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FISCAL IMPACT REPORT

SPONSOR Cervantes DATE TYPED 02/25/05 HB 708

SHORT TITLE Penalties for Open Meeting Act Violations SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal – See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General (AGO)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 708 allows a court to assess civil penalties against a member of a public body who is found to have willfully and knowingly violated the Open Meeting Act in an amount not to exceed \$1,000 or the cost incurred by the body to correct an action invalidated by the violation, whichever is greater. The penalty shall be the personal liability of the individual and shall not be paid with the public body's funds.

The bill also raises the existing misdemeanor fine for a violation of the Open Meetings Act from a maximum of \$500 to a maximum of \$1,000.

Significant Issues

Current law provides criminal misdemeanor penalties for a violation of the Open Meeting Act of a fine not to exceed \$500. Current law also provides for enforcement by the attorney general and the district attorneys. In addition, individuals may seek a writ of injunction, mandamus or other

appropriate order in district court to address violations. The prevailing party in such a case may be awarded costs and reasonable attorney fees. This bill would expand on this and allow a court to assess a civil penalty when it finds that the violation was committed willfully and knowingly. The judge may assess a penalty up to \$1,000 or may order the individual to pay an amount equal to the costs incurred by the public body to correct an action that had been invalidated because of the violation.

FISCAL IMPLICATIONS

Civil and criminal penalties issued under this bill would be the personal responsibility of an individual and shall not be paid from the public body's funds.

The bill may create minor costs to the courts if cases become more prevalent or complicated.

The bill is not clear as to whom civil penalties will be paid. If the assessed penalties are paid to the public body that incurred costs to correct a violation, the bill could help defray any state costs of Open Meeting Act violations. However, if the violations are paid to an individual bringing a suit, the assessment would not impact the state. Finally, if the attorney general brought a suit and a penalty were assessed, the penalty would presumably be deposited in the general fund. Further clarification of the bill's intent in this regard is warranted.

OTHER SUBSTANTIVE ISSUES

The bill could result in significant penalties to a public official, particularly if the individual were charged with the cost of correcting an action invalidated by a violation. This language is somewhat vague. What costs would be considered in this calculation? How will the court determine these costs?

The bill does not specify to whom an assessed civil penalty is paid. Is the intent of the bill to help defray the costs incurred by the public body? Or will the penalty be paid to the individual or agency bringing the suit in district court?

The AOC notes that the bill's definition of "separate act" could use further clarification.

EF/lg