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## DIGEST

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HB 554 Original

2019 Regular Session

Garofalo

**Abstract:** Makes revisions to the Public Records Law, including provisions relative to the definition of public records, right to access public records, procedures and requirements for making public records requests, duties of custodians relative to such requests, fees, and enforcement.

Present law (R.S.44:1 et seq.—Public Records Law) provides for access and retention of public records. Establishes a framework for the ready availability of public records to requesting persons.

Proposed law revises provisions of present law relative to the definition of public records, right to access public records, procedures and requirements for making public records requests, duties of custodians relative to such requests, fees, and enforcement, including the following changes:

- (1) Adds electronic communications, data, and email and text messages to the listing of documents included in the definition of "public records".
- (2) Removes the requirement that a person be of the age of majority to inspect, copy, or reproduce a public record.
- (3) Specifies that the custodian's burden of proving that a public record is not subject to inspection, copying, or reproduction applies also to a portion of the record.
- (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))