

- SUBJECT:** Closed meetings for county commissioners in contract negotiations
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 6 ayes — Marchant, Madden, J. Davis, B. Cook, Gattis, Goodman
0 nays
3 absent — Elkins, Lewis, Villarreal
- WITNESSES:** For — Seth Mitchell, Bexar County Commissioners Court; Craig Pardue, Dallas County; Edward Schweningen, Bexar County Commissioners Court and Bexar County District Attorney’s Office; *(Registered, but did not testify:)* Cathy Douglass, Texas Association of School Boards; Jim Jackson, Margaret Keliber, and Kenneth Mayfield, Dallas County Commissioners Court; Donald Lee, Texas Conference of Urban Counties

Against — *(Registered, but did not testify:)* Donnis Baggett, Texas Daily Newspaper Association and Texas Press Association; Kathy Mitchell, Consumers Union; Suzy Woodford, Common Cause
- BACKGROUND:** County commissioners courts are subject to open meetings requirements under Government Code, ch. 551. Sec. 551.072 allows a governmental body to hold a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.
- DIGEST:** CSHB 2004 would allow the commissioners court of a county with a population of 400,000 or more to hold a closed meeting to deliberate business or financial issues relating to a contract under negotiation if, before holding the closed meeting, the commissioners voted unanimously, and their attorney issued a written determination advising, that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

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:**

CSHB 2004 would answer the question of how a county commissioners court may respond when open meetings requirements conflict with the confidentiality of proprietary information. Commissioners courts are accustomed to conducting their business in public, but in certain situations, their ability to negotiate contracts is severely compromised by the conflict between open meetings and confidentiality requirements.

Recently, the Dallas County Commissioners Court faced a situation in which five bidders had responded to a request for proposals, but the court could not discuss aspects of the bid because of concerns about the public disclosure of proprietary information. This made it very difficult for the court to come to a decision. In these situations, taxpayers may be the ultimate losers because of the compromises that must be made in order to reach a decision about which bid to choose.

CSHB 2004 would resolve the conflict by making it clear that in these situations, the commissioners court would have the authority to conduct a closed meeting. By requiring that an attorney specify in writing the reason for the closed meeting and requiring a unanimous decision of the court, the bill would ensure that a commissioners court would not take advantage of this authority.

**OPPONENTS
SAY:**

CSHB 2004 would establish a standard for closed meetings that other governing bodies would be eager to adopt because it would allow them to leave the public out of the competitive bidding process. The issue is the same regardless of how many protective layers the bill would include: with a legal opinion from a staff member and a unanimous vote, a governing body could shield from the public the process of making decisions about how to spend public money.

The standards on which this bill are based, whether the open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person, are included in similar language in statutes governing purchases of property. While this standard may be appropriate in

these limited cases, it is not appropriate in situations where the commissioners court of a large county is making a wide range of decisions about how to spend taxpayer money.

NOTES:

The committee substitute changed the filed version of HB 2004 by specifying that it would apply to a county with a population of 400,000 or more, and by adding the requirements for a unanimous vote of the court and a written determination by the court's attorney that an open meeting would have a detrimental effect on negotiations.

The companion bill, SB 1214 by Van de Putte, has been referred to the Senate State Affairs Committee.