

whitleypenn

SPALDING NICHOLS STAMPELANGELOIS
SNILL
ATTORNEYS

DebtBook

K B K G

VIRTUAL

2023 PUBLIC SECTOR SEMINAR

SEPTEMBER 22, 2023

8:30 AM - 12:30 PM CST



AGENDA

- **8:30AM-9:00AM:** Welcome & GASB Update | Whitley Penn
- **9:00AM- 9:50AM:** Legislative Update | SNLL
- **9:50AM-10:00AM:** Break
- **10:00AM-10:50AM:** Data Analytics Presentation | Whitley Penn CAAS
DATS
- **10:50AM – 11:40AM:** New Legislation for 179D and Public Sector
Benefits | KBKG
- **11:40AM-12:30PM:** How to Implement GASB 96 & Maintain Compliance
| DebtBook
- **12:30PM-12:40PM:** Q&A

HOUSE KEEPING ITEMS

- CPE Items – 3 Poll Questions throughout each presentation (total of 14). Must answer all to get full credit! Bonus polls available.
- Survey to follow at the end of the program from LCVista portal.
- Thank you to our Lunch Sponsor: Planful
- Please submit your questions in the Q&A feature – Q&A Session at the end of the program.
- Presentation Materials & recording will be sent to registrants and available on our Events page on our website: www.whitleypenn.com/events-new/

THANK YOU TO OUR SPEAKERS & LUNCH SPONSOR!



Lunch Sponsor:

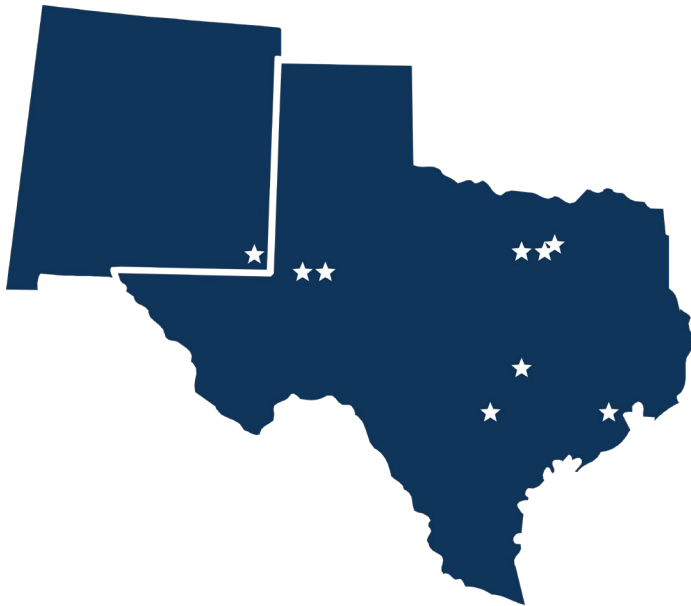


FIRM UPDATE



Whitley Penn is the 37th largest firm in the nation based on 2023 rankings in Accounting Today, 39th in the nation based on 2023 rankings in INSIDE Public Accounting's "Top 100 Firms", and one of the fastest growing firms in the nation. We have an extensive team of experienced audit, tax, consulting, and valuation professionals that we will be able to draw upon as needed.





800+
Professionals

#37
by Accounting
Today

9
Offices

OUR SERVICES

- Audit
- Consulting
- Forensic, Litigation & Valuation
- Client Accounting & Advisory Services
- Risk Advisory Services
- Tax
- Transaction Advisory Services
- Wealth Management (WPWealth)

OUR INDUSTRIES

- Agriculture
- Construction
- Employee Benefit Plans
- Energy
- Estate & Gift Planning
- Family Office & High-Net-Worth Individuals
- Financial Institutions
- Healthcare
- Manufacturing, Distribution & Logistics
- Nonprofit
- Private Equity & Investment Funds
- Professional Services
- **Public Sector**
- Real Estate & Construction
- Restaurant, Entertainment, Retail & Hospitality
- Technology
- Transportation
- Veterinary

UP NEXT: OMB & GASB UPDATE

LUPE GARCIA, CPA & CELINA CERECERES, CPA, CFE



LIGHTNING ROUND

- OMB Update
- GASB Update



OMB UPDATES



Transitioning to



- All 2022 audits must be submitted by October 2, 2023 (September 30, 2023 falls on a weekend)
- Early submission is recommended for 2022 audits – no revisions allowed past 10/2/2023
- All 2023 audits must be submitted through GSA

OMB UPDATES

CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

- Summary Document issues by Department of Treasury ([Overview-of-the-2023-Interim-Final-Rule.pdf](#) ([treasury.gov](#)))
- Interim final rule as part of the Consolidated Appropriations Act, 2023
- Existing eligible uses are still in effect
- Three (3) new uses:
 - Emergency Relief From Natural Disasters
 - Surface Transportation Projects
 - Title I Projects

OMB UPDATES

CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

- Recipients may use the SLFRF funds on new eligible use beginning December 29, 2022.
- All obligations, new and existing, must be obligated by December 31, 2024
- Funds related to emergency relief from natural disasters must be expended by December 31, 2026
- Funds for surface transportation and Title I Projects must be expended by September 30, 2026

OMB UPDATES/REMINDERS

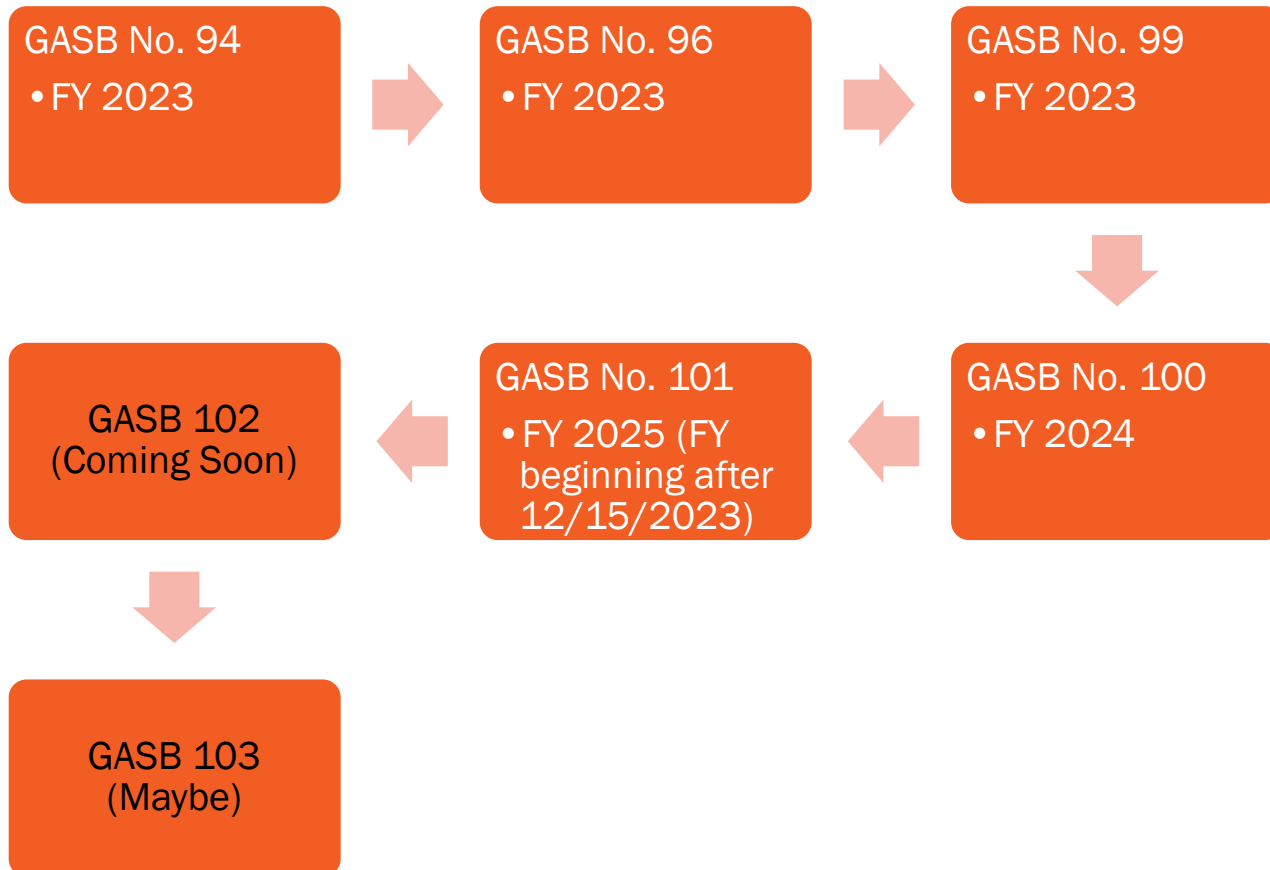
- Schedule of Expenditures of Federal (and/or State) Awards must be reconciled to the financial statements
- HEERF
 - Lost Revenue
 - Institutional/Student Portion
 - Indirect Costs
- ESSER
 - Learning loss (20% of ESSER III)
 - Indirect costs
 - Construction (Buy American Act and Davis Bacon Act)
- Emergency Connectivity Fund belongs on the SEFA under 32.009 and E-Rate does NOT for 2023.

Question: Between what two years did the GASB issue the most standards and which standards were those?

Answer: Between 2010 and 2012, the GASB issued Statements No. 59 through 68



GASB STANDARDS AND IMPLEMENTATION GUIDES



94 – PUBLIC-PRIVATE AND PUBLIC-PUBLIC PARTNERSHIPS AND AVAILABILITY PAYMENT ARRANGEMENTS

- Public-Private or Public-Public Partnerships (PPP)
 - A transferor contracts with an operator to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction.
- Service Concession Arrangements (SCA), a type of PPP
 - Transferor conveys to operator the right and related obligation to provide public services through the use and operation of an underlying PPP asset in exchange for significant consideration, such as an upfront payment, installment payments, a new facility, or improvements to an existing facility.
- Availability Payment Arrangements (APA)
 - A government compensates an operator for activities that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction. The payments by the government are based entirely on the asset's availability for use rather than on tolls, fees, or similar revenues or measures of demand.

94 – PUBLIC-PRIVATE AND PUBLIC-PUBLIC PARTNERSHIPS AND AVAILABILITY PAYMENT ARRANGEMENTS



The types of assets that may be subject to GASB 94:

- Infrastructure
- Hospitals
- Student services for colleges and universities
- Sports facilities
- Recreational facilities
- Jails/prisons
- Wastewater treatment plants
- Museums

GASB UPDATES

GASB NO. 96 – EFFECTIVE IN FISCAL YEAR 2023

- Disclose the Subscription-Based Information Technology Arrangement (SBITA) recognition threshold in the notes
- Disclose the terms (# of years, incremental borrowing rate or interest rate, incentives, etc.)
- Ensure that the capital asset roll forward reflects a line item for leases and SBITAs
- Long-term debt note disclosure includes leases and SBITAs, separately, and disclose the principal and interest payments
- Right-to-use leased assets and SBITAs and related liabilities are part of the Net Investment In Capital Assets calculation

99 – OMNIBUS 2022

Lease Term – Termination options

- Termination options are unconditional rights. A provision that gives a party to a lease conditional right to terminate is not a termination option.

Lease Term – Purchase options

- If a purchase option is reasonably certain to be exercised, all periods after that purchase should be excluded from lease term.

Short-term Leases

- Closing a loophole in which an original lease is structured to meet the short-term exception and then it is subsequently modified to be longer term later.
- Requires evaluation of lease term for the whole lease arrangement from inception and requires remeasurement from the modification date forward.
- Corrected some unclear language in GASB 87 related to the definition of a cancellable period (both parties must have the option to terminate)



99 – OMNIBUS 2022

Lease Measurement – Variable Payments

- Only include variable payments that depend on an index or rate or that are fixed in substance in the calculation of the lease liability (lessee) / lease receivable (lessor).

Lease Remeasurement

- You are not allowed to remeasure leases solely for a change in index or rate used to determine variable payments nor solely for a change in the incremental borrowing rate.

Lease Incentives

- Clarifies that, in situations in which a lessor makes payments on lessee's previous lease obligation, it would still be a lease incentive even if the lessor doesn't assume obligation of lessee.
- Thus, it refines definition of lease incentives as “equivalent to a rebate or discount and includes an assumption of, or an agreement to pay, lessee's preexisting lease obligations to a third party, other reimbursements of lessee costs, rent holidays, and reductions of interest or principal charges by the lessor.”

100 – ACCOUNTING CHANGES AND ERROR CORRECTIONS

Defines the following categories:

- Changes in accounting principles.
- Changes in accounting estimates.
- Changes to or within the financial reporting entity.
- Corrections of errors in previously issued financial statements.

100 – ACCOUNTING CHANGES AND ERROR CORRECTIONS

Prescribes accounting and financial reporting for each category of accounting change and error corrections. It requires that:

- Changes in accounting principles and error corrections be reported retroactively by restating prior periods.
- Changes in accounting estimates be reported prospectively by recognizing the change in the current period.
- Changes to and within the financial reporting entity be reported by adjusting beginning balances of the current period.

The statement also addresses how accounting changes and error corrections should be displayed in financial statements, disclosed in notes, and presented in required supplementary information and supplementary information.

101 – COMPENSATED ABSENCES

- Amends the existing requirement to disclose the gross increases and decreases in a liability for compensated absences to allow governments to disclose only the net change in the liability (as long as they identify it as a net change)
- Governments are no longer required to disclose which governmental funds typically have been used to liquidate the liability for compensated absences.
- Earlier application is encouraged!

