

2024 Regular Session

SENATE BILL NO. 423

BY SENATOR MORRIS

PUBLIC RECORDS. Provides for access to public records by certain persons. (gov sig)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact R.S. 44:5(A) and (C), 31(B), 31.1, 31.2, 32(A)(1), (C)(1)(a), (c), and (d), (2), (3), and (D), 33(B)(1), 34, and 35(A) and (D), relative to public records; to provide for public records request requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:5(A) and (C), 31(B), 31.1, 31.2, 32(A)(1), (C)(1)(a), (c), and (d), (2), (3), and (D), 33(B)(1), 34, and 35(A) and (D) are hereby amended and reenacted to read as follows:

§5. Records of the office of the governor

A. The legislature recognizes that it is essential to the maintenance of a democratic society that public business be performed in an open and public manner, and that the citizens **of this state** be advised of and be aware of the performance of public officials and the deliberations and decisions that go into making public policy. Toward this end, the provisions of this Section, as well as the rest of this Chapter, shall be construed liberally so as to facilitate, rather than hinder, access to public records.

* * *

1 C. The provisions of Subsection B of this Section shall not prevent any
 2 ~~person~~ **Louisiana citizen** from inspecting, examining, copying, or obtaining an
 3 electronic or physical reproduction of any record pertaining to any money or monies,
 4 any assets or items of economic value to the state, or any financial transactions in the
 5 control of or handled by or through the governor or the office of the governor.

6 * * *

7 §31. Right to examine records

8 * * *

9 B.(1) Except as otherwise provided in this Chapter or as otherwise
 10 specifically provided by law, and in accordance with the provisions of this Chapter,
 11 any public record.

12 (2) Except as otherwise provided in this Chapter or as otherwise specifically
 13 provided by law, and in accordance with the provisions of this Chapter, any ~~person~~
 14 **Louisiana citizen** may obtain a copy or reproduction of any public record.

15 **(3) Except as otherwise provided in this Chapter or as otherwise**
 16 **specifically provided by law, and in accordance with the provisions of this**
 17 **Chapter, no provision of this Chapter shall be construed to limit access to**
 18 **readily available public records, including but not limited to mortgage and**
 19 **conveyance records.**

20 ~~(3)~~ **(4)** The burden of proving that a public record is not subject to inspection,
 21 copying, or reproduction shall rest with the custodian.

22 §31.1. Exceptions; authority of the custodian

23 For the purposes of this Chapter, ~~person~~ **Louisiana citizen** does not include
 24 an individual in custody after sentence following a felony conviction who has
 25 exhausted his appellate remedies when the request for public records is not limited
 26 to grounds upon which the individual could file for post-conviction relief under Code
 27 of Criminal Procedure Article 930.3. Notwithstanding the provisions contained in
 28 R.S. 44:32, the custodian may make an inquiry of any individual who applies for a
 29 public record to determine if ~~such~~ **the** individual is in custody after sentence

1 following a felony conviction who has exhausted his appellate remedies and the
2 custodian may make any inquiry necessary to determine if the request of any ~~such~~
3 individual in custody for a felony conviction is limited to grounds upon which ~~such~~
4 **the** individual may file for post-conviction relief under Code of Criminal Procedure
5 Article 930.3.

6 §31.2. Public records awareness program

7 The attorney general shall establish a program for educating the general
8 public, public bodies, and custodians regarding the provisions of this Chapter. ~~Such~~
9 **The** program may include brochures, pamphlets, videos, seminars, and internet
10 access to information which provides training on the provisions of this Chapter,
11 including the custodian's responsibilities in connection with a request for records, the
12 possibility that information submitted to a public body may become public record
13 pursuant to the provisions of this Chapter, and the right of a ~~person~~ **Louisiana**
14 **citizen** to institute court proceedings if access to a record is denied by the custodian.

