

BILL ANALYSIS

Senate Research Center
85R17510 TJB-D

C.S.S.B. 515
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Business & Commerce
3/21/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that, in some cases, elected or appointed officials selected to oversee a governmental body have been blocked from accessing information and properties governed by that body. S.B. 515 provides that elected or appointed officers of a state, county, city, or special district have a right of access to all information and properties within their respective governmental bodies. This change establishes and reinforces the legislative expectation that elected or appointed officials have unfettered access to information within their jurisdiction, including information that may be exempt from disclosure under the Public Information Act or is otherwise confidential. The bill is grounded on the premise that all information created or maintained within a governmental body must be accessible to their governing elected or appointed officials. Access to any information within a governmental body, no matter how confidential or mundane, is essential for elected and appointed officials to perform their duties. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 515 amends current law relating to the right of certain public officers to access public information, documents, records, and property, and creates criminal offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 1 (Section 674.054, Government Code) and SECTION 2 (Section 206.005, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 6, Government Code, by adding Chapter 674, as follows:

CHAPTER 674. RIGHT OF ACCESS TO PUBLIC INFORMATION, BUILDINGS, AND GROUNDS BY APPOINTED STATE BOARD MEMBERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 674.001. DEFINITIONS. Defines "board member," "public information," and "state governmental body."

SUBCHAPTER B. RIGHT OF ACCESS TO INFORMATION

Sec. 674.051. RIGHT OF ACCESS TO INFORMATION. (a) Provides that this section does not apply to public information that is excepted from disclosure under Sections 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information) or 552.119 (Exception: Confidentiality of Certain Photographs of Peace Officers).

(b) Provides that a board member has a right of access to information that is public information of the state governmental body to which the member is appointed.

Sec. 674.052. PROVISION OF INFORMATION. (a) Requires a state governmental body, on request by a board member of the governmental body, to provide public information to which the member has a right of access, including confidential information or information otherwise excepted from disclosure, to the member in accordance with Chapter 552 (Public Information).

(b) Provides that a state governmental body, by providing public information under this section that is confidential or otherwise excepted from disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right of the governmental body to assert exceptions to disclosure of the information in the future.

Sec. 674.053. CONFIDENTIALITY AGREEMENT. (a) Authorizes a state governmental body to require a board member requesting information or a designated employee of the requesting member who will view or handle information that is received under this subchapter and that is confidential or otherwise excepted from disclosure under law to sign a confidentiality agreement that covers the information and requires that the information be handled in certain ways.

(b) Authorizes an individual required to sign a confidentiality agreement to seek a decision as provided by Section 674.054 about whether the information covered by the confidentiality agreement is confidential or otherwise excepted from disclosure under law. Provides that a confidentiality agreement is void to the extent that the agreement covers information that is finally determined under Section 674.054 to not be confidential or otherwise excepted from disclosure under law.

Sec. 674.054. DECISION BY ATTORNEY GENERAL REGARDING CONFIDENTIALITY OR DISCLOSURE. (a) Authorizes a board member requesting information under this subchapter to seek a decision from the attorney general about whether the information covered by a confidentiality agreement under Section 674.053 is confidential or otherwise excepted from disclosure under law.

(b) Requires the attorney general, by rule, to establish procedures and deadlines for receiving information necessary to determine whether the information covered by a confidentiality agreement is confidential or otherwise excepted from disclosure under law and for receiving briefs from a requesting board member, a state governmental body, and any other interested person.

(c) Requires the attorney general to render the decision not later than the 45th business day after the date the attorney general receives the request for a decision. Authorizes the attorney general, if the attorney general is unable to issue the decision within the 45-day period, to during the 45-day period extend the period for issuing the decision by an additional 10 business days by informing certain people and bodies of the reason for the delay.

(d) Requires the attorney general to issue a written decision and provide a copy of the decision to the requesting board member, the state governmental body, and any interested person who submitted necessary information or a brief to the attorney general.

(e) Authorizes the requesting board member or the state governmental body to appeal a decision of the attorney general under Subsection (d) to a district court. Authorizes a person to appeal a decision of the attorney general to a district court if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect.

