

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1280 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 5-14-1.5-5, AS AMENDED BY P.L.177-2005,
4 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2009]: Sec. 5. (a) Public notice of the date, time, and place of
6 any meetings, executive sessions, or of any rescheduled or reconvened
7 meeting, shall be given at least forty-eight (48) hours (excluding
8 Saturdays, Sundays, and legal holidays) before the meeting. This
9 requirement does not apply to reconvened meetings (not including
10 executive sessions) where announcement of the date, time, and place
11 of the reconvened meeting is made at the original meeting and recorded
12 in the memoranda and minutes thereof, and there is no change in the
13 agenda.
14 (b) Public notice shall be given by the governing body of a public
15 agency ~~by~~ **as follows:**
16 (1) **The governing body of a public agency shall give public**
17 **notice by** posting a copy of the notice at the principal office of the
18 public agency holding the meeting or, if no such office exists, at
19 the building where the meeting is to be held. ~~and~~
20 (2) **The governing body of a public agency shall give public**
21 **notice by** delivering notice to all news media which deliver ~~by~~
22 ~~January~~ † an annual written request for ~~such~~ **the notices not later**
23 **than December 31** for the next succeeding calendar year to the
24 governing body of the public agency. The governing body shall
25 give notice by one (1) of the following methods:
26 (A) Depositing the notice in the United States mail with
27 postage prepaid.
28 (B) Transmitting the notice by electronic mail, **if the public**
29 **agency has the capacity to transmit electronic mail.**
30 (C) Transmitting the notice by facsimile (fax).
31 **(3) This subdivision applies only to a public agency that is not**

1 a state agency (as defined in IC 4-13-1-1) and has the capacity
 2 to send electronic mail. The governing body of a public agency
 3 shall give public notice by delivering notice to any person
 4 (other than news media) who delivers an annual written
 5 request for the notices not later than December 31 for the next
 6 succeeding calendar year to the governing body of the public
 7 agency. The governing body shall give notice by one (1) of the
 8 following methods, which shall be determined by the
 9 governing body:

10 (A) Transmitting the notice by electronic mail.

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

14 A judge shall not declare void any policy, decision, or final action
 15 under section 7 of this chapter based on a failure to give a person
 16 notice under subsection (b)(3) if the public agency made a good
 17 faith effort to comply. If a governing body comes into existence after
 18 ~~January 1, December 31,~~ it shall comply with this ~~subdivision~~
 19 **subsection** upon receipt of a written request for notice. In addition, a
 20 state agency (as defined in IC 4-13-1-1) shall provide electronic access
 21 to the notice through the computer gateway administered by the office
 22 of technology established by IC 4-13.1-2-1.

23 (c) Notice of regular meetings need be given only once each year,
 24 except that an additional notice shall be given where the date, time, or
 25 place of a regular meeting or meetings is changed. This subsection does
 26 not apply to executive sessions.

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

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

35 (2) the public must be notified by posting a copy of the notice
 36 according to this section.

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

39 (f) This section shall not apply to:

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

45 (2) the executive of a county or the legislative body of a town if
 46 the meetings are held solely to receive information or
 47 recommendations in order to carry out administrative functions,

1 to carry out administrative functions, or confer with staff
 2 members on matters relating to the internal management of the
 3 unit. "Administrative functions" do not include the awarding of
 4 contracts, the entering into contracts, or any other action creating
 5 an obligation or otherwise binding a county or town.

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

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

12 SECTION 2. IC 5-14-1.5-7, AS AMENDED BY P.L.179-2007,
 13 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2009]: Sec. 7. (a) An action may be filed by any person in any
 15 court of competent jurisdiction to:

- 16 (1) obtain a declaratory judgment;
 17 (2) enjoin continuing, threatened, or future violations of this
 18 chapter; or
 19 (3) declare void any policy, decision, or final action:
 20 (A) taken at an executive session in violation of section 3(a) of
 21 this chapter;
 22 (B) taken at any meeting of which notice is not given in
 23 accordance with section 5 of this chapter;
 24 (C) that is based in whole or in part upon official action taken
 25 at any:
 26 (i) executive session in violation of section 3(a) of this
 27 chapter;
 28 (ii) meeting of which notice is not given in accordance with
 29 section 5 of this chapter; or
 30 (iii) series of gatherings in violation of section 3.1 of this
 31 chapter; or
 32 (D) taken at a meeting held in a location in violation of section
 33 8 of this chapter.

