

E AND R AMENDMENTS TO LB 363

Introduced by Murante, 49, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 84-712, Revised Statutes Cumulative  
4 Supplement, 2012, is amended to read:

5           84-712 (1) Except as otherwise expressly provided by  
6 statute, all citizens of this state and all other persons  
7 interested in the examination of the public records as defined  
8 in section 84-712.01 are hereby fully empowered and authorized  
9 to (a) examine such records, and make memoranda, copies using  
10 their own copying or photocopying equipment in accordance with  
11 subsection (2) of this section, and abstracts therefrom, all free  
12 of charge, during the hours the respective offices may be kept  
13 open for the ordinary transaction of business and (b) except if  
14 federal copyright law otherwise provides, obtain copies of public  
15 records in accordance with subsection (3) of this section during  
16 the hours the respective offices may be kept open for the ordinary  
17 transaction of business.

18           (2) Copies made by citizens or other persons using their  
19 own copying or photocopying equipment pursuant to subdivision  
20 (1)(a) of this section shall be made on the premises of the  
21 custodian of the public record or at a location mutually agreed to  
22 by the requester and the custodian.

23           (3)(a) Copies may be obtained pursuant to subdivision

1 (1) (b) of this section only if the custodian has copying equipment  
2 reasonably available. Such copies may be obtained in any form  
3 designated by the requester in which the public record is  
4 maintained or produced, including, but not limited to, printouts,  
5 electronic data, discs, tapes, and photocopies. This section shall  
6 not be construed to require a custodian to copy any public record  
7 that is available to the requester on the custodian's web site on  
8 the Internet. The custodian of the public record is required to  
9 provide the location of the public record on the Internet to the  
10 requester. If the requester does not have reasonable access to the  
11 Internet due to lack of computer, lack of Internet availability, or  
12 inability to use a computer or the Internet, the custodian shall  
13 produce copies for the requester.

14 (b) Except as otherwise provided by statute, the public  
15 body, public entity, or public official which is the custodian of  
16 a public record may charge a fee for providing copies of such  
17 public record pursuant to subdivision (1) (b) of this section, which  
18 fee shall not exceed the actual added cost of making the copies  
19 available. For purposes of this subdivision, (i) for photocopies,  
20 the actual added cost of making the copies available shall not  
21 exceed the amount of the reasonably calculated actual added cost  
22 of the photocopies, which may include a reasonably apportioned cost  
23 of the supplies, such as paper, toner, and equipment, used in  
24 preparing the copies, as well as any additional payment obligation  
25 of the custodian for time of contractors necessarily incurred  
26 to comply with the request for copies, (ii) for printouts of  
27 computerized data on paper, the actual added cost of making the

1 copies available shall include the reasonably calculated actual  
2 added cost of computer run time and the cost of materials  
3 for making the copy, and (iii) for electronic data, the actual  
4 added cost of making the copies available shall include the  
5 reasonably calculated actual added cost of the computer run time,  
6 any necessary analysis and programming by the public body, public  
7 entity, public official, or third-party information technology  
8 services company contracted to provide computer services to the  
9 public body, public entity, or public official, and the production  
10 of the report in the form furnished to the requester.

11 (c) The actual added cost used as the basis for the  
12 calculation of a fee for records shall not include any charge  
13 for the existing salary or pay obligation to the public officers  
14 or employees with respect to the first six hours of searching,  
15 identifying, physically redacting, or copying. A special service  
16 charge reflecting the calculated labor cost may be included in  
17 the fee for time required in excess of six hours, since that  
18 large a request may cause some delay or disruption of the other  
19 responsibilities of the custodian's office, except that the fee  
20 for records shall not include any charge for the services of an  
21 attorney to review the requested public records seeking a legal  
22 basis to withhold the public records from the public.

23 (d) State agencies which provide electronic access to  
24 public records through a portal established under section 84-1204  
25 shall obtain approval of their proposed reasonable fees for  
26 such records pursuant to sections 84-1205.02 and 84-1205.03,  
27 if applicable, and the actual added cost of making the copies

1 available may include the approved fee for the portal.

2 ~~(e)~~ (e) This section shall not be construed to require a  
3 public body or custodian of a public record to produce or generate  
4 any public record in a new or different form or format modified  
5 from that of the original public record.