Sec. 674.055. EFFECT OF SUBCHAPTER. (a) Provides that this subchapter does not affect the right of a board member to obtain information under other law, the procedures

under which the information is obtained under other law, or the use that may be made of the information obtained under other law.

(b) Provides that this subchapter does not grant authority to a state governmental body to withhold information from a board member.

SUBCHAPTER C. RIGHT OF ACCESS TO PUBLIC PROPERTY

Sec. 674.101. RIGHT OF ACCESS TO PUBLIC PROPERTY. (a) Provides that this section does not apply to the office of another board member, a room that contains a criminal forensic laboratory, or a room in which criminal evidence is stored.

(b) Provides that a board member, notwithstanding any other provision of law and except as provided by Subsection (a), has a right of access to any building, structure, room, land, or body of water owned or leased by or under the exclusive control of the state governmental body to which the member is appointed.

Sec. 674.102. ACCESS TO PROPERTY. (a) Requires a person authorized to control access to property described by Section 674.101(b) to provide a board member of the state governmental body access to the property if the member completes certain actions.

(b) Requires the authorized person to provide access to property not later than the 10th business day following the date the request for access is made by the requesting board member.

SUBCHAPTER D. ENFORCEMENT

Sec. 674.151. DISTRIBUTION OR MISUSE OF CONFIDENTIAL INFORMATION. (a) Provides that a person who is a recipient of confidential information under Subchapter B commits an offense if the person knowingly permits inspection of the confidential information by a person who is not authorized to inspect the information or discloses the confidential information to a person who is not authorized to receive the information.

(b) Provides that an offense under this section is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both the fine and confinement.

(c) Provides that a violation under this section constitutes official misconduct.

SECTION 2. Amends Subtitle C, Title 6, Local Government Code, by adding Chapter 206, as follows:

CHAPTER 206. RIGHT OF ACCESS TO INFORMATION BY CERTAIN PUBLIC OFFICERS

Sec. 206.001. DEFINITIONS. Defines "county governmental body," "county officer," "municipal governmental body," "municipal officer," "public information," "special district," and "special district officer."

Sec. 206.002. RIGHT OF ACCESS TO INFORMATION. (a) Provides that this section does not apply to public information that is excepted from disclosure under Section 552.108, Government Code, or Section 552.119, Government Code.

(b) Provides that a county officer has a right of access to information that is public information of the county governmental body to which the county officer is elected or appointed.

(c) Provides that a municipal officer has a right of access to information that is public information of the municipal governmental body to which the municipal officer is elected or appointed.

(d) Provides that a special district officer has a right of access to information that is public information of the district.

Sec. 206.003. PROVISION OF INFORMATION. (a) Requires a county governmental body on request by a county officer of the governmental body, a municipal governmental body on request by a municipal officer of the governmental body, or a special district on request by a special district officer of the district to provide public information to which the officer has a right of access, including confidential information or information otherwise excepted from disclosure, to the officer in the accordance with Chapter 552, Government Code.

(b) Provides that a county governmental body, municipal governmental body, or special district, by providing public information under this section that is confidential or otherwise excepted from disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right of the governmental body or special district to assert exceptions to disclosure of the information in the future.

Sec. 206.004. CONFIDENTIALITY AGREEMENT. (a) Authorizes a county governmental body, municipal governmental body, or special district to require an officer requesting information or a designated employee of the requesting officer who will view or handle information that is received under this chapter and that is confidential or otherwise excepted from disclosure under law to sign a confidentiality agreement that covers the information and requires that the information be handled in certain ways.

(b) Authorizes an individual required to sign a confidentiality agreement to seek a decision as provided by Section 206.005 about whether the information covered by the confidentiality agreement is confidential or otherwise excepted from disclosure under law. Provides that a confidentiality agreement is void to the extent that the agreement covers information that is finally determined under Section 206.005 to not be confidential or otherwise excepted from disclosure under law.

Sec. 206.005. DECISION BY ATTORNEY GENERAL REGARDING CONFIDENTIALITY OR DISCLOSURE. (a) Authorizes an officer requesting information under this chapter to seek a decision from the attorney general about whether the information covered by a confidentiality agreement under Section 206.004 is confidential or otherwise excepted from disclosure under law.

