

BILL ANALYSIS

C.S.H.B. 3200
By: Larson
Government Efficiency & Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Public information law generally requires governmental bodies to release public information promptly after it receives the request. If the governmental body is unsure whether certain information is public or if it seeks to withhold information, the governmental body follows an administrative process with various deadlines to resolve the issue. The governmental body may seek a ruling from the attorney general about whether the information is considered public information, or a requestor may bring a suit for a writ of mandamus to compel a governmental body to release requested information under certain circumstances.

Interested parties contend that the dual means of obtaining public information has led to confusion and duplicative efforts to resolve public information issues. It has been reported that in some cases, requestors have filed mandamus actions while an attorney general ruling is pending. The parties further contend that the attorney general proclaimed that it would always issue an opinion if requested, which potentially sets up conflicting opinions between the attorney general and the courts.

In order to preserve what these parties contend is the original legislative intent of the administrative process for resolving public information disputes, C.S.H.B. 3200 seeks to clarify the time frame under which a suit for a writ of mandamus may be filed.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3200 amends the Government Code, in a statutory provision authorizing the attorney general or a person who submits a request to a governmental body for inspection or copies of public information to file suit for a writ of mandamus compelling the governmental body to make information available for public inspection if the governmental body refuses to perform certain actions, to place conditions on the filing of such a suit by such a requestor. The bill authorizes such a requestor to file a suit for such a writ of mandamus only if:

- the time period for the governmental body to request a decision from the attorney general has elapsed and the governmental body has not requested a decision in that time period; or
- the governmental body has timely requested a decision from the attorney general and the attorney general has either issued a decision that information to which the decision applies is public information that is not excepted from disclosure and the governmental body has not disclosed the information within 30 days after the date the attorney general issued the decision or the time period for the attorney general to issue a decision has elapsed.

The bill requires a suit for a writ of mandamus filed under the bill's provisions to allege that the

applicable period has elapsed.

C.S.H.B. 3200 authorizes a governmental body to file a motion to dismiss such a suit for a writ of mandamus that does not comply with the bill's requirements, requires the court to dismiss the suit if it does not comply with the bill's requirements, and authorizes the court to award the governmental body court costs and reasonable attorney's fees if the court dismisses the suit.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3200 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 552.321, Government Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) A requestor may file suit for a writ of mandamus under this section only if:

(1) the time period for the governmental body to request a decision from the attorney general under Subchapter G has elapsed and the governmental body has not requested a decision in that time period; or

(2) the governmental body has timely requested a decision from the attorney general under Subchapter G and:

(A) the attorney general has issued a decision that information to which the decision applies is public information that is not excepted from disclosure under Subchapter C; or

(B) the time period for the attorney general to issue a decision under Subchapter G has elapsed.

(d) A suit for a writ of mandamus filed under **Subsection (c)** must allege that the applicable time period described by Subsection (c) has elapsed.

(e) A governmental body may file a motion to dismiss a suit for a writ of mandamus compelling the governmental body to make information available for public inspection that does not comply with the requirements of Subsection (c).

(f) The court shall dismiss a suit for a writ of mandamus compelling a governmental

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 552.321, Government Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) A requestor may file suit for a writ of mandamus under this section only if:

(1) the time period for the governmental body to request a decision from the attorney general under Subchapter G has elapsed and the governmental body has not requested a decision in that time period; or

(2) the governmental body has timely requested a decision from the attorney general under Subchapter G and:

(A) the attorney general has issued a decision that information to which the decision applies is public information that is not excepted from disclosure under Subchapter C, **and the governmental body has not disclosed the information within 30 days after the date the attorney general issued the decision;** or

(B) the time period for the attorney general to issue a decision under Subchapter G has elapsed.

(d) A suit for a writ of mandamus filed under **this section** must allege that the applicable time period described by Subsection (c) has elapsed.

(e) A governmental body may file a motion to dismiss a suit for a writ of mandamus compelling the governmental body to make information available for public inspection that does not comply with the requirements of Subsection (c).

(f) The court shall dismiss a suit for a writ of mandamus compelling a governmental

body to make information available for public inspection that does not comply with the requirements of Subsection (c). If the court dismisses the suit under this subsection, the court may award the governmental body court costs and reasonable attorney's fees.

SECTION 2. Section 552.321, Government Code, as amended by this Act, applies to a suit for a writ of mandamus compelling a governmental body to make information available for public inspection that is filed on or after September 1, 2013. A suit for a writ of mandamus compelling a governmental body to make information available for public inspection that is filed before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

body to make information available for public inspection that does not comply with the requirements of Subsection (c). If the court dismisses the suit under this subsection, the court may award the governmental body court costs and reasonable attorney's fees.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.