

BILL ANALYSIS

C.S.H.B. 2191
By: Capriglione
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls for the state to do more to ensure that an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information provides that information to the public information officer for the governmental body for purposes of protecting that information and ensuring transparency. C.S.H.B. 2191 seeks to revise and clarify the public information 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. 2191 amends the Government Code to establish that a current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity. The bill requires such a person who, in the transaction of official business, creates or receives public information that the person has not provided to the governmental body's public information officer or the officer's agent and who has possession, custody, or control of public information to surrender or return the information to the governmental body not later than the 10th day after the date the governmental body's public information officer or the officer's agent requests the person to surrender or return the information. The bill establishes that such a temporary custodian's failure to surrender or return requested public information is grounds for disciplinary action by the governmental body that employs the temporary custodian or any other applicable penalties provided by law. The governmental body is considered to receive the request for information on the date the information is surrendered or returned to the governmental body for purposes of certain decisions made by the attorney general under state public information law.

C.S.H.B. 2191 sets out the authorized methods for making a public information request and establishes that a governmental body is considered to have approved an additional appropriate request method only if the governmental body includes a statement that a request for public information may be made by that method on its website or on the sign informing the public of the basic rights and responsibilities provided under state public information law.

C.S.H.B. 2191 provides for the designation by a governmental body of one email address and one mailing address for receiving written public information requests. A governmental body that

posts the designated email and mailing addresses on its website or that prints those addresses on that certain sign regarding the rights and responsibilities provided under state public information law is not required to respond to a written public information request that is not received at one of those addresses, by hand delivery, or by an additional method approved by the governmental body. The bill requires the attorney general, not later than October 1, 2019, to create a public information request form and sets out provisions relating to that form. The bill defines "protected health information" by reference and makes that information confidential and exempt from disclosure under state public information law.

C.S.H.B. 2191 requires a current or former officer or employee of a governmental body who maintains public information on a privately owned device to either forward or transfer the public information to the governmental body or a governmental body server to be preserved or to preserve the public information in its original form in a backup or archive and on the privately owned device for a time determined by the governmental body. The bill establishes that provisions of the Government Code relating to libraries and archives and provisions of the Local Government Code relating to certain governmental records that govern the disposition of records or public information apply to records and public information held by a temporary custodian.

C.S.H.B. 2191 requires each public information officer, subject to penalties under state public information law, to make reasonable efforts to obtain public information from a temporary custodian if:

- the information has been requested from the governmental body;
- the officer for public information is aware of facts sufficient to warrant a reasonable belief that the person has possession, custody, or control of the information;
- the officer is unable to comply with the duties imposed by state public information law without obtaining the information; and
- the temporary custodian has not provided the information to the officer or the officer's agent.

C.S.H.B. 2191 repeals Section 552.301(c), Government Code, which provides that, for purposes of the provision of state public information law governing certain attorney general decisions, a written request for information includes a request made to the applicable person in writing and sent by email or fax.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2191 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision making certain healthcare information confidential and excepted from the public availability requirement of state public information law but does include a provision establishing the exception from that requirement for certain protected health information in the Health and Safety Code.

The substitute includes a backup or archive among the places a temporary custodian must preserve applicable public information in its original form.

The substitute includes a provision providing for the authorized methods by which a person may make a written public information request and revises the provision setting out the circumstances

under which a governmental body is required to respond to such a request.

The substitute does not include a provision revising the provision of state public information law providing that email and fax constitute a written public information request for certain purposes and instead repeals that provision.