15 §32. Duty to permit examination; prevention of alteration; payment for overtime;
16 copies provided; fees

17 A.(1) The custodian shall present any public record to any ~~person~~ **Louisiana**
18 **citizen** of the age of majority who so requests. The custodian shall make no inquiry
19 of any ~~person~~ **Louisiana citizen** who applies for a public record, except an inquiry
20 as to the age and **state-issued** identification of the ~~person~~ **Louisiana citizen** and may
21 require the ~~person~~ **Louisiana citizen** to sign a register and shall not review, examine,
22 or scrutinize any copy, photograph, or memoranda in the possession of any ~~such~~
23 ~~person~~ **Louisiana citizen**; and shall extend to the ~~person~~ **Louisiana citizen** all
24 reasonable comfort and facility for the full exercise of the right granted by this
25 Chapter; provided that nothing herein contained shall prevent the custodian from
26 maintaining such vigilance as is required to prevent alteration of any record while
27 it is being examined; and provided further, that examinations of records under the
28 authority of this Section must be conducted during regular office or working hours,
29 unless the custodian shall authorize examination of records in other than regular

1 office or working hours. In this event the persons designated to represent the
2 custodian during such examination shall be entitled to reasonable compensation to
3 be paid to them by the public body having custody of such record, out of funds
4 provided in advance by the person examining such record in other than regular office
5 or working hours. The custodian shall be permitted to make an inquiry regarding the
6 specificity of the records sought by the applicant if, after review of the initial request,
7 the custodian is unable to ascertain what records are being requested.

8 * * *

9 C.(1)(a) For all public records, except public records of state agencies, it shall
10 be the duty of the custodian of the public records to provide copies to ~~persons~~
11 **Louisiana citizens** so requesting, unless the requestor fails to pay the applicable
12 copying fees after being notified of the amount in advance of production or the
13 requestor has an outstanding balance from a prior request. The custodian may
14 establish and collect reasonable fees for making copies of public records, which may
15 include the transmission of electronic copies of public records. Any custodian who
16 elects to establish and collect fees shall establish a reasonable fee schedule and post
17 the schedule where it can be readily accessed by the public. The custodian may
18 request payment of fees in advance of production. Copies of records may be
19 furnished without charge or at a reduced charge to indigent citizens of this state.

20 * * *

21 (c) The use or placement of mechanical reproduction, microphotographic
22 reproduction, or any other such imaging, reproduction, or photocopying equipment
23 within the offices of the clerk of court by any ~~person~~ **Louisiana citizen** described in
24 R.S. 44:31 is prohibited unless ordered by a court of competent jurisdiction.

25 (d) Any ~~person~~ **Louisiana citizen**, as provided for in R.S. 44:31, may request
26 a copy or reproduction of any public record and it shall be the duty of the custodian
27 to provide such copy or reproduction to the person so requesting.

28 (2) For all public records of state agencies, it shall be the duty of the
29 custodian of ~~such~~ records to provide copies to ~~persons~~ **Louisiana citizens** so

1 requesting, unless the requestor fails to pay the applicable copying fees after being
2 notified of the amount in advance of production or the requestor has an outstanding
3 balance from a prior request. Fees for ~~such~~ copies shall be charged according to the
4 uniform fee schedule adopted by the commissioner of administration, as provided
5 by R.S. 39:241 or as otherwise fixed or provided by law. Copies of records may be
6 furnished without charge or at a reduced charge to indigent citizens of this state or
7 the persons whose use of ~~such~~ the copies, as determined by the custodian, will be
8 limited to a public purpose, including but not limited to use in a hearing before any
9 governmental regulatory commission.

10 (3) No fee shall be charged to any ~~person~~ **Louisiana citizen** to examine or
11 review any public records, except as provided in this Section, and no fee shall be
12 charged for examination or review to determine if a record is subject to disclosure,
13 except as may be determined by a court of competent jurisdiction.

14 D. In any case in which a record is requested and a question is raised by the
15 custodian of the record as to whether it is a public record, such custodian shall within
16 five days, exclusive of Saturdays, Sundays, and legal public holidays, of the receipt
17 of the request, in writing for such record, notify in writing the ~~person~~ **Louisiana**
18 **citizen** making such request of his determination and the reasons therefor. ~~Such~~ **The**
19 written notification shall contain a reference to the basis under law which the
20 custodian has determined exempts a record, or any part thereof, from inspection,
21 copying, or reproduction.

22 §33. Availability of records

23 * * *

24 B.(1) If the public record applied for is immediately available, because of its
25 not being in active use at the time of the application, the public record shall be
26 immediately presented to the authorized ~~person~~ **Louisiana citizen** applying for it.
27 If the public record applied for is not immediately available, because of its being in
28 active use at the time of the application, the custodian shall promptly certify this in
29 writing to the applicant, and in his certificate shall fix a day and hour within three

1 days, exclusive of Saturdays, Sundays, and legal public holidays, for the exercise of
2 the right granted by this Chapter.

