



# 2019 LEGISLATIVE UPDATE



KARCZEWSKI | BRADSHAW | SPALDING  
NICHOLS | LAMP | LANGLOIS

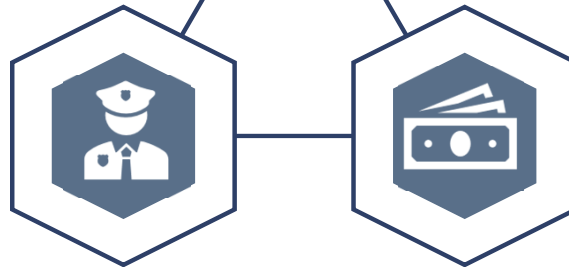
SARAH LANGLOIS, PARTNER  
KBS Law Group Houston



**RECAP**

**the big three**  
legislative priorities

**make schools  
safer**



**fix school  
finance**

**raise teacher  
pay**

# 86<sup>th</sup> Legislative Session: By the Numbers



- 10,877 bills filed
- 4,581 bills passed by both chambers
- 1,323 bills signed by the Governor
- 58 bills vetoed by the Governor

**HB 3**

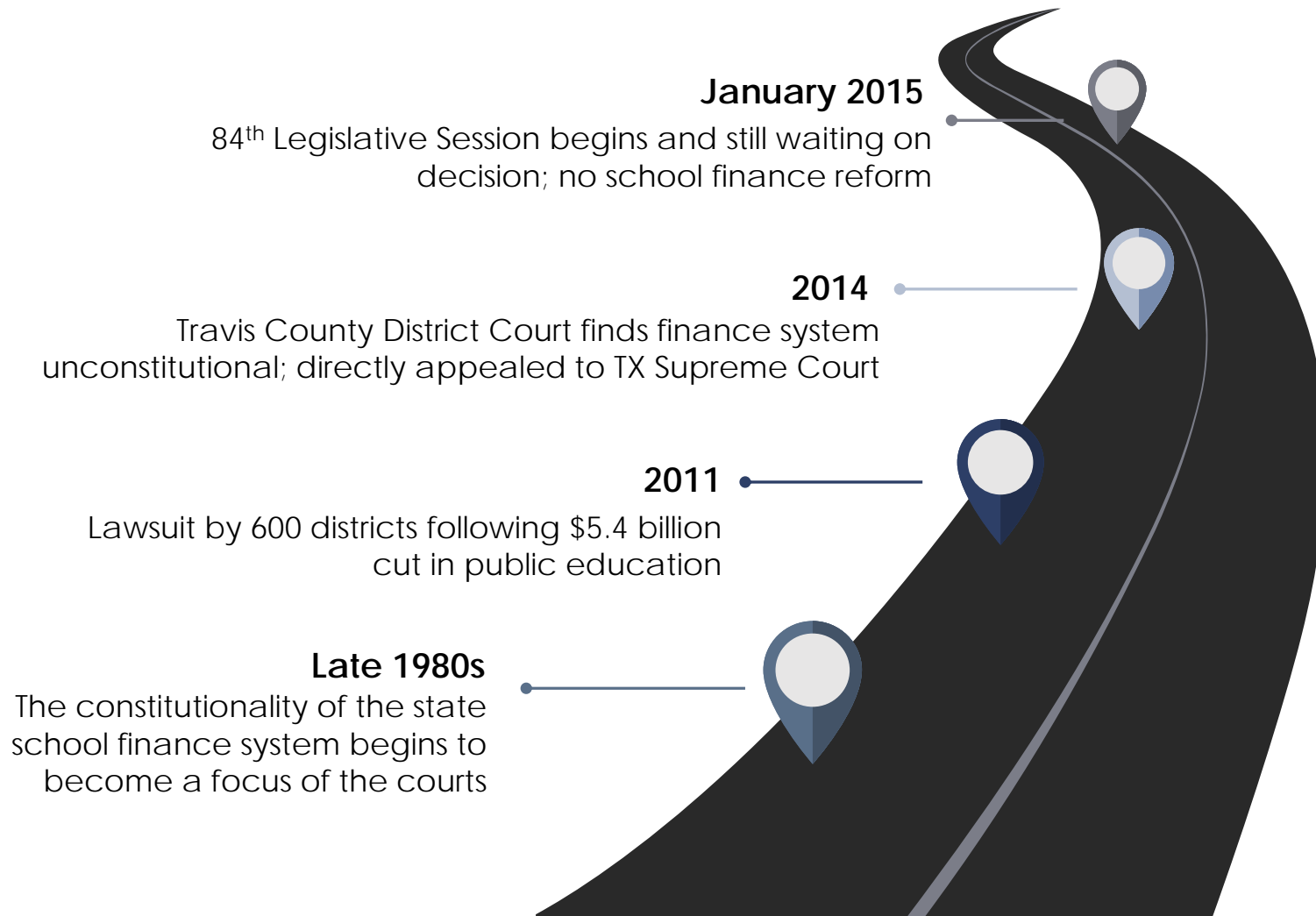
A large white quotation mark is positioned on the left side of the image. The background is a dark blue, semi-transparent overlay over a blurred image of a wooden gavel. The gavel is positioned diagonally, with the head in the upper right and the handle extending towards the lower left. The text is centered in the upper half of the image.

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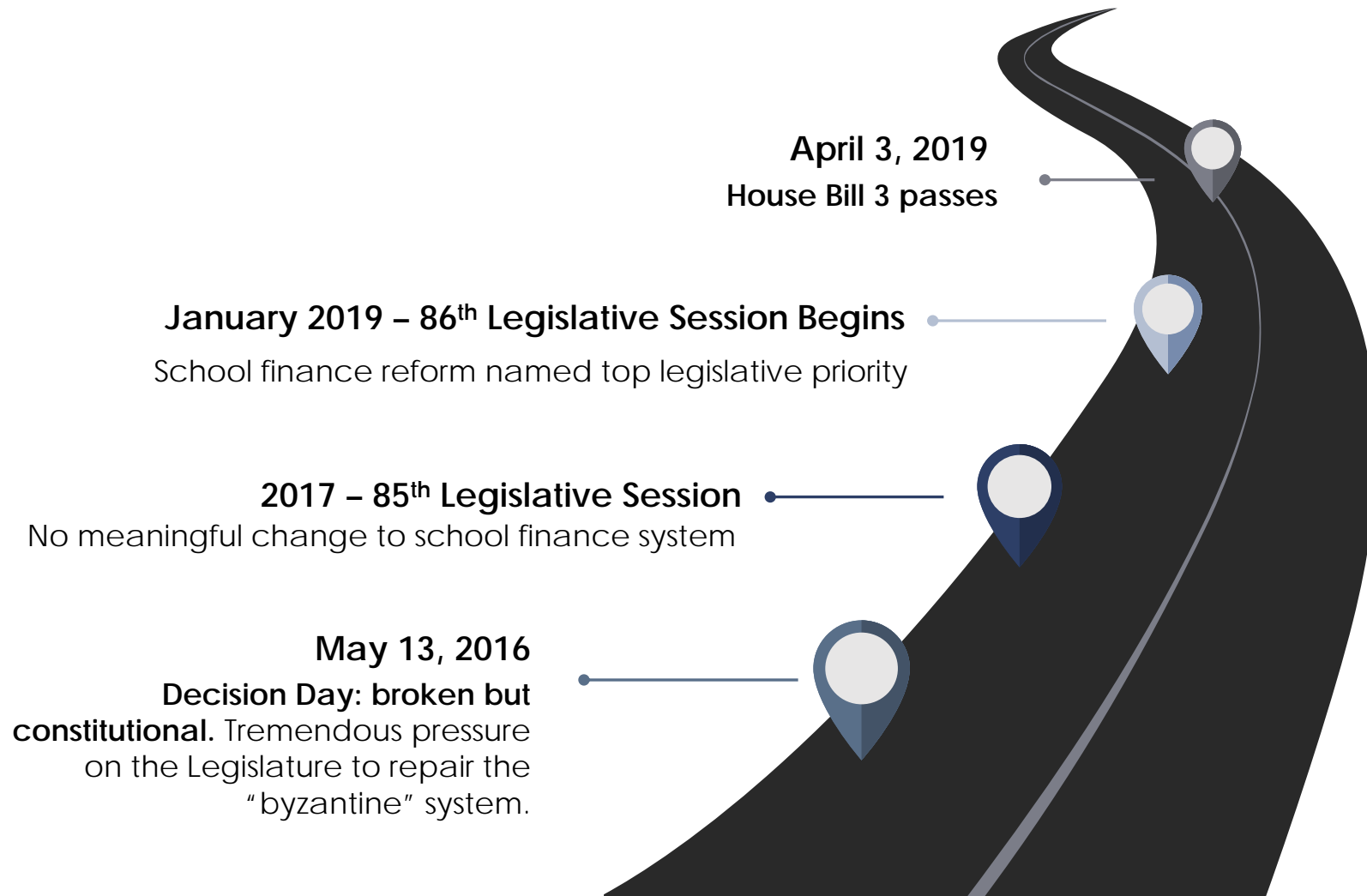
**IT SHALL BE THE DUTY  
OF THE LEGISLATURE.**

MORATH VS. TEXAS TAXPAYER & STUDENT FAIRNESS COALITION

# HB 3 and School Finance Reform: HOW DID WE GET HERE?



# HB 3 and School Finance Reform: HOW DID WE GET HERE?







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**I WANT TO MAKE THIS VERY CLEAR.**

WE WILL DO WHAT NO ONE THOUGHT POSSIBLE.  
WE WILL FINALLY FIX SCHOOL FINANCE.

GOVERNOR ABBOTT

“

**I MADE SOME PRETTY BOLD  
PROMISES TO THE PEOPLE OF TEXAS.**

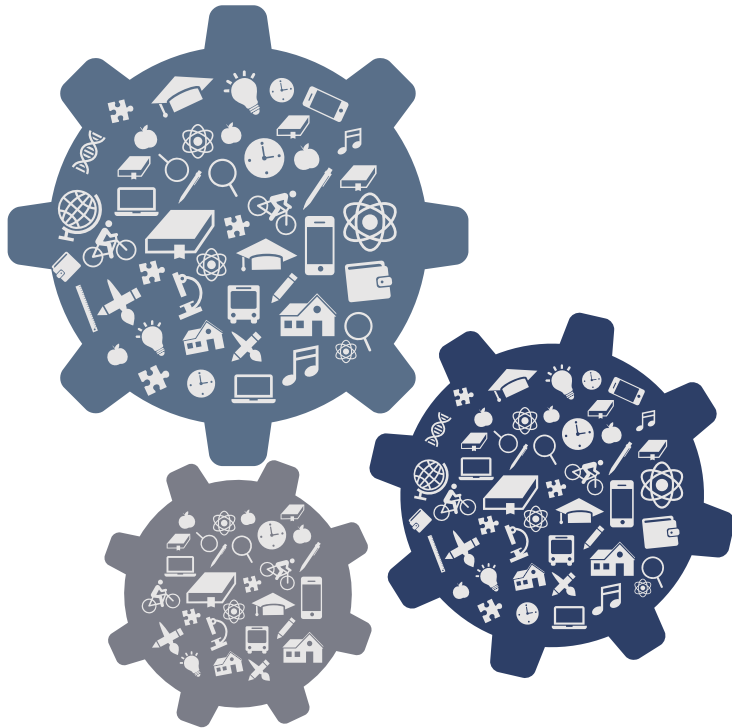
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ARE ANNOUNCING THAT WE HAVE DONE EXACTLY  
THAT.

