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MEMORANDUM

TO: Members of the 86th Legislature

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SUBJECT: Local and Special Bills, Notice Requirements for Local and Special Bills, and
Bracket Bills

INTRODUCTION

The primary purpose of this memorandum is to discuss the requirements imposed by the Texas Constitution, by Texas statutes, and by rules of both houses of the state legislature for publishing notice of intent to apply for passage of a bill to enact a local or special law. Although "local" and "special" are often used interchangeably when referring to bills or laws, there is a distinction between the terms. A "local bill" proposes a "local law" that applies to a limited area, and a "special bill" proposes a "special law" that applies to a single person or class. In practice, local bills are far more common than special bills and the notice requirements are virtually the same. For that reason, this memorandum generally treats both types of bills as local bills.

This memorandum also discusses the legal and parliamentary standards governing consideration of a "bracket bill." A bracket bill is a bill that proposes a law made applicable only to a particular class of political subdivisions or geographic areas through use of a population figure or another classification device. Although often thought of as a local bill, a properly crafted bracket bill proposes a general law. However, if a bracket bill's classification scheme does not reasonably relate to the purpose of the bill, the bill may be considered a prohibited local bill.

This memorandum does not constitute final parliamentary authority on local or special bills, bracket bills, or related notice requirements. Although this memorandum conforms to the treatment in previous legislative sessions of bills and notice requirements, the presiding officer of each house of the legislature has the exclusive prerogative to interpret and enforce the rules of the officer's respective house.

The appendixes to this memorandum contain constitutional, statutory, and legislative rules provisions governing notice requirements and a sample publisher's affidavit commonly used as evidence that notice has been published. For a reader concerned about a particular bill, the quick reference guide (Appendix K) provides a general overview of local bill notice publication requirements and the notice publication requirements for certain types of authorized local bills.

SUMMARY

The Texas Constitution expressly prohibits local and special bills for most purposes. The constitution does not prohibit a bill proposing a law that addresses a particular place or otherwise appears to be a local bill if adopting the bill would affect people throughout the state or if the bill treats substantially a subject that is a matter of interest across the state.

Some local bills are constitutionally permitted. For those, the constitution generally requires notice of the bill to be published. In some cases an exception to the general constitutional notice requirement applies. If the constitution requires publication of notice for a local bill and the notice is not published as required, the local bill is subject to a point of order, even if the bill is not a type of bill for which the rules of either house of the legislature require published notice. Therefore, to determine whether notice of intent to apply for passage of a bill must be published, one must consider both the requirements contained in the state constitution and those provided by the rules of each house of the legislature.

Both houses by rule require publication of notice for six specific types of local bills. In either house, if a bill is a local bill for purposes of the rules of that house, the bill is subject to a point of order if notice is not published in accordance with the rules. However, by application of the enrolled bill rule, a bill for which the constitution or rules require notice is probably not subject to a successful court challenge after passage merely because notice was not given as required.

Note that under the rules of the house of representatives: (1) a local bill that has not had notice published in accordance with the rules is not eligible for the local, consent, and resolutions calendar; and (2) the 60-day filing deadline that applies to other bills and joint resolutions does not apply to local bills as defined by the rules or to other bills concerning certain types of specified special-purpose districts.

A classification scheme used in a bracket bill does not violate the constitutional prohibition on local bills if the classification scheme applies uniformly, is broad enough to include a substantial

class or geographic area, and is based on characteristics that legitimately distinguish the class or area from other classes or areas in a way related to the purpose of the proposed law. Bracketing schemes are commonly and legitimately used to limit a bill's application. In some instances, however, a bracketing scheme may be seen as a subterfuge to circumvent the local law prohibition. Note that a rule of the house of representatives prohibits consideration of a bill the application of which is limited to one or more political subdivisions according to a population bracket or other artificial device instead of by identifying the political subdivisions by name. Two principal considerations make up a shorthand guide to the validity of a classification scheme for a bracket bill:

(1) Are the classification criteria such that membership in the class may expand or contract over time?

(2) Are the classification criteria reasonably related to the purpose of the bill?

If the answer to either question is "no," the classification is suspect.

LOCAL BILLS

Local Laws and Notice Requirements; Texas Constitution and Senate and House Rules

(A) Local Bills Permitted by Constitution

Section 56, Article III, Texas Constitution, prohibits most local laws. (See Appendix A for the text of that provision.) Section 56(a) provides a list of subjects for which a local or special law is prohibited "except as otherwise provided in this Constitution." Section 56(b) further provides:

"In addition to those laws described by Subsection (a) of this section in all other cases where a general law can be made applicable, no local or special law shall be enacted"

Reading Sections 56(a) and (b) together, the constitution prohibits a local or special law concerning any one of the specified subjects or concerning a matter to which a general law can be made applicable. Courts have treated the matter of whether a general law can be made applicable as a question solely for the legislature. *Beyman v. Black*, 47 Tex. 558 (1877) (construing language in Texas Constitution of 1869, as amended in 1873); *Smith v. Grayson Co.*, 44 S.W. 921 (Tex. Civ. App. 1897, writ ref'd) (citing similar holdings in other states); *Logan v. State*, 111 S.W. 1028 (Tex. Crim. App. 1908); and *Harris County v. Crooker*, 224 S.W. 792 (Tex. Civ. App.--Texarkana 1920), *aff'd*, 248 S.W. 652 (Tex. 1923).

The primary types of local or special bills authorized by the Texas Constitution are bills:

- (1) creating or affecting a conservation and reclamation district, a category that includes various kinds of water-related districts and similar special-purpose districts (Section 59, Article XVI);
- (2) creating or affecting a hospital district (Sections 4 through 11, Article IX);
- (3) relating to the preservation of game and fish (Section 56(b)(1), Article III);
- (4) dealing with the courts system, including district courts, county courts, statutory county courts, and municipal courts (Sections 1, 7, 8, and 21, Article V);
- (5) creating or affecting a road utility district or various water-related districts and similar special-purpose districts (Section 52, Article III);
- (6) granting aid or a release from the payment of taxes in cases of public calamity (Section 51, Article III; Section 10, Article VIII);
- (7) creating or relating to the operation of airport authorities (Section 12, Article IX);
- (8) providing for the consolidation of governmental offices and functions of political subdivisions comprising or located in a county (Section 64, Article III);
- (9) relating to fence laws (Section 56(b)(2), Article III);
- (10) relating to stock laws (Section 23, Article XVI); or
- (11) providing for local road maintenance (Section 9(e), Article VIII).

(B) Local Bills as Defined by Senate and House Rules

The rules of the senate and house define as local bills six categories of bills that are very similar to local bills included within the first five categories of constitutionally permissible local or special bills listed above. See Rules 9.01(b) and (c), Senate Rules; Rule 8, Sections 10(c) and (d), House Rules. Rule 9.01(b), Senate Rules, and Rule 8, Section 10(c), House Rules, are each divided into six subdivisions. For the reader's convenience in comparing the constitutional requirements and the requirements of the senate and house rules discussed in the next section of

this memorandum, each subdivision is considered a "category." (See Appendixes F and G for the text of those rules.) The similarities and differences should be considered.