3 * * *

4 §34. Absence of records

5 If any public record applied for by any authorized ~~person~~ **Louisiana citizen**
6 is not in the custody or control of the person to whom the application is made, ~~such~~
7 **the** person shall promptly certify this in writing to the applicant, and shall in the
8 certificate state in detail to the best of his knowledge and belief, the reason for the
9 absence of the record from his custody or control, its location, what person then has
10 custody of the record and the manner and method in which, and the exact time at
11 which it was taken from his custody or control. He shall include in the certificate
12 ample and detailed answers to inquiries of the applicant which may facilitate the
13 exercise of the right granted by this Chapter.

14 §35. Enforcement

15 A. Any ~~person~~ **Louisiana citizen** who has been denied the right to inspect,
16 copy, reproduce, or obtain a copy or reproduction of a record under the provisions
17 of this Chapter, either by a determination of the custodian or by the passage of five
18 days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of
19 his in-person, written, or electronic request without receiving a determination in
20 writing by the custodian or an estimate of the time reasonably necessary for
21 collection, segregation, redaction, examination, or review of a records request, may
22 institute proceedings for the issuance of a writ of mandamus, injunctive or
23 declaratory relief, together with attorney fees, costs and damages as provided for by
24 this Section, in the district court for the parish in which the office of the custodian
25 is located.

26 * * *

27 D.(1) If a ~~person~~ **Louisiana citizen** seeking the right to inspect, copy, or
28 reproduce a record or to receive or obtain a copy or reproduction of a public record
29 prevails in ~~such~~ **the** suit, he shall be awarded reasonable attorney fees and other costs

1 of litigation. If ~~such~~ **the** person prevails in part, the court may in its discretion award
2 him reasonable attorney fees or an appropriate portion thereof.

3 (2) If a public body or official brings a suit against a ~~person~~ **Louisiana**
4 **citizen** based on the ~~person's~~ **Louisiana citizen's** request to inspect, copy, or
5 reproduce a record or to receive or obtain a copy or reproduction of a public record
6 and the ~~person~~ **Louisiana citizen** prevails in the suit, the ~~person~~ **Louisiana citizen**
7 shall be awarded reasonable attorney fees and other costs of litigation. If the ~~person~~
8 **Louisiana citizen** prevails in part, the court may in its discretion award the ~~person~~
9 **Louisiana citizen** reasonable attorney fees or an appropriate portion thereof.

10 * * *

11 Section 2. This Act shall become effective upon signature by the governor or, if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
15 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Matt DeVille.

DIGEST

SB 423 Engrossed

2024 Regular Session

Morris

Present law provides that the legislature recognizes that it is essential to the maintenance of a democratic society that public business be performed in an open and public manner, and that the citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into making public policy. Toward this end, the provisions of present law shall be construed liberally so as to facilitate, rather than hinder, access to public records.

Present law further provides that present law shall not prevent any person from inspecting, examining, copying, or obtaining an electronic or physical reproduction of any record pertaining to any money or monies, any assets or items of economic value to the state, or any financial transactions in the control of or handled by or through the governor or the office of the governor.

Present law provides that except as otherwise provided in present law, any person of the age of majority may inspect, copy, or reproduce any public record. Further provides that except as otherwise provided by present law, any person may obtain a copy or reproduction of any public record.

Present law provides that for the purposes of present law, the term "person" does not include an individual in custody after sentence following a felony conviction who has exhausted his appellate remedies when the request for public records is not limited to grounds upon which

the individual could file for post-conviction relief under present law.

Present law provides that the attorney general shall establish a program for educating the general public, public bodies, and custodians regarding the provisions of the Public Records Law. Further provides that the program may include brochures, pamphlets, videos, seminars, and internet access to information which provides training on the provisions of the Public Records Law, including the custodian's responsibilities in connection with a request for records, the possibility that information submitted to a public body may become public record pursuant to the provisions of present law, and the right of a person to institute court proceedings if access to a record is denied by the custodian.

Present law provides that the custodian of records shall present any public record to any person of the age of majority who so requests. Further provides that the custodian shall make no inquiry of any person who applies for a public record, except an inquiry as to the age and identification of the person and may require the person to sign a register and shall not review, examine, or scrutinize any copy, photograph, or memoranda in the possession of any person; and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted by present law.

