

By: Estes

S.B. No. 1396

A BILL TO BE ENTITLED

AN ACT

relating to state agency investigations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. STATE AGENCY INVESTIGATIONS

SECTION 1.01. Chapter 2001, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. STATE AGENCY INVESTIGATIONS

Sec. 2001.301. DEFINITIONS. In this subchapter:

(1) "Enabling statute" means the statute or rule that authorizes a state agency to conduct a state agency investigation.

(2) "Request" means the method by which a state agency seeks information as part of a state agency investigation. The term includes a subpoena, civil investigative demand, request for documents, interrogatory, request for admission, request for deposition, formal request for information, informal requests for information, request to examine, and visitation letter.

(3) "Requesting agency" means a state agency conducting a state agency investigation.

(4) "Responding party" means a party who is asked to provide information as part of a state agency investigation.

(5) "State agency" means an officer, board, commission, or department in the executive branch of state government that has statewide jurisdiction.

(6) "State agency investigation" means the efforts of

1 a state agency to obtain information from a nongovernmental party.

2 The term does not include:

3 (A) discovery conducted during a contested case
4 proceeding under this chapter;

5 (B) discovery conducted as part of a lawsuit
6 subject to state or federal rules of civil procedure; or

7 (C) information sought in a criminal or family
8 law matter.

9 Sec. 2001.302. APPLICABILITY; CONFLICT OF LAWS. (a) This
10 subchapter applies to a state agency investigation conducted by a
11 state agency.

12 (b) This subchapter is intended to expand the legal
13 protections provided to a responding party who is subject to a state
14 agency investigation. To the extent another statute or rule
15 provides greater legal protections to a responding party than the
16 legal protections provided in this subchapter, a responding party
17 is entitled to rely on and receive the legal protection of the other
18 statute or rule.

19 Sec. 2001.303. ENABLING STATUTE AUTHORIZATION. A state
20 agency investigation must be authorized by an enabling statute that
21 expressly allows the requesting agency to issue a request. This
22 subchapter is not an enabling statute and does not provide a state
23 agency with an independent basis for conducting a state agency
24 investigation.

25 Sec. 2001.304. CONTENTS OF REQUEST. Each request submitted
26 by a state agency must:

27 (1) reference the enabling statute that authorizes the

1 requesting agency to make the request;

2 (2) state the applicable time for the responding party
3 to respond to the request;

4 (3) state with specificity the information sought from
5 the responding party; and

6 (4) specify the form in which the information must be
7 provided to the requesting agency.

8 Sec. 2001.305. SERVICE OF REQUEST. (a) Except as provided
9 by Subsection (b), a requesting agency shall send a request by
10 certified mail, return receipt requested, to the responding party's
11 last known address.

12 (b) If the responding party is not an individual, the
13 requesting agency shall deliver the request to the responding
14 party's attorney of record or to a person to whom delivery would be
15 appropriate under state law if the request were process in a civil
16 suit.

17 Sec. 2001.306. TIME FOR RESPONSE. (a) A responding party
18 shall respond to a request not later than the 20th day after the
19 date the party receives the request unless the applicable enabling
20 statute or the request provides a later response date.

21 (b) The response period for any request runs from the date
22 the responding party receives a request that fully complies with
23 the requirements of this subchapter.

24 Sec. 2001.307. EXTENSIONS AND COMPUTATION OF TIME. (a) The
25 requesting agency shall grant a 10-day extension of the response
26 time to the responding party on written request of the responding
27 party. The extension is granted automatically on request of the

1 responding party and does not require a response from the
2 requesting agency.

3 (b) The requesting agency shall grant additional reasonable
4 time extensions if the responding party demonstrates good cause for
5 the additional time.

6 (c) The computation of time provisions contained in the
7 Texas Rules of Civil Procedure apply to the response times
8 established by this subchapter.

9 Sec. 2001.308. PERMISSIBILITY OF AGREEMENTS. A requesting
10 agency and responding party may agree to any terms to facilitate a
11 state agency investigation, including terms that modify the
12 provisions of this subchapter. The requesting agency and the
13 responding party may agree to extend any response time established
14 by this subchapter or another time applicable to a state agency
15 investigation, including the time for filing a petition under
16 Section 2001.313.

17 Sec. 2001.309. OBJECTIONS TO REQUEST. A responding party
18 may object to a request on the basis that it is overly broad, unduly
19 burdensome, irrelevant, vague, ambiguous, or based on another
20 ground that would be a valid objection to a discovery request made
21 under the Texas Rules of Civil Procedure.