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

36 (b) Regardless of whether a formal complaint or an informal inquiry
 37 is pending before the public access counselor, any action to declare any
 38 policy, decision, or final action of a governing body void, or to enter an
 39 injunction which would invalidate any policy, decision, or final action
 40 of a governing body, based on violation of this chapter occurring before
 41 the action is commenced, shall be commenced:

- 42 (1) prior to the delivery of any warrants, notes, bonds, or
 43 obligations if the relief sought would have the effect, if granted,
 44 of invalidating the notes, bonds, or obligations; or
 45 (2) with respect to any other subject matter, within thirty (30)
 46 days of either:
 47 (A) the date of the act or failure to act complained of; or

1 (B) the date that the plaintiff knew or should have known that
2 the act or failure to act complained of had occurred;
3 whichever is later. If the challenged policy, decision, or final action is
4 recorded in the memoranda or minutes of a governing body, a plaintiff
5 is considered to have known that the act or failure to act complained of
6 had occurred not later than the date that the memoranda or minutes are
7 first available for public inspection.

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

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

15 (1) The extent to which the violation:

16 (A) affected the substance of the policy, decision, or final
17 action;

18 (B) denied or impaired access to any meetings that the public
19 had a right to observe and record; and

20 (C) prevented or impaired public knowledge or understanding
21 of the public's business.

22 (2) Whether voiding of the policy, decision, or final action is a
23 necessary prerequisite to a substantial reconsideration of the
24 subject matter.

25 (3) Whether the public interest will be served by voiding the
26 policy, decision, or final action by determining which of the
27 following factors outweighs the other:

28 (A) The remedial benefits gained by effectuating the public
29 policy of the state declared in section 1 of this chapter.

30 (B) The prejudice likely to accrue to the public if the policy,
31 decision, or final action is voided, including the extent to
32 which persons have relied upon the validity of the challenged
33 action and the effect declaring the challenged action void
34 would have on them.

35 (4) Whether the defendant acted in compliance with an informal
36 inquiry response or advisory opinion issued by the public access
37 counselor concerning the violation.

38 (e) If a court declares a policy, decision, or final action of a
39 governing body of a public agency void, the court may enjoin the
40 governing body from subsequently acting upon the subject matter of
41 the voided act until it has been given substantial reconsideration at a
42 meeting or meetings that comply with this chapter.

43 (f) In any action filed under this section, a court shall award
44 reasonable attorney's fees, court costs, and other reasonable expenses
45 of litigation to the prevailing party if:

46 (1) the plaintiff prevails; or

47 (2) the defendant prevails and the court finds that the action is

1 frivolous and vexatious.
 2 The plaintiff is not eligible for the awarding of attorney's fees, court
 3 costs, and other reasonable expenses if the plaintiff filed the action
 4 without first seeking and receiving an informal inquiry response or
 5 advisory opinion from the public access counselor, unless the plaintiff
 6 can show the filing of the action was necessary to prevent a violation
 7 of this chapter.

8 **(g) A court may assess a civil penalty against the public agency
 9 and the public officers and employees of the public agency under
 10 section 7.5 of this chapter.**

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

13 SECTION 3. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a) An officer or employee of
 16 a public agency who knowingly and intentionally fails to perform
 17 a duty imposed on the officer or employee under this chapter by:**

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

20 **(2) taking final action outside a regular meeting or special
 21 meeting;**

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

23 **(4) discussing in an executive session subjects not eligible for
 24 an executive session;**

25 **(5) failing to prepare a memorandum of a meeting required
 26 by section 4 of this chapter; or**

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

29 **is subject to a civil penalty under this section.**

30 **(b) Except as provided in subsection (f), a court may impose a
 31 civil penalty against one (1) or more of the following:**

32 **(1) The officer or employee of the public agency who commits
 33 the violation.**

