

2019 Regular Session

HOUSE BILL NO. 554

BY REPRESENTATIVE GAROFALO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC RECORDS: Provides relative to public records

1 AN ACT

2 To amend and reenact R.S. 44:1(A)(2)(a), 31(B)(1) and (3), 32, 33, 35(C) and (E) and to
3 enact R.S. 44:31(B)(4) through (6), relative to public records; to provide relative to
4 the interpretation of the Public Records Law; to provide for the definition of public
5 records; to provide relative to the rights of a person requesting a public record; to
6 provide procedures and requirements for requesting public records; to provide
7 relative to the rights, duties, and responsibilities of custodians of public records; to
8 provide procedures and requirements for responding to a request and for producing
9 public records and copies or reproductions of public records; to provide relative to
10 fees; to provide relative to enforcement; to provide for penalties; and to provide for
11 related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 44:1(A)(2)(a), 31(B)(1) and (3), 32, 33, 35(C) and (E) are hereby
14 amended and reenacted and R.S. 44:31(B)(4) through (6) are hereby enacted to read as
15 follows:

16 §1. General definitions

17 A.

18 * * *

19 (2)(a) All books, records, writings, accounts, letters and letter books, maps,
20 drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all

1 copies, duplicates, photographs, including microfilm, or other reproductions thereof,
 2 or any other documentary materials, regardless of physical form or characteristics,
 3 including information contained in electronic data processing equipment, including
 4 electronic communications and data, email and text messages, having been used,
 5 being in use, or prepared, possessed, or retained for use in the conduct, transaction,
 6 or performance of any business, transaction, work, duty, or function which was
 7 conducted, transacted, or performed by or under the authority of the constitution or
 8 laws of this state, or by or under the authority of any ordinance, regulation, mandate,
 9 or order of any public body or concerning the receipt or payment of any money
 10 received or paid by or under the authority of the constitution or the laws of this state,
 11 are "public records", except as otherwise provided in this Chapter or the Constitution
 12 of Louisiana.

* * *

14 §31. Right to ~~examine~~ inspect, copy, reproduce, or obtain a copy or reproduction of
 15 records

* * *

17 B.(1) Except as otherwise provided in this Chapter or as otherwise
 18 specifically provided by law, and in accordance with the provisions of this Chapter,
 19 any person ~~of the age of majority~~ may inspect, copy, or reproduce any public record.

* * *

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

23 (4) Access to a public record can be denied only when a law, specifically and
 24 unequivocally, provides for exemption.

25 (5) The provisions of this Chapter shall be interpreted liberally in all cases
 26 in favor of free and unrestricted access to records.

27 (6) When there is doubt as to whether the public has the right to access a
 28 record, the doubt shall be resolved in favor of the public's right to access the record.

* * *

1 §32. Duty to ~~permit examination; prevention of alteration; payment for overtime;~~
2 ~~copies provided; provide record; reproduction fees~~

3 A.(1) ~~The custodian shall present any public record to any person of the age~~
4 ~~of majority who so requests. The~~ A requestor may make a request to review a
5 ~~public record to the custodian by any means the requestor chooses, including in~~
6 ~~person, electronically, or by mail.~~

7 (2) ~~After receiving the request, the~~ custodian shall make no inquiry ~~of any~~
8 ~~person who applies for a public record, except an inquiry as to the age and~~
9 ~~identification of the person and~~ of the requestor.

10 (3) ~~The custodian may require the person~~ requestor to sign a register ~~and if~~
11 ~~the request is made in person.~~

12 (4) ~~The custodian shall not review, examine, or scrutinize any copy,~~
13 ~~photograph, or memoranda in the possession of any such person, and~~ the requestor.

