

# Spotlight on Public Finance

BRACEWELL

## Fall 2017 Newsletter

A Note About Hurricane Harvey	1	Attorneys in Action	5
Featured Article	1	Updates	6
Practice Focus	4	Did You Know?	7
Attorney Spotlight	5		

## A Note About Hurricane Harvey

The members of the Public Finance Group continue to think about our clients, colleagues and friends in Houston and across the Gulf Coast region. Our main concern now is for the safety of you and your families and the efforts underway to recover and rebuild in all areas affected by Hurricane Harvey. In addition to providing advice on disclosure considerations, we are working with others to identify and promote ways in which the federal and State government can provide assistance by passing legislation relating to tax-exempt bonds. Further, we plan to monitor and provide updates on the resources and flexibility provided by the federal and State government to tax-exempt bonds with an aim at helping the affected areas rebound. Please don't hesitate to reach out to us if there is anything we can do to be of assistance during this time of recovery.

## Featured Article

### Good Public Policy in 140 Characters or Less: An 85th Texas Legislative Session summary and thoughts for future public policy initiatives

During the 85th Texas Legislative Session that ended in May, we saw bullet points such as “stop local government overreach,” “citizens deserve more transparency and public disclosure,” “lower taxes,” and “reduce state debt.” These ideas seem to stem from a belief that government-funded projects should be limited in order to keep taxes low. While this belief may be true in some cases – and there are always some actors that take advantage of the existing rules – in many cases, financing infrastructure or large capital investments can save taxpayer dollars. On these projects, savings are savings, and any economic development impact or savings on the cost of construction due to inflation are then just bonuses.

Over the past three legislative sessions we have seen an increase in bills filed that limit the avenues local entities have to pass bond measures, or make the current process more costly and cumbersome. As we move forward, educational outreach is more important than ever to ensure that government and elected officials, who have the good of the state as their primary interest, understand the practical effects of these measures so that local governments are not overly burdened by measures that do not serve their intended purpose. This article provides an overview of the measures that have been considered recently and how Statehouse Consultants has worked to address the concerns of decisionmakers in a manner that will protect local governments' ability to access the financing tools needed to provide important infrastructure.

### **Proposition/Ballot Language**

There is a belief among a number of elected officials that because bond proposals pass at such a high rate, the general public must not be fully informed of what these initiatives do. Therefore, if voters are given additional information, less proposals will pass, thus keeping taxes and local spending in check. Additionally, there is significant confusion surrounding what information is currently available during and leading up to an election. These issues combined led to bills seeking to add additional posting requirements and language to ballot initiatives such as HB 3335/SB 461. In many instances, when evaluated independently, the proposals seem to be helpful but, in many cases, can be more misleading for the voters when presented out of context. For instance, a significant number of bills would have required the interest rate of the bonds being sold to be added to the language on the ballot. Given that bonds are often sold many months after voters approve the issuance, any interest rate on the ballot is simply a guess as to where rates may be, and could mislead voters either way.

SB 957 passed during the regular session, requiring a political subdivision's propositions on the ballot to be assigned a unique number or letter on the ballot, additionally it must also identify the name of the authority ordering the election. A handful of bills related to this issue were filed this session and attempted to alleviate a concern that when an entity runs an ad that says, "Vote No on Prop 1" a voter is clear as to which "Prop 1" the ad is referring, so that other entities utilizing a "Prop 1" don't suffer "guilt by association." Statehouse Consultants worked throughout the session to make sure the final bill that passed, SB 957, was written to allow each entity to have their own Prop 1, 2, 3 or Prop A, B, C. Significant effort was expended to ensure the language was precise as other versions of this bill would have created an administrative issue as there would be no way for entities on a joint ballot to know what numbers to use prior to adoption of their various election orders.

### **Bonds**

The 85th Legislative Session included a handful of bills limiting the ways bonds can be used generally. Some dealt with the useful life of an asset or project being less than the maturity date of the bonds issued like HB 3336/SB 460. Another approach, HB 1811, HB 1910 and HB 2811, required that each public project be voted on individually, instead of grouping these items together into one proposal, which would have a significant impact on school districts and water districts. Therefore, instead of voting on a ballot proposal for the construction and equipment of school buildings, voters would have been required to vote on each individual project: "plumbing repairs at School X," "roofing repairs at School Y," "replace air conditioning unit in gymnasium B," etc. Ultimately all legislation that would require ballot initiatives be split into separate proposals did not pass.

