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UPDATE 28
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SECTION C: BUSINESS AND SUPPORT SERVICES

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There shall be appropriated biennially from money in the state treasury not otherwise appropriated an amount sufficient to supplement local funds for the proper support, maintenance, operation, and improvement of those public junior colleges of Texas that meet the standards prescribed by Education Code Chapter 130. The sum shall be allocated on the basis of contact hours within categories developed, reviewed, and updated by the Coordinating Board. *Education Code 130.003(a)*

To be eligible to receive its proportionate share of the biennial appropriations for support, maintenance, operation, and improvement, each public community college must:

1. Be certified as a public community college as prescribed by Administrative Code 9.29.
2. Offer a minimum of 24 semester credit hours of career technical/workforce education courses.
3. Have complied with all existing laws, rules, and regulations governing the establishment and maintenance of public community colleges.
4. Collect, from each full-time and part-time student enrolled, appropriate matriculation and other fees as required by law.
5. Grant, when properly applied for, the scholarships and tuition exemptions provided for in the Education Code.
6. Levy and collect ad valorem taxes as provided by law for the operation and maintenance of the institution.

*Education Code 130.003(b), (d); 19 TAC 9.28-.29*

All funds allocated under the provisions of the Education Code, with the exception of those necessary for paying the costs of audits as provided, shall be used exclusively for the purpose of paying salaries of the instructional and administrative forces of the several institutions and the purchase of supplies and materials for instructional purposes. *Education Code 130.003(c)*

*Note:* For more detail regarding appropriated funds and restrictions on the use of the funds, see the current General Appropriations Act and related appropriations bills, available at [http://www.lrl.state.tx.us/legis/approBills.cfm](http://www.lrl.state.tx.us/legis/approBills.cfm).
PERKINS GRANTS

Except as provided in 20 U.S.C. 2352(b) and (c) and 20 U.S.C. 2353, each eligible agency, including the Coordinating Board, shall distribute the portion of the funds made available under 20 U.S.C. 2322(a)(1) to carry out 20 U.S.C. 2352 for any fiscal year to eligible institutions or consortia of eligible institutions within the state.

Each eligible institution or consortium of eligible institutions shall be allocated an amount that bears the same relationship to the portion of funds made available under 20 U.S.C. 2322(a)(1) to carry out 20 U.S.C. 2352 for any fiscal year as the sum of the number of individuals who are Federal Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of 20 U.S.C. 2355 offered by such institution or consortium in the preceding fiscal year bears to the sum of the number of such recipients enrolled in such programs within the state for such year.

20 U.S.C. 2352(a)(1)–(2)

RETIREMENT CONTRIBUTIONS

If an employer, including a college district, applies for money provided by the United States or an agency of the United States and if any of the money will pay part or all of any employee’s salary, the employer shall apply for any legally available money to pay state contributions required by Government Code 825.404 or 830.201 in accordance with Government Code 825.406.

An employer who fails to comply with Government Code 825.406 may not, after the failure, apply for or spend any money from a federal or private grant. The attorney general shall bring a writ of mandamus against the employer to compel compliance.

A person commits an offense if the person is an administrator of an employer and knowingly fails to comply with Government Code 825.406.

Gov’t Code 825.406 [See CAM]
The governing board of each junior college district shall be authorized to issue negotiable coupon bonds for the construction and equipment of school buildings and the purchase of the necessary sites therefor, and levy and pledge annual ad valorem taxes sufficient to pay the principal of and interest on said bonds as they come due, and to levy annual ad valorem taxes for the maintenance of its public junior college or junior colleges; provided that the annual bond tax shall never exceed $.50 on the $100 valuation of taxable property in the district, and the annual bond tax, if any, together with the annual maintenance tax shall never exceed the aggregate of $1 on the $100 valuation of taxable property in the district.

Such bonds may be issued in various series or issues, and shall mature serially or otherwise not more than 40 years from their date, and shall bear interest at such rate or rates as shall be determined within the discretion of the board. Said bonds, and the interest coupons appertaining thereto, shall be negotiable instruments, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be signed and executed, as provided by the board in the resolution or order authorizing the issuance of said bonds. All bonds shall be sold to the highest bidder for not less than their par value and accrued interest.

*Education Code 130.122(a)*

All bonds shall be issued in accordance with the Public Security Procedures Act and Education Code 130.122. *Gov’t Code Ch. 1201*

**CREDIT AGREEMENTS**

A junior college district that at the time of the issuance of obligations and execution of credit agreements has at least 2,000 full-time students or the equivalent or a combined aggregate principal amount of at least $50 million of outstanding bonds and voted, but unissued, bonds may, in the issuance of bonds as provided by Education Code 130.122, exercise the powers granted to the governing body of an issuer with regard to the issuance of obligations and execution of credit agreements under Government Code Chapter 1371.

A proposition to issue bonds to which Education Code 130.1221 applies must include the question of whether the board may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds and the costs of any credit agreements executed in connection with the bonds.
LIMITS

A district may not issue bonds in an amount greater than the greater of:

1. Twenty-five percent of the sum of:
   a. The aggregate principal amount of all district debt payable from ad valorem taxes that is outstanding at the time the bonds are issued; and
   b. The aggregate principal amount of all bonds payable from ad valorem taxes that have been authorized but not issued;

2. Twenty-five million dollars, in a district that has at least 3,500 but not more than 15,000 full-time students or the equivalent; or

3. Fifty million dollars, in a district that has more than 15,000 full-time students or the equivalent.

Government Code 1371.057 and 1371.059 govern approval by the attorney general of obligations issued under the authority of Education Code 130.1221.

Education Code 130.1221

POLITICAL ADVERTISING

An officer or employee of a political subdivision, including a college district, may not knowingly spend or authorize the spending of public funds for political advertising. The restriction does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

1. The officer or employee knows is false; and

2. Is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

It is an affirmative defense for an offense under this section or the imposition of a civil penalty for conduct under this section that an officer or employee of a political subdivision reasonably relied on a court order or an interpretation in a written opinion issued by a court of record, the attorney general, or the Ethics Commission.

On written request of the governing body of a political subdivision that has ordered an election on a measure, the Ethics Commission shall prepare an advance written advisory opinion as to whether a
particular communication relating to a measure complies with the section.

_Election Code 255.003(a)–(b-1), (d)–(e) [See CHE]

NEWSLETTERS

A newsletter of a public officer of a political subdivision is not political advertising if:

1. It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;

2. It includes no more than eight personally phrased references (such as the public officer's name, "I", "me", "the city council member") on a page that is 8 1/2" x 11" or larger, with a reasonable reduction of the number of such personally phrased references in pages smaller than 8 1/2" x 11"; and

3. When viewed as a whole and in the proper context:
   a. Is informational rather than self promotional;
   b. Does not advocate passage or defeat of a measure; and
   c. Does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

_Education Code 130.122(b); Election Code 41.001(a) [See BBB]

ELECTIONS

No such bonds shall be issued and none of the aforesaid taxes shall be levied unless authorized by a majority of the electors voting at an election held for such purpose in accordance with law, at the expense of the district. Each such election shall be called by resolution or order of the board, which shall set forth the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters deemed necessary or advisable by the board.

The election shall be held on a uniform election date.

CALL FOR ELECTION

For an election to be held on:

1. The date of the general election for state and county officers (the November uniform election date of even-numbered years), the election shall be called not later than the 78th day before the election day; and
2. A uniform election date other than the date of the general election for state and county officers, the election shall be called not later than the 71st day before election day.

_Election Code 3.003, .005, 41.002 [See BBB]

**NOTICE OF ELECTION**

Notice of said election shall be given by publishing a substantial copy of the election resolution or order one time, at least ten days prior to the date set for the election, in a newspaper of general circulation in the district. The person responsible for giving the notice must retain a copy of the published notice that contains the name of the newspaper and the date of publication. _Education Code 130.122(b); Election Code 4.003(a)(1), (c), .005_

The governing body of a political subdivision that orders an election shall deliver notice of the election to the county clerk and voter registrar of each county in which the political subdivision is located not later than the 60th day before election day. _Election Code 4.008(a)_

**POSTING NOTICE OF ELECTION**

In addition, notice of the election, which must include the location of each polling place, must be posted not later than the 21st day before election day, the authority responsible for giving notice of the election shall post a copy of the notice, which must include the location of each polling place, on the bulletin board used for posting notices of the meetings of the governing body of the political subdivision that the authority serves. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the authority responsible for giving the election notice after the last posting is made. _Election Code 4.003(a)(1), (b)–(c), .004–.005_

**ELECTION ORDER**

"Debt obligation" means an issued public security, as defined by Government Code 1201.002, that is secured by ad valorem taxes.

The document ordering an election to authorize a political subdivision, including a college district, to issue debt obligations must distinctly state:

1. The proposition language that will appear on the ballot;
2. The purpose for which the debt obligations are to be authorized;
3. The principal amount of the debt obligations to be authorized;
4. That taxes sufficient to pay the annual principal of and interest on the debt obligations may be imposed;
5. A statement of the estimated tax rate if the debt obligations are authorized or of the maximum interest rate of the debt ob-
literations or any series of the debt obligations, based on the market conditions at the time of the election order;

6. The maximum maturity date of the debt obligations to be authorized or that the debt obligations may be issued to mature over a specified number of years not to exceed 40;

7. The aggregate amount of the outstanding principal of the political subdivision's debt obligations as of the beginning of the political subdivision's fiscal year in which the election is ordered;

8. The aggregate amount of the outstanding interest on the debt obligations of the political subdivision as of the beginning of the political subdivision's fiscal year in which the election is ordered; and

9. The ad valorem debt service tax rate for the political subdivision at the time the election is ordered, expressed as an amount per $100 valuation of taxable property.

Election Code 3.009

POSTING THE ELECTION ORDER

A debt obligation election order required under Election Code 3.009 shall be posted on election day and during early voting by personal appearance, in a prominent location at each polling place; not later than the 21st day before the election, in three public places in the boundaries of the political subdivision holding the election; and during the 21 days before the election, on the political subdivision's Internet website, prominently and together with the notice of the election and the contents of the proposition, if the political subdivision maintains an Internet website. Election Code 4.003(f)

CANVASS

The board shall canvass the returns and declare the results of such election. Education Code 130.122(b)

PROPOSITIONS

Except as otherwise provided by law, the authority ordering the election shall prescribe the wording of a proposition that is to appear on the ballot. A proposition shall be printed on the ballot in the form of a single statement and may appear on the ballot only once in accordance with Election Code 52.072(e).

In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the issuance of bonds shall specifically state:

1. The total principal amount of the bonds to be authorized, if approved; and
2. A general description of the purposes for which the bonds are to be authorized, if approved.

_Election Code 52.072(a)–(b), (e)_

**REFUNDS**

An issuer, including a college district, may issue refunding bonds under Government Code Chapter 1207 to refund all or any part of the issuer’s outstanding bonds, notes, or other general or special obligations.

Subject to the provisions of Government Code Chapter 1207 and Education Code 130.122, the governing board of each junior college district is authorized to refund or refinance all or any part of any of its outstanding bonds and matured but unpaid interest coupons payable from ad valorem taxes by the issuance of negotiable coupon refunding bonds payable from ad valorem taxes.

_Gov’t Code 1207.002; Education Code 130.122(c)_

**AUTHORIZED UNISSUED BONDS**

All tax bonds voted in any junior college district in accordance with law but unissued by September 1, 1969, may be issued in the manner provided in Education Code 130.122, without an additional election; and all maintenance taxes voted in any district in accordance with law may be levied and collected in the manner provided by law without an additional election. _Education Code 130.122(g)_.

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Any school district, including a college district, in need of funds to construct, repair, or renovate school buildings, purchase school buildings and school equipment, or equip school property with necessary heating, water, sanitation, lunchroom, or electric facilities or in need of funds with which to employ a person who has special skill and experience to compile taxation data and that is financially unable out of available funds to construct, repair, renovate, or purchase school buildings, purchase school equipment, or equip school properties with necessary heating, water, sanitation, lunchroom, or electric facilities or is unable to pay the person for compiling taxation data, may, subject to Education Code 45.103, issue interest-bearing time warrants, in amounts sufficient to construct, purchase, equip, or improve school buildings and facilities or to pay all or part of the compensation of the person to compile taxation data.

The warrants shall mature in serial installments of not more than 15 years from date of issue. The warrants on maturity may be payable out of any available funds of the school district in the order of their maturity dates.

A school district may also issue interest-bearing time warrants to refund warrants previously issued under this section if the refunding warrants are coterminous with the refunded obligations.

“Interest-bearing time warrant” includes a promissory note or other evidence of indebtedness issued under Education Code 45.103.

_education Code 45.103(a)–(a-1), (g), 130.084(a)_

The maximum rate of interest for any issue or series of public securities, including an issue or series that is issued in exchange for property, labor, services, materials, or equipment under another law, is a net effective interest rate of 15 percent. _Gov’t Code 1204.006_

Any interest-bearing time warrants may be issued and sold by the district for not less than their face value, and the proceeds used to provide funds required for the purpose for which they were issued.

A school district may not issue interest-bearing time warrants in excess of five percent of the assessed valuation of the district for the year in which the warrants are issued. The payment of interest-bearing time warrants in any one year may not exceed the anticipated surplus income of the district for the year in which the warrants are issued, based on the budget of the district for that year. The anticipated income is exclusive of all bond taxes. A school district may not have outstanding at any one time warrants totaling in excess of $1 million under Education Code 45.103.

_Education Code 45.103(a), (c), 130.084(a)_
Time warrants shall be issued in accordance with the Public Security Procedures Act. *Gov’t Code Ch. 1201*
Any school district, including a junior college district, situated in a county with a population of 200,000 or more may issue interest-bearing certificates of indebtedness to provide funds for erecting or equipping school buildings in the boundaries of the district or refinancing outstanding certificates as provided by Education Code 45.111. “Certificates” includes all obligations authorized to be issued under Education Code 45.111 and the interest on those obligations. Education Code 45.111(a)

PAYMENT OF CERTIFICATES

The governing body of the district shall provide for the payment of the certificates by appropriating and pledging local school funds derived from maintenance taxes levied and assessed under Education Code 45.002 and 130.122, Vernon’s Texas Civil Statutes Article 2784g, or other similar law that limits the amount of tax that may be levied for maintenance purposes as distinguished from bond requirements. The appropriation and pledge may be in the nature of a continuing irrevocable pledge to apply the first moneys collected annually from the tax levy to the payment of the obligations or by the irrevocable present levy and appropriation of the amount of the maintenance tax required to meet the annual debt service requirements of the obligations, in which event the governing body shall covenant to annually set aside the amount in the annual tax levy, showing the same is a portion of the maintenance tax. The governing body shall annually budget the amount required to pay the principal and interest of the obligations that may be scheduled to become due in any fiscal year. This section may not be construed as permitting the levy of a maintenance tax in excess of the amount approved by the qualified voters of the district. Education Code 45.111(b)

OUTSTANDING CERTIFICATES

A district may not at any time have certificates outstanding and unpaid in principal amount in excess of $250,000, unless the excessive amount becomes the obligation of the district by assumption under Education Code 45.111(k) or the new certificates are being issued to refund or refinance outstanding obligations under Education Code 45.111(i). Education Code 45.111(c)

PRINCIPAL MATURITY AND AMOUNT

The principal amount of certificates that may be authorized at any one time and the scheduling of their principal maturity are further restricted as follows:

1. If the assessed valuation is more than $1 million and less than $15 million, the limiting factor is 25 cents;
2. If the assessed valuation is $15 million or more but less than $35 million, the limiting factor is 15 cents; and
3. If the assessed valuation is $35 million or more, the limiting factor is 5 cents.
Assessed valuation means the valuation for school district purposes on the tax rolls of the district most recently approved before the authorization of the certificates. The limiting factor for a particular district, as prescribed above, is multiplied by the assessed valuation of the district, and the product is the maximum amount of debt service requirements on the certificates that may be scheduled to become due in any fiscal year on a cumulative basis. A district that has an assessed valuation less than $1 million may not issue certificates under this section.

_Education Code 45.111(d)–(e)_

**MATURITY**

Certificates authorized to be issued under this section shall be payable at the times and be in such form and denomination or denominations either in coupon form or registered as to principal, interest, or both. The certificates may contain options for redemption before the scheduled maturity and may be payable at the place and may contain other provisions as the governing body of the district determines. A certificate may not mature over a period exceeding 25 years from date of the certificate. _Education Code 45.111(f)_

**INTEREST**

A certificate may not bear interest at a rate in excess of seven percent per annum. _Education Code 45.111(f)_

**PROCEDURES**

Certificates of indebtedness shall be issued in accordance with Education Code 45.111.
The governing board of each junior college district shall be authorized and have the power to acquire, purchase, construct, improve, enlarge, equip, operate, and/or maintain any property, buildings, structures, activities, operations, or facilities, of any nature, for and on behalf of its institution or institutions. For the purpose of carrying out any one or more of the aforesaid powers each board shall be authorized to issue its revenue bonds to be payable from and secured by liens on and pledges of all or any part of any of the revenues from any rentals, rates, charges, fees, or other resources of such board in accordance with Education Code 130.123.

Each board shall be authorized to pledge all or any part of any of its revenues from the rentals, rates, charges, and/or fees, including student union fees, from students and others for the occupancy, use and/or availability of all or any of its property, buildings, structures, activities, operations, or facilities, of any nature, to the payment of any bonds issued, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds in accordance with Education Code 130.123(d).

*Education Code 130.123(a)–(d)*

Each board further shall be authorized to pledge irrevocably to such payment, out of the tuition charges required or permitted by law to be imposed at its institution or institutions, an amount not exceeding 25 percent of the tuition charges collected from each enrolled student for each semester or term, and each board also shall be authorized to pledge to such payment all or any part of any grant, donation, or income received or to be received from the U.S. government or any other public or private source, whether pursuant to an agreement or otherwise. *

*Education Code 130.123(e)*

Any revenue bonds issued by such board under Education Code 130.123, and any revenue bonds or notes issued by any such board under any other Texas statute and payable from tuition fees and charges and/or any part of the use fees from or revenues of any property, buildings, structures, activities, operations, or facilities at the institution or institutions, may be refunded or refinanced by such governing board and in such case all pertinent and appropriate provisions of Education Code 130.123 shall be fully applicable to such refunding bonds.

*Education Code 130.123(f)–(g)*
The governing body of an issuer is authorized and empowered to issue, sell, and deliver obligations and execute credit agreements in order to finance project costs of an eligible project or to refund obligations issued in connection with an eligible project, subject to the limitations of Education Code 130.125.

The issuance of obligations shall be authorized by resolution or order of the governing body of an issuer, which resolution or order shall fix the maximum amount of obligations to be issued or, if applicable, the maximum principal amount which may be outstanding at any time, the maximum term obligations issued and delivered pursuant to such authorization shall be outstanding, the maximum interest rate to be borne by the obligations, not to exceed a net effective interest rate of 15 percent, the manner of sale (which may be either public or private sale), price, form, terms, conditions, and covenants thereof.

Obligations shall be secured solely by:

1. The proceeds of sale of other obligations.
2. Any revenues that the issuer is authorized by any statute or constitutional provision to pledge to the payment of any obligations.
3. Any one or more of such sources, including credit agreements, all as the governing body of an issuer shall provide in the resolution or order authorizing the issuance of the obligations.

Obligations shall be repaid from the source or sources securing the payment thereof, funds received from a credit agreement, or from any other revenues otherwise legally available for the payment thereof, except funds derived from ad valorem taxation.

“Credit agreement” means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase obligations, purchase or sale agreement, or commitment or other contract or agreement authorized and approved by the governing body of the issuer in connection with the authorization, issuance, security, exchange, payment, purchase, or redemption of obligations or interest thereon. **Education Code 130.125(a)(1)**

“Eligible project” means any project or purpose for which an issuer is authorized to issue revenue bonds pursuant to Education Code 130.123 or any other provision of law. **Education Code 130.125(a)(2)**
“OBLIGATIONS” “Obligations” means notes, warrants, or other special obligations authorized to be issued by an issuer under the provisions of Education Code 130.125 and all “public securities” as defined by Government Code 1201.002, which prior to the delivery thereof, have been rated by a nationally recognized rating agency for municipal securities in either one of the three highest ranking categories for short-term obligations or one of the four highest ranking categories for long-term obligations. It is provided, however, that the term “obligations” does not mean or include any obligations payable from ad valorem taxes. *Education Code 130.125(a)(5)*

“PROJECT COSTS” “Project costs” means all costs and expenses incurred in relation to an eligible project, including without limitation design, planning, engineering, and legal costs, acquisition costs of land, interest in land, rights-of-way, and easements, construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an eligible project, and financing costs, including interest during construction and thereafter, underwriter’s discount and fees for legal, financial, and other professional services. Project costs attributable to an eligible project and incurred prior to the issuance of any obligations issued to finance an eligible project may be reimbursed from the proceeds of sale of obligations. *Education Code 130.125(a)(6)*

REFUNDING Obligations, including accrued interest, may from time to time be refinanced, renewed, or refunded by the issuance of other obligations. Credit agreements entered into by an issuer whether pursuant to these provisions or not, may be refinanced, renewed, refunded, or otherwise terminated and a new credit agreement substituted therefor by amendment to the proceedings authorizing such credit agreements and, if required to accomplish the substitution of credit agreements, outstanding bonds may be refunded with obligations. *Education Code 130.125(e)*

ATTORNEY GENERAL APPROVAL Preliminary to the issuance and delivery of obligations, the resolution or order authorizing the issuance thereof, together with any credit agreements and any contracts providing revenues and security to pay the obligations, shall be submitted to the attorney general for review. Upon approval by the attorney general and initial delivery of any obligations so authorized, any such credit agreements, any such contracts providing revenues or security, such initial obligations, and all other obligations thereafter issued pursuant to the authorizing proceedings shall be incontestable for any cause in any court or other forum and shall be valid and binding obligations enforceable in accordance with their respective terms and provisions. *Education Code 130.125(f)*
A college district may borrow money for the purpose of paying maintenance expenses and may evidence those loans with negotiable or nonnegotiable notes, except that the loans may not at any time exceed 75 percent of the previous year’s income. The notes may be payable from and secured by a lien on and pledge of any available funds of the college district, including proceeds of a maintenance tax.

The term “maintenance expenses” or “maintenance expenditures” as used in this policy means any lawful expenditure of the college district other than payment of principal of and interest on bonds. The term includes expenditures relating to notes issued to refund notes previously issued under this section if the refunding notes are coterminous with the refunded obligation. The term also includes all costs incurred in connection with environmental cleanup and asbestos cleanup and removal programs implemented by the college district or in connection with the maintenance, repair, rehabilitation, or replacement of heating, air conditioning, water, sanitation, roofing, flooring, electric, or other building systems of existing school properties.

Notes issued pursuant to this policy may be issued to mature in not more than 20 years from their date. Notes issued for a term longer than one year shall be treated as “debt” as defined in Section 26.012(7), Tax Code, as amended.

Notes may be issued only after a budget has been adopted for the current school year. Notes must be authorized by resolution adopted by a majority of the board of trustees, signed by the president or vice president and attested to by the secretary of the board.

A note may contain a certification that it is issued pursuant to and in compliance with Education Code 45.108 and pursuant to a resolution adopted by the board of trustees. The certification is sufficient evidence that the note is a valid obligation of the district.

**Education Code 45.108, 130.084(a)**

The maximum rate of interest for any issue or series of public securities, including an issue or series that is issued in exchange for property, labor, services, materials, or equipment under another law, is a net effective interest rate of 15 percent. **Gov't Code 1204.006**

Short-term notes shall be issued in accordance with the Public Security Procedures Act. **Gov't Code Ch. 1201**
TAX BONDS AND MAINTENANCE TAX

The governing board of each junior college district shall be authorized to issue negotiable coupon bonds for the construction and equipment of school buildings and the purchase of the necessary sites therefor, and levy and pledge annual ad valorem taxes sufficient to pay the principal of and interest on said bonds as they come due, and levy annual ad valorem taxes for the further maintenance of its public junior college or junior colleges; provided that the annual bond tax shall never exceed $.50 on the $100 valuation of taxable property in the district, and the annual bond tax, if any, together with the annual maintenance tax shall never exceed the aggregate of $1 on the $100 valuation of taxable property in the district. Education Code 130.122(a) [See CAD]

NOTICE TO BOARD

By August 7 or as soon thereafter as practicable, the designated officer or employee shall submit the effective tax rate and the rollback tax rate to the governing body. The individual shall deliver by mail to each property owner in the unit or publish in a newspaper in the form prescribed by the comptroller:

1. The effective tax rate, the rollback tax rate, and an explanation of how they were calculated;

2. The estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligations;

3. A schedule of the taxing unit’s debt obligations as prescribed by Tax Code 26.04(e)(3);

4. The amount of additional sales and use tax revenue anticipated in calculations under Tax Code 26.041;

5. A statement that the adoption of a tax rate equal to the effective tax rate would result in an increase or decrease, as applicable, in the amount of taxes imposed by the unit as compared to last year’s levy, and the amount of the increase or decrease;

6. In the year that a taxing unit calculates an adjustment under Tax Code 26.04(i) or (j), a schedule as prescribed by Tax Code 26.04(e)(6); and

7. In the year following the year in which a taxing unit raised its rollback rate as required by Tax Code 26.04(j), a schedule as prescribed by Tax Code 26.04(e)(7).

Tax Code 26.04(e)
The governing body of each taxing unit, before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted. The tax rate consists of two components, each of which must be approved separately. The components are:

1. The rate that, if applied to the total taxable value, will impose the total amount published under Tax Code 26.04(e)(3)(c), less any amount of additional sales and use tax revenue that will be used to pay debt service; and

2. The rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the next year.

A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the annual tax rate shall be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget.

Tax Code 26.05(a)–(b)

The vote on the ordinance, resolution, or order setting a tax rate that exceeds the effective tax rate must be a record vote. A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the effective tax rate must be made in the following form: “I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the effective tax rate) percent increase in the tax rate.” Tax Code 26.05(b)

If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the taxing unit that exceeds the amount of taxes imposed for that purpose in the preceding year, the taxing unit must include in the ordinance, resolution, or order in type larger than the type used in any other portion of the document the following statement: “THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE.”; and if the tax rate exceeds the effective maintenance and operations rate, the following statement: “THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE EFFECTIVE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERA-
INTERNET POSTING

The taxing unit must include on the home page of any Internet website operated by the unit the following statement: "(Insert name of unit) ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE"; and if the tax rate exceeds the effective maintenance and operations rate, the following statement: "THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE EFFECTIVE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount).”  Tax Code 26.05(b)

HIGHER RATE

The governing body of a taxing unit may not adopt a tax rate that exceeds the lower of the rollback tax rate or the effective tax rate calculated as provided by Tax Code Chapter 26 until the governing body has held two public hearings on the proposed tax rate and has otherwise complied with Tax Code 26.06 and 26.065. The governing body of a taxing unit shall reduce a tax rate set by law or by vote of the electorate to the lower of the rollback tax rate or the effective tax rate and may not adopt a higher rate unless it first complies with Tax Code 26.06.  Tax Code 26.05(d)

PUBLIC HEARING

The public hearing required above may not be held before the seventh day after the notice of the public hearing is given. The second hearing may not be held earlier than the third day after the date of the first hearing. Each hearing must be on a weekday that is not a public holiday. Each hearing must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. At the hearings, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

The notice of a public hearing shall be in the size and form prescribed by Tax Code 26.06(b). The notice of a public hearing may be delivered by mail to each property owner in the unit, or may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear. If the taxing unit operates an Internet website, the notice must be posted on the website from the date the notice is first published until the second public hearing is concluded.

At the public hearings the governing body shall announce the date, time, and place of the meeting at which it will vote on the proposed
tax rate. After each hearing, the governing body shall give notice of the meeting at which it will vote on the proposed tax rate and the notice shall be in the size and form as prescribed by Tax Code 26.06(b)–(d).

Tax Code 26.06(a)–(d)

The meeting to vote on the tax increase may not be earlier than the third day or later than the 14th day after the date of the second public hearing. The meeting must be held inside the boundaries of the taxing unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. If the governing body does not adopt a tax rate that exceeds the lower of the rollback tax rate or the effective tax rate by the 14th day, it must give a new notice under Tax Code 26.06(d) before it may adopt a rate that exceeds the lower of the rollback tax rate or the effective tax rate. Tax Code 26.06(e)

In addition to the notice required under Tax Code 26.06, the governing body of a taxing unit required to hold a public hearing by Tax Code 26.05(d) shall give notice of the hearing in the manner provided by this section.

If the taxing unit owns, operates, or controls an Internet website, the unit shall post notice of the public hearing on the website continuously for at least seven days immediately before the public hearing on the proposed tax rate increase and at least seven days immediately before the date of the vote proposing the increase in the tax rate.

If the taxing unit has free access to a television channel, the taxing unit shall request that the station carry a 60-second notice of the public hearing at least five times a day between the hours of 7:00 a.m. and 9:00 p.m. for at least seven days immediately before the public hearing on the proposed tax rate increase and at least seven days immediately before the date of the vote proposing the increase in the tax rate.

The notice of the public hearing required by Tax Code 26.065(b) must contain a statement that is substantially the same as the statement required by Tax Code 26.06(b).

This section does not apply to a taxing unit if the taxing unit:

1. Is unable to comply with the requirements of this section because of the failure of an electronic or mechanical device, including a computer or server; or

2. Is unable to comply with the requirements of this section due to other circumstances beyond its control.
A person who owns taxable property is not entitled to an injunction restraining the collection of taxes by the taxing unit in which the property is taxable if the taxing unit has, in good faith, attempted to comply with the requirements of this section.

_Tax Code 26.065_

**ELECTION TO REPEAL INCREASE**

If the governing body of a taxing unit adopts a tax rate that exceeds the rollback tax rate, the qualified voters of the taxing unit by petition may require that an election be held to determine whether or not to reduce the tax rate adopted for the current year to the rollback tax rate.

Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether or not the petition is valid, as defined by Tax Code 26.07(b), and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

If the governing body finds that the petition is valid, or fails to act within the time allowed, it shall order that an election be held in the taxing unit on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Reducing the tax rate in (name of taxing unit) for the current year from (the rate adopted) to (the rollback tax rate calculated as provided by this chapter)."

If a majority of the qualified voters in the election favor the proposition, the tax rate for the current year is the rollback tax rate calculated as provided by Tax Code Chapter 26; otherwise, the tax rate for the current year is the one adopted by the governing body.

_Tax Code 26.07(a)–(e)_

**CALL FOR ELECTION**

An election ordered by an authority of a political subdivision shall be ordered not later than the 62nd day before election day. _Election Code 3.005(a)_

**EXCEPTION**

For an election to be held on:

1. The date of the general election for state and county officers (the November uniform election date of even-numbered years), the election shall be called not later than the 78th day before the election day; and
2. A uniform election date other than the date of the general election for state and county officers, the election shall be ordered not later than the 71st day before election day.

_Election Code 3.003, .005(c), 41.002 [See BBB]

**NOTICE TO COUNTY CLERK AND VOTER REGISTRAR**

The governing body of a political subdivision, including a college district, shall deliver notice of the election to the county clerk and voter registrar of each county in which the political subdivision is located not later than the 60th day before election day. _Election Code 4.008(a)_

**PROPOSITION**

In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the reduction of a tax shall specifically state the amount of tax rate reduction or the tax rate for which approval is sought. _Election Code 52.072(e)_

**TAX INFORMATION TO COUNTY**

The county assessor-collector for each county that maintains an Internet website shall post on the website of the county the following information for the most recent five tax years beginning with the 2012 tax year for each taxing unit all or part of the territory of which is located in the county: the adopted tax rate, the maintenance and operations rate, the debt rate, the effective tax rate, the effective maintenance and operations rate, and the rollback tax rate.

A taxing unit all or part of the territory of which is located in a county shall provide the information described above pertaining to the taxing unit to the county assessor-collector annually following the adoption of a tax rate by the taxing unit for the current tax year.

_Tax Code 26.16(a)–(b)_

**DISCOUNTS**

The governing body of a taxing unit may adopt one of the discounts described below, or both, in the manner required by law for official action by the body. _Tax Code 31.05(a)_

**OPTION 1**

A taxing unit may adopt the following discounts to apply regardless of the date of which it mails its tax bills:

1. Three percent if the tax is paid in October or earlier;
2. Two percent if the tax is paid in November; and
3. One percent if the tax is paid in December.

This discount does not apply to taxes that are calculated too late for it to be available.

_Tax Code 31.04(c), .05(b)_
A taxing unit may adopt the following discounts to apply when it mails its tax bills after September 30:

1. Three percent if the tax is paid before or during the next full calendar month following the date on which the tax bills were mailed;

2. Two percent if the tax is paid during the second full calendar month following the date on which the tax bills were mailed; and

3. One percent if the tax is paid during the third full calendar month following the date on which the tax bills were mailed.

*Tax Code 31.05(c)*

If a taxing unit adopts both discounts, the discounts described at Option 1 apply unless the tax bills for the unit are mailed after September 30, in which case only the discounts described at Option 2 apply. *Tax Code 31.05(a)*

The governing body of a taxing unit may rescind a discount adopted by the governing body in the manner required by law for official action by the body. The rescission of a discount takes effect in the tax year following the year in which the discount is rescinded. *Tax Code 31.05(d)*

The governing body of a taxing unit that collects its own taxes may provide, in a manner required by law for official action by the body, that a person who pays one-half of the unit’s taxes before December 1 may pay the remaining one-half of the taxes without penalty or interest before July 1 of the following year. The split-payment option, if adopted, applies to taxes for all units for which the adopting taxing unit collects taxes.

If one or more taxing units contract with the appraisal district for collection of taxes, the split-payment option does not apply to taxes collected by the district unless approved by resolution adopted by a majority of the governing bodies of the taxing units whose taxes the district collects and filed with the secretary of the appraisal district board of directors. After an appraisal district provides for the split-payment option, the option applies to all taxes collected by the district until revoked. It may be revoked in the same manner as provided for adoption.

This payment option does not apply to taxes that are calculated too late for it to be available.

*Tax Code 31.03, .04(c)*
IN CERTAIN COUNTIES

The governing body of a taxing unit located in a county having a population of not less than 285,000 and not more than 300,000 that borders a county having a population of 3.3 million or more and the Gulf of Mexico that has its taxes collected by another taxing unit that has adopted the split-payment option may provide that the split-payment option does not apply to the taxing unit's taxes collected by the other taxing unit. \textit{Tax Code 31.03(d)}

INSTALLMENT PAYMENTS CERTAIN HOMESTEADS

This section applies only to an individual who is qualified for an exemption under Tax Code 11.13(c), 11.132, or 11.22. Subject to Tax Code 31.031, an individual to whom this section applies may pay a taxing unit's taxes imposed on property that the person owns and occupies as a residence homestead in four equal installments without penalty or interest if the first installment is before the delinquency date and is accompanied by notice that the individual will pay the remaining taxes in three equal installments. The second installment must be paid before April 1, the third installment before June 1, and the fourth installment before August 1.

Notwithstanding the deadline prescribed above for payment of the first installment, an individual to whom this section applies may pay the taxes in four equal installments as provided above if the first installment is paid and the required notice is provided before March 1.

\textit{Tax Code 31.031(a)-(a-2)}

PARTIAL PAYMENTS

A tax collector may adopt a policy of accepting partial payments of property taxes. Acceptance of a partial payment does not affect the date that the tax becomes delinquent, but the penalties and interest provided by Tax Code 33.01 are incurred only by the portion of tax that remains unpaid on the date the tax becomes delinquent. A payment option provided by Tax Code 31.03 or a discount adopted under Tax Code 31.05 does not apply to any portion of a partial payment. \textit{Tax Code 31.07(c)}

DISASTER AREA

This section applies to:

1. Real property that:

   a. Is the residence homestead of the owner or consists of property that is used for residential purposes and that has fewer than five living units or is owned or leased by a business entity that had not more than the amount calculated as provided by Tax Code 31.032(h) in gross receipts in the entity’s most recent federal tax year or state franchise tax annual period, according to the applicable federal income tax return or state franchise tax report of the entity;
b. Is located in a disaster area; and  
c. Has been damaged as a direct result of the disaster;  

2. Tangible personal property that is owned or leased by a business entity described above at paragraph 1(a); and  

3. Taxes that are imposed on the property by a taxing unit before the first anniversary of the disaster.  

If, before the delinquency date, a person pays at least one-fourth of the taxing unit’s taxes imposed on property that the person owns, accompanied by notice to the taxing unit that the person will pay the remaining taxes in installments, the person may pay the remaining taxes without penalty or interest in three equal installments in accordance with Tax Code 31.032.  

Tax Code 31.032(a)–(b)  

In accordance with Tax Code 31.035, the governing body of a taxing unit may permit an individual who is at least 65 years of age to perform service to the taxing unit in lieu of paying property taxes imposed by the taxing unit on property owned by the individual and occupied as the individual’s residence homestead. While performing service for the taxing unit, the property owner is not an employee of the taxing unit and is not entitled to any benefit, including workers’ compensation coverage, that the taxing unit provides to an employee of the taxing unit. Tax Code 31.035(a), (f)  

PERFORMING SERVICES IN LIEU OF PAYING TAXES  

DELINQUENCY DATE  

Taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed, except as provided below:  

1. The taxing unit has provided for split payments, as described above. Tax Code 31.03  

2. The taxing unit’s tax bills are mailed after January 10. Tax Code 31.04(a)  

3. The taxing unit’s tax bills are mailed after September 30 and the taxing unit has adopted discounts provided by Tax Code 31.05(c). Tax Code 31.04(d)  

4. A person who owns any interest in the property is an eligible person serving on active duty in any branch of the U.S. armed forces during a war or national emergency declared in accordance with federal law as provided by Tax Code 31.02(b).  

Tax Code 31.02
### DELINQUENT TAX COLLECTION

The governing body of a taxing unit may contract with any competent attorney to represent the unit to enforce the collection of delinquent taxes. The attorney’s compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected. *Tax Code 6.30(c)*

### ADDITIONAL PENALTIES

A taxing unit or appraisal district may provide, in the manner required by law for official action by the body, that taxes that become delinquent on or after February 1 but not later than May 1 of that year and remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty to defray costs of collection, if the unit or district or another unit that collects taxes for the unit has contracted with a private attorney for the collection of delinquent taxes pursuant to Tax Code 6.30. The amount of the penalty may not exceed the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes. A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty. If a taxing unit or appraisal district provides for a penalty under this section, the collector shall deliver notice of the delinquency and of the penalty to the property owner at least 30 and not more than 60 days before July 1.

