

By: Capriglione, Phelan, Wilson, et al.

H.B. No. 2189

Substitute the following for H.B. No. 2189:

By: Holland

C.S.H.B. No. 2189

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of certain contracting information under the public information law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 552.003, Government Code, is amended by amending Subdivision (1) and adding Subdivision (7) to read as follows:

(1) "Governmental body":

(A) means:

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(ii) a county commissioners court in the state;

(iii) a municipal governing body in the state;

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(v) a school district board of trustees;

(vi) a county board of school trustees;

(vii) a county board of education;

1 (viii) the governing board of a special
2 district;

3 (ix) the governing body of a nonprofit
4 corporation organized under Chapter 67, Water Code, that provides a
5 water supply or wastewater service, or both, and is exempt from ad
6 valorem taxation under Section 11.30, Tax Code;

7 (x) a local workforce development board
8 created under Section 2308.253;

9 (xi) a nonprofit corporation that is
10 eligible to receive funds under the federal community services
11 block grant program and that is authorized by this state to serve a
12 geographic area of the state; ~~and~~

13 (xii) a confinement facility operated under
14 a contract with any division of the Texas Department of Criminal
15 Justice;

16 (xiii) a civil commitment housing facility
17 owned, leased, or operated by a vendor under contract with the state
18 as provided by Chapter 841, Health and Safety Code;

19 (xiv) an entity that receives public funds
20 in the current or preceding state fiscal year to manage the daily
21 operations or restoration of the Alamo, or an entity that oversees
22 such an entity; and

23 (xv) the part, section, or portion of an
24 organization, corporation, commission, committee, institution, or
25 agency that spends or that is supported in whole or in part by
26 public funds; and

27 (B) does not include:

1 (i) the judiciary; or
2 (ii) an economic development entity whose
3 mission or purpose is to develop and promote the economic growth of
4 a state agency or political subdivision with which the entity
5 contracts if:

6 (a) the entity does not receive \$1
7 million or more in public funds from a single state agency or
8 political subdivision in the current or preceding state fiscal
9 year; or

10 (b) the entity:

11 (1) either:

12 (A) does not have the
13 authority to make decisions or recommendations on behalf of a state
14 agency or political subdivision regarding tax abatements or tax
15 incentives; or

16 (B) does not require an
17 officer of the state agency or political subdivision to hold office
18 as a member of the board of directors of the entity;

19 (2) does not use staff or office
20 space of the state agency or political subdivision for no or nominal
21 consideration, unless the space is available to the public;

22 (3) to a reasonable degree,
23 tracks the entity's receipt and expenditure of public funds
24 separately from the entity's receipt and expenditure of private
25 funds; and

26 (4) provides at least quarterly
27 public reports to the state agency or political subdivision

1 regarding work performed on behalf of the state agency or political
2 subdivision.

3 (7) "Contracting information" means the following
4 information maintained by a governmental body or exchanged between
5 a governmental body and a vendor, contractor, potential vendor, or
6 potential contractor:

7 (A) information in a voucher or contract relating
8 to the receipt or expenditure of public funds by a governmental
9 body;

10 (B) solicitation or bid documents relating to a
11 contract with a governmental body;

12 (C) communications sent between a governmental
13 body and a vendor, contractor, potential vendor, or potential
14 contractor during the solicitation, evaluation, or negotiation of a
15 contract;

16 (D) documents, including bid tabulations,
17 showing the criteria by which a governmental body evaluates each
18 vendor, contractor, potential vendor, or potential contractor
19 responding to a solicitation and, if applicable, an explanation of
20 why the vendor or contractor was selected; and

21 (E) communications and other information sent
22 between a governmental body and a vendor or contractor related to
23 the performance of a final contract with the governmental body or
24 work performed on behalf of the governmental body.

