

2017 Regular Session

HOUSE BILL NO. 157

BY REPRESENTATIVE GAINES

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

PUBLIC RECORDS: Authorizes the assessment of a civil penalty not to exceed \$100 per day for arbitrarily or capriciously withholding a record

1 AN ACT

2 To amend and reenact R.S. 44:35(E), relative to penalties for violations of the Public  
3 Records Law; to authorize the assessment of civil penalties if a custodian arbitrarily  
4 or capriciously withholds a record; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 44:35(E) is hereby amended and reenacted to read as follows:

7 §35. Enforcement

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9 E.(1) If the court finds that the custodian arbitrarily or capriciously withheld  
10 the requested record ~~or unreasonably or arbitrarily failed to respond to the request~~  
11 ~~as required by R.S. 44:32~~, it may award the requester any actual damages proven by  
12 him to have resulted from the actions of the custodian except as ~~hereinafter~~ otherwise  
13 provided in this Section. In addition, if the court finds that the custodian  
14 ~~unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32~~  
15 or capriciously withheld the requested record it may award the requester civil  
16 penalties not to exceed one hundred dollars per day, exclusive of Saturdays,  
17 Sundays, and legal public holidays, for each ~~such day of such failure to give~~  
18 ~~notification~~ the court determines that the custodian arbitrarily or capriciously  
19 withheld the requested record.

1           (2) If the court finds that the custodian unreasonably or arbitrarily failed to  
2           respond to the request as required by R.S. 44:32, it may award the requester any  
3           actual damages proven by him to have resulted from the actions of the custodian  
4           except as otherwise provided in this Section. In addition, if the court finds that the  
5           custodian unreasonably or arbitrarily failed to respond to the request as required by  
6           R.S. 44:32 it may award the requester civil penalties not to exceed one hundred  
7           dollars per day, exclusive of Saturdays, Sundays, and legal public holidays, for each  
8           such day of the failure to give notification.

9           ~~(2)~~ (3) The custodian shall be personally liable for the payment of any such  
10           damages, and shall be liable in solido with the public body for the payment of the  
11           requester's attorney fees and other costs of litigation, except where the custodian has  
12           withheld or denied production of the requested record or records on advice of the  
13           legal counsel representing the public body in which the office of such custodian is  
14           located, and in the event the custodian retains private legal counsel for his defense  
15           or for bringing suit against the requester in connection with the request for records,  
16           the court may award attorney fees to the custodian.

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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)]

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HB 157 Original

2017 Regular Session

Gaines

**Abstract:** Authorizes the award of civil penalties not to exceed \$100 per day if the court finds that a custodian of public records arbitrarily or capriciously withheld a 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 requests to obtain a copy or reproduction of any public record. Provides that a person who has been denied the right to inspect or copy a record may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs, and damages, in the district court for the parish in which the office of the custodian is located. Specifies that the right to institute an enforcement action applies to: (1) all written, electronic, and in person requests; (2) the denial of the right to inspect or copy a record; and (3) the denial of the right to obtain a copy or reproduction of a record. Provides that a person may institute an enforcement action when the person is denied access to a record 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 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 the request.

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. Provides that if such person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof. Provides that an award for attorney fees shall not exceed the amounts approved by the attorney general for the employment of outside counsel. Present law further authorizes the court to award the requester civil penalties not to exceed \$100 per day, exclusive of Saturdays, Sundays, and legal public holidays, if the court finds that the custodian unreasonably or arbitrarily failed to respond to the request as required by present law.

Proposed law further authorizes the court to award the requester civil penalties not to exceed \$100 per day, exclusive of Saturdays, Sundays, and legal public holidays, if the court finds that the custodian arbitrarily or capriciously withheld the requested record and otherwise retains present law.

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