Rule 9.01(b), Senate Rules, and Rule 8, Section 10(c), House Rules, provide that a bill is a local bill if it:

(1) is a bill for which publication of notice is required under Section 59, Article XVI, Texas Constitution (i.e., a bill creating a conservation and reclamation district, including various kinds of water-related districts and similar special-purpose districts, or a bill amending a law governing a district to add land to the district, alter the district's taxing authority, alter the district's bonding authority, or alter the qualifications or terms of members of the district's governing body);

(2) is a bill for which publication of notice is required under Section 9, Article IX, Texas Constitution (i.e., a local bill creating a hospital district);

(3) relates to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) creates or affects a county court, statutory court, or court of one or more specified counties or municipalities;

(5) creates or affects a county juvenile board or boards of one or more specified counties; or

(6) creates or affects a road utility district under Section 52, Article III, Texas Constitution.

(1) Category (1): Certain Conservation and Reclamation District Bills

Rule 9.01(b)(1), Senate Rules, and Rule 8, Section 10(c)(1), House Rules, provide that a bill is a local bill if the bill is "a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.)." Therefore, a bill of that category is considered to be a local bill under the rules only if the bill is one for which notice is required by Section 59(d), Article XVI. That constitutional provision requires notice of intent to introduce a bill creating a conservation and reclamation district and also requires notice of intent to introduce a bill that amends a law creating or governing a particular district if the bill: (1) adds land to the district; (2) alters the district's taxing authority; (3) alters the district's authority to issue bonds; or (4) alters the qualifications or terms of office of the district's governing body. A bill regarding a particular district authorized by Section 59, Article XVI, that would neither create the district nor affect the district in any of those four ways is not constitutionally required to have notice of its introduction published and is not required by the rules of either house to have notice of intention

to apply for its passage published. Note that Section 59(d), Article XVI, requires notice to be published at least 30 but not more than 90 days before the bill is introduced, which is different from the general 30-day notice requirement of Section 57, Article III, Texas Constitution. (See Appendixes B and E for the texts of those provisions.)

(2) Category (2): Certain Hospital District Bills

Rule 9.01(b)(2), Senate Rules, and Rule 8, Section 10(c)(2), House Rules, track the constitutional notice requirements of Section 9, Article IX, Texas Constitution. (See Appendix D for the text of that provision.) Section 9, Article IX, requires 30 days' public notice of a local bill (in that section, termed a "special law") creating a hospital district. The notice requirements of the senate and house rules apply only to local bills creating a hospital district under Section 9, Article IX. The senate and house rules relating to notice required for local bills do not address a local bill creating a hospital district under any other section of Article IX, and do not address other bills affecting a hospital district created under other law, even if those bills otherwise appear to be local bills.

(3) Categories (3), (4), and (5): Bills Concerning Hunting, Fishing, or Wildlife Conservation; Certain Courts; or County Juvenile Boards

Special attention is warranted for categories (3), (4), and (5) (Rules 9.01(b)(3), (4), and (5), Senate Rules, and Rule 8, Sections 10(c)(3), (4), and (5), House Rules). Bills of those kinds appear to be local bills, and, as noted above, the constitution expressly authorizes local or special bills for categories (3) and (4). However, courts have determined that many bills described by those categories are general bills because they relate to matters of general state interest, despite appearing to be local bills. Following that reasoning, local hunting, fishing, and wildlife conservation bills (category (3)), various local courts bills (category (4)), and bills relating to juvenile boards (category (5)) are treated as general bills. Regarding category (4), case law considers bills relating to district courts to be items of general state interest. The extent to which bills relating to county courts, statutory courts, municipal courts, and other local courts would also be considered general bills under the constitution is not settled. Note that the bills discussed in this paragraph are treated as general bills for purposes of the constitution, but not necessarily for purposes of the senate and house rules. The senate and house rules must be examined separately, and as further explained below, the senate and house rules provide that:

(1) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality (category (3)) is a local bill;

(2) for bills relating to various local courts in category (4), a bill is a local bill if the bill creates or affects a county court, a statutory court, or a court or courts of one or more specified counties or municipalities; and

(3) a bill creating or affecting a juvenile board or boards of one or more specified counties (category (5)) is a local bill.

(4) Category (6): Bills Concerning Road Utility Districts and Other Districts Authorized by Section 52, Article III, Texas Constitution

Rule 9.01(b)(6), Senate Rules, and Rule 8, Section 10(c)(6), House Rules, apply only to a bill creating or affecting a road utility district under Section 52, Article III, Texas Constitution, even though that provision authorizes local laws for other kinds of districts as well. For example, many local laws creating or governing districts with authority over water resources (see Sections 52(b)(1) and (2) and (d), Article III) have been enacted.

(C) Publication of Notice Under Constitution

(1) 30-Day Notice Generally Required (Section 57, Article III, Texas Constitution)

Section 57, Article III, Texas Constitution, provides the general rule for publishing notice of a local or special bill. (See Appendix B for the text of that provision.) That section requires notice of intent to apply for passage of a local bill to be published in the affected area at least 30 days before introduction of the bill.

As discussed above, courts have determined that bills dealing with the preservation of game and fish, certain bills dealing with the courts system, and bills concerning juvenile boards are general bills for purposes of the publication of notice under the state constitution regardless of their local appearance and regardless of whether the constitution authorizes local bills for those subjects. Because those bills are considered general bills, the bills are not subject to the Section 57, Article III, requirements for publication of notice. However, the senate and house rules' notice requirements apply independently.

Since some courts have found that certain laws that appear to be constitutionally authorized local laws are instead general laws not subject to the notice requirements of Section 57, Article III, some commentators have interpreted those decisions to mean that Section 57 notice is not required for local bills specifically authorized by the state constitution. No court case has made a specific holding to that effect. While courts and commentators have confused the meaning and application of Section 57, the only logical meaning that can be given to the provision is that Section 57 requires publication of notice for any local bill permitted by the state constitution, unless another provision of the constitution creates an exception to the notice requirement or provides a different notice requirement. It would be illogical to interpret Section 57 as requiring the publication of notice of a bill that Section 56 of that article prohibits. To interpret the section in that way would violate the principle of statutory construction that every provision of a law (including a constitution) be given meaning if possible.

Notably, one case, *Cravens v. State*, 122 S.W. 29 (Tex. Crim. App. 1909), indicates that notice is necessary for a local law specifically authorized by the constitution. There, a law applicable only to Galveston was upheld under a now-repealed constitutional provision authorizing city charter amendments by local law. The law was challenged partly on the basis that notice was not given. The court *presumed* that notice had been given because there was no proof to the contrary. That the court considered the notice issue and created the presumption must have been based on an assumption that notice was required. Otherwise, there would have been no need to create the presumption.

(2) Local Road Maintenance Bills Exempted

Note that Section 9(e), Article VIII, Texas Constitution, expressly exempts local bills relating to local road maintenance from all publication of notice requirements. (See Appendix C for the text of that provision.)

(3) 30-Day Notice Required for Certain Hospital District Bills

In addition to the general Section 57, Article III, requirement for publication of notice, Section 9, Article IX, Texas Constitution, requires "thirty (30) days' public notice" of a local bill *creating* a hospital district. (See Appendix D for the text of that provision.) That provision does not require notice of bills *affecting* a hospital district.

(4) 30-90 Days' Notice Required for Certain Conservation and Reclamation District Bills

Also in addition to the general Section 57, Article III, requirement, Section 59, Article XVI, Texas Constitution, which authorizes local laws for various kinds of conservation and reclamation districts, requires that notice be published of a bill that either *creates* a district under that section or *amends* a law relating to a district created under that section for any of four purposes: (1) adding land to the district; (2) altering the district's taxing authority; (3) altering the district's authority to issue bonds; or (4) altering the qualifications or terms of office of the district's governing body. (See Appendix E for the text of that provision.) That provision does not require notice of a bill that amends a special district's local law for another purpose.

