

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 3107  
By: Ashby (Schwertner)  
Business & Commerce  
5/19/2017  
Committee Report (Substituted)

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

While the Public Information Act (Act) ensures citizens have access to public information, the Act is also subject to being abused in a manner that unduly burdens governmental entities, particularly small local governments. H.B. 3107 seeks to relieve such burden and prevent abuse of state public information law by revising the law relating to the production of public information, particularly with regard to requests that require a large amount of employee or personnel time.

H.B. 3107 amends existing Government Code regarding when open records requests can be withdrawn, clarifies the establishment of time limits for responding to requests, sets forth that requests do not have to be completed until a previous request by the same requestor has paid for costs or withdrawn the request, outlines which entities may be exempt from payment, and provides for the allowance of a requester to file a complaint with the Texas attorney general. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 3107 amends current law relating to the production of public information 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 552.221, Government Code, by adding Subsection (e), as follows:

(e) Provides that a request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in the offices of the governmental body on or before the 60th day after the date the information is made available or fails to pay the postage and any other applicable charges accrued under Subchapter F (Charge for Proving Copies of Public Information) on or before the 60th day after the date the requestor is informed of the charges.

SECTION 2. Amends Section 552.261, Government Code, by adding Subsection (e), as follows:

(e) Authorizes all requests received in one calendar day from an individual, except as otherwise provided by this subsection, to be treated as a single request for purposes of calculating costs under this chapter (Public Information). Prohibits a governmental body from combining multiple requests under this subsection from separate individuals who submit requests on behalf of an organization.

SECTION 3. Amends Section 552.275, Government Code, by amending Subsections (a), (b), (d), (e), (g), (h), and (j) and adding Subsections (a-1), (e-1), and (m), as follows:

(a) Authorizes a governmental body to establish reasonable monthly and yearly limits, rather than a reasonable limit, on the amount of time that personnel of the governmental body are required to spend producing public information for inspection or duplication by

a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time.

(a-1) Authorizes all county officials who have designated the same officer for public information, for purposes of this section, to calculate the amount of time that personnel are required to spend collectively for purposes of the monthly or yearly limit.

(b) Prohibits a yearly time limit established under Subsection (a) from being less than 36 hours for a requestor during the 12-month period that corresponds to the fiscal year of the governmental body. Prohibits a monthly time limit established under Subsection (a) from being less than 15 hours for a requestor for a one-month period.

(d) Requires the governmental body, if a governmental body establishes a time limit under Subsection (a), each time the governmental body complies with a request for public information, to provide the requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative amount of time spent complying with requests for public information from that requestor during the applicable monthly or yearly, rather than applicable 12-month period.

(e) Requires the governmental body, subject to Subsection (e-1), if in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the limit established by the governmental body under Subsection (a), to provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses, necessary to comply with the request.

(e-1) Provides that this subsection applies only to a request made by a requestor who has made a previous request to a governmental body that has not been withdrawn, for which the governmental body has located and compiled documents in response, and for which the governmental body has issued a statement under Subsection (e) that remains unpaid on the date the requestor submits the new request. Provides that a governmental body is not required to locate, compile, produce, or provide copies of documents or prepare a statement under Subsection (e) in response to a new request described by this subsection until the date the requestor pays each unpaid statement issued under Subsection (e) in connection with a previous request or withdraws the previous request to which the statement applies.

(g) Provides that, if a governmental body provides a requestor with the written statement under Subsection (e) and the time limits prescribed by Subsection (a) regarding the requestor have been exceeded, the governmental body is not required to produce public information for inspection or duplication or to provide copies of public information in response to the requestor's request, unless on or before a certain date, the requestor submits payment of the amount stated in the written statement provided under Subsection (e), rather than submits a statement in writing to the governmental body in which the requestor commits to pay the lesser of the actual costs incurred in complying with the requestor's request, including the cost of materials and personnel time and overhead, or the amount stated in the written statement provided under Subsection (e).

(h) Provides that if the requestor fails or refuses to submit payment, rather than the written statement, under Subsection (g), the requestor is considered to have withdrawn the requestor's pending request for public information.

(j) Provides that this section does not apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

(1) dissemination by a news medium or communication service provider, including an individual who supervises or assists in gathering, preparing, and disseminating the news or information or an individual who is or was a journalist,

scholar, or researcher employed by an institution of higher education at the time the person made the request for information;

(2) creation or maintenance of an abstract plant as described by Section 2501.004 (Abstract Plant; Joint Abstract Plant Operation), Insurance Code, rather than for a radio or television broadcast station that holds a broadcast license for an assigned frequency issued by the Federal Communications Commission. Deletes existing text providing that this section does not apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, takes certain actions relating to seeking the information for a newspaper that is qualified under Section 2051.044 (Type of Newspaper Required) to publish legal notices or is a free newspaper of general circulation and that is published at least once a week and available and of interest to the general public in connection with the dissemination of news; a newspaper of general circulation that is published on the Internet by a news medium engaged in the business of disseminating news or information to the general public; or a magazine that is published at least once a week or on the Internet by a news medium engaged in the business of disseminating news or information to the general public.

(m) Defines "communication service provider" and "news medium."

SECTION 4. Amends Section 552.3215(i), Government Code, as follows:

(i) Provides that a complainant is entitled to file a complaint with Texas attorney general on or after the 90th day after the date the complainant files the complaint with a district or county attorney if the district or county attorney has not brought an action under this section.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2017.