

Vantage Points

A Board Member's Guide to Update 91

Update 91 encompasses changes in law from the 82nd Legislative Session and addresses a variety of topics, including elections, purchasing and construction contracts, investments, instructional materials, employee contracts, student truancy and discipline, student concussions, and district records. Unless otherwise noted, references to legislative bills refer to bills from the 82nd Regular Legislative Session. Bills from the First Called Session of the 82nd Legislature are so noted. All referenced bills have already gone into effect unless otherwise noted.

Board Issues

Elections

Senate Bill (SB) 100 made several changes to election provisions at BBB(LEGAL):

- A district may change to a November election date, and adjust terms accordingly, if the change is made by December 31, 2012. This provision gives districts flexibility since county elections administrators are no longer required to assist school districts with May elections in even-numbered years.
- A board may adopt a resolution, by December 31, 2011, to change the length of board member terms, consisting of staggered three- or four-year terms.
- Changes were made to the deadlines regarding dates by which a district must complete its election orders, filing dates for general and special elections, deadlines to submit a declaration of write-in candidacy, and, as reflected at CCA(LEGAL), the deadline for a district to call for a bond election.

Provisions from SB 100 are not applicable to November 2011 elections. TASB Legal Services has published a Frequently Asked Questions on conducting district elections under SB 100, available at:
http://www.tasb.org/services/legal/esource/governance/documents/sb100_elec_related_changes_aug11.pdf.

Also at BBB(LEGAL), SB 729 allows a school district to satisfy joint election requirements by holding a joint election with a college district and, in certain counties, with hospital districts.

Board Member Qualifications

As reflected at BBA(LEGAL), to be a board member, a person must be a qualified voter. House Bill (HB) 1226 clarifies that a person is not considered to have been finally convicted of a felony, and therefore disqualified from voting, if criminal proceedings are deferred without an adjudication of guilt.

Financial Issues

Revenue

Legislative changes prompted revisions to several policies dealing with school district revenue:

- At CBA(LEGAL), SB 8 (First Called Session) requires the commissioner to certify a reduction in state funding to a district from the amount the district received for the 2010–11 school year. A district must receive this certification from the commissioner in order to implement a furlough as allowed by SB 8.
- At CCA(LEGAL), HB 360 requires a district to state the total principal amount of bonds to be issued and a general description of the purposes of the bonds.
- At CDB(LEGAL), HB 2690 adds an exception to the notice and bidding requirements for the sale or exchange of land owned by a school district to another political subdivision if the land will be used to benefit the public interest of the district.
- At CCG(LEGAL):
 - SB 1 (First Called Session) provides that, if a district's debt service rate decreases after publication of the required notice of the budget and tax rate meeting, the board is not required to post another notice or call another meeting to adopt the budget and the proposed lower tax rate.
 - HB 2338 requires that a district provide to the county assessor-collector information related to the tax rate for posting on the county's Web site.
 - HB 499 allows a district to collect additional penalties on delinquent taxes.
 - SB 1 (First Called Session) provides that, in order to tax goods-in-transit, a district must take official action on or after October 1, 2011, even if the district had previously taken action to provide for the taxation.

Also at CCG(LEGAL), existing statutory text was added requiring a district to notify the appraisal office within 30 days of adopting, amending, or repealing an optional tax exemption.

Investments

HB 2226 prompted several changes regarding investments at CDA(LEGAL):

- A district's investment policies must now include procedures to monitor rating changes in investments and liquidate investments that do not meet minimum ratings.

- Quarterly investment reports are no longer required to be prepared in compliance with generally accepted accounting principles or to state the additions and changes to the market value during the period covered by the report.
- Authorized investments now include obligations fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the full faith and credit of the United States.

Also at CDA(LEGAL), SB 1543 permits a district that qualifies as an issuer, as defined in the Government Code, to invest in corporate bonds.

CDA(LOCAL) POLICY CONSIDERATIONS

To satisfy the requirements from HB 2226 on monitoring rating changes, we recommend new local policy text requiring the investment officer to develop procedures to monitor investment ratings and to liquidate investments that do not maintain satisfactory ratings.