GOVERNOR ABBOTT

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# The HB 3 Solution

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1. Increase basic allotment
2. Reduce property taxes
3. Reduce recapture



**PURCHASING  
& OPERATIONS**

# HB 3834 Cybersecurity Training for State and Local Employees

- **Applies to:** contracts entered into or renewed on or after June 14, 2019
- **Background and purpose:** “It has been suggested that the integration of information technology services into the daily duties of many state and local government employees and contractors has created points of vulnerability for government data systems that may house sensitive information...HB 3834 seeks to ensure that state and local governments are better safeguarded against cybersecurity risks by requiring certain government employees and contractors to undergo cybersecurity training.”
- **Updates provisions related to:**
  - cybersecurity training requirements
  - Program certification by the Department of Information Resources (DIR); and
  - Required terms for state contractors.

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# HB 3834 DIR-Certified Training Programs

HB 3834 requires that DIR:

- Work with the state cybersecurity council and industry stakeholders to annually certify **at least 5 cybersecurity training programs**;
- Publish approved programs on DIR website; and
- Update program certification standards. (Gov. Code 2054.519)



# HB 3834 Required Training

At least once a year, local governments (including school districts) must:

State Agencies must annually identify and require a DIR-certified cyber security training for:

- Identify employees with access to district computer systems or databases; and
- Require that those employees complete a DIR-certified cybersecurity program.
- State employees who use a computer for 25% or more of their required duties; and
- Elected or appointed officers of the agency. - Gov. Code 2054.5191 (a)

- Gov. Code 2054.5191 (a)



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## HB 3834 Additional Requirements

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### Governing body may:

- ✓ select the most appropriate DIR-certified program to use
- ✓ select a program provided by a dedicated information resources cybersecurity officer employed by the local government, if any.

### Governing body must:

- ✓ verify and report training completion; and
- ✓ Require periodic audits focusing on compliance.





# HB 3834 Requirements for DIR-Certification

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To be certified, the cybersecurity training program must:

1. focus on forming information security habits and procedures that protect information resources; and
2. teach best practices for detecting, assessing, reporting, and addressing information security threats.

- Gov. Code 2054.519(b)

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## HB 3834 State Contractor Requirements

- State contractors who have access to a state computer system or database must complete a state-certified cybersecurity training during:
  - the contract term; and
  - any renewal period.
- Training requirement must be expressly included as a term of the state contract
- Training completion by state contractors is subject to verification and periodic compliance review



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## HB 4390 Privacy of Personal Identifying Information and the Texas Privacy Protection Advisory Council

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### Section 521.053(b), Bus. & Comm. Code

- A person who conducts business in the state and owns or licenses computerized data that includes sensitive personal information is required to disclose any discovered breach of system security to any individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person.
- Must be disclosed “as quickly as possible.”

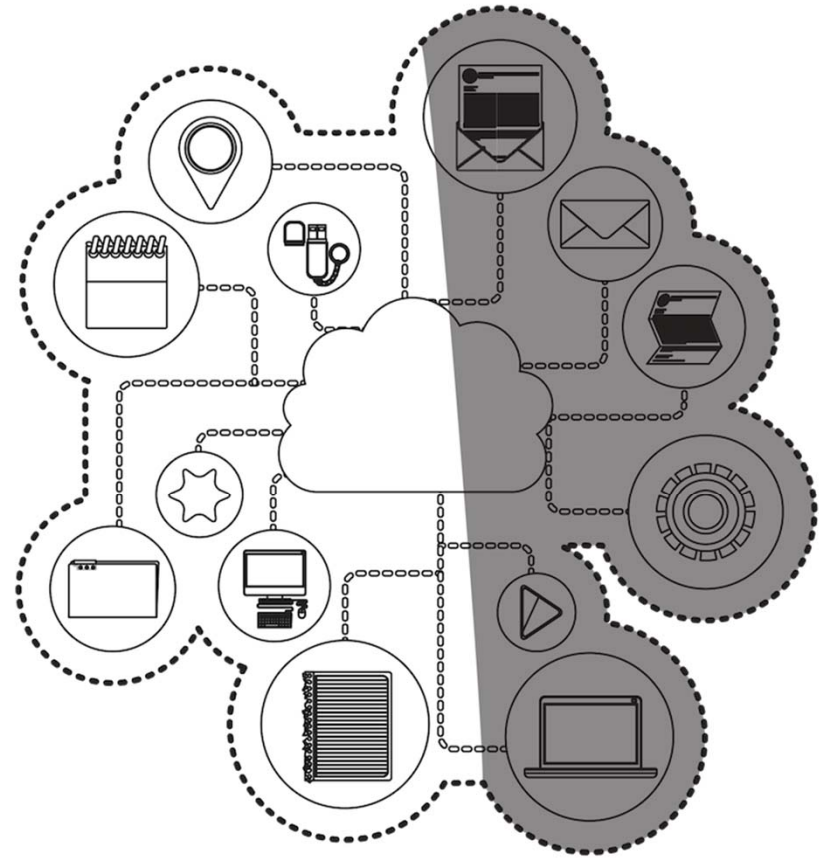


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## HB 4390

Seeks to better protect individuals from the unauthorized disclosure of sensitive personal information by:

- Strengthening notification requirements pertaining to the disclosure of data breaches impacting sensitive personal information; and
- Creating the Texas Privacy Protection Advisory Council.



# HB 4390 Privacy of Personal Identifying Information

## Timing of Disclosure

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**As of January 1, 2020**, disclosure of system security breaches in which an individual's sensitive personal information "was or was reasonably believed to have been acquired by an authorized person" is required:

- Without unreasonable delay
- But not later than the 60th day after the determination that the breach occurred.

- Sec. 521.053, Bus. & Comm. Code

# HB 4390 Privacy of Personal Identifying Information

## Notice to the Attorney General

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### Notice to AG required for large breaches

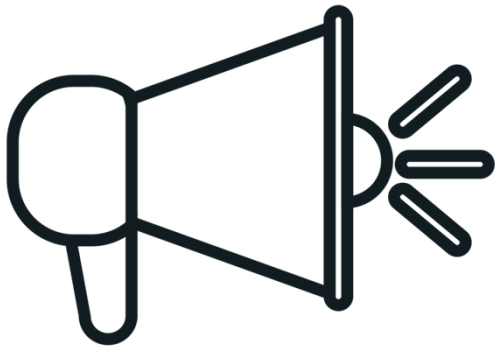
If the breach involves **at least 250 state residents**, the person who owns or licensed the data including the sensitive personal information must also notify the attorney general of the breach.

- Sec. 521.053(i), Bus. & Comm. Code

# HB 4390 Privacy of Personal Identifying Information

## Notice to the AG

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### The notice must include:

1. a detailed description of the nature and circumstances of the breach or the use of sensitive information acquired as a result;
2. the number of TX residents affected at the time of notification;
3. steps taken to address the breach;
4. any steps the entity or individual intends to take; and
5. information on whether law enforcement was involved in investigating the breach.

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# HB 4390 Texas Privacy Protection Advisory Council

- Tasked with studying data privacy laws and making legislative recommendations (temporary provision effective September 1, 2019-December 31, 2020)
- 15-member council composed of:
  - 5 members from House of Representatives (appointed by House speaker);
  - 5 senators (appointed by the lieutenant governor); and
  - 5 members of “relevant industries” (appointed by the governor).





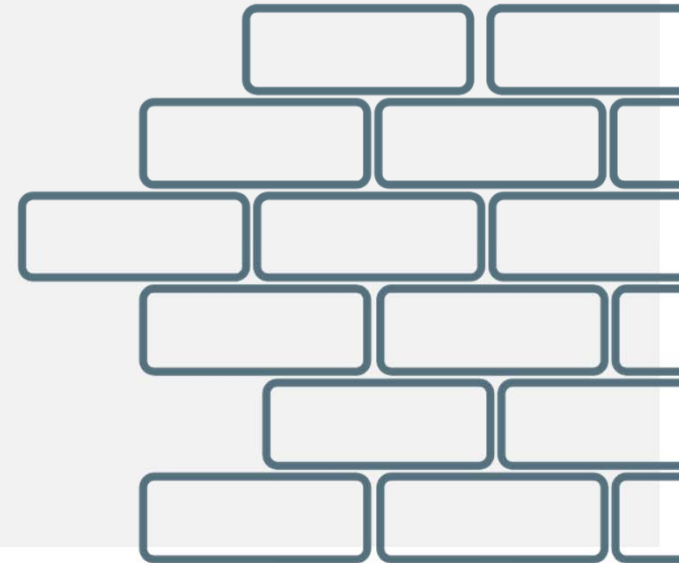
# HB 985 Collective Bargaining Organization Agreements & Certain State-Funded Public Work Contracts

- Amends TEC Sec. 51.7761 and Sec. 2269.0541 of the Government Code
- Requires neutrality regarding labor agreements for public works contracts by “prohibiting a governmental entity or an institution of higher education from prohibiting, requiring, discouraging, or encouraging a contractor or subcontractor from entering into or adhering to an agreement with a collective bargaining organization for a state-funded project, including state-guaranteed debt.”
- Applies only to a public work contract for which an invitation for offers, request for proposals, request for qualifications, or other similar solicitation is first published or distributed on or after September 1, 2019.
- **Supporters said:** simply creates a “level playing field” and “ensure[s] that public works contracts were awarded based on who could deliver the best product at the most competitive price, regardless of their collective bargaining status.”

# HB 1734 Litigation Concerning Defects in District Facilities

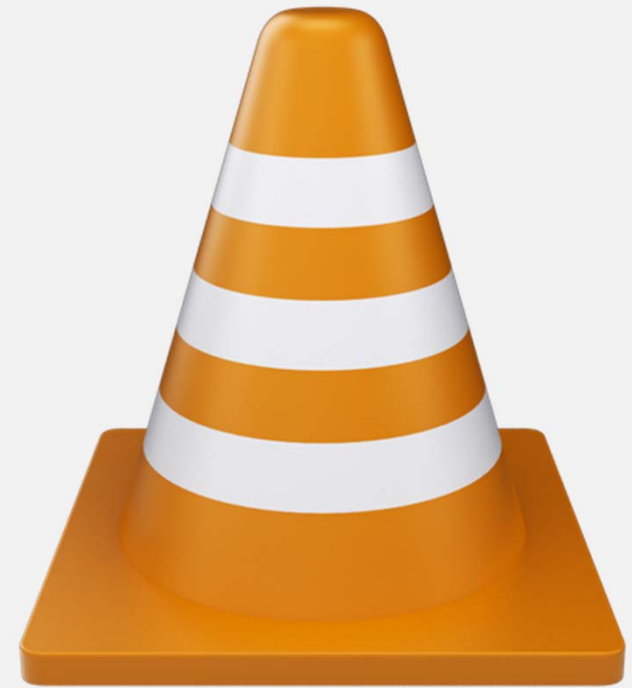
Increases requirements for school districts to bring a legal action pertaining to defective design, construction, renovation, or improvement of district facilities financed by bonds.

- **Supporters said:** dissuades districts from resorting to legal action against architects and construction firms before first providing the opportunity to remedy the problem.
- **Opponents said:** creates unnecessary obstacles to hold contractors accountable for construction defects.