If the governing body of the taxing unit or appraisal district has imposed the penalty for collection costs described above and the taxing unit or appraisal district, or another taxing unit that collects taxes for the unit, has entered into a contract with an attorney under Tax Code 6.30 for collection of delinquent taxes, the governing body of the taxing unit or appraisal district, in a manner required by law for official action, may provide that taxes that become delinquent on or after June 1 under Tax Code 26.07(f), 26.15(e), 31.03, 31.031, 31.032, 31.04, or 42.42 incur an additional penalty to defray costs of collection. The amount of the penalty may not exceed the amount of compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes. A tax lien attaches to the property on which the tax is imposed to secure payment of the additional penalty. After the taxes become delinquent, the collector for a taxing unit or appraisal district that has provided for the additional penalty shall send a notice of the delinquency and the penalty to the property owner. The penalty is incurred on the first day of the first month that begins at least 21 days after the date the notice is sent.

*Tax Code 33.07–.08*

### HOMESTEAD EXEMPTIONS

An individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion, the amount of
which is fixed as provided by Tax Code 11.13(e), of the appraised value of the individual’s residence homestead if the exemption is adopted either:

1. By the governing body of the taxing unit; or

2. By a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of a taxing unit, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit.

The amount of an exemption adopted is $3,000 of the appraised value of the residence homestead unless a larger amount is specified by the governing body authorizing the exemption as described at item 1 or the petition for the election if the exemption is authorized as described a item 2.

Once authorized, an exemption adopted as provided in this section may be repealed or decreased or increased in amount by the governing body of the taxing unit or by the procedure authorized by item 2 above. In the case of a decrease, the amount of the exemption may not be reduced to less than $3,000 of the market value. 

Tax Code 11.13(d)–(f)

APPLICATION FOR EXEMPTION

To receive the residence homestead exemption, a person claiming the exemption must apply for the exemption. Tax Code 11.43(a)

HOMESTEADS RENDERED UNINHABITABLE OR UNUSABLE

If a qualified residential structure for which the owner receives a homestead exemption under Tax Code 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land in accordance with Tax Code 11.135 and 11.26(n)–(o) and 34 Administrative Code 9.416. Tax Code 11.135, .26(n)–(o); 34 TAC 9.416

DISABLED VETERANS AND THEIR FAMILIES

Pursuant to Tax Code 11.22, a disabled veteran and, if that person dies, the person’s unmarried surviving spouse or unmarried children, is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates in accordance with Tax Code 11.22(f). Tax Code 11.22
<table>
<thead>
<tr>
<th>DONATED RESIDENCE</th>
<th>A disabled veteran who has a disability rating of less than 100 percent is entitled to an exemption from taxation of a percentage of the appraised value of the disabled veteran’s residence homestead equal to the disabled veteran’s disability rating if the residence homestead was donated to the disabled veteran by a charitable organization at no cost to the disabled veteran. The surviving spouse of a disabled veteran who qualified for the exemption of a percentage of the appraised value of the disabled veteran’s residence homestead when the disabled veteran died is entitled to an exemption in accordance with Tax Code 11.132. <em>Tax Code 11.132(b)–(c)</em></th>
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<tr>
<td>TOTAL APPRAISED VALUE</td>
<td>A disabled veteran who receives from the U.S. Department of Veterans’ Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran’s residence homestead. The surviving spouse of a disabled veteran who qualified for an exemption under Tax Code 11.131(b) when the disabled veteran died is entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran’s exemption applied if the surviving spouse has not remarried since the death of the disabled veteran; and the property:</td>
</tr>
<tr>
<td>1.</td>
<td>Was the residence homestead of the surviving spouse when the disabled veteran died; and</td>
</tr>
<tr>
<td>2.</td>
<td>Remains the residence homestead of the surviving spouse.</td>
</tr>
<tr>
<td>If a surviving spouse who qualifies for an exemption under Tax Code 11.131(c) subsequently qualifies a different property as the surviving spouse’s residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified homestead in accordance with Tax Code 11.131(d). <em>Tax Code 11.131(b)–(d)</em></td>
<td></td>
</tr>
<tr>
<td>SURVIVING SPOUSE OF ARMED SERVICES MEMBER KILLED IN ACTION</td>
<td>The surviving spouse of a member of the armed services of the United States who is killed in action is entitled to an exemption from taxation of the total appraised value of the surviving spouse’s residence homestead in accordance with Tax Code 11.132. <em>Tax Code 11.132</em></td>
</tr>
<tr>
<td>ADDITIONAL EXEMPTIONS</td>
<td>A taxing unit may grant additional tax exemptions for historic sites, certain tax-exempt corporations, and charitable organizations, as provided by law. <em>Tax Code 11.184, .24; Tex. Const. Art. VIII, Sec. 1-b</em></td>
</tr>
</tbody>
</table>
If a taxing unit adopts, amends, or repeals an exemption that the unit by law has the option to adopt or not, the taxing unit shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action. \textit{Tax Code 6.08}

The governing body of a taxing unit that is located partly or entirely inside an area declared to be a disaster area by the governor may authorize reappraisal of all property damaged in the disaster at its market value immediately after the disaster. \textit{Tax Code 23.02(a)}

In accordance with Education Code 130.087, the governing body of a school district or a county may levy a junior college district branch campus maintenance tax at a rate not to exceed five cents on each $100 valuation of all taxable property in its jurisdiction.

The proceeds of the junior college district branch campus maintenance tax may be used only as follows:

1. To operate and maintain a branch campus and support its programs and services in the area of the political subdivision that levied the tax; and

2. Under an agreement by the applicable junior college district and the political subdivision levying the tax, to make lease payments to the political subdivision for facilities used exclusively by the branch campus that are owned by the political subdivision.

\textit{Education Code 130.087(a), (k)}

A local group of citizens interested in establishing a branch campus maintenance tax jurisdiction shall appoint a steering committee of at least seven citizens to provide leadership on behalf of the tax effort. The steering committee shall be composed of a cross-section of the population of the area, with representation from major civic groups and business and industry. A chair, co-chair, and secretary shall be appointed, along with any other officers who may be of assistance to the committee. Where the proposed branch campus maintenance tax jurisdiction is to be located in an independent school district, the district board of trustees may serve as the steering committee.

The steering committee shall:

1. Serve as liaison between the local community, the college district which would operate the branch campus, and the Coordinating Board;

2. Be responsible for conducting a feasibility study and a survey of the needs and potential of the area for a branch campus;
3. Provide information to the community, which at a minimum, describes the nature and purpose of a branch campus;

4. Summarize and evaluate the results of the feasibility study and survey and formulate conclusions for submission to the commissioner;

5. Prepare and circulate a petition to obtain not fewer than five percent of the qualified voters of the proposed branch maintenance tax jurisdiction; and

6. Present the appropriately signed petition as set out in 19 Administrative Code 8.30(a) to appropriate authorities for certification in compliance with Education Code 130.087.

19 TAC 8.93

APPLICATION PROCEDURES

The steering committee and the community college district that is planning the branch campus shall jointly file a letter of intent with the commissioner as soon as practical. The staff of the Coordinating Board shall offer advice and technical assistance to the steering committee under the direction of the commissioner on procedures and requirements. 19 TAC 8.94

LOCAL FEASIBILITY STUDY AND SURVEY

A local feasibility study consisting of a survey of need, potential student clientele, financial ability of the jurisdiction, and other pertinent data must be carried out under the auspices of the steering committee and the college which shall operate the branch campus. This feasibility study may be conducted either by the steering committee or by professionals.

The Coordinating Board staff shall offer advice and technical assistance to the steering committee under the direction of the commissioner. When the feasibility study is conducted by a professional individual or research organization, the steering committee shall fully advise the commissioner prior to initiating the study.

The feasibility study shall be made in consultation with the Coordinating Board staff and, upon completion, be submitted to the commissioner. The commissioner, in consultation with Coordinating Board staff, shall determine if further documentation or clarification is needed to supplement the information presented in the feasibility study.

The feasibility study shall be reviewed by the Coordinating Board, along with other information it deems appropriate, in determining whether the criteria as set out in 19 Administrative Code 8.89 (relating to Standards and Board Procedure for Approval) have been met.

19 TAC 8.95
PETITION

In counties with a population of more than 150,000, the steering committee shall be responsible for the circulation of a petition for authorization of an election to levy a public community college branch campus maintenance tax. At a minimum, the petition shall include the maintenance tax limits that shall appear on the ballot in the event an election is authorized. For counties with a population of 150,000 or less or an independent school district within a county with a population of 150,000 or less, no petition to propose an election for a branch campus maintenance tax is required to be submitted to the Coordinating Board.

The petition must incorporate all requirements as set forth in Election Code Chapter 277. After the petition has been circulated among the electorate and has been signed by not less than five percent of the qualified electors of the proposed branch maintenance tax jurisdiction, the petition shall be presented to the appropriate authorities who have the duty of verifying the legality of the petition.

Upon submission of a petition for an election to authorize a branch campus maintenance tax to a governing body of an independent school district or county, the governing body may propose an election and submit to the commissioner a feasibility study and survey. Upon approval by the commissioner, the governing body may enter an order for an election.

The governing body of a county with a population of 150,000 or less or an independent school district within a county with a population of 150,000 or less, on completion and approval of the feasibility study and survey by the commissioner, on its own motion and without presentation and approval of a certified petition to the Coordinating Board may order an election to authorize a branch campus maintenance tax. The governing body of an independent school district or county, notwithstanding 19 Administrative Code 8.98(b), shall present a certified petition to the commissioner who shall then present it to the Coordinating Board for approval or disapproval.

After the petition and any additional documentation or information are presented to the commissioner, a minimum of 45 days must elapse between the date on which the petition and supporting documents are received by the commissioner and the quarterly meeting of the Coordinating Board when the Coordinating Board will consider the petition.

19 TAC 8.96–.98

COORDINATING BOARD APPROVAL

Education Code 130.087 requires the Coordinating Board to determine that:
1. The branch campus maintenance tax rate does not exceed five cents on each $100 valuation of all taxable property;

2. A certified petition has been submitted by the appropriate authorities to the Coordinating Board; and

3. The proposed tax is feasible and desirable.

*Education Code 130.087(c); 19 TAC 8.99(a)*

**CRITERIA**

The Coordinating Board shall apply the following criteria when considering the appropriateness for the levying of a branch campus maintenance tax:

1. Demographic and economic characteristics of the jurisdiction seeking to establish the maintenance tax, such as:
   a. Population trends by age group;
   b. Economic development trends and projection; and
   c. Employment trends and projection (i.e., supply-demand data).

2. Potential student clientele, including:
   a. Educational levels by age group; and
   b. College-bound data (i.e., trends by age group).

3. The financial status of the proposed jurisdiction to be taxed and the state as a whole, including:
   a. Any projected growth or decline in the tax base; and
   b. Trends in state appropriations for community/junior colleges and other institutions of higher education.

4. Projected programs and services for the proposed jurisdiction based on economic and population trends.

5. Proximity and impediments to programs and services to existing institutions of higher education such as:
   a. Identification of institutions that could be affected by a new branch campus;
   b. Documentation of existing programs and services:
      (1) On the campuses of nearby institutions of higher education;
      (2) Available to citizens within a 50-mile radius of the proposed jurisdiction; and
Northeast Texas Community College
225500

APPROPRIATIONS AND REVENUE SOURCES
AD VALOREM TAXES

(3) Offered in the proposed jurisdiction by existing institutions of higher education.

c. Financial limitations on existing institutions of higher education inhibiting the offering of programs and services in the proposed jurisdiction;

d. Availability of facilities, libraries, and equipment for institutions to offer classes in the proposed jurisdiction;

e. Distance and traffic patterns to existing institutions of higher education;

f. Effect on enrollments of existing institutions of higher education; and

g. Effect on financing of existing institutions of higher education.

_Education Code 130.087(c); 19 TAC 8.99(b)_

PUBLIC HEARINGS

A Coordinating Board committee may conduct one or more public hearings in the proposed jurisdiction to:

1. Assess public sentiment regarding the levying of a branch campus maintenance tax;

2. Determine whether programs in the proposed jurisdiction would create unnecessary duplication or seriously harm programs in existing community/junior college districts or other institutions of higher education in the area; and

3. Assess the potential impact of the proposed jurisdiction on existing community/junior colleges or other institutions of higher education in the area and on the state of Texas.

_Education Code 130.087(c); 19 TAC 8.99(c)_

RECOMMENDATION

After the self-study has been reviewed and, if applicable, a site visit conducted by a Coordinating Board committee and Coordinating Board staff, a report from the Coordinating Board staff shall be submitted to the commissioner indicating whether the criteria as set out above have been met. The report shall include a recommendation for approval or denial of the request for approval to hold an election to levy a branch campus maintenance tax, but shall not be binding on the commissioner or the Coordinating Board.

Coordinating Board action on the request for approval to hold an election to levy a branch campus maintenance tax shall be taken at the next quarterly Coordinating Board meeting. In making its decision, the Coordinating Board shall consider the needs of the community/junior college, the needs of the community or communities
served by the branch campus maintenance tax jurisdiction, and the welfare of the state as a whole. A resolution shall be entered in the minutes of the board and conveyed in writing by the commissioner to the governing board of the community/junior college district.

*Education Code 130.087(c); 19 TAC 8.99(d), .100*

**ELECTION**

If the Coordinating Board approves the establishment of the branch campus maintenance tax, the governing body of the school district or county shall enter an order for an election to be held in the territory under its jurisdiction not less than 20 days nor more than 60 days after the date on which the order is entered to determine whether the branch campus maintenance tax may be levied. In the case of the joint school district or joint county elections, by mutual agreement of the governing bodies, the elections shall be held on the same date throughout the jurisdictions.

The president of the governing board of the school district or the county judge, as applicable, shall give notice of the election in the manner provided by law for notice by the county judge of general elections.

A majority of the electors in the proposed branch campus maintenance tax jurisdiction voting in the election shall determine the question of the creation of the branch campus maintenance tax jurisdiction submitted in the order.

*19 TAC 8.101–.102*

**RESUBMISSION OF APPLICATIONS**

Should an election to create a branch campus maintenance tax jurisdiction fail, a period of 12 months must elapse before resubmission of the proposition to the Coordinating Board. The Coordinating Board shall require a strong showing of need and unusual circumstances before approving resubmission before the 12 months have elapsed. *19 TAC 8.103*

**REINVESTMENT ZONES / TAX INCREMENT FINANCING**

The governing body of a county by order may designate a contiguous geographic area in the county and the governing body of a municipality by ordinance may designate a contiguous or noncontiguous geographic area that is in the corporate limits of the municipality, in the extraterritorial jurisdiction of the municipality, or in both to be a reinvestment zone to promote development or redevelopment of the area if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future, in accordance with the Tax Increment Financing Act, Tax Code Chapter 311. The designation of an area that is wholly or partly located in the extraterritorial jurisdiction of a municipality is not affected by a subsequent
annexation of real property in the reinvestment zone by the municipality. *Tax Code 311.003(a)*

Each taxing unit other than the municipality or county that designated the zone that levies taxes on real property in the zone may appoint one member of the reinvestment zone’s board of directors if the taxing unit has approved the payment of all or part of the tax increment produced by the college district into the tax increment fund for the zone. A unit may waive its right to appoint a director. *Tax Code 311.009(a)*

In a reinvestment zone designated by a municipality which is wholly or partially located in a county with a population of less than 1.8 million in which the principal municipality has a population of 1.1 million or more, except as provided by *Tax Code 311.0091(c)*, each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members of the reinvestment zone’s board of directors in proportion to the taxing unit’s pro rata share of the total anticipated tax increment to be deposited into the tax increment fund during the term of the zone. *Tax Code 311.0091(a)–(b)*

If the zone was designated upon petition of property owners under *Tax Code 311.005(a)(4)*, each taxing unit, other than the municipality or county that designated the zone, that levies taxes on real property in the zone may appoint one member or members, as provided by *Tax Code 311.009(b)*, of the reinvestment zone’s board of directors only if it has approved the payment of all or part of the tax increment produced by the taxing unit into the tax increment fund for the zone. *Tax Code 311.009(b), .0091(c)*

Each taxing unit that taxes real property located in a reinvestment zone shall provide for the collection of its taxes in the zone as for any other property taxed by the unit. Each taxing unit shall pay into the tax increment fund for the zone an amount specified by *Tax Code 311.013(b)*. Notwithstanding any termination of the reinvestment zone under *Tax Code 311.017(a)* and unless otherwise specified by an agreement between the taxing unit and the municipality or county that created the zone, a taxing unit shall make the payment not later than the 90th day after the later of the delinquency date for the unit’s property taxes or the date the municipality or county that created the zone submits to the taxing unit an invoice specifying the tax increment produced by the taxing unit and the amount the taxing unit is required to pay into the tax increment fund for the zone. A taxing unit is not required to pay into a tax increment fund the applicable portion of a tax increment attributable to delinquent taxes until those taxes are collected. *Tax Code 311.013*
A taxing unit is not required to pay into the tax increment fund any of its tax increment produced the property located in a reinvestment zone created designated by a petition of property owners under Tax Code 311.005(a) or in an area added to a reinvestment zone under Tax Code 311.007 unless the taxing unit enters into an agreement to do so with the governing body of the municipality or county that designated the zone. *Tax Code 311.013(f)*

Notwithstanding the designation of a later termination date under Tax Code 311.017(a), a taxing unit that taxes real property located in the reinvestment zone is not required to pay any of its tax increment into the tax increment fund for the zone after the termination date designated in the ordinance or order creating the zone unless the governing body of the taxing unit enters into an agreement to do so with the governing body of the municipality or county that created the zone. *Tax Code 311.017(a-1)*

The governing body of the municipality or county that designated a reinvestment zone by ordinance or resolution or by order or resolution, respectively, may extend the term of all or a portion of the zone after notice and hearing in the manner provided for the designation of the zone. A taxing unit is not required to participate in the zone or portion of the zone for the extended term unless the taxing unit enters into a written agreement to do so. *Tax Code 311.007(c)*

Money in the tax increment fund for a reinvestment zone may be transferred to the tax increment fund for an adjacent zone if:

1. The taxing units that participate in the zone from which the money is to be transferred participate in the adjacent zone and vice versa;
2. Each participating taxing unit has agreed to deposit the same portion of its tax increment in the fund for each zone;
3. Each participating taxing unit has agreed to the transfer; and
4. The holders of any tax increment bonds or notes issued for the zone from which the money is to be transferred have agreed to the transfer.

*Tax Code 311.014(f)*

A person is entitled to an exemption from taxation of the appraised value of that portion of the person’s property that consists of goods-in-transit.

In accordance with Tax Code 11.253, the governing body of a taxing unit, in a manner required for official action by the governing
body, may provide for the taxation of goods-in-transit exempt as set out above and not exempt under other law. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body must conduct a public hearing as required by Texas Constitution Article VIII, Section 1-n(d). The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption prescribed above will apply to that taxing unit.

Notwithstanding the above section or official action that was taken before October 1, 2011, to tax goods-in-transit under the above exemption, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes official action on or after October 1, 2011, in the manner required for official action by the board, to provide for the taxation of the goods-in-transit.

*Tax Code 11.253(b), (j)–(j-1)*

**EXCEPTION**

If the governing body of the taxing unit, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of a taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created. *Tax Code 11.253(j-2)*

**REINVESTMENT ZONES — TAX ABATEMENT ELIGIBILITY TO PARTICIPATE**

A taxing unit may not enter into tax abatement agreements unless the governing body has established guidelines and criteria governing tax abatement agreements by the taxing unit and a resolution stating that the taxing unit elects to be eligible to participate in tax abatement. The governing body of a taxing unit may not enter into a tax abatement agreement unless it finds that the terms of the agreement meets and the property subject to the agreement meet the applicable guidelines and criteria adopted by the governing body.

The adoption of guidelines and criteria by the governing body of a taxing unit does not:

1. Limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement.

2. Limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the gov-
erning body should consider a particular application or request for tax abatement.

3. Create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

*Tax Code 312.002*

**NOTICE OF PUBLIC HEARING ON DESIGNATION**

The governing body may not adopt an ordinance designating an area as a reinvestment zone until the governing body has held a public hearing on the designation and has found that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the municipality after the expiration of an agreement entered into under Tax Code 312.204 and 312.211, as applicable. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality and delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone. *Tax Code 312.201(d)*

**NOTICE OF TAX ABATEMENT AGREEMENTS**

Not later than the seventh day before the date on which a municipality enters into a tax abatement agreement under Tax Code 312.204 or 312.211, the governing body of the municipality or a designated officer or employee of the municipality shall deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the municipality intends to enter into the agreement. The notice must include a copy of the proposed agreement. Failure to deliver the notice does not affect the validity of the agreement. *Tax Code 312.2041(a), (c)*

**ENTERING TAX ABATEMENT AGREEMENTS**

If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Tax Code 312.204 or 312.211, the governing body of each other taxing unit eligible to enter tax abatement agreements under Tax Code 312.002 in which the property is located may execute a written agreement with the owner of the property. The agreement is not required to contain terms identical to those contained in the agreement with the municipality. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Tax Code 312.204, 312.205, and 312.211. *Tax Code 312.206(a)*

**DATE ISSUED:** 3/27/2015

**UPDATE:** 30

**CAI(LEGAL)-LJC**
NO DISCOUNTS OR SPLIT PAYMENTS
Discount or split payment options shall not be provided for the payment of property taxes in the College District. [See CAI(LEGAL)]

TAX ABATEMENT REQUESTS
Tax abatement requests shall be submitted to the Board prior to action by the requestor. Each case shall be considered on an individual basis. The Board may consider tax abatement requests under one of the following circumstances:

1. A business or industry is located in a specified enterprise zone. The business or industry must meet the criteria of the enterprise zone.

2. A new business or industry will provide new jobs and impact the tax base.

3. An existing business or industry will provide significant expansion or historical renovations and provide jobs and impact the tax base.

4. A business or industry has the potential of establishing a working relationship with the College District, including partnership arrangements, intern positions, jobs, and the like.
An appraisal district is established in each county. The appraisal district is responsible for appraising property in the appraisal district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the appraisal district. *Tax Code 6.01(a)–(b)*

In accordance with the Property Taxation Professional Certification Act, the following persons must register with the Texas Department of Licensing and Regulation:

1. The chief appraiser of an appraisal district, an appraisal supervisor or assistant, a property tax appraiser, an appraisal engineer, and any other person authorized to render judgment on, recommend, or certify an appraised value to the appraisal review board of an appraisal district;

2. A person who engages in appraisal of property for ad valorem tax purposes for an appraisal district or a taxing unit;

3. An assessor-collector other than a county assessor-collector;

4. A collector or another person designated by a governing body as the chief administrator of the taxing unit’s assessment functions, collection functions, or both; and

5. A person who performs assessment or collection functions for a taxing unit and is required to register by the chief administrator of the unit’s tax office.

*Occupations Code 1151.151*

The governing board of each junior college district annually shall cause the taxable property in its district to be assessed for ad valorem taxation and the ad valorem taxes in the district to be collected, in accordance with any one of the methods set forth in Education Code 130.121, and any method adopted shall remain in effect until changed by the board. Each governing board shall be authorized to have the taxable property in its district assessed and/or its taxes collected, in whole or in part, by the tax assessors and/or tax collectors, respectively, of any county, city, taxing district, or other governmental subdivision in which all or any part of the junior college district is located. *Education Code 130.121(a)–(b); Tax Code 6.22(c), .24(a)*

The assessor and collector for a taxing unit other than a county shall assess, collect, or assess and collect taxes as applicable, for the unit. *Tax Code 6.23(b)*

In addition to any other duties that may be required by law, the assessor for a taxing unit shall:
1. On receipt of the appraisal roll, determine the total appraised value, the total assessed value, and the total taxable value of property taxable by the taxing unit.  
   *Tax Code 26.04(a)*

2. Submit the appraisal roll for the taxing unit showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property to the taxing unit’s board of directors by August 1 or as soon thereafter as practicable.  
   *Tax Code 26.04(b)*

3. On receipt of notice of the tax rate for the current tax year, calculate the tax imposed on each property on the appraisal roll for the taxing unit.  
   *Tax Code 26.09(a)*

4. Prepare and mail a tax bill to each person in whose name the property is listed on the tax roll and to the person’s authorized agent by October 1 or as soon thereafter as practicable.  
   *Tax Code 31.01(a)*

**COLLECTOR**

In addition to any other duties that may be required by law, the collector of a taxing unit shall:

1. By August 1 or as soon thereafter as practicable, certify an estimate of the collection rate for the current year to a board.  
   If the collector certified an anticipated collection rate in the preceding year and the actual collection rate in that year exceeded the anticipated rate, the collector shall also certify the amount of debt taxes collected in excess of the anticipated amount in the preceding year.  
   *Tax Code 26.04(b)*

2. Each month, prepare and submit to a board a written report made under oath accounting for all taxes collected for the taxing unit during the preceding month.  
   Reports of collections made in the months of October through January are due on the 25th day of the month following the month that is the subject of the report.  
   Reports of collections made in all other months are due on the 15th day of the month following the month that is the subject of the report.  
   *Tax Code 31.10(a)*

3. Prepare and submit to the board an annual report made under oath accounting for all taxes collected or delinquent on property taxed by the taxing unit during the preceding 12-month period.  
   Annual reports are due on the 60th day following the last day of the fiscal year.  
   *Tax Code 31.10(b)*

4. At least monthly, deposit in a taxing unit’s depository all taxes collected for the taxing unit.  
   The board may require deposits to be made more frequently.  
   *Tax Code 31.10(c)*
If a taxing unit's taxes are collected by the collector or other officer or employee of another taxing unit or by the appraisal district, the entity that collects the taxes shall deposit the taxes in the taxing unit's depository daily, unless a board, by official action, provides that those deposits may be made less often than daily. \textit{Tax Code 31.10(d)}

5. Each year, prepare a current and cumulative delinquent tax roll for the taxing unit. \textit{Tax Code 33.03}

6. At least once each year, deliver a notice of delinquency to each person whose name appears on the delinquent tax roll, subject to the exceptions of Tax Code 33.04(a). \textit{Tax Code 33.04}

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\textbf{COLLECTOR'S BOND}
\end{flushleft}

A taxing unit whose taxes are collected by the collector for another taxing unit, by an officer or employee of another taxing unit or of an appraisal district, or by any other person other than the taxing unit’s own collector may require the collector, officer, employee, or other person to give bond conditioned on the faithful performance of duties. To be effective, the bond must be payable to and must be approved by and paid for by the governing body of the unit requiring bond in an amount determined by the governing body. The governing body may prescribe additional requirements for the bond.

The taxing unit shall pay the premium for a bond required pursuant to Tax Code 6.29 from its general fund or as provided by intergovernmental contract. \textit{Tax Code 6.29(b)–(c)}

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\textbf{LIMIT ON CONTRACTING}
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A taxing unit may not enter into a contract relating to the performance of an activity governed by Title 1 of the Tax Code (i.e., the Property Tax Code) with a member of the board of directors of an appraisal district in which the taxing unit participates or with a business entity in which a member of the appraisal board has a substantial interest.

For purposes of the above paragraph, an individual has a substantial interest in a business entity if:

1. The combined ownership of the individual and the individual’s spouse is at least ten percent of the voting stock or share of the business entity; or

2. The individual or the individual’s spouse is a partner, limited partner, or officer of the business entity.
“Business entity” means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

Tax Code 6.036(c)–(e)
The College District shall have its taxes assessed and collected by the Titus County Tax Assessor-Collector and the Morris and Camp County Appraisal District.
An appraisal district is established in each county. The appraisal district is responsible for appraising property in the appraisal district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the appraisal district. *Tex. Const. Art. VIII, § 18(b); Tax Code 6.01(a)–(b)*

The appraisal district is governed by a board of directors. Five directors are appointed by the taxing units that participate in the appraisal district as provided by Tax Code 6.03.

To be eligible to serve on the appraisal district board of directors, an individual other than a county assessor-collector serving as a nonvoting director must be a resident of the appraisal district and must have resided in the appraisal district for at least two years immediately preceding the date the individual takes office. An individual who is otherwise eligible to serve on the appraisal district board is not ineligible because of membership on the governing body of a taxing unit.

An employee of a taxing unit that participates in the appraisal district is not eligible to serve on the board of directors unless the individual is also a member of the governing body or an elected official of a taxing unit that also participates in the appraisal district.

*Tax Code 6.03(a)*

An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual:

1. Is related within the second degree by consanguinity or affinity, as determined under Government Code Chapter 573, Subchapter B [see DBE], to an individual who is engaged in the business of appraising property for compensation for use in proceedings under the Tax Code or of representing property owners for compensation in proceedings relating to property taxes in the appraisal district.

2. Owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless: the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Tax Code 33.02; or a suit to collect the delinquent taxes is deferred or abated under Tax Code 33.06 or 33.065.

3. Is related within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B [see DBE], to a member of the appraisal district's board of directors.
### INVOLVEMENT WITH PAST APPRAISALS

An individual is ineligible to serve on an appraisal district board of directors if the individual has engaged in the business of appraising property for compensation for use in proceedings under the Tax Code or of representing property owners for compensation in proceedings under the Tax Code in the appraisal district at any time during the preceding five years.

*Tax Code 6.035(a)–(a-1)*

### CONFLICT OF INTEREST

An individual is not eligible to be appointed to or to serve on the board of directors of an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with:

1. The appraisal district.
2. A taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity governed by the Tax Code.

An individual has a substantial interest in a business entity if the combined ownership of the individual and the individual’s spouse is at least ten percent of the voting stock or shares of the business entity or the individual or the individual’s spouse is a partner, limited partner, or officer of the business entity.

“Business entity” means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

*Tax Code 6.036*

### RECALL

The governing board of a taxing unit may call for the recall of a member of the board of directors of an appraisal district appointed under Tax Code 6.03 for whom the unit cast any of its votes in the appointment of the board of directors. The call must be in the form of a resolution, be filed with the chief appraiser of the appraisal district, and state that the unit is calling for a recall of the member.

*Tax Code 6.033(a)*

### TERMS

The taxing units participating in an appraisal district may provide that the terms of the appointed members of the appraisal district board of directors be staggered if the governing bodies of at least three-fourths of the taxing units that are entitled to vote on the appointment of appraisal district board members adopt resolutions providing for the staggered terms. *Tax Code 6.034(a)*

### APPRAISAL OFFICE

The board of directors of an appraisal district may contract with an appraisal office in another appraisal district or with a taxing unit in
the appraisal district to perform the duties of the appraisal office for the appraisal district. *Tax Code 6.05(b)*

**OWNERSHIP OR LEASE OF REAL PROPERTY**

The acquisition or conveyance of real property or the construction or renovation of a building or other improvement by an appraisal district must be approved by the governing bodies of three-fourths of the taxing units entitled to vote on the appointment of appraisal district board members.

The appraisal district board of directors by resolution may propose a property transaction or other action for which *Tax Code 6.051* requires approval of the taxing units. The chief appraiser shall notify the presiding officer of each governing body entitled to vote on the approval of the proposal by delivering a copy of the appraisal district board’s resolution, together with information showing the costs of other available alternatives to the proposal.

On or before the 30th day after the date the presiding officer receives notice of the proposal, the governing body of a taxing unit by resolution may approve or disapprove the proposal. If a governing body fails to act on or before that 30th day or fails to file its resolution with the chief appraiser on or before the tenth day after that 30th day, the proposal is treated as if it were disapproved by the governing body.

*Tax Code 6.051(b)*

**PROCEEDS**

The appraisal district’s board of directors may convey real property owned by the district, and the proceeds shall be credited to each taxing unit that participates in the appraisal district in proportion to the unit’s allocation of the appraisal district budget in the year in which the transaction occurs. *Tax Code 6.051(c)*

**BUDGET AND FINANCING**

Each year the chief appraiser shall prepare a proposed budget for the operations of the appraisal district for the following tax year as described in *Tax Code 6.06(a)* and shall submit copies to each taxing unit participating in the appraisal district and to the appraisal district board of directors before June 15. *Tax Code 6.06(a)*

**PUBLIC POSTING**

Each taxing unit entitled to vote on the appointment of appraisal district board members shall maintain a copy of the proposed budget for public inspection at its principal administrative office. *Tax Code 6.06(a)*

**BUDGET ADOPTION**

The appraisal district board of directors shall hold a public hearing to consider the budget. The secretary of the appraisal district board shall deliver to the presiding officer of the governing body of each taxing unit participating in the appraisal district not later than the tenth day before the date of the hearing a written notice of the date, time, and place fixed for the hearing. The appraisal district
board of directors shall complete its hearings, make any amendments to the proposed budget it desires, and finally approve a budget before September 15.

If governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district board members adopt resolutions disapproving a budget and file them with the secretary of the appraisal district board within 30 days after its adoption, the budget does not take effect, and the appraisal district board shall adopt a new budget within 30 days of the disapproval.

*Tax Code 6.06(b)*

**AMENDMENTS**

The appraisal district board may amend the approved budget at any time, but the secretary of the appraisal district board must deliver a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit participating in the appraisal district not later than the 30th day before the date the appraisal district board acts on it. *Tax Code 6.06(c)*

**ALLOCATION**

Each taxing unit participating in the appraisal district is allocated a portion of the amount of the budget and must pay its allocation as provided by Tax Code 6.06. *Tax Code 6.06(d)*

**CHANGES IN METHOD OF FINANCING**

The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the appraisal district after June 15 and before August 15, may prescribe a different method of allocating the costs of operating the appraisal district unless the governing body of any taxing unit that participates in the appraisal district adopts a resolution opposing the different method, and files it with the appraisal district board of directors before September 1. If an appraisal district board proposal is rejected, the appraisal district board shall notify, in writing, each taxing unit participating in the appraisal district before September 15.

The taxing units participating in an appraisal district may adopt a different method of allocating the costs of operating the appraisal district in accordance with Tax Code 6.061.

*Tax Code 6.061(a)–(b)*

**DISAPPROVAL OF APPRAISAL DISTRICT BOARD ACTIONS**

If the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district board members adopt resolutions disapproving an action, other than adoption of the budget, by the appraisal district board of directors and file them with the secretary of the appraisal district board within 15 days after the action is taken, the action is revoked effective the day after the day on which the required number of resolutions is filed. *Tax Code 6.10*
An appraisal review board is established for each appraisal district, unless the boards of directors of two or more adjoining appraisal districts provide for the operation of a consolidated appraisal review board by interlocal contract. Except as provided in Tax Code 6.41(d-1), members of the appraisal review board are appointed by resolution of a majority of the appraisal district board of directors. *Tax Code 6.41(a), (d), (g)*

The board of directors of an appraisal district, by resolution of a majority of the members, may provide for a number of auxiliary appraisal review board members that the appraisal district board considers appropriate to hear taxpayer protests before the appraisal review board and to assist the board in performing its duties. *Tax Code 6.414(a)*

Members of the appraisal review board, including auxiliary members, are subject to the eligibility restrictions described in Tax Code 6.412, including prohibitions on service by college district board members, officers, and employees, and Tax Code 6.413, including prohibitions on service by individuals who are parties to certain contracts. *Tax Code 6.41, .412-.413, .414(b)*

In a county with a population of 120,000 or more, the members of the appraisal review board are appointed by the local administrative district judge under Government Code, Chapter 74, Subchapter D in the county in which the appraisal district is established. *Tax Code 6.41(d-1)*

A taxing unit may not enter into a contract with a member of the appraisal review board established for an appraisal district in which the taxing unit participates or with a business entity in which a member of the appraisal review board has a substantial interest as defined in Tax Code 6.413. *Tax Code 6.413(c)*
All investments made by investing entities, including college districts, shall comply with the Public Funds Investment Act, Government Code Chapter 2256, Subchapter A, and all federal, state, and local statutes, rules, or regulations. Gov’t Code 2256.026

WRITTEN POLICIES

The governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds under its control. The investment policies must be written; primarily emphasize safety of principal and liquidity; and address investment diversification, yield, and maturity and the quality and capability of investment management; and include:

1. A list of the types of authorized investments in which the college district’s funds may be invested;
2. The maximum allowable stated maturity of any individual investment owned by the college district;
3. For pooled fund groups, the maximum dollar-weighted average maturity allowed based on the stated maturity date of the portfolio;
4. Methods to monitor the market price of investments acquired with public funds;
5. A requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis; and
6. Procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments consistent with the provisions of Government Code 2256.021 [see LOSS OF REQUIRED RATING, below].

Gov’t Code 2256.005(b)

ANNUAL REVIEW

The governing body of an investing entity shall review its investment policy and investment strategies not less than annually. The governing body shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies. Education Code 51.0032; Gov’t Code 2256.005(e)

INVESTMENT STRATEGIES

As an integral part of the investment policy, the governing body shall adopt a separate written investment strategy for each of the funds or group of funds under the its control. Each investment
strategy must describe the investment objectives for the particular fund using the following priorities in order of importance:

1. Understanding of the suitability of the investment to the financial requirements of the entity;
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;
5. Diversification of the investment portfolio; and
6. Yield.

Gov't Code 2256.005(d)

Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees as investment officer to be responsible for the investment of its funds consistent with the investment policy adopted by the entity. If the governing body of an investing entity has contracted with another investing entity to invest its funds, the investment officer of the other investing entity is considered to be the investment officer of the first investing entity for purposes of Government Code Chapter 2256. Authority granted to a person to invest an entity's funds is effective until rescinded by the investing entity, until the expiration of the officer's term or the termination of the person's employment by the investing entity, or if an investment management firm, until the expiration of the contract with the investing entity. In the administration of the duties of an investment officer, the person designated as investment officer shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs, but the governing body of the investing entity retains the ultimate responsibility as fiduciaries of the assets of the investing entity. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity. Gov't Code 2256.005(f)

Government Code Chapter 2256 does not prohibit an investing entity or investment officer from using the entity's employees or the services of a contractor of the entity to aid the investment officer in the execution of the officer's duties under Government Code Chapter 2256. Gov't Code 2256.003(c)

Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to
the person’s responsibilities under the Public Funds Investment Act within six months after taking office or assuming duties. The Coordinating Board shall provide the training under Government Code 2256.007. The training must include education in:

1. Investment controls;
2. Security risks;
3. Strategy risks;
4. Market risks;
5. Diversification of investment portfolio; and
6. Compliance with the Public Funds Investment Act.

