

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1851
By: Wentworth
State Affairs
4/19/1999
Committee Report (Substituted)

DIGEST

Currently, the state government complies with open records request from the general public. C.S.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, C.S.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 address 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 Chapter 552A, Government Code, by adding Section 552.011, as follows:

Sec. 552.011. UNIFORMITY. Requires the attorney general to maintain uniformity in the application, operation, and interpretation of this chapter. Authorizes the attorney general to generate literature to maintain uniformity.

SECTION 5. Amends Section 552.022, Government Code, to provide that certain categories of information is public information and is not excepted from disclosure, unless expressly held to be confidential under other law. Prohibits a court from ordering a governmental body or an officer of public information to withhold public information from inspection or duplication. Makes conforming changes.

SECTION 6. Amends Section 552.103, Government Code, by amending Subsection (a) and adding Subsection (c), to provide that certain litigation information pertaining to a governmental body is excepted from disclosure, if the litigation is pending or anticipated. Deletes information that is excepted from the requirements of Section 552.021, including settlement negotiations and certain declarations by the attorney general or a political subdivision.

SECTION 7. Amends Section 552.110, Government Code, as follows:

Sec. 552.110. New heading: EXCEPTION: TRADE SECRETS; CERTAIN COMMERCIAL OR FINANCIAL INFORMATION. Excepts certain commercial or financial information from the requirements of Section 552.110. Deletes text making certain commercial or financial information excepted from the requirements of Section 552.021.

SECTION 8. 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, but although the audit information is excepted from the requirements any information held while maintaining the audit is not exempt from the requirements. 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 9. 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 10. Amends Chapter 552C, Government Code, by adding Section 552.132, as follows:

Sec. 552.132. EXCEPTION: CRIME VICTIM INFORMATION. Authorizes a crime victim to elect to decide whether to offer access to certain information about the victim that is held by certain law enforcement agencies, but must be made within certain guidelines, in which case the information is excepted from the requirements of Section 552.021; however, a non-election would constitute access to the information, unless the information is made confidential by other law within a certain time period and according to certain procedures.

SECTION 11. 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 12. Amends Section 552.221(b), Government Code, to provide that sending copies to a person requesting information who agrees to pay the applicable postage would constitute compliance by an officer of public information.

SECTION 13. Amends Section 552.261, Government Code, by amending Subsection (a) and adding Subsections (c) and (d), 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. Provides that charges for providing a copy of public information do begin to accrue when a governmental body advises the request about the payment.

SECTION 14. 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 15. Amends Section 552.263, Government Code, by amending Subsection (a) and adding Subsections (c)-(e), 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. Authorizes the officer to require some deposit for unpaid information requests, but only if the new requests exceed \$100. Requires the governmental body to fully document the amounts prior to requiring the deposit. Establishes when an amount is considered to be unpaid.

SECTION 16. Amends Section 552.271, Government Code, to prohibit an inspection charge from being assessed, except as provided by this section, if the requestor does not request a copy of public information. 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 17. 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 18. Amends Section 552.301, Government Code, to require a governmental body that requests information under Subsection (a) to provide to the requestor within a reasonable time certain statements regarding the desire of the governmental body to withhold the requested information and to as the attorney general for a decisions. Requires the governmental body to submit in their request to the attorney general a signed statement detailing when the request was received. Requires the governmental body to release the request and not ask for a decision if the attorney general previously made a determination concerning that precise information and the attorney general or a court determined the information to be public information under this chapter that is not excepted under Subchapter C.

SECTION 19. Amends Chapter 552G, Government Code, by adding Section 552.3011, as follows:

Sec. 552.3011. REQUEST FOR ATTORNEY GENERAL DECISION: BURDENSOME REPETITIOUS REQUESTS. Authorizes a governmental body to request the attorney general to declare that a requestor has made burdensome repetitious requests and that the requestor must now pay certain fees for any future requests regarding certain repetitious information, but the declaration may only affect certain requests, yet must be treated as any other requestor. Requires the governmental body to request a decision under this section within a certain time period. Requires the attorney general to respond to the request and render the decision in a certain manner and time.

SECTION 20. Amends Section 552.303, Government Code, by amending Subsections (a)-(c) and (e),

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. Authorizes the attorney general to determine that additional information is required to render a decision for a governmental body. Requires certain information to be disclosed unless there exists a compelling reason to withhold the information. Deletes text regarding a governmental body's failure to supply sufficient information. Makes conforming changes.

SECTION 21. 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 22. Amends Section 552.305, Government Code, by adding Subsections (d)-(f), 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. Authorizes the correspondence to be a redacted copy, if the correspondence contains the substance of the information requested. Provides that this subsection applies to a governmental body that does not make a reasonable attempt to provide the necessary notice to a person whose privacy or property interests are involved. Prohibits the governmental body from using a decision of the attorney general that required the governmental body to release information of a person who brings a suit. Makes conforming changes.

SECTION 23. Amends Section 552.306(a), Government Code, to require the attorney general to promptly render a decision, except as provided by Section 552.011. Requires the attorney general to notify a governmental body that the agency will not be able to render an opinion with 45 days, rather than 60 days, and that an additional 10 days, rather than 20 days, are required.

SECTION 24. 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. Authorize certain suits for a writ of mandamus for public information that is not excepted from disclosure under Subchapter C. Requires the suit to be filed in a district court for the county in which the main offices of the governmental body are located, and the attorney general to file in a district court of Travis County.

SECTION 25. Amends Section 552.321, Government Code, to authorize certain suits for a writ of mandamus for public information that is not excepted from disclosure under Subchapter C, and to add provisions regarding the suit.

