

SUBJECT: Eliminating the staff briefing exception to open meetings law

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Wolens, S. Turner, Alvarado, Carter, Counts, Danburg, Hunter, Longoria, McCall, Ramsay

1 nay — Craddick

4 absent — Brimer, Hilbert, D. Jones, Stiles

SENATE VOTE: On final passage, March 19 — 28-3 (Carona, Shapiro, Zaffirini)

WITNESSES: (*On House companion bill, HB 746*):

For — Bob Barton, Texas Press Association, Texas Daily Newspaper Association; Janet Evans; Suzy Woodford, Common Cause of Texas; Jay Jacobson, ACLU of Texas

Against — Susan Horton, Texas Municipal League, Denise Nance Pierce, Texas Association of School Boards; Louann Martinez, Texas Association of School Administrators

BACKGROUND : The Open Meetings Act, Government Code chapter 551, requires that every regular, special or called meeting of a governmental body must be open to the public. Openness requires a record of the meeting and notice. Generally exempted from open meetings requirements by §551.075 of the Government Code are briefing sessions in which the members of a governmental body receive information from staff but do not conduct any deliberations.

DIGEST: CSSB 308 would eliminate the open meeting exemption for staff briefings by repealing the section specifically allowing “closed” briefings and redefining “meeting” to include such briefings.

A meeting would include any gathering where a quorum of a governmental body “receive information from, give information to, ask questions of or receive questions from any third person including an employee.” The meeting would have to be conducted by the governmental body and concern

public business or policy over which the governmental body had supervision or control.

CSSB 308 would specifically allow school boards to conduct closed meetings to deliberate matters made confidential by law.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSSB 308 would eliminate an unjustifiable loophole in the open meetings law to require that public business be conducted in public. The staff briefings exception allowed under current law is in direct conflict with the general standard of open government set forth in the Open Meetings Act. The very notion that the members of a governmental board can meet as a body with an employee behind closed doors, ask questions of that employee, and still not be considered as conducting public business makes little sense. Under current law, a staff briefing is not a deliberation because the members of the governmental entity do not engage in direct conversation with each other. However, because members may hear the questions and answers posed to staff by other members and they can ask questions based on those questions, such proceedings clearly fall in the realm of deliberations.

In practice, the staff briefings exemption allows significant negotiation and deliberation to occur, but because the staff briefings are not open to the public or the media and do not require an agenda, minutes or recording, no one other than the participants is aware of how much public business is actually being discussed behind closed doors. Under CSSB 308, if there was a situation in which members had to be briefed by staff on a recent event or occurrence, that could still be done, but not when a quorum of the board was present.

Exceptions to the open meetings law exist for sensitive matters such as personnel decisions, property acquisition, and discussion of future or pending litigation. There is no need to have additional exceptions for what is clearly public business. Although some maintain that it is helpful to give officials information on issues that are not yet ripe for public debate, such a vague standard clearly should not apply. Whether an issue is ripe or not, it should be discussed in public.

When the staff briefings exemption is exploited to its full potential, the public meetings of governmental entities may be nothing more than votes on issues as all questions would have already been answered and all deliberations would have occurred behind closed doors. Such practices by the board of regents of the University of Texas System have prompted questions about whether the board has violated the spirit if not the letter of the open meetings law. Many major cities have already opened staff briefings to the public recognizing the need to hold such discussions in public.

**OPPONENTS
SAY:**

Members of many governmental entities use staff briefings for the legitimate purpose of educating a board about an issue that it not yet ready to be discussed in public. For example, if an incident occurred on the property of a school, the members of the district's board could meet with staff immediately to find out what the incident was and what some possible repercussions of the incident may be. Some of this information may be confidential, some may not. Additionally, some information may not have been checked by staff before being passed on to members. CSSB 308 would force members to be kept in the dark about important events or incidents until a public meeting could be called and the information prepared for public use.

**OTHER
OPPONENTS
SAY:**

Simply repealing the section allowing staff briefings may be adequate to achieve the purpose desired. Changing the definition of what constitutes a meeting may create additional questions rather than further clarification.

NOTES:

The committee substitute would require that the gathering be one "conducted by or for which the governmental body is responsible." It also would specifically exempt school boards from open meetings requirements when the matter on which they are deliberating was made confidential by law.

During the 74th regular session in 1995, SB 246 by Wentworth, an identical bill, passed the Senate but died in the House Calendars Committee.