

Committee on Governmental Oversight And Accountability

CS/HB 273 — Public Records

by Government Operations Subcommittee; and Reps. Beshears, Kerner, and others (CS/SB 390 by Judiciary Committee and Senator Simpson)

Currently, private contractors who act on behalf of a public agency are required to comply with public records laws in the same manner as a public agency. The bill makes changes to the law regarding provisions in a contract for services; possession of public records at the end of a contract for services; and liability in public records lawsuits.

The bill (Chapter 2016-20, L.O.F.) repeals the requirement that each contract for services require the contractor to transfer its public records to the public agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the public agency upon completion of the contract. This bill requires contracts for services between a public agency and a contractor that are amended or entered into on or after July 1, 2016, to include the following provisions:

- A statement informing the contractor of the contact information of the public agency's custodian of public records and instructing the contractor to contact the public agency's records custodian concerning any questions the contractor may have regarding the contractor's duties to provide public records relating to the contract;
- Terms requiring a contractor to comply with a public agency's request for a copy of a public record or to permit inspection of a public record;
- Terms requiring a contractor to prevent disclosure of confidential or exempt information while the contractor has custody of a public record; and,
- Terms requiring a contractor to comply with all applicable public records requirements if the contractor retains public records after the contract for services is completed.

The bill requires a request for public records relating to a contract for services to be made directly to the agency. If the public agency determines that it does not possess the records, it must immediately notify the contractor, and the contractor must provide the records or allow access to the records within a reasonable time. A contractor who fails to provide the records to the agency within a reasonable time may be subject to certain penalties.

The bill provides that if a civil action is filed against a contractor to compel production of public records, the court must assess and award against the contractor the reasonable costs of enforcement, including attorney fees, if:

- The court determines that a contractor unlawfully refused to comply with the public records request within a reasonable time; and,
- The plaintiff provided written notice of the public records request to the public agency and the contractor at least eight business days before filing the civil action.

The bill specifies that a contractor who complies with the public records request within eight business days after the notice is sent is not liable for the reasonable costs of enforcement.

These provisions were approved by the Governor and took effect on March 8, 2016.

Vote: Senate 34-1; House 110-7