SECTION 26. Amends Chapter 552H, Government Code, by adding Section 552.3215, as follows:

Sec. 552.3215. DECLARATORY JUDGMENT OR INJUNCTIVE RELIEF. 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 an action for a declaratory judgment or injunctive relief to be brought against a governmental body that violates this chapter. Authorizes an action 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 an action to draw up a statement of the determination and to return the complaint to the complainant. Authorizes the complainant to file the action 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 action 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. Provides that the action is in addition to any other civil, administrative, or criminal action provided.

SECTION 27. Amends Section 552.323, Government Code, to require, rather than authorize, the court to assess only certain costs and fees for certain actions. Sets forth 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 28. Amends Section 552.324, Government Code, to require a governmental body to bring a suit by a certain date of receiving a challenged decision of the attorney general, otherwise the governmental body must comply with the decision. Provides that this subsection does not affect certain other deadlines for a suit.

SECTION 29. Amends Chapter 552H, Government Code, by adding Section 552.326, as follows:

Sec. 552.326. FAILURE TO RAISE EXCEPTIONS BEFORE ATTORNEY GENERAL. Authorizes a governmental body to raise certain exceptions in a suit. Provides that Subsection(a) does not prohibit a governmental body from raising certain exceptions.

SECTION 30. 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 31. 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 32. 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 33. (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 34. Makes application of this Act prospective.

SECTION 35. Effective date: September 1, 1999.

SUMMARY OF COMMITTEE CHANGES

SECTION 4.

Adds Section 552.011, Chapter 552A, Government Code, regarding uniformity by the attorney general. Redesignates SECTION 4 as SECTION 5.

SECTION 5.

Amends Section 552.022, Government Code, by amending Subsection (a) and adding Subsection (b), to remove a deletion that makes certain information public information, and to add a prohibition for a court from ordering public information be made unavailable, unless expressly authorized by law. Redesignates SECTIONS 5-7 as SECTIONS 7-9.

SECTION 6.

Amends Section 552.103, Government Code, by amending Subsection (a) and adding Subsection (c), to make certain litigation information excepted from public disclosure, and to delete certain exemptions from the disclosure requirements.

SECTION 7.

Amends Section 552.110, Government Code, to change the heading and to except certain commercial or financial information from the requirements of Section 552.110.

SECTION 8.

Amends Section 552.116, Government Code, to provide that certain audit information is excepted from the requirements of Section 552.021, and to provide that material maintained in association with the excepted information does not exempt the associated material. Redefines proposed definition for “audit.” Redesignates SECTION 8 as SECTION 11.

SECTION 9.

Redesignates SECTIONS 9-14 as SECTIONS 13-18.

SECTION 10.

Adds Section 552.132, Chapter 552C, Government Code, to provide an exception based on crime victim information.

SECTION 12.

Amends Section 552.221(b), Government Code, to provide that charges begin to accrue when a requestor is informed about required payment for an information request.

SECTION 13.

Amends Section 552.261, Government Code, by adding Subsection (d), to provide that charges for providing a copy of public information are considered to accrue at the time the governmental body advises the request about the payment.

SECTION 15.

Amends Section 552.263, Government Code, by adding Subsections (c)-(e), to set forth procedures to require a payment of unpaid amounts owing the governmental body for information requests. Redesignates SECTIONS 15-17 as SECTIONS 20-22.

SECTION 16.

Amends Section 552.271, Government Code, to prohibit certain charges if the requestor does not request a copy of public information.

SECTION 18.

Amends Section 552.301, Government Code, by adding Subsections (d), (f), and (g) regarding a request for an attorney general decision, to remove proposed Subsection (c), and to make conforming changes. Redesignates SECTION 18 as SECTION 24.

SECTION 19.

Amends Chapter 552G, Government Code, to add Section 552.3011 regarding attorney general declarations against burdensome repetitious request for information.

Redesignates SECTIONS 19-20 as SECTIONS 26-27.

SECTION 20.

Amends Sections 552.303, Government Code, by amending Subsections (b), (c), and (e), regarding whether the attorney general may declare a governmental body's request for a declaration is sufficient.

SECTION 21.

Redesignates SECTIONS 21-25 as SECTIONS 30-34.

SECTION 22.

Amends Section 552.3035, Government Code, by amending Subsection (d) and adding Subsection (f), to include a list of citation of certain attorney general opinions that a governmental body must provide to a requestor. Adds provisions regarding the applicability of this section.

SECTION 23.

Amends Section 552.306(a), Government Code, to amend the time the attorney general must render an opinion for a governmental body, which is 45 days with an 10-working day extension, rather than 60 days with a 20 working-day extension.

Amends Chapter 552G, Government Code, to add changes to Section 552.306 regarding the number of days the attorney general must render certain decisions.

SECTION 25.

Amends Section 552.321, Government Code, to authorize certain suits for a writ of mandamus for public information that is not excepted from disclosure under Subchapter C, and to add provisions regarding the suit.

Amends Chapter 552G, Government Code, to add changes Section 552.321 regarding a suit for writ of mandamus.

SECTION 26.

Amends the heading to proposed Section 552.3215, Government Code, and authorizes certain action against a governmental body. Adds a provision regarding venue for an action, additional requirements for an attorney general who files an action, renames a suit as an action, and provisions stating that an action addition to any other appropriate actions. Deletes proposed sections regarding an order in the action and penalties against a governmental body.

SECTION 28.

Amends Section 552.324, Government Code, to set forth additional guidelines for a suit by a governmental body.

SECTION 29.

Adds Section 552.326, Chapter 552H, Government Code, regarding failure to raise exceptions before the attorney general.

Amends Chapter 552G, Government Code, to Section 552.326 regarding failure to raise exceptions before the attorney general.

SECTION 35.

Adds effective date as September 1, 1999.