

First Extraordinary Session, 2008

SENATE BILL NO. 36

BY SENATORS CHAISSON, AMEDEE, BROOME, DONAHUE, JACKSON,
KOSTELKA, JOHN SMITH AND WALSWORTH

PUBLIC RECORDS. Establishes procedures for the attorney general to mediate public records disputes. (8/15/08)

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

1 **B.(1) When a dispute arises between a person and a public body, public**
 2 **officer, or custodian regarding whether a specific record is a public record**
 3 **subject to examination, inspection, copying, or reproduction pursuant to this**
 4 **Chapter, such person may request the attorney general to mediate the dispute.**
 5 **If a person requests the attorney general to conduct such a mediation, the public**
 6 **body, public officer, or custodian shall be required to participate in the**
 7 **mediation. The attorney general shall make every effort to resolve such a**
 8 **dispute within ten days of receipt of the request for the mediation. The attorney**
 9 **general may designate one or more of his employees to conduct such a**
 10 **mediation.**

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

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

22 Section 2. This Act shall become effective on August 15, 2008.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Tim Prather.

DIGEST

Present law 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 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 without receiving a final determination in writing by the custodian, 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 will be tried by preference and in a summary manner and that any appellate court to which the suit is brought will place it on its preferential docket and will hear it without delay, rendering a decision as soon as practicable.

Present law provides that if the person prevails, he will be awarded reasonable attorney fees and other costs of litigation and that if such person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof. 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 requestor 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 requestor 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 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, such 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 such a 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 such a mediation. Proposed law additionally provides that proposed law will not be construed to require any person to make such a request nor will 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.

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

Effective August 15, 2008.

(Adds R.S. 44:31.2)