EFFECTIVE IN FY 2024

Basic Financial Statements and Management's Discussion and Analysis

Question 7.9.8 in Implementation Guide 2015-1

5.1. Q—Should a government's capitalization policy be applied only to individual assets or can it be applied to a group of assets acquired together? Consider a government that has established a capitalization threshold of \$5,000 for equipment. If the government purchases 100 computers costing \$1,500 each, should the computers be capitalized?

A—Capitalization policies adopted by governments include many considerations such as finding an appropriate balance between ensuring that all significant capital assets, collectively, are capitalized and minimizing the cost of recordkeeping for capital assets. A government should capitalize assets whose individual acquisition costs are less than the threshold for an individual asset if those assets in the aggregate are significant. Computers, classroom furniture, and library books are examples of asset types that may not meet a capitalization policy on an individual basis, yet could be significant collectively. In this example, if the \$150,000 aggregate amount (100 computers costing \$1,500 each) is significant, the government should capitalize the computers.

GASB NO. 102 CERTAIN RISK DISCLOSURES

- In exposure draft issued in June 2022 and the GASB plans to issue 3rd Quarter 2023
- For some governmental entities, the long-term impacts of the COVID-19 pandemic might be felt across each of those categories. However, the potential need for this information by users of financial statements extends beyond the effects of the pandemic.
- Categories of risks and uncertainties (for example, operations, estimates, and concentrations)
- Specific disclosure requirements within each category
- Criteria associated with disclosures.

FINANCIAL REPORTING MODEL

- Potential GASB No. 103 *Financial Reporting Model*
- *Scheduled to be released 1st Quarter 2024*
- Time to retire?!?
- Affected areas:
 - Management's Discussion and Analysis
 - Fund financial statement revamp
 - Sunsetting of special and extraordinary items
 - Budgetary Comparison Info will be moved to Required Supplementary Information



POTENTIAL GASB NO. 103

Government Fund Financial Statements

- The short-term financial resources measurement focus is going to replace the current financial resources measurement focus.
- Governmental fund financial statements will be renamed the *Short-term Financial Resources Balance Sheet* and the *Statement of Short-term Financial Resources Flows*.
- The “flows” in the *Statement of Short-term Financial Resources Flows* will be separated between current and noncurrent based on the terms of an underlying binding arrangement, or estimated payments.
- The measurement of transactions will begin on the inception date of the transaction with the cutoff for short-term being one year (not 60 days).

POTENTIAL GASB NO. 103

Proprietary Fund Financial Statements

- Nonoperating revenues and expenses have been defined as:
 - Subsidies received and provided,
 - Revenues and expenses relating to financing,
 - Resources from the disposal of capital assets and inventory,
 - Investment income and expenses, and
 - Contributions to permanent and term endowments.
- Exceptions will be made for certain loan programs which will classify interest revenue as operating and interest expense as nonoperating.
- Subsidies has been updated to now include transfers and flows that can have a direct or indirect impact on user fees and charges.
- Subsidies will be classified as noncapital subsidies unless clearly for capital purposes. Noncapital subsidies will have their own separate subtotal.

POTENTIAL GASB NO. 103

Management's Discussion and Analysis

- The MD&A provisions appear to be headed toward a reemphasis of the word “analysis” of year-to-year changes.
- The level of the analysis will be “thorough” including the relative size of the reasons for the change.
- A reemphasis of the avoidance of unnecessary duplication of what is in the notes to the basic financial statements.
- The requirement to include a description of significant capital assets and all long-term financing activity during the year.
- Descriptions of currently known facts, decisions, or conditions that are expected to have a significant impact on financial position, or the results of operations will include additional examples such as trends in demographics, unemployment, and defined benefit plans.
- Budgetary analysis of significant variances will be moved to the notes to the RSI.

POTENTIAL GASB NO. 103

Special Items and Extraordinary Items

- These will be replaced with unusual or infrequent items.
- Notes to the basic financial statements will include information regarding whether the event is within the control of management.

Required Supplementary Information

- Budgetary analysis of significant variances will be moved to the notes to the RSI.
- The budgetary schedules in the RSI will include variances between the original and final budget amounts AND final budget and actual amounts.

■ What questions do you have?



UP NEXT: LEGISLATIVE UPDATE

SARAH LANGLOIS





2023 LEGISLATIVE UPDATE



SPALDING NICHOLS
—LAMP LANGLOIS—

SARAH LANGLOIS, PARTNER
Spalding Nichols Lamp Langlois, Houston Office

HOW DOES A BILL BECOME LAW?



NO ONE KNOWS ANYMORE BILLY, NO ONE KNOWS!



Session Recap



88th Regular Legislative Session: **By the Numbers**



- **8,046** bills filed
- **1,246** bills passed by House & Senate
- **1,124** bills signed by the Governor
- **76** bills vetoed by the Governor

Major bills at a glance

Signed

- [HB 1: Allocating the budget](#)
- [SB 14: Banning care for trans kids](#)
- [HB 12: Expanding postpartum Medicaid](#)
- [HB 6: Allowing murder charges for fentanyl poisoning](#)
- [HB 3: Addressing school safety](#)
- [HB 1500: Shoring up the power grid](#)
- [SB 15: Restricting trans athletes in college sports](#)
- [SB 17: Banning DEI offices in colleges](#)
- [SB 18: Solidifying tenure in state law](#)
- [HB 9/HJR 125: Expanding broadband](#)
- [SB 12 : Regulating sexually explicit shows](#)
- [HB 2127: Preempting local regulations](#)
- [HB 1595: Creating university endowments](#)
- [SB 28/SJR 75: Funding water infrastructure](#)

Vetoed or Failed

- [SB 8: Creating education savings accounts](#)
- [HB 100: Increasing school funding and education savings accounts](#)
- [SB 3: Cutting property taxes](#)
- [HB 7: Expanding border security funding and creating a border safety unit](#)
- [HB 2744: Raising the age](#)
- [SB 7: Shoring up the power grid](#)
- [HJR 102: Legalizing online sports betting](#)
- [HJR 155: Authorizing casinos](#)
- [HB 1422: Adopting permanent daylight saving time](#)
- [SB 23: Raising minimum sentence for gun crimes](#)
- [HB 4843: Raising minimum sentence for gun crimes](#)
- [SB 147: Restricting foreign land ownership](#)

NOTHING BURGER

Definitions from Oxford Languages

noth·ing·burg·er

noun: **nothing burger**

1. something that is or turns out to be insignificant or lacking in substance.

2. "another nothingburger of a debate"



Post-session statement from Governor Abbott:



"I will soon be signing laws that advance our state and the future of all Texans Despite these major achievements, more must be done for the people of Texas. Many critical items remain that must be passed. Several special sessions will be required."

Special Sessions

- May only be called by the Governor
- Maximum 30 days each (but an unlimited number of Special Sessions may be called)
- May be called at any time between regular sessions
- Topics limited to those set forth by the Governor



Special session #1

Governor Abbott Announces Immediate Special Session Agenda

May 29, 2023 | Austin, Texas | [Press Release](#)

Governor Greg Abbott today announced special session #1 and [issued a proclamation](#) identifying agenda items for the Special Session that begins at 9:00 PM on Monday, May 29. Governor Abbott issued the following statement:

“I will soon be signing laws that advance our state and the future of all Texans, including laws that:

- End COVID restrictions and mandates;
- Provide more than \$5.1 billion to secure the border and fund the Texas National Guard, the Texas Department of Public Safety, and the border wall;
- Designate Mexican drug cartels as foreign terrorist organizations;
- Prosecute fentanyl deaths as murder;
- Protect women’s sports and female collegiate athletes;
- Focus community colleges on preparing Texas students for high skill careers;
- Increase electric power generation to secure the Texas power grid;
- Hold rogue district attorneys accountable;
- Protect children from life-altering gender mutilation;
- Ban illegal DEI hiring practices in our colleges and universities;
- Add \$1.4 billion to make Texas schools safer;
- Require armed security at all schools;
- Provide access to mental healthcare for students at all schools; and
- Require regular safety checks of school buildings.

Despite these major achievements, more must be done for the people of Texas. Many critical items remain that must be passed. Several special sessions will be required. **To ensure that each priority receives the time and attention it deserves to pass into law, only a few will be added each session.**

Special session #1 will focus only on cutting property taxes and cracking down on illegal human smuggling.

We must cut property taxes. During the regular session, we added \$17.6 billion to cut property taxes. However, the legislature could not agree on how to allocate funds to accomplish this goal. Texans want and need a path towards eliminating property taxes. The best way to do that is to direct property tax reduction dollars to cut school property tax rates.”

Special Session #1 agenda items include:

- **PROPERTY TAXES:** Legislation to cut property-tax rates solely by reducing the school district maximum compressed tax rate in order to provide lasting property-tax relief for Texas taxpayers.
- **BORDER SECURITY:** Legislation solely for the purpose of increasing or enhancing the penalties for certain criminal conduct involving the smuggling of persons or the operation of a stash house.

[View the Governor’s special session proclamation.](#)

Special session #1

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, by the authority vested in me by Article III, Sections 5 and 40, and Article IV, Section 8 of the Texas Constitution, do hereby call extraordinary session #1 of the 88th Legislature, to convene in the City of Austin, commencing at 9:00 P.M. on Monday, May 29, 2023, for the following purposes:

To consider and act upon the following:

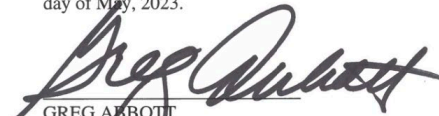
Legislation to cut property-tax rates solely by reducing the school district maximum compressed tax rate in order to provide lasting property-tax relief for Texas taxpayers.

Legislation solely for the purpose of increasing or enhancing the penalties for certain criminal conduct involving the smuggling of persons or the operation of a stash house.

The Secretary of State will take notice of this action and will notify the members of the legislature of my action.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 29th day of May, 2023.


GREG ABBOTT
Governor

Special session #1

TEXAS LEGISLATURE 2023

First special session ends with no new laws, Texas lawmakers still deadlocked on property taxes

Gov. Greg Abbott quickly called lawmakers back to the Capitol for round two, hoping to break an impasse that has outlasted the regular session and one overtime period.

BY **JAMES BARRAGÁN** AND **PATRICK SVITEK** JUNE 27, 2023 UPDATED: 5 PM CENTRAL

Special session #1...then #2...

PROCLAMATION
BY THE
Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, by the authority vested in me by Article III, Sections 5 and 40, and Article IV, Section 8 of the Texas Constitution, do hereby call extraordinary session #2 of the 88th Legislature, to convene in the City of Austin, commencing at 3 p.m. on Tuesday, June 27, 2023, for the following purposes:

To consider and act upon the following:

Legislation to cut property-tax rates solely by reducing the school district maximum compressed tax rate in order to provide lasting property-tax relief for Texas taxpayers.

Legislation to put Texas on a pathway to eliminating school district maintenance and operations property taxes.

The Secretary of State will take notice of this action and will notify the members of the legislature of my action.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of June, 2023.




GREG ABBOTT
Governor

Special session #1...then #2...

TEXAS LEGISLATURE 2023

Gov. Greg Abbott signs \$18 billion tax cut package for Texas property owners

At a time when the state has some of the nation's highest property taxes, the initiative was a cornerstone of his 2022 reelection campaign.

BY **KAREN BROOKS HARPER** JULY 24, 2023 1 HOUR AGO

HOUSTON CHRONICLE

HOUSTONCHRONICLE.COM • THURSDAY, SEPTEMBER 21, 2023 • VOL. 122, NO. 343 • \$3.00

Abbott vows special session on vouchers

He promises those at odds with him on hot topic will face primary challengers

By Edward McKinley

AUSTIN BUREAU

Gov. Greg Abbott said he will call a special session next month to pass private school vouchers and threatened lawmakers with primary challenges if they don't get on board.

"There's an easy way to get it done and a hard way to get it

done," he said during a recent call with supporters and church leaders, adding: "If they make it the hard way, we're happy to take the hard way also. Either way, I'm in this to win this."

The third-term Republican also pressed pastors to make the case for vouchers by telling their congregations "how important this is to the moral fabric of the

future of Texas."

The announcement comes as there's no clear consensus on the politically thorny issue of sending public money to private schools, and at a time when tensions are running high after the Senate acquittal of Attorney General Ken Paxton.

Lt. Gov. Dan Patrick has lashed out at House Speaker Dade Phelan for mishandling the impeachment case and Phelan responding by blasting the Senate leader for "confessing his

bias."

The Republican-controlled chambers have long been at loggerheads over voucher proposals. The Senate green-lit a policy earlier this year giving families \$8,000 in taxpayer money to pay for private school tuition and other related expenses, but the House never took it up.

Abbott, who named the issue a priority, said if the Republican-controlled Legislature won't pass a bill in a special session next month, he'll call a sec-

ond. And if it doesn't pass then, he said, "we will have everything teed up in a way" where anti-voucher members will face primary challengers who support vouchers in March. He said parents shouldn't have to send their children to a public school "teaching them things that are morally at odds with where parents want their children to be."

