



Testimony

SB 1225

Testimony Before the Senate Committee on Business & Commerce

by Shelby Sterling, Policy Analyst

Mr. Chairman and Members of the Committee:

My name is Shelby Sterling, and I represent the Texas Public Policy Foundation. I am here today to testify in support of [Senate Bill 1225](#).

As introduced, SB 1225 would clarify state law as it pertains to catastrophe notices that governmental entities can file to temporarily suspend Public Information Act (PIA) responses during a time of disaster. Key provisions include:

- A redefinition of “catastrophe,” as provided by [Chapter 552 of the Government Code](#), to stipulate that an incident or event must *directly* interfere with a governmental entity’s ability to comply with the PIA;
- A clarification that “catastrophe” does not include a period when staff is required to work remotely but can still electronically access requested information;
- A limitation of one catastrophe notice per disaster plus an optional one-time extension;
- A prohibition on suspending the requirements of Chapter 552 for more than a total of 14 consecutive calendar days with respect to any single catastrophe; and
- A requirement that the governmental entity immediately resume complying with its Chapter 552 duties once the suspension period has ended.

If enacted, these changes promise to better align the PIA process with the spirit of the law and mitigate catastrophe notice abuses. These changes represent a significant improvement over current law.

Shortcomings Under the Current System

Until recently, natural disasters and other unforeseen catastrophes made it difficult or even impossible for affected governmental entities to respond to PIA requests in a timely manner because of work resulting from the incident, the closure of government facilities, or some combination of both. Then, in 2019, the Texas Legislature passed [Senate Bill 494](#) which codified a long-standing informal practice of allowing governmental entities, on rare occasions, to temporarily suspend the PIA process.

The bill, it was said, “[would strike a balance](#) between open government requirements and the ability of government officials to respond to natural disasters and other emergencies.” It is not an unreasonable request, either, as certain circumstances, such as the hurricanes that impact the state’s coastal region, do warrant the shifting of resources to prioritize the safety and well-being of individuals in the affected area.

As a result of the bill’s passage, governments are now allowed to file “catastrophe notices” with the Office of the Attorney General of Texas. Under these new notices, governmental entities notify the attorney general that they will be implementing a 7-day suspension period for Texas PIA requests and responses. This suspension period effectively means that any PIA requests received during those 7 days is not marked as officially received until the suspension period is over. Further, in situations where a governmental entity remains impacted by the catastrophe for more than the initial suspension period, a 7-day extension of the initial suspension notice can be filed, therefore granting a total of 14 days of suspension per notice.

In light of the consistent natural disasters Texans face each year, the intention of current law is sound, and SB 494 codified an informal but existing practice, providing leniency to governmental entities during a catastrophe. However, during the

COVID-19 pandemic, the catastrophe notice was used and abused by governmental entities across the state.

Prior to the coronavirus pandemic, the use of the new catastrophe notice was rare. In fact, the Office of the Attorney General only cites a total of eight catastrophe notices due to cyberattacks or natural disasters prior to or unrelated to COVID-19. While the pandemic was unforeseen, the abuse of the catastrophe notices has sparked the need for reform to the Texas PIA once again.

In March 2020, governmental entities across the state began closing their offices due to the pandemic. The closure of physical offices sparked the onslaught of catastrophe notice filings. Even as some employees immediately began working remotely or they resumed work remotely or in-person soon after, dozens of governmental entities continued to file catastrophe notices or extensions throughout the pandemic.

According to the Office of the Attorney General's website, several governmental entities [filed numerous consecutive 7-day catastrophe notices](#) and extensions. In fact, the city of Dalworthington Gardens filed seven consecutive catastrophe notices from March to May 2020. Additionally, Williamson County filed four back-to-back notices, as did VIA Metropolitan Transit Authority in San Antonio.

These are just a glimpse into some of the abuses of catastrophe notices that have occurred since the start of the COVID-19 pandemic.

The purpose of current law was to provide legal relief to an existing informal practice. However, the Texas Legislature now needs to take another step toward reforming the Texas PIA to ensure this type of abuse cannot occur in the future.

The Current System Needs Reform

The Texas Legislature has shown its intent to keep the government transparent and accountable by keeping the spirit of the PIA alive. This is evidenced by the many additional reforms made to the PIA since its inception. However, nothing promotes the state's PIA spirit as much as the law's opening preamble, which states:

*Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed so that they may retain control over the instruments they have created** [emphasis added].*

Unfortunately, even with the law's intent to ensure that citizens have access to a transparent and accountable government, abuse of the exceptions provided in the PIA demonstrate actions that are contrary to the intent of the PIA. The catastrophe notice provision was intended to aid governmental entities delay PIA requests and divert all necessary resources to the ongoing catastrophe at hand.

However, the use of multiple catastrophe notices creates roadblocks to information that individuals need in times of emergency. These notices prevented Texans from the opportunity to ask questions and scrutinize their elected officials. Particularly, during the COVID-19 pandemic, when governmental entities were closing businesses, limiting hours of operation for restaurants, and ordering individuals to stay

home, people were left without any opportunity to gain the public information they had the right to.

A temporary suspension of Texas PIA responses may be necessary in some circumstances, but abuse of the catastrophe notice provision goes against the spirit and intent of the law. As SB 1225 proposes, catastrophe notices and any suspensions of the Texas Public Information Act should only be allowed when the catastrophe *significantly* impacts a governmental entity and *directly* causes the inability of a government to comply with the requirements of the law. In addition, SB 1225 would ensure that a governmental entity is only permitted to suspend provisions of the Texas PIA once per catastrophe, which may include one optional extension period.

It is imperative, at all times, to uphold the spirit of transparency and accountability of our governing bodies. SB 1225 proposes needed clarification of current law that will allow Texans to be informed. For these reasons, we strongly support this bill. Thank you for your time. I look forward to answering any questions that you may have. ★

ABOUT THE AUTHOR



Shelby Sterling, JD, is a policy analyst for the Government for the People campaign at the Texas Public Policy Foundation.

Sterling is a licensed attorney in the state of Texas with a JD from Texas A&M University School of Law in Fort Worth. She participated in the law school's residency externship program and graduated with a concentration in public policy. Sterling received her BA in Letters from the University of Oklahoma, a combination study of philosophy, history, and literature on the U.S. Constitution and the Founding Fathers.

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