

SUBJECT: Assessing costs and fees in certain lawsuits under public information laws

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, Smithee, Springer

0 nays

2 absent — Hernandez, E. Rodriguez

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: *On House companion bill, HB 2192:*
For — (*Registered, but did not testify:* Adam Cahn, Cahnman's Musings; Michael Coleman, Public Citizen; Anthony Gutierrez, Common Cause Texas; Dave Jones, Clean Elections Texas; Bay Scoggin, TexPIRG)

Against — None

On — Justin Gordon, Office of the Attorney General

BACKGROUND: Government Code ch. 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request unless that information is excepted from disclosure. Subch. G generally requires a governmental body to request an attorney general decision if it wishes to withhold information under a statutory exception.

Under sec. 552.324, the only suit a governmental body may file seeking to withhold information from a requestor is a suit that is filed in a Travis County district court against the attorney general seeking declaratory relief from compliance with an attorney general decision.

Sec. 552.323 allows the court to assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails in an action brought under sec. 552.324. In exercising its

discretion, the court has to consider whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.

Some have suggested that the awarding of costs and attorney's fees could encourage challenges to the attorney general's office that could impact the timely release of public information and shift the cost burden from entities seeking to withhold information to the entity charged with defending the public information laws.

DIGEST:

SB 988 would prohibit the court from assessing costs of litigation or reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevailed in a suit filed against the attorney general by a governmental body seeking to withhold requested information under Government Code sec. 552.324, unless the court found the action or the defense of the action was groundless in fact or law.

The bill would take effect September 1, 2019, and would apply only to an action brought on or after that date.