## HB 1999 Public Buildings and Public Works Construction Liability Claims

- Impacts ability for school districts to recover damages for construction defects
- “ Among other provisions, the bill requires a governmental entity to provide certain parties with a report and an opportunity to inspect and correct any construction defect or related condition before bringing an action asserting such a claim and provides for the dismissal of an action brought by a governmental entity that does not comply with these requirements.”



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## HB 1999 Applicability - Section 2272.002(a)(1)

1. Applies only to a claim for:
  - A. damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work; or
  - B. indemnity or contribution for damages described by 2272.002(A);
2. asserted by a governmental entity with an interest in the public building or public work affected by the alleged construction defect; and
3. asserted against a contractor, subcontractor, supplier, or design professional.





## **HB 1999- Applicability** Section 2272.002(b)

This chapter does not apply to:

1. a claim for personal injury, survival, or wrongful death;
2. a claim involving the construction of residential property covered under Chapter 27, Property Code;
3. a contract entered into by the Texas Department of Transportation;
4. a project that receives money from a state or federal highway fund; or
5. a civil works project as defined by Section 2269.351.

## Prior to bringing a claim, the district must first provide:

### 01 written report Sec. 2272.003

1. Identify the specific construction defect subject to the claim;
2. Describe the present physical condition of the affected structure; and
3. Describe any modification, maintenance, or repairs made since the affected structure was initially occupied or used.

### 02 chance to inspect and correct Sec. 2272.004

- A reasonable opportunity to inspect within 30 days of the report; and
- In general, at least 120 days to correct or to repair after the inspection.

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# HB 1999

## Consequences

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Failure to comply with Sections 2272.003-.004 may result in dismissal of the claim by court, arbitrator, or other adjudicating authority.

- First violation – without prejudice
- Second violation – with prejudice



## SB 1928 Certificate of Merit in Certain Actions Against Certain Licensed or Registered Professionals

- Amends Sections 150.001-150.002, Civ. Prac. & Rem. Code
- Effective immediately
- **Intent** - preventing frivolous claims against certain registered professionals by requiring:
  - Certificates of merit from all claimants, not just the original plaintiffs; and
  - Vetting of all claims by third-party professionals.





## SB 1928 Certificate of Merit in Certain Actions Against Certain Licensed or Registered Professionals

The Civil Practice & Remedies requires that plaintiffs file an affidavit of a third-party licensed or registered professional (the "Certificate of Merit") in an action or arbitration for damages relating to the provision of professional services by a:

- licensed architect;
- licensed professional engineer;
- registered professional land surveyor; or
- registered landscape architect.



## SB 1928 Certificate of Merit in Certain Actions Against Certain Licensed or Registered Professionals

- Makes the requirement applicable to any claimant in such an action or proceeding; and
- Requires that the third-party professional practice in the defendant's area of practice.



# SB 1928 Certificate of Merit in Certain Actions Against Certain Licensed or Registered Professionals

- **“Claimant”** means a party, including a plaintiff or third-party plaintiff, seeking recovery for damages, contribution, or indemnification.

-150.001(1-a), Civ. Prac. & Rem. Code

- **“Complaint”** means any petition or other pleading, which, for the first time, raises a claim against a licensed or registered professional for damages arising out of the provision of professional services by the licensed or registered professional.

-150.001(1-b), Civ. Prac. & Rem. Code

## SB 1928 Certificate of Merit in Certain Actions Against Certain Licensed or Registered Professionals

### Failure to file the affidavit:

- ❑ *Shall* result in dismissal of the complaint; and
- ❑ Dismissal *may* be with prejudice!



# SB 1928 Certificate of Merit in Certain Actions Against Certain Licensed or Registered Professionals

**Section 150.002(a)** In any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, a claimant [~~the plaintiff~~] shall be required to file with the complaint an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who:

1. competent to testify;
2. holds the same professional license or registration as the defendant; and
3. practices [~~is knowledgeable~~] in the area of practice of the defendant and offers testimony based on the person's:
  - A. knowledge;
  - B. skill;
  - C. experience;
  - D. education;
  - E. training; and
  - F. practice.

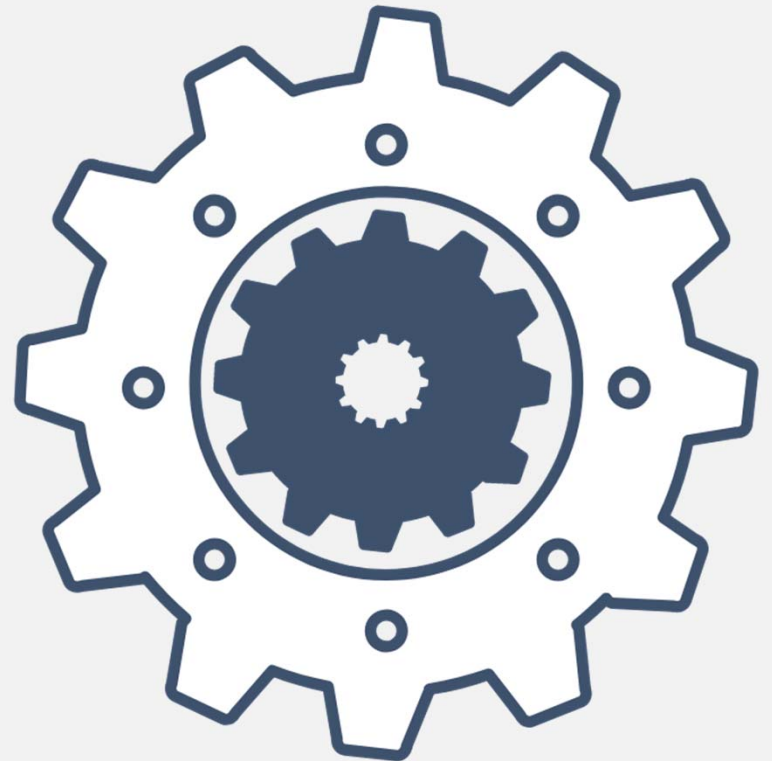
# HB 396 Instructional Materials and Technology Fund Allotment

Effective September 1<sup>st</sup>

Amends Chapter 37 of the Education Code pertaining to authorized uses of the:

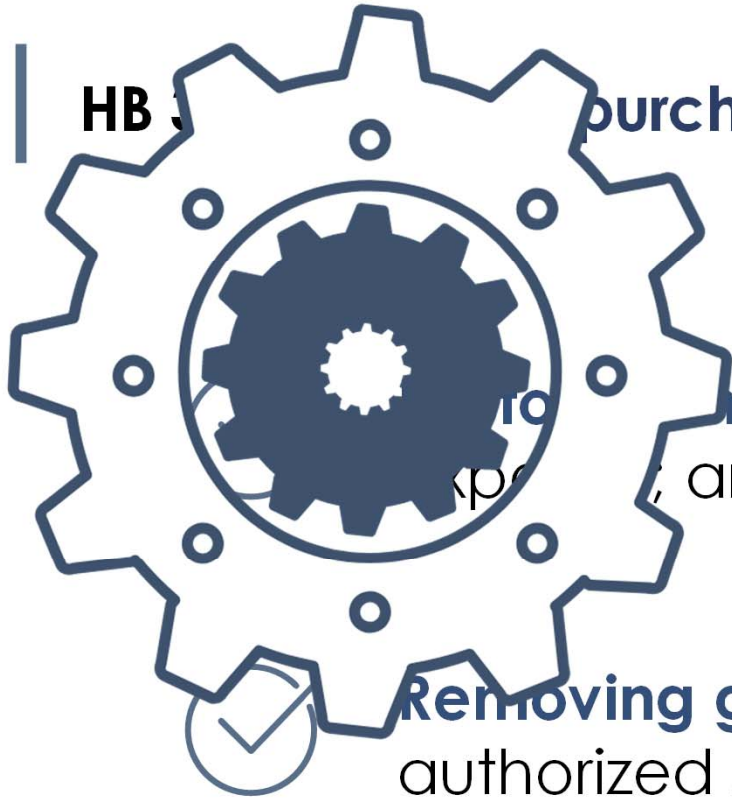
- instructional materials and technology fund; and
- instructional materials and technology allotment

**Intent:** provide greater purchasing flexibility

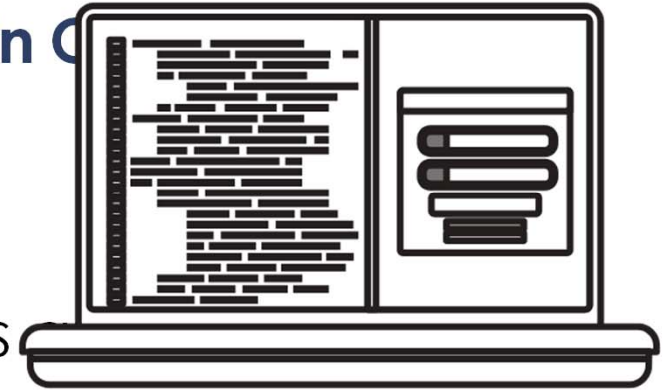


HB

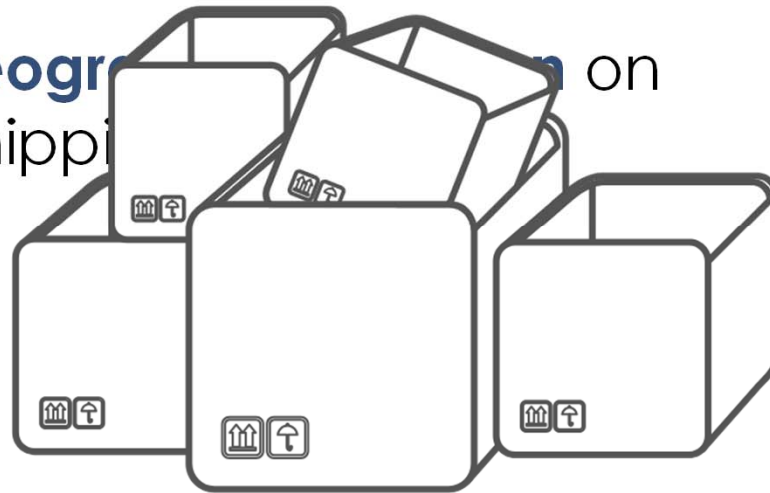
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Inventory software as  
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Removing geogr  
authorized shipp



## HB 396 Shipping and Freight Costs



Previously, Chapter 37 only covered **intra-state costs** associated with the purchase of instructional materials.



HB 396 removes the **geographic limitation**; allowed expenditures from the fund now include inter-state shipping and freight costs. See amended TEC 31.021(c)(5)



# HB 396 Purchase of Inventory Software



## | Reenacts TEC 31.1021(c)(J)

Removed during the 85<sup>th</sup> Legislative Session

## | Restores inventory software as an allowable expense

May use allotment to purchase inventory software or systems for storing, managing, and accessing instructional materials and analyzing the usage and effectiveness of the instructional materials.