25 SECTION 2. Subchapter B, Chapter 552, Government Code, is
26 amended by adding Section 552.0222 to read as follows:

27 Sec. 552.0222. DISCLOSURE OF CONTRACTING INFORMATION. (a)

1 Contracting information is public and must be released unless
2 excepted from disclosure.

3 (b) The exceptions to disclosure provided by Sections
4 552.110 and 552.1101 do not apply to the following types of
5 contracting information:

6 (1) a contract described by Section 2261.253(a),
7 subject to Subsection (e) of that section;

8 (2) a contract described by Section 322.020(c),
9 subject to Subsection (d) of that section;

10 (3) the following contract or offer terms or their
11 functional equivalent:

12 (A) any term describing the overall or total
13 price the governmental body will or could potentially pay,
14 including overall or total value, maximum liability, and final
15 price;

16 (B) a description of the items or services to be
17 delivered with the total price for each if a total price is
18 identified for the item or service in the contract;

19 (C) the delivery and service deadlines;

20 (D) the remedies for breach of contract;

21 (E) the identity of all parties to the contract;

22 (F) the identity of all subcontractors in a
23 contract;

24 (G) the affiliate overall or total pricing for a
25 vendor, contractor, potential vendor, or potential contractor;

26 (H) the execution dates;

27 (I) the effective dates; and

1 (J) the contract duration terms, including any
2 extension options; or

3 (4) information indicating whether a vendor,
4 contractor, potential vendor, or potential contractor performed
5 its duties under a contract, including information regarding:

6 (A) a breach of contract;

7 (B) a contract variance or exception;

8 (C) a remedial action;

9 (D) an amendment to a contract;

10 (E) any assessed or paid liquidated damages;

11 (F) a key measures report;

12 (G) a progress report; and

13 (H) a final payment checklist.

14 (c) Notwithstanding Subsection (b), information described
15 by Subdivisions (3)(A) and (B) of that subsection that relates to a
16 retail electricity contract may not be disclosed until the delivery
17 start date.

18 SECTION 3. Section 552.104(a), Government Code, is amended
19 to read as follows:

20 (a) Information is excepted from the requirements of
21 Section 552.021 if a governmental body demonstrates that release of
22 the [it is] information [that, if released,] would harm its
23 interests by providing an [give] advantage to a competitor or
24 bidder in a particular ongoing competitive situation or in a
25 particular competitive situation where the governmental body
26 establishes the situation at issue is set to reoccur or there is a
27 specific and demonstrable intent to enter into the competitive

1 situation again in the future.

2 SECTION 4. Section 552.110, Government Code, is amended to
3 read as follows:

4 Sec. 552.110. EXCEPTION: CONFIDENTIALITY OF TRADE
5 SECRETS; CONFIDENTIALITY OF CERTAIN COMMERCIAL OR FINANCIAL
6 INFORMATION. (a) In this section, "trade secret" means all forms
7 and types of information, including business, scientific,
8 technical, economic, or engineering information, and any formula,
9 design, prototype, pattern, plan, compilation, program device,
10 program, code, device, method, technique, process, procedure,
11 financial data, or list of actual or potential customers or
12 suppliers, whether tangible or intangible and whether or however
13 stored, compiled, or memorialized physically, electronically,
14 graphically, photographically, or in writing if:

15 (1) the owner of the trade secret has taken reasonable
16 measures under the circumstances to keep the information secret;
17 and

18 (2) the information derives independent economic
19 value, actual or potential, from not being generally known to, and
20 not being readily ascertainable through proper means by, another
21 person who can obtain economic value from the disclosure or use of
22 the information.

23 (b) Except as provided by Section 552.0222, information [A
24 trade secret obtained from a person and privileged or confidential
25 by statute or judicial decision] is excepted from the requirements
26 of Section 552.021 if it is demonstrated based on specific factual
27 evidence that the information is a trade secret.

1 (c) Except as provided by Section 552.0222, commercial
2 ~~[(b) Commercial]~~ or financial information for which it is
3 demonstrated based on specific factual evidence that disclosure
4 would cause substantial competitive harm to the person from whom
5 the information was obtained is excepted from the requirements of
6 Section 552.021.

7 SECTION 5. Subchapter C, Chapter 552, Government Code, is
8 amended by adding Section 552.1101 to read as follows:

9 Sec. 552.1101. EXCEPTION: CONFIDENTIALITY OF PROPRIETARY
10 INFORMATION. (a) Except as provided by Section 552.0222,
11 information submitted to a governmental body by a vendor,
12 contractor, potential vendor, or potential contractor in response
13 to a request for a bid, proposal, or qualification is excepted from
14 the requirements of Section 552.021 if the vendor, contractor,
15 potential vendor, or potential contractor that the information
16 relates to demonstrates based on specific factual evidence that
17 disclosure of the information would:

18 (1) reveal an individual approach to:

19 (A) work;

20 (B) organizational structure;

21 (C) staffing;

22 (D) internal operations;

23 (E) processes; or

24 (F) discounts, pricing methodology, pricing per
25 kilowatt hour, cost data, or other pricing information that will be
26 used in future solicitation or bid documents; and

27 (2) give advantage to a competitor.

