

SUBJECT: Litigation, reports, and deadlines under the Public Information Act

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Solomons, Menendez, Cook, Craddick, Gallego, Geren,
Harless, Hilderbran, Jones, Lucio, Maldonado, Swinford

0 nays

3 absent — Farabee, Oliveira, S. Turner

SENATE VOTE: On final passage, April 23 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3522:*)
For — (*Registered, but did not testify:* Ken Whalen, Texas Daily
Newspaper Association, Texas Press Association)

Against — None

On — Amanda Crawford, Office of the Attorney General

BACKGROUND: The Public Information Act, Government Code, ch. 552 requires governmental bodies to disclose public information upon request by the public unless that information is excepted from disclosure by one of a number of enumerated exceptions. If a governmental body wishes to withhold information from a request for disclosure based on one of the exceptions, the body asks for a decision from the attorney general about whether the information is within that exception and submits written comments on why the exceptions apply no later than the 15th day after receiving the request. The governmental body also must send the written comments to the requestor.

Under Government Code, sec. 552.324, the only suit a governmental body or public information officer may file seeking to withhold information from a requestor is a suit that challenges an attorney general decision regarding exceptions to disclosure and that is filed in accordance with:

- sec. 552.325, which provides that a governmental body, public

information officer, or other person or entity that files a suit seeking to withhold information from a requestor may not file suit against the person requesting the information and that the requestor is entitled to intervene in the suit; and

- sec. 552.353, which provides that a public information officer may file a petition for declaratory judgment, writ of mandamus, or both against the attorney general seeking relief from compliance with an attorney general decision requiring disclosure of information the officer believes can be withheld, and that such a suit would be part of a public information officer's affirmative defense against prosecution for criminal negligence for failure to provide access to public information to a requestor.

Government Code, sec. 552.323 states that, in an action brought under sec. 552.353, the court may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. In making this determination, the court will consider whether the conduct of the governmental body's public information officer had a reasonable basis in law and whether the litigation was brought in good faith.

DIGEST:

SB 1182 would amend Government Code, sec. 552.324 to state that the only suit a governmental body could file seeking to withhold information would be a suit filed in Travis County district court against the attorney general under sec. 552.325 that sought declaratory relief from compliance with an attorney general decision on exceptions to disclosure. If a governmental body wished to preserve an affirmative defense for its public information officer under sec. 552.353, the suit would have to be filed in accordance with that section's deadline.

A governmental body would have to submit the written comments regarding exceptions to disclosure to the requestor no later than the 15th business day after receipt of the request, the same time frame for the governmental body to submit the comments to the attorney general.

Government Code, sec. 552.323 would be amended to state that a court could assess costs and fees where an action was brought under sec. 552.324, and that the court would have to consider the conduct of the governmental body, rather than governmental body's public information officer.

Government Code, sec. 552.353 would be amended to provide that either the public information officer or the governmental body for whom the defendant was the public information officer could file for declaratory judgment against the attorney general.

A governmental body, public information officer, or other entity that filed suit under sec. 552.325 would have to demonstrate that the entity made a good faith effort to inform the requester that the suit was against the attorney general in Travis County district court, rather than just that the suit was against the attorney general.

Government Code, sec. 552.274 would be reenacted to require the attorney general to prepare and update a report every two years about the charges made by state agencies for providing copies of public information and provide a copy of the report on the attorney general's open records internet page.

The heading for sec. 552.009 would be amended to read "Open Records Steering Committee: Advice to Attorney General," instead of "Advice to Commission."

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

By changing certain language in the Government Code, SB 1182 would clarify some of the procedures under the Public Information Act and make the law less confusing to city, county, and other governmental entities that have to deal with open records requests. More easily understandable language also would make procedures under the act more efficient. The bill is based on suggestions from the attorney general's Open Records Division and the Open Records Steering Committee, which are based on current practices. SB 1182 would not affect whether or not any particular information was public information, nor would it affect the public's access to public information.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The companion bill, HB 3522 by Ortiz, was considered in a public hearing by the House State Affairs Committee on April 14 and left pending.