

## **BILL ANALYSIS**

Senate Research Center

S.B. 1640  
By: Watson; Bettencourt  
State Affairs  
6/14/2019  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

On February 27, 2019, the Texas Court of Criminal Appeals (CCA) concluded that Government Code Section 551.143(a), commonly referred to as the "walking quorum" prohibition in the Texas Open Meetings Act (TOMA), was unconstitutionally vague on its face. The court took particular issue with the phrase "conspires to circumvent this chapter," concluding that the current statute "requires a person to envision actions that are like a violation of TOMA without actually being a violation of TOMA and refrain from engaging in them." Despite the statute's vagueness, its purpose is clear—to prohibit members of a governmental body from skirting TOMA's requirement that deliberations occur in public by meeting in a series of small, private gatherings to avoid a quorum. This kind of prohibition is essential to ensuring governmental bodies continue to conduct public business in the open.

S.B. 1640 addresses the constitutional issues identified by CCA by making the walking quorum prohibition much more specific, precise, and clear. This not only addresses the court's concerns, but it will also help members of governmental bodies to better understand the limits of the law. At the same time, S.B. 1640 restores the original intent and scope of the prohibition so that governmental bodies cannot avoid transparency by conducting a series of small, private conversations. (Original Author's/Sponsor's Statement of Intent)

S.B. 1640 amends current law relating to the open meetings law.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 551.001(2), Government Code, to redefine "deliberation" as a verbal or written 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, rather than as a verbal exchange during a meeting between a quorum or governmental body, or between a quorum of a government body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.

SECTION 2. Amends the heading to Section 551.143, Governmental Code, to read as follows:

Sec. 551.143. PROHIBITED SERIES OF COMMUNICATIONS; OFFENSE; PENALTY.

SECTION 3. Amends Section 551.143(a), Government Code, as follows:

(a) Provides that a member, rather than a member or group of members, of a governmental body commits an offense if the member:

(1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter (Open Meetings) and that concern an issue within the jurisdiction of the

governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and

(2) knew at the time the member engaged in the communication that the series of communications:

(A) involved or would involve a quorum; and

(B) would constitute a deliberation once a quorum of members engaged in the series of communications.

Makes a conforming change to Subdivision (1). Deletes existing text relating to conspiracy to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

SECTION 4. Makes application of Section 551.143, Government Code, as amended by this Act, prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. Effective date: upon passage or September 1, 2019.