By:  Paxton S.B. No. 861

(In the Senate - Filed February 26, 2021; March 11, 2021, read first time and referred to Committee on Business & Commerce; April 9, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 1; April 9, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Johnson              X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire                 X

COMMITTEE SUBSTITUTE FOR S.B. No. 861 By:  Hancock

A BILL TO BE ENTITLED

AN ACT

relating to remote meetings under the open meetings law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 551.125, Government Code, is amended to read as follows:

Sec. 551.125.  MEETING FROM REMOTE LOCATIONS BY TELEPHONE CONFERENCE CALL [~~OTHER GOVERNMENTAL BODY~~]. (a) Except as otherwise provided by this subchapter, this chapter does not prohibit a governmental body from holding an open or closed meeting from one or more remote locations by telephone conference call.

(b)  A meeting held by telephone conference call may be held only if:

(1)  [~~an emergency or public necessity exists within the meaning of Section 551.045 of this chapter; and~~

[~~(2)~~]  the convening at one location of a quorum of the governmental body is difficult or impossible; or

(2) [~~(3)~~]  the meeting is held by an advisory board.

(c)  The telephone conference call meeting is subject to the notice requirements applicable to other meetings except as otherwise provided by Subsection (d).

(d)  The notice of the telephone conference call meeting must:

(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 [~~specify as the location of the meeting the location where meetings of the governmental body are usually held~~].

(e)  Any method of access that is provided to the public for listening to or participating in the telephone conference call meeting must 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)  a mobile telephone;

(B)  a computer;

(C)  an Internet-connected television; or

(D)  a similar, widely available electronic device.

(f) [~~(e)~~]  Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public using the access information described by Subsection (d) [~~at the location specified in the notice of the meeting as the location of the meeting~~] and shall be recorded. The recording shall be made available to the public.

(g) [~~(f)~~]  The [~~location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the~~] identification of each party to the telephone conference shall be clearly stated prior to speaking.

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

SECTION 2.  Section 551.127, Government Code, is amended to read as follows:

Sec. 551.127.  MEETING FROM REMOTE LOCATIONS BY VIDEOCONFERENCE CALL. (a) Except as otherwise provided by this section, this chapter does not prohibit a governmental body from holding an open or closed meeting from one or more remote locations by videoconference call.

(b) [~~(a-1)~~]  A member or employee of a governmental body may participate remotely in a meeting of the governmental body by means of a videoconference call if the [~~video and~~] audio feed and, if applicable, video feed of the member's or employee's participation [~~, as applicable, is broadcast live at the meeting and~~] complies with the provisions of this section.

(c) [~~(a-2)~~]  A member of a governmental body who participates in a meeting as provided by Subsection (b) [~~(a-1)~~] shall be counted as present at the meeting for all purposes.

(d) [~~(a-3)~~]  A member of a governmental body who participates in a meeting by videoconference call shall be considered absent from any portion of the meeting during which audio [~~or video~~] communication with the member is lost or disconnected. The governmental body may 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 [~~remains present at the meeting location or, if applicable, continues to participate in a meeting conducted under Subsection (c)~~].

[~~(b)  A meeting may be held by videoconference call only if a quorum of the governmental body is physically present at one location of the meeting, except as provided by Subsection (c).~~

[~~(c)  A meeting of a state governmental body or a governmental body that extends into three or more counties may 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) [~~(d)~~]  A meeting held by videoconference call is subject to the notice requirements applicable to other meetings except as otherwise provided by Subsection (f) [~~in addition to the notice requirements prescribed by this section~~].

(f) [~~(e)~~]  The notice of a meeting to be held by videoconference call must:

(1)  include the statement "Videoconference call under Section 551.127, 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 [~~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) must 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. The location where the member of the governmental body presiding over the meeting is physically present shall be open to the public during the open portions of the meeting~~].

(g)  Any method of access that is provided to the public for the purpose of observing or participating in a meeting held under this section must 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)  a mobile telephone;

(B)  a computer;

(C)  an Internet-connected television; or

(D)  a similar, widely available electronic device.

