Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

NORTON ROSE FULBRIGHT

Texas Public Finance Legislative Review

86th Session

Contents

Introduction

Thank you for using the legislative summary prepared by Norton Rose Fulbright's Public Finance attorneys. It is not a summary of all bills enacted by the 86th Legislature, but it is focused on special concerns: how Texas governments and nonprofit corporations build and finance facilities; how Texas governments finance operations and economic development; and how those governments govern themselves. The 86th Legislature was unique in that Governor Greg Abbott, Lt. Governor Dan Patrick, and the Speaker of the House, Dennis Bonnen collectively sought a unified agenda focusing on property tax reform and school finance reform. The two chambers collectively passed bills relating to both agenda items. This alert highlights the major bills that were passed, along with particular bills that affect our clients in our practice.

If you have any additional questions relating to the summaries contained herein, please do not hesitate to contact a member of our team so that we may assist you with specific questions and guidance.

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Property tax reform

SB 2

Author: Bettencourt, Creighton, Hancock, Paxton, Taylor

Caption: Relating to ad valorem taxation; authorizing fees.

Background: Reform of ad valorem property tax provisions was a principal goal of the 86th Legislature, and SB 2 was the principal vehicle for accomplishing reform.

Summary: SB 2, The Property Tax Reform and Relief Act of 2019; has four main goals:

(1) to lower the maximum annual O&M tax proceeds increase without an election for most taxing units from 8 percent to 3.5 percent;

(2) to require an automatic tax ratification election if the 3.5 percent tax increase is exceeded;

(3) to increase tax adoption transparency for taxpayers; and

(4) to streamline valuation challenges.

Because SB 2 is both large and complex, this summary will focus on provisions affecting local governments and will largely ignore provisions that affect appraisal districts only, or that affect valuation challenges. Note that many specific provisions of the Act apply to very specific circumstances, including municipalities imposing certain sales taxes, declared disasters, and certain program-specific exceptions. Numeric references are to sections of the Texas Tax Code unless otherwise specified.

Classes of local governments

SB 2 creates different classes of local governments. In specific sections, the bill provides different results for the following classes of local governments:

(1) Taxing units, which includes as a general matter all local governments that impose a tax, except for those described below.

(2) Special taxing units, which includes taxing units with a maintenance and operations tax of 2.5 cents or less, junior college districts, and hospital districts.

(3) School districts.

(4) Water districts, which are subdivided into water districts with a maintenance and operations tax of 2.5 cents or less, developed districts, and undeveloped districts.

Calendar for adopting a tax

For any class of local government subject to an automatic ratification election, SB 2 effectively changes the calendar for tax adoption.

SB 2 requires the chief appraiser to prepare and certify to the assessor for each taxing unit participating in the district an estimate of the taxable value of property in that taxing unit not later than July 25th. (26.01(a-1)). SB 2 also requires that the assessor submit the certified appraisal roll for the taxing unit by August 1 or as soon thereafter as practicable. 26.04(B). Each taxing unit is required to adopt a tax rate before the later of September 30 or the 60th day after the certified roll is received by the taxing unit, but if the adopted rate will require an election then not later than the 71st day before the November uniform election date (the first Tuesday after the first Monday in November). (26.05(a)). Section 26.05(a) requiring the adoption of a tax rate that exceeds the voter-approval tax rate to occur not later than the 71st day before the next uniform election date conflicts with Section 3.005(c), Texas Election Code. Section 3.005(c) requires elections held on a uniform election date to be ordered not later than the 78th day before an election day. While the Election Code would normally supersede the 71-day requirement in the Tax Code, this reading would cause an impractical result for taxing units.

Assuming the Tax Code controls, if an election is required, the taxing unit must adopt its tax rate and call its election by late August. If an August 1 certified roll is delivered, the chief appraiser is also required to deliver by August 7 to each property owner a notice that the estimated taxes to be imposed on the owner's property by each applicable taxing unit may be found online. 26.04(e-2). The taxing unit (other than a school district) may not adopt its tax rate until five days after the chief appraiser has given the August 7 notice, and the taxing unit has delivered its estimated rate forms to the appraisal district and the appraisal district has posted the forms. (26.05(d-1)).

The change, when added to the existing notice of hearing requirement (which is reduced from seven to five days 26.06(a)), means that a taxing unit must receive its certified roll by August 1, authorize an officer to calculate and publish the rate, provide the calculated rate to the appraisal district and publish its rate in a newspaper, and complete its hearing and meeting requirements by 71 days before the next election day: at the earliest August 23 or August 29 at the latest.

No-New-Revenue Rate and the Voter-Approval Tax Rate

For most taxing units, the most important change in SB 2 is the potential for a required election if the taxing unit exceeds the Voter-Approval Rate. As under prior law, the No-New-Revenue Maintenance and Operations Rate (formerly the effective tax rate) and the Voter-Approval Tax Rate (formerly the rollback rate) are calculated by a designated officer or employee and published or mailed to taxpayers before adoption of the tax rate. (26.05, 26.06). Calculation of the Voter-Approval Rate requires first the calculation by the designee of the No-New-Value Maintenance & Operations Rate:

(last year's levy) *less* (last year's total debt levy)

(current total value) *less* (new property value)

(26.012(18)) The calculation of the No-New-Value Maintenance and Operations Rate provides a tax rate which would produce the same amount of M&O revenues from the same property as the prior year's tax levy.

The Voter-Approval Rate is a rate expressed in dollars per $100 taxable value equal to:

(no-new-revenue-maintenance & operations rate x 1.035) +

(current debt rate) + (unused increment rate)

The unused increment rate gives a three-year rolling cushion for taxing units that have levied less than the Voter-Approval Rate during the prior three years. For most taxing units, if a taxing unit proposes a tax rate greater than the Voter-Approval Rate, the taxing unit must first hold an approval election on the next November uniform election date under procedures outlined in SB 2.

There are several circumstantial variations for the required elections, including emergency provisions relating to declared disasters, but most variations relate to either the de minimis rate or the class of local government.

De Minimis Rate

The De Minimis Rate is a rate equal to (1) the No-New-Revenue Maintenance and Operations Rate, (2) the rate that will impose an amount of taxes equal to $500,000, and (3) a taxing unit's current debt rate. For a taxing unit (other than a special taxing unit or a municipality with a population equal to or greater than 30,000) or a municipality with a population less than 30,000 which adopts a tax rate greater than the taxing unit's Voter-Approval Rate, but equal to or less than its De Minimis Rate, the taxing unit is not required to have the rate approved at an election. (26.07(b)). However, voters can require an election for a rollback of the rate to the Voter-Approval Rate by petition of three percent of the taxing unit's registered voters. (26.075). While it is not clear from the text of the statute, the De Minimis Rate is apparently not applicable to water districts.

Special Taxing Units

For Special Taxing Units, taxing units with a tax rate of less than $0.025 per $100 valuation tax rate, junior college districts, and hospital districts, the maximum annual tax proceeds increase is not changed to 3.5 percent and remains at 8 percent. (26.04(c)). The calculation of the Voter-Approval Rate is as follows:

(no-new-revenue maintenance & operations rate x 1.08) +

(current debt rate) + (unused increment rate)

The unused increment rate gives a three-year rolling cushion for taxing units that have levied less than the Voter-Approval Rate during the prior three years. Before a Special Taxing Unit may adopt a tax rate greater than its Voter-Approval Rate, it must receive voter approval. (26.07(b)).

School districts

SB 2 does not generally affect school district taxation.

Water districts subject to chapter 49 of the Texas Water Code

Low Tax Rate Districts. Water districts with a tax rate less than $0.025 per $100 are Low Tax Rate Districts. For Low Tax Rate Districts, the Voter-Approval Tax Rate is the sum of the current year's (1) debt service tax rate, (2) contract tax rate, and (3) the operations and maintenance tax rate that would impose 1.08 times the amount of the operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any elderly or disabled optional homestead exemptions. To adopt a tax rate greater than the Voter Approval Rate, a Low Tax Rate District must hold an election.

Developed District means a district that is effectively 95% developed. For Developed Districts, the district is required to hold an election if the adopted tax rate would exceed the Mandatory Tax Election Rate. The Mandatory Tax Election Rate is (1) the rate that would impose 1.035 times the amount of tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any optional homestead exemption for the disabled or elderly; and (2) the unused increment rate.

There are three important things to note about the calculation of the Mandatory Election Tax Rate. First, it is calculated on last year's total district tax rate, including current debt and contract tax revenue, and the multiple is not calculated solely on the operations & maintenance tax. Second, it is unclear how the tax will be calculated on commercial districts without residential homesteads. Third, a district with an existing debt or contract rate would still be able to implement a first-time operations & maintenance tax without immediately exceeding the election minimum. If no debt service or contract tax existed in the prior year, it is unclear how a district could impose a first-time maintenance tax without holding two elections.

In addition, if a Developed District's proposed current year rate exceeds the Mandatory Election Tax Rate because of increases in the current year's debt or contract rate, the District may be technically required to hold an election to reduce the proposed rate to a Voter-Approval Tax Rate which is higher than the proposed rate. This is because the Voter-Approval Tax Rate is calculated based on the current debt or contract rate. This could happen easily to a Developed District which has no operations and maintenance tax, or which has no voted bonds outstanding but may need to issue debt.

If the election fails, the imposed tax is the Voter-Approval Tax Rate, which is the rate equal to the sum of the district's (1) current year's debt service tax rate; (2) current

year's contract tax rate; (3) the operation and maintenance tax rate that would impose 1.035 times the amount of tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any optional homestead exemption for the disabled or elderly; and (4) unused increment rate. The difference between the Voter-Approval Tax Rate and the Mandatory Tax Election Rate is the multiplication of the 1.035 by only the operation and maintenance tax rate instead of the total combined rate.

Developing Districts. Developing Districts are not defined in SB 2, but effectively Developing Districts include any district which is neither a Low Tax Rate District nor a Developed District. For Developing Districts, elections are only required upon petition by three percent of district voters if the rate of tax exceeds the combined tax rate of the district multiplied by 1.08.

SB 2 also adds certain requirements for a Developed District's budget. As part of the budget, the board must attach an appendix that includes (1) the district's audited financial statements, (2) the district's bond transcripts (presumably for its outstanding bonds), and (3) the engineering reports required for bond elections. In truth, this is not a budget, it's a large library.

Notices under the revised statute

As a general matter, notices under the tax code have historically been given by first class mail or published in a newspaper. SB 2 expands notice requirements to require local governments which do not give direct notice by mail to give notice by both publication and posting on a local government's internet home page. In at least one instance, posting on the taxing unit's home page replaces publication or mailed notice. 26.04(e) If a taxing unit's proposed rate exceeds its no-new-revenue tax rate, a specified statement must be posted on its internet home page. 26.05(b)(2). Further, if newspaper publication of the notice of meeting is chosen over direct mail, the notice must also be posted on the taxing unit home page. 26.052(e).

Effectively, the SB 2 revisions now require taxing units to maintain an internet home page.

Additionally, SB 2 repealed the simplified notice authorized by Texas Local Government Code, Section 140.010.

Effective date: Unless otherwise specified, January 1, 2020.

Affected statutes: Texas Tax Code Chapter 26. Texas Water Code Chapter 49.

School finance reform

HB 3

Authors: Huberty, Bernal, Zerwas, King, K., Allen

Caption: Relating to public school finance and public education; creating a criminal offense; authorizing the imposition of a fee.

Background: The state's prior school finance system was structured around funding formulas that were ordinarily revised only in response to court decisions finding one or more parts of the system unconstitutional under the Texas Constitution. In the opinion of many, the prior school finance system did not meet the needs of Texas public school students. The Texas Commission on Public School Finance, established by the 85th Legislature, found that roughly 22 percent of Texas eighth graders will go on to achieve a post-secondary credential six years following their scheduled high school graduation. For low-income Texas students, who are reported to represent approximately six out of every 10 public school students in Texas, the commission found that such post-secondary completion rates are around 12 percent.

House Bill 3 ("HB 3") seeks to mandate and address the inefficiencies of the prior school finance system by modernizing the funding formulas to rebalance the state's share of public education funding, readjusting outdated or otherwise inefficient elements of the school finance system to invest available funding in students, and improving the system's equitable administration with meaningful investment in low-income and other historically underperforming student groups to support improvements in student achievement and teacher quality.

Summary: Local funding is derived from collections of ad valorem taxes levied on property located within each district's boundaries. School districts are authorized to levy two types of property taxes: a limited maintenance and operations ("M&O") tax to pay current expenses and an unlimited interest and sinking fund ("I&S") tax to pay debt service on bonds. School districts may not levy surplus M&O taxes for the purpose of paying debt service on bonds.

Prior to the 2019 Legislative Session, a district's maximum M&O tax rate for a given tax year was determined by multiplying that district's 2005 M&O tax rate levy by a compression percentage set by legislative appropriation or, in the absence of legislative appropriation, by the Commissioner of Education. This compression percentage was historically set at 66.67%, effectively setting the maximum compressed M&O tax rate for most school districts at $1.00 per $100 of taxable value. School districts were permitted, however, to generate additional local funds by raising their M&O tax rate up to $0.04 above the compressed tax rate or, with voter-approval at a valid election in the district, by up to $0.17 above the compressed rate (for most districts, between $1.04 and $1.17 per $100 of taxable value). District's received additional State funds in proportion to such taxing effort.

