

- SUBJECT:** Requiring open government law training for public officials
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 7 ayes — Swinford, Miller, Gattis, Farrar, J. Keffer, Martinez Fischer, Wong
0 nays
2 absent — B. Cook, Villarreal
- WITNESSES:** For — Wanda Cash, Freedom of Information Foundation; Lonnie Hollingsworth, Texas Classroom Teachers Association; Donald Lee, Texas Conference of Urban Counties; Craig Lonon, City of Cedar Park; David Lowery, Texas Daily Newspaper Association, Texas Press Association, Freedom of Information Foundation of Texas; Brian L. Rose, Harris County District Attorney's Office; Michael Schneider, Texas Association of Broadcasters; Bob Antle; Noe E. Perez
Against — None
On — Brandon Agamalian, City of Fort Worth; Jim Allison, County Judges and Commissioners Association of Texas; Missy (Katherine) Cary, Office of the Attorney General Open Records Division; Nancy Fuller, Office of the Attorney General Opinion Committee; Susan Horton, Texas Municipal League; Jay Johnson, Gene Terry, Texas Association of Counties
- BACKGROUND:** Government Code, chapters 551 and 552 are known, respectively, as the Open Meetings Act and the Public Information Act. The Open Meetings Act generally requires meetings of governmental entities to be open to the public and sets requirements for public notice of both closed and open meetings. The Public Information Act provides for public access to records maintained by state and local governments.
- DIGEST:** CSHB 634 would require public officials to take courses of between one and two hours each on the Open Meetings Act and the Public Information Act within 90 days of being appointed, elected, or assuming responsibilities as members of a governmental body, and to take additional

refresher classes once every two years. Executive officers of governmental entities headed by a single officer and public information officers also would be required to attend the public information class. A public official or executive officer could designate a public information coordinator to take this class in the official's place if the coordinator primarily was responsible for administering the open records responsibilities of the official or governmental body. This training would apply toward training requirements contained in other laws.

The attorney general would be required to provide training or approve courses by other entities. At least one course would have to be available on videotape or another widely available medium at no cost. Upon completion of the course, each person would receive a certificate that would have to be maintained by the governmental body and made available for public inspection. This certificate would be admissible as evidence in a criminal prosecution under the Open Meetings Act or the Public Information Act. However, it would not be prima facie evidence that the defendant knowingly had violated the statute. The failure of one or more members of a governmental body to complete the training would not affect the validity of that body's actions.

The bill specifies that the training would have to include:

- the general background of the legal requirements for open meetings and open records;
- the applicability of open meetings and open records requirements to governmental bodies;
- procedures and requirements regarding quorums, notice, recordkeeping, and complying with a request for information;
- procedures and requirements for holding open and closed meetings;
- the role of the attorney general in open records requests; and
- penalties and other consequences for noncompliance.

The bill would take effect January 1, 2006. Officials who had taken the oath of office or assumed the duties of the office prior to that date would have to complete training before January 1, 2007.

**SUPPORTERS
SAY:**

By educating public officials about open government requirements, HB 634 would reduce the number of unintentional violations of these laws and help to foster the spirit of openness and accountability essential for a vibrant democracy.

Although public officials already are required to comply with open government provisions, often they are not familiar with the specific requirements of these laws. This confusion is evident in the large and increasing number of requests for information to the Attorney General's Office. In 2004, the Attorney General's Open Records Division issued more than 11,000 open records rulings — approximately double the number from 2000 — and answered another 10,000 calls. Because failure to comply with these laws may result in criminal or civil penalties, it is critical that officials understand their responsibilities. Open government training would reduce confusion about these laws, potentially leading to fewer requests for rulings, fewer violations, and fewer lawsuits. Although some officials already may be quite well informed about open government requirements, there is virtually no official who could not learn more. Continuing education requirements would ensure that officials remained up to date on changes to open government laws from new legislation or court decisions.

The training would not be a burden on public officials. The bill requires the availability of at least one free course on video or another common medium, ensuring the existence of a no-cost option that could be completed in the official's town. Other organizations also could offer open government classes with the attorney general's approval, allowing this information to be taught by local groups or incorporated into organizational training. Because this training would count toward other training requirements contained in statute, it would not impose additional training requirements on officials who already take classes covering this information. Public officials also could designate a public information coordinator to take the open records course in the official's place, giving the official a flexible way to comply. Finally, current officials would have ample time to complete the course.

The bill would not create penalties for failing to attend the courses because other consequences already exist that should ensure compliance. The threat of prosecution for violating open records or open meeting requirements likely would be a sufficient incentive for most officials to take the courses. Although completion of the course could be used as evidence in a trial, it could not constitute the sole evidence used to establish criminal intent. Failure to take the course also could be used by a political opponent or the person who appointed the official as a reason not to be reelect or reappoint the official.

OPPONENTS
SAY:

Requiring training in open meetings and open records law would create an additional burden on public officials and make it harder to attract quality candidates to serve in local government, particularly in small towns and rural areas where it already is difficult to fill these positions. Although the committee substitute attempts to address this issue by allowing this training to be counted toward other training requirements, many officials receive training on their specific governmental entities but may not receive training on these statutes. For them, this training would constitute an additional time commitment for an unpaid and often time-consuming position.

OTHER
OPPONENTS
SAY:

CSHB 634 would make no exception for public officials who already have served several terms in office and are well aware of open meetings and open records requirements. These officials, as well as new officials who can demonstrate a solid understanding of these laws, should be excepted from the bill's requirements. Also, rather than requiring continuing education for public officials, it would be easier to keep these officials up to date by mailing briefs from the Attorney General's Office on changes to open government laws.

NOTES:

The committee substitute made a number of changes to the bill as filed, including:

- specifying the length of time of each class;
- extending from 30 days to 90 days the amount of time an official had to complete the courses;
- specifying that the Attorney General would have to ensure the availability of at least one free course on video or another widely available medium;
- clarifying that training would apply toward other training requirements;
- specifying that the validity of an action of a governmental body would not be affected if a member of that body failed to complete the course; and
- specifying that completion of a course would not be prima facie evidence that a person knowingly had violated the law.

The companion bill, SB 286 by Wentworth, passed the Senate by 28-1 (Brimer) on April 18 and was reported favorably, without amendment, by the House State Affairs Committee on May 2, making it eligible to be considered in lieu of HB 634.