

Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Penalties

**Issues/recommendations discussed**

- Holding individuals responsible for violations (not just entities)
- Increase fine amounts
- Is fine (civil penalty) sufficient or is criminal penalty appropriate? Or both?
- Give statute “teeth” – more penalty options?
- Is enforcement the/an issue? Education, outreach ideas? ? – need some message that is not necessarily statutory?

**Current law**

**§409. Appeals**

**1. Records.** If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

**2. Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

**3. Proceedings not exclusive.** The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

**4. Attorney's fees.** In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

#### **§410. Violations**

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.

#### **Proposals**

#### **§410. Violations**

**1. Violation.** A state government agency, a local government entity or an officer or employee of a state government agency or local government entity who *intentionally or knowingly* violates this subchapter or a rule adopted pursuant to this subchapter is subject to the following penalties.

**2. Penalty.** The following penalties apply to violations of this section.

#### **Options**

➡ A. A person who (*include culpable mental state -- intentionally or knowingly? Willfully? Do we use this regularly now in civil violations? We don't use willful in the criminal context.*) violates subsection 1 commits a civil violation for which a fine of not more than \$? may be adjudged.

➡ B. A person who intentionally or knowingly violates subsection 1 is guilty of a Class E crime, except the sentencing alternative may include only the penalties provided in Title 17-A, section 1301. (fines – for a Class E, it is a fine of no more than \$1,000) (*okay to structure it like this for a crime?*)

➡ **Another option that can be drafted is to set out a penalty for a 1st offense, then increase the penalty for a second or subsequent offense. (including going from a civil violation to a crime) – this is possible for individuals as well as government agencies or entities**

➡ C. A state government agency or local government entity who (*include culpable mental state -- intentionally or knowingly? Willfully? Do we use this regularly now in civil violations? We don't use willful in the criminal context.*)

See Q in ¶A) violates subsection 1 commits a civil violation for which a fine of not more than \$? may be adjudged.

➔ D. A state government agency or local government entity who intentionally or knowingly violates subsection 1 is guilty of a Class E crime, except the sentencing alternative may include only the penalties provided in Title 17-A, section 1301. (fines – for a Class E, it is a fine of no more than \$1,000) (okay to structure it like this for a crime? see Q. in ¶B)

➔ **Another option that can be drafted is to compound penalties by imposing fine for each day of violation (i.e., \$25/day) – proof problems?...**

### Other additional sanctions

#### In current law:

- ➔ See **attorney's fees** in §409, sub-§4
- ➔ See **court invalidation of act** in violation of FOA laws in §409, sub-§2

#### Could add:

**#. Enjoin.** In addition to any other relief awarded pursuant to this subchapter, the court may issue an order to enjoin future violations of this subchapter. (subsequent violation = violation of court order, which is subject to enforcement and possible contempt)