

BILL ANALYSIS

Senate Research Center
86R3523 TJB-D

S.B. 494
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Business & Commerce
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties assert that during disasters, fully complying with the Open Meetings Act and the Public Information Act is challenging and, in some cases, impossible due to extreme circumstances. S.B. 494 allows governmental entities to prioritize the safety and wellbeing of people in need by adjusting the requirements in these Acts during and immediately following disasters. S.B. 494 is not meant to limit government transparency.

As proposed, S.B. 494 amends current law relating to certain procedures applicable to meetings under the open meetings law and the disclosure of public information under the public information law in the event of an emergency, urgent public necessity, or catastrophic event.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 551.045, Government Code, by amending Subsections (a), (b), and (e) and adding Subsection (a-1), as follows:

(a) Provides that in an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the 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 for which notice has been posted in accordance with this subchapter, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened, rather than providing that the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened. Makes nonsubstantive changes.

(a-1) Prohibits a governmental body from deliberating or taking action on a matter at a meeting for which notice or supplemental notice is posted under Subsection (a) other than a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting as provided by Subsection (c) (relating to the requirement of a government body to identify the emergency in the notice), or an agenda item listed on a notice of the meeting before the supplemental notice was posted.

(b) Provides that an emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety, including a threat described by Subdivision (2) if imminent; or

(2) 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.

(e) Deletes existing text requiring that notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection be given to members of the news media as provided by Section 551.047 (Special Notice to News Media of Emergency Meeting or Emergency Addition to Agenda) not later than one hour before the meeting. Makes no further changes to this subsection.

SECTION 2. Amends Section 551.047(c), Government Code, as follows:

(c) Requires the presiding officer or member to give the notice by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened.

SECTION 3. Amends Section 551.142, Government Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes the Texas attorney general (attorney general) to bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of Section 551.045(a-1) by members of a governmental body.

(d) Requires a suit filed by the attorney general under Subsection (c) (relating to bringing an action by mandamus or injunction) to be filed in a district court of Travis County.

SECTION 4. Amends Section 551.143, Government Code, by adding Subsection (c), as follows:

(c) Provides that it is an affirmative defense to prosecution under Subsection (a) (relating to a conspiracy to circumvent this chapter (Open Meetings)) that the member or group of members met in numbers less than a quorum to deliberate or take action on a matter directly related to responding to an emergency or urgent public necessity under Section 551.045 (Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda).

SECTION 5. Amends Subchapter E, Chapter 552, Government Code, by adding Section 552.233, as follows:

Sec. 552.233. TEMPORARY SUSPENSION OF REQUIREMENTS FOR GOVERNMENTAL BODY IMPACTED BY CATASTROPHE. (a) Defines "catastrophe" and "suspension period."

(b) Provides that the requirements of this chapter (Public Information) do not apply to a governmental body during the suspension period determined by the governmental body under Subsections (d) and (e) if the governmental body adopts a resolution finding that the governmental body is currently impacted by a catastrophe, and complies with the requirements of this section.

(c) Requires a governmental body that elects to suspend the applicability of the requirements of this chapter to the governmental body to submit notice to the Office of the Attorney General (OAG) that the governmental body is currently impacted by a catastrophe and has elected to suspend the applicability of those requirements during the initial suspension period determined under Subsection (d). Requires the notice to be on the form prescribed by OAG under Subsection (j).

(d) Authorizes a governmental body to suspend the applicability of the requirements of this chapter to the governmental body for an initial suspension

period. Prohibits the initial suspension period from exceeding seven consecutive days and requires the initial suspension period to occur during the period that begins not earlier than the second day before the date the governmental body submits notice to OAG under Subsection (c), and ends not later than the seventh day after the date the governmental body submits that notice.

(e) Authorizes a governmental body to extend an initial suspension period if the governing body determines that the governing body is still impacted by the catastrophe on which the initial suspension period was based. Authorizes the initial suspension period to be extended one time for not more than seven consecutive days that begin on the day following the day the initial suspension period ends. Requires the governing body to submit notice of the extension to OAG on the form prescribed by the office under Subsection (j).

(f) Requires a governmental body that suspends the applicability of the requirements of this chapter to the governmental body under this section to provide notice to the public of the suspension in a place readily accessible to the public and in each other location the governmental body is required to post a notice under Subchapter C (Notice of Meetings), Chapter 551. Requires the governmental body to maintain the notice of the suspension during the suspension period.

(g) Provides that a request for public information received by a governmental body during a suspension period determined by the governmental body is considered to have been received by the governmental body on the first business day after the date the suspension period ends, notwithstanding another provision of this chapter.

(h) Provides that the requirements of this chapter related to a request for public information received by a governmental body before the date an initial suspension period determined by the governmental body begins are tolled until the first business day after the date the suspension period ends.

(i) Requires OAG to continuously post on the Internet website of the office each notice submitted to the office under this section from the date the office receives the notice until the first anniversary of that date.

(j) Requires OAG to prescribe the form of the notice that a governmental body must submit to the office under Subsections (c) and (e). Requires the notice to require the governmental body to:

(1) provide a copy of the resolution described by Subsection (b)(1);

(2) identify and describe the catastrophe that is the subject of that resolution;

(3) state the date the initial suspension period determined by the governmental body under Subsection (d) begins and the date that period ends;

(4) if the governmental body has determined to extend the initial suspension period under Subsection (e):

(A) state that the governmental body continues to be impacted by the catastrophe identified in Subdivision (2); and

(B) state the date the extension to the initial suspension period begins and the date the period ends; and

(5) provide any other information OAG determines necessary.

SECTION 6. Requires OAG, not later than August 1, 2019, to prescribe the form of the notice required by Section 552.233(j), Government Code, as added by this Act.

SECTION 7. Makes application of Sections 551.045 and 551.047, Government Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2019.