



**GOVERNMENT TRANSPARENCY  
UPDATE & INTERACTIONS WITH  
STATE AGENCIES & LAWMAKERS**

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## Governmental Transparency

- Emphasized by Governor Abbott
- Technology
  - Easier to use
  - Increased access to info and meetings
- Use of Tax Funds
  - taxpayers want more accountability

## Governmental Transparency

- Reporting
- Sunset
- Texas Open Meetings Act / Texas Public Information Act
- Elections

## House Bill 23 (Davis) – Local Government Conflict Disclosure Requirements

- Bill expands the definition of “local government entity” to include a water district created under Chapter 49 of the Water Code.
- Reduces the trigger amount under which a local government officer must file a conflicts disclosure statement from \$250 to **\$100**.
- Eliminates several of the “guest exceptions” of the disclosure requirements:
  - No longer can count expenses on lodging, transportation, or entertainment accepted as a guest as exceptions to the reporting requirements.
  - Dining is the only “as a guest” exception that remains – e.g. you can still be taken to dinner as a guest without having the amount spent at dinner added towards the \$100 conflicts disclosure threshold.

## House Bill 1295 (Capriglione) – New Conflict Disclosure Requirements

- This bill creates a new subsection in the Government Code, “Disclosure of Interested Parties,” relating to contracts between a “business entity” and a governmental entity. The contract must either: (1) require an action or vote by the governing body of the governmental entity OR (2) have a value of at least \$1 million. If the contract qualifies, the business entity must submit a “disclosure of interested parties” to the governmental entity before entering into the contract.
  - “Business Entity” defined as “any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.”
- The disclosure would need to contain a list of each “interested party” the contracting person is aware of, and also a signature acknowledging the disclosure is under oath.
  - “Interested party” is defined as “a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.”

## House Bill 1295 (Capriglione) – New Conflict Disclosure Requirements

- Within 30 days of receiving the disclosure, the entity or agency would be required to submit the disclosure to the Texas Ethics Commission (“TEC”).
- TEC to have a rulemaking procedure to implement the provisions of this bill.
- In reconciling the provisions of this bill with the requirements of Chapter 176, Local Government Code, this bill seems more focused on bringing to light any and all individuals with a financial interest in a contract between the state and a business entity, whereas Chapter 176 requirements are more focused on exposing personal or business relationships between local governmental entities/officers and those they contract with.



## House Bill 280 (Simmons) – Required Information on SWIFT

- Amends TWC § 15.440(b) to require additional information regarding the state water implementation fund be posted online by the TWDB, including:
  - An accounting of the number of bonds issued and the terms of the bonds, a summary of the terms of the bond enhancement agreement, and the status of repayment of loans and an assessment of the risk of default for all projects within each regional water planning area;
  - A description of the investment portfolio of the fund;
  - The expenses incurred in investing money in the fund;
  - The rate of return on the investment of said money;
  - A description of the point system for prioritizing projects and the number of points awarded by the board for each project;
  - Any nonconfidential information submitted to the board as part of an application for financial assistance; and
  - The administrative and operating expenses incurred by the board in developing the state water plan and providing financial assistance for projects in the plan.

## House Bill 1378 (Flynn) – Annual Financial Reporting

- Notwithstanding any other provision of the bill, a district, as defined by Section 49.001, Water Code, satisfies the requirements of this section if the district:
  - (1) Complies with the requirements of Subchapter G, Chapter 49, Water Code, regarding audit reports, affidavits of financial dormancy, and annual financial reports; and
  - (2) Submits the financial documents described by Subchapter G, Chapter 49, Water Code, to the comptroller.



## House Bill 1378 (Flynn) – Annual Financial Reporting

- This bill amends the Local Government Code to require political subdivisions to prepare an annual financial report that includes financial information for each fund and debt obligation.
  - Debt obligation information (i.e. principal and interest on outstanding debt amounts), credit rating, and any other information relevant or necessary to explain the values of any of the financial information provided.
- The political subdivision would be required to post the financial report on their internet website until the next report is prepared.
  - Alternatively, a political subdivision may provide the financial and debt obligation information to the comptroller, and the comptroller would then be required to post the information on the comptroller's website.

## Senate Bill 1760 (Creighton) – Tax Rate Publication

- Creates a new subsection in Chapter 5 of the Tax Code requiring the comptroller to annually prepare a list of the total tax rates of every taxing entity in the state that reports its rates to the comptroller, and to publish that list on the Comptroller’s website.
- Additionally, the bill creates a new provision in Chapter 49 of the Water Code, whereby if a district proposes to adopt a combined tax rate that would authorize voters to, by petition, require a “rollback election” to be held by the district, notice must include a description of the purpose of the proposed tax increase, in addition to all other notice requirements listed in Water Code Section 49.236(a).