Local funding for school districts

The 86th Texas Legislature made several significant changes to the funding methodology for school districts. It orders a district's M&O tax rate into two distinct parts: the Tier One Tax Rate and the Enrichment Tax Rate, and applies a legislatively-appropriated State Compression Percentage (each term as described below) or a higher rate of compression, as appropriate.

State Compression Percentage. The State Compression Percentage is a statutorily-defined percentage of the rate of $1.00 per $100 that is necessary to receive the full amount of State aid. The State Compression Percentage is set at 93% per $100 of taxable value for the 2019-2020 school year, effectively setting the fiscal year 2019-2020 Tier One Tax Rate for most school districts at $0.93 cents. In the 2020-2021 school year, the State Compression Percentage is anticipated to decline, based on statewide average property value growth, to 91.65%. It will decline further in future years if statewide average property values grow at a rate that is greater than 2.5%.

Tier One Tax Rate. For school year 2019-2020, the Tier One Tax Rate is defined as the lesser of the State Compression Percentage multiplied by $1.00 or the total number of cents levied by the district for the 2018-2019 school year for M&O (excluding tax rate increases in response to declared disasters as described below), multiplied by the State Compression Percentage. Beginning with the 2020-2021 school year, a district must reduce its compression percentage to a rate lower than the State Compression Percentage if the taxable value in the district has increased by more than 2.5% over the prior year.

Enrichment Tax Rate. The Enrichment Tax Rate is defined as any tax effort in excess of the Tier One Tax Rate and less than $1.17. The Enrichment Tax Rate is divided into two components, commonly known as "Golden Pennies" and "Copper Pennies". Golden Pennies refer to the first eight cents of taxing effort above the Tier One Tax Rate. Copper Pennies refer to any taxing effort above the sum of the Tier One Tax Rate and Golden Pennies, but less than or equal to the sum of (1) $0.17, plus (2) the product of the State Compression Percentage, multiplied by $1.00. For the 2019-2020 tax year, this maximum value for most districts is $1.10.

Districts are entitled to a guaranteed yield (i.e., the guaranteed level of local tax revenue and State aid generated) for each Golden Penny or Copper Penny levied in addition to the Tier One Tax Rate. However, in years for which the guaranteed yield per Copper Penny is increased, a district may be required to reduce its M&O tax rate for that school year if it levies Copper Pennies (see "Wealth Transfer Provisions – Tier Two Funding" below).

State funding for school districts

State funding for school districts is provided through the Foundation School Program, which provides each district with a State-appropriated baseline level of funding (the "Basic Allotment") for each student in "Average Daily Attendance" (being the sum of student attendance for each State-mandated day of instruction divided by the number of State-mandated days of instruction, defined herein as "ADA"). The Basic Allotment per student is revised downward if a district's Tier One Tax Rate does not meet or

exceed a State-determined threshold (currently $0.93 per $100 of taxable value). This Basic Allotment is supplemented by additional State funds, allotted based upon the unique district characteristics and demographics of students in ADA, to make up most of a district's basic level of State funding (referred to herein as "Tier One") under the Foundation School Program.

Tier One is then "enriched" with additional funds known as "Tier Two" of the Foundation School Program. Tier Two provides a guaranteed level of funding for each cent of a district's Enrichment Tax Rate, which is the M&O tax effort that exceeds the Tier One Tax Rate.

Tier One and Tier Two allotments represent the State's share of the cost of M&O expenses of districts, with local M&O taxes representing the district's local share. Tier One and Tier Two allotments are generally required to be funded each year by the Texas Legislature.

For the 2020-21 State fiscal biennium, the Basic Allotment for districts with an M&O tax rate of at least $0.93 cents is $6,160 for each student in ADA and is revised downward for districts with a lower M&O tax rate. The Basic Allotment is then supplemented for all districts by various weights to account for differences among districts and their student populations. Such additional allotments include, but are not limited to, increased funds for students in ADA who: (i) attend a qualified special education program, (ii) are diagnosed with dyslexia or a related disorder, (iii) are economically disadvantaged, or (iv) have limited English language proficiency. Additional allotments to mitigate differences among districts include, but are not limited to: (i) a transportation allotment for mileage associated with transporting students who reside two miles or more from their home campus, (ii) a fast growth allotment (for districts in the top 25% of enrollment growth relative to other districts), and (iii) a college, career and military readiness allotment to further Texas' goal of increasing the number of student who attain post-secondary education or workforce credential. The sum of a district's Basic Allotment and all statutory adjustments, divided by $6,160, is that district's measure of students in "Weighted Average Daily Attendance" ("WADA"), which serves to calculate Tier Two funding.

Tier Two supplements the basic funding of Tier One and provides two levels of enrichment with different guaranteed yields (i.e., guaranteed levels of State and local funds per cent of tax effort) depending on the district's Enrichment Tax Rate. The first eight cents of tax effort that exceeds a district's Tier One Tax Rate (Golden Pennies) will generate a guaranteed yield equal to the greater of (i) the local revenue per student in WADA per cent of tax effort available to a school district at the 96th percentile of wealth per student in WADA, or (ii) the Basic Allotment multiplied by 0.016 per student in WADA per cent of tax effort. For the 2020-21 State fiscal biennium, the guaranteed yield will be $98.56 per WADA per cent of tax effort above $0.93 up to $1.01 per $100 taxable value.

The second level of Tier Two is generated by tax effort that exceeds the district's Tier One Tax Rate plus eight cents (Copper Pennies) and has a guaranteed yield per cent per WADA of the Basic Allotment multiplied by 0.008. For the 2020-2021 State fiscal biennium, the guaranteed yield will be $49.28 per WADA per cent of tax effort above $1.01, up to eleven cents of tax effort.

Wealth transfer provisions and funding equity

Some school districts in Texas have sufficient property wealth per student in WADA to generate their statutory level of funding through collections of local property taxes alone. Certain districts whose property tax base can generate local M&O revenues in excess of the State entitlement are subject to the wealth equalization provisions contained in Chapter 49, as amended, Texas Education Code ("Chapter 49"). For most Chapter 49 districts, wealth equalization entails a process known as "recapture", paying the portion of the district's local share in excess of the guaranteed yield to the State (for redistribution to other school districts) or otherwise expending M&O tax revenues for the benefit of students in districts that are not subject to Chapter 49.

In 2019, the 86th Texas Legislature adopted substantial changes to the wealth transfer provisions of the Texas Education Code. Whereas the recapture process had previously been based on the proportion of a district's assessed property value per student in WADA, recapture is now measured by the "local revenue level" (being the local share of the relevant portion of the Foundation School Program) in excess of the entitlements appropriated by the Legislature each fiscal biennium. Therefore, districts are now guaranteed that recapture will not reduce revenue below their statutory entitlement. The changes to the wealth transfer provisions are expected to reduce the cumulative amount of recapture payments paid by school districts by approximately $3.6 billion during the 2020-2021 State fiscal biennium.

Effective dates: HB 3 has graduated effective dates. This Act takes effect September 1, 2019, except Article 2 and Sections 1.026, 1.029, and 5.010 take effect immediately; Sections 1.001, 1.010, 1.065, 1A.008, 3.053, 3.057, and 3.080 take effect January 1, 2020; and Sections 1.004(b), 1.014, 1A.001-1A.007, and 2.011 take effect September 1, 2020.

Affected statutes: Broad impact on the Texas Education Code; Amends Chapters 1 and 3 of the Texas Government Code; Amends Chapters 1 and 3 of the Texas Tax Code; Amends Chapter 3 of the Texas Human Resources Code; Amends Chapter 3 of the Texas Insurance Code; Amends Chapter 3 of the Texas Penal Code.

Cities

HB 347

Author: King (Phil), Huberty, Bell (Cecil), Larson

Caption: Relating to consent annexation requirements.

Background: Prior to HB 347, Texas law allowed for forced annexation. The Texas Annexation Right to Vote Act of 2017 created two tiers of counties. Landowners in tier 1 counties, with a population of less than 500,000, had almost no power to resist annexation by a nearby municipality, while municipalities in tier 2 counties, with a population of 500,000 or more, could hold a public election to approve or resist annexation. Tier 1 counties could use an opt-in election process to allow voters to petition for an election that would change the county to tier 2 status. Many criticized the forced annexation regime as allowing for citizens to be deprived of liberty without political representation. HB 347 was proposed to end the tier system and bar forced annexation of almost all areas in Texas, giving residents of all municipalities the right to refuse annexation by another municipality.

Summary: HB 347 repeals several provisions of Chapter 43 of the Local Government Code that formerly allowed for forced annexation. The bill eliminates the consent exemption to providing certain notices to an area being annexed and the two tier system of prior law where a municipality's annexation rights depended on the population of the county in which the municipality is located. Generally speaking, municipalities in higher-population (tier 2) counties could not annex without consent of voters in the target area, whereas municipalities in lower-population (tier 1) counties were less restricted. The bill replaces the tiers with references to Subchapters C-1, C-3, C-4, and C-5 that define annexation procedures. Subchapter C-4 governs the annexation procedures of areas with a population of less than 200, while Subchapter C-5 governs annexation of areas with a population of at least 200. The bill grants almost all municipalities subject to annexation the right to vote on the proposed annexation. Lack of consent of the annexed area prevents annexation. Areas that do not receive this protection (governed by Subchapter C-1) include those that contain fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract. Such areas must only receive notice of annexation to its service-providing public or private entities from the annexing municipality. Other areas that do not receive protection from annexation are enclaves, industrial districts, navigable streams, and municipally-owned reservoirs and airports. Areas subject to forced annexation may negotiate and enter into a written strategic partnership agreement with the annexing municipality.

The bill allows for disannexation if the municipality fails or refuses to provide services or to cause services to be provided to the area within the time period described in either the service plan or written agreement.

Effective date: Immediately as of May 24, 2019.

Affected statute: Chapter 43 of the Local Government Code.

HB 477

For a discussion of certain new notice requirements for the issuance of ***certificates of obligation***, see our discussion of HB 477 under "Elections."

HB 4257

Author: Craddick

Caption: Relating to retaliation for municipal annexation disapproval.

Background: A municipality may provide governmental services, including water or wastewater services, to areas that are annexed and those that are not. Despite recent legislative efforts requiring an election under certain conditions for annexation purposes, there have been calls to ensure that a municipal utility must continue to serve an area that it currently serves even if that area chooses not to be annexed. HB 4257 seeks to address this issue by prohibiting retaliation, including retaliation in the form of higher rates, following the disapproval of a proposed municipal annexation regardless of whether the municipality holds a certificate of convenience and necessity to serve the area.

Summary: HB 4257 amends the Local Government Code to specify that a provision establishing that the disapproval of an annexation of an area proposed by a tier 2 municipality does not affect any existing legal obligation of the municipality to continue to provide governmental services in the area, including water or wastewater services, applies regardless of whether the municipality holds a certificate of convenience and necessity to serve the area. The bill prohibits a municipality that makes a wholesale sale of water to specified special districts from charging rates for the water that are higher than rates charged in other similarly situated areas solely because the district is wholly or partly located in an area that disapproved of the proposed annexation.

Effective date: Signed by governor and effective immediately on June 10, 2019.

Affected statutes: Sections 43.0688 and 43.0699, Local Government Code, are amended.

SB 1303

Author: Bettencourt et al.

Caption: Relating to maps of the actual or proposed boundaries and extraterritorial jurisdiction of a municipality and certain notices related to expanding the boundaries.

Background: Local Government Code section 41.001 requires each municipality to prepare a map that shows the boundaries of its extraterritorial jurisdiction and keep a copy of the map in the office of the secretary or clerk and the municipal engineer, if the municipality has one.

Section 43.052 requires a municipality that must adopt an annexation plan to, within 90 days after the plan was adopted or amended, give written notice to each property owner in the affected area, each public or private entity providing services in an area proposed for annexation, and each railroad company operating a right-of-way in the area proposed for annexation.

Under Section 43.0561, before a municipality may institute annexation proceedings for areas under a municipal annexation plan, the governing body must conduct two

public hearings. The municipality must post notice of the hearings on its website, if it has one, and publish notice in a newspaper of general circulation in the municipality and area proposed to be annexed.

Under Section 43.063, before a municipality may institute annexation proceedings for an area exempted from a municipal annexation plan, the governing body must conduct two public hearings. The municipality must post notice of those hearings on its website and public notice in a newspaper of general circulation in the municipality and the area.

Summary: SB 1303 adds requirements for certain home-rule municipalities proposing annexation in areas that would be included in their extraterritorial jurisdiction ("ETJ"), including requirements that municipalities provide notice to property owners and in a newspaper of general circulation in their areas. A home-rule municipality must also create and make public a digital map of its ETJ or, upon a proposed annexation, a digital map of its expanded ETJ.

Notice to property owners. The bill requires a home-rule municipality to give written notice to each property owner in any area that is newly included in the municipality's ETJ as a result of a proposed annexation. The municipality must give such notice within 90 days of adopting or amending an annexation plan. The notice must include a description of the area included in the municipality's annexation plan, a statement that the completed annexation expands the ETJ to include all or part of the owner's property, a statement of the purpose of ETJ designation as provided in statute, and a description of municipal ordinances that would be applicable in the area.

This provision applies only to a prospective expansion of ETJ resulting from an area proposed for annexation that was included in a municipal annexation plan on or after September 1, 2019.

