

What's New in 2019

Legislative Updates and Other Hot Topics



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**HIGHLIGHTS:
86th
LEGISLATIVE SESSION**



SB 30

Projects Requiring Separate Ballot Proposition in Bond Election (and amounts)

- Stadiums seating 1000+ spectators
- Natatoriums
- Recreational facilities other than a gymnasium, playground, or play area
- Performing arts facility
- Housing for teachers
- Acquisition or update of technology equipment, other than equipment used for school security purposes or technology infrastructure integral to the construction of a facility.



HB 440

Use of Unspent Bond Funds

- Allows a district to use unspent bond proceeds for three things:
 - The specific purposes for which the bonds were authorized;
 - To retire the bonds; or
 - If the original purpose has been accomplished or abandoned, for another purpose, provided the Board holds a public meeting to consider and vote on the expenditure of the unspent proceeds for a purpose not specified in the bond election order



HB 3834

Cybersecurity Training

- A district must identify employees who have access to a local government computer system or database and require them to annually complete a cybersecurity training program from a state certified provider selected by the District
- The district must verify and report on the completion of the training and require periodic audits to ensure compliance



HB 4390: Data Breach Notification

- Expands the data breach notification requirement. Previously, in event of a data breach, the data owner was required to notify *as quickly as possible* any individual whose sensitive personal information was, or reasonably believed to have been, subject to the breach
- Now the notification must occur “without unreasonable delay,” and no later than 60 days after the date the breach was determined to occur. Additionally, notice must be sent to the Attorney General if the breach involves at least 250 Texas residents



HB 985: Collective Bargaining on Public Works Contracts

A district awarding a public work contract funded with state money (including debt) may not “prohibit, require, discourage, or encourage a contractor or sub from entering a contract with a collective bargaining organization relating to the project, or discriminate against a person’s involvement in (or refusal to enter) such an agreement



HB 1734: Proceeds from Construction Defect Litigation

- A district must notify TEA within 30 days of filing a construction defect action (suit or arbitration) related to a district facility financed with bonds. The notice must include a copy of the petition and a list of defects
- For instructional facilities, TEA may join in the suit
- The proceeds from such a claim must be used for repair, replacement, reimbursement for repair or replacement or other purpose approved by the commissioner



HB 1999: Construction Defect Claims

- Before bringing a construction defect claim regarding a public building or public work, the district must provide a written report to each contracted party identifying the defects, describing the physical condition of the building, and describing any maintenance or repairs to the building since initially occupied or used
- The district must allow a contractor an opportunity to inspect and correct, or agree to correct the defect



HB 793: Companies that Boycott Israel

- Amends the requirement to obtain certification a company will not boycott Israel by
 - Excluding sole proprietors from the requirements, and
 - Limiting the requirement to contracts
 - With companies who have 10 or more full-time employees and
 - With a value of \$100,000 or more
- Practically speaking, revise your contract language to only apply to companies (not including sole proprietorships) employing 10 or more employees and to contracts worth \$100,000 or more



HB 2868: Interior Design Services as Professional Services

- Adds “a person lawfully engaged in interior design” to the list of profession services in Chapter 2254
- Cannot be competed on the basis of price
- Notably, the person does not have to be registered as an interior designer



SB 1376: Elimination of Requirements Imposed on School Districts

- Expands the exemption for small districts from the requirement to establish a recycling program. TCEQ is now required to exempt districts with fewer than 10,000 students from the program without the need for identifying a hardship. Previously the exemption applied only to district with 5,000 students who demonstrated a hardship. Additionally, larger districts may request an exemption if they demonstrate a hardship exists
- Expands the exemption for districts from the requirement to give preference during the purchasing process to products made of recycled materials. The Water Commission is now required to exempt districts with fewer than 10,000 students from the program without the need for identifying a hardship. Previously the exemption applied only to district with 5,000 students who sought an exemption. Additionally, larger districts may request an exemption if compliance creates a hardship
- District are no longer required to comply with the mandate to purchase cost-effective, energy-efficient light bulbs in instructional facilities



SB 11 School Safety and Mental Health Promotion

- Requires the Commissioner to adopt rules to ensure building standards for instructional facilities (and other district and charter facilities) provide a secure and safe environment. These should include best practices for design and construction of new facilities as well as renovation and retrofitting of existing facilities
- Requires parental notification, as soon as possible, to each student assigned to the campus, or who regularly uses the facility in the event of a bomb threat or terroristic threat relating to the campus or facility
- Requires the board of each district to establish a “threat assessment and safe and supportive school team,” “to serve at each campus of the district.” The team is responsible for developing and implementing the Safe and Supportive School Program developed by TEA and the Texas School Safety Center
- The bill makes a number of changes to Emergency Operation Plans (EOP) and safety and security audits, including:
 - The EOP must also address prevention;
 - EOP must address training for employees, including substitutes;
- EOP must ensure employees have classroom access to communications devices (including cell phones) in order to reach emergency services



Firearms

HB 1143: Parking in School Parking Lot with Firearm

- The law currently provides the District may not prohibit a person with a license to carry from transporting or storing a firearm or ammunition out of plain view in a locked private vehicle in the district parking lot. This bill makes clear a district may not “regulate the manner in which the [firearm] is stored in the vehicle.”

