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| | <p>A board may act only by majority vote of the members present at a meeting held in compliance with Government Code Chapter 551, at which a quorum of the board is present and voting. A majority vote is generally determined from a majority of those present and voting, excluding abstentions, assuming a quorum is present. <i>Education Code 11.051(a-1); Atty. Gen. Op. GA-689 (2009)</i></p> |
| Definitions | |
| Meeting | <p>“Meeting” means a deliberation among a quorum of the board, or between a quorum of the board and another person, during which public business or public policy over which the board has supervision or control is discussed or considered, or during which the board takes formal action. “Meeting” also means a gathering:</p> <ol style="list-style-type: none">1. That is conducted by the board or for which the board is responsible;2. At which a quorum of members of the board is present;3. That has been called by the board; and4. At which board members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the ESC, about the public business or public policy over which the board has supervision or control. <p><i>Gov’t Code 551.001(4)</i></p> <p>A communication or exchange of information between board members about public business or public policy over which the board has supervision or control does not constitute a meeting or deliberation for purposes of the Texas Open Meetings Act if the communication is posted to an online message board or similar internet application in compliance with Government Code 551.006. [See BBI(LEGAL)] <i>Gov’t Code 551.006</i></p> |
| Deliberation | <p>“Deliberation” means a verbal or written exchange between a quorum of the board, or between a quorum of the board and another person, concerning an issue within the jurisdiction of the board. <i>Gov’t Code 551.001(2)</i></p> |
| Recording | <p>“Recording” means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed. <i>Gov’t Code 551.001(7)</i></p> |
| Videoconference Call | <p>“Videoconference call” means a communication conducted between two or more persons in which one or more of the partici-</p> |

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| | <p>pants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the internet. <i>Gov't Code 551.001(8)</i></p> |
| Social Function or Convention | <p>The term "meeting" does not include the gathering of a quorum of the board at a social function unrelated to the public business that is conducted by the board, or the attendance by a quorum of the board at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference. <i>Gov't Code 551.001(4)</i></p> |
| Legislative Committee or Agency Meeting | <p>The attendance by a quorum of the board at a meeting of a committee or agency of the legislature is not considered to be a meeting of the board if the deliberations at the meeting by the board members consist only of publicly testifying, publicly commenting, and publicly responding to a question asked by a member of the legislative committee or agency. <i>Gov't Code 551.0035(b)</i></p> |
| Executive Director Participation | <p>The board shall provide the executive director an opportunity to present at a meeting an oral or written recommendation to the board on any item that is voted on by the board at the meeting. <i>Education Code 11.051(a-1)</i></p> |
| Open to Public | <p>Every meeting of the board shall be open to the public. The board may, however, exclude a witness from a hearing during the examination of another witness in a matter being investigated and may enter into a closed meeting, as provided by law. [See BDB and BEC] <i>Gov't Code 551.002, .084, Ch. 551, Subch. D</i></p> |
| Recording | <p>All or any part of an open meeting may be recorded by any person in attendance by means of a recorder, video camera, or any other means of aural or visual reproduction. The board may adopt reasonable rules to maintain order at a meeting, including rules related to the location of recording equipment and the manner in which the recording is conducted. These rules shall not prevent or unreasonably impair a person from exercising the right to record a meeting that is open to the public. <i>Gov't Code 551.023</i></p> |
| Minutes | <p>The board shall prepare and keep minutes or make a recording of each open meeting. The minutes shall state the subject matter of each deliberation and indicate each vote, order, decision, or other action taken. <i>Gov't Code 551.021</i></p> |
| Availability | <p>The minutes and recording are public records and shall be available for public inspection and copying on request to the executive director or designee. <i>Gov't Code 551.022</i></p> |

Notice Required

The board shall give written notice of the date, hour, place, and subject(s) of each meeting it holds. *Gov't Code 551.041*

Notice to Secretary of State, County Clerk, Website

An ESC that extends into four or more counties shall provide notice of each meeting to the secretary of state and either provide notice to the county clerk of the county in which the administrative office of the ESC is located or post notice on the ESC's internet website.

An ESC that extends into fewer than four counties shall either provide notice of each meeting to the county clerk of each county in which the ESC is located or post notice on the ESC's internet website.

