

BILL ANALYSIS

Senate Research Center
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S.B. 1851
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State Affairs
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As Filed

DIGEST

Currently, the state government complies with open records request from the general public. S.B. 1851 would make statutory changes regarding public access to governmental information and decisions, including revisions to the public information law, and provide a penalty.

PURPOSE

As proposed, S.B. 1851 makes changes to the public information law; and provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the General Services Commission in SECTIONS 8 and SECTION 10 (Sections 552.205(b) and 552.262(a), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 552A, Government Code, by adding Section 552.0035, as follows:

Sec. 552.0035. ACCESS TO INFORMATION OF JUDICIARY. Provides that access to certain judicial information is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules. Provides that this section does not affect determination about whether information is considered to be information collected, assembled, or maintained by or for the judiciary.

SECTION 2. Amends Chapter 552A, Government Code, by adding Section 552.0055, as follows:

Sec. 552.0055. SUBPOENA DUCES TECUM OR DISCOVERY REQUEST. Provides that a subpoena duces tecum or certain requests for discovery are not considered to be a request for information under this chapter.

SECTION 3. Amends Chapter 552A, Government Code, by adding Sections 552.009 and 552.010, as follows:

Sec. 552.009. OPEN RECORDS STEERING COMMITTEE: ADVICE TO COMMISSION; ELECTRONIC AVAILABILITY OF PUBLIC INFORMATION. Sets forth the composition and terms of office of the open records steering committee (committee). Provides that the General Services Commission (GSC) representative is the presiding officer of the committee. Requires the committee to meet as prescribed by its rules or at the call of the presiding officer. Requires the committee to advise the General Services Commission regarding its performance of duties under this chapter. Requires the committee's members to periodically study and to determine the types of public information that would be useful or cost-effective to provide by means of the Internet or another electronic format. Provides that Chapter 2110 does not apply to the size, composition, or duration of the committee, but rather to the reimbursement of a public member's expenses. Authorizes certain reimbursements to be paid from funds available to the state or local governmental body the member represents.

Sec. 552.010. STATE GOVERNMENTAL BODIES: FISCAL AND OTHER INFORMATION RELATING TO MAKING INFORMATION ACCESSIBLE. Requires each governmental body to report to the Legislative Budget Board (LBB) the information the LBB requires on matters regarding the request for information from the governmental body and the cost

to the body to provide that information. Sets forth the manner in which the LBB must report their findings. Requires the committee and the state auditor, at the request of the LBB, to assist the board in designing its reporting requirements under this section. Requires the LBB to share the information reported under this section with the committee.

SECTION 4. Amends Section 552.022, Government Code, to provide that certain categories of information is not excepted from required disclosure under this chapter unless they are expressly confidential under other law. Makes standard statutory changes.

SECTION 5. Amends Section 552.110, Government Code, as follows:

Sec. 552.110. New heading: EXCEPTION: TRADE SECRETS. Deletes text making certain commercial or financial information excepted from the requirements of Section 552.021.

SECTION 6. Amends Section 552.116, Government Code, to provide that an audit working paper of the auditor of a state agency or higher education institution is excepted from the requirements of Section 552.021 to a certain extent. Provides that certain information in an audit working paper is excepted from the requirements of Section 552.021, only to the extent that the information is maintained by the auditor, and otherwise if the information is maintained by another person, it is not excepted. Defines “audit” and “audit working paper.” Deletes text making a draft audit report of the state auditor excepted from the requirements of Section 552.003.

SECTION 7. Amends Chapter 552C, Government Code, by adding Section 552.131, as follows:

Sec. 552.131. EXCEPTION: ECONOMIC DEVELOPMENT INFORMATION. Provides that information related to certain economic development negotiations, such as a governmental body attempting to relocate or expand a business, is excepted from Section 552.021. Provides that certain information on financial incentives provided by a governmental body or certain person is not exempt from the requirements of Section 552.021.

SECTION 8. Amends Chapter 552D, Government Code, by adding Section 552.205, as follows:

Sec. 552.205. INFORMING PUBLIC OF BASIC RIGHTS AND RESPONSIBILITIES UNDER THIS CHAPTER. Requires an officer of public information to prominently display a sign, which contains the rights and responsibilities pertaining inspecting and obtaining public information under this chapter, in the administrative officer of a governmental body plainly visible to the public and employees of the body. Requires GSC to prescribe, by rule, the sign’s content, dimensions, and plain language that address the rights and responsibilities of public access to public information.

SECTION 9. Amends Section 552.261, Government Code, by amending Subsection (a) and adding Subsection (c), to prohibit a charge for photocopying 50 or few pages of paper records from including certain costs, unless the photocopied pages are located in two or more separate buildings that are not physically connected with each other, rather than located in more than one building. Specifies the physical characteristics of a building insufficient to be considered separate buildings.

SECTION 10. Amends Sections 552.262(a)-(d), Government Code, to require GSC to adopt rules to determine the charge, deposit, or bond required for making certain public information available. Requires the rules to be used to determine the charge, deposit, or bond required for making that information available for inspection. Prohibits the charges for providing copies from exceeding the actual cost for making public information that exists in a paper record available for inspection. Makes conforming changes.

SECTION 11. Amends Section 552.263(a), Government Code, to authorize the information officer to require a deposit or bond for anticipated costs for copying the information if the charge for providing the copy of the information specifically requested is estimated to exceed \$100, if the governmental body has more than 15 full-time employees, or \$50, if the body has few than 16 full-time employees.

