

1-1 By: Wentworth S.B. No. 1182
1-2 (In the Senate - Filed February 26, 2009; March 13, 2009, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 15, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 15, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1182 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the open records steering committee, reports by the
1-11 attorney general on costs of copies, and certain deadlines, costs,
1-12 and suits filed under the public information law.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The heading to Section 552.009, Government Code,
1-15 is amended to read as follows:

1-16 Sec. 552.009. OPEN RECORDS STEERING COMMITTEE: ADVICE TO
1-17 ATTORNEY GENERAL ~~[COMMISSION]~~; ELECTRONIC AVAILABILITY OF PUBLIC
1-18 INFORMATION.

1-19 SECTION 2. Subsection (a), Section 552.263, Government
1-20 Code, is amended to read as follows:

1-21 (a) An officer for public information or the officer's agent
1-22 may require a deposit or bond for payment of anticipated costs for
1-23 the preparation of a copy of public information if:

1-24 (1) the officer for public information or the
1-25 officer's agent has provided the requestor with the ~~[required]~~
1-26 written itemized statement required under Section 552.2615
1-27 detailing the estimated charge for providing the copy; and

1-28 (2) ~~[if]~~ the charge for providing the copy of the
1-29 public information specifically requested by the requestor is
1-30 estimated by the governmental body to exceed:

1-31 (A) ~~[(1)]~~ \$100, if the governmental body has more
1-32 than 15 full-time employees; or

1-33 (B) ~~[(2)]~~ \$50, if the governmental body has fewer
1-34 than 16 full-time employees.

1-35 SECTION 3. Subsection (a), Section 552.274, Government
1-36 Code, as amended by Chapters 329 (S.B. 727) and 716 (S.B. 452), Acts
1-37 of the 79th Legislature, Regular Session, 2005, is reenacted to
1-38 read as follows:

1-39 (a) The attorney general shall:

1-40 (1) biennially update a report prepared by the
1-41 attorney general about the charges made by state agencies for
1-42 providing copies of public information; and

1-43 (2) provide a copy of the updated report on the
1-44 attorney general's open records page on the Internet not later than
1-45 March 1 of each even-numbered year.

1-46 SECTION 4. Subsection (e-1), Section 552.301, Government
1-47 Code, is amended to read as follows:

1-48 (e-1) A governmental body that submits written comments to
1-49 the attorney general under Subsection (e)(1)(A) shall send a copy
1-50 of those comments to the person who requested the information from
1-51 the governmental body not later than the 15th business day after the
1-52 date of receiving the written request. If the written comments
1-53 disclose or contain the substance of the information requested, the
1-54 copy of the comments provided to the person must be a redacted copy.

1-55 SECTION 5. Subsection (b), Section 552.323, Government
1-56 Code, is amended to read as follows:

1-57 (b) In an action brought under Section 552.324
1-58 ~~[552.353(b)(3)]~~, the court may assess costs of litigation and
1-59 reasonable attorney's fees incurred by a plaintiff or defendant who
1-60 substantially prevails. In exercising its discretion under this
1-61 subsection, the court shall consider whether the conduct of ~~[the~~
1-62 ~~officer for public information of]~~ the governmental body had a
1-63 reasonable basis in law and whether the litigation was brought in

2-1 good faith.

2-2 SECTION 6. Section 552.324, Government Code, is amended to
2-3 read as follows:

2-4 Sec. 552.324. SUIT BY GOVERNMENTAL BODY. (a) The only
2-5 suit a governmental body ~~[or officer for public information]~~ may
2-6 file seeking to withhold information from a requestor is a suit
2-7 that:

2-8 (1) is filed in a Travis County district court against
2-9 the attorney general in accordance with Section ~~[Sections]~~ 552.325;
2-10 ~~[and 552.353]~~ and

2-11 (2) seeks declaratory relief from compliance with
2-12 ~~[that challenges]~~ a decision by the attorney general issued under
2-13 Subchapter G.

2-14 (b) The governmental body must bring the suit not later than
2-15 the 30th calendar day after the date the governmental body receives
2-16 the decision of the attorney general determining that the requested
2-17 information must be disclosed to the requestor ~~[being challenged]~~.
2-18 If the governmental body does not bring suit within that period, the
2-19 governmental body shall comply with the decision of the attorney
2-20 general. If a governmental body wishes to preserve an affirmative
2-21 defense for its officer for public information as provided in
2-22 Section 552.353(b)(3), suit must be filed within the deadline
2-23 provided in Section 552.353(b)(3) ~~[This subsection does not~~
2-24 ~~affect the earlier deadline for purposes of Section 552.353(b)(3)~~
2-25 ~~for a suit brought by an officer for public information]~~.

2-26 SECTION 7. Subsection (b), Section 552.325, Government
2-27 Code, is amended to read as follows:

2-28 (b) The governmental body, officer for public information,
2-29 or other person or entity that files the suit shall demonstrate to
2-30 the court that the governmental body, officer for public
2-31 information, or other person or entity made a timely good faith
2-32 effort to inform the requestor, by certified mail or by another
2-33 written method of notice that requires the return of a receipt, of:

2-34 (1) the existence of the suit, including the subject
2-35 matter and cause number of the suit and the court in which the suit
2-36 is filed;

2-37 (2) the requestor's right to intervene in the suit or
2-38 to choose to not participate in the suit;

2-39 (3) the fact that the suit is against the attorney
2-40 general in Travis County district court; and

2-41 (4) the address and phone number of the office of the
2-42 attorney general.

2-43 SECTION 8. Subsections (b) and (c), Section 552.353,
2-44 Government Code, are amended to read as follows:

2-45 (b) It is an affirmative defense to prosecution under
2-46 Subsection (a) that the officer for public information reasonably
2-47 believed that public access to the requested information was not
2-48 required and that ~~[the officer]~~:

2-49 (1) the officer acted in reasonable reliance on a
2-50 court order or a written interpretation of this chapter contained
2-51 in an opinion of a court of record or of the attorney general issued
2-52 under Subchapter G;

2-53 (2) the officer requested a decision from the attorney
2-54 general in accordance with Subchapter G, and the decision is
2-55 pending; or

2-56 (3) not later than the 10th calendar day after the date
2-57 of receipt of a decision by the attorney general that the
2-58 information is public, the officer or the governmental body for
2-59 whom the defendant is the officer for public information filed a
2-60 petition for a declaratory judgment ~~[, a writ of mandamus, or both,]~~
2-61 against the attorney general in a Travis County district court
2-62 seeking relief from compliance with the decision of the attorney
2-63 general, as provided by Section 552.324, and the cause ~~[a petition]~~
2-64 is pending.

2-65 (c) It is an affirmative defense to prosecution under
2-66 Subsection (a) that a person or entity has, not later than the 10th
2-67 calendar day after the date of receipt by a governmental body of a
2-68 decision by the attorney general that the information is public,
2-69 filed a cause of action seeking relief from compliance with the

3-1 decision of the attorney general, as provided by Section 552.325,
3-2 and the cause is pending.

3-3 SECTION 9. This Act takes effect September 1, 2009.

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