

Memorandum

To: Municipal Advisory Council of Texas

From: Jerry Kyle, Jr.
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Date: May 16, 2016 ([Updated June 6, 2016](#))

Subject: House Bill 1378

General

During the 84th Regular Legislative Session, the Texas Legislature passed House Bill 1378 (“HB 1378”). HB 1378 relates to the fiscal transparency and accountability of political subdivisions. Specifically, it imposes certain annual financial reporting requirements on political subdivisions.¹

HB 1378 amends Chapter 140, Texas Local Government Code,² by adding Section 140.008. Among other things, Section 140.008 imposes a requirement on political subdivisions³ to annually compile and report certain financial information. Unless one of the alternative methods of compliance described below is followed, HB 1378 requires a political subdivision to post the requisite information in a report on its website and also make such report available for inspection by the public.

Effectiveness

Pursuant to Section 3 of HB 1378, its reporting requirements apply only to a fiscal year ending on or after January 1, 2016.

Compliance Deadline

HB 1378 requires only that the financial information be “annually” compiled and reported. While some of the information must be reported “as of the last day of the preceding fiscal year”, this

¹ HB 1378 also places certain restrictions on the issuance of certificates of obligation, which will not be addressed herein.

² Unless otherwise specifically set forth herein, all section references are to the Texas Local Government Code.

³ The term “political subdivision” is defined broadly to include “a county, municipality, school district, junior college district, other special district, or other subdivision of state government.”

reference does not impose a compliance deadline. Instead, this “as of” date relates only to the currentness of the financial information provided. The Senate Finance Committee substitute for HB 1378 contained a compliance deadline of the 90th day following the fiscal year end. This language was not included in the enrolled version of HB 1378 and no replacement was included, leaving the statute silent on timing.

~~Since the audited information necessary comply with HB 1378 is not available until the fiscal year end and the information need only be reported “annually”, a political subdivision should be compliant with HB 1378 if it posts/files the report and makes it available to the public within the next fiscal year. However, since this information will be available sooner and will oftentimes be released around the statutory deadline for the release of a political subdivision’s audit, it seems reasonable to assume that a political subdivision will satisfy the requirements of HB 1378 if all required information is provided by the political subdivision’s audit deadline. This conservative approach should ensure compliance with the HB 1378’s requirements despite its lack of guidance.~~

[UPDATE: On May 27, 2016, the Comptroller released an email with a link to its new HB 1378 landing page, which is located at http://www.texasparency.org/Local_Government/HB1378/. The Comptroller’s landing page states that its HB 1378 rules are still being developed. In the meantime, the Comptroller has revealed that the deadline for compliance will be: \(a\) for fiscal year 2016, 210 days after the entity’s fiscal year end, and \(b\) for all subsequent fiscal years, 180 days after the entity’s fiscal year end.](http://www.texasparency.org/Local_Government/HB1378/)

Information Reported

The annual reporting information required by Section 140.008(b), Texas Local Government Code is as follows:

- (1) As of the last day of the preceding fiscal year:
 - (A) the amount of all authorized debt obligations;
 - (B) the principal of all outstanding debt obligations;
 - (C) the principal of each outstanding debt obligation;
 - (D) the combined principal and interest required to pay all outstanding debt obligations on time and in full;
 - (E) the combined principal and interest required to pay each outstanding debt obligation on time and in full;
 - (F) the amounts required by Paragraphs (A)-(E) limited to authorized and outstanding debt obligations secured by ad valorem taxation, expressed as a total amount and, if the political subdivision is a municipality, county, or school district, as a per capita amount; and
 - (G) the following for each debt obligation:

- (i) the issued and unissued amount;
 - (ii) the spent and unspent amount;
 - (iii) the maturity date; and
 - (iv) the stated purpose for which the debt obligation was authorized;
- (2) the current⁴ credit rating given by any nationally recognized credit rating organization to debt obligations of the political subdivision;
- (3) any other information that the political subdivision considers relevant or necessary to explain the values required by Subdivisions (1)(A) - (F), including:
 - (A) an amount required by Subdivision (1)(F) stated as a per capita amount if the political subdivision is not required to provide the amount under that paragraph;
 - (B) an explanation of the payment sources for the different types of debt; and
 - (C) a projected per capita amount of an amount required by Subdivision (1)(F), as of the last day of the maximum term of the most recent debt obligation issued by the political subdivision.

Compliance - Primary Method

Unless a political subdivision complies in one of the several alternative manners provided by HB 1378 (discussed below), Section 140.008(f) requires that the governing body of a political subdivision take action to ensure that the annual report is made available for inspection by any person and is posted continuously on the political subdivision's website until the political subdivision posts its next annual report.

There is no requirement that the information be posted in any particular location on the political subdivision's website. Further, Section 140.008(c) reduces the burden of complying with Section 140.008(f)'s annual posting requirement should some or most of the required information already be separately posted on the political subdivision's website. Instead of replicating such information within the annual report, the political subdivision may instead include in the annual report a direct link or a clear statement describing the location of the separately posted information. This provision could be helpful for political subdivisions that are already posting audits and/or other financial documents that contain some or most of the information set forth in Section 140.008(b).

