

By: Estes

S.B. No. 1603

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. DUE PROCESS IN 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 a subpoena, civil investigative demand, request for documents, sworn interrogatory, request for admission, or request for deposition issued by a state agency as part of a state agency investigation.

(3) "Requesting agency" means a state agency issuing a request.

(4) "Responding party" means a party receiving a request.

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

The term does not include:

1           (A) discovery conducted during a contested case  
2 proceeding under this chapter;

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

5           (C) information sought in a criminal or family  
6 law matter; or

7           (D) information required to be disclosed,  
8 reported, or tendered pursuant to the terms of a valid contract or  
9 lease between the agency and the nongovernmental party.

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

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

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

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

1           (1) reference the enabling statute that authorizes the  
2 requesting agency to make the request;

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

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

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

9           Sec. 2001.305. 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. 2001.306. 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. 2001.307. 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. 2001.308. 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. 2001.309. 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) Except as provided by Subsection (d), in a contested  
4 case initiated under this subchapter, the relief sought by the  
5 requesting agency is limited to an order requiring compliance with  
6 the request, and a responding party's failure to comply with this  
7 subchapter does not entitle the requesting agency to seek  
8 administrative penalties, attorney's fees, or other remedies.

9 (d) If the presiding officer in a contested case initiated  
10 under Subsection (a) determines that a responding party objected to  
11 a request in bad faith or asserted a privilege in bad faith, the  
12 presiding officer may award the agency administrative penalties,  
13 attorney's fees, or other remedies sufficient to deter future bad  
14 faith conduct.

15 (e) This subchapter does not prohibit a requesting agency  
16 from taking other action to ensure compliance with a state agency  
17 investigation authorized by the requesting agency's enabling  
18 statute. The requesting agency may combine a request for relief  
19 under this subchapter with an action for administrative penalties  
20 and other remedies authorized by the requesting agency's enabling  
21 statute.

22 Sec. 2001.310. CONDUCT OF STATE AGENCY INVESTIGATIONS. In  
23 a state agency investigation conducted under this subchapter, a  
24 responding party is entitled to be represented by counsel and may  
25 cross-examine witnesses.

26 Sec. 2001.311. ORAL EXAMINATION. (a) The examination of  
27 any witness under a demand for oral testimony served under this

1 section must be taken before a person authorized to administer  
2 oaths and affirmations by state or federal law. The person before  
3 whom the testimony is to be taken shall administer the oath or  
4 affirmation and personally, or by someone acting under the person's  
5 direction in the person's presence, record the witness's testimony.  
6 At the expense of the requesting agency, the testimony must be taken  
7 stenographically and may be transcribed.

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

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

16 (d) The person conducting the examination on behalf of the  
17 requesting agency shall exclude from the place of examination all  
18 other persons except the witness being examined, the witness's  
19 attorney, the person before whom the testimony is to be taken, any  
20 stenographer taking the testimony, and any persons assisting the  
21 person conducting the examination.

22 (e) During the examination, the witness being examined or  
23 the witness's attorney may object on the record to any question,  
24 wholly or partly, and shall briefly state for the record the reason  
25 for the objection. An objection may properly be made, received, and  
26 entered on the record when it is claimed that the witness is  
27 entitled to refuse to answer the question on grounds of any

1 constitutional or other legal right or privilege, including the  
2 privilege against self-incrimination. The witness or the witness's  
3 attorney may not otherwise object to or refuse to answer any  
4 question or interrupt the oral examination. If the witness refuses  
5 to answer any question, the requesting agency may petition the  
6 district court in the county in which the examination is being  
7 conducted for an order compelling the witness to answer the  
8 question.

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

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



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

3   ARTICLE 2. CONFORMING CHANGES

4           SECTION 2.01. Section 2001.003(7), Government Code, is  
5 amended to read as follows:

6                           (7) "State agency" means a state officer, board,  
7 commission, or department with statewide jurisdiction that makes  
8 rules or determines contested cases. The term includes the State  
9 Office of Administrative Hearings for the purpose of determining  
10 contested cases. Except as otherwise provided by this chapter,  
11 the [The] term does not include:

12   (A) a state agency wholly financed by federal  
13 money;

14   (B) the legislature;

15   (C) the courts;

16   (D) the Texas Department of Insurance, as regards  
17 proceedings and activities under Title 5, Labor Code, of the  
18 department, the commissioner of insurance, or the commissioner of  
19 workers' compensation; or

20   (E) an institution of higher education.

21           SECTION 2.02. Subchapter B, Chapter 5, Alcoholic Beverage  
22 Code, is amended by adding Section 5.439 to read as follows:

23                   Sec. 5.439. 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 2.03. Subchapter B, Chapter 15, Business & Commerce  
5 Code, is amended by adding Section 15.101 to read as follows:

6 Sec. 15.101. 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 2.04. Subchapter E, Chapter 14, Finance Code, is  
15 amended by adding Section 14.2029 to read as follows:

16 Sec. 14.2029. 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 2.05. Subchapter C, Chapter 35, Finance Code, is  
25 amended by adding Section 35.2029 to read as follows:

26 Sec. 35.2029. 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 2.06. Subchapter B, Chapter 66, Finance Code, is  
8 amended by adding Section 66.0539 to read as follows:

9 Sec. 66.0539. 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 SECTION 2.07. Subchapter B, Chapter 96, Finance Code, is  
18 amended by adding Section 96.0569 to read as follows:

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

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

27 SECTION 2.08. Subchapter B, Chapter 126, Finance Code, is

1 amended by adding Section 126.0529 to read as follows:

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

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

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

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

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

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

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

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

1 Chapter 2001, Government Code, the provisions that provide the  
2 greatest legal protections to a responding party control.

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

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

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

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

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

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

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

25 Sec. 205.3589. STATE AGENCY INVESTIGATION. (a) In this  
26 section, "responding party" and "request" have the meanings  
27 assigned by Section 2001.301, Government Code.

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

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

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

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

16                   ARTICLE 3. TRANSITION AND EFFECTIVE DATE

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

23       SECTION 3.02. This Act takes effect September 1, 2017.