



HOUSE BILL 2815

by Rep. Jacey Jetton / Sen. Brandon Creighton

Effective June 18, 2023

- Before and during the 2023 Regular Session, Rep. Jetton worked with water district representatives and stakeholders to draft HB 2815, which is an “omnibus bill” making numerous changes to laws affecting water districts.
 - It has been over 20 years since the last major revision to water district law. That effort was led by former Rep. Bill Callegari.
 - HB 2815 is comprehensive legislation that improves and modernizes the operation of water districts. Efficiency of operation saves taxpayer money and encourages private investment from developers.
 - HB 2815 also reinforces meaningful state oversight.
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MOOT TAX RATE ELECTIONS

- Eliminates an inadvertent error in SB 2 (2019) that requires a tax rate approval election for developed districts in certain situations even when it is not possible for the election to result in a tax rate reduction. (i.e., the “voter-approval tax rate” is already lower than the adopted tax rate.)
- Saves the time, expense, and confusion of moot elections.

DIRECTOR PER DIEMS

- Ties the water district director per diem amount to the legislative per diem amount determined by the Texas Ethics Commission. In so doing, the per diem is automatically indexed for inflation. The current legislative per diem is \$221.
- The annual maximum amount of per diem per director remains the same at \$7,200, with few exceptions.
- Water district directors are entitled to earn a per diem for each day of active service. The per diem amount was last increased in 2003 by former Rep. Bill Callegari.

DIVISION OF DISTRICTS

- Authorizes the division of a district into multiple districts.
- These division provisions are the same as found in the MUD Template for legislatively created districts.
- Permits a district to divide into multiple districts within the original area before bonds are issued, subject to a confirmation election for a new district.

CONFIDENTIALITY OF PERSONAL EMAIL ADDRESSES

- Excepts from public information a director's personal email address so long as:
 - the email address is not paid for with public funds;
 - the email address is not primarily used to transact district business; and
 - an official email address for the board member or the board is made publicly available.

LEVEE IMPROVEMENT DISTRICT DIRECTORS

- Amends the director qualifications for LIDs to be the same qualifications as MUDs by requiring directors to be either landowners or qualified voters to serve on all LID boards, appointed or elected.

FILLING MUD DIRECTOR VACANCIES

- Current law prohibits a MUD board from filling a vacancy by appointing a person who recently resigned from the board or was defeated in an election.
- This provision causes numerous problems. For example, a candidate who narrowly lost an election cannot be appointed subsequently to fill a vacancy.
- HB 2815 repeals this provision.

TCEQ CREATION & OVERSIGHT OF MANAGEMENT DISTRICTS

- Streamlines the process for TCEQ creation of an MMD, including notice and hearing requirements, using the same process as for all water district creations.
- Allows a petition to the TCEQ for creation of an MMD to request an elected board of directors instead of a city-appointed board. Amends the MMD statute to include provisions for elected directors the same as elected MUD directors.
- Clarifies and reinforces TCEQ jurisdiction and oversight of MMDs.

CONDUCT OF INITIAL ELECTIONS

- Allows the board of directors of a district to consider the best interests of district voters and to be responsible for establishing precincts and polling places for its initial confirmation, bond, tax, and directors' election.
- In so doing, authorizes a board, at its discretion, to establish voting precincts and polling locations different from the county voting precincts and polling locations. In turn, the district is able to administer the election instead of the county, which often results in better election integrity.

BOND AND REFUNDING BOND PROPOSITIONS

- Restores long-standing practice of including “new money” and “refunding” bonds in the same ballot proposition. This reduces the length and complexity of ballots, ultimately making elections easier and cheaper to administer.

WATER CONTROL & IMPROVEMENT DISTRICT ANNEXATIONS

- Allows a WCID to substitute land of equal value the same way as a MUD to allow for a boundary adjustment without impairing outstanding bonds.

