

2025-2026 Legal Update for Education Foundations

UNDERWOOD

Janet Bubert
www.uwlaw.com



New Legislation Impacting Education Foundations



89th Legislature

- 1,169 bills filed Nov. 12 (first day of filing)
- 8,719 bills filed
- 1,185 signed or filed without signature
- 26 vetoes

89th Legislature

- Significantly impacted many areas related to public education.
- Resulted in largest TASB Policy Update ever released – revisions to more than 140 legal framework documents.

SB 2411 – Governance Procedures

- Nonprofit organization may designate a committee to exercise all or a specified portion of the authority granted to the board of directors by:
 - Provision in the certificate of formation
 - Bylaws
 - Resolution adopted by the board of directors
(Tex. Bus. Org. Code 22.218)
- Limitations on ratification of a defective corporate act
(Tex. Bus. Org. Code 22.502)

HB 4219 – New Procedures for Public Information Act

- Requires written notice to requestor within 10 business days if entity does not have requested information.
- Requires written notice to requestor within 10 business days if information is withheld under previous determination from the Attorney General & notice must identify specific determination relied upon.

HB 4219 – New Procedures for Public Information Act

- New complaint procedure if entity fails to respond to PIA request.
- If AG finds entity failed to comply with PIA due to failure to respond:
 - AG notifies entity in writing.
 - Entity may not charge for providing response.
 - Five-day deadline to submit request for AG opinion on exceptions.
 - AG must require open records training within 6 months.

HB 3372 – Prohibited Moonlighting

- Subject to certain exceptions, prohibits a school administrator from **receiving any financial benefit** for the performance of personal services for:
 - any business entity that conducts or solicits business with the school district that employs the administrator;
 - an education business that provides services regarding the curriculum or administration of any school district; or
 - another school district, charter school, or regional education service center.
- Subject to civil penalty of \$10,000 for each violation.

HB 3372 – Prohibited Moonlighting

- Administrator means “a person who has significant administrative duties relating to the operation of a school district, including the operation of a campus, program, or other subdivision of the district.”
- The term does not include: (1) a school district employee whose employment contract responsibilities primarily include the in-classroom instruction of students; or (2) a school district trustee.

HB 3372 – Prohibited Moonlighting

- Exception applies if:
 - Administrator presents a contract describing the services to be performed to the School Board; and
 - School Board approves the contract, after determining:
 - No harm to the district;
 - No conflict of interest; and
 - Services to be performed by administrator entirely on administrator's personal time.
- Exception does not apply for superintendent or assistant superintendent.

HB 3372 – Prohibited Moonlighting



STATE OF TEXAS
HOUSE OF REPRESENTATIVES

WILL METCALF

District 16

The purpose of this legislation is to curb the practice of administrators engaging in consulting work or other paid services that may be a conflict of interest. As I detailed in the bill analysis, "Texas school administrators have used their public positions to profit from private educational consulting contracts while directing district contracts to those same entities and that such conflicts of interest have often occurred without proper disclosure". It was not the intent of this legislation to apply to administrators who also officiate sports contests.

HB 3372 – Prohibited Moonlighting

This text cannot be interpreted to prevent administrators from serving as sports officials because serving as a sports official does not create the concerns of a conflict of interest that this statutory language is meant to address.

Concerns about this bill's applicability may arise from its use of the term "personal services," which is not defined in the Education Code. The Texas Supreme Court has defined "personal services" to include only those services which are performed personally by the individual who contracted to perform them; however, the Court distinguished "personal services" from "services" by indicating that personal services "are not as broad and all encompassing as the word 'services'". Given this narrower definition, "personal services" would not include every action an individual might perform, suggesting that serving as a sports official falls outside the scope of this legislation.

HB 210 – Contracting with Vendor

- Relating to contracting with a vendor with whom a member of the board of trustees or a related individual has certain business interests.
- Creates a criminal offense for vendors if they bid on or receive a contract from an ISD or OECS if any board member: (1) has a substantial interest in the vendor; (2) is related within 2nd degree to someone with a substantial interest in the vendor; or (3) receives or is promised a gift or service valued at more than \$250.
- “Substantial interest” means an individual owns more than 10 percent of the vendor’s voting interest or has a direct or indirect ownership interest representing more than 10 percent of the vendor’s profits/proceeds.

Tex. Educ. Code 11.067

Education Foundation Events

Nonprofit Entity Temporary Event Permit (NT)

Nonprofit Entity Temporary Event Permit (“NT Permit”)

- NT Permit is required for the sale of alcoholic beverages at an event sponsored by a nonprofit entity
 - Examples of sponsored events: fundraisers, picnics, celebrations, and other temporary events (16 TAC § 33.71)
- Alcohol may only be sold at an event held in a location where the sale and on-site consumption of that type of alcoholic beverage is lawful. (16 TAC § 33.78(g))
 - Verify whether alcohol sales and consumption are permitted by consulting local regulations, the event venue, or the TABC.

