



Public Safety Commission Meeting

June 21, 2012, 9:00 a.m.

Criminal Law Enforcement Auditorium
6100 Guadalupe, Bldg E Austin, TX 78752

Summary

(This report represents a summary of events of the meeting,
and is not necessarily complete nor an exact transcript of testimony.)

The Public Safety Commission convened as posted to consider and take formal action, if necessary, on the following agenda items:

I. CALL TO ORDER

9:05 am – Chairwoman Cynthia Leon called the meeting to order. In attendance: Chairwoman Cindy Leon, Commissioners Allan Polunsky, Carin Barth, Ada Brown and John Steen. Also present were Director Steve McCraw, Deputy Director David Baker, Deputy Director Cheryl McBride, and General Counsel Phil Adkins.



II. DISCHARGE APPEAL HEARING

Continuance of Discharge Appeal Hearing and possible action regarding DPS employee Michael Deck

Chair Leon – Instructed both counsels regarding procedures, John Ferguson for DPS and Patrick Ruzzo for the defense. After two hours of testimony and questioning, the Mr. Deck's dismissal for sexual harassment and unprofessional conduct was upheld by an unanimous vote by the Commission.

During the hearing, it was divulged that it had been a commonly held practice for DPS employees to accept token gratuities such as restaurant gift cards or bottles of alcohol around the holidays from companies being regulated.

Commissioner Steen asked Dir. McCraw to make clear that the practice of accepting gratuities of any kind is not acceptable throughout the state. Dir. McCraw said that this practice would not be tolerated and would result in termination is discovered.

Chair Leon called for a 5 minute break.

III. APPROVAL OF MINUTES

Motion made by Commissioner Steen, and seconded by Commissioner Barth, to approve the Minutes. Passed Unanimously.

- IV. PUBLIC COMMENT** *(Members of the public wishing to address the Commission are subject to a time limit of 5 minutes and must complete a Public Comment Registration Card located at the entry. Should a member of the public bring an item to the Commission for which the subject was not posted on the agenda of the meeting, state law provides that the Commission may receive the information but cannot act upon it at the meeting. The Commission may direct staff to contact the requestor or request that the issue be placed on a future agenda for discussion.)*

Chair Cindy Leon asked if anyone wished to make public comment. There was no response.

V. DIRECTORS REPORT

A. Presentation of Awards

(This section of the report is provided by the Department's Public Information Office)

Director Steven McCraw today presented a Life Saving Award and a Unit Citation to DPS employees. Driver License employee Carla Caldwell-Guidry was honored for potentially saving a baby's life, and Panhandle area Highway Patrol troopers were recognized for excellence in drug and cash seizures.

"Our awards today highlight how one person or a group of people can impact so many lives in a positive way," said Director McCraw. "Driver License employee Caldwell-Guidry directly assisted a family in dire need of help, potentially saving a life, and our Highway Patrol troopers in a three-county Panhandle area showed why DPS patrols are the first line of defense for communities against drug traffickers and other criminals."

- Driver License Customer Service Representative Carla Caldwell-Guidry received a Life Saving Award today for dislodging food from a choking baby's throat. On April 10, 2012, Caldwell-Guidry*



was on duty outside the Townhurst Driver License Office in Houston when she noticed two frantic women holding a baby that appeared to be choking. Without hesitation, Caldwell-Guidry took control of the situation and performed the Heimlich Maneuver on the choking baby. When this wasn't successful, Caldwell-Guidry turned the child over and dislodged a piece of candy from the baby's throat with several light taps, preventing possible serious injury or death.

- The Highway Patrol Sergeant Area 5B03 based in the northern Panhandle received a Unit Citation today for its successful efforts in criminal and drug interdiction. The Department currently monitors six categories of data to track drug and currency seizures. In 2011, troopers in the area led the state in four of those categories, including the number of cases, total currency seized, cocaine seized and other substances seized. The Sergeant Area includes Carson, Hutchinson and Hansford counties and a portion of I-40. Since 2000, troopers in this area have seized \$11.6 million dollars in currency and narcotics valued at more than \$149 million. Sgt. Joe Medrano, Cpl. Oscar Esqueda, and Troopers Darrin Bridges, Casey Dawson, Jimmy Chatfield, Joshua Allen, Trevor Dillard, Donald Davis, Robert Dollar, Danny Nunez and Ed Longoria were all recognized as part of the Unit Citation.*



B. DPS Response to Senate Transportation and Homeland Security Committee Regarding Driver License Program

This item was deferred until later in the meeting. Move to VIII E.

