

BILL ANALYSIS

Senate Research Center
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S.B. 1327
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Open Government
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this bill is to clarify that information developed in a compliance investigation at an institution of higher education may be shared with appropriate enforcement agencies and with appropriate internal investigators and reviewers.

H.B. 4189, 81st Legislature, Regular Session, 2009, encourages employees to make appropriate reports of theft, fraud, and ethics violations and participate in compliance investigations, and permits institutions of higher education to provide a means, such as a compliance hotline, for employees to have private access to the compliance office. In addition, H.B. 4189 makes confidential, and therefore a mandatory exception under the public information law, the identities of individuals who report compliance issues, ask compliance questions, or participate in a compliance investigation. The individual may consent to the release of the individual's identity.

Strictly applied, the current law fails to protect that same information in the hands of a systemwide compliance office reviewing institutional compliance processes. In addition, while the law permits the disclosure of the confidential information to a law enforcement agency or prosecutor, the law fails to permit the sharing of confidential information with governmental agencies such as the Texas Commission on Human Rights, that may be charged under law with investigating the same matter that is the subject of the compliance report, or to permit the sharing of the confidential information within the institution with officers or employees responsible for conducting or reviewing the compliance investigation.

These issues have arisen in enforcement of the law in the two years since enactment, and this bill would properly be characterized as fine-tuning the previous legislation.

This bill allows the confidential information to be shared with a systemwide compliance officer charged with reviewing compliance programs and with governmental agencies charged with reviewing the matter that is the subject of a compliance investigation. Sharing the information with these officials does not change the confidential nature of the information in any other regard.

As proposed, S.B. 1327 amends current law relating to the confidentiality of information obtained by a compliance office of an institution of higher education.

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 51.971, Education Code, by amending Subsections (e) and (f) and adding Subsection (g), as follows:

(e) Provides that information is excepted from disclosure under Chapter 552 (Public Information), Government Code, if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation; or

(2) by a systemwide compliance office for the purpose of reviewing compliance processes at a component institution of higher education of a university system.

Deletes existing text providing that information produced in a compliance program investigation the release of which would interfere with an ongoing compliance investigation is excepted from disclosure under Chapter 552, Government Code.

(f) Authorizes information made confidential or excepted from public disclosure by this section to be made available to the following on request in compliance with applicable law and procedure:

(1) a law enforcement agency or prosecutor;

(2) a governmental agency responsible for investigating the matter that is the subject of a compliance report, including the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission; or

(3) an officer or employee of an institution of higher education or a compliance officer or employee of a university system administration who is responsible under institutional or system policy for a compliance program investigation or for reviewing a compliance program investigation, rather than for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(g) Provides that a disclosure under Subsection (f) is not a voluntary disclosure for purposes of Section 552.007 (Voluntary Disclosure of Certain Information When Disclosure Not Required), Government Code.

SECTION 2. Effective date: upon passage or September 1, 2011.