Note that Section 59(d), Article XVI, requires that a copy of the notice and the proposed local bill creating or amending the law that created a conservation and reclamation district be delivered to the governor and that Section 59(e) of that article requires a copy of a proposed bill to create such a district be delivered, at the same time notice is published, to the governing bodies of affected counties and municipalities. No reported case has considered whether the copy of the bill provided must be identical to the introduced version of the bill. Also, parliamentary precedent holds that, in the absence of a statutory or parliamentary procedure for proof that a copy was delivered, the presiding officer has no basis on which to sustain a point of order that the required

copy was not delivered. (See, e.g., S.J. of Tex., 74th Leg., R.S. 2458-2462 (1995); H.J. of Tex., 74th Leg., R.S. 2447-2448 (1995).)

(D) Proof of Notice as Required by Constitution

(1) Evidence of Notice as Required by Constitution

Section 57, Article III, Texas Constitution, requires only that evidence of the publication of notice be "exhibited" in the legislature before the local bill is "passed." The senate and house rules contain requirements for the attachment of the notice to a bill, and those rules should be consulted also.

(2) Publication of Notice Under Rules

The senate and house rules require the publication of notice of intent to apply for passage of a local bill. Rule 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules. (See Appendixes F and G for the text of the rules.) The publication requirements in the senate and house rules are in addition to the requirements imposed by the state constitution. To determine whether notice is necessary, both the rules and the constitution must be considered.

(3) Attachment of Notice to Bill as Required by Rules

The senate and house rules require that evidence of the publication of notice be attached to a local bill. See Rules 7.07(c) and 9.01(a), Senate Rules, and Rule 8, Section 10(a), House Rules. (See Appendixes F and G for the text of the rules.)

Rule 9.01(c), Senate Rules, and Rule 8, Section 10(d), House Rules, provide an exception to the notice requirement if the bill being considered: (1) is of a certain category specified by the local law definition (described above as categories (3), (4), and (5)); and (2) "affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance." The categories of bills exempted include bills relating to hunting, fishing, and wildlife conservation, bills relating to certain courts, and bills relating to juvenile boards. (See the discussion above concerning whether bills of those categories are local bills or general bills for the purposes of the constitutionally imposed requirements.)

The initial determination of whether notice is required and is attached as required may be made at the time the bill is considered for referral to committee by the presiding officer. (See Rule 7.07(c), Senate Rules, providing that it is not in order to introduce a local bill unless the notice of publication is attached.) However, the issue is more likely to be first raised at a later stage. Under Rule 9.01(a), Senate Rules, neither the senate nor a senate committee may consider a bill that requires notice but for which notice has not been published and attached to the bill. Under Rule 8,

Section 10(a), House Rules, the house may not consider a local bill unless the required notice has been published and attached to the bill.

Neither the secretary of the senate nor the chief clerk of the house is prohibited by rule from accepting for filing a bill that requires notice but does not have the notice attached.

Senate Rule 9.01(a) requires the notice "at the time of introduction," which suggests that the attachment of notice between filing with the secretary of the senate and first reading is permitted. (See Rule 7.05, Senate Rules, which provides that senate bills are considered *introduced* when first read in the presence of the senate, and Rule 7.06, Senate Rules.)

Rule 8, Section 10(a), House Rules, clearly allows the notice to be attached after the bill is filed. That house rule provides that if the notice is not attached to the bill when the bill is filed with the chief clerk or when the bill is received from the senate, copies of the notice, after it has been timely published, shall be filed with the chief clerk and distributed to the committee members before the bill is first laid out in a committee meeting. Under those circumstances, the notice must be attached to the bill on first printing, that is, at the time of the committee report on the bill.

Chapter 313, Government Code, which governs the content and publication procedures for the notice (see discussion below), requires that "[w]hen a local or special law is introduced in the legislature, the law must be accompanied by competent proof that notice was given."

Content of Notice; Procedure for Publication

(A) Constitutional Requirements

The state constitution provides few details about the content or procedure for the publication of notice of intent to apply for passage of a local bill. Section 57, Article III, Texas Constitution, provides only that the notice must: (1) be published in the affected locality; (2) state the substance of the local bill; (3) be published at least 30 days before introduction of the bill; and (4) be published "in the manner to be provided by law." Section 9, Article IX, provides only that 30 days' public notice to the affected district is required for a local bill subject to that section. Section 59, Article XVI, provides that the notice for a local bill subject to that section must: (1) contain the general substance of the local bill; (2) be published at least 30 and not more than 90 days before introduction of the bill; and (3) be published in a newspaper or newspapers of general circulation in the county or counties in which all or any part of the affected district is or will be located.

(B) Senate and House Rules Requirements

The rules of the senate and house require only that the publication of notice be made "as provided by law." (See Rules 7.07(c) and 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules.)

(C) Statutory Requirements for Publication or Posting Notice

The primary source of details about the content and publication or posting procedures for the notice are found in Chapter 313, Government Code. (See Appendix H for the text of that chapter.)

Under Chapter 313, for a local bill:

(1) the notice must be published once in a newspaper published in the county that includes the affected area and not later than the 30th day before the bill is introduced in the legislature;

(2) the notice is sufficient if the notice contains a statement of the general purpose and substance of the proposed law (publication of the caption of the bill should be sufficient [see Appendix I]);

(3) if more than one county is covered by the proposed law, notice must be given in each of the counties affected;

(4) if no newspaper is published in a county covered by the proposed law, a notice accurately defining the affected locality must be posted on the courthouse door and in five other places in the affected county for at least 30 days before the bill is introduced;

(5) proof of publication is made by obtaining an affidavit of publication from the newspaper publisher (see the form included in Appendix J) together with a copy of the published notice;

(6) if notice is accomplished by posting, proof of posting may be shown by the return of the sheriff or constable or by an affidavit of a credible person made on a copy of the posted notice; and

(7) a copy of the notice, plus a copy of the affidavit or return, must be attached to each copy of the bill when it is introduced (photocopies of these documents are sufficient).

Section 313.003 establishes notice requirements for a bill proposing "a law that will primarily affect persons and will not directly affect a particular locality more than it will affect another." The person applying for passage of the special law is required to publish notice in a

newspaper published in the county in which the person resides in the same manner as required for a bill proposing a local law or, if the person is not a resident of Texas, the person may publish the notice in a newspaper published in Austin.

Section 313.006 adds additional requirements for notice of a local bill proposing to create or enlarge the territory of a special district that would have a power provided by Chapter 375, Local Government Code, if the person who intends to apply for the passage of the bill is other than a member of the legislature. That person is required to provide, at least 30 days before the bill is introduced, notice of intent to apply for the passage of the bill to each person who owns real property that, as a result of the bill, would be located in and subject to an assessment by the district. In addition, not later than the 30th day after the date on which the bill is introduced, that person is required to provide notice that the bill has been introduced, as well as the applicable bill number, to the same persons.

Enforcement

A point of order may be raised during the legislative process in connection with the requirements to publish notice of intent to apply for passage of a local bill and to attach a copy of the notice to the bill. A local bill for which the state constitution requires publication of notice is subject to a point of order if the constitutional requirements are not followed, even if the bill is of a type not listed in the rules. In both houses, a bill of either house that is local for purposes of the senate and house rules is also subject to a point of order if the requirements of the rules are not followed.

