



2021 TxPPA

Legislative Update

PURCHASING RELATED LEGISLATION

HB 362

- ▶ **Relating to the authority of a county to require electronic bids or proposals for competitive bidding.**
 - ▶ The purpose of H.B. 362 is to allow counties to align with current municipal practices throughout the state, modernizing and streamlining competitive submission requirements by amending Section 262.0225 of the Local Government Code to allow a commissioners court, by court order, to require electronic submissions of bids and proposals.
 - ▶ Signed by Governor on 5/15/2021 and was effective immediately.

HB 692

- ▶ **Relating to retainage requirements for certain public works construction projects.**
 - ▶ Prevents misuse, abuse, and withholding of excessive retainage.
 - ▶ Protects the interests of public owners by establishing clarity around the process of withholding retainage by providing clear conditions for the partial release of retainage to incentivize project completion and minimize unnecessary and costly disputes.
 - ▶ Prohibits the misuse of retainage to confer additional unreasonable liability or free warranty work.
 - ▶ Preserves public owners' ability to utilize retainage for its intended purpose to ensure and incentivize completion of work under fair and reasonable conditions.
 - ▶ Preserves the rights of public owners to hold contractors accountable and maintain standing in the event of default or genuine disputes.
 - ▶ Promotes fair and reasonable payment of retainage so Texas public works contractors can maintain cash flow and pay subcontractors and suppliers.
 - ▶ Promotes common sense policy to protect Texas construction companies and promote successful project completion and minimize payment disputes.
 - ▶ Signed by Governor on 6/15/2021 and was effective immediately

HB 735

- ▶ Relating to service contracts for leased or purchased motor vehicles.
 - ▶ Clarifies that the depreciation benefit program applies to all depreciation member benefit program purchases including lease agreements, financing, and cash transactions.
 - ▶ H.B. 735 amends Sections 1304.003(a)(2) and (3), Occupations Code, to enable Texans to purchase a depreciation member benefit program from their auto dealer through a finance agreement, lease, or cash payment.
 - ▶ Prohibits service contracts from being required as a condition of approval of a lease of a vehicle or a loan, rather than as a condition of approval of a loan, for the purchase of a vehicle.
 - ▶ Buyer can cancel service contract not later than the 30th day after entering into the contract without penalty.
 - ▶ Effective 9/1/2021

HB 1118

- ▶ Relating to state agency and local government compliance with cybersecurity training requirements.
 - ▶ H.B. 1118 provides consistency in the implementation and requirements of the cybersecurity training between state and local governments and tracks compliance with the cybersecurity training through consistency in the reporting, a common list of training modules provided by the Texas Department of Information Resources through a portal, and common requirements for who is required to take the cybersecurity training between the state and local governments.
 - ▶ Requires a local government, at least once each year, to: (1) identify local government employees and elected and appointed officials who have access to a local government computer system or database and use a computer to perform at least 25 percent of the employee's or official's required duties; and (2) require the employees and officials identified under Subdivision (1) to complete a cybersecurity training programs certified under Section 2054.519 (State Certified Cybersecurity Training Programs), rather than certified under Section 2054.519 or offered under Section 2054.519(f) (relating to authorizing a local government that employs a dedicated information resources cybersecurity officer to offer to its employees a cybersecurity training program that satisfies the requirements).
 - ▶ Signed by Governor on 5/18/2021 and effective immediately

HB 1397

- ▶ Relating to the required disclosure of entities with an ownership interest in a vendor of voting system equipment.
 - ▶ H.B. 1397 amends the Election Code to require a contract for a county to acquire voting system equipment from a vendor to identify each person or entity that has a five percent or greater ownership interest in the vendor and, if applicable, the vendor's parent company and each subsidiary or affiliate of the vendor. This requirement applies only to equipment acquired on or after September 1, 2021.
 - ▶ H.B. 1397 amends current law relating to the required disclosure of entities with an ownership interest in a vendor of voting system equipment.
 - ▶ Effective 9/1/2021

HB 1428

- ▶ Relating to procurement by a political subdivision of a contingent fee contract for legal services.
 - ▶ H.B. 1428 amends the Government Code 2254.102 to extend the exemption for certain collection services contracts from provisions governing contingent fee contracts for legal services to any contract for legal services entered into by a political subdivision for the collection of a delinquent obligation. The bill defines "obligation" by reference and establishes that for purposes of this exemption an obligation does not include a fine or penalty that results from an action by a political subdivision under specified Water Code enforcement provisions
 - ▶ *Effective on 9/1/21*

