

## **BILL ANALYSIS**

C.S.H.B. 1075  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, there is no provision that generally authorizes state agencies to obtain criminal background checks on prospective employees in information technology departments. The failure of key systems and resources, such as energy, water, transportation, and healthcare, would have a devastating impact on national security, economic security, and/or public health and safety. Although most of these services are provided by the private sector, some are public entities, and many are regulated by state agencies. The Department of Information Resources (DIR) studied the issue of infrastructure security recently and suggested that Texas should take certain precautions to ensure that critical infrastructure in state government is not compromised. DIR issued a biennial report in 2002 that recommended that the legislature consider enabling state agencies to perform criminal background checks through the Department of Public Safety for prospective personnel who manage sensitive or private data, state networks, and/or information resources security functions. The purpose of C.S.H.B. 1075 is to authorize criminal background checks on employees, applicants for employment, contractors, and other personnel in the information technology departments within state government.

### **RULEMAKING AUTHORITY**

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1075 amends Subchapter F, Chapter 411 of the Government Code to provide that a state agency is entitled to obtain from the Department of Public Safety (DPS) a criminal history record for a person who is an employee, applicant for employment, contractor, subcontractor, or intern or other volunteer with the state agency, or with a contractor or subcontractor for the state agency, and who has access to information resources or information resources technologies, other than a desktop computer or telephone station. "State agency" is defined as a department, commission, board, office, council, authority, or other agency in the executive, legislative, or judicial branch of state government that is created by the constitution or a state statute, including a university system as defined by Section 61.003 of the Education Code. "Information resources" are defined as the procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors. "Information resources technologies" are defined as data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

C.S.H.B. 1075 prohibits a state agency that obtains criminal history record information from releasing or disclosing the information or any documents or other records derived from the information except by a court order, with the consent of the person who is the subject of the information, or to the affected contractor or subcontractor unless the information was obtained by DPS from the Federal Bureau of Investigation.

C.S.H.B. 1075 requires a state agency and the affected contractor or subcontractor to destroy criminal

history record information obtained under the provisions of the bill that relates to a person after the information is used to make an employment decision or to take a personnel action relating to the person who is the subject of the information.

C.S.H.B. 1075 prohibits a state agency from obtaining criminal history record information unless the state agency first adopts policies and procedures that provide that evidence of a criminal conviction or other relevant information does not automatically disqualify an individual from employment, but rather that the hiring official will determine, on a case-by-case basis, whether the individual is qualified for employment based on a list of factors to include: the specific duties of the position, the number of offenses committed by the individual, the nature and seriousness of each offense, the length of time between the offense and the employment decision, the efforts by the individual at rehabilitation, and the accuracy of the information on the individual's employment application. The bill provides that the attorney general is required to review these policies and procedures for compliance with due process and other legal requirements before adoption by a state agency, and is authorized to charge the state agency a fee to cover the cost of the review.

C.S.H.B. 1075 provides that a criminal history record information provision in another law that is more specific to a state agency, including Section 411.089 of the Government Code, prevails over the provisions of the bill to the extent of any conflict.

### **EFFECTIVE DATE**

September 1, 2003

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 1075 removes the provision in the original which entitled state agencies to obtain criminal history record information from law enforcement agencies other than the Department of Public Safety. The substitute adds new language to provide that a state agency that obtains criminal history record information under the provisions of the bill is prohibited from disclosing not just the information, but also any other records derived from the information, except under certain circumstances. The substitute adds new language to provide that state agencies are prohibited from disclosing criminal history record information to the affected contractor or subcontractor when the information was obtained by the Department of Public Safety from the Federal Bureau of Investigation. The substitute adds new language to provide that a state agency and the affected contractor or subcontractor are required to destroy only criminal history record information obtained under the provisions of the bill that relates to a person after the information is used to make an employment decision or to take a personnel action. The substitute adds new language to clarify that Section 411.089 of the Government Code, which pertains to access to criminal history record information by a criminal justice agency, prevails over the provisions of C.S.H.B. 1075 to the extent of any conflict.