

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 363**

Introduced by Avery, 28.

Read first time January 18, 2013

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to public records; to amend section 84-712.03,  
2 Reissue Revised Statutes of Nebraska, and section 84-712,  
3 Revised Statutes Cumulative Supplement, 2012; to change  
4 provisions relating to access; to harmonize provisions;  
5 and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

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

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

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

20           (3)(a) Copies may be obtained pursuant to subdivision (1)  
21 (b) of this section only if the custodian has copying equipment  
22 reasonably available. Such copies may be obtained in any form  
23 designated by the requester in which the public record is maintained  
24 or produced, including, but not limited to, printouts, electronic  
25 data, discs, tapes, and photocopies. This section shall not be

1 construed to require a custodian to copy any public record that is  
2 available to the requester on the custodian's web site on the  
3 Internet. The custodian of the public record is required to provide  
4 the location of the public record on the Internet to the requester.  
5 If the requester does not have reasonable access to the Internet due  
6 to lack of computer, lack of Internet availability, or inability to  
7 use a computer or the Internet, the custodian shall produce copies  
8 for the requester.

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

1 include the reasonably calculated actual added cost of the computer  
2 run time, any necessary analysis and programming by the public body,  
3 public entity, public official, or third-party information technology  
4 services company contracted to provide computer services to the  
5 public body, public entity, or public official, and the production of  
6 the report in the form furnished to the requester.

7           (c) The actual added cost used as the basis for the  
8 calculation of a fee for records shall not include any charge for the  
9 existing salary or pay obligation to the public officers or employees  
10 with respect to the first six hours of searching, identifying, or  
11 copying. A special service charge reflecting the calculated labor  
12 cost may be included in the fee for time required in excess of six  
13 hours, since that large a request may cause come delay or disruption  
14 of the other responsibilities of the custodian's office. The fee for  
15 records shall not include any charge for the custodian or any  
16 officer, employee, or contractor of the office to review the  
17 requested public records seeking a legal basis to withhold the public  
18 records from the public. Under section 84-712.05, the withholding of  
19 certain types of public records is discretionary with the custodian,  
20 so the public may not be charged a fee for the custodian to exercise  
21 that discretion.

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

1 applicable, and the actual added cost of making the copies available  
2 may include the approved fee for the portal.

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

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

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

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

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

15           84-712.03 (1) Any person denied any rights granted by  
16 sections 84-712 to 84-712.03 may elect to:

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

21           ~~(2)~~ (b) Petition the Attorney General to review the  
22 matter to determine whether a record may be withheld from public  
23 inspection or whether the public body that is custodian of such  
24 record has otherwise failed to comply with such sections, including  
25 whether the fees estimated or charged by the custodian are actual

1 added costs or special service charges as provided under section  
2 84-712. This determination shall be made within fifteen calendar days  
3 ~~of~~after the submission of the petition. If the Attorney General  
4 determines that the record may not be withheld or that the public  
5 body is otherwise not in compliance, the public body shall be ordered  
6 to disclose the record immediately or otherwise comply. If the public  
7 body continues to withhold the record or remain in noncompliance, the  
8 person seeking disclosure or compliance may ~~(a)~~(i) bring suit in the  
9 trial court of general jurisdiction or ~~(b)~~(ii) demand in writing  
10 that the Attorney General bring suit in the name of the state in the  
11 trial court of general jurisdiction for the same purpose. If such  
12 demand is made, the Attorney General shall bring suit within fifteen  
13 calendar days ~~of~~after its receipt. The requester shall have an  
14 absolute right to intervene as a full party in the suit at any time.

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

24 (3) Proceedings arising under this section, except as to  
25 the cases the court considers of greater importance, shall take

1 precedence on the docket over all other cases and shall be assigned  
2 for hearing, trial, or argument at the earliest practicable date and  
3 expedited in every way.

4           Sec. 3. Original section 84-712.03, Reissue Revised  
5 Statutes of Nebraska, and section 84-712, Revised Statutes Cumulative  
6 Supplement, 2012, are repealed.