HB 1476

- ▶ Relating to a vendor's remedies for nonpayment of a contract with this state or a political subdivision of this state.
 - ▶ Under current Texas law, a governmental entity is required to notify a vendor of an error or dispute with an invoice for payment and is permitted to withhold all funds owed to that vendor until the dispute is resolved.
 - ▶ Currently, while notice is statutorily required, there is no provision in the code requiring the governmental entity to quantify or provide a detailed statement of the amount of the invoice which is being disputed. As a result, the governmental entity is currently allowed to withhold all funds owed to that vendor until the dispute is resolved.
 - ▶ H.B. 1476 seeks to address this issue and increase transparency and fairness by requiring a governmental entity to detail the amount of an invoice that is being disputed and permitting the entity to withhold from payments required no more than 10 percent of that disputed amount, thus allowing the vendor to receive partial payment for work completed that is not in dispute.
 - ▶ *Effective on 9/1/21*

HB 1477 – Vetoed by the Governor

- ▶ Relating to performance and payment bonds for public work contracts on public property leased to a nongovernmental entity.
 - ▶ Governor's Reason for Veto: "Whenever a government entity leases public property to a non-governmental entity, and the latter decides to enter into a contract for work performed on the property, House Bill 1477 would make the government entity responsible for the prime contractor obtaining a bond to protect subcontractors. If no bond is obtained and the prime contractor does not pay subcontractors, the government entity would be responsible for payment because the bill waives the government entity's sovereign immunity in this situation. Because the government entity may not know who the prime contractor is—or even that there is a contract between the non-governmental entity and a prime contractor—House Bill 1477 could leave the government entity, and taxpayers, on the hook for damages not caused by the government entity."

HB 1543

- ▶ Relating to certain procedural requirements for public improvement districts and transfers of property located in public improvement districts.
 - ▶ Section 49.452, Texas Water Code, applies to MUDs, and includes extensive transparency guidelines regarding the responsibilities of parties selling homes within the boundaries of MUDs.
 - ▶ Another development tool, known as public improvement districts or PIDs, are becoming increasingly common in Texas. However, the law regarding disclosure to the homebuyer merely requires the seller to provide notice to the purchaser at the time the purchase contract is entered. None of the other protections that apply regarding home sales in MUDs apply to home sales in PIDs.
 - ▶ H.B. 1543 proposes to place the same statutory obligations on parties to home sales in PIDs as those required for home sales in MUDs. The bill also imposes the same penalties on the seller in a PID as those applicable to MUDs. This bill is intended to increase transparency in PID transactions which will benefit both the homebuyer and the homebuilder.
 - ▶ *Effective on 9/1/21*

HB 1554

- ▶ Relating to use of project funds of municipal development districts.
 - ▶ Chapter 377 of the Local Government Code provides direction for allowable actions of municipal development districts, which may be created by municipalities to plan, acquire, establish, develop, construct, or renovate one or more development projects beneficial to the district. However, current law unnecessarily restricts municipal development districts from funding certain economic development projects outside a district's boundaries, even if those projects are determined to have a positive return on investment for the district.
 - ▶ H.B. 1554 would create an option for municipal development districts to fund certain projects outside their district if the board of the municipal development district determines that the development project will provide an economic benefit to the district and the governing body of the municipality that created the district by resolution approves the development project.
 - ▶ The bill includes a requirement for funding an economic development project outside the boundaries of a municipal development district. In addition, the bill requires that the project be located in the extraterritorial jurisdiction (ETJ) of the municipality that created the district. Finally, the bill requires the governing body of the municipality where the development project will be located to approve the development project by resolution. This requirement further ensures public involvement, transparency, and approval by local elected officials who voters can hold accountable.
 - ▶ *Effective on 9/1/21*

HB 2116

- ▶ Relating to certain agreements by architects and engineers in or in connection with certain construction contracts.
 - ▶ Would prohibit design contracts for engineering and architectural services from including unreasonable, uninsurable, risk-shifting duty to defend provisions in a contract.
 - ▶ Protects the rights of owners by providing for recovery of reasonable attorney's fees from engineers or architects upon a final determination of liability.
 - ▶ Would require contracts for engineering or architectural services to include a reasonable and insurable standard of care for professional services.
 - ▶ *Effective on 9/1/21*

HB 2404

- ▶ Relating to the creation and maintenance of a database of information regarding certain local economic development agreements; providing a civil penalty.
 - ▶ Seeks to provide additional transparency and increase accessibility to these agreements by creating a statewide database containing information regarding all local development agreements in Texas.
 - ▶ Amends current law relating to the creation and maintenance of a database of information regarding certain local economic development agreements and provides a civil penalty.
 - ▶ Provides that if a local government does not report the required information, the local government is liable to the state for a civil penalty of \$1,000.
 - ▶ Authorizes the attorney general to sue to collect a civil penalty imposed under this section.
 - ▶ To the extent the information or documents are not exempt from disclosure or confidential under Chapter 552 (Public Information).
 - ▶ *Effective on 9/1/21*