# HB 793: Anti-Boycott Israel Certification

**2017** – HB 89 passed requiring Anti-Boycott Israel certification for certain government contracts

**April 2019** - Federal District Court in Austin entered a temporary injunction blocking enforcement on Free Speech grounds

## HB 793 Relating to certain government contracts with companies that boycott Israel

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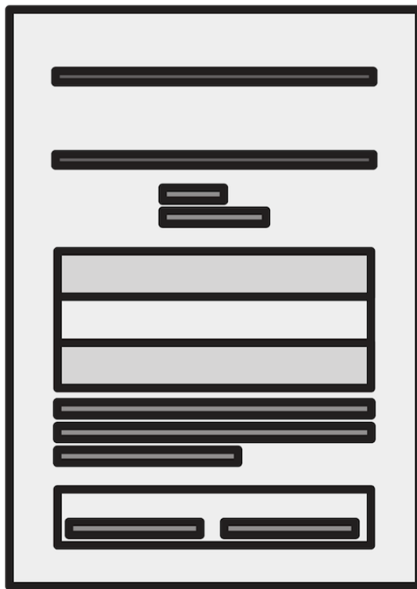
✓ Effective as of May 7<sup>th</sup>

- Excludes sole proprietorships and small businesses from certification requirement
- Amends 2270.001(2):
  - “Company” has the meaning assigned by Section 808.001, *except that the term does not include a sole proprietorship.*”



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# HB 793 Relating to certain government contracts with companies that boycott Israel



## Amends 2270.002

(a) This section only applies to a contract that:

1. is between a governmental entity and a company with 10 or more full-time employees; and
2. has a value of \$100,000 or more that is wholly or partly from public funds of the governmental entity.



## HB 793 Recommended Contract Language

If (a) Contractor is not a sole proprietorship; (b) Contractor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Contractor hereby certifies and verifies that neither the Contractor, nor any affiliate, subsidiary, or parent company of the Contractor, if any, (the "Contractor Companies"), boycotts Israel, and the Contractor agrees that the Contractor and Contractor Companies will not boycott Israel during the term of this Agreement...



## HB 793 Recommended Contract Language

... For purposes of this Agreement, the term “boycott” shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business with Israel or an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

# HB 2868 Procurement of Interior Design Services



**Amends Tex. Gov't Code § 22254.002(a)**

Adds interior design services to the  
Professional Services Procurement Act

# HB 2868 Procurement of Interior Design Services

Applies to contracts entered into on or after October 1, 2019



Greater flexibility for governmental entities when procuring these services in recognition of high level of skill, expertise, and creativity involved



Defined as services provided by a person lawfully engaged in interior design, need not be registered as an interior designer.



Selected on demonstrated competence and qualifications to perform services for fair and reasonable price rather than competitive bids





## SB 22 Prohibiting Certain Transactions between Governmental Entities and Abortion Providers

- Prohibits the state, a state agency, or a political subdivision of the state from entering into a “taxpayer resource transaction” with an abortion provider or an affiliate of an abortion provider, other than a certain hospital, licensed physician, or accredited residency program.
  - *Taxpayer resource transaction* – defined to encompass advocacy or lobbying on behalf of the interests of an abortion provider,
- Allows the Attorney general to bring an action in the name of the state to enjoin a violation of SB 22.

# SB 65 State Contracting and Procurement/ Disclosures related to Lobbying Services

Updates state contracting and procurement requirements and oversight

- Effective September 1, 2019
- **Author's Sponsor's Statement of Intent:** "Texas has seen many procurement difficulties at our state agencies. Despite procurement reforms over the past two legislative sessions, several well-publicized instances of agencies failing to adhere to procurement laws highlight the need for further reform. S.B. 65 ensures that safeguards and consistent contracting practices are in place to achieve the best value for the state in every procurement...[and] better allocates resources to provide more oversight during the stages of procurement when agencies need it most."

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## SB 65 – Disclosures Related to Lobbying Services

- HB 1295 (2015) added the Disclosure of Interested Parties certification requirement, which applies to contracts requiring action or vote by the board before signing and contracts with a value of at least \$1 million
- SB 65 includes additional types of contracts requiring this certification.



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## SB 65 – Disclosures related to Lobbying Services

- Disclosure required for service contracts that would require a person to register as a lobbyist under Chapter 305 of the Government Code.
- Disclosure of contract information also required for a political subdivision (such as a school district) that enters into a *consulting services contract* with a state agency if it requires the person to register as a lobbyist.
  - *Consulting services* – the service of studying or advising a state agency under a contract outside of the traditional employer/employee relationship

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## SB 65 Lobbying Services Disclosures Website Posting

The lobbying contract and the following information constitutes public information under the TPIA and must be prominently displayed on the district's website:

1. Execution dates;
2. Term, including extension options;
3. Effective dates;
4. Final amount paid in the previous fiscal year; and
5. A list of all legislation (and the position taken) advocated for, on, or against by all parties and subcontractors to the contract in the previous fiscal year.



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# SB 65 Lobbying Services Disclosures

## Budget Requirements

- Proposed budget of a political subdivision that provides consulting services with a state agency must detail (as a line item) expenditures for directly or indirectly influencing or attempting to influence legislation or administrative action
- Must have sufficient detail to allow for a comparison between proposed budget/actual expenditures for the same purpose during the previous year.
- *Disclosure and budget requirements:* applicable to contracts entered into before, on, or after, September 1<sup>st</sup>, regardless of whether the contract term has expired.



## **SB 969 Operation of Mobile Carrying and Personal Delivery Devices**

- Effective as of June 10, 2019
- Creates Chapter 552A of the Texas Transportation Code
- Makes the use of mobile carrying devices and personal delivery devices generally subject to pedestrian laws

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# SB 969 Operation of Mobile Carrying and Personal Delivery Devices

**Definition of Mobile Carrying Device** “a device that transports cargo while remaining within 25 feet of a human operator and is equipped with technology that allows the operator to actively monitor the device.

**Definition of Personal Delivery Device** “a device that is manufactured primarily for transporting cargo in a pedestrian area or on the side or shoulder of a highway and is equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.”



# SB 969 Operation of Mobile Carrying and Personal Delivery Devices

## Governing Law

The operation of both devices in a *pedestrian area* or on the side or shoulder of a highway is governed exclusively by:

- The new Chapter 552; and
- Any applicable regulations adopted by a *local authority* that are not inconsistent with the law.

*Pedestrian area* includes: a sidewalk, crosswalk, school crosswalk, school crossing zone, or safety zone.

*Local authority* includes a school district only when it is "designating school crossing guards for schools operated by the district."

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## SB 969 Operation of Mobile Carrying and Personal Delivery Devices

- May be operated only in a pedestrian area at a speed that does not exceed 10 mph.
- Local authority may establish a maximum speed of less than 10 mph, but no slower than 7 mph, if the local authority determines that a 10 mph speed limit is unreasonable or unsafe for that area.

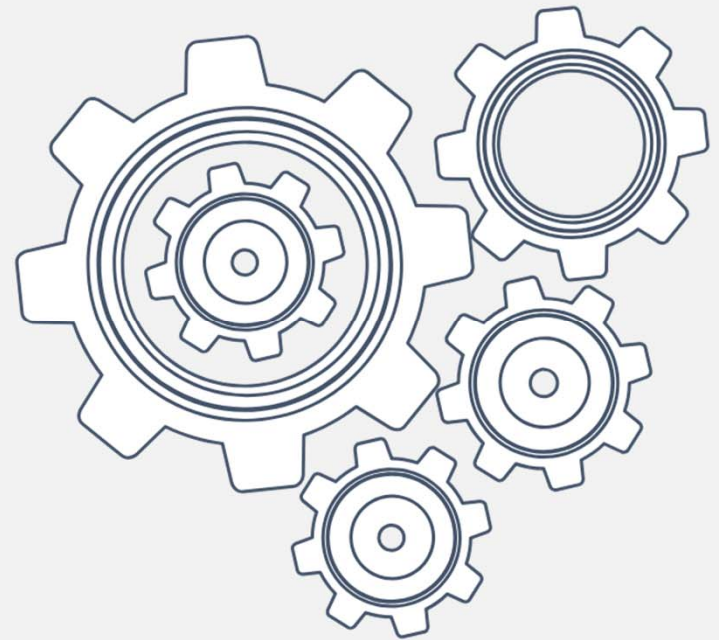


# HB 1523 Continuing Regulation of Land Surveyors

## Background and Purpose

"While Texas has a clear, ongoing need to regulate the practice of land surveying, the Sunset Advisory Commission found the Texas Board of Professional Land Surveying has failed to meet its fundamental duties and responsibilities... [HB] 1523 seeks to provide for the continued regulation of land surveying alongside the regulation of professional engineering under the consolidated Texas Board of Professional Engineers and Land Surveyors with related statutory modifications."

-Bill Analysis



# HB 1523 Continuing Regulation of Land Surveyors

- Consolidates the roles of the Texas Board of Professional Land Surveying and the Texas Board of Professional Engineers
- Creates new Texas Board of Professional Engineers and Land Surveyors (TBPELS).
- **On September 1, 2020** → Board of Professional Land Surveyors abolished and its duties, obligations, powers, and property (including unexpended funds) will all transfer to TBPELS.



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## HB 1523 Continuing Regulation of Land Surveyors

- **Board membership:** 5 engineers, 1 land surveyor, and 3 representatives of the public.
- Requires appointment of advisory committee by the board to give recommendations related to professional engineering and/or land surveying.



# HB 1523 Continuing Regulation of Land Surveyors

- Certificates of registration or licenses from TBPELS must be valid for 1 or 2 year terms.
- Includes registration, certification, and renewal fees for land surveyors.
- Eliminates ate renewal fees, engineer-in-training certificate fees, and registration fees for engineering firms.
- State residency requirement abolished to be licensed as a land surveyor.
- Allows the board to develop or contract for engineering/surveying.



# SB 1376 Eliminating Certain Requirements Imposed on School Districts and Other Educational Entities

- **Effective:** beginning with the 2019-2020 school year
- **Intent:**
  - provide relief from unfunded mandates in the TEC; and
  - “encourage innovative practices at the local level.”

## SB 1376 State Board for Educator Certification (SBEC) Role and Responsibilities

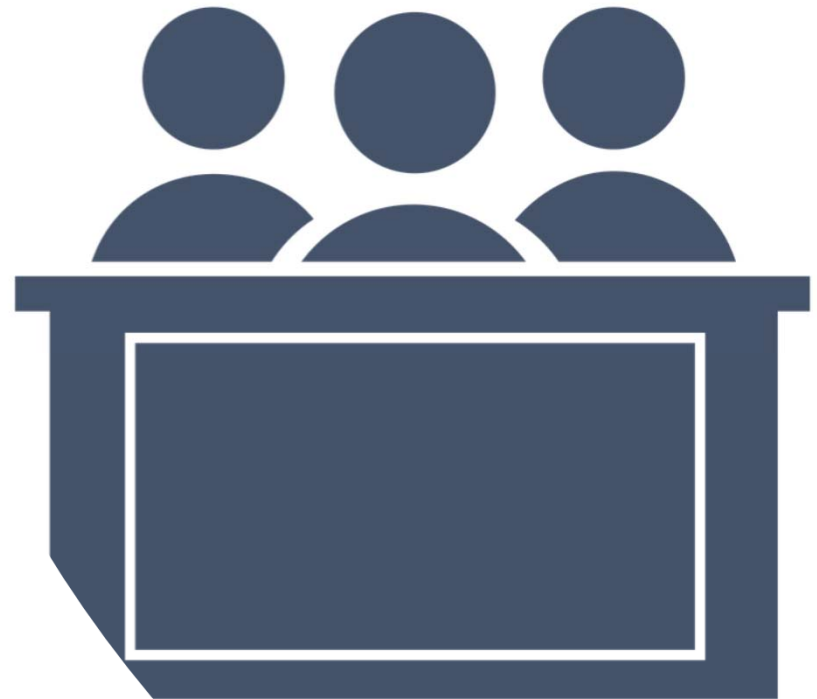
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No longer has the authority to:

- Grant an open-enrollment charter; or
- Approve a charter revision.