Gov't Code 551.053(a), 054(a)

Continued Meeting

If the board recesses an open meeting to the following regular business day, the board is not required to post notice of the continued meeting if the action is taken in good faith and not to circumvent Government Code Chapter 551. If an open meeting is continued to the following regular business day and, on that following day, the board continues the meeting to another day, the board must give the required written notice of the meeting continued to that other day. *Gov't Code 551.0411(a)*

Inquiry During Meeting

If a member of the public or of the board inquires at a meeting about a subject for which notice has not been given, the notice provisions do not apply to a statement of specific factual information given in response to the inquiry or a recitation of existing policy in response to the inquiry. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda of a subsequent meeting. *Gov't Code 551.042*

Time of Notice and Accessibility

Notice of a board meeting shall be posted on a bulletin board at a place convenient to the public in the central administration office for at least 72 hours before the scheduled time of the meeting. That notice or a notice posted at another board-designated place shall at all times be readily accessible to the public for at least 72 hours before the scheduled time of the meeting. *Gov't Code 551.043(a), .051; City of San Antonio v. Fourth Court of Appeals, 820 S.W. 2d 762 (Tex. 1991)*

If the ESC is required to post notice of a meeting on the internet, the ESC satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the internet during the prescribed period.

The ESC must still comply with the duty to physically post the notice in the central administration office and if the ESC makes a

good-faith attempt to continuously post the notice on the internet during the prescribed period, the physically posted notice must be readily accessible to the general public during normal business hours.

Gov't Code 551.043(b)

Internet Posting

If the ESC maintains an internet website, in addition to the other place at which notice is required to be posted, the board must also concurrently post notice of a meeting on the internet website.

An ESC that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more must also, concurrently with the notice, post on the ESC's internet website the agenda for a board meeting if the agenda differs from the posted notice.

The validity of a posting the ESC made in a good-faith attempt to comply with the internet posting requirements is not affected by a failure to comply that is due to a technical problem beyond the control of the ESC.

Gov't Code 551.056

**Specificity of
Agenda / Notice**

Agendas for all meetings shall be sufficiently specific to inform the public of the subjects to be deliberated at the meeting, setting out any special or unusual matters to be considered or any matter in which the public has a particular interest. Deliberations or actions pertaining to the executive director are of particular public interest, and notice of those subjects must be worded with such clarity that the public will understand what the board proposes to discuss or accomplish. *Cox Enterprises, Inc. v. Austin Indep. Sch. Dist.*, 706 S.W.2d 956 (Tex. 1986); *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied); *Atty. Gen. Ops. M-494 (1969), H-419 (1974), H-662 (1975), H-1045 (1977)*

The terms "employee briefing" or "staff briefing" do not give adequate notice of the subject matter to be presented to the board by employees or staff members. *Atty. Gen. Op. JC-169 (2000)*

The subject of a report or update by ESC staff or a member of the board must be set out in the notice in a manner that informs a reader about the subjects to be addressed. *Atty. Gen. Op. GA-668 (2008)*

**Emergency Meeting
or Emergency
Addition to Agenda**

In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public

necessity as an item to the agenda for a meeting for which notice has been posted in accordance with the Open Meetings Act, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened.

A board may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted as described above other than:

1. A matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting; or
2. An agenda item listed on a notice of the meeting before the supplemental notice was posted.

An emergency or urgent public necessity exists only if immediate action is required because of:

1. An imminent threat to public health and safety, including a threat described in item 2, below, if imminent; or
2. A reasonably unforeseeable situation; including:
 - a. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snowstorm;
 - b. Power failure, transportation failure, or interruption of communication facilities;
 - c. Epidemic; or
 - d. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

The board shall clearly identify the emergency or urgent public necessity in the notice of an emergency meeting or supplemental notice.

The sudden relocation of a large number of residents from the area of a declared disaster to the ESC's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation.

Gov't Code 551.045

Catastrophe

A board prevented from convening an open meeting that was otherwise properly posted under Government Code Section 551.041 because of a catastrophe may convene the meeting in a convenient location within 72 hours pursuant to Government Code Section 551.045 if the action is taken in good faith and not to circumvent Government Code Chapter 551. If the board is unable to convene

the open meeting within those 72 hours, the board may subsequently convene the meeting only if the board gives the required written notice of the meeting.

“Catastrophe” means a condition or occurrence that interferes physically with the ability of the board to conduct a meeting, including:

1. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snowstorm;
2. Power failure, transportation failure, or interruption of communication facilities;
3. Epidemic; or
4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

Gov’t Code 551.0411(b), (c)

Special Notice to News Media

The ESC shall provide special notice of each meeting by telephone, facsimile transmission, or electronic mail to any news media that has requested special notice and agreed to reimburse the ESC for the cost of providing the special notice. *Gov’t Code 551.052*

The board president or board member who calls an emergency meeting or adds an emergency item to the agenda of a board meeting shall notify the news media of the emergency meeting or emergency item. The president or member is required to notify only those members of the news media that have previously filed a request containing all pertinent information for the special notice and agreed to reimburse the board for the cost of providing the special notice. The board president or member shall give the notice by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened. *Gov’t Code 551.047*

