

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3033
By: Landgraf; Cain (Zaffirini)
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, state public information law provides a governmental body the opportunity to delay the release of information subject to a public information request by requesting an opinion from the Office of the Attorney General regarding whether the information may legally be withheld. The opinion process as currently written does not ensure the timely release of requested information and thus effectively permits governmental bodies to delay the response to a public information request for an extended amount of time. H.B. 3033 would address this issue and ensure a more timely release of information subject to public information law by implementing a number of safeguards, including requiring a governmental body to take action within 30 days after the issuance of an opinion by the attorney general following a request from the governmental body.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 3033 amends current law relating to the public information law.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 7 (Section 552.3031, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 552, Government Code, by adding Section 552.0031, as follows:

Sec. 552.0031. BUSINESS DAYS. (a) Defines "business day."

(b) Provides that the fact that an employee works from an alternative work site does not affect whether a day is considered a business day under Chapter 552 (Public Information).

(c) Provides that an optional holiday under Section 662.003(c) (relating to providing that an "optional holiday" includes only the days on which Rosh Hashanah, Yom Kippur, or Good Friday falls) is not a business day of a governmental body if the officer for public information of the governmental body observes the optional holiday.

(d) Provides that a holiday established by the governing body of an institution of higher education under Section 662.011(a) (relating to authorizing certain institutions to establish the holiday schedule for the institution, subject to any applicable limitation on the observance of holidays prescribe by the General Appropriations Act) is not a business day of the institution of higher education.

(e) Provides that the Friday before or Monday after a holiday described by Subsection (a)(2) (relating to excluding from the definition of "business day" a national holiday) or (3) (relating to excluding from the definition of "business day" a state holiday) is not a business day of a governmental body if the holiday

occurs on a Saturday or Sunday and the governmental body observes the holiday on that Friday or Monday.

(f) Authorizes a governmental body, subject to the requirements of this subsection, to designate a day on which the governmental body's administrative offices are closed or operating with minimum staffing as a nonbusiness day. Requires that the designation of a nonbusiness day for an independent school district be made by the board of trustees. Requires that the designation of a nonbusiness day for a governmental body other than an independent school district be made by the executive director or other chief administrative officer. Authorizes a governmental body to designate not more than 10 nonbusiness days under this subsection each calendar year.

SECTION 2. Amends Section 552.012, Government Code, by adding Subsection (b-1), as follows:

(b-1) Authorizes the attorney general to require each public official of a governmental body to complete the course of training if the attorney general determines that the governmental body has failed to comply with a requirement of this chapter. Requires the attorney general to notify each public official in writing of the attorney general's determination and the requirement to complete the training. Requires a public official who receives notice from the attorney general under this subsection to complete the training not later than the 60th day after the date the official receives the notice.

SECTION 3. Amends Section 552.108(c), Government Code, as follows:

(c) Requires a governmental body to promptly release basic information responsive to a request made under this chapter unless the governmental body seeks to withhold the information as provided by another provision of this chapter, and regardless of whether the governmental body requests an attorney general decision under Subchapter G (Attorney General Decisions) regarding other information subject to the request.

SECTION 4. Amends Section 552.271, Government Code, by adding Subsection (e), as follows:

(e) Prohibits a requestor who has exceeded a limit established by a governmental body under Section 552.275 (Requests That Require Large Amounts of Employee or Personnel Time) from inspecting public information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the governmental body under Section 552.275(e) (relating to requiring a governmental body to provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses, necessary to comply with an information request in certain circumstances).

SECTION 5. Amends Section 552.272, Government Code, by adding Subsection (f), as follows:

(f) Prohibits a requestor who has exceeded a limit established by a governmental body under Section 552.275 from inspecting public information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the governmental body under Section 552.275(e).

SECTION 6. Amends Section 552.275, Government Code, by amending Subsections (d), (g), and (h) and adding Subsections (n) and (o), as follows:

(d) Prohibits the amount of time spent preparing the written statement from being included in the amount of time included in the statement provided to the requestor under this subsection unless the requestor's time limit for the period has been exceeded.

(g) Provides that 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 the 10th day after the date the governmental body

provided the written statement under that subsection, the requestor submits payment of the amount stated in the written statement provided under Subsection (e) or provides identification or submits payment as required by Subsection (o), as applicable, if a governmental body provides a requestor with a written statement under Subsection (e) or (o) and the time limits prescribed by Subsection (a) regarding the requestor have been exceeded.

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

(n) Authorizes a governmental body to request photo identification from a requestor for the sole purpose of establishing that the requestor has not:

(1) exceeded a limit established by the governmental body under Subsection (a); and

(2) concealed the requestor's identity.

(o) Requires that a request for photo identification under Subsection (n) include a statement under Subsection (e) applicable to the requestor who has exceeded a limit established by the governmental body and a statement that describes each specific reason why Subsection (n) is authorized to apply to the requestor. Requires the governmental body to accept as proof of a requestor's identification physical presentment of photo identification or an image of the photo identification that is transmitted electronically or through the mail. Authorizes a requestor from whom a governmental body has requested photo identification under Subsection (n) to decline to provide identification and obtain the requested information by paying the charge assessed in the statement.