However, a bill for which the constitution or rules require the publication of notice is probably not subject to successful court challenge if the notice requirements are not followed. In *Moore v. Edna Hospital Dist.*, 449 S.W.2d 508 (Tex. Civ. App.--Corpus Christi 1969, writ ref'd n.r.e.), the court held that passage of an act that requires notice is conclusive of the fact that notice was given, applying the enrolled bill rule to prevent a judicial determination that the proper procedures were not followed. Under the principle followed in that case, a bill may not be invalidated because it was passed without required notice. Also, in *Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Utility Dist.*, 198 S.W.3d 300, 313-315 (Tex. App.--Texarkana 2006, pet. denied), the court ruled that, in a trial in which a claim is raised that notice was not properly published, the enrolled bill rule requires that evidence on the issue be excluded. The holdings in these cases suggest that it is during the legislative process that compliance with the notice requirements contained in the constitution and in the senate or house rules is of the utmost importance.

Other Rules Applying to Local Bills: Eligibility for Calendar; Order of Business

Rule 9.02, Senate Rules, provides that the constitutional order of business does not apply to local bills.

Under Rule 6, Section 23(a), House Rules, a bill that is local for purposes of Rule 8, Section 10(c), House Rules, is ineligible for the house local, consent, and resolutions calendar if notice has not been published.

Local bills are not subject to the 60-day filing deadline applicable to other bills and joint resolutions. (See Rules 7.07(b) and 7.08, Senate Rules, and Rule 8, Section 8, House Rules.) The house rules provide for a greater exemption from the 60-day filing deadline by exempting also any bill that "relates to" any specified special-purpose district, regardless of whether the constitution or the house rules require publication of notice for the bill. (See Rule 8, Section 8(b), House Rules.)

BRACKET BILLS

The type of bill commonly called a "bracket bill" is a bill that proposes a law applicable only to a particular class of political subdivisions or geographic areas through use of population figures or another classification device. A properly crafted bracket bill is not a local bill but is a bill proposing general law. As such, publication of notice of intent to introduce a bracket bill is not required or recommended. As discussed below, the courts have established the manner by which to test the validity of a law proposed by a bracket bill to determine whether the law is a valid general law or an unconstitutional local law.

Validity of Bracket Law

For a "bracket law" to survive a challenge that the law is an unconstitutional local law under Section 56, Article III, Texas Constitution, the law must be drafted carefully. The courts impose a three-part test to determine whether a classification scheme used in a law creates an invalid local law or creates a valid general law. The classification scheme used for a valid general law must: (1) "apply uniformly to all who may come within the classification designated" by the law; (2) "be broad enough to include a substantial class"; and (3) "be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished" by the law. *Miller v. El Paso County*, 150 S.W.2d 1000, 1001-1002 (Tex. 1941).

(A) "Uniform Application" Requirement

The courts have given little discussion to the first part of the test, the "uniform application" requirement. The purpose of that requirement appears to be to ensure that political subdivisions and other geographic areas that come within the bracket later are given the same treatment as the subdivisions and areas that are within the bracket at the time of the law's enactment. *Morris v. City of San Antonio*, 572 S.W.2d 831, 833-834 (Tex. Civ. App.--Austin 1978, no writ); *Miller*, 150 S.W.2d at 1001.

(B) "Substantial Class" Requirement

The second part of the test, the "substantial class" requirement, also is treated by the courts only briefly. The meaning of that requirement is not entirely clear from the case law, but appears to be closely connected with the third part of the test. The purpose of the requirement appears to be to ensure that a bracket creates a "real class," that is, a legitimate group of entities with similar characteristics that distinguish that group from others. *Miller*, 150 S.W.2d at 1002. It is clear that the controlling factor in determining whether a substantial class exists is *not* simply the number of political subdivisions or other geographic areas that fall within the defining criteria of the bracket at the time the law that specifies the criteria is enacted. The courts have upheld classifications as substantial even though, at the time of enactment, the brackets contained only one or two members. *City of Irving v. Dallas/Fort Worth International Airport Board*, 894 S.W.2d 456 (Tex. App.--Fort Worth 1995, writ denied); *Ex parte Spring*, 586 S.W.2d 482 (Tex. Crim. App. 1978); *Smith v. Davis*, 426 S.W.2d 827 (Tex. 1968). A relevant consideration is whether the class may expand or contract as the characteristics of class members and potential class members change over time.

(C) "Reasonable Basis" Requirement—Two Approaches

The third part of the test, the requirement that a classification "be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished" by the law, is the most important part of the test because it receives the closest scrutiny by the courts and is the most common basis for invalidating a bracketing scheme. The requirement is sometimes described as the "primary and ultimate test" of whether a law is a local law or general law, and it is sometimes stated more simply as a requirement that the classification have a "reasonable basis." *Rodriguez v. Gonzales*, 227 S.W.2d 791, 793 (Tex. 1950). The requirement that a bracket have a reasonable basis is an attempt by the courts to ensure that a statutory classification is not a "pretended class" or an "artificial distinction" or "subterfuge" used by the legislature in a "covert attempt" to evade the constitutional prohibition on local laws. *Clark v. Finley*, 54 S.W. 343, 345 (Tex. 1899); *City of Fort Worth v. Bobbitt*, 36 S.W.2d 470, 472 (Tex. 1931); *Public Utility Commission of Texas v. Southwest Water Services, Inc.*, 636 S.W.2d 262, 264 (Tex. App.--Austin 1982, writ ref'd n.r.e.). That is, a bracket "must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law." *Miller*, 150 S.W.2d at 1002.

Two approaches have emerged for determining whether a bracketing scheme meets the reasonable basis requirement. The first examines the relationship between the purpose or subject of the law and the criteria used to establish the bracket. The second examines whether the purpose of the law is of statewide, or only local, importance.

(1) Bracket Criteria Must Relate to Purpose of Law

Under the first method of analysis, the purposes and subject of the law under review are identified and then the criteria used to create the law's bracket are examined. The criteria must

have a *real* relationship to the purposes sought to be accomplished by the law, something "germane to the purpose of" the legislation (*Id.* at 1002-1003), and must be related to the subject of the law in such a way to show that the intent of the legislature was to legislate on a subject generally and not to single out one entity or area (*Bexar County v. Tynan*, 97 S.W.2d 467, 470 (Tex. 1936)).

(a) Bracket Is Suspect If Only One Entity or Area Covered

It is clear from the case law that some suspicions are raised about a classification if only one entity is included in the bracket at the time of enactment. *Miller*, 150 S.W.2d 1000; *Tynan*, 97 S.W.2d 467; *Smith*, 426 S.W.2d 827. This suspicion follows naturally from the focus on the intent behind the law.

(b) Single Population Criterion

Statutes that use as a bracket only a single population criterion and that apply to all localities above that figure have fared much better in the courts. See, for example, *Ex parte Spring*, 586 S.W.2d 482 (upholding legislation affecting municipal courts in cities with a population of more than 1.2 million); *Robinson v. Hill*, 507 S.W.2d 521 (Tex. 1974) (upholding special bail bond regulations in counties with a population of 150,000 or more); *Smith*, 426 S.W.2d 827 at 830-832 (upholding special ad valorem tax rules for hospital districts in counties with a population of 650,000 or more and operating a teaching hospital).

