

SUBJECT: Authorizing some agencies to share information for investigative purposes

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Marchant, Madden, J. Davis, B. Cook, Elkins, Gattis, Goodman, Lewis, Villarreal

0 nays

WITNESSES: For — Shanna Igo, Texas Municipal League

Against — None

On — Susan Durso, Public Utility Commission; Richard Lawson, Texas Telephone Association; Karen Pettigrew, Office of the Attorney General

BACKGROUND: Government Code, ch. 555 governs state agency records relating to license holders. The statute is located within Title 5 of the Government Code, relating to open government and ethics.

DIGEST: HB 2040 would allow the Office of the Attorney General (OAG), Texas Department of Insurance (TDI), State Board of Public Accountancy (SBPA), Public Utility Commission (PUC), and State Securities Board (SSB) to share with each other, for investigative purposes, confidential information about people they license or otherwise regulate. An agency that received such information would have to secure it against access from anyone who did not need it for investigative purposes. The agency could disclose the information to another of the five agencies or to law enforcement, if it was necessary evidence in an investigation, or under a court order upon a showing that the disclosure was necessary to protect the public health, safety, or welfare. The agency also could disclose the information if necessary to bring or prosecute a contested case or court action, to prevent a violation of a law, or to impose sanctions or penalties in connection with violation of a law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 2040 is part of a corporate accountability initiative, along with several other bills this session. Its purpose is to improve identification, investigation, and prosecution of corporate crime by facilitating information sharing among state agencies that deal directly with the companies most vulnerable to corporate crime. Each of these agencies may have information about a single piece of the corporate fraud puzzle, and HB 2040 would allow them to put the pieces together to see the whole picture.

The bill would include five specific agencies for particular reasons. SBPA investigates and prosecutes alleged violations of professional conduct, including by accounting firms, such as those that have been implicated in the audits of failed or troubled savings and loans, financial institutions, corporations, and insurance companies. SSB investigates securities fraud, particularly selling or advising on securities. PUC regulates components of telecommunications and energy companies whose high-profile scandals have instigated this legislation. OAG, through its financial litigation division, deals with financial and commercial fraud and irregularities in insurance, securities, consumer credit, banking, savings and loans, unclaimed property, and the practice of public accountancy. TDI helps ensure the financial solvency of insurance companies, which is very important in helping a company avoid bankruptcy and protect consumers after an incident of insurance fraud.

Some assert that state agencies already have information sharing authority for investigations. The attorney general has issued opinions on this topic, and some agencies already have formal information-sharing agreements allowed by previous legislation. HB 2040 would clarify and lend certainty to the authority that the attorney general has articulated, add specificity to existing information-sharing procedures, and augment agencies' ability to share information for investigative purposes. The bill is written broadly enough so as not to inhibit agencies from properly investigating cases of corporate fraud, but not so broadly as to hinder private companies' competitive activity. The bill clearly would limit its application to the five agencies identified.

**OPPONENTS
SAY:**

HB 2040 does not mention corporate fraud, the bill's purported target, and is too broad in its current form. It could have unintended consequences. First, it would allow an agency to obtain confidential information for investigative purposes but would not prevent the agency from using the information later on unrelated matters or contested cases. In theory, an agency could gain

access to proprietary information about a company to which the agency was opposed as a party in a lawsuit without the company's being notified, thus violating the company's due-process rights. To protect private companies' proprietary information, the bill should allow information sharing only for the purpose of investigating corporate fraud and should define that term.

Also, the bill would not limit the agencies that could receive confidential information under these provisions. The bill would allow the five specified agencies to disclose such information "to the extent necessary" to prosecute a contested case without specifying whom the information could be shared with. The bill should be amended to make it clear that only the five named agencies could share the information.

**OTHER
OPPONENTS
SAY:**

Attorney general opinions have concluded that state agencies have authority to share information with another agencies, so HB 2040 would grant no new authority. Some agencies already have information-sharing authority that goes beyond investigative purposes. The bill should be amended to clarify that it would not restrict information-sharing authority that exists under current law and that it would not limit these five agencies to sharing information only in instances involving corporate fraud.

NOTES:

The companion bill, SB 141 by Ellis, et al., was reported favorably, as substituted, by the Senate Jurisprudence Committee on April 7.