SECTION 12. Amends Section 552.271, Government Code, to prohibit an inspection charge from being assessed, except as provided by this section. Authorizes the information officer, under certain circumstances, to require a requestor to make certain payments for personnel costs, except as provided

by Subsection (d). Sets forth when payment may be required from the requestor, if the governmental body has fewer than 16 full-time employees.

SECTION 13. Amends Section 552.274(a), Government Code, to require each state agency to send certain information regarding procedures for charging and collecting fees for public information to GSC by December 1, rather than September 1, of each year.

SECTION 14. Amends Section 552.301, Government Code, by adding Subsection (c), to prohibit a governmental body from asking for a decision from the attorney general about whether information requested under this chapter is within an exception under Subchapter C if the body has already received the attorney general's determination and if the information was determined by the attorney general or a court to be public information.

SECTION 15. Amends Section 552.303(a), Government Code, to authorize a governmental body to disclose requested information, unless the information requested is confidential by law, before the attorney general makes a final determination for the requested information, rather than until the attorney general makes a final determination for the information.

SECTION 16. Amends Chapter 552G, Government Code, by adding Section 552.3035, as follows:

Sec. 552.3035. DISCLOSURE OF REQUESTED INFORMATION BY ATTORNEY GENERAL. Prohibits the attorney general from disclosing to the requester or the public any information submitted to the attorney general under certain sections.

SECTION 17. Amends Section 552.305, Government Code, by adding Subsections (d) and (e), to require a governmental body that requests an attorney general decision under Section 552.301 to notify a person whose privacy or property interest will be involved under Subsection (a). Sets forth criteria for the notice. Requires a person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) to send a copy of that correspondence to the person who requested the information from the governmental body. If the correspondence contains the substance of the information requested, the copy of the correspondence may be a redacted copy. Makes conforming changes.

SECTION 18. Amend Section 552.308, Government Code, as follows:

Sec. 552.308. New heading: TIMELINESS OF ACTION BY UNITED STATES OR INTERAGENCY MAIL. Provides criteria from which a state agency determines if the agency's request to the attorney general was in a timely fashion.

SECTION 19. Amends Chapter 552H, Government Code, by adding Section 552.3215, as follows:

Sec. 552.3215. CIVIL PENALTY. Defines "complaint" and "state agency." Provides that a state agency that violates this chapter is subject to certain fines and penalties, and that each day a violation continues is considered a separate violation. Authorizes a district or county attorney to bring a civil suit in the name of the state to assess and recover the civil penalty in a district court for that county. Authorizes the suit to be brought in the county in which the administrative office of the governmental body is located if the body extends into more than one county. Sets forth other venues if the body is a state agency. Authorizes a complainant to file a complaint alleging a violation of this chapter, and for that suit to be filed in certain counties based on the agency. Sets forth criteria for a valid complaint. Requires the attorney receiving the complaint to indicate the complaint's receiving date on the cover of the complaint. Sets forth certain actions that the attorney must take upon receiving a complaint. Requires the attorney that determines not to bring a suit to draw up a statement of the determination and to return the complaint to the complainant. Authorizes the complainant to file the complaint with the attorney general by a certain time, if the attorney determines not to bring a suit. Requires the attorney general to comply with certain requirements. Authorizes the suit to be brought only if the official proposing to bring the suit notifies the governmental body of the official's determination of the alleged violation and if the body still does not cure the violation by a certain date. Authorizes the suit to be brought regardless of whether a suit for mandamus has been brought under Section 552.321. Requires a court that receives the suit to issue immediately an order directed to at all person who have suffered economic or other damages from the violation. Requires the order to require the addressed persons to appear in court. Requires the clerk of the court to make public a substantial copy of

the order in certain circulations. Requires the notice to be published a certain number of times. Authorizes the court to award an amount not to exceed one-half of the penalty for a person who appears for trial and shows economic suffering or other damages. Requires the civil penalty to be deposited in the state treasury. Requires the body to pay the penalty from money appropriated for the operation of the body. Provides that the administrative penalty is in addition to any other civil, administrative, or criminal action provided by this chapter or another law.

SECTION 20. Amends Section 552.323, Government Code, to require, rather than authorize, the court to assess only certain costs and fees for certain actions. Sets for the costs and fees not authorized to be assessed by the court. Authorizes the court to assess the costs and fees incurred by a plaintiff or defendant who substantially prevails, in certain actions brought. Requires the court to consider the conduct of the officer of public information of the governmental body, rather than only the governmental body. Makes conforming changes.

SECTION 21. Amends Chapter 551D, Government Code, by adding Section 551.086, as follows:

Sec. 551.086. DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS; CLOSED MEETING. Provides that this chapter does not require a governmental body to conduct an open meeting for certain matters.

SECTION 22. Amends Section 325.011, Government Code, to require the Sunset Advisory Commission to consider the extent to which an agency complies with Chapters 551 and 552 and follows records management practices that enable the agency to respond efficiently to requests for public information in determining whether a public need exists for continuing the agency.

SECTION 23. Amends Section 2(d), Chapter 428, Acts of the 73rd Legislature, Regular Session, 1993, to require GSC to provide a copy of the updated report to each state agency by a certain date of each even-numbered year.

SECTION 24. (a) Requires GSC to adopt the rules under Section 552.205, Government Code, in time for a governmental body to print and display the required sign by January 3, 2000.

(b) Makes application of the requirement to post a sign prospective to January 3, 2000.

SECTION 25. Makes application of this Act prospective.
Effective date: 90 days after adjournment.