The biggest hurdle for vouchers has been the House, where a coalition of rural Republicans

Vouchers continues on A8



Notable Bills



Overview

W

procurement / vendor forms

public information

construction

facilities

miscellaneous



Procurement / Vendor Forms





HB 41 23

HB 4123 Access to and Use of Certain Criminal History Record Information

- **Effective:** June 13, 2023
- Amends provisions of Educ. Code regarding criminal history review of contractors and their employees to align with FBI criteria for use of background check information





2007

- FBI notified DPS that TEC §22.0834 [the law requiring contractors to obtain CHRI and certify compliance to the district] should be amended to provide **access to school districts only**

2019 FBI Audit

- FBI instructed DPS that **contractors cannot have access to national criminal history record information**, given status as private entities

TEA Contractor Fingerprinting Guidance

Popular Applications AskTED ECOS for Educators Grant Opportunities Secure Applications TEAL Login TSDS Help Desk

TEA
Texas Education Agency

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Requirements for School District Contractors

Updated July 20, 2021

Texas Education Code (TEC) [§22.0834](#) and [§22.08341](#) state that a contractor that provides services to a school district or charter school must be fingerprinted before beginning work, if the contractor 1) will have continuing duties related to the contracted services, and 2) will have the opportunity for direct contact with students. Additionally, the law requires that a contractor certify to a school district or charter school that it has received all criminal history information for its employees who provide services for the school. Pursuant to [§22.08341\(c\)](#), the requirement does not apply to a contractor that performs construction, alteration, or repair of an instructional facility if the contractor uses separate sanitary facilities, installs a barrier fence, and has a policy that employees may not interact with students or enter areas used by students.

Fingerprinting and Registry for Schools

- [Annual Certification and Statement of Compliance](#)
- [Fingerprinting for Certification Applicants](#)
- [Fingerprinting Help Desk](#)
- [Registry of Persons Ineligible for Employment](#)
- [Requirements for Certified Educators and Non-Certified Employees](#)
- [Requirements for School District Contractors](#)**
- [Requirements for Social Security Numbers](#)



REMEMBER

Fingerprinting requirement is triggered:

Unless an exception applies, Contractor:

- 1) is providing **services** to District;
- 2) will have **continuing duties** related to the contracted services; and
- 3) will have the opportunity for **direct contact** with students.

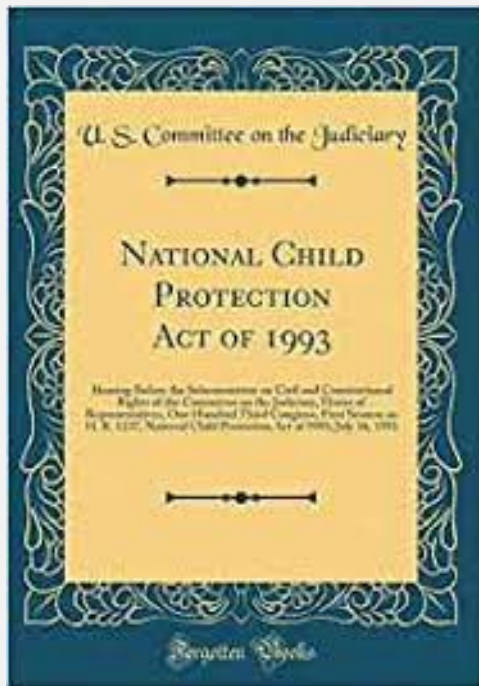
- ✓ **Continuing duties related to contracted services** – Work duties that are performed pursuant to a contract to provide services to a school entity on a **regular, repeated basis** rather than infrequently or one-time only. 19 TAC §153.1101(2)
- ✓ **Direct contact with students** – The contact that results from activities that provide **substantial opportunity** for **verbal or physical interaction with students** that is **not supervised** by a certified educator or other professional district employee.
 - ✓ Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students.
 - ✓ However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students. 19 TAC §153.1101(7)
- TEA has stated that **virtual** interaction with students (i.e., virtual tutoring) IS direct contact and triggers the requirement to fingerprint!

HB 4123 Access to and Use of Certain Criminal History Record Information

- Qualified school contractor = has access to CHRI under National Child Protection Act of 1993 (NCPA)
 - May obtain CHRI from DPS or another Texas criminal justice agency
 - May not release CHRI without subject's consent or disclose under TPIA
 - May provide school district with a "fitness determination" based on CHRI; must certify to school district receipt of all CHRI of employees/ applicants offered employment
 - Must destroy CHRI after authorized use



Exception: National Child Protection Act



- Access under the National Child Protection Act (NCPA):
 - if the contractor provides “**care or care placement services**” and
 - is **based in Texas**
- These contractors may fingerprint their W-2 employees who have access to students

HB 4123 Access to and Use of Certain Criminal History Record Information

- Employees of contractors and subcontractors that are **not** qualified school contractors must submit to criminal history review by the school district
 - Contractor must ensure person sends to DPS information required for obtaining CHRI, such as photo and fingerprints
- Qualified school contractors must require any subcontracting entities that are also qualified school contractors to obtain CHRI
 - If subcontracting entity is not a qualified school contractor, contractor must require that subcontractor employees/ applicants submit to criminal history review by school district



HB 4123 Access to and Use of Certain Criminal History Record Information

- Qualified school contractors and school districts must **not** allow employees to provide services if convicted of a crime that would prevent school district employment (TEC 22.085)



HB 4123 Access to and Use of Certain Criminal History Record Information

- Subcontractors: Adds employees and applicants for employment of school district subcontractors as persons who must submit to criminal history review (if continuing duties and direct contact with students)
- Volunteers: School districts now authorized to obtain CHRI from DPS relating to volunteering parents, grandparents, guardians and school campus event volunteers.
- Tutors: Tutors offering accelerated or supplemental instruction subject to national and state level background checks by school district.



HB 4123 Access to and Use of Certain Criminal History Record Information

- Removes separate process for criminal history background checks for public works contractors from TEC 22.08341
- **Public Works Contractor** = an entity that contracts directly or subcontracts with an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services to the school district, open-enrollment charter school, or shared services arrangement.



HB 4123 Access to and Use of Certain Criminal History Record Information

Does not apply to employee / applicant of public works contractor if:

(1) the public work **does not involve** the construction, alteration, or repair of an **instructional facility**;

(2) for public work involving construction of **new** instructional facility:

- person's duties will be **completed not later than the seventh day before** the first date the facility will be **used for instructional**

purposes;

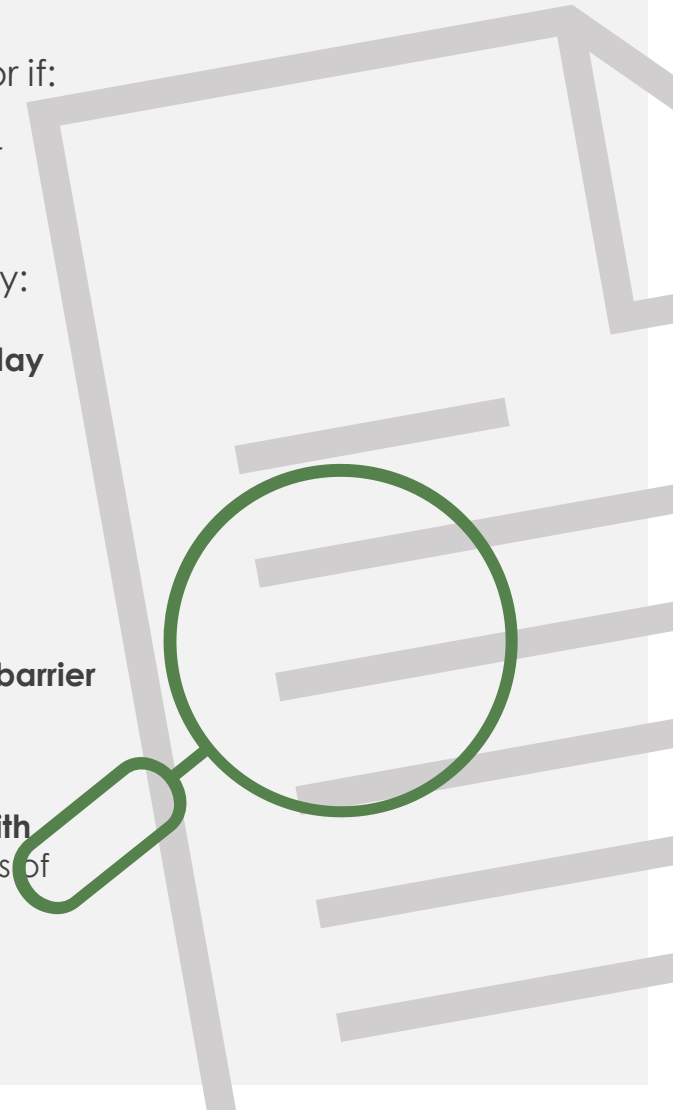
(3) or for public work involving **existing** instructional facility:

- public work area contains **sanitary facilities** and

fence

- is separated from all areas used by students by **secure barrier** not less than six feet high; and

- contracting entity adopts policy **prohibiting employees**, including subcontracting entity employees, from **interacting with students** or entering areas used by students, informs employees of policy, and enforces policy at work area.



HB 4123 Access to and Use of Certain Criminal History Record Information

- 1 Not instructional facility
- 2 New instructional facility, but
 - duties completed 7+ days before use
- 3 Existing instructional facility, but
 - barrier fence and
 - separate sanitary facilities and
 - employees prohibited from interacting with students

PREVIOUSLY

Defined as “person does **not** have the opportunity for **direct contact** with students”

NOW

Exception to criminal history check requirement

END RESULT

No criminal history check required

HB 4123 Access to and Use of Certain Criminal History Record Information

- Removes modifier “on or after January 1, 2008”
- State Board for Educator Certification (SBEC) and Texas Education Agency (TEA) authorized to obtain CHRI (from DPS and FBI) for their purposes
 - May not release or disclose FBI CHRI
 - May only release DPS CHRI to certain entities
 - Must destroy CHRI after authorized use






HB 1605



HB 1605 Instructional Material

- **Effective:** June 13, 2023
 - District not required to follow purchasing contract requirements (e.g., RFP) to purchase instructional materials that have been reviewed by TEA and included on SBOE-approved list
- 



HB 1817



CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	OFFICE USE ONLY
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.	
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.	
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.	

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is no Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

Must file online at www.ethics.state.tx.us/File

HB 1817 Disclosure of Interested Parties for Certain Contracts

BILL ANALYSIS

H.B. 1817
By: Capriglione
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2015, the Texas Legislature enacted legislation that required governmental entities to file a disclosure of interested parties, otherwise known as a Form 1295, with the Texas Ethics Commission for certain contracts. In 2022, a development company, Legacy Hutto LLC, sued the City of Hutto for breach of contract. The judge found that the city had not verified whether a Form 1295 was submitted and on file, therefore not complying with state government transparency laws. As such, the judge found that the contract had not been properly executed. With this ruling, the potential now exists for any government contract without a Form 1295 on file to be found void. H.B. 1817 seeks to prevent this from occurring by updating the disclosure of interested parties statute to allow for a cure period of 10 business days if a Form 1295 is found to not be on file.

HB 1817 Disclosure of Interested Parties for Certain Contracts

- **Effective:** June 9, 2023
- Contract is only voidable for failure to provide Form 1295 if:

the governmental
entity submits
written notice to
the vendor



the vendor fails to
submit the disclosure
within 10 business days
after receiving the
notice



Public Information

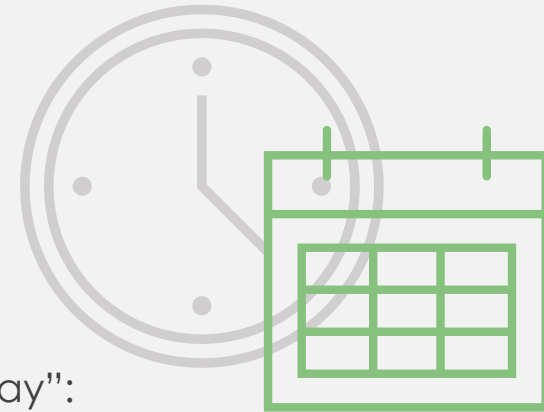




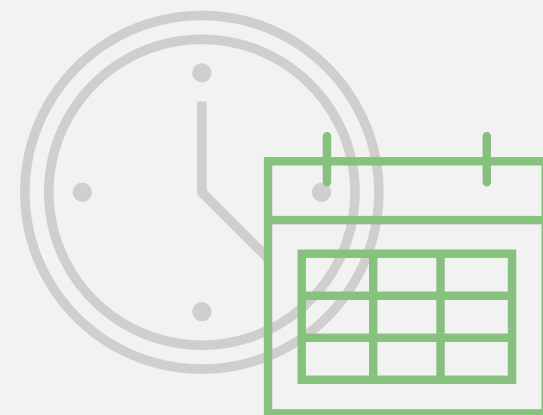
HB 3033

HB 3033 Revisions to Public Information Act

- **Effective:** September 1, 2023
- **Definition of “business day”**
 - Business day = day *other than*
 - Saturday or Sunday
 - National holiday (TGC 662.003(a))
 - State holiday (TGC 662.003(b))
 - Also not a “business day”:
 - Optional holiday (TGC 662.003(c)) if the public information officer observes it
 - Rosh Hashanah, Yom Kippur, or Good Friday
 - Holiday established by governing body of institution of higher education (TGC 662.011(a))
 - “Friday before” or “Monday after,” observing national or state holiday that occurs on Saturday or Sunday



HB 3033 Revisions to Public Information Act



Nonbusiness Days

- Governmental body may designate as a “nonbusiness day” a day on which its administrative offices are closed or operating with minimum staffing
 - Maximum of **10** “nonbusiness days” per calendar year
 - For school district, board of trustees must designate

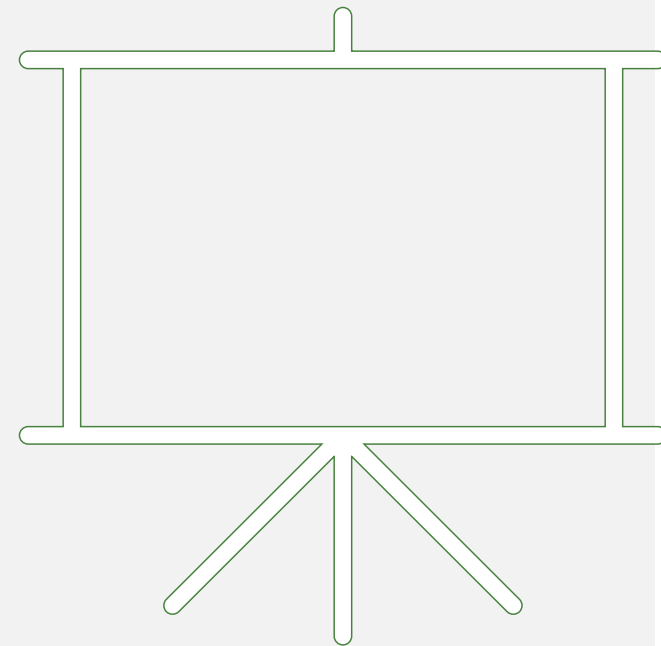
Alternative Work Sites

- Fact that employee works from alternative work site does not affect “business day.”