(b) Requires the attorney general, by rule, to establish procedures and deadlines for receiving information necessary to determine whether the information covered by a confidentiality agreement is confidential or otherwise excepted from disclosure under law and receiving briefs from a requesting officer, a county governmental body, municipal governmental body, or special district, as applicable, and any other interested person.

(c) Requires the attorney general to render the decision not later than the 45th business day after the date the attorney general receives the request for a decision. Authorizes the attorney general, if the attorney general is unable to issue the decision within the 45-day period, to during that 45-day period extend the period for issuing the decision by an additional 10 business days by informing certain persons and bodies of the reason for the delay.

(d) Requires the attorney general to issue a written decision and provide a copy of the decision to the requesting officer, the county governmental body, municipal governmental body, or special district, as applicable, and any interested person who submitted necessary information or a brief to the attorney general.

(e) Authorizes the requesting officer or the county governmental body, municipal governmental body, or special district, as applicable, to appeal a decision of the attorney general to a district court. Authorizes a person to appeal a decision of the attorney general to a district court if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect.

Sec. 206.006. DISTRIBUTION OR MISUSE OF CONFIDENTIAL INFORMATION.

(a) Provides that a person who is a recipient of confidential information under this chapter commits an offense if the person knowingly permits inspection of the confidential information by a person who is not authorized to inspect the information or discloses the confidential information to a person who is not authorized to receive the information.

(b) Provides that an offense under this section is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both the fine and confinement.

(c) Provides that a violation under this section constitutes official misconduct.

Sec. 206.007. EFFECT OF CHAPTER. (a) Provides that this chapter does not affect the right of a county officer, municipal officer, or special district officer to obtain information under other law, the procedures under which the information is obtained under other law, or the use that may be made of the information obtained under other law.

(b) Provides that this chapter does not grant authority to a county governmental body, municipal governmental body, or special district to withhold information from a county officer, municipal officer, or special district officer.

SECTION 3. Amends the heading to Subtitle C, Title 9, Local Government Code, to read as follows:

SUBTITLE C. PUBLIC BUILDINGS AND GROUNDS PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

SECTION 4. Amends the heading to Chapter 305, Local Government Code, to read as follows:

CHAPTER 305. MISCELLANEOUS PUBLIC BUILDINGS AND GROUNDS PROVISIONS

SECTION 5. Amends Chapter 305, Local Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. RIGHT OF ACCESS TO PUBLIC PROPERTY BY CERTAIN PUBLIC OFFICERS

Sec. 305.021. DEFINITION. Defines "political subdivision."

Sec. 305.022. RIGHT OF ACCESS TO PUBLIC PROPERTY. (a) Provides that this section does not apply to the office of another member of the governing body of the political subdivision, a room that contains a criminal forensic laboratory, or a room in which criminal evidence is stored.

(b) Provides that a member of the governing body of a political subdivision, notwithstanding any other provision of law and except as provided by Subsection (a), has right of access to any building, structure, room, land, or body of water owned or leased by, or under the exclusive control of the political subdivision to which the member is elected or appointed.

Sec. 305.023. ACCESS TO PROPERTY. (a) Requires a person authorized to control access to property described by Section 305.022(b) to provide a member of the governing

body of the political subdivision access to the property if the member fulfills certain actions.

(b) Requires the authorized person to provide access to property not later than the 10th business day following the date the request for access is made by the requesting member of the governing body.

SECTION 6. Requires the attorney general, not later than January 1, 2018, to adopt rules establishing the procedures and deadlines required by Section 674.054(b), Government Code, as added by this Act, and Section 206.005(b), Local Government Code, as added by this Act.

SECTION 7. Makes application of Subchapter B, Chapter 674, Government Code, as added by this Act, and Chapter 206, Local Government Code, as added by this Act, prospective.

SECTION 8. (a) Effective date, except as provided by Subsection (b): January 1, 2018.

(b) Effective date, Section 6: upon passage or September 1, 2017.