The investment officer shall attend a training session not less than once each state fiscal biennium and may receive training from any independent source approved by the governing body of the state agency. The investment officer shall prepare a report on the Public Funds Investment Act and deliver it to the governing body of the state agency no later than the 180th day after the last day of each regular session of the legislature.

Gov't Code 2256.007

Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of his or her own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following objectives in order of priority:

1. Preservation and safety of principal;
2. Liquidity; and
3. Yield.

In determining whether an investment officer has exercised prudence with respect to an investment decision, the following shall be taken into consideration:

1. The investment of all funds, or funds under the entity’s control over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
2. Whether the investment decision was consistent with the written investment policy of the entity.

Gov't Code 2256.006

STANDARD OF CARE
An investment officer of an entity who has a personal business relationship with a business organization offering to engage in an investment transaction with the entity shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined by Government Code Chapter 573, to an individual seeking to sell an investment to the investment officer’s entity shall file a statement disclosing that relationship. A required statement must be filed with the Texas Ethics Commission and the governing body of the entity. For purposes of this policy, an investment officer has a personal business relationship with a business organization if:

1. The investment officer owns ten percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization;

2. Funds received by the investment officer from the business organization exceed ten percent of the investment officer’s gross income for the previous year; or

3. The investment officer has acquired from the business organization during the previous year investments with a book value of $2,500 or more for the personal account of the investment officer.

Gov’t Code 2256.005(i)

Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by the Public Funds Investment Act. This report shall be presented not less than quarterly to the governing body and its chief executive officer within a reasonable time after the end of the period. The report must:

1. Describe in detail the investment position of the entity on the date of the report;

2. Be prepared jointly by all investment officers of the entity;

3. Be signed by each investment officer of the entity;

4. Contain a summary statement for each pooled fund group (i.e., each internally created fund in which one or more accounts are combined for investing purposes) that states the:
   a. Beginning market value for the reporting period;
   b. Ending market value for the period; and
   c. Fully accrued interest for the reporting period;
5. State the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;

6. State the maturity date of each separately invested asset that has a maturity date;

7. State the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired; and

8. State the compliance of the investment portfolio of the state agency or local government as it relates to the agency’s or local government’s investment strategy expressed in the agency’s or local government’s investment policy and relevant provisions of Government Code Chapter 2256.

If the entity invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officer under Government Code Chapter 2256 shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.

*Education Code 51.0032; Gov’t Code 2256.023*

**SELECTION OF BROKER**

The governing body of an entity subject to Government Code Chapter 2256, Subchapter A or a designated investment committee, shall, at least annually, review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the entity. *Gov’t Code 2256.025*

**AUTHORIZED INVESTMENTS**

Each governing body of a local government or a state agency may purchase, sell, and invest its funds and funds under its control in investments described below, in compliance with investment policies approved by the governing body and according to the standard of care set out in this policy. Investments may be made directly by the governing body or by a nonprofit corporation acting on behalf of the governing body or an investment pool acting on behalf of two or more local governments, state agencies, or a combination of those entities.

In the exercise of these powers, the governing body of an investing entity may contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control. A contract made for such purpose may not be for a term longer than two years. A renewal or extension of the contract must
be made by the governing body of an investing entity by order, ordinance, or resolution.

Gov't Code 2256.003(a)–(b)

OBLIGATIONS

Except as provided below, the following are authorized investments:

1. Obligations, including letters of credit, of the United States or its agencies and instrumentalities;
2. Direct obligations of this state or its agencies and instrumentalities;
3. Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the state of Texas, the United States, or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation (FDIC) or by the explicit full faith and credit of the United States;
5. Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent; and
6. Bonds issued, assumed, or guaranteed by the state of Israel.

Gov't Code 2256.009(a)

The following investments are not authorized:

1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.
2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.
3. Collateralized mortgage obligations that have a stated final maturity date of greater than ten years.
4. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

**Gov't Code 2256.009(b)**

A certificate of deposit or share certificate is an authorized investment if the certificate is issued by a depository institution that has its main office or a branch office in Texas and is:

1. Guaranteed or insured by the FDIC or its successor or the National Credit Union Share Insurance Fund or its successor;

2. Secured by obligations described by Government Code 2256.009(a) above, including mortgage-backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates, but excluding those mortgage-backed securities of the nature described by Section 2256.009(b); or

3. Secured in any other manner and amount provided by law for the deposits of the investing entity.

In addition to the authority to invest funds in certificates of deposit under the previous section, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under Government Code 2256.010:

1. The funds are invested by an investing entity through a broker that has its main office or a branch office in this state and is selected from a list adopted by the investing entity as required by Government Code 2256.025, or a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;

2. The broker or depository institution selected by the investing entity arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;

3. The full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; and

4. The investing entity appoints the depository institution selected by the investing entity under paragraph a above or a clearing broker-dealer registered with the Securities and Exchange Commission and operating pursuant to Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. 240.15c3-3) as
custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity.

*Gov't Code 2256.010(a)–(b)*

The investment policies may provide that bids for certificates of deposit be solicited orally, in writing, electronically, or in any combination of those methods. *Gov't Code 2256.005(c)*

**REPURCHASE AGREEMENTS**

A fully collateralized repurchase agreement is an authorized investment under Government Code Chapter 2256 if the repurchase agreement:

1. Has a defined termination date;
2. Is secured by a combination of cash and obligations of the United States or its agencies and instrumentalities;
3. Requires the securities being purchased by the entity or cash held by the entity to be pledged to the entity, held in the entity’s name, and deposited with the entity or a third party selected and approved by the entity; and
4. Is placed through a primary government securities dealer, as defined by the Federal Reserve or a financial institution doing business in Texas.

Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. Money received by an entity under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

*Gov't Code 2256.011*

**SECURITIES LENDING PROGRAM**

A securities lending program is an authorized investment if:

1. The value of securities loaned must not be less than 100 percent collateralized, including accrued income, and the loan must allow for termination at any time;
2. The loan must be secured by:
   a. Pledged securities described by Government Code 2256.009;
   b. Pledged irrevocable letters of credit issued by a bank that is organized and existing under the laws of the United States or any other state and continuously rated by at
least one nationally recognized investment rating firm at not less than A or its equivalent; or

c. Cash invested in accordance with Government Code 2256.009, 2256.013, 2256.014, or 2256.016;

3. The terms of the loan require that the securities being held as collateral be pledged to the investing entity, held in the investing entity’s name, and deposited at the time the investment is made with the entity or with a third party selected by or approved by the investing entity; and

4. The loan must be placed through a primary government securities dealer, as defined by 5 C.F.R. 6801.102(f), as that regulation existed on September 1, 2003, or a financial institution doing business in this state.

An agreement to lend securities under a securities lending program must have a term of one year or less.

Gov’t Code 2256.0115

A banker’s acceptance is an authorized investment if the banker’s acceptance:

1. Has a stated maturity of 270 days or fewer from the date of issuance;

2. Will be, in accordance with its terms, liquidated in full at maturity;

3. Is eligible for collateral for borrowing from a Federal Reserve Bank, and

4. Is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

Gov’t Code 2256.012

Commercial paper is an authorized investment if the commercial paper:

1. Has a stated maturity of 270 days or fewer from the date of issuance; and

2. Is rated not less than A1-1 or P-1 or an equivalent rating by at least two nationally recognized credit rating agencies, or by one nationally recognized credit rating agency and is fully se-
cured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

Gov't Code 2256.013

MUTUAL FUNDS

A no-load money market mutual fund is an authorized investment if the mutual fund:

1. Is registered with and regulated by the Securities and Exchange Commission;

2. Provides the investing entity with a prospectus and other information required by the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

3. Has a dollar-weighted average stated maturity of 90 days or fewer; and

4. Includes in its investment objectives the maintenance of a stable net asset value of $1 for each share.

A no-load mutual fund is an authorized investment if the mutual fund:

1. Is registered with the Securities and Exchange Commission;

2. Has an average weighted maturity of less than two years;

3. Is invested exclusively in obligations approved by Government Code Chapter 2256, Subchapter A, regarding authorized investments (Public Funds Investment Act);

4. Is continuously rated as to investment quality by at least one nationally recognized investment rating firm of not less than AAA or its equivalent; and

5. Conforms to the requirements in Government Code 2256.016(b) and (c) relating to the eligibility of investment pools to receive and invest funds of investing entities.

Investments in no-load money market mutual funds shall be limited to the percentages authorized by Government Code 2256.014(c). In addition, the investing entity may not invest any portion of bond proceeds, reserves, and funds held for debt service, in no-load mutual funds.

Gov't Code 2256.014
A guaranteed investment contract is an authorized investment for bond proceeds if the guaranteed investment contract:

1. Has a defined termination date;
2. Is secured by obligations described by Government Code 2256.009(a)(1), excluding those obligations described by Section 2256.009(b), in an amount at least equal to the amount of bond proceeds invested under the contract; and
3. Is pledged to the entity and deposited with the entity or with a third party selected and approved by the entity.

Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested in a guaranteed investment contract with a term longer than five years from the date of issuance of the bonds.

To be eligible as an authorized investment:

1. The governing body of the entity must specifically authorize guaranteed investment contracts as eligible investments in the order, ordinance, or resolution authorizing the issuance of bonds;
2. The entity must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;
3. The entity must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;
4. The price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and
5. The provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

Gov't Code 2256.015

A public funds investment pool is an authorized investment if it meets the requirements of Government Code 2256.016 and 2256.019, including that the governing body of the entity authorizes the investment in the particular pool by rule, order, ordinance, or resolution, as appropriate. Gov't Code 2256.016, .019

An entity is not required to liquidate investments that were authorized investments at the time of purchase. Gov't Code 2256.017
**LOSS OF REQUIRED RATING**

An investment that requires a minimum rating under Government Code Chapter 2256 does not qualify as an authorized investment during the period the investment does not have the minimum rating. An entity shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating. *Gov't Code 2256.021*

**INVESTMENT OF DEBT SERVICE FUNDS**

A junior college district may enter into a contract with a term not to exceed seven years to purchase investments with the proceeds of taxes levied or to be levied by the district for the purpose of paying debt service on bonds issued by the district.

A contract under this section may provide for the purchase of investments at a stated yield or yields.

Before entering a contract under this section, a college district must solicit and receive bids from at least three separate providers. The district must accept the qualifying bid that provides for the highest yield investments over the term of the contract.

A contract under this section may provide only for the purchase of an obligation described by Government Code 2256.009(a)(1), other than an obligation described by Government Code 2256.009(b).

*Education Code 45.112*

**GENERAL DEPOSITS**

The governing board of each institution of higher education may invest the funds received as general deposits authorized by Education Code 54.502 in the manner provided under either Education Code 51.003 or 51.0031. *Education Code 54.502*

**SELLERS OF INVESTMENTS**

A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction with an investing entity or to an investment management firm under contract with an investing entity to invest or manage the entity’s investment portfolio. For purposes of Government Code 2256.005, a business organization includes investment pools and an investment management firm under contract with an investing entity to invest or manage the entity’s investment portfolio. The qualified representative of the business organization offering to engage in an investment transaction with an investing entity shall execute a written instrument in a form acceptable to the investing entity and the business organization substantially to the effect that the business organization has:

1. Received and thoroughly reviewed the investment policy of the entity; and
2. Acknowledged that the business organization has implemented reasonable procedures and controls in an effort to pre-
clude investment transactions conducted between the entity and the organization that are not authorized by the entity’s policy, except to the extent that this authorization is dependent on an analysis of the makeup of the entity’s entire portfolio or requires an interpretation of subjective investment standards.

The investment officer of an entity may not acquire or otherwise obtain any authorized investment described in the investment policy of the investing entity from a person who has not delivered to the entity the instrument described above.

Gov’t Code 2256.005(k)–(l)

DONATIONS Government Code Chapter 2256, Subchapter A does not apply to an investment donated to an investing entity for a particular purpose or under terms of use specified by the donor. Gov’t Code 2256.004(b)

ELECTRONIC FUNDS TRANSFER Any local government may use electronic means to transfer or invest all funds collected or controlled by the local government. Gov’t Code 2256.051

PRIVATE AUDITOR Notwithstanding any other law, a state agency shall employ a private auditor if authorized by the legislative audit committee either on the committee’s initiative or on request of the governing body of the agency. Gov’t Code 2256.052
INVESTMENT AUTHORITY

The Vice President for Administrative Services and the College District Controller shall serve as the investment officers of the College District and shall invest College District funds as directed by the Board and in accordance with the College District's written investment policy and generally accepted accounting procedures. All investment transactions except investment pool funds and mutual funds shall be executed on a delivery versus payment basis.

APPROVED INVESTMENT INSTRUMENTS

From those investments authorized by law and described further in CAK(LEGAL), the Board shall permit investment of College District funds in only the following investment types, consistent with the strategies and maturities defined in this policy:

1. Obligations of, or guaranteed by, governmental entities as permitted by Government Code 2256.009.
2. Certificates of deposit and share certificates as permitted by Government Code 2256.010.
5. Banker’s acceptances as permitted by Government Code 2256.012.
7. No-load money market mutual funds and no-load mutual funds as permitted by Government Code 2256.014.
8. A guaranteed investment contract as an investment vehicle for bond proceeds, provided it meets the criteria and eligibility requirements established by Government Code 2256.015.

SAFETY AND INVESTMENT MANAGEMENT

The main goal of the investment program is to ensure its safety and maximize financial returns within current market conditions in accordance with this policy. Investments shall be made in a manner that ensures the preservation of capital in the overall portfolio, and offsets during a 12-month period any market price losses resulting from interest-rate fluctuations by income received from the balance of the portfolio. No individual investment transaction shall be undertaken that jeopardizes the total capital position of the overall portfolio.

LIQUIDITY AND MATURITY

Any internally created pool fund group of the College District shall have a maximum dollar weighted maturity of 180 days. The maxi-
mum allowable stated maturity of any other individual investment owned by the College District shall not exceed one year from the time of purchase. The Board may specifically authorize a longer maturity for a given investment, within legal limits.

The College District’s investment portfolio shall have sufficient liquidity to meet anticipated cash flow requirements.

### DIVERSITY

The investment portfolio shall be diversified in terms of investment instruments, maturity scheduling, and financial institutions to reduce risk of loss resulting from overconcentration of assets in a specific class of investments, specific maturity, or specific issuer.

### MONITORING MARKET PRICES

The investment officers shall monitor the investment portfolio and shall keep the Board informed of significant declines in the market value of the College District’s investment portfolio. Information sources may include financial/investment publications and electronic media, available software for tracking investments, depository banks, commercial or investment banks, financial advisors, and representatives/advisors of investment pools or money market funds. Monitoring shall be done monthly or more often as economic conditions warrant by using appropriate reports, indices, or benchmarks for the type of investment.

### MONITORING RATING CHANGES

In accordance with Government Code 2256.005(b), the investment officers shall develop a procedure to monitor changes in investment ratings and to liquidate investments that do not maintain satisfactory ratings.

### FUNDS / STRATEGIES

Investments of the following fund categories shall be consistent with this policy and in accordance with the strategy defined below.

#### OPERATING FUNDS

Investment strategies for operating funds (including any commingled pools containing operating funds) shall have as their primary objectives safety, investment liquidity, and maturity sufficient to meet anticipated cash flow requirements.

#### AGENCY FUNDS

Investment strategies for agency funds shall have as their objectives safety, investment liquidity, and maturity sufficient to meet anticipated cash flow requirements.

#### DEBT SERVICE FUNDS

Investment strategies for debt service funds shall have as their objective sufficient investment liquidity to timely meet debt service payment obligations in accordance with provisions in the bond documents. Maturities longer than one year are authorized provided legal limits are not exceeded.

#### CAPITAL PROJECTS

Investment strategies for capital project funds shall have as their objective sufficient investment liquidity to timely meet capital project obligations. Maturities longer than one year are authorized provided legal limits are not exceeded.
SAFEKEEPING AND CUSTODY

The College District shall retain clearly marked receipts providing proof of the College District’s ownership. The College District may delegate, however, to an investment pool the authority to hold legal title as custodian of investments purchased with College District funds by the investment pool.

BROKERS / DEALERS

Prior to handling investments on behalf of the College District, brokers/dealers must submit required written documents in accordance with law. [See SELLERS OF INVESTMENTS, CAK(LEGAL)] Representatives of brokers/dealers shall be registered with the Texas State Securities Board and must have membership in the Securities Investor Protection Corporation (SIPC), and be in good standing with the Financial Industry Regulatory Authority (FINRA).

SOLICITING BIDS FOR CD’S

In order to get the best return on its investments, the College District may solicit bids for certificates of deposit in writing, by telephone, or electronically, or by a combination of these methods.

INTEREST RATE RISK

To reduce exposure to changes in interest rates that could adversely affect the value of investments, the College District shall use final and weighted-average-maturity limits and diversification.

The College District shall monitor interest rate risk using weighted average maturity and specific identification.

INTERNAL CONTROLS

A system of internal controls shall be established and documented in writing and must include specific procedures designating who has authority to withdraw funds. Also, they shall be designed to protect against losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the College District. Controls deemed most important shall include:

1. Separation of transaction authority from accounting and recordkeeping and electronic transfer of funds.
2. Avoidance of collusion.
3. Custodial safekeeping.
5. Written confirmation of telephone transactions.
6. Documentation of dealer questionnaires, quotations and bids, evaluations, transactions, and rationale.
7. Avoidance of bearer-form securities.

These controls shall be reviewed by the College District’s independent auditing firm.
Except for the types of land and interests described in Local Government Code 272.001 and 253.008, before land owned by a political subdivision of the state, including a college district, may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication. Local Gov’t Code 272.001(a)

The notice and bidding requirements set out above do not apply to the types of land and real property interests described below and owned by a political subdivision. The land and those interests described below may not be conveyed, sold, or exchanged for less than the fair market value of the land or interest unless the conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple. The fair market value is determined by an appraisal obtained by the political subdivision that owns the land or interest. The appraisal price is conclusive of the fair market value of the land or interest. This applies to:

1. Narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances;
2. Streets or alleys, owned outright or used by easement;
3. Land or a real property interest originally acquired for streets, rights-of-way, or easements that the political subdivision chooses to exchange for other land to be used for streets, rights-of-way, easements, or other public purposes, including transactions partly for cash;
4. Land that the political subdivision wants to have developed by contract with an independent foundation;
5. A real property interest conveyed to a governmental entity that has the power of eminent domain; or
6. The land or interests described by items 1 and 2 above may be sold to:
   a. Abutting property owners in the same subdivision if the land has been subdivided; or
b. Abutting property owners in proportion to their abutting
ownership, and the division between owners must be
made in an equitable manner.

This section does not require the governing body of a political sub-
division to accept any bid or offer or to complete a sale or ex-
change.

*Local Gov't Code 272.001(b)–(d)*

**OTHER HIGHER EDUCATION INSTITUTIONS**

A political subdivision may donate, exchange, convey, sell, or lease
land, improvements, or an interest in real property to an institution
of higher education to promote a public purpose related to higher
education. The political subdivision shall determine the terms and
conditions of the transaction so as to effectuate and maintain the
public purpose. A political subdivision may donate, exchange,
convey, sell, or lease the real property interest for less than its fair
market value and without complying with the notice and bidding
requirements set out above. *Local Gov't Code 272.001(j)*

**OTHER POLITICAL SUBDIVISIONS**

A political subdivision may donate or sell for less than fair market
value and without complying with the notice and bidding require-
ments set out above a designated parcel of land or an interest in
real property to another political subdivision if:

1. The land or interest will be used by the political subdivision to
   which it is donated or sold in carrying out a purpose that ben-
   efits the public interest of the donating or selling political sub-
   division;

2. The donation or sale of the land or interest is made under
terms that effect and maintain the public purpose for which
   the donation or sale is made; and

3. The title and right to possession of the land or interest revert
to the donating or selling political subdivision if the acquiring
   political subdivision ceases to use the land or interest in carry-
   ing out the public purpose.

*Local Gov't Code 272.001(l)*

**PROPERTY ACQUIRED THROUGH EMINENT DOMAIN**

A governmental entity may sell real property acquired through emi-
inent domain to the person who owned the real property interest
immediately before the governmental entity acquired the property
interest, or to the person's heirs, successors, or assigns, at the
price the entity paid at the time of acquisition if:

1. The public use for which the property was acquired through
   eminent domain is canceled;
2. No actual progress is made toward the public use during a prescribed period of time; or

3. The property is unnecessary for the public use.

Tex. Const. Art. III, § 52j

LEASE OF PROPERTY TO A GOVERNMENTAL ENTITY

To promote a public purpose of the political subdivision, a political subdivision may:

1. Lease property owned by the political subdivision to another political subdivision or an agency of the state or federal government; or

2. Make an agreement to provide office space in property owned by the political subdivision to the other political subdivision or agency.

When leasing property or providing office space in its property the political subdivision:

1. Shall determine the terms of the lease or agreement so as to promote and maintain the public purpose;

2. May provide for the lease of the property or provision of the office space at less than fair market value; and

3. Is not required to comply with any competitive purchasing procedure or any notice and publication requirement imposed by this chapter or other law.

Local Gov't Code 272.005

A public institution of higher education, including a college district, may make the institution’s classrooms not scheduled for use by the institution or by students, student organizations, or faculty of the college district between 5:00 p.m. and 10:00 p.m. on one or more weekdays or between 8:00 a.m. and 5:00 p.m. on one or more Saturdays available for that day to another public junior college on request for teaching courses in the core curriculum, as defined by Education Code 61.821, or continuing education courses.

A public institution of higher education that under Education Code 51.975 makes a classroom available to another institution shall continue to make that classroom, or a comparable classroom, available to the other institution for the duration of the semester or other academic term.

An institution of higher education may charge another institution for the use of a classroom under Education Code 51.975 at a rate not to exceed the rate permitted for this purpose as determined by the Coordinating Board. The Coordinating Board shall establish those
rates in an amount to reimburse the host institution for utility costs and other costs, such as maintenance and custodial services, based on the infrastructure formula funding that the host institution would receive if teaching a course in that space itself for that time.

_education code 51.975_

[See GH for funds paid by school districts in exchange for the use of an instructional or athletic facility]

**Note:** Regarding geospatial data products, see CRA.
The Board delegates to the College President the authority to negotiate the lease of College District property or office space to another political subdivision or an agency of a state or federal government in accordance with state law.

The College President shall report the terms of any new lease to the Board at the next regular Board meeting.
If an employer, including a college district, applies for money provided by the United States, an agency of the United States, or a privately sponsored source, and if any of the money will pay part or all of any employee's salary, the employer shall apply for any legally available funds to pay state contributions to the Teacher Retirement System as set out in Government Code 825.404 and 830.201.

When an employer receives funds to pay for state contributions for retirement and insurance pursuant to this application, the employer shall immediately send the money to the retirement system for deposit in the state contribution account. Monthly, employers shall:

1. Report to the system in a form prescribed by the system a certification of the total amount of salary paid from federal funds and private grants and the total amounts provided by the funds and grants for state contributions for the employees; and

2. Retain the name of each employee paid in whole or in part from a grant, the source of the grant, the amount of the employee's salary paid from the grant, the amount of money provided by the grant for state contributions for the employee, and any other information the retirement system determines is necessary to enforce this section.

The retirement system may require from employers reports of applications for money, require evidence that the applications include requests for funds available to pay state contributions to the retirement system for employees paid from the grant, and examine the records of any employer to determine compliance with this section and rules promulgated under it.

An employer who fails to comply with Government Code 825.406 may not, after the failure, apply for or spend any money from a federal or private grant. The attorney general shall bring a writ of mandamus against the employer to compel compliance.

A person commits an offense if the person is an administrator of an employer and knowingly fails to comply with Government Code 825.406.

Gov't Code 825.406; Insurance Code Ch. 1575, Subch. F

The governing body of a junior college district shall prepare an annual financial statement showing for each fund subject to the authority of the governing body during the fiscal year, the total receipts of the funds, itemized by source of revenue, including gifts or other general sources from which funds are derived. Local Gov't Code 140.005
PRIVATE DONATIONS

A state agency, including a college district, which is authorized by statute to accept money from a private donor or for which a private organization exists that is designed to further the purposes and duties of the agency shall adopt rules governing the relationship between:

1. The donor or organization; and
2. The agency and its employees.

Rules adopted under Government Code Chapter 2255 shall govern all aspects of conduct of the agency and its employees in the relationship, including:

1. Administration and investment of funds received by the organization for the benefit of the agency;
2. Use of an employee or property of the agency by the donor or organization;
3. Service by an officer or employee of the agency as an officer or director of the donor or organization; and
4. Monetary enrichment of an officer or employee of the agency by the donor or organization.

A rule adopted under Government Code Chapter 2255 may not conflict with or supersede a requirement of a statute regulating:

1. The conduct of an employee of a state agency; or
2. The procedures of a state agency.

Gov't Code 2255.001

CERTIFICATE OF RECOGNITION

On receipt of a written request from an institution of higher education, including a college district, providing the information necessary to establish the donor's eligibility for the certificate, the Coordinating Board shall prepare and provide at no cost to the institution a certificate of recognition designed by the Coordinating Board under this section recognizing the gifts or donations of a person who in any year contributes to the institution, for the support of any purposes, programs, or activities of the institution, one or more gifts or donations in a total amount of at least $10,000.

Education Code 61.0903

ENDOWMENT FUND

The board of trustees of a public junior college may establish an endowment fund outside the state treasury in a depository selected by the board of trustees.

The board of trustees may deposit local funds collected by the board to the credit of the endowment fund.
The board of trustees may accept gifts and grants from any public or private source for the endowment fund.

The endowment fund consists of local funds deposited to the credit of the endowment fund, gifts, grants, and income from investing the endowment fund.

The board of trustees may invest the endowment fund in securities, bonds, and other investments that the board considers prudent. In making investments under this section, the board shall exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence exercises in the management of the person’s own affairs.

The board may not spend any money deposited in the endowment fund as local funds, gifts, or grants but may spend any income from investing the endowment fund for the operation or maintenance of the junior college.

_Education Code 130.007_

Charitable trust funds donated to a public junior college for the restricted purpose of providing scholarships to needy students of the college are not general assets of the junior college. Accordingly, should the trustees of the junior college as trustee of these funds view the administrative costs associated with their retaining control of the funds as substantially impairing the accomplishment of the trust purpose, the trustees may petition a court of competent jurisdiction to modify the trust under Property Code 112.054, substituting as trustees over the funds the trustees of a nonprofit corporation created to provide support to the college, subject to the continuing restriction that the funds may only be used for their original purpose as scholarship funds. Because of the trust impressed upon these funds, the constitutional restrictions on the donation of public money or credit to a private entity would not be implicated by such a consolidation. However, any grant of general college funds by the trustees to the foundation would implicate such constitutional questions. _Atty. Gen. Op. JC-138 (1999)_
GIFTS

All bequests of property for the benefit of the College District shall vest the property in the Board. When not specified by the grantor, funds or other property donated, or the income therefrom, may be expended in any manner authorized by statute. The College President shall make recommendations to the Board regarding the acceptance of gifts and donations including donor, value, form, and restrictions. The authority to accept gifts shall be vested solely with the Board.

The Board shall not accept gifts that discriminate against any person on the grounds of sex, race, color, religion, national origin, or disability.

CERTIFICATE OF RECOGNITION

Any bequests, gifts, or donations made by a donor totaling at least $10,000 within the calendar year shall be acknowledged with a certificate of recognition.

SOLICITATION OF GIFTS

A College District student or employee shall not solicit any gift without the prior knowledge and approval of the College President or designee.

EXTERNALLY FUNDED GRANTS AND CONTRACTS

The College District may accept money from a federal, state, or local government agency or from a private entity as long as any restrictions as to the use of such money are in accord with the purposes of the College District as defined by policy and as enumerated by Section 130.003 of the Texas Education Code.

The acceptance of a grant creates a contract between the grantor and the College District under which monies paid over to the College District are charged with the obligation to be used for the purposes and are subject to the conditions of the grant. In the case of federal grants, the United States government maintains a reversionary interest in the unencumbered balances of such grants, including any funds improperly applied. Op. Comptroller Gen. of the United States, No. B–149441, December 6, 1962.

Upon acceptance of any external grant, the College District shall ensure that grant-funded activities do not replace general educational offerings in the more appropriate educational facilities or endanger the continuity of support for general institutional activities. Furthermore, the College District shall ensure that no dependency exists either on direct grant funding or on indirect cost allowances from grants in terms of the College District’s regular operating budget or any aspect of its regular educational program.

The College President shall be responsible for ensuring that the College District complies with all terms and conditions of grants to the College District, including all terms and conditions incorporated by reference.
The governing board of each junior college district shall be authorized to fix and collect rentals, rates, charges, and/or fees, including student union fees, from students and others for the occupancy, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or facilities, of any nature, in such amounts and in such manner as may be determined by such board. *Education Code 130.123(c)*
A governing body of a sponsor, including a college district, that determines that it is in the public interest and to the benefit of the sponsor's residents and the citizens of this state that a corporation be created to finance, refinance, or provide the costs of public facilities of the sponsor may by resolution stating that determination authorize and approve the creation of a corporation to act on behalf of the sponsor and approve proposed articles of incorporation for the corporation. *Local Gov't Code 303.023*

A sponsor may create one or more nonmember, nonstock, nonprofit public facility corporations to:

1. Issue bonds under Local Government Code Chapter 303 to purchase sponsor obligations;
2. Finance public facilities on behalf of the sponsor; or
3. Loan the proceeds of the obligations to other entities to accomplish the purposes of the sponsor.

*Local Gov't Code 303.021(a)*

A sponsor may use the corporation to acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in service public facilities or to issue bonds on the sponsor's behalf to finance the cost of the public facilities. *Local Gov't Code 303.021(b)*
The governing board of each institution of higher education, including each college district, may select one or more depositories as places of deposit for the funds enumerated in Education Code 51.002. Depositories shall be selected on the basis of competitive bids. If bids are taken orally, the bids shall be tabulated by the person taking the bids and made a part of the permanent records of the institution.

The funds shall either be deposited in the depository bank or banks or invested as authorized by Government Code Chapter 2256 (Public Funds Investment Act). Funds that are to be deposited in the depository bank or banks must be deposited within seven days from the date of receipt by the institution.

*Education Code 51.003(a)–(b)*

**FOREIGN BANK**

Notwithstanding any other provision of Education Code 51.003, the governing board of each institution may maintain unsecured deposits in a foreign bank as necessary to support the college district’s academic and research operations in the foreign country in which the bank is located, provided that no appropriated or tuition funds other than those collected from students enrolled in the affected programs are deposited. The foreign bank must:

1. Be licensed and supervised by a central bank;
2. Be audited annually by an accounting firm that follows international financial reporting standards; and
3. Maintain a capital-to-total assets ratio that is not less than the greater of four percent or the minimum tier 1 capital-to-total assets ratio required for depository institutions insured by the Federal Deposit Insurance Corporation.

*Education Code 51.003(f)*

**SURETY BONDS**

The governing board shall require adequate surety bonds or securities to be posted to secure the deposits and may require additional security at any time it deems the deposits inadequately secured. The depository banks selected may pledge their securities to protect the funds.

Any surety bond furnished under the provisions of this section shall be payable to the governor and his successors in office. Venue for a suit to recover an amount claimed by the state to be due on a surety bond is in Travis County.

**INTEREST**

A depository shall pay interest on the deposits at a rate agreed on by the depository and the governing board.

*Education Code 51.003(c)–(e)*
In accordance with written policy approved by the governing body of the public entity, including a college district, a public entity shall determine if an investment security is eligible to secure deposits of public funds covered by the Public Funds Collateral Act.

The written policy may include the security of the institution that obtains or holds an investment security, the substitution or release of an investment security, and the method by which an investment security used to secure a deposit of public funds is valued.

Gov't Code 2257.023

A deposit of public funds shall be secured by eligible securities to the extent and in the manner required by Government Code Chapter 2257. Gov't Code 2257.021
<table>
<thead>
<tr>
<th>ALLOWABLE COLLATERAL</th>
<th>Eligible securities for collateralization of deposits are those defined as “eligible securities” by the Public Funds Collateral Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>MONITORING COLLATERAL ADEQUACY</td>
<td>The College District shall require monthly reports with market values of pledged securities from all financial institutions with which the College District has collateralized deposits. The investment officers shall monitor adequacy of collateralization levels to verify market values and total collateral positions.</td>
</tr>
<tr>
<td>RELEASE OF PLEDGED SECURITIES</td>
<td>The College President or designee must approve in writing the release or substitution of any securities pledged to the College District that are being held by any organization.</td>
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</table>
The legislature shall have no power to authorize any political corporation or subdivision of the state, including a college district, to lend its credit or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in such corporation, association or company. *Tx. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. App.—Houston [1st Dist.] 1976, no writ)*

The legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the state, under any agreement or contract, made without authority of law. *Tx. Const. Art. III, Sec. 53; Harlingen Indep. Sch. Dist. v. C.H. Page and Bro., 48 S.W.2d 983 (Comm. App. 1932)*

If a contract for the acquisition, including lease, of real or personal property retains to the governing body of a local government, including a college district, the continuing right to terminate the contract at the expiration of each budget period of the local government during the term of the contract, is conditioned on a best efforts attempt by the governing body to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of the local government’s current revenue only. *Local Gov’t Code 271.903*

The operating budgets shall:

1. Include general revenue, local funds, and estimated institutional funds;
2. Include detail by department for current and prior year;
3. Include a summary by functional categories for current and prior year;
4. Include a summary of the instructional budget by college or school for the current and preceding year;
5. Include a summary by amount and method of finance for each listed informational item in the general appropriation act; and
6. Be prepared within the limits of revenue available.

*19 TAC 13.45*

The governing board of each institution, including each college district, shall approve on or before September 1 of each year an item-
ized budget covering the operation of the institution for the fiscal year beginning on September 1 of each year. *Education Code 51.0051, 19 TAC 13.42(a)*

Copies of each such budget, including current operating funds, shall be furnished to the Coordinating Board and Legislative Budget Board electronically and bound paper copies to the Governor's Budget and Planning Office and Legislative Reference Library by December 1 of each fiscal year. Additional copies shall be delivered to the Coordinating Board as required.

The governing board of the institution shall retain five copies of the budget for distribution to legislators or other state officials on request.

Copies shall be maintained in the institution's library. *Education Code 51.0051; 19 TAC 13.43*

**CERTAIN DONATIONS**

Funds, other property, or services may be donated to the Texas Military Department, a unit of the Texas National Guard, or a unit in the Texas State Guard by a political subdivision, including a college district. *Gov't Code 437.111(b), .252, .304(a)*
Budget planning shall be an integral part of overall program planning so that the budget effectively reflects the College District's programs and activities and provides the resources to implement them. In the planning process, general educational goals, specific program goals, and alternatives for achieving program goals shall be considered. Budget planning and evaluation are continuous processes and should be a part of each month’s activities.

The budget shall conform to Texas Higher Education Coordinating Board requirements and meet the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

The annual public meeting to discuss the proposed budget shall be conducted as follows:

1. The Board President shall request at the beginning of the meeting that all persons who desire to speak on the proposed budget sign up on the sheet provided.

2. Prior to the beginning of the meeting, the Board may establish time limits for speakers.

3. Speakers shall confine their remarks to the appropriation of funds as contained in the proposed budget.

4. No officer or employee of the College District shall be required to respond to questions from speakers at the meeting.

The adopted budget provides authority to expend funds for the purposes indicated and in accordance with state law, Board policy, and the College District's approved purchasing procedures. The expenditure of funds shall be under the direction of the College President or designee who shall ensure that funds are expended in accordance with the adopted budget.

Once the budget is adopted, the administration and control of budgeted expenditures become a cooperative effort among those involved in the budgeting process. Each director, dean, and vice president is responsible for monitoring the budgets of his or her respective units. The Vice President for Administrative Services shall be responsible to the College President for overall budget control. The College President shall be responsible to the Board for complete budget administration and is the only person authorized to recommend budget changes for Board action.

The Board may amend the budget at any time during the fiscal year. The College District shall develop procedures for budget amendments.
The comptroller and the Coordinating Board jointly shall prescribe and periodically update a uniform system of financial accounting and reporting for institutions of higher education, including definitions of the elements of cost on the basis of which appropriations shall be made and financial records shall be maintained. The Coordinating Board may require institutions to report additional financial information as the Coordinating Board considers necessary. The accounts of the institutions shall be maintained and audited in accordance with the approved reporting system. *Education Code 61.065(a)*

**COLLECTION OF DELINQUENT OBLIGATIONS**

If under the rules adopted by the attorney general under Government Code Chapter 2107, an institution of higher education, including a college district, is not required to refer a delinquent obligation for collection to the attorney general, the institution is not required to expend resources for further collection efforts if, considering the amount, security, likelihood of collection, expense, and available resources, the institution determines that further collection should not be actively pursued. *Education Code 51.010*

**ABANDONED PROPERTY**

Property Code Chapter 76 applies to a junior college only if the governing board of the junior college takes formal action to opt to handle property presumed abandoned under Property Code Chapter 72 or Chapter 75 and valued at $100 or less in accordance with Chapter 76. *Property Code 76.001*

**UNCLAIMED MONEY FUND**

This section applies to a credit balance of less than $25 held by an institution of higher education that is presumed abandoned under Property Code Chapter 72.

An institution of higher education may maintain an unclaimed money fund and transfer to that fund a credit balance to which this section applies. A deposit to the unclaimed money fund does not affect the ownership of the amount deposited. The institution shall:

1. Adopt procedures for owners to make and receive payments of claims against the fund; and
2. Maintain a database that permits members of the public to search for ownership of unclaimed funds.

The institution of higher education shall use the fund to pay the claims of persons establishing ownership of amounts transferred to the fund and shall hold and account for the unclaimed money fund as educational and general funds of the institution. If the fund balance is insufficient to pay a valid claim, the institution shall pay the claim from the college district's other educational and general funds.
Each fiscal year, after deducting funds sufficient to pay anticipated expenses of and claims against the unclaimed money fund, the institution shall use the balance of the fund as other educational and general funds of the institution.

If an institution of higher education maintains an unclaimed money fund under this section, Property Code Chapter 74 does not apply to a credit balance to which this section applies.