14 (5) ~~The custodian shall extend to the person~~ requestor all reasonable comfort
15 and facility for the full exercise of the right granted by this Chapter; ~~provided that~~
16 ~~nothing herein contained shall prevent the custodian from maintaining such vigilance~~
17 ~~as is required to prevent alteration of any record while it is being examined; and~~
18 ~~provided further, that examinations of records.~~

19 B. Any inspection, copying, or reproduction by a requestor under the
20 authority of this Section must be conducted during regular office or working hours,
21 unless the custodian ~~shall authorize examination~~ authorizes inspection, copying, or
22 reproduction of records ~~in~~ during a time other than regular office or working hours.
23 In this event the persons designated to represent the custodian during such
24 ~~examination~~ inspection, copying, or reproduction shall be entitled to reasonable
25 compensation to be paid to them by the public body having custody of such record,
26 out of funds provided in advance by the ~~person examining~~ requestor inspecting,
27 copying, or reproducing such record in other than regular office or working hours.

1 B. ~~If any record contains material which is not a public record, the custodian~~
2 ~~may separate the nonpublic record and make the public record available for~~
3 ~~examination.~~

4 C. Nothing in this Section shall prevent the custodian from maintaining such
5 vigilance as is required to prevent alteration of any record while it is being inspected,
6 copied, or reproduced by the requestor.

7 D.(1) ~~(1)(a) For all public records, except public records of state agencies,~~
8 ~~it~~ It shall be the duty and responsibility of the custodian of such public records to
9 provide copies or reproductions to persons so requesting a requestor regardless of the
10 form of the request.

11 (2)(a)(i) Unless the fee for copying or reproducing a public record is
12 established by law, The the custodian of records for a non-state agency may establish
13 a reasonable fee schedule and collect reasonable fees according to the fee schedule
14 for the making of copies or reproductions of public records.

15 (ii) If the custodian establishes a reasonable fee schedule, the custodian shall
16 make the fee schedule available to the public in a manner that will allow a member
17 of the public to quickly determine the fees for the making of copies and
18 reproductions of public records, including by placing such information on the
19 internet.

20 (b) If the custodian fails to establish a reasonable fee schedule and make the
21 fee schedule available as required by Subparagraph (a) of this Paragraph, the
22 custodian shall use the uniform fee schedule adopted by the commissioner of
23 administration as provided in R.S. 39:241 for copying or reproducing public records.

24 (3) Each state agency shall use the uniform fee schedule adopted by the
25 commissioner of administration as provided in RS. 39:241 for copying or
26 reproducing a public record.

27 (4) The custodian may request require payment of fees in advance of
28 production copying or reproducing a record.

1 (5) Copies or reproductions of records may be furnished without charge or
2 at a reduced charge to indigent citizens of this state or to persons whose use of such
3 copies or reproductions, as determined by the custodian, will be limited to a public
4 purpose, including but not limited to use in a hearing before any governmental
5 regulatory commission.

6 (6) No fee shall be charged to a requestor who requests to inspect a public
7 record.

8 (7) No fee shall be charged by the custodian to collect, segregate, redact,
9 examine, or review a record request, except as may be determined by a court of
10 competent jurisdiction.

11 (8) The requestor shall be allowed to choose whether the requestor receives
12 the requested records via electronic transmission or hard copy. The records shall be
13 provided in the format in which they are maintained unless the requestor requests
14 and the custodian agrees to provide the records in another format.

15 ~~(b)~~ (9)(a) For all public records in the custody of a clerk of court, the clerk
16 may also establish reasonable uniform written procedures for the reproduction of any
17 such public record.

18 (b) Additionally, in the parish of Orleans, the recorder of mortgages, the
19 register of conveyances, and the custodian of notarial records may each establish
20 reasonable uniform procedures for the reproduction of public records.

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 described in R.S. 44:31 is
24 prohibited unless ordered by a court of competent jurisdiction.

