

## **BILL ANALYSIS**

Senate Research Center  
81R988 CS-F

S.B. 1182  
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State Affairs  
3/19/2009  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, portions of the Public Information 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.

As proposed, S.B. 1182 clarifies that the Open Records Steering Committee provides advice and a required biennial report to the attorney general rather than the Texas Building and Procurement Commission since those duties were transferred to the attorney general during the 79th Legislature. The bill creates a deadline of 15 business days within which a copy of written comments must be sent to a requestor under Section 552.301(e-1) (relating to a governmental body that submits written comments to the attorney general).

The bill amends and clarifies provisions authorizing a governmental body to require a deposit or bond for anticipated costs if charges for a public information request reach a certain amount, and provides that the governmental body is authorized to provide the requestor with an appropriate written itemized statement of the estimated charges.

S.B. 1182 clarifies that an action brought by a governmental body is filed under Section 552.324 (Suit By Governmental Body), Government Code, and not Section 552.353(b)(3) (relating to an affirmative defense to prosecution by the officer for public information), Government Code, and requires the court to consider the conduct of the governmental body that filed the suit, rather than the officer for public information, in determining whether to award attorney's fees in these suits.

Finally S.B. 1182 clarifies the litigation process under the Public Information Act and sets Travis County as a proper venue for those suits.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. 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 2. 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 3. 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 4. 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 5. 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 6. 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 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 7. Amends Section 552.325(b), Government Code, to make a conforming change.

SECTION 8. 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 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 the officer for public information or another 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 9. Effective date: September 1, 2009.