22 Sec. 2001.310. ASSERTIONS OF PRIVILEGE. (a) A responding
23 party may withhold information responsive to a request if the
24 information is a trade secret or protected by any privilege
25 recognized by law, the Texas Rules of Civil Procedure, or the Texas
26 Rules of Evidence.

27 (b) If information is withheld under Subsection (a), the

1 responding party must submit to the requesting agency a response
2 that includes:

3 (1) a statement that information or material
4 responsive to the request has been withheld;

5 (2) a description of the request to which the
6 information or material relates; and

7 (3) the privilege asserted.

8 (c) After receiving a response indicating that material or
9 information has been withheld, the requesting agency may serve a
10 written request that the responding party identify the information
11 and material withheld. Not later than the 15th day after the date
12 the request under this subsection is received, the responding party
13 must submit to the requesting agency a response that:

14 (1) describes the information or materials withheld
15 that, without revealing the privileged information or otherwise
16 waiving the privilege, enables the requesting agency to assess the
17 applicability of the privilege; and

18 (2) asserts a specific privilege for each item or
19 group of items withheld.

20 (d) Without complying with Subsections (a) and (b), a
21 responding party may withhold a privileged communication to or from
22 an attorney or attorney's representative or a privileged document
23 of an attorney or attorney's representative created or made from
24 the point at which the responding party consults an attorney with a
25 view to obtaining professional legal services from the attorney
26 related to the request.

27 Sec. 2001.311. COMPLIANCE WITH REQUEST. (a) A responding

1 party must timely respond to a valid request that complies with this
2 subchapter. A responding party is not required to respond to a
3 request that:

- 4 (1) does not comply with this subchapter; or
5 (2) is invalid under the appropriate enabling statute
6 or other law.

7 (b) If a responding party objects to a request or asserts a
8 privilege, the responding party is not required to respond to the
9 portion of the request covered by the privilege or objection until
10 ordered to comply:

- 11 (1) by a court; or
12 (2) as part of a final decision in a contested case.

13 (c) The responding party shall timely respond to the
14 portions of a request that are not covered by an objection or
15 assertion of privilege.

16 Sec. 2001.312. REMEDIES FOR REQUESTING AGENCY: CONTESTED
17 CASE. (a) A requesting agency may initiate a contested case to
18 obtain:

- 19 (1) a response from a responding party who has failed
20 to comply with a request; or
21 (2) a ruling on an objection or assertion of privilege
22 made by a responding party.

23 (b) A contested case initiated under Subsection (a) must be
24 conducted in accordance with the rules and other procedures of the
25 requesting agency for other contested cases. If the requesting
26 agency has not adopted rules or procedures for contested cases, the
27 contested case is governed by this chapter. A decision in a

1 contested case under this section may be appealed in accordance
2 with this chapter.

3 (c) In a contested case initiated under this subchapter, the
4 relief sought by the requesting agency is limited to an order
5 requiring compliance with the request. A responding party's
6 failure to comply with this subchapter does not entitle the
7 requesting agency to seek administrative penalties, attorney's
8 fees, or other remedies.

9 (d) This subchapter does not prohibit a requesting agency
10 from taking other action to ensure compliance with a state agency
11 investigation authorized by the requesting agency's enabling
12 statute. The requesting agency may combine a request for relief
13 under this subchapter with an action for administrative penalties
14 and other remedies authorized by the requesting agency's enabling
15 statute.

16 Sec. 2001.313. REMEDIES FOR RESPONDING PARTY. (a) A
17 responding party may file a petition in a district court of Travis
18 County for an order to set aside, modify, or otherwise limit a
19 request or a response to a request. On good cause shown, the
20 district court may issue necessary orders or judgments, including a
21 protective order, injunction, or declaratory relief. This
22 subchapter does not authorize a responding party to seek damages or
23 attorney's fees from the requesting agency.

24 (b) A petition may be filed under this section not later
25 than the first anniversary of the date a request is issued if there
26 is a legal controversy concerning the request.

27 (c) The filing of a petition under this section stays the

1 state agency investigation or portion of the state agency
2 investigation that is the subject of the petition and any contested
3 case concerning the state agency investigation. A responding party
4 who files a petition under this section is immediately relieved of
5 any obligation to respond to a request or portion of a request that
6 is the subject of the petition until otherwise ordered by the court.