In accordance with SB 1543, as mentioned above, a district that qualifies as an issuer may add local policy provisions to invest in corporate bonds. [See CCF in your policy manual.]

District Resources

At CE(LEGAL), a new provision from HB 628 allows a district to enter into an agreement regarding improvements to real property not owned or leased by the district if the improvement benefits real property owned or leased by the district. Also at this code, SB 764 prohibits a district from using district funds or resources or acquiring property for the design, construction, renovation, or operation of a hotel.

Financial Exigency

A new policy at CEA(LEGAL) includes provisions on financial exigency. SB 8 (First Called Session) requires a board to adopt a resolution to declare a financial exigency, limits the duration of the declaration, requires notice to the commissioner, and requires the commissioner to adopt minimum standards for the financial conditions that must exist for a declaration of financial exigency. As reflected at BJCG(LEGAL), SB 8 also specifies that if a board declares a financial exigency, the board may amend the terms of the superintendent's term contract. TASB Legal Services has a Frequently Asked Questions on SB 8 available at: http://www.tasb.org/services/legal/esource/personnel/documents/sb8_flexibilities_reducing_costs_july11.pdf.

Eminent Domain

At CHG(LEGAL), SB 18 prompts revisions regarding eminent domain:

- A district may use eminent domain to construct a school building or for any other public use necessary for the district by following the procedures set out in the Government Code and Property Code.
- A district must provide notice to the previous property owner so the owner may repurchase the property if the public use for which the property was acquired is canceled, no actual progress is made toward the public use, or the property becomes unnecessary for the public use.
- A district will lose the authority to exercise eminent domain if the district does not submit a letter to the comptroller by December 31, 2012, stating the district's authority to exercise eminent domain and identifying each provision of law that grants the district that authority.

Purchasing

At CH(LEGAL), HB 628 provides that, subject to some exceptions, in awarding a contract for goods and services, a district must consider whether the vendor has its principal place of business in or employs at least 500 people in Texas. The bill also adds specific procedures for competitive bidding and competitive sealed proposals for nonconstruction purchases.

A new policy, CHH(LEGAL), addressing the Public Property Finance Act has been added to districts' localized policy manuals.

Facilities Construction

HB 628 created Government Code Chapter 2267 to address purchasing methods used for construction contracts and prompted subsequent changes to CV(LEGAL). New provisions establish a board's authority to adopt rules necessary to implement Chapter 2267 and to delegate the board's authority under Chapter 2267 to a designated representative, committee, or other person. Other changes from HB 628 include:

- A requirement that, when selecting a contracting method other than competitive bidding, a board must determine, before advertising, the method that provides the best value for the district.
- A revised list of factors a district may consider in awarding a contract, and a requirement that the district consider any existing laws related to historically underutilized businesses and the use of women- or minority-owned, small, or disadvantaged businesses in determining the award of a contract.
- A requirement that a district publish the applicable weighted value for each criterion that will be used to evaluate the offerors.

- New limitations on district-approved change orders, which provide that if a change in plans or specifications is necessary after performance has begun, the district may approve change orders. The total contract price may not be increased above certain limits, however, unless additional money is approved from available money or is provided for through time warrants. A similar provision is included at CH(LEGAL).

Changes have also been made to conform with new Government Code Chapter 2267 in the legally referenced policies at CVA, CVB, CVC, CVD, CVE, and CVF, addressing the various methods of facilities contracting.

CV(LOCAL) POLICY CONSIDERATIONS

To correspond to the limitations on district-approved change orders for construction contracts imposed by HB 628, we recommend new language to clarify that change orders *permitted by law* will be approved by the board or designee prior to changes being made in the plans or construction of a facility.

Also authorized by HB 628 but not included in the policy text, the board may delegate the authority to approve change orders allowed by law to an administrative official and may delegate the authority to determine the project delivery/contract award method to be used for each construction contract to a representative, committee, or other person. If you wish to consider either of these options, TASB Policy Service has sample text.

At CL(LEGAL), a provision from HB 1728 requires that the strategies for achieving energy efficiency in a district's long-range energy plan include facility design and construction. The bill also gives districts greater flexibility in financing energy savings performance contracts and expands upon what the district can contract for.

