

BILL ANALYSIS

Senate Research Center

S.B. 1182
By: Wentworth
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, portions of the Public Information Act (Act) are confusing. The Office of the Attorney General Open Records Division and the Open Records Steering Committee have suggested changes to the Act to make it more efficient and less confusing.

S.B. 1182 amends current law relating to the open records steering committee, reports by the attorney general on costs of copies, and certain deadlines, costs, and suits filed under the public information law.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 2 (Section 552.008, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 551, Government Code, by adding Section 551.0415, as follows:

Sec. 551.0415. GOVERNING BODY OF MUNICIPALITY: REPORTS ABOUT ITEMS OF COMMUNITY INTEREST REGARDING WHICH NO ACTION WILL BE TAKEN. (a) Authorizes a quorum of the governing body of a municipality, notwithstanding Sections 551.041 (Notice of Meeting Required) and 551.042 (Inquiry Made at Meeting), to receive from municipal staff and a member of the governing body to make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) Defines "items of community interest."

SECTION 2. Amends Section 552.008, Government Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Authorizes a member, committee, or agency of the legislature required by a governmental body to sign a confidentiality agreement under Subsection (b) (relating to information requested for legislative purposes) to seek a decision as provided by Subsection (b-2) about whether the information covered by the confidentiality agreement is confidential under law. Provides that a confidentiality agreement signed under Subsection (b) is void to the extent that the agreement covers information that is finally determined under Subsection (b-2) to not be confidential under law.

(b-2) Authorizes the member, committee, or agency of the legislature to seek a decision from the attorney general about the matter. Requires the attorney general by rule to establish procedures and deadlines for receiving information necessary to decide the matter and briefs for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. Requires the attorney general to promptly render a decision requested under this subsection, determining whether the information covered by the confidentiality agreement is confidential under law, not later than the 45th business day after the date the attorney

general received the request for a decision under this subsection. Requires the attorney general to issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. Authorizes the requestor or the governmental body to appeal a decision of the attorney general under this subsection to a Travis County district court. Authorizes a person to appeal a decision of the attorney general under this subsection to a Travis County district court if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect.

SECTION 3. Amends the heading to Section 552.009, Government Code, to read as follows:

Sec. 552.009. OPEN RECORDS STEERING COMMITTEE: ADVICE TO ATTORNEY GENERAL; ELECTRONIC AVAILABILITY OF PUBLIC INFORMATION.

SECTION 4. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.150, as follows:

Sec. 552.150. EXCEPTION: INFORMATION THAT COULD COMPROMISE SAFETY OF OFFICER OR EMPLOYEE OF HOSPITAL DISTRICT. (a) Provides that information in the custody of a hospital district that relates to an employee or officer of the hospital district is excepted from the requirements of Section 552.021 (Availability of Public Information) if it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual, such as information that describes or depicts the likeness of the individual, information stating the times that the individual arrives at or departs from work, a description of the individual's automobile, or the location where the individual works or parks; and the employee or officer applies in writing to the hospital district's officer for public information to have the information withheld from public disclosure under this section and includes certain information in the application.

(b) Requires the officer for public information, on receiving a written request for information described in an application submitted under Subsection (a)(2) (relating to certain information to be withheld from public disclosure), to take certain actions.

(c) Provides that this section expires September 1, 2013.

SECTION 5. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.151, as follows:

Sec. 552.151. EXCEPTION: INFORMATION REGARDING SELECT AGENTS. (a) Provides that certain information that pertains to a biological agent or toxin identified or listed as a select agent under federal law, including under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188) and regulations adopted under that Act, is excepted from the requirements of Section 552.021.

(b) Provides that this section does not except from disclosure the identity of the select agents present at a facility.

(c) Provides that this section does not except from disclosure the identity of an individual faculty member or employee whose name appears or will appear on published research.

(d) Provides that this section does not except from disclosure otherwise public information relating to contracts of a governmental body.

(e) Provides that if a resident of another state is present in Texas and is authorized to possess, use, or access a select agent in conducting research or other work at a Texas facility, information relating to the identity of that individual is subject to disclosure under this chapter only to the extent the information would be subject to disclosure under the laws of the state of which the person is a resident.