HB 2581

- ▶ Relating to civil works projects and other construction projects of governmental entities.
 - ▶ Amends Section 2269.056(b), Government Code, to delete existing text and now requires all governmental entities (not just state) to publish in the request for proposals or qualifications for state agencies, a detailed methodology for scoring each criterion.
 - ▶ Authorizes an offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under Chapter 2269 (Contracting and Delivery Procedures for Construction Projects) to, after the contract is awarded, make a request in writing to the governmental entity to provide documents related to the evaluation of the offeror's submission. Thirty days to provide, including ranking, if applicable.
 - ▶ Requires the weighted value assigned to price for certain projects to be at least 50% of the total weighted value of all selection criteria. Governing body can determine a lower weighted value, but not less than 36.9%.
 - ▶ Not later than the seventh business day after the date the contract is awarded, to make the evaluations, including any scores, public and provide them to all offerors.
 - ▶ Amends Section 2269.452(a), Government Code, to authorize Chapter 2269 to be enforced through an action for declaratory or injunctive relief filed not later than the 15th calendar day, rather than the 10th day, after the date on which the contract is awarded.
 - ▶ *Effective on 9/1/21*

HB 3130

- ▶ Relating to state agency contracts for Internet application development.
 - ▶ Amends Section 2054.113(c), Government Code, to require a state agency, before the state agency is authorized to contract with a third party for Internet application development that duplicates a state electronic Internet portal function, including a function of a native mobile application, to notify the Texas Department of Information Resources of its intent to bid for such services at the same time that others have the opportunity to bid.
 - ▶ *Effective on 9/1/21*

HB 3390

- ▶ Relating to the purchase of cybersecurity insurance coverage by the Texas Department of Transportation.
 - ▶ Authorizes TxDOT to purchase insurance coverage to protect against liability, revenue and property losses that may result from a data breach or cyber attack.
 - ▶ Authorizes insurance purchased under this section to include coverage for business and dependent business interruption loss, breach response, data recovery, cyber extortion or ransomware response, fiduciary liability, media liability, professional liability, or expenses for general incident management, such as investigation, remediation, and notification.
 - ▶ Signed by Governor on 5/24/2021 and effective immediately

SB 13

- ▶ Relating to state contracts with and investments in certain companies that boycott energy companies.
 - ▶ Prohibits Texas state agencies that invest funds from investing in financial companies that boycott energy companies. Specifically, it requires the Comptroller of Public Accounts of the State of Texas (comptroller) to prepare and maintain a list of all financial companies that refuse to deal with, terminate business activities with, or otherwise take any action that is, solely or primarily, intended to penalize, inflict economic harm on, or limit commercial relations with a financial company because the company engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law.
 - ▶ States that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract. This provision only applies to a company with 10 or more full time employee and that has a contract value of \$100,000 or more.
 - ▶ "Governmental entity" means a state agency or political subdivision of this state.
 - ▶ *Effective on 9/1/21*

SB 19

- ▶ Relating to prohibited contracts with companies that discriminate against the firearm or ammunition industries.
 - ▶ Would prevent any company with at least 10 employees from the benefits of state or other government contracts valued at \$100,000 or more unless the company verifies in writing that it does not have an internal policy or directive that discriminates against members of the lawful firearm or ammunition industries.
 - ▶ This bill will ensure that any company in Texas with a policy that attempts to restrict gun or ammunition sales will not be allowed to benefit from tax dollars through state contracts.
 - ▶ "Governmental entity" means a state agency or political subdivision of this state.
 - ▶ *Effective on 9/1/21*

SB 58

- ▶ Relating to purchasing of cloud computing services by a political subdivision.
 - ▶ Cloud computing, which offers on-demand availability of computing services like processing and storage without direct active management by the user, has grown rapidly in popularity as a more responsive, efficient, and secure alternative to traditional computing. As currently constructed, however, the Public Property Finance Act does not allow government entities to finance the purchase of cloud computing services, a vital support (not unlike electricity) to the computer hardware they are allowed to finance.
 - ▶ S.B. 58 would authorize government entities to finance the purchase of cloud computing services via the Public Property Finance Act, which would greatly expand access to these services and the improved service delivery, reduced maintenance, and enhanced cybersecurity they offer.
 - ▶ Signed by Governor on 6/3/2021 and effective immediately

SB 219

- ▶ Relating to civil liability and responsibility for the consequences of defects in the plans, specifications, or related documents for the construction or repair of an improvement to real property or of a road or highway.
 - ▶ Provides that a builder is not responsible for the consequences of defects in design or bid documents provided to the builder by the person with whom the builder has entered into a construction contract. It also prevents an owner from requiring a builder to waive this protection by contract.
 - ▶ Amends current law relating to civil liability and responsibility for the consequences of defects in the plans, specifications, or related documents for the construction or repair of an improvement to real property or of a road or highway.
 - ▶ *Effective on 9/1/21*

