin a new paragraph and insert:

"(g) A court may assess a civil penalty under section 7.5 of this chapter only if the plaintiff obtained an advisory opinion from the public access counselor before filing an action under this section as set forth in section 7.5 of this chapter."

Page 6, delete lines 2 through 42, begin a new paragraph and insert:

"SECTION 3. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7.5. (a) This section applies only to an individual who is:

- (1) an officer of a public agency; or**
- (2) employed in a management level position with a public agency.**

(b) If an individual with the specific intent to violate the law fails to perform a duty imposed on the individual under this chapter by:

- (1) failing to give proper notice of a regular meeting, special meeting, or executive session;**
- (2) taking final action outside a regular meeting or special meeting;**
- (3) participating in a secret ballot during a meeting;**
- (4) discussing in an executive session subjects not eligible for discussion in an executive session;**
- (5) failing to prepare a memorandum of a meeting as required by section 4 of this chapter; or**
- (6) participating in at least one (1) gathering of a series of gatherings under section 3.1 of this chapter;**

the individual and the public agency are subject to a civil penalty under subsection (f).

(c) A civil penalty may only be imposed as part of an action filed under section 7 of this chapter. A court may not impose a civil penalty under this section unless the public access counselor has issued an advisory opinion:

- (1) to the complainant and the public agency;**
- (2) that finds that the individual or public agency violated this chapter; and**
- (3) before the action under section 7 of this chapter is filed.**

HB 1093—LS 6571/DI 87+



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Nothing in this section prevents both the complainant and the public agency from requesting an advisory opinion from the public access counselor.

(d) It is a defense to the imposition of a civil penalty under this section that the individual failed to perform a duty under subsection (b) in reliance on either of the following:

- (1) An opinion of the public agency's legal counsel.
- (2) An opinion of the attorney general.

(e) Except as provided in subsection (i), in an action filed under section 7 of this chapter, a court may impose a civil penalty against one (1) or more of the following:

- (1) The individual named as a defendant in the action.
- (2) The public agency named as a defendant in the action.

(f) The court may impose against each defendant listed in subsection (c) the following civil penalties:

- (1) Not more than one hundred dollars (\$100) for the first violation.
- (2) Not more than five hundred dollars (\$500) for each additional violation.

A civil penalty imposed under this section is in addition to any other civil or criminal penalty imposed. However, in any one (1) action brought under section 7 of this chapter, a court may impose only one (1) civil penalty against an individual, even if the court finds that the individual committed multiple violations. This subsection does not preclude a court from imposing another civil penalty against an individual in a separate action, but an individual may not be assessed more than one (1) civil penalty in any one (1) action brought under this section.

(g) A court shall distribute monthly to the auditor of state any penalties collected under this section for deposit in the education fund established by IC 5-14-4-14.

(h) An individual is personally liable for a civil penalty imposed on the individual under this section. A civil penalty imposed against a public agency under this section shall be paid from the public agency's budget.

(i) If an officer of a public agency directs an individual who is employed in a management level position to fail to give proper notice as described in subsection (b)(1), the management level employee is not subject to civil penalties under subsection (f)."

Page 7, delete lines 1 through 12.

Page 18, delete lines 15 through 16, begin a new paragraph and insert:



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"(j) A court may assess a civil penalty under section 9.5 of this chapter only if the plaintiff obtained an advisory opinion from the public access counselor before filing an action under this section as set forth in section 9.5 of this chapter."

Page 18, delete lines 19 through 42, begin a new paragraph and insert:

"SECTION 7. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 9.5. (a) As used in this section, "individual" means:**

- (1) an officer of a public agency; or**
- (2) an individual employed in a management level position with a public agency.**

(b) If an individual:

- (1) continues to deny a request that complies with section 3(a) of this chapter for inspection or copying of a public record after the public access counselor has issued an advisory opinion:**

(A) regarding the request for inspection or copying of the public record; and

(B) that instructs the public agency to allow access to the public record; and

- (2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure under this chapter;**

the individual and the public agency employing the individual are subject to a civil penalty under subsection (g).

(c) If an individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order, the individual is subject to a civil penalty under subsection (g).

(d) A civil penalty may only be imposed as part of an action filed under section 9 of this chapter. A court may not impose a civil penalty under this section unless the public access counselor has issued an advisory opinion:

- (1) to the complainant and the public agency;**
- (2) that instructs the public agency to allow access to the public record; and**
- (3) before the action under section 9 of this chapter is filed.**

Nothing in this section prevents both the person requesting the public record and the public agency from requesting an advisory opinion from the public access counselor.

(e) It is a defense to the imposition of a civil penalty under this

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section that the individual denied access to a public record in reliance on either of the following:

- (1) An opinion of the public agency's legal counsel.
- (2) An opinion of the attorney general.

(f) A court may impose a civil penalty for a violation under subsection (b) against one (1) or more of the following:

- (1) The individual named as a defendant in the action.
- (2) The public agency named as a defendant in the action.

(g) In an action under this section, a court may impose the following civil penalties:

- (1) Not more than one hundred dollars (\$100) for the first violation.
- (2) Not more than five hundred dollars (\$500) for each additional violation.

A civil penalty imposed under this section is in addition to any other civil or criminal penalty imposed. However, in any one (1) action brought under this section, a court may impose only one (1) civil penalty against an individual, even if the court finds that the individual committed multiple violations. This subsection does not preclude a court from imposing another civil penalty against an individual in a separate action, but an individual may not be assessed more than one (1) civil penalty in any one (1) action brought under this section.

(h) A court shall distribute monthly to the auditor of state any penalties collected under this section for deposit in the education fund established by IC 5-14-4-14.

(i) An individual is personally liable for a civil penalty imposed on the individual under this section. A civil penalty imposed against a public agency under this section shall be paid from the public agency's budget.

(j) If an officer of a public agency directs an individual who is employed in a management level position to deny a request as described in subsection (b)(1), the management level employee is not subject to civil penalties under subsection (g)."

Page 19, delete lines 1 through 23.

Page 20, delete lines 4 through 42.

Delete page 21.

Page 22, delete lines 1 through 11.

Page 22, line 15, after "superior" delete "," and insert "or on the advice of the agency attorney or the attorney general,".

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Page 22, line 20, after "superior" delete "," and insert "**or on the advice of the agency attorney or the attorney general,**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1093 as introduced.)

MAHAN, Chair

Committee Vote: yeas 11, nays 0.

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