Last session the Governor signed into law House Bill 114 to reform the use of Capital Appreciation Bonds (CABs) and limit their use in local debt management, in order to circumvent future abuse of this important tool. Through many stakeholder meetings and as part of the final agreement, the bill included a cap that moving forward CABs could comprise no more than 25% of a subdivision's entire debt portfolio. However, it was the clear intent of the authors to protect taxpayer dollars by fully excluding (i) the refunding of existing bonds from this new cap for issuers that were either already over the cap or would break the new cap through retiring other outstanding debt, and (ii) CABs issued for transportation projects. Yet due to a drafting oversight that developed as the bill evolved, the carve out for refunding and transportation projects was not clearly stated and could not be used even in instances with significant tax dollar savings. To address this oversight, Senator Hinojosa filed SB 295, "CAB clean-up bill," to simply correct the previous drafting oversight and bring the statute in alignment with the legislature's original intent. SB 295 passed during the

regular session and clarifies that the requirements to issue capital appreciation bonds by a political subdivision do not apply to the refunding of bonds, or for financing transportation projects.

## **Public Disclosure/Transparency**

Transparency and public disclosure are important to our democratic system of governance. However, agreement on what that means can be very challenging. Bills this session ranged from clean-up of the HB 1295 “interested party” disclosure form from last session (ironically also HB 1295) to some bills which attempted to unwind several Supreme Court rulings commonly referred to as the “Boeing case,” HB 792/SB 407, what information is considered a trade secret or competitive advantage, and “Greater Houston Partnership case,” HB 793/ SB 408, what is a public entity, rulings. There will likely be many interim hearings dedicated to this subject and an effort should be made by the entities impacted to advocate for meaningful and streamlined disclosure, so that the information provided to the public is useful and not just abundant. Due to the failure of these bills during the regular session, SCR 56 was passed to create a joint interim committee to examine all state open-government laws, including the Public Information Act (PIA).

## **Election Procedures**

There was a lot of discussion this session around various voting procedure bills. While there seemed to be no leading proposal backed by the leadership, except for the elimination of straight ticket voting, it is safe to say that these issues will return next session. The main problems legislators are attempting to address include low voter turnout and election dates, or locations designed to increase the likelihood a particular proposal will pass. The old line of thinking that voters will come out in force to oppose controversial ballot initiatives regardless of the date, and let the less controversial items pass without ever going to the polls no longer satisfies many legislators. We saw these views manifested this session in bills like HB 1773, SB 702 and SB 2091, which would have required at least a 25-33% turnout of registered voters for a bond election but these items failed to pass.

## **Property Tax**

Limiting local government’s ability to tax and spend taxpayer dollars was a constant theme throughout session. While in many cases the impact to an individual homeowner’s tax bill could be minimal, reducing property taxes is on numerous members’ campaign websites as a critical mission they intend to accomplish. Recently, “real” or “meaningful” property tax reductions have been the bullet point. Absent from most of the conversations is any discussion of the largest portion of most homeowners’ bills, the local school district’s tax, and any conversation of what the return on investment is from the infrastructure the remaining property taxes provide. During the regular session and first called special session, both Senator Bettencourt and Representative Bonnen headed the effort to make “meaningful” property tax reductions. The original initiatives that were offered required an automatic rollback election if a local entity were to raise taxes above a certain percentage. The House and Senate could not agree during the regular session on whether there should be an automatic rollback election threshold, and during the special session, they could not come to a consensus on whether there should be a 4% automatic rollback election or a 6 % automatic rollback election. Both chambers had exemptions in their bills for “small taxing units,” defined in the Senate as entities with less than \$20 million total collection on all taxes and, in the House, as entities with less than \$25 million maintenance and operations collection as well as public junior colleges. Ultimately, the regular and special session ended without an automatic rollback provision property tax bill passing, but this issue will clearly be back on the agenda next time.

## **Annexation**

During the regular and special sessions, there were a handful of proposals to change the way a city may annex additional areas. Several bills would have altered the annexation process for all cities throughout the state, while others targeted only the most populous counties or cities. The debate surrounding the existing process and whether or not citizens outside a city should be able to vote before being annexed is not a new discussion; however, the current political environment has bolstered the arguments. There is a widespread belief among lawmakers that, since the state created and authorizes what powers to give local governments, they have a responsibility to protect their constituents from aggressive cities. This concept is reflected in the increasing number of items filed, limiting a local government’s ability to regulate any number of activities. During the regular session, the leading annexation bill, SB 715, was filibustered on the last day of the regular session by Senator Menendez and did not pass. A general sentiment among

legislators to preclude local ordinance making authority, combined with SB 715 nearly making it to the governor's desk, led to annexation being added to the special session call. The House and Senate were able to come to an agreement on SB 6, which requires the consent of the majority of property owners who are registered voters - by petition if the population is under 200 or by an election if the population is over 200 - for a municipality to have the authority to annex the area.

With all this in mind, it was a very successful legislative session and the process worked as designed, and most of the truly harmful or burdensome legislation died in the process. As desperate as things sometimes appear in the public policy world, education is our ally and it is incumbent upon experts and decision makers to actively work with policymakers to modify and craft sound legislation moving forward.

