

**SUBJECT:** Accessibility of state electronic and information resources

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 8 ayes — Swinford, Miller, B. Cook, Farrar, J. Keffer, Martinez Fischer, Villarreal, Wong

0 nays

1 absent — Gattis

**WITNESSES:** For — William Greer and James Thatcher, Coalition of Texans with Disabilities; Gene Rodgers, Disability Law Resource Project

Against — None

**BACKGROUND:** Sec. 508 of the federal Rehabilitation Act of 1973 requires that federal agencies' electronic and information technology be accessible to persons with disabilities, including employees and members of the public, unless doing so would create an undue burden on the agency. The technical standards developed by the federal Access Board spell out the specific requirements of sec. 508. Section 504 of the act prohibits the exclusion of otherwise qualified handicapped individuals from participation in a program or activity receiving federal financial assistance. The section does not require small providers to make significant structural alterations to existing facilities if an alternative means of providing the service is available.

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits public entities from excluding or denying the benefits of any services, programs, or activities to individuals with disabilities. Public entities must reasonably modify their policies, practices, or procedures to avoid discrimination unless that modification fundamentally would alter the nature of its service, program, or activity. Public entities may not discriminate in employment against qualified individuals with disabilities.

All new buildings constructed by public entities, as well as any renovated portions of older buildings, must be accessible. For buildings that already were in existence, the ADA imposes a standard of "program accessibility,"

meaning that while every building does not have to be made accessible, the program or service, when viewed in its entirety, must be accessible. This may be accomplished by altering existing facilities, acquiring or constructing additional facilities, relocating a service or program to an accessible location, or providing services at alternate accessible sites.

Government Code, sec. 2001.007 requires state agencies to have a generally accessible Internet website that includes the text of its rules, information about those rules, and a method for submitting questions electronically. Sec. 2001.007(c) requires the site to conform to generally acceptable standards for Internet accessibility for people with disabilities.

Government Code, sec. 2157.005 requires automated information systems purchased by the state to be accessible to those with visual impairments, either independently or through readily available adaptive technology.

**DIGEST:**

CSHB 2819 would require state agencies to develop, procure, maintain, and use electronic and information resources accessible to persons with disabilities, beginning September 1, 2006. Agencies would have to provide access to and use of those resources to state employees and members of the public with disabilities at a level comparable to that provided to persons without disabilities, unless doing so would impose a significant difficulty or expense on the agency. "Electronic and information resources" would be information resources and any equipment or interconnected system of equipment used in the creation, conversion, or duplication of information resources. The term would include telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, such as copy and fax machines.

If an agency declined to comply with the bill's provisions by citing significant difficulty or expense, the agency would have to comply with all applicable state and federal civil rights statutes, including the Americans with Disabilities Act of 1990 and sec. 504 of the Rehabilitation Act of 1973. The agency also would have to provide people with disabilities with alternate methods for timely access to these resources, such as through the use of telephone, fax, teletypewriter, Internet posting, captioning, text-to-speech synthesis, or audio description. The Department of Information Resources (DIR) would adopt rules for exemptions from the bill's provisions, focusing on circumstances in which the benefit of compliance for persons with disabilities would be relatively

minor while the cost of compliance would be relatively great. DIR also would have to adopt a method for the department to consider complaints.

DIR would adopt rules to implement the bill's provisions by March 1, 2006. The bill would require an annual state agency survey, as well as an annual report by each agency.

The bill would delete secs. 2001.007(c) and 2157.005 of the Government Code, effective on September 1, 2006, although the latter would apply only to a contract entered into on or after the effective date of the act.

The bill would not:

- apply to medical equipment or embedded information resources;
- require accessibility-related software or an assistive device at the work station of a state employee who did not have a disability, except as necessary to permit the employee to interact directly with a member of the public who had a disability; nor
- require a state agency to make a product owned by the agency available for access and use at a location other than that where it was provided to the public.

The bill would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 2819 would bring the state into line with federal section 508 standards for accessibility and ensure that Texans with disabilities fully could access the resources of the state.

The rapid growth of information technology has opened new doors for people with disabilities in employment and government access. Many activities that once could be accomplished only in person or by persons without disabilities now may be accomplished remotely or with the assistance of adaptive technology. Under current state and federal laws, state agencies already are prohibited from discrimination in employment against persons with disabilities, are required to use equipment accessible to persons with visual impairments, and are required to have an accessible Internet website. Yet many otherwise qualified persons with disabilities other than a visual impairment continue to have difficulty accessing government programs and services or finding employment with the state due to a lack of accessible technology. Simple changes, like requiring on/off switches to be at the front of a copy machine so that they could be

reached by a person in a wheelchair, could mean the difference between accessible and inaccessible technology. CSHB 2819 would ensure that these Texans have the same access to information from and employment with their government as other persons in the state.

The bill would closely follow federal section 508 standards, which many other states also have adopted. Referencing the same standards would ensure consistency and help businesses that supply these technologies easily to comply with a single set of requirements. Because most technology vendors already conform to these standards in order to be eligible to contract with the federal government, complying with these standards would not impose a burden on state agencies. However, the bill would allow a state agency to exempt itself from specific provisions if implementation would create a significant burden on the agency. Thus, the bill would not create a significant cost to the state. An agency still would have to adhere to the federal standard of "program accessibility."

By creating a process by which the public could provide information on compliance, the bill would ensure that agencies adhered to these accessibility standards. While agency oversight is appropriate in many cases, persons with disabilities employed by or who access the resources of state government are in the best position to evaluate whether an agency's attempts to comply are truly sufficient. Agencies also would have to report on their compliance annually.

**OPPONENTS  
SAY:**

The bill has no mechanism for monitoring or enforcing its provisions. It would be inappropriate to rely entirely on information provided or complaints made by the public to determine whether an agency is in compliance. Moreover, it is unclear what remedies a person would have in these circumstances. The Department of Information Resources ought to be required to monitor and ensure compliance with the bill's provisions, as in the bill as filed.

The bill would stray from section 508 standards in several ways. First, it only would require the DIR to consider section 508 standards when adopting rules. As a result, Texas could end up with a different set of standards from those in place across the rest of the country, making compliance for vendors more difficult and potentially raising the cost of procurements. The provision allowing DIR to exempt an agency from compliance is too vague and would leave too much discretion to the agency. The committee substitute also inexplicably changed "electronic

and information technology," which is the section 508 language, to "electronic and information resources." Electronic and information technology is well defined in federal statute, while "electronic and information resources" would be defined in the bill as information resources, which is redundant and unclear.

NOTES:

The committee substitute removed provisions in the original bill requiring DIR to monitor and oversee agency compliance, removed the definitions of "alternate methods," "accessible electronic and information technology," "information technology," and "undue burden," and changed "electronic and information technology" to "electronic and information resources."