Transportation

At CNA(LEGAL) and FP(LEGAL), a new provision from SB 1 (First Called Session) authorizes a district to charge a student a reasonable transportation fee if the district does not receive any transportation allotment funds or participate in a county transportation system. Also at CNA(LEGAL), a provision from HB 3506 permits a district to use transportation allotment funds to provide a bus pass or card for another transportation system to a student who is eligible to use the regular transportation system but for whom the regular system is not a feasible method of transportation.

Employment

As reflected at DC(LEGAL), the provision requiring a board to determine acute shortage areas was repealed by SB 1669, which made significant

changes to the rules on TRS payments when a retired employee returns to work for a school district.

Other legislative changes regarding employees include:

- At DFE(LEGAL), a provision from HB 1610 requiring a superintendent to complete an investigation of an employee who has resigned under suspicion of abuse of a student, despite the resignation.
- At DG(LEGAL), a provision from HB 1682 prohibiting a district from requiring or coercing an employee to make or to refrain from making charitable contributions, including requiring employees to attend meetings at which charitable contributions are solicited.

Employee Contracts

At DF(LEGAL), HB 1610 imposes new termination standards when an educator is convicted of certain offenses; termination is mandatory for some offenses but discretionary for others. SB 8 (First Called Session) expands the circumstances under which a district may declare an employee's Chapter 21 contract void. A district may not terminate or suspend an employee because he or she does not have a current certificate if the employee requests an extension from SBEC and takes measures to renew, extend, or otherwise validate the certificate.

SB 8 prompted other changes regarding termination, suspension, and nonrenewal of contracts, as follows:

- The standard for terminating a continuing contract because of a reduction in force has been amended, as reflected at DFCA(LEGAL). While decisions previously had to be made in the reverse order of seniority, they must now be based primarily on teacher appraisals and other criteria as determined by the board.
- At DFD(LEGAL), new provisions clarify that a determination by a hearing examiner regarding good cause for termination or suspension is a conclusion of law and the board or board committee may adopt, reject, or change the determination. Previously a board could change this determination only if it was not supported by substantial evidence.
- At DFAA(LEGAL) and DFCA(LEGAL), an employee on a probationary or continuing contract may now be suspended without pay for good cause pending discharge. Previously, suspension was only permitted in lieu of discharge.
- For a hearing protesting a mid-year termination based on financial exigency, a school board may now decide whether to use the hearing process for term contract nonrenewals or the independent hearing examiner process. This change is reflected at DFAA(LEGAL) for

probationary contracts and DFBA(LEGAL) for term contracts. A similar provision applies to terminations at the end of the year of continuing contracts based on financial exigency. [See DFCA(LEGAL).]

- As reflected at DFBB(LEGAL), SB 8 also changed the deadline for the district to give notice of proposed nonrenewal to the tenth day before the last day of instruction and amended the procedure to give notice. The notice must be delivered by hand to the employee on the campus. If the employee is not present on the campus on the date that hand delivery is attempted, the district must mail the notice by prepaid certified mail or express delivery service to the employee's address of record. Notice is timely if postmarked on or before the tenth day before the last day of instruction. Similar provisions are also reflected at DFAB(LEGAL), addressing termination of probationary contracts at the end of the school year.
- Finally, DFBB(LEGAL) includes a new option for a board in a district with an enrollment of at least 5,000 students to designate an attorney who meets certain criteria to hold the nonrenewal hearing on behalf of the board.

DFBB(LOCAL) POLICY CONSIDERATIONS

Recommended changes to the list of reasons for nonrenewal are intended to emphasize that a reduction in force can either be based on financial exigency or a program change.

To allow for more flexibility when the administration submits a recommendation for proposed nonrenewal to the superintendent, new language now requires an administrative recommendation to be supported by any relevant documentation. The policy no longer requires the administration to submit copies of the information necessary to the decision at the time of the recommendation.

New recommended text has also been added to correspond to provisions from SB 8, mentioned above, regarding the new deadline and delivery procedures for notice of proposed nonrenewal.

If your district has an ADA of at least 5,000 students, recommended provisions have also been included regarding the new option to designate an attorney to hold the nonrenewal hearing.