Director Steve McCraw – We were asked to address issues such as the cost of having our DL offices stay open on Saturdays, as well as the cost of staying open 2 days a week until 7:00 pm.

Dir. McCraw said that he testified as he has in the past that DPS would love to be able to do some of implement some of these recommendations, but currently do not have the capacity to do these things. We would have to staff up for the additional hours of operations. For example, currently, we have to enter social security numbers 2 times in our system...this takes time.

Kiosks were also discussed to improve service. Self help would be useful in taking the photo, and

getting some front end information taken care of prior to going to a window to see a DL employee. These kiosks could perhaps also be placed in other locations as well.

The two year cost of these measures is calculated to be \$152,996,000.00. When adding FTE's that Chairman Phillips had suggested, our request will likely be near \$156,000,000.00 in additional funding.

Sen. Williams also asked us to address the need for driving tests. These are very time consuming in both the commercial and passenger licensing processes. We have to maintain the Commercial driving testing in that it is statutorily required by the Department of Transportation, but we will look at the passenger driving tests.

We will add this request to our exceptional items list for the legislators' consideration in the 83rd Session.

Comm. Barth thanked the Director for the progress being made in the improvement of service in the DL offices, and suggested that perhaps we could better publicize when it is necessary to go to the DL offices in person, and when their transaction can be handled online.

Comm. Steen asked Dir. McCraw's opinion regarding how the "Real ID" acts requirements are impacting our operations. Dir. McCraw responded that DPS is not currently 100% Real ID compliant, but we are moving towards that. It makes all of our front line officers to become experts in identifying key elements of ID's and it takes additional training and time in the field. I feel that we have over regulated it. I feel that it should focus on foreign nationals, and not everyone. The Real ID Act does not allow us to do this. For example, an elderly foreign national who has had a valid DL in Texas since 50 or more years, is not likely to pose a threat as a foreign terrorist, and we should be able to make reasonable exceptions. My opinions have been made known in Washington, but we still have to comply with the law as written.

Comm. Polunsky asked what the President's new executive order regarding legal status of some foreign nationals affects the DPS issuing of driver licenses. Dir. McCraw stated that as long as an individual can present documentation of legal status (I-90 form, Temporary Visa, Work Visa, State Department waiver, etc.), DPS will issue a driver license or state id. Gen. Counsel Steen said that the executive order allows the issuance of a Deferred Action Status document that would also allow the issuance of a DL. Dir. McCraw suggested that ICE can issue such documentation.

VI. NEW BUSINESS

A. Report, discussion, and possible action on proposed amendments to Inscription on Vehicles Rule for publication to receive comment: Rule 1.151, 37 TAC Sec. 1.151, concerning Exemption of Inscription

General Counsel Phillip Adkins – Section 21 of the Transportation Code mandates identification markings on all state vehicles, but also allows DPS to exempt certain vehicles. This new rule would allow the Director to designate certain vehicles whose identification markings could put some in harm's way.

A motion was made to post the rule in the Texas Register. It was seconded, and approved unanimously.

B. Report, discussion and possible action regarding current laws pertaining to individuals with multiple offenses and removal of driver license

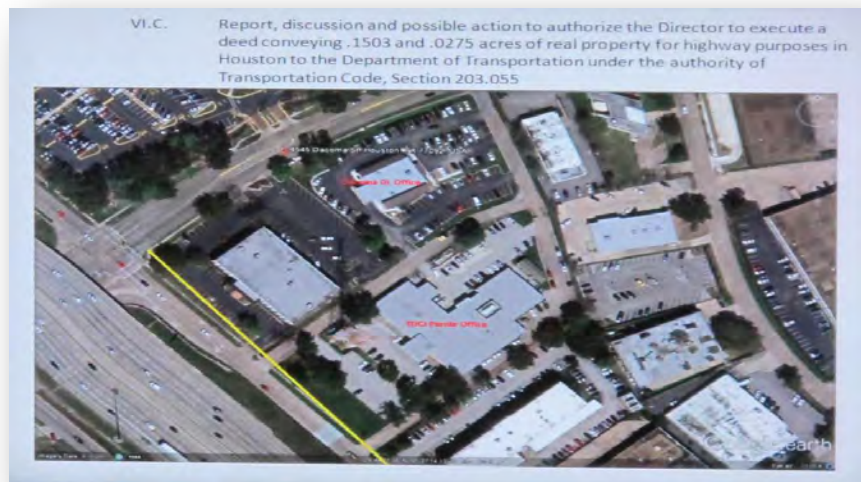
Deputy Director David Baker – As requested by Comm. Barth, details regarding the DWI rules were presented to the Commission.