*Education Code 51.011; Property Code 74.001(c)*
The system of accounting for and reporting the financial activities of this state and its political subdivisions, including college districts:

1. Must be consistent with state financial laws;
2. May not misrepresent the nature, scope, or duration of the financial activities of the state or political subdivision; and

Gov't Code 2266.051

Compliance with the statutory accounting principles of Chapter 2266 by this state or a political subdivision satisfies any other law that requires accounting and reporting according to generally accepted accounting principles, including Government Code 403.013 or 2101.012. Gov't Code 2266.053

The college district shall submit its audited annual financial report to the Coordinating Board by January 1st of each year. 19 TAC 13.62

Each community college shall provide to the Coordinating Board financial data related to the operation of each community college using the specific content and format prescribed by the Coordinating Board. Each community college shall provide the report no later than January 1st of each year. General Appropriations Act, 82nd Leg., R.S., S.B. 1, III-203.

The governing body of a junior college district shall prepare an annual financial statement showing for each fund subject to the authority of the governing body during the fiscal year:

1. The total receipts of the fund, itemized by source of revenue, including taxes, assessments, service charges, grants of state money, gifts, or other general sources from which funds are derived;
2. The total disbursements of the fund, itemized by the nature of the expenditure; and
3. The balance in each fund at the close of the fiscal year.

Local Gov't Code 140.005

The presiding officer of a governing body shall submit the financial statement to a newspaper in each county in which the district or any part of the district is located. If a district is located in more than one county, the financial statement may be published in a newspaper that has general circulation in the district. If a newspaper is not...
published in the county, the financial statement may be published in a newspaper in an adjoining county.

A statement shall be published not later than two months after the date the fiscal year ends.

*Local Gov't Code 140.006*

**STATE EXPENDITURE DATABASE**

A state agency, including a college district, is required to cooperate with and provide information to the comptroller as necessary to implement and administer the state expenditure database. A state agency is not required to record information or expend resources for the purpose of computer programming or other additional actions necessary to make information reportable under this section. *Gov't Code 403.024(g)–(h)*

Each state agency that maintains a generally accessible Internet site or for which a generally accessible Internet site is maintained shall include a link on the agency’s Internet site to the state expenditure database. *Gov't Code 2054.126*

**PUBLICATION OF FINANCIAL TRANSACTIONS**

Each institution of higher education, including each college district, shall post on the institution’s Internet website a copy of the institution’s financial transactions to the extent necessary to provide, for each payment drawn from money appropriated from the state general revenue fund or received as student tuition or fee payments:

1. The amount of the payment;
2. The date of the payment;
3. A brief description of the purpose of the payment; and
4. The name of the payee.

An institution of higher education may comply by providing on the institution’s Internet website an easily noticeable direct link, the purpose of which is clearly identifiable, to an Internet website maintained by the comptroller that provides information concerning the institution that is similar to the information required above.

*Education Code 51.9741*
Financial summary reports shall be submitted to the Board at each regularly scheduled Board meeting outlining the progress of the budget to that date and reporting on the status of all College District funds and College District accounts. These financial and budget progress reports shall indicate all receipts and their sources for the period, expenditures and their classification for the period, and the various fund balances at the beginning and the end of the period.
An institution of higher education, including a college district, shall account for all personal property as defined by the comptroller under Government Code 403.272. At all times, the property records of an institution of higher education must accurately reflect the personal property possessed by the system or institution. Gov’t Code 403.2715(c)

PROPERTY MANAGER

The chief executive officer of each institution of higher education shall designate one or more property managers. The property manager shall maintain the records required and be the custodian of all personal property possessed by the institution. Gov’t Code 403.2715(d)

PROPERTY TRANSFER

A state agency, including a college district or other institution of higher education or a university system, may transfer any personal property of the state in its possession to another state agency with or without reimbursement between the agencies.

When personal property in the possession of one state agency is transferred to the possession of another state agency the transfers must be reported immediately to the comptroller by the transferor and the transferee on the forms prescribed.

Gov’t Code 403.2715(e), .278

STATE AUDITOR

The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the examination in the audit plan under Government Code 321.013, may periodically examine property records or inventory as necessary to determine if controls are adequate to safeguard state property. Gov’t Code 403.2715(e), .273(h)

LIABILITY

A person is pecuniarily liable for the loss sustained by the state if:

1. Agency property disappears, as a result of the failure of the head of an agency, property manager, or agency employee entrusted with the property to exercise reasonable care for its safekeeping;

2. Agency property deteriorates as a result of the failure of the head of an agency, property manager, or agency employee entrusted with the property to exercise reasonable care to maintain and service the property; or

3. Agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any state official or employee.
The liability may attach on a joint and several basis to more than one person in a particular instance.

*Gov't Code 403.2715(e), .275*

Except as provided by this policy, Government Code Chapter 403, Subchapter L does not apply to an institution of higher education. *Gov't Code 403.2715(b)*
The comptroller of public accounts and the Coordinating Board jointly shall prescribe and periodically update a uniform system of financial accounting and reporting for institutions of higher education, including definitions of the elements of cost on the basis of which appropriations shall be made and financial records shall be maintained. The Coordinating Board may require institutions to report additional financial information as the board considers necessary. The accounts of the institutions shall be maintained and audited in accordance with the approved reporting system. *Education Code 61.065*

**ANNUAL AUDIT REPORT**

A community college’s bound and audited financial statements, in the quantity indicated, should be forwarded to each agency listed in Section 2.1 of the Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges manual by January 1st of each year and submitted electronically to the Coordinating Board. The audit must be certified by the auditor but does not need to be approved by the governing board before submission.

Each published audited financial report should include the items listed, be arranged in the order as shown, in Section 2.2 of the manual.

*Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, http://www.thecb.state.tx.us/reports/PDF/5758.PDF*

**INFORMATION FROM STATE AUDITOR**

At a reasonable time in advance of an independent audit of a junior college district, the state auditor shall provide the presiding officer of the district’s governing body and the chief executive officer of the district with written information relating to the procedures for and scope of the audit. The state auditor shall include in the materials information describing:

1. How the appropriate representatives of the district may participate in the audit planning process; and
2. How the district may request information or assistance in preparing for the audit from the state auditor.

*Gov’t Code 321.0137(a)*

**PUBLICATION OF AUDIT PLAN AND AUDIT REPORT**

At the time and in the manner provided by the state auditor, a state agency, including a college district, shall post on the agency’s Internet website:

1. The agency’s internal audit plan approved as provided by Government Code 2102.008; and
2. The agency’s annual report required under Government Code 2102.009.

A state agency is not required to post information contained in the agency's internal audit plan or annual report if the information is excepted from public disclosure under Government Code Chapter 552 (Texas Public Information Act).

A state agency shall update the posting required under this section at the time and in the manner provided by the state auditor to include a detailed summary of the weaknesses, deficiencies, wrongdoings, or other concerns, if any, raised by the audit plan or annual report.

A state agency shall update the posting required under this section to include a summary of the action taken by the agency to address the concerns, if any, that are raised by the audit plan or annual report.

Gov't Code 2102.015
The Board shall select an auditing firm for a designated period through a Request for Proposal (RFP) or an engagement letter that outlines the Board’s expectations for the annual audit and ensures that the audit firm follows the guidelines and standards of the American Institute of Certified Public Accountants (AICPA) and the Governmental Accounting Standards Board (GASB).

The annual audit of all funds shall be made to determine:

1. The adequacy of the Board’s fiscal policies.
2. The execution of those fiscal policies.
3. A check and review of the College District’s fiscal actions for the preceding year.

A comprehensive audit report of all funds and accounts of the College District, including a management letter, shall be submitted annually to the Board. A copy of the independent audit shall become a part of the Board’s official minutes and shall be available to the public for inspection during regular office hours and on the College District’s Web site.

Periodically, the College President shall submit reports to the Board evaluating the work of the College District’s auditor.
The College District requires that each employee’s pay be deposited electronically into the employee’s account with a financial institution. The requirement for direct deposit shall apply to all employees, including students, full-time employees, and part-time/adjunct employees. An employee may access his or her monthly payroll stub online via the ADP link found on the College District’s internal portal.

Each College District employee shall be required to complete a direct deposit authorization form, available on the Human Resources page of the College District’s employee portal. New employees shall complete the form during the new employee orientation process.

An employee with a current authorized direct deposit who wishes to change financial institutions, account numbers, and/or account types shall submit a new direct deposit authorization form indicating the desired revisions. It is the employee’s responsibility to notify the payroll coordinator if the individual’s financial institution’s account information changes.
A college district shall make periodic deductions from its employees’ salaries or wages or shall reduce its employees’ salaries or wages in accordance with state law or salary reduction agreements executed between the college district and its employees:

**INCOME TAX**

1. Except as otherwise provided in 26 U.S.C. 3402, every employer making payment of wages shall deduct and withhold upon such wages an income tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury. 26 U.S.C. 3401–3402

**MEDICARE TAX**

2. The tax imposed by 26 U.S.C. 3101 shall be collected by the employer of the taxpayer hired after March 31, 1986, by deducting the amount of the tax from the wages as and when paid as required by law. 26 U.S.C. 3102(a), 3121(u)

**RETIREMENT**

3. Each payroll period, each employer shall deduct from the compensation of each member employed by the employer the amount required by Government Code 825.402. Gov’t Code 825.403

Each employer shall pick up the employees contribution required of each of its employees by Section 825.403. An employer shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of salary reduction and offset against a future salary increase.

"Employee" means a person who is employed, as determined by the Teacher Retirement System of Texas, on other than a temporary basis by an employer for at least one-half time at a regular rate of pay comparable to that of other persons employed in similar positions.


**OPTIONAL RETIREMENT PROGRAM**

A participant in the optional retirement program and the employing institution of higher education acting through its governing board shall execute an agreement under which the salary of the participant is reduced by the amount of the contribution required under Government Code 830.201 in accordance with Government Code 830.204. Gov’t Code 830.204

**CHILD SUPPORT PAYMENTS**

4. In accordance with Family Code Chapter 158, an employer shall begin to withhold income in accordance with an order or writ of withholding issued under Chapter 158 not later than the first pay period following the date on which the order or writ was delivered to the employer and shall continue to withhold income as required by the order or writ as long as the
obligor is employed by the employer. The employer shall remit the amount to be withheld to the person or office named in the order or writ on each pay date.

An employer may deduct an administrative fee of not more than $10 each month from the obligor’s disposable earnings in addition to the amount withheld as child support.

*Family Code 158.202–.204*

**SPOUSAL MAINTENANCE**

5. An order or writ of withholding issued under Family Code Chapter 8 for spousal maintenance and delivered to an employer doing business in this state is binding on the employer without regard to whether the obligor resides or works outside this state. In accordance with Chapter 8, the employer shall remit to the person or office named in the order or writ of withholding the amount of income withheld from an obligor on each pay date.

An employer may deduct an administrative fee of not more than $5 each month from the obligor’s disposable earnings in addition to the amount withheld as spousal maintenance.

*Family Code 8.107, .203–.204*

**SOCIAL SECURITY**

6. An employer shall deduct from the salaries of designated employees the amount of Social Security tax required by federal law. 26 U.S.C. 3101–3102, 3121(b)(7); 26 C.F.R. 31.3121(b)(7)-2

**FEDERAL EDUCATION LOANS**

7. An employer shall pay to the U.S. Secretary of Education, the Texas Guaranteed Student Loan Corporation, or any other guaranty agency for federal education loans as directed in the withholding order issued in an action to recover delinquent federal education loan payments. 20 U.S.C. 1095a(a)(6)

**PREPAID HIGHER EDUCATION TUITION PROGRAM**

8. An employee of a political subdivision of the state may make payments under a prepaid tuition contract by payroll deductions made by the appropriate officer of the political subdivision. *Education Code 54.626(c)*

**HIGHER EDUCATION SAVINGS PLAN**

9. An employee of a political subdivision of the state may make contributions to a higher education savings trust account established under the higher education savings plan by payroll deductions made by the appropriate officer of the state or political subdivision. *Education Code 54.708(a)*

**ENGLISH PROFICIENCY COURSE**

10. The cost of such English proficiency course offered under Education Code 51.917 will be deducted from said faculty member’s salary. *Education Code 51.917*
11. An employee of an institution of higher education may authorize in writing a reduction each pay period from the employee's salary or wage payment for the payment of any fee or charge for parking, a parking permit, a transportation pass, or other qualified transportation benefit authorized under Section 132(f), Internal Revenue Code of 1986, as amended. The institution shall determine which fee or charge an employee may pay under this provision. *Gov't Code 659.202(a)*

12. An employee of an institution of higher education may authorize in writing a deduction each pay period from the employee's salary or wage payment for the payment of any fee or charge for parking or for a club membership, recreational sports membership, or similar activity or program. The institution shall determine which fee or charge an employee may pay under this provision. *Gov't Code 659.202(b)*

13. If so designated by the employing institution of higher education, a salary deduction made by an employee under Government Code Chapter 659, Subchapter J shall be considered compensation under Government Code Chapter 659 and salary and wages and member compensation under Government Code Title 8.

If authorized by federal law, a salary deduction or salary reduction under Government Code Chapter 659, Subchapter J may be made on a pretax basis.

*Gov't Code 659.205*

14. For purposes of Government Code Chapter 659, Subchapter H a public junior college is considered to be an institution of higher education and employees of the public junior college are considered to be state employees during a state fiscal year unless an affirmative decision not to participate in the state employee charitable contribution program is made by the governing board of the public junior college not later than April 1 of the preceding state fiscal year. An employee of a public junior college that elects not to participate in the state employee charitable contribution program may authorize a deduction from the employee's salary or wage payment for a charitable contribution as provided by the policy of the governing board of the public junior college. *Gov't Code 659.1311*

15. An employee of an institution of higher education may authorize a deduction each pay period from the employee's salary or wage payment for a contribution to an institution of higher education or a charitable contribution to a nonprofit organization.
the purpose of which is to support the programs of an institution of higher education.

To be eligible to receive charitable contributions, a nonprofit organization must comply with the rules adopted under Government Code 2255.001 by the institution of higher education the organization supports. An institution of higher education shall establish procedures to enable an employee of the institution to authorize a deduction under this section.

_Education Code 51.947_

**ASSIGNMENTS**

16. An employee's assignment, pledge, or transfer, as security for indebtedness, of any interest in or part of the employee's salary or wages then due or that may become due under an existing contract of employment is enforceable only if, before or at the time of execution, delivery, or acceptance of an assignment, pledge, or transfer, written approval is obtained in accordance with the policy of the employing institution; and to the extent that the indebtedness it secures is a valid and enforceable obligation.

An institution of higher education shall honor an assignment, pledge, or transfer fulfilling the conditions of Education Code 51.934(b) without incurring any liability to the employee executing the assignment, pledge, or transfer. Payment to any assignee, pledgee, or transferee in accordance with the terms of the instrument is payment to or for the account of the assignor, pledgor, or transferor. An assignment, pledge, or transfer is enforceable only to the extent of salary due or that may become due during continuation of the assignor's employment as an employee of the institution.


**DEFERRED COMPENSATION**

17. The governing board of a state-supported institution of higher education, including a college district, may reduce the salary of participants in approved deferred compensation and annuity programs when authorized by the participants and shall apply the amount of the reduction to the purchase of annuity contracts or to contributions to any type of investment authorized in Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments, the exclusive control of which will vest in the participants and develop a system to allow or require participants to electronically authorize participation under Vernon's Civil Statutes Article 6228a-5, purchases of annuity contracts, and contributions to investments. _Art. 6228a-5, § 2(b), V.A.T.S.; Gov't Code Chapter 609_ [See CKC]
18. An employer shall withhold from an employee’s salary the amount designated by an employee for participation in the college district’s cafeteria plan authorized under 26 U.S.C. 125. 26 U.S.C. 125

The governing board of an institution of higher education, including a college district, that is not a component institution of a university system may authorize employees of the institution to elect a payroll deduction for any purpose that the governing board determines serves a public purpose and benefits employees. The board may adopt policies and procedures governing payroll deductions under this section. A payroll deduction under this section is in addition to payroll deductions authorized by other law.

The payroll deduction must be at the written request of the employee, and the request must state the amount to be deducted and the entity to which the deducted amount is to be transferred. A payroll deduction is in effect until revoked in writing by the employee, but the policies and procedures of the institution of higher education may provide for enrollment periods.

An institution of higher education may collect an administrative fee to cover the costs of making a deduction.

This section does not authorize a payroll deduction for dues or membership fees payable to a labor union or employees’ association.

Education Code 51.9611

An employer, including a college district, who is required by state or federal law to deduct from the current wages of an employee an amount garnished under a withholding order may deduct monthly an administrative fee from the employee’s disposable earnings in addition to the amount required to be withheld under the withholding order.

The administrative fee may not exceed the lesser of:

1. The actual administrative cost incurred by the employer in complying with the withholding order; or
2. $10.

Civ. Prac. & Rem. Code 63.006(a)–(b)
By April 1 of each year the Board shall decide whether to participate in the state employee charitable contribution (SECC) program for the following fiscal year.

In addition to legally required deductions, the Board has determined it to serve a public purpose and benefit employees to permit voluntary deductions for:

1. Approved insurance programs;
2. Annuities/deferred compensation programs;
3. College District cafeteria plan options authorized by the Internal Revenue Service;
4. Area credit unions as specified in administrative procedures; and
5. Charitable organizations as approved by the Board. If the Board participates in the SECC program, an employee may choose not to participate in the program and may authorize a deduction(s) for charitable organizations approved by the Board.

To qualify for a deduction listed above, the employee must submit a request in writing, specifying the category of the deduction, the amount to be deducted, and the entity to which the deducted amount is to be transferred, in accordance with administrative procedures. The procedures must address:

1. Enrollment periods, if any; and
2. Any administrative fee to cover the cost of making a deduction.

Deductions shall be made for unauthorized leave or leave taken in excess of earned leave. [See DEC]
All Board members, employees, vendors, contractors, consultants, volunteers, and any other parties who are involved in the College District’s financial transactions shall act with integrity and diligence in duties involving the College District’s fiscal resources.

Note: See the following policies and/or administrative regulations regarding conflicts of interest, ethics, and financial oversight:

- Code of ethics:
  - for Board members—BBF
  - for employees—DH
- Financial conflicts of interest:
  - for public officials—BBFA
  - for all employees—DBD
- Systems for monitoring the College District’s investment program: CAK
- Budget planning and evaluation: CC
- Compliance with accounting regulations: CDC
- Criminal history record information for employees: DC
- Disciplinary action for fraud by employees: DCC and DM series

The College District prohibits fraud and financial impropriety, as defined below, in the actions of its Board members, employees, vendors, contractors, consultants, volunteers, and others seeking or maintaining a business relationship with the College District.

Fraud and financial impropriety shall include but not be limited to:

1. Forgery or unauthorized alteration of any document or account belonging to the College District.
2. Forgery or unauthorized alteration of a check, bank draft, or any other financial document.
3. Misappropriation of funds, securities, supplies, or other College District assets, including employee time.
4. Impropriety in the handling of money or reporting of College District financial transactions.
5. Profiteering as a result of insider knowledge of College District information or activities.
6. Unauthorized disclosure of confidential or proprietary information to outside parties.

7. Unauthorized disclosure of investment activities engaged in or contemplated by the College District.

8. Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to the College District, except as otherwise permitted by law or College District policy. [See DBD]

9. Inappropriately destroying, removing, or using records, furniture, fixtures, or equipment.

10. Failing to provide financial records required by state or local entities.

11. Failure to disclose conflicts of interest as required by law or College District policy.

12. Any other dishonest act regarding the finances of the College District.

FINANCIAL CONTROLS AND OVERSIGHT

Each employee who supervises or prepares College District financial reports or transactions shall set an example of honest and ethical behavior and shall actively monitor his or her area of responsibility for fraud and financial impropriety.

FRAUD PREVENTION

The College President or designee shall maintain a system of internal controls to deter and monitor for fraud or financial impropriety in the College District.

REPORTS

Any person who suspects fraud or financial impropriety in the College District shall report the suspicions immediately to any supervisor, the College President or designee, the Board President, or local law enforcement.

Reports of suspected fraud or financial impropriety shall be treated as confidential to the extent permitted by law. Limited disclosure may be necessary to complete a full investigation or to comply with law. All employees involved in an investigation shall be advised to keep information about the investigation confidential.

PROTECTION FROM RETALIATION

Neither the Board nor any College District employee shall unlawfully retaliate against a person who in good faith reports perceived fraud or financial impropriety. [See DG]

FRAUD INVESTIGATIONS

In coordination with legal counsel and other internal or external departments or agencies, as appropriate, the College President, Board President, or a designee shall promptly investigate reports of potential fraud or financial impropriety.
RESPONSE

If an investigation substantiates a report of fraud or financial impropriety, the College President or designee shall promptly inform the Board of the report, the investigation, and any responsive action taken or recommended by the administration.

If an employee is found to have committed fraud or financial impropriety, the College President or designee shall take or recommend appropriate disciplinary action, which may include termination of employment. If a contractor or vendor is found to have committed fraud or financial impropriety, the College District shall take appropriate action, which may include cancellation of the College District’s relationship with the contractor or vendor.

When circumstances warrant, the Board, College President, or designee may refer matters to appropriate law enforcement or regulatory authorities. In cases involving monetary loss to the College District, the College District may seek to recover lost or misappropriated funds.

The final disposition of the matter and any decision to file a criminal complaint or to refer the matter to the appropriate law enforcement or regulatory agency for independent investigation shall be made in consultation with legal counsel.

ANALYSIS OF FRAUD

After any investigation substantiates a report of fraud or financial impropriety, the College President or designee shall analyze conditions or factors that may have contributed to the fraudulent or improper activity. The College President or designee shall ensure that appropriate administrative procedures are developed and implemented to prevent future misconduct. These measures shall be presented to the Board for review.
The College President, Vice President for Administrative Services, and any other employee having custody of College District funds shall be bonded.
The provisions of Education Code Chapter 44, Subchapter B, relating to the purchase of goods and services under contract by a school district apply to the purchase of goods and services under contract by a junior college district.

To the extent of any conflict, the provisions of Chapter 44, Subchapter B prevail over any other law relating to the purchase of goods and services by a junior college district.

*Education Code 44.0311(a), 130.010*

Education Code Chapter 44, Subchapter B does not apply to a purchase, acquisition, or license of library goods and services for a library operated as a part of a junior college district. "Library goods and services" has the meaning assigned by Education Code 130.0101(a). [See EDAA] *Education Code 44.0311(c)*

The board of trustees of the district may adopt rules and procedures for the acquisition of goods and services. *Education Code 44.031(d)*

The board of trustees of the district may, as appropriate, delegate its authority under Education Code Chapter 44, Subchapter B regarding an action authorized or required by Chapter 44, Subchapter B to be taken by a college district to a designated person, representative, or committee.

The board may not delegate the authority to act regarding an action authorized or required by Education Code Chapter 44, Subchapter B to be taken by the board.

*Education Code 44.0312(a)–(b)*

Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a college district, the board of trustees of the district may delegate to the college chief executive officer or designated person the authority to contract for the replacement, construction, or repair of college district equipment or facilities under Education Code Chapter 44, Subchapter B if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff. *Education Code 44.0312(c)*

Except as provided by Government Code 771.003, an agency, including a junior college district, may agree or contract with another agency for the provision of necessary and authorized services and resources. *Gov't Code 771.003(a)*

Except as provided by Education Code Chapter 44, Subchapter B, all college district contracts for the purchase of goods and services,
except contracts for the purchase of produce or vehicle fuel, valued at $50,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for the district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals, for services other than construction services.
4. An interlocal contract.
5. The reverse auction procedure as defined by Government Code 2155.062(d).
6. The formation of a political subdivision corporation under Local Government Code 304.001.

*Education Code 44.031(a)*

**Note:** Regarding construction of school facilities, see CM generally; CMA for competitive bidding; CMB for competitive sealed proposals; CMC and CMD for contracts using a construction manager; CME for design/build contracts; and CMF for job-order contracts for minor repairs/alterations.

### FACTORS

Except as provided by Education Code Chapter 44, Subchapter B, in determining to whom to award a contract, the district shall consider:

1. The purchase price.
2. The reputation of the vendor and of the vendor’s goods and services.
3. The quality of the vendor’s goods or services.
4. The extent to which the goods or services meet the district’s needs.
5. The vendor’s past relationship with the district.
6. The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses.
7. The total long-term cost to the district to acquire the goods or services.

8. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor’s ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.

9. Any other relevant factor specifically listed in the request for bids or proposals.

_Education Code 44.031(b)_

In awarding a contract by competitive sealed bid under Education Code 44.031, a college district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder’s principal place of business in the manner provided by Local Government Code 271.9051. This provision does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. 153. _Education Code 44.031(b-1)_

The factors listed above are the only criteria that may be considered by the college district in its decision to award a contract. The college district may apply one, some, or all of the criteria, but it may not completely ignore them. _R.G.V. Vending v. Weslaco Indep. Sch. Dist._, 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.).

_A governmental entity, including a college district, may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located, or the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.

This requirement does not apply to a contract involving federal funds. A governmental entity shall use the information published by the comptroller in the Texas Register in evaluating the bids of a nonresident bidder._

_Gov’t Code 2252.001–.004_
CONTRACT WITH PERSON INDEBTED TO COLLEGE DISTRICT

The board of trustees of a college district by resolution may establish regulations permitting the college district to refuse to enter into a contract or other transaction with a person indebted to the college district. It is not a violation of Education Code Chapter 44, Subchapter B for a college district, under the adopted regulations, to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the college district.

The term “person” includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that seeks to enter into a contract or other transaction with the college district requiring approval by the board.

*Education Code 44.044*

MAJOR CONTRACT REQUIREMENTS

Before a state agency, including a college district, may award a major contract, a contract that has a value of at least $1 million, for the purchase of goods or services to a business entity, each of the state agency’s purchasing personnel working on the contract must disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds $25,000, or other owner of the business entity who is within a degree described by Government Code 573.002, the third degree by consanguinity or within the second degree by affinity of the purchasing employee. The state auditor shall develop a form for use in reporting a specified relationship.

"Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding contract terms or conditions on a major contract, who is to be awarded a major contract, preparation of a solicitation for a major contract, or evaluation of a bid or proposal.

*Gov't Code 2262.001(4), .004*

NOTICE PUBLICATION

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district’s central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district’s central administrative office is located. In a two-step procurement process, the time and place where the second-step bids,
proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

**ELECTRONIC BIDS OR PROPOSALS**

A college district may receive bids or proposals under Education Code Chapter 44 through electronic transmission if the board of trustees of the college district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

An electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.

*Education Code 44.0313*

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent.

The college district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031.

*Education Code 44.031(f)*

A governmental entity, including a college district, may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price.

"Professional services" means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing; or

2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse.

*Gov’t Code 2254.002, .003(a)* [See also CM]
An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

**EMERGENCY DAMAGE OR DESTRUCTION**

If school equipment, a school facility, or a portion of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board of trustees determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

**COMPUTERS AND COMPUTER-RELATED EQUIPMENT**

A college district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts entered into in accordance with Government Code Chapter 2054 or 2157. *Education Code 44.031(i)*

**PURCHASING THROUGH DIR**

Each institution of higher education, including each college district, that solicits bids or proposals from the public for the purchase and/or lease of computer equipment must do so in accordance with applicable rules adopted by the comptroller pertaining to competitive bidding or competitive sealed proposals. *1 TAC 217.30(c)*

**PURCHASE USING COMPETITIVE BIDDING**

A public solicitation for the purchase or lease of computer equipment issued by an institution of higher education is required to contain the certification to be completed by bidders, in accordance with 1 Administrative Code 217.30. Failure of a bidder to provide this certification shall render the bidder ineligible to participate in the bidding. The institution of higher education shall reject the related bid and not evaluate it. *1 TAC 217.30(a)–(b)*

**REQUIRED CERTIFICATION**

All institutions of higher education shall include in all bids for the purchase or lease of computer equipment a special preference for all manufacturers that have a program to recycle the computer equipment of other manufacturers, which program includes collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand. The preference may take the form of extra evaluation points or be the tie-breaking factor among equal bids. *1 TAC 217.31*

**SPECIAL PREFERENCE**

“Computer equipment” is defined as a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner. *1 TAC 217.1(1)*
AUTOMATED INFORMATION SYSTEM

A local government, including a college district, shall purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A local government that purchases an item using a method listed above satisfies any state law requiring the local government to seek competitive bids for the purchase of the item. Gov't Code 2157.006; 34 TAC 20.391

SOLE SOURCE

Without complying with Education Code 44.031(a), a college district may purchase an item that is available from only one source, including:

1. An item for which competition is precluded because of a patent, copyright, secret process, or monopoly.

2. A film, manuscript, or book.

3. A utility service, including electricity, gas, or water.

4. A captive replacement part or component for equipment.

The sole source exception does not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of $15,000.

Education Code 44.031(j)–(k)

INSURANCE


MULTIYEAR CONTRACTS

The college district may execute an insurance contract for a period longer than 12 months, if the contract contains either or both of the provisions described at COMMITMENT OF CURRENT REVENUE, below. If the college district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the college district will be executing a new insurance contract. Atty. Gen. Op. DM-418 (1996)

COMPETITIVE BIDDING

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a college district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A college district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stat-
ed in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see FACTORS, above].

Except as provided below, Local Government Code Chapter 271, Subchapter B does not apply to a competitive bidding process under this policy.

*Education Code 44.0351*

**OPENING BIDS**

Bids may be opened only by the governing body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

The governmental entity is entitled to reject any and all bids.

*Local Gov't Code 271.026–.027(a)*

**SAFETY RECORD**

In determining who is a responsible bidder, the governmental entity may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such firm, corporation, partnership, or institution if:

1. The governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of a bidder.

2. The governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder.

3. The determinations are not arbitrary and capricious.

*Local Gov't Code 271.0275*

**IDENTICAL BIDS**

If a district is required to accept bids on a contract and receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, the governing body of the district shall enter into a contract with only one of those bidders and must reject all other bids.

If only one of the bidders submitting identical bids is a resident of the district, the district must select that bidder. If two or more of the bidders submitting identical bids are residents of the district, the district must select one of those bidders by the casting of lots. In all other cases, the district must select from the identical bids by the casting of lots.

The casting of lots must be in a manner prescribed by the governing body of the district and must be conducted in the presence of
the governing body of the district. All qualified bidders or their legal representatives may be present at the casting of lots.

This section does not prohibit a district from rejecting all bids.

Local Gov’t Code 271.901

COMPETITIVE SEALED PROPOSALS

In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a college district shall follow the procedures prescribed below. Education Code 44.0352(a)

REQUEST FOR PROPOSALS

The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror. Education Code 44.0352(b)

OPENING PROPOSALS

The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria. Education Code 44.0352(c)

SELECTION

The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected. Education Code 44.0352(d)

BEST VALUE DETERMINATION

In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. Education Code 44.0352(e)

INTERLOCAL AGREEMENTS

A local government, including a college district, may contract or agree with another local government or with the state or a state agency, including the comptroller, or a federally recognized Indian Tribe, as listed by the United States secretary of the interior under 25 U.S.C. 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services, such as to purchase goods and services, in accordance with Government Code Chapter 791. Gov’t Code 791.001, .011, .025
An interlocal contract must be authorized by the governing body of each party to the contract; must state the purpose, terms, rights, and duties of the contracting parties; and must specify that each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying party.

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. An interlocal contract may have a specified term of years. An interlocal contract may be renewed.

Gov’t Code 791.011(d)–(f), (i)

A local government, including a council of governments, may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. This provision does not apply to services provided by firefighters, police officers, or emergency medical personnel.

A local government that purchases goods and services under Government Code 791.025 satisfies the requirement to seek competitive bids for the purchase of goods and services.


A local government may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than $50,000 unless a person designated by the local government certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Occupations Code Chapter 1001 or 1051; or

2. The plans and specifications required under Chapters 1001 and 1051 have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov’t Code 791.011(j)

The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:
1. The extension of state contract prices to participating local governments when the comptroller considers it feasible;

2. Solicitation of bids on items desired by local governments if the solicitation is considered feasible by the comptroller and is desired by the local government; and

3. Provision of information and technical assistance to local governments about the purchasing program.

The comptroller may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

(Local Gov’t Code 271.082)

COLLEGE DISTRICT REQUIREMENTS

A local government may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the comptroller a resolution adopted by the governing body of the local government requesting that the local government be allowed to participate on a voluntary basis, to the extent the comptroller deems feasible, and stating that the local government shall:

1. Designate an official to act for the local government in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;

2. Be responsible for:
   a. Submitting requisitions to the comptroller under any contract; or
   b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase and electronically sending to the comptroller reports on actual purchases made under this paragraph that provide the information and are sent at the times required by the comptroller;

3. Be responsible for making payment directly to the vendor; and

4. Be responsible for the vendor’s compliance with all conditions of delivery and quality of the purchased item.

A local government that purchases an item under a state contract or under a reverse auction procedure sponsored by the comptroller satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.

(Local Gov’t Code 271.083)
MULTIPLE AWARD CONTRACT SCHEDULE

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government, including the federal General Services Administration, or any other governmental entity in any state.

A local government may purchase goods or services directly from a vendor under a contract listed on a schedule. An authorized purchase satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Government Code Chapter 2157.

The price listed for a good or service under a multiple award contract is a maximum price. A local government may negotiate a lower price for goods or services under a contract listed on a schedule.

Gov’t Code 2155.502, .504

COOPERATIVE PURCHASING PROGRAM

A local government may participate in a cooperative purchasing program with another local government or a local cooperative organization. A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative stating that the signing local government will:

1. Designate a person to act under the direction of, and on behalf of, that local government in all matters relating to the program;

2. Make payments to another participating local government or local cooperative organization or directly to a vendor under a contract made under Local Government Code Chapter 271, Subchapter F, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and

3. Be responsible for the vendor’s compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

A local government that purchases goods or services under Local Government Code Chapter 271, Subchapter F satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

A college district that enters into a purchasing contract valued at $25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for college districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the board of trustees of the college district. The written report must appear as an agenda item.

*Education Code 44.0331*

To the extent the State Council on Competitive Government determines is feasible, a local government may voluntarily participate in a contract awarded by the council or a state agency under Government Code Chapter 2162. A local government that purchases a good or a service under such a contract is considered to have satisfied any state law requiring the local government to follow a competitive purchasing procedure for the purchase. *Gov't Code 2162.102(d)*

A local government that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the local government and fair to vendors. *Local Gov't Code 271.906(b)*

“Reverse auction procedure” means:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or

2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

*Gov't Code 2155.062(d)*

If a contract for the acquisition, including lease, of real or personal property retains to the governing body of a local government the continuing right to terminate the contract at the expiration of each budget period of the local government during the term of the con-
tract, is conditioned on a best efforts attempt by the governing body to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of the local government's current revenues only. *Local Gov't Code 271.903*

**CHANGE ORDERS**

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

*Education Code 44.0411*

**ENERGY OR WATER CONSERVATION MEASURES**

The governing board of an institution of higher education may enter into an energy savings performance contract in accordance with *Education Code 51.927*. An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by *Government Code 2254.004*. *Education Code 51.927(b), (i)*

[See policy CH for legal requirements pertaining to such contracts]

**RECYCLED PRODUCTS**

A junior or community college district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. The college district regularly shall review and revise its procurement procedures and specifications for purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.

2. Encourage the use of products made of recycled materials.
3. Ensure to the maximum extent economically feasible that the college district purchase products that may be recycled when they have served their intended use.

In developing new procedures and specifications, the college district shall encourage the use of recycled products and products that may be recycled or reused.

*Health and Safety Code 361.426*

**AGRICULTURAL PRODUCTS**

A college district that purchases agricultural products shall give preference to those produced, processed, or grown in this state if the cost to the college district is equal and the quality is equal. “Processed” means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form. If agricultural products produced, processed, or grown in this state are not equal in cost and quality to other products, the college district shall give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost to the college district is equal and the quality is equal.

A college district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in this state.

*Education Code 44.042(a)–(b), (f), (g)(1)*

**VEGETATION FOR LANDSCAPING**

A college district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the college district is equal and the quality is not inferior.

*Education Code 44.042(c)*

**DAIRY PRODUCTS**

A political subdivision, including a college district, may not purchase milk, cream, butter, cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States. The restriction does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business. *Health and Safety Code 435.021*

**IMPORTED BEEF**

A political subdivision, including a college district, may not purchase beef or a product consisting substantially of beef that has been imported from outside the United States. *Agriculture Code 150.012(a)*

**CRIMINAL HISTORY**

A person or business entity, with the exception of a publically held corporation, that enters into a contract with a college district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A college district may terminate a contract with a person or business...
entity if the district determines that the person or business entity failed to give notice or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract. Education Code 44.034

RIGHT TO WORK

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement, a college district:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and

2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization. Education Code 44.043

IMPERMISSIBLE PRACTICES

An officer, employee, or agent of a college district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Education Code 44.031(a) or (b) or otherwise violates Section 44.031(a) or (b). An officer or employee of a college district commits an offense if the officer or employee knowingly violates Education Code 44.031 in any other manner.

“Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase. “Sequential purchases” means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

Education Code 44.032(a)-(d) [See BBC]

INJUNCTION

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the college district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this provision is entitled to reasonable attorney's fees as approved by the court. Education Code 44.032(f)
The Board delegates to the College President or Vice President for Administrative Services the authority to determine the method of purchasing, in accordance with CF(LEGAL), and to make budgeted purchases. Any purchases not included in the budget shall be taken to the Board for approval.

If competitive bidding is chosen as the purchasing method, the College President or Vice President for Administrative Services shall prepare bid specifications. All bids shall be in accordance with administrative regulations, and the submission of any electronic bids shall also be in accordance with Board-adopted rules. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

The College District may reject any and all bids.

If competitive sealed proposals are chosen as the purchasing method, the College President or Vice President for Administrative Services shall prepare the request for proposals and/or specifications for items to be purchased. All proposals shall be in accordance with administrative regulations, and the submission of any electronic proposals shall also be in accordance with Board-adopted rules. Proposals received after the specified time shall not be considered. Proposals shall be opened at the time specified, and all proposers shall be invited to attend the proposal opening. Proposals may be withdrawn prior to the scheduled time for opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

The College District may reject any and all proposals.

Bids or proposals that the College District has chosen to accept through electronic transmission shall be administered in accordance with Board-adopted rules. Such rules shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic bids or proposals; and ensure that the electronic bids or proposals remain effectively unopened until the proper time.

