



87th Legislative Session
Latest Development – New Bills
Affecting Public Purchasing

Presented by: Diane Palmer-Boeck
Government Procurement and Leadership
Solutions
www.palmerboeck.com
info@palmerboeck.com

87th Legislative Session 2021

HB
1476

Remedies for non-payment

Not later than the 21st day after receipt of the invoice, and include in the notice a detailed statement of the amount disputed.

HB
1118

Cybersecurity Training

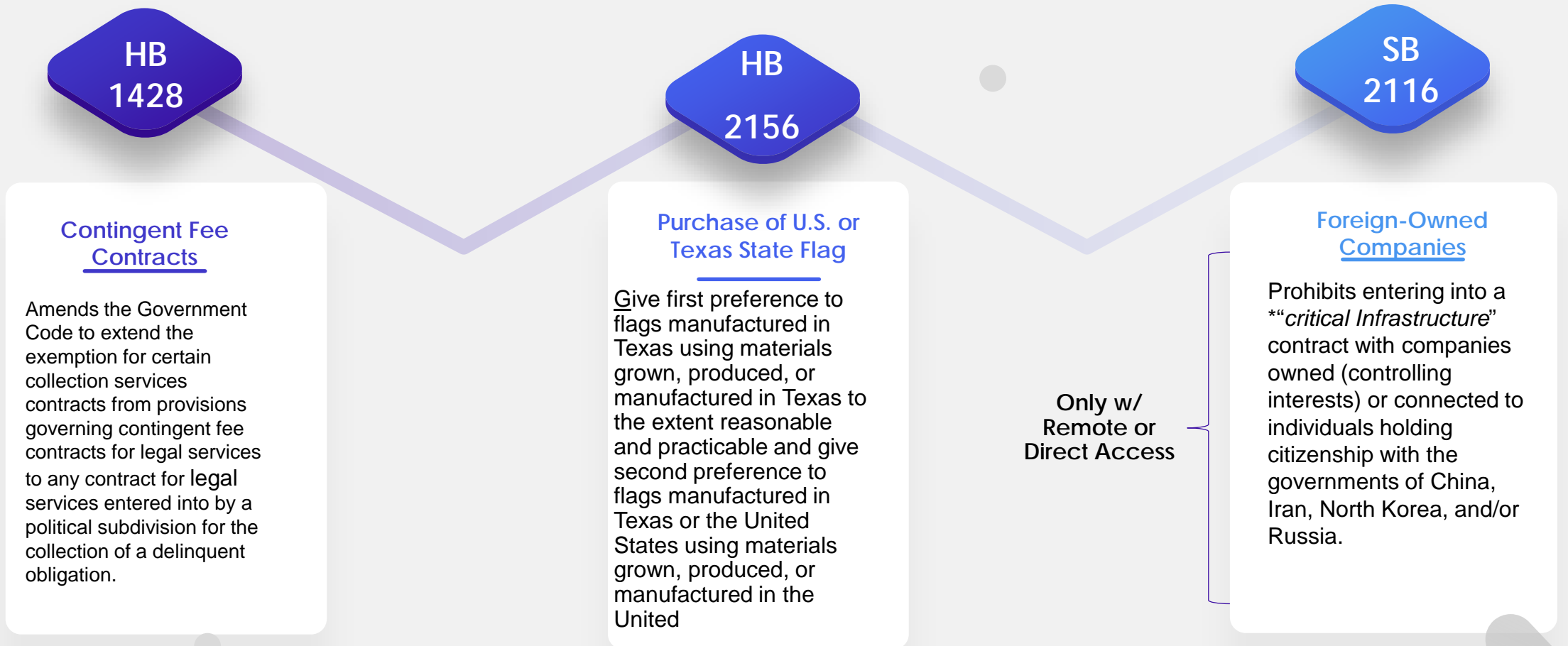
local governments that submit grant applications must submit written certification of the local government's compliance

SB
19

Firearms and Ammo Industry

Prohibits entering into a contract unless the contract contains a written verification from the company that it that does NOT discriminate against a firearm entity or firearm trade association; and company with at least 10 full-time employees that has a value of at least \$100,000.

