

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 and written requests for a public record; to provide an
4 enforcement mechanism if the custodian fails to respond to a written request within
5 a certain number of days; to assign costs and attorney's fees against the custodian in
6 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, or~~
12 reproduce a record under the provisions of this Chapter, ~~either by a final~~
13 ~~determination of the custodian or by the passage of~~ for five days, exclusive of
14 Saturdays, Sundays, and legal public holidays, from the date of his in person request
15 or who has been unable to obtain a copy or reproduction of a record under the
16 provisions of this Chapter for five days, exclusive of Saturdays, Sundays, and legal
17 public holidays, from the date of his written request without receiving a final
18 determination in writing by the custodian, may institute proceedings for the issuance
19 of a writ of mandamus, injunctive or declaratory relief, together with attorney's fees,

1 costs and damages as provided for by this Section, in the district court for the parish
2 in which the office of 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 fees and other costs of litigation. If such
7 person prevails in part, the court may in its discretion award him reasonable
8 attorney's 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 on a written 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 an enforcement mechanism for any person who, after making an in-person request, has been denied the right to inspect or copy a record after the passage of five days. Present law also provides an enforcement mechanism for any person who, after making a written request, has been denied a copy or reproduction of a record based on the custodian's determination that the record being sought is not a public record but who has not received written notice thereof as required by present law. Such enforcement includes the right to institute a legal proceeding for the issuance of a writ of mandamus.

Present law as indicated in the case of *Foster v. Kemp*, 657 So.2d 681 (La. App. 1 Cir., 1995) provides no such enforcement mechanism for a person who makes a written request which is never acted upon by the custodian. Proposed law provides an enforcement mechanism in these cases.

Present law authorizes an award of attorney fees and other costs of litigation in cases in which the requestor of public records prevails at law. Proposed law retains present law but adds language used in other provisions of the Public Records Law, specifically in regard to an in-person right to inspect, copy, or reproduce any public record and a written request to obtain a copy or reproduction of any public record.

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