

BILL ANALYSIS

Senate Research Center

S.B. 1563
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Open Government
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Transparency and accountability are important factors in governing. Legislators have realized the value of providing the public with access to information surrounding governmental business. Since the Public Information Act (Act) was originally enacted in 1973 and codified in the Government Code, there have been vast changes to the way business is conducted. The advances in technology over the last few decades have added additional venues and ease to governing, but they have also added a layer of complexity to interpreting the Act.

The attorney general's existing opinions address the issue of new technology and public business being conducted on private accounts, as the Act defines public information by the content of the information as opposed to the media with which it is transmitted.

As governments move to reduce costs and improve efficiencies, the private sector is often utilized to accomplish this. When the Act was written, governmental functions were performed for the most part by governmental entities. Today, there is a more frequent reliance on the private sector. As such, the Act does not explicitly address this issue, but the attorney general's office has in a number of opinions.

S.B. 1563 seeks to codify existing attorney general's opinions regarding the Act, as they relate to the use of technology and third-party contracts.

As proposed, S.B. 1563 amends current law relating to the definition of and access to 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 "public information" in this chapter.

(b) Provides that the media on which public information is recorded include certain items, including a magnetic, optical, solid state, or other device that can store an electronic signal, and any physical material on which information may be recorded including linen. 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.

(d) Provides that the definition of public information provided by Subsection (a) applies to:

(1) information that is contained in a communication conducted through a device procured, provided, or purchased, wholly or partly, by a governmental body or maintained on governmental servers; or

(2) information contained on any other device if the device is used by an individual officer or employee of a governmental body, including an elected official or member of the elected official's staff, in the course and scope of the individual's official duties.

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

SECTION 3. Amends Section 552.022(a), Government Code, to provide that, without limiting the amount or kind of information that is public information under this chapter, certain categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law, including a contract between an agency and any other person, including records and files related to the performance of a governmental function by the other person; a local government record as defined by Chapter 201 (General Provisions), Local Government Code; a local government record as defined by Section 441.151 (Definitions); a state record as defined by Chapter 441 (Libraries and Archives); and a county record as defined by Section 441.091 (Definition).

SECTION 4. Amends Subchapter B, Chapter 552, Government Code, by adding Section 552.030, as follows:

Sec. 552.030. PROVISIONS REQUIRED IN GOVERNMENT CONTRACT. (a) Requires that a contract between a governmental body and another person for the performance of a governmental function:

(1) provide that the governmental body is entitled to obtain from the contracting person a copy of any record or file related to the performance of the governmental function;

(2) provide that a copy of a record or file described by Subdivision (1) may be disclosed by the governmental body under this chapter; and

(3) require the contracting person to administer information relating to the performance of a governmental function under the contract as required under this chapter.

(b) Requires that a contract to which Subsection (a) applies that is entered into on or after September 1, 2013, be construed as if the contract contains the provisions required by that subsection without regard to whether the contract includes those provisions on its face.

(c) Prohibits a governmental body from entering into a contract that impairs the right of the public under the provisions of this chapter to inspect or obtain a copy of the governmental body's information that is not confidential or not otherwise excepted from disclosure under this chapter, including public information existing online or in a device or medium procured, provided, or purchased, wholly or partly, by a governmental body or maintained on governmental servers.

SECTION 5. Effective date: upon passage or September 1, 2013.