HB 3033 Revisions to Public Information Act

AG-Required Training

- If AG determines governmental body has failed to comply with TPIA requirement, AG may require that each public official of that body (including board members and PIO) complete TPIA course of training
 - AG to provide written notice of determination and requirement to complete training
 - Public official to complete training within 60 days of receiving notice



HB 3033 Revisions to Public Information Act



Litigation Exception – Elections

- Background: TPIA exception to disclosure for information related to pending litigation
- Litigation exception does not apply if the information:
 - relates to a general, primary, or special election, and
 - is in the possession of the governmental body that administers elections.

HB 3033 Revisions to Public Information Act

Law Enforcement Exception – Basic Arrest Information


- Background: TPIA exception to disclosure for information related to certain law enforcement information
 - NOT basic information: arrested person / arrest / crime
- Clarifies that governmental body shall release the basic information
 - unless seeking to withhold under another TPIA provision, and
 - regardless of whether seeking an AG decision regarding other requested information.





HB 3033 Revisions to Public Information Act

Limits; Written Statement

- 
- Background: Governmental body is permitted to establish certain monthly and yearly limits and to charge for certain costs when requestor requires large amounts of personnel time.
 - Written statement of personnel time may not include time spent preparing the written statement.
 - Requestor who has exceeded such a limit (TGC 552.275) may not inspect information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the governmental body.
 - Time spent preparing the written statement may be included if the requestor has exceeded time limit for the period.

HB 3033 Revisions to Public Information Act

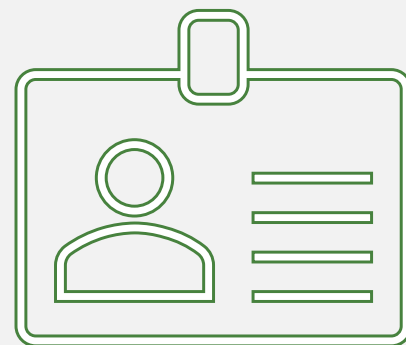


Photo ID of Requestor

- Governmental body may request photo ID from requestor for sole purpose of establishing that requestor has not exceeded a limit established by governmental body and concealed his or her identity.
 - Request for ID must include written statement of personnel time spent and statement describing each specific reason why photo ID request may apply.
 - Governmental body must accept as proof a physical photo ID or electronically transmitted or mailed image of the photo ID.
 - Requestor may decline to provide ID and obtain requested information by paying charge assessed in statement.

HB 3033 Revisions to Public Information Act

Electronic Submission of Request for AG Decision

- Governmental body must submit request for TPIA AG decision through AG's designated electronic filing system (\$15/submission).
- Does not apply if:
 - Governmental body requesting decision has fewer than 16 full-time employees or is located in a county with a population of less than 150,000;
 - Amount or format of responsive information at issue in request makes use of filing system impractical or impossible; or
 - Request is hand-delivered to AG's office.



HB 3033 Revisions to Public Information Act

Production of Information After AG Decision

- Within a reasonable time after date AG issues decision, governmental body to respond and produce information:
 - Provide requestor itemized estimate of charges for production of information, if required (*i.e.*, charges exceed \$40);
 - Take certain actions if requested information is voluminous;
 - Produce information, if required;
 - Notify requestor in writing that governmental body is withholding information as authorized by AG's decision; or
 - Notify requestor in writing that governmental body has filed suit against AG regarding information.
- Governmental body is presumed to have complied with these requirements if action is taken not later than **30th day** after date AG's decision is issued.



HB 3033 Revisions to Public Information Act



Searchable Database on AG's Website

- AG to make available on its website (no later than January 1, 2024) a searchable database consisting of:
 - Information identifying each request for a TPIA AG decision, and
 - AG's decision issued for each request.
- Required search functions: Must be searchable by
 - name of governmental body requesting decision, and
 - exception asserted for withholding information from public disclosure.
- Must include current status of request for decision and estimated timeline for each stage of review.



Construction

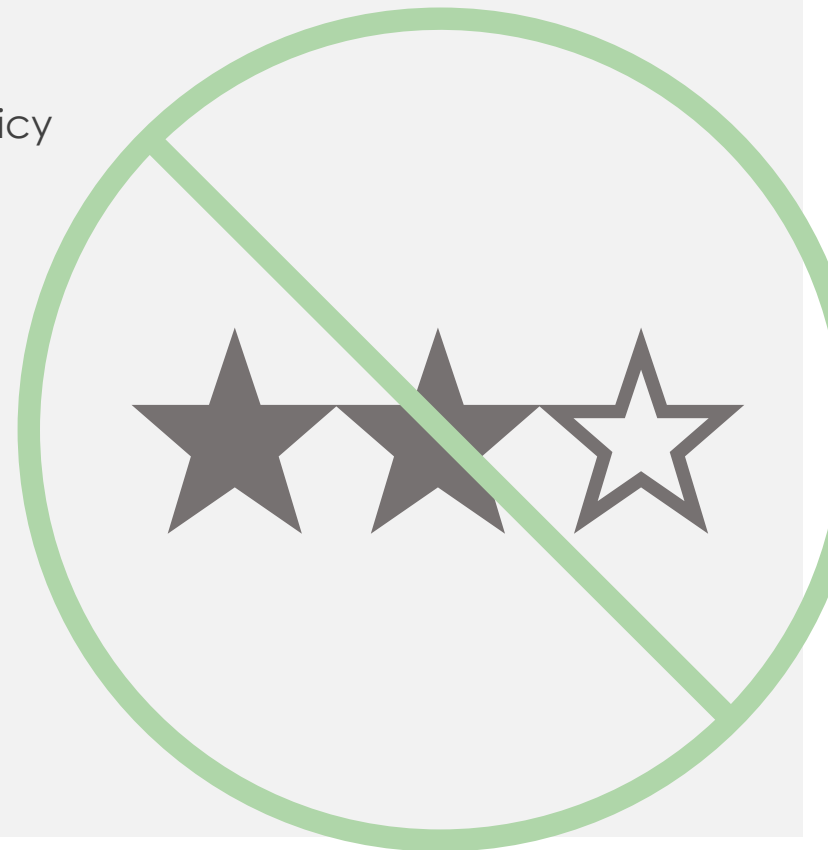




HB 679

HB 679 Workers' Compensation Experience Modifiers in Construction Procurement

- **Effective:** September 1, 2023 (applies to a contract for which a governmental entity first advertises or solicits offers on or after this date)
- “Experience modifier” = number assigned to an employer seeking a workers’ comp insurance policy
 - Based on the employer’s past loss experience
 - Affects the policy’s premium amount



HB 679 Workers' Compensation Experience Modifiers in Construction Procurement

- Governmental entities (including school districts) may not consider a workers' comp experience modifier when soliciting or entering into a construction contract or a contract for a public work
 - Cannot require a specified experience modifier to respond to a solicitation or accept an offer
 - Contract cannot require a specified experience modifier for contractor
- Applies to public and private construction contracts
- Violation = solicitation / contract / offer is voidable





HB 2965

HB 2965 No Waiver of Construction Defect Claim Requirements

- **Effective:** September 1, 2023 (applies only to a cause of action that accrues on or after this date, under a contract entered into on or after this date)



- **Background:** TGC 2272 imposes requirements before action may be brought alleging damages for construction defects against contractors or design professionals
- Clarifies that those provisions may not be waived by contract
 - “Waiver” = void



HB 3485

HB 3485 Contractor's Right Not to Proceed With Additional Work



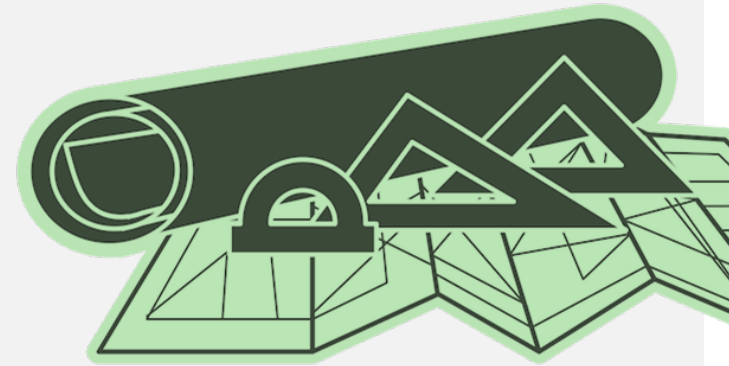
- **Effective:** September 1, 2023 (applies only to a contract entered into on or after this date)
- Grants to vendors and subcontractors certain rights related to the performance of additional work directed by a school district under a public work contract:
 - May elect not to proceed with additional work if:
 - it has not received a written, fully executed change order for the work **AND**
 - the aggregate value of the additional work plus any previous additional work not covered by a change order exceeds 10 percent of the original contract amount
 - Not responsible for damages associated with election not to proceed



HB 2007

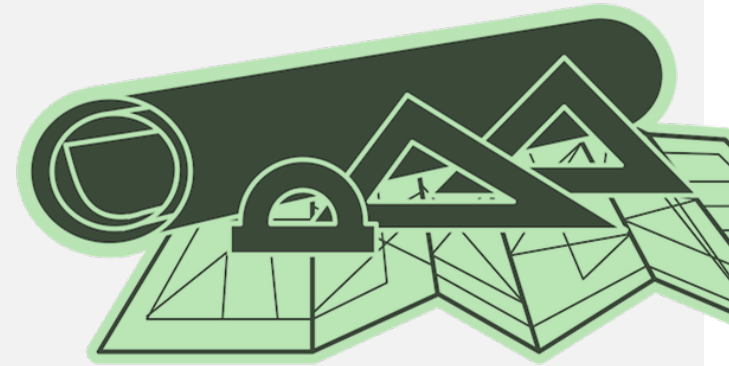
HB 2007 Certificate of Merit for Third-Party Claims Arising from Design-Build Projects

- **Effective:** September 1, 2023 (applies only to an action commenced on or after this date)
- **Background:** Civil Practice & Remedies Code 150.002 requires certificate of merit - affidavit from third-party architect, engineer, landscape architect, or land surveyor (re: professional's knowledge, skill, experience, education, training, and practice) - before pursuing an action against professional



HB 2007 Certificate of Merit for Third-Party Claims Arising from Design-Build Projects

- Creates an exception to certificate of merit requirement when design-build firm makes third-party claim or cross-claim against professional arising from design-build project where school district contracts with single entity to provide both design and construction services





Facilities





HB 1263

HB 1263 School Crossing Zones and Crosswalks at High Schools in Houston

- **Effective:** September 1, 2023
- Local authority authorized to enact traffic laws required, upon request of Houston high school administrator, to designate a school crossing zone or crosswalk at the campus
 - Not applicable to campus undergoing major extension or new construction
- Local authority to update school zone standards by Sept. 1 and post online with clear instructions for making request