Notice in newspaper. A home-rule municipality proposing to annex an area, whether the area was under a municipal annexation plan or exempted from such a plan, must publish the required notice of public hearings in a newspaper in general circulation in any area that is newly included in the municipality's ETJ as a result of the annexation. The notice must include a statement that the completed annexation of the area expands the municipality's ETJ, a description of the area, a statement of the purpose of ETJ designation as provided in statute, and a description of the municipal ordinances that are applicable in the area.

This provision applies only to a hearing notice published on or after September 1, 2019.

Map of boundaries. SB 1303 specifies that a municipality must maintain a copy of the map showing the boundaries of the municipality's ETJ in a location that was easily accessible to the public. The municipality is required to maintain the map on a website, if it has one, and to make a copy of the map available without charge.

In addition, a home-rule municipality must create and make public a digital map of its ETJ. The bill requires a digital map to be made available without charge and in a format widely used by common geographic information system software. A home-

rule municipality that does not have that software instead must make the digital map available in any other widely used electronic format. The digital map must be included on the municipality's website, if it has one.

Each home-rule municipality would have to make digital maps publicly available by January 1, 2020.

The bill also requires a home-rule municipality, within 90 days of adopting or amending a municipal annexation plan or before instituting annexation proceedings for an area exempted from such a plan, to create and make public a digital map that identified the area proposed for annexation and any area that is be newly included in the municipality's ETJ. This provision applies only to a proposed annexation that was included in a municipal annexation plan, or for which the first hearing notice was published, on or after September 1, 2019.

Effective date: September 1, 2019.

Affected statutes: Sections 41.001, 43.052, 43.0561, 43.063, Local Government Code. Section 43.0635 was added to Chapter 43, Local Government Code.

Disaster relief/preparedness

HB 492

Author: Shine, Darby, Murphy, Stephenson, Raney

Note on Bill: The effectiveness of this bill is predicated on the passing of a constitutional amendment authorizing the legislature to provide for a temporary exemption from ad valorem taxation or a portion of the appraised value of certain property damaged by a disaster.

Caption: Relating to a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.

Background: Hurricane Harvey made it clear that victims of a natural disaster can be greatly impacted by not only the disaster itself but also inefficient and unpredictable recovery plans. One way to lessen post-disaster effects is to provide clear guidance regarding the valuation of damaged property.

Summary: Assuming it becomes effective, HB 492 amends Chapter 11, Tax Code to provide a temporary exemption from taxation, in an amount determined under the Tax Code, for "qualified property" damaged by a disaster. Qualified property includes personal property used for producing income, improvements to real property, and manufactured homes used as a dwelling, all of which property must be (i) located in an area declared by the governor to be a disaster area following a disaster and (ii) is at least 15 percent damaged by the disaster, as determined by the chief appraiser. If the governor does not declare territory to be a disaster before a taxing unit adopts a tax rate, the exemption will not apply unless the governing body of the tax unit adopts the exemption in accordance with the statute. Affected taxpayers must apply for the exemption within certain prescribed timelines, and a taxpayer may only protest before the appraisal review board certain actions of the chief appraiser with respect to such exemption. The exemption authorized under HB 492 expires as to an item of qualified property on January 1 of the first tax year in which the property is reappraised under the Tax Code.

HB 492 also repeals Section 23.02, Tax Code, which allows the governing body of a disaster area taxing unit that is located in a disaster area to authorize the reappraisal of all property damaged at its post-disaster market value.

Effective date: January 1, 2020, if the required constitutional amendment is approved by the voters.

Affected statutes: Chapter 11, Tax Code; Section 23.02, Tax Code.

HJR 4

Author: Phelan, Creighton

Caption: Proposing a constitutional amendment providing for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects.

Summary: HJR 4 is the constitutional amendment that provides the necessary funding in order for SB 7 (discussed herein) to take effect.

Effective date: The proposed constitutional amendment will be on the November 5, 2019, election ballot.

SJR 79

Author: Lucio, Hinojosa, Perry

Caption: Proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board to provide financial assistance for the development of certain projects in economically distressed areas.

Background: The Economically Distressed Areas Program (EDAP) administered by the Texas Water Development Board (TWDB) provides financial assistance for construction of water and wastewater infrastructure projects in economically distressed areas where services either do not exist or existing systems do not meet minimum state standards.

Prior constitutional bond authorizations totaling $500 million provide funding for the program, and historically the legislature has appropriated funds to support issuance of $50 million in bonds each fiscal year of the biennium to fund EDAP projects. There is currently no remaining unissued EDAP bonding authority.

Summary: SJR 79 is a proposed constitutional amendment that would provide general obligation bonding authority in an amount not to exceed $400 million to TWDB to provide financial assistance to eligible applicants from the EDAP program. TWDB has issued bonds and provided financial assistance for all of its existing bonding authority, so the additional bonding authority as proposed in SJR 79 is necessary to continue providing financial assistance from this program.

Effective date: The amendment will be submitted to the voters on November 5, 2019.

Affected statute: Article III, Texas Constitution.

SB 7

Author: Creighton, Alvarado, Bettencourt, Buckingham, Flores, et al.

Caption: Relating to flood planning, mitigation, and infrastructure projects.

Background: Since 1953, Texas has had the most federal major disaster declarations of any state. In 2017, Texas was hit by the most destructive storm in United States history. To build a more resilient Texas that can withstand future storms, Texas needs a funding mechanism to assist in financing flood mitigation projects in an efficient and transparent manner.

Summary: SB 7 amends the existing floodplain management account to create the Texas Infrastructure Resiliency Fund, or TIRF. TIRF will house four accounts within the fund:

- the floodplain management account for grants, data collection, stream gauging, and outreach;
- the Hurricane Harvey account to meet local match requirements to leverage federally appropriated money for Hurricane Harvey recovery;
- the flood plan implementation account to finance flood mitigation projects included in the state flood plan; and
- the federal matching account to meet matching requirements for projects funded partially by the United States Army Corps of Engineers.

SB 7 also includes oversight by an advisory committee, a report from agencies that utilize federal dollars to better track revenue streams and expenses, transparency requirements, and cost-sharing requirements with political subdivisions. SB 7 requires the Texas Water Development Board to adopt rules establishing eligibility criteria for flood control planning money.

Effective dates: September 1, 2019 for Article I; January 1, 2020 for Article II.

Affected statutes: Section 15.405, Water Code and Chapters 15 and 16, Water Code.

SB 443

Author: Hancock

Caption: Relating to the period for which a property owner may receive a residence homestead exemption from ad valorem taxation for property that is rendered uninhabitable or unusable as a result of a disaster.

Background: The Tax Code limits to two years the period during which a property owner who receives a homestead exemption can claim such homestead exemption on a residential structure rendered uninhabitable or unusable by casualty or by wind or water damage. The law also provides certain other restrictions to qualify for the homestead exemption, including that active construction or physical preparation must begin on-site no later than the first anniversary of the date the property owner vacates the premise. Victims of Hurricane Harvey, however, are experiencing difficulties in getting construction or physical preparation to begin within the Tax Code's two-year deadline.

Summary: SB 443 amends Section 11.135, Tax Code, to provide that a homeowner can continue to receive a homestead exemption on his or her uninhabited residential structure that is rendered uninhabitable or unusable by casualty or by wind or water damage for up to five years if (i) the property is located in an area declared to be a disaster by the governor, and (ii) the residential structure is rendered uninhabitable or unusable by the disaster. If the aforementioned conditions are not met, the homeowner is limited to claiming the homestead exemption on such uninhabitable or unusable residential structure to two years.

Effective date: June 4, 2019.

Affected statute: Section 11.135, Tax Code.

SB 812

Author: Lucio, Bettencourt

Caption: Relating to the application of the limit on appraised value of a residence homestead for ad valorem tax purposes to an improvement that is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage.

Background: In 2013, the Texas legislature enacted Section 23.23(g), Tax Code to provide property tax relief to homeowners whose homes were damaged by disaster. Specifically, Section 23.23(g) provided that a replacement home or improvement made to a disaster-damaged home was not considered a "new improvement" under Section 23, Tax Code if the improvement or replacement home was made to satisfy requirements of the "disaster recovery program," which was defined as the Texas General Land Office's disaster reconstruction program funded with money authorized by two specific federal appropriation laws.

Summary: SB 812 expands the protection provided by Section 23.23(g), Tax Code, to homeowners whose homes were damaged by Hurricane Harvey, and applies to future disasters as well. The bill amends the definition of "disaster recovery program" to include a disaster recovery program administered by either the General Land Office or by a political subdivision of the State that is funded with money authorized by "federal law", rather than through only two specific federal appropriation laws. For the appraisal of residence homesteads for ad valorem tax purposes for tax years beginning on and after January 1, 2019, SB 812 also requires the General Land Office and each political subdivision to take certain steps to correct the appraised value of homes covered by Section 23.23(g) and, if necessary, refund a portion of tax payments to homeowners covered by Section 23.23(g).

Effective date: May 7, 2019.

Affected statute: Section 23.23(g), Tax Code.

Economic development

HB 2199

Author: King, Tracy O.

Caption: Relating to the use of municipal hotel occupancy tax revenue in certain municipalities.

Background: Texas law currently allows certain municipalities to use their hotel occupancy tax for constructing, enlarging, equipping, improving, maintaining, repairing, and operating a recreational facility or an arena used for rodeos, livestock shows, and agricultural expositions to substantially enhance hotel activity and encourage tourism.

Summary: HB 2199 amends current law to allow certain additional municipalities to use the revenue from its municipal hotel occupancy tax to construct, enlarge equip, improve, maintain, repair, and operate a recreational facility or an arena used for rodeos, livestock shows, and agricultural expositions.

Effective date: September 1, 2019.

Affected statute: Section 351.1066(a), Tax Code.

HB 3356

Author: Bucy

Caption: Relating to the use of municipal hotel occupancy tax revenue in certain municipalities.

Background: Tourism construction could be beneficial for the state.

Summary: HB 3356 allows certain municipalities to use revenue from their hotel occupancy tax to promote tourism and the convention and hotel industry by constructing, improving, equipping, repairing, maintaining, operating, or expanding a coliseum or multiuse facility if the majority of the events at the coliseum or facility attract tourists who substantially increase economic activity at hotels in the municipality.

Effective date: June 2, 2019.

Affected statute: Section 351.101, Tax Code.

HB 4347

Author: Anchia, Bonnen, Greg, Zerwas, Moody, Turner, Chris

Caption: Relating to the authority of certain municipalities to use certain tax revenue for hotel and convention center projects and other qualified projects.

Summary: HB 4347 amends several sections of Subchapter B of Chapter 351 of the Tax Code, and creates Subchapter C, to give certain municipalities additional tax from sales, use, and occupancy taxes, associated with hotels and ancillary businesses such as restaurants, bars and other retail establishments. The bill also gives certain municipalities the authority to apply tax revenue to costs associated with the development of hotels, convention centers, and sports facilities. In addition to controlling how municipalities may use certain tax revenue, the bill regulates the amount of tax revenue municipalities may apply to costs associated with qualified projects.

Effective date: September 1, 2019.

Affected statutes: Sections 351,102(d), 351.102(f), 351.1021 (newly-created), 351.1022 (newly-created), 351.10712 (newly-created), 351.102(b-1), 351.102(c-1), 351.102(g), and Subchapter C of Chapter 351 (newly-created).

SB 1262

Author: Johnson

Caption: Relating to the allocation of hotel occupancy tax revenue collected by certain municipalities.

Background: Subject to a limited exception, Chapter 351 of the Tax Code requires municipalities with a population exceeding 200,000 to use 50 percent of their hotel occupancy tax for advertising and promotions to attract tourists and convention delegates. Certain municipalities believe it is ineffective to allocate 50 percent of their hotel occupancy tax for advertising and promotion purposes and, rather than spending the entire 50 percent of funds on advertising and promotions, save any surplus funds. The municipalities would prefer to use such surplus funds for uses they deem more productive.

Summary: SB 1262 amends Section 351.101(a), Tax Code to allow certain, specific municipalities with a population of at least 200,000 to use their hotel occupancy tax for expenses directly related to sporting events in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity, as well as the promotion of tourism by enhancing and upgrading existing sports facilities or fields. However, such municipalities must allocate at least 30 percent of their hotel occupancy tax revenue for advertising and promotions to attract tourists and convention delegates.

Effective date: September 1, 2019.

Affected statutes: Section 351.101(a), Tax Code; Section 351.103.

Education

HB 293 **Author:** King (Ken)

Caption: Relating to investment training requirements for school district financial officers.

Background: Certain investment training requirements for public school district and municipal financial officers are unnecessary with regard to investments in bank-insured interest-bearing accounts or certificates of deposit.

Summary: HB 293 amends Section 2256.008 of the Government Code by providing an exception to the requirement that a treasurer, or chief financial officer (if not the same), and the investment officer of a school district must attend an investment training session every two years for at least eight hours of instruction relating to investment responsibilities under State law.

The exception is only applicable if the school district does not invest district funds, or only deposits those funds in (1) interest-bearing deposit accounts, or (2) certificates of deposits as authorized by Section 2256.010. To qualify for the exemption, the treasurer, chief financial officer, or investment officer must submit a sworn affidavit identifying the applicable criteria under Subdivision (1) that apply to the district for the basis of exemption.