SB 220

- ▶ Relating to notice and reporting requirements for vendor rebates under a contract listed on a multiple award contract schedule.
 - ▶ Amends Section 2155.510, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:
 - ▶ (b) Requires the Comptroller of Public Accounts of the State of Texas (comptroller) to notify a state agency purchasing a good or service through a contract listed on a schedule developed under Subchapter I (Multiple Award Contract Schedule) of the percentage used to calculate the rebate authorized under Subsection (a) (relating to the collection of rebates from a vendor by the comptroller).
 - ▶ (c) Requires the purchasing state agency, rather than the comptroller, if a purchase resulting in a rebate under Section 2155.510 (Rebates) is made in whole or in part with federal funds, to ensure that, to the extent the purchase was made with federal funds, the appropriate portion of the rebate is reported to the appropriate federal funding agency.
 - ▶ *Effective on 9/1/21*

SB 538

- ▶ Relating to information technology purchased through the Department of Information Resources.
 - ▶ Amends state law to reflect the cooperative contract program's current participants (state agencies, political subdivisions of this state, specific entities listed in TGC 2157.068 (j) and governmental agencies of another state).
 - ▶ *Effective on 9/1/21*

SB 783

- ▶ Relating to the purchase of iron and steel products made in the United States for certain projects by public institutions of higher education.
 - ▶ Expands the “Buy America” provisions in Government Code 2252 to include institutions of higher education.
 - ▶ *Effective on 9/1/21*

SB 799

- ▶ Relating to contracting procedures and requirements for governmental entities.
 - ▶ Standardizes procurement thresholds to improve training and compliance, provides greater group purchasing power to agencies, clarifies project oversight responsibilities, increases our state hospital's (HHS) ability to contract with medical providers in limited circumstances, and makes improvements to guidance and training in the procurement and contract management guide.
 - ▶ *Effective on 9/1/21*

SB 1225

- ▶ Relating to the authority of a governmental body impacted by a catastrophe to temporarily suspend the requirements of the public information law.
 - ▶ Amends the Texas Government Code to specify that:
 - (1) a catastrophe notice and suspension of the TPIA should not be allowed unless the incident significantly impacts a governmental body and directly causes the inability of a governmental body to comply with requirements of the Act;
 - (2) a catastrophe does not apply to periods in which a governmental body is required to work remotely, but can still electronically access requested information and otherwise respond to TPIA requests;
 - (3) and a catastrophe notice allows the suspension of TPIA provisions once per catastrophe, with an optional one-time extension.
 - ▶ Amends current law relating to the authority of a governmental body impacted by a catastrophe to temporarily suspend the requirements of the public information law.
 - ▶ *Effective on 9/1/21*

SB 1270

- ▶ Relating to the procurement of certain goods and services related to highways by the Texas Department of Transportation.
 - ▶ Provides a remedy to the Texas Department of Transportation's (TxDOT) prolonged low-bid process by expediting their procurement process, resulting in quicker repairs and maintenance times.
 - ▶ Allow TxDOT to purchase road, traffic control, and safety materials as a commodity purchase under Subtitle D, Title 10, Government Code, not to exceed the Comptroller of Public Accounts of the State of Texas (comptroller) delegated limits for TxDOT (currently \$50,000).
 - ▶ Amends Section 223.042, Transportation Code, to allow TxDOT to procure maintenance projects as a purchase of services under the purchasing act up to the current comptroller delegated limit (currently \$100,000).
 - ▶ Signed by Governor on 6/7/2021 and effective immediately

SB 1367

- ▶ Relating to the regulation of commercial property and casualty insurance and insurance for certain large risks.
 - ▶ exempts certain insurance products for large commercial risks from rate filing and review requirements, consistent with the currently existing exemption from form filing requirements for those same risks. It also exempts 17 specialty commercial insurance lines from rate and form filing requirements. Combined, these changes will ensure a more robust and competitive marketplace, giving businesses greater access to commercial insurance products, all while retaining ultimate TDI oversight.
 - ▶ *Effective on 9/1/21*

SB 1821

- ▶ Relating to procurement of a contingent fee contract for legal services by certain governmental entities.
 - ▶ Redefines "contingent fee contract," for purposes of TGC 2254.101(2) Subchapter C (Contingent Fee Contract for Legal Services), to provide that the term includes an amendment to a contract for legal services described by this subdivision if the amendment changes the scope of representation or may result in the filing of an action or the amending of a petition in an existing action.
 - ▶ "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.
 - ▶ Signed by Governor on 6/7/2021 and effective immediately

HB 26 (Special Session 1)

- ▶ Relating to the requirement for payment bonds from certain public work contractors.
 - ▶ If approved, will increase the dollar threshold for requiring payment bonds on a public work contract from \$25,000 to \$100,000.