(c) "Open Brackets" and "Closed Brackets"

In discussing bracket bills and their brackets, the terms "open bracket" and "closed bracket" are often applied. An open bracket allows for members to fall into the bracket or fall out of the bracket as the members' circumstances change. A closed bracket has members that apparently always will be members and does not allow for new members.

In most cases, a bracketing scheme that is based on existing circumstances alone results in a closed bracket that would be considered invalid. For example, a bill using population criteria that are tied to a specific census is likely to violate Section 56, Article III, Texas Constitution. *Bobbitt*, 36 S.W.2d at 471-472 (Tex. 1931) (bracket so drawn to only one city "just as clearly" as if the city had been named). Note that Rule 8, Section 10(b), House Rules, addresses the same concern (prohibiting consideration of "a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of" naming the subdivisions).

In some circumstances, a closed class may be justified by a reasonable basis for that class. For example, a closed class composed of coastal counties in which an island suitable for park purposes is located was found to be reasonable in light of the statewide interest in and demand for parks in coastal areas as opposed to other geographic regions. *County of Cameron v. Wilson*, 326

S.W.2d 162 (Tex. 1959). See also *Public Utility Commission of Texas*, 636 S.W.2d at 264-267 (applying, in effect, the reasonable basis test to a class that by its terms is closed to future members).

(2) Statewide Importance as Reasonable Basis

The second method of analysis for determining whether a bill's bracketing scheme has a reasonable basis requires an examination of the statewide effects of the proposed law. A bill treating only a particular locality does not violate the local law prohibition if people throughout the state would be affected by the proposed law or if the bill treats substantially a subject that is a matter of interest to people throughout the state. *Dallas/Fort Worth International Airport Board*, 894 S.W.2d at 466-467; *Smith*, 426 S.W.2d at 832; *Wilson*, 326 S.W.2d at 165-166; *Lower Colorado River Authority v. McCraw*, 83 S.W.2d 629, 636 (Tex. 1935). This method of analysis attempts to determine whether the bill "deals with a matter of general rather than purely local interest." *Wilson*, 326 S.W.2d at 165. Normally, a bill's proposed law would not be considered to have a sufficient statewide impact unless the law would affect "a substantial class of persons over a broad region of the state." *Maple Run at Austin Mun. Utility Dist. v. Monaghan*, 931 S.W.2d 941, 947 (Tex. 1996); *City of Austin v. City of Cedar Park*, 953 S.W.2d 424, 435 (Tex. App.--Austin 1997, no writ). An incidental effect on a matter of statewide importance is insufficient. *Maple Run*, 931 S.W.2d at 948. Furthermore, even if the proposed law would affect a matter of statewide importance, a reasonable connection must exist between the bracketing scheme used and the statewide interest. *Id.*

Simplified Approach to Testing Validity

As a practical matter, two principal considerations will provide a reasonably accurate guide to determining whether a bracket bill's proposed law will meet the constitutional tests:

(1) *Are the classification criteria such that membership in the class may expand or contract over time?*

If the answer is "no," the bracketing scheme is suspect. The greater the number of criteria in the classification scheme, the narrower the class becomes and the more difficult it is for a change in circumstances to bring an excluded entity or area into the class. Therefore, the greater the number of classification criteria, the more constitutionally suspect the bracketing scheme. If the answer is "yes," the bracket itself may be valid, but the second question must also be considered.

(2) *Are the classification criteria reasonably related to the purpose of the bill?*

If the answer is "no," the bill employing the scheme is likely invalid. If the answer is "yes," the bill is likely valid. The more difficult it is to identify a connection between the purpose of the

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bill and the classification criteria used to describe the class, the easier it is to conclude that the criteria are only for the purpose of narrowing the class.

APPENDIX A. LOCAL AND SPECIAL LAWS PROHIBITED

Section 56, Article III, Texas Constitution

Sec. 56. LOCAL AND SPECIAL LAWS. (a) The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

- (1) the creation, extension or impairing of liens;
- (2) regulating the affairs of counties, cities, towns, wards or school districts;
- (3) changing the names of persons or places;
- (4) changing the venue in civil or criminal cases;
- (5) authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;
- (6) relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;
- (7) vacating roads, town plats, streets or alleys;
- (8) relating to cemeteries, grave-yards or public grounds not of the State;
- (9) authorizing the adoption or legitimation of children;
- (10) locating or changing county seats;
- (11) incorporating cities, towns or villages, or changing their charters;
- (12) for the opening and conducting of elections, or fixing or changing the places of voting;
- (13) granting divorces;
- (14) creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;
- (15) changing the law of descent or succession;
- (16) regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;
- (17) regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;
- (18) regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;
- (19) fixing the rate of interest;
- (20) affecting the estates of minors, or persons under disability;
- (21) remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;
- (22) exempting property from taxation;
- (23) regulating labor, trade, mining and manufacturing;
- (24) declaring any named person of age;

(25) extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

(26) giving effect to informal or invalid wills or deeds;

(27) summoning or empanelling grand or petit juries;

(28) for limitation of civil or criminal actions;

(29) for incorporating railroads or other works of internal improvements; or

(30) relieving or discharging any person or set of persons from the performance of any public duty or service imposed by general law.

(b) In addition to those laws described by Subsection (a) of this section in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing:

(1) special laws for the preservation of the game and fish of this State in certain localities; and

(2) fence laws applicable to any subdivision of this State or counties as may be needed to meet the wants of the people.

APPENDIX B. GENERAL NOTICE REQUIREMENT FOR LOCAL OR
SPECIAL BILLS

Section 57, Article III, Texas Constitution

Sec. 57. NOTICE OF INTENTION TO APPLY FOR LOCAL OR SPECIAL LAWS. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed.

APPENDIX C. LOCAL LAWS FOR ROADS AND HIGHWAYS

Section 9(e), Article VIII, Texas Constitution

(e) The Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws.

APPENDIX D. NOTICE REQUIRED FOR SPECIAL LAWS
CREATING HOSPITAL DISTRICTS

Section 9, Article IX, Texas Constitution

Sec. 9. . . .

Provided, however, that no [hospital] district shall be created by special law except after thirty (30) days' public notice to the district affected

APPENDIX E. NOTICE REQUIRED FOR LOCAL LAWS CONCERNING
CONSERVATION AND RECLAMATION DISTRICTS

Sections 59(d) and (e), Article XVI, Texas Constitution

(d) No law creating a conservation and reclamation district shall be passed unless notice of the intention to introduce such a bill setting forth the general substance of the contemplated law shall have been published at least thirty (30) days and not more than ninety (90) days prior to the introduction thereof in a newspaper or newspapers having general circulation in the county or counties in which said district or any part thereof is or will be located and by delivering a copy of such notice and such bill to the Governor who shall submit such notice and bill to the Texas Water Commission, or its successor, which shall file its recommendation as to such bill with the Governor, Lieutenant Governor and Speaker of the House of Representatives within thirty (30) days from date notice was received by the Texas Water Commission. Such notice and copy of bill shall also be given of the introduction of any bill amending a law creating or governing a particular conservation and reclamation district if such bill (1) adds additional land to the district, (2) alters the taxing authority of the district, (3) alters the authority of the district with respect to the issuance of bonds, or (4) alters the qualifications or terms of office of the members of the governing body of the district.