Removes responsibilities pertaining to:

- Supervising the executive director's performance;
- Approving the operating budget;
- Requesting appropriations; and
- Executing interagency contracts to perform routine administrative functions.





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**SB 1376**  
Eliminating  
Certain  
Requirements  
Imposed on  
School Districts  
and Other  
Educational  
Entities

SBEC Duties

Shared Service Arrangements

High School Completion and Success Initiative

Extracurricular Safety Training

Steroid Information

Interagency Obesity Council

Recycling Programs

Lightbulbs

Depository Contracts

Master Teacher Grants

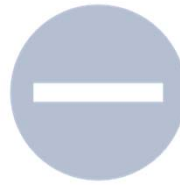


# Shared Service Arrangements (SSA)

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Repeals TEC 29.007, which allowed school districts to jointly-operate special education programs through an SSA



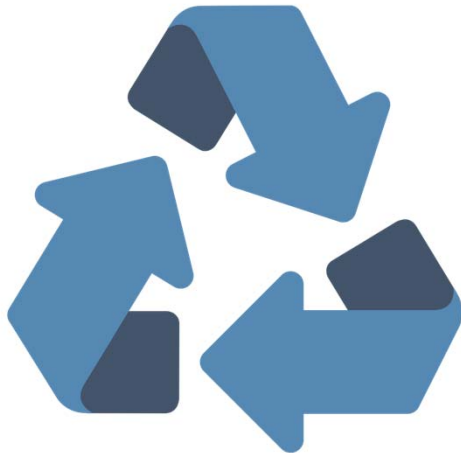
Commissioner no longer required to approve such contracts.



An SSA Director of Special Education Program is no longer an option for for IDEA continuing advisory committees.

# Recycling Program Requirements

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- Part of effort to remove requirements unrelated to increased academic outcomes
- Revises Health and Safety Code provisions requiring certain governmental entities to:
  - Establish a program for separating and collecting all recyclable materials; and
  - Give preference in purchasing products made of recycled materials if the products satisfied applicable quantity and quality specifications.



## Recycling Program Requirements Exemptions

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The Texas Commission on Environmental Quality (TCEQ) must exempt from the recycling program requirements:

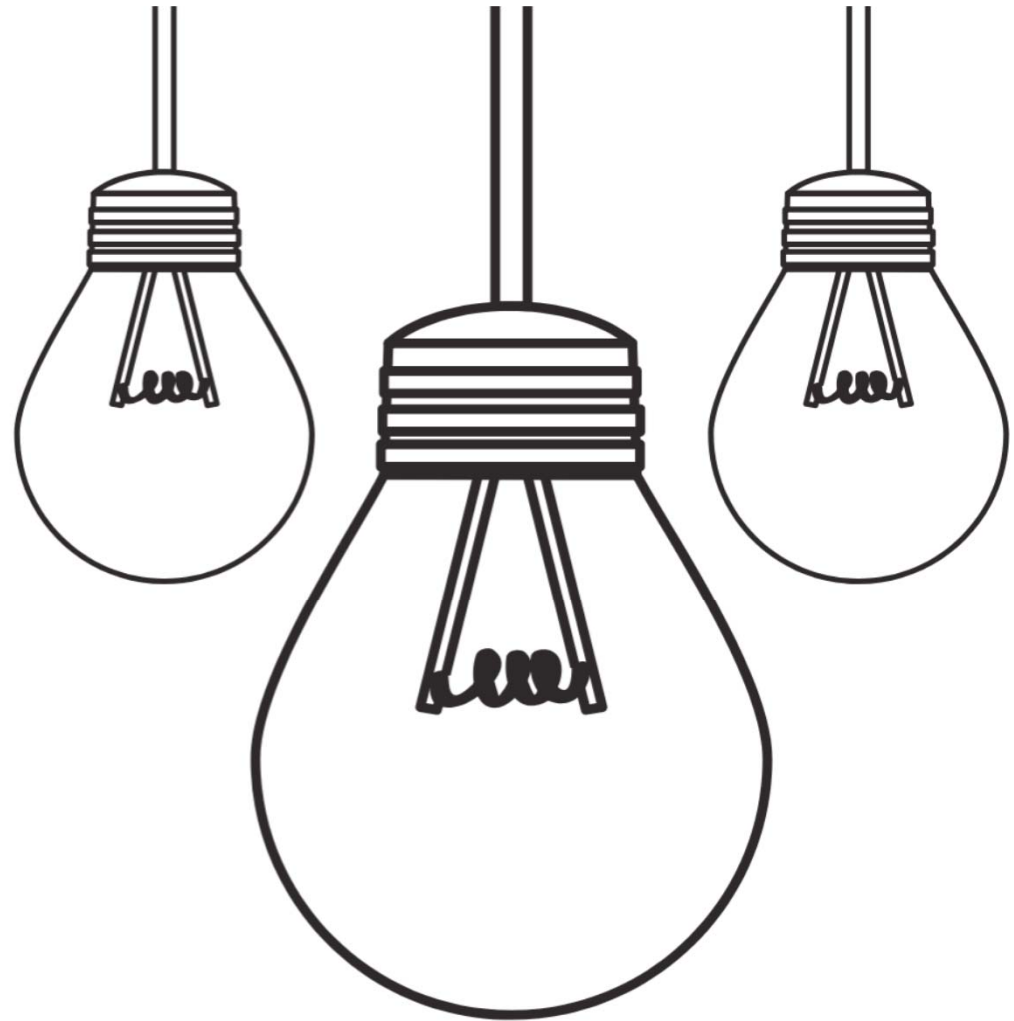
1. A school district with an enrollment of fewer than 10,000 students;
2. A municipality with a population of less than 5,000, if TCEQ found that compliance would work a hardship on the municipality; and
3. Certain governmental entities that petitioned TCEQ for an exemption and TCEQ found that compliance would result in a hardship on the entity.

# Lightbulbs

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## Repeals TEC 44.903

- Districts are no longer required to purchase cost-effective, energy-efficient light bulbs for instructional facilities.
- Part of effort to remove requirements unrelated to increased academic outcomes



# Depository Contracts

- Repeals TEC 45.208(e)
- Districts are no longer required to:
  - File a copy of its depository contract with TEA; or
  - File a copy of its depository bond with TEA.



# HB 2826 Contingent Fee Contracts for Legal Services

Effective September 1, 2019

- Adds new requirements related to contingent-fee contracts for legal services by **political subdivisions**:
  - “districts, authorities, counties, municipalities, other political subdivisions of the state, and local government corporations or other entities acting on behalf of a political subdivision in the planning and design of construction projects”



# HB 2826 Contingent Fee Contracts for Legal Services



Requires approval by the Attorney General

Approval was previously required from the Comptroller



Requires a public notice and contract approval in an Open Meeting



Records must be verified as reasonable and necessary before fees can be paid





# HB 2826 Contingent Fee Contracts for Legal Services

## Public notice requirements:

- the reasons for pursuing the matter for which the attorney would be retained and the desired outcome;
- the competence, qualifications, and experience demonstrated by the attorney;
- the nature of any relationship between the political subdivision and the attorney;
- the reasons the political subdivision was unable to pursue the matter by itself without retaining an attorney on a contingent fee basis;
- the reasons the legal services reasonably could not be obtained from an attorney under a hourly fee contract; and
- the reasons that entering into a contingent fee contract would be in the best interest of the political subdivision's residents.

## HB 2826 Selection based on qualifications not competitive bids...



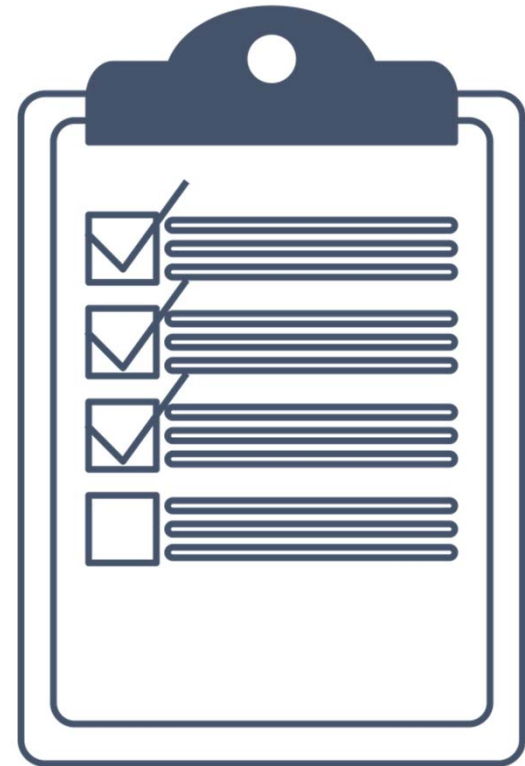
Demonstrated competence



Qualifications



Experience



# HB 2706: Authorized Investments for Public Funds



**Effective Date:**  
September 1, 2019



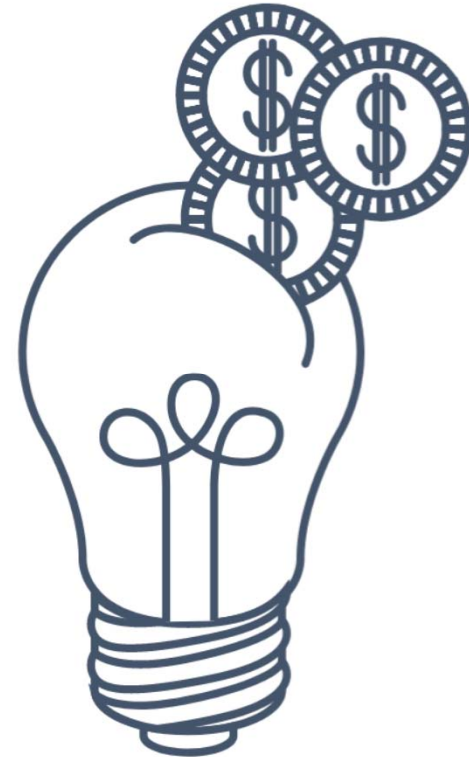
**Amends:** Public Funds  
Investment Act (PFIA),  
Chapter 2256 of the  
Government Code

# HB 2706

## Noteworthy Changes

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- **Increases authority purchase, sell, and invest public funds. For example:**
  - Authorizes investment in certain repurchase agreements and commercial paper; and
  - Allows school districts to invest in corporate bonds;
- **Brings investment officers of local governments who invest bond proceeds within the scope of the PFIA.**



# HB 293

Exempting certain school districts and cities from investment training

**Section 2256.008(a-1) of the Government Code requires the treasurer or the CFO (if the treasurer is not the CFO, of a school district or municipality to:**

- Complete an investment training at least 1x/2 years; and
- Receive 8+ hours of instruction relating to investment responsibilities under the Public Funds Investment Act from an independent source approved by the district or municipality's governing body



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## HB 293

Exempts the treasurer or CFO, as appropriate, and investment officer of a school district or municipality from this training if the district or municipality:

- Did not invest district or municipal funds;  
or
- Only deposited those funds in:
  - interest-bearing deposit accounts;  
or
  - certificates of deposit.





**TRIA**

## Background Information - *Boeing*

- For many years, the AG has held that the terms of a contract and especially the pricing of a winning bid was public. Information that would give an advantage to a competitor or bidder could be withheld under TPIA 552.104, but such information generally did not cover pricing.
- A 2015 case, *Boeing v. Paxton*, changed the landscape, expanding the test under Section 552.104 to whether knowing another bidder/competitor's information would be an advantage, instead of whether it would be a decisive advantage.
- Further, *Boeing* held 552.104 is not limited to only ongoing competitive situations but covers information that would provide an advantage even after a contract is executed.