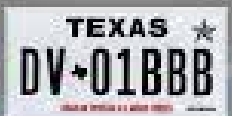




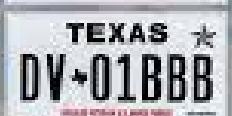
HB 1633



DISABLED VETERAN (DV) HANDICAP PARKING



+



+



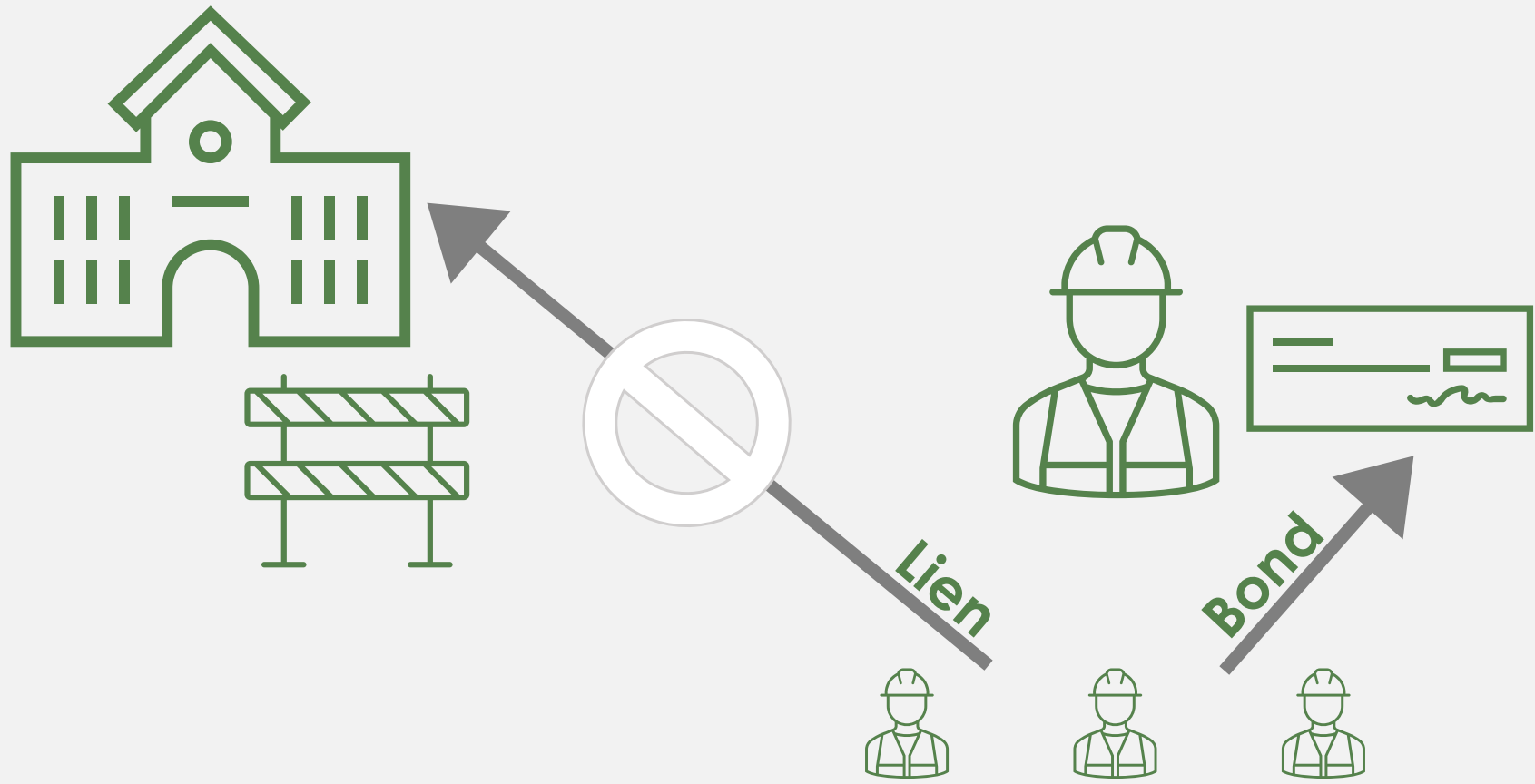
HB 1633 Parking Spaces Designated for Persons with Disabilities



- **Effective:** September 1, 2023 (applies only to offense committed on or after this date)
- **Background:** School district may designate parking spaces / area for use of vehicles transporting persons with disabilities. Parking enforcement may file charge against person using space without displaying international symbol of access on license plate or disabled parking placard.
- Lowers penalty for offense if vehicle displays disabled veteran license plate.



HB 2518



HB 2518 Required Terms for Leases of Public Property

- **Effective:** September 1, 2023 (applies to lease entered into or renewed by governmental entity on or after this date)
- Lease of public property by school district must require in any contract for the construction, alteration, or repair of improvement that contractor:
 - execute payment bond and performance bond in an amount equal to the amount of the contract, and
 - provide to governmental entity “notice of commencement” at least 90 days before start date of any construction / alteration / repair



HB 2518 Required Terms for Leases of Public Property

- Notice of commencement must include:
 - Identification of public property
 - Description of work
 - Total cost of work
 - Copies of bonds
 - Contractor's written acknowledgement that will give copies of bonds to all subcontractors.
- Governmental entity has 10 days from receipt of notice to notify leaseholder that construction/ alteration / repair may not proceed.





HB 1825



HB 1825 Alcoholic Beverages at School Districts in Tarrant County

- **Effective:** September 1, 2023
- Board of Tarrant County school district permitted to adopt policy allowing for consumption / possession / sale of alcoholic beverages at event held at district's performing arts facility
 - Facility must be leased to a nonprofit organization for event not sponsored or sanctioned by district **AND**
 - lease must require that event be held outside regular school hours **AND**
 - alcoholic beverages must be sold by person holding appropriate retail license or permit.





HB 915

HB 915 Texas Workforce Commission Notice for Workplace Violence

- **Effective:** September 1, 2023
- Employers to post notice for reporting workplace violence or suspicious activity to DPS. Must include contact information and right to make anonymous report. Must be posted:
 - In a conspicuous place,
 - In sufficient locations to be convenient to all employees, and
 - In English and Spanish, as appropriate.
- TWC to consult with DPS to adopt rules prescribing form and content of notice by March 1, 2024.





HB 1760

HB 1760 Possession of Weapon in Prohibited Places Related to Schools

- **Effective:** September 1, 2023 (applies only to offense committed on or after this date)
- Adjusts list of locations where (absent an exception) a person cannot go with a firearm, location-restricted knife, club, or other prohibited weapon. Cannot take a location-restricted weapon:
 - On premises of a school or postsecondary educational institution,
 - On grounds or building **owned by and under control of school or postsecondary educational institution** where school activity is being conducted, or
 - In passenger vehicle of school or postsecondary educational institution.



HB 1760 Possession of Weapon in Prohibited Places Related to Schools

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- Adjusts list of locations where (absent an exception) a person cannot go with a firearm, location-restricted knife, club, or other prohibited weapon. Cannot take a location-restricted weapon: **UNLESS**
 - On premises of a school or postsecondary educational institution,
 - On grounds or building **owned by and under control of school or postsecondary educational institution** where school activity is being conducted, or
 - In passenger vehicle of school or postsecondary educational institution.

Not an offense if carrying weapon pursuant to written regulations or written authorization of the school or institution

HB 1760 Possession of Weapon in Prohibited Places Related to Schools

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- On premises of a school or postsecondary educational institution,
- On grounds or building **owned by and under control of school or postsecondary educational institution** where school activity is being conducted, or
- In passenger vehicle of school or postsecondary educational institution.


Premises = building or portion of building

- **NOT**
public or private driveway,
street,
sidewalk or walkway,
parking lot, parking garage, or
other parking area.

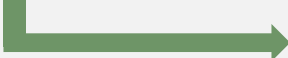
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- On premises of a school or postsecondary educational institution,
- On grounds or building **owned by and under control of school or postsecondary educational institution** where school activity is being conducted, or
- In passenger vehicle of school or postsecondary educational institution.



School = accredited primary or secondary school



Postsecondary educational institution = institution of higher education or private or independent institution of higher education.



Miscellaneous





SB 1893



SB 1893 Prohibiting Certain Social Media Applications on Government Devices

- **Effective:** June 14, 2023



- Prohibits use on government devices of social media applications and services deemed to pose risk to the state.
- Requires governmental entities to prohibit on devices owned / leased by governmental entity:
 - TikTok,
 - Any other service developed / provided by ByteDance Limited (owner of TikTok), and
 - Any other social media application or service determined by governor to pose a risk to the state.



SB 1893 Prohibiting Certain Social Media Applications on Government Devices

Professors sue Texas over TikTok ban, signaling First Amendment fight

The professors said the ban immediately halted research projects into TikTok and derailed their plans to lead classes discussing the social media app's benefits and risks.

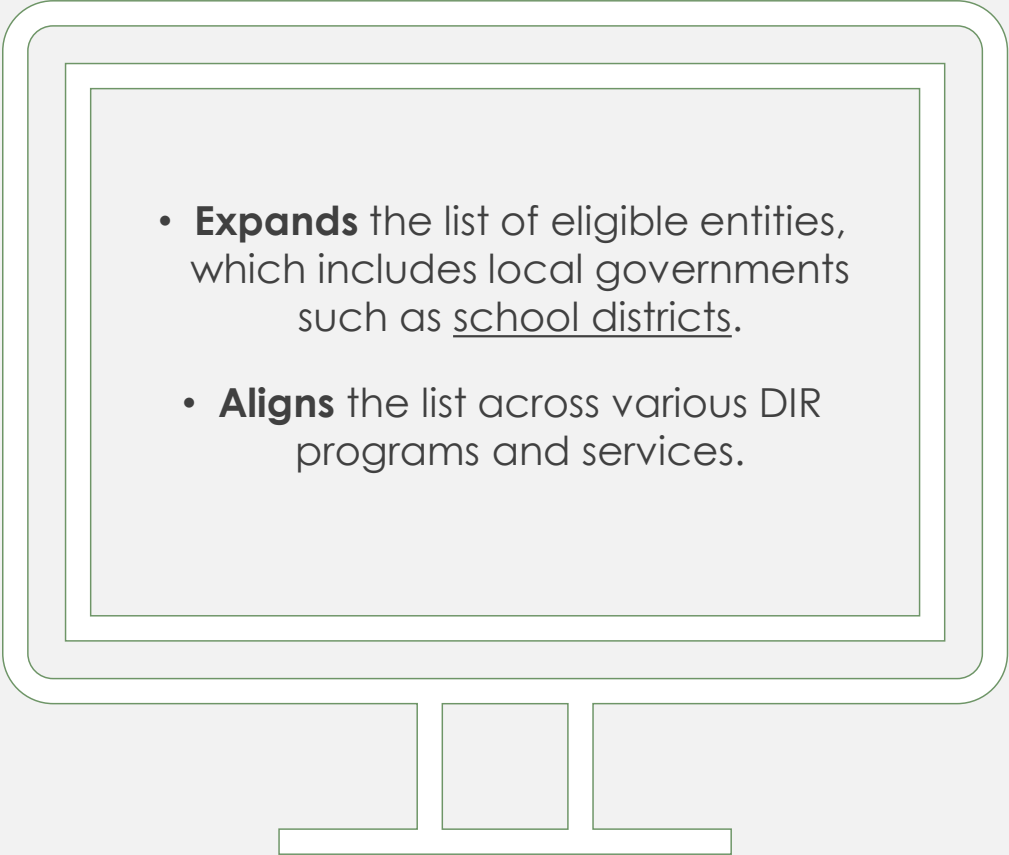
BY DREW HARWELL, [THE WASHINGTON POST](#) JULY 13, 2023 12 PM CENTRAL



HB 4553

HB 4553 Eligibility of Certain Entities for DIR Services

- **Effective:** September 1, 2023
- **Background:** DIR required to perform a variety of tasks:
 - Telecommunications services,
 - Negotiate contracts for IT commodity items, and
 - Establish statewide tech centers offering tech services.
- State law establishes which entities are eligible to access DIR programs and services, but lists are not uniform. Varying eligibility across programs = confusion.

- 
- **Expands** the list of eligible entities, which includes local governments such as school districts.
 - **Aligns** the list across various DIR programs and services.



HB 2190

HB 2190 Terminology Used to Describe Transportation-Related Accidents

- **Effective:** September 1, 2023

Accident



Collision





Federal DOL Davis-Bacon Rule Changes



U.S. DEPARTMENT OF LABOR

News Release

US DEPARTMENT OF LABOR ANNOUNCES FINAL RULE TO MODERNIZE DAVIS-BACON ACT

Aided by labor, industry stakeholders' comments, most comprehensive updates in 40 years

The final rule's regulatory changes improve the department's ability to administer and enforce DBRA labor standards more effectively and efficiently. These changes include the following:

- Creating new efficiencies in the prevailing wage update system and making sure prevailing wage rates keep up with actual wages which, over time, would mean higher wages for workers.
- Returning to the definition of "prevailing wage" used from 1935 to 1983 to ensure prevailing wages reflect actual wages paid to workers in the local community.
- Periodically updating prevailing wage rates to address out-of-date wage determinations.
- Providing broader authority to adopt state or local wage determinations when certain criteria are met
- Issuing supplemental rates for key job classifications when no survey data exists.
- Updating the regulatory language to better reflect modern construction practices.
- Strengthening worker protections and enforcement, including debarment and anti-retaliation provisions.

The DBRA requirements apply to an estimated tens of billions of dollars in federal and federally assisted construction spending each year and provide minimum wage rates for hundreds of thousands of U.S. construction workers. The department expects a significant increase in the numbers of industry workers due to the historic investments in federally funded construction projects made possible by legislation such as the Infrastructure Investment and Jobs Act.



“Lagniappe” Bills

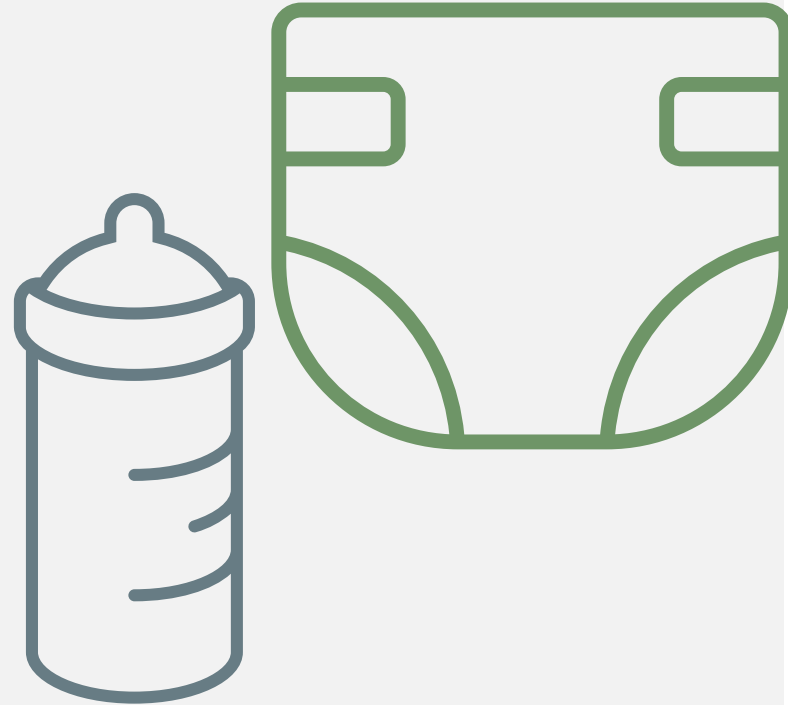


Lagniappe

(LAN-yap)
a little something extra,
something unexpected,
a random mix.