6 ~~(d)~~ (f) If copies requested in accordance with  
7 subdivision (1)(b) of this section are estimated by the custodian  
8 of such public records to cost more than fifty dollars, the  
9 custodian may require the requester to furnish a deposit prior to  
10 fulfilling such request.

11 (4) Upon receipt of a written request for access to  
12 or copies of a public record, the custodian of such record  
13 shall provide to the requester as soon as is practicable and  
14 without delay, but not more than four business days after actual  
15 receipt of the request, an estimate of the expected cost of  
16 the copies and either (a) access to or, if copying equipment is  
17 reasonably available, copies of the public record, (b) if there  
18 is a legal basis for denial of access or copies, a written denial  
19 of the request together with the information specified in section  
20 84-712.04, or (c) if the entire request cannot with reasonable  
21 good faith efforts be fulfilled within four business days after  
22 actual receipt of the request due to the significant difficulty or  
23 the extensiveness of the request, a written explanation, including  
24 the earliest practicable date for fulfilling the request, an  
25 estimate of the expected cost of any copies, and an opportunity  
26 for the requester to modify or prioritize the items within the  
27 request. The requester shall have ten business days to review the

1 estimated costs, including any special service charge, and request  
2 the custodian to fulfill the original request, negotiate with  
3 the custodian to narrow or simplify the request, or withdraw the  
4 request. If the requester does not respond to the custodian within  
5 ten business days, the custodian shall not proceed to fulfill the  
6 request. The four business days shall be computed by excluding the  
7 day the request is received, after which the designated period of  
8 time begins to run. Business day does not include a Saturday, a  
9 Sunday, or a day during which the offices of the custodian of the  
10 public records are closed.

11           Sec. 2. Section 84-712.03, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           84-712.03 (1) Any person denied any rights granted by  
14 sections 84-712 to 84-712.03 may elect to:

15           ~~(1)~~ (a) File for speedy relief by a writ of mandamus in  
16 the district court within whose jurisdiction the state, county, or  
17 political subdivision officer who has custody of the public record  
18 can be served; or

19           ~~(2)~~ (b) Petition the Attorney General to review the  
20 matter to determine whether a record may be withheld from public  
21 inspection or whether the public body that is custodian of such  
22 record has otherwise failed to comply with such sections, including  
23 whether the fees estimated or charged by the custodian are actual  
24 added costs or special service charges as provided under section  
25 84-712. This determination shall be made within fifteen calendar  
26 days ~~of~~ after the submission of the petition. If the Attorney  
27 General determines that the record may not be withheld or that the

1 public body is otherwise not in compliance, the public body shall  
2 be ordered to disclose the record immediately or otherwise comply.  
3 If the public body continues to withhold the record or remain in  
4 noncompliance, the person seeking disclosure or compliance may ~~(a)~~  
5 (i) bring suit in the trial court of general jurisdiction or ~~(b)~~  
6 (ii) demand in writing that the Attorney General bring suit in  
7 the name of the state in the trial court of general jurisdiction  
8 for the same purpose. If such demand is made, the Attorney General  
9 shall bring suit within fifteen calendar days ~~of~~ after its receipt.  
10 The requester shall have an absolute right to intervene as a full  
11 party in the suit at any time.

12 (2) In any suit filed under this section, the court has  
13 jurisdiction to enjoin the public body from withholding records,  
14 to order the disclosure, and to grant such other equitable relief  
15 as may be proper. The court shall determine the matter de novo  
16 and the burden is on the public body to sustain its action.  
17 The court may view the records in controversy in camera before  
18 reaching a decision, and in the discretion of the court other  
19 persons, including the requester, counsel, and necessary expert  
20 witnesses, may be permitted to view the records, subject to  
21 necessary protective orders.

22 (3) Proceedings arising under this section, except as to  
23 the cases the court considers of greater importance, shall take  
24 precedence on the docket over all other cases and shall be assigned  
25 for hearing, trial, or argument at the earliest practicable date  
26 and expedited in every way.

27 Sec. 3. Original section 84-712.03, Reissue Revised

ER22  
LB363  
MMM-02/26/2013

ER22  
LB363  
MMM-02/26/2013

- 1 Statutes of Nebraska, and section 84-712, Revised Statutes
- 2 Cumulative Supplement, 2012, are repealed.