General Counsel Phillip Adkins – discussed the rules for license suspension and disqualification. There are about 100,000 DWI arrests per year and approximately 90,000 ALR suspensions per year.

DD Baker stated that DPS currently has 190,539 licenses under suspension.

DPS has 44 attorneys handling ALR cases across the state.

- C. Report, discussion and possible action to authorize the Director to execute a deed conveying .1503 and .0275 acres of real property for highway purposes in Houston to the Department of Transportation under the authority of Transportation Code, Section 203.055**



Assistant Director Wayne Mueller – This would allow DPS to convey property to TxDot in Houston to allow for the widening of Hwy. 290 near the current TDCJ facility.

- D. Report, discussion and possible action regarding FY 2013 Internal Operating Budget**

Assistant Director Denise Hudson, Finance and CFO – Action item for FY2013 operating budget presented earlier this year. We have made some changes, mainly in adding full time employees. This would add 361 FTE's (many in DL), and bring the proposed total FTE's in the Department to 9,181 FTEs.

A motion was made by Comm. Barth, Seconded by Comm. Brown. Comm. Steen asked for clarification on what the vote means. AD Hudson stated that this is an approval for the 2013 operating budget on three main areas of the 2013 operating budget and where the funding would come from, and this would become the basis for our LBB budget and exceptional items request.

- E. Report, discussion and possible action regarding FY 2014-2015 Exceptional Items to be included in the FY 2014-2015 Legislative Appropriations Request**

Assistant Director Denise Hudson, Finance and CFO – The Exceptional Items were broken into 7 categories, and total \$664 million, and 1,224 FTEs. One change involves the Marine unit, going from \$13 million to \$13.9 million due to an adjustment based on actual fuel efficiency of the boats, originally estimated to be 30 gallons per operating hour and actual is now 40 gallons per operating hour.

Comm. Polunsky stated that he didn't feel that this will be an unrealistic request for the Legislature to consider, but we need to go in with the idea that this is a wish list. Dir. McCraw said that he feels comfortable with a completely candid statement of need, and we should ask

for what we need and see where it goes legislatively. Dir. McCraw went on to say that we even paired down our request. Using the national standard for police personnel coverage, we have identified that we need to add (in addition to our current vacancies) 775 troopers, 17 Texas Rangers to bring us to par based on projected growth of the state's population.

A motion was made by Brown and seconded by Steen. Approved unanimously.

F. Report, discussion and possible action regarding live streaming video of Public Safety Commission meetings on the DPS website

Chair Leon asked for this item to be deferred to the July PSC Meeting.

G. Report, discussion and possible action on Equal Employment Opportunity compliance/refresher training



Major Ronda Fleming – Every new employee has to take EEO Training within 30 days of hire has to take this training and all employees must take the training every two years. The training takes two hours. Major Fleming showed statistic based trends in claims and substantiated incidents. While the number of claims continues to rise, the substantiated claims have declined slightly, which she attributed primarily to the increased awareness of the employees due to the ongoing training.

Commissioner Brown asked Maj. Fleming to tell about the Texas Ethics Commission and the TWC asking to use our course in their agencies. She stated that this is a testament to the effectiveness of our program.