The Board shall assume responsibility for debts incurred in the name of the College District so long as those debts are for purchases made in accordance with the adopted budget, state law, Board policy, and the College District's purchasing procedures. [See CC] The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control; persons making unauthorized purchases shall assume full responsibility for all such debts.
## PURCHASE COMMITMENTS

All purchase commitments shall be made by the College President or Vice President for Administrative Services on a properly drawn and issued purchase document, in accordance with administrative procedures. All commitments must be in the name of the College District, and all purchases must be consistent with the stated mission and goals of the College District. A purchase order shall be issued only after verification that the budget has provided the funds necessary to meet the expenditure requirements for the purchase.

## PERSONAL PURCHASES

College District employees shall not be permitted to make purchases for personal use through the College District's business office.
REQUIRED VENDOR DISCLOSURE

The disclosure requirement applies to a person who enters or seeks to enter into a contract with a local governmental entity or is an agent of that person in the person's business with a local governmental entity. *Local Gov't Code 176.002(a)*

A person is not subject to the disclosure requirements if the person is a state, a political subdivision of a state, the federal government, or a foreign government; or an employee of such an entity, acting in the employee's official capacity. *Local Gov't Code 176.002(b)*

A person described by Local Government Code 176.002(a) shall file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and:

1. Has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that a contract described by Local Government Code 176.003(a)(1) has been executed or the local governmental entity is considering entering into a contract with the person; or

2. Has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value of more than $250 in the 12-month period preceding the date the officer becomes aware that a contract described by Local Government Code 176.003(a)(1) has been executed or the local governmental entity is considering entering into a contract with the person, excluding any gift that is:
   a. Given by a family member of the person accepting the gift;
   b. A political contribution as defined by Election Code Title 15; or
   c. Food, lodging, transportation, or entertainment accepted as a guest.

The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

1. The date that the person:
   a. Begins discussions or negotiations to enter into a contract with the local governmental entity; or
b. Submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or 

2. The date the person becomes aware:
   a. Of an employment or other business relationship with a local government officer, or a family member of the officer; or
   b. That the person has given one or more gifts.

_Local Gov't Code 176.003(a)(2), (a-1), .006(a)-(b)_

**DEFINITION OF BUSINESS RELATIONSHIP**

“Business relationship” means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

1. A transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

2. A transaction conducted at a price and subject to terms available to the public; or

3. A purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

_Local Gov't Code 176.001(1-a)_

**DISCLOSURE FORM**

The Texas Ethics Commission shall adopt a conflict of interest questionnaire that requires disclosure of a vendor’s business relationships with a local governmental entity. _Local Gov't Code 176.006(c)_

**ELECTRONIC FILING**

The required questionnaire, including signature requirements, may be filed electronically in a form approved by the Commission. _Local Gov't Code 176.008_

**UPDATES**

A person to whom this policy applies shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate. _Local Gov't Code 176.006(d)_

**LIST OF LOCAL GOVERNMENT OFFICERS**

The records administrator for a local governmental entity shall maintain a list of local government officers of the entity and shall make that list available to the public and any person who may be required to file a conflict of interest questionnaire. _Local Gov't Code 176.007_ [See BBFA]
INTERNET POSTING

A local governmental entity that maintains an Internet website shall provide access to the conflict of interest questionnaires required to be filed under this policy on that website. *Local Gov't Code 176.009*

**Note:** The Conflict of Interest Questionnaire, Form CIQ, is available on the Texas Ethics Commission website at [http://www.ethics.state.tx.us/filinginfo/conflict_forms.htm](http://www.ethics.state.tx.us/filinginfo/conflict_forms.htm).
PAYMENT DUE

A payment by a governmental entity, including a college district, under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of the date the governmental entity receives the goods under the contract, the date the performance of service under the contract is completed, or the date the governmental entity receives the invoice for the goods or service. However, a payment under a contract executed on or after September 1, 1993, owed by a political subdivision whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event of those described above. The renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract. *Gov't Code 2251.021*

INTEREST

A payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Interest on an overdue payment stops accruing on the date the governmental entity or vendor mails or electronically transmits the payment.

The unpaid balance of a partial payment made within the prescribed period accrues interest, unless the balance is in dispute.

*Gov't Code 2251.025(a)–(c), .029(a)*

EARLY PAYMENT DISCOUNT

A political subdivision, including a college district, shall compute interest imposed on the political subdivision under Government Code Chapter 2251. The political subdivision shall pay the interest at the time payment is made on the principal. The political subdivision shall submit the interest payment with the net amount due for the goods or service. The political subdivision may not require a vendor to petition, bill, or wait an additional day to receive the interest due. The political subdivision may not require a vendor or subcontractor to agree to waive the vendor’s or subcontractor’s right to interest under Chapter 2251 as a condition of the contract between the parties. *Gov't Code 2251.027*

The intent of the legislature is that a governmental entity should take advantage of an offer for an early payment discount. A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period. If a governmental entity takes an early pay-
EXCEPTIONS

Except as provided by Government Code Chapter 2251, Subchapter D [see ALTERNATE VENDOR REMEDY FOR NONPAYMENT OF CONTRACT, below], Government Code Chapter 2251, Subchapter B [see PAYMENT DUE, INTEREST, and EARLY PAYMENT DISCOUNT, above] does not apply to a payment made by a governmental entity, including a college district, a vendor, or a subcontractor if:

1. There is a bona fide dispute between the political subdivision and a vendor, contractor, subcontractor, or supplier concerning the goods delivered or the service performed that causes the payment to be late;

2. There is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late;

3. The terms of a federal contract, grant, regulation, or statute prevent the governmental entity from making a timely payment with federal funds; or

4. The invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment.

Gov’t Code 2251.002(a)

A vendor may suspend performance required under a contract with a governmental entity, including a college district, if the governmental entity does not pay the vendor an undisputed amount within the time limits provided above and the vendor gives the governmental entity written notice informing the governmental entity that payment has not been received and stating the intent of the vendor to suspend performance for nonpayment.

The vendor may not suspend performance before the later of the tenth day after the date the vendor gives the notice.

A vendor who suspends performance is not:

1. Required to supply further labor, services, or materials until the vendor is paid the amount provided for under Government Code Chapter 2251, plus costs for demobilization and remobilization; or

2. Responsible for damages resulting from suspending work if the governmental entity with which the vendor has the con-
tract has not notified the vendor in writing before performance is suspended that payment has been made or that a bona fide dispute for payment exists.

A notification under item 2 that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor, services, or materials provided by the vendor or the vendor’s subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance of the listed items or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Gov’t Code 2251.051

DISPUTED PAYMENT

A governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice. If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor beginning on the date that the payment for the invoice is overdue. If a dispute is resolved in favor of the governmental entity, the vendor shall submit a corrected invoice that must be paid within 30 days of receipt. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date. Gov’t Code 2251.042

“Contract” means an agreement entered into under the authority of the Public Property Finance Act but does not mean a contract solely for the construction of improvements to real property. *Local Gov't Code 271.003(2)*

“Improvement” means a permanent building, structure, fixture, or fence that is erected on or affixed to land but does not include a transportable building or structure whether or not it is affixed to land. *Local Gov’t Code 271.003(10)*

“Real property” means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property. *Local Gov’t Code 271.003(11)*

The board of trustees of a community college district or junior college district may execute, perform, and make payments under a contract under the Public Property Finance Act for the use or purchase or other acquisition of real property or an improvement to real property. If the board proposes to enter into such a contract, the board shall publish notice of intent to enter into the contract not less than 60 days before the date set to approve execution of the contract in a newspaper with general circulation in the college district. The notice must summarize the major provisions of the proposed contract. The notice shall estimate the construction and other costs, but the board shall not publish the first advertisement for bids for construction of improvements until 60 days after publication of the notice of intent to enter into the contract. *Local Gov’t Code 271.004(a)*

If, within 60 days of the date of publication of the notice of intent, a written petition signed by a least five percent of the registered voters of the district is filed with the board of trustees requesting that the board order a referendum on the question of whether the contract should be approved, the board may not approve the contract or publish the first advertisement for bids for construction of improvements unless the question is approved by a majority of the votes received in a referendum ordered and held on the question.
The referendum shall be held in accordance with the applicable provisions of the Election Code. The requirement that an election must be held on a uniform election date as prescribed by the Election Code does not apply to an election held under this section.

*Local Gov't Code 271.004(b)–(c)*

**SUBMISSION TO ATTORNEY GENERAL**

A lease-purchase contract entered into by the district under Local Government Code 271.004 and the records relating to its execution must be submitted to the attorney general for examination as to their validity. If the attorney general finds that the contract has been authorized in accordance with the law, the attorney general shall approve them, and the comptroller of public accounts shall register them. Following approval and registration, the contract is incontestable and is a binding obligation according to its terms.

*Local Gov't Code 271.004(g)–(i)*

**COLLEGE DISTRICT OBLIGATION**

The contract is a special obligation of the college district if ad valorem taxes are not pledged to the payment of the contract. If the contract provides that payments by the college district are to be made from maintenance taxes previously approved by the voters of the college district and are subject to annual appropriation or are paid from a source other than ad valorem taxes, the payments under the contract shall not be considered indebtedness under Tax Code 26.04(c). All or part of the obligation of the college district may be evidenced by one or more negotiable promissory notes.

*Local Gov't Code 271.004(d)–(f)*

**EMINENT DOMAIN**

A college district may, by the exercise of the right of eminent domain, acquire the fee simple title to real property on which to construct school buildings or for any other public use necessary for the district. *Education Code 11.155(a)*

A governmental entity, including a college district, may not take private property through the use of eminent domain if the taking confers a private benefit on a particular private party through the use of the property, is for a public use that is merely a pretext to confer a private benefit on a particular private party, or is not for a public use. *Gov't Code 2206.001(b)*

**PROCEDURES**

When exercising the right of eminent domain, a college district must follow the procedures found at Government Code Chapter 2206, Subchapter B and Property Code Chapter 21, Subchapter B. *Gov't Code 2206.001(a); Property Code 21.011*

**REPURCHASE OF REAL PROPERTY**

A person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person’s heirs, successors, or assigns, is entitled to repurchase the property as provided by Property Code Chapter 21, Subchapter E if the public
use for which the property was acquired through eminent domain is canceled before the property is used for that public use, no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the tenth anniversary of that date, or the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the tenth anniversary of the date of acquisition. Not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property, the entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice in accordance with Property Code 21.103. Property Code 21.101-102.
DEFINITIONS

"CONTRACT"

“Contract” means an agreement entered under the authority of the Public Property Finance Act, Local Government Code Chapter 271, Subchapter A, but does not mean a contract solely for the construction of improvements to real property. Local Gov't Code 271.003(2)

"PERSONAL PROPERTY"

“Personal property” includes appliances, equipment, facilities, and furnishings, or an interest in personal property, whether movable or fixed, considered by the board to be necessary, useful, or appropriate to one or more purposes of the college district. The term includes all materials and labor incident to the installation of that personal property. The term includes electricity. The term does not include real property. Local Gov't Code 271.003(8)

AUTHORITY

The governing body of a governmental agency, including a college district, may execute, perform, and make payments under a contract with any person for the use or the purchase or other acquisition of any personal property, or the financing thereof, in accordance with the requirements of the Public Property Finance Act.

The governing body of a governmental agency may contract under Local Government Code Section 271.005 for materials and labor incident to the installation of personal property.

Local Gov't Code 271.005(a)–(b)
SAFETY PROGRAM

The governing board of each state institution of higher education, including each public junior college, may promulgate rules and regulations for the safety and welfare of students, employees, and property. *Education Code 51.202*

SAFETY AND SECURITY AUDIT

At least once every three years, each public junior college district shall conduct a safety and security audit of the district’s facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center (TxSSC) or a comparable public or private entity. A public junior college district shall report the results of the safety and security audit to the district's board of trustees and, in the manner required by the TxSSC, to the TxSSC. *Education Code 37.108(b)–(c)*

DISCLOSURE

Except as provided by Education Code 37.108(c-2) regarding certain emergency operations plans [see CGC], any document or information collected, developed, or produced during a safety and security audit is not subject to disclosure under Government Code Chapter 552. *Education Code 37.108(c-1)*
The District shall take every reasonable precaution regarding the safety of its employees, students, visitors, and all others with whom it conducts business. A designated administrator shall be responsible for developing, implementing, and promoting a comprehensive safety program.

The general areas of responsibility include, but are not limited to, the following:

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The College President or designee shall be responsible for the collection, storage, and analysis of relevant operational and historical data required to develop sound procedures for implementation and operation of the comprehensive safety program.
“ASBESTOS-RELATED ACTIVITY”


“Asbestos-related activity” means the removal, encapsulation, or enclosure of asbestos; the performance of an asbestos survey; the development of an asbestos management plan or response action; the collection or analysis of an asbestos sample; or the performance of another activity for which a license is required under the Texas Asbestos Health Protection Act. *Occupations Code 1954.002(4), .101*

Unless a person is licensed by the Texas Department of State Health Services (TDSHS) under Occupations Code Chapter 1954, the person may not engage in an asbestos-related activity listed at Occupations Code 1954.101. *Occupations Code 1954.101(a)*

NOTICE

A person engaged in removing asbestos from or encapsulating or enclosing asbestos in a public building shall notify the department in writing at least ten working days before the date the person begins the removal, encapsulation, or enclosure project according to applicable laws. A person may give the required notice orally if the removal, encapsulation, or enclosure project is of an emergency nature. *Occupations Code 1954.252, .101; 25 TAC 295.61*

RECORDS

A license holder shall keep an appropriate record of each asbestos-related activity the license holder performs in a public building. The license holder shall make the records available to TDSHS at any reasonable time. The license holder shall keep the records for at least 30 years, or as long as required by federal law or regulation. *Occupations Code 1954.251; 25 TAC 295.58(d)*
Industrial-quality eye- and face-protective devices shall be worn by every teacher and student in the College District participating in any of the following activities that include vocational services to students from independent school districts:

1. The use of hazardous chemicals;
2. The use of hot liquids or solids;
3. The use of molten materials;
4. Performing grinding, chipping, or other hazardous activities where there is danger of flying particles;
5. Milling, sawing, turning, shaping, cutting, or stamping of any solid materials;
6. Heat treatment, tempering, or kiln firing of any metal or other materials;
7. Cutting, welding, or brazing operations;
8. The use of hazardous radiation, including the use of infrared and ultraviolet light or lasers;
9. Repair or servicing of any vehicle; or
10. Any process or activity in a vocational, art, industrial arts, or science course or laboratory that might have a tendency to cause damage to the eyes.

The College District shall comply with the guidelines entitled “Eye and Face Protection,” available at 29 CFR 1910.133, as recommended by the Texas Department of State Health Services (TDSHS).

For hazard assessment and face- and eye-protective equipment selection, the College District shall comply with the guidelines entitled “Non-mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection,” available at 29 CFR part 1210, subpart I, appendix B, also as recommended by TDSHS.
Each public junior college district shall adopt and implement a multihazard emergency operations plan for use in the district’s facilities. The plan must address mitigation, preparedness, response, and recovery as defined by the Commissioner in conjunction with the governor’s office of homeland security. The plan must provide for:

1. District employee training in responding to an emergency;
2. Measures to ensure coordination with the Texas Department of State Health Services (TDSHS) and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and
3. The implementation of a required safety and security audit [see CG].

*Education Code 37.108(a)*

A document relating to a public junior college district’s multihazard emergency operations plan is subject to disclosure if the document enables a person to:

1. Verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including TDSHS, local emergency services agencies, law enforcement agencies, health departments, and fire departments;
2. Verify that the district’s plan was reviewed within the last 12 months and determine the specific review dates;
3. Verify that the plan addresses the four phases of emergency management listed at EMERGENCY OPERATIONS PLAN;
4. Verify that district employees have been trained to respond to an emergency and determine the types of training, the number of employees trained, and the person conducting the training;
5. Verify that each campus in the district has conducted mandatory emergency drills and exercises in accordance with the plan and determine the frequency of the drills;
6. Verify that the district has completed a safety and security audit and determine the date the audit was conducted, the person conducting the audit, and the date the district presented the results of the audit to the district’s board of trustees [see CG]; and
7. Verify that the district has addressed any recommendations by the district’s board of trustees for improvement of the plan and determine the district’s progress within the last 12 months.

*Education Code 37.108(c-2)*

**EMERGENCY RESPONSE AND EVACUATION PROCEDURES**

Campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication, if appropriate, shall include procedures to:

1. Immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, as defined in 20 U.S.C. 1092(f)(6), unless issuing a notification will compromise efforts to contain the emergency;

2. Publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

3. Test emergency response and evacuation procedures on an annual basis.


**EMERGENCY ALERT SYSTEM**

Each institution of higher education, including each college district, shall establish an emergency alert system for the institution’s students and staff, including faculty. The emergency alert system must use e-mail or telephone notifications in addition to any other alert method the institution considers appropriate to provide timely notification of emergencies affecting the institution or its students and staff.

At the time a student initially enrolls or registers for courses or a staff member begins employment, the institution shall:

1. Obtain a personal telephone number or e-mail address from the student or staff member to be used to notify the individual in the event of an emergency; and

2. Register the student or staff member in the institution’s emergency alert system.

A student or staff member may elect not to participate in an emergency alert system. An election may be submitted electronically or in writing, as chosen by the institution, and must be renewed at the start of each academic year. The personal identifying information obtained from an individual for the purpose of the emergency alert system of an institution of higher education, including an e-mail
FIRE ESCAPES

The owner of a building shall equip the building with at least one fire escape and with additional fire escapes as required by Health and Safety Code Chapter 791, Subchapters C and D if the building has at least:

1. Three stories and is used as a facility subject to Subchapter C, including a college, a dormitory, a theater or other public place of amusement, or any other facility used for public gatherings; or

2. Two stories and is used as a school.

A fire escape required by Chapter 791 must meet the specifications provided by Chapter 791 for an exterior stairway fire escape, an exterior chute fire escape, a combination of those exterior fire escapes, or an interior fire escape.

Chapter 791 does not apply to the construction of a structure in a municipality that has in effect a nationally recognized model building code governing the construction if the building code requires at least one one-hour fire-resistant means of escape with a total width equal to or greater than the total exit width required under Chapter 791 for a structure of three or more stories.

Health and Safety Code 791.002, .004(a), .021

[See GGE for response to requests from other governmental entities for mutual aid]
In accordance with state requirements, the College District shall maintain a multihazard emergency operations plan that provides for appropriate employee training, coordination with state and local entities, and implementation of a safety and security audit.

In accordance with federal law, the College District shall maintain effective emergency response and evacuation procedures that can be implemented on short notice and that will ensure optimum safety for students and personnel.

In accordance with state requirements, the College District shall maintain an emergency alert system that provides for timely notification to students, faculty, and staff of emergencies affecting the College District or its students and employees.
Each political subdivision or institution of higher education, including each college district, shall establish a goal to reduce the electric consumption by the entity by at least five percent each state fiscal year for ten years, beginning September 1, 2011.

Each political subdivision or institution of higher education shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Local Government Code 302.004(b) in order to reduce electricity consumption by the existing facilities of the entity.

A political subdivision or institution of higher education annually shall report to the State Energy Conservation Office (SECO), on forms provided by that office, regarding the entity's goal, the entity's efforts to meet the goal, and progress the entity has made. The SECO shall provide assistance and information to the entity to help the entity meet established goals.

A political subdivision or institution of higher education that does not attain the established goals must include in the report justification that the entity has already implemented all available cost-effective measures. An entity that submits a report indicating that the entity has reviewed its available options, has determined that no additional measures are cost-effective, and has already implemented all available cost-effective measures is exempt from the annual reporting requirement if a subsequent report would indicate no change in status. An entity may be required to provide notice that it is exempt to SECO.

Health and Safety Code 388.005(b)–(e)

Exception

This section does not apply to a state agency or an institution of higher education that the SECO determines, before September 1, 2007, adopted a plan for conserving energy under which the agency or institution established a percentage goal for reducing the consumption of electricity. The exemption provided by this section applies only while the agency or institution has an energy conservation plan in effect and only if the agency or institution submits reports on the conservation plan each year to the governor, the Legislative Budget Board, and the SECO. Health and Safety Code 388.005(f)

Energy or Water Conservation Measures

The governing board of an institution of higher education may enter into an energy savings performance contract in accordance with this section. "Energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing institutional facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the
measures over a specified period. The term includes a contract for the installation or implementation of:

1. Insulation of a building structure and systems within the building.

2. Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption.

3. Automatic energy control systems, including computer software and technical data licenses.

4. Heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption.

5. Lighting fixtures that increase energy efficiency.


7. Electric systems improvements.

8. Water-conserving fixtures, appliances, and equipment or the substitution of nonwater-using fixtures, appliances, and equipment.

9. Water-conserving landscape irrigation equipment.

10. Landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
    a. Landscape contouring, including the use of berms, swales, and terraces; and
    b. The use of soil amendments that increase the water-holding capacity of the soil, including compost.

11. Rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control.

12. Equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent.

13. Equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses.
14. Metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings.

15. Other energy or water conservation-related improvements or equipment, including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding the list above, an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts.

*Education Code 51.927(a)–(d), (k)*

**PERFORMANCE BOND**

Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond in accordance with Government Code Chapter 2253. The board may also require a separate bond to cover the value of the guaranteed savings on the contract. *Education Code 51.927(e)*

**CONTRACT TERM**

The board may enter into an energy savings performance contract for a period of more than one year only if the board finds that the amount the institution would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 years from the date of installation. *Education Code 51.927(f)*

**FINANCING**

An energy savings performance contract may be financed:

1. Under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;
2. With the proceeds of bonds; or

3. Under the contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures, and the board is not required to pay for such costs solely out of the savings realized by the college district under an energy savings performance contract.

*Education Code 51.927(g)–(g-1)*

**COST SAVINGS**

An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the institution of higher education under the contract. If the term of the contract exceeds one year, the institution's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the board, divided by the number of years in the contract term beginning after the final date of installation. The board shall consider all costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and debt service. *Education Code 51.927(f), (h)*

**CONTRACT PROCUREMENT**

An energy savings performance contract shall be let according to the procedures established for professional services by Government Code 2254.004. Notice of the request for qualifications shall be given in the manner provided by Government Code 2156.002.

The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

*Education Code 51.927(g-1), (i)*

**GUIDELINES**

The Coordinating Board, in consultation with the SECO with regard to energy conservation measures, shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the con-
tract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. A contract is not required to be reviewed or approved by the SECO. Occupations Code 1001.053 and 1001.047 apply to work performed under the contract. Education Code 51.927(i)

The guidelines must require the Coordinating Board to review any reports submitted to the Coordinating Board that measure and verify cost savings to an institution of higher education under an energy savings performance contract; and based on the reports, provide an analysis, on a periodic basis, of the cost savings under the energy savings performance contract to the governing board of the institution of higher education and the Legislative Budget Board until the governing board of the institution of higher education determines that the analysis is no longer required to accurately measure cost savings. Education Code 51.927(l)

ENERGY USAGE REPORT
A governmental entity, including a college district, shall record in an electronic repository the governmental entity’s metered amount of electricity, water, or natural gas consumed for which it is responsible to pay and the aggregate costs for those utility services. The governmental entity shall report the recorded information on a publicly accessible Internet website with an interface designed for ease of navigation if available, or at another publicly accessible location. Gov't Code 2265.001

LIGHT BULBS
An institution of higher education, including a college district, shall purchase for use in each type of light fixture in an educational or housing facility the commercially available model of light bulb that:

1. Is compatible with the light fixture;
2. Uses the fewest watts for the necessary luminous flux or light output; and
3. Is the most cost-effective, considering the factors described above.

Education Code 51.9271

"Housing facility" means a single- or multi-family residence used exclusively for housing or boarding, or housing and boarding students, faculty, or staff members of an institution of higher learning. The term includes infirmary and student union building, but does
not include a housing or boarding facility for the use of a fraternity, sorority, or private club. *Education Code 53.02*(7)

**RECYCLING PROGRAM**

An institution of higher education, including a college district, shall:

1. In cooperation with the comptroller or the Texas Commission on Environmental Quality (TCEQ) establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging, polycoated paperboard cartons, high-grade office paper, and corrugated cardboard;

2. Provide procedures for collecting and storing recyclable materials, provide containers for recyclable materials, and provide procedures for making contractual or other arrangements with buyers of recyclable materials;

3. Evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

4. Establish educational and incentive programs to encourage maximum employee participation.

“Recyclable materials” includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.

*Health and Safety Code 361.425*

**CERTIFICATE OF MOLD REMEDIATION**

If a property owner, including a college district, sells property, the property owner shall provide to the buyer a copy of each certificate of mold remediation issued for the property during the five years preceding the date the property owner sells the property. *Occupations Code 1958.154*(b); 25 TAC 295.327(d)

**POOLS GENERALLY**

An owner, manager, operator, or other attendant in charge of a public swimming pool, wading pool, baby pool, hot tub, in-ground spa, spray fountain, or other artificial body of water typically used for recreational swimming, bathing, or play shall comply with pool safety standards necessary to prevent drowning adopted by the executive commissioner of the Health and Human Services Commission. *Health and Safety Code 341.0645; 25 TAC 265.181–.208*

**DRAINS**

Each public pool and spa shall comply with the drain cover standards found at 15 U.S.C. 8003. “Public pool and spa” means a swimming pool or spa that is open to the public generally, whether for a fee or free of charge. *15 U.S.C. 8003*
CAMPUS PEACE OFFICERS

The governing board of each state institution of higher education, including each community college, may employ and commission peace officers to maintain law and order. The primary jurisdiction of a peace officer so commissioned includes all counties in which property is owned, leased, rented, or otherwise under the control of the college district that employs the peace officer.

Within a peace officer’s primary jurisdiction, a peace officer:

1. Is vested with all the powers, privileges, and immunities of peace officers.
2. May, in accordance with Code of Criminal Procedure Chapter 14 arrest without a warrant any person who violates a law of the state.
3. May enforce all traffic laws on streets and highways.

Outside a peace officer’s primary jurisdiction a peace officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers and may arrest any person who violates any law of the state if the peace officer:

1. Is summoned by another law enforcement agency to provide assistance;
2. Is assisting another law enforcement agency; or
3. Is otherwise performing duties as a peace officer for the institution of higher education that employs the peace officer.

Any officer assigned to duty and commissioned shall take and file the oath required of peace officers.

Any person commissioned under this section must be a certified police officer under the requirements of the Texas Commission on Law Enforcement (TCOLE).

*Education Code 51.203; Code of Criminal Procedure Art. 2.12*

MOTOR VEHICLE STOPS

A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

1. A physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
   a. The person’s gender;
   b. The person’s race or ethnicity, as stated by the person or, if the person does not state the person’s race or eth-
nicity, as determined by the officer to the best of the officer’s ability;

2. The initial reason for the stop;

3. Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

4. Whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;

5. The reason for the search, including whether:
   a. Any contraband or other evidence was in plain view;
   b. Any probable cause or reasonable suspicion existed to perform the search; or
   c. The search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

6. Whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

7. The street address or approximate location of the stop; and

8. Whether the officer issued a written warning or a citation as a result of the stop.

Code of Criminal Procedure 2.133

A law enforcement agency, including a college district police department, shall compile and analyze the information contained in each report received by the agency under Code of Criminal Procedure 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year, in accordance with Code of Criminal Procedure 2.134, to the TCOLE and to the governing body of each county or municipality served by the agency. Code of Criminal Procedure 2.134(b)

CIVIL PENALTY

If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Code of Criminal Procedure 2.134, the agency is liable to the state for a civil penalty in the amount of $1,000 for each violation. Code of Criminal Procedure 2.1385(a)
EXEMPTION

A peace officer is exempt from the reporting requirement under Code of Criminal Procedure 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Code of Criminal Procedure 2.134 if:

1. During the calendar year preceding the date that a report under Code of Criminal Procedure 2.134 is required to be submitted:
   a. Each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle stops is equipped with transmitter-activated equipment; and
   b. Each motor vehicle stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

2. The governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Texas Department of Public Safety (TDPS), not later than the date specified by rule by TDPS, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by TDPS, for the agency to accomplish that purpose.

A law enforcement agency that is exempt from the requirements under Code of Criminal Procedure 2.134 shall retain the video and audio documentation of each motor vehicle stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle stop, the agency shall retain the video and audio record of the stop until final disposition of the complaint.

Code of Criminal Procedure 2.135

RACIAL PROFILING

PROHIBITION

A peace officer may not engage in racial profiling. Code of Criminal Procedure 2.131
Each law enforcement agency in this state, including each college district police department, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties shall adopt a detailed written policy on racial profiling. The policy must:

1. Clearly define acts constituting racial profiling;
2. Strictly prohibit peace officers employed by the agency from engaging in racial profiling;
3. Implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
4. Provide public education relating to the agency’s complaint process;
5. Require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency’s policy adopted under this section;
6. Require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
   a. The race or ethnicity of the individual detained;
   b. Whether a search was conducted and, if so, whether the individual detained consented to the search; and
   c. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
7. Require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under item 6 to:
   a. TCOLE; and
   b. The governing body of each county or municipality served by the agency.

On adoption of a racial profiling policy, a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle.
regularly used to make motor vehicle stops. If a law enforcement agency installs video or audio equipment, the policy adopted by the agency must include standards for reviewing video and audio documentation.

A report required under item 7, above, may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.

*Code of Criminal Procedure 2.132(a)–(b), (d)–(e)*

To be considered by the head of a fire department or local law enforcement agency, a complaint against a peace officer must be in writing and signed by the person making the complaint. A copy of a signed complaint against a peace officer appointed or employed by a political subdivision of this state shall be given to the officer within a reasonable time after the complaint is filed. Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer. The officer may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless the complaint is investigated and there is evidence to prove the allegation of misconduct. *Gov't Code 614.022–.023*

On the commencement of an investigation by a law enforcement agency of a complaint that alleges that a peace officer employed by the department has engaged in racial profiling with respect to an individual and in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer. *Code of Criminal Procedure 2.132(f)*

[See DGBA, FLD, and GB for appeals]

Each employer covered by workers’ compensation insurance, including state and political subdivision employers, which employ emergency medical service employees, paramedics, firefighters, law enforcement officers or correctional officers must post the notice contained in 28 Administrative Code 110.108(d), in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers’ compensation benefits following a work-related exposure to a reportable communicable disease. The notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where employees are likely to read the notice on a regular basis. *28 TAC 110.108*
The Board may employ campus security personnel for the purposes of maintaining law and order, enforcing campus rules and regulations, issuing citations for violations of campus regulations, and rendering assistance to students, employees, and visitors. Security officers shall not be armed and shall not be required to be state-licensed peace officers.
A school building must be located on grounds that are well-drained and maintained in a sanitary condition. A school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices. 

*Health and Safety Code 341.065(a)–(b)*

A public school lunchroom must comply with the state food and drug rules. *Health and Safety Code 341.065(c)*

A public school building and its appurtenances shall be maintained in a sanitary manner. A building custodian or janitor employed full-time shall know the fundamentals of safety and school sanitation. 

*Health and Safety Code 341.065(d)–(e)*
The governing board of each state institution of higher education, including public junior colleges, may promulgate rules and regulations for the safety and welfare of students, employees, and property, and other rules and regulations it may deem necessary to carry out the provisions of Education Code Chapter 51, Subchapter E and the governance of the institution, providing for the operation and parking of vehicles on the grounds, streets, drives, alleys, and any other institutional property under its control, including but not limited to the following:

1. Limiting the rate of speed;
2. Assigning parking spaces and designating parking areas and their use and assessing a charge for parking;
3. Prohibiting parking as it deems necessary;
4. Removing vehicles parked in violation of institutional rules and regulations or law at the expense of the violator; and
5. Instituting a system of registration for vehicle identification, including a reasonable charge.

*Education Code 51.202(a)*

It shall be unlawful for any person to park a vehicle on any property under the control and jurisdiction of a state institution of higher education of this state, including a college district, except in the manner designated by the institution and in the spaces marked and designated by the governing board, or to block or impede traffic through any driveway of that property. All laws regulating traffic on highways and streets shall apply to the operation of vehicles within the property of the institution, except as may be modified in Education Code Chapter 51, Subchapter E. *Education Code 51.205*

Each public institution of higher education, including each college district, may provide for the issuance and use of suitable vehicle identification insignia. The institution may bar or suspend the permit of any vehicle from driving or parking on any institutional property for the violation of any rule or regulation promulgated by the board as well as for any violation of Education Code Chapter 51, Subchapter E. Reinstatement of the privileges may be permitted and a reasonable fee assessed. *Education Code 51.207(a)*

If the public institution of higher education campus is located in whole or part in an area in which a motor vehicle registered in the area is required to undergo a vehicle emissions inspection under Transportation Code Chapter 548, Subchapter F, the institution may not issue a permit to a student enrolled at the institution to park or drive a motor vehicle that is not registered in this state on...
institutional property unless the institution has provided written notice to the student concerning requirements for vehicle emissions inspections pursuant to Transportation Code Chapter 548, Subchapter F. *Education Code 51.207(b)*

If the public institution of higher education campus is not covered by Education Code 51.207(b), the institution may not issue a permit to a student of the institution for driving or parking a motor vehicle on institutional property unless the institution provides written notice to the student that failure to register the vehicle in this state may violate state law if the owner of the vehicle resides in this state.

Each institution of higher education that maintains a campus police force shall adopt procedures for enforcing State of Texas vehicle inspection laws for vehicles parking or driving on the campus of the institution.

*Education Code 51.207(d)–(e)*

An institution of higher education, including a college district, in this state may not adopt or enforce any rule, regulation, or other provision or take any other action, including posting notice under Penal Code 30.06, prohibiting or placing restrictions on the storage or transportation of a firearm or ammunition in a locked, privately owned or leased motor vehicle by a person, including a student enrolled at that institution, who holds a license to carry a concealed handgun under Government Code Chapter 411, Subchapter H and lawfully possesses the firearm or ammunition:

1. On a street or driveway located on the campus of the institution; or
2. In a parking lot, parking garage, or other parking area located on the campus of the institution.

*Gov't Code 411.2032*

This section applies to a vehicle that:

1. Is being operated by or for the transportation of the person who registered the vehicle under Transportation Code 504.202(a) or a person described by Transportation Code 504.202(b) if the vehicle is registered under that subsection; and displays special license plates issued under Transportation Code 504.202; or
2. Displays license plates issued by another state of the United States that indicate on the face of the license plates that the
owner or operator of the vehicle is a disabled veteran of the U.S. armed forces.

A qualifying vehicle may be parked for an unlimited period in a parking space or area that is designated specifically for persons with physical disabilities on the property of an institution of higher education, including a college district, regardless of whether a permit is generally required for the use of the space or area. An institution of higher education may require the vehicle to display a parking permit issued by the institution specifically for the purpose of implementing this section but may not charge a fee for the permit. This section does not entitle a person to park a qualifying vehicle in a parking space or area that has not been designated specifically for persons with physical disabilities on the property of the institution if the vehicle has not been granted or assigned a parking permit required by the institution.

This section does not apply to a parking space or area located in:

1. A controlled access parking facility if at least 50 percent of the number of parking spaces or areas designated specifically for persons with physical disabilities on the property of the institution of higher education are located outside a controlled access parking facility;

2. An area temporarily designated for special event parking; or

3. An area where parking is temporarily prohibited for health or safety concerns.

Transp. Code 681.008(a)–(a-2)

In connection with traffic and parking violations, only the officers authorized to enforce the provisions of Education Code Chapter 51, Subchapter E have the authority to issue and use traffic tickets and summons of the type used by the Texas Highway Patrol, with any changes that are necessitated by reason of Subchapter E. On the issuance of any parking or traffic ticket or summons, the same procedures shall be followed as prevail in connection with the use of parking and traffic violation tickets by the cities of this state and the Texas Highway Patrol. Nothing in Subchapter E restricts the application and use of regular arrest warrants. Education Code 51.206
Unless it has been opened to the public, by policy or practice, a school mail system is not a public forum. The college district may create a limited public forum in its campus mailboxes. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983) [See also GF]

The college district is prohibited by the Private Express Statutes from carrying unstamped letters over postal routes unless:

1. The letters relate to the current business of the college district to an extent sufficient to satisfy the “letters of the carrier” exception; or
2. The carriage of the letters is without any compensation, direct or indirect, to the college district so as to satisfy the “private hands” exception.


An officer or employee of a state agency or political subdivision, including a college district, may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising. The prohibition does not apply to the use of an internal mail system to distribute political advertising that is delivered to the premises of a state agency or political subdivision through the United States Postal Service or the use of an internal mail system by a state agency to distribute political advertising that is the subject of or related to an investigation, hearing, or other official proceeding of the agency. *Election Code 255.0031*

“Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

1. In return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television;
2. Appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
3. Appears on an Internet website.

*Election Code 251.001(16); 1 TAC 20.1(13)*

“Political advertising” does not include an individual communication made by e-mail but does include mass e-mails involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth.  *1 TAC 20.1(13)*
USE OF INTERNAL MAIL SYSTEM

The College District mail system for delivering items between College District buildings shall not be available for use other than official school business.

An employee who wishes to distribute information from an employee organization shall do so only when the employee is off-duty and when acting as an agent of the employee organization.

