

Regular Session, 2014

HOUSE BILL NO. 616

BY REPRESENTATIVE ABRAMSON

PUBLIC RECORDS: Provides relative to public records requests

1 AN ACT

2 To amend and reenact R.S. 44:35(A) and (D), relative to public records; provides with
3 respect to in-person, written, and electronic requests for a public record; to provide
4 an enforcement mechanism if the custodian fails to respond to a written or electronic
5 request within a certain number of days; to assign costs and attorney fees against the
6 custodian in certain cases; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 44:35(A) and (D) are hereby amended and reenacted to read as
9 follows:

10 §35. Enforcement

11 A. Any person who has been denied the right to inspect, ~~or copy, reproduce,~~
12 or obtain a copy or reproduction of a record under the provisions of this Chapter,
13 either by a ~~final~~ determination of the custodian or by the passage of five days,
14 exclusive of Saturdays, Sundays, and legal public holidays, from the date of his in-
15 person, written, or electronic request without receiving a ~~final~~ determination in
16 writing by the custodian or an estimate of the time reasonably necessary for
17 collection, segregation, redaction, examination, or review of a records request, may
18 institute proceedings for the issuance of a writ of mandamus, injunctive or
19 declaratory relief, together with ~~attorney's~~ attorney fees, costs and damages as

1 provided for by this Section, in the district court for the parish in which the office of
2 the custodian is located.

3 * * *

4 D. If a person seeking the right to inspect, copy, or reproduce a record or to
5 receive or obtain a copy or reproduction of a public record prevails in such suit, he
6 shall be awarded reasonable ~~attorney's~~ attorney fees and other costs of litigation. If
7 such person prevails in part, the court may in its discretion award him reasonable
8 ~~attorney's~~ attorney fees or an appropriate portion thereof.

9 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Abramson

HB No. 616

Abstract: Provides a legal remedy in cases wherein a custodian fails to act within a specified amount of time on a written or electronic request for a public record.

Present law establishes the right of any person to examine a public record and authorizes individuals who appear in person to inspect, copy, or reproduce any public record and further authorizes written requests to obtain a copy or reproduction of any public record.

Present law provides that a person who has been denied the right to inspect or copy a record under present law may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs and damages, in the district court for the parish in which the office of the custodian is located.

Proposed law retains present law. Specifies that the right to institute an enforcement action applies to written and electronic requests in addition to requests made in person. Additionally specifies that the right to institute an enforcement action applies to denial of the right to obtain a copy or reproduction of a record in addition to denial of the right to inspect or copy a record.

Present law provides that a person may institute an enforcement action when the person is denied access to a record either by a final determination of the custodian or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his request without receiving a final determination in writing by the custodian.

Proposed law removes the requirement that the determination of the custodian be a final determination. Provides that the right to institute an enforcement action does not apply if the requestor, within five days of the date of the request, receives an estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of the records request. Otherwise retains present law.

Present law provides that if a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded reasonable attorney fees and other

costs of litigation. Provides that if such person prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion thereof.

Proposed law retains present law. Specifies that attorney fees may be awarded to a person seeking the right to copy or reproduce a public record or to obtain a copy or reproduction of a public record in addition to a person seeking the right to inspect or receive a copy of a public record.

(Amends R.S. 44:35(A) and (D))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill.

1. Removes provisions of proposed law that would have repealed present law provisions allowing a person to institute an enforcement action before the expiration of five days upon receiving a final determination of the custodian denying the request.
2. Adds provisions expressly providing that proposed law applies to electronic requests.
3. Adds provisions providing that the right to institute an enforcement action does not apply if the requestor within five days of the date of the request receives an estimate of the time necessary for examination or review of a burdensome records request.

House Floor Amendments to the engrossed bill.

1. Removed the present law requirement that the decision of the custodian that affects the right to bring an enforcement action be a final decision.
2. Added provisions specifying that the estimate of time necessary to respond to the request be reasonable, that the estimate additionally include the time necessary for the collection, segregation, and redaction of records, and that the provisions of proposed law relative to the estimate apply to any records request, not only burdensome requests.