

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 212**

Introduced by Cavanaugh, M., 6.

Read first time January 08, 2021

Committee:

- 1 A BILL FOR AN ACT relating to public records; to amend sections 84-712
- 2 and 84-712.01, Reissue Revised Statutes of Nebraska; to prohibit
- 3 charging a fee for official requests for public records by members
- 4 of the Legislature and set a deadline for fulfilling such requests;
- 5 to harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-712, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 84-712 (1) Except as otherwise expressly provided by statute, all  
4 citizens of this state and all other persons interested in the  
5 examination of the public records as defined in section 84-712.01 are  
6 hereby fully empowered and authorized to (a) examine such records, and  
7 make memoranda, copies using their own copying or photocopying equipment  
8 in accordance with subsection (2) of this section, and abstracts  
9 therefrom, all free of charge, during the hours the respective offices  
10 may be kept open for the ordinary transaction of business and (b) except  
11 if federal copyright law otherwise provides, obtain copies of public  
12 records in accordance with subsection (3) of this section during the  
13 hours the respective offices may be kept open for the ordinary  
14 transaction of business.

15 (2) Copies made by citizens or other persons using their own copying  
16 or photocopying equipment pursuant to subdivision (1)(a) of this section  
17 shall be made on the premises of the custodian of the public record or at  
18 a location mutually agreed to by the requester and the custodian.

19 (3)(a) Copies may be obtained pursuant to subdivision (1)(b) of this  
20 section only if the custodian has copying equipment reasonably available.  
21 Such copies may be obtained in any form designated by the requester in  
22 which the public record is maintained or produced, including, but not  
23 limited to, printouts, electronic data, discs, tapes, and photocopies.  
24 This section shall not be construed to require a custodian to copy any  
25 public record that is available to the requester on the custodian's web  
26 site on the Internet. The custodian of the public record is required to  
27 provide the location of the public record on the Internet to the  
28 requester. If the requester does not have reasonable access to the  
29 Internet due to lack of computer, lack of Internet availability, or  
30 inability to use a computer or the Internet, the custodian shall produce  
31 copies for the requester.

1           (b) Except as provided in subdivision (3)(g) of this section and as  
2 otherwise provided by statute, the public body, public entity, or public  
3 official which is the custodian of a public record may charge a fee for  
4 providing copies of such public record pursuant to subdivision (1)(b) of  
5 this section, which fee shall not exceed the actual added cost of making  
6 the copies available. For purposes of this subdivision, (i) for  
7 photocopies, the actual added cost of making the copies available shall  
8 not exceed the amount of the reasonably calculated actual added cost of  
9 the photocopies, which may include a reasonably apportioned cost of the  
10 supplies, such as paper, toner, and equipment, used in preparing the  
11 copies, as well as any additional payment obligation of the custodian for  
12 time of contractors necessarily incurred to comply with the request for  
13 copies, (ii) for printouts of computerized data on paper, the actual  
14 added cost of making the copies available shall include the reasonably  
15 calculated actual added cost of computer run time and the cost of  
16 materials for making the copy, and (iii) for electronic data, the actual  
17 added cost of making the copies available shall include the reasonably  
18 calculated actual added cost of the computer run time, any necessary  
19 analysis and programming by the public body, public entity, public  
20 official, or third-party information technology services company  
21 contracted to provide computer services to the public body, public  
22 entity, or public official, and the production of the report in the form  
23 furnished to the requester.

24           (c) The actual added cost used as the basis for the calculation of a  
25 fee for records shall not include any charge for the existing salary or  
26 pay obligation to the public officers or employees with respect to the  
27 first four cumulative hours of searching, identifying, physically  
28 redacting, or copying. A special service charge reflecting the calculated  
29 labor cost may be included in the fee for time required in excess of four  
30 cumulative hours, since that large a request may cause some delay or  
31 disruption of the other responsibilities of the custodian's office,

1 except that the fee for records shall not include any charge for the  
2 services of an attorney to review the requested public records seeking a  
3 legal basis to withhold the public records from the public.

4 (d) State agencies which provide electronic access to public records  
5 through a portal established under section 84-1204 shall obtain approval  
6 of their proposed reasonable fees for such records pursuant to sections  
7 84-1205.02 and 84-1205.03, if applicable, and the actual added cost of  
8 making the copies available may include the approved fee for the portal.