1 (b) The exception to disclosure provided by Subsection (a)
2 does not apply to:

3 (1) information in a voucher or contract relating to
4 the receipt or expenditure of public funds by a governmental body;
5 or

6 (2) communications and other information sent between
7 a governmental body and a vendor or contractor related to the
8 performance of a final contract with the governmental body or work
9 performed on behalf of the governmental body.

10 (c) The exception to disclosure provided by Subsection (a)
11 may be asserted only by a vendor, contractor, potential vendor, or
12 potential contractor in the manner described by Section 552.305(b)
13 for the purpose of protecting the interests of the vendor,
14 contractor, potential vendor, or potential contractor. A
15 governmental body shall decline to release information as provided
16 by Section 552.305(a) to the extent necessary to allow a vendor,
17 contractor, potential vendor, or potential contractor to assert the
18 exception to disclosure provided by Subsection (a).

19 SECTION 6. Section 552.131, Government Code, is amended by
20 adding Subsection (b-1) to read as follows:

21 (b-1) An economic development entity whose mission or
22 purpose is to develop and promote the economic growth of a state
23 agency or political subdivision with which the entity contracts may
24 assert the exceptions under this section in the manner described by
25 Section 552.305(b) with respect to information that is in the
26 economic development entity's custody or control.

27 SECTION 7. Sections 552.305(a) and (d), Government Code,

1 are amended to read as follows:

2 (a) In a case in which information is requested under this
3 chapter and a person's privacy or property interests may be
4 involved, including a case under Section 552.101, [~~552.104,~~
5 552.110, 552.1101, [~~or~~] 552.114, 552.131, or 552.143, a
6 governmental body may decline to release the information for the
7 purpose of requesting an attorney general decision.

8 (d) If release of a person's proprietary information may be
9 subject to exception under Section 552.101, 552.110, 552.1101,
10 552.113, [~~or~~] 552.131, or 552.143, the governmental body that
11 requests an attorney general decision under Section 552.301 shall
12 make a good faith attempt to notify that person of the request for
13 the attorney general decision. Notice under this subsection must:

14 (1) be in writing and sent within a reasonable time not
15 later than the 10th business day after the date the governmental
16 body receives the request for the information; and

17 (2) include:

18 (A) a copy of the written request for the
19 information, if any, received by the governmental body; and

20 (B) a statement, in the form prescribed by the
21 attorney general, that the person is entitled to submit in writing
22 to the attorney general within a reasonable time not later than the
23 10th business day after the date the person receives the notice:

24 (i) each reason the person has as to why the
25 information should be withheld; and

26 (ii) a letter, memorandum, or brief in
27 support of that reason.

1 SECTION 8. Section [552.321](#), Government Code, is amended by
2 adding Subsection (c) to read as follows:

3 (c) A requestor may file suit for a writ of mandamus
4 compelling a governmental body or an entity to comply with the
5 requirements of Subchapter J.

6 SECTION 9. Chapter [552](#), Government Code, is amended by
7 adding Subchapter J to read as follows:

8 SUBCHAPTER J. ADDITIONAL PROVISIONS RELATED TO CONTRACTING

9 INFORMATION

10 Sec. 552.371. CERTAIN ENTITIES REQUIRED TO PROVIDE
11 CONTRACTING INFORMATION TO GOVERNMENTAL BODY IN CONNECTION WITH
12 REQUEST. (a) This section applies to an entity that executes a
13 contract with a governmental body that includes the receipt or
14 expenditure of at least \$1 million in public funds for the purchase
15 of goods or services.

16 (b) This section applies to a written request for public
17 information received by a governmental body that is a party to a
18 contract described by Subsection (a) for contracting information
19 related to the contract that is in the custody or possession of the
20 entity and not maintained by the governmental body.

21 (c) A governmental body that receives a written request for
22 information described by Subsection (b) shall request that the
23 entity provide the information to the governmental body. The
24 governmental body must send the request in writing to the entity not
25 later than the third business day after the date the governmental
26 body receives the written request described by Subsection (b).