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

1 ~~copies shall be charged according to the uniform fee schedule adopted by the~~
2 ~~commissioner of administration, as provided by R.S. 39:241.~~

3 ~~Copies shall be provided at fees according to the schedule, except for copies~~
4 ~~of public records the fees for the reproduction of which are otherwise fixed by law.~~
5 ~~Copies of records may be furnished without charge or at a reduced charge to indigent~~
6 ~~citizens of this state or the persons whose use of such copies, as determined by the~~
7 ~~custodian, will be limited to a public purpose, including but not limited to use in a~~
8 ~~hearing before any governmental regulatory commission.~~

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

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

20 §33. Availability of records; time for production

21 ~~A.(1)~~ When a request is made for to inspect, copy, reproduce, or obtain a
22 copy or reproduction of a public record to which the public is entitled, the official
23 custodian, clerks of court and the custodian of notarial records in and for the parish
24 of Orleans excepted, who has responsibility for the record shall have the record
25 segregated from other records under his custody so that the public can reasonably
26 view the record: shall do the following:

27 (1) If the request is made in person and the public record is immediately
28 available, the custodian shall immediately provide the record to the requestor.

1 (2) If the request is a written or electronic request for a copy or reproduction
2 of a public record and the public record is immediately available, the custodian shall
3 provide an electronic copy or reproduction of the record to the requestor within three
4 days, exclusive of Saturdays, Sundays, and legal public holidays, of the receipt of the
5 request.

6 (3) Regardless of the means used to make the request, if the public record is
7 not immediately available or immediately provided, the custodian shall, within three
8 days, exclusive of Saturdays, Sundays, and legal public holidays, of the receipt of the
9 request, state this in writing and provide an estimate of the time reasonably necessary
10 for the collection, segregation, redaction, examination, or review of the records
11 request.

12 (4) If the custodian reasonably believes the requested public record is subject
13 to an exception, exemption, or limitation to the Public Records Law, or contains
14 material that must be segregated or redacted in order to produce the record, the
15 custodian shall, within three days, exclusive of Saturdays, Sundays, and legal public
16 holidays, of the receipt of the request notify the requestor in writing of the
17 custodian's determination and the specific reasons therefor and include in the written
18 notification the following:

19 (1) An estimate of the time reasonably necessary for the collection,
20 segregation, redaction, examination, or review of the public record requested.

21 (2) The specific legal authority that forms the basis for any delay or denial
22 of the request.

23 (2) B. If, however, Notwithstanding any other provision of this Section, if
24 segregating the record would be unreasonably burdensome or expensive, or if the
25 record requested is maintained in a fashion that makes it readily identifiable and
26 renders further segregation by the custodian unnecessary, the official custodian shall
27 so state in writing and shall within three days, exclusive of Saturdays, Sundays, and
28 legal public holidays, of the receipt of the request state the location of the requested
29 record and provide the requestor the opportunity to inspect, copy, reproduce, or

1 select records for copying or reproduction in satisfaction of the right guaranteed by
2 this Chapter.

3 ~~B.(1) If the public record applied for is immediately available, because of its~~
4 ~~not being in active use at the time of the application, the public record shall be~~
5 ~~immediately presented to the authorized person applying for it. If the public record~~
6 ~~applied for is not immediately available, because of its being in active use at the time~~
7 ~~of the application, the custodian shall promptly certify this in writing to the~~
8 ~~applicant, and in his certificate shall fix a day and hour within three days, exclusive~~
9 ~~of Saturdays, Sundays, and legal public holidays, for the exercise of the right granted~~
10 ~~by this Chapter.~~

11 ~~(2)~~ C. The fact that the public records are being audited shall in no case be
12 construed as a reason or justification for a refusal to allow inspection of the records
13 except when the public records are in active use by the auditor.

14 * * *

15 §35. Enforcement

16 * * *

17 C. Any suit brought by a requestor in any court of original jurisdiction to
18 enforce the provisions of this Chapter shall be tried by preference and in a summary
19 manner in accordance with Code of Civil Procedure Article 2592. Any appellate
20 courts to which the suit is brought shall place it on its preferential docket and shall
21 hear it without delay, rendering a decision as soon as practicable.