Instruction

Instructional Materials

At DCA(LEGAL), a provision from HB 2380 allows a district to employ an educator under a probationary contract if the educator is reassigned to a new professional capacity that requires a different class of certificate than required by the educator's previous professional capacity and the educator voluntarily accepts the reassignment.

SB 6 (First Called Session) made significant revisions to the law on instructional materials, including changing references to the term "textbooks" to "instructional materials."

Changes from SB 6 regarding instructional materials inventory and requisition are at CMD(LEGAL):

- Each district is entitled to an annual instructional materials allotment (IMA) for each student enrolled.
- Materials purchased with the district's IMA are now the property of the district, rather than the state.
- A district must annually certify to the commissioner that the district's IMA has been used only for permitted expenses.
- A district must first purchase materials that cover all elements of the essential knowledge and skills, other than physical education. The district may then purchase other materials or equipment.
- A district must determine appropriate disposal of instructional material and technological equipment. A similar provision is also included at CI(LEGAL).

At EFAA(LEGAL), SB 6 provides that the State Board of Education (SBOE) will now produce a single list of approved materials, rather than a conforming list and a nonconforming list as before. If a board selects supplemental instructional materials, the district must certify to TEA that the supplemental materials, in combination with any other instructional materials used by the district, cover the essential knowledge and skills for the course.

EFAA(LOCAL) POLICY CONSIDERATIONS

To correspond with the changes from SB 6 mentioned above, we recommend the following changes to this local policy:

- The term "textbook selection committee" has been changed to "instructional materials selection committee" throughout the policy.
- The reference to the State Board instructional materials lists has been broadened to refer to the *state* lists to incorporate the instructional materials list adopted by the commissioner.

- For added flexibility, we have deleted the requirement that only professional staff may be members of the instructional materials selection committee.
- We also recommend deletion of procedural provisions that are unnecessary for inclusion in board-adopted local policy.

Assessments

HB 2135 exempts certain students in grades 3 through 8 from the administration of a state assessment instrument if the student is enrolled in a course intended for students above the student's grade level and the student will be administered an assessment instrument for the course, including an end-of-course assessment. These new provisions are reflected at EIE(LEGAL) and EKB(LEGAL).

Accountability

At AIC(LEGAL), a new provision from SB 738 allows the parents of a majority of the students at a campus that has had an unacceptable performance rating for three consecutive years to submit a petition specifying which corrective action they would like the commissioner to take. The commissioner must order the specific action requested by the petition unless the board presents a written request specifying a different action, in which case the commissioner may order the action requested by the board.

Texas Virtual School Network

SB 1 (First Called Session) included several revisions to the Texas Virtual School Network (TxVSN), reflected at EHDE(LEGAL). A student may enroll in a TxVSN course if the student is younger than 26 on September 1 of a school year and has been admitted by a school district. Enrollment was previously limited to students younger than 21 years of age. Finally, a district must adopt a policy providing students with the opportunity to enroll in electronic courses through the TxVSN. Districts that have adopted EHDD and EHDE(LOCAL) from Update 89 already have appropriate policy language sufficient to meet this requirement.

Special Education

Legislation addressing special education includes:

- HB 1335, which requires a district to develop a process for a teacher who instructs a student with a disability in a regular classroom setting to request review of a student's IEP. See EHBAB(LEGAL).
- SB 1788, which requires that transition planning for students receiving special education services begin by the time a student is 14 years old. See EHBAD(LEGAL).

**Other
Instructional
Issues**

Other legislative changes regarding instruction are as follows:

- At EHAA(LEGAL), SB 6 (First Called Session) removes economics from the enrichment curriculum, as it is now a subject within social studies in the foundation curriculum.
- In accordance with SB 6 (First Called Session) and reflected at EFAA(LEGAL), the required TEKS must now address personal financial literacy instruction for students in kindergarten through grade 8, while at EHAC(LEGAL) HB 34 requires an economics course in grades 9–12 to provide instruction in personal financial literacy, including instruction in completing the federal student aid application.
- At EIF(LEGAL), HB 692 permits a student who cannot participate in physical activity because of disability or illness to substitute a credit in English language arts, mathematics, science, or social studies or an academic elective credit for the required physical education credit.
- At EIF(LEGAL), we have also added provisions, broadened by SB 966, regarding diplomas for veterans.
- At EHBK(LEGAL), a new provision from HB 3616 designates the month of October as Persons with Disabilities History and Awareness Month, while HB 2909 renames “Education: Go Get It” Week to Generation Texas Week, during which districts are now required to provide students with information on college readiness standards and expectations.