HB 1791: Carrying a Handgun on Government Property

- Expands the current law preventing a district from posting notice of trespass in a location a license holder is not prohibited by law from carrying. Now the district is subject to a complaint and potential penalty if the district “take[s] any action” that “states or implies” a license holder is not permitted to carry, unless the license holder is not permitted to carry under the Penal Code or “other law.”



Changing Drainage and Detention Requirements in the Gulf Coast Area



Flooding Mitigation

- Harris County and FEMA are working together to update floodplain mapping; expected to be available to public in 2022
- Atlas 14 - updated precipitation frequency estimates and resulting flood risk due to rainfall runoff draining through streets and neighborhoods on the way to bayous
 - Redefining what constitutes 100 year events
- Updated Drainage Criteria Manuals for cities and counties have already been released or are underway
- All developers will be sharing in the mitigation effort by collectively playing catch-up
- Finished floor elevation and detention requirements are increasing significantly
- Previously oversized facilities will not accommodate as much as you planned under new requirements



What is Impervious Cover?

- Any area that has been compacted or covered such that it does not readily absorb water or does not allow water to percolate through to undisturbed underlying soil strata
- Surface materials considered impervious include bricks, pavers, concrete, asphalt, compacted oil-dirt... compacted or decomposed shale... gravel or granite. Surface features utilizing such materials and considered impervious include decks, foundations (whether pier and beam or slab) building roofs, parking and driveway areas, sidewalks, compacted or rolled areas, paved recreation areas, swimming pools, dry or wet detention ponds that don't allow percolation
- Other features or surfaces that are built or laid on the surface of the land and have the effect of increasing, concentrating, or otherwise altering water runoff so that runoff is not readily absorbed. (9.1.04.O)



Say Goodbye to Grandfather

- Under 9.2.01.H.1, the intention of stormwater detention is to mitigate the effect of New Development, Redevelopment, or Site Modifications on an existing drainage system
- Stormwater detention volume requirements are based on the acreage of the disturbed area that results in imperious surface



Key Definitions

- “Redevelopment” means “a change in land use that alters the impervious surface from one type of Development to either the same type or another type, or green field, and alters the drainage patterns internally or externally to the Development
 - “Development” – any activity that requires a plat or permit
- “Site Modification,” means “A site improvement that alters the area of impervious surface or a change in existing storm water collection, conveyance or runoff conditions for the developed site.” (9.1.04.F.3)
- “Disturbed Area,” means an area where the existing surface has been altered by activity including, but not limited to, clearing, grubbing, demolition, grading, excavating and construction related activity (including equipment staging and stockpiling of fill material) ... (9.1.04.G)



What Will Trigger Detention?

According to 9.2.01.H.2.b – Stormwater detention requirements are invoked for **redevelopments** that include **disturbed area** resulting in **impervious surface**:

- Additions, renovations, rebuilds
- New or replacement sidewalks
- Canopies or shade covers
- Additional portables
- Replacement of old impervious area with new impervious area
- Turf replacement
- Parking resurfacing
- Regrading
- Clearing and grubbing
- Roof replacement?



Planning Considerations

- Factor additional time for reviews and approvals for authorities having jurisdiction
- Factor additional time and costs for required detention and studies
 - Topography and drainage studies
 - Conveyance studies
- Greater land size requirements for facilities and detention
- Plan for increased costs to pay/reimburse sellers, developers and MUDs for off-site detention
- Negotiation of fill dirt agreements with sellers and other developers
- Consider structural slabs



Fingerprinting: Wait, what just happened?



Recent DPS Notification to School Districts:

- As a result of recent FBI audit, the DPS announced that effective September 1, 2019, contractors/subs would no longer have access to DPS Clearinghouse to review criminal history of their employees
- On September 19, 2019, TASB notified school districts that DPS revoked the halt, and will maintain the status quo pending transition to a new process going forward

How to Prepare: Districts may need consider applying requirements more selectively, and only when required by law

Direct contact?

Continuing duties?

Public works or supervision/escort exceptions?





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