TCEQ BOND FEASIBILITY TESTS

- The TCEQ imposes stringent bond feasibility tests using assumptions about the housing market and the urbanization of the area on a county-by-county basis. These assumptions are set in TCEQ Rules and have not been adjusted in decades. As the pattern of growth pushes outward from major metropolitan areas, there is inconsistency in the impact of these rules.
- HB 2815 directs the TCEQ to update its formulas for evaluating the feasibility of bonds in high growth areas.
 - Houston Metro: A district located wholly or partly in Austin, Brazos, Chambers, Grimes, Liberty, Walker, or Wharton county shall be evaluated the same as a district located in Brazoria, Chambers, Fort Bend, Galveston, Harris, Montgomery, or Waller county.
 - Austin / San Antonio Metro: A district located wholly or partly in Bastrop, Bell, Blanco, Burnet, Caldwell, Gillespie, Kendall, Lee, or Milam county shall be evaluated the same as a district located in Bexar, Hays, Guadalupe, Travis, and Williamson county.

NOTICES TO PURCHASERS

- Streamlines and modernizes the Notices to Purchasers given to every purchaser of property in a district so that the notices are more apparent and meaningful. Replaces archaic legalese with plain language.
- Requires the notices to be available on the Internet.
- These same provisions also passed as HB 2816.

MISCELLANEOUS

- Clarifies the process for two-thirds approval for an MMD board of directors to authorize the levy of assessments, fees, and taxes or the issuance of bonds.
- Authorizes the consolidation of a MUD and an MMD.
- Cleans up conflicting provisions relating to conversion of a district into a MUD.
- Provides that an Internet posting of a notice of board meeting by a county clerk, if any, fulfills a district's requirement to post its notices on the Internet.
- Permits a district created in a city's extraterritorial jurisdiction to be annexed subsequently into the city without dissolution if annexation occurs prior to the district's confirmation election.

SPECIAL THANKS

Thank you to Rep. Jacey Jetton and his staff and Sen. Brandon Creighton and his staff for their continued support of water districts and passage of House Bill 2815.





HOUSE BILL 2816

by Rep. Jacey Jetton / Sen. Brandon Creighton

Effective June 18, 2023

- Several individuals and associations expressed frustration from the confusing and outdated Notice to Purchasers (Notice). The Notice has not been updated for two decades.
- As champions of water districts and transparency, Rep. Jetton and Sen. Creighton agreed to carry this legislation.
- For water districts to be successful, homeowners must understand the water district taxes that come with their home purchase.
- HB 2816 updates and modernizes the form of the Notice. The provisions of the new Notice recognize changes in municipal annexation law and its relationship to water districts. This legislation is a leap forward for transparency.

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- Specifies a conspicuous and straightforward header:

NOTICE TO PURCHASER OF SPECIAL TAXING OR ASSESSMENT DISTRICT

The real property that you are about to purchase is located in the
(_____district) and may be subject to district taxes or assessments.

- Water districts select from a menu of applicable provisions based on the facts and circumstances of the district.
- The use of a menu allows water districts to use only the items that are relevant to the district, improving the meaningfulness of the Notice.
- Requires a district that is levying property taxes to post the Notice on the Internet.
- Clarifies that the Notice requirements apply to Municipal Management Districts (MMDs) operating under Chapter 375 of the Local Government Code and real property in MMDs.
- Exempts “director lots” from the Notice requirements.
- Eliminates the requirement that board members must sign the district boundary map.
- Repeals the criminal penalties for directors who affirm the accuracy of an information form that, without any knowledge of the director, is inaccurate or incorrect.
- Also repeals the criminal penalties for directors who do not sign the information form and the presumption that a director who was present at a meeting, but did not sign the information form, willfully refused to do so.



