



Texas Association of School Boards

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Serving Texas Schools Since 1949

Open Meetings Act

House Bill 2840—Public Comment and Testimony at Board Meetings

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For more frequently asked questions about public comments at school board meetings and the Open Meetings Act (OMA), please see TASB Legal Services' [Open Meetings Act—Public Comment](#).

House Bill 2840—Public Comment and Testimony

Currently, the Open Meetings Act (OMA) does not require a governmental body to offer the public an opportunity to address the board at every meeting. A new law will significantly change this.

Effective September 1, 2019, HB 2840 amends the OMA to modify how a governmental body, including a school district board of trustees, may manage public input at its meetings. This law is new and has not yet been interpreted by a legal authority such as the attorney general or a court. Districts are encouraged to work closely with their school attorneys to interpret the requirements of the new law.

Specifically, HB 2840 will require the following:

- A board must allow every person who wishes to address the board on an agenda item to do so during or before the board's consideration of the item;
- A board must allow public comment before or during the board's consideration of agenda items at all open meetings as defined by the OMA;
- A board may establish reasonable rules for public comments, including rules that limit the total time a member of the public can address the board on a given item;
- A board may not prohibit public criticism of the board, including criticism of any act, omission, policy, procedures, program, or service; and
- If a board adopts rules limiting the amount of time a member of the public may have to address the board, but does not use simultaneous translation equipment in a manner that allows the board to hear the translated public testimony simultaneously, then the board must provide at least twice the amount of time for non-English speakers who need a translator.

Until the board revises BED(LOCAL) and the district updates its public comment procedures, the board must ensure that any board meetings held on or after September 1 comply with the new requirements noted above.

If your board has been operating under typical TASB-recommended policy provisions for public comment, your board should adjust its current meeting practices to reflect the impact of the bill:

- Opportunities for the public to comment on agenda items to be considered by the board must be permitted at every open meeting, not just regular meetings. This may include special called meetings and workshops.
- The board may continue, but is not required, to receive public comments concerning subject matters not posted on an agenda.
- The board may no longer require the designation of a spokesperson to reduce the number of speakers.
- Public comments about an agenda item must be accepted before or during the board's consideration of that item.
- Per-speaker time limits may still be enforced, and citizens may be required to sign up at or before the meeting in order to address the board. However, no member of the public who wishes to speak about an agenda item and who has followed reasonable sign-up rules should be turned away due to an overall cap on the number of speakers or total time for public comment. If your board finds that it is overwhelmed by the number of citizens wishing to address the board, the board should seek legal advice before refusing to allow a citizen to address the board before its consideration of a given agenda item.

TASB-recommended revisions to Model Policy BED(LOCAL) will incorporate these changes as required by HB 2840 at Update 114. Meanwhile, please consult your school attorneys or call TASB Legal Services if you have questions about implementing your local policies in compliance with HB 2840.

Frequently Asked Questions about HB 2840

Q: Does HB 2840 apply to school district boards of trustees?

A: Yes. HB 2840 applies to all governmental bodies that are defined by Texas Government Code sections 551.001(3)(B)-(L), which includes a school district board of trustees. HB 2840 does not apply to a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members, under Section 551.001(3)(A) of the Texas Government Code.

Q: Will districts need to update their Policy BED(LOCAL) prior to receiving TASB's Update 114?

A: No. A new law on its effective date automatically takes legal precedence over any conflicting local policies or regulations. Therefore, the legal requirements in HB 2840 will be effective and controlling on September 1, 2019, with or without the adoption of a new local policy. Although the district may choose to update their policies prior to receiving TASB's Update 114, TASB Policy Services discourages duplicating updates for BED(LOCAL) pending receipt of Policy Update 114 as it may unnecessarily increase administrative burdens for the district.

Q: The board does not vote or take any action at work sessions. Will public comment still be required for work sessions?

A: Yes, if the board is going to consider an item on the agenda for an open meeting, as defined by the OMA. A board must allow each member of the public who desires to address the board regarding an item on an agenda for an open meeting of the board to address the board regarding the item at the meeting before or during the board's consideration of the item. The OMA defines *open* to mean open to the public, and *meeting* to mean any deliberation or gathering that meets the definition of a meeting under Section 551.001(4) of the OMA. Tex. Gov't Code § 551.001(4), (5).

Q: What does HB 2840 require if a board does not use simultaneous translation equipment?

A: If a board does not use simultaneous translation equipment in a manner that that allows the board to hear the public comment and its translation simultaneously, and the board limits the amount of time a person may have to address the board, then the board is required to provide any person requiring a translator to have at least twice the amount of time as a person who does not need a translator.

Q: May a board prohibit public criticism of the board or the district?

A: No. HB 2840 specifically disallows a governmental body from prohibiting public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service.

Q: May a board prohibit public criticism of an individual?

A: Maybe. HB 2840 will not apply to public criticism that is otherwise prohibited by law. A district should consult its school attorney when developing procedures prohibiting certain public comments, including the consideration of whether prohibitions are reasonable, viewpoint-neutral, and avoids interfering with a person's rights under other law.

Q: *Is the full text of HB 2840 available online?*

A: Yes. The Texas Legislature Online [website](#) offers a publicly available copy of the enrolled text of HB 2840 [here](#).

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-essource/governance/documents/hb2840-public-comment-and-testimony-at-board-meetings.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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