With the permission of the College President or designee, internal mailboxes at an individual campus may be used by campus employees and school-sponsored or school support groups affiliated with that campus. [See also GF]
The Texas Department of Public Safety (TDPS) and the Coordinating Board shall adopt a memorandum of understanding that establishes the responsibilities of the Coordinating Board, TDPS, and the public or private institutions of higher education in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of institutions of higher education. *Health and Safety Code 481.0621(b)*

**Note:** The Memorandum of Understanding between the Texas Department of Public Safety and the Texas Higher Education Coordinating Board is available on the Coordinating Board website at [http://www.thecb.state.tx.us/reports/PDF/1210.PDF](http://www.thecb.state.tx.us/reports/PDF/1210.PDF).
“LOCAL GOVERNMENT RECORD”

A “local government record” means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information-recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government, including a college district, or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

1. Extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government.
2. Notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer’s or employee’s personal convenience.
3. Blank forms.
4. Stocks of publications.
5. Library and museum materials acquired solely for the purposes of reference or display.
6. Copies of documents in any media furnished to members of the public to which they are entitled under Government Code Chapter 552 (Public Information Act) or other state law.
7. Any records, correspondence, notes, memoranda, or documents, other than a final written agreement described by Government Code 2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

Local Gov’t Code 201.003(8)

The governing body of a local government, including a college district, shall:

1. Establish, promote, and support an active and continuing program for the efficient and economical management of all local government records;
2. Cause policies and procedures to be developed for the administration of the program under the direction of the records management officer;
3. Facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government;

4. Facilitate the identification and preservation of local government records that are of permanent value;

5. Facilitate the identification and protection of essential local government records; and

6. Cooperate with the State Library and Archives Commission in its conduct of statewide records management surveys.

Local Gov’t Code 203.021

CUSTODIANS OF RECORDS

Custodians of records in each local government, including each college district, shall:

1. Cooperate with the records management officer in carrying out the policies and procedures established by the local government for the efficient and economical management of records and in carrying out the requirements of Local Government Code Title 6, Subtitle C;

2. Adequately document the transaction of government business and the services, programs, and duties for which the custodians and their staff are responsible; and

3. Maintain the records in the custodians’ care and carry out the preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the local government’s records management program and the requirements of Subtitle C and rules adopted under it.

State law relating to the duties, other responsibilities, or record-keeping requirements of a custodian of local government records do not exempt the custodian or the records in the custodian’s care from the application of Subtitle C and rules adopted under it and may not be used by the custodian as a basis for refusal to participate in the records management program of the local government whose establishment is required by Local Government Code Chapter 203.

Local Gov’t Code 203.022
The governing body of each local government shall designate a records management officer by:

1. Designating an individual; or
2. Designating an office or position, the holder of which shall be the records management officer.

The name, office, or position of the records management officer shall be entered on the minutes of the governing body. The name or the name and office or position of the records management officer shall be filed by the records management officer with the director and librarian within 30 days after the date of the designation.

The designation of a new individual or a new office or position shall be entered on the minutes and reported by the records management officer to the director and librarian in the same manner as the original designation. If the order designating a records management officer designates an office or position rather than an individual, a new holder of that office or position must file the holder's name with the director and librarian within 30 days after the date of assuming the office or position.

Local Gov't Code 203.025

The records management officer in each local government shall:

1. Assist in establishing and developing policies and procedures for the records management program for the local government.
2. Administer the records management program and provide assistance to custodians for the purposes of reducing costs and improving the efficiency of recordkeeping.
3. In cooperation with the custodians of the records:
   a. Prepare and file with the director and librarian the records control schedules and amended schedules required by Local Government Code 203.041 and the list of obsolete records as provided by Local Government Code 203.044; and
   b. Prepare or direct the preparation of requests for authorization to destroy records not on an approved control schedule as provided by Local Government Code 203.045, of requests to destroy the originals of permanent records that have been microfilmed as provided by Local Government Code 204.008, and of electronic storage authorization requests as provided by Local Government Code 205.007;
4. In cooperation with custodians, identify and take adequate steps to preserve local government records of permanent value.

5. In cooperation with custodians, identify and take adequate steps to protect essential local government records.

6. In cooperation with custodians, ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the local government's records management program and the requirements of Local Government Code Title 6, Subtitle C and rules adopted under it.

7. Disseminate to the governing body and custodians information concerning state laws, administrative rules, and policies of the government relating to local government records.

8. In cooperation with custodians, establish procedures to ensure that the handling of records in any context of the records management program by the records management officer or those under the officer’s authority is carried out with due regard for the duties and responsibilities of custodians that may be imposed by law and the confidentiality of information in records to which access is restricted by law.

Local Gov't Code 203.023

On or before January 4, 1999, the records management officer shall prepare and file with the director and librarian:

1. A records control schedule listing the following records and establishing a retention period for each as provided by Local Government Code 203.042:

   a. All records created or received by the local government or elective county office;

   b. Any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has not expired; and

   c. Any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has expired but which will not be destroyed as provided by Local Government Code 203.044; or

2. The records management officer, in lieu of filing a records control schedule, may file with the director and librarian a writ-
ten certification of compliance that the local government or the elective county office has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by the commission.

At the discretion of the records management officer the records control schedule may also list and provide retention periods for material that is excluded from the definition of a local government record by Local Government Code 201.003(8) and exempted records described by Local Government Code 202.001(b) if in the officer's opinion the inclusion of the material or records is necessary to ensure the periodic destruction of the material or records in the interest of efficient records management.

A records management officer, in lieu of filing an amended records control schedule, may file with the director and librarian an amended written certification of compliance that the local government or the elective county office has adopted amended records control schedules to comply with the minimum requirements established on records retention schedules issued by the commission including any revised schedules issued by the commission.

The records management officer shall review the records control schedules of the local government or elective county office and prepare amendments to the schedules as needed to reflect new records created or received by the government or office or revisions to retention periods established in a records retention schedule issued by the commission. Amendments to records control schedules shall be filed with the director and librarian in the same manner as the original schedules.

The governing body shall require in the ordinance or order establishing the records management program the review or approval of a records control schedule or amended schedule by the officers of the local government as it considers necessary. The records control schedule or amended schedule for an elective county office need only be approved by the elected official in charge of that office.

Records control schedules may be filed on an office-by-office basis or on a department-by-department basis within each office.

A local government that intends to retain all records permanently or that destroys only those records for which no retention periods have been established in a records retention schedule established under Government Code 441.158 is not required to submit a records control schedule.

*Local Gov't Code 203.041*
The records retention schedules adopted in 1 Administrative Code 7.125 shall be considered minimum requirements and shall in no way affect the authority of the governing bodies of local governments to establish longer periods of time for which records of their government are to be retained. The applicable records retention schedules adopted by the State Library and Archives Commission include:

1. Local Schedule GR—Records Common to all Governments;
2. Local Schedule EL—Records of Elections and Voter Registration;
3. Local Schedule TX—Records of Property Taxation; and
4. Local Schedule JC—Records for Public Junior Colleges.

13 TAC 7.123(b), .125

Note: The State Library and Archives Commission records retention schedules are available at [http://www.tsl.state.tx.us/slrm/recordspubs/localretention.html](http://www.tsl.state.tx.us/slrm/recordspubs/localretention.html).

A local government record may be destroyed if:

1. The record is listed on a records control schedule accepted for filing by the director and librarian as provided by Local Government Code 203.041 and either its retention period has expired or it has been microfilmed or stored electronically in accordance with the requirements of Local Government Code Chapters 204 and 205;
2. The record appears on a list of obsolete records approved by the director and librarian as provided by Local Government Code 203.044; or
3. A destruction request is filed with and approved by the director and librarian as provided by Local Government Code 203.045 for a record not listed on an approved control schedule.

The following records may be destroyed without meeting the above conditions:

1. Records the destruction or obliteration of which is directed by an expunction order issued by a district court pursuant to state law.
2. Records defined as exempt from scheduling or filing requirements by rules adopted by the commission or listed as exempt in a records retention schedule issued by the Commission.

*Local Gov't Code 202.001*

**EXCEPTIONS**

A local government record the subject matter of which is known by the custodian to be in litigation may not be destroyed until the litigation is settled. A local government record subject to a request under Government Code Chapter 552 may not be destroyed until the request is resolved. *Local Gov't Code 202.002*

**MANNER OF DESTRUCTION**

A local government record may be destroyed by burning, shredding, pulping, or burial in a landfill or by sale or donation for recycling purposes except that records, including extra identical copies of a local government record, to which public access is restricted under Government Code Chapter 552 or other state law may be destroyed only by burning, pulping, or shredding.

A local government that sells or donates records for recycling purposes shall establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler.

The director and librarian may approve other methods of destruction that render the records unrecognizable as local government records.

*Local Gov't Code 202.003, .006*

**ALIENATION OF RECORDS**

A local government record may be sold or donated, loaned, transferred, or otherwise passed out of the custody of a local government to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government’s records management officer and after the expiration of the record's retention period under the local government's records control schedule.

A local government record may not be sold or donated (except for the purposes of recycling), loaned, transferred, or otherwise passed out of the custody of a local government to any private college or university, private museum or library, private organization of any type, or an individual, except with the consent of the director and librarian and after the expiration of its retention period under the local government's records control schedule.

A records management officer or custodian may temporarily transfer a local government record to a person for the purposes of mi-
crofilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures.

*Local Gov't Code 202.004*

**RIGHT OF RECOVERY**

In accordance with Local Government Code 202.005, the governing body may demand and receive from any person any local government record in private possession created or received by the local government the removal of which was not authorized by law. *Local Gov't Code 202.005(a)*

**PRESERVATION OF RECORDS**

A governmental body, including a college district board of trustees, shall determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of local government records or public information. *Gov't Code 552.004*

**MICROFILMING**

Any local government record may be maintained on microfilm in addition to or instead of paper or other media, subject to the requirements of Local Government Code Chapter 204 and rules adopted under it by the State Library and Archives Commission. *Local Gov't Code 204.002–.003*

**ELECTRONIC STORAGE**

Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of Local Government Code Chapter 205 and rules adopted under it by the State Library and Archives Commission. *Local Gov't Code 205.002–.003*

**PENALTIES**

An officer or employee of a local government commits an offense if the officer or employee knowingly or intentionally violates this subtitle or rules adopted under it by destroying or alienating a local government record in contravention of Local Government Code Title 6, Subtitle C or by intentionally failing to deliver records to a successor in office as provided by Local Government Code 201.006(a). *Local Gov't Code 202.008*

**FEDERAL INVESTIGATIONS AND BANKRUPTCY**

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under U.S.C. Title 11 (bankruptcy), or in relation to or contemplation of any such matter or case, shall be fined, imprisoned not more than 20 years, or both. *18 U.S.C. 1519*
The College President or designee shall oversee the performance of records management functions prescribed by state and federal law:

- Records Management Officer, as prescribed by Local Government Code 203.023
- Records Administrator, as prescribed by Local Government Code 176.001 and 176.007 [See BBFA and CFE]
- Officer for Public Information, as prescribed by Government Code 552.201–.205 [See GAB]
- Public Information Coordinator, as prescribed by Government Code 552.012 [See BBD]

The College District shall follow its records management program regarding document destruction. However, the College District shall preserve documents, including electronically stored information, and suspend routine record destruction practices as applicable according to procedures developed by the records management officer:

1. In the event of pending or reasonably anticipated litigation;
2. In the event of an investigation by a federal agency or department or any bankruptcy case; or
3. In the event of a public information request.

Notification shall be given to appropriate staff of any applicable obligations to suspend routine record destruction practices.

The College District's records management program shall address the length of time documents will be posted on the College District’s website when the law does not specify a posting period.
The governing board of each state institution of higher education, including each public junior college, is authorized to promulgate rules and regulations providing for the disposition of abandoned and unclaimed personal property coming into the possession of the campus security personnel where the personal property is not being held as evidence to be used in any pending criminal case. Education Code 51.213(a)
The Director of Campus Security is authorized to dispose of abandoned and unclaimed personal property in accordance with College District regulations. These regulations shall address, but not be limited to, the following topics:

1. Notices of lost and found locations posted at appropriate places or described in College District publications and that include procedures for reclaiming lost articles and time frames for the College District to dispose of unclaimed property.

2. A range of options for locating owners of abandoned property that is not turned in to a lost and found location. These options may address such items as abandoned cars or other large items.

3. Disposal procedures including donations to charity or student organizations, sales, and auctions.

Any monies realized from disposal of unclaimed or abandoned personal property shall be deposited in the College District’s general fund.

[For the applicability of the abandoned property procedures under Property Code Chapter 76, see CD]

The Vice President for Administrative Services is authorized to declare College District materials, equipment, and supplies to be unnecessary and shall dispose of unnecessary materials, equipment, and supplies for fair market value. If the unnecessary property has no value, the Vice President for Administrative Services may dispose of such property according to administrative discretion.

Items obtained as federal surplus shall be managed according to federal regulations.

The bartering of College District assets shall be prohibited without the express approval of the Board.
The owner of a motor vehicle, trailer, or semitrailer may annually apply for registration under Transportation Code 502.451 and is exempt from the payment of a registration fee under Transportation Code Chapter 502 if the vehicle is owned by and used exclusively in the service of the United States, this state, or a county, municipality, or school district in this state. An application for registration under this section must be made by a person having the authority to certify that the vehicle meets the exemption requirements. *Transp. Code 502.453*

A motor vehicle, trailer, or semitrailer that is the property of and used exclusively by any institution of higher education, including a college district, must have the name of the institution printed on the side of the vehicle. The inscription must be in a color sufficiently different from the body of the vehicle and must be of letters of sufficient height so that the lettering is plainly legible at a distance of not less than 100 feet. This requirement does not apply to a motor vehicle used by a peace officer commissioned under Education Code Chapter 51, Subchapter E or the chancellor or president of an institution of higher education. *Education Code 51.932*

Each governing board of an institution of higher education, including each college district, shall adopt a policy regulating travel that is undertaken by one or more students presently enrolled at the institution to reach an activity or event that is located more than 25 miles from the institution that is organized and sponsored by the institution and that is:

1. Funded by the institution, and the travel is undertaken using a vehicle owned or leased by the institution; or
2. Required by a student organization registered at the institution.

The governing board shall seek advice and comment from the faculty and students of the institution before adopting any policy. The policy must contain provisions that address:

1. Different modes of travel likely to be used by students; and
2. Safety issues related to student travel, including:
   a. Use of seat belts or other safety devices;
   b. Passenger capacity; and
   c. For the person providing transportation services:
      (1) Qualifications and training required to operate that particular mode of travel; and
(2) Fatigue at the time of travel.

The governing board shall make the policy available to the public by publishing the policy in the college district’s catalog and by any other method the board considers appropriate.

The board shall file a copy of the policy, and any amendments to that policy, with the Coordinating Board.

*Education Code 51.950*

**TRANSPORTATION OF PUBLIC SCHOOL STUDENTS**

A school bus operated by a junior college may also be used to transport public school students if it is convenient. If students of a local public school district are transported to and from school on a bus operated by a junior college and the operator is under 21 years of age, the selection of the operator must be approved by the principal of the public school whose students are transported on that bus. This section does not apply to the operator of a vehicle operated under a registration certificate issued under Transportation Code Chapter 643. *Transp. Code 521.023(b)–(c)*

**DRIVER QUALIFICATIONS**

A person who is 18 years of age or older and who is licensed by the Texas Department of Public Safety to operate a motor vehicle as a school bus may operate the motor vehicle for the transportation of junior college students and employees to and from school or official school activities. This section does not apply to the operator of a vehicle operated under a registration certificate issued under Transportation Code Chapter 643. *Transp. Code 521.023(a), (c)*
**MODES OF TRANSPORTATION**

Modes of transportation used for student travel shall include, but are not be limited to, cars, vans, and buses. Travel arrangements for student groups shall be made in accordance with administrative regulations.

**DRIVER REQUIREMENTS**

A driver who is transporting students in College District-owned or -leased vehicles must:

1. Be an employee of the College District.
2. Hold a valid driver’s license appropriate for the vehicle to be driven. A driver of a commercial motor vehicle must have a commercial driver’s license.
3. Have an acceptable driving record.

**SAFETY STANDARDS**

The driver shall ensure that the number of passengers does not exceed the designed capacity of the vehicle and that each passenger is secured by a safety belt, if provided.

**DRIVER FATIGUE**

A driver shall not drive for more than eight consecutive hours without taking a thirty-minute break or relief from driving.
A person commits an offense that is a misdemeanor if the person operates or moves or, as an owner, knowingly permits another to operate or move, a vehicle that:

1. Is unsafe so as to endanger a person;
2. Is not equipped in a manner that complies with the vehicle equipment standards and requirements established by Transportation Code Chapter 547; or
3. Is equipped in a manner prohibited by Chapter 547.

*Transp. Code 547.004(a)*

**INSPECTIONS**

A motor vehicle, trailer, semitrailer, pole trailer, or mobile home, registered in this state, must have the items listed in Transportation Code 548.051 inspected at an inspection station or by an inspector. *Transp. Code 548.051(a)*

**COLLEGE DISTRICT INSPECTION STATION**

The Texas Department of Public Safety may certify a vehicle maintenance facility owned and operated by a political subdivision or agency of this state as an inspection station. An inspection station certified under this section is subject to the requirements of Transportation Code Chapter 548 applicable to another inspection station, except as otherwise provided by Chapter 548. The facility may inspect only a vehicle owned by the political subdivision or state agency. *Transp. Code 548.004*
COMMERCIAL INSURANCE PLANS

Associations of public employees and the governing boards and authorities of colleges are authorized to procure contracts with any insurance company authorized to do business in this state insuring their respective employees under a policy or policies of group health, accident, accidental death and dismemberment, disability income replacement, and hospital, surgical, and/or medical expense insurance, or a group contract providing for annuities. The dependents of any such employees may be insured under group policies which provide hospital, surgical, and/or medical expense insurance. *Insurance Code 3.51 §1(a)*

PREMIUM PAYMENTS

The premium for the policy may be paid wholly or partly from funds contributed by the employer, the individuals insured under the policy, or the insured employees who are members of the association of employees. The employer may deduct from an employee's salary the employee’s contribution for the premiums if authorized to do so in writing by that employee. *Insurance Code 3.51, 1131.303*

SELF-INSURANCE FUND

A governmental unit, including a college district, may establish a self-insurance fund to protect the governmental unit and its officers, employees, and agents from any insurable risk or hazard. The governmental unit may issue public securities and use the proceeds for all or part of the fund or use any money available to the governmental unit for the fund.

The governmental unit may purchase reinsurance for a risk covered through the fund. Any law, including a regulation, requiring insurance may be satisfied by coverage provided through the fund. Any law, including a regulation, requiring a certificate of insurance or an insurance agent's signature, countersignature, or approval may be satisfied by a certificate of coverage issued on behalf of the governmental unit demonstrating that coverage is provided through the fund.

*Gov't Code 2259.031*

RISK-RETENTION GROUPS

A governmental unit, including a college district, may become a member of a risk retention group or purchasing group created under the Liability Risk Retention Act of 1986, 15 U.S.C. 3901 et. seq., to obtain insurance against an insurable risk. *Gov't Code 2259.061*

DESIGNATED BROKER OF RECORD

A junior college district may not use a designated broker of record to purchase insurance contracts with premiums of an aggregate value of $10,000 or more for each 12-month period. If the district expends less than $10,000, in the aggregate, on insurance premiums for each 12-month period, the district may use a designated broker of record to purchase insurance contracts, but the board shall ensure that the use of a designated broker of record is in the
LIABILITY INSURANCE

The governing board of an institution of higher education may purchase insurance insuring the institution and its employees against any liability, risk, or exposure and covering the losses of any institutional property. The governing board may pay the cost of any insurance from any funds of the institution. Government Code 612.002(b) does not apply to an institution of higher education purchasing insurance under Education Code 51.966. Education Code 51.966; Atty. Gen. Op. H-70 (1973)

TORT CLAIMS ACT

Each governmental unit other than a unit of state government may purchase insurance policies protecting the unit and the unit’s employees against claims for property damage, personal injury, or death proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of the individual’s employment if:

1. The property damage, personal injury, or death arises from the operation or use of a motor vehicle or motor-driven equipment; and

2. The employee would be personally liable to the claimant according to Texas law.

A unit of state government may purchase such a policy only to the extent that the unit is authorized or required to do so under other law.

Civil Prac. & Rem. Code 101.021, .027(a)

TORT CLAIMS PAYMENTS

A local government, including a college district, may pay actual damages awarded against an employee of the local government if the damages result from an act or omission by the employee in the course and scope of employment for the local government and arise from a cause of action for negligence. The local government may also pay the court costs and attorney’s fees awarded against an employee for whom the local government may pay damages under this section.

A local government may not pay damages awarded against an employee that arise from a cause of action for official misconduct or arise from a cause of action involving a willful or wrongful act or omission or an act or omission constituting gross negligence.

Civil Prac. & Rem. Code 102.002

DEFENSE COUNSEL

A local government, including a college district, may provide counsel to represent a defendant for whom the local government may pay damages. The counsel provided by the local government may be the local government’s regularly employed counsel, unless there is a potential conflict of interest between the local govern-
A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed if a certificate of mold damage remediation has been issued for the property, the property is owned or occupied by a governmental entity, including a college district, and the decision to occupy was made by the owner, occupier, or any person authorized by the owner or occupier to make the decision. *Occupations Code 1958.304; 25 TAC 295.338(b)*

The governing body of a political subdivision shall provide for insuring each law enforcement officer appointed or employed by the political subdivision against liability to third persons arising out of the officer’s operation of a motor vehicle owned, leased, or otherwise controlled by the political subdivision at any time the officer is authorized to operate the vehicle, including times that the officer is authorized to operate the vehicle while off duty. The motor vehicle liability coverage must be in amounts not less than those required by Transportation Code Chapter 601, Subchapter D to establish financial responsibility. A political subdivision may satisfy this requirement by:

1. Electing to be self-insured;
2. Entering into a risk retention group, risk management pool, or interlocal contract with other political subdivisions; or
3. Providing for coverage by an insurance company authorized to write motor vehicle liability insurance coverage.

The policy may exclude coverage for operation of a motor vehicle in the commission of a criminal offense other than a traffic offense. *Gov’t Code 612.005*
The College District shall purchase insurance as provided in CKB(LEGAL) to fund the cost of litigation to protect the College District, its employees, and its Board members who are exposed to individual liability by virtue of their official duties. [See CKB(LEGAL)]

In addition, the College District shall purchase insurance to protect the College District and employees from liability under the Tort Claims Act. [See CKB(LEGAL)]
A political subdivision or institution of higher education may contract with an employee for the deferment of any part of the employee’s compensation. A contract created under this section need not be in writing and may be communicated to the plan administrator electronically or by any other means approved by the plan's trustees. *Gov't Code 609.007(a), (d)–(e)*

A junior college district, either alone or by contract with other political subdivisions or institutions of higher education, may create and administer a deferred compensation plan, the federal income tax treatment of which is governed by Section 457 of the Internal Revenue Code of 1986, and its subsequent amendments, for its employees and may assess a fee on each participating employee for administering the plan.

The organization and implementation of such a deferred compensation plan shall be in accordance with Government Code Chapter 609.

*Gov't Code 609.102, .702*

Pursuant to Government Code Chapter 609, Subchapter C and 34 Administrative Code Chapter 87, employees of community colleges and junior colleges are eligible to participate in the Texa$saver plan only if such community college or junior college has opted to participate in the Texa$saver 457 plan. *34 TAC 87.5(d)*

Except as provided by Government Code 609.5025, to participate in a deferred compensation plan, an employee must consent in the contract to automatic payroll deductions in an amount equal to the deferred amount. *Gov't Code 609.007 (c)*

The governing board of a state-supported institution of higher education, including a college district, may enter into agreements with the entity’s employees for the purchase of annuities or for contributions to any type of investment for the entity’s employees as authorized in Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments.

The governing board, as appropriate, may:

1. Reduce the salary of participants when authorized by the participants and shall apply the amount of the reduction to the purchase of annuity contracts or to contributions to any type of investment authorized in Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments, the exclusive control of which will vest in the participants; and
2. Develop a system to allow or require participants to electronically authorize participation, purchases of annuity contracts, and contributions to investments.

*Art. 6228a-5, Sec 1-2, V.A.T.S.*
An institution of higher education, including a college district, shall be covered by the Texas Employees Uniform Group Insurance Program.

The institution shall provide a health care insurance program in compliance with the Employee Retirement System of Texas (ERS) policies and regulations and federal law.

*Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191, 45 C.F.R. 146.111(a); Insurance Code Chapter 1551*

An institution of higher education, including a college district, shall, at the time of employment, notify each of the institution’s employees eligible to participate in the group benefits program of the employee’s eligibility to participate. *Insurance Code 1551.107(b)*

Employees and officers shall be eligible to participate in the group benefits program pursuant to Insurance Code, Chapter 1551, Subchapter C.

An employee of a public junior college who is employed to perform services outside of this state is not eligible to participate in the group benefits program unless the college elects, under procedures adopted by the ERS board of trustees, to permit the employee to participate in the group benefits program.

An employee is employed to perform services outside of this state if 75 percent or more of the services performed by the employee are performed outside of this state.

A person employed by a public junior college on August 31, 1999, remains eligible to participate in the group benefits program in the same manner as other employees of the college even if the individual’s employment by the college is not continuous.

*Insurance Code 1551.110(a)–(c)*

Subject to Insurance Code 1551.351, on application to the board of trustees of ERS and arrangement for payment of contributions, an individual participating in the group benefits program on August 31, 2003, as a current or former member of the governing body of an institution of higher education remains eligible for participation in a group health benefit plan offered under Insurance Code Chapter 1551 if a lapse in coverage has not occurred. A participant described by this section may not receive a state contribution for premiums. The governing body of an institution of higher education may pay from local funds part or all of the contributions the state would pay for similar coverage of other participants in the group benefits program. The participant’s contribution for coverage under a health benefit plan may not be greater than the contribu-
In any case in which a person (or the person’s dependents) has coverage under a health plan in connection with the person’s position of employment, including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, and such person is absent from such position of employment by reason of service in the uniformed services the plan shall provide that the person may elect to continue such coverage. The maximum period of coverage of such a person and the person’s dependents under such an election shall be the lesser of:

1. The 24-month period beginning on the date on which the person’s absence begins; or

2. The day after the date on which the person fails to apply for or return to a position of employment. [See DECB]

38 U.S.C. 4317(a)(1)

During any period that an eligible employee takes family and medical leave, the employer shall maintain coverage under any “group health plan,” as defined in 26 U.S.C. 5000(b)(1), for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave. 29 U.S.C. 2614(c); 29 C.F.R. 825.209–210, .213 [See also DECA]

In accordance with regulations which the Secretary of Health and Human Services shall prescribe, each group health plan that is maintained by any state that receives funds under 42 U.S.C. Chapter 6A, by any political subdivision of such a state, or by any agency or instrumentality of such a state or political subdivision, shall provide, in accordance with 42 U.S.C. Chapter 6A, Subchapter XX, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan in connection with such group.

42 U.S.C. 300bb-1(a), 300bb-2(1)
“QUALIFYING EVENT”  

“Qualifying event” means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under 42 U.S.C. Chapter 6A, Subchapter XX, would result in the loss of coverage of a qualified beneficiary:

1. The death of the covered employee.
2. The termination, other than by reason of such employee’s gross misconduct, or reduction of hours, of the covered employee’s employment.
3. The divorce or legal separation of the covered employee from the employee’s spouse.
4. The covered employee becoming entitled to benefits under Medicare, 42 U.S.C. 1395 et seq.
5. A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

42 U.S.C. 300bb-3  

PERIOD OF COVERAGE  
The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

1. In the case of the termination or reduction of hours of a covered employee as described at “QUALIFYING EVENT,” the date which is 18 months after the date of the termination or reduction of hours.
2. If a qualifying event occurs during the 18 months after the date of the termination or reduction of hours, the date which is 36 months after the date of the termination or reduction of hours.
3. In the case of a qualifying event other than termination or reduction of hours, the date which is 36 months after the date of the qualifying event.
4. In the case of the termination or reduction of hours of a covered employee as described at “QUALIFYING EVENT” that occurs less than 18 months after the date the covered employee became entitled to benefits under Medicare, 42 U.S.C. 1395 et seq., the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this provision before the close of the 36-month period beginning on the date the covered employee became so entitled.
5. In the case of a qualified beneficiary who is determined, under Title II or XVI of the Social Security Act, 42 U.S.C. 401 et seq.,
1381 et seq., to have been disabled at any time during the first 60 days of continuation coverage, any reference in paragraph 1 or 2 to 18 months is deemed a reference to 29 months with respect to all qualified beneficiaries, but only if the qualified beneficiary has provided notice of such determination under 42 U.S.C. 300bb–6(3) before the end of such 18 months.

42 U.S.C. 300bb-2(2)

PREMIUM

The plan may require payments of a premium for any period of continuation coverage, except that such premium shall not exceed 102 percent of the applicable premium for such period, and may, at the election of the payor, be made in monthly installments. In the case of an individual entitled to 29 months of continuation coverage under 42 U.S.C. 300bb-2(2)(A)(vi) the plan may require payment of a premium that shall not exceed 150 percent of the applicable premium for any month after the 18th month. The qualified beneficiary may choose to pay the premiums in monthly installments. In no event may the plan require the payment of any premium before the day that is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. 42 U.S.C. 300bb-2(2)(A), (3)

NOTICE

The employer of an employee under a group health plan must notify the plan administrator of an employee’s death, termination, reduction of hours, or eligibility for Medicare payments within 30 days of the date of the qualifying event.

Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of a divorce or legal separation from a spouse or a dependent child ceasing to be a dependent within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under Title II or XVI of the Social Security Act, 42 U.S.C. 401 et seq., 1381 et seq., to have been disabled at any time during the first 60 days of continuation coverage is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination that the qualified beneficiary is no longer disabled.

42 U.S.C. 300bb-6(2)–(3)

Note: See also DEB for continuation benefits that are available to survivors of college district peace officers under certain conditions.
A group health plan may not impose any preexisting condition exclusion with respect to such plan or coverage.

42 U.S.C. 300gg-3(a); 45 C.F.R. 146.111

A group health plan shall provide certification:

1. At the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision. This certification may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision;

2. In the case of an individual covered under COBRA, at the time the individual’s COBRA coverage ceases; and

3. On the request on behalf of an individual made not later than 24 months after the date of cessation of coverage described in paragraph 1 or 2, whichever is later.

The certification is a written certification of:

1. The period of creditable coverage of the individual under such plan and the coverage, if any, under such COBRA continuation provision, and

2. The waiting period, if any, and affiliation period, if applicable, imposed with respect to the individual for any coverage under such plan.

To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirements if the health insurance issuer offering the coverage provides for such certification.

42 U.S.C. 300gg-3(e)(1); 45 C.F.R. 146.115

If the plan sponsor of a nonfederal governmental group health plan to which 42 U.S.C. Chapter 6A, Subchapter XXV, Part A, Subparts 1 and 2 otherwise apply makes an election to be exempted from any or all of the following provisions of HIPAA then the requirements of such subparts insofar as they apply directly to group health plans (and not merely to group health insurance coverage) shall not apply to such governmental plans for such period:

1. Limitations on preexisting condition exclusion periods;

2. Special enrollment periods for individuals;

3. Prohibitions against discriminating against individual participants and beneficiaries based on health status;
4. Standards relating to benefits for mothers and newborns;

5. Parity in the application of certain limits to mental health benefits; and

6. Required coverage for reconstructive surgery and certain other services following a mastectomy under section 2706 of the Public Health Service Act.

**42 U.S.C. 300gg-21(a)(2); 45 C.F.R. 146.180**

**FORM OF ELECTION**

The election must meet the following requirements:

1. Be made in writing.

2. Be made in conformance with all of the plan sponsor’s rules, including any public hearing requirements.

3. Specify the beginning and ending dates of the period to which the election is to apply. This period is a single specified plan year, as defined in 45 C.F.R. 144.103.

4. Specify the name of the plan and the name and address of the plan administrator, and include the name and telephone number of a person CMS may contact regarding the election.

5. State that the plan does not include health insurance coverage, or identify which portion of the plan is not funded through health insurance coverage.

6. Specify each requirement described in 45 C.F.R. 146.180(a) of this section from which the plan sponsor elects to exempt the plan.

7. Certify that the person signing the election document, including, if applicable, a third party plan administrator, is legally authorized to do so by the plan sponsor.

8. Include, as an attachment, a copy of the notice described in 45 C.F.R. 146.180(f).

**42 U.S.C. 300gg-21(a)(2); 45 C.F.R. 146.180(b)**

**TIMING OF ELECTION**

Absent an extension by the U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) for good cause, a plan sponsor or entity acting on behalf of a plan sponsor must file an election with CMS before the first day of the plan year. The election applies for a single specified plan year. A plan sponsor may renew an election through subsequent elections.

**42 U.S.C. 300gg-21(a)(2)(A); 45 C.F.R. 146.180(d), (g)**
In accordance with 45 C.F.R. 146.180(f), a plan that makes the election described in this section must notify each affected enrollee of the election, and explain the consequences of the election. The notice must be in writing and must be provided to each enrollee at the time of enrollment under the plan, and on an annual basis no later than the last day of each plan year for which there is an election. A plan may meet the notification requirements by prominently printing the notice in a summary plan description, or equivalent description, that it provides to each enrollee at the time of enrollment, and annually. Also, when a plan provides a notice to an enrollee at the time of enrollment, that notice may serve as the initial annual notice for that enrollee. 42 U.S.C. 300gg-21(a)(2)(C); 45 C.F.R. 146.180(f)

To the extent the college district is a covered entity under the Administrative Simplification provisions of HIPAA, the college district must maintain the privacy of protected health information in accordance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E. 42 U.S.C. Chapter 7, Subchapter XI, Part C

“Covered entity” means:

1. A health plan;

2. A health-care clearinghouse; or


45 C.F.R. 160.103

“Protected health information” means individually identifiable health information that is transmitted by electronic media, maintained by electronic media, or transmitted or maintained in any form or medium. “Protected health information” excludes individually identifiable health information in:


2. Medical treatment records described at 20 U.S.C. 1232g(a)(4)(B)(iv) on a student who is at least 18 years of age.

3. Employment records held by a covered entity in its role as employer.

20 U.S.C. 1232g, 45 C.F.R. 160.103 [See FJ(LEGAL) at “EDUCATION RECORDS” DEFINED]
The term “plan sponsor” includes the employer in the case of an employee benefit plan established or maintained by a single employer. 29 U.S.C. 1002(16)(B)

A group health plan, to disclose protected health information to the plan sponsor or to provide for or permit the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO with respect to the group health plan, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of the Privacy Rule.

The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose summary health information to the plan sponsor, if the plan sponsor requests the summary health information for the purpose of:

1. Obtaining premium bids from health plans for providing health insurance coverage under the group health plan; or
2. Modifying, amending, or terminating the group health plan.

A state agency on request of another state agency shall disclose information relating to the amounts charged by a pharmacy benefit manager for pharmacy benefit manager services provided under a prescription drug program and other requested pricing information related to a contract for pharmacy benefit manager services. A state agency shall provide information requested under this section not later than the 30th day after the date the information is requested.

A state agency is not required to disclose information the agency is specifically prohibited from disclosing under a contract with a pharmacy benefit manager executed before September 1, 2009.

A contract entered, amended, or extended on or after September 1, 2009, may not contain a provision that prohibits a state agency from disclosing information on the amounts charged by a pharmacy benefit manager for pharmacy benefit manager services provided under a prescription drug program or from disclosing other pricing information related to the contract.

Gov’t Code 2158.402
The information received by a state agency under this section may not be disclosed to a person outside of the state agency or its agents. *Gov’t Code 2158.403*

“State agency” means a board, commission, department, office, or other agency in the executive, legislative, or judicial branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by Education Code 61.003. *Gov’t Code 2158.401(a)*
A political subdivision, including a college district, shall extend workers’ compensation benefits to its employees by:

1. Becoming a self-insurer;
2. Providing insurance under a workers’ compensation insurance policy; or
3. Entering into an interlocal agreement with other political subdivisions providing for self-insurance.

_Labor Code 504.011_

In Labor Code Chapter 504, unless a different meaning is plainly required by the context, “employee” means a person in the service of a political subdivision, including a college district, who has been employed as provided by law, or a person for whom optional coverage is provided under Labor Code 504.012 or 504.013. A person is not an employee and is not entitled to compensation under Chapter 504 if the person:

1. Is in the service of a political subdivision and is paid on a piecework basis other than by the hour, day, week, month, or year; or
2. Performs services that may benefit a political subdivision, or is employed by or under contract with a performer providing those services, but does not receive payment from the political subdivision for the performance of the services, if the services are performed in connection with the operation or production of a musical, vocal, or theatrical performance, or another entertainment event.

_Labor Code 504.001, .014_

A political subdivision, including a college district, shall notify the Texas Department of Insurance (TDI) of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

A political subdivision shall notify its employees of the method by which the employees will receive benefits and the effective date of the coverage.

_Labor Code 504.018_

The employer, including a college district, shall report to the employer’s insurance carrier each death, each occupational disease of which the employer has received notice of injury or has knowledge, and each injury that results in more than one day’s absence from work for the injured employee. The term “knowledge”
includes receipt of written or oral information regarding diagnosis of an occupational disease, or diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.

TDI shall prescribe the form, format, and manner of the employer's first report of injury (report). The report shall contain the information required by 28 Administrative Code 120.1(a) (relating to Employer's Record of Injuries), any additional information prescribed by TDI in accordance with the Labor Code 402.00128(b)(10), and the information necessary for an insurance carrier to electronically transmit a first report of injury to TDI. The report shall be filed with the insurance carrier not later than the eighth day after having received notice of or having knowledge of an occupational disease or death, or not later than the eighth day after the employee's absence from work for more than one day due to a work-related injury. A report is filed when personally delivered, mailed, reported via tele-claims, electronically submitted, or sent via facsimile.

The employer shall maintain a record of the date the report of injury is filed with the insurance carrier.

Labor Code 409.005–.006; 28 TAC 120.2(a)–(c), (f)

The employer shall provide a written copy of the report and a written copy of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) adopted by the Public Counsel of the Office of Injured Employee Counsel to the injured employee by personal delivery, mail, electronic submission or facsimile at the time that the report is made with the insurance carrier. The Notice of Rights and Responsibilities shall be in English and Spanish, or in English and any other language common to the employee. The written report may be the report specified in 28 Administrative Code 120.2(b), or at a minimum shall contain the information listed in 28 Administrative Code 120.1(a).

The employer shall maintain a record of the date the copy of the report of injury and the date the Notice of Rights and Responsibilities were provided to the employee.

Labor Code 409.005(c), (g); 28 TAC 120.2(d), (f)

The employer shall, on the written request of the employee, a doctor, the insurance carrier, or TDI, notify the employee, the employee's treating doctor if known to the employer, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through...
the employer. If those opportunities or that program exists, the employer shall identify the employer’s contact person and provide other information to assist the doctor, the employee, and the insurance carrier to assess modified duty or return-to-work options. Labor Code 409.005(j)

SUPPLEMENTAL REPORT OF INJURY

As provided in 28 Administrative Code 129.4 relating to adjustment of temporary income benefit amount, the employer shall file the supplemental report of injury, in the form, format and manner prescribed by TDI. The report shall be filed with the employer’s carrier and provided to the employee within ten days after:

1. The end of each pay period in which the employee has a change in earnings, including reporting all post-injury earnings as that term is used in 28 Administrative Code Chapter 129 [see OFFSETTING PAID LEAVE AGAINST WORKERS’ COMPENSATION INCOME BENEFITS, below], as a result of the injury; or

2. The employee resigns or is terminated.

The employer’s duty to file supplemental reports continues until the employee reaches maximum medical improvement (MMI) or is no longer employed by the employer and the employer has made the required report. The employer may contact the insurance carrier for information regarding the employee’s MMI status.