(e) No law creating a conservation and reclamation district shall be passed unless, at the time notice of the intention to introduce a bill is published as provided in Subsection (d) of this section, a copy of the proposed bill is delivered to the commissioners court of each county in which said district or any part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located. Each such commissioners court and governing body may file its written consent or opposition to the creation of the proposed district with the governor, lieutenant governor, and speaker of the house of representatives. Each special law creating a conservation and reclamation district shall comply with the provisions of the general laws then in effect relating to consent by political subdivisions to the creation of conservation and reclamation districts and to the inclusion of land within the district.

APPENDIX F. SENATE RULES

Rule 7.07(c), Senate Rules

(c) It shall not be in order to introduce a local bill as defined by Rule 9.01 unless notice of publication, as provided by law, is attached.

Rule 7.08, Senate Rules

Rule 7.08. CONSIDERATION OF EMERGENCY MATTERS. At any time during the session, resolutions, emergency appropriations, emergency matters specifically submitted by the Governor in special messages to the Legislature, and local bills (as defined in Rule 9.01) may be filed with the Secretary of the Senate, introduced and referred to the proper committee, and disposed of under the rules of the Senate.

Rule 9.01, Senate Rules

Rule 9.01. DEFINITION OF LOCAL BILL. (a) Neither the Senate nor a committee of the Senate may consider a local bill unless notice of intention to apply for the passage of the bill was published as provided by law and evidence of the publication was attached to the bill at the time of introduction.

(b) Except as provided by Subsection (c) of this rule, "local bill" for purposes of this article means:

- (1) a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.);
- (2) a bill for which publication of notice is required under Article IX, Section 9, of the Texas Constitution (hospital districts);
- (3) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality;
- (4) a bill creating or affecting a county court or statutory court or courts of one or more specified counties or municipalities;
- (5) a bill creating or affecting the juvenile board or boards of a specified county or counties; or
- (6) a bill creating or affecting a road utility district under the authority of Article III, Section 52, of the Texas Constitution.

(c) A bill is not considered to be a local bill under Subsection (b)(3), (4), or (5) of this rule if it affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance.

Rule 9.02, Senate Rules

Rule 9.02. INTRODUCTION AND CONSIDERATION OF LOCAL BILLS. The constitutional procedure with reference to the introduction, reference to a committee, and the consideration of bills set forth in Article III, Section 5, of the Texas Constitution, shall not apply to local bills herein defined, and the same may be introduced, referred, reported, and acted upon at any time under the general rules and order of business of the Senate.

APPENDIX G. HOUSE RULES

Rule 6, Section 23, House Rules

Sec. 23. QUALIFICATIONS FOR PLACEMENT ON THE LOCAL, CONSENT, AND RESOLUTIONS CALENDAR. (a) No bill defined as a local bill by Rule 8, Section 10(c), shall be placed on the local, consent, and resolutions calendar unless:

(1) evidence of publication of notice in compliance with the Texas Constitution and these rules is filed with the Committee on Local and Consent Calendars; and

(2) it has been recommended unanimously by the present and voting members of the committee from which it was reported that the bill be sent to the Committee on Local and Consent Calendars for placement on the local, consent, and resolutions calendar.

(b) No other bill or resolution shall be placed on the local, consent, and resolutions calendar unless it has been recommended unanimously by the present and voting members of the committee from which it was reported that the bill be sent to the Committee on Local and Consent Calendars for placement on the local, consent, and resolutions calendar.

(c) No bill or resolution shall be placed on the local, consent, and resolutions calendar that:

(1) directly or indirectly prevents from being available for purposes of funding state government generally any money that under existing law would otherwise be available for that purpose, including a bill that transfers or diverts money in the state treasury from the general revenue fund to another fund; or

(2) authorizes or requires the expenditure or diversion of state funds for any purpose, as determined by a fiscal note attached to the bill.

Rule 8, Section 8, House Rules

Sec. 8. DEADLINE FOR INTRODUCTION. (a) Bills and joint resolutions introduced during the first 60 calendar days of the regular session may be considered by the committees and in the house and disposed of at any time during the session, in accordance with the rules of the house. After the first 60 calendar days of a regular session, any bill or joint resolution, except local bills, emergency appropriations, and all emergency matters submitted by the governor in special messages to the legislature, shall require an affirmative vote of four-fifths of those members present and voting to be introduced.

(b) In addition to a bill defined as a "local bill" under Section 10(c) of this rule, a bill is considered local for purposes of this section if it relates to a specified district created under Article XVI, Section 59, of the Texas Constitution (water districts, etc.), a specified hospital district, or another specified special purpose district, even if neither these rules nor the Texas Constitution require publication of notice for that bill.

Rule 8, Section 9(b), House Rules

(b) A bill relating to conservation and reclamation districts and governed by the provisions

of Article XVI, Section 59, of the Texas Constitution must be filed with copies of the notice to introduce the bill attached if the bill is intended to:

- (1) create a particular conservation and reclamation district; or
- (2) amend the act of a particular conservation and reclamation district to:
 - (A) add additional land to the district;
 - (B) alter the taxing authority of the district;
 - (C) alter the authority of the district with respect to issuing bonds; or
 - (D) alter the qualifications or terms of office of the members of the

governing body of the district.

Rule 8, Section 10, House Rules

Sec. 10. LOCAL BILLS. (a) The house may not consider a local bill unless notice of intention to apply for the passage of the bill was published as provided by law and evidence of the publication is attached to the bill. If not attached to the bill on filing with the chief clerk or receipt of the bill from the senate, copies of the evidence of timely publication shall be filed with the chief clerk and must be distributed to the members of the committee not later than the first time the bill is laid out in a committee meeting. The evidence shall be attached to the bill on first printing and shall remain with the measure throughout the entire legislative process, including submission to the governor.

(b) Neither the house nor a committee of the house may consider a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name. However, this subsection does not prevent consideration of a bill that classifies political subdivisions according to a minimum or maximum population or other criterion that bears a reasonable relation to the purpose of the proposed legislation or a bill that updates laws based on population classifications to conform to a federal decennial census.

(c) Except as provided by Subsection (d) of this section, "local bill" for purposes of this section means:

(1) a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.);

(2) a bill for which publication of notice is required under Article IX, Section 9, of the Texas Constitution (hospital districts);

(3) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) a bill creating or affecting a county court or statutory court or courts of one or more specified counties or municipalities;

(5) a bill creating or affecting the juvenile board or boards of a specified county or counties; or

(6) a bill creating or affecting a road utility district under the authority of Article III, Section 52, of the Texas Constitution.

(d) A bill is not considered to be a local bill under Subsection (c)(3), (4), or (5) if it affects

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a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance.

APPENDIX H. GENERAL LAW

GOVERNMENT CODE

CHAPTER 313. NOTICE FOR LOCAL AND SPECIAL LAWS

Sec. 313.001. NOTICE. A person who intends to apply for the passage of a local or special law must give notice of that intention as prescribed by this chapter.

Sec. 313.002. PUBLICATION OR POSTING OF NOTICE FOR LAWS AFFECTING LOCALITIES. (a) A person who intends to apply for the passage of a local or special law must publish notice of that intention in a newspaper published in the county embracing the locality the law will affect.

(b) The notice must be published once not later than the 30th day before the date on which the intended law is introduced in the legislature.

(c) The notice is sufficient if it contains a statement of the general purpose and substance of the intended law. Publication of the particular form of the intended law or the terms used in the intended law is not required.

(d) If the intended law will affect more than one county, the person applying for passage of the law must publish notice in each county the law will affect.

(e) If a newspaper is not published in the county, the person applying for passage of the law must post the notice at the courthouse door and at five other public places in the immediate locality in the county the law will affect.

