

## **BILL ANALYSIS**

Senate Research Center

S.B. 1571  
By: Watson  
Open Government  
3/29/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Public Information Act was established in 1973 to give the public complete information about the affairs of government and control over the instruments they created (Section 552.001, Government Code).

The Public Information Act was codified at a time when all government functions were performed largely by identifiable governmental entities. In the 38 years since the passage of the Public Information Act, state leaders have privatized many critical public services in an effort to be efficient and cost-sensitive. Private or nonprofit organizations that provide a public function do not constitute a governmental body. The information they process is not owned or maintained by a governmental body; therefore, the information falls outside the purview of the Public Information Act. This violates the original intent of the statute and the statute should be amended to reflect current practices.

The bill expands the definition of public information to include information that is created, possessed, used, or relied upon, as well as information that is stored in an electronic format. It defines public function as a function performed by a governmental body or an elected or appointed public official and as functions funded either fully or in part by public funds. The bill amends the definition of public funds to include federal funds or intergovernmental transfers.

Finally, the bill extends the Public Information Act to include data stored or used by private or nonprofit state contractors that perform a public function. Contracts with third-party providers must articulate the requirements of Chapter 552 (Public Information), Government Code. This section applies to both contractors and subcontractors engaged in the performance of a public function.

As proposed, S.B. 1571 amends current law relating to information subject to 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 amending Subsection (a) and adding Subsection (d), as follows:

(a) Redefines, in this chapter, "public information."

(d) Provides that, in this chapter, "public information" includes information stored in electronic format that contains public documents, public records, or a communication of official business, regardless of whether the information is stored on a server or in a computer facility owned or maintained by a governmental body.

SECTION 2. Amends Section 552.003, Government Code, by adding Subdivisions (1-a) and (4-a) and amending Subdivision (5), as follows:

(1-a) Provides that "administer" includes functions performed pursuant to a contract to which a governmental body is a party, including functions that have been completely delegated to a nongovernmental entity.

(4-a) Defines "public function."

(5) Redefines "public funds."

SECTION 3. Amends Subchapter Z, Chapter 2252, Government Code, by adding Section 2252.907, as follows:

Sec. 2252.907. **CONTRACTS INVOLVING EXCHANGE OR CREATION OF PUBLIC INFORMATION.** (a) Requires that a contract between a governmental entity that receives state funds and a vendor, institution, individual, corporation or other business entity, or nonprofit organization that performs a public function involving the exchange or creation of public information:

(1) be drafted in consideration of the requirements of Chapter 552 (Public Information); and

(2) if the information is to be exchanged or stored in an electronic format, contain a provision that the vendor or other contracting entity must make the information available in a specific electronic format that is agreed on in the contract, and accessible by the public.

(b) Provides that the requirements of Subsection (a) apply to contracts between the vendor or other contracting entity that performs a public function and a subcontractor engaged to further the performance of the public function.

(c) Prohibits this section from being waived by contract or otherwise.

(d) Defines, in this section, "governmental entity."

SECTION 4. (a) Provides that the changes in law made by this Act by amending Sections 552.002 and 552.003, Government Code, apply only to a request for the disclosure of public information made on or after the effective date of this Act. Provides that a request for the disclosure of public information made before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Provides that Section 2252.907, Government Code, as added by this Act, applies only to a contract for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. Provides that a contract for which a governmental entity advertised or otherwise solicited bids, proposals, offers, or qualifications before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2011.