Quorum

A majority of the board (e.g., four members of a seven-member board or five members of a nine-member board, regardless of the number of vacancies) constitutes a quorum for meetings of the board. *Gov’t Code 551.001(6), 311.013(b)*

Disaster

Notwithstanding any other law, a quorum is not required for the board to act if:

1. The ESC’s jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and

2. A majority of the members of the board are unable to be present at a board meeting as a result of the disaster.

Gov't Code 418.1102

Secret Ballot

No vote shall be taken by secret ballot. *Atty. Gen. Op. H-1163 (1978)*

Meeting by Telephone Conference Call

A board may hold a meeting by telephone conference call if an emergency or public necessity exists within the meaning of Government Code 551.045 and the convening at one location of a quorum of the board is difficult or impossible, or if the meeting is held by an advisory board.

Each part of the telephone conference call meeting that is required to be open shall be audible to the public at the location specified in the notice of the meeting. 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.

Notice

The telephone conference call meeting is subject to the notice requirements applicable to other meetings. The notice must specify as the location of the meeting, the location where meetings of the governmental body are usually held.

Recording

The conference call meeting shall be recorded and made available to the public.

Gov't Code 551.125

Meeting by Videoconference Call

A board member or ESC employee may participate remotely in a board meeting by means of a videoconference call if the video and audio feed of the board member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions below. A board member who participates by videoconference call shall be counted as present at the meeting for all purposes.

A meeting of the board may be held by videoconference call only if:

1. The board makes available to the public at least one suitable physical space located in the ESC's geographic jurisdiction that is equipped with videoconference equipment that provides an audio and video display, as well as a camera and microphone by which a member of the public can provide testimony or otherwise actively participate in the meeting;
2. The board member presiding over the meeting is present at the physical space; and

3. Any member of the public present at that physical space is provided the opportunity to participate in the meeting by means of a videoconference call in the same manner as a person who is physically present at a board meeting that is not conducted by videoconference call.

The location where the presiding officer is physically present shall be open to the public during the open portions of the meeting.

Gov't Code 551.001(7), .127

Notice

A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements applicable to meetings by videoconference call.

The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where the presiding officer will be physically present and specify the intent to have the presiding officer present at that location.

Quality of Audio and Video Signals

Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the location specified in the notice. 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.

The physical location specified in the notice, and each remote location from which a member of the board participates, shall have two-way audio and video communication with each member who is participating by videoconference call during the entire meeting. The face of each participant in the videoconference call, 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 in attendance at the physical location described by the notice and at any other location of the meeting that is open to the public.

The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed standards specified by the Department of Information Resources. The audio and video signals perceptible by members of the public at each location of the meeting described by the board notice and at any other location of the meeting that is open to the public must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

BOARD MEETINGS

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| Recording | The board shall make at least an audio recording of the meeting. The recording shall be made available to the public. |
| Remote Participation by the Public | The board may allow a member of the public to testify at a meeting from a remote location by videoconference call even if a board member is not participating in the meeting from a remote location. <i>Gov't Code 551.127; 1 TAC 209.10-.11</i> |
| Internet Broadcast | The board may broadcast an open meeting over the internet. If the board broadcasts a meeting over the internet, it shall establish an internet site and provide access to the broadcast from that site. The board shall provide on the internet site the same notice of the meeting, within the time required for posting that notice, that the board is required to post under the Open Meetings Act. <i>Gov't Code 551.128(b), (c)</i> |
| Attorney Consultation | The board may use a telephone conference call, videoconference call, or communications over the internet to conduct a public consultation with its attorney in an open meeting of the board or a private consultation with its attorney in a closed meeting of the board. [See BEC] Each part of a public consultation by the board with its attorney in an open meeting must be audible to the public at the location specified in the notice of the meeting as the location of the meeting. |
| Exception | This does not apply to a consultation with an attorney who is an employee of the ESC. An attorney who receives compensation for legal services performed, from which employment taxes are deducted by the ESC, is an employee of the ESC. <i>Gov't Code 551.129</i> |
| Hearing-Impaired Persons | In a proceeding before the board in which the legal rights, duties, or privileges of a party are to be determined by the board after an adjudicative hearing, the board shall supply for a party who is deaf or hearing impaired an interpreter who has qualifications approved by the Texas Department of Assistive and Rehabilitative Services. For purposes of this requirement, "deaf or hearing impaired" means having a hearing impairment, regardless of the existence of a speech impairment, that inhibits comprehension of a proceeding or inhibits communication with others. <i>Gov't Code 558.001, .003</i> |
| Prohibited Series of Communications | A board member 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 the Open Meetings Act and that concern an issue within the jurisdiction of the board 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.

Gov't Code 551.143