

BILL ANALYSIS

C.S.H.B. 54
By: Swinford
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A recent opinion issued by the Attorney General ruled that Section 552.022(a)(5), Government Code, applies to the budgetary working papers of the Governor's office. This could also be construed to apply to similar documents prepared by the Legislative Budget Board. Previously, this section had been interpreted by state officials to apply to agencies as they developed plans to expend public funds or request appropriations from the legislature. However, with the issuance of the Attorney General's opinion, all budgetary documents, no matter how theoretical in nature, are now open to public disclosure. The author does not dispute the public's right to access supporting materials for budgets that are proposed. However, in the case of the preliminary development by staff of proposals for consideration by the Governor or the members of the Legislative Budget Board, the inherent need for frank discussion of issues, absent calculation of the potential political ramifications of those proposed policies, outweighs the public's need for access to those materials. If the statute is left to be interpreted as the Attorney General has recently done, it is impossible to think that budget staff will be able to continue to operate independent of concerns that their proposals are at constant threat of being scrutinized by the media or a public who may not always know the context of their recommendations.

C.S.H.B. 54 adds language to Section 552.022(a)(5) of the Government Code. This section of the Government Code deals with Categories of Public Information, and cites examples. Under (a)(5) the statute is amended to clarify the distinction between proposals developed by agencies to dispense public funds or request appropriations and documents developed by staff of the Governor or the Legislative Budget Board in their efforts to propose a state budget for consideration before the Legislature.

C.S.H.B. 54 also amends Section 552.106(a) of the Government Code to extend an already existing exemption for drafts and working papers involved in preparation of proposed legislation to those documents developed under the Governor's Budget Authority and by the Legislative Budget Board under their authority to develop an Appropriations Bill each session.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 552.022(a)(5), by adding language that provides for certain documents to be exempted from public disclosure if they are prepared under Section 322.008, Government Code or Section 401.0445, Government Code.

SECTION 2. Amends Section 552.106(a), Government Code, by adding language that exempts a draft or working paper involved in preparation of a budget document or budget proposal by the Office of the Governor or the Legislative Budget Board from the disclosure requirements of 552.021, Government Code.

SECTION 3. Effective Date.

EFFECTIVE DATE

Effective immediately if it receives necessary vote. If the Act does not receive the necessary vote for immediate effect, it will be effective on the 91st day after the last day of the legislative session.

COMPARISON OF ORIGINAL TO SUBSTITUTE

As introduced, HB 54 adds Section 401.0446 to the Government Code. The proposed section sets forth a definition for “budgetary working papers” and then exempts those papers from required public disclosure under Chapter 552, Government Code and any other law of the state.

The substitute does not create a new section of the Government Code, but instead amends Section 552.022 (a)(5), Government Code, as well as Section 552.106 (a), Government Code.