(h) [~~(f)~~]  Each portion of a meeting held by videoconference call that is required to be open to the public shall be [~~visible and~~] audible and, if applicable, visible to the public using the access information described by Subsection (f) [~~at the location specified under Subsection (e)~~]. If a problem occurs that causes a meeting to no longer be [~~visible and~~] audible to the public [~~at that location~~], the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

(i) [~~(g)~~]  The governmental body shall make at least an audio recording of the meeting. The recording shall be made available to the public.

(j)  [~~(h) The location specified under Subsection (e), and each remote location from which a member of the governmental body participates, shall have two-way audio and video communication with each other location during the entire meeting.~~] The face of each participant in the videoconference call who is participating in the call using video communication, while that participant is speaking, shall 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 [~~in attendance at the physical location described by Subsection (e) and~~] at any [~~other~~] location described by Subsection (f)(2) [~~of the meeting that is open to the public~~].

(k)  A participant in the videoconference call using solely audio communication:

(1)  shall, 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)  must be clearly identified before speaking.

(l) [~~(i)~~]  The Department of Information Resources by rule shall specify minimum technical standards for [~~audio and video signals at~~] a meeting held by videoconference call. [~~The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed those standards.~~]

(m) [~~(j)~~]  The audio and video signals perceptible by members of the public using the access information described under Subsection (f) [~~at each location of the meeting described by Subsection (h)~~] must be of sufficient quality so that members of the public [~~at each location~~] can observe the demeanor or [~~and~~] hear the voice, as applicable, of each participant in the open portion of the meeting.

(n) [~~(k)~~]  Without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify or provide comments at a meeting from a remote location by videoconference call.

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

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

(q)  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. Notwithstanding Subsection (d) or (j), a member of the governmental body may participate remotely in an open or closed meeting of the governmental body using solely audio communication and shall 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.  Section 551.131(d), Government Code, is amended to read as follows:

(d)  A meeting held by telephone conference call must otherwise comply with the procedures under Sections 551.125(c), (d), [~~(e), and~~] (f), and (g).

SECTION 4.  Subchapter F, Chapter 551, Government Code, is amended by adding Section 551.132 to read as follows:

Sec. 551.132.  REMOTE PARTICIPATION BY SINGLE MEMBER. (a) Notwithstanding Section 551.125 or 551.127, this chapter 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)  A member of a governmental body who participates in a meeting under this section shall be counted as present at the meeting for all purposes, except that the member shall be counted as absent from any portion of the meeting during which audio communication with the member is lost or disconnected.

(c)  If a problem occurs where a quorum of a governmental body is not participating in a meeting under this section, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

SECTION 5.  Section 61.06641(i), Education Code, is amended to read as follows:

(i)  Notwithstanding Chapter 551, Government Code, or any other law, the advisory council may meet by telephone conference call, videoconference, or other similar telecommunication method. A meeting held by telephone conference call, videoconference, or other similar telecommunication method is subject to the requirements of Sections 551.125(c), (d), (f), and (g) [~~551.125(c)-(f)~~], Government Code.

SECTION 6.  Section 81.406(b), Health and Safety Code, is amended to read as follows:

(b)  The task force may meet telephonically in accordance with Section 551.125 [~~551.125(b)(3)~~], Government Code.

SECTION 7.  Section 117.056(b), Health and Safety Code, is amended to read as follows:

(b)  To ensure appropriate representation from all areas of this state, the committee may meet by videoconference or telephone conference call. A meeting held by videoconference or telephone conference call under this subsection must comply with the requirements applicable to a telephone conference call under Sections 551.125(c), (d), [~~(e), and~~] (f), and (g), Government Code. Sections 551.125(b) and 551.127, Government Code, do not apply to the committee.

SECTION 8.  Section 370.262(a), Transportation Code, is amended to read as follows:

(a)  Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call. The board may hold an open or closed meeting by telephone conference call subject to the requirements of Sections 551.125(c), (d), (f), and (g) [~~551.125(c)-(f)~~], Government Code, but is not subject to the requirements of Subsection (b) of that section.

SECTION 9.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

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