

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1463
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Texas law, non-profit organizations are required to maintain current and accurate financial records with complete entries as to each financial transaction of the organization. More importantly, Section 22.353, Business Organizations Code, requires non-profit organizations to keep records, books, and annual reports of the organization's financial activity and make those documents available to the public for inspection and copying. This law was enacted to ensure that non-profit organizations preserve adequate records and provide assurance to the organization's donors, as well as those who are considering donating, that the organization is utilizing its funds properly.

There is growing concern that Section 22.353 is being misused to harass non-profit organizations and forces them to disclose sensitive information that should not be subject to disclosure under this statute. Non-profit organizations conduct various types of transactions and maintain documents such as personnel files, contract agreements, sponsorship information, and operating agreements. This statute is ambiguous and does not specify what documents are included in a non-profit's "records, books, and reports of the organization's financial activity." This lack of clarity is causing confusion for non-profit organizations attempting to comply with the statute.

As proposed, S.B. 1463 would exempt non-profit organizations from making their records, books, and reports available to the public for inspection and copying if an independent certified public accountant conducted an audit of the organization's financial statements for the preceding fiscal year and makes those audited financial statements and the annual reports of the organization's financial activity available to the public for inspection and copying. This change aligns with the original intent of the law and seeks to strike a balance between keeping non-profit organizations accountable to the public while also protecting non-profits from abusive practices. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1463 amends current law relating to the availability of financial information of nonprofit corporations for public inspection.

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 22.353, Business Organizations Code, by adding Subsections (a-1), (c), (d), (e), (f), and (g), as follows:

(a-1) Provides that "records, books, and annual reports" of a nonprofit corporation's (corporation) financial activity:

(1) include:

(A) financial records required to be maintained and annual financial reports prepared or approved under Section 22.352 (Financial Records and Annual Reports);

(B) any document the Internal Revenue Service requires a corporation that is tax exempt under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c) of that code, to make available to the public;

(C) documents containing salary or other information related to the compensation of each employee who receives more than \$75,000 annually from the corporation;

(D) other annual reports produced by the corporation;

(E) financial statements, including audited financial statements; and

(F) management representation letters prepared in connection with an audit of the corporation; and

(2) do not include:

(A) contracts and agreements, including operating and settlement agreements;

(B) employee personnel files;

(C) donor names;

(D) sponsor information; or

(E) sensitive personal information, including addresses, bank account numbers, and social security numbers.

(c) Authorizes a corporation, if a corporation anticipates that the fee to be charged for preparing a copy of a record or report under Subsection (b) (relating to requiring the corporation to make certain records, books, and reports available to the public for inspection and copying) will exceed \$100, to provide notice to the person requesting the copy requiring the person to pay a deposit of all or a portion of the anticipated fee for preparing the copy. Authorizes the corporation to treat all requests for copies received by the corporation during seven consecutive calendar days from a single person, mailing address, or e-mail address as a single request for purposes of calculating the anticipated fee under this subsection. Requires the corporation, on the date the corporation provides a copy or copies of a record or report for which the corporation accepted a deposit under this subsection, to refund to the requestor the difference between the accepted deposit and the actual costs incurred by the corporation in providing the copy or copies.

(d) Provides that a requestor who fails to pay a deposit required under Subsection (c) not later than the 15th business day after the date the requestor receives notice of the deposit from the corporation is considered to have withdrawn the request for the copy or copies under this section (Availability of Financial Information For Public Inspection). Provides that a person whose request is considered withdrawn under this subsection is not precluded from submitting a new request to the corporation for the same records or reports.

(e) Authorizes a corporation to establish a reasonable monthly limit of not less than 15 hours on the total amount of hours per calendar month that the corporation's personnel are authorized to spend responding to two or more requests for copies submitted to the corporation by a single requestor during a calendar month.

(f) Requires a corporation, each time the corporation that establishes a monthly time limit under Subsection (e) complies with a request for a copy or copies under this section, to provide to the requestor a written statement of the monthly hour limit established under

that subsection, the amount of time corporation personnel spent complying with the request, and the cumulative amount of time spent by corporation personnel complying with all requests from that requestor during the applicable calendar month in which the request is made. Prohibits the corporation from including the amount of time spent by personnel in preparing a written statement required by this subsection in calculating the amount of time spent complying with a request. Provides that a corporation that provides a written statement to a requestor as required by this subsection is not required to respond to additional requests for copies from a requestor who has exceeded the monthly time limit until the following calendar month.

(g) Provides that a corporation, if the corporation determines that all or part of a person's request for copies is duplicative of a request for which the corporation has previously provided copies to that person, is not required to provide the duplicative copies to the requestor and the corporation is required to certify to the requestor that copies of all or part of the requested record or report, as applicable, were previously provided to the requestor and that the corporation is not required to provide the duplicative copies to the requestor.

SECTION 2. Effective date: September 1, 2019.