Qualifications for Issuance of NT Permit

- NT Permit shall only be issued to a nonprofit entity (16 TAC § 33.78(a))
- Under Texas Alcohol Beverage Code § 30.01, a “nonprofit entity” means:
 - Nonprofit corporations
 - Nonprofit charitable, civic or religious organizations
 - Political party or associations
 - Fraternal organizations
 - Political candidates and officeholders

Application Process and Fees

- Application for NT Permit must occur at least 10 days before the event.
- Submit application using forms provided by the Texas Alcoholic Beverage Commission (TABC).
- Forms must be signed and sworn to by the applicant.
- Submitted to the TABC Region in which the event will be held.
- Fee for the NT Permit is \$50 per day, covering each day of the permit.
(16 TAC § 33.78(b)-(f))

2025 Update: Minimum Duration for NT Permits

- Effective April 14, 2025, Nonprofit Entity Temporary Event Permits may be issued for a minimum duration of one day.
 - Previously, the minimum duration was two days.
 - 16 TAC § 33.23(c) as amended April 11, 2025.

NT Permit Requirements

- The permit must be displayed in a conspicuous place at the location of the event at all times during the event.
- The hours of the event must comply with hours of operation authorized by local authorities.
- The permit can last no more than 10 consecutive days. (16 TAC § 33.72(d))
- The permit must cover the entire event period, from time of receipt of the alcohol until the conclusion of the event.
- There is no statutory limit on the number of NT permitted events a nonprofit may hold per year. (16 TAC § 33.78(i))

Purchasing Alcohol for a Temporary Event

- Alcoholic beverages cannot be purchased from retailers such as grocery stores.
- Alcohol must be purchased from a vendor with the proper permit depending on the type of alcohol being purchased. (16 TAC § 33.79(d))
- For example:
 - Wine can be purchased from businesses that hold these permits:
 - Winery Permit (G)
 - Wholesaler's Permit (W) and General Class B Wholesaler's Permit (X)
 - Package Store Permit (P) with Local Distributor's Permit (LP)

Hosting an Event Without an NT Permit

Hosting an Event Without an NT Permit

- Without an NT Permit, an event is considered a non-permitted event.
- In order to lawfully host a non-permitted event, *alcohol must be provided free of charge to all non-intoxicated adults 21 years of age and older.*
 - The entity may charge an entry fee or accept donations for admission or other activities, as long as the fee is not tied to receiving alcohol.
- The nonprofit may accept product or cash donations from members of the alcoholic beverage industry.
- The nonprofit may enter into sponsorship agreements with members of the alcoholic beverage community (16 TAC § 33.79(a)-(c))

Charitable Auctions & Raffles

Charitable Auction with Donated Alcoholic Beverages

- Although NT Permit is not required for a nonprofit entity to host a charity auction using donated alcoholic beverages, the Nonprofit Entity must file a Nonprofit Entity Temporary Event Auction Form.
 - The awarded alcohol cannot be consumed on premises.
 - The auction cannot involve onsite sales of alcoholic beverages.
- If alcoholic beverages are sold at the auction, the nonprofit entity must file a Nonprofit Entity Temporary Event Auction Form in addition to submitting an application for a NT Permit. (Tex. Alco. Bev. Code § 30.06)

KP-0153 (2017) – Alcohol as a raffle prize

- Whether charitable organization may conduct raffles that award alcoholic beverages as the prize.
- Because the award of alcohol as a prize for an authorized raffle is not prohibited by the Charitable Raffle Enabling Act and is not a sale or otherwise regulated activity, a court would likely conclude that current law does not prohibit such a raffle prize.

Events on School District Property

KP-0397 (2022)

- Whether TEC 37.122 prohibits the sale of alcoholic beverages at a school banquet facility located in a football stadium, both owned by a school district.
- TEC 37.122(a) prohibits the possession of an intoxicating beverage for consumption, sale, or distribution while on the grounds or in a building of a public school. Whether a building in a stadium owned by a school district is a “building of a public school” subject to the prohibition depends on the particular facts and therefore cannot be determined as a matter of law in an Attorney General opinion.

RQ-0624-KP (2025)

- Inquiry regarding ISD authority to lease certain facilities and allow alcohol service by lessees.
- Socorro ISD owns two large stadium/complex facilities with stadium seating, fields, suite/banquet areas, parking, administrative offices and classrooms.
- District use is seasonal and event-based.
- District has received requests for short-term leases for concerts and other special events that will include sale of alcoholic beverages.

Questions?

Janet.Bubert@uwlaw.com

817-439-9905

UNDERWOOD

uwlaw.com