9 (e) This section shall not be construed to require a public body or  
10 custodian of a public record to produce or generate any public record in  
11 a new or different form or format modified from that of the original  
12 public record.

13 (f) Except as provided in subdivision (3)(g) of this section, if If  
14 copies requested in accordance with subdivision (1)(b) of this section  
15 are estimated by the custodian of such public records to cost more than  
16 fifty dollars, the custodian may require the requester to furnish a  
17 deposit prior to fulfilling such request.

18 (g) No fee shall be charged under this section for a request made by  
19 a member of the Legislature in the member's official capacity.

20 ~~(4)~~ (4)(a) Upon receipt of a written request for access to or copies  
21 of a public record, the custodian of such record shall provide to the  
22 requester as soon as is practicable and without delay, but not more than  
23 four business days after actual receipt of the request, an estimate of  
24 the expected cost of the copies and either:

25 ~~(a)~~ (i) Access access to or, if copying equipment is reasonably  
26 available, copies of the public record; ~~τ~~

27 ~~(b)~~ (ii) If if there is a legal basis for denial of access or  
28 copies, a written denial of the request together with the information  
29 specified in section 84-712.04; ~~τ~~ or

30 ~~(c)~~ (iii) If if the entire request cannot with reasonable good faith  
31 efforts be fulfilled within four business days after actual receipt of

1 the request due to the significant difficulty or the extensiveness of the  
2 request, a written explanation, including the earliest practicable date  
3 for fulfilling the request, an estimate of the expected cost of any  
4 copies, and an opportunity for the requester to modify or prioritize the  
5 items within the request.

6 (b) The requester shall have ten business days to review the  
7 estimated costs, including any special service charge, and request the  
8 custodian to fulfill the original request, negotiate with the custodian  
9 to narrow or simplify the request, or withdraw the request. If the  
10 requester does not respond to the custodian within ten business days, the  
11 custodian shall not proceed to fulfill the request. If the request was  
12 made by a member of the Legislature in the member's official capacity,  
13 the entire request shall be fulfilled within fifteen business days after  
14 the member's response to the custodian's written explanation unless the  
15 member negotiates with the custodian to narrow or simplify the request,  
16 withdraws the request, or agrees to a longer period of time.

17 (4) ~~The four~~ For purposes of this section:

18 (a) Business ~~business~~ days shall be computed by excluding the day  
19 the request or response is received, after which the designated period of  
20 time begins to run; and -

21 (b) Business day does not include a Saturday, a Sunday, or a day  
22 during which the offices of the custodian of the public records are  
23 closed.

24 Sec. 2. Section 84-712.01, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 84-712.01 (1) Except when any other statute expressly provides that  
27 particular information or records shall not be made public, public  
28 records shall include all records and documents, regardless of physical  
29 form, of or belonging to this state, any county, city, village, political  
30 subdivision, or tax-supported district in this state, or any agency,  
31 branch, department, board, bureau, commission, council, subunit, or

1 committee of any of the foregoing. Data which is a public record in its  
2 original form shall remain a public record when maintained in computer  
3 files.

4 (2) When a custodian of a public record of a county provides to a  
5 member of the public, upon request, a copy of the public record by  
6 transmitting it from a modem to an outside modem, a reasonable fee may be  
7 charged for such specialized service except as provided for in subsection  
8 (3) of this section. Such fee may include a reasonable amount  
9 representing a portion of the amortization of the cost of computer  
10 equipment, including software, necessarily added in order to provide such  
11 specialized service. This subsection shall not be construed to require a  
12 governmental entity to acquire computer capability to generate public  
13 records in a new or different form when that new form would require  
14 additional computer equipment or software not already possessed by the  
15 governmental entity.

16 (3) No fee shall be charged under this section for a request made by  
17 a member of the Legislature in the member's official capacity.

18 (4) ~~(3)~~ Sections 84-712 to 84-712.03 shall be liberally construed  
19 whenever any state, county, or political subdivision fiscal records,  
20 audit, warrant, voucher, invoice, purchase order, requisition, payroll,  
21 check, receipt, or other record of receipt, cash, or expenditure  
22 involving public funds is involved in order that the citizens of this  
23 state shall have the full right to know of and have full access to  
24 information on the public finances of the government and the public  
25 bodies and entities created to serve them.

26 Sec. 3. Original sections 84-712 and 84-712.01, Reissue Revised  
27 Statutes of Nebraska, are repealed.