

BILL ANALYSIS

Senate Research Center
83R3700 RWG-D

S.B. 1368
By: Davis
Open Government
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As Filed

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.

As proposed, S.B. 1368 amends current law relating 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 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 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 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) Defines, in this section, "state governmental entity."

SECTION 2. Provides that the change in law made 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 3. Effective date: September 1, 2013.