

A photograph of a library interior, showing curved bookshelves filled with books and a modern architectural design with a glass and metal structure.

86th Legislative Session Summary- New Ballot Language Requirements for School District Bond Elections

The 86th Session of the Texas Legislature, which concluded in May 2019, resulted in the enactment of several laws that directly impact how school districts draft ballot and proposition language for their bond elections. In general terms, these changes create two new obligations for school districts. First, districts are now required to include specific language in each bond proposition to notify the voters that property taxes will increase in connection with the approval of the proposition. Second, districts must also consider whether the projects to be funded through a bond election are classified as what the Texas Education Code (“Code”) now refers to as “general purpose,” or as “special purpose,” projects, and then draft the ballot propositions accordingly.

The primary purpose of this short briefing paper is to explain how these two new requirements- the mandatory tax notice and the distinction between general and special purpose projects- will affect the drafting of bond election ballots. This paper also outlines and summarizes recently issued guidance provided by the Public Finance Division of the Office of the Attorney General about the amendments to the Code as they affect school district bond elections. The questions addressed in that guidance will be of interest to all school districts.

Mandatory Tax Statement

Section 45.003 of the Code has been amended to require school districts to include specific language in each proposition on a bond election ballot. The required language, as stated at Section 45.003 of the Code is: “THIS IS A PROPERTY TAX INCREASE.” The inclusion of this language is a mandatory obligation for which there are no exceptions.

“General,” and “Special,” Purposes Defined

As noted above, the law now requires that projects that are to be funded through a bond election be presented on the ballot a manner that depends on whether the projects are “general,” or “special.”

General purposes are as follows: construction, acquisition, and equipment of school buildings in the district, the purchase of new school buses, and the purchase of necessary sites for school buildings. This list of general purposes is stated in Section 45.003(g) of the Code.

Special purposes are the construction, acquisition, or equipping of any of the following:

- (1) a stadium with seating capacity for more than 1,000 spectators;
- (2) a natatorium;
- (3) another recreational facility other than a gymnasium, playground, or play area;
- (4) a performing arts facility;
- (5) housing for teachers; and
- (6) an acquisition or update of technology equipment, other than equipment used for school security purposes or technology infrastructure integral to the construction of a facility. This list of special purposes is also stated in Section 45.003(g) of the Code.

Ballot Language Requirements

Under the Code as recently amended, when a school district presents to the voters projects for funding on a bond election ballot, the general purpose projects must be included in one or more separate propositions, the special purpose projects must be set out each in its own proposition.

If a school district intends for a bond funded building or complex to be used for both general and special purposes, the general and special purposes must be addressed in separate propositions. For example, if a district called a bond election to fund the construction of a complex that would include a school building, which is a general purpose, and a stadium with seating for more than 1,000 spectators, which is a special purpose, the question on the funding of the school building would need to be in one proposition, and the question on the funding of the stadium in a separate proposition. Each proposition would need to state the amount of bonds that are to be issued for the respective part of the project considered under that proposition. Moreover, special purposes cannot be combined into one proposition. Each special purpose project must be the subject of a distinct proposition. These requirements are stated at Section 45.003(h) of the Code.

It is important to note that some facilities that are not predominately used for classroom instruction or essential administrative operations may be considered as general purpose facilities. Specifically, auditoriums that have a capacity of less than 1,000 spectators, gymnasiums, playgrounds, play areas, and equipment used for security or technology that is integral to the construction of a facility, are all general purpose projects and can be included for consideration under the same proposition.

Attorney General Guidance

The Public Finance Division of the Office of the Attorney General is the office responsible for approving each issuance of public debt in the state. This includes bonds issued by school districts as authorized by elections. It is in this capacity that the Attorney General released guidance in an All Bond Counsel Letter dated December 27, 2019 on the recent changes to the Code, as they affect school district bond elections. In that guidance, the Attorney General addressed a series of questions that it had been asked by school districts and their representatives shortly after the amendments to the Code were approved by the legislature. The key points made by the Attorney General in that guidance can be summarized as follows:

- Performing Arts Facilities. The Attorney General made two key points about what makes a space that will be used for the performing arts a performing arts facility, and therefore, a special purpose project. The first point is that what determines whether a building with a stage is a performing arts facility is whether the district intends for the space to be used primarily to make performances before an audience, or if instead, the space is to be used primarily for instruction. If the space is intended for educational use, rather than presentation, it will be a general purpose facility. That is, a stage in itself does not make a building a performing arts facility. The second point is that school districts should consult with the Public Finance Division of the Office of the Attorney General to decide if a building will be a performing arts facility, if the district has a question about how the law will apply to the particular situation. The classification of performing arts facilities as general or special purposes presents some grey area and the Attorney General is ready to assist school districts in addressing any questions that arise.
- Improvements and Renovations. The making of improvements and renovations to special purpose projects, such as a performing arts facility or natatorium, are to be treated as special purpose projects, and as such, be presented under separate propositions.
- District Vehicles. Recent legislation amended Section 45.001 of the Code to authorize the retrofitting of buses and the acquisition or retrofitting of emergency and safety vehicles for emergency, safety, or security purposes. These purposes may be considered as general purpose when drafting the relevant propositions.

Summary and Conclusion

The manner in which school districts present projects for bond funding to the voters has been significantly affected by legislation enacted in the last session. The primary changes relate to the new mandatory “tax increase” language that must be inserted into each proposition and to the required presentation of each special purpose under a unique proposition. As the Attorney General has acknowledged in its recent guidance, given the scope of the statutory changes, there are bound to be lingering questions as to how the recently amended law is to apply to each bond election.

In light of the uncertainty caused by the recent amendments to the Code, school districts may wish to consult with their bond counsel to better understand how the amended laws will apply to their next bond elections. For each bond election, bond counsel, on behalf of their school district clients, typically will present to the Attorney General draft ballot and proposition language for approval before the school district orders the bond election. The Attorney General is the state office that is ultimately responsible for approving the validity of each school district bond before a sale of bonds may take place. As such, seeking Attorney General concurrence with the ballot and proposition language before the election is called is a step that can provide school districts with a high level of certainty that any bonds approved by the voters will be accepted by the Attorney General and will be able to be sold by district.

We hope that this brief report of the revisions is useful, and encourage each school district to seek guidance when there are any questions about the requirements of the Code. Our firm has provided legal public finance support, including representation in matters involving bond elections, to the school districts and other local governments of Texas for over 35 years. We would be glad to visit with you about any questions your district may have about the recent amendments to the Code, or any other aspect of school district financing.

Please direct any questions about the recent changes to the Education Code or other public finance issues to **David Méndez** or **Gregory Miller** at:

Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
P: 512.472.8021
www.bickerstaff.com