

BILL ANALYSIS

Senate Research Center
87R18371 JON-D

C.S.S.B. 861
By: Paxton
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

On March 16, 2020, the governor temporarily suspended certain open meeting laws in response to COVID-19, which will expire once the disaster declaration is lifted. This allowed greater flexibility for governmental bodies to meet via telephone or video conference in light of public health concerns by limiting face-to-face meetings.

Interested parties believe the added flexibility resulted in increased participation in the open meetings. S.B. 861 makes permanent in statute certain Open Meetings Act provisions that were suspended due to COVID-19 and more clearly allow for virtual meetings.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 861 amends current law relating to remote meetings under the open meetings law.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Information Resources is modified in SECTION 2 (Section 551.127, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 551.125, Government Code, as follows:

Sec. 551.125. New heading: MEETING FROM REMOTE LOCATIONS BY TELEPHONE CONFERENCE CALL. (a) Provides that, except as otherwise provided by Subchapter F (Meetings Using Telephone, Videoconference, or Internet), Chapter 551 (Open Meetings) does not prohibit a governmental body from holding an open or closed meeting from one or more remote locations by telephone conference call, rather than from holding an open or closed meeting by telephone conference call.

(b) Deletes existing text authorizing a meeting by telephone conference call to be held only if an emergency or public necessity exists within the meaning of Section 551.045 (Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda) of this chapter. Makes nonsubstantive changes.

(c) Creates an exception as otherwise provided by Subsection (d).

(d) Requires that the notice of the telephone conference call meeting:

(1) include the statement "Telephone conference call under Section 551.125, Government Code" in lieu of the place of the meeting;

(2) list each physical location where members of the public may listen to or participate in the meeting, including:

(A) any location that is open to the public where a member of the governmental body intends to participate in the meeting; and

(B) any facility provided by the governmental body for members of the public to listen to the meeting or provide testimony or comments;

(3) include access information for an audio feed of the meeting; and

(4) if applicable, include instructions for members of the public to provide testimony or comments to the governmental body, rather than require that the notice of the conference call meeting specify as the location of the meeting the location where meetings of the governmental body are usually held.

(e) Requires that any method of access that is provided to the public for listening to or participating in the telephone conference call meeting be widely available at no cost to the public, including:

(1) a toll-free telephone number; or

(2) a free, widely available computer application that can be installed on a mobile telephone, a computer, an Internet-connected television, or a similar, widely available electronic device.

(f) Creates this subsection from existing text. Requires that each part of the telephone conference call meeting that is required to be open to the public be audible to the public using the access information described by Subsection (d), rather than audible to the public at the location specified in the notice of the meeting, as the location of the meeting and be recorded.

(g) Creates this subsection from existing text. Deletes existing text requiring that the location designated in the notice as the location of the meeting provide two-way communication during the entire telephone conference call meeting.

(h) Requires the governmental body, if the governmental body prepares an agenda packet that would have been distributed to members of the public at a face-to-face meeting, to make the packet available electronically so that members of the public listening remotely can follow along with the meeting.

SECTION 2. Amends Section 551.127, Government Code, as follows:

Sec. 551.127. New heading: MEETING FROM REMOTE LOCATIONS BY VIDEOCONFERENCE CALL. (a) Makes a conforming change to this subsection.

(b) Creates this subsection from existing text. Authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body by means of a videoconference call if the audio feed and, if applicable, video feed of the member's or employee's participation complies with the provisions of this section. Deletes existing text authorizing a member or employee to participate remotely in a meeting by videoconference call if the video and audio feed of the member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provision of this section. Makes a nonsubstantive change.

(c) Creates this subsection from existing text. Requires that a member of a governmental body who participates in a meeting as provided by Subsection (b), rather than Subsection (a-1), be counted as present at the meeting for all purposes. Makes a nonsubstantive change.

(d) Creates this subsection from existing text. Authorizes the governmental body to continue the meeting only if members in a number sufficient to constitute a quorum of the body remain audible and visible to each other and, during the open

portion of the meeting, to the public. Deletes existing text authorizing the governmental body to continue the meeting only if a quorum of the body remains present at the meeting location or, if applicable, continues to participate in a certain meeting.

Makes nonsubstantive changes. Deletes existing text authorizing a meeting to be held by videoconference call only if a quorum of the governmental body is physically present at one location of the meeting, and authorizing a meeting of a state governmental body or a governmental body that extends into three or more counties to be held by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

(e) Creates this subsection from existing text. Provides that a meeting held by videoconference call is subject to the notice requirements applicable to other meetings except as otherwise provided by Subsection (f), rather than applicable to other meetings in addition to the notice requirements prescribed by this section. Makes a nonsubstantive change.

(f) Creates this subsection from existing text. Requires that the notice of a meeting to be held by videoconference call:

(1) include the statement "Videoconference call under Section 551.127 (Videoconference Call), Government Code" in lieu of the place of the meeting;

(2) list each physical location where members of the public may observe or participate in the meeting, including:

(A) any location that is open to the public where a member of the governmental body intends to participate in the meeting; and

(B) any facility provided by the governmental body for members of the public to observe the meeting or provide testimony or comments;

(3) include access information for both audio-only and audiovisual feeds of the meeting; and

(4) if applicable, include instructions for members of the public to provide testimony or comments to the governmental body.

