

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 408
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Business & Commerce
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Committee Report (Substituted)

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. (Original Author's / Sponsor's Statement of Intent)

C.S.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 552.002, Government Code, by adding Subsection (d), as follows:

(d) Provides that information maintained by a governmental body described by Section 552.003(1)(A)(xii) is public information and subject to this chapter (Public Information) only to the extent the information relates to the receipt or expenditure of public funds or other public resources, as described by Section 552.003(1)(A)(xii)(a); a relationship with one or more governmental bodies that involves public funds or other public resources and that indicates a common purpose or objective or that creates a certain agency-type relationship; or the provision of services that are traditionally provided by a governmental body, as described by Section 552.003(1)(A)(xii)(c).

SECTION 2. Amends Section 552.003, Government Code, by amending Subdivision (1) and adding Subdivision (5-a), as follows:

(1) Redefines "governmental body":

(A) to mean:

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

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

(a) receives or spends public funds or other public resources unless the receipt or expenditure of the funds or other resources imposes a specific and definite obligation on the entity to provide a measurable amount of goods, services, or insurance in exchange for the funds or other resources as would be expected in an arms-length transaction or quid pro quo agreement for goods, services, or insurance between a vendor and purchaser;

(b) is involved in a relationship with one or more governmental bodies that involves public funds or other public resources 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 in exchange for public funds or other public resources, rather than spends or that is supported in whole or in part by public funds; and

(B) Makes no changes to this subparagraph.

(5-a) Defines "public resources."

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.