

BILL ANALYSIS

Senate Research Center

S.B. 1640
By: Watson; Bettencourt
State Affairs
3/21/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

On February 27, 2019, the Court of Criminal Appeals concluded that Government Code Section 551.143(a), commonly referred to as the "walking quorum" prohibition in the Texas Open Meetings Act (TOMA), was unconstitutionally vague on its face. The court took particular issue with the phrase "conspires to circumvent this chapter," concluding that the current statute "requires a person to envision actions that are like a violation of TOMA without actually being a violation of TOMA and refrain from engaging in them." Despite the statute's vagueness, its purpose is clear—to prohibit members of a governmental body from skirting TOMA's requirement that deliberations occur in public by meeting in a series of small, private gatherings to avoid a quorum. This kind of prohibition is essential to ensuring governmental bodies continue to conduct public business in the open.

S.B. 1640 addresses the constitutional issues identified by the Court of Criminal Appeals by making the walking quorum prohibition much more specific, precise, and clear. This not only addresses the court's concerns, but it will also help members of governmental bodies to better understand the limits of the law. At the same time, S.B. 1640 restores the original intent and scope of the prohibition so that governmental bodies cannot avoid transparency by conducting a series of small, private conversations.

As proposed, S.B. 1640 amends current law relating to changing the criminal offense of conspiracy to circumvent the open meetings law.

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 551.143(a), Government Code, as follows:

Sec. 551.143. New heading: PROHIBITED SERIES OF COMMUNICATIONS; OFFENSE; PENALTY. (a) Provides that a member, rather than a member or group of members, of a governmental body commits an offense if:

- (1) the member, rather than the member or group of members, knowingly engages in at least one among a series of communications that each occur outside of an open meeting concerning any public business of the governmental body where individual communications are among fewer than a quorum of members; and
- (2) the member knew at the time the member engaged in the series of communications that the series involved or would involve a quorum and would constitute a deliberation in violation of this chapter if the series of communications had occurred in a single instance among every member involved in the series.

Deletes existing text relating to conspiracy to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

SECTION 2. Makes application of this Act prospective. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. Effective date: upon passage or September 1, 2019.