

The Allensworth water law practice group analyzed updates from the 2023 legislative session for bills that affect our Water Supply Corporation (WSC) and Special Utility District (SUD) clients. Below is a brief analysis of what we consider to be the most important changes to the law, categorized by (1) Open Government laws, (2) Certificate of Convenience and Necessity (CCN) laws, (3) Infrastructure Funding laws, and (4) WSC-related laws. If you have questions about these changes in the law, or how to implement them, please don't hesitate to reach out.

Open Government

HB 1957

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/HB01957E.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB01957F.htm>

HB 1957 applies to non-profit water providers that are listed as 501(c)(3) non-profit corporations exempt from federal taxation. This bill changes the documents a qualifying water provider must maintain and provide to the public upon request. Instead of requiring a water provider to maintain all “records, books, and annual reports of the corporation’s financial activity” for public inspection, **qualifying water providers must now maintain all records that would be subject to Internal Revenue Service review for public inspection.** WSCs and SUDs subject to this change may still charge a reasonable fee for preparing copies of these documents. The bill potentially narrows the universe of documents that certain WSCs and SUDs must maintain to comply with Texas Business Organizations Code Section 22.353.

HB 3033

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/HB03033S.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB03033F.htm>

HB 3033 added and amended numerous sections regarding release of information by governmental bodies who are subject to public information requests. The overall purpose of this bill is to encourage a timelier release of information, while adding some safeguards. Of note to our clients, the bill amends § 552.306 of the Texas Government Code to require that the governmental body release information “as soon as practicable but within a reasonable period of time” after the Attorney General issues a ruling on the information’s release. If the request requires the production of many documents, the governmental body may give notice to the requestor but must still release the information within 15 business days after the notice. The bill also clarifies the definition of business day, and establishes that the calculation of business days is unaffected by the fact that a governmental employee works from an alternate site (likely offsite).

HB 3440

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/HB03440S.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB03440F.htm>

HB 3440 amends Texas Government Code § 551.056 and now requires certain governmental entities, including SUDs, to post notice of a meeting, the agenda for that meeting, and any supplemental written materials for use during the meeting on the entity’s website in addition to the places such notice, or agenda were previously required to be posted. However, the governmental entity does not need to post information deemed confidential or that is permitted to be withheld.

Entities subject to this change should have started posting notices or agendas by September 1, 2023, the effective date of this statute. Note that the validity of any action taken at a meeting where a notice or

agenda was not posted online will not be affected by a failure to comply with this requirement if caused by a technical problem beyond the entity's control.

CCN

HB 2442

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/HB02442H.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB02442H.htm>

HB 2442 amends Texas Water Code §§ 13.2541 and 13.255. Generally, the amendments deal with notice and Public Utility Commission procedures in these CCN proceedings.

Section 13.2541 requires the petitioner seeking streamlined expedited release from a provider's CCN to send a copy of the petition to the current CCN holder the day the petition is filed. Section 13.2541 also permits the current CCN holder to submit information to controvert information submitted by the petitioner. This change may lead to the PUC denying more petitions for streamlined expedited release, but that remains to be seen.

Section 13.255: requires a city filing an application for single certification to send a copy of the application to any retail public utility certificated in that same CCN. If the PUC grants single certification to the petitioning municipality, the bill requires the PUC to determine a monetary amount that is adequate to compensate a retail public utility for any property determined to be rendered useless by the single certification. Lastly, the bill allows the affected retail public utility 7 days to appeal the granting of a 13.255 petition for certification via a separate hearing before the PUC. This appeal is permissive and does not affect the retail public utility's right to seek an appeal directly to Travis County District Court within 30 days of the PUC's single certification order. But this new permissive appeal to the PUC must be made *before* an appeal to the Travis County District Court. HB 2442 clarifies that the PUC's grant of a single certification to a municipality under 13.255 must be made through a PUC order.

This amendment also provides affected CCN holders with prompter notice of attempts to curtail their service area. In addition, the Texas Water Code now expressly permits CCN holders to refute information submitted by landowners seeking streamlined expedited release from their CCN.