34 **(2) The public agency.**

35 **(c) The court may impose against each entity listed in subsection
 36 (b) the following civil penalties:**

37 **(1) Not more than one hundred dollars (\$100) for the first
 38 violation.**

39 **(2) Not more than five hundred dollars (\$500) for each
 40 additional violation.**

41 **The penalty imposed under this section is in addition to any other
 42 civil or criminal penalty imposed.**

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

46 **(e) An officer or employee of a public agency is personally liable
 47 for a civil penalty imposed under this section. A civil penalty**

1 **imposed against a public agency shall be paid from the public**
 2 **agency's budget.**

3 **(f) If a subordinate of an officer or employee of a public agency**
 4 **is directed by the officer or employee to perform any action under**
 5 **subsection (a)(1), the subordinate is not subject to civil penalties**
 6 **under subsection (b).**

7 SECTION 4. IC 5-14-3-4, AS AMENDED BY P.L.120-2008,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2009]: Sec. 4. (a) The following public records are excepted
 10 from section 3 of this chapter and may not be disclosed by a public
 11 agency, unless access to the records is specifically required by a state
 12 or federal statute or is ordered by a court under the rules of discovery:

13 (1) Those declared confidential by state statute.

14 (2) Those declared confidential by rule adopted by a public
 15 agency under specific authority to classify public records as
 16 confidential granted to the public agency by statute.

17 (3) Those required to be kept confidential by federal law.

18 (4) Records containing trade secrets.

19 (5) Confidential financial information obtained, upon request,
 20 from a person. However, this does not include information that is
 21 filed with or received by a public agency pursuant to state statute.

22 (6) Information concerning research, including actual research
 23 documents, conducted under the auspices of a state educational
 24 institution, including information:

25 (A) concerning any negotiations made with respect to the
 26 research; and

27 (B) received from another party involved in the research.

28 (7) Grade transcripts and license examination scores obtained as
 29 part of a licensure process.

30 (8) Those declared confidential by or under rules adopted by the
 31 supreme court of Indiana.

32 (9) Patient medical records and charts created by a provider,
 33 unless the patient gives written consent under IC 16-39.

34 (10) Application information declared confidential by the board
 35 of the Indiana economic development corporation under
 36 IC 5-28-16.

37 (11) A photograph, a video recording, or an audio recording of an
 38 autopsy, except as provided in IC 36-2-14-10.

39 (12) A Social Security number contained in the records of a
 40 public agency.

41 (b) Except as otherwise provided by subsection (a), the following
 42 public records shall be excepted from section 3 of this chapter at the
 43 discretion of a public agency:

44 (1) Investigatory records of law enforcement agencies. However,
 45 certain law enforcement records must be made available for
 46 inspection and copying as provided in section 5 of this chapter.

47 (2) The work product of an attorney representing, pursuant to

- 1 state employment or an appointment by a public agency:
- 2 (A) a public agency;
- 3 (B) the state; or
- 4 (C) an individual.
- 5 (3) Test questions, scoring keys, and other examination data used
- 6 in administering a licensing examination, examination for
- 7 employment, or academic examination before the examination is
- 8 given or if it is to be given again.
- 9 (4) Scores of tests if the person is identified by name and has not
- 10 consented to the release of the person's scores.
- 11 (5) The following:
- 12 (A) Records relating to negotiations between the Indiana
- 13 economic development corporation, the ports of Indiana, the
- 14 Indiana state department of agriculture, the Indiana finance
- 15 authority, an economic development commission, a local
- 16 economic development organization (as defined in
- 17 IC 5-28-11-2(3)), or a governing body of a political
- 18 subdivision with industrial, research, or commercial prospects,
- 19 if the records are created while negotiations are in progress.
- 20 (B) Notwithstanding clause (A), the terms of the final offer of
- 21 public financial resources communicated by the Indiana
- 22 economic development corporation, the ports of Indiana, the
- 23 Indiana finance authority, an economic development
- 24 commission, or a governing body of a political subdivision to
- 25 an industrial, a research, or a commercial prospect shall be
- 26 available for inspection and copying under section 3 of this
- 27 chapter after negotiations with that prospect have terminated.
- 28 (C) When disclosing a final offer under clause (B), the Indiana
- 29 economic development corporation shall certify that the
- 30 information being disclosed accurately and completely
- 31 represents the terms of the final offer.
- 32 (6) Records that are intra-agency or interagency advisory or
- 33 deliberative material, including material developed by a private
- 34 contractor under a contract with a public agency, that are
- 35 expressions of opinion or are of a speculative nature, and that are
- 36 communicated for the purpose of decision making.
- 37 (7) Diaries, journals, or other personal notes serving as the
- 38 functional equivalent of a diary or journal.
- 39 (8) Personnel files of public employees and files of applicants for
- 40 public employment, except for:
- 41 (A) the name, compensation, job title, business address,
- 42 business telephone number, job description, education and
- 43 training background, previous work experience, or dates of
- 44 first and last employment of present or former officers or
- 45 employees of the agency;
- 46 (B) information relating to the status of any formal charges
- 47 against the employee; and

