

SUBJECT: In camera review of information in a suit under public information laws

COMMITTEE: Government Efficiency and Reform — Favorable, without amendment

VOTE: 6 ayes — Harper-Brown, Capriglione, Stephenson, Taylor, Scott Turner, Vo
0 nays
1 absent — Perry

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Michael Schneider, Texas Association of Broadcasters; Brian Yarbrough, City of Houston)
Against — None
On — Lesli Ginn, Office of the Attorney General

DIGEST: SB 983 would allow information at issue in a lawsuit filed under the Public Information Act to be submitted for a judge's review “in camera,” or privately in his or her chambers.

Upon receipt of the information at issue, the court would enter an order that would prevent the release or access by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order.

The information filed with the court for in-camera inspection would be:

- attached to the order and transmitted by the court to the clerk for filing as “information at issue”;
- maintained in a sealed envelope or in a manner that precluded disclosure of the information; and
- transmitted by the clerk to any court of appeals as part of the clerk’s record.

Information filed with the court under the bill would not constitute “court records” and would not be made available by the clerk or any custodian of record for public inspection.

The bill would define “information at issue” as information held by a governmental body that formed the basis of a suit under the Public Information Act.

The bill would take effect on September 1, 2013.

**SUPPORTERS
SAY:**

SB 983 would improve litigation under the Public Information Act (PIA) by protecting confidential information when it was under court review and later protecting it from inadvertent disclosure as part of a court record.

Public Information Act lawsuits occur when there is a dispute as to whether certain documents or records should be made public under the act. These suits determine whether or not the information should be made public, or in some cases, be shown to only one or a few groups that have special rights of access. The problem is that in a court proceeding, information entered into evidence is made part of the official record and is made public.

Appeals courts have ruled that documents or records in question in a PIA case must be part of the clerk’s record so appellate courts will have all the appropriate evidence for review.

To protect information not yet declared publicly accessible under the PIA, the Office of the Attorney General, which handles a great deal of PIA litigation, has been protecting information in question with agreed orders. These orders state that the documents in question will be introduced to a court in camera. But some judges refuse to acknowledge these agreements because they do not believe the law allows them to recognize such agreements. This can result in information that has been ruled confidential under the PIA being exposed as part of the public court record.

SB 983 would create an easy and uniform method to protect the information at issue in PIA litigation while the court decided whether the information was public or not. While the use of in camera review is already commonly done, the bill only would make explicit a judge’s ability to review evidence in this manner. In camera review combined with an order protecting the information for appellate review would allow for

proper litigation under the PIA and for information to be released, or not, on the merits of a case, rather than as an inadvertent disclosure as part of a court record.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The House companion bill, HB 2246 by Harper-Brown, was left pending in the Government Efficiency & Reform committee on March 18.