Deletes existing text requiring that the notice of a meeting to be held by videoconference call specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting to be held by videoconference call under Subsection (c) is required to specify as a location of the meeting the location where the member of the governmental body presiding over the meeting will be physically present and specify the intent to have the member of the governmental body presiding over the meeting present at that location. Deletes existing text requiring that the location where the member of the governmental body presiding over the meeting is physically present be open to the public during the open portions of the meeting.

(g) Requires that any method of access that is provided to the public for the purpose of observing or participating in a meeting held under this section be widely available at no cost to the public, including:

(1) a toll-free telephone number; or

(2) a free, widely available computer application that can be installed on a mobile telephone, a computer, an Internet-connected television, or a similar, widely available electronic device.

(h) Creates this subsection from existing text. Requires that each portion of a meeting held by videoconference call that is required to be open to the public be audible, and, if applicable, visible to the public using the access information described by Subsection (f). Deletes existing text requiring that each portion of a videoconference meeting required to be open to the public be visible and audible to the public at the location specified under Subsection (e). Makes conforming and nonsubstantive changes.

(i) Creates this subsection from existing text and makes no further changes.

(j) Creates this subsection from existing text. Requires that the face of each participant in the videoconference call who is participating in the call using video communication, while that participant is speaking, be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public, including at any location described by Subsection (f)(2), rather than to the members of the public in attendance at the physical location described by Subsection (e) and at any other location of the meeting that is open to the public. Deletes existing text requiring that the location specified under Subsection (e), and each remote location from which a member of the governmental body participates, have two-way audio and video communication with each other location during the entire meeting. Makes nonsubstantive changes.

(k) Requires that a participant in the videoconference call using solely audio communication:

(1) while the participant is speaking, be clearly audible to each other participant and, during the open portion of the meeting, to the members of the public, including at any location described by Subsection (f)(2); and

(2) be clearly identified before speaking.

(l) Requires the Texas Department of Information Resources (DIR) by rule to specify minimum technical standards for a meeting held by videoconference call, rather than minimum standards for audio and visual signals at a meeting held by videoconference call. Deletes existing text requiring that the quality of the audio and video signals perceptible at each location of the meeting meet or exceed those standards. Makes a nonsubstantive change.

(m) Creates this subsection from existing text. Requires that the audio and video signals perceptible by members of the public using the access information described under Subsection (f) be of sufficient quality so that members of the public can observe the demeanor or hear the voice, as applicable, of each participant in the open portion of the meeting. Deletes existing text requiring that the audio and visual signals perceptible by members of the public at each location of the meeting described by Subsection (h) be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting. Makes nonsubstantive changes.

(n) Creates this subsection from existing text. Authorizes a governmental body, without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, to allow a member of the public to testify or provide comments at a meeting from a remote location by videoconference call.

(o) Requires a governmental body that is holding a meeting by videoconference call where public testimony is taken or comments are provided to allow a member of the public to testify from a remote location using video or audio communication.

(p) Requires the governmental body, if the governmental body prepares an agenda packet that would have been distributed to members of the public at a face-to-face meeting, to make the packet available electronically so that members of the public observing remotely can follow along with the meeting.

(q) Provides that this subsection applies only to a governmental body located in an area of this state that the state broadband development office designates as eligible under the state broadband development program. Authorizes a member of the governmental body, notwithstanding Subsection (d) or (j), to participate remotely in an open or closed meeting of the governmental body using solely audio communication and requires that the member be counted as present during the meeting provided that:

(1) the identification of each participant in the meeting is clearly stated prior to speaking;

(2) the member is considered absent from any portion of the meeting during which audio communication with the member is lost or disconnected; and

(3) the governmental body may continue the meeting only if members in a number sufficient to constitute a quorum of the body remain audible to each other and, during the open portion of the meeting, to the public.

SECTION 3. Amends Section 551.131(d), Government Code, to make conforming changes.

SECTION 4. Amends Subchapter F, Chapter 551, Government Code, by adding Section 551.132, as follows:

Sec. 551.132. REMOTE PARTICIPATION BY SINGLE MEMBER. (a) Provides that, notwithstanding Section 551.125 or 551.127, Chapter 551 does not prohibit a governmental body with three or more members from holding an open or closed meeting where not more than one member of the body is participating remotely through the use of a telephone or computer application, provided that:

(1) when speaking, the member who is participating remotely is clearly audible to each other member of the body and, during the portion of the meeting that is open, to the public in attendance at the physical location of the meeting;

(2) the member who is participating remotely is able to hear all portions of the meeting; and

(3) the identification of each participant in the meeting is clearly stated prior to speaking.

(b) Requires that a member of a governmental body who participates in a meeting under this section be counted as present at the meeting for all purposes, except that the member is required to be counted as absent from any portion of the meeting during which audio communication with the member is lost or disconnected.

(c) Requires that the meeting, if a problem occurs where a quorum of a governmental body is not participating in a meeting under this section, be

recessed until the problem is resolved. Requires that the meeting, if the problem is not resolved in six hours or less, be adjourned.

SECTION 5. Amends Section 61.06641(i), Education Code, to make conforming changes.

SECTION 6. Amends Section 81.406(b), Health and Safety Code, to authorize the task force to meet telephonically in accordance with Section 551.125, Government Code, rather than Section 551.125(b)(3), Government Code.

SECTION 7. Amends Section 117.056(b), Health and Safety Code, to make conforming changes.

SECTION 8. Amends Section 370.262(a), Transportation Code, to make conforming changes.

SECTION 9. Effective date: upon passage or September 1, 2021.