

**GREEN SHEET REDIGEST**

**HB 768**

**2024 Regular Session**

**Farnum**

**PUBLIC RECORDS: Provides relative to custodian liability for public records requests.**

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**DIGEST**

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 pursuant to the Public Records Law may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs and damages.

Present law provides that a person who prevails in such suit seeking public records shall be awarded reasonable attorney fees and other costs of litigation.

Present law provides that if the court finds that the custodian arbitrarily or capriciously withheld the requested record it may award the requestor any actual damages. If the court finds that the custodian unreasonably or arbitrarily failed to respond to the request, it may award the requestor any actual damages in addition to civil penalties not to exceed \$100 per day for each day of failure to give notification.

Present law provides that the custodian shall be personally liable for the payment of damages for arbitrary and capricious withholding of records or failure to respond to a request. Provides that the custodian shall be liable in solido with the public body for the payment of the requestor's attorney fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of legal counsel representing the public body. In the event the custodian retains private legal counsel for his defense or for bringing suit against the requestor in connection with the request for records, the court may award attorney fees to the custodian.

Proposed law provides that no person shall personally be liable for penalties, damages, civil penalties, attorney fees, or other costs of litigation, assessed for failure to comply with the enforcement provisions and that the public body shall be responsible for the penalties.

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

(Amends R.S. 44:35(E))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Reinstates the custodian's personal liability for arbitrarily and capriciously withholding records or failing to respond to a request.
2. Provide a limitation of liability for a representative of a public official or head of a public body authorized to respond to a public records request.

Summary of Amendments Adopted by Senate

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

1. Make technical changes.
2. Provide that no person shall be personally liable for any penalty for a custodian of public records' failure to respond to a public records request and that the public body shall be responsible.
3. Change the effective date to upon signature of the governor.