- 1 (C) the factual basis for a disciplinary action in which final
 2 action has been taken and that resulted in the employee being
 3 suspended, demoted, or discharged.
- 4 However, all personnel file information shall be made available
 5 to the affected employee or the employee's representative. This
 6 subdivision does not apply to disclosure of personnel information
 7 generally on all employees or for groups of employees without the
 8 request being particularized by employee name.
- 9 (9) Minutes or records of hospital medical staff meetings.
- 10 (10) Administrative or technical information that would
 11 jeopardize a record keeping or security system.
- 12 (11) Computer programs, computer codes, computer filing
 13 systems, and other software that are owned by the public agency
 14 or entrusted to it and portions of electronic maps entrusted to a
 15 public agency by a utility.
- 16 (12) Records specifically prepared for discussion or developed
 17 during discussion in an executive session under IC 5-14-1.5-6.1.
 18 However, this subdivision does not apply to that information
 19 required to be available for inspection and copying under
 20 subdivision (8).
- 21 (13) The work product of the legislative services agency under
 22 personnel rules approved by the legislative council.
- 23 (14) The work product of individual members and the partisan
 24 staffs of the general assembly.
- 25 (15) The identity of a donor of a gift made to a public agency if:
 26 (A) the donor requires nondisclosure of the donor's identity as
 27 a condition of making the gift; or
 28 (B) after the gift is made, the donor or a member of the donor's
 29 family requests nondisclosure.
- 30 (16) Library or archival records:
 31 (A) which can be used to identify any library patron; or
 32 (B) deposited with or acquired by a library upon a condition
 33 that the records be disclosed only:
 34 (i) to qualified researchers;
 35 (ii) after the passing of a period of years that is specified in
 36 the documents under which the deposit or acquisition is
 37 made; or
 38 (iii) after the death of persons specified at the time of the
 39 acquisition or deposit.
- 40 However, nothing in this subdivision shall limit or affect contracts
 41 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 42 (17) The identity of any person who contacts the bureau of motor
 43 vehicles concerning the ability of a driver to operate a motor
 44 vehicle safely and the medical records and evaluations made by
 45 the bureau of motor vehicles staff or members of the driver
 46 licensing medical advisory board regarding the ability of a driver
 47 to operate a motor vehicle safely. However, upon written request

