

BILL ANALYSIS

Senate Research Center
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S.B. 988
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 552.323(b), Government Code, only applies to lawsuits between the Office of Attorney General (OAG) and other governmental bodies regarding the application or enforcement of the PIA. Currently, this provision allows whichever side "substantially prevails" to recover reasonable attorney's fees and court costs.

Recently, OAG was ordered to pay another governmental body's attorney's fees and court costs under this provision for the first time. In this case, the OAG won at the trial court level, but the appellate court reversed a longstanding and reasonable OAG interpretation that had been upheld by the courts before.

The very first section of the PIA states: "The provisions of this chapter shall be liberally construed to implement this policy." Since OAG is required to enforce the Act with this directive in mind, it's unfair to assess court costs and attorney fees against them when they make reasonable, but unsuccessful arguments defending the PIA in court. Further, allowing other governmental bodies to recoup attorney's fees and court costs so easily provides a perverse incentive to bad actors to try to withhold more public information and delay after OAG instructs them to release requested information.

S.B. 988 protects OAG from unfair court costs and attorney fee assessments by replacing the "substantially prevails" standard with a higher standard. More specifically, a court could award attorney's fees and court costs to either side (OAG or the other governmental body) if it finds that the action or defense was groundless in fact or law.

This standard ensures either party can still recoup their court costs and attorney's fees if a legal challenge is brought in bad faith. But it also protects OAG as it complies with its statutory duty to enforce the PIA in favor of public transparency.

As proposed, S.B. 988 amends current law relating to the assessment of litigation costs and attorney's fees in certain actions under the public information law.

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 Section 552.323(b), Government Code, as follows:

(b) Prohibits the court, in an action brought under Section 552.324 (Suit By Governmental Body), from assessing the costs of litigation or reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails unless the court finds the action or the defense of the action was groundless in fact or law, rather than authorizing the court, in an action brought Section 552.324, to assess the costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.