

BILL ANALYSIS

Senate Research Center

S.B. 1882
By: Zaffirini et al.
Open Government
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1973, the Texas Legislature passed the Texas Public Information Act (Act) to codify the policy of the state that each person is entitled at all times to complete information about the affairs of government and the official acts of public officials and employees. Although confidential information can remain confidential from private citizen requests, the legislature crafted an exception to this general rule for requests by legislators for legislative purposes in Section 552.008 (Information for Legislative Purposes), Government Code.

"Confidential" in this section was not defined specifically; however, the intent was to allow legislators to access all public information upon request. By statute and by practice, the disclosure of confidential information to a legislator under the Act does not waive or affect the confidentiality of the information, and the governmental body may require the legislator to sign a confidentiality agreement to not disclose the confidential information.

In 2010, the Texas Third Court of Appeals ruled in *Texas Commission on Environmental Quality v. Abbott* that information deemed privileged attorney-client communications and attorney work product are subject to disclosure to a legislative requestor under the Act. The court found that the phrase "confidential information" was sufficient to include this type of information, and that the legislature intended to maintain for itself a special right of access to confidential governmental information necessary to fulfill its legislative function. Nevertheless, situations have arisen when a governmental body has questioned the scope of the legislator requestor provisions of the Act.

S.B. 1882 clarifies the intended scope of the legislator requestor provision of the Act and further clarifies that the 10-day timeframe for providing information found in other parts of the Act applies to the legislator requestor. These clarifications will help prevent delays in information requests by legislators and potential litigation.

As proposed, S.B. 1882 amends current law relating to information for legislative purposes requested under the Texas Public Information Act.

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 552.008, Government Code, by adding Subsections (b-3) and (d), as follows:

(b-3) Provides that information required to be provided by a governmental body under this section includes, but is not limited to:

- (1) attorney work product;
- (2) attorney-client communications; and
- (3) information that the governmental body asserts the disclosure of which may:

(A) affect the ability of the governmental body to conduct an investigation within its appropriate purview;

(B) impede or cause the abrogation or loss of the attorney-client privilege of the governmental body; or

(C) intrude and unduly interfere upon the power of a governing board of any agency within the executive branch established by the Texas Constitution to conduct its activities and fulfill its legal mandates and responsibilities.

(d) Requires a governmental body to promptly produce information requested under this section. Defines, in this subsection, "promptly." Requires the governmental body, if the governmental body cannot produce public information for inspection or duplication within 10 business days after the date the information is requested under this section, to certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

SECTION 2. Effective date: upon passage or September 1, 2013.