

ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013
COMMITTEE STATEMENT
LB363

Hearing Date: Wednesday February 06, 2013
Committee On: Government, Military and Veterans Affairs
Introducer: Avery
One Liner: Change provisions relating to access to public records

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Avery, Karpisek, Lautenbaugh, Murante, Price, Scheer, Wallman
Nay:		
Absent:		
Present Not Voting:	1	Senator Bloomfield

Proponents:

Senator Bill Avery
Jack Gould
Robbie McEwen
Tracy Overstreet
Chris Dunker
Shawn Renner
Alan Peterson
Gary Krumland
Jon Edwards

Representing:

Introducer
Common Cause Nebraska
Nebraska Appleseed
Grand Island Independent
Beatrice Daily Sun
Media of Nebraska, Inc.
ACLU Nebraska
League of Nebraska Municipalities
Nebraska Association of County Officials

Opponents:

Neutral:

Ron Withem
Michael Smith
David Cookson
Dale Comer

Representing:

Representing:
University of Nebraska
Nebraska State Historical Society
Nebraska Attorney General
Nebraska Attorney General

Summary of purpose and/or changes:

LB 363 contains several provisions dealing with the issue of the costs of public records.

The bill clarifies that a public entity may charge a fee for making copies but the fee cannot exceed the amount of the reasonably calculated actual added cost which may include the cost of supplies such as paper, toner, and equipment. The cost may also include additional payments for contractors to complete the request, including computer services.

The actual added cost used to calculate the fee for records will not include any charge for the existing salary of officers or employees with respect to the first 6 hours of searching, identifying, or copying the records. A special service charge reflecting labor cost may be included for time required beyond the 6 hours.

The fee for records will not include any charge by the public entity to review the records seeking a legal basis to withhold the public records.

The requester will have 10 days to review the estimated costs of the requests, to negotiate with the custodian to narrow the request or to withdraw the request. If the requester does not respond in 10 days, the public entity will not fulfill the request.

The bill also provides that if a public record is available on the public entity's website, the custodian does not need to provide the copy but will provide the location of the record on the website. If the requester doesn't have access to the website, the custodian will produce the copies.

Currently in law, a public entity has four business days to respond to a request for a public record. This bill clarifies that the four business days will be computed by excluding the day the request is received. Business day does not include Saturday, Sunday or a day that the office is closed.

Finally, the Attorney General may review whether the fees estimated or charged by the custodian are actual added costs or special service charges.

Explanation of amendments:

The committee amendment makes two clarifying changes to the original bill.

First, the amendment provides that the actual added cost used as the bases for the calculation of the fee for records will not include any charge for staff to physically redact information for the first six hours. In other words, staff time to physically redact information from records will be allowed to be charged after the first 6 hours.

The second change provides that the fee for records will not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records. This is a narrowing from the original bill which prohibited the custodian or any officer, employee or contractor of the office to charge for reviewing the public records seeking a legal basis to withhold them. With the amendment, only services of attorneys are prohibited from being charged for this purpose even after six hours of time.

Bill Avery, Chairperson