Affected statute: Subtitle F, Chapter 2256, Government Code.

HB 4258 **Author:** Murphy, Gervin-Hawkins

Caption: Relating to review and approval by the attorney general of certain bonds financing an educational facility for certain charter schools.

Background: Under the Tax Equity and Fiscal Responsibility Act ("TEFRA"), conduit financings for tax-exempt charter school bonds have historically required formal notice and approval from the municipalities the charter school proposes to serve. HB 4258 places the authority to approve a charter school TEFRA notice and bonds with the Texas Attorney General, thus responding to concerns that certain municipal authorities were preventing the growth of charter schools by refusing to approve the notice required before bonds needed to finance an educational facility for a charter school can be issued, even if other applicable municipalities had provided approval.

Summary: SB 4258 amends Section 53.40, Texas Education Code, by adding subsection (c), which grants the Texas Attorney General "sole authority to review the record of public notice and hearings relating to any bond financing an educational

facility for an authorized charter school". The Texas Attorney General may approve the charter school bonds as required under TEFRA.

Effective date: June 14, 2019.

Affected statute: Section 53.40, Texas Education Code.

SB 11

Author: Taylor et al.

Caption: Relating to policies, procedures, and measures for school safety and mental health promotion in public schools and the creation of the Texas Child Mental Health Care Consortium.

Background: SB 11 amends current law relating to policies, procedures, and measures for school safety and mental health promotion in public schools and the creation of the Texas Child Mental Health Care Consortium. The Senate Select Committee on Violence in Schools and School Security was appointed following the tragedy that occurred at Santa Fe High School. The committee studied methods to reduce the likelihood of school violence and reduce security threats, harden facilities, and facilitate mental health resources to schools. With respect to public finance for Texas school districts, SB 11 amends the specific purposes for which a district may issue unlimited tax school building bonds.

Summary: SB 11 amends Section 45.001(a)(1) by inserting subsections (1)(E) and (1)(F), allowing the governing body of an independent school district to submit to the voters a proposition to issue school building bonds for the purposes of "the retrofitting of school buses with emergency, safety, or security equipment" and "the purchase or retrofitting of vehicles to be used for emergency, safety, or security purposes."

Effective date: June 6, 2019.

Affected statute: Section 45.001(a)(1), Texas Education Code.

SB 1376

Author: Paxton, Creighton

Caption: Relating to eliminating certain requirements imposed on school districts and other educational entities.

Background: SB 1376 aims to offer relief from unfunded mandates in the Texas Education Code and encourage innovative practices on the local level. SB 1376 is based on the K-12 Improvement, Innovation, and Mandate Relief Workgroup's recommendations around five issue areas: data collection, reporting, and utilization; school operations; student pathways, course offerings and public school options; teacher quality; and classroom conduct and school discipline. As relates to public finance, SB 1376 repeals the requirement that a school district file its depository bank contract and bond with the Texas Education Agency.

Summary: The bill repeals the requirement to file a depository contract with Texas Education Agency, by repealing Section 45.208(e), Texas Education Code, which previously required that "[a] copy of the depository contract and bond shall be filed with the agency".

Effective date: June 4, 2019.

Affected statute: Section 45.001(a)(1), Texas Education Code

Elections

HB 305

Author: Paul, et al.

Caption: Relating to the requirement that certain political subdivisions with authority to impose a tax post certain information on an Internet website.

Background: There have been calls for greater public accountability for political subdivisions which impose taxes. HB 305 seeks to address this issue by requiring a taxing unit that maintains a publicly accessible website to make certain relevant information available on that website.

Summary: A political subdivision with the authority to impose a tax which at any time on or after January 1, 2019 maintained a website is required to post certain information on the website, including the following: (i) contact information including mailing address, telephone number, and email address; (ii) each elected officer of the political subdivision; (iii) the date and location of the next election for officers of the political subdivision; (iv) the requirements and deadline for filing for candidacy of each elected office of the political subdivision, which is required to be posted continuously for at least one year before the election for the office; (v) each agenda of a meeting; and (vi) each record of a meeting of the board.

The following are exempted: a county with a population of less than 10,000; a municipality with a population of less than 5,000 located in a county with a population of less than 25,000; or a school district with a population of less than 5,000 in the district's boundaries and located in a county with a population of less than 25,000.

Effective date: September 1, 2019.

Affected statute: Sections 2051.151, 2051.152, Government Code.

HB 440

Author: Murphy et al.

Caption: Relating to general obligation bonds issued by political subdivisions.

Background:

Unspent bond proceeds

Case law and the oversight of the Attorney General limit a political subdivision's ability to spend proceeds of general obligation bonds on the purposes specified in the election proposition. If projects come in under budget, political subdivisions have discretion to fund projects not necessarily anticipated before the election but within the scope of the authorization. Caution suggests, however, that specific projects identified in voter information be completed first because current case law is divided

on whether voter communications constitute a contract with the voters. When specifically authorized purposes are accomplished or abandoned, municipalities are authorized by Chapter 1332 of the Government Code to conduct a new election to authorize a new purpose for unspent bond proceeds.

Notice of bond election

In addition to publication requirements and posting on the bulletin board usually used for a political subdivision's notices, a "debt obligation election order" must be posted at the polling locations during voting hours and, no later than 21 days before election day, in three public places within the political subdivision and on its website.

Limitation on authority to issue general obligation bonds

Current state law does not limit a political subdivision's ability to issue general obligation bonds based on the project's anticipated life.

Summary:

Unspent bond proceeds

School districts are statutorily authorized to use unspent bond proceeds for the specific purposes for which the bonds were authorized, to retire the bonds, or for another purpose if the original purposes are "accomplished or abandoned." In the case of accomplishment or abandonment, the board of trustees must conduct a public meeting for the sole purpose of addressing the unspent proceeds and must separately vote not to retire the bonds and for the new specified purpose. Notice for this public meeting must include a statement that the board "will consider the use of unspent bond proceeds for a purpose other than the specific purposes for which the bonds were authorized." The public must have an opportunity to address the board at the meeting.

Political subdivisions other than school districts are statutorily authorized to use unspent bond proceeds for the specific purposes for which the bonds were authorized, to retire the bonds, or for another purpose if the original purposes are "accomplished or abandoned." In the case of accomplishment or abandonment, a majority of voters must approve the new purpose in an election conducted in the same fashion as a debt obligation election under an order that names the new purpose.

Notice of bond election

In addition to the existing publication and posting requirements, political subdivisions must post on their websites, at least 21 days before the election, "any sample ballot prepared for the election."

Limitation on authority to issue general obligation bonds

The weighted average maturity of the issue of bonds may not exceed 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with an issue of bonds.

Effective date: September 1, 2019. More specifically, the additional election trigger for unspent bond proceeds applies "only to a general obligation bond authorized to be issued at an election held on or after the effective date of this Act."

Affected statutes: Subchapter E, chapter 45, Education Code, is amended by adding section 45.1105. Subtitle C, title 9, Government Code, is amended by adding Chapter 1253. Chapter 1332, Government Code, is repealed.

HB 477

Author: Murphy et al.

Caption: Relating to the notice required before the issuance of certain debt obligations by political subdivisions.

Background:

Election orders

Under current law, debt obligation election orders and ordinances must contain certain financial details concerning the political subdivision calling the election, including principal and interest calculations for outstanding debt obligations. The order/ordinance must also state the maximum maturity of the proposed debt, not to exceed 40 years.

Ballots

Current code requires ballots for bond measures to state the total principal amount to be authorized and the purposes for which the bonds are authorized. The Attorney General requires ballots to indicate a tax will be levied to pay for the bonds and further restricts cities and counties to a single purpose per ballot proposition. Finally, case law requires ballots to identify the "chief features" of the measure. *See, e.g., Dacus v. Parker*, 466 S.W.3d 820, 825-26 (Tex. 2015).

CO notices

Notice to issue certificates of obligation must be published in a newspaper of general circulation once a week for two consecutive weeks, before the meeting authorizing the issuance.

Summary: HB 477 was designed to address "lack of uniformity and transparency in the content of propositions by which political subdivisions seek new bonded debt."[1] HB 477 addresses both bonds that are not self-supporting and certificates of obligation by amending provisions of the Election Code and by extending Chapter 1251 of the Government Code beyond cities and counties to school districts and special taxing districts. SB 30 (as discussed herein) also amends Chapter 1251 of the Government Code.

[1] House Comm. on Pensions, Invest. & Fin. Servs., Bill Analysis, Tex. H.B. 477, 86th Leg., R.S. (2019), available at https://capitol.texas.gov/Search/DocViewer.aspx?ID=86RHB004772A&QueryText=%22HB+477%22&DocType=A.

Election orders/ordinances

Under HB 477, outstanding principal as stated in a debt obligation election order or ordinance must be calculated as of the date the election is ordered. Likewise, outstanding interest for the order must be calculated on the date the election is ordered but "may be based on the political subdivision's expectation relative to variable rate debt obligations." The order or ordinance must also state the maturity date or that the debt may be issued over a specific number of years "not to exceed the maximum" "provided by law."

Ballots

The new law proscribes the "form" of ballots for municipalities, counties, school districts, and special taxing districts proposing to issue a "debt obligation," which term does not include public securities that are designated as self-supporting. Essentially, the new law codifies the content requirements that ballots state: (1) the purposes of the debt obligation; (2) the total principal amount to be authorized; and (3) the imposition of taxes "sufficient to pay principal and interest."

New voter information documentation

If municipalities, counties, school districts, and special taxing districts have at least 250 registered voters on the date the election is called, they must prepare a voter information document for ***each*** proposition that: (1) states the ballot language; (2) provides a table with (a) the principal to be authorized, (b) estimated interest, (c) estimated combined principal and interest required to pay on time and in full the debt to be authorized, (d) the principal of "all" outstanding debt obligations calculated on the date the election is called, (e) the estimated interest on "all" outstanding debt obligations, (f) the estimated combined principal and interested required to pay on time and in full all outstanding debt; (3) states the estimated maximum annual increase in taxes imposed on a homestead valued at $100,000 and identifies the assumptions made in this calculation, including (i) the amortization of the debt obligations, (ii) changes in estimated future appraised values, and (iii) the assumed interest rate on the proposed debt; and (4) states "any other information that the political subdivision considers relevant or necessary to explain the information required."

The voter information document must be posted in the polling places during voting hours and, at least 21 days before election day, in three public places and on the entity's website. The voter information, however, may be included in the debt obligation election order, which must also be posted.

Single or dual purpose propositions?

HB 477 carries forward the former requirement of section 57.072 of the Election Code that a ballot state a "general description of the ***purposes***" for which the debt authorization is sought. (Emphasis added). The use of the plural "purposes" may be meaningful given that HB 477 also repeals section 1251.002 of the Government Code, which the Attorney General has read as prohibiting dual propositions for cities and counties.

HB 477 provides that "[t]o the extent of a conflict between this section and another law, this section controls." Both HB 477 and SB 30 amend sections 1251.051 and 1251.052 of the Government Code, but not all amendments are identical. For example, HB 477 defines "debt obligation election order," while SB 30 does not. HB 477 requires additional voter information, while SB 30 does not. *See generally* TEX. GOV'T CODE § 311.025 (requiring amendments enacted in the same session to be harmonized unless irreconcilable, in which case the later enactment prevails [which would be SB 30]).

SB 30 also requires the ballot to state "***a plain language description*** of the ***single specific purposes*** [sic] for which the debt obligations are to be authorized." (Emphasis added). SB 30, unlike HB 477, adds subsection (a-1) to section 1251.052 of the Government Code:

> Each single specific ***purpose*** for which debt obligations requiring voter approval are to be issued must be printed on the ballot as a ***separate proposition***. A proposition may include as a specific purpose one or more structures or improvements serving the substantially same purpose and may include related improvements and equipment necessary to accomplish the specific purpose.

(Emphasis added). As explained below, SB 30 preserves a school district's ability to submit a single proposition for schools, land, and buses with a number of exceptions.

CO notices – new requirement

HB 477 addresses the content of notices that might trigger a petition election for certificates of obligation. This notice must be published once a week for two consecutive weeks, with the date of the first publication at least 45 days before the meeting authorizing the issuance. Likewise, the notice must be posted on the entity's website at least 45 days before the meeting. The notice must state (1) the time and place of the meeting; (2) the purpose of the certificates; (3) the manner in which the certificates will be paid; (4) the "then-current" principal of outstanding debt obligations, other than self-supporting public securities; (5) the "then-current" combined principal and interest required to pay the aforesaid outstanding debt on time and in full; (6) the maximum principal amount of the certificates; (7) the estimated combined principal and interest required to pay the certificates in full; (8) the estimated interest rate for the certificates or that the maximum rate will not exceed the legal interest rate; and (9) the maximum maturity date.

Effective date: September 1, 2019. More specifically, the ballot provisions only apply to elections ordered after September 1, 2019, while the notice provisions only apply to certificates of obligation for which the first notice is made on or after September 1, 2019.

Affected statutes: Section 3.009, Election Code, is amended. Section 52.072(e), Election Code, is amended, while Section 52.072(f) is added. Chapter 1251, Government Code, is amended by organizing sections 1251.001, .003, .004, and .005 as a new subchapter A; by adding subchapter B; and by repealing section 1251.002.

Sections 271.049(a-b), Local Government Code, are amended, and subsection (e) is added. Section 1251.002, Government Code, is repealed.