7 (d) The final decision of a court in a proceeding brought
8 under this subchapter may be appealed in the same manner as any
9 other final court judgment.

10 (e) The remedies provided by this section are in addition to
11 other remedies provided by law.

12 Sec. 2001.314. CONDUCT OF STATE AGENCY INVESTIGATIONS. (a)
13 In a state agency investigation conducted under this subchapter, a
14 responding party is entitled to be represented by counsel and may
15 cross-examine witnesses.

16 (b) In a state agency investigation conducted under this
17 subchapter, a requesting agency may not conduct an unannounced
18 office inspection of a responding party.

19 Sec. 2001.315. ORAL EXAMINATION. (a) The examination of
20 any witness under a demand for oral testimony served under this
21 section must be taken before a person authorized to administer
22 oaths and affirmations by state or federal law. The person before
23 whom the testimony is to be taken shall administer the oath or
24 affirmation and personally, or by someone acting under the person's
25 direction in the person's presence, record the witness's testimony.
26 At the expense of the requesting agency, the testimony must be taken
27 stenographically and may be transcribed.

1 (b) The witness's oral testimony under this section must be
2 taken in the county in which the witness resides, is found, or
3 transacts business or in another place agreed to by the witness and
4 the requesting agency.

5 (c) Any witness compelled to appear under this section may
6 be accompanied, represented, and advised by an attorney. The
7 attorney may advise the witness in confidence on any question
8 arising in connection with the examination.

9 (d) The person conducting the examination on behalf of the
10 requesting agency shall exclude from the place of examination all
11 other persons except the witness being examined, the witness's
12 attorney, the person before whom the testimony is to be taken, any
13 stenographer taking the testimony, and any persons assisting the
14 person conducting the examination.

15 (e) During the examination, the witness being examined or
16 the witness's attorney may object on the record to any question,
17 wholly or partly, and shall briefly state for the record the reason
18 for the objection. An objection may properly be made, received, and
19 entered on the record when it is claimed that the witness is
20 entitled to refuse to answer the question on grounds of any
21 constitutional or other legal right or privilege, including the
22 privilege against self-incrimination. The witness or the witness's
23 attorney may not otherwise object to or refuse to answer any
24 question or interrupt the oral examination. If the witness refuses
25 to answer any question, the requesting agency may petition the
26 district court in the county in which the examination is being
27 conducted for an order compelling the witness to answer the

1 question.

2 (f) If the testimony is fully transcribed, the person before
3 whom the testimony was taken shall promptly transmit the transcript
4 of the testimony to the witness and a copy of the transcript to the
5 requesting agency. The witness shall have a reasonable opportunity
6 to examine the transcript and make any changes in form or substance
7 accompanied by a statement of the reasons for the changes. The
8 witness shall sign and return the transcript, unless the witness is
9 ill, cannot be found, refuses to sign, or in writing waives the
10 signing. If the witness does not sign the transcript on or before
11 the 15th day after the date the witness receives the transcript, the
12 person before whom the testimony has been given shall sign it and
13 state on the record the reason, if known, for the witness's failure
14 to sign. The person transcribing the testimony shall certify on the
15 transcript that the witness was duly sworn and that the transcript
16 is a true record of the testimony given by the witness and promptly
17 transmit a copy of the certified transcript to the requesting
18 agency.

19 (g) On request, the requesting agency shall furnish a copy
20 of the certified transcript to the witness.

21 (h) The witness is entitled to the same fees and mileage
22 that are paid to witnesses in the district courts of this state.

23 Sec. 2001.316. CONFIDENTIALITY OF INFORMATION OBTAINED
24 FROM STATE AGENCY INVESTIGATION. (a) All information obtained as a
25 result of a state agency investigation is exempt from a request
26 under Chapter 552 and a state agency may not disclose the
27 information in responding under that chapter.

1 (b) The request, the responding party's response, and all
2 correspondence discussing a state agency investigation are not
3 discoverable by a third party in a civil lawsuit.

4 (c) Portions of information contained in a response to a
5 state agency investigation may be discoverable in a third-party
6 civil lawsuit if the information is independently related to,
7 directly relevant to, and narrowly tailored to the issues presented
8 by that civil lawsuit. In determining whether information
9 contained in a response to a state agency investigation is
10 discoverable in a third-party civil lawsuit, a court shall evaluate
11 the burden and scope of the discovery request on its own merit and
12 without regard to whether the responding party has already gathered
13 and provided the information as part of a state agency
14 investigation.