- 1 to the commissioner of the bureau of motor vehicles, the driver
 2 must be given copies of the driver's medical records and
 3 evaluations.
- 4 (18) School safety and security measures, plans, and systems,
 5 including emergency preparedness plans developed under 511
 6 IAC 6.1-2-2.5.
- 7 (19) A record or a part of a record, the public disclosure of which
 8 would have a reasonable likelihood of threatening public safety
 9 by exposing a vulnerability to terrorist attack. A record described
 10 under this subdivision includes:
- 11 (A) a record assembled, prepared, or maintained to prevent,
 12 mitigate, or respond to an act of terrorism under IC 35-47-12-1
 13 or an act of agricultural terrorism under IC 35-47-12-2;
 - 14 (B) vulnerability assessments;
 - 15 (C) risk planning documents;
 - 16 (D) needs assessments;
 - 17 (E) threat assessments;
 - 18 (F) intelligence assessments;
 - 19 (G) domestic preparedness strategies;
 - 20 (H) the location of community drinking water wells and
 21 surface water intakes;
 - 22 (I) the emergency contact information of emergency
 23 responders and volunteers;
 - 24 (J) infrastructure records that disclose the configuration of
 25 critical systems such as communication, electrical, ventilation,
 26 water, and wastewater systems; and
 - 27 (K) detailed drawings or specifications of structural elements,
 28 floor plans, and operating, utility, or security systems, whether
 29 in paper or electronic form, of any building or facility located
 30 on an airport (as defined in IC 8-21-1-1) that is owned,
 31 occupied, leased, or maintained by a public agency. A record
 32 described in this clause may not be released for public
 33 inspection by any public agency without the prior approval of
 34 the public agency that owns, occupies, leases, or maintains the
 35 airport. The public agency that owns, occupies, leases, or
 36 maintains the airport:
 - 37 (i) is responsible for determining whether the public
 38 disclosure of a record or a part of a record has a reasonable
 39 likelihood of threatening public safety by exposing a
 40 vulnerability to terrorist attack; and
 - 41 (ii) must identify a record described under item (i) and
 42 clearly mark the record as "confidential and not subject to
 43 public disclosure under IC 5-14-3-4(b)(19)(J) without
 44 approval of (insert name of submitting public agency)".
- 45 This subdivision does not apply to a record or portion of a record
 46 pertaining to a location or structure owned or protected by a
 47 public agency in the event that an act of terrorism under

- 1 IC 35-47-12-1 or an act of agricultural terrorism under
 2 IC 35-47-12-2 has occurred at that location or structure, unless
 3 release of the record or portion of the record would have a
 4 reasonable likelihood of threatening public safety by exposing a
 5 vulnerability of other locations or structures to terrorist attack.
 6 (20) The following personal information concerning a customer
 7 of a municipally owned utility (as defined in IC 8-1-2-1):
 8 (A) Telephone number.
 9 (B) Address.
 10 (C) Social Security number.
 11 (21) The following personal information about a complainant
 12 contained in records of a law enforcement agency:
 13 (A) Telephone number.
 14 (B) The complainant's address. However, if the complainant's
 15 address is the location of the suspected crime, infraction,
 16 accident, or complaint reported, the address shall be made
 17 available for public inspection and copying.
 18 (22) Notwithstanding subdivision (8)(A), the name,
 19 compensation, job title, business address, business telephone
 20 number, job description, education and training background,
 21 previous work experience, or dates of first employment of a law
 22 enforcement officer who is operating in an undercover capacity.
 23 (23) Records requested by an offender that:
 24 (A) contain personal information relating to:
 25 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 26 (ii) the victim of a crime; or
 27 (iii) a family member of a correctional officer or the victim
 28 of a crime; or
 29 (B) concern or could affect the security of a jail or correctional
 30 facility.
 31 **(24) Information concerning an individual less than eighteen**
 32 **(18) years of age who participates in a conference, meeting,**
 33 **program, or activity conducted or supervised by a state**
 34 **educational institution. The information includes the**
 35 **following regarding the individual or the individual's parent**
 36 **or guardian:**
 37 **(A) Name.**
 38 **(B) Address.**
 39 **(C) Telephone number.**
 40 **(D) Electronic mail account address.**
 41 (c) Nothing contained in subsection (b) shall limit or affect the right
 42 of a person to inspect and copy a public record required or directed to
 43 be made by any statute or by any rule of a public agency.
 44 (d) Notwithstanding any other law, a public record that is classified
 45 as confidential, other than a record concerning an adoption, shall be
 46 made available for inspection and copying seventy-five (75) years after
 47 the creation of that record.

1 (e) Notwithstanding subsection (d) and section 7 of this chapter:

- 2 (1) public records subject to IC 5-15 may be destroyed only in
 3 accordance with record retention schedules under IC 5-15; or
 4 (2) public records not subject to IC 5-15 may be destroyed in the
 5 ordinary course of business.

6 SECTION 5. IC 5-14-3-9, AS AMENDED BY P.L.22-2005,
 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2009]: Sec. 9. (a) A denial of disclosure by a public agency
 9 occurs when the person making the request is physically present in the
 10 office of the agency, makes the request by telephone, or requests
 11 enhanced access to a document and:

- 12 (1) the person designated by the public agency as being
 13 responsible for public records release decisions refuses to permit
 14 inspection and copying of a public record when a request has
 15 been made; or
 16 (2) twenty-four (24) hours elapse after any employee of the public
 17 agency refuses to permit inspection and copying of a public
 18 record when a request has been made;

19 whichever occurs first.

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

23 (c) If a request is made orally, either in person or by telephone, a
 24 public agency may deny the request orally. However, if a request
 25 initially is made in writing, by facsimile, or through enhanced access,
 26 or if an oral request that has been denied is renewed in writing or by
 27 facsimile, a public agency may deny the request if:

- 28 (1) the denial is in writing or by facsimile; and
 29 (2) the denial includes:

- 30 (A) a statement of the specific exemption or exemptions
 31 authorizing the withholding of all or part of the public record;
 32 and
 33 (B) the name and the title or position of the person responsible
 34 for the denial.

35 (d) This subsection applies to a board, a commission, a department,
 36 a division, a bureau, a committee, an agency, an office, an
 37 instrumentality, or an authority, by whatever name designated,
 38 exercising any part of the executive, administrative, judicial, or
 39 legislative power of the state. If an agency receives a request to inspect
 40 or copy a record that the agency considers to be excepted from
 41 disclosure under section 4(b)(19) of this chapter, the agency may
 42 consult with the counterterrorism and security council established by
 43 IC 10-19-8-1. If an agency denies the disclosure of a record or a part of
 44 a record under section 4(b)(19) of this chapter, the agency or the
 45 counterterrorism and security council shall provide a general
 46 description of the record being withheld and of how disclosure of the
 47 record would have a reasonable likelihood of threatening the public

1 safety.

2 (e) A person who has been denied the right to inspect or copy a
3 public record by a public agency may file an action in the circuit or
4 superior court of the county in which the denial occurred to compel the
5 public agency to permit the person to inspect and copy the public
6 record. Whenever an action is filed under this subsection, the public
7 agency must notify each person who supplied any part of the public
8 record at issue:

9 (1) that a request for release of the public record has been denied;
10 and

11 (2) whether the denial was in compliance with an informal inquiry
12 response or advisory opinion of the public access counselor.

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

17 (f) The court shall determine the matter de novo, with the burden of
18 proof on the public agency to sustain its denial. If the issue in de novo
19 review under this section is whether a public agency properly denied
20 access to a public record because the record is exempted under section
21 4(a) of this chapter, the public agency meets its burden of proof under
22 this subsection by establishing the content of the record with adequate
23 specificity and not by relying on a conclusory statement or affidavit.

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

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

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

32 (B) establishing the content of the record with adequate
33 specificity and not by relying on a conclusory statement or
34 affidavit; and

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

38 (h) The court may review the public record in camera to determine
39 whether any part of it may be withheld under this chapter. **However,**
40 **if the complaint alleges that a public agency denied disclosure of a**
41 **public record by redacting information in the public record, the**
42 **court shall conduct an in camera inspection of the public record**
43 **without the information redacted.**

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

47 (1) the plaintiff substantially prevails; or

1 (2) the defendant substantially prevails and the court finds the
 2 action was frivolous or vexatious.
 3 The plaintiff is not eligible for the awarding of attorney's fees, court
 4 costs, and other reasonable expenses if the plaintiff filed the action
 5 without first seeking and receiving an informal inquiry response or
 6 advisory opinion from the public access counselor, unless the plaintiff
 7 can show the filing of the action was necessary because the denial of
 8 access to a public record under this chapter would prevent the plaintiff
 9 from presenting that public record to a public agency preparing to act
 10 on a matter of relevance to the public record whose disclosure was
 11 denied.

12 **(j) A court may assess a civil penalty against the public officers
 13 and employees of a public agency under section 9.5 of this chapter.**

14 ~~(j)~~ **(k)** A court shall expedite the hearing of an action filed under this
 15 section.

16 SECTION 6. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2009]: **Sec. 9.5. (a) An officer or employee of a public agency who
 19 knowingly and intentionally does any of the following is subject to
 20 a civil penalty under subsection (b):**

21 **(1) Denies or interferes with a person's request for inspection
 22 or copying of a public record if:**

23 **(A) the person's request meets the requirements of this
 24 chapter; and**

25 **(B) the record is subject to disclosure by law.**

26 **(2) Charges a copying fee that exceeds the amount permitted
 27 by this chapter.**

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

30 **(1) The officer or employee of the public agency who
 31 committed the violation.**

32 **(2) The public agency.**

33 **(c) The court may impose against each entity listed in subsection
 34 (b) the following civil penalties:**

35 **(1) Not more than one hundred dollars (\$100) for the first
 36 violation.**

37 **(2) Not more than five hundred dollars (\$500) for each
 38 additional violation.**

39 **The penalty imposed under this section is in addition to any other
 40 civil or criminal penalty imposed.**

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

44 **(e) An officer or employee of a public agency is personally liable
 45 for a civil penalty imposed under this section. A civil penalty
 46 imposed against a public agency shall be paid from the public
 47 agency's budget.**

1 **(f) If a subordinate of an officer or employee of a public agency**
 2 **is directed by the officer or employee to perform any action under**
 3 **subsection (a)(1), the subordinate is not subject to civil penalties**
 4 **under subsection (b)."**

5 Page 4, between lines 5 and 6, begin a new paragraph and insert:

6 "SECTION 8. IC 5-14-4-14 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2009]: **Sec. 14. (a) An education fund is established to fund a**
 9 **program under section 10(1) of this chapter.**

10 **(b) The fund consists of the following:**

11 **(1) Civil penalties collected under IC 5-14-1.5-7.5 and**
 12 **IC 5-14-3-9.5.**

13 **(2) Money appropriated by the general assembly.**

14 **(3) Grants, gifts, contributions, and money received from any**
 15 **other source.**

16 **(c) The treasurer of state shall administer the fund. The**
 17 **following may be paid from money in the fund:**

18 **(1) Expenses of administering the fund.**

19 **(2) Nonrecurring administrative expenses incurred to carry**
 20 **out the purposes of this section.**

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

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

27 SECTION 9. IC 5-14-5-9 IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2009]: **Sec. 9. Except as provided in section 10**
 29 **of this chapter, the counselor shall issue an advisory opinion on the**
 30 **complaint not later than thirty (30) days after:**

31 **(1) the complaint is filed; or**

32 **(2) an in camera inspection is completed under section 10.5 of**
 33 **this chapter.**

34 SECTION 10. IC 5-14-5-10 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10. (a) If the counselor**
 36 **determines that a complaint has priority, the counselor shall issue an**
 37 **advisory opinion on the complaint not later than seven (7) days after:**

38 **(1) the complaint is filed; or**

39 **(2) an in camera inspection is completed under section 10.5 of**
 40 **this chapter.**

41 **(b) The counselor shall adopt rules under IC 4-22-2 establishing**
 42 **criteria for complaints that have priority.**

43 SECTION 11. IC 5-14-5-10.5 IS ADDED TO THE INDIANA
 44 CODE AS A NEW SECTION TO READ AS FOLLOWS
 45 [EFFECTIVE JULY 1, 2009]: **Sec. 10.5. (a) Except as provided in**
 46 **subsections (e) and (i), if a formal complaint is filed alleging that a**
 47 **public agency denied disclosure of a public record by redacting**

1 information in the public record, the counselor shall conduct an in
 2 camera inspection of the public record without the information
 3 redacted.

4 (b) Both parties to the dispute shall be notified of the in camera
 5 inspection. However, neither the parties nor their representatives
 6 may be present during the inspection.

7 (c) The counselor shall provide a written notice to the public
 8 agency that includes the following:

9 (1) A statement of the date, time, place, and nature of the
 10 inspection.

11 (2) The documents to be inspected.

12 (3) The manner in which the documents must be presented to
 13 the counselor for inspection.

14 (4) Any other information the counselor considers relevant.

15 (d) Except as provided in subsection (e), the public agency shall:

16 (1) deliver the documents specified under subsection (c)(2) to
 17 the counselor for inspection in a sealed envelope; and

18 (2) deliver to the counselor and the complainant:

19 (A) a certification signed by the custodian of the
 20 documents stipulating that the copies of the documents
 21 delivered to the counselor are true and complete copies of
 22 the documents in question with no alterations or
 23 redactions; and

24 (B) an in camera inspection index that:

25 (i) gives the title or name of each document, or any part
 26 of the document, claimed to be exempt from disclosure;

27 (ii) provides a description of each document that is
 28 general enough to explain the exemptions without
 29 compromising the alleged reason for the exemption from
 30 disclosure;

31 (iii) lists the reasons that each document, or any part of
 32 the document, is alleged to be exempt from disclosure;
 33 and

34 (iv) fully explains why the alleged reason for exemption
 35 from disclosure applies to each document.

36 (e) If the redacted information in a public record is the work
 37 product of an attorney (as defined in IC 5-14-3-2(q)), the counselor
 38 may not inspect the public record with the redaction removed. If
 39 the notice provided by the counselor under subsection (c) requests
 40 disclosure of redacted information that is the work product of an
 41 attorney, the public agency shall do the following:

42 (1) Deliver the documents specified under subsection (c)(2) to
 43 the counselor, with the information redacted.

44 (2) Deliver an index to the counselor and the complainant
 45 that:

46 (A) gives the title or name of each document, or any part
 47 of the document, claimed to be exempt from disclosure on
 48 the basis that the document or any part of the document is

1 the work product of an attorney;

2 **(B) provides a description of each document that is general**
3 **enough to explain the exemption without compromising the**
4 **alleged reason for the exemption from disclosure;**

5 **(C) lists the reasons that each document, or any part of the**
6 **document, is alleged to be exempt from disclosure; and**

7 **(D) fully explains why the alleged reason for exemption**
8 **from disclosure applies to each document.**

9 **(f) The counselor or anyone else authorized to inspect the**
10 **documents may not make copies of the documents or take notes**
11 **making reference to specific information contained in the**
12 **documents. Upon completion of an in camera inspection, the**
13 **counselor shall seal the documents and return them to the**
14 **custodian of the documents. The sealed documents are confidential**
15 **while in the possession of the counselor.**

16 **(g) An advisory opinion issued on the complaint may not discuss**
17 **the specific contents of the documents and may refer only to the**
18 **assigned reference number or the general descriptions of the**
19 **documents listed in the in camera inspection index.**

20 **(h) Nothing in this section prohibits a court from conducting an**
21 **in camera inspection of a public record under IC 5-14-3-9(h)**
22 **without the information redacted that is the work product of an**
23 **attorney (as defined in IC 5-14-3-2(q)).**

24 **(i) If the redacted information in a public record is redacted**
25 **under IC 5-14-3-4(a), the counselor may not inspect the public**
26 **record with the redaction removed and the public agency shall**
27 **provide the citation to the state or federal law that prohibits the**
28 **information from being disclosed.**

29 SECTION 12. IC 34-30-2-14.1 IS ADDED TO THE INDIANA
30 CODE AS A NEW SECTION TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2009]: **Sec. 14.1. IC 5-14-1.5-7.5 (Concerning**
32 **a public employee who, acting on the orders of a superior, fails to**
33 **provide proper notice of a public meeting or executive session).**

34 SECTION 113. IC 34-30-2-14.2 IS ADDED TO THE INDIANA
35 CODE AS A NEW SECTION TO READ AS FOLLOWS
36 [EFFECTIVE JULY 1, 2009]: **Sec. 14.2. IC 5-14-3-9.5 (Concerning**
37 **a public employee who, acting on the orders of a superior, denies**

1 **or interferes with a person's request for inspection or copying of a**
2 **public record).".**

3 Renumber all SECTIONS consecutively.
(Reference is to EHB 1280 as printed April 8, 2009.)

Senator GARD