

SUBJECT: Public disclosure exception for audit working papers

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 6 ayes — Swinford, Miller, B. Cook, Farrar, Gattis, Wong
0 nays
3 absent — J. Keffer, Martinez Fischer, Villarreal

WITNESSES: For — Robert Darby, Dallas-Fort Worth International Airport Board

Against — Donnis Baggett, Texas Daily Newspaper Association and Texas Press Association

On — Kay Hastings, Office of the Attorney General

BACKGROUND: Government Code, ch. 552, also known as the Public Information Act, provides for public access to records maintained by state and local government. Under sec. 552.116, audit working papers of an auditor of a city, county, state agency, or public institution of higher education are excepted from disclosure. The section defines an audit as an audit authorized or required by a statute of this state or the United States.

DIGEST: HB 1285 would expand the definition of an audit in sec. 552.116 to include audits authorized or required by a city charter or ordinance or by an order of a county commissioners court. This change would apply to audit working papers created both before and after the effective date of the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: HB 1285 would clean up sec. 552.116 of the Government Code to bring the definition of an audit into conformity with statutory changes approved by the 78th Legislature. It would not make any substantive change in the law.

SB 1581 by Wentworth, enacted in the 2003 regular session, expanded the public disclosure exception for audit working papers to include city and county auditors. However, the bill neglected to change the definition of an audit to include audits authorized or required by a city or county. In January 2003, the Attorney General's Office released an open records letter ruling (OR2004-0037) saying that the exception applies to audits allowed by a city charter. HB 1285 would amend the definition of an audit in order to conform to this opinion and to clarify that the exception applies to the audit working papers of a city or county audit authorized under city or county authority.

Excluding audit working papers from public disclosure ensures the preparation of the most comprehensive and honest audits possible by creating an environment of full and open communication between an auditor and the governmental entity under review. Releasing audit working papers would reveal the specific methods of auditors, as well as the specialties of particular auditors in larger offices. Such information could be used by those under review to determine the likely subject of future audits and to hide or distort information that the auditor may seek. Excluding these working papers would not limit the public's ability to oversee government actions because the audit, as well as information about the receipt and expenditure of public funds, would remain available to the public.

OPPONENTS
SAY:

The public should have full and open access to audit working papers in order to monitor the process and the use of public funds. Final audit reports are not sufficient for this purpose because what appears in a final report may be influenced by political pressure or a conflict of interest. Only by guaranteeing public access to these working papers can citizens ensure that the audit process has been impartial and taxpayer money has been used properly.

NOTES:

The companion bill, SB 147 by Wentworth, has been referred to the Senate State Affairs Committee.