

- SUBJECT:** Suspension of certain open government laws during emergencies
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, Smithee, Springer
- 0 nays
- 2 absent — Hernandez, E. Rodriguez
- SENATE VOTE:** On final passage, April 17 — 31-0 on Local and Uncontested Calendar
- WITNESSES:** *On House companion bill, HB 3752:*
For — (*Registered, but did not testify:* Guadalupe Cuellar, City of El Paso; James Grace Jr., Houston First; Aryn James, Travis County Commissioners Court; Karen Kennard, City of Port Arthur, City of Missouri City; Tom Oney, Lower Colorado River Authority; Ender Reed, Harris County Commissioners Court; Clifford Sparks, City of Dallas)
- Against — Fred Hartman, Texas Press Association; (*Registered, but did not testify:* Michael Schneider, Texas Association of Broadcasters)
- On — (*Registered, but did not testify:* Justin Gordon and Jennie Hoelscher, Office of the Attorney General; Kelley Shannon, Freedom of Information Foundation of Texas)
- DIGEST:** SB 494 would revise requirements in Government Code sec. 551.045 related to exceptions to open meetings requirements in certain emergency situations. The bill would allow a governmental body to temporarily suspend requirements in Government Code, ch. 552 related to the handling of public information requests during certain emergencies.
- Open meetings.** SB 494 would decrease from at least two hours to at least one hour the posting time for notice of an emergency meeting or emergency addition to an agenda of a governmental body in an emergency

or when there was an urgent public necessity. The notice would have to concern a meeting to deliberate or take action on the emergency or urgent public necessity, or a supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting that had already posted the statutorily required notice.

A governmental body could not deliberate or take action on a matter at a meeting for which a one-hour notice or supplemental notice was posted other than a matter directly related to responding to the emergency or urgent public necessity identified in the notice or an agenda item listed on a notice of the meeting before the supplemental notice was posted.

The bill would specify conditions under which an emergency meeting or an emergency addition to an agenda would exist to include an imminent threat to public health and safety or a reasonably unforeseeable situation, including:

- fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
- power failure, transportation failure, or interruption of communication facilities;
- epidemic, or
- riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

The bill would specify that the special notice of an emergency meeting or the addition of an emergency item to an agenda of a governmental body given to the news media would have to be given at least one hour before the meeting was convened.

SB 494 would authorize the attorney general to bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the bill's notice requirements by members of a governmental body.

Public information. SB 494 would establish a period during which a governmental body could suspend the requirements of Government Code, ch. 552. The public information requirements would not apply to a governmental body during the suspension period if the governmental body was currently impacted by a catastrophe and complied with the bill.

The bill would define "catastrophe" to mean a condition or occurrence that interfered with the ability of a governmental body to comply with public information requirements, including:

- fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
- power failure, transportation failure, or interruption of communication facilities;
- epidemic; or
- riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

A governmental body that elected to suspend the applicability of the public information requirements would have to submit notice to the Office of the Attorney General that it was currently impacted by a catastrophe and had elected to suspend the requirements during an initial suspension period.

The initial suspension period could not exceed seven consecutive days and would have to occur during the period that began not earlier than the second day before the notice was submitted to the attorney general and ended not later than the seventh day after the notice was submitted.

A governmental body could extend an initial suspension period if it determined that it was still impacted by the catastrophe. The initial suspension period could be extended one time for not more than seven consecutive days that began on the day following the day the initial suspension period ended.

A governmental body would have to provide public notice of the

suspension in a place readily accessible to the public and in each other location the governmental body was required to post open meeting notices. The notice would have to be maintained during the suspension period.

A request for public information received by a governmental body during a suspension period would be considered to have been received on the first business day after the suspension period ended. Requests received before an initial suspension period began would be tolled until the first business day after the suspension period ended.

The attorney general would have to prescribe the form of the notice as specified by the bill. The attorney general would have to continuously post on its website each notice submitted from the date the attorney general received the notice until the first anniversary of that date.

The bill would take effect September 1, 2019, and would apply to a meeting held on or after that date.

**SUPPORTERS
SAY:**

SB 494 would strike a balance between open government requirements and the ability of government officials to respond to natural disasters and other emergencies. Government transparency is critical, but emergency situations create exigent circumstances requiring redirection of resources to save lives.

The bill would allow county commissioners, city councils, and other governmental bodies to more quickly communicate during a disaster by lowering the requirement for posting notice of a meeting to deal with the disaster from two hours to one hour. The news media would be given the one-hour notice, allowing time for them to cover the meeting.

Allowing a governmental body to suspend requirements to respond to public information requests during a catastrophe would help local officials prioritize the safety and well-being of their constituents. Government buildings, equipment, and records can be damaged during a flood or other severe weather event, making it difficult to comply with public

information requests. The bill would create a process for a one-week suspension, which could be followed by a second one-week suspension.

The involvement of the attorney general in monitoring local officials' suspension of public information requirements during an emergency would protect against possible abuses. The attorney general also would have authority to bring an action against a governmental body that violated the one-hour posting requirement.

While some have said the bill would broaden the circumstances under which a meeting could be considered an emergency by listing a variety of possible events, the current statutory language provides more latitude because it does not define what constitutes a "reasonably unforeseeable situation." The listing of events gives context to the magnitude of an event that would trigger the bill's provisions.

**OPPONENTS
SAY:**

SB 494 could hamper the ability of the news media to provide critical information to the public. Local officials have sufficiently broad authority under current law, which allows for a two-hour posting of a public meeting during an emergency. Current law also provides flexibility concerning deadlines for public information requests when government offices are closed.

The bill would provide too much latitude for local officials to declare an emergency for an event like a power outage or threat of violence that would not be on par with a hurricane, major flood, or tornado. The bill should require the attorney general to approve the suspension of public information requirements instead of merely being the recipient of a suspension notice from local officials.