

First Extraordinary Session, 2008

HOUSE BILL NO. 11

BY REPRESENTATIVES TUCKER, PETERSON, AND GALLOT

PUBLIC RECORDS: Establishes procedures for the mediation of public records disputes  
(Item #5(4))

1 AN ACT

2 To amend and reenact R.S. 44:31.2, relative to public records; to authorize the mediation of  
3 public records disputes; to provide for such mediation and the effect of such a  
4 mediation; to require participation by public bodies and officers in such a mediation;  
5 to provide for the promulgation of certain rules and procedures; and to provide for  
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 44:31.2 is hereby amended and reenacted to read as follows:

9 §31.2. Attorney General; Public ~~public~~ records awareness program; public record  
10 dispute mediation

11 A. The attorney general shall establish a program for educating the general  
12 public, public bodies, and custodians regarding the provisions of this Chapter. Such  
13 program may include brochures, pamphlets, videos, seminars, and Internet access to  
14 information which provides training on the provisions of this Chapter, including the  
15 custodian's responsibilities in connection with a request for records and the right of  
16 a person to institute court proceedings if access to a record is denied by the  
17 custodian.

18 B.(1) When a dispute arises between a person and a public body, public  
19 officer, or custodian regarding whether a specific record is a public record subject  
20 to examination, inspection, copying, or reproduction pursuant to this Chapter, the

1 person may request that the attorney general mediate the dispute. If a person  
 2 requests that the attorney general conduct such a mediation, the public body, public  
 3 officer, or custodian is hereby required to participate in the mediation. The attorney  
 4 general shall make every effort to resolve the dispute within ten days of receipt of  
 5 the request for the mediation. The attorney general may designate one or more of his  
 6 employees to conduct such a mediation.

7 (2) The provisions of Paragraph (1) of this Subsection shall not be construed  
 8 to require any person to make such a request, nor shall the provisions of this  
 9 Subsection impair in any way the right or ability of any person to seek enforcement  
 10 of the provisions of this Chapter pursuant to R.S. 44:35.

11 (3) The attorney general shall promulgate rules and regulations to provide  
 12 procedures for mediation as provided in this Subsection. Notwithstanding the  
 13 provisions of R.S. 49:968(B)(8), the rules and regulations promulgated pursuant to  
 14 this Subsection shall be subject to oversight by the House Committee on House and  
 15 Governmental Affairs and the Senate Committee on Senate and Governmental  
 16 Affairs as otherwise provided in the Administrative Procedure Act.

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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 [R.S. 1:13(B)] and do not constitute proof or indicia of legislative intent. [R.S. 24:177(E)]

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Tucker

HB No. 11

**Abstract:** Authorizes persons to request the attorney general to mediate public records disputes and, if a person requests a mediation, requires the public body, public officer, or custodian to participate.

Present law (R.S. 44:1 et seq.) relative to public records, provides that any person may obtain a copy or reproduction of a public record and provides that any person of the age of majority may inspect, copy, or reproduce any public record. Provides for definitions and provides procedures for the request and presentation of the record requested. Provides for enforcement and penalties. Provides for application of the laws relative to public records and for exceptions.

Present law (R.S. 44:35) relative to enforcement, provides that any person who has been denied the right to inspect or copy a record, either by a final 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, may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs, and damages

as provided in present law, in the district court for the parish in which the office of the custodian is located. Provides for the court to determine the matter de novo and specifies that the burden is on the custodian to sustain his action. Provides that any such suit shall be tried by preference and in a summary manner and that any appellate court to which the suit is brought shall place it on its preferential docket and shall hear it without delay, rendering a decision as soon as practicable. Present law additionally authorizes, if the court finds that the custodian arbitrarily or capriciously withheld the requested record or unreasonably or arbitrarily failed to respond to the request, the award to the requester of any actual damages proven to have resulted from the custodian's actions and if the court finds that the custodian unreasonably or arbitrarily failed to respond to the request, it may award the requester civil penalties not to exceed \$100 per day (exclusive of Saturdays, Sundays, and legal public holidays) that the custodian failed to give the required notification. Present law additionally provides relative to the liability of the custodian and the public body for such penalties.

Present law (R.S. 44:31.2) requires the attorney general to establish a program for educating the general public, public bodies, and custodians regarding the laws relative to public records and provides that such program may include brochures, pamphlets, videos, seminars, and Internet access to information on the public records law.

Proposed law retains present law and further provides that when a dispute arises between a person and a public body, public officer, or custodian regarding whether a specific record is a public record subject to examination, inspection, copying, or reproduction pursuant to present law, the person may request the attorney general to mediate the dispute. If a mediation is so requested, proposed law requires the public body, public officer, or custodian to participate in the mediation. Requires the attorney general to make every effort to resolve the dispute within 10 days of receipt of the request for the mediation. Authorizes the attorney general to designate one or more of his employees to conduct the mediation. Proposed law additionally provides that proposed law shall not be construed to require any person to make such a request nor shall proposed law impair the right or ability of any person to seek enforcement of the provisions of the public records laws pursuant to present law (R.S. 44:35).

Proposed law further requires the attorney general to promulgate rules and regulations to provide procedures for such mediation and provides, notwithstanding present law (R.S. 49:968(B)(8), which provides for oversight over proposed rules of the Dept. of Justice by the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section C), that such rules and regulations shall be subject to the oversight by the Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs as otherwise provided in the Administrative Procedure Act.

(Amends R.S. 44:31.2)