

**SUBJECT:** Open Meetings Law exception for testimony at legislative hearings

**COMMITTEE:** State Affairs — favorable, without amendment

**VOTE:** 13 ayes — Wolens, Bailey, Brimer, Counts, Craddick, Danburg, Hunter, D. Jones, Longoria, Marchant, McCall, McClendon, Merritt

0 nays

2 absent — S. Turner, Hilbert

**SENATE VOTE:** On final passage, February 7 — 30-0

**WITNESSES:** None

**BACKGROUND:** The Open Meetings Act (Government Code, chapter 551) requires that every regular, special, or called meeting of a governmental body be open to the public. Openness requires notice and a record of the meeting.

In 1999, the Legislature enacted HB 156 by Wolens, eliminating an exception for “closed” briefings that allow governmental bodies to receive information from staff but not to conduct any deliberations. For purposes of the Open Meetings Act, HB 156 defines a meeting as including any called gathering of a governmental body where a quorum would “receive information, give information to, ask questions of, or receive questions from any third person, including an employee.”

In July 2000, an attorney general’s opinion (JC-0248) determined that if a quorum of the members of a state agency board appeared before the Sunset Advisory Commission, the board would have to post its own notice under the Opening Meetings Act for when its members attended the hearing also posted by the commission. The opinion stated that “if a quorum of the members of the governing board of an agency attends the public hearing, and one or more of them testifies before the commission, answers questions, or in any manner supplies information, the agency will itself be found to have held a ‘meeting’ under the Open Meetings Act, and thus be required to post the requisite notice in accordance with the Act’s provisions.”

In November 2000, Opinion JC-0308 determined that the meeting notice requirement also applied when governmental bodies testified before legislative committees. The opinion held that attendance before a legislative committee was analogous to participating in a Sunset Commission meeting. “As a result, when a quorum of the members of a board of a state agency attends a legislative committee hearing, the board is itself subject to the provisions of the Act if one or more members of the board participates in a discussion on matters within the board’s jurisdiction.” This opinion noted that the Open Meetings Law allows “emergency” meetings with two hours notice but that a meeting before a legislative committee would not qualify as the reasonably unforeseeable situation needed to call an emergency meeting.

**DIGEST:**

SB 170 would allow a quorum of a governmental body to attend a legislative committee hearing without posting a separate notice of a meeting if the deliberations of the governmental body’s members at the hearing consisted only of public testimony, comment, and response to questions asked by members of the legislative committee. The exemption would not apply to the legislative committee itself, which would have to post the hearing according to state law and rules of the House or Senate.

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, 2001.

**SUPPORTERS  
SAY:**

SB 170 would create a narrowly drawn exception to the Open Meetings Law to remedy an unforeseen and unintentional consequence of eliminating the exception for staff briefings under HB 156, enacted last session. Testimony before a legislative committee is not a separate meeting for the affected state agency or local governing body. The legislative meeting already has been posted, and the testimony is held in public.

The bill would remedy situations that have arisen this session, such as when small boards had to post “meetings” before testifying or even appearing at legislative committees. For example, the Public Utility Commission (PUC) had to post a “meeting” during hearings of the Joint Committee on Oversight

of Utility Restructuring, and the State Aircraft Pooling Board followed similar posting procedures to appear before Senate Finance Committee and the House Appropriations Committee. If two of the three PUC members appear, a quorum is present, and a meeting must be posted.

Legislative committees often meet on short notice late in the session, and it would not be feasible for state agencies and other local governments to post notice to anticipate the legislative committee's schedule.

OPPONENTS  
SAY:

No apparent opposition.