HB 933

Author: Bucy et al.

Caption: Relating to posting of election information on the secretary of state's and each county's Internet website.

Background: Under current law, a notice of election need not be posted on a political subdivision's website unless the election involves debt obligations, in which case the "debt obligation order" must be posted on a political subdivision's website at least 21 days before the election. In either situation, notice of election must also be provided to the county clerk and voter registrar no later than 60 days before the election.

Political subdivisions are not currently required to notify the Secretary of State about their elections.

County election officials are not required to maintain election information on the internet, although almost all do so.

Summary: The new law requires a political subdivision to include each polling place in the 60-day notice to the county clerk and voter registrar. The new law places responsibility on the county clerk to post notice of election on the internet, except when the county has no website or when an entity is issuing debt.

The Secretary of State is tasked with creating new procedures for counties to report additional election information. Moreover, each entity designating the location of a polling place must submit the location's building name, street address, and zip code to the Secretary of State for inclusion on an internet database that will be downloadable, apparently to the public.

The new law mandates that county election officials post contact information and polling information on their respective websites, provided the county maintains one. The new law requires internet posting of notices for election judge training (which is also open to the public), changes to county precinct boundaries, opening election records, canvassing the governor's race, early voting, branch voting, appointment of the signature verification committee, logic and accuracy testing, convention lists, canvass of legislative races, and drawing for the ballot order of constitutional amendments.

Effective date: September 1, 2019. More specifically, the Secretary of State is required to comply by September 1, 2019, while counties with websites are required to comply by October 1, 2019.

Affected statutes: Sections 4.003(b) and 4.008(a), Election Code, are amended. Subchapter A, Chapter 31, Election Code, is amended by adding section 31.016 (although no sections 31.014 or 31.015 have been designated). Subchapter E, Chapter 31, Election Code is amended by adding section 31.125. The following Election Code sections are also amended to address internet postings: 32.114(c),

42.035(a), 66.059, 67.012(b), 85.007(c), 85.067(d), 87.027, 129.023(b), 181.006(k), 203.012(c), and 274.002(c).

HB 1048 **Author:** Guillen

Caption: Relating to use of a county early voting polling place by a political subdivision.

Background: Section 85.010 of the Election Code applies to a political subdivision (other than a county) holding an election on the uniform election date in November that does not have a contract with a county to share early voting polling places and is not holding a joint election with a county.

Summary: HB 1048 adds a subsection to Section 85.010 that defines "eligible county polling place" as an early voting polling place established by a county. This definition excludes polling places established under Section 85.062(e) of the Election Code (i.e. a movable temporary branch polling place created on request of a political party). Section 85.010(b) is also amended to use this newly defined term and to require a subdivision to designate all eligible county polling places as early voting polling places before designating any other early voting polling places.

Effective date: As of June 14, 2019.

Affected statute: Section 85.010 of the Election Code.

HB 1888 **Author:** Bonnen et al.

Caption: Relating to temporary branch polling place hours of operation.

Background: Political subdivisions must use county election precincts for elections held on the uniform date in November. For elections held on the uniform date in May, political subdivisions could avoid the use of county election precincts on election day by having (a) only one early voting location, or (b) having a main early voting location plus a sufficient number of branch early voting locations such that 75% of the branches shared the same days and hours of operation as the main early voting location.

Summary: Temporary branch early voting must be open the same days as the main location and be open at least eight hours daily.

Effective date: September 1, 2019.

Affected statutes: The headings to sections 42.0261 and 85.064, Election Code, are amended. Sections 85.062(e), 85.064(b), and 85.068(a), Election Code, are amended. The following provisions of the Election Code are repealed: section 42.002(c), sections 85.064(a) and (c), and section 85.065.

SB 30 **Author:** Phelan et al.

Caption: Relating to ballot language requirements for a proposition seeking voter approval for the issuance of bonds.

Background: Current law allows a school district to submit school facilities, sites for school facilities, and new school buses as a single proposition.

Summary: As explained in the context of HB 477, SB 30 amends Chapter 1251, Government Code, to require cities, counties, school districts, and special taxing districts to use a separate ballot proposition for each "specific purpose" for which debt obligations are to be authorized. "Notwithstanding Section 1251.052, Government Code," regarding the content of ballots for the political subdivisions defined in section 1251.051, SB 30 expressly allows school districts to submit a single proposition for school buildings, school sites, and school buses, except that a separate proposition is required for the following facilities, whether standalone or part of a classroom complex: (1) stadium with seating for more than 1,000 spectators; (2) natatorium; (3) recreational facility other than a gym, playground, or play area; (4) performing arts facility; (5) teacher housing; and (6) technology equipment, other than security or infrastructure integral to other construction. The ballot language for these facilities must "state the principal amount of the bonds to be issued that constitutes the cost for construction of that portion of the building or complex."

Effective date: September 1, 2019. More specifically, the Act applies only to an election ordered on or after September 1, 2019.

Affected statutes: Section 45.003, Education Code, is amended by adding subsections (g-h). Section 52.072(e), Election Code, is amended in identical fashion as HB 477. Chapter 1251, Government Code, is amended by organizing sections 1251.001, .003, .004, and .005 as a new subchapter A; by adding subchapter B; and by repealing section 1251.002.

SB 893

Author: Menéndez

Caption: Relating to the requirement that the comptroller of public accounts receive copies of orders adopted in connection with the administration of elections.

Summary: SB 893 amends several provisions in the Election Code to remove the obligations of the county clerks and joint election commissions to deliver certain orders in connection with elections to the Comptroller of public accounts (Sections 12.032(b), 12.034(b), 31.031(d), 31.048(c), 31.071(c), 31.076(b), 31.152(h), 31.170(c)). The bill only applies to orders adopted on or after the effective date.

Effective date: September 1, 2019.

Affected statutes: Sections 12.032(b), 12.034(b), 31.031(d), 31.048(c), 31.071(c), 31.076(b), 31.152(h), and 31.170(c) of the Election Code.

Government administration

HB 2826 **Author:** Bonnen, Huffman

Caption: Relating to procurement of a contingent fee contract for legal services by certain governmental entities.

Background: Increased calls for transparency in the process of hiring attorneys by political subdivisions have resulted in a desire to make the contingent fee contracting process for political subdivisions more consistent with the process used by state governmental entities. HB 2826 seeks to establish requirements for the procurement of contingent fee contracts for legal services by political subdivisions.

Summary: HB 2826 moves the existing program of review and approval of political subdivision contingent fee contracts for legal services from the Comptroller of Public Accounts to the Office of the Attorney General.

The bill imposes new regulations on the selection by political subdivisions of attorneys for award of contingent fee contracts, including those relating to the issuance of bonds:

- Selection of an attorney must be in accordance with the Professional Services Procurement Act. A political subdivision should select a well-qualified attorney and negotiate for a fair and reasonable price.
- A political subdivision may require an attorney to indemnify the local government from negligent acts or omissions by the attorney, however, such an indemnity could obviate professional liability insurance coverage which would otherwise be available.

At or before the time of giving written notice of a meeting of the governing body as required by the Open Meetings Act, a political subdivision shall also provide written notice of a meeting of the governing body at which a contingent fee legal contract will be considered, stating:

- The reasons for pursuing the matter and the desired outcome of such pursuit;
- The competence, qualifications, and experience of the attorney;
- The nature of any relationship between the political subdivision and the attorney;
- The reasons the legal services cannot be adequately performed by the attorneys and supporting personnel of the political subdivision;

- The reasons the legal services cannot be reasonably obtained from attorneys in private practice under a contract providing for an hourly-fee arrangement without contingency; and

- The reasons that a contingent fee contract for legal services is in the best interest of the residents of the political subdivision.

The contract must be approved in an open meeting, and upon its approval, the political subdivision must find that:

- There is a substantial need for the legal services;

- The legal services cannot be adequately performed by the attorneys and supporting personnel of the political subdivision; and

- A contract with a private practice under an hourly-fee arrangement would not suffice, because of the nature of the matter for which the services will be obtained, or because the political subdivision does not have the funds to pay the estimated cost of an hourly-fee contract.

A contract is public information under the Texas Public Information Act and may not be withheld from a requestor under any exception from required disclosure.

In addition, certain types of contingent fee contracts (not bond counsel contracts) have to be approved by the Attorney General.

Effective date: September 1, 2019.

Affected statute: Chapter 2254 of the Government Code.

SB 1474

Author: Lucio, Menendez

Caption: Relating to private activity bonds.

Background: SB 1474 incorporates critical updates to the Texas Private Activity Bond program which ensures that the goal of increasing per project amounts across all issuers is achieved and maximizes the traditional use of existing sub-ceilings by better utilizing any unutilized sub-ceiling to meet increased demand in other categories. Since the passage of the Tax Reform Act of 1986 federal law has limited tax-exempt financing of private activities. The Private Activity Bond program allocates the limited amount of private activity bonds available for Texas issuers (the "State ceiling") among various purposes ("sub-ceilings").

Summary: SB 1474 amends Section 1372.022(a), Texas Government Code, such that, if the State ceiling for private activity bonds is computed on the basis of $75 per capita or a greater amount, before August 15 of each year: (1) 32.25% of the State ceiling is available for qualified mortgage bonds; (2) 10.00% of the State ceiling is available for State-voted issues; (3) 2.0% of the State ceiling is available for small issue bonds and enterprise zone facility bonds; (4) 26.25% of the State ceiling is available for

residential rental project bonds; and (5) 29.5% of the State ceiling is available for any other bond issue that requires an allocation under the Private Activity Bond program.

Effective date: September 1, 2019.

Affected statute: Chapter 1372, Texas Government Code.

Higher education

Notes on Higher Education Tuition Revenue Bonds

SB 505 (Seliger/Hinojosa) and SB 2247 (West/Hinojosa) both sought the approval of certain tuition revenue bonds, but neither bill made it past the Senate Higher Education Committee. A third bill authored to provide tuition revenue bonds for Sul Ross State University also failed to pass. While this session did not provide access for universities to use tuition revenue bonds, there was significant funding authorized by the legislature for certain universities. If you have questions relating to a particular university's funding authorized by the legislature, please reach out to a member of our team.

Open meetings

HB 2840

Author: Canales; Guerra; Guillen; Raymond

Caption: Relating to the right of a member of the public to address the governing body of a political subdivision at an open meeting of the body.

Background: HB 2840 seeks to give the public increased access to the decision-making process by providing for public comment before or during the consideration of each item on the meeting agenda.

Summary: HB 2840 requires a governing body to allow members of the public to address the governing body regarding an agenda item before or during the body's consideration of the item. In addition, a governing body may adopt rules to address public comments (time limitations, order, etc.). Governing bodies may not limit public criticism, unless the criticism is otherwise prohibited by law.

Effective date: September 1, 2019.

Affected statute: Subchapter A, Chapter 551, Government Code.

SB 494

Author: Huffman

Caption: Relating to certain procedures applicable to meetings under the open meetings law and the disclosure of public information under the public information law in the event of an emergency, urgent public necessity, or catastrophic event.

Background: Chapter 551 of the Texas Government Code provides specific requirements for "Open Meetings" that be followed by many governmental bodies in most situations where members of the body meet to discuss public business or public policy in Texas.

Summary: SB 494 amends Subsections (a), (b), and (e) of Section 551.045 regarding the notice of a meeting to deliberate or take action on an emergency or urgent public necessity. Subsection (a) is amended to require only one hour's notice (previously two hours were required) before convening the meeting. During these meetings however, a governmental body may only deliberate or take action on a matter directly related to responding to the emergency or urgent public necessity identified in the notice of the meeting, unless there was an agenda item listed on a notice of the meeting before the posting of a supplemental notice relating to the emergency. The bill also gives more specific examples of threats to public health and safety, including imminent threats of certain events.

The bill removes the requirement in Subsection (e) for a governmental body to notify news media of a meeting addressing an emergency or urgent public necessity stemming from the sudden relocation of a large number of residents from the area of

a declared disaster to a governmental body 's jurisdiction. The bill amends Section 551.047(c) to require notice to be given to members of the news media at least one hour before convening the meeting.

The bill adds Subsections (c) and (d) to Section 551.142, which allow the attorney general to file in a Travis County district court a mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Open Meetings Act by members of a governmental body who consider items at an emergency meeting that are not related to an imminent threat.

The bill allows a governmental body relief from the Open Meetings requirements for a maximum of seven days (while being affected by a catastrophe). The governmental body must submit proper notice to the attorney general's office and the public. The suspension period can be extended by seven days if the governmental body is still affected by the catastrophe.

Effective date: September 1, 2019.

Affected statutes: Section 551.045, 551.047(c), 551.142(c) and (d) (new subsections), and 552.233 (new section) of the Government Code.

SB 1640

Author: Watson, Bettencourt

Caption: Relating to the open meetings law.

Background: On February 27, 2019, the Texas Court of Criminal Appeals (CCA) concluded that 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.

Summary: SB 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, SB 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. "Deliberation" is amended to include a verbal *or written* exchange between a quorum of a governmental body concerning an issue within the jurisdiction of the governmental body. In addition, the walking quorum cannot be circumvented by sending emails to individual members of the governmental body seeking agreement or disagreement on an issue.

Effective date: September 1, 2019.

Affected statute: Section 551.143, Government Code.