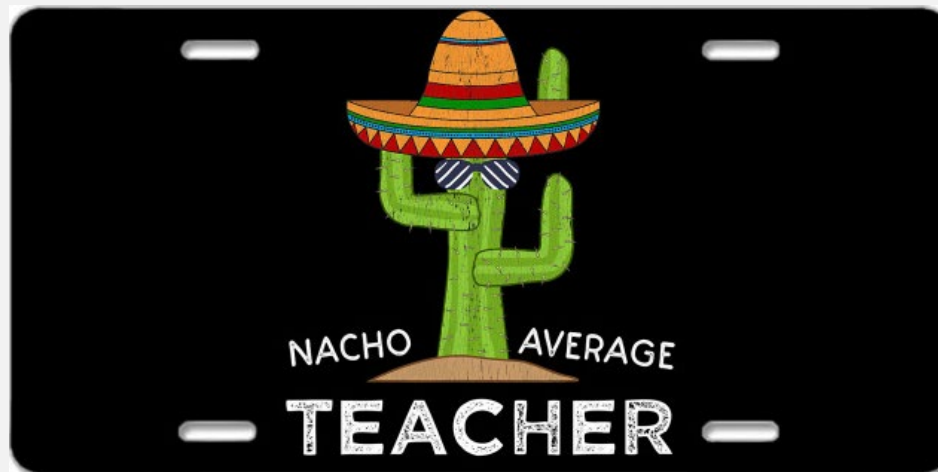
SB 379 Exemption from Sales and Use Taxes for Certain Family Care Items

- **Effective:** September 1, 2023
- Exempts from sales tax:
 - Diapers
 - Wipes
 - Baby bottles
 - Feminine hygiene products
 - Maternity clothes
 - Breast milk pumping products



HB 108 Issuance of Specialty License Plates for Classroom Teachers and Retired Classroom Teachers

- **Effective:** September 1, 2023
- Specialty license plates for classroom teachers with 15 years of service (and retired classroom teachers with 20 years of service) teaching public school students
- “Texas Teacher” or “Retired Texas Teacher,” respectively, and public education logo.



HB 2194 Establishing a “Made in Texas” Labeling Program



- **Effective:** September 1, 2023
- Establishes a “Made in Texas” labeling program to:
 - Set criteria for whether person may sell / advertise / offer for sale in Texas a product using “Made in Texas”
 - All or virtually all significant parts and processing of product must originate in Texas
 - Design and administer use of logo for products to be labeled as “Made in Texas”
 - Adopt application process for use of logo

HB 3991

Fruit & Vege Day



- **Effective:** beginning 2023-24 school year
- Establishes the first Friday in April as “Texas Fruit and Vegetable Day”
- To promote awareness of the health benefits of fruits and vegetables and to encourage students to consume more fruits and vegetables during Texas Fruit and Vegetable Month under Section 662.103, Government Code.
- Texas Fruit and Vegetable Day shall include appropriate instruction, as determined by each school district.

HB 639 Number of Temporary Licenses to Conduct Bingo

- **Effective:** September 1, 2023
- Increases from **6** to **12** the number of temporary licenses to conduct bingo per year.





Questions?

Have a BALL this school year!





SPALDING NICHOLS
-LAMP LANGLOIS-

Sarah Langlois

PARTNER

3700 Buffalo Speedway, Suite 560, Houston, Texas 77098

713.993.7065

slanglois@snll-law.com

www.snll-law.com

THIS PRESENTATION IS INTENDED TO BE USED SOLELY FOR GENERAL INFORMATION PURPOSES AND IS NOT TO BE REGARDED AS LEGAL ADVICE. IF SPECIFIC LEGAL ADVICE IS SOUGHT, PLEASE CONSULT AN ATTORNEY.

UP NEXT: DATA ANALYTICS PRESENTATION

JONATHAN LI

WHITLEY PENN



UP NEXT: NEW LEGISLATION FOR 179D AND PUBLIC SECTOR BENEFITS

MATTHEW GELTZ & JESSE STANLEY

KBKG





179D Today and Tomorrow: The Future of Green Building Tax Incentives

Jesse Stanley

Director – Green Building Tax Incentive Services

Matt Geltz

Regional Director - Texas

Presented on September 22nd, 2023

ABOUT KBKG

Established in 1999 with offices in major markets throughout the US, KBKG is one of the oldest and largest independent providers of specialty tax studies in the country. By focusing exclusively on value-added tax services, we complement your traditional tax and accounting team.

SINGLE SOURCE SOLUTION

We are unique in the marketplace as we offer a single source solution for a number of specialty tax services. We provide you with a single point of contact who will interject the appropriate subject matter expert within our team as necessary. We help determine which tax programs benefit clients and stay committed to handling each relationship with care and diligence.

SEAMLESS TEAMWORK & COLLABORATION

Our ability to work seamlessly with your team is the reason so many tax professionals and businesses across the nation trust KBKG.

Our practice is staffed by full-time specialists with engineering, valuation, "green" building, estimating, and construction backgrounds as well as tax professionals, attorneys, engineers, and economists.

SERVICES

- R&D Tax Credits
- Employee Retention Tax Credits
- Cost Segregation for Buildings and Improvements
- Green Building Tax Incentives
- Transfer Pricing Services
- IC-DISC
- Fixed Asset Review
- Repair vs. Capitalization Review
- Employment Tax Credits

- Director at KBKG in the 179D practice.
- Jesse has over 15 years of experience in the Energy, Sustainability, and Tax Consulting industries. Jesse is a licensed Mechanical Engineer in 38 States. He is a subject matter expert on energy efficiency in buildings, sustainability, mechanical system design, building controls, and daylighting design having presented to ASHRAE Conferences, Former Congressmen, federal agencies, and state government officials.



Jesse Stanley

Director – 179D and Practice Leader



Matt Geltz

Regional Director – Texas



SOLUTIONS FOR TAX PROFESSIONALS AND BUSINESSES
TAX CREDITS • INCENTIVES • COST RECOVERY



179D Today and
Tomorrow Webinar
| AGENDA

179D Explained	10min
Inflation Reduction Act Changes	10min
Retrofit Program	5min
Qualification Requirements	10min
Calculation Methods	5min
Q & A	15min



179D Today and
Tomorrow Webinar
| AGENDA

179D Explained

10min

Inflation Reduction Act Changes

10min

Retrofit Program

5min

Qualification Requirements

10min

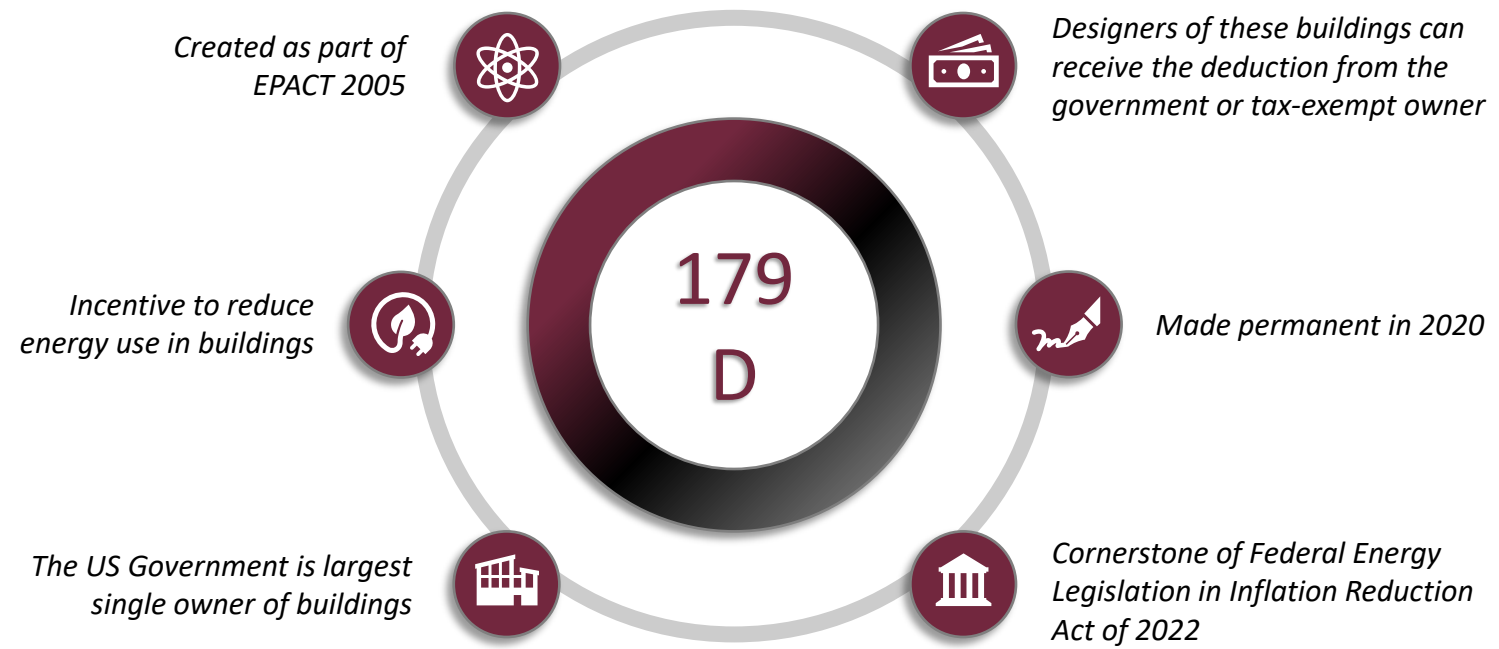
Calculation Methods

5min

Q & A

15min

Overview of 179D





Case Study – 179D Value of three new construction projects

Building Size	Year Complete	Qualification Amount	Deduction Amount
175,000	2020	1.80 \$/sf	\$315,000
320,000	2023	4.50 \$/sf	\$1,440,000
215,000	2023	5.00 \$/sf	\$1,075,000
Total Deductions			\$2,830,000

What does 179D look like in 2022 (as well as previous years)?



2022 and prior

Available to:



- Designers of government entities
- Commercial building owners

Prevailing Wages

Requirements:



NONE!

Benefits

Qualifications:



- Was made permanent in 2020
- The maximum allowable benefit is **\$1.88/sf**
- Partial allowances up to \$0.60/sf for single systems
- Interim lighting rule available up to \$0.60/sf



179D Today and
Tomorrow Webinar
| AGENDA

179D Explained

10min

Inflation Reduction Act Changes

10min

Retrofit Program

5min

Qualification Requirements

10min

Calculation Methods

5min

Q & A

15min



How does the Inflation Reduction Act Make 179D *more valuable*?

NEW Eligibility

Tax-exempt entities

- charitable organizations
- churches & religious organizations
- private schools & universities
- private foundations
- political organizations
- other non-profits
- Native American tribal governments
- Alaska Native Corporations

Prevailing Wages

Requirements

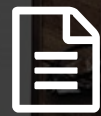
Required for Max
Benefit on Construction
1/29/2023 and later

Safe Harbor Exists

Benefit Changes

Significant increase!

- The Inflation Reduction Act expands both the impact and scope of the 179D tax deduction.
- Beginning January 1, 2023, the maximum allowable benefit increases from **\$1.88/sf** to **\$5.00/sf** of building area.



POLLING QUESTION #1



How does the Inflation Reduction Act Make 179D *more valuable*?

Allocating Entities

- Federal, State, Local Governments
- charitable organizations
- churches & religious organizations
- private schools & universities
- private foundations
- political organizations
- other non-profits
- Native American tribal governments
- Alaska Native Corporations

Tax-Exempt entities can allocate to the primary designer of their choice or a combination of designers of their choosing



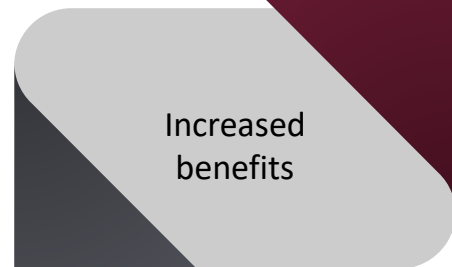


The benefit for the changes are **significant**

The maximum allowable benefit increases from **\$1.88/sf** to **\$5.00/sf** of building area,

a **165% benefit INCREASE**

In 2022 and prior, a 250k sf middle school qualified for **\$470 thousand**



In 2023+ the same middle school is now **\$1.25 MILLION!**



POLLING QUESTION #2



179D Today and
Tomorrow Webinar
| AGENDA

179D Explained	10min
Inflation Reduction Act Changes	10min
Retrofit Program	5min
Qualification Requirements	10min
Calculation Methods	5min
Q & A	15min

Two paths of 179D qualification



Traditional 179D

Strengthened via
Inflation Reduction Act

Energy Efficient Commercial Building Property

- No More Partial Qualifications or Interim Lighting Qualifications
- Whole Building Only
- Energy Cost Savings compared to ASHRAE 90.1 Compliant Baseline Model
- Designed Building vs Simulated Building

Created via Inflation
Reduction Act

Retrofit 179D

Alternative Deduction – Retrofit Property Retrofit

- Does not need to exceed ASHRAE Standards
- Focused on reductions compared to past actual usage
- No Energy Cost Component
- New Energy Usage vs Old Energy Usage
- Buildings Can Reclaim benefit
 - 3 Years for Owners
 - 4 Years for Tax Exempt

What is the Alternative Deduction – Retrofit Property?



