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**State Government & Tribal Affairs**  
**Committee**

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**HB 2910**

**Brief Description:** Changing remedies for actions under the public records act.

**Sponsors:** Representatives Flannigan and Hunt.

**Brief Summary of Bill**

- Makes discretionary the awarding of costs by a court to a person who prevails in court, against an agency in any action 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.
- Eliminates court awards to a person who prevails against an agency in a PRA action an amount of not less than \$5 but not to exceed \$100 for each day that he or she was denied the right to inspect or copy the public record.
- Imposes a fine of not less than \$5 but not to exceed \$100 on the responsible agency which shall be deposited in the Archives and Records Management Account.

**Hearing Date:** 2/2/10

**Staff:** Tracey O'Brien (786-7196).

**Background:**

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond

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to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in Superior Court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera.

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

An agency or its representative or a person who is named in the record or to whom the record specifically pertains may file a motion or affidavit asking superior court to enjoin disclosure of the public record. The court may issue an injunction if it finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions.

#### **Summary of Bill:**

The awarding of costs to a person who prevails in court against an agency in any action 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 is at the discretion of the court.

The court will no longer award a person who prevails against an agency in a PRA action an amount of not less than \$5 but not to exceed \$100 for each day that he or she was denied the right to inspect or copy the public record. Instead, the court shall impose a fine, in the same dollar range, on the responsible agency. The fine shall be deposited in the Archives and Records Management Account to enhance the preservation and availability of the state's public records. A court may award a portion 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.

**Appropriation:** None.

**Fiscal Note:** Requested on January 25, 2010.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.