

HB 4181: Open Government?

Background

The Texas legislature met for the 86th Session January 8-May 27, 2019. In that period, 10,877 bills were introduced, 4,581 passed both House and Senate and were sent for the governor's signature. He vetoed 58.

A few of those bills that became law will have an impact on Government Code Title 5: Open Government, Chapter 552: Public Information. Our discussion for the September Unit Membership Meeting is focused on one of these legislative changes.

Advocates of open government had planned that this year's legislature would make improvements to government transparency after a series of recent court decisions weakened Texas open government laws. When the session ended, the Texas League Open Government Issue Chair, our own Linda Pavlik, wrapped up the overall view of advocates in her last post on the LWV Texas website:

"Open Government Summary, May 27, 2019 (86th Legislative Session Wrap-Up) This session's Bi-partisan legislation will obligate governments to reveal the core elements of their contracts with private companies, including final dollar amount, key contract provisions, and line-item pricing. Information about public contracts with nonprofits that are performing government work, such as economic development agencies, will also be more readily available.

Sen. Kirk Watson, D-Austin, and Rep. Giovanni Capriglione, R-Southlake, worked with the League of Women Voters through the Sunshine Coalition and Freedom of Information Foundation of Texas to pass **Senate Bill 943**, contracting transparency legislation that strengthens the Texas Public Information Act. In 2015, two Texas Supreme Court rulings had blocked public access to how taxpayer money is spent.

Watson and Capriglione also joined to pass **Senate Bill 944**, which allows better access to public records in a government official's private cell phone or email account. These records are already public by law, but SB 944 closes a "custodian loophole" and makes them easier to obtain.."

Attorney General Ken Paxton's web site reports 12 bills that governmental bodies and members of the public should familiarize themselves with concerning changes to Title 5, Chapter 552.

One bill missing from the list was HB 4181, "An Act relating to the organization and efficient operation of the legislative branch of state government" filed by Rep. Charlie Geren (R-Fort Worth) on March 8, 2019. There was no hearing and the measure passed the House May 2 on a vote of 136-0.

The following highlights are some of the language contained in HB 4181:

Chapter 552, Subchapter C. Legislative Offices and Employees:

Sec. 301.041-.043: Communications with Parliamentarians and certain other department employees:
Makes communications including conversations, correspondence and **electronic communications** that

relate to a request for information between a member, officer, or employee of the legislative branch and a parliamentarian or their staff, confidential and subject to legislative privilege.

Chapter 552, Subchapter F. Miscellaneous Provisions

Sec. 306.008. Legislative Privilege: Applies attorney-client privileges to communications related to legal advice or other legal services between a legislative attorney or employee working for the attorney and a member of the house or senate.

Sec. 306.009. Custodian of Certain Legislative Records: Adds some custodian authority to the Legislative Reference Library, which reports to the Legislative Counsel co-chaired by the Lieutenant Governor and Speaker of the House. For the last 110 years this custodial role was the authority of the independent Texas State Library and Archives Commission.

Sec. 441.1821 Legislative Records Management: Establishes that a government body can withhold the records relating to legislative privilege in sections 301.41 & 301.43 without requesting a decision from the attorney general as required in Subchapter G, Chapter 552, Government Code.

The most significant amendment to the bill was authored by Representative Chris Turner (D-Arlington,) which assuaged some open government advocates' concerns:

Section 301.042 (f) and Section 306.008 (d) inserts: This section does not affect the authority of a court to analyze and apply legislative or attorney-client privileges under the applicable rules of evidence governing a judicial proceeding.

In the Senate, the bill was referred to the Business and Commerce Committee chaired by Kelly Hancock (R-North Richland Hills), where there was a hearing without testimony. On the Senate floor, the bill passed its second and third readings on May 21 and returned to the House for concurrence on the amendments on May 23, after which it was sent to the governor. Not being vetoed, it was effective immediately.

A few sharp-eyed reporters tried to draw attention online to the bill's provision on privileged legislative records ("Legislative Bill Would Hide How the Sausage Is Made," May 17, 2019.) However, it wasn't until after the legislation had been forwarded to the governor that there was any lengthy discussion of the problems this seemingly innocuous bill might create ("Advocates say lawmakers largely exempted themselves from Texas' public records law, prompting calls for a veto," June 14, 2019, <https://www.texastribune.org/2019/06/14/texas-lawmakers-largely-exempted-themselves-texas-public-records-law/>)

LWV of the US position: Citizen's Right to Know/Citizen Participation

The League of Women Voters of the United States believes that democratic government depends upon informed and active participation at all levels of government. The League further believes that governmental bodies must protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible.

Discussion Questions:

- 1). The legislation states legislative privilege is to protect the public's interest in the proper performance of the deliberative and policymaking responsibilities of the legislature and to preserve the legislative branch's independence in the principle of separation of powers. Do you view those as priorities that legitimately exceed the rights of citizens for an open government?

- 2). This is a done deal. Is there a further role for open government advocates? If yes, what would that be?