Student Issues

Dating Violence

FFH(LOCAL) POLICY CONSIDERATIONS

In accordance with SB 116, the definition and examples of dating violence have been updated in this local policy to include changes from the Family Code. It is now considered dating violence if a person who dated or is dating a student commits the violent acts listed in the policy against the student's current spouse or dating partner.

Food Allergies

Multiple policies were affected by legislation regarding food allergies. As reflected at FD(LEGAL), HB 742 requires a district to request, upon enrollment, food allergy information so that the district can take any necessary precautions regarding a child's safety.

At FFAF(LEGAL), SB 27 requires the commissioner of state health services to create guidelines to help districts develop a policy by August 1, 2012, for the care of students with a diagnosed food allergy who are at risk for anaphy-

laxis. Once the commissioner releases the guidelines next spring, TASB Policy Service will develop a local policy for districts' consideration.

Physical Fitness Assessments

SB 8 (First Called Session) now requires a physical fitness assessment only for students in grades 3 or higher who are enrolled in a physical education course. See FFAA(LEGAL).

Concussions

Provisions on the prevention, treatment, and oversight of concussions come from HB 2038 and are reflected in several codes:

- As indicated at FM(LEGAL), the board must appoint a concussion oversight team to establish a return-to-play protocol for students following an impact believed to have caused a concussion. In addition, before a student can participate in an interscholastic activity, the student and the student's parent must sign a UIL-approved form acknowledging they received information on concussions. A student must be removed from practice or competition if a coach, physician, licensed health-care professional, or the student's parent believes the student might have sustained a concussion, and the student and parent must complete the return-to-play protocol and sign a consent form before the student may return.
- GKG(LEGAL) requires that a licensed health-care professional who volunteers for the concussion oversight team must have had training on concussions at the time of appointment to the team and must take an approved course on concussions at least once every two years. Similar provisions regarding district employees involved in athletic activities are found at DMA(LEGAL).

Also at FM(LEGAL) are new football helmet safety requirements from HB 675. The new provisions prohibit a district from using a helmet that is 16 years old or older, require helmets that are 10 years old or older to be reconditioned every two years, and require a district to make documentation available to parents about helmets used in the football program.

Attendance

SB 1489 made several changes to attendance provisions at FEA(LEGAL). The offense of failure to attend school may now only be applied to a student who is 12 to 17 years old, while the definition of a "child" regarding conduct in need of supervision now includes a person who is 10 years old or older. As reflected at FEA(LEGAL) and FED(LEGAL), SB 1489 amended the filing requirements for referring a student to court for truancy, though timelines for referrals have not changed. A district must provide information on the truancy prevention measures used with the student.

Student Conduct

As reflected at FO(LEGAL), in districts where the board has adopted a policy permitting the use of corporal punishment as a disciplinary method, an edu-

cator may not use corporal punishment if the parent provides a signed statement to the board prohibiting its use with the parent's child. This statement must be provided annually, though a parent may revoke a previously submitted statement at any time. A new definition of corporal punishment includes the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline but does not include physical pain caused by reasonable physical activities associated with athletic activities or the use of restraint as permitted by law. These changes are from HB 359.

FO(LOCAL) POLICY CONSIDERATIONS

Certain provisions on detention that are better suited to the Student Code of Conduct are recommended for deletion. The remaining detention provisions have been moved under the general guidelines at the beginning of this local policy.

For districts that permit the use of corporal punishment as a disciplinary measure, recommended text has been added as a result of HB 359, as mentioned above, prohibiting the use of corporal punishment with a child if the child's parent has submitted an appropriate signed statement to the principal. The parent may reinstate permission for the district to use corporal punishment by submitting another signed statement at any time. A new guideline is also recommended to allow only an employee who is the same sex as the student to administer corporal punishment.