H. Report, discussion and possible action regarding criminal investigations as provided by Government Code 411.0041. This item may be presented in Executive Session

Discussed in Executive Session

VII. ADJOURN INTO EXECUTIVE SESSION (if required) to consult with legal counsel regarding pending or contemplated litigation or settlement offers or to receive legal advice on items posted on this agenda; deliberation regarding real estate matters; consideration of any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; ongoing criminal investigations

*Chair Leon adjourned the meeting to executive session, at 1:30 PM.
Reconvened, 2:50 pm.*

VIII. ONGOING BUSINESS

Reports, discussion and possible action regarding the following:

- A.** Follow-up report, discussion and possible action on the Department of Public Safety ethics policy and reporting requirements

Director Steve McCraw – Commissioner Ada Brown said that the committee had a good meeting and asked Chief of Staff Duke Bodisch give a summary. One of the things discussed was that there is too much legalese language, and Amanda Arriaga has volunteered to look at this and try to simplify the language. Comm. Brown said that our current policy seems to be very thorough and “state of the art” for lack of better term.

- B.** Report, discussion, and possible action by the Commission regarding modification and transformation of the DPS organizational structure approval of personnel placements and salaries pursuant to Government Code chapter 411, Secs. 411.005, 411.006 and 411.0071

Director Steve McCraw – nothing further to report.

- C.** Report, discussion and possible action regarding the appointment, promotion, ratification, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of the Department or Commission management team

Director Steve McCraw – nothing further to report.

- D.** Report, discussion and possible action regarding discharge appeal hearing process and scheduling

General Counsel Phillip Adkins – Statutorily we are required to have an appeal hearing process, but we have quite a bit of discretion as to how these hearings are conducted. They have to be public and allow evidence to be presented.

We had only 3 appeals hearings in 2011. We currently have 15 appeals in the works, of which 9 are commissioned officers.

Comm. Brown asked to make a statement. Before she was on the PSC, she was with TCLEOSE, and from her experience SOAH never votes to fire anyone.

The Commissioners and the General Counsel discussed several options for modifying the appeals hearing procedures, including offering a written appeal option, reducing the time for the hearing from 2 hours to 1 – 1^{1/2} hrs (or variable time based on the case), to pretrial hearings, to holding the hearings on a separate day (scheduling 3-4 a day), etc.

Chair Leon scheduled a day of hearings for Friday, July 20th, where they hoped to hear 3 appeals in addition to one on Thursday, July 19th at the PSC meeting. Commissioner Ada Brown agreed to head a committee (with Comm. Polunsky) to review and recommend statutory changes to the appeals hearing process while GC Adkins will prepare a draft of possible changes to the Department Policy.

- E.** Report, discussion and possible action regarding communications from Texas Facilities Commission regarding leasing practices



Director Terry Keel of the Texas Facilities Commission and Mike Lacey of TFC appeared before the Commission. The Capitol Complex covers 10th Street to the south, to MLK Blvd. to the north; and Lavaca St. to the west, to Trinity to the East. We have identified several areas that

are underutilized Although crime is high downtown, the Capitol complex has a very low rate of crime primarily due to the high profile presence of the DPS, in black & whites, on motorcycles, and on bicycles.

Comm. Polunsky asked for clarification regarding the public/private partnership to bring in development to the Complex area that would better utilize the underutilized space and bring in other state agencies to the area. Mr. Keel confirmed this, well as Comm. Polunsky's question regarding study of the DPS HQ campus.



There is a study underway to evaluate the HQ campus space and usage. Comm. Polunsky asked where this came from, and stated that he was not aware of this project. Dir. McCraw said that it began just this week, and Mr. Keel stated that TFC is statutorily required to evaluate all state property. His roll is not to tell DPS what to do with their property, but to facilitate and assist in any plans that the Department has. Chairman Leon asked Dir. McCraw when it was planned to inform the Commission and include them. Dir. McCraw said that the discussion was just initiated, and the Commission and Department leadership will be very much involved in the planning.

Comm. Barth suggested considering moving the HQ complex to a new, less populated area. Col. McCraw stated that everything should be considered, but a great deal has been invested in the current campus (Crime Lab, Fusion Center, etc.) so it would be very costly to start over.

The Commission asked to address the RFP process for TFC. Mr. Lacey responded that they

go to great length to insure that the process is fair and thorough and that their agency is highly regulated and governed by the state legislature. Comm. Barth stated that there were concerns last meeting regarding the narrowness of the distribution of the RFPs. The PSC wanted to be sure that the RFP's are distributed to the broadest list of builders possible. Mr. Keel responded that the control of the Centralized Master Builders' List is in the Comptroller's office. Comm. Polunsky wanted to know why they couldn't answer who was on the CMB list. They promised that the list would be provided to the PSC.