SECTION 6. Amends Section 552.263(a), Government Code, to authorize an officer for public information or the officer's agent to require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if the officer for public information or the officer's agent has provided the requestor with the written, rather than required written, itemized statement required under Section 552.2615 (Required Itemized Estimate of Charges) detailing the estimated charge for providing the copy and the charge for providing the copy of the public information specifically requested by the requestor is estimated by the governmental body to exceed a certain dollar amount. Makes nonsubstantive changes.

SECTION 7. Reenacts Section 552.274(a), Government Code, as amended by Chapters 329 (S.B. 727) and 716 (S.B. 452), Acts of the 79th Legislature, Regular Session, 2005, to require the attorney general to biennially update a report prepared by the attorney general about the charges made by state agencies for providing copies of public information and provide a copy of the updated report on the attorney general's open records page on the Internet not later than March 1 of each even-numbered year.

SECTION 8. Amends Section 552.301(e-1), Government Code, to require a governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) (relating to written comments stating the reasons why the state exceptions apply) to send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request.

SECTION 9. Amends Section 552.323(b), Government Code, to authorize the court, in an action brought under Section 552.324, rather than Section 552.353(b)(3), to assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. Requires the court, in exercising its discretion under this subsection, to consider whether the conduct of the governmental body, rather than the officer for public information of the governmental body, had a reasonable basis in law and whether the litigation was brought in good faith.

SECTION 10. Amends Section 552.324, Government Code, as follows:

Sec. 552.324. **SUIT BY GOVERNMENTAL BODY.** (a) Provides that the only suit a governmental body, rather than a governmental body or officer for public information, is authorized to file seeking to withhold information from a requestor is a suit that is filed in a Travis County district court against the attorney general in accordance with Section 552.325 (Parties to Suit Seeking to Withhold Information), rather than Sections 552.325 and 552.353; and seeks declaratory relief from compliance with, rather than that challenges, a decision by the attorney general issued under Subchapter G (Attorney General Decisions).

(b) Requires the governmental body to bring the suit not later than the 30th calendar day after the date the governmental body receives the decision of the attorney general determining that the requested information is required to be disclosed to the requestor, rather than the decision of the attorney general being challenged. Requires a suit, if a governmental body wishes to preserve an affirmative defense for its officer for public information as provided in Section 552.353(b)(3), to be filed within the deadline provided in Section 552.353(b)(3). Deletes existing text that provides that this subsection does not affect the earlier deadline for purposes of Section 552.353(b)(3) for a suit brought by an officer for public information.

SECTION 11. Amends Section 552.325(b), Government Code, to make a conforming change.

SECTION 12. Amends Sections 552.353(b) and (c), Government Code, as follows:

(b) Provides that it is an affirmative defense to prosecution under Subsection (a) that the officer for public information reasonably believed that public access to the requested information was not required and that the officer took certain actions, including that not later than the 10th calendar day after the date of receipt of a decision by the attorney general that the information is public, the officer or the governmental body for whom the defendant is the officer for public information filed a petition for a declaratory judgment, rather than a declaratory judgment, a writ of mandamus, or both, against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, as provided by Section 552.324 (Suit by Governmental Body), and the cause, rather than a petition, is pending. Makes nonsubstantive changes.

(c) Provides that it is an affirmative defense to prosecution under Subsection (a) that a person or entity has, not later than the 10th calendar day after the date of receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, as provided by Section 552.325, and the cause is pending. Makes conforming changes.

SECTION 13. Amends Section 261.201, Family Code, by adding Subsections (k) and (l), as follows:

(k) Requires an investigating agency, other than the Department of Family and Protective Services or the Texas Youth Commission, notwithstanding Subsection (a) (relating to the confidentiality of certain information), to provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. Requires the investigating agency to withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Requires the custodian of the record or file, before a child or a parent, managing conservator, or other legal representative of a child is authorized to inspect or copy a record or file concerning the child under Subsection (k), to redact certain information.

SECTION 14. Provides that the changes in law made by Section 552.150, Government Code, as added by this Act, apply in relation to a request for information made under Chapter 552 (Public Information), Government Code, before, on, or after the effective date of this Act.

SECTION 15. Provides that Section 552.151, Government Code, as added by this Act, applies in relation to a request for public information under Chapter 552, Government Code, made before, on, or after the effective date of this Act; and to information that on the effective date of this Act has not yet been disclosed that meets certain conditions.

SECTION 16. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 552.008(b-1) and (b-2), Government Code, as added by this Act: September 1, 2010.