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Open Government Update

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Open Government Update: Maintaining Transparency in the Time of Coronavirus

As it happens nearly every session, the 86th Texas Legislature enacted several important changes to the Open Meetings Act, Texas Government Code Chapter 551 (OMA) and the Public Information Act, Texas Government Code Chapter 552 (PIA), many of which took effect on September 1, 2019, and January 1, 2020. Soon after, the world faced an entirely unusual challenge that necessitated a public health response that affected nearly every area of life and halted business as usual, including the business and usual functioning of governmental bodies. On March 13, 2020, Texas Governor Greg Abbott issued a declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas.¹ This paper explores some of the usual legislative updates enacted in the PIA and OMA, the unusual suspensions and alterations of the same acts due to COVID-19, and some of the problems faced by governmental bodies attempting to maintain transparency in a quarantined state.

I. Updates from the 86th Legislative Session²

A. Amendments to the Open Meetings Act

i. H.B. 2840

Through House Bill 2840, which became effective September 1, 2019, the Legislature created a right for members of the public to address the governing body of a political subdivision during an open meeting. *See* H.B. 2840, 86th Leg., R.S., codified at Tex. Gov't Code § 551.007. Prior to this bill, a member of the public had a right to attend a public meeting, but did not have a right to actively participate or offer comments during the meeting. *See* Tex. Att'y Gen. Op. No. LO-96-111.

Historically, many governmental bodies provided an opportunity to for public comment despite not being required to do so by law. However, in expressly cementing that right, the

¹ Governor Greg Abbott's March 13, 2020 Disaster Declaration, available at https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf.

² The following update is a selection of the legislation passed last session, not a complete list. For comprehensive guides to both acts, see the Texas Attorney General's 2020 Public Information Act Handbook and 2020 Open Meetings Act Handbook.

language of the bill created some question as to what exactly the public was now entitled to – specifically, whether a governmental body must provide an opportunity for public comment both at a designated public comment period and during each agenda item. The text of the bill reads, in part:

(b) A governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body *to address the body regarding the item at the meeting before or during the body's consideration of the item.*

(c) A governmental body may adopt reasonable rules regarding the public's right to address the body under this section, including rules that limit the total amount of time that a member of the public may address the body on a given item.

Tex. Gov't Code 552.007(b-c) (emphasis added).

In light of the confusion, the Blanco County Attorney's Office submitted a request for an opinion to the Attorney General inquiring as to whether a governmental entity (1) can hold one public comment period at the beginning of an open meeting to address all agenda items (rather than having to hold public comments during discussion of each individual agenda item), and (2) whether the entity can limit the total amount of time given to an individual to address all agenda items in their public comments. *See* RQ-0313-KP. In the example presented, the governing body already allowed public comment at its meetings, and pursuant to its rules had a cap of three minutes per public speaker. Under the newly enacted law, a constituent wished to speak for three minutes on each agenda item he wished to comment upon, which in that case would amount to 51 minutes of comment time for one member of the public.

On April 22, 2020, the Attorney General issued Opinion No. KP-0300, clarifying that a governmental body must permit public comment on an item on the agenda for an open meeting either before or during the body's consideration of the item, but not both. The requirement can be satisfied with a single public comment period at the beginning of the meeting. Further, a governmental body still may adopt rules capping the total amount of time a member of the public may address all items on the agenda, provided the rule is reasonable. *See generally*, Gov't Code § 551.007(c); Tex. Att'y Gen. Op. Nos. KP-300 (2020), H-188 (1973) at 2.

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