Comm. Barth asked for an update on the San Antonio Mega Center. Mr. Lacey stated that the SA Mega Center is on time and the contractors are "blowing and going" and should finish on schedule. All of the Mega Centers are on schedule. Comm. Barth disagreed and stated that the Fort Worth facility has delays and problems. A developer was selected and would not sign the contract. This did put the project behind, and there will be a delayed opening.

Comm. Keel again thanked the Department for the exceptional law enforcement that has made the Capitol Complex area virtually crime free by provide high profile (motorcycle and bicycle patrols) and thorough law enforcement presence. This has made the area very attractive to developers.



F. Update, report, discussion and possible action on the presentation of the Office of Inspector General 2011 Annual Report of Operations and OIG resource allocations/regional assignments of personnel

Inspector General Stuart Platt – We previously recommended adding 11 FTEs to the OIG office bringing us to a total of 34 inspectors. It takes 48 hrs on average to complete a TAIG, and we have 40 TAIGs pending at any given time, which translates to 1,921 workdays, or 8 FTEs adjusting for 5 day work week, holidays, etc. This is a very heavy burden for commissioned officers who also have their regular duties to handle. Rep. Kolkhorst has gone on record that her intent of authoring the sunset amendment is to have the OIG office is to keep these investigations independent and outside of the chain of command. The cost of adding 8 FTEs is \$1,294,000 in the first year, \$793,700 in the second for a total of approximately \$2,088,000 over two years. Our budget per year is approximately \$2,200,000 per year, so you are asking for approximately 55% increase in your budget.

Comm. Brown asked Dir. McCraw to comment on IG Steen's recommendations. Dir. McCraw, DD Baker, and DD McBride are fully supportive of the OIG operations as well as the audit departments. Major Fleming has hand selected 60 employees with high integrity that she uses as TAIGs, and that leaves her with time to manage the cases (as a staff of one – Maj. Fleming). I think her' model is one that works and should be used Department-wide, including the OIG's office.

Director McCraw made the commitment that a designated TAIG appointee would have to be freed of all other duties and answer directly to the Inspector General, and not their regional command. IG Platt expressed concerns that that is how the current TAIG program is supposed to work but the reality is that they tend to get pulled back in to some of their routine duties, if not physically, at least mentally.

Comm. Brown said that in her mind, it comes down to a fundamental philosophical question; do we want the OIG to be totally independent and separate, or do we want to utilize some of the investigative skill sets available throughout the department.

Comm. Barth agreed to try to meet with Rep. Kolkhorst to ask her to clarify her intent and recommendations, and asked Amanda Arriaga to arrange the meeting.

IG Platt and Dir. McCraw agreed to discuss a possible compromise with the two philosophical scenarios.

G. Report, discussion and possible action on Driver License monthly updates
Assistant Director Rebecca Davio, Drivers License Division – Comm. Brown asked for reports and asked for an update on Garland. Comm. Barth asked for an update on MSG surcharge services.

H. Report, discussion, and possible action regarding the adoption of reorganized Chapter 15, Driver License Rules, Subchapter J, Driver Responsibility Program, including: amendments to Rule 15.161 and Rule 15.162, 37 TAC Sec. 15.161 and Sec. 15.162, repeal of Rule 15.163, 37 TAC Sec. 15.163, and new Rules 15.163 – 15.166, 37 TAC Secs. 15.163 – 15.166, as previously published in the Texas Register

Assistant Director Rebecca Davio, Drivers License Division – No comments received, and ask for final adoption.

*Motion made by Comm. Barth, and seconded by Comm. Steen.
Passed unanimously.*

I. Report, discussion, and possible action regarding adoption of amendments to Safety Responsibility Regulations: Rule 25.7, 37 TAC Sec. 25.7 concerning the application for a self-insurance certificate, as previously published in the Texas Register

*Assistant Director Rebecca Davio, Drivers License Division – Also no comments received.
Motion made and seconded. Passed unanimously.*

J. Report, discussion and possible action on the Fiscal Year 2012 Operating Budget
Assistant Director Denise Hudson, Finance and CFO – nothing further to report.

K. Report, discussion and possible action regarding purchases using seized funds
Assistant Director Denise Hudson, Finance and CFO – nothing further to report.