87th Legislative Session 2021



**Critical infrastructure is defined as an electrical grid system, water treatment or chemical facility, communications system or critical cyber infrastructure*

HB 692 - Retainage for Public Works Projects

Include a provision that establishes circumstances that describe when a project is **substantially complete and when the entity may release all or a portion of the retainage; includes subs**

Less than \$5 million

May not withhold retainage that exceeds

- 10% of the contract price
- 10% for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed

Greater than \$ 5 million

May not withhold retainage that exceeds

- 5% percent of the contract price
- 5% for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed
- Excludes Dam Projects

\$10 million or more

A governmental entity and prime contractor may agree to deposit in an interest-bearing account the retainage withheld on periodic contract payments

Exemption

A Public Works Contract <\$400,000

Cannot withhold retainage for work specified by the designer of record; and properly installed by the contractor. You may withhold retainage if there is a bona fide dispute between the governmental entity and the prime contractor. Refer to HB 1476 / GC 2258

HB 692 Impact

Gov't Entity must maintain accurate records of accounting for

- Retainage withheld;
- Retainage released to prime; and
- Remaining retainage and interest earned

HB 692 Impact

INTEREST

- Permits interest on retainage by agreement for
 - Competitively bid contracts > \$10M
 - Contracts awarded using procurement method other than competitive bidding (any amount)

HB 692 Impact

- **Changes for Contractors & Subs:**
 - Prohibits prime contractor from withholding greater % of retainage from subcontractors
 - Prohibits subcontractors from withholding greater % of retainage from sub-subcontractors

HB 692: WHY?

Bill attempts to address perception Owners hold retainage too long and use it to leverage warranty repairs or extra work

- Owner may not withhold retainage after completion of work
 - Exception: Allows Owner to withhold retainage if a bona fide dispute exists
 - with written notice
 - Permits Contractor to cure noncompliant work ; Or
 - Offer Owner reasonable compensation instead of correction No obligation by Owner to accept offer

HB 692 Impact on GC Chapter 2258

- Prevailing Wage Rates General Provisions; Still applies to retainage for complaints from employees that aren't being paid the prevailing wage rate.
 - Point of Reference:
 - (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
 - (b) Subsection (a) does not apply to maintenance work.

HB 2581 - Creates Additional Transparency Relating to civil works projects and other construction projects of governmental entities.

Changes GC 2269

Changes to GC 2269 in the following areas: 1) General—added section on evaluation and ranking; 2) Competitive Sealed Proposal—added definition of civil works project and changed dates related to selection of offeror; and 3) Enforcement—changed date on injunctive relief.

Evaluation Review

Not later than the 30th day after the date a request is made under Subsection (a), the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission

Process Action Item:

- **Recommend review of how evaluations are documented.**

Changes timeline from 10 days to 15 days to challenge

HB 2581 Impact on Civil Works Projects

- The weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria.
- (d) **If the governing body** of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria.
- SECTION 4. Section 2269.155, Government Code, is amended by adding Subsection (d) to read as follows:
- (d) Not later than the seventh (7th) business day after the date the contract is awarded, the governmental entity shall make the evaluations, including any scores, public and provide them to all offerors.

PROCESS ACTION ITEM - CHANGE RECOMMENDED: MOVE TO CONSENSUS SCORING

HB 2116

Provides Architects and Engineers protections on contracts in three areas and:

- Prohibits design contracts for engineering and architectural services from including unreasonable, uninsurable risk-shifting;
- Protects the rights of owners by providing for recovery of reasonable attorneys fees;
- Requires contracts for engineering or architectural services to include a reasonable and insurable standard of care for professional services.

HB 3069

Relates to statutes of limitation and repose for certain claims:

- Shortens the time an entity can bring suit from 10 to 8 Years
- For claims made against listed professionals related to construction, repair of an improvement to real property or equipment attached to real property.

Refers to GC 2269.351 Design Build for Civil Works Projects

HB 3583

Relates to Energy Savings Performance Contracts (ESPC):

- Is a method of finance that allows a facility to complete energy-saving improvements within an existing budget by paying for them with money saved through reduced utility expenditures.
- Specifically **prohibits the use of ESPC** for public works and civil works projects that are subject LGC 252 and GC 2269 for the design or construction of major civil works projects.

SB 219

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:

- 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.

HB 362

Relates to the authority of a county to require electronic bids or proposals for competitive bidding :

- **The commissioners court of a county may by order require submission of bids or proposals through electronic transmission if the county makes available all technology necessary to submit through electronic transmission to any person who submits a hard-copy bid or proposal in person**

LGC 262
Effective 5/15/21

HB 735

Relating to service contracts for leased or purchased motor vehicles.

- **Provides that service contracts may not be required as a condition of lease of a vehicle or purchase through a loan. Adds to the service contract a depreciation benefit option. Describes cancellation periods without penalty.**

Occupations Code 1304
Effective 9/1/21

HB 1397

Relating to the required disclosure of entities with an ownership interest in a vendor of voting system equipment.

- A contract to acquire voting equipment must identify each person or entity with a 5% or greater ownership interest in the vendor, vendor's parent company and each subsidiary or affiliate of the vendor.

Election Code 123
Effective 9/1/21

HB 1543

Relating to certain procedural requirements for public improvement districts and transfers of property located in public improvement districts.

- Makes a significant number of changes in procedures related to public improvement districts and transfer of property within those districts.

