

BILL ANALYSIS

Senate Research Center

S.B. 1368
By: Davis
Open Government
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the interim of the 82nd Legislature, concerns were brought to the attention of the Senate Committee on Open Government that attempts to obtain records from third party private entities under contract with the state to provide goods or services were sometimes not produced due to an opinion that the private entity is not subject to open records.

S.B. 1368 clarifies that the records of a private entity under contract with the state to provide goods or services are subject to open records laws, to the extent to which those records are considered public information under Chapter 552 (Public Information), Government Code. The bill accomplishes this by requiring that state contracts include a provision to which the private entity agrees to disclose records subject to open records laws.

S.B. 1368 amends current law relating to public information pertaining to the official business of governmental bodies and to contracts by certain state governmental entities that involve the exchange or creation of public information.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 552.002, Government Code, as follows:

Sec. 552.002. DEFINITION OF PUBLIC INFORMATION; MEDIA CONTAINING PUBLIC INFORMATION. (a) Redefines, in this chapter, "public information."

(a-1) Provides that information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) Provides that the definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

(b) Provides that the media on which public information is recorded include paper; film; a magnetic, optical, solid state, or other device that can store an electronic signal; tape; Mylar; and any physical material on which information may be recorded, including linen, silk, and vellum. Makes nonsubstantive changes.

(c) Provides that the general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting,

text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

SECTION 2. Amends Section 552.003, Government Code, by adding Subdivision (2-a) to define "official business."

SECTION 3. Amends Subchapter Z, Chapter 2252, Government Code, by adding Section 2252.907, as follows:

Sec. 2252.907. CONTRACTS INVOLVING EXCHANGE OR CREATION OF PUBLIC INFORMATION. (a) Provides that a contract between a state governmental entity and a nongovernmental vendor involving the exchange or creation of public information as defined by Section 552.002 (Definition of Public Information; Media Containing Public Information) that the state governmental entity collects, assembles, or maintains or has a right of access to is required to:

(1) be drafted in consideration of the requirements of Chapter 552 (Public Information); and

(2) contain a provision that requires the vendor to make the information not otherwise excepted from disclosure under Chapter 552 available in a specific format that is:

(A) agreed upon in the contract; and

(B) accessible by the public.

(b) Prohibits this section from being waived by contract or otherwise.

(c) Requires that a request for public information regarding a contract described by this section be submitted to the officer or employee responsible for responding to open records requests for the state governmental entity that executed the contract.

(d) Defines, in this section, "state governmental entity."

SECTION 4. Provides that Section 2252.907, Government Code, as added by this Act, applies only to a contract for which a state governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. Provides that a contract for which a state governmental entity advertised or otherwise solicited bids, proposals, offers, or qualifications before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2013.