For injuries requiring a FIRST REPORT OF INJURY, above, unless the information required in this subsection is provided on the first report, the employer shall file the supplemental report with the employer’s carrier and provide a copy to the employee within three days after:

1. The employee begins to lose time from work as a result of the injury;

2. The employee returns to work; or

3. The employee, after returning to work, experiences an additional day(s) of disability as a result of the injury.

The employer shall file the supplemental report of injury with the carrier by personal delivery, telephone, facsimile or electronic transmission. The employer shall provide a copy of the report to the employee by facsimile or electronic transmission if the employee has identified a personal facsimile number or a personal email address to be used and the employer has the means of sending such a transmission. Otherwise the report shall be provided by personal delivery or sent by mail.
The employer shall maintain a record of the date the supplemental report is filed with the carrier and provided to the employee.

*Labor Code 409.005(i); 28 TAC 120.3*

**INJURY AND OCCUPATIONAL DISEASE REPORT**

An employer that has workers’ compensation insurance coverage (subscriber) shall file a report of injury with TDI pursuant to Labor Code 411.032. A subscribing employer’s report of injury filed in accordance with Labor Code 409.005 and applicable TDI rules satisfies that employer’s requirement to file an injury and occupational disease report under Labor Code 411.032, unless TDI requests that the employer file a report with TDI for a specific injury. *28 TAC 160.3(a)*

**WAGE REPORTS**

The employer is required to timely file a complete wage statement in the form and manner prescribed by TDI. The term "filed" means "received."

The wage statement shall be filed with the carrier, the claimant, and the claimant’s representative, if any, within 30 days of the earliest of:

1. The date the employer is notified that the employee is entitled to income benefits; or
2. The date of the employee’s death as a result of a compensable injury.

A subsequent wage statement shall be filed with the carrier, the claimant, and the claimant’s representative, if any, within seven days of a change in any wage information provided on the previous wage statement, such as because the employer has discontinued providing a nonpecuniary wage that was originally continued after the injury. A wage statement shall be filed with TDI within seven days of receiving a request from TDI. *28 TAC 120.4(a)*

**RECORD OF INJURIES**

An employer shall keep a record of all injuries and fatal injuries to employees as reported to an employer, or otherwise made known to an employer. The record shall include:

1. The name, address, date of birth, sex, wage, length of service, social security number, and occupation of the employee;
2. The reported cause and nature of the injury, the part of the body affected, and a description of any equipment involved;
3. The date, time, and location where the injury occurred;
4. The name of the employee's immediate supervisor;
5. The names of any witnesses (if known);

6. The name and address of the treating health-care provider, if known; and

7. Any voluntary benefits paid by the employer under the Texas Workers' Compensation Act.

These records shall be open to inspection by TDI, upon at least five working days notice to the employer, at a reasonable time and place. The employer shall retain a record of an injury until the expiration of five years from the last day of the year in which the injury occurred.

28 TAC 120.1(a)–(c)

The Office of Injured Employee Counsel shall maintain an ombudsman program as provided by Labor Code Chapter 404, Subchapter D to assist injured employees and persons claiming death benefits in obtaining benefits under the Texas Workers' Compensation Act. Each employer, including each college district, shall notify its employees of the ombudsman program.

These notices shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis. The notices shall be printed with a title in at least 26 point bold type, subject in at least 18 point bold type, and text in at least 16 point normal type, and shall include English, Spanish, and any other language common to the employer's employee population. The text for the notices shall be the text provided by TDI on the sample notice without any additional words or changes.

Labor Code 404.151(a), .153(a); 28 TAC 110.101(e)

TDI shall maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law. Each employer, including each college district, shall notify its employees of this service.

These notices shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis. The notices shall be printed with a title in at least 26 point bold type, subject in at least 18 point bold type, and text in at least 16 point normal type, and shall include English, Spanish, and any other language common to the employer's employee population. The text for the notices shall be the text provided by TDI on the sample notice without any additional words or changes.
An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for using the telephone service to report in good faith an alleged violation of an occupational health or safety law.

*Labor Code 411.081–.082; 28 TAC 110.101(e)*

### RELATION TO PAID LEAVE

Once temporary income benefits (TIBs) accrue, an injured employee is entitled to TIBs to compensate the employee for lost wages due to the compensable injury during a period in which the employee has a disability and has not reached maximum medical improvement.

“Lost wages” are the difference between the employee’s gross average weekly wage (AWW) and the employee’s gross post-injury earnings (PIE). If the employee’s PIE equals or exceeds the employee’s AWW, the employee has no lost wages.

PIE shall include, but not be limited to, the documented weekly amount of:

1. The value of any full days of accrued sick leave or accrued annual leave that the employee voluntarily elects to use after the date of injury; and

2. The value of any partial days of accrued sick leave or accrued annual leave that the employee has voluntarily elected to use after the date of injury that, when combined with the employee’s TIBs, exceeds AWW.

*28 TAC 129.2*

The governing body of a political subdivision, including a college district board of trustees, by majority vote, may provide that while an employee of the political subdivision is receiving workers’ compensation benefits, the employee may elect to receive previously accrued sick leave benefits, whether statutory or contractual, in an amount equal to the difference between the workers’ compensation benefits and the weekly compensation that the employee was receiving before the injury that resulted in the claim. Sick leave benefits that are received shall be deducted proportionately from the employee’s sick leave balance. *Labor Code 504.052*


### OFFSETTING PAID LEAVE AGAINST WORKERS’ COMPENSATION INCOME BENEFITS

### PROHIBITED DISCRIMINATION

A person may not discharge or in any other manner discriminate against an employee because the employee has:
1. Filed a workers’ compensation claim in good faith.
2. Hired a lawyer to represent the employee in a claim.
3. Instituted or caused to be instituted in good faith a proceeding under the Texas Workers’ Compensation Act.
4. Testified or is about to testify in a proceeding under the Texas Workers’ Compensation Act.

Labor Code 451.001

A person who violates the discrimination prohibition is liable for reasonable damages incurred by the employee as a result of the violation. An employee discharged in violation of the discrimination prohibition is entitled to reinstatement in the former position of employment. Labor Code 451.002

LEAVES OF ABSENCE


An employer that terminates an employee for violating a reasonable absence-control policy cannot be liable for prohibited discrimination as long as the rule is uniformly enforced. Continental Coffee Products Co. v. Cazarez, 937 S.W.2d 444 (Tex. 1996)
Unemployment benefits are paid through the Texas Workforce Commission (TWC) in accordance with rules adopted by the TWC and are due and payable under the Texas Unemployment Compensation Act, Labor Code Title 4, Subtitle A only to the extent provided by the Act.

"Employer" for purposes of the Texas Unemployment Compensation Act also means a political subdivision of a state, including a college district, or an instrumentality of a political subdivision of a state that is wholly owned by political subdivisions of one or more states.

_Labor Code 201.026, 206.001_

Benefits are not payable to an individual based on services performed in an instructional, research, or principal administrative capacity for an educational institution, including a college district, for a week beginning during the period between two successive academic years or terms or under an agreement providing for a similar period between two regular but not successive terms if the individual performed the services in the first of the academic years or terms and there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years or terms.

Benefits are not payable to an individual based on services performed for an educational institution in a capacity other than a capacity described above for a week that begins during a period between two successive academic years or terms if the individual performed the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. However, if benefits are denied to an individual for any week under this provision and the individual is not offered an opportunity to perform services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week that the individual filed a timely claim for benefits and the benefits were denied solely because of this provision.

Benefits are not payable to an individual based on services performed for an educational institution for a week that begins during an established and customary vacation period or holiday recess if the individual performed the services in the period immediately before the vacation period or holiday recess and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

_Labor Code 207.041(a)-(d)_
REQUIRED EMPLOYER PAYMENT ALTERNATIVES
CONTRIBUTIONS
A governmental employer shall pay a contribution, defined as a tax payment under the Texas Unemployment Compensation Act to the compensation fund, in accordance with Labor Code Chapter 204, Subchapter F and rules adopted by the TWC on wages paid for employment during each year or portion of the year in which the governmental employer is subject to the Act. A contribution paid by a governmental employer may not be deducted from the wages of individuals in the employer’s employ. Labor Code 204.101–102

REIMBURSEMENTS
A political subdivision of a state, an instrumentality of a state, or a political subdivision of a state may elect to pay reimbursements for benefits instead of contributions. The election must be made not later than the 45th day after the date on which notice that an employer is subject to the Texas Unemployment Compensation Act is mailed to the employer. The election is effective January 1 of the year in which the employer becomes subject to the Act. An election is effective for at least two calendar years and may be terminated after the minimum period by filing with the commission not later than December 1 a written request for termination. The termination is effective January 1 of the following year. Labor Code 205.001

GROUP ACCOUNTS
On approval of an application submitted by two or more reimbursing employers, the TWC shall establish a group account for the employers to share the cost of benefits that are attributable to service in the employ of the employers. The application must identify and authorize a group representative to act as the group’s agent for the purpose of Labor Code Chapter 205, Subchapter C. The group account takes effect at the beginning of the calendar quarter in which the commission received the application. The TWC shall notify the group’s representative of the effective date of the account. Labor Code 205.021

INITIAL CLAIM AND RESPONSE
A person, including a college district, to whom notice is mailed under Labor Code 208.002 shall notify TWC promptly of any facts known to the person that may:

1. Adversely affect the claimant’s right to benefits; or
2. Affect a charge to the person’s account.

A notification provided by a person, including an initial response to a notice mailed to the person under Section 208.002, must include sufficient factual information to allow the commission to make a determination regarding the claimant’s entitlement to benefits.

A person who does not mail or otherwise deliver that notification to the commission within 14 days after the date notice of a claim was mailed to the person by the commission waives all rights in con-
connection with the claim, including rights the person may have under Labor Code Subchapter B, Chapter 204, other than rights relating to a clerical or machine error as to the amount of the person's chargeback or maximum potential chargeback in connection with the claim for benefits.

Labor Code 208.004(a)–(b)
LETTERS OF REASONABLE ASSURANCE

The College District shall issue letters of reasonable assurance, as appropriate, to employees in positions requiring less than 12 months of service whose services are anticipated to be needed at the beginning of the following school year.
ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity, including a college district, shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Each facility or part of a facility which is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. 28 C.F.R. 35.151(a)–(b), 34 C.F.R. 104.23(b)

Except as otherwise provided in 28 C.F.R. 35.150, no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, and activities of a public entity or be subjected to discrimination by any public entity. 29 U.S.C. 794, 42 U.S.C. 12132; 28 C.F.R. 35.149, 34 C.F.R. 104.21

A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not:

1. Necessarily require a public entity to make each of its existing facilities or every part of a facility accessible to and usable by individuals with disabilities;

2. Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

3. Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with 28 C.F.R. 35.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an al-
teration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

28 C.F.R. 35.150(a); 34 C.F.R. 104.22(a)

A recipient may comply with the requirements of 28 C.F.R. 35.150 and, if applicable, 34 C.F.R. 104.22(a) through such means as:

1. Redesign or acquisition of equipment.
2. Reassignment of classes or other services to accessible buildings.
3. Assignment of aides to qualified individuals with disabilities.
4. Home visits.
5. Delivery of services at alternate accessible sites.
6. Alteration of existing facilities.
7. Construction of new facilities.
8. Any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities.

A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with 28 C.F.R. 35.150, and if applicable, 34 C.F.R. 104.22(a). A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of 28 C.F.R. 35.151. In choosing among available methods for meeting these requirements, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

28 C.F.R. 35.150(b); 34 C.F.R. 104.22(b)

REVIEW OF PLANS

All plans and specifications for construction of or for the substantial renovation or modification of a building or facility must be submitted to the Department of Licensing and Regulation for review and approval if the building or facility is subject to Government Code Chapter 469 and if the estimated construction cost is at least $50,000. Gov't Code 469.101

The architect, interior designer, landscape architect, or engineer who has overall responsibility for the design of a constructed or reconstructed building or facility shall submit the required plans and specifications. The owner of the building or facility may not allow an application to be filed with a local governmental entity for
a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the department. On application to a local governmental entity for a building construction permit, the owner shall submit to the entity proof that the plans and specifications have been submitted to the department under Government Code Chapter 469.

Approved plans and specifications to which any substantial modification is made shall be resubmitted to the department for review and approval.

The owner of a building or facility described by Government Code 496.101 is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the Commission of Licensing and Regulation not later than the first anniversary of the date that construction or substantial renovation, or modification of the building or facility is completed. The inspection must be performed by the department, an entity with which the commission contracts under Government Code 469.055, or a person who holds a certificate of registration to perform inspections under Government Code Chapter 469, Subchapter E.

Gov't Code 469.102(a), (c), .103, .105

An outdoor lighting fixture that is designed, installed, or replaced on or after September 1, 1999, may be installed, replaced, maintained, or operated using state funds only if:

1. The new or replacement outdoor lighting fixture is a cutoff luminaire if the rated output of the outdoor lighting fixture is greater than 1,800 lumens;

2. The minimum illuminance adequate for the intended purpose is used with consideration given to nationally recognized standards;

3. For lighting of a designated highway of the state highway system, the Texas Department of Transportation determines that the purpose of the outdoor lighting fixture cannot be achieved by the installation of reflective road markers, lines, warning or informational signs, or other effective passive methods; and

4. Full consideration has been given to energy conservation, reducing glare, minimizing light pollution, and preserving the natural night environment. "Energy conservation" means reducing energy costs and resources used and includes using a light with lower wattage or a timer switch.

Health and Safety Code 425.002(a)–(b)
EXCEPTIONS

The standards for state-funded outdoor lighting fixtures do not apply if:

1. A federal law, rule, or regulation preempts state law;

2. The outdoor lighting fixture is used on a temporary basis because emergency personnel require additional illumination for emergency procedures;

3. The outdoor lighting fixture is used on a temporary basis for nighttime work;

4. Special events or situations require additional illumination;

5. The outdoor lighting fixture is used solely to enhance the aesthetic beauty of an object; or

6. A compelling safety interest exists that cannot be addressed by another method.

Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution.

*Health and Safety Code 425.002(c)–(d)*
Note: For information on procuring goods and services under Education Code Chapter 44, including the delegation of authority and pursuit of injunctions, see CF(LEGAL).

Education Code Chapter 44, Subchapter B, applies to junior college districts. *Education Code 44.0311(a)*

**BOARD AUTHORITY**

A governmental entity, including a college district, may adopt rules as necessary to implement Government Code Chapter 2269. *Gov’t Code 2269.051*

**DELEGATION OF AUTHORITY**

The governing body of a governmental entity may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person.

The governmental entity shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request. *Gov’t Code 2269.053*

**CONTRACTS VALUED AT OR ABOVE $50,000**

Except as provided by Education Code Chapter 44, Subchapter B, all college district contracts valued at $50,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for the district:  [See also CF]

1. An interlocal contract. [See CF]
2. Competitive bidding. [See CMA]
3. Competitive sealed proposals. [See CMB]
4. Construction manager-agent method. [See CMC]
5. Construction manager-at-risk method. [See CMD]
6. Design-build method. [See CME]
7. The reverse auction procedure as defined by Government Code 2155.062(d). [See CF]

*Education Code 44.031(a); Gov’t Code Ch. 2269*

**SELECTING A CONTRACTING METHOD**

The governing body of a governmental entity that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity. *Gov’t Code 2269.056(a)*
EXCEPTIONS

If school equipment, a school facility, or a portion of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board of trustees determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. Education Code 44.031(h)

CONTRACTS REQUIRING A BOND

A reverse auction procedure, whether the same or similar to that described by Government Code 2155.062, may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see PAYMENT AND PERFORMANCE BONDS, below]. Gov’t Code 2253.021(h)

PUBLIC NOTICE

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district’s central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district’s central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. Education Code 44.031(g); Gov’t Code 2269.052(a)–(b)

CONTRACT SELECTION CRITERIA

In determining the award of a contract, the governmental entity shall:

1. Consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and

2. Consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women- or minority-owned, small, or disadvantaged businesses.

In determining the award of a contract, the governmental entity may consider:

1. The price.

2. The offeror’s experience and reputation.

3. The quality of the offeror’s goods or services.
4. The impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses.

5. The offeror’s safety record.

6. The offeror’s proposed personnel.

7. Whether the offeror’s financial capability is appropriate to the size and scope of the project.

8. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Gov’t Code 2269.055

A governmental entity, including a college district, may not award a governmental contract for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment to a nonresident bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located or the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed. Gov’t Code 2252.001–.002

This requirement does not apply to a contract involving federal funds. A governmental entity shall use the information published by the comptroller in the Texas Register to evaluate the bid of a nonresident bidder. Gov’t Code 2252.003–.004

Gov’t Code 2269.056(b)

The governmental entity shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion.

Gov’t Code 2269.059

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery.

A college district may receive bids or proposals through electronic transmission if the board of trustees of the college district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time. An electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to an electronic bid or proposal.
bid or proposal received through electronic transmission. *Education Code 44.0313*

### SELECTION

The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. *Gov’t Code 2269.056(b)*

### MAKING EVALUATIONS PUBLIC

The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded. *Gov’t Code 2269.056(c), .105*

### CHANGE ORDERS

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

*Education Code 44.0411*

### INSPECTION, VERIFICATION, AND TESTING

Independently of the contractor, construction manager-at-risk, or design-build firm, a governmental entity shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity. The governmental entity shall select the services for which it contracts in accordance with Government Code 2254.004. *Gov’t Code 2269.058*

### ENERGY SAVINGS PERFORMANCE CONTRACTS

The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts described at Education Code 51.927. *Education Code 51.927(k) [See CH]*

### PROFESSIONAL SERVICES

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.
If the selected or designated architect or engineer is not a full-time employee of the governmental entity, the governmental entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004 [see PROCURING PROFESSIONAL SERVICES, below].

Gov’t Code 2269.057

An architectural plan or specification for any of the following may be prepared only by an architect registered under Occupations Code Chapter 1051 to engage in the practice of architecture:

1. A new building having construction costs exceeding $100,000 that is to be constructed and owned by a political subdivision of this state and used for education, assembly, or office occupancy.

2. An alteration or addition having construction costs exceeding $50,000 that is to be made to an existing building that is owned by a political subdivision of this state and is or will be used for education, assembly, or office occupancy and requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

This section does not prohibit an owner of a building from contracting with an architect or an engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Occupations Code Chapter 1001 or 1051.

Occupations Code 1051.101(1), .703; 22 TAC 1.212

The following work is exempt from Occupations Code Chapter 1001:

1. A public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is $8,000 or less; or

2. A public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is $20,000 or less.

A local government may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than $50,000 unless a person designated by the local government certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Occupations Code Chapters 1001 or 1051; or

2. The plans and specifications required under Occupations Code Chapters 1001 and 1051 have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov’t Code 791.011(j)

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect. A college district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031. Education Code 44.031(f)

A governmental entity, including a college district, may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price.

"Professional services" means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing; or

2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse.

Gov’t Code 2254.002, .003(a)
In procuring architectural, engineering, or land-surveying services, a governmental entity shall:

1. First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

2. Then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, the entity shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The entity shall continue the process to select and negotiate with providers until a contract is entered into.

Gov’t Code 2254.004

An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase engineering or architectural services. Gov’t Code 791.011(h)

CRIMINAL HISTORY

A person or business entity, with the exception of a publicly held corporation, that enters into a contract with a college district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A college district may terminate a contract with a person or business if the district determines that the person or business entity failed to give such notice or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract. Education Code 44.034

RIGHT TO WORK

When engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, the governmental entity:

1. May not consider whether a person is a member of or has another relationship with any organization; and

2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person’s membership or other relationship status with respect to any organization.

Gov’t Code 2269.054
**ACCESSIBILITY**

Each facility or part of a facility constructed by, on behalf of, or for the use of the college district shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Alterations of facilities that affect or could affect their usability shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by individuals with disabilities. *28 C.F.R. 35.151; 34 C.F.R. 104.23*

**PAYMENT AND PERFORMANCE BONDS**

A governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds must be executed by a corporate surety in accordance with Insurance Code 7.19-1. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity. *Gov’t Code 2253.021(a), (d)–(e)*

For a contract in excess of $100,000, a performance bond shall be executed. The performance bond is solely for the protection of the governmental entity awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. *Gov’t Code 2253.021(a)–(b)*

For a contract in excess of $25,000, a payment bond shall be executed. The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material and in the amount of the contract. *Gov’t Code 2253.021(a), (c)*

**FAILURE TO OBTAIN PAYMENT BOND**

If a governmental entity fails to obtain from a prime contractor a payment bond as required by Government Code 2253.021 the entity is subject to the same liability as a surety would have if the surety had issued a payment bond and if the entity had obtained the bond, and a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the contract were subject to Property Code Chapter 53, Subchapter J. *Gov’t Code 2253.027*

**NO BOND FOR DESIGN SERVICES ONLY**

A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm under Government Code Chapter 2269, Subchapter G. *Gov’t Code 2269.311(a)* [See CME for more information on design/build contracts, including bond amounts]

**BOND FOR INSURED LOSS**

A governmental entity shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging...
for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor, in accordance with Government Code Chapter 2253:

1. A performance bond as described by Government Code 2253.021(b) for the benefit of the governmental entity; and

2. A payment bond as described in Government Code 2253.021(c) for the benefit of the beneficiaries described by that subsection. If the payment bond is not furnished, the governmental entity is subject to the same liability that a surety would have if the surety had issued the payment bond and the governmental entity had required the bond to be provided.

The bonds must be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish the bonds.

Gov’t Code 2253.022(a)–(c), (f)

Government Code 2253.022 does not apply to a governmental entity when a surety company is complying with an obligation under a bond that had been issued for the benefit of the governmental entity. Gov’t Code 2253.022(e)

A worker, such as a laborer or mechanic, employed on a public work, exclusive of maintenance work, by or on behalf of a political subdivision, including a college district, shall be paid 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 not less than the general prevailing rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with a political subdivision of the state or any officer or public body of a political subdivision of the state. Gov’t Code 2258.001, .021(3)

For a contract for a public work awarded by a political subdivision of the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed or using the prevailing wage rate as determined by the U.S. Department of Labor.
The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A public body shall specify in the call for bids for the contract and in the contract itself the calculated prevailing wage rates. The public body’s determination of the general prevailing rates of per diem wages shall be final.

Gov’t Code 2258.022

ENFORCEMENT

A public body awarding a contract, and an agent or officer of the public body, shall take cognizance of complaints of all violations of Government Code Chapter 2258, and withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated Chapter 2258.

On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred. A public body must make its determination before the 31st day after the date the public body receives the information. A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial determination.

Gov’t Code 2258.051, .052(a)–(c)

RETAINAGE AND REIMBURSEMENT

A public body shall retain any amount due under the contract pending a final determination of the violation. A public body shall use any amounts retained under Government Code Chapter 2258 to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing rate as provided in the arbitrator’s award. The public body may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made.

Gov’t Code 2258.052(d), .056

PENALTY FOR NONCOMPLIANCE

The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Government Code 2258.022 to a worker employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to the political subdivision of the state on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates specified in the contract. A public body awarding a contract shall specify this
penalty in the contract. A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022. The public body shall use any penalty money collected under this section to offset the costs incurred in the administration of Government Code Chapter 2258. Gov't Code 2258.023

REQUIRED WORKERS' COMPENSATION COVERAGE

A governmental entity that enters into a building or construction contract on a project, which includes the provision of all services related to a building or construction contract for a governmental entity, shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers’ compensation coverages described in 28 Administrative Code 110.110(c)(7). [See CM(EXHIBIT)]

2. As part of the contract, using the language required by 28 Administrative Code 110.110(c)(7), require the contractor to perform the duties and responsibilities described in 28 Administrative Code 110.110(d). [See CM(EXHIBIT)]

3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person’s beginning work on the project. “Person providing services on the project” includes but is not limited to all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracts directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the contract. “Services” include, but are not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

4. Obtain from the contractor a new certificate of coverage showing extension of coverage:
   a. Before the end of the coverage period, if the contractor’s current certificate shows that the coverage period ends during the duration of the project; and
b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.

5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.

6. Provide a copy of the certificate of coverage to the Texas Department of Insurance upon request and to any person entitled to a copy by law.

7. Use the prescribed language for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation. [See CM(EXHIBIT) for prescribed language]

Labor Code 406.096; 28 TAC 110.110(a)(7)–(8), (c)

**EXCEPTION**

A sole proprietor, partner, or corporate executive officer of a business entity that elects to provide workers' compensation insurance coverage is entitled to benefits under that coverage as an employee unless the sole proprietor, partner, or corporate executive officer is specifically excluded from coverage through an endorsement to the insurance policy or certificate of authority to self insure. Labor Code 406.097; 28 TAC 110.110(i)

**USE OF STUDENT FEES IN CONSTRUCTION**

A junior college district facility constructed with student fees may be used only for junior college district purposes, as determined by the board. Student fees may not be used for construction, repair, or rehabilitation of a community center or junior college district auxiliary enterprise unless the enterprise serves as a student center or dormitory. Education Code 130.124; Atty. Gen. Op. JM-139 (1984)

**IMPERMISSIBLE PRACTICES**

An officer, employee, or agent of a college district who knowingly or with criminal negligence violates the purchasing laws found in Education Code Chapter 44 as described at Education Code 44.032 is subject to criminal penalties. Education Code 44.032 [See CF]

**ENFORCEMENT ACTIONS**

Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the tenth day after the date on which the contract is awarded. Gov't Code 2269.452(a)

**ATTORNEY FEES**

A governmental contract may not provide for the award of attorney's fees to the governmental entity in a dispute in which the entity prevails unless the contract provides for the award of attorney’s fees to each other party to the contract if that party prevails in the dispute. Gov't Code 2252.904(b)
A governmental entity, including a college district, may enter into a partnership with a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities that serve a public need and purpose in accordance with the requirements of Government Code Chapter 2267. *Gov't Code Ch. 2267*
The College President or designee shall establish procedures ensuring that all facilities within the College District comply with applicable laws and local building codes.

Prior to advertising, the Board shall determine the project delivery/contract award method to be used for each construction contract valued at or above $50,000. To assist the Board, the College President shall recommend the project delivery/contract award method that he or she determines provides the best value to the College District. [See CM series]

For construction contracts valued at or above $1,000,000, the College President shall also submit the resulting contract to the Board for approval. Lesser expenditures for construction and construction-related materials or services shall be at the discretion of the College President and consistent with law and policy. [See also CF]

Change orders permitted by law shall be approved by the Board or its designee prior to executing any changes in the approved plans or in the actual construction of the facility.

All construction projects shall be administered by the College President or designee.

The College President or designee shall keep the Board informed concerning construction projects and also shall provide information to the general public.

The College District shall not make final payments for the construction or the supervision of construction until the work has been completed and the College District has accepted the work.
REQUIRED WORKERS’ COMPENSATION COVERAGES

A governmental entity, including a college district, that enters into a building or construction contract on a project shall use the language found at 28 Administrative Code 110.110(c)(7) for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation. 28 TAC 110.110(c)

The language is available at http://info.sos.state.tx.us/fids/28_0110_0110-1.html.
“Competitive bidding” is a procurement method by which a governmental entity, including a college district, contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

Except as otherwise provided by Government Code Chapter 2269 or other law, a governmental entity may contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Gov’t Code 2269.101

The competitive bidding process is governed by the process outlined below. The governmental entity must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CM(LEGAL)], which include the following steps:

1. Giving PUBLIC NOTICE of the project;
2. Publishing CONTRACT SELECTION CRITERIA;
3. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
4. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the governmental entity.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(c), .058, .105

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

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opened only by the governing body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.  Gov't Code 2269.104; Local Gov't Code 271.026

The governmental entity is entitled to reject any and all bids.  Local Gov't Code 271.027(a)

SAFETY RECORD

In determining who is a responsible bidder, the governmental entity may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such firm, corporation, partnership, or institution if:

1. The governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of the bidder;

2. The governmental entity has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and

3. The determinations are not arbitrary and capricious.

Local Gov't Code 271.0275; Education Code 44.0351(b)

CONFLICT OF LAWS

Except as otherwise specifically provided in this policy, Local Government Code Chapter 271, Subchapter B, does not apply to the competitive bidding process.  Gov't Code 2269.106; Education Code 44.0351(b)
The College President or designee shall ensure that detailed specifications are prepared for any construction project for which competitive bids are sought.

All bids shall be submitted in accordance with administrative regulations. Bids shall be opened at the time specified. All interested parties shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

The College District shall accept bids through electronic transmission in accordance with administrative regulations. Such regulations shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic bids; and ensure that the electronic bids remain effectively unopened until the proper time.

If the College District considers the safety record of bidders in determining to whom to award a contract, the safety record shall be defined as a bidder’s OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the bidder’s insurance carrier, and a loss history covering all lines of insurance coverage carried by the bidder.
“Competitive sealed proposals” is a procurement method by which a governmental entity, including a college district, requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.151*

If a governmental entity uses the competitive sealed proposals method as described in this policy, it must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CM], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the governmental entity.

*Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058*

**Note:** Terms in all capital letters, above, point to margin notes in the referenced policy.

**REQUEST FOR PROPOSALS**

The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, schedule, and other information that a contractor may require to respond to the request. *Gov’t Code 2269.153*

**ARCHITECT / ENGINEER**

The governmental entity shall select or designate an architect or engineer to prepare construction documents for the project. *Gov’t Code 2269.152 [See CM]*

**OPENING PROPOSALS**

The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors. Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

**SELECTION**

The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity.
based on the selection criteria in the request for proposals and the weighted value for those criteria in the request for proposal and on its ranking evaluation.

The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

_Gov't Code 2269.154–155_
# FACILITIES CONSTRUCTION

## COMPETITIVE SEALED PROPOSALS

**SPECIFICATIONS**

The College President or designee shall prepare a request for proposals for any construction project for which competitive sealed proposals are sought.

**PROCESS**

All proposals shall be submitted in accordance with administrative regulations. Proposals shall be opened at the time specified. All offerors shall be invited to attend the proposal opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

**ELECTRONIC PROPOSALS**

The College District shall accept proposals through electronic transmission in accordance with administrative regulations. Such regulations shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic proposals; and ensure that the electronic proposals remain effectively unopened until the proper time.

**WITHDRAWAL AND LATE PROPOSALS**

Any proposal may be withdrawn prior to the scheduled time for opening. Proposals received after the specified time shall not be considered.

**PROPOSAL ACCEPTANCE**

The College District may reject any and all proposals.

**SAFETY RECORD**

If the safety record of offerors is considered in selecting a proposal, the record shall be defined as an offeror’s OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the offeror’s insurance carrier, and a loss history covering all lines of insurance coverage carried by the offeror.
A “construction manager-agent” is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity, including a college district, by providing consultation or administrative services during the design and construction phase and managing multiple contracts with various construction prime contractors for construction, rehabilitation, alteration, or repair of a facility. A governmental entity may retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by Government Code Chapter 2269, Subchapter E. The contract between the governmental entity and the construction manager-agent may require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this policy, on-site management, and other services specified in the contract. *Gov't Code 2269.201–.202*

A construction manager-agent may not:

1. Self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility.
2. Be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility.
3. Provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.

*Gov't Code 2269.203*

A construction manager-agent represents the governmental entity in a fiduciary capacity. *Gov't Code 2269.204*

The governmental entity may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, the governmental entity must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CM], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the governmental entity.

*Education Code 44.031(g); Gov't Code 2269.052, .055, .056(a), (c), .058, .201(c)*

**Note:** Terms in all capital letters, above, point to margin notes in the referenced policy.

**ARCHITECT / ENGINEER**

On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer in accordance with Occupations Code Chapters 1051 or 1001, as applicable, to prepare the construction documents for the project. [See CM]

The governmental entity’s architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this policy. This restriction does not prohibit the governmental entity’s architect or engineer from providing customary construction-phase services under the architect’s or engineer’s original professional service agreement in accordance with applicable licensing laws.

To the extent that the construction manager-agent’s services are defined as part of the practice of architecture or engineering under Occupations Code Chapter 1051 or 1001 those services must be conducted by a person licensed under the applicable chapter.

*Gov't Code 2269.205*

**SELECTION OF CONSTRUCTION MANAGER-AGENT**

A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Government Code 2254.004. *Gov't Code 2269.207* [See CM]

**INSURANCE**

The construction manager-agent shall maintain professional liability or errors and omissions insurance in the amount of at least $1 million for each occurrence. *Gov't Code 2269.208*

**SELECTION OF CONTRACTORS**

A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by Government Code Chapter 2269, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the governmental entity in accordance with applicable laws. *Gov't Code 2269.206*
"Construction manager-at-risk method" is a delivery method by which a governmental entity, including a college district, contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at a contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

Gov’t Code 2269.251(a)–(b)

A governmental entity may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, the entity must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CM], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the entity.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058, .251(c)

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

On or before the selection of a construction manager-at-risk, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project. [See CM]

The governmental entity’s architect or engineer for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the architect or engineer is hired to serve
as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with Government Code Chapter 2269, Subchapter F. This restriction does not prohibit the governmental entity’s architect or engineer from providing customary construction phase services under the architect’s or engineer’s original professional service agreement in accordance with applicable licensing laws.

Gov’t Code 2269.252

SELECTION PROCESS

The governmental entity shall select the construction manager-at-risk in either a one-step or two-step process.

The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process that includes:

1. A statement as to whether the selection process is a one-step or two-step process;

2. General information on the project site, project scope, schedule, selection criteria, and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and

3. Other information that may assist the governmental entity in its selection of a construction manager-at-risk.

The governmental entity shall state the selection criteria in the request for proposals or qualifications.

If a one-step process is used, the governmental entity may request, as part of the offeror’s proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk’s proposed fee and its price for fulfilling the general conditions.

Gov’t Code 2269.253(a)–(e)

OPENING AND EVALUATING PROPOSALS

At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date on which the final proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.  Gov’t Code 2269.253(f)–(g)
The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. The governmental entity shall first attempt to negotiate a contract with the selected offeror. If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end. *Gov't Code 2269.254(a)–(c)*

Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the proposal rankings public. *Gov't Code 2269.254(d)*

A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if:

1. The construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and
2. The governmental entity determines that the construction manager-at-risk’s bid or proposal provides the best value for the governmental entity.

*Gov't Code 2269.255*

The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor, but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of
the governmental entity’s requirement that another bid or proposal be accepted.

If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this policy, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Gov’t Code 2269.256-.257

PAYMENT AND PERFORMANCE BOND AMOUNTS

If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications. The construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. Gov’t Code 2269.258

[See CM for more information on payment and performance bonds]
“Design-build" is a project delivery method by which a government- 
tal entity, including a college district, contracts with a single entity to 
provide both design and construction services for the construction, 
rehabilitation, alteration, or repair of a facility. *Gov't Code* 
2269.301

This policy applies only to a facility that is a building or an associate-
ded structure, including an electric utility structure. This policy 
does not apply to:

1. A highway, road, street, bridge, underground utility, water 
supply project, water plant, wastewater plant, water and 
wastewater distribution or conveyance facility, wharf, dock, 
airport runway or taxiway, drainage project, or related type of 
project associated with civil engineering construction; or

2. A building or structure that is incidental to a project that is 
primarily a civil engineering construction project.

*Gov't Code* 2269.302

A governmental entity may use the design-build method for the 
construction, rehabilitation, alteration, or repair of a building or asso-
ciated structure. In using that method, the governmental entity 
shall enter into a single contract with a design-build firm for the de-
sign and construction of the building or associated structure in ac-
cordance with applicable legal requirements in this policy as well 
as other applicable legal requirements [see CM], which include the 
following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is award-
ed; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING 
necessary for acceptance of the facility by the governmental 
entity.

*Education Code* 44.031(g); *Gov't Code* 2269.052, .055, .056(a), 
(c), .058, .303

**Note:** Terms in all capital letters, above, point to margin notes 
in the referenced policy.
A design-build firm must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor. Gov't Code 2269.304

The governmental entity shall select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project. Gov't Code 2269.305 [See CM]

The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project.

The governmental entity may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications.

Gov't Code 2269.306(a), (d)

The governmental entity shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Occupations Code Chapter 1051 or the practice of engineering within the meaning of Occupations Code Chapter 1001, those services shall be provided in accordance with the applicable law.

The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the college district considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

Gov't Code 2269.306(b)–(c)

For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, capability to perform, the past perfor-
mance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each firm must certify to the governmental entity that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Government Code 2254.004. The governmental entity shall qualify a maximum of five responders to submit proposals that contain additional information and, if the governmental entity chooses, to interview for final selection. *Gov't Code 2269.307(a)–(c)*

**PROPOSALS**

The governmental entity shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology.

“Costing methodology” means an offeror’s policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

The college district shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.

*Gov't Code 2269.307(d)–(f)*

**SELECTION**

The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

The governmental entity shall first attempt to negotiate a contract with the selected firm. If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the governmental entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

*Gov't Code 2269.308(a)–(c)*
<table>
<thead>
<tr>
<th>NOTICE OF RANKINGS</th>
<th>Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the proposal rankings public. Gov't Code 2269.308(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DESIGN</td>
<td>After selection of the design-build firm, that firm’s architects or engineers shall submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity’s architect or engineer before or concurrently with construction. Gov't Code 2269.309</td>
</tr>
<tr>
<td>FINAL CONSTRUCTION DOCUMENTS</td>
<td>The design-build firm shall supply a set of construction documents for the completed project to the governmental entity at the conclusion of construction. The documents must note any changes made during construction. Gov't Code 2269.310</td>
</tr>
<tr>
<td>PAYMENT OR PERFORMANCE BOND</td>
<td>A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract. Gov't Code 2269.311(a) [See CM for more information on payment and performance bonds]</td>
</tr>
<tr>
<td>AMOUNT</td>
<td>If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract, unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins. Gov't Code 2269.311(b)–(c)</td>
</tr>
</tbody>
</table>
“Job order contracting” is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite. *Gov't Code 2269.401*

This policy applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. This policy does not apply to:

1. A highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

2. A building or structure that is incidental to a project that is primarily a civil engineering construction project.  

*Gov't Code 2269.402*

If a governmental entity, including a college district, uses the job order contracts method as described in this policy, it must comply with the applicable legal requirements in this policy as well as other applicable legal requirements [see CM], which include the following steps:

1. SELECTING A CONTRACTING METHOD;  
2. Giving PUBLIC NOTICE of the project;  
3. Publishing CONTRACT SELECTION CRITERIA;  
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and  
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the governmental entity.  

