

- SUBJECT:** Eliminating the staff briefing exception to open meetings law
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 10 ayes — Wolens, S. Turner, Alvarado, Bailey, Craddick, Danburg, D. Jones, Longoria, McCall, Merritt
- 2 nays — Brimer, Counts
- 3 absent — Hilbert, Hunter, Marchant
- WITNESSES:** For — Dohn Larson, Texas Classroom Teachers Association; Karen Miller, Texas Parent Teacher Association; Rich Oppel, Texas Daily Newspaper Association and Texas Press Association; Ted Melina Raab, Texas State Employees Union; Rob Schneider, Consumer’s Union; Tom “Smitty” Smith, Public Citizen; Suzy Woodford, Common Cause Texas
- Against — Mike Sullivan, Texas Association of School Boards; Brad Shields
- On — Susan Horton, Texas Municipal League; Michael Millsap, U.T. System
- 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:** CSHB 156 would eliminate the open meeting exemption for staff briefings by repealing the section specifically allowing “closed” briefings and revising the definition of “meeting” to include such briefings.
- A meeting would include any called gathering of a governmental body where a quorum would “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.

CSHB 156 would repeal §551.075 of the Government Code that allows an exemption for staff briefings.

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

**SUPPORTERS  
SAY:**

CSHB 156 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 directly conflicts 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, question that employee, and not be considered to be conducting public business is contradictory. 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 hear the questions and answers posed to staff by other members, and because they themselves can ask questions based on these exchanges, such proceedings clearly should be considered official deliberations.

In practice, the exemption for staff briefings allows significant negotiation and deliberation to occur behind closed doors. No one knows how much public business is discussed because staff briefings are not open to the public or the media and do not require an agenda, minutes or recording.

CSHB 156 would not restrict individual members from receiving crucial information on an emergency basis, but it would prevent the board from gathering in a quorum in private to receive such information.

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. Some maintain that it is helpful to give officials information on issues that are not yet ripe for public debate. But a standard this vague

should not apply. Whether an issue is ripe or not, it should be discussed in public.

If the exemption were exploited to its full potential, public meetings of governmental entities could become nothing more than forums for quick votes on issues that already have been discussed in full behind closed doors.

The Austin ISD used the staff briefings exemption to hide allegations about TAAS test cheating from the public for over a week. Closed-door briefings of 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. Recognizing the importance of open debate, many major cities already have opened staff briefings to the public.

OPPONENTS  
SAY:

Members of many governmental entities use staff briefings for the legitimate purpose of educating a board about an issue that is not yet an appropriate matter for public discussion. For example, when a serious incident occurs on school property, the exemption allows members of the district's board to meet quickly with staff to gather crucial information and assess possible repercussions. Some of this information may be confidential; some may not. In order to discuss such an incident in an open meeting, notice of the meeting normally must be posted for 72 hours. CSHB 156 would prevent board members from being fully informed about important events until an official public meeting could be called.

Staff briefings also provide an invaluable venue for board members to ask questions and receive frank information without the scrutiny that accompanies a public meeting. The law clearly states that no deliberation can occur in these meetings, so any discussions between board members is reserved for public meetings.

OTHER  
OPPONENTS  
SAY:

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

NOTES:

The committee substitute to HB 156 removed a provision from the original bill that would have allowed governing boards of higher education institutions

that meet less than five times a year to gather in less than a quorum for a staff briefing.

During the 75th Legislature, a similar bill, SB 308 by Wentworth, passed the Senate and was reported favorably by the House State Affairs Committee, but died on a point of order.

The companion bill, SB 1149 by Wentworth, has been referred to the Senate State Affairs Committee.