## Senate Bill 523 (Birdwell) – Sunset Review of River Authorities

- This bill subjects river authorities to a limited review by the Sunset Advisory Commission, but without the option that they be abolished.
- River authorities have grown in size and power to the point that oversight and a periodic review have become necessary. Periodic review of river authority duties and functions is necessary to ensure maximized benefit of our state's most precious resource—water.
- The Sunset Advisory Commission would assess each river authority's governance, management, operating structure, and compliance with legislative requirements.
- The costs of the review would be paid for by the applicable river authority.

## House Bill 283 (Fallon) – Recording of Meetings

- Amends Government Code § 551.128 which states that if a county, municipality, or school district has a population of **more than 50,000**, the county commissioner’s court, the school district board of trustees, or governing body of a home-rule municipality must make a video and audio recording of each regularly scheduled open meeting and make available an archived copy on the internet.
- Each governmental body that maintains a website must make the archived videos available on its website for two years.
- The governmental body may broadcast a regularly scheduled open meeting on television.
- Water districts are not included in the definition of “governmental body” for the purposes of this legislation.

## House Bill 685 (Sheets) – Referral to Website

- Provides that a political subdivision (i.e. a water district) complies with requests under the Public Information Act if it refers a requestor to a website maintained by the political subdivision and accessible to the public if the requested information is identifiable and readily available on that website.
- If the officer for public information sends an e-mail with a link to the Internet website, the email must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail.

## House Bill 2134 (Burkett) – Email Request for Clarification under PIA

- This bill amends Government Code Section 552.222 regarding a governmental body's ability to respond with a request for clarification or additional information.
- Specifically, if a governmental body sends a request for clarification or additional information, the original request may be considered withdrawn if the governmental body does not receive any response from the requestor within the deadline prescribed by Section 552.222(d).
- The governmental body must send its request for clarification or additional information to the same email address from which the original request was sent or to an address provided by the requestor in the original request.
- Previous law required that the request for clarification be sent by certified mail (to allow for the request to be withdrawn if the requestor failed to respond).



## House Bill 3357 (Lucio) – Posting Notice of Meetings

- This bill amends the Government Code to allow notice of each meeting held by a governing body of a water district, or other district or political subdivision, to be provided to the county clerk or posted on the district's or subdivision's internet website.

## House Bill 484 (Capriglione) - Qualifications to be a Candidate for Office

- The bill amends section 141.001(a) of the Election Code (which sets forth the eligibility requirements for running for public office) by adding an additional requirement that a person must be **registered to vote** in the territory from which the office is elected
- The bill also makes conforming changes to the Government Code, creating Section 601.009 which states that in order to qualify for an elected office, a person must be a registered voter. An exception to this requirement is provided in the instance an individual runs for a public office for which the federal or state constitution prescribes exclusive qualification requirements.
- **NOTE** → These new requirements do not apply “to a member of the governing body of a district created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution.”

## Senate Bill 733 (Fraser) – Time Extension to Move Election Date

- Amends Election Code § 41.0052(a) to extend the deadline from December 31, 2012 to December 31, 2016 by which date political subdivisions must change the date of its general election to the November uniform election date if their current election date is one other than the November uniform election date (excludes counties and municipal utility districts).
- The Secretary of State shall, by rule modify the applicable deadline in the Election Code to implement the change made by this Act.

## House Bill 2354 (Farney) – Change of Uniform Election Date

- This bill amends § 41.001(a) of the Election Code to change the May uniform election date from the second Saturday in May to the **first** Saturday in May.
- Interested parties contend that the recent rescheduling of national and state political party conventions poses a problem for the attendees of the state convention, as some attendees are also volunteers for municipal elections held on the same weekend as the state convention.
- Decided that it is easier to change the municipal election date than it is to reschedule the convention and find a new convention venue.

## SB 1812 – EMINENT DOMAIN REPORTING

- SB 1812 (Kolkhorst/Geren) – requires public and private entities, including common carriers, authorized by the state by a general or special law to exercise the power of eminent domain to provide the Comptroller with eminent domain-related data such as source of eminent domain authority
- DEADLINE = February 1, 2016

## SB 1812 – EMIMENT DOMAIN REPORTING

- If an entity does not timely submit a report that complies with SB 1812, the Comptroller shall provide written notice to the entity:
  - informing the entity of the entity's violation of that section; and
  - notifying the entity that the entity will be subject to a penalty of \$1,000 if the entity does not report the required information on or before the 30th day after the date the notice is provided.



