
SUBSTITUTE SENATE BILL 5022

State of Washington

62nd Legislature

2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Kilmer, Regala, Pflug, and Rockefeller; by request of Attorney General)

READ FIRST TIME 02/10/11.

1 AN ACT Relating to clarifying the statute of limitations for any
2 court action brought under RCW 42.56.550; reenacting and amending RCW
3 42.56.550; creating new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the court in
6 *Tobin v. Worden*, 156 Wn. App. 507, 233 P.3d 906 (2010), did not apply
7 the one-year statute of limitations where the agency did not claim an
8 exemption or produce records on a partial or installment basis, but
9 instead produced records at one time. In enacting chapter 483, Laws of
10 2005, the legislature intended that a one-year statute of limitations
11 applies to all actions brought under RCW 42.56.550. This act clarifies
12 the legislature's intent that all actions brought under RCW 42.56.550
13 are subject to a one-year statute of limitations running from the date
14 of the events set forth in this act.

15 **Sec. 2.** RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are
16 each reenacted and amended to read as follows:

17 (1) Upon the motion of any person having been denied an opportunity
18 to inspect or copy a public record by an agency, the superior court in

1 the county in which a record is maintained may require the responsible
2 agency to show cause why it has refused to allow inspection or copying
3 of a specific public record or class of records. The burden of proof
4 shall be on the agency to establish that refusal to permit public
5 inspection and copying is in accordance with a statute that exempts or
6 prohibits disclosure in whole or in part of specific information or
7 records.

8 (2) Upon the motion of any person who believes that an agency has
9 not made a reasonable estimate of the time that the agency requires to
10 respond to a public record request, the superior court in the county in
11 which a record is maintained may require the responsible agency to show
12 that the estimate it provided is reasonable. The burden of proof shall
13 be on the agency to show that the estimate it provided is reasonable.

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

22 (4) Any person who prevails against an agency in any action in the
23 courts seeking the right to inspect or copy any public record or the
24 right to receive a response to a public record request within a
25 reasonable amount of time shall be awarded all costs, including
26 reasonable attorney fees, incurred in connection with such legal
27 action. In addition, it shall be within the discretion of the court to
28 award such person an amount not less than five dollars and not to
29 exceed one hundred dollars for each day that he or she was denied the
30 right to inspect or copy said public record.

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

33 (6) Actions under this section must be filed within one year of the
34 latest of:

35 (a) The agency's claim of exemption ((~~or~~));

36 (b) The last production of a record ((~~on a partial or installment~~
37 basis)) prior to the action being filed;

38 (c) A response indicating no records have been located; or

1 (d) A response indicating there are no additional records that will
2 be produced on a partial or installment basis.

3 If none of these events occur, an action under this section must be
4 filed within one year of the date of the public record request.

5 NEW SECTION. Sec. 3. This act applies to all actions brought
6 under RCW 42.56.550 in which final judgment has not been entered as of
7 the effective date of this section. To this extent, this act applies
8 retroactively; provided, however, that for an action where the running
9 of the statute of limitations was triggered by the agency's production
10 of records at one time, as was the case in *Tobin v. Worden*, 156 Wn.
11 App. 507, 233 P.3d 906 (2010), and the one-year statute of limitations
12 period ended on or after June 21, 2010, and on or before the effective
13 date of this section, the one-year statute of limitations runs from the
14 effective date of this section.

15 NEW SECTION. Sec. 4. This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 immediately.

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