HOUSE BILL 2071

by Rep. Jacey Jetton / Sen. Paul Bettencourt

Effective June 18, 2023

- HB 2071 was the result of a widespread effort to reform the program of Public Facility Corporations (PFCs) for acquiring and constructing multi-family residential developments that are exempt from property taxes.
 - A PFC is a non-profit corporation sponsored by a local governmental entity, such as a city, county, or public housing authority, with the goal of incentivizing the development of affordable housing.
 - Using a PFC, private apartment developers construct new or acquire existing multi-family residential developments and then convey those developments to a PFC subject to a leaseback to the developer. This entitles the developer to receive a 100% property tax exemption for up to 99 years in exchange for making a percentage of units affordable, as determined by the PFC, and making payments to the PFC. In theory, this reduction in the operating costs of the complex is passed on to tenants in the form of lower rents.
 - Use of the PFC structure has increased significantly in recent years and even months, raising concerns about the benefits and potential abuses of the program.
 - Concerns include:
 - the amount of affordable housing actually provided in exchange for significant tax savings;
 - the tax burden shift to the remaining taxpayers within an affected taxing entity;
 - the lack of transparency associated with PFC agreements; and
 - the lack of notice or input afforded to taxing entities and taxpayers before property is removed from the tax roll.
 - AWBD developed, gathered, and presented data demonstrating the unique impact to water district finances when one or more multi-family residential developments are removed from the tax rolls. (See attached.)
 - Rep. Jetton and Sen. Bettencourt invested significant time and energy working with stakeholders to develop this legislation to reform the PFC program.
 - AWBD representatives worked closely with the bill authors to ensure adequate protections for water districts were included.
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- HB 2071 significantly reforms the use of PFCs to acquire and construct multi-family residential developments that are often leased back to a developer and exempt from property taxes.
- Importantly, future multi-family residential developments are not exempt from paying taxes imposed by a water district that is providing water, sewer, or drainage services to the development unless the district and the PFC enter into an agreement for payment in lieu of taxation.
- PFC-owned multi-family residential developments must be located within the sponsor's boundaries.
- Additional requirements include:
 - compliance with certain rent metrics and reservation of certain percentages of income-restricted units;
 - proper notice to overlapping jurisdictions;
 - approval by the elected body of the sponsor;
 - an initial 15% reinvestment for an occupied development that is acquired;
 - annual audits to determine compliance; and
 - shorter terms of the leaseback.



Public Facility Corporations (PFC)

What is a PFC?

A PFC is an entity established by a local government entity, such as a city, county or public housing authority. **They are intended as affordable housing tools.**

How does it work?

Private apartment developers can transfer land, and any new or existing apartment buildings on the land, to a PFC and receive a 100% property tax break in exchange for reducing the rent in some units. **When the property is transferred to the PFC, it comes off the tax rolls of all overlapping government entities.**

Things to Note

01 An apartment project does not have to be located within the local government entity that established the PFC. This means that the City of Austin could create a PFC that acquires projects in the City of Houston, **thereby removing the property from the tax rolls of the City of Houston and other overlapping entities.**

02 Under current law, only the government entity that established the PFC has a say in whether a multi-family property becomes tax exempt through a PFC transfer. **Notice of a planned transfer to a PFC is not required to be provided to an affected taxing jurisdictions, nor is consent needed from the affected taxing entity.**

HOW CAN A PFC IMPACT MY WATER DISTRICT?

When property value is removed from a tax roll, the responsibility for the lost tax revenue is shifted to the remaining tax and/or rate payers.

The monetary impact could be substantial depending on the value of the apartment project as a percentage of the overall tax base.

The smaller the entity's tax base, the bigger the impact. Therefore, the impact to a water district could be quite significant.

This could become an issue for an entity's ability to pay debt service on district bonds, maintain reserves & repair facilities.

What are some examples of this impact?

There are many water districts that have existing apartment projects within their boundaries. Some districts contain multiple projects, exacerbating the potential impact.

Some new projects are initially constructed as PFCs. Other older projects may later be converted to PFCs.

The creation of PFCs is becoming more prevalent & districts receive NO advance notice & are often unaware of its existence until they receive the preliminary tax roll for the new tax year.

The taxable value of apartment projects can range from \$20 Million to more than \$50 Million.

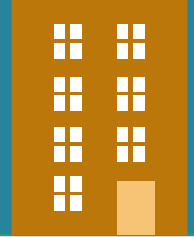
AWBD has received reports of certified value reductions in water districts ranging from a low of 3% to highs in excess of 40% on the 2023 preliminary tax rolls.

HB 2071: WHAT IS THE STATUS OF THE PFC LEGISLATION?

HB 2071 by Representative Jacey Jetton and Senator Paul Bettencourt is the bill under consideration to reform Public Facility Corporations. The bill is subject to ongoing negotiation. Both Representative Jetton and Senator Bettencourt are very interested in improving the current situation for all government entities, particularly water districts. They actively solicit AWBD's input.