Open records

HB 3001 **Author:** Morrison, Birdwell

Caption: Relating to the fiscal transparency of special purpose districts and other political subdivisions.

Background: The Comptroller of Public Accounts was directed to develop a Special Purpose District Public Information Database by the 84th Legislature. The database was expanded by the 85th Legislature. Districts must provide information to the Comptroller. It has been noted that some of these requirements relating to special purpose districts are duplicative.

Summary: This legislation excludes special purpose districts from duplicative reporting requirements. Districts need not provide certain financial information to the Comptroller if they ensure that their financial audit is made available at a regular office for inspection and, if the district maintains a website, posts the financial audit on the website on an annual basis. The Comptroller may post a direct link to the district's website or provide a clear statement of the location of the separately posted information instead of or in addition to reproducing the required information on the Comptroller's website.

Effective date: September 1, 2019.

Affected statutes: Section 403.0241(c), (e), Government Code; Section 140.008, Local Government Code.

SB 943 **Author:** Watson et al.

Caption: Relating to the disclosure of certain contracting information under the public information law.

Background: Government Code Chapter 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request, unless that information is excepted from disclosure.

Section 552.104 creates an exception from disclosure for information that, if released, would give advantage to a competitor or bidder.

Section 552.110 creates an exception from disclosure for privileged or confidential trade secrets and for commercial or financial information whose disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Summary: SB 943 expands public disclosure requirements related to government contracts under the Public Information Act and imposes recordkeeping requirements

on certain entities in possession of such information. The bill revises exceptions from disclosure based on competitive advantage and trade secrets, creates a new exception from disclosure for proprietary information, and expands the definition of a governmental body.

Contracting information. Unless otherwise excepted under the Public Information Act, the bill requires public disclosure of the following types of contracting information maintained by a governmental body or sent between a governmental body and contractor:'

> (1) information in vouchers or contracts relating to the receipt or expenditure of public funds by governmental bodies;
>
> (2) solicitation or bid documents relating to a contract with a governmental body;
>
> (3) communications between a governmental body and a vendor or contractor during the solicitation, evaluation, or negotiation of a contract;
>
> (4) documents showing the criteria by which a governmental body evaluated responses to a solicitation; and
>
> (5) communications and other information related to the performance of a final contract with a governmental body or work performed on behalf of the governmental body.

Excluding information that was properly redacted under previously enacted law, the following types of contracting information cannot be excepted from disclosure as trade secrets, commercial or financial information that would cause competitive harm, or proprietary information:

> (1) contracts with a state agency required to be posted on the agency's website;
>
> (2) contracts required to be included in the Legislative Budget Board's major contract database;
>
> (3) contract or offer terms describing price, items or services subject to the contract, delivery and service deadlines, remedies for breach of contract, identity of parties or subcontractors, affiliate overall or total pricing for the contractor, execution and effective dates, and duration dates; and
>
> (4) information indicating whether a contractor performed its duties under a contract.

Contracting information held by certain entities. The bill requires nongovernmental entities that executed a contract with a governmental body that had a stated expenditure of at least $1 million in public funds or that resulted in the expenditure of at least $1 million in public funds in a fiscal year to be subject to certain recordkeeping and disclosure requirements.

Written requests for contracting information. If a governmental body received a written public information request for contracting information related to a contract that was in the contracting entity's custody and not maintained by the governmental body, the governmental body is required to request that the entity provide the information to the governmental body. This request must be made in writing within three business days after the governmental body received the request for information.

Attorney general's opinion. SB 943 provides specific deadlines for requesting an attorney general's opinion to determine whether contracting information falls within an exception to disclosure and for providing notice to the requestor of such information.

Failure to comply with these deadlines leads to the presumption that the requested information was subject to disclosure unless the governmental body:

> (1) had made a good faith effort to obtain the contracting information from the contracting entity;
>
> (2) was unable to meet a deadline prescribed by the bill because the entity had failed to provide the information within 13 business days after the date the governmental body received the request for information; and
>
> (3) had complied with the applicable deadlines within eight business days after receiving the information from the contracting entity.

Contractual requirements. Under the bill, certain contracts between a governmental body and another entity require the contracting entity to preserve all contracting information related to the contract as provided by the governmental body's applicable record retention requirements for the duration of the contract.

The entity must promptly provide to the governmental body any related contracting information in the entity's custody or possession on request by the governmental body. Upon the contract's completion, the entity is required either to provide at no cost to the governmental body all contracting information in the entity's custody or preserve such information as provided by the governmental body's recordkeeping requirements.

A bid for a contract or a contract described above also is required to state that the contract may be subject to the above requirements and that the contractor agrees that the contract can be terminated for an intentional or knowing failure to comply with the bill's requirements.

A governmental body may not accept a bid for contract or award a contract to an entity that the governmental body determined to have failed intentionally or knowingly to comply with the bill's requirements in a previous bid or contract unless the governmental body determined that the entity has taken adequate steps to ensure future compliance.

Notice and termination. A governmental body is required to provide written notice to a contracting entity that failed to comply with any of the above requirements. The

notice must state the requirement that had been violated and advise the entity that the contract may be terminated without further obligation if the entity does not cure the violation within 10 business days after the notice was provided.

The contract may be terminated after the governmental body has provided notice to the entity if:

> (1) the contracting entity does not cure the violation within the prescribed period;
>
> (2) the governmental body determines that the contracting entity has failed intentionally or knowingly to comply with one of the above requirements; and
>
> (3) the governmental body determines that the entity has not taken adequate steps to ensure future compliance with the bill's requirements.

Adequate steps to ensure future compliance are considered to have been taken if the entity produces requested contracting information within 10 business days after the governmental body made the request and the entity established a records management system to enable it to comply with the above requirements.

A governmental body may not terminate a contract for any of the reasons above if the contract related to the purchase or underwriting of a public security, is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.

Writ of mandamus. Requestors may file suit for a writ of mandamus compelling a governmental body to comply with the bill's requirements.

Competitive advantage exception. SB 943 excepts information from disclosure if a governmental entity demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation that was set to reoccur or if there was a specific and demonstrable intent to enter into the competitive situation again in the future.

Trade secrets exception. The bill excepts from disclosure certain information that was shown by specific factual evidence to be a trade secret. A trade secret is defined as all forms and types of information if the owner of the information has taken reasonable measures to keep it secret and if the information derived independent economic value from not being generally known to or readily accessible by another person who could obtain economic value from its use or disclosure.

Proprietary information exception. SB 943 excepts from disclosure certain information submitted to a governmental body by a vendor, contractor, or potential vendor or contractor in response to a request for a bid, proposal, or qualification if the vendor or contractor demonstrates that disclosure of the information would give an advantage to a competitor by revealing an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing information. This exception may be asserted only by a contractor, vendor, or potential vendor or contractor for the purpose of protecting its interests.

Economic development entities. The bill allows certain economic development entities whose purpose was to develop and promote the economic growth of state agencies or political subdivisions with which the entities has contracted to assert that information relating to economic development negotiations in the entities' custody or control was excepted from disclosure.

Definition of governmental body. SB 943 expands the definition of a governmental body to include:

> (1) a confinement facility operated under contract with the Texas Department of Criminal Justice;
>
> (2) a civil commitment housing facility owned, leased, or operated by a vendor under contract with the state under provisions relating to the civil commitment of sexually violent predators; and
>
> (3) an entity that receives public funds in the current or preceding fiscal year to manage daily operations or restoration of the Alamo or an entity that oversees such an entity.

The bill also specifies that certain economic development entities whose mission or purpose was to develop and promote the economic growth of a state agency or political subdivision and that meet certain requirements as listed in the bill are not considered governmental bodies.

Effective date: January 1, 2020.

Affected statutes: Sections 552.003, 552.104(a), 552.110, 552.131, 552.305(a), 552.305(d), and 552.321, Government Code, are amended. Sections 552.0222, 552.1101, and Subchapter J are added to Chapter 552, Government Code.

SB 944

Author: Watson

Caption: Relating to the public information law.

Background: Government Code Chapter 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request unless that information is excepted from disclosure. Subchapter G establishes the process by which a governmental body must request an attorney general decision if it wishes to withhold information from public disclosure under a statutory exception.

Sec. 552.205 requires an officer for public information to prominently display a plainly visible sign in a governmental body's administrative offices that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information.

Observers have noted that some of the procedures related to requesting public information are inefficient, including processes for governmental bodies to receive and respond to requests that include confidential or otherwise excepted information. Others also have raised concerns about access to public information stored on privately owned devices.

Summary: SB 944 revises the Public Information Act to provide a process for a governmental body to retrieve public information held by a temporary custodian, specify the procedure for making a written request, require the attorney general to create a request form, and create an exception for certain health information.

Temporary Custodian. The bill requires a current or former officer or employee of a governmental body who maintained public information on a privately owned device to:

> (1) forward or transfer the information to the governmental body or a governmental body server to be preserved; or
>
> (2) preserve the public information in its original form in a backup or archive on the privately owned device for a period of time determined by the governmental body.

Previously enacted law governing the preservation, destruction, or other disposition of records or public information now applies to records and public information held by a temporary custodian.

The bill defines "temporary custodian" as an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the governmental body's officer for public information. The term includes a former employee or officer.

Ownership of public information. A current or former officer or employee of a governmental body does not have a personal or property right to public information the officer or employee created or received while acting in an official capacity.

A temporary custodian with possession, custody, or control of public information must surrender or return the information within 10 days after the governmental body's officer for public information requested it.

An officer for public information is required to make reasonable efforts to obtain public information from a temporary custodian if:

> (1) the information had been requested from the governmental body;
>
> (2) the officer was aware of facts sufficient to warrant a reasonable belief that the temporary custodian had possession, custody, or control of the information;
>
> (3) the officer was unable to comply with the duties imposed by the Public Information Act without obtaining the information; and
>
> (4) the temporary custodian had not provided the information to the officer.

Written requests. A person could make a written request for public information only by delivering the request to the officer for public information by U.S. mail, email, hand delivery, or any other method approved by the governmental body, including by fax and through the governmental body's website. A statement on a governmental body's

approved methods must be included on the sign required under Government Code Section 552.205 or the governmental body's website.

A governmental body may designate one mailing address and one email address for receiving written requests for public information and would have to provide the addresses to any person on request. A governmental body that posted the mailing and email addresses on its website or on the displayed sign would not be required to respond to a written request for public information unless it was received at one of those addresses, by hand delivery, or by another approved method.

Public information request form. The bill requires the attorney general to create a request form that provided a requestor the option of excluding from a request information that the governmental body determined was confidential or subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

The attorney general is required to create the form by October 1, 2019. A governmental body that maintained a website and allowed requestors to use the form must post the form on its website.

Health information. The bill specifies that protected health information, including any information that reflected that an individual received health care from a covered entity that was a governmental unit, was not public information and not subject to disclosure.

Information obtained by a governmental body that was provided by an out-of-state health care provider in connection with a quality management, peer review, or best practices program that the out-of-state provider paid for must remain confidential and excepted from disclosure under public information laws.

Effective date: September 1, 2019, and would apply only to a public information request received on or after that date.

Affected statutes: Sections 552.002, 552.003, 552.004, 552.203, Government Code, are amended. Sections 552.233, 552.234, 552.235 are added to Chapter 552, Government Code. Section 552.301(c), Government Code, is repealed.

Public funds

HB 2706 **Author:** Capriglione

Caption: Relating to authorized investments for government entities and a study of the investment and management of funds by public schools.

Background: The Public Funds Investment Act has not kept up with the evolution of financial markets after Dodd-Frank and contains inconsistencies that treat securities with similar risk profiles differently.

Summary: HB 2706 amends the Public Funds Investment Act to modify the investments that the Act authorizes for public funds of local governments (municipalities, counties, school districts, authorities, and other political subdivisions of the State), state agencies (offices, departments, commissions, boards, and other parts of state government and public institutions of higher education), their non-profit corporate instrumentalities, and their investment pools, except certain retirement, registry, state, and endowed institutions of higher education. Under Section 2256.024, Government Code, the investment authority granted by the Act is cumulative and does not prohibit investments specifically authorized by other law, except for stripped interest and principal obligations, collateralized mortgage obligations with a maturity greater than 10 years or interest that floats inversely to a market index.

HB 2076 amends Section 2256.011, Government Code, to provide that previously authorized collateralized repurchase agreements may be secured by commercial paper rated A-1/P-1 in addition to previously authorized collateral.

The bill amends Section 2256.013, Government Code, to extend the maximum term of commercial paper previously authorized for investment to 365 days from 270 days.

Section 2256.016 authorizes investments in local government pools that, among other requirements, report their yield to investors, stabilize their net asset value at $1.00 per unit to the extent reasonably possible, and take certain action if the net asset value strays from the target by more than one half cent. The bill amends Section 2256.016 to apply the stabilization requirement only to investment pools that use amortized cost (as opposed to fair value) reporting and to amend the definition of "yield" accordingly.

The bill adds Section 2256.0208, Government Code, to authorize local governments (municipalities, counties, school districts, authorities, and other political subdivisions of the State and their non-profit corporate instrumentalities) to invest bond proceeds, as well as revenue pledged to secure bonds, leases, installment sale contracts, and other indebtedness, "only" to the extent permitted by the Act and in accordance with statutory authority for the indebtedness and the local government's investment policy regarding the indebtedness. The added section appears to add authority to

invest money that is not in the custody of a local government and, therefore, is not "funds" which the Act previously authorized them to invest. Since Section 2256.024 was not amended by the bill, the new Section should not restrict existing authority (found outside the Act) to invest bond proceeds and pledged funds, except by banning investments in stripped principal or interest, CMOs longer than 10 years, and inversely floating CMOs.