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## AG's shift in light of *Boeing v. Paxton*

- Going forward, third parties may argue that their pricing information would give an advantage to a competitor or bidder and should be withheld.
- The presumption that all pricing information is public no longer exists.



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## AG's shift in light of *Boeing v. Paxton*

This shift in authority calls into question the practices of:

- Posting bid tabs on websites
- Readily providing bid tabs, contracts, and other pricing information to members of the public under the TPIA
- Posting/providing pricing information to members of the public in connection with agenda items (i.e., posting the board book online)



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# So, post-Boeing, we could...



Request clarification



Obtain a waiver from vendor whose info is requested



Proceed under 552.305 of TPIA and request ruling from AG's Office and notify affected third-parties of their right to submit arguments to withhold their info



Update RFP templates/vendor packets

# Records denials jump under Paxton

Review: Requests for public information doubled in 10 years

**By Jeremy Blackman**

AUSTIN BUREAU

Kathryn Green just wanted to know what had happened to her son.

It had been more than two months since 27-year-old Patrick died of bacterial meningitis while incarcerated at the Harris Coun-

ty jail, and still there were so many questions. How long had he been sick? Had he shown symptoms? What had been done to help him?

So in early June 2015, Green, a Houston lawyer, did what thousands of Texans do every year: She asked for the records. She requested Patrick's autopsy report and the investigative report into his death. She demanded the video surveillance from inside the jail, and any other public clues that might help piece together

his final hours.

One by one, she was turned down.

"Anybody would be devastated by the loss of their child," Green said in an interview last week. "But then to have to go through dealing with your grief, trying to return to work, trying to keep your home intact, and fighting to get information. It was so difficult for us."

The Greens' plight is all too common in Texas, where records

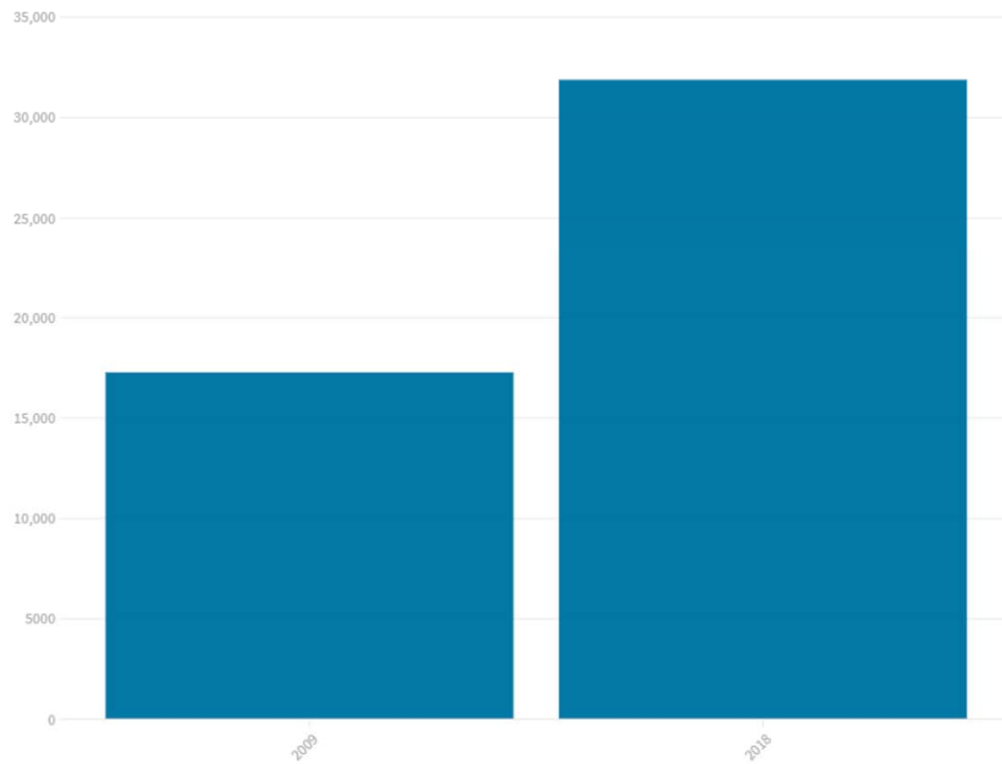
***Records continues on A15***



The number of records opinions issued by the Attorney General's office has increased by nearly 50 percent since 2009.

1 of 3

Records opinions issued by the Attorney General's Office



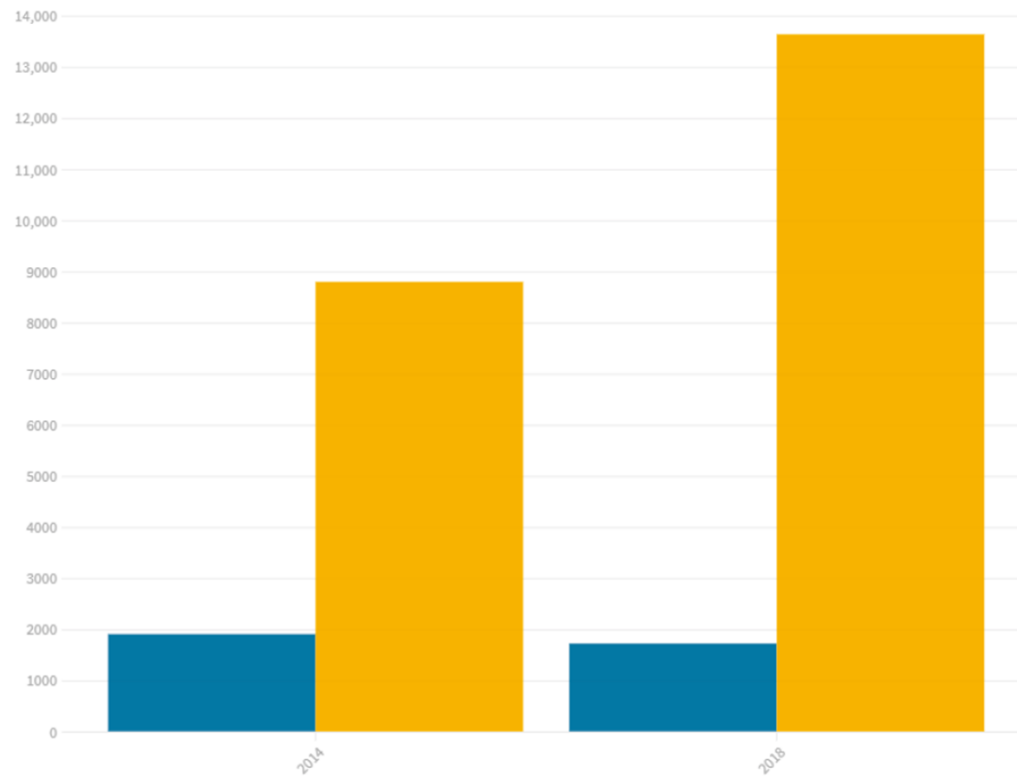
# The Aftermath



2 of 3

The percentage of denials overturned by the Attorney General's office has decreased from 2014 to 2018, while the percentage of denials has climbed from 37 percent to nearly 43 percent.

■ Denials overturned by the Attorney General's office ■ Denials granted in full by the Attorney General's office



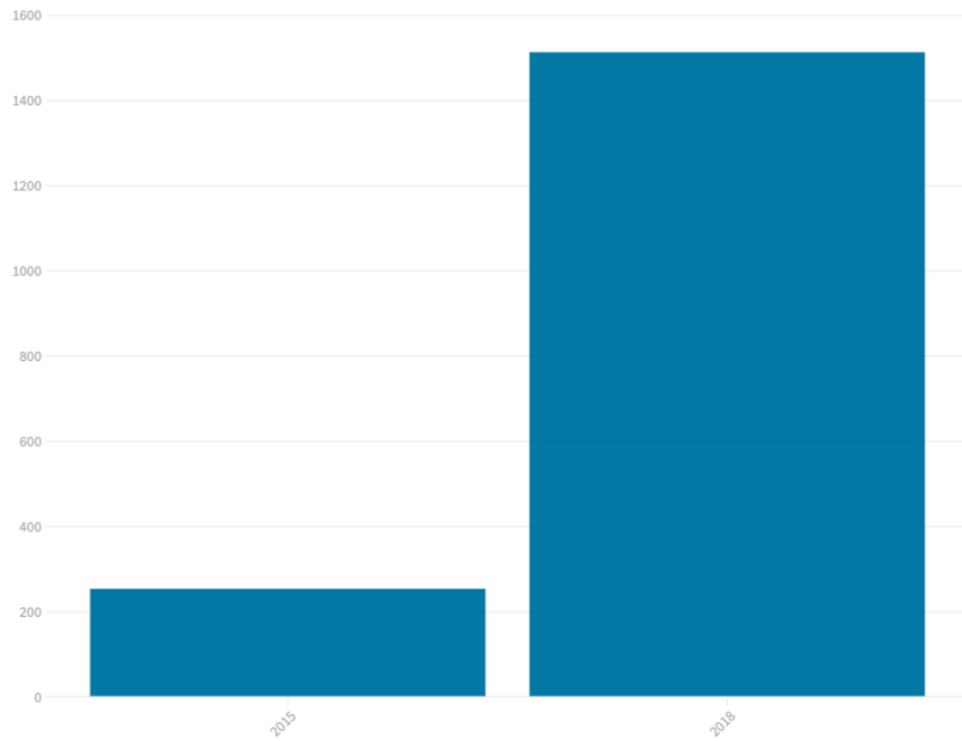
# The Aftermath



The Boeing ruling was invoked nearly seven times more often in 2018 compared to 2015, the year it was decided.