For districts with provisions on video and audio monitoring, recommended text broadens the use of video and audio recording equipment to monitor student behavior "on district property," rather than being limited to buses and common areas on campus as before. The district must continue to post signs notifying students and parents about the district's use of video or audio equipment.

Other Student Conduct Issues

Other student conduct issues affected by legislation include the following:

- At FOC(LEGAL) and FOE(LEGAL), HB 968 adds aggravated robbery to the acts for which a student may be disciplined in accordance with the Student Code of Conduct.
- At FOD(LEGAL), HB 1224 adds breach of computer security as a permissive expellable offense.
- In an effort to limit citations issued to elementary school students, HB 359 provides that a student in grade 6 or below may no longer be

charged with a misdemeanor for the offenses of disruptions to classes or transportation. See CNC(LEGAL), FNCI(LEGAL), and GKA(LEGAL).

- At FOCA(LEGAL), SB 49 now requires a district to provide parents of a student removed to a DAEP with written notice of the district's obligation to provide the student an opportunity to complete coursework required for graduation.

Maltreatment of Children

SB 471 added provisions regarding the maltreatment of children to several codes. BQ(LEGAL) now requires that the district improvement plan include a program to address maltreatment (defined as abuse and neglect) of children, in addition to the existing requirement to address child sexual abuse. At DG(LEGAL), a new provision specifies that a district may not discharge, non-renew, or suspend an employee for complying with the law regarding prevention of abuse and other maltreatment of children, while at DGC(LEGAL), a new code housing provisions on employee immunity, the new law clarifies that an employee's actions to comply with this law are considered to involve an employee's judgment and discretion for purposes of immunity from liability. At DMA(LEGAL), a district is now required to train employees regarding the prevention of child sexual abuse and other maltreatment.

Planning and Decision-Making Process

At BQA(LEGAL) and BQB(LEGAL), SB 778 adds a requirement that, if practicable, the professional staff on the district and campus planning and decision-making committees will include an individual with the primary responsibility for educating students with disabilities.

Governmental Authorities

Provisions from GRA(LEGAL) focusing on notices to and from law enforcement agencies and dissemination of notices from law enforcement agencies to district employees have been moved to a new legally referenced policy at GRAA, while a new legally referenced policy at GRAC focuses on information sharing between juvenile service providers.

At GRAA(LEGAL), HB 1907 added detail on the contents of notices from law enforcement agencies and amended provisions requiring notices to employees. If a board learns that the superintendent or principal has failed to provide notices to employees as required by law, the board must report the failure to the State Board for Educator Certification (SBEC). The requirements regarding notice to employees are also included at FL(LEGAL).

Miscellaneous

Other changes prompted by the legislature include the following:

Criminal History for Contracted Services

- As reflected at CJA(LEGAL), HB 398 and SB 1042 establish the same standards for acceptable criminal history for a person employed by a contractor with the district as currently apply for a district employee.

**Summer
Nutrition
Program**

- SB 89 created a new summer nutrition program administered by the Texas Department of Agriculture (TDA). As reflected at COB(LEGAL), the new program requires a district in which 50 percent or more of the students qualify for free and reduced-price lunch to provide or arrange for a summer nutrition program for at least 30 days during the summer. A board may request a waiver by January 31st, though the board must notify the school health advisory council of its intentions and the reasons for seeking a waiver by November 30th of the prior year.

**District Liaison
for Children in
State Care**

- At FFC(LEGAL), HB 826 now requires a district to appoint an employee to serve as a liaison for children in the conservatorship of the state who enroll in or transfer to the district.

**Confidentiality of
Personal
Information**

- SB 1638 added emergency contact information to the list of personal information a current or former employee or board member, a peace officer, or a security officer may choose to withhold from public access. This provision is reflected at DBA(LEGAL) and GBA(LEGAL). Also at GBA(LEGAL), SB 1907 provides that, except for certain information such as social security numbers, information excepted from public disclosure will no longer be excepted from disclosure after the 75th anniversary of the date the district created or received the information.

**More
Information**

For further information on these policy changes, refer to the policy-by-policy Explanatory Notes—customized for each district’s policies—and the policies themselves, found in your localized update packet.