L. Update report, discussion and possible action regarding recruitment
Deputy Assistant Director Frank Woodall – We will graduate 51 recruits tomorrow morning at 10:00, and have 64 currently lined up for our next school, which is scheduled to begin on July 23. We are interviewing 41 additional candidates next week for that school and hope to have

75 – 85. We currently have 425 FTE openings for commissioned officers, and have an average attrition rate of 15 retirees per month. We are only able to average 2 schools per year, when only 10% of applicants can make it to any level of serious consideration. Dir. McCraw projected that we will have over 300 but under 400 openings by the end of the year.

DAD Woodall explained that when we have a qualified applicant just out of the military, we are offering them an internship until they can enter the next recruit school. This locks them in early on.

- M.** Report, discussion and possible action regarding Emergency Management's procurement status of RFP for audit services with respect to Federal monies for past grants

Assistant Director Nim Kidd – we are still awaiting reports from the State Auditor's office.

- N.** Report, discussion and possible action regarding Commission requests for additional auditing to be performed by the Chief Auditor's Office. Updates regarding status of semi-annual follow-up, contract management, emergency response supplies, compliance audit of records retention requirements, internal control/risk management and bulk fuel tanks-cost benefit audits.

Assistant Director Robert Goodwin – No audit emergencies....1st on list for next month.

- O.** Review of pending contract/renewal/change order/awards from Contract Review Board

- 1. Airplane – Pilatus Single Engine, High Altitude

Assistant Director Wayne Mueller, Administration – \$7,456,000 total cost. We are entering into contract, pending final sign off by the General Counsel. We expect 90 days to get the basic plane, and another 180 days to do the build out. March 2012 estimated delivery.

IX. REPORTS

- A.** Commission member reports and discussion

None

- B.** Finance Report

Nothing further to report.

- C.** Chief Auditors Office

Nothing further to report.

- D.** Division status reports on activities and action

Chair Leon, since the hour was late, asked if the Divisions had anything to add to their filed reports. There was no response.

X. CONSENT ITEMS

All of the following items may be enacted with one motion. These items are typically self-explanatory or have been previously considered by the Commission. There will be no separate discussion of these items unless a commissioner so requests.

- A. Discussion and possible action on the Director's action of discharging probationary employee Debra Walker
- B. Discussion and possible action on appointments of Special Rangers and Special Texas Rangers pursuant to Government Code chapter 411, Secs. 411.023 & 411.024; Special Ranger: Edgar A Brecher Jr, Edward L Duncan, Michael E Gullede, Joel D McKinney, James W Morgan, Jose Munoz, James L O'Shields, Kent A Paluga, Richard Ray and Juan M Rodriguez; Special Texas Ranger: Arthur J Miller

Commissioner Polunsky asked Deputy Director David Baker if all three items had been thoroughly vetted. DD Baker stated that they had and all were very good items.

A motion was made and seconded to approve Items the consent items.. Approved unanimously.

XI. ITEMS FOR FUTURE AGENDA

None.

XII. DATE FOR FUTURE MEETING

July 19, 2012

XIII. ADJOURN

Chair Leon adjourned the meeting at 5:14 pm.

The Commission may take items out of the order in which they are posted on this agenda. Also, an item that has been adopted, passed upon, delayed or tabled for a later meeting may be considered or reconsidered at the same meeting.

The Public Safety Commission may meet and discuss in Executive Session and have action taken in an Open Meeting where required on the following items

Government Code Sec. 551.071 Consultation and deliberation with legal counsel about pending or contemplated litigation or a settlement offer, or on a matter where the Commissioners seek the advice of their attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, and to discuss the Open Meetings Act and the Administrative Procedures Act with their attorney

Government Code Sec. 551.074 Appointment, employment, evaluation, reassignment, duties, discipline or dismissal of director, assistant director, and persons appointed to management team positions pursuant to Govt. Code Sec. 411.0071

Government Code Sec. 551.076 Deliberations about security audits, security devices, including deployment and implementation of security personnel and devices

Government Code Chapter 411, Sec. 411.0041 Ongoing criminal investigations

Government Code Sec. 551.072 Deliberation of the purchase, exchange, lease, or value of real property, if deliberation in an open meeting would have a detrimental effect on the position of the government body in negotiations with a third person

Government Code Sec. 551.073 Deliberation of a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an

open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person