27 (d) Notwithstanding Section [552.301](#):

1 (1) a request for an attorney general's decision under
2 Section 552.301(b) to determine whether contracting information
3 subject to a written request described by Subsection (b) falls
4 within an exception to disclosure under this chapter is considered
5 timely if made not later than the 13th business day after the date
6 the governmental body receives the written request described by
7 Subsection (b);

8 (2) the statement and copy described by Section
9 552.301(d) is considered timely if provided to the requestor not
10 later than the 13th business day after the date the governmental
11 body receives the written request described by Subsection (b);

12 (3) a submission described by Section 552.301(e) is
13 considered timely if submitted to the attorney general not later
14 than the 18th business day after the date the governmental body
15 receives the written request described by Subsection (b); and

16 (4) a copy described by Section 552.301(e-1) is
17 considered timely if sent to the requestor not later than the 18th
18 business day after the date the governmental body receives the
19 written request described by Subsection (b).

20 Sec. 552.372. BIDS AND CONTRACTS. (a) A contract described
21 by Section 552.371 must require a contracting entity to:

22 (1) preserve all contracting information related to
23 the contract for the duration of the contract;

24 (2) promptly produce any contracting information
25 related to the contract that is in the custody or possession of the
26 entity on request of the governmental body; and

27 (3) on completion of the contract, either:

1 (A) provide at no cost to the governmental body
2 all contracting information related to the contract that is in the
3 custody or possession of the entity; or

4 (B) preserve the contracting information related
5 to the contract as provided by the records retention requirements
6 applicable to the governmental body.

7 (b) A bid for a contract described by Section 552.371 and
8 the contract must include the following statement: "The
9 requirements of Subchapter J, Chapter 552, Government Code, may
10 apply to this (include "bid" or "contract" as applicable) and the
11 contractor or vendor agrees that the contract can be terminated if
12 the contractor or vendor knowingly or intentionally fails to comply
13 with a requirement of that subchapter."

14 (c) A governmental body may not accept a bid for a contract
15 described by Section 552.371 or award the contract to an entity that
16 the governmental body has determined has knowingly or intentionally
17 failed to comply with this subchapter in a previous bid or contract
18 described by that section unless the governmental body determines
19 and documents that the entity has taken adequate steps to ensure
20 future compliance with the requirements of this subchapter.

21 Sec. 552.373. NONCOMPLIANCE WITH PROVISION OF SUBCHAPTER.
22 A governmental body that is the party to a contract described by
23 Section 552.371 shall provide notice to the entity that is a party
24 to the contract if the entity fails to comply with a requirement of
25 this subchapter applicable to the entity. The notice must:

26 (1) be in writing;

27 (2) state the requirement of this subchapter that the

1 entity has violated; and

2 (3) advise the entity that the governmental body may
3 terminate the contract without further obligation to the entity if
4 the entity does not cure the violation on or before the 10th
5 business day after the date the governmental body provides the
6 notice.

7 Sec. 552.374. TERMINATION OF CONTRACT FOR NONCOMPLIANCE.

8 (a) A governmental body may terminate a contract described by
9 Section 552.371 if:

10 (1) the governmental body provides notice under
11 Section 552.373 to the entity that is party to the contract;

12 (2) the contracting entity does not cure the violation
13 in the period prescribed by Section 552.373;

14 (3) the governmental body determines that the
15 contracting entity has intentionally or knowingly failed to comply
16 with a requirement of this subchapter; and

17 (4) the governmental body determines that the entity
18 has not taken adequate steps to ensure future compliance with the
19 requirements of this subchapter.

20 (b) For the purpose of Subsection (a), an entity has taken
21 adequate steps to ensure future compliance with this subchapter if:

22 (1) the entity produces contracting information
23 requested by the governmental body that is in the custody or
24 possession of the entity not later than the 10th business day after
25 the date the governmental body makes the request; and

26 (2) the entity establishes a records management
27 program to enable the entity to comply with this subchapter.

1 Sec. 552.375. CAUSE OF ACTION NOT CREATED. This subchapter
2 does not create a cause of action to contest a bid for or the award
3 of a contract with a governmental body.

4 SECTION 10. The changes in law made by this Act apply only
5 to a request for public information that is received by a
6 governmental body or an officer for public information on or after
7 the effective date of this Act.

8 SECTION 11. Subchapter J, Chapter 552, Government Code, as
9 added by this Act, applies only to a contract described by that
10 subchapter that is executed on or after the effective date of this
11 Act.

12 SECTION 12. This Act takes effect January 1, 2020.