The bill repeals Section 2256.0204(g), Government Code, which had provided that corporate bonds are not an eligible investment for any public funds investment pool.

Finally, the bill requires the Texas Education Agency (TEA) to conduct a study regarding the investment and management of funds by school districts and open-enrollment charter schools. School districts, schools, and the entities that invest or manage their funds are required to provide information to TEA, at its request, regarding: (1) the district's or school's investments, including asset allocations, fees, and risks; and (2) the district's or school's cash flow, fund balances, and other revenue sources. No later than June 1, 2020, TEA must report the findings of its study and its recommendations for legislative action to the governor, lieutenant governor, speaker of the house of representatives, and each standing committee of the legislature having primary jurisdiction over primary and secondary education.

Effective date: September 1, 2019.

Affected statute: Subtitle F, Chapter 2256, Government Code.

Public improvement districts

HB 1136

Author: Price, Clardy, Krause, King (Ken), Anchia

Caption: Relating to territory included in a common characteristic or use project in a public improvement district established by a municipality.

Background: Public Improvement Districts (or PIDs), which are governed by Chapter 372 of the Local Government Code, have been used by municipalities across Texas as a mechanism for developing new neighborhood and supporting areas. Section 372.0035 was only available to a small number of municipalities and applied (and still applies) only to public improvement districts that contained hotels as the only business within the district.

Summary: The bill amends Section 372.0035 to eliminate the population and the hotel room number requirements that previously restricted the use of this section to create so called "tourism PIDs". Now, all municipalities may create a tourism PID of property that is composed of territory in which the only businesses are one or more hotels. The bill also allows a new district created after September 1, 2019, to undertake a project *only* for advertising, promotion, or business recruitment directly related to hotels, as an "authorized improvement". HB 1136 also adds Section 372.0121 to the Local Government Code, which permits the governing body of a municipality to include property in a "tourism PID" if (1) the property is a hotel, and (2) at the time of the district's creation, the property could have been included in the district without violating Section 372.005(b-1), regardless of whether the record owners of the property signed the original petition.

Effective date: Immediately, as of June 14, 2019.

Affected statute: Sections 372.0035 and 372.0121 (new section) of the Local Government Code.

Tax

HB 492 *For a discussion on temporary exemptions from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster, see our discussion of HB 492 under "Disaster relief/preparedness."*

HB 1883 **Author:** Bonnen (Greg), Guillen

Caption: Relating to deferred payment of ad valorem taxes for certain persons serving in the United States armed forces.

Background: Previously, Texas law created a "grace period" for service members to pay property taxes. The new law expands this grace period and provides additional benefits after the grace period runs.

Summary: HB 1883 gives active duty personnel in the United States armed forces a 60 day deferral period to pay delinquent property taxes without having to pay penalties or interest. The bill removed the prior statutory requirement under 31.02(b) that active duty personnel must be serving during a war or national emergency to receive the tax break. In accordance with prior law, the deferral period begins on the earlier of (1) upon discharge from active military service, (2) upon return to Texas for more than 10 days, or (3) upon returning to non-active duty status in the reserves. The ending of a war or national emergency is no longer a triggering event for the deferral period. "Eligible person" under 31.02(c) is revised to mean a person on active military duty in Texas who was transferred out of Texas, or a person in the reserve forces who was placed on active military duty and transferred out of Texas. The bill added Subsection (f) to 33.01, which sets the post-deferral period interest rate at six percent per year or portion of a year that the tax remains unpaid. No penalty is incurred by failing to pay by the end of the 60-day deferral period. This bill applies to penalties and interest on delinquent taxes if the taxes are paid on or after the effective date, even if the penalties or interest accrued before the effective date.

Effective date: September 1, 2019.

Affected statutes: Sections 31.02(b) and (c) and 33.01 of the Tax Code.

HB 1885 **Author:** Bonnen (Greg), Guillen

Caption: Relating to the waiver of penalties and interest if an error by a mortgagee results in failure to pay an ad valorem tax.

Background: Section 33.011 of the Tax Codes allows a governing body of a taxing unit to waive a penalties and interest on a delinquent tax in various situations. This bill expands this ability to include situations where a tax bill was not properly sent to the owner of property by the company that holds a mortgage on the property.

Summary: HB 1885 adds Subsection (k) as a new scenario in which one may request a waiver of penalties and interest. Under Subsection (k), the governing body of a taxing unit may waive penalties and interest on a delinquent property tax if three requirements are met. The first requirement is that the taxed property is subject to a mortgage under which the property owner is not required to fund an escrow account to pay property taxes. The second requirement is that the tax bill was mailed or delivered by electronic means to the mortgagee of the property, but the mortgagee failed to mail a copy of the bill to the owner of the property as required by Section 31.01(j). The third requirement is that the taxpayer paid the tax within 21 days following the date the taxpayer knew or should have known of the delinquency. The change in law made by this bill applies only to penalties and interest on an ad valorem tax that becomes delinquent on or after the effective date.

Effective date: January 1, 2020.

Affected statute: Section 33.011 of the Tax Code.

HB 2441

Author: Wray, Guillen

Caption: Relating to the entitlement of a person who is disabled and elderly to receive a disabled residence homestead exemption from ad valorem taxation from one taxing unit and an elderly exemption from another taxing unit.

Background: Previously, a disabled person who is 65 or older could not receive both a disabled and an elderly homestead exemption. This bill clarifies a situation where both exemptions may be available.

Summary: HB 2441 bars an eligible disabled person who is 65 or older from receiving both a disabled and an elderly residence homestead exemption from the same taxing unit in the same year. Such person may choose either exemption if a taxing unit has adopted both. The only way that both exemptions can be received by one person in the same year is if the exemptions are applied to taxes levied by different taxing units.

Effective date: January 1, 2020.

Affected statute: Section 11.13(h) of the Tax Code.

SB 443

For a discussion on changes to the period for which a property owner may receive a residence homestead exemption from ad valorem taxation for property that is rendered uninhabitable or unusable as a result of the disaster, please see our discussion of SB 443 under "Disaster relief/preparedness."

SB 812

For a discussion on changes to the appraised value of a residence homestead to an improvement that is a replacement structure that was rendered uninhabitable or unusable by casualty or by wind or water damage, please see our discussion of SB 812 under "Disaster relief/preparedness."

SB 1856

Author: Paxton

Caption: Relating to the payment of certain ad valorem tax refunds.

Background: The Tax Code permits certain exemptions/deductions from property taxes. If the tax bill have been paid where one of these exemption should have, the assessor may be required to repay the tax. This bill provides additional clarity as to who should be paid in this situation.

Summary: SB 1856 requires tax refunds to be sent to the recipient's mailing address as listed on the appraisal roll unless the taxpayer files a written request that they desire the request to be sent to another address. The bill clarifies that refunds are paid to the owner of the property when the tax was paid.

Effective date: September 1, 2019.

Affected statute: Section 1.071 (new section), 11.431(b), 11.439(b), 26.112(b) of the Tax Code.

Transportation

Minor Bills

HB 71 **Author:** Martinez Guillen

Caption: Relating to the creation of regional transit authorities; granting the power of eminent domain; providing authority to issue bonds and charge fees; creating a criminal offense.

Effective date: May 24, 2019.

HB 803 **Author:** Patterson; Canales; Thierry; Toth; Krause

Caption: Relating to financial reporting requirements of a toll project entity.

Effective date: September 1, 2019.

HB 2830 **Author:** Canales

Caption: Relating to certain requirements for and limitations on design-build contracts for highway projects of the Texas Department of Transportation ("TxDOT").

Effective date: September 1, 2019.

SB 198 **Author:** Schwertner; Kolkhorst

Caption: Relating to payment for the use of a highway toll project.

Effective date: September 1, 2020.

SB 1091 **Author:** Nichols

Caption: Relating to vehicles eligible for veteran toll discount programs.

Effective date: June 14, 2019.

SB 1311 **Author:** Bettencourt

Caption: Relating to the electronic transmission of an invoice or notice of toll nonpayment by a toll project entity.

Effective date: September 1, 2019.

Water

HB 2590 **Author:** Biedermann, Creighton

Caption: Relating to the administration, powers, and duties of water districts.

Background: It appears that the original impetus for the bill was to change how other kinds of water districts could convert to a municipal utility district. At the House committee hearing for the bill, the Association of Water Board Directors ("AWBD") opposed it. As it progressed, the bill was modified and various other "clean-up" provisions to the Water Code were added. At the Senate committee hearing, the AWBD supported the bill.

Summary: HB 2590 addresses many subjects: (i) it requires a city to consent to a water district previously created by an act of the legislature in the same way and with the same conditions as it is required to consent to a water district created by the Texas Commission on Environmental Quality ("TCEQ"); (ii) it sets out the ballot language for an operation and maintenance tax election; (iii) it expands the kind of districts which can provide fire-fighting services to include regional or master districts; (iv) it institutes certain residency requirements for temporary directors of a district appointed by the TCEQ; (v) it changes the procedures a district must use to convert to a municipal utility district and requires information on the conversion to be sent to the state senator and representative who represent the area in which the district is located; (vi) it broadens the types of roads a district may finance under its road powers; (vii) it allows a district to contract with a retail public utility to provide water or sewer service using the district's system; and (viii) it changes the procedures for creating a defined area within a district, and decreases the required acreage for eligible districts from 1,500 acres to 1,000..

Effective date: September 1, 2019.

Affected statutes: Sections 42.042(b), (f), (g) and (h) Local Government Code; Sections 49.107(d), 49.351(a), 54.022, 54.030, 54.033(a), 54.234(a), 54.2351, 54.801(a), (b), 54.805, 54.806(a), 54.809, 54.812(b), Water Code. Repeals Sections 54.234(b), 54.803, 54.804(a), 54.807, and 54.808, Water Code.

SB 239 **Author:** Nelson, Button, Stucky, Patterson

Caption: Relating to meetings for certain special purpose districts.

Background: Current law allows a district to designate a meeting place outside the district. After at least 25 qualified electors are residing in a district, on written request of at least five of those electors, the board is required to designate a meeting place and hold meetings within the district if it determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings. If the directors fail to designate a new meeting place, then five

electors may petition the TCEQ to designate a location. If the TCEQ determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings, the TCEQ may designate a meeting place inside or outside the district and require that meetings be held at such place. After the next election, the board may designate a meeting place outside the boundaries of the district.

Summary: SB 239 makes several changes pertaining to water district meetings.

First, the procedure for changing the location of the meeting place is changed. If the board chooses a location outside the district, it must describe in the resolution designating the meeting place the justification of why the meeting will not be held in the district or within 10 miles of the boundary of the district. After at least 50 (not 25) qualified electors are residing in a district, on written request of at least five of those electors, the board is required to designate a meeting place and hold meetings within the district. If no suitable meeting place exists inside the district, the board may designate a meeting place outside the district that is located not further than 10 miles from the boundary of the district. If the board fails to act on the request, five electors may petition the TCEQ to designate a location. If the TCEQ determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings, the TCEQ is required to designate a meeting place inside or outside the district which is reasonably available to the public within 60 days after the TCEQ receives the petition. After holding a meeting at a place designated pursuant to elector petition or TCEQ determination, a board may hold a hearing on the designation of a different meeting place, including a meeting place outside the district. The board may not hold meetings at a meeting place outside the district or further than 10 miles from the boundaries of the district if the board receives a petition asking the TCEQ to designate a location. Both the TCEQ and Comptroller are required to add information on their websites regarding how a resident may petition the TCEQ to require board meetings to be held no further than 10 miles from the boundary of the district.

With respect to districts operating under Chapter 51, 53, 54 or 55 with a population of 500 or more, on written request of a district resident made to the district not later than the third day before a public hearing to consider the adoption of an ad valorem tax rate, the district is required to make an audio recording of reasonable quality of the hearing and provide the recording to the resident in an electronic format not later than the fifth business day after the hearing. The district is required to maintain the recording for one year.

Districts operating under Chapter 51, 53, 54 or 55 with a population of 500 or more are required to post the minutes of their meeting (not clear if this is just tax rate hearing) to the district's website if the district maintains a website.

A district providing potable water or sewer service is required to include on a district's bill to a customer a statement referring the customer to the district's website or the Comptroller Special Purpose District Public Information Database for more information about the district, including information about the board and board meetings.

Effective date: September 1, 2019.

Affected statutes: Sections 403.0241(c), 551.1283, Government Code; Section 49.062, Water Code; adds Section 49.0631, Water Code.

SB 700

Author: Nichols, Watson

Caption: Relating to retail public utilities that provide water or sewer service.

Background: In 2013, the Texas Legislature transferred responsibility for rate regulation of water and wastewater facilities from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission of Texas (PUC). SB 700 changes the rate approval process for districts.

Summary: SB 700 amends the Water Code to change, for purposes of water rates and services, the number of taps or connections that constitute a particular class of utility as follows:

- A Class B utility has 2,300 connections or more but fewer than 10,000.
- A Class C utility has 500 connections or more but fewer than 2,300.
- A Class D utility has fewer than 500 taps or connections.