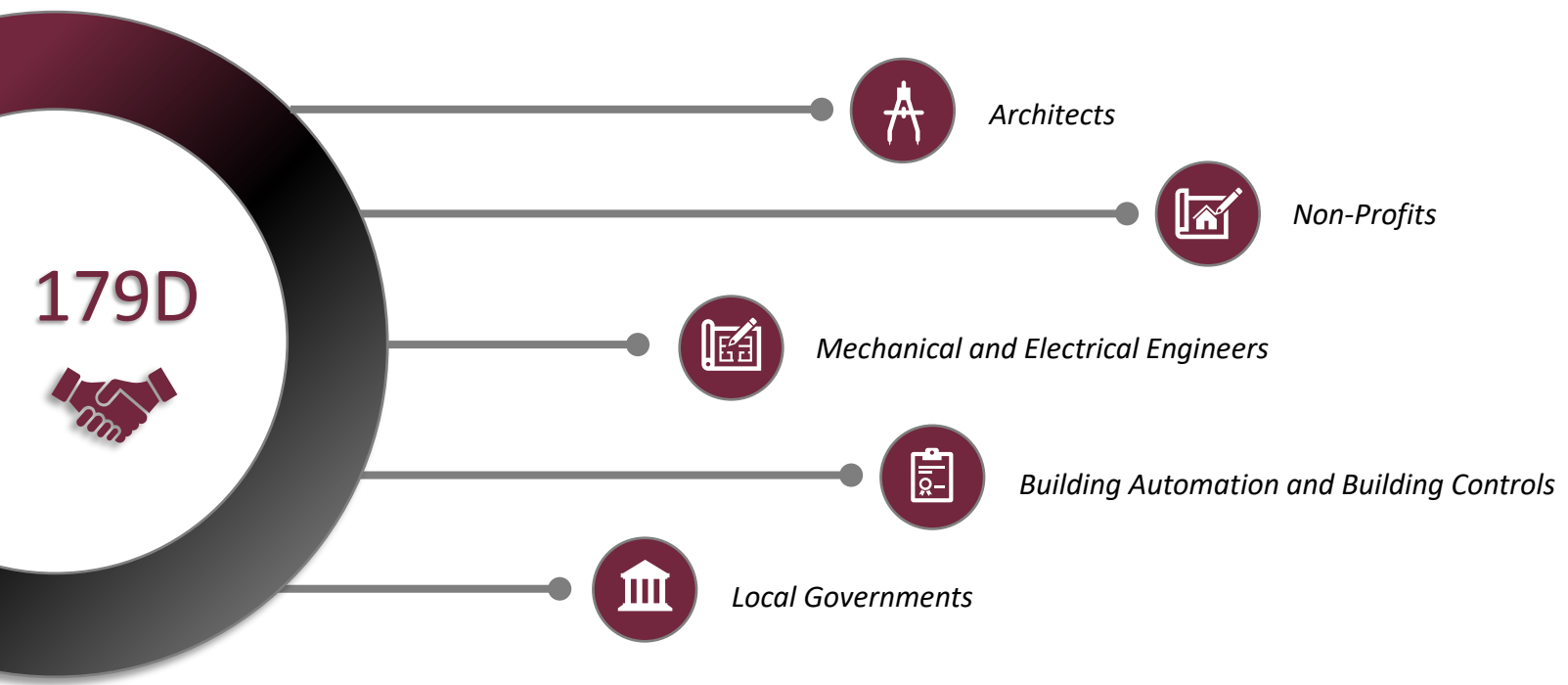
- 0 Building Must be at least 5 years old
- 1
- 0 Requires a plan to reduce Site Energy Use Intensity by at least
- 2 25%
- 0
- 3 Comparison of actual historic use compared to post retrofit use
- 0
- 4 Can be difficult for buildings with high process use

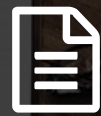


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What types of companies can claim 179D?

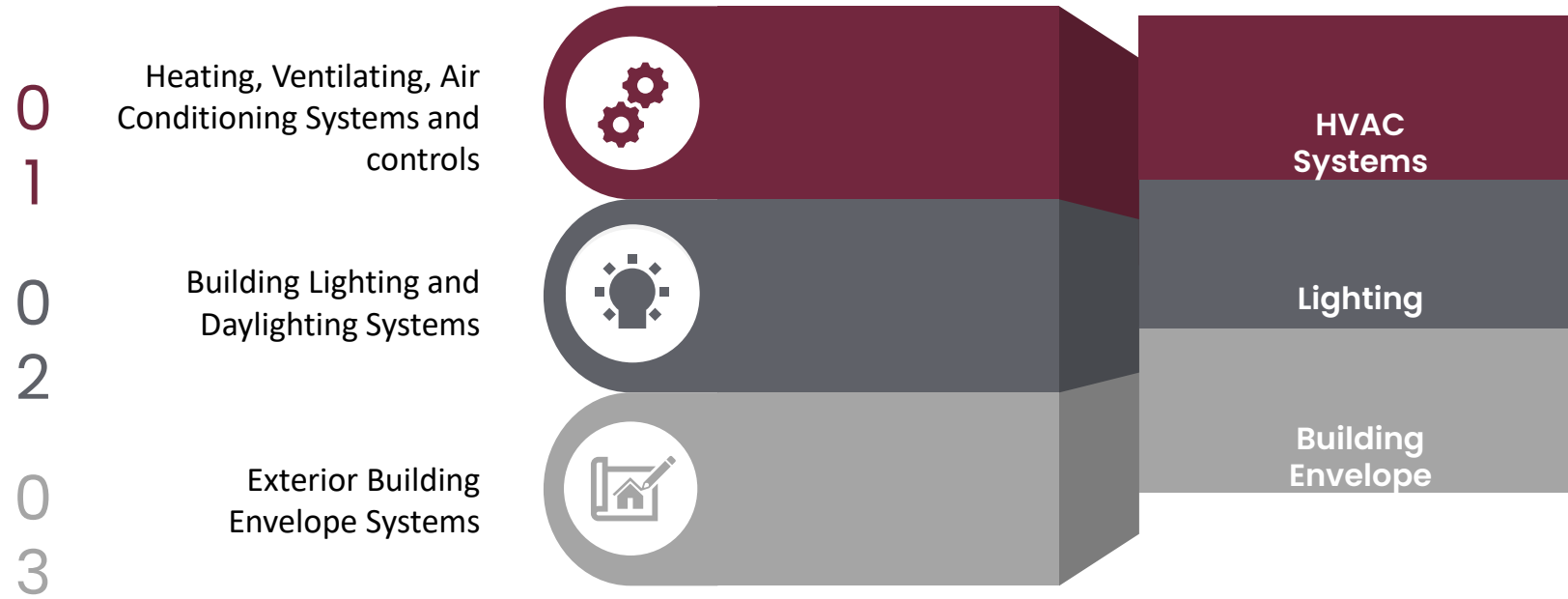




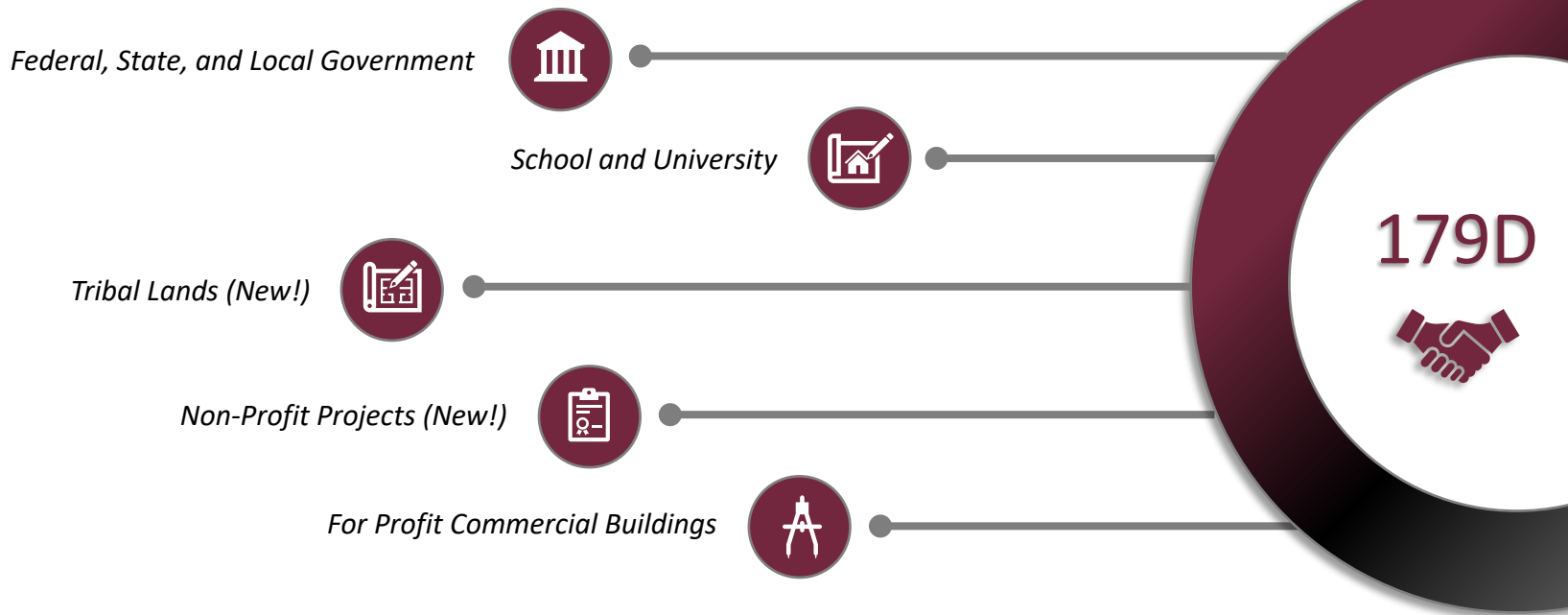
POLLING QUESTION #3



What types of projects qualify?



What types of buildings can participate in 179D?





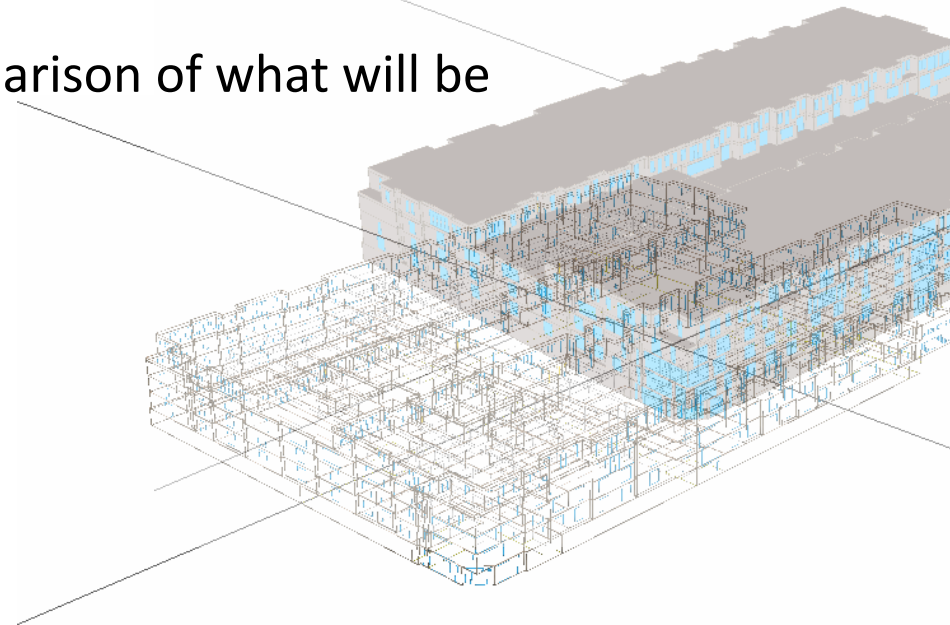
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Calculation Methods – What is an Energy Model?



- 0 1 3D simulation of every hour of building energy use across all 8760 hours of the year
- 0 2 All aspects of Heating, Ventilation, Air Conditioning, Lighting, Insulation, and internal loads are considered
- 0 3 Creates an apples-to-apples comparison of what will be versus what could be



Summary of 179D Tax Deductions in detail



Compliance Path		Savings Requirement	Tax Deduction			
			taxable years before 2021	taxable year beginning 2021	taxable year beginning 2022	taxable year beginning 2023*
Fully Qualifying Property		25%	na	na	na	\$2.5/ft ²
		50%	\$1.80/ft ²	\$1.82/ft ²	\$1.88/ft ²	\$5.00/ft ²
Partially Qualifying Property	Envelope	10%	\$0.60/ft ²	\$0.61/ft ²	\$0.63/ft ²	na
	HVAC and HW	15%				
	Lighting	25%				
Interim Lighting Rule		25% - 40% lower lighting power density (50% for warehouses)	\$0.60/ft ²	\$0.61/ft ²	\$0.63/ft ²	na

*with prevailing wages

Example Case Study:

- 3 New Construction High Schools each at 500,000 sf
- 2022 year, Total Potential Deduction of **\$2,820,000 at 1.88 \$/sf**
- 2023+, Total Potential Deduction of **\$7,500,000 at 5.00 \$/sf**



Case Study – 179D Value of three new construction projects

Building Size	Year Complete	Qualification Amount	Deduction Amount
175,000	2020	1.80 \$/sf	\$315,000
320,000	2023	4.50 \$/sf	\$1,440,000
215,000	2023	5.00 \$/sf	\$1,075,000
Total Deductions			\$2,830,000



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Questions?