LGC 372
Effective 9/1/21
Property Code 5

HB 1554

Relating to use of project funds of municipal development districts.

- Defines geographical areas and circumstances where municipal develop district development funds may be used.

LGC 377
Effective 6/15/21

HB 2237

Relating to mechanic's, contractor's, or materialman's liens.

- **Repeals and replaces a number of definitions and provisions in the Property Code related to mechanic's, contractor's and materialman's liens. Changes are made to the Insurance Code to reflect the Property Code changes**

Insurance Code 3503
Property Code 53
Effective 1/1/22

HB 2343

Relating to the purchase of food and beverages by the Department of Public Safety for certain persons.

- **Changes definition of funds for peace officer training to “certain persons”. This section relates to purchase of food and beverages for training functions. It expands use to persons working in emergency situations, incidents or disasters who are unable to leave their assignment area due to the situation.**

GC 411
Effective 6/7/21

SB 13

Relating to state contracts with and investments in certain companies that boycott energy companies.

- **Would, among other things, prohibit a governmental entity from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.**

GC 809, 2274
Effective 9/1/21

SB 58

Relating to purchasing of cloud computing services by a political subdivision.

- **Adds cloud computing services to the definition of the term “personal property” for purposes of the Public Property Finance Act.**

LGC 271
Effective 6/3/21

SB 475

Relating to state agency and local government information management and security, including establishment of the state risk and authorization management program and the Texas volunteer incident response team; authorizing fees.

- **Would, among other things: (1) require the Department of Information Resources (DIR) to establish a framework for regional cybersecurity working groups to execute mutual aid agreements that allow state agencies, local governments, and others to assist with responding to a cybersecurity event in the state; (2) require DIR to establish the Texas volunteer incident response team to provide rapid response assistance to any participating entity (which could include a city) under DIR’s direction during a cybersecurity event; and (3) authorize DIR to establish a regional network security center to assist in providing cybersecurity support and network security to certain entities (including cities) that elect to participate in and contract for services through such a center.**

GC 2054, 2059, 2062

SB 538

Relating to information technology purchased through the Department of Information Resources.

- **Expands the Department of Information Resources' cooperative contracts purchasing program for information technology commodity items to include items in demand by political subdivisions and governmental entities of another state. Terms changed from two years after date of agreement to the duration of the initial contract and terms and conditions can be renegotiated at any time before expiration of contract.**

GC 2157
Effective 9/1/21

SB 780

Relating to the authority of a local government to enter into an intergovernmental support agreement with a branch of the armed forces of the United States.

- **To provide installation-support services to a military installation located in Texas.**

GC 793
Effective 5/24/21

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.

- **Adds institution of higher education to definition of governmental entity related to purchase of iron and steel products made in the US**

GC 2252
Effective 9/1/21

SB 780

Relating to the authority of a local government to enter into an intergovernmental support agreement with a branch of the armed forces of the United States.

- **To provide installation-support services to a military installation located in Texas.**

GC 793
Effective 5/24/21

SB 799

Relating to contracting procedures and requirements for governmental entities.

- **Would, among other things, give a governmental entity contracting for the services of physicians, optometrists, and registered nurses, where the number of contracts awarded is not otherwise limited, the option of making the selection and award on the basis of: (1) the provider's agreement to payment of a set fee, as a range or lump sum amount; and (2) the provider's affirmation and the governmental entity's verification that the provider has the necessary license and experience.**

GC 531, 2054, 2155, 2157, 2254, 2262
Ed Code 44
Effective 9/1/21

SB 922

Relating to contracts for fingerprinting services entered into by the Department of Public Safety of the State of Texas.

- **Provides requirements for contracts with a vendor to provide fingerprinting services throughout the state to use when accessing criminal history record information.**
- **Requires a study of miles required to travel in the state to receive fingerprinting services and any gaps in coverage.**

GC 411
Effective 9/1/21

SB 1064

Relating to the extended registration of certain county fleet vehicles.

- **Would:**
 - (1) provide that a county or city that owns and operations a motor vehicle, trailer, or semitrailer that is exempt from the payment of a registration fee under certain law may choose to register some or all of those vehicles for an extended registration and inspection period of three years; and
 - (2) require a county or city that chooses to register a vehicle as described in (1) to provide for the timely inspection of the vehicle before registration

Transportation Code 502
Effective 9/1/21

SB 1122

Relating to participation in the comptroller's contracts for travel services.

- Defines qualifications to participate in the contracts. Would, among other things, prohibit the comptroller from charging a city a fee if a government entity officer or employee who is engaged in official city business participates in the comptroller's contract for travel services for the purpose of obtaining reduced airline fares and reduced travel agent fees.

GC 2171
Effective 5/28/2021

SB 1541

Relating the definition of business case for major information resources projects.