2023
Tax Year

Harris County Water Districts



PFC Exposure & Risk Analysis

Number of Multi-Family Properties
Within Districts targeted by PFCs

167

Number of PFC Properties*

41

Total 2023 Preliminary Taxable Value:
\$25,445,185,122

Total Taxable Value owned or approved to acquire by PFC*:

\$1,408,217,902 = 5.5%
Of Districts Total
Taxable Value

Remaining Taxable Value at Risk:

\$5,526,788,309 = 21.7%
Of Districts Total
Taxable Value

*Total is a combination of properties currently owned by a PFC, totaling \$856,834,776 and properties that have a resolution to be acquired by a PFC totaling \$551,383,126. There are a total of 33 MUDs in the aggregate totals.



Senate Bill 28 by Sen. Charles Perry and Rep. Tracy King

Effective September 1, 2023, with certain provisions contingent on voter approval

Senate Joint Resolution 75 by Sen. Charles Perry and Rep. Tracy King

Effective January 1, 2024, if approved by the voters at the election in November 2023

- The Texas Water Development Board’s (TWDB) 2022 State Water Plan projects that Texas’ water demands are expected to increase by approximately nine percent between 2020 and 2070, while Texas’ existing water supplies are projected to decline by approximately 18 percent during the same time period. As a result, Texas could face a potential water shortage of approximately 7 million acre-feet per year in 2070.
 - See the 2022 State Water Plan at:
<https://www.twdb.texas.gov/waterplanning/swp/2022/index.asp>.
 - Winter Storm Uri has been front and center in the minds and lives of millions of people since February 2021. Texans faced electrical outages as well as boil water notices. It is estimated that 16 million people in Texas were without access to potable water.
 - Importantly, the Texas Water Fund and the New Water Supply Fund for Texas are dedicated funds in the Treasury, outside of the general revenue fund, which allows future Legislatures to appropriate money to these funds without further constitutional amendment.
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SB 28

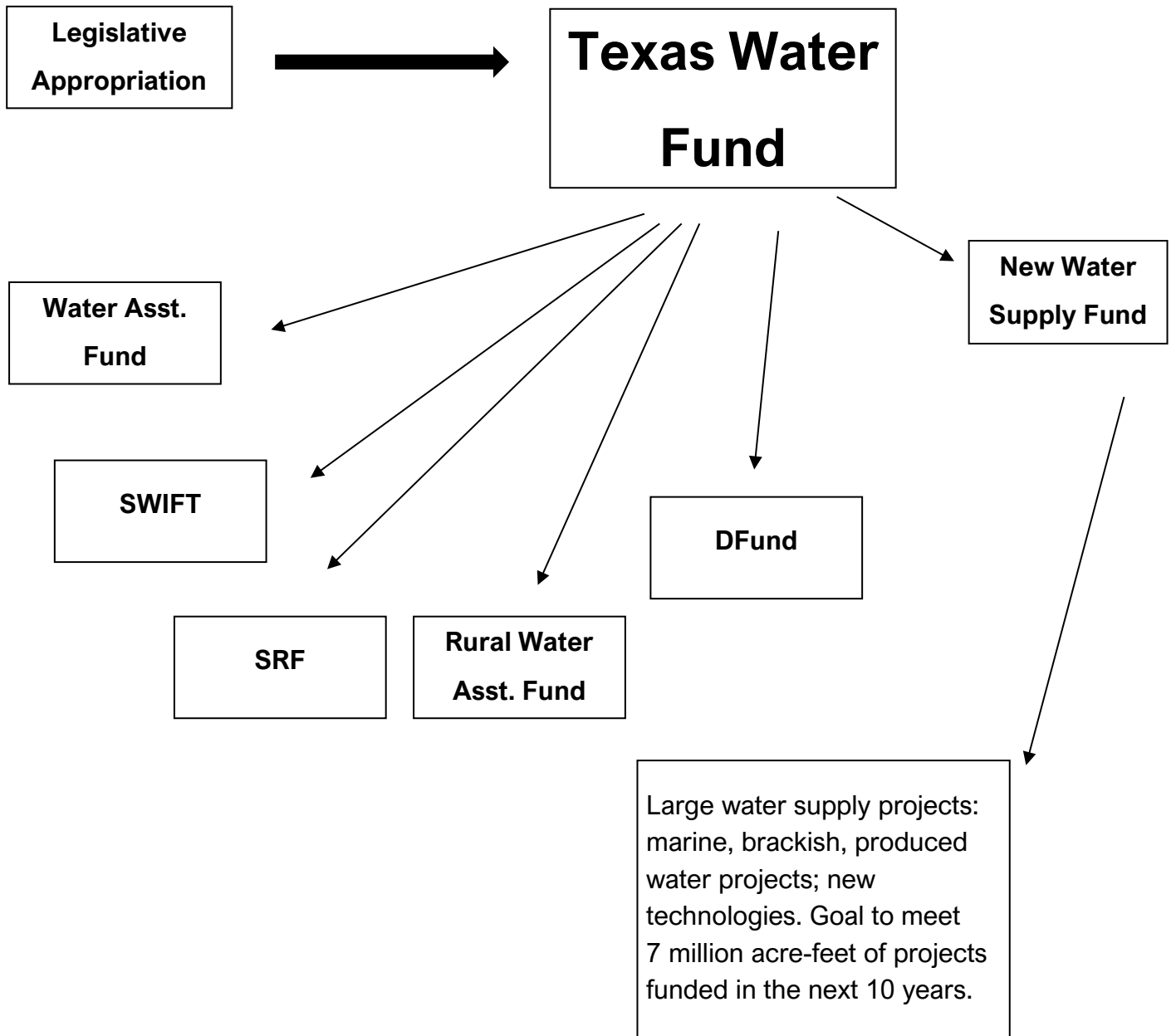
- The Texas Water Fund (TWF) serves as the umbrella fund administered by the TWDB.
 - The TWF consolidates and invests money from various sources, including appropriations, grants, and interest earnings.
 - The TWF holds and then transfers money to other funds as projects are approved. Money for the TWF may be transferred to other TWDB funds, including:
 - the Water Assistance Fund;
 - the State Water Implementation Fund for Texas (SWIFT);
 - the State Water Implementation Revenue Fund for Texas (SWIRFT);
 - the State Revolving Fund for Assisting Water Pollution Control;

