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MEMORANDUM

TO: Members of the Legislature

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DATE: February 4, 2009

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

INTRODUCTION

The primary purpose of this memorandum is to discuss the requirements for publishing notice of intent to apply for passage of a bill to enact a local law or special law as imposed by the Texas Constitution, statutes, and rules of the respective houses of the legislature. Although the common use and misuse of "local" and "special" have rendered the two terms virtually synonymous when referring to bills or laws, there is a distinction usually recognized: A "local law" is a law that applies to a limited area, and a "special law" is a law that applies to a single person or class. Similarly, "local bill" refers to a bill proposing a local law and "special bill" refers to a bill proposing a special law. 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 as "local bills."

This memorandum also discusses the legal and parliamentary standards governing consideration of a "bracket bill"--meaning a bill to enact a law applicable only to a particular class of political subdivisions or geographic areas through use of population figures or another classification device. Although often thought of as local bills, bracket bills propose general laws. 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 applicable rules.

Appendices follow this memorandum that contain constitutional, statutory, and legislative rules provisions governing notice requirements and a sample publisher's affidavit showing that notice has been published.

SUMMARY

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.

The Texas Constitution expressly prohibits local and special bills for most purposes. The constitution does not prohibit a bill proposing a law that would affect people throughout the state or treats a subject that is a matter of interest across the state, even if the bill addresses a particular place or otherwise appears to be a local bill. However, that exception to the general prohibition does not apply to a local bill that has a merely incidental effect on a matter of statewide importance.

For constitutionally permitted local bills, the constitution generally requires notice of the bill to be published. In some cases an exception to the constitutional notice requirement applies. If the constitution requires publication of notice for a local bill and the notice is not published as required, the 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.

The rules of both houses also 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 ineligible 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 in a bracket bill does not violate the constitutional prohibition on local bills if the classification: (1) is broad enough to include a substantial class or geographic area; and (2) is based on characteristics that legitimately distinguish, in relation to the public purpose to be served, the class or area from classes or areas. Note also that the rules of each house prohibit the consideration of a bill whose application is limited to one or more political subdivisions according to a population bracket or other artificial device instead of identifying the

political subdivisions by name. The answer to two principal questions offers a shorthand guide to the validity of a classification scheme for a bracket bill:

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

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

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

LOCAL BILLS

Local Laws and Notice Requirements in the Texas Constitution

(A) Local Bills Permitted by the Constitution

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

"[i]n 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 59(a) and (b) together, the constitution prohibits a local or special law concerning any one of the subjects specified or concerning a matter to which a general law cannot be made applicable. Courts have treated the determination of whether a general law can be made applicable to be 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 bills authorized under the state 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 and 9, 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 special 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 within 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).

The rules of the house and senate define as local bills six categories of bills that are very similar to local bills included within the first five of the above constitutionally permissible categories; the similarities and differences should be considered. See Rules 9.01(b) and (c), Senate Rules; Rule 8, Sections 10(c) and (d), House Rules. (See Appendices F and G for the text of those rules.)

With regard to category (1), the rules of each house 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." Therefore, a bill of that category is a local bill under the rules only if the bill is one for which notice is required by Section 59(d), Article XVI. That 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, even though it otherwise appears to be a local bill: (1) is not constitutionally required to have notice of its introduction published; and (2) is not required by the rules of either house to have notice of intention to apply for its passage published. (Note also 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 a notice requirement different from the general requirement of Section 57, Article III, Texas Constitution.)

With regard to category (2), the rules track the constitutional notice requirements of Section 9, Article IX, Texas Constitution. That section requires 30 days' public notice of a local law (in that section, termed a "special law") creating a hospital district. The notice requirements of the house and senate rules apply only to local bills creating a hospital district under Section 9, Article IX, Texas Constitution. The rules do not address a local law creating a hospital district under Section 4, Article IX, and do not address other bills affecting a hospital district, even if they otherwise appear to be local bills.

With regard to categories (3) and (4) and with regard also to bills relating to juvenile boards in specific localities, special attention is warranted in this discussion. Bills of those kinds appear to be local bills, and as noted above, the constitution even authorizes local bills in categories (3) and (4). However, courts have determined that many bills of those types are general bills because they relate to matters of general state interest, despite their appearance as local bills. Following that reasoning, the bills in category (3), various bills in category (4), and

bills relating to juvenile boards are treated as general bills. With regard to category (4), the 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 county 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, not necessarily for purposes of the house and senate rules. The house and senate rules must be examined separately, and as further explained below, the house and senate rules provide that:

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

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

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

With regard to category (5), the house and senate 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. 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.

(B) Publication of Notice Under the 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, or 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 general bills, the bills are not subject to the Section 57, Article III, requirements for publication of notice.

Although some commentators have interpreted decisions of courts finding laws that appear to be constitutionally authorized local laws to be general laws not to be subject to the notice requirements of Section 57, Article III, 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 publication of notice as that section provides is required 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 and 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 be based on an assumption of the court that notice was required. Otherwise, there would have been no need to create the presumption.

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.)

In addition to Section 57, Article III, two other provisions of the constitution provide specific requirements for publication of notice. Section 9, Article IX, requires notice to be published of any 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. Section 59, Article XVI, which authorizes conservation and reclamation districts, including various kinds of water-related districts and similar special-purpose districts, requires that notice be published of a bill that creates a district or amends a law relating to a district for the purpose of adding land or altering the taxing authority, bonding authority, or qualifications or terms of governing board members. (See Appendix E for the text of that provision.) That provision does not require notice of a bill that amends a district law for some other purpose.

Note that Sections 59(d) and (e), Article XVI, require that in some circumstances a copy of the notice and proposed local bill relating to a conservation and reclamation district be delivered to the governor and that a copy of the proposed bill 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).)

It must be emphasized that the requirements for publication of notice in the state constitution are in addition to the requirements imposed by the house and senate rules. To determine whether notice is necessary, both the constitution and the rules must be considered.

(C) Attachment of Notice to the Bill as Required by the Constitution

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

Rules Requirements

(A) Local Bills Defined by the Rules

The rules of the senate and house for the 81st Legislature define "local bill" for the purposes of the publication of notice. (See Appendices F and G for the text of the rules.) The definitions, contained in 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 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 county court, or court of one or more specified counties or municipalities;

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

or

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

(B) Publication of Notice Under the Rules

The rules of the senate and house 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 Appendices F and G for the text of the rules.) Note that the publication of notice requirements in the rules of the senate and house 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.

(C) Attachment of Notice to the Bill as Required by the Rules

The rules of the senate and house require that evidence of the publication of notice be attached to a local bill. Rules 7.07(c) and 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules. (See