22 * * *

23 E.(1) If the court finds that the custodian arbitrarily or capriciously withheld
24 the requested record or unreasonably or arbitrarily failed to respond to the request
25 as required by R.S. 44:32 or 33, it may award the requester any actual damages
26 proven by him to have resulted from the actions of the custodian except as
27 hereinafter provided. In addition, if the court finds that the custodian unreasonably
28 or arbitrarily failed to respond to the request as required by R.S. 44:32 or 33 it may
29 award the requester civil penalties not to exceed one hundred dollars per day,

- (4) Provides that access to a public record can be denied only when a law, specifically and unequivocally, provides for exemption.
- (5) Requires the provisions of the Public Records Law to be interpreted liberally in all cases in favor of free and unrestricted access to records.
- (6) Provides that when there is doubt as to whether the public has the right to access a record, the doubt shall be resolved in favor of the public's right to access the record.
- (7) Specifies that a person may make a request to review a public record by any means, including in person, electronically, or by mail.
- (8) Removes the ability of a custodian to inquire about the age and identification of a person who makes a public records request.
- (9) Specifies that the ability for a custodian to require a requestor to sign a register is limited to requests made in person.
- (10) Removes provision providing that if a record contains material that is not a public record, the custodian may separate the nonpublic record and make the public record available.
- (11) Requires a non-state agency to establish a fee schedule relative to fees for copying or reproducing public records and to make the fee schedule available to the public. If it does not do so, the agency must use the state fee schedule adopted by the commissioner of administration pursuant to present law (R.S. 39:241).
- (12) Allows the custodian to require a requestor to pay fees in advance, instead of requesting advance payment.
- (13) Specifies that no fee may be charged by the custodian to collect, segregate, redact, or review a record request.
- (14) Provides that if a request is a written or electronic request for a copy or reproduction of a public record and the public record is immediately available, the custodian shall provide an electronic copy or reproduction of the record to the requestor within three days, exclusive of Sat., Sun., and legal public holidays, of the receipt of the request.
- (15) Provides that regardless of the means used to make the request, if the public record is not immediately available or immediately provided, the custodian shall, within three days, exclusive of Sat., Sun., and legal public holidays, of the receipt of the request, state this in writing and provide an estimate of the time reasonably necessary for the collection, segregation, redaction, examination, or review of the records request.
- (16) In a situation where the custodian does not provide a record because of an issue concerning whether the public is granted access, requires the custodian to reasonably believe that the requested record is subject to an exception, exemption, or limitation to the Public Records Law or contains material that must be segregated or redacted in order to produce the record.
- (17) In such a situation, requires the custodian to include in his notification to the requestor, in addition to the requirements of present law, an estimate of the time reasonably necessary for the collection, segregation, redaction, examination, or review of the public record requested and the specific legal authority that forms the basis for any delay of the request.
- (18) Specifies that a suit brought by a requestor to enforce provisions of the Public Records Law shall be tried pursuant to present law (La. C.C.P. Art. 2592).

- (19) Provides for the award of actual damages and per-day civil penalties for a custodian's failure to comply with proposed law (R.S. 44:33).
- (20) Limits the award of per-day civil penalties to a maximum of three hundred and sixty-five days.
- (21) In provisions relative to personal liability of a custodian for the payment of damages, requires the custodian to prove by a preponderance of the evidence that the custodian withheld or denied production of the requested record on advice of legal counsel representing the public body.
- (22) Removes provisions of present law authorizing the court to award attorney fees to the custodian when the custodian retains private legal counsel for his defense or for bringing suit against the requester.

Present law (R.S. 44:37) provides that any person having custody or control of a public record, who violates any of the provisions of present law, or any person not having such custody or control who, by any conspiracy, understanding, or cooperation with any other person, hinders or attempts to hinder the inspection of any public record declared by present law to be subject to inspection, shall upon first conviction be fined not less than \$100, and not more than \$1,000, or shall be imprisoned for not less than one month, nor more than six months. Provides that upon any subsequent conviction such person shall be fined not less than \$250, and not more than \$2,000, or imprisoned for not less than two months, nor more than six months, or both.

Proposed law retains present law and therefore makes present law applicable to proposed law.

(Amends R.S. 44:1(A)(2)(a), 31(B)(1) and (3), 32, 33, 35(C) and (E); Adds R.S. 44:31(B)(4) through (6))