POLLING QUESTION #4

KBKG 179D Experts



JESSE STANLEY, P.E.

Director – 179D and Practice Leader
877.525.4462 x 309
jesse.stanley@kbkg.com



kbkg.com/management/jesse-stanley



MATT GELTZ

Regional Director – Texas
877.525.4462 x 294
matthew.geltz@kbkg.com



kbkg.com/management/matthew-geltz

TO EXPLORE 179D WITH KBKG FURTHER, BOOK A MEETING:



UP NEXT: HOW TO IMPLEMENT GABS 96 & MAINTAIN COMPLIANCE

LOUIS STRATTON

DEBTBOOK





How to Implement GASB 96 & Maintain Compliance

Disclaimer: DebtBook does not provide professional services or advice. DebtBook has prepared these materials for general informational and educational purposes, which means we have not tailored the information to your specific circumstances. Please consult your professional advisors before taking action based on any information in these materials. Any use of this information is solely at your own risk.

Speaker

Louis is the Managing Director of Strategic Partnerships at DebtBook. He is a Certified Public Accountant (CPA) who now works with innovative fintech companies to transform the lives of finance and accounting professionals.

In addition to serving public sector clients in his accounting role and holding leadership positions at Blackbaud and Porte Brown, Louis has also served as an adjunct professor of Accounting, Auditing, Finance, and Management.



Louis Stratton

CPA, CITP, CGMA, MBA

MANAGING DIRECTOR
OF STRATEGIC
PARTNERSHIPS

Step 1: Creating Your Implementation Roadmap

- Identify who is responsible for each step
- Determine the timing of each step

GASB 96 IMPLEMENTATION ROADMAP (STEP 1)															
	GASB 96 Implementation Steps	Total Weeks Needed	Weeks Remaining	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12
STEP 2	Collecting and Organizing Subscriptions <i>Responsible Parties: Mary, Accounting and Jeff, Legal</i>	2	2	█	█										
STEP 3	Extracting the Data <i>Responsible Parties: Mary, Accounting and Department Leaders</i>	2	2		█	█									
STEP 4	Crafting the Initial Schedules <i>Responsible Parties: Mary, Accounting and Michele, Accounting</i>	2	2				█	█							
STEP 5	Launching the Internal Review Process <i>Responsible Parties: Jeff, Finance and Stacy, Accounting</i>	3	3						█	█	█				
STEP 6	Understanding the Importance of Journal Entries <i>Responsible Parties: Mary, Accounting</i>	1	1									█			
STEP 7	Preparing Note Disclosures <i>Responsible Parties: Susan, Financial Reporting</i>	2	2												█
STEP 8	Adhering to Ongoing Compliance <i>Responsible Parties: Mary, Accounting and Department Leaders</i>	9	9	█	█	█	█	█	█	█	█	█	█	█	█

Step 2: Collecting & Organizing Subscriptions

- Requirements that are **SIMILAR to Leases** under GASB 87
 - Contract must convey control of the right to use another entity's IT software
 - IT software must be controlled for a period of time in exchange/exchange-like transaction
- Requirements that are **NEW to Subscriptions** under GASB 96
 - Does the IT software contract contain a tangible capital asset?
 - Is the IT software component insignificant compared to the tangible capital asset?
 - Is the contract a perpetual licensing agreement?

Short-Term

- Term of 12 months or less
- Including extension options
- Regardless of reasonable certainty of extending

*We have a decision tree on our website that you can use to walk through this process.

Collecting & Organizing Subscriptions: Project Costs

- IT Subscription Agreements may have costs that should be capitalized

STAGES OF IMPLEMENTATION	EXAMPLES
Preliminary Project Stage (Expensed as Incurred)	Determination of existence of needed technology, selection of alternatives
Initial Implementation Stage (Capitalizable)	Coding, testing, installation
Operation & Additional Implementation Stage (Expensed as Incurred)	Maintenance, troubleshooting, implementation of additional modules

- Costs incurred prior to the following should be expensed as incurred:
 - Determination of the specific objective of the project and nature of service capacity expected
 - Demonstration of technical or technological feasibility
 - Demonstration of current intention, ability and presence of effort

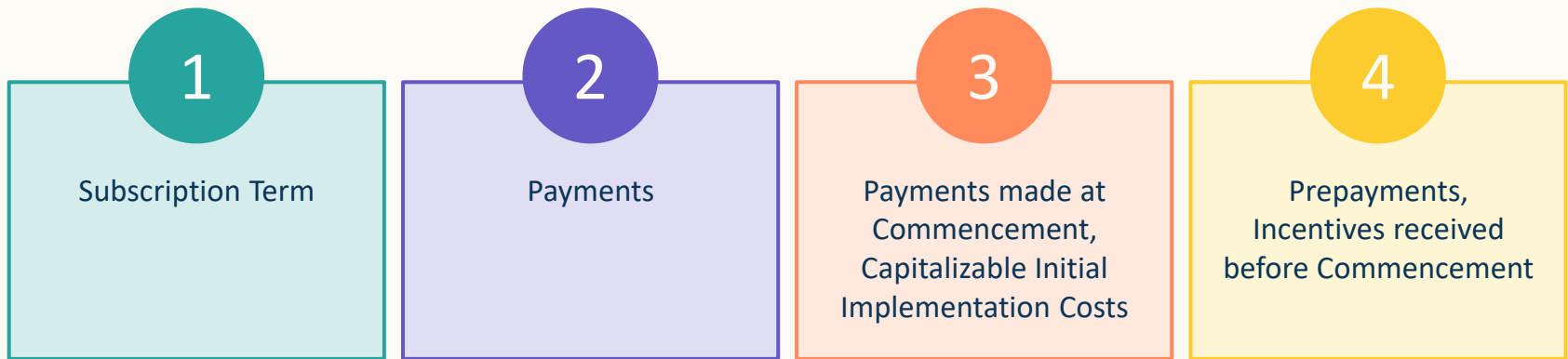


Polling Question



Step 3: Extracting the Data

- Consider using a checklist
- Include those who are familiar with the contract details
- There are four primary categories of information:



Extracting the Data: Subscription Term

- Extension options
- Termination options
- Fiscal funding or cancelation clauses
- Cancelable periods
 - Both government and vendor can terminate without permission from the other or both parties must agree to extend

Ex. rolling month-to-month subscription and holdover periods

Extracting the Data: Payments

- Fixed payments
- Variable payments
 - Variable payments fixed in substance
 - Variable payments based on an index or rate
 - Variable payments based on future performance (exclude)
- Termination penalties, contract incentives, other payments

Extracting the Data: Other Payments / Costs

- Payments Made at Commencement
 - Included as an increase in the Subscription Asset
- Capitalizable Initial Implementation Costs
 - Included as an increase in the Subscription Asset
- Prepayments and Incentives Received Before Commencement
 - Prepayments minus Incentives Received Before Commencement = Asset or Liability Prior to Commencement
 - Reclass as an addition (Asset) or subtraction (Liability) to Subscription Asset at commencement

Subscription & Non-Subscription Components

- Multiple underlying IT assets
 - Different subscription terms
- Non-subscription components
 - Common examples: separate perpetual licensing agreement, maintenance services
 - Treat separately from subscription component
- Allocate contract price
 - Prices included in the contract
 - Best estimate; if not practicable, treat as one component

Step 4: Crafting the Initial Schedules

- Discount the subscription payments using the appropriate interest rate to determine your subscription liability beginning balance
- Use payments made at commencement, capitalizable initial implementation costs, incentives, and prepayments to adjust the subscription asset
- Consider materiality

Date	SUBSCRIPTION LIABILITY				SUBSCRIPTION ASSET		
	Beginning Balance	Subscription Payment	Interest Expense	Ending Balance	Beginning Balance	Amortization Expense	Ending Balance
1/31/21	\$ 5,849.09	\$ 225.00	\$ 10.97	\$ 5,635.06	\$ 5,999.09	\$ 166.64	\$ 5,832.45
2/28/21	\$ 5,635.06	\$ 225.00	\$ 10.57	\$ 5,420.62	\$ 5,832.45	\$ 166.64	\$ 5,665.81
3/31/21	\$ 5,420.62	\$ 225.00	\$ 10.16	\$ 5,205.79	\$ 5,665.81	\$ 166.64	\$ 5,499.17
4/30/21	\$ 5,205.79	\$ 225.00	\$ 9.76	\$ 4,990.55	\$ 5,499.17	\$ 166.64	\$ 5,332.52
5/31/21	\$ 4,990.55	\$ 225.00	\$ 9.36	\$ 4,774.90	\$ 5,332.52	\$ 166.64	\$ 5,165.88
6/30/21	\$ 4,774.90	\$ 225.00	\$ 8.95	\$ 4,558.86	\$ 5,165.88	\$ 166.64	\$ 4,999.24
7/31/21	\$ 4,558.86	\$ 225.00	\$ 8.55	\$ 4,342.41	\$ 4,999.24	\$ 166.64	\$ 4,832.60
8/31/21	\$ 4,342.41	\$ 225.00	\$ 8.14	\$ 4,125.55	\$ 4,832.60	\$ 166.64	\$ 4,665.96
9/30/21	\$ 4,125.55	\$ 225.00	\$ 7.74	\$ 3,908.28	\$ 4,665.96	\$ 166.64	\$ 4,499.32

Crafting the Initial Schedules - Example

Present value calculation inputs in Excel:

- **Rate:** 5% = Stated, Implicit or IB Rate
- **Number of Periods (nper):** 24 = calculated lease term
- **Payment (pmt):** \$5,000 = Total SBITA payment
- **Type:** 0 for payments at the end of the period or 1 for payments at the beginning of the period

Interest Rates

Stated
Rate

Implicit
Rate

Incremental
Borrowing Rate

Step 5: Launching the Internal Review Process



- Identify who will be the internal reviewer(s) well in advance
- Make sure all assumptions are properly documented with support
- Consider time and personnel constraints and evaluate using an outside specialist



Polling Question



Step 6: Understanding the Importance of Journal Entries

- These entries may not be as complex as you think
- All entries related to GASB 96 will be highly susceptible to auditor scrutiny
- In some cases, a restatement will be necessary

FULL ACCRUAL JOURNAL ENTRIES			
1/1/21	Right-of-Use Asset	\$ 5,999.09	
	Subscription Liability		\$ 5,849.09
	Prepayment Asset		\$ 150.00
	<i>To record initial right-of-use asset and subscription liability.</i>		
1/31/21	Amortization Expense	\$ 166.64	
	Accumulated Amortization		\$ 166.64
	<i>To record the first month of amortization expense of the right-of-use asset.</i>		
1/31/21	Subscription Liability	\$ 214.03	
	Interest Expense	\$ 10.97	
	Cash		\$ 225.00
	<i>To record the first payment on the subscription liability.</i>		
MODIFIED ACCRUAL JOURNAL ENTRIES			
1/1/21	Expenditure: Right-of-Use Asset	\$ 5,999.09	
	Other Financing Source: Subscription		\$ 5,849.09
	Prepayment Asset		\$ 150.00
	<i>To record initial right-of-use asset and subscription liability.</i>		
1/31/21	Expenditure: Subscription Principal	\$ 214.03	
	Expenditure: Subscription Interest	\$ 10.97	
	Cash		\$ 225.00
	<i>To record the first payment on the subscription liability.</i>		

Journal Entry



Polling Question



Step 7: Preparing Note Disclosures

- General description
 - Include basis, terms and conditions variable payments not included in subscription liability are determined
- Be sure to list right-of-use assets separately from other capital assets
- Outflows recognized for other payments not included in subscription liability (Example: termination penalty)
- Principal & interest requirements to maturity
 - 5 subsequent fiscal years and then 5 year increments thereafter
- Commitments before commencement
- Any loss associated with impairment

Step 8: Adhering to Ongoing Compliance

- Use a central location for all contracts
- Document the processes as you work through them in the current fiscal year
- Review processes regularly



Polling Question



Next Steps

- Ready to leverage DebtBook for easy, efficient GASB 96 implementation and compliance? Email us at partnerships@debtbook.com to connect with one of our experts!

Questions?



Louis Stratton

louis.stratton@debtbook.com



www.debtbook.com

Q&A

***THANK YOU FOR SUBMITTING
YOUR QUESTIONS!***

HOUSE KEEPING REMINDERS

- Survey to follow at the end of the program from LCVista portal.
- Presentation Materials & Recording will be sent to registrants & available on our Events page on our website: www.whitleypenn.com/events-new/
- Questions about CPE, please email Marketing@whitleypenn.com

**THANK YOU FOR JOINING US,
SEE YOU IN APRIL!**

**WE WILL BE AT TML IN DALLAS
ON OCTOBER 4 – 6,
STOP BY BOOTH 844!**