S-1084.4

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 6014**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Honeyford, Cleveland, Hatfield, and Chase

AN ACT Relating to remedies for actions under the public records act; and amending RCW 42.56.550 and 40.14.025.

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

**Sec.**  RCW 42.56.550 and 2011 c 273 s 1 are each amended to read as follows:

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

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

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

(4)(a)(i) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to ((~~award such person~~)) impose a fine on the responsible agency in an amount not to exceed one hundred dollars for each day that ((~~he or she~~)) the prevailing person was denied the right to inspect or copy said public record. The fine shall be deposited in the public records efficiency, preservation, and access account created in RCW 40.14.025 to enhance the preservation and availability of the state's public records.

(ii) However, the court must award a portion of the fine, not to exceed twenty-five percent of the fine, to the prevailing person in an amount that reimburses the person for any demonstrated financial loss caused by the failure of the agency to timely release the public record or respond to the request.

(b)(i) Any total dollar amount of any settlement agreement must include all costs, including reasonable attorneys' fees, incurred by the prevailing person in connection with such legal action. In addition, the portion of the settlement awarded to the prevailing person is limited to no more than twenty-five percent of the settlement, in an amount that reimburses the person for any demonstrated financial loss caused by the failure of the agency to timely release the public record or respond to the request exclusive of costs and attorneys' fees.

(ii) The balance of the settlement shall be deposited in the public records efficiency, preservation, and access account created in RCW 40.14.025 to enhance the preservation and availability of the state's public records.

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

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

**Sec.**  RCW 40.14.025 and 2011 1st sp.s. c 50 s 932 are each amended to read as follows:

(1) The secretary of state and the director of financial management shall jointly establish a procedure and formula for allocating the costs of services provided by the division of archives and records management to state agencies. The total amount allotted for services to state agencies shall not exceed the appropriation to the ((~~archives and records management~~)) public records efficiency, preservation, and access account during any allotment period.

(2) There is created the public records efficiency, preservation, and access account in the state treasury which shall consist of all fines directed to the account by a court and all settlement amounts directed to the account by a court under RCW 42.56.550 and all fees and charges collected under this section. The account shall be appropriated exclusively for the payment of costs and expenses incurred in the operation of the division of archives and records management as specified by law.

**--- END ---**