SB 893

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/SB00893H.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00893F.htm>

SB 893 amends the Texas Water Code to authorize the executive director of the PUC, at their discretion or on the request of the certificate holder, to make a correction to a CCN, without observing formal amendment procedures. The executive director may reissue a certificate or issue an endorsement to a certificate. The executive director must notify the certificate holder that the correction has been made and ensure that the reissued certificate or endorsement is recorded in the PUC's records. The executive director's corrections under The bill authorizes the executive director to make a correction for the following purposes:

- to correct a clerical or typographical error;
- to change the name of an incorporated certificate holder on a certificate if an amendment to the certificate holder's articles of incorporation or certificate of formation, as applicable, is filed with the secretary of state that only changes the

name of the certificate holder and the certificate holder provides verification of such a change;

- to correct a mapping error in a certificate to reflect the correct metes and bounds of the certificated area; or
- to correct another similar non-substantive error or matter if authorized by PUC rule.

SB 893 prohibits the executive director of the PUC from correcting a mapping error unless the certificate holder provides the executive director a written agreement between the certificate holder and any other retail water or sewer service provider whose service area is directly affected by the correction and provides notice of the correction to any water or sewer service customers whose retail service is directly affected by the correction.

CCN holders now have a streamlined way to update their CCN's if they undergo a name change or discover a non-substantive error in their CCN. The bill also provides an avenue to correct clerical errors without going through the more formal process previously required for such amendments or revisions to a CCN.

Infrastructure Funding

SB 469

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/SB00469F.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00469F.htm>

SB 469 amends Chapters 15 and 17 of the Texas Water Code, but its main purpose is to redefine “rural political subdivision” that may apply for and receive money from the Texas Water Development Board for rural water infrastructure projects. The new definition of “rural political subdivision” includes WSCs and SUDs that have no part of their service area located in an urban area with a population of more than 50,000 or that can adequately demonstrate that their service area is rural. The newly proposed Texas Water Fund has earmarked 10% of its funds during the first 5 years after its adoption to support rural political subdivision projects.

SB 28

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/SB00028F.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00028F.htm>

SB 28 creates the Texas Water Fund by adding Subchapter H-1 to Chapter 15 of the Texas Water Code. This fund will be controlled by the Texas Water Development Board who will issue funds for water infrastructure projects, prioritized by risk or need for rural political subdivisions (newly defined by SB 469); projects for which all required state or federal permitting has been substantially completed, as determined by the TWDB; water public awareness program; water conservation strategies; and water loss mitigation projects. The TWDB is given the authority to adopt rules, procedures, and policies as needed to administer the fund. The constitutional amendment passed in November 2023, and the TWDB created and adopted rules for allocating the funding to various projects. The TWDB landing page for the Texas Water Fund and how to apply for funding is available here: <https://www.twdb.texas.gov/financial/programs/SWIFT/index.asp>.

The State is keen to assist water districts in repairing and expanding their infrastructure. If this fund is approved by Texas voters, water districts could be eligible for funding on their projects.

WSCs:

SB 317

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/SB00317H.htm>
- Bill: <https://legiscan.com/TX/text/SB317/2023>

SB 317 permits an applicant for service from a WSC to appeal to the PUC for a determination of whether their membership or tap fee required to obtain service is consistent with the WSC's rates. The PUC may issue an order requiring the WSC to charge a fee consistent with their rate if the fee charged is deemed inconsistent.

This amendment could lead to disputes and additional costs for WSCs who are not charging consistent membership or tap fees.

SB 2601

- Analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/html/SB02601F.htm>
- Bill: <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB02601F.htm>

Previously the Texas Department of Transportation (TxDOT) could provide financial assistance to certain utilities, but not WSCs for the relocation of utilities if the relocation was required for improvements of highway systems. This amendment permits a WSC to request reimbursement from the Texas Transportation Commission for expenses associated with relocating infrastructure if (1) the cost of relocation would adversely affect the utility's ability to operate or provide adequate service; and (2) the utility would not be able to receive a state infrastructure bank loan and is otherwise unable to finance the cost of relocation.

WSC clients should consider their ability to recoup the costs for relocating infrastructure due to TxDOT operations if bearing that cost would negatively affect the Water Supply Corporations financial status or ability to adequately serve its members.