The governing body must also ensure that contact information for the main office of the political subdivision is continuously posted on the political subdivision's website. (A definition for the term "main office" is not provided by the statute.) While many political subdivisions already post

⁴ The use of "current" with respect to credit ratings versus "as of the last day of the preceding fiscal year" is probably intended to require that the credit ratings listed be as of the date of the filing/posting of the annual report. This distinction is obviously only relevant to the extent that a political subdivision has had a ratings downgrade between the end of the last fiscal year and the completion of the annual report.

contact information on their respective websites, HB 1378 now imposes a requirement to do so. Further, HB 1378 specifically requires the posting of four items relative to the “main office” of the political subdivision: the physical address, mailing address, main telephone number, and an e-mail address. This could potentially cause an issue for political subdivisions that do not necessarily have a single headquarter office or for municipal utility districts and other special districts, which commonly have no office other than those of their various contract consultants. Ultimately, however, the lack of a definition should provide flexibility for a political subdivision to proclaim the location of its “main office” in cases where it is unclear.

There are several alternative methods of compliance for the requirement that a political subdivision post the annual report to its website:

Compliance - Alternative Methods

All political subdivisions - Comptroller report:⁵ Section 140.008(d) provides an alternative to posting the annual report on the political subdivision’s website. This Section permits the political subdivision to provide the information set forth in Section 140.008(b) *and any other related information required by the Comptroller*⁶ in the form and in the manner required by the Comptroller. ~~Since the Comptroller’s rules related to HB 1378 have not yet been promulgated, it is unknown what information in addition to the information set forth in Section 140.008(b) will be required for reports submitted to the Comptroller pursuant to Section 140.008(d).~~ If the political subdivision maintains a website, it must also provide a link from its website to the location on the Comptroller’s website where the annual report may be viewed. There is no statutory requirement that the link be posted in any particular location on the political subdivision’s website.⁶⁷

[UPDATE: The Comptroller’s office, through the HB 1378 landing page referenced above, indicated that Comptroller report submissions will be submitted through an “uploading solution” on the Comptroller’s website, not through hard copy or email. Per the landing page, the Comptroller’s uploading solution will be available “beginning in the summer of 2016.”](#)⁸

⁵ The Comptroller is currently developing rules related to HB 1378, its reporting form and its upload functionality for reports submitted pursuant to Sections 140.008(d)-(e). The Comptroller has indicated that these items should be available by the summer of 2016.

⁶ [UPDATE: The Comptroller has indicated that there will be no additional information required by the Comptroller for entities filing the Comptroller’s report pursuant to Section 140.008\(d\), as opposed to Section 140.008\(b\).](#)

⁶⁷ The Comptroller’s rules related to HB 1378, which have not yet been promulgated, could require that these links be located in a particular location.

⁸ [Based upon the 2016 compliance deadline of 210 days after the fiscal year end, this functionality would need to be available no later than August 28, 2016, which is the deadline for entities whose prior fiscal year ended on January 31, 2016. At this time, however, the Comptroller has not provided a specific date for the arrival of the uploading solution.](#)

Small municipalities (population < 15,000) and counties (population < 35,000) - Comptroller report:⁵ For small municipalities and counties, Section 140.008(e) provides a substantially similar compliance mechanism as the Comptroller report described in Section 140.008(d). Noticeably absent from Section 140.008(e), however, is a reference to “other related information required by the Comptroller.” Instead, the information required to be submitted by small municipalities and counties is limited to the information described in Section 140.008(b). Otherwise, Section 140.008(e) is nearly identical to Section 140.008(d).

UPDATE: The Comptroller’s office, through the HB 1378 landing page referenced above, has indicated that small municipalities and counties will use the “same reporting form and uploading solution as other political subdivisions.”

Water districts:⁷² Section 140.008(g) provides relaxed compliance requirements for water districts (i.e. a “district” as defined by Section 49.001, Texas Water Code). Water districts comply with the provisions of Section 140.008 if they submit an audit, affidavit of financial dormancy or annual financial report, as applicable, to the Comptroller and are in compliance with Chapter 49, Texas Water Code’s requirements relative to such documents. These requirements include, but are not limited to, the requirement to file, as applicable, an audit, affidavit of financial dormancy or annual financial report with the Texas Commission on Environmental Quality within 135 days after the close of the water district's fiscal year.

Noncompliance

Section 140.008 does not provide a penalty for noncompliance. As mentioned above, the Comptroller’s rules related to HB 1378 have not yet been promulgated, and could potentially impose penalties for noncompliance. However, Section 140.008 does not clearly delegate authority to the Comptroller promulgate rules that would impose such penalties.

UPDATE: The Comptroller’s landing page and recent email do not indicate whether the Comptroller’s rules will include noncompliance penalties.

⁷² The Comptroller has the authority to promulgate rules related to Section 140.008(g), but no such rules have been promulgated as of the date of this memorandum.

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