*Amanda Schar, a Partner with Statehouse Consultants LLC, has broad experience with public and governmental policy issues with deep policy experience in licensing, administrative procedure, regulated industry, environmental and budget policy. In her role, she develops legislative, issue advocacy, communication, business development and regulatory strategies. Mrs. Schar previously worked as the Chief of Staff to the House Chairman of Licensing and Administrative Procedures and the House Chairman of Environmental Regulation.*

*Colin Parrish, a Partner with Statehouse Consultants LLC, has broad experience with most public and governmental policy issues with deep policy experience in all things transportation, infrastructure, public finance, tax and fiscal policy. In his role, he develops legislative, issue advocacy, communication, business development and regulatory strategies. Mr. Parrish previously worked as a budget, planning and policy advisor to Governor Perry and an aide and policy advisor to the Texas Transportation Commission.*

Statehouse Consultants LLC is not affiliated with Bracewell LLP.

The views expressed in the article above do not necessarily reflect the views of Bracewell LLP.



---

## PRACTICE FOCUS

### Tax Exempt Organizations

Bracewell's public finance attorneys have significant experience advising section 501(c)(3) organizations in connection with tax-exempt financings. ***But did you know that this is just one of the variety of legal services we routinely provide to 501(c)(3) entities?***

In fact, Bracewell attorneys regularly advise a wide range of nonprofit corporations and charitable trusts about the applicable complex rules and regulations. For example, we routinely advise clients about various federal tax issues, including initial qualification, compliance with the private inurement proscription, the private benefit limitation, excise taxes applicable to private foundations and related persons, the lobbying and electioneering rules, structuring investments to avoid unrelated business income tax. We also have significant experience representing nonprofit organizations involved in matters before the IRS, including during examinations and in connection with ruling requests. In addition, we provide legal guidance to nonprofit corporations in connection with a variety of business transactions, such as mergers and acquisitions, sales and purchases of physician practices, and debt offerings. Finally, we help clients comply with board governance issues, such as drafting and interpreting governance documents and policies, and negotiating gift and naming rights agreements with donors.

Our nonprofit clients include hospitals and healthcare organizations, colleges and universities, independent and parochial schools, foundations organized to support school districts, museums and arts organizations, conservation organizations, advocacy groups, student loan organizations, and grant-making foundations and charitable trusts.

More information regarding Bracewell's Tax Exempt Organizations team can be found by contacting Todd Greenwalt or Brian Teaff.

## ATTORNEY SPOTLIGHT



### Todd Greenwalt | Partner, Houston

Todd Greenwalt works with governmental entities and tax-exempt organizations, advising them with regard to tax-exempt financings and other business transactions, and resolving tax-exempt status issues. His clients include all types of state and local governmental entities, hospitals, other health care organizations, colleges and universities, charter schools, museums, arts organizations, community and economic development organizations, private foundations, advocacy groups and other charities.

#### What are your specialties within public finance?

I am a tax lawyer by trade, so the bulk of my public finance practice involves tax compliance. I tend to view the typical transaction as having three time frames when tax compliance comes to the fore—initial structuring of the transaction, due diligence and preparation of the tax documents, and post-issuance compliance (everybody's favorite :)).

#### What do you see as public finance trends?

A trend in industry discussions continues to be the use of public finance techniques in connection with public/private partnerships - the vaunted P3. Currently, though, the tax law presents a number of challenges to the use of tax-exempt debt in connection with a true P3 joint venture. Recent changes to the accounting and allocation rules and liberalization of the management contract safe harbors have helped, but a bit more assistance from Congress or Treasury is needed to fully realize the potential represented by true P3 joint ventures.

#### What do you like best about your practice?

Without question the best part of my practice is the opportunity to work with such great colleagues and clients. As with any particular legal specialty, there can be a bit of repetition in my practice. However, the people I get to work with every day keep that repetition from becoming tedium. If I had to pick a second best, it's the fact that I get to work with folks on projects that improve people's everyday lives, whether it's a new school, new hospital, new road or new stadium for the Texas Rangers!

#### What is your favorite thing about Houston?

Houston is an easy city to "be from somewhere else," something I have appreciated since I moved here after law school. I am also continually struck by the sense of community that pervades Houston given its extraordinary diversity. This sense of community was on display 24/7 during Hurricane Harvey and the immediate aftermath and continues as the cleanup rolls on.

#### How do you like to spend your free time?

I have three main passions - after my family - golf, skiing and guitar. Unfortunately for me, I have good friends who excel in all three of these endeavors, leaving me with persistent feelings of inadequacy. Nonetheless, when the weather is nice, you can find me on the golf course; when the snow is deep, you can find me on the slopes; and if you want to find me when you come to my house, just follow the Metallica.

