

- SUBJECT:** Implementing the Uniform Electronic Legal Material Act
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Smithee, Farrar, Gutierrez, Laubenberg, Murr, Rinaldi, Schofield
- 0 nays
- 2 absent — Hernandez, Neave
- WITNESSES:** For — Barbara Bintliff; (*Registered, but did not testify:* Kelley Shannon, Freedom of Information Foundation of Texas; Colette Billings; Jane O'Connell; Ashley Terrazas)
- Against — None
- On — (*Registered, but did not testify:* Robert Sumners, Secretary of State; Jeffrey Archer, Texas Legislative Council)
- BACKGROUND:** A number of states have enacted the Uniform Electronic Legal Material Act in an effort to ensure that official government electronic materials can be verified and made permanently available. Some suggest that electronically provided information can improve transparency and public access to government documents.
- DIGEST:** CSHB 1032 would adopt the Uniform Electronic Legal Material Act as Government Code, ch. 2051, subch. E. It would apply to all legal material designated official and first published in the state in an electronic record on or after January 1, 2019. The bill would address matters of authentication, preservation, accessibility, and standards for electronic records.
- The "official publisher" would be the Texas Legislative Council if the published legal material, whether in effect or not, was the Texas Constitution or the secretary of state if the published materials were

statutes enacted by the Legislature or rules adopted by a state agency. If the official publisher published legal material solely by electric record, the material would have to be designated as the official copy and comply with the authentication, preservation, security, and public access requirements in the bill.

CSHB 1032 would require official publishers of electronic legal materials to authenticate the published materials in a way that allowed a person viewing the material to know that it was unaltered from the official record. If a record was so authenticated, it would be presumed to be an accurate copy. Authenticity could be contested by proving by a preponderance of the evidence that the record was not authentic.

The bill would require official publishers to preserve and secure an electronic record, in either an electronic or non-electronic form. When preserving the record in an electronic form, the publisher would be required to ensure the integrity of the record, guarantee its continuing usability, and provide for back up and disaster recovery.

The official publisher also would be required to ensure that all electronic material published was reasonably and permanently available to the public.

CSHB 1032 would require the official publisher to consider certain factors when implementing the bill, including the standards and practices of other jurisdictions, the most recent standards adopted by national standard-setting bodies, the needs of users, the views of governmental entities and interested parties, and the methods and practices of other states. The bill would require that promoting uniformity with other states that have enacted similar laws receive consideration.

CSHB 1032 would modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. sec. 7001, et seq.), other than certain provisions of the law specified in the bill.

CSHB 1032 would require the development of two implementation plans

— one in consultation with an official publisher in the executive branch and the other with an official publisher in the legislative branch. Both would include a timeline for compliance and recommendations for authentication, preservation, and availability according to the type of legal material.

After working with the official publisher in the state executive branch, the Records Management Interagency Coordinating Council would provide the plan to the Legislature by September 1, 2018. The official publisher in the legislative branch would provide the plan to the lieutenant governor and the speaker by the same date.

The bill would take effect September 1, 2017.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have a negative impact to general revenue related funds of \$152,000 through fiscal 2018-19 due to contracting and software costs within the Office of the Secretary of State.