

BILL ANALYSIS

Senate Research Center
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S.B. 408
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Business & Commerce
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

After the Sharpstown fraud scandal in the early 1970s, the Texas Legislature passed the Public Information Act (PIA) to ensure the public could obtain public information.

According to its own text, the PIA applies to a private entity, or a section thereof, "that spends or that is supported in whole or in part by public funds." In a recent decision, *Greater Houston Partnership v. Paxton*, the Texas Supreme Court abandoned the decades-old *Kneeland* test that had been used to apply this provision. In so doing, the court said the PIA only applies if a private entity, or a section thereof, is "sustained" by public funds. This is a much higher threshold that distorts the PIA's text.

S.B. 408 restores the public's right to know how public money is spent by codifying the *Kneeland* test. The *Kneeland* test essentially holds that a private entity, or a section thereof, must comply with the PIA if it:

- Receives public funds, unless the funds are received pursuant to an arms-length contract for services;
- Receives public funds under a contract that indicates a common purpose or creates an agency-type relationship with the public entity; or
- Provides services traditionally provided by a governmental body.

As proposed, S.B. 408 amends current law relating to the definition of a governmental body for the purposes of the public information law.

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 552.003(1), Government Code, as follows:

(1) Redefines "governmental body":

(A) to mean:

(i)-(xi) Makes no changes to these subsections;

(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that:

(a) receives public funds or other public resources unless the receipt of the funds or other resources imposes a specific and definite obligation on the entity to provide a measurable amount for services in exchange for the funds or other resources as would

be expected in an arms-length transaction for services between a vendor and purchaser;

(b) is a party to a contract with a governmental body or involved in another relationship with a governmental body that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between the entity and one or more governmental bodies; or

(c) provides services traditionally provided by a governmental body, rather than spends or that is supported in whole or in part by public funds; and

(B) Makes no changes to this subsection.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2017.