

SUBJECT: Open meetings exemption for bond pricing and sales activities

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 8 ayes — Averitt, Solomons, Denny, Elkins, Grusendorf, Marchant, Pitts,
Juan Solis

0 nays

1 absent — Ehrhardt

WITNESSES: For — John T. Daniel, Merrill Lynch & Co.

Against — None

On — Kimberly K. Edwards, Texas Public Finance Authority; John C. Kerr,
Texas Public Finance Authority

BACKGROUND: The Texas Public Finance Authority (TPFA) provides financing for state agencies through the use of bonds and commercial paper. Bond sales are always negotiated using underwriting firms, and the bonds are sold on the open market. The TPFA governing board approves all resolutions for the issuance of bonds, sets the policies for accepting prices and refinancing bonds, and approves contracts for using underwriting firms.

DIGEST: CSHB 1879 would allow a subcommittee of the TPFA governing board to price and sell TPFA obligations in accordance with board requirements without being subject to the Open Meetings requirements of Chapter 551, Government Code. The bill would allow the board to delegate authority to staff to negotiate contracts with underwriting firms and would provide that those negotiations were not meetings or deliberations subject to Open Meetings laws.

CSHB 1879 also would repeal Section 6, Article 602d-1 VACS, limiting to \$900 million the combined amount of outstanding revenue and general obligation bonds issued by TPFA.

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

**SUPPORTERS
SAY:**

CSHB 1879 is a legislative clarification to ensure that TPFA can issue bonds in the most efficient, cost-effective manner, without revealing information that could impede the agency's negotiations with other parties. It would allow a subcommittee of the board to accompany staff members to the office of an underwriting firm on the day that bonds are sold without being subject to Open Meetings requirements. Up to three members of the board would be able to participate in decisions on pricing bonds at times when market conditions are optimal for the state.

Bond prices and interest rates can fluctuate widely within short periods of times. Even small, hourly variations can make a big difference in overall costs. The board needs flexibility to move quickly to sell bonds when interest rates drop temporarily. This allows the state to lower its debt service costs. The physical presence of board members at such a time greatly increases the state's bargaining power, results in lower interest rates, and ensures that underwriters adhere to the board's policies for negotiated sales.

If these pricing activities were fully subject to the Open Meetings requirements, the board would be required to delegate pricing authority to a single member or to staff. Otherwise, it would be forced to resort to "evergreen" posting, which means continually posting a meeting to make sure legal requirements are met, then canceling each day in the event market conditions prove unfavorable. The alternative is to give 72 hours' notice prior to negotiating a sale. This means the state could not take advantage of the best market conditions, increasing the cost of borrowing.

The process of issuing bonds provides numerous opportunities for public involvement. TPFA cannot issue a bond unless:

- ! the Legislature has approved the project and amount to be financed;
- ! the relevant agency has adopted a resolution defining the project and requesting financing from TPFA; and
- ! the board adopts a resolution in a public meeting authorizing the bond, establishing the terms of the sale, defining the circumstances for refinancing, and approving the official statement, which is similar to a stock prospectus, used by an underwriting firm to market the bond to potential investors.

The activities that this bill would cover are technical in nature. Policy decisions are made by the full board in open meetings. When a bond is marketed by an underwriter, the only factors being deliberated are the interest rates (the price) and other technical terms of issuance. A full report of these activities is given at the next full meeting of the board.

Current law provides an exception to the Open Meetings laws for the “purchase, exchange, lease, or value” of real property if the deliberation in an open meeting would have a detrimental effect on the position of the government in negotiations with a third party. The board’s negotiating position on bonds may be damaged by public pricing deliberations. The effect would be to increase the state’s debt service unnecessarily.

The bill also would repeal an unneeded provision limiting to \$900 million the outstanding debt the TPFA can issue. The Legislature has specifically authorized bond issues far exceeding this limit, and outstanding debt payable from general revenue is limited by Art. 3, Sec. 49-j of the Constitution.

Article 717q, VACS authorizes the board to delegate pricing authority to a smaller subset of the board or its employees. CSHB 1879 would clarify that the board can delegate its authority to staff to negotiate contracts with underwriting firms that market and sell the bonds. The full Board still would have to approve the contract and its terms in an open meeting.

**OPPONENTS
SAY:**

CSHB 1879 would unnecessarily close off public access to information that it currently has about TPFA activities. Public accountability and access to public decision-making should not be infringed solely to expedite an agency’s activities.

The Legislature should not grant exceptions to the Open Meetings laws when current law already provides sufficient flexibility for agencies like TPFA to take immediate action in the public interest. Section 551.045 of the Government Code allows agencies to call emergency meetings if they need to take immediate action because of “a reasonably unforeseeable situation,” such as a sudden drop in interest rates. Notice must be posted only two hours before the emergency meeting is convened to satisfy current law. Two hours’ notice will not unreasonably impact the board’s abilities to obtain the best rates.

Exemptions to the Open Meetings laws are granted only for highly sensitive discussions, such as personnel matters, security, individuals' medical records and discipline of school children. Going to an investment firm to negotiate lower interest rates does not rise to the level of sensitivity required for an exemption. However, granting TPFA and its board an exemption for its individual activities would open the door for other agencies wishing to expedite their decision-making processes without having to comply with the Open Meetings laws.

OTHER
OPPONENTS
SAY:

Because these activities are highly technical and of little interest to the public, the need for public accountability could be achieved simply by tape-recording all activities at the underwriter's office and making these recordings available to the public. However, just because a meeting is of little public interest does not mean that it should be entirely beyond public scrutiny.

NOTES:

The substitute removed a provision in the original bill specifically requiring the board to adhere to the Open Meetings and Open Records laws. The substitute added Section 4, which would authorize the board to delegate authority to negotiate contracts required to issue the bonds.