---

## ATTORNEYS IN ACTION

### Upcoming Events

#### Texas Women in Public Finance

January 25–26, 2018 – Austin, TX

Bracewell is a sponsor of the Texas Women in Public Finance and a group of our attorneys will be attending the 2018 Annual Statewide Conference.

#### Association of Water Board Directors

January 26–27, 2018 – Dallas, TX

Bracewell partner Clark Lord will be attending the 2018 Association of Water Board Directors Mid-Winter Conference.

## The Bond Buyer's Texas Public Finance Conference

February 12–14, 2018 – Austin, TX

Bracewell is a sponsor of the 2018 conference and many of our attorneys will be attending The Bond Buyer's Texas Public Finance Conference.

## Tax and Securities Law Institute

February 21–23, 2018 – Phoenix, AZ

Bracewell attorneys will spend a day and a half days at the 16th Annual Tax and Security Law Institute discussing the latest news and information affecting the public finance industry.

## Past Events

### Texas Public Finance Seminar (hosted by Texas Bond Review Board)

October 17, Austin, TX

Elizabeth Bowes, Jonathan Frels and Glen Hill will discussed recent legislative updates.

### Bond Dealers of America (BDA)

October 18, Dallas, TX

Ed Fierro spoke at BDA's Fixed Income Legal and Compliance Roundtable.

### National Association of Bond Lawyers (NABL) - Bond Attorney's Workshop

October 4-6, Chicago, IL

Victoria Ozimek chaired the “**Post-Issuance Compliance Panel**” at NABL's Bond Attorney's Workshop (BAW). In addition, Todd Greenwalt spoke on the “**Qualified 501(c)(3) Bonds Panel**,” Bill Avila participated on the “**Ethics—Professional Responsibility and Liability Panel**,” Ed Fierro spoke on the “**Hot Topics in Municipal Securities Law Panel**” and Brian Teaff presented on the “**Private Business Use Panel**.” In addition, there were several Bracewell attorneys who attended the BAW, including Glenn Opel, Ben Brooks, Cristy Edwards, Paul Maco, George Rodriguez and Katherine Milton.

### Municipal Advisory Council of Texas 2017 Conference & 63rd Annual Meeting

October 12-13, Bastrop, TX

In addition to sponsoring the 2017 conference, Jonathan Frels, Rob Collins, Tim Deithloff and Glenwood Hill were in attendance

---

## UPDATES

Since our last newsletter, our public finance team has distributed a number of federal securities and tax law updates as well as announcements and attorney commentaries. If you missed them the first time or would like to refresh your memory, we have compiled the most recent of our team's updates here.

### Proposed Treasury Regulations Bring the Public Notice Requirements into the 21st Century

October 2, 2017

**Todd Greenwalt, Victoria Ozimek and Brian Teaff**

### Hurricane Harvey – After the Storm, Disclosure Considerations for Bond Issuers

September 7, 2017

**Barron Wallace, Jonathan Frels and Ed Fierro**

### FY 2018 Sequestration Reduction Percentage for Direct Pay Tax Credit Bonds Set at 6.6 Percent

August 7, 2017

**Todd Greenwalt, Victoria Ozimek and Brian Teaff**

## Deadline Near for Passing the Municipal Advisor Qualification Exam

July 26, 2017

Paul Maco, Edward Fierro and Britt Cass Steckman

## Bracewell Partner Elizabeth Bowes Elected as President of Texas Chapter of Women in Public Finance

July 26, 2017

## Bracewell Served as Bond Counsel to Fort Bend ISD in First-of-its-Kind Green Bonds for Capital Projects

July 12, 2017

## The Law as a Bond

June 14, 2017

Jonathan Frels

## The Final Countdown: New Issue Price Regulations Effective June 7th

May 17, 2017

Victoria Ozimek and Brian Teaff

## Internal Revenue Service to begin new procedure for initiating tax-exempt bond audits

April 11, 2017 - American City & County

Victoria Ozimek and Brian Teaff

---

## DID YOU KNOW?

- During the 85th Texas Legislative Session 7,002 bills were filed. Of those, 1,317 passed and 51 were vetoed.
- According to the National Center for Charitable Statistics, there were over one million 501(c)(3) organizations in the United States in 2013.
- Munich has hosted the official Bavarian Oktoberfest every year since 1810.

---

*Bracewell LLP makes this information available for educational purposes. This information does not offer specific legal advice or create an attorney-client relationship with the firm. Do not use this information as a substitute for specific legal advice. Attorney advertising.*

*Bracewell is a leading law and government relations firm primarily serving the energy, finance and technology industries throughout the world.*

*Our industry focus results in comprehensive state-of-the-art knowledge of the commercial, legal and governmental challenges faced by our clients and enables us to provide innovative solutions to facilitate transactions and resolve disputes*