



The Council of State Archivists
Statement on Texas Legislative Records

Approved by the CoSA Board of Directors, April 8, 2019

With this statement, the Council of State Archivists (CoSA) expresses its concern on House Bill 1962 - Committee Substitute that creates Section 441.206 of the Texas Code, changing the existing statutes governing archival records of the Texas legislature.

In existing law, Subchapter L. Preservation and Management of State Records and Other Historical Resources, Section 441.180 (9) (A) and (11), legislative records are not defined separately from executive or judicial records. The bill would change current law that provides for the standard archival practice of transferring archival records from all state entities to the Texas State Library and Archives Commission (TSLAC) to be preserved and accessed. The proposed legislation provides for legislative archival records to be treated separately and differently from the records of other state executive and judicial agencies. The impact of this bill may be to place records at risk. The Committee Substitute bill states, as follows:

the legislative entity that transferred the state records to the commission retains ownership and legal custody of the records held by the state archives program, including records placed in a depository outside the Texas State Library and Archives. The legislative entity may retrieve the records for the legislature's use.

Best practices and principles for archival repositories outline records transfer procedures for archival records, including provenance of the record and chain of custody of the record.¹ When a record leaves archival custody, the integrity of the record's provenance and authenticity cannot be guaranteed, and therefore may be challenged in the future. Additionally, having a record leave archival control not only breaks the chain of custody and calls into question the record's authenticity, but makes the record more vulnerable to damage. Legislative records should be handled according to archival principles and practices to ensure physical longevity and access for generations to come. It could not be guaranteed that these records would not be altered or stolen, if removed from the archives, potentially creating legal issues for the government.

¹ Hilary Jenkinson, *A Manual of Archive Administration*, 1937, p.11-15, p. 37-41, et seq.
<https://archive.org/details/manualofarchivea00iljenk>

TSLAC has a long and honored history in preserving and providing access to Texas state government records. Its employees are trained and highly skilled archivists who follow accepted archival principles and practices for transferring records into the custody of the archives; providing intellectual and physical control through inventories, processing logs, and finding aids; and allowing for public access according to the laws of the state for confidentiality and security.

CoSA's position statements on [Developing and Maintaining a Strong State Archives](#) and on [Autonomous Government Archives](#) provide documentation on the importance of maintaining strong archival programs in the states and territories, to ensure the integrity, authenticity, safety, and security of government records, so that those records are available for generations to document government policies and actions.

The changes to Texas Law that would permit a "legislative entity" to reclaim any and all records for any reason, with no public oversight, could have significant implications for government transparency, time and costs for TSLAC, and endangerment of the records. CoSA respectfully requests that the Texas Legislature revise the Committee Substitute language so that both the physical and legal custody of archival legislative records continues to be transferred to and the records remain under the care of the Texas State Library and Archives Commission.

About CoSA

The Council of State Archivists (CoSA) is a nonprofit membership organization of the state and territorial government archives in the fifty states, five territories, and District of Columbia. Through collaborative research, education, and advocacy, CoSA provides leadership that strengthens and supports state and territorial archives in their work to preserve and provide access to government records. CoSA facilitates networking, information sharing, and project collaboration among its member organizations to help state and territorial government archives with their responsibilities for protecting the rights and historical documents of the American people.

For more information, see: www.statearchivists.org, or email info@statearchivists.org.