

## CHAPTER 549

## S.B. No. 168

## AN ACT

relating to the open meetings requirements applicable to governmental bodies; giving private rights of action and access in certain circumstances; defining offenses and providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsections (a) and (b), Section 1, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) "Meeting" means any deliberation between a quorum of members of a governmental body, *or between a quorum of members of a governmental body and any other person*, at which any public business or public policy over which the governmental body has supervision or control is discussed or considered, or at which any formal action is taken. It shall not be construed that the intent of this definition is to prohibit the gathering of members of the governmental body in numbers of a quorum or more for social functions unrelated to the public business which is conducted by the body or for attendance of regional, state, or national conventions or workshops as long as no formal action is taken and *any discussion of public business is incidental to the functions, conventions, or workshops* [~~there is no deliberation of public business which will appear on the agenda of the respective body~~].

(b) "Deliberation" means a verbal exchange *during a meeting* between a quorum of members of a governmental body, *or between a quorum of members of a governmental body and any other person, concerning any issue within the jurisdiction of the governmental body or* [~~attempting to arrive at a decision on~~] any public business.

SECTION 2. Section 2, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (i) and by adding Subsection (r) to read as follows:

(a) Except as otherwise provided in this Act or specifically permitted in the Constitution, every regular, special, or called meeting or session of every governmental body shall be open to the public; and no closed or executive meeting or session of any governmental body for any of the purposes for which closed or executive meetings or sessions are hereinafter authorized shall be held unless a *quorum* of the governmental body has first been convened in open meeting or session for which notice has been given as hereinafter provided and during which open meeting or session the presiding officer has publicly announced that a closed or executive meeting or session will be held and identified the section or sections under this Act authorizing the holding of such closed or executive session.

(i) All or any part of the proceedings in any public meeting of any governmental body as defined hereinabove may be recorded by any person in attendance by means of a tape recorder, *video camera*, or any other means of sonic or visual reproduction. *The governmental body may adopt reasonable rules to maintain order at the meeting place. These rules may include, but shall not be limited to, a determination of the location of such equipment and the manner in which the recording is conducted; provided, however, that the rules do not have the effect of preventing or unreasonably impairing camera coverage or tape recording.*

(r) *Nothing in this Act shall be construed to require a quorum of the members of a governmental body to confer with an employee or employees of the governmental body in an open meeting where such conference is for the sole purpose of receiving information from the employee or employees or to ask questions of the employee or*

*employees; provided, however, that no discussion of public business or agency policy that affects public business shall take place between the members of the governmental body during the conference.*

SECTION 3. Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), is amended by adding Section 2A to read as follows:

*Sec. 2A. (a) For each of its meetings that is closed to the public, except for consultations in accordance with Subsection (e) of Section 2 of this Act, a governmental body shall keep a certified agenda of the proceedings.*

*(b) The presiding officer must certify that the agenda kept under Subsection (a) of this section is a true and correct record of the proceedings.*

*(c) The certified agenda shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time. The certified agenda shall state the subject matter of each deliberation and shall include a record of any further action taken. The certified agenda of closed or executive sessions shall be made available for public inspection and copying only upon court order in an action brought under this Act.*

*(d) In lieu of the requirements for maintaining a certified agenda as provided in Subsections (a), (b), and (c) of this section, a governmental body may make a tape recording of the proceedings which shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time.*

*(e) The certified agenda or tape shall be available for in camera inspection by the judge of a district court if litigation has been initiated involving an alleged violation of this Act. The court upon entry of a final judgment may admit the certified agenda or tape into evidence in whole or in part. The court may grant equitable or legal relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was not authorized to be closed under this Act.*

*(f) The governmental body shall preserve the certified agenda or tape for at least two years after the date of the meeting. If an action involving the meeting is commenced during the required preservation period, the certified agenda or tape shall be preserved pending the outcome of the action.*

*(g) No member of a governmental body shall participate in a meeting of the governmental body closed to the public knowing that a certified agenda of the meeting is not being kept or tape recording is not being made. A person who violates this subsection commits a Class C misdemeanor.*

*(h) No individual, corporation, or partnership shall, without lawful authority, knowingly make public the certified agenda or tape recording of a meeting or that portion of a meeting that was closed under authority of this Act. A person who violates this subsection shall be liable to any person injured or damaged thereby for:*

*(1) actual damages including but not limited to lost wages, damages due to defamation of character, or mental or other emotional distress or other personal injury or damages;*

*(2) costs of court;*

*(3) reasonable attorney's fees; and*

*(4) exemplary or punitive damages in the discretion of the trier of fact.*

*(i) An offense under Subsection (h) of this section is a Class B misdemeanor.*

*(j) It shall be a defense to prosecution under Subsection (h) of this section and an affirmative defense in any civil action arising under Subsection (h) that the person releasing the certified agenda or tape thereof had good reason to believe the release was lawful or that the release was the result of a mistake of fact concerning the nature or content of the certified agenda or tape.*

SECTION 4. Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), is amended by amending Section 3 and by adding Section 3B to read as follows:

Sec. 3. (a) Any interested person, including bona fide members of the news media, may commence an action either by mandamus or injunction for the purpose of stopping, ~~or~~ preventing, or reversing violations or threatened violations of this Act by members of a governing body. *An action taken by a governmental body in violation of this Act is avoidable.*

(b) *In an action brought under this section, a court may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion, the court shall consider whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.*

Sec. 3B. *A governmental body shall prepare and retain minutes or make a tape recording of each of its open meetings. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the governmental body. The minutes or tapes prepared under this section are public records and shall be made available for public inspection and copying on request to the chief administrative officer of the governmental body or to any other official designated by the chief administrative officer.*

SECTION 5. Subsections (a) and (h), Section 3A, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting as prescribed by this section~~, and any action taken by a governmental body at a meeting on a subject which was not stated on the agenda in the notice posted for such meeting is avoidable~~. The requirement for notice prescribed by this section does not apply to matters about which specific factual information or a recitation of existing policy is furnished in response to an inquiry made at such meeting, whether such inquiry is made by a member of the general public or by a member of the governmental body. Any deliberation, discussion, or decision with respect to the subject about which inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting of such governmental body for which notice has been provided in compliance with this Act.

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Industrial Accident Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be *clearly identified* ~~expressed~~ in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. *Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice taking at face value the reason for the emergency as stated by the governmental body. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body.* Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph

to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

SECTION 6. Subsections (a) and (b), Section 4, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Any member of a governing body who *knowingly* [~~wilfully~~] calls or aids in calling or organizing a special or called meeting or session which is closed to the public, or who *knowingly* [~~wilfully~~] closes or aids in closing a regular meeting or session to the public, or who *knowingly* [~~wilfully~~] participates in a regular, special, or called meeting or session which is closed to the public where a closed meeting is not permitted by the provisions of this Act, shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment in the county jail for not less than one month nor more than six months, or both.

(b) Any member or group of members of a governing body who *knowingly conspires* [~~conspire~~] to circumvent the provisions of this Act by meeting in numbers less than a quorum for the purpose of secret deliberations in contravention of this Act shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment in the county jail for not less than one month nor more than six months or both.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 15, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 31, 1987, by a viva-voce vote.

Passed the House, with amendment, on May 29, 1987, by a non-record vote.

Approved June 18, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.