

Texas Open Meetings Act

Texas Task Force on Infectious Disease Preparedness and Response

October 19, 2020

Barbara L. Klein, JD, EMPL

General Counsel, Texas Department of State Health Services



Open Meetings Act (OMA), Texas Government Code Chapter 551:

- The OMA requires a governmental body to hold all meetings in public, in an accessible location [Texas Government Code §551.002 (abbreviated Tex. Gov't Code §551.002)].



Training Requirements (Tex. Gov't Code §551.005)

1. The Department of State Health Services (DSHS) requires all committee members to comply with the OMA training requirements.
2. Training must last between one to two hours.
3. Training must include:
 - a) General background of the legal requirements.
 - b) Applicability of the OMA to governmental bodies.
 - c) Procedures and requirements regarding quorums, notice, and recordkeeping requirements.
 - d) Procedures and requirements for holding an open meetings and a closed meeting.
 - e) Penalties and other consequences for failing to comply with the OMA.



Training Requirements (Tex. Gov't Code §551.005)

4. The DSHS maintains the completion certificates in our files.
5. DSHS recommends all committee members take the training every five years as the Act is frequently amended by the Texas Legislature.



General Background

- First adopted in 1967 and substantially revised in 1973 after a major scandal involving high ranking state officials.
- Adopted to make governmental decision-making transparent and promote governmental body accountability.
- Also encourages members of the public to be informed about and sometimes participate in governmental decisions.



Why is this committee subject to the OMA?

- The Texas Task Force on Infectious Diseases Preparedness and Response was created by the legislature to safeguard and protect the health and well-being of Texans from the spread of infectious diseases [Tex. Health and Safety Code, §§81.401-409].



Why is this committee subject to the OMA?

- The Legislature has charged the Task Force with providing expert, evidence-based assessments, protocols, and recommendations related to state responses to infectious diseases, and, serving as a reliable and transparent source of information and education for Texas leadership and citizens. In the enabling statute, the legislature indicated the Task Force is subject to the requirements of the Open Meetings Act with some notable exceptions.



Meeting Requirements

- Under the terms of the OMA, a meeting is:
 - A deliberation involving a quorum where public business is discussed, and formal action taken and at which the members receive information from, give information to, ask questions of, or receive questions from a third person, about the body's public business [Texas Government Code §551.001(4)].
- Quorum. A majority of the body's members constitutes a quorum [Tex. Gov't Code §551.001(6) (defining "quorum"); 1 Tex. Administrative Code §351.801(d)].



Meeting Requirements

- Deliberation: an exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body [Tex. Gov't Code §551.001(2), *as amended by* Senate Bill 1640, §1, 86th Legislature, Regular Session (2019)].
- Gatherings of less than a quorum are not subject to the OMA but be careful of a daisy chain [Tex. Gov't Code §551.143].



Meeting Requirements

- Gatherings of a quorum that may not be a meeting if no deliberation or any discussion complies with OMA requirements:
 - Social function [Tex. Gov't Code §551.001(4)]
 - Regional, state, or national convention or workshop, ceremonial event, or press conference [Tex. Gov't Code §551.001(4)]
 - Candidate forum, appearance, or debate [Tex. Gov't Code §551.001(4)]
 - Legislative committee or legislative agency meeting or hearing [Tex. Gov't Code §551.0035]



Meeting Requirements

- The Task Force is specifically authorized to conduct meetings via teleconference [Tex. Health and Safety Code §81.406].
- The Task Force may meet via videoconference in compliance with the Act.



Notice Requirements

- **Substance of the notice:** The OMA requires a governmental body to notify the public in writing that a meeting will occur. The written notice must include the following:
 - Date of the meeting.
 - Hour of the meeting.
 - Place at which the meeting will be held.
 - Subject or subjects to be discussed at the meeting, in appropriate detail [Tex. Gov't Code §551.041].



