

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 5, 2005**

**TO:** Honorable David Swinford, Chair, House Committee on State Affairs

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB3278** by Isett (Relating to the management, security, and protection of personal information and governmental records; providing a criminal penalty.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3278, Committee Report 1st House, Substituted: a negative impact of (\$5,728,248) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2006	(\$2,608,437)
2007	(\$3,119,811)
2008	(\$4,650,510)
2009	(\$6,023,542)
2010	(\$7,291,911)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from GENERAL REVENUE FUND 1</b>	<b>Change in Number of State Employees from FY 2005</b>
2006	(\$2,608,437)	34.0
2007	(\$3,119,811)	14.0
2008	(\$4,650,510)	14.0
2009	(\$6,023,542)	14.0
2010	(\$7,291,911)	14.0

**Fiscal Analysis**

The bill prohibits the public display or transmittal of an individual's social security number unless it is secured or encrypted or required by state or federal law, as the law existed on September 1, 2005, in specific circumstances. The bill provides for privacy protections for personal information held by governmental entities. Subchapter B of the bill prohibits a state or local governmental entity from disclosing an individual's social security number, bank account, credit card account, other financial account, computer password, network or location without authorization from the Attorney General, and limits disclosure of an individual's signature or the seal of office of a notary public. The bill further states that a governmental body that receives a request for these categories of information need not release the personal information about an individual or request a ruling from the Office of the Attorney General (OAG) under the Public Information Act (PIA). Subchapter C authorizes the OAG

to establish additional guidelines for local entities to follow when responding to open records requests.

Section 3 of the bill would prohibit a governmental body that possesses a biometric identifier of an individual from storing a biometric identifier in a database, except under certain circumstances identified in the bill. Subchapter D restricts access to information in electronic form, and Section 32.51 of the Penal Code is amended to make an offense under that section a third degree felony.

Other than Section 2, the provisions of the bill would take effect September 1, 2005. Section 2 of the bill would take effect January 1, 2006.

## **Methodology**

The Office of the Attorney's General (OAG) Open Records Division projects that the provisions of the bill would require a two-step review process for public information requests. Requests first would be reviewed under the existing Public Information Act (PIA), then in cases that involve social security numbers, bank account information, computer password/network information, those requests would be reviewed under the provisions outlined in the bill. It is estimated that the Open Records Division would need 4 additional attorneys and 2 support staff to comply with the provisions of the bill at a cost of \$438,962 in fiscal year 2006 and \$402,700 each fiscal year thereafter.

The OAG's Administrative Law Division projects an additional 50 cases per year under the PIA for the redaction of individual names and notary public seals on pleadings and other documents when requested under the PIA. It is estimated that the Administrative Law Division would need 2 additional FTEs (one-half Legal Assistant III, one-half Legal Secretary II, and 1 Assistant Attorney General III) for these additional cases at a cost of \$221,939 in fiscal year 2006 and \$209,185 each fiscal year thereafter.

The State Auditor estimates that the cost to update existing audit guidelines to comply with the requirements of the bill would total approximately 250 hours or \$16,500 in fiscal year 2006. The cost would be approximately 100 hours, or \$6,600, to update the guidelines in each subsequent fiscal year. Overall, the costs would not be significant and could be absorbed within the existing resources.

The Department of Public Safety (DPS) currently uses an Automated Fingerprint Information System (AFIS). Since fiscal year 2001, DPS has received \$13,520,445 for AFIS. Under the provisions of the bill, AFIS could retain the fingerprints of arrested persons or persons convicted of a crime; however, DPS reports that fingerprints stored on juveniles, licensees required to have periodic background checks, and crime suspects would have to be removed. DPS would have to revert back to manual storage, comparison, and search. In order to accommodate such a manual system, additional FTEs and storage would be required. It would also result in a lag in the time required to complete a background search/check. Although there is no specific exclusion for driver's licensing by reference to Chapter 521, Transportation Code, this analysis assumes that fingerprints maintained by the Driver License Division would not be allowed to prevent fraud. If not, the fiscal impact would be significantly greater.

Amounts estimated for DPS include 26 FTEs in fiscal year 2006 and 6 each year thereafter, with costs ranging from \$855,474 in 2006 to \$291,572 in 2010. In addition, fiscal year 2006 includes \$130,000 for computer programming costs. And, \$208,884 each fiscal year is included for rent and storage costs. Other incidental costs are also included for DPS.

There would be an impact to the Texas Department of Criminal Justice. In fiscal year 2004, there were 234 state jail community supervision placements and 186 state jail admissions for the offense of fraudulent use or possession of a person's identifying information. For the purposes of this analysis, it is assumed that all state jail admissions would serve additional time incarcerated as third degree felons and that 56 percent of the 234 state jail community supervision placements for the offense identified by this bill would be sentenced to a term of incarceration as third degree felons. The bill affects a smaller percentage of the community supervision placements because it is assumed that many of the offenders that were sentenced to community supervision as state jail felons would also be sentenced to community supervision as third degree felons. This assumption is based on an analysis of offenders sentenced to community supervision and incarceration in fiscal year 2004 for offenses punishable as a

felony of the third degree. The analysis also reflects the additional parole supervision population that would result from the enhancement of the offense from a state jail felony to a felony of the third degree.

In order to estimate the future impact of the proposal, the changes proposed in the bill are applied in a simulation model using the estimated number of felony prison admissions and probation placements identified in the bill, reflecting the distribution of offenses, sentence lengths, and time served for those offenders. Included in the estimated costs are projected parole supervision operating costs. Costs of incarceration by the Department of Criminal Justice are estimated on the basis of \$40 per inmate per day for prison, reflecting the approximate costs of either operating facilities or contracting with other entities. No costs are included for prison construction. Options available to address the increased demand for prison capacity that would result from implementation of the bill include construction of new facilities and contracting with counties or private entities for additional capacity. The felony enhancement provision of the bill would result in a net negative impact to General Revenue Related Funds ranging from \$399,248 in fiscal year 2006 to \$6,119,554 in fiscal year 2010. The two-year net impact to General Revenue Related Funds for the felony enhancement provision would result in a negative impact of \$2,347,772 through the biennium ending August 31, 2007.

### **Technology**

The technology impact to the Office of the Attorney General would be \$16,296 in fiscal year 2006 for computer network stations. In addition, \$1.3 million is included for fiscal years 2006, 2007, and 2008 for AFIS programming at DPS.

### **Local Government Impact**

There could be some costs to local governments to discontinue the use of an individual's social security number upon request from the individual, but the costs would depend on the number of requests.

There would be some costs to local governments that have not yet established data collection procedures or a general or Internet privacy policy. These costs are not expected to be significant. There could also be costs to guard, restrict, or prevent remote access to a local government's electronic information.

The bill would require local entities to be trained on and comply with two sets of laws relating to public information requests. The Office of the Attorney General anticipates that there will be an operational and fiscal impact to local governments to comply with the law.

**Source Agencies:** 302 Office of the Attorney General, 313 Department of Information Resources, 405 Department of Public Safety

**LBB Staff:** JOB, SR, KJG, MS, GG