Present law further provides that nothing shall prevent the custodian from maintaining vigilance as is required to prevent alteration of any record while it is being examined and provides further that examinations of records under the authority of present law must be conducted during regular office or working hours, unless the custodian authorizes examination of records in other than regular office or working hours.

Present law further provides that the custodian shall be permitted to make an inquiry regarding the specificity of the records sought by the applicant if, after review of the initial request, the custodian is unable to ascertain what records are being requested.

Present law provides that for all public records, except public records of state agencies, it shall be the duty of the custodian of the public records to provide copies to persons so requesting, unless the requestor fails to pay the applicable copying fees after being notified of the amount in advance of production or the requestor has an outstanding balance from a prior request.

Present law further provides the custodian may establish and collect reasonable fees for making copies of public records, which may include the transmission of electronic copies of public records. Further provides any custodian who elects to establish and collect fees shall establish a reasonable fee schedule and post the schedule where it can be readily accessed by the public and that the custodian may request payment of fees in advance of production.

Present law further provides that copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state.

Present law provides that the use or placement of mechanical reproduction, microphotographic reproduction, or any other such imaging, reproduction, or photocopying equipment within the offices of the clerk of court by any person is prohibited unless ordered by a court of competent jurisdiction.

Present law provides that any person may request a copy or reproduction of any public record and it shall be the duty of the custodian to provide the copy or reproduction to the person so requesting.

Present law provides that for all public records of state agencies, it shall be the duty of the custodian of such records to provide copies to persons so requesting, unless the requestor fails to pay the applicable copying fees after being notified of the amount in advance of production or the requestor has an outstanding balance from a prior request.

Present law further provides that fees for copies of public records of state agencies shall be charged according to the uniform fee schedule adopted by the commissioner of administration, as provided by present law.

Present law further provides that copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state or the persons whose use of such copies, as determined by the custodian, will be limited to a public purpose, including but not limited to use in a hearing before any governmental regulatory commission.

Present law provides that no fee shall be charged to any person to examine or review any public records, except as provided in present law, and that no fee shall be charged for examination or review to determine if a record is subject to disclosure, except as may be determined by a court of competent jurisdiction.

Present law provides that if the public record applied for is immediately available, because of it not being in active use at the time of the application, the public record shall be immediately presented to the authorized person applying for it.

Present law further provides that if the public record applied for is not immediately available, because of its being in active use at the time of the application, the custodian shall promptly certify this in writing to the applicant, and in his certificate shall fix a day and hour within three days, exclusive of Saturdays, Sundays, and legal public holidays.

Present law provides that if any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, the person shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of his knowledge and belief, the reason for the absence of the record from his custody or control, its location, what person then has custody of the record and the manner and method in which, and the exact time at which it was taken from his custody or control. Further provides that the person shall include in the certificate ample and detailed answers to inquiries of the applicant which may facilitate the exercise of the right to public records.

Present law provides that any person who has been denied the right to inspect, copy, reproduce, or obtain a copy or reproduction of a record under the provisions of present law, either by a determination of the custodian or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his in-person, written, or electronic request without receiving a determination in writing by the custodian or an estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of a records request, may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs and damages as provided for by present law, in the district court for the parish in which the office of the custodian is located.

Present law provides that if a person seeking the right to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record prevails in such suit, he shall be awarded reasonable attorney fees and other costs of litigation. Further provides that if the person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof.

Present law provides that if a public body or official brings a suit against a person based on the person's request to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record and the person prevails in the suit, the person shall be awarded reasonable attorney fees and other costs of litigation. Further provides if the person prevails in part, the court may in its discretion award the person reasonable attorney fees or an appropriate portion thereof.

Proposed law retains present law and requires any public record requestor to be a Louisiana citizen.

Proposed law further provides that no provision of present law or proposed law shall be construed to limit access to readily available public records including but not limited to mortgage and conveyance records.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 44:5(A) and (C), 31(B), 31.1, 31.2, 32(A)(1), (C)(1)(a), (c), and (d), (2), (3), and (D), 33(B)(1), 34, and 35(A) and (D))

Summary of Amendments Adopted by Senate

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

1. Make technical changes.
2. Provide that no provision of law shall be construed to limit access to readily available public records including but not limited to mortgage and conveyance records.