(f) The posted notice must accurately define the locality the law will affect.

(g) The notice must be posted for at least 30 days.

Sec. 313.003. PUBLICATION OF NOTICE FOR LAWS PRIMARILY AFFECTING PERSONS. (a) If a resident of this state intends to apply for passage of a law that will primarily affect persons and will not directly affect a particular locality more than it will affect another, the person applying for passage must publish notice in a newspaper published in the county in which the person resides in the same manner as if the law will affect the locality.

(b) If the applicant is not a resident of this state, publication of notice in a newspaper published in Austin is sufficient.

Sec. 313.004. PROOF OF PUBLICATION OR POSTING. (a) If publication of notice in a newspaper is required by law, proof of publication shall be made by the affidavit of the publisher accompanied by a printed copy of the notice as published.

(b) Proof of posting may be made by the return of the sheriff or constable or by the affidavit of a credible person made on a copy of the posted notice showing the fact of the posting.

Sec. 313.005. INTRODUCTION OF LAW. When a local or special law is introduced in the legislature, the law must be accompanied by competent proof that notice was given.

Sec. 313.006. NOTICE FOR LAWS ESTABLISHING OR ADDING TERRITORY TO MUNICIPAL MANAGEMENT DISTRICTS. (a) In addition to the other requirements of this chapter, a person, other than a member of the legislature, who intends to apply for the passage of a law establishing or adding territory to a special district that incorporates a power from Chapter 375, Local Government Code, must provide notice as provided by this section.

(b) The person shall notify by mail each person who owns real property proposed to be included in a new district or to be added to an existing district, according to the most recent certified tax appraisal roll for the county in which the real property is owned. The notice, properly addressed with postage paid, must be deposited with the United States Postal Service not later than the 30th day before the date on which the intended law is introduced in the legislature.

(c) The notice is sufficient if it contains a statement of the general purpose and substance of the intended law. Notice of the particular form of the intended law or the terms used in the intended law is not required.

(d) The person is not required to mail notice under Subsection (b) or (e) to a person who owns real property in the proposed district or in the area proposed to be added to a district if the property cannot be subject to an assessment by the district.

(e) After the introduction of a law in the legislature establishing or adding territory to a special district that incorporates a power from Chapter 375, Local Government Code, the person shall mail to each person who owns real property proposed to be included in a new district or to be added to an existing district a notice that the legislation has been introduced, including the applicable bill number. The notice, properly addressed with postage paid, must be deposited with the United States Postal Service not later than the 30th day after the date on which the intended law is introduced in the legislature. If the person has not mailed the notice required under this subsection on the 31st day after the date on which the intended law is introduced in the legislature, the person may cure the deficiency by immediately mailing the notice, but the person shall in no event mail the notice later than the date on which the intended law is reported out of committee in the chamber other than the chamber in which the intended law was introduced. If similar bills are filed in both chambers of the legislature, a person is only required to provide a single notice under this subsection not later than the 30th day after the date the first of the bills is filed.

(f) A landowner may waive any notice required under this section at any time.

APPENDIX I. NOTICE OF INTENT TO INTRODUCE

NOTICE

This is to give notice of intent to introduce in the 86th Legislature, Regular Session, a bill to be entitled an Act (insert here the caption of the bill, e.g., "relating to creation of the Tidewater Hospital District.").

APPENDIX J. PUBLISHER'S AFFIDAVIT OF PUBLICATION

PUBLISHER'S AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

Before me, a Notary Public in and for _____ County, this day personally appeared (insert name and title of person who signs the affidavit, such as "Richard Roe, Classifieds Manager, Metropolis News"), who, being duly sworn, states that the following advertisement was published in (insert name of the newspaper) on (insert date of publication):

(Here affix a copy of the advertisement. If the advertisement is too large to be affixed in the space allowed, substitute "attached" for "following" in the introduction and affix a copy of the advertisement on a page to be attached.)

(signature of affiant)

Sworn to and subscribed before me this _____ day of _____, ____.

(signature of notary)

APPENDIX K. QUICK REFERENCE FOR LOCAL NOTICE FOR CONSTITUTIONALLY AUTHORIZED LOCAL BILLS

This appendix is intended to serve as a quick reference guide to notice publication requirements for authorized local bills of various types. In some instances, it is difficult to determine both whether a particular bill is a "local bill" and what notice publication requirements are applicable to a particular local bill. For that reason, this appendix is meant only to provide a general overview of local bill notice publication requirements.

The appendix is organized to address the notice publication requirements for certain types of authorized local bills as follows:

- I. Notice for Local Bills; the Constitution and Rules Generally
- II. Districts Authorized by Section 59, Article XVI
- III. Districts Authorized by Section 52, Article III
- IV. Hospital Districts Authorized by Article IX
- V. Preservation of Game or Fish
- VI. Courts System
- VII. Granting Aid for Public Calamity
- VIII. Airport Authorities
- IX. Consolidation of Government Offices and Functions of Political Subdivisions in a County
- X. Fence Laws
- XI. Stock Laws
- XII. Local Road Maintenance
- XIII. Juvenile Boards

I. Notice for Local Bills; the Constitution and Rules Generally

Section 57, Article III, Texas Constitution, provides that a local or special law may not be passed unless notice of the intention to apply for the law is published at least 30 days before the bill is introduced. Section 57 requires the notice to state the substance of the contemplated law. The notice must be published "in the manner provided by law" in the locality where the matter or thing to be affected is situated. Chapter 313, Government Code, the rules of both houses of the legislature, and the relevant constitutional and statutory provisions provide the relevant notice requirements and must be considered together to determine what notice requirements are applicable to a particular bill.

Rule 9.01(a), Senate Rules, provides that neither the senate nor a senate committee may consider a local bill unless notice is published as provided by law and evidence of the publication is attached to the bill at the time of introduction. For purposes of the rule, "local bill" is defined by Rules 9.01(b) and (c).

Rule 8, Section 10(a), House Rules, provides that the house may not consider a local bill unless notice is published as provided by law. The rule requires evidence of the publication of notice to be either: (1) attached to the bill when it is filed with the chief clerk or when it is received from the senate; or (2) filed with the chief clerk and distributed to the members of the committee not later than the first time the bill is laid out in a committee meeting. The rule also requires evidence of the publication of notice to be attached to the bill on the first printing and to remain with the bill throughout the legislative process, including when the bill is submitted to the governor. For purposes of the rule, "local bill" is defined by Rule 8, Sections 10(c) and (d).

II. Districts Authorized by Section 59, Article XVI

Section 59, Article XVI, Texas Constitution, authorizes local bills creating or affecting conservation and reclamation districts. Local bills of this type are common. Many of these districts are called "water districts" and are governed by one or more chapters of the Water Code. Others are called "municipal management districts" and are governed by Chapter 375, Local Government Code. Other types of districts known by other terms may be created or affected by local laws authorized under Section 59, Article XVI. Note also that some "water districts" are districts created or authorized under Section 52, Article III, instead of Section 59, Article XVI. For a discussion of Section 52, Article III, districts, see below.

Local notice is required for a bill that would:

- create a district as authorized by Section 59, Article XVI; or
- affect an existing district created under Section 59, Article XVI, by:
 - adding land to the district;
 - altering the taxing authority of the district;
 - altering the district's authority to issue bonds; or
 - altering the qualifications or terms of office of the district's governing body.

Local notice is not required for a bill that would affect in any other way an existing district created under Section 59, Article XVI.