15 Sec. 2001.317. USE OF INFORMATION OBTAINED FROM STATE
16 AGENCY INVESTIGATION. (a) A requesting agency may use any
17 information obtained as a result of a state agency investigation as
18 authorized by the requesting agency's enabling statute. The
19 requesting agency shall take all necessary steps to protect
20 information that the responding party designates as confidential,
21 privileged, or otherwise sensitive.

22 (b) The requesting agency shall notify the responding party
23 in the manner provided by Section 2001.305 not later than the 30th
24 day before the date of any intended disclosure to a third party of
25 the responding party's information obtained as part of a state
26 agency investigation, including a state agency other than the
27 requesting agency.

1 Subchapter J, Chapter 2001, Government Code. To the extent of any
2 conflict between the provisions of this chapter and Subchapter J,
3 Chapter 2001, Government Code, the provisions that provide the
4 greatest legal protections to a responding party control.

5 SECTION 2.03. Subchapter B, Chapter 15, Business & Commerce
6 Code, is amended by adding Section 15.101 to read as follows:

7 Sec. 15.101. STATE AGENCY INVESTIGATION. (a) In this
8 section, "responding party" and "request" have the meanings
9 assigned by Section 2001.301, Government Code.

10 (b) A request submitted under this chapter is governed by
11 Subchapter J, Chapter 2001, Government Code. To the extent of any
12 conflict between the provisions of this chapter and Subchapter J,
13 Chapter 2001, Government Code, the provisions that provide the
14 greatest legal protections to a responding party control.

15 SECTION 2.04. Subchapter E, Chapter 14, Finance Code, is
16 amended by adding Section 14.2029 to read as follows:

17 Sec. 14.2029. STATE AGENCY INVESTIGATION. (a) In this
18 section, "responding party" and "request" have the meanings
19 assigned by Section 2001.301, Government Code.

20 (b) A request submitted under this chapter is governed by
21 Subchapter J, Chapter 2001, Government Code. To the extent of any
22 conflict between the provisions of this chapter and Subchapter J,
23 Chapter 2001, Government Code, the provisions that provide the
24 greatest legal protections to a responding party control.

25 SECTION 2.05. Subchapter C, Chapter 35, Finance Code, is
26 amended by adding Section 35.2029 to read as follows:

27 Sec. 35.2029. STATE AGENCY INVESTIGATION. (a) In this

1 section, "responding party" and "request" have the meanings
2 assigned by Section 2001.301, Government Code.

3 (b) A request submitted under this chapter is governed by
4 Subchapter J, Chapter 2001, Government Code. To the extent of any
5 conflict between the provisions of this chapter and Subchapter J,
6 Chapter 2001, Government Code, the provisions that provide the
7 greatest legal protections to a responding party control.

8 SECTION 2.06. Subchapter B, Chapter 66, Finance Code, is
9 amended by adding Section 66.0539 to read as follows:

10 Sec. 66.0539. STATE AGENCY INVESTIGATION. (a) In this
11 section, "responding party" and "request" have the meanings
12 assigned by Section 2001.301, Government Code.

13 (b) A request submitted under this chapter is governed by
14 Subchapter J, Chapter 2001, Government Code. To the extent of any
15 conflict between the provisions of this chapter and Subchapter J,
16 Chapter 2001, Government Code, the provisions that provide the
17 greatest legal protections to a responding party control.

18 SECTION 2.07. Subchapter B, Chapter 96, Finance Code, is
19 amended by adding Section 96.0569 to read as follows:

20 Sec. 96.0569. STATE AGENCY INVESTIGATION. (a) In this
21 section, "responding party" and "request" have the meanings
22 assigned by Section 2001.301, Government Code.

23 (b) A request submitted under this chapter is governed by
24 Subchapter J, Chapter 2001, Government Code. To the extent of any
25 conflict between the provisions of this chapter and Subchapter J,
26 Chapter 2001, Government Code, the provisions that provide the
27 greatest legal protections to a responding party control.

1 SECTION 2.08. Subchapter B, Chapter 126, Finance Code, is
2 amended by adding Section 126.0529 to read as follows:

3 Sec. 126.0529. STATE AGENCY INVESTIGATION. (a) In this
4 section, "responding party" and "request" have the meanings
5 assigned by Section 2001.301, Government Code.