SECTION 7. Amends Subchapter G, Chapter 552, Government Code, by adding Section 552.3031, as follows:

Sec. 552.3031. ELECTRONIC SUBMISSION OF REQUEST FOR ATTORNEY GENERAL DECISION. (a) Provides that this section does not apply to a request for an attorney general decision made under this subchapter if:

(1) the governmental body requesting the decision:

(A) has fewer than 16 full-time employees; or

(B) is located in a county with a population of less than 150,000;

(2) the amount or format of responsive information at issue in a particular request makes use of the attorney general's electronic filing system impractical or impossible; or

(3) the request is hand delivered to the office of the attorney general.

(b) Requires a governmental body that requests an attorney general decision under this subchapter to submit the request through the attorney general's designated electronic filing system.

(c) Authorizes the attorney general to adopt rules necessary to implement this section, including rules that define the amount or type of formatting of information described by Subsection (a)(2) that makes use of the electronic filing system impractical or impossible.

SECTION 8. Amends Section 552.306, Government Code, by adding Subsections (c) and (d), as follows:

(c) Requires that a governmental body, as soon as practicable but within a reasonable period of time after the date the attorney general issues an opinion under Subsection (b) (relating to requiring the attorney general to issue a written opinion of the determination and to provide a copy of the opinion to the requestor) regarding information requested under this chapter:

(1) provide the requestor of the information an itemized estimate of charges for production of the information if the estimate is required by Section 552.2615 (Required Itemized Estimate of Charges);

(2) if the requested information is voluminous:

(A) take the following actions if the governmental body determines that it is able to disclose the information in a single batch:

(i) provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the governmental body to produce the information within a reasonable period of time;

(ii) include in the notice the date and hour that the governmental body will disclose the information to the requestor, which is prohibited from being later than the 15th business day after the date the governmental body provides the notice; and

(iii) produce the information at the date and time included in the notice; or

(B) take the following actions if the governmental body determines that it is unable to disclose the information in a single batch:

(i) provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the governmental body to produce the information within a reasonable period of time and in a single batch;

(ii) include in the notice the date and hour that the governmental body will disclose the first batch of information to the requestor, which is prohibited from being later than the 15th business day after the date the governmental body provides the notice;

(iii) provide a written certified notice to the requestor and the attorney general when each subsequent batch of information is disclosed to the requestor of the date and hour that the governmental body will disclose the next batch of information to the requestor, which is prohibited from being later than the 15th business day after the date the governmental body provides the notice; and

(iv) produce the requested information at each date and time included in the notice;

(3) produce the information if it is required to be produced;

(4) notify the requestor in writing that the governmental body is withholding the information as authorized by the opinion; or

(5) notify the requestor in writing that the governmental body has filed suit against the attorney general under Section 552.324 (Suit by Governmental Body) regarding the information.

(d) Provides that a governmental body is presumed to have complied with the requirements of Subsection (c) if the governmental body takes an action under that subsection regarding information that is the subject of an opinion issued by the attorney general in an action brought against the governmental body for failure to comply with that subsection not later than the 30th day after the date the attorney general issues an opinion.

SECTION 9. Amends Section 552.308, Government Code, as follows:

Sec. 552.308. TIMELINESS OF ACTION BY UNITED STATES MAIL, INTERAGENCY MAIL, OR COMMON OR CONTRACT CARRIER. (a) Creates an exception under Section 552.3031 and makes nonsubstantive changes.

(b) Creates an exception under Section 552.3031.

SECTION 10. Amends Subchapter G, Chapter 552, Government Code, by adding Section 552.310, as follows:

Sec. 552.310. SEARCHABLE DATABASE. (a) Requires the Office of the Attorney General (OAG) to make available on OAG's Internet website an easily accessible and searchable database consisting of:

(1) information identifying each request for an attorney general decision made under this subchapter; and

(2) the attorney general's opinion issued for the request.

(b) Requires that the database at a minimum allow a person to search for a request or opinion described by Subsection (a) by:

(1) the name of the governmental body making the request; and

(2) the exception under Subchapter C (Information Excepted From Required Disclosure) that a governmental body asserts in the request applies to its request to withhold information from public disclosure.

(c) Requires that the database allow a person to view the current status of a request described by Subsection (a)(1) and an estimated timeline indicating the date each stage of review of the request will be started and completed.

SECTION 11. Makes the changes in law made by this Act to Sections 552.271, 552.272, and 552.275, Government Code, prospective.

SECTION 12. Makes application of Section 552.3031, Government Code, as added by this Act, and Section 552.306, Government Code, as amended by this Act, prospective.

SECTION 13. Requires OAG to make the database required by Section 552.310, Government Code, as added by this Act, available on OAG's Internet website, as soon as practicable, but not later than January 1, 2024.

SECTION 14. Effective date: September 1, 2023.