

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 29, 2009

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB1182 by Wentworth (Relating to public information and open government.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code to require agencies other than the Department of Family and Protective Services and the Texas Youth Commission that investigate a report of child abuse or neglect to provide information concerning the investigation to the parent, managing conservator, or legal representative of the child who is the subject of the report, or to the child if the child is at least 18 years of age. The agencies must redact identifying or confidential information prior to releasing the information. The Department of Aging and Disability Services, the Department of State Health Services, and the Health and Human Services Commission indicate that any cost to implement provisions of the bill would be minimal and can be absorbed within available resources.

The bill would amend various sections of Chapter 552 of the Government Code to make amendments to the Public Information Act (PIA).

The bill would allow a member, committee, or agency of the legislature to seek a decision from the Office of the Attorney General (OAG) about whether the information covered by a confidentiality agreement is confidential under law. Currently a member, committee, or agency of the legislature can request confidential information from a governmental body; however, the governmental body may choose to require the requestor to sign a confidentiality agreement before the information is released. This portion of the bill would take effect September 1, 2010.

The bill would also exempt from public disclosure information that could reasonably be expected to compromise the safety of an employee or official if it were released. To have the information withheld, the individual must apply in writing, describing the information involved and the specific circumstances that make its release dangerous. The agency's Public Information Officer would request a decision from the OAG regarding withholding the information. This portion of the bill would expire September 1, 2013.

The bill amends the Texas Public Information Code, under the request for public information provisions, by adding a section which exempts information pertaining to certain biological agents and toxins, identified in federal law, from categories of publicly accessible information. Excepted information regarding select biological and toxic agent agents includes their specific location within an approved facility, personal identifying information of an individual whose name appears in documentation relating to the chain of custody, and the identity of authorized individuals.

The bill would not allow exceptions from disclosure of the identity of the select agents present at a facility, the identity of an individual faculty member or employee whose name appears on published research, and otherwise public information relating to contracts of a governmental body. The bill would also require that information relating to the identity of out of state residents be subject to disclosure only to the extent the information would be subject to disclosure under the laws of the state of which the person is a resident.

State agencies affected have stated that there is no cost implication to the state in making these technical changes to the Texas Public Information Code.

The bill would require a governmental body to provide a copy of written arguments that were submitted to the OAG to a requestor within 15 business days. Currently, a governmental body that requests an open records decision from the OAG under section 552.301(a) must submit written arguments only to the OAG concerning the applicability of exceptions in the PIA within 15 business days of receiving the request for information.

The bill would clarify that the only suit a governmental body may file when trying to withhold information under the PIA is a suit against the OAG that seeks declaratory relief (rather than a mandamus action) from compliance with an open records decision of the OAG. Additionally, a governmental body wishing to preserve affirmative defenses for its public information officer found in section 552.353(b)(3) must file suit within the deadlines provided by that section. The bill would clarify certain sections of the PIA relating to litigation between the OAG and governmental bodies.

The bill would apply to requests for information made before, on, or after the relevant provisions of the bill.

Except as otherwise provided by the bill, it would take effect September 1, 2009.

Based on analysis by a variety of state agencies, including the Office of Attorney General, it is assumed that implementation of the provisions of the bill could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 347 Public Finance Authority, 454 Department of Insurance, 477 Commission on State Emergency Communications, 504 Texas State Board of Dental Examiners, 520 Board of Examiners of Psychologists, 539 Aging and Disability Services, Department of, 582 Commission on Environmental Quality, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

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