6 (b) A request submitted under this chapter is governed by
7 Subchapter J, Chapter 2001, Government Code. To the extent of any
8 conflict between the provisions of this chapter and Subchapter J,
9 Chapter 2001, Government Code, the provisions that provide the
10 greatest legal protections to a responding party control.

11 SECTION 2.09. Subchapter C, Chapter 36, Insurance Code, is
12 amended by adding Section 36.1515 to read as follows:

13 Sec. 36.1515. STATE AGENCY INVESTIGATION. (a) In this
14 section, "responding party" and "request" have the meanings
15 assigned by Section 2001.301, Government Code.

16 (b) A request submitted under this subtitle is governed by
17 Subchapter J, Chapter 2001, Government Code. To the extent of any
18 conflict between the provisions of this subtitle and Subchapter J,
19 Chapter 2001, Government Code, the provisions that provide the
20 greatest legal protections to a responding party control.

21 SECTION 2.10. Subchapter G, Chapter 51, Occupations Code,
22 is amended by adding Section 51.35119 to read as follows:

23 Sec. 51.35119. STATE AGENCY INVESTIGATION. (a) In this
24 section, "responding party" and "request" have the meanings
25 assigned by Section 2001.301, Government Code.

26 (b) A request submitted under this chapter is governed by
27 Subchapter J, Chapter 2001, Government Code. To the extent of any

1 conflict between the provisions of this chapter and Subchapter J,
2 Chapter 2001, Government Code, the provisions that provide the
3 greatest legal protections to a responding party control.

4 SECTION 2.11. Subchapter A, Chapter 153, Occupations Code,
5 is amended by adding Section 153.0069 to read as follows:

6 Sec. 153.0069. STATE AGENCY INVESTIGATION. (a) In this
7 section, "responding party" and "request" have the meanings
8 assigned by Section 2001.301, Government Code.

9 (b) A request submitted under this chapter is governed by
10 Subchapter J, Chapter 2001, Government Code. To the extent of any
11 conflict between the provisions of this chapter and Subchapter J,
12 Chapter 2001, Government Code, the provisions that provide the
13 greatest legal protections to a responding party control.

14 SECTION 2.12. Subchapter G, Chapter 204, Occupations Code,
15 is amended by adding Section 204.307 to read as follows:

16 Sec. 204.307. STATE AGENCY INVESTIGATION. (a) In this
17 section, "responding party" and "request" have the meanings
18 assigned by Section 2001.301, Government Code.

19 (b) A request submitted under this chapter is governed by
20 Subchapter J, Chapter 2001, Government Code. To the extent of any
21 conflict between the provisions of this chapter and Subchapter J,
22 Chapter 2001, Government Code, the provisions that provide the
23 greatest legal protections to a responding party control.

24 SECTION 2.13. Subchapter H, Chapter 205, Occupations Code,
25 is amended by adding Section 205.3589 to read as follows:

26 Sec. 205.3589. STATE AGENCY INVESTIGATION. (a) In this
27 section, "responding party" and "request" have the meanings

1 assigned by Section 2001.301, Government Code.

2 (b) A request submitted under this chapter is governed by
3 Subchapter J, Chapter 2001, Government Code. To the extent of any
4 conflict between the provisions of this chapter and Subchapter J,
5 Chapter 2001, Government Code, the provisions that provide the
6 greatest legal protections to a responding party control.

7 SECTION 2.14. Subchapter G, Chapter 206, Occupations Code,
8 is amended by adding Section 206.3079 to read as follows:

9 Sec. 206.3079. STATE AGENCY INVESTIGATION. (a) In this
10 section, "responding party" and "request" have the meanings
11 assigned by Section 2001.301, Government Code.

12 (b) A request submitted under this chapter is governed by
13 Subchapter J, Chapter 2001, Government Code. To the extent of any
14 conflict between the provisions of this chapter and Subchapter J,
15 Chapter 2001, Government Code, the provisions that provide the
16 greatest legal protections to a responding party control.

17 ARTICLE 3. TRANSITION AND EFFECTIVE DATE

18 SECTION 3.01. Subchapter J, Chapter 2001, Government Code,
19 as added by this Act, applies only to a request submitted to a
20 responding party by a state agency on or after the effective date of
21 this Act. A request submitted before that date is governed by the
22 law in effect on the date the request was submitted, and that law is
23 continued in effect for that purpose.

24 SECTION 3.02. This Act takes effect September 1, 2013.