The notice publication requirements governing conservation and reclamation districts under Section 59, Article XVI, are different from the general notice publication requirements under Section 57, Article III. Sections 59(d) and (e), Article XVI, require that:

- The notice of intention to introduce a bill must set forth the general substance of the contemplated law.
- The notice must be published *at least 30 days and not more than 90 days* before the bill is introduced.
- Publication of the notice must be in a newspaper or newspapers having general circulation in the county or counties in which any part of the district is or will be located.
- The notice must be delivered to the governor.

- For a bill creating a district, a copy of the proposed bill must be delivered to the commissioners court of each county in which any part of the district is or will be located and to the governing body of each municipality in whose jurisdiction any part of the district is or will be located.

Rule 9.01(b)(1), Senate Rules, and Rule 8, Section 10(c)(1), House Rules, provide that a bill is a local bill for the purposes of publication of local notice if the bill is a bill for which publication of notice is required by Section 59, Article XVI. The notice publication requirements provided by Section 59, Article XVI, the rules of both houses of the legislature, and statutes must be considered together to determine what notice publication requirements are applicable to a bill authorized under Section 59, Article XVI.

III. Districts Authorized by Section 52, Article III

Section 52, Article III, Texas Constitution, authorizes local bills related to water resources or roads. Most local bills authorized by that section concern a "road utility district" or a "water district" of some kind.

The general requirements of Section 57, Article III, the rules of both houses of the legislature, and statutes apply to publication of notice for Section 52, Article III, local bills.

The senate and house rules provide that a bill is a local bill if the bill creates or affects a "road utility district." The rules do not mention bills affecting other kinds of districts authorized under Section 52, Article III, or other local laws authorized by that section. See Rule 9.01(b)(6), Senate Rules, and Rule 8, Section 10(c)(6), House Rules.

Note also that some "water districts" are districts created or authorized under Section 59, Article XVI, instead of Section 52, Article III. (See above at II.)

IV. Hospital Districts Authorized by Article IX

Legislation regarding hospital districts is authorized by Sections 4, 5, 8, 9, 9A, 9B, and 11, Article IX, Texas Constitution. Sections 9 and 9B of that article expressly authorize the legislature to treat hospital districts by "special law" (in this context the term is synonymous with "local law"). Section 9A implicitly authorizes a local law regarding the provision of health care to residents of a hospital district. Section 11 implicitly authorizes local laws to create hospital districts in certain named counties.

Except as noted below, the general requirements of Section 57, Article III, the rules of both houses of the legislature, and statutes apply to publication of notice for hospital district local bills.

Section 9, Article IX, provides that a district may not be created by a local bill except after 30 days' public notice to the district affected; this provision must be read together with the notice publication requirements of Section 57, Article III, the rules of both houses of the legislature, and statutes.

The senate and house rules provide that a bill is a local bill if publication of notice is required for the bill under Section 9, Article IX. Section 9 addresses publication of notice only for a bill that creates a hospital district under that section; the rules do not mention other bills affecting hospital districts authorized under Section 9 or other local laws authorized by that section. See Rule 9.01(b)(2), Senate Rules, and Rule 8, Section 10(c)(2), House Rules. Arguably, Section 9, Article IX, relieves the Section 57, Article III, requirement to publish notice not only for a local bill that affects an existing district created under Section 9, but also for a local bill that affects an existing hospital district created under other law.

V. Preservation of Game or Fish

Section 56(b)(1), Article III, Texas Constitution, authorizes "special laws" (in this context the term is synonymous with "local laws") for the "preservation of game and fish of this State in certain localities."

Although courts have determined that bills dealing with the preservation of game and fish are general bills, for purposes of the senate and house rules, a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality is expressly considered to be a local bill for which publication of notice is required. See Rule 9.01(b)(3), Senate Rules, and Rule 8, Section 10(c)(3), House Rules.

VI. Courts System

Sections 1, 7, 8, and 21, Article V, Texas Constitution, authorize local laws on matters regarding the courts system, including district courts, county courts, statutory courts, and municipal courts and county and district attorneys.

Courts have determined that certain bills relating to *district courts* are items of general state interest and for that reason are considered to be general bills, regardless of their local appearance and regardless of whether the constitution authorizes local bills for those subjects. As general bills, bills relating to district courts are not subject to the Section 57, Article III, requirements for publication of notice.

Note that those courts system bills are treated as general bills for purposes of the constitution only and not for purposes of the senate and house rules. The senate and house rules provide that a bill is a local bill if the bill creates or affects a county court or statutory court or

courts of one or more specified counties or municipalities, and that publication of notice is required for those local bills. See Rule 9.01(b)(4), Senate Rules, and Rule 8, Section 10(c)(4), House Rules.

VII. Granting Aid for Public Calamity

Section 51, Article III, and Section 10, Article VIII, Texas Constitution, authorize special or local laws in response to cases of public calamity.

The senate and house rules do not expressly address bills that respond to a public calamity. Note that Rule 9.01(c), Senate Rules, and Rule 8, Section 10(d), House Rules, provide that a bill that affects a sufficient number of localities is considered a bill of general application or a matter of statewide importance, and for that reason is not considered a local bill.

VIII. Airport Authorities

Section 12, Article IX, Texas Constitution, authorizes the legislature to enact local laws regarding airport authorities.

The senate and house rules do not expressly address local bills authorized by Section 12, Article IX, but Section 57, Article III, and statutory notice publication requirements apply.

IX. Consolidation of Government Offices and Functions of Political Subdivisions in a County

Section 64, Article III, Texas Constitution, authorizes the legislature "by special statute" (in this context the term is synonymous with "by local law") to "provide for consolidation of governmental offices and functions of government of any one or more political subdivisions comprising or located within any county." The provision can be read as an exception to the Section 56(a), Article III, general prohibition against local or special laws.

The senate and house rules do not expressly address local bills authorized by Section 64, Article III, but Section 57, Article III, and statutory notice publication requirements apply.

X. Fence Laws

Section 56(b)(2), Article III, Texas Constitution, authorizes the legislature to pass local "fence laws applicable to any subdivision of this State or counties."

The senate and house rules do not expressly address local bills authorized by Section 56(b)(2), Article III, but Section 57, Article III, and statutory notice publication requirements apply.

XI. Stock Laws

Section 23, Article XVI, Texas Constitution, authorizes the legislature to pass local and special laws to regulate livestock and protect stock raisers.

The senate and house rules do not expressly address local bills authorized by Section 23, Article XVI, but Section 57, Article III, and statutory notice publication requirements apply.

XII. Local Road Maintenance

Section 9(e), Article VIII, Texas Constitution, authorizes the legislature to "pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws."

Further, since the senate and house rules do not expressly address a bill regarding road and highway maintenance, publication of notice is not required for such a bill.

XIII. Juvenile Boards

Courts have treated bills to create juvenile boards in specific localities as general bills for which the constitution does not require publication of notice because they relate to matters of general state interest, despite their appearance as local bills.

Nevertheless, Rule 9.01(b)(5), Senate Rules, and Rule 8, Section 10(c)(5), House Rules, define as "local bill" a bill "creating or affecting the juvenile board or boards of a specified county or counties." For that reason, the senate and house rules require publication of notice for most bills regarding specific juvenile boards. Note also Rule 9.01(c), Senate Rules, and Rule 8, Section 10(d), House Rules, which provide that a bill is not a local bill if it "affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance."