

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

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:*

- 1 Page 5, delete lines 40 through 41, begin a new paragraph and
- 2 insert:
- 3 "**(g) A court may assess a civil penalty under section 7.5 of this**
- 4 **chapter only if the plaintiff obtained an advisory opinion from the**
- 5 **public access counselor before filing an action under this section as**
- 6 **set forth in section 7.5 of this chapter."**
- 7 Page 6, delete lines 2 through 42, begin a new paragraph and insert:
- 8 "**SECTION 3. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA**
- 9 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
- 10 **[EFFECTIVE JULY 1, 2012]: Sec. 7.5. (a) This section applies only**
- 11 **to an individual who is:**
- 12 **(1) an officer of a public agency; or**
- 13 **(2) employed in a management level position with a public**
- 14 **agency.**

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

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

5 **(2) taking final action outside a regular meeting or special**
6 **meeting;**

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

8 **(4) discussing in an executive session subjects not eligible for**
9 **discussion in an executive session;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 section 7 of this chapter, a court may impose**
8 **only one (1) civil penalty against an individual, even if the court**
9 **finds that the individual committed multiple violations. This**
10 **subsection does not preclude a court from imposing another civil**
11 **penalty against an individual in a separate action, but an individual**
12 **may not be assessed more than one (1) civil penalty in any one (1)**
13 **action brought under this section.**

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

25 Page 7, delete lines 1 through 12.

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

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

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

34 **"SECTION 7. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE**
35 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
36 **1, 2012]: Sec. 9.5. (a) As used in this section, "individual" means:**

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

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

1 **(2) The public agency named as a defendant in the action.**
2 **(g) In an action under this section, a court may impose the**
3 **following civil penalties:**

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

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

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

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

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

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

28 Page 19, delete lines 1 through 23.

29 Page 20, delete lines 4 through 42.

30 Delete page 21.

31 Page 22, delete lines 1 through 11.

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

- 1 Page 22, line 20, after "superior" delete "," and insert "**or on the**
- 2 **advice of the agency attorney or the attorney general,**".
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1093 as introduced.)

and when so amended that said bill do pass.

Representative Mahan