- Adds a definition of “business case” involving a comparison of business solution costs and project benefits based on a solution assessment and validation for major information resources projects.

GC 2054
Effective 9/1/21

SB 1821

Relating to procurement of a contingent fee contract for legal services by certain governmental entities.

- Would, for purposes of the Professional Services Procurement Act, define the term “contingent fee contract” to include an amendment to a contingent fee contract if the amendment changes the scope of representation or may result in the filing of a lawsuit or the amending of a petition in an existing lawsuit.

GC 2254
Effective 6/7/21

Bills that are ISD Specific

Overall Notes on educational bills



905 **BILLS**



1113
PASSED



11 **SIGNED**

Various Updates on HB3 and HB 1525

- HB3 Clean up - CTE Allotment. Gifted and Talented Allotment and several issues from last session as to clarifying HB 3 – does not include ESSER Restrictions
- Extensions for pandemic Provisions
- Civic Instruction Limitations
- HB1525 Increase in funding changes from .24% to 1.41% depending on demographics
 - CTE Allotment changes; fast growth districts; Allotment at \$270 M in Fy 22 and \$310 in FY 23
 - New allotment for Gifted and talented
 - Formula transition grant \$400M
 - Stat Comp would include Homeless students
 - Funding for restorative practices
 - Bonuses for CMR – military grad path Tx National Guard
 - Teacher Incentive Allotment

HB 1525

HB 1525 College prep assessments

Tuition Allotment

Additional calendar days for charter partnerships

Adds Transportation allotment for meals and materials

Turnaround models for F campuses to Resource Campuses

Recapture and state aid and rollover

Consolidation incentive for recapture districts

Winter Fund Reimbursement \$35M

Tech reimbursement for broadband

Intensive instruction - \$188M for CTE

MOE Equity for Esser II and III

Tutoring Program

Dyslexia Program

OTHER Tax bills

- HB 1525
- Tax rates – prohibition on M&O to create surplus for debt service
- New compressed rates by .3 percent to .9164 to .9134 plus Tie 2 pennies
- HB 3610 real exempt from tax if leased to an isd, community college or charter for operations
- SB 1438 no disaster pennies for a pandemic
- HJR 125 tax ceiling for a spouse of disabled person- refunds
- SB 63 explanation of protest process

Various more on HB 1525

- HB3 Compensation- must maintain effort and salary under 30%
- Use of PTA donations for staff positions
- Reading Academies – Fy 22-23 extension
- Covid 19 Adjustments to FIRST rating for various practices and indicators
- SHAC Health Councils changes in postings, recordings of mtgs, curriculum, and students change to require opt in to human sexuality instruction.

School Admin Impact

- HB 189 Severance pay rules for charters supt
- HB246 prohibits the release of name of employee accused of improper relationship before other action
- HB750 Employment policy on websites
- SB 1116 Must post election info on websites
- SB 1831 post warning signs about penalties on human trafficking at School or UIL function
- SB 338 on uniform conditions on construction contracts
- SB 1095 Notices on Ap Tests requirements
- SB 746 change in info, parents must notify the ISD
- SB 2081 22 to 1 in pre K classes
- SB 1225 even if closed, still subject to public information requirements

Other Bills

- Number of assessment bills on electronic administration HB 3261
- SB 1365 Accountability and appeals
- HB4545 Accelerated learning – process for requesting a particular teacher and used of federal funds
- SB 123 Adds Social emotional learning k to 12
- HB 1247 work based learning framework
- HB 3212 dangers of street racing
- HB2681 Elective course on study of the Bible
- HB3979 no credit for political activism in a course
- SB 1063 requirements for personal financial literacy
- HB 4509 Informed patriotism teaching
- SB 2066 changes from limited English proficiency to emergent bilingual students

Other Bills

- Number of assessment bills on electronic administration HB 3261
- SB 1365 Accountability and appeals
- HB4545 Accelerated learning – process for requesting a particular teacher and used of federal funds
- SB 123 Adds Social emotional learning k to 12
- HB 1247 work based learning framework
- HB 3212 dangers of street racing
- HB2681 Elective course on study of the Bible
- HB3979 no credit for political activism in a course
- SB 1063 requirements for personal financial literacy
- HB 4509 Informed patriotism teaching
- SB 2066 changes from limited English proficiency to emergent bilingual students





Bills that are State Specific



Bills that Impact Only the Texas Department of Transportation





Bill Passed by the
Legislature, but Was
Vetoed by the Governor



- **Relating to performance and payment bonds for public work contracts on public property leased to a nongovernmental entity.**
- Impacts .
- Bus. & **Vetoed by Governor**



- Watch the dates for implementation of the requirements in bills that passed into law. Many this session are already in effect. You don't want to miss an important deadline!