

By: Merritt

H.B. No. 1562

A BILL TO BE ENTITLED

AN ACT

relating to applications for public information that are frivolous or filed for the purpose of harassment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 552, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. APPLICATIONS FOR PUBLIC INFORMATION THAT ARE FRIVOLOUS OR MADE FOR PURPOSE OF HARASSMENT

Sec. 552.401. APPLICABILITY. (a) This subchapter applies only to:

(1) a governmental body of a municipality located in whole or in part in a county having a population of less than 200,000; or

(2) a governmental body of a county with a population of 200,000 or less.

(b) This subchapter does not apply to an application for public information filed by a bona fide member of the news media acting in that capacity.

Sec. 552.402. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) An administrative law judge employed by the State Office of Administrative Hearings shall, on application by an officer for public information of a governmental body, determine whether an application for public information filed with that officer for public information is frivolous or was filed for the

1 purpose of harassment.

2 (b) The State Office of Administrative Hearings shall  
3 provide for the stenographic or electronic recording of a hearing  
4 conducted under this subchapter.

5 (c) For purposes of this subchapter, an application for  
6 public information is filed for the purpose of harassment if:

7 (1) the application is reasonably likely to harass,  
8 abuse, or torment a governmental body or the officer for public  
9 information of the governmental body; and

10 (2) a primary reason for the application is to cause  
11 that result.

12 Sec. 552.403. REQUEST FOR DETERMINATION. (a) An officer  
13 for public information who believes that an application for public  
14 information filed with that officer is frivolous or filed for the  
15 purpose of harassment, instead of complying with Subchapter E, may  
16 file with the State Office of Administrative Hearings a request for  
17 a determination under this subchapter specifying the grounds for  
18 the officer's belief that the application is frivolous or filed for  
19 the purpose of harassment.

20 (b) The officer for public information must:

21 (1) file the determination request before the seventh  
22 day after the date the application for public information was filed  
23 with the officer;

24 (2) file the request in writing; and

25 (3) send a copy of the request to the person who filed  
26 the application for public information.

27 (c) A request for a determination stays all proceedings in

1 furtherance of the application for public information that is the  
2 subject of the request until the determination of the  
3 administrative law judge is made.

4 Sec. 552.404. HEARING LOCATION. A hearing under this  
5 subchapter shall be held:

6 (1) at a location designated by the State Office of  
7 Administrative Hearings:

8 (A) in the county in which the main  
9 administrative offices of the governmental body are located; or

10 (B) in Travis County; or

11 (2) with the consent of the person who filed the  
12 application for public information and the public information  
13 officer for the governmental body, by telephone conference call.

14 Sec. 552.405. NOTICE OF HEARING. (a) The State Office of  
15 Administrative Hearings shall notify the person who filed the  
16 application for public information and the officer for public  
17 information of the time and location of the hearing.

18 (b) Notice may be given by telephone or other electronic  
19 means. If notice is given by telephone or other electronic means,  
20 written notice must also be provided.

21 (c) Notice by mail is considered received on the fifth day  
22 after the date the notice is deposited with the United States Postal  
23 Service.

24 Sec. 552.406. FAILURE TO APPEAR. An officer for public  
25 information who requests a hearing and fails to appear without just  
26 cause waives the right to a hearing.

27 Sec. 552.407. DETERMINATION BY ADMINISTRATIVE LAW

1 JUDGE. The administrative law judge shall:

2 (1) determine the matter presented within a reasonable  
3 time; and

4 (2) notify, in writing as soon as practicable, the  
5 person who filed the application for public information and the  
6 officer for public information of the administrative law judge's  
7 determination.

8 Sec. 552.408. EFFECT OF DETERMINATION. (a) If the  
9 determination of the administrative law judge is that the  
10 application for public information is not frivolous or not filed  
11 for the purpose of harassment, the officer for public information  
12 shall promptly comply with the applicable provisions of this  
13 chapter, including Subchapter E.

14 (b) If the determination of the administrative law judge is  
15 that the application for public information is frivolous or filed  
16 for the purpose of harassment, the officer for public information:

17 (1) is relieved of further compliance with this  
18 chapter; and

19 (2) is not required to accept or comply with other  
20 applications for public information filed by the person for a  
21 reasonable period, as determined by the administrative law judge.

22 Sec. 552.409. APPEAL FROM ADMINISTRATIVE HEARING  
23 DETERMINATION. (a) The officer for public information or the  
24 person who filed the application for public information aggrieved  
25 by the determination of the administrative law judge may appeal the  
26 determination by filing a petition not later than the 30th day after  
27 the date the administrative law judge's determination is made. The

1 administrative law judge's determination is immediately appealable  
2 without the requirement of a motion for rehearing.

3 (b) A petition under Subsection (a) must be filed in a  
4 county court at law in the county in which the main administrative  
5 offices of the governmental body are located or, if there is not a  
6 county court at law in the county, in a district court for that  
7 county.

8 (c) A person who files an appeal under this section shall  
9 send a copy of the petition by certified mail to the State Office of  
10 Administrative Hearings at that agency's headquarters in Austin and  
11 to the party in opposition at the administrative hearing. The copy  
12 must be certified by the clerk of the court in which the petition is  
13 filed.

14 (d) An attorney for the governmental body may represent the  
15 officer for public information in an appeal.

16 Sec. 552.410. STAY OF DETERMINATION ON APPEAL. The  
17 determination of the administrative law judge is stayed on the  
18 filing of an appeal petition.

19 Sec. 552.411. REVIEW; ADDITIONAL EVIDENCE. (a) Review on  
20 appeal is on the record certified by the State Office of  
21 Administrative Hearings with no additional testimony.

22 (b) On appeal, a party may apply to the court to present  
23 additional evidence. If the court is satisfied that the additional  
24 evidence is material and that there were good reasons for the  
25 failure to present it in the proceeding before the administrative  
26 law judge, the court may order that the additional evidence be taken  
27 before an administrative law judge on conditions determined by the

1 court.

2 (c) There is no right to a jury trial in an appeal under this  
3 section.

4 (d) A remand under this section does not stay the original  
5 determination of the administrative law judge.

6 Sec. 552.412. TRANSCRIPT OF ADMINISTRATIVE HEARING. (a)  
7 To obtain a transcript of an administrative hearing, the party who  
8 appeals the administrative law judge's decision must apply to the  
9 State Office of Administrative Hearings.

10 (b) On payment of a fee not to exceed the actual cost of  
11 preparing the transcript, the State Office of Administrative  
12 Hearings shall promptly furnish both parties with a transcript of  
13 the administrative hearing.

14 SECTION 2. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2003.