Notice Requirements

- **Posting:**

- On the Secretary of State's website [Tex. Gov't Code §551.044(a)] and on DSHS' website [Tex. Gov't Code §531.0165(d)].
- At least seven days before the date of the meeting, not counting the day of posting or the day of the meeting [1 Tex. Administrative Code [§91.21\(a\)\(1\)](#)].
- In emergency circumstances, a governmental body may post notice or post a supplement to an already-posted notice one hour before the meeting [Tex. Gov't Code §551.045(a)]. Circumstances constituting an "emergency" or "urgent public necessity" are strictly limited: An emergency or an urgent public necessity exists *only* if a governmental body must take immediate action because of: (1) an imminent threat to public health and safety; or (2) a reasonably unforeseeable situation [Tex. Gov't Code §551.045(b)].



Open Portion of Meeting

- Quorum must convene and adjourn in the open [Tex. Gov't Code §551.101].
- Any action, decision, or vote must be in the open [Tex. Gov't Code §551.102].
- If public comment is taken, the governmental body may not restrict on discriminatory grounds.
- Members may not discuss items not listed on the agenda. If a member of the public raises an issue not included in the posted notice, the governmental body may respond by:
 - Stating specific factual information;
 - Reciting existing policy; or
 - Telling the speaker that the subject will be on a future agenda [Tex. Gov't Code §551.042].
- Minutes must be kept or a recording made [Tex. Gov't Code §551.021]. The minutes or recording are/is subject to release under the Public Information Act [Tex. Gov't Code §551.022].



Open Portion of Meeting

- **For all DSHS committees:**
 - Meetings must be broadcast live over the Internet [Tex. Gov't Code §531.0165(b). Section 4 of the bill enacting section 531.0165 states that the statute applies only to meetings held on or after September 1, 2023, but DSHS is coming into compliance early where possible. See House Bill 630, §4, 85th Legislature, Regular Session (2017)].
 - Advisory committee meeting recordings must be archived on the Health and Human Services Commission's website and available no later than seven days after the date of the meeting. The archived recording must be maintained on the website for two years [Tex. Gov't Code §531.0165(b), (c)].



Closed Portion of Meeting

- A governmental body may meet in a closed meeting only if a statute *expressly* authorizes the closure. Examples:
 - Private consultation with attorney on a matter in which the attorney's professional duty conflicts with the OMA [Tex. Gov't Code §551.071].
 - To discuss matters that are confidential by state or federal law or to ensure public security or law enforcement needs [Tex. Health and Safety Code §81.406].
- The members who are present must convene in the open [Tex. Gov't Code §551.101].
- Before the governmental body goes into a closed meeting, the presiding officer must announce that the body will go into a closed meeting and must announce the law or laws that allow the closure [Tex. Gov't Code §551.101].



Closed Portion of Meeting

- The governmental body may not take a final action, decision, or vote [Tex. Gov't Code §551.102].
- The governmental body must keep a certified agenda or recording of each closed meeting [Tex. Gov't Code §551.103]. The certified agenda or recording is not available to the public under the Public Information Act [Tex. Gov't Code §551.104].
- Only members of the governmental body have a right to attend. Other individuals may be admitted, but the governmental body should carefully consider whether the individual would destroy the purpose of the closed meeting and whether the presence of "other individuals" is necessary [Tex. Attorney General Opinion No. GA-0277 (2004) and opinions cited therein].



Penalties for Violations

- If the advisory committee is subject to the Open Meetings Act by statute, criminal and civil penalties are possible [Tex. Gov't Code §§551.143 (conspiracy to circumvent chapter), 551.144 (closed meeting), 551.145 (closed meeting without certified agenda or recording), 551.146 (disclosure of certified agenda or recording of closed meeting)].
 - Possible fines between \$100 and \$500, and/or,
 - Confinement in jail from 1 to 6 months.



Note

- This presentation is tailored for the Texas Task Force on Infectious Diseases Preparedness and Response. Other governmental bodies may have different requirements. This overview is limited and does not discuss all of the requirements of the Open Meetings Act. For more detail or specific questions please contact Barbara L. Klein, General Counsel, Department of State Health Services.



Thank you!

Texas Open Meetings Act

Barbara L. Klein, JD, EMPL

General Counsel, Texas Department of State Health Services