- the Rural Water Assistance Fund;
 - the Statewide Water Public Awareness Account;
 - the Texas Water Development Fund II Water Financial Assistance Account; and
 - the Texas Water Development Fund II State Participation Account.
- The TWDB is required to ensure that a portion of the money is used for rural communities and municipalities with a population of less than 150,000.
- No more than 25% of the money initially appropriated to the TWF may be transferred to the New Water Supply for Texas Fund.
- Authorizes the SWIFT Advisory Committee to review the TWF and submit comments and recommendations to the TWDB.
- The New Water Supply for Texas Fund (NWSFTF) is for political subdivisions and water supply corporations to fund large water supply projects through loans.
 - Projects could include marine and brackish desalination, produced water treatment projects, aquifer storage and recovery, and water transportation projects.
 - The goal is to acquire or create seven million acre-feet of new water supplies by December 1, 2033.
 - Loans made from the fund provide for repayment terms of up to 30 years.
- SB 28 also creates the Statewide Water Public Awareness Account (SWPAA), which is a general revenue fund to develop, administer, and implement the statewide water conservation awareness program.

SJR 75

- The proposed constitutional amendment required to establish the TWF and the NWSFTF as designated funds in the Treasury that operate outside the general revenue fund.
- If approved by voters, requires the comptroller to transfer \$1 billion of the unencumbered balance of the general revenue fund to the TWF.

The chart below illustrates the flow of funds and the relationship between the funds created in SB 28 and other TWDB funds. This chart is courtesy of Sen. Perry, Chairman of the Senate Committee on Water, Agriculture, and Rural Affairs.