SB 700 authorizes the Texas Commission on Environmental Quality (TCEQ) to issue emergency orders with or without a hearing to:

- Compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of the TCEQ if necessary to ensure safe drinking water or environmental protection, and
- Compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

The bill authorizes the PUC, on request by TCEQ and on an expedited basis, to establish reasonable compensation for the temporary service required for such an emergency interconnection and allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment. If an emergency order is issued with a hearing, notice of a hearing to affirm, modify, or set aside the order is adequate if the notice is mailed or hand delivered to the last known address of the retail public utility's headquarters.

SB 700 changes the entity that has obtained or is required to obtain a certificate of public convenience and necessity for whom the PUC may issue an emergency order to compel to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the entity's actions or failure to act, from a water service provider to a retail public utility.

SB 700 also requires that when the PUC approves the acquisition of a nonfunctioning retail water or sewer utility service provider, it must determine the duration of the

temporary rates for the acquiring retail public utility. Rates must be for a reasonable period, and the PUC must rule on the reasonableness of the temporary rates if the PUC did not make a ruling before the application for the acquisition was filed.

The bill authorizes a regulatory authority to adopt rate approval methodologies that allow for timely and efficient cost recovery. The bill establishes that appropriate alternative ratemaking methodologies are the introduction of new customer classes, the cash needs method, and phased and multi-step rate changes and authorizes a regulatory authority to also adopt system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment.

SB 700 changes the number of gallons of water that are used as the basis for the billing comparison of a statement of intent to change rates for a Class A utility and a Class B utility. Class C utility rate adjustment provisions now apply only to a Class D utility. The bill revises the provision requiring the PUC to adopt procedures to allow a utility to receive, without a hearing, an annual rate adjustment by removing the specification that such adjustment be based on changes in the price index. It prohibits a Class C utility from making changes in its rates except by complying with the procedures to change rates for a Class B utility. It further authorizes a Class C utility, and a Class D utility that chooses to comply with Class B utility procedures, to send by mail or email a required hearing notice to each ratepayer regarding a rate change.

The bill requires the PUC, in adopting rules related to the information required in an application for a Class C or Class D utility to change rules, to ensure that these utilities face a less burdensome and complex application than is required for a Class A or B utility.

The bill also changes the entity to which a Class A utility can apply for an amendment of a certificate of convenience and necessity held by a municipal utility district from the TCEQ to the PUC.

SB 700 repeals Section 13.1872(b) of the Water Code, regarding rate adjustments for Class C utilities.

Effective date: September 1, 2019.

Affected statute: Subtitle B, Chapter 13, Water Code.

SB 911

Author: Hinojosa

Caption: Relating to the supervision of water districts by the Texas Commission on Environmental Quality.

Background*:* The Texas Commission on Environmental Quality (TCEQ) has "continuing right of supervision" and oversight over water districts in accordance with the Water Code. Over the years TCEQ has lacked the statutory authority to properly investigate a water district that mismanaged its financial resources and procurement process. SB 911 enhances TCEQ's statutory supervisory role after issues are raised by a district's annual audit report.

Summary: SB 911 adds language to clarify and amend TCEQ authority regarding water districts in Chapter 49 of the Water Code.

- Specifically, SB 911 would amend Section 12.081(a)(1), Water Code, to replace the phrase "competence, fitness, and reputation" with the word "qualifications." Additionally, SB 911 would amend Section 12.081(a)(4), Water Code, to clarify that the State Office of Administrative Hearings will conduct a hearing instead of a hearing examiner appointed by TCEQ.

SB 911 makes revisions to ensure that documents related to a district's confirmation elections are timely provided to TCEQ to allow TCEQ to timely respond to inquiries about these elections.

- All orders required to be filed must be provided to TCEQ within 30 days after the date of the election.

SB 911 amends the Water Code to specify that after reviewing a district's annual audit report, the executive director of TCEQ may request additional information from the district. This information must be provided within 60 days, unless extended by the executive director for good cause.

SB 911 specifies that the executive director may review and investigate a district's financial records and may conduct an on-site audit of a district's financial information.

Effective date: September 1, 2019.

Affected statute: Section 12.081(a), Water Code; Sections 49.102(e) and (f), Water Code; Section 49.195(a), Water Code, and Section 49.196(a), Water Code.

Appendices

Appendix A: How a bill becomes a law

Generally, the following information is chronological, and draws extensively from the *Guide to Texas Legislative Information*, Texas Legislative Council.

***Origin & Introduction*:** Any legislator may draft a bill and introduce it in that legislator's chamber.

Committee Referral: Following introduction (or its initial receipt from the opposite chamber), the bill undergoes its first reading. After first reading, the Speaker of the House or the Lieutenant Governor refers the bill to an appropriate committee.

House of Representatives: Committees in the House of Representatives are organized based on subject matter.

Senate: Committees in the Senate are not organized by subject matter, and the Lieutenant Governor may refer bills to any standing senate committee or subcommittee. However, strong attempts are made to keep bills of similar subject matter within the same committee.

In either chamber, a committee may appoint subcommittee to review a bill or bills which require significant analysis. Upon completion of the review, the subcommittee reports its findings and recommendations to the full committee.

Committee Action: Before a committee can report a bill out to the entire chamber, the committee must hold a public hearing on the bill. After the hearing and deliberation, the committee may either take no action or issue a report on the bill to the its chamber. Committee reports outline any recommendations or amendments to a bill and provide the committee's analysis of the bill.

House of Representatives: In the House, the committee report is circulated to the chief clerk of the House for referral to a calendars committee. The calendars committee determines a date for a bill's second reading and consideration.

Senate: The Senate does not have a calendars committee, and each senator receives a copy of the senate committee report. Bills are placed on the Senate's regular order of business list for consideration in listed order, unless the bill's author or the sponsoring senator files a notice of intent to suspend the regular order of business list and expedite consideration of a bill.

***Calendars*:** Before a bill can be considered by the entire chamber, the bill must be placed on the appropriate calendar.

House of Representatives: The Supplemental House Calendar is the Calendar used on a daily basis by the House of Representatives. Before adjourning each day, the House typically considers all matters on the calendars for that day.

Senate: The Senate only uses the "Senate Agenda" which lists all the matters up for deliberation on that day. Unless the Senate adopts a rule allowing bills to be considered out of order, items on the agenda must be considered in the order of the agenda. To consider bills out of order, the author or

sponsor must file notice of intent with the Secretary of the Senate by 3:00 p.m. the day before (or in the case of holidays or weekends, the last day the Senate was in session).

Floor Action: After being placed on a calendar, a bill undergoes its second reading on the floor. Following the second reading, the chamber may debate a bill. During debate, legislators may propose amendments. After debate and amendments, the chamber may vote on the bill for passage to third reading. A bill may only be amended during its third reading by a two-thirds majority of members present. The Texas Constitution requires each reading to occur on three separate days, unless the chamber through a four-fifths vote waives the requirement.

Return of Bill to the House/Senate & Conference Committee: After three readings, it is sent back to its originating chamber or to the opposite chamber for consideration and passage. If no amendments to the bill are made in the opposite chamber, the bill is enrolled and signed by the Speaker of the House and the Lieutenant Governor and sent to the Governor for signature or veto. If the opposite chamber amended the bill, the originating chamber must concur with the amendments. If concurrence is not possible, the originating chamber requests a conference committee to resolve the disagreements.

A conference committee consists of five representatives and five senators. The committee may only resolve and amend disputed language. The committee cannot amend or omit other language, nor can it add new language. If the committee comes to a resolution, it prepares and circulates a report to the members of both chambers with its recommendations on the final text of the bill. The chambers may not amend the report, and it is subject to a yay or nay vote in its entirety.

If the chambers cannot agree with the committee's recommendation, the bill may be sent back to the conference committee for further review, or a new committee may be convened. If the conference committee does not reach agreement the bill is dead. If, on the hand, the conference committee's recommendation is approved by both chambers, the bill is enrolled and sent to the Governor.

Governor's Action: Within 10 days, after a bill is received by the Governor, the Governor may sign, veto, or allow the bill to pass without signature. If a bill is sent to the Governor during the last 10 days of the regular session, the Governor has 20 days to act. If the session has not ended and the Governor vetoes a bill, it is sent back to its originating chamber and may become law if a two-thirds majority of each chamber overrides the veto. If the Governor does not sign or veto a bill, the bill becomes law after 10 days or 20 days if the session has ended.

Effective Date: A law passed by the Legislature becomes effective on the 91st day after final adjournment. However, on record votes of a two-thirds majority of both chambers, a measure becomes effective either immediately or at an earlier specified date. If effective immediately, the effective date is the later of 1) the day the Governor signs the bill, 2) the day the bill is filed with the Secretary of State without the Governor's signature, 3) the first day after the expiration of the period allowed for gubernatorial action on the measure, and 4) the day the Legislature overrides the veto. Different parts of a bill may become effective on different days.

Appendix B: How a local and consent bill becomes a law

Generally, the following information is chronological, and draws extensively from the *Guide to Texas Legislative Information*, Texas Legislative Council.

The House of Representatives and the Senate provide for different procedures for Local and Consent Bills. In the House, a Local and Consent Bill is one that is local or one to which no opposition is expected. In the Senate, a Local and Consent Bill in one that is local or one to which no opposition is expected and contains no appropriation. Local and Consent Bills receive expedited consideration because amendments are not allowed and debate is limited.

House of Representatives: In the House, Local and Consent Bills are scheduled on the Local, Consent, and Resolutions Calendar, as set by the Committee on Local and Consent Calendars. Any standing committee may recommend that a measure be sent to the Committee on Local and Consent Calendars. This recommendation requires unanimous consent of all committee members. If it is not eligible for the Local and Consent Calendar May the Committee on Local and Consent Calendars may transfer the bill to the Committee on Calendars.

During the last half of the regular session, the House generally considers measures on the Local, Consent, and Resolution Calendar once a week. Debate is limited, and amendments can be offered only if approved by the Committee on Local and Consent Calendars. If debate exceeds ten minutes, the bill can be removed from the Local, Consent, and Resolutions Calendar. A bill may also be removed if five or more representatives object to its consideration.

Senate: The Senate schedules Local and Consent Bills on the Local and Uncontested Calendar, as is set by the Senate Committee on Administration. Both the author or sponsor of the bill and the chair of the committee reporting on the bill must file a written request for placement on such calendar.

During the last half of the regular session, the Senate considers measures on the Local and Uncontested Calendar once or twice a week. The measures are not debated nor are amendments allowed. Bills on the Local and Uncontested Calendar are considered without a suspension of the regular order of business, which is generally required for any other legislation taken out of order. If two or more senators object to consideration, a bill may be removed from the Local and Uncontested Calendar.

Appendix C: How joint resolutions are placed on the ballot

Joint resolutions are used to propose amendments to the Texas Constitution, ratify proposed amendments to the U.S. Constitution, or request a constitutional convention to propose amendments to the U.S. Constitution. Joint resolutions proposing amendments to the Texas Constitution require a vote of two-thirds of the total membership of each chamber for adoption. Other joint resolutions require a simple majority vote in each chamber for adoption. A joint resolution takes the same course through both chambers as a bill and is like a bill in all respects, except that, in the house, if it receives the required number of votes at any reading after the first reading, the resolution is passed. Three readings are required to pass a joint resolution in the senate. Joint resolutions passed by the legislature are not submitted to the governor for signing but are filed directly with the secretary of state. An amendment to the Texas Constitution proposed by an adopted joint resolution does not become effective until it is approved by Texas voters at a general election.

The secretary of state conducts a drawing to determine the order in which the proposed constitutional amendments will appear on the ballot.

Appendix D: Useful terms

Calendar means a list of all measures scheduled to be considered on a specific date by a chamber.

Concurrent Resolution means a measure that conveys the opinion of the Texas Legislature. Concurrent resolutions are typically used to offer commendations, memorials, congratulatory statements, or welcomes, or to request action by other governmental entities. Unless it is an administrative resolution for adjournment or a joint session of both chambers, a concurrent resolution requires passage by both chambers and action by the Governor.

Enrolled means a bill that has passed both chambers in identical form. Following enrollment, a bill is sent to the Governor for signature.

Engrossed means a bill that has passed one chamber. Following engrossment, a bill is sent with all amendments to the opposite chamber for consideration, amendment, and passage.

HB means a house bill.

HJR means a house joint resolution.

HR means a house resolution.

Local and Consent Calendar in the House, means the list for a scheduled date of local and non-controversial bills or measures.

Local and Uncontested Calendar in the Senate, means list for a scheduled date of local and non-controversial measures.

Local Measures means bills and resolutions concerning water districts, hospital districts, county and statutory courts, juvenile boards, road utility districts, or localized hunting, fishing, and conservation of wildlife.

Joint Resolution means a measure proposing amendments to the Texas Constitution, ratifying amendments to the United States Constitution, or requesting a convention to propose amendments to the United States Constitution. A joint resolution requires passage by both chambers, and must ultimately be approved by Texas voters. A joint resolution does not require action by the Governor.

Resolution means a measure used to express a legislative opinion or decision on a particular matter that may be approved by one or both chambers. Resolutions do not have the force of law.

SB means a senate bill.

SJR means a senate joint resolution.

SR means a senate resolution.

Appendix E: Bill summary index

House bills

Senate bills

Joint resolutions

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Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

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