

## **BILL ANALYSIS**

Senate Research Center  
85R5525 BEF-F

S.B. 407  
By: Watson  
Business & Commerce  
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As Filed

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

After the Sharpstown fraud scandal in the early 1970s, the Texas Legislature passed the Public Information Act (PIA) to ensure the public could obtain public information. The PIA contains various exceptions, however, including an exception that was designed to prevent competitors from obtaining each other's bids while they compete for government work.

A recent decision from the Texas Supreme Court, *Boeing v. Paxton*, overturned decades of prior attorney general opinions and greatly expanded the competition or bidding exception. In essence, *Boeing* transformed this narrow exception into a second, lax trade-secrets exception. The expanded exception now allows private entities benefiting from public funds to shield basic information like price if they can show any potential competitive disadvantage.

S.B. 407 would undo this damage by limiting the competition or bidding exception to those cases when a governmental body demonstrates that the release of information would harm its interests "in a particular competitive situation." Furthermore, S.B. 407 explicitly states that the exception does not apply to final government contracts. Together, these provisions protect the competitive bidding process and restore taxpayers' right to obtain public information.

As proposed, S.B. 407 amends current law relating to the exception from disclosure under the public information law for information related to competition or bidding.

### **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 552.104, Government Code, as follows:

Sec. 552.104. EXCEPTION: INFORMATION RELATED TO COMPETITION OR BIDDING. (a) Provides that, except as provided by Subsection (c), information is excepted from the requirements of Section 552.021 (Availability of Public Information) if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation. Deletes existing text providing that information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

(b) Creates an exception under Subsection (c).

(c) Provides that the exception under this section does not apply to a bid or proposal, or information contained in a bid or proposal, after the governmental body executes or awards the contract to which the bid or proposal relates; or to an account, voucher, or contract, or information contained in or describing an account, voucher, or contract.

(d) Provides that Section 552.305 (Information Involving Privacy or Property Interests of Third Party) does not apply to the exception under this section.

SECTION 2. Amends Section 552.305(a), Government Code, by deleting existing text referencing Section 552.104 (Exception: Information Related to Competition or Bidding), in the list of certain sections under which a case is brought.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.