## Senate Interim Committee Charges – Focus on Governmental Transparency

- **Senate State Affairs Committee:**
- **Ethics:** Review current ethics laws governing public officials and employees and recommend changes necessary to inspire the public's confidence in a transparent and ethically principled government. Review public officials' reporting requirements to the Texas Ethics Commission. Examine the categorization of ethics reporting violations and make recommendations to encourage accurate reporting and timely correction to inadvertent clerical errors.
- **Eminent Domain:** Gather and review data on the compensation provided to private property owners for property purchased or taken by entities with eminent domain authority. Examine the variance, if any, between the offers and the fair market values of properties taken through eminent domain. Make recommendations to ensure property owners are fairly compensated.

## Senate Interim Committee Charges – Focus on Governmental Transparency

- Senate Inter-Governmental Relations Committee:
- Debt Transparency in the Voting Booth: Examine ways to improve government accountability in elections regarding the issuance of public debt. Include a review of the information that is currently provided to individuals in the voting booth and provide statutory recommendations, if necessary, to improve transparency.
- Local Ordinance Integrity: Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions and the means by which they are put forth to voters, conform with existing state law

## Senate Interim Committee Charges – Focus on Governmental Transparency

- **Senate Finance Committee:**
- Property Tax Process: Study the property tax process, including the appraisal system, and recommend ways to promote transparency, simplicity, and accountability by all taxing entities. (Charge to a select subcommittee on Property Tax Reform and Relief)

## EX PARTE COMMUNICATIONS

- Back in 1990, the Texas Supreme Court in the Acker vs. the Texas Water Commission case, found two commission members guilty of illegal ex parte communication while presiding over a hearing on a request for a wastewater permit.
- Two TWC commissioners, during a break in proceedings, discussed the merits of the case while standing at the urinal in the men's room and were overheard by the attorney for losing side.
- In the “Bathroom Case,” the Texas Supreme Court set out the importance of public deliberations and decision-making by all state commissions and boards.

## EX PARTE COMMUNICATIONS

- **Texas Disciplinary Rules of Professional Conduct**
- **Rule 3.05. Maintaining Impartiality of Tribunal**
- A lawyer shall not:
  - (b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a **tribunal** for the purpose of influencing that entity or person concerning a pending matter other than:
    - (1) in the course of official proceedings in the cause;
    - (2) in writing if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer;
    - (3) orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

## EX PARTE COMMUNICATIONS

- **Texas Disciplinary Rules of Professional Conduct**
- **“Tribunal”** means any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy.
- **“Tribunal”** includes such institutions as courts and **administrative agencies** when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.



## EX PARTE COMMUNICATIONS

- **TEXAS GOVERNMENT CODE § 2001.061. Ex Parte Consultations**
- (a) Unless required for the disposition of an ex parte matter authorized by law, **a member or employee of a state agency** assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.
- (b) A state agency member *may* communicate ex parte with another member of the agency unless prohibited by other law.

- Most public servants are subject to one or more prohibitions on the acceptance of “benefits” from
- persons subject to their jurisdiction. Penal Code § 36.08. For example, a public servant in an
- agency performing regulatory functions or conducting inspections or investigations may not accept a benefit from a person the public servant “knows to be subject to regulation, inspection, or
- investigation by the public servant or his agency.” Id. § 36.08(a). Similarly, a public servant who
- “exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary
- transactions” of the agency may not accept a benefit from a person the public servant knows is
- interested in or likely to become interested in such a transaction. Id. § 36.08(d). (The Appendix
- contains the full text of section 36.08.) These prohibitions apply regardless of whether the donor is
- asking for something in return.

## TEXAS ETHICS COMMISSION - PUBLICATIONS

- Lobbying in Texas = A Guide to the Texas Law
- State Officers and Employees = A Guide to Ethics Laws for State Officers and Employees

## Chapter 305 of the Government Code – The Lobby Law

- The lobby law regulates "direct communications" with members of the legislative or executive branch of state government to influence legislation or administrative action. See Gov't Code §§ 305.001, 305.003(a).
- To understand what activity is regulated by the lobby law, it is important to understand the terms "direct communication," "member of the legislative or executive branch," and "communication for the purpose of influencing legislation or administrative action."
- The lobby law regulates certain "direct communications." "Direct communication" includes contact in person or by telephone, telegraph, or letter. The communication must be directed to a member of the legislative or executive branch of state government.