3 of 3

■ Times the Boeing ruling was invoked

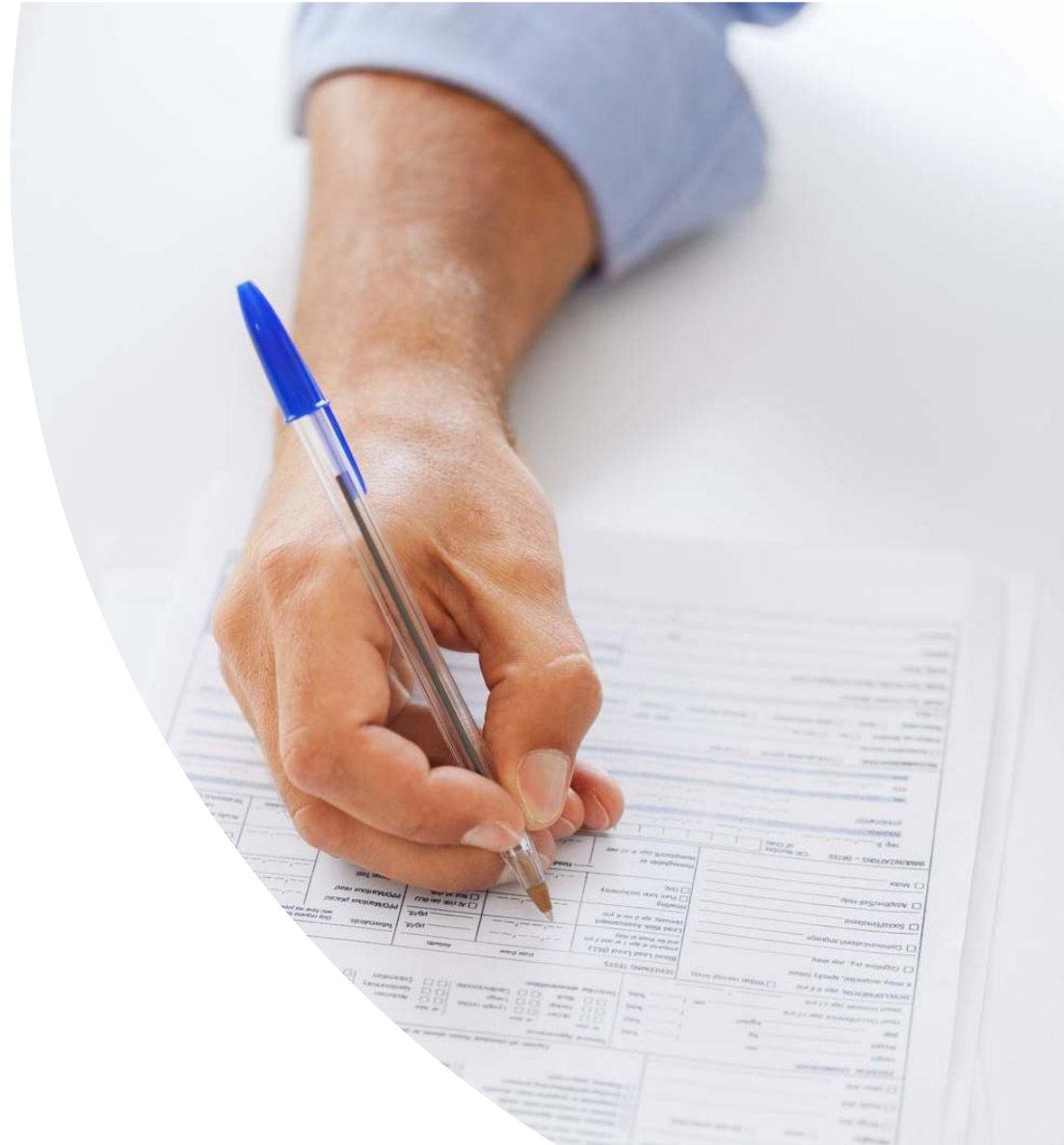


# The Aftermath

# Public Information

## SB 943: Disclosure of Certain Contracting Information

- ✓ Sent to the Governor – May 25th
- **Concern sought to address:** perceived lack of transparency following 2015 Texas Supreme Court decisions, *Boeing* and *Greater Houston Partnership*
  - Used as basis to deny over 2,600 TPIA requests in 3-year period following decisions
- **Statement of Intent:** “SB 943 restores transparency to state and local government contracting, while recognizing that some information needs to be protected from disclosure in order to foster competition...”





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# Public Information

## SB 943

- **Adds Section 552.0222** – Disclosure of Contracting Information
- **Amends Section 552.110** – Confidentiality of Trade Secrets and Certain Commercial or Financial Information
- **Adds Section 552.1101** – Confidentiality of Proprietary Information

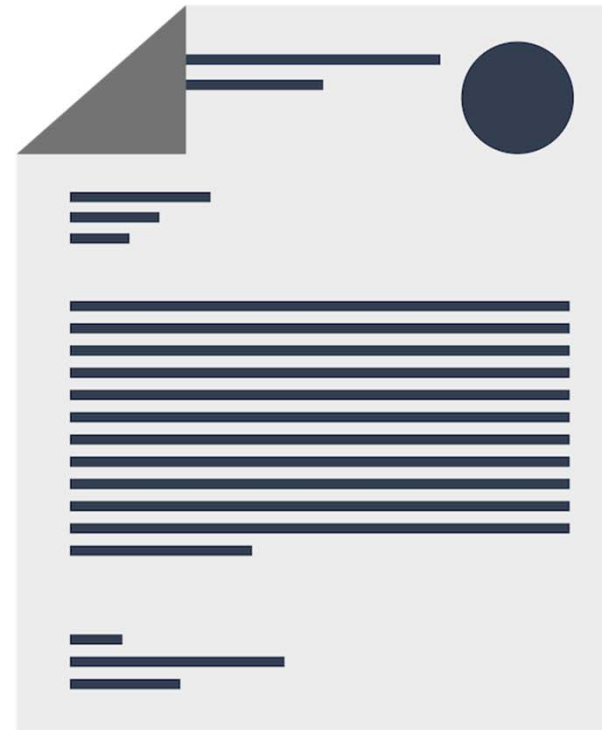


# Public Information

## SB 943: Disclosure of Certain Contracting Information

### Adds 552.0222 – Disclosure of Contracting Information

1. Key contract terms (e.g.- overall price and deliverables, execution date, contract duration, identity of all parties, etc.); and
2. Information concerning whether the contractor performed its obligations under the contract, including any remedial action taken



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# Public Information

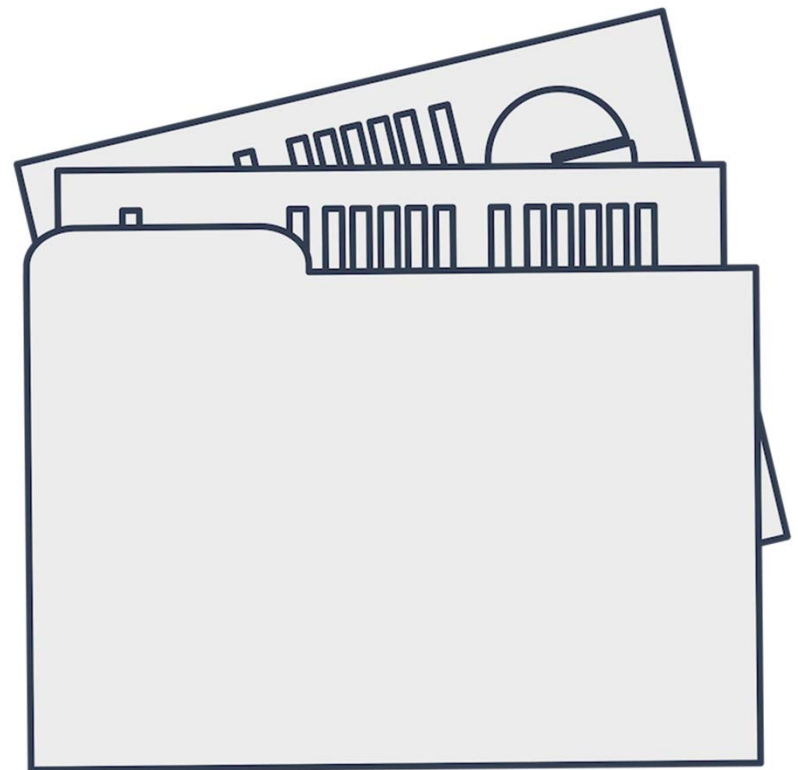
## SB 943 - Sec. 552.0222 Disclosure of Certain Contracting Information

### General Rule:

(a) Contracting information is public and must be released unless excepted from disclosure.

### Exceptions to disclosure do not apply to 4 categories of information:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information....





# Public Information

## SB 943 - Sec. 552.0222 Disclosure of Certain Contracting Information

### The exceptions to disclosure in 552.110 and 552.1101 do not apply to:

1. A contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section;
2. A contract described by Section 322.020(c), excluding any information that was properly redacted under Subsection (d) of that section;
3. Certain contract or offer terms; and
4. Certain information indicating whether a vendor, contractor, potential vendor, or potential contractor performed its duties under a contract.



## Public Information

### SB 943 - Sec. 552.0222 Disclosure of Certain Contracting Information

The exceptions to disclosure in 552.110 and 552.1101 do not apply to: (1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section.

- **2261.253(a)** – relates to “requiring a state agency to post certain information relating to a contract for the purchase of goods or services from a private vendor” (Bill Analysis)
- **2261.253(e):** A state agency that posts a contract on its Internet website as required under this section shall redact from the posted contract:
  - (1) information that is confidential under law;
  - (2) information the attorney general determines is excepted from public disclosure under Chapter 552; and
  - (3) the social security number of any individual.



## Public Information

### SB 943 - Sec. 552.0222 Disclosure of Certain Contracting Information

The exceptions to disclosure in 552.110 and 552.1101 do not apply to: (2) a contract described by Section 322.020(c), excluding any information that was properly redacted under Subsection (d) of that section...

- **322.020(c):** pertaining to the requirement for “Legislative Budget Board to post certain information relating to major contracts” (Bill Analysis)
- **332.020(d):** The Legislative Budget Board shall allow public access to the information posted under this section, except for information that is not subject to disclosure under Chapter 552. Information that is not subject to disclosure under Chapter 552 must be referenced in an appendix that generally describes the information without disclosing the specific content of the information.



# Public Information

## SB 943 - Sec. 552.0222 Disclosure of Certain Contracting Information

**The exceptions to disclosure in 552.110 and 552.1101 do not apply to: (3) the following contract or offer terms or their functional equivalent:**

- A. any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price;
- B. a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;
- C. the delivery and service deadlines;
- D. the remedies for breach of contract;
- E. the identity of all parties to the contract;
- F. the identity of all subcontractors in a contract;
- G. the affiliate overall or total pricing for a vendor, contractor, potential vendor, or potential contractor;
- H. the execution dates;
- I. the effective dates; and
- J. the contract duration terms, including any extension options.



# Public Information

## SB 943 - Sec. 552.0222 Disclosure of Certain Contracting Information

The exceptions to disclosure in 552.110 and 552.1101 do not apply to: (4) information indicating whether a vendor, contractor, potential vendor, or potential contractor performed its duties under a contract, including information regarding:

- A. a breach of contract;
- B. a contract variance or exception;
- C. a remedial action;
- D. an amendment to a contract;
- E. any assessed or paid liquidated damages;
- F. a key measures report;
- G. a progress report; and
- H. a final payment checklist.



# Public Information SB 943

## Adds Sec. 552.1101- Confidentiality of Proprietary Information

Must provide specific factual evidence to demonstrate disclosure would:

1. reveal an individual approach to:
  - A. work;
  - B. organizational structure;
  - C. staffing;
  - D. internal operations;
  - E. processes; or
  - F. discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; **and**
2. give advantage to a competitor.



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## Public Information SB 943

### Amends Sec. 552.110 – Confidentiality of Trade Secrets and Certain Commercial or Financial Information

Requires specific factual evidence that the information is a trade secret, which is defined as “all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

1. the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
2. the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.”



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## HB 81: Requiring disclosure of information on public entertainment events

### ✓ Effective as of May 17<sup>th</sup>

- Amends Government Code 552.104
- HB 81 clarifies that information pertaining to government body's receipt or expenditure of public funds for a parade, concert, or other entertainment event paid in whole or part by public funds.
- A contract that prohibits such disclosure of such information is void.



# Public Information

## SB 944



Ownership of Public Information



Temporary Custodians



Written Requests



Request Forms

## Public Information SB 944

### Ownership of Public Information – Section 552.233

#### Current or Former Employees

(a) A current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

#### Temporary Custodians

(b) A temporary custodian with possession, custody, or control of public information shall surrender or return the information to the governmental body not later than the 10th day after the date the public information officer or officer's agent requests surrender of the information.