HOUSE BILLS 3697 & 3699

by Rep. Terry Wilson / Sen. Paul Bettencourt

Effective September 1, 2023

- In 2019, the Legislature passed HB 3167, known as the “shot clock bill,” which sought to establish a uniform system of timelines and deadlines for the review and approval of plats.
 - The inconsistent patchwork of city and county platting regulations persists.
 - HB 3697 and HB 3699 seek to make the city and county plat approval process more consistent and predictable, leading to savings of time and money for landowners and ultimately improving the affordability of housing for Texans.
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- Amends the “shot clock” provisions by:
 - excluding plan approvals;
 - establishing the date on which a plat application is considered filed;
 - clarifying that a city or county may establish a submittal calendar;
 - authorizing delegation of approval responsibility to officers or employees and establishing an appeal process of a decision to the governing body; and
 - clarifying the number and length of extensions allowed in various circumstances.
- Eliminates any requirement to plat private streets, alleys, squares, and parks. (In so doing, clarifies that the private streets of a single-family condominium project do not trigger a requirement for a plat.)
- Prohibits a city or county from requiring an analysis, study, document, agreement, or similar requirement as part of an application for a plat, development permit, or subdivision of land that is not explicitly required by state law.
- Prohibits a city or county from requiring the identification and dedication of right-of-way for a future transportation corridor, unless the corridor is part of an existing, published agreement between the county and the Texas Department of Transportation.
- Prohibits a city from requiring the dedication of land for a future street or alley that is not intended by the owner of the tract or is not included, funded, or approved in the city’s capital improvement plan or a similar plan of the county.

- Provides that an applicant may challenge a city’s failure or refusal to approve a plat in district court (current law already provides that right with regard to counties) and may recover attorney’s fees from a city or county.
- Clarifies that any authority of a city to determine the completeness of a plat application must be explicitly provided by law.
- Provides that a city:
 - is required to adopt and make available to the public a complete, written list of all documentation required to be submitted with a plat application;
 - may only require documentation that is related to a requirement authorized under law; and
 - is required to accept as complete an application that contains all documents.(Current law addresses these matters for counties.)
- Requires cities and counties to issue and post on their Internet websites (or in the newspaper for a city that does not operate an Internet website), by January 1, 2024, a list of all documentation and other information required for a plat application.



SENATE BILL 2038

by Sen. Paul Bettencourt / Rep. Cecil Bell

Effective September 1, 2023

- SB 2038 is ground-breaking legislation to empower landowners to free their land from city regulation by removing it from a city’s extraterritorial jurisdiction (ETJ).
 - This is the logical extension of Municipal Annexation Reform. The ETJ no longer has a purpose—it is only an opportunity for a city to regulate. Unnecessary city regulation and the costs and timing of the regulation directly increase the cost of housing, thereby reducing affordability.
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RELEASE FROM ETJ BY PETITION

- A resident of an area in a city’s ETJ, and the owner(s) of the majority in value of an area, may file a petition with the city for the area to be released from the ETJ.
- More than 50 percent of the registered voters of the applicable area or a majority in value of the landowners in the applicable area must sign the petition.
- The petition must include a map of the area to be released and a description of the land by metes and bounds, or if there is a recorded map or plat, by lot and block number.
- The city must verify the signatures and immediately release the area from the ETJ. If the city fails to release the area within 45 days or the date of the next city council meeting, whichever is later, the area is released by operation of law.

RELEASE FROM ETJ BY ELECTION

- A resident of an area in a city’s ETJ may request that the city hold an election for voters of the area to vote on whether the area should be released from the ETJ.
- The resident must file with the city a petition that includes signatures of at least five percent of the registered voters who reside in the applicable area.
- The petition must include a map of the area to be released and a description of the land by metes and bounds, or if there is a recorded map or plat, by lot and block number.
- The city must hold an election and immediately release the area from the ETJ if a majority of the voters of the applicable area approve the release. If the city fails to

release the area within 15 days after the canvass date or the date of the next city council meeting, whichever is later, the area is released by operation of law.

- Alternatively, the city may voluntarily release the applicable area before the election date.

EXCEPTIONS

- An area may not opt out of an ETJ if it is located:
 - within five miles of a military base, as defined by Section 43.0117, Local Government Code, at which an active training program is conducted;
 - in an area that was voluntarily annexed into an ETJ in Hays County;
 - within the portion of San Antonio’s ETJ in Bexar County that is within 15 miles of Camp Bullis;
 - in an area designated as an industrial district under Section 42.044, Local Government Code; or
 - in an area subject to a Strategic Partnership Agreement entered into under Section 43.0751, Local Government Code.

ADDITIONAL PROVISIONS

- An area that is released by petition or election may not become part of any city or city’s ETJ unless subsequently requested by the owner(s) of the released area.
- If an area that is released from an ETJ is subject to an interlocal agreement between the city and county governing subdivision regulation, such agreement is terminated as to the area and the county is authorized to regulate the area.
- City annexations of property after January 1, 2023, do not expand the ETJ unless the owner(s) request inclusion in the ETJ.