

BILL ANALYSIS

Senate Research Center
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S.B. 1463
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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.

As proposed, 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, as follows:

Sec. 22.353. AVAILABILITY OF FINANCIAL INFORMATION FOR PUBLIC INSPECTION. (a) Requires a corporation to keep records, books, and annual reports of the corporation's financial activity and audited financial statements described by Subsection (c) at the corporation's registered or principal office in this state for at least three years after the close of the fiscal year.

(b) Requires a corporation, except as provided by Subsection (c), to make the records, books, and reports available to the public for inspection and copying at the corporation's registered or principal office during regular business hours.

(c) Provides that a corporation is exempt from Subsection (b) if:

(1) an independent certified public accountant has conducted an audit of the corporation's financial statements for the preceding fiscal year in accordance with generally accepted auditing standards; and

(2) subject to Subsection (d), the corporation makes its audited financial statements and the annual reports of the corporation's financial activity kept under Subsection (a) available to the public for inspection and copying at the corporation's registered or principal office during regular business hours. Authorizes the corporation to charge a reasonable fee for preparing a copy of a statement or report.

(d) Requires a corporation to make an audited financial statement described by Subsection (c)(1) available to the public for inspection and copying not later than the 180th day after the close of the fiscal year to which the audit relates.

SECTION 2. Effective date: September 1, 2019.