(c) Makes a temporary custodian's failure to surrender or return public information required under (b) grounds for disciplinary action from the governmental body and grounds for any other applicable penalties

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# Public Information SB 944

## Temporary Custodians

### Section 552.003(7) "Temporary custodian" means:

- 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 officer for public information of the governmental body or the officer's agent.
- Includes a former officer or employee of a governmental body who created or received public information in the officer's or employee's official capacity that has not been provided to the officer for public information of the governmental body or the officer's agent.



# Public Information SB 944

## Temporary Custodians

### Applicability of Law

#### Sec. 552.004(c)

Specifies that the laws governing the preservation, destruction, or other disposition of records or public information apply to temporary custodians

### Duties of Public Information Officer

#### Sec. 552.203(4)

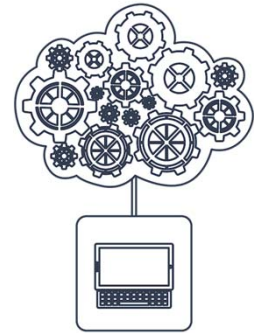
Adds obligations related to obtaining public information from temporary custodians when a TPIA request is made to the general duties of a public information officer

## Public Information SB 944

### Temporary Custodians– Privately Owned Devices

**552.004 (b) Preservation of Information:** A current or former officer or employee of a governmental body who maintains public information on a privately owned device shall:

1. forward or transfer the public information to the governmental body or a governmental body server to be preserved as provided by Subsection (a); or
2. preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under Subsection (a).





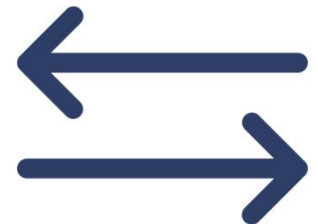
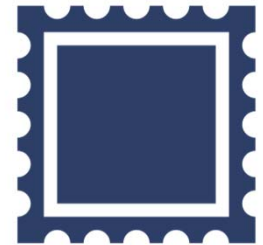
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# Public Information SB 944

## Written Requests – Section 552.234(a)

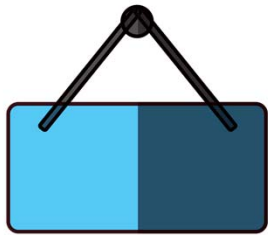
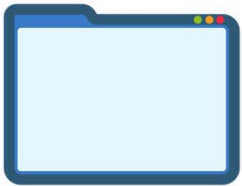
**Methods for Submission:** Written requests may be made to the applicable officer for public information or designee by one of the following methods:

1. U.S. mail;
2. E-Mail;
3. Hand delivery; or
4. Any other appropriate method approved by the governmental body, including:
  - Fax; and
  - Electronic submission through the governmental body's website.



## Public Information SB 944

### Written Requests – Section 552.234(b)



To constitute an “approved method” under (a)(4), the method must be described by a statement that a request for public information may be made by that method on:

1. The sign required to be displayed under Section 552.205; or
2. The governmental body’s website.



# Public Information SB 944

## Written Requests – Section 552.234(c-d)

- Allows governmental body to designate one mailing address and one email address for receiving written requests for public information
- Designated addresses must be provided upon request
- If the governmental body posts the designated addresses on the sign required by 552.205 or on the governmental body's website, then it is not required to respond to a request unless it is received:
  1. At one of the designated addresses;
  2. By hand delivery; or
  3. By another method approved by the governmental body pursuant to 552.234(a).

# Public Information SB 944

## Request Forms – Section 552.235



- a. The attorney general shall create a public information request form (by October 2019) that provides a requestor the option of excluding from a request information that the governmental body determines is:
  1. Confidential; or
  2. Subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.
- b. A governmental body that allows requestors to use the form described by Subsection (a) and maintains an Internet website shall post the form on its website.

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# Public Information

## SB 988

Limits ability to recover attorney's fees from TPIA litigation

- ✓ Sent to the Governor – May 25th
- Section 552.323 provides the ability to obtain attorney's fees and court costs related to a lawsuit involving the application/enforcement of the TPIA
- **Current standard:** "substantially prevails"
- **SB 988's standard:** recoverable only if action or defense was groundless in fact or law





**LAGNIAPPE**



# Criminal history update

From: NCJU <[NCJU@dps.texas.gov](mailto:NCJU@dps.texas.gov)> Subject: NOTICE: School Contractors Secure Site Access

To whom it may concern,

Beginning September 01, 2019, the Texas Department of Public Safety be making changes due to our recent audit that was conducted by the FBI. We will no longer accept new requests from School Contracting agencies for access to the Department of Public Safety (DPS) Secure Website. School contracting agencies no longer have legislative authority to obtain FBI criminal history record information.

Existing School contracting agencies that DO NOT provide care, treatment, education, training, instruction, supervision, or recreation to children, will continue to have access until January 1, 2020. Existing school contractors that DO provide care, treatment, education, training, instruction, supervision, or recreation to children will continue to have access to the DPS FACT Clearinghouse after January 1, 2020, however their accounts will be converted and the agencies will now be considered a National Child Protection Act (NCPA) agency. This will mean school districts will no longer be authorized to review any of the results obtained by these contracting agencies.

As an Independent School District, your agency does have the authorization to conduct Texas and FBI fingerprint based criminal history checks on individuals contracting with your district and have the ability to adjudicate the results. For those contracting agencies that will be losing access/authority, your ISD will need to fingerprint the individuals working with the contracting agency if it is a requirement that they are fingerprinted. ISDs can use the existing LEE Pass process to fulfill these requirements.

If your agency has any questions regarding these changes, please contact the Criminal History Inquiry Unit at 512-424-2474, options 1 or 2, or at

Thank you, Access and Dissemination Bureau

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# Criminal history update

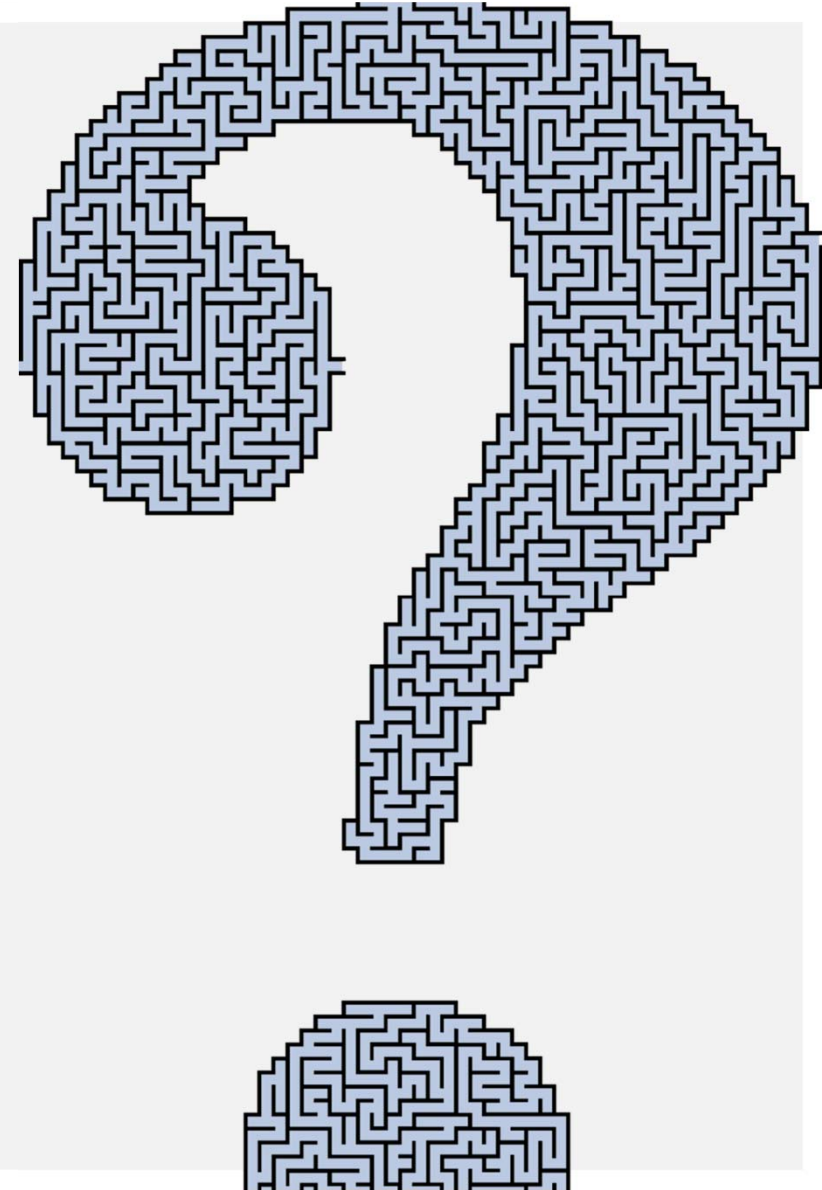
- TASB Legal Services has confirmed that school districts for the time being may disregard the DPS notice regarding changes to school contractor access to the FACT Clearinghouse.
- TEA and DPS are working together on this issue, and school districts should be on the lookout for an amended notice explaining how districts and school contractors may obtain and process national criminal background checks in the future. Pending further notice, school contractor access will continue in the same manner as before.
- For school districts with additional questions, they may contact the Criminal History Inquiry Unit at 512-424-2474.





# Procurement of Non-Public Placements?

- TEA provides districts with a list of approved non-public placements on an annual basis.
  - TEA does not competitively procure those placements.
  - Districts may place a student in a non-public school on TEA's approved list. The District remains responsible for the student, although services are provided out-of-district.
- ...Do districts need to competitively procure services to place a student at a school on TEA's approved list?**



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## OOPS! Plumber licensing requirement down the drain

- The Board of Plumbing Examiners was due for Sunset Review, but legislators did not reach agreement concerning bill, and the Board was not included in the "Sunset Safety Net Bill."
- As a result, as of September, individuals will no longer need a license to become a plumber at least until the next legislative session.



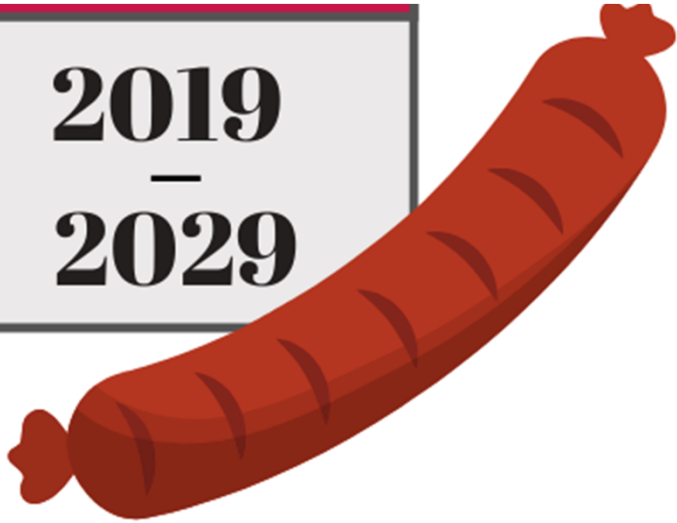
**"To err is human.  
To really screw up requires a plan."**

# New PBK Prevailing Wage Rates are out!

Update your schedules – have Board adopt Resolution



**2019  
—  
2029**



**PITTSBURG, TEXAS  
HOT LINK  
CAPITAL OF  
TEXAS**

**HOMEMADE  
PIE DAY**





Questions?



KARCZEWSKI | BRADSHAW | SPALDING  
NICHOLS | LAMP | LANGLOIS

**Sarah Langlois**

PARTNER

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