

SUBJECT: Assessing costs and fees in certain lawsuits under public information laws

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

WITNESSES: For — William Stowe, Texas Association of Broadcasters; Laura Prather, Texas Press Association, Freedom of Information Foundation; Fred Hartman, Texas Press Association; Don Adams; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; Guy Herman, Statutory Probate Courts of Texas; Joshua Houston, Texas Impact; Donnis Baggett, Texas Press Association)

Against — (*Registered, but did not testify*: Jennifer Riggs, Freedom of Information Foundation)

On — Tom Oney, Lowe Colorado River Authority; Zindia Thomas, Texas Municipal League

BACKGROUND: Government Code, sec. 552.321 allows a requestor of public information or the attorney general to file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the body refuses to comply with public information laws.

Sec. 552.3215 allows an individual to file with a district or county attorney a complaint against a governmental body alleging a violation of public information laws. Within 31 days, the prosecutor must determine and inform the complainant as to whether the alleged violation was committed and whether action will be brought against the body.

In actions brought under the above provisions, sec. 552.323 requires the court to assess costs of litigation and reasonable attorney fees incurred by a plaintiff who substantially prevails, except in certain circumstances.

Concerns have been raised that in a suit, governmental bodies can prevent a plaintiff from recovering litigation costs and attorney fees by disclosing the requested information before a ruling would be delivered in favor of the requestor.

DIGEST: CSHB 2783 would allow a court to assess costs of litigation and reasonable attorney fees incurred by a plaintiff to whom a governmental body voluntarily released the requested information after filing an answer to actions brought under Government Code, secs. 552.321 and 552.3215.

The bill would take effect September 1, 2017, and would apply only to a suit filed on or after that date.

NOTES: CSHB 2783 differs from the filed bill in that the committee substitute would allow, rather than require, courts to assess litigation costs and attorney fees incurred by a plaintiff in cases where a governmental body voluntarily released requested information in a suit.