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**SECOND SUBSTITUTE HOUSE BILL 2583**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** House General Government Appropriations (originally sponsored by Representatives Haigh, Armstrong, Moeller, and Chase)

READ FIRST TIME 02/09/10.

1       AN ACT Relating to conferences regarding public records requests  
2       violations; and reenacting and amending RCW 42.56.550.

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

4       **Sec. 1.** RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are  
5       each reenacted and amended to read as follows:

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

15      (2) Upon the motion of any person who believes that an agency has  
16      not made a reasonable estimate of the time that the agency requires to  
17      respond to a public record request, the superior court in the county in  
18      which a record is maintained may require the responsible agency to show

1 that the estimate it provided is reasonable. The burden of proof shall  
2 be on the agency to show that the estimate it provided is reasonable.

3 (3)(a) Prior to filing any court action alleging a violation of  
4 this chapter, the requester and agency may first confer in person or by  
5 telephone regarding any dispute. For claims filed pursuant to  
6 subsection (1) of this section, no action should be commenced until  
7 fifteen days have elapsed after this conference occurs. The one-year  
8 statute of limitation shall be stayed and daily penalties shall not  
9 accrue during this fifteen-day period.

10 (b) The requester or agency filing suit shall include a  
11 certification that they have met, or if they have not met, why they  
12 have not met. Nothing in this section requires a requester to explain  
13 any purpose or reason for requesting the records.

14 (4) 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))~~ (5) Any person who prevails against an agency in any action  
23 in the courts seeking the right to inspect or copy any public record or  
24 the 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. If a requester or agency  
31 elects to file suit without conducting the conference in good faith  
32 pursuant to subsection (3) of this section, or if the requester or  
33 agency files a lawsuit pursuant to subsection (1) of this section  
34 without waiting the full fifteen days after that conference, the court  
35 shall have the discretion to reduce or eliminate any award for costs,  
36 including daily penalties. In exercising this discretion, the court  
37 may consider the following nonexclusive factors:

1       (a) Whether the requester had need to obtain the records in less  
2 than fifteen days; and  
3       (b) Whether a conference would have been futile.  
4       ~~((+5))~~ (6) For actions under this section against counties, the  
5 venue provisions of RCW 36.01.050 apply.  
6       ~~((+6))~~ (7) Actions under this section must be filed within one  
7 year of the agency's claim of exemption or the last production of a  
8 record on a partial or installment basis.  
9       (8) For purposes of this section, "conference" means an in-person  
10 meeting or a telephone conversation between the agency and the person  
11 requesting records to resolve any issues to avoid litigation.

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