*Education Code 44.031(g); Gov't Code 2269.052, .055, .056(a), (c), .058*

**Note:** Terms in all capital letters, above, point to margin notes in the referenced policy.

A governmental entity may award job order contracts for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if the work is of a recurring nature but the de-
livery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks. The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal. The governing body of a governmental entity shall approve each job, task, or purchase order that exceeds $500,000. *Gov't Code 2269.403*

**ESTABLISHING UNIT PRICES**

The governmental entity may establish contractual unit prices for a job order contract by:

1. Specifying one or more published construction unit price books and the applicable divisions or line items; or

2. Providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or pre-priced work items as the price proposal.

*Gov't Code 2269.404*

**ADVERTISING AND OPENING PROPOSALS**

A governmental entity may use the competitive sealed proposal method under Government Code Chapter 2269, Subchapter D for job order contracts. [See CMB] The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts. The governmental entity may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology. *Gov't Code 2269.405*

**ARCHITECT OR ENGINEER**

If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Occupations Code Chapter 1051 or the practice of engineering within the meaning of Occupations Code Chapter 1001, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

This requirement does not apply to a job order contract or an order issued under the contract for industrialized housing, industrialized buildings, or relocatable educational facilities subject to and approved under Occupations Code Chapter 1202 if the contractor employs the services of an architect or engineer who approves the documents for the project.

*Gov't Code 2269.408 [See CM]*

**AWARDING CONTRACTS**

The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.
An order for a job or project under a job order contract must be signed by the governmental entity’s representative and the contractor. The order may be:

1. A fixed-price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or

2. A unit price order based on the quantities and line items delivered.

_Gov't Code 2269.406-.410_

**CONTRACT TERM**
The base term for a job order contract may not exceed two years. The governmental entity may renew the contract annually for not more than three additional years. _Gov't Code 2269.409_

**USE OF CONTRACT**
A job order contract may be used to accomplish work only for the governmental entity that awards the contract unless:

1. The solicitation for the job order contract and the contract specifically provide for use by other persons; or

2. The governmental entity enters into an interlocal agreement that provides otherwise.

_Gov't Code 2269.407_

**BONDS**
The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order. _Gov't Code 2269.411_ [See CM for more information on payment and performance bonds]
RETAIL STORES

A retail store that is owned or operated by an institution of higher education, including a college district, may not enter into a transaction for the sale or lease of goods or services in which the institution extends the credit of the state to the obligor.

This prohibition does not apply to an extension of credit to a student for the purchase of books or other educational supplies if the credit may be offset against undistributed grant or loan funds that are held by the institution for the student or that the institution is entitled to receive on behalf of the student. The institution may not withhold grant or loan funds to require the student to purchase books or educational supplies from a store that it owns or operates.  

*Education Code 51.929*

CENTER FOR TECHNOLOGY TRANSFER

In accordance with Education Code Chapter 153, an institution of higher education, including a college district, subject to approval by its governing board, is authorized to establish centers to manage, transfer, market, or otherwise commercialize technology owned by it or in which it owns an interest. Each center shall be administered within an institution of higher education. Centers may provide services to multiple institutions of higher education. An institution of higher education may contract with a center under the control of a governing board other than its own.  

*Education Code 153.001*
Auxiliary enterprises are those activities that are established to provide services ancillary to the instructional programs. Auxiliary enterprises shall be intended to be self-supporting from fees charged for products and services. Fees charged for auxiliary enterprise sales and services shall provide for the operating expenses, equipment replacement, and a reasonable profit. An operating budget shall be prepared each year for each auxiliary service enterprise and shall be included with the College District's annual operating budget.

The College District shall be authorized to operate a bookstore to provide textbooks and supplies required for College District courses and sundry items, as well as a food service facility that will provide snacks, hot meals, beverages, vending facilities, and banquet services, for the benefit of students and employees. Both facilities shall also be open to the general public.

The operation of auxiliary enterprises may be contracted to an outside person or firm, provided the contract has been submitted for bidding according to the bid requirements established by the Board, and the resulting contract has been approved by the Board.

Profits from the operation of auxiliary enterprises may be used for the benefit of the College District, at the College President's discretion.
The Uniform Electronic Transactions Act (UETA), Business and Commerce Code Chapter 322, and 1 Administrative Code Chapter 203, Subchapter C apply to transactions between parties each of which has agreed to conduct transactions by electronic means. Business and Commerce Code 322.005(b); 1 TAC 203.43–.46

The Guidelines for the Management of Electronic Transactions and Signed Records, which are available on the Department of Information Resources (DIR) website, were adopted by DIR based on the work and recommendations of the UETA Task Force. The Guidelines for the Management of Electronic Transactions and Signed Records are applicable to institutions of higher education that send and accept electronic records and electronic signatures to and from other persons and to other institutions of higher education and state agencies that otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. 1 TAC 203.40–.41

An institution of higher education, including a college district, shall determine whether, and the extent to which, the institution will send and accept electronic or digital signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely on electronic or digital signatures. The institution may adopt rules and procedures governing the use of electronic or digital signatures.

To the extent of any conflict, this provision prevails over Business and Commerce Code Chapter 322, the UETA, and rules and guidelines adopted under that Chapter. Education Code 51.9336

An institution of higher education, including a college district, may make any payment through electronic funds transfer or by electronic pay card. Education Code 51.012

Each institution of higher education, including each college district, that proposes to receive information resources technologies under a contract from another state agency or institution of higher education shall comply with 1 Administrative Code Chapter 204, Subchapter C. 1 TAC 204.30–.32

Except as otherwise provided in the Electronic Communication Privacy Act (ECPA), 18 U.S.C. 2510–22, a person commits an offense if the person:

1. Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;
2. Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
   a. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication;
   b. Such device transmits communications by radio or interferes with the transmission of such communication;
   c. Such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce;
   d. Such use or endeavor to use takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or
   e. Such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

3. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication;

4. Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication; or

5. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by 18 U.S.C. 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518; knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation; having obtained or received the information in connection with a criminal investigation; and with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.
It shall not be unlawful for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

18 U.S.C. 2511(1), (2)(d)

A college district must comply with the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. 2701–12.

Whoever intentionally accesses without authorization a facility through which an electronic communication service is provided or intentionally exceeds an authorization to access that facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system commits an offense. 18 U.S.C. 2701(a)

This section does not apply with respect to conduct authorized:

1. By the person or entity providing a wire or electronic communications service;
2. By a user of that service with respect to a communication of or intended for that user; or

18 U.S.C. 2701(c)

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photooptical system that affects interstate or foreign commerce. 18 U.S.C. 2510(12)

“Electronic storage” means:

1. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
2. Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

18 U.S.C. 2510(17)
The term encompasses only the information that has been stored by an electronic communication service provider. Information that an individual stores to the individual's hard drive or cell phone is not in electronic storage under the statute. *Garcia v. City of Laredo*, 702 F.3d 788 (5th Cir. 2012)

"ELECTRONIC COMMUNICATIONS SYSTEM"  
"Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communications. *18 U.S.C. 2510(14)*

"ELECTRONIC COMMUNICATIONS SERVICE"  
"Electronic communication service" means any service that provides to users thereof the ability to send or receive wire or electronic communications. *18 U.S.C. 2510(15)*

"FACILITY"  
"Facility" includes servers operated by electronic communication service providers for the purpose of storing and maintaining electronic storage. The term does not include technology, such as cell phones and computers, that enables the use of an electronic communication service. *Garcia v. City of Laredo*, 702 F.3d 788 (5th Cir. 2012)
For purposes of this policy, “technology resources” means electronic communication systems and electronic equipment.

Access to the College District’s technology resources, including the Internet, shall be made available to students and employees primarily for instructional and administrative purposes and in accordance with administrative regulations.

Limited personal use of the College District’s technology resources shall be permitted if the use:

1. Imposes no tangible cost on the College District;
2. Does not unduly burden the College District’s technology resources; and
3. Has no adverse effect on an employee’s job performance or on a student’s academic performance.

Access to the College District’s technology resources, including the Internet, shall be made available to members of the public, in accordance with administrative regulations. Such use shall be permitted so long as the use:

1. Imposes no tangible cost on the College District; and
2. Does not unduly burden the College District’s technology resources.

The College President or designee shall develop and implement administrative regulations, guidelines, and user agreements consistent with the purposes and mission of the College District and with law and policy.

Access to the College District’s technology resources is a privilege, not a right. All users shall be required to acknowledge receipt and understanding of all administrative regulations governing use of the College District’s technology resources and shall agree in writing to allow monitoring of their use and to comply with such regulations and guidelines. Noncompliance may result in suspension of access or termination of privileges and other disciplinary action consistent with College District policies. [See DH, FL series, and FM series] Violations of law may result in criminal prosecution as well as disciplinary action by the College District.

Electronic mail transmissions and other use of the College District’s technology resources by students, employees, and members of the public shall be monitored.
public shall not be considered private. Designated College District staff shall be authorized to monitor the College District’s technology resources at any time to ensure appropriate use.

**DISCLAIMER OF LIABILITY**

The College District shall not be liable for users’ inappropriate use of the College District’s technology resources, violations of copyright restrictions or other laws, users’ mistakes or negligence, and costs incurred by users. The College District shall not be responsible for ensuring the availability of the College District’s technology resources or the accuracy, appropriateness, or usability of any information found on the Internet.

**RECORD RETENTION**

A College District employee shall retain electronic records, whether created or maintained using the College District’s technology resources or using personal technology resources, in accordance with the College District’s record management program. [See CIA]
Note: The following is an index of website posting requirements that are addressed in the legally reference material of the policy manual. The list is not all-inclusive. The list does not address postings that are required in response to a specific incident, postings required under special circumstances, or postings required under administrative procedures of an agency.

REQUIRED INTERNET POSTINGS

A college district that maintains an Internet website shall post the following:

1. The college district’s Compact With Texans under Government Code 2114.006. [See AFA]

2. On the first frame of the homepage and in a font that is larger than the font of the majority of the text on the home page, an accessible link to the college district's online resumes maintained on the Coordinating Board's Internet website under Education Code 51A.003. [See AFA]

3. The cost of attendance for a first-time entering full-time student in accordance with the uniform standards prescribed by the commissioner, under Education Code 61.0777 and 19 Administrative Code 21.222. [See AFA]

4. In a prominent location, that is not more than three hyperlinks from the website's home page, a link to the postsecondary and career information posted on the Texas Education Agency's Internet website, under Education Code 7.040. [See AFA]

5. Conflicts disclosure statements and questionnaires, under Local Government Code 176.009. [See BBFA, CFE]

6. Notice of a board meeting and, if the college district contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more, the agenda for a board meeting, under Government Code 551.056. [See BD]

7. Any written agenda and related supplemental written materials for a board meeting, as well as a broadcast of the board meeting followed by an archived version of that broadcast, if the junior college district has a total student enrollment of more than 20,000 in any semester of the preceding academic year, under Government Code 551.1282. [See BD]

8. On the home page the prescribed statement if the college district proposes to increase the amount of taxes to fund mainte-
nance and operation expenditures, under Tax Code 26.05. [See CAI]

9. If the website is generally accessible, a link to the state expenditure database under Government Code 2054.126. [See CDA]

10. A copy of the college district’s financial transactions, under Education Code 51.9741. [See CDA]

11. A college district shall report its energy usage information on a publicly accessible Internet website with an interface designed for ease of navigation, if available, under Government Code 2265.001. [See CH]

12. In a prominent location, the code of conduct for the college district’s officers, employees, and agents under 20 U.S.C. 1094. [See DBD]

13. Information regarding college district employees and employee compensation, as provided by Government Code 659.026. [See DEA]

14. Information regarding a gift, grant, donation, or other consideration from a person that the person designated to be used as a salary supplement, and related conflict of interest provisions, as provided by Government Code 659.0201. [See DEA]

15. The end-of-course student evaluations of faculty according to a plan developed under Education Code 51.974(h) and 19 Administrative Code 4.227(10) and 4.228(e). [See DLA]

16. The International Standard Book Number (ISBN) and retail price information of required and recommended college textbooks and supplemental materials for each course listed in the institution’s course schedule used for preregistration and registration purposes as provided by 20 USC 1015b. [See EDA]

17. Information about each undergraduate classroom course offered for credit not later than the seventh day after the first day of classes for the semester or other academic term during which the course is offered as provided by Education Code 51.974 and 19 Administrative Code 4.225 to 4.228. [See EFA]

18. The college district’s policy to grant undergraduate course credit to entering freshmen students who have successfully completed the International Baccalaureate Diploma Program,
who have achieved required scores on one or more examinations in the Advanced Placement Program or the College-Level Examination Program, or who have successfully completed one or more courses offered through concurrent enrollment in high school and at an institution of higher education with the application materials under Education Code 51.968. [See EGA]

19. Guidelines addressing the practices of the college district regarding the transfer of course credit under Education Code 61.830. [See EGA]

OPTIONAL INTERNET POSTINGS
A college district that maintains an Internet website may broadcast an open meeting over the Internet, under Government Code 551.128. [See BD]

GEOSPATIAL DATA PRODUCTS
“Geospatial data product” means a document, computer file, or Internet website that contains geospatial data; a map; or information about a service involving geospatial data or a map. Gov't Code 2051.101(1)

NOTICE
A governmental entity, including a college district, shall include a notice on each geospatial data product that:

1. Is created or hosted by the governmental entity;
2. Appears to represent property boundaries; and
3. Was not produced using information from an on-the-ground survey conducted by or under the supervision of a registered professional land surveyor or land surveyor authorized to perform surveys under laws in effect when the survey was conducted.

The notice must be in substantially the following form: “This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.”

The notice may include language further defining the limits of liability of a geospatial data product producer; apply to a geospatial data product that contains more than one map; or for a notice that applies to a geospatial data product that is or is on an Internet website, be included on a separate page that requires the person accessing the website to agree to the terms of the notice before accessing the geospatial data product.

Gov't Code 2051.102
A governmental entity is not required to include the notice on a geospatial data product that:

1. Does not contain a legal description, a property boundary monument, or the distance and direction of a property line;
2. Is prepared only for use as evidence in a legal proceeding;
3. Is filed with the clerk of any court; or
4. Is filed with the county clerk.

Gov't Code 2051.103
A financial institution, as defined below, shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of any customer information at issue. Such safeguards shall include the elements set forth below at ELEMENTS and shall be reasonably designed to achieve the objectives set forth below at OBJECTIVES. 16 C.F.R. 314.3(a); 15 U.S.C. 6801(b)

The objectives are to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of such information; and
3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

16 C.F.R. 314.3(b)

To develop, implement, and maintain the information security program, the financial institution shall:

1. Designate an employee or employees to coordinate the program;
2. Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such a risk assessment should include consideration of risks in each relevant area of the institution’s operations, including:
   a. Employee training and management;
   b. Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and
   c. Detecting, preventing and responding to attacks, intrusions, or other systems failures.
3. Design and implement information safeguards to control the risks the institution identifies through risk assessment, and
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225500

INFORMATION SECURITY

regularly test or otherwise monitor the effectiveness of the safeguard’s key controls, systems, and procedures.

4. Oversee service providers by:
   a. Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and
   b. Requiring the institution’s service providers by contract to implement and maintain such safeguards.

5. Evaluate and adjust the information security program in light of the results of testing and monitoring, any material changes to the institution’s operations or business arrangements, or any other circumstances that the college district knows or has reason to know may have a material impact on the information security program.

16 C.F.R. 314.4

DEFINITIONS

“CUSTOMER INFORMATION”

“Customer Information” means any record containing nonpublic personal information, as defined below, about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of the institution or its affiliates. 16 C.F.R. 314.2(b)

“FINANCIAL INSTITUTION”

“Financial institution” means any institution the business of which is engaging in financial activities as described in the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), including lending, exchanging, transferring, investing for others, or safeguarding money or securities. An institution that is significantly engaged in financial activities is a financial institution. 12 U.S.C. 1843(k); 16 C.F.R. 313.3(k)

“NONPUBLIC PERSONAL INFORMATION”

“Nonpublic personal information” means:

1. Personally identifiable financial information; and
2. Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

16 C.F.R. 313.3(n)

“SERVICE PROVIDER”

“Service provider” means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provisions of services directly to a qualifying entity. 16 C.F.R. 314.2(d)
| STATE PROVISIONS | All institutions of higher education, including all college districts, must comply with the information security standards in 1 Administrative Code Chapter 202, Subchapter C. 1 TAC 202.70(2) |
| SECURITY BREACH NOTIFICATION TO RESIDENTS OF TEXAS AND CERTAIN OTHER STATES | A person, including a college district, who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose, in accordance with the notice provisions at Business and Commerce Code 521.053(e), any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided at CRIMINAL INVESTIGATION EXCEPTION, below, or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Business and Commerce Code 521.053(b) |
| TO THE OWNER OR LICENSE HOLDER | If the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of a state that requires a person described by Business and Commerce Code 521.053(b) to provide notice of a breach of system security, the notice of the breach of system security required by Section 521.053(b) may be provided under that state’s law or under Business and Commerce Code 521.053(b). Business and Commerce Code 521.053(b-1); Gov’t Code 2054.1125; Local Gov’t Code 205.010 |
| TO A CONSUMER REPORTING AGENCY | If a person is required to notify at one time more than 10,000 persons of a breach of system security, the person shall also notify each consumer reporting agency, as defined by 15 U.S.C. 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The person shall provide the notice without unreasonable delay. Business and Commerce Code 521.053(h); Gov’t Code 2054.1125; Local Gov’t Code 205.010 |
| CRIMINAL INVESTIGATION EXCEPTION | A person may delay providing the required notice to state residents or the owner or license holder at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law permits. |
INFORMATION SECURITY POLICY

A person who maintains the person’s own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice under Business and Commerce Code 521.053 if the person notifies affected persons in accordance with that policy. Business and Commerce Code 521.053(g); Gov't Code 2054.1125; Local Gov't Code 205.010

DEFINITIONS

“Breach of system security” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner. Business and Commerce Code 521.053(a)

“Sensitive personal information” means:

1. An individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
   a. Social security number;
   b. Driver’s license number or government-issued identification number; or
   c. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account; or

2. Information that identifies an individual and relates to:
   a. The physical or mental health or condition of the individual;
   b. The provision of health care to the individual; or
   c. Payment for the provision of health care to the individual.
“Sensitive personal information” does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

Business and Commerce Code 521.002(a)(2), (b)

Each institution of higher education, including each college district, that proposes to receive information resources technologies under a contract from another state agency or institution of higher education shall comply with 1 Administrative Code Chapter 204, Subchapter C. 1 TAC 204.30-.32
INFORMATION SECURITY PROGRAM

The College President shall approve an information security program designed to address the security of the College District's information resources against unauthorized or accidental modification, destruction, or disclosure. This program shall also address accessibility, privacy, and security of the College District's Web site.

SECURITY BREACH NOTIFICATION

Upon discovering or receiving notification of a breach of system security, the College District shall disclose the breach to affected persons or entities in accordance with the time frames established by law.

The College District shall give notice by using one or more of the following methods:

1. Written notice.
2. Electronic mail, if the College District has electronic mail addresses for the affected persons.
4. Publication through broadcast media.

ACCESS BY INDIVIDUALS WITH DISABILITIES

The College President or designee shall develop procedures to ensure that individuals with disabilities have access to the College District's electronic and information resources similar to individuals without disabilities.
Copyright protection subsists, in accordance with United States Copyright Law, 17 U.S.C. 101–1332, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

1. Literary works;
2. Musical works, including any accompanying words;
3. Dramatic works, including any accompanying music;
4. Pantomimes and choreographic works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audiovisual works;
7. Sound recordings; and
8. Architectural works.

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. 102

Copyright in a work protected under United States Copyright Law vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work. 17 U.S.C. 201(a)

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of United States Copyright Law, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright. 17 U.S.C. 201(b)

A “work made for hire” is:

1. A work prepared by an employee within the scope of his or her employment; or
2. A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.
A “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.

An “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

17 U.S.C. 101

The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by 17 U.S.C. 106, may be transferred and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner.

17 U.S.C. 201(d)

At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by registering in accordance with 17 U.S.C. 408–409 and 708. Such registration is not a condition of copyright protection. 17 U.S.C. 408(a)

EXCLUSIVE RIGHTS

Subject to 17 U.S.C. 107–122, the owner of a copyright has the exclusive rights:

1. To reproduce the copyrighted work in copies or phonorecords;

2. To prepare derivative works based upon the copyrighted work;

3. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

4. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. 106

FAIR USE

An exception to the exclusive rights enjoyed by copyright owners is the doctrine of fair use. The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by 17 U.S.C. 106, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. The following factors shall be considered in determining fair use:

1. The purpose and character of the use, including whether the use is of a commercial nature or for nonprofit educational purposes.

2. The nature of the copyrighted work.

3. The amount and importance of the portion used in relation to the copyrighted work as a whole.

4. The effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. 107

PERFORMANCES AND DISPLAYS

PERFORMANCES AND DISPLAYS

Additional exceptions related to performances and displays include performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under United States Copyright Law, and that the person responsible for the performance knew or had reason to believe was not lawfully made.

17 U.S.C. 110(1)

DISTANCE EDUCATION

Except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason
to believe was not lawfully made and acquired, the performance of
a nondramatic literary or musical work or reasonable and limited
portions of any other work, or display of a work in an amount com-
parable to that which is typically displayed in the course of a live
classroom session, by or in the course of a transmission, is not a
copyright infringement if:

1. The performance or display is made by, at the direction of, or
under the actual supervision of an instructor as an integral
part of a class session offered as a regular part of the sys-
tematic mediated instructional activities of a governmental
body or an accredited nonprofit educational institution;

2. The performance or display is directly related and of material
assistance to the teaching content of the transmission;

3. The transmission is made solely for, and, to the extent tech-
nologically feasible, the reception of such transmission is lim-
ited to students officially enrolled in the course for which the
transmission is made or officers or employees of governmen-
tal bodies as a part of their official duties or employment; and

4. The transmitting body or institution:
   a. institutes policies regarding copyright, provides informa-
tional materials to faculty, students, and relevant staff
members that accurately describe, and promote compli-
ance with, the laws of the United States relating to cop-
yright, and provides notice to students that materials used
in connection with the course may be subject to copy-
right protection; and
   b. in the case of digital transmissions:
      (1) applies technological measures that reasonably
prevent retention of the work in accessible form by
recipients of the transmission from the transmitting
body or institution for longer than the class session;
and unauthorized further dissemination of the work
in accessible form by such recipients to others; and
      (2) does not engage in conduct that could reasonably
be expected to interfere with technological
measures used by copyright owners to prevent
such retention or unauthorized further dissemin-
ation.

17 U.S.C. 110(2)

“Mediated instructional activities” with respect to the performance
or display of a work by digital transmission under 17 U.S.C. section
110 refers to activities that use such work as an integral part of the
class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in one or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use. 17 U.S.C. 110

GUIDELINES

The purpose of the “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions” and “Guidelines for Educational Uses of Music” is to state the minimum and not the maximum standards of educational fair use under 17 U.S.C 107. The guidelines are not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107. There may be instances in which copying that does not fall within the guidelines may nonetheless be permitted under the criteria of fair use.

PROHIBITIONS

Notwithstanding the fair use guidelines, the following shall be prohibited:

1. Copying of print materials and sheet music to create or replace or substitute for anthologies, compilations, or collective works. This prohibition against replacement or substitution applies whether copies of various works or excerpts are accumulated, or reproduced and used separately.

2. Copying of or from works intended to be “consumable” in the course of study or teaching. These works include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.

Copying shall not substitute for the purchase of books, publishers’ reprints, or periodicals; be directed by higher authority; or be repeated with respect to the same item by the same teacher from term to term.

No charge shall be made to the student beyond the actual cost of the photocopying.

Additional prohibitions regarding the use of music are:

1. Copying for the purpose of performance, except as permitted under the “Guidelines for Educational Use of Music.”
2. Copying for the purpose of substituting for the purchase of music, except as permitted under the “Guidelines for Educational Use of Music.”

3. Copying without inclusion of the copyright notice that appears on the printed copy.

REFERENCE

“Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions” and “Guidelines for Educational Use of Music” are contained in the historical note following 17 U.S.C. 107.

BROADCAST PROGRAMS

Broadcast programs, including commercial and public television and radio, shall not be videotaped or tape recorded for reuse without permission, except within the following guidelines:

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by the college district for a period not to exceed the first 45 consecutive calendar days after date of recording. At the end of that retention period, off-air recordings shall be erased or destroyed.

2. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities and repeated once only when instructional reinforcement is necessary during the first ten consecutive school days within the 45-calendar-day retention period. “School days” are actual days of instruction, excluding examination periods.

3. Off-air recordings shall be made at the request of and used by individual teachers and shall not be regularly recorded in anticipation of requests. No broadcast program shall be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program is broadcast.

4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording. All copies of off-air recordings shall include the copyright notice on the broadcast program as recorded.

5. After the first ten consecutive school days, off-air recordings may be used up to the end of the 45-calendar-day retention period only to determine whether or not to include the broadcast program in the teaching curriculum and shall not be used in the college district for student exhibition or any other nonevaluative purpose without authorization.
6. Off-air recordings need not be used in their entirety, but the recorded programs shall not be altered from their original content. Off-air recordings shall not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

**17 U.S.C. 107 historical note**

Anyone who violates any of the exclusive rights of the copyright owner or of the author as provided in 17 U.S.C. 106A(a) is an infringer of the copyright or right of the author. The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of 17 U.S.C. 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. *17 U.S.C. 501(a)–(b)*

**COPYRIGHT INFRINGEMENT**

**ONLINE COPYRIGHT INFRINGEMENT**

**LIMITATION OF LIABILITY**

**ELIGIBILITY FOR LIMITATIONS ON LIABILITY**

A “service provider” (regarding online services) under 17 U.S.C. 512(k) that meets the conditions in 17 U.S.C. 512 shall not be liable for monetary relief or certain injunctive or other equitable relief, except as allowed under 17 U.S.C. 512(j), for copyright infringement in certain online services (transitory communications, system caching, storage of information on systems or networks at the instruction of users, and information location tools) provided by the service provider. *17 U.S.C. 512*

The limitations on liability established by 17 U.S.C. 512 shall apply to a service provider only if the service provider:

1. Has adopted and reasonably implemented, and informs subscribers and account holders of the service provider’s system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider’s system or network who are repeat infringers; and

2. Accommodates and does not interfere with standard technical measures. The term “standard technical measures” means technical measures that are used by copyright owners to identify or protect copyrighted works and:

   a. Have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

   b. Are available to any person on reasonable and nondiscriminatory terms; and

   c. Do not impose substantial costs on service providers or substantial burdens on their systems or networks.

*17 U.S.C. 512(i)*
Generally, a service provider shall not be liable for monetary relief, or for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resided on a system or network controlled or operated by or for the service provider, if the service provider:

1. Does not have actual knowledge that the material or activity using the material on the system or network is infringing; in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

2. Does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity;

3. Upon notification of claimed infringement as described in 17 U.S.C. 512(c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity; and

4. Has designated an agent to receive notifications of claimed infringement described in 17 U.S.C. 512(c)(3), by making available through its service, including on its Web site in a location accessible to the public, and by providing to the Copyright Office, certain contact information.

17 U.S.C. 512(c)(1)–(2); 37 C.F.R. 201.38

When a public or other nonprofit institution of higher education, including a college district, is a service provider, and when a faculty member is performing a teaching or research function, for the purposes of 17 U.S.C. 512(a) and 512(b) such faculty member shall be considered to be a person other than the institution, and for the purposes of 17 U.S.C. 512(c) and 512(d) such faculty member’s knowledge or awareness of his or her infringing activities shall not be attributed to the institution if:

1. Such faculty member’s infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding three-year period, for a course taught at the institution by such faculty member;

2. The institution has not, within the preceding three-year period, received more than two notifications described in 17 U.S.C. 512(c)(3) of claimed infringement by such faculty member, and such notifications of claimed infringement were not actionable under 17 U.S.C. 512(f); and
3. The institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

17 U.S.C. 512(e)

- Generally, liability of a service provider for copyright infringement may also be limited upon certain conditions for transitory communications, system caching, and information location tools services. 17 U.S.C. 512(a)-(b), (d)

- Generally, a service provider shall not be liable to any person for any claim based on the service provider’s good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing. 17 U.S.C. 512(g)

**Note:** Further information regarding copyrights and the Digital Millennium Copyright Act can be found at: [http://www.copyright.gov](http://www.copyright.gov).

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### TRADEMARKED MATERIAL UNDER FEDERAL LAW

**“TRADEMARK”**

The term “trademark” includes any word, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to register on the principal register to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

### “SERVICE MARK”

The term “service mark” means any word, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to register on the principal register to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

### “CERTIFICATION MARK”

The term “certification mark” means any word, name, symbol, or device, or any combination thereof, used by a person other than its owner or which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other
characteristics of such person’s goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

“COLLECTIVE MARK”

The term “collective mark” means a trademark or service mark used by the members of a cooperative, an association, or other collective group or organization or which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register and includes marks indicating membership in a union, an association, or other organization.

15 U.S.C. 1127

REGISTERING A MARK

Trademarks, service marks, collective marks, and certification marks may be registered in accordance with the Trademark Act of 1946, 15 U.S.C. 1051–1142. 15 U.S.C. 1051–1054

ASSIGNMENT OF A MARK

A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark in accordance with 15 U.S.C. 1060. 15 U.S.C. 1060(a)(1)

LIABILITY

Any person shall be liable in a civil action by the registrant for the remedies provided in 15 U.S.C. 1114 if the person, without the consent of the registrant:

1. Uses in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

2. Reproduces, counterfeits, copies or colorably imitates a registered mark and applies such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

Under item 2 above, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

15 U.S.C. 1114(1)
Note: Further information regarding federal trademarks can be found at [http://www.uspto.gov/trademarks](http://www.uspto.gov/trademarks).

**TRADEMARKED MATERIAL UNDER STATE LAW**

The term "service mark" means a word, name, symbol, or device, or any combination of those terms, used by a person to identify and distinguish the services of one person, including a unique service, from the services of another; and indicate the source of the services, regardless of whether the source is unknown; and includes the titles, character names used by a person, and other distinctive features of radio or television programs, regardless of whether the titles, character names, or programs advertise the sponsor's goods. *Business and Commerce Code 16.001(8)*

The term "trademark" means a word, name, symbol, or device, or any combination of those terms, used by a person to identify and distinguish the person's goods, including a unique product, from the goods manufactured or sold by another; and indicate the source of the goods, regardless of whether the source is unknown. *Business and Commerce Code 16.001(10)*

**REGISTRATION**

A service mark or trademark may be registered in accordance with Business and Commerce Code Chapter 16 and 1 Administrative Code Chapter 93. *Business and Commerce Code 16.051-.066; 1 TAC 93.31-.124, .141-.144*

**ASSIGNMENT OF A MARK AND REGISTRATION**

A mark and its registration are assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of, and symbolized by, the mark. An assignment must be made by a properly executed written instrument and may be recorded with the Texas Secretary of State in accordance with Business and Commerce Code 16.061. *Business and Commerce Code 16.061; 1 TAC 93.131*

**INFRINGEMENT**

Subject to Business and Commerce Code 16.107, a person commits an infringement if the person:

1. Without the registrant's consent, uses anywhere in this state a reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with selling, offering for sale, or advertising goods or services when the use is likely to deceive or cause confusion or mistake as to the source or origin of the goods or services; or

2. Reproduces, counterfeits, copies, or colorably imitates a registered mark and applies the reproduction, counterfeit, copy, or colorable imitation to a label, sign, print, package, wrapper, receptacle, or advertisement intended to be used in selling or distributing, or in connection with the sale or distribution of, goods or services in this state.
A registrant may sue for damages and to enjoin an infringement.  
*Business and Commerce Code 16.102(a)–(b)*

**Note:** Further information regarding state trademarks can be found at 

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<th>PATENTS</th>
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<td>The term &quot;invention&quot; means invention or discovery.</td>
<td>35 U.S.C. 100(a)</td>
<td>The term &quot;process&quot; means process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.</td>
<td>35 U.S.C. 100(b)</td>
<td>Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement, may obtain a patent, subject to the conditions and requirements of 35 U.S.C. 1-376. 35 U.S.C. 101</td>
<td>Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigned or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States. 35 U.S.C. 261</td>
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<tr>
<td>WHOEVER INVENTS OR DISCOVERS ANY NEW AND USEFUL PROCESS, MACHINE, MANUFACTURE, OR COMPOSITION OF MATTER, OR ANY NEW AND USEFUL IMPROVEMENT, MAY OBTAIN A PATENT, SUBJECT TO THE CONDITIONS AND REQUIREMENTS OF 35 U.S.C. 1-376. 35 U.S.C. 101</td>
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<td>Except as otherwise provided in 35 U.S.C. 1-376, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent, infringes the patent.</td>
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<td>whoever actively induces infringement of a patent shall be liable as an infringer.</td>
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<td>Whoever actively induces infringement of a patent shall be liable as an infringer.</td>
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<td>whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.</td>
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<td>35 U.S.C. 271(a)–(c)</td>
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**Note:** Further information regarding patents can be found at [http://www.uspto.gov/patents](http://www.uspto.gov/patents).
The Board encourages each College District employee and student to contribute to the advancement of knowledge by publishing and copyrighting, inventing, and patenting materials and objects of his or her own creation. The College District shall protect the interests of its personnel and students in relation to their intellectual property. Intellectual property is defined as intellectual and creative works that can be copyrighted or patented, such as literary, dramatic, musical and artistic works; computer software; multimedia presentations; inventions; and the like. The College District shall assume responsibility for ensuring that public funds, public facilities, equipment, and other public properties for which it has stewardship are not utilized for personal profit or gain. An author, creator, or inventor may receive benefits from publications and inventions according to the provisions of this policy.

Each employee and student shall retain exclusive property rights to materials developed on his or her own time without the use of College District equipment, facilities, or personnel support; developed as part of his or her regular responsibilities; or produced prior to employment with the College District.

To the extent permitted by law, materials developed using College District property or while in the performance of duties as an employee shall become the sole property of the College District.

No employee or student shall utilize any property or facility of the College District for any personal or private business activities. College District facilities, equipment, and staff may be utilized for research projects only if prior approval of the College President or designee is obtained. Upon approval of the project, the College District shall enter into an agreement with the staff member regarding legal protection and guidelines for licensing, patenting, and royalty participation.

Each employee shall have a joint property right with the College District for any materials written or developed in conjunction with released time or with College District support. This joint right shall entitle the College District to the use of materials, regardless of copyrights or patents, and exclusive of any royalties, commissions, or profit to an employee until such time as the College District has been reimbursed to the extent and amount that the College District paid for the project. Once reimbursement for such released time or College District support has been made, any joint property rights of the College District shall be in accordance with the agreement authorizing the project.

Intellectual property resulting from research supported by a grant or contract with the federal government, or any agency thereof, or with a nonprofit or for-profit nongovernmental entity, shall be gov-
erned by the specific terms pertaining to the intellectual property rights included in the grant or contract.

Non-copyrighted materials prepared by a College District employee or student for use in a course conducted by the College District shall remain the property of the College District, and use of such materials for non-College District purposes shall be approved by the College President.

An employee of the College District may not realize a profit from materials sold exclusively to College District students.

COPYRIGHT

Unless the proposed use of a copyrighted work is an exception under the “fair use” guidelines maintained by the College President or designee, the College District shall require an employee or student to obtain a license or permission from the copyright holder before copying, modifying, displaying, performing, distributing, or otherwise employing the copyright holder’s work for instructional, curricular, or extracurricular purposes. This policy does not apply to any work sufficiently documented to be in the public domain.

TECHNOLOGY USE

All persons are prohibited from using College District technology in violation of any law including copyright law. Only appropriately licensed programs or software may be used with College District technology resources. No person shall use the College District’s technology resources to post, publicize, or duplicate information in violation of copyright law. The Board shall direct the College President or designee to employ all reasonable measures to prevent the use of College District technology resources in violation of the law. All persons using College District technology resources in violation of law shall lose user privileges in addition to other sanctions. [See BBI and CR]

ELECTRONIC MEDIA

Unless a license or permission is obtained, electronic media in the classroom, including motion pictures and other audiovisual works, must be used in the course of face-to-face teaching activities as defined by law.

DESIGNATED AGENT

The College District shall designate an agent to receive notification of alleged online copyright infringement and shall notify the U.S. Copyright Office of the designated agent’s identity. The College District shall include on its Web site information on how to contact the College District’s designated agent and a copy of the College District’s copyright policy. Upon notification, the College District’s designated agent shall take all actions necessary to remedy any violation. The College District shall provide the designated agent appropriate training and resources necessary to protect the College District.
If a content owner reasonably believes that the College District’s technology resources have been used to infringe upon a copyright, the owner may notify the designated agent.

**TRADEMARK**

The College District protects all College District and campus trademarks, including names, logos, mascots, and symbols, from unauthorized use.

**COLLEGE DISTRICT-RELATED USE**

The College District grants permission to students, student organizations, parent organizations, and other College District-affiliated college-support organizations to use, without charge, College District and campus trademarks to promote a group of students, an activity or event, a campus, or the College District if the use is in furtherance of College District-related business or activity. The College President or designee shall determine what constitutes use in furtherance of College District-related business or activity and is authorized to revoke permission if the use is improper or does not conform to administrative regulations.

**PUBLIC USE**

Members of the general public, outside organizations, vendors, commercial manufacturers, wholesalers, and retailers shall not use College District trademarks without the written permission of the College President or designee. Any production of merchandise with College District trademarks for sale or distribution must be pursuant to a trademark licensing agreement and may be subject to the payment of royalties.

Any individual, organization, or business that uses College District trademarks without appropriate authorization shall be subject to legal action.