

BILL ANALYSIS

C.S.H.B. 111
By: Capriglione
Delivery of Government Efficiency
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee that the Texas Public Information Act (TPIA), originally enacted in 1973 as a response to growing public demand for government transparency, serves to ensure the public has access to information held by the government and embodies the principle that "government is the servant and not the master of the people." The bill author has further informed the committee that transparency is not just a legislative priority but a fundamental right of the people of Texas and that citizens should not have to navigate bureaucratic loopholes to access information about how their government operates. C.S.H.B. 111 seeks to enhance transparency under the TPIA and clarify application of the law.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 111 amends the Government Code to make the following changes to state public information law:

- includes in the applicable definition of "governmental body" a nonprofit state association or organization that is primarily composed of similarly situated political subdivisions, has more than 15 full-time employees, and receives public funds;
- makes inapplicable to certain governmental bodies, including a nonprofit state association or organization included in the definition of that term under the bill's provisions and other than special districts created under Section 59, Article XVI, Texas Constitution, the exception from the public availability requirement of state public information law a draft or working paper involved in the preparation of proposed legislation and an internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation;
- with respect to the exception from the public availability requirement of state public information law for information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct, or for information of which a court by order has prohibited disclosure, revises provisions relating to the exception as follows:
 - makes the exception to disclosure inapplicable to the following:

- a communication with an attorney or an attorney's representative that is not a confidential communication made for the purpose of facilitating the rendition of professional legal services to the governmental body; or
 - a report, audit, or other material that was created in the absence of pending or threatened litigation and that was not created at the request of an attorney or attorney representative to facilitate the rendition of professional legal services to the governmental body; and
- requires the attorney general, when rendering a decision under state public information law as to whether requested information is within the scope of the exception to disclosure, to do the following:
 - restrict the scope of the attorney-client privilege by construing the exception narrowly and in favor of the public's interest in maximum government transparency; and
 - authorize the governmental body, if the attorney general determines that the requested information is within the scope of the exception to disclosure for certain legal matters, to withhold or redact the information to only the minimum extent necessary to prevent the disclosure of confidential communications made for the purpose of facilitating the rendition of professional legal services to the governmental body; and
- provides that the following records and communications are not subject to state public information law:
 - records of a member of the legislature or the lieutenant governor that are composed exclusively of memoranda of communications with Texas residents and of personal information concerning the person communicating with the member or lieutenant governor, which are confidential under applicable state law;
 - all or part of a written or otherwise recorded communication from a Texas citizen received by a member or the lieutenant governor in the member's or lieutenant governor's official capacity, the disclosure of which is prohibited under applicable state law except under certain circumstances that are specified under applicable state law; and
 - communications that are confidential and subject to legislative privilege or attorney-client privilege under applicable state law.

C.S.H.B. 111 revises the Texas Sunset Act by removing exceptions for the following records from the public disclosure requirements under state public information law and by establishing instead that those records are not public information and not subject to state public information law:

- a working paper, including all documentary or other information, prepared or maintained by the sunset commission staff in performing its duties under that act or other law to conduct an evaluation and prepare a report; and
- a record held by another entity that is considered to be confidential by law and that the sunset commission receives in connection with the performance of the sunset commission's functions under that act or another law, which current law establishes remains confidential.

C.S.H.B. 111 repeals provisions relating to exceptions from the public availability requirement of state public information law for the following:

- the name of an applicant for the position of chief executive officer of an institution of higher education and other information that would tend to identify the applicant;
- the name of an applicant for the position of superintendent of a public school district; and
- the name of an applicant for the position of executive director, chief investment officer, or chief audit executive of the Teacher Retirement System of Texas.

C.S.H.B. 111 repeals Sections 552.123, 552.126, and 552.154, Government Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 111 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While the substitute and introduced both make changes to state public information law, the versions differ in the following ways:

- the introduced revised the applicable definition of "governmental body" by removing the specification that the definition of "governmental body" includes the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds and by specifying that the definition of "governmental body" includes an organization, corporation, commission, committee, institution, or agency that instead is such an entity for which the source of at least 51 percent of its revenue during the preceding year was public funds or that engages primarily in activities under an agreement with or a grant from another governmental body, whereas the substitute does not remove that specification or make the additional specification;
- the substitute includes in the applicable definition of "governmental body" a nonprofit state association or organization that is primarily composed of similarly situated political subdivisions, has more than 15 full-time employees, and receives public funds, whereas the introduced did not include that association or organization in the definition;
- the substitute revises the provision in the introduced that made the exception from the public availability requirement of state public information law for a draft or working paper involved in the preparation of proposed legislation and an internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation inapplicable to certain governmental bodies by doing the following:
 - including among those governmental bodies a nonprofit association or organization included in the definition of that term under the substitute's provisions; and
 - specifying that the exception is applicable to special districts created under Section 59, Article XVI, Texas Constitution; and
- the substitute omits the provision in the introduced that did the following with respect to statutory provisions relating to an exception for the confidentiality of certain economic development information from the public availability requirement of state public information law:
 - made the authorization for a governmental body to decline to release information in a case in which information is requested under state public information law and a person's privacy or property interests may be involved inapplicable to a case under those statutory provisions; and
 - removed the requirement for a governmental body that requests an attorney general decision under state public information law to make a good faith attempt to notify that person of the request for the attorney general decision if release of a person's proprietary information may be subject to exception under those statutory provisions.

While the introduced and the substitute both revise provisions with respect to the exception from the public availability requirement of state public information law for information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of

Professional Conduct, or for information of which a court by order has prohibited disclosure, the versions differ in the following ways:

- the introduced did the following, whereas the substitute does not:
 - removed from the exception information that an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct; and
 - included in the exception information that pertains to active litigation against a governmental body;
- whereas the introduced made the exception to disclosure, as amended by the introduced, inapplicable to a communication with an attorney or an attorney's representative, other than information contained in the communication to which the exception otherwise applies, the substitute makes the exception to disclosure inapplicable to a communication with an attorney or an attorney's representative that is not a confidential communication made for the purpose of facilitating the rendition of professional legal services to the governmental body;
- whereas the introduced made the exception to disclosure, as amended by the introduced, inapplicable to a report, audit, or other material created in the absence of active litigation, the substitute makes the exception to disclosure inapplicable to a report, audit, or other material that was created in the absence of pending or threatened litigation and that was not created at the request of an attorney or attorney representative to facilitate the rendition of professional legal services to the governmental body; and
- the substitute includes a provision absent from the introduced requiring the attorney general, when rendering a decision under state public information law as to whether requested information is within the scope of the exception to disclosure and on determining that the requested information is within that scope for certain legal matters, to authorize the governmental body to withhold or redact the information to only the minimum extent necessary to prevent the disclosure of confidential communications made for the purpose of facilitating the rendition of professional legal services to the governmental body.

The substitute omits the provisions in the introduced that did the following:

- made the definition of "competitive matter" as it applies to the exception of confidential public power utility competitive matters from the public availability requirement of state public information law applicable instead to the existing exception of the competitive matters of certain public power utilities from state open meetings law;
- accordingly repealed the provisions that use that defined term for purposes of the exception of confidential public power utility competitive matters from the public availability requirement of state public information law; and
- repealed provisions relating to exceptions from the public availability requirement of state public information law for an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

The substitute includes provisions absent from the introduced revising the Texas Sunset Act as follows:

- removing exceptions for certain working papers, including all documentary or other information, prepared or maintained by the sunset commission staff and certain records received by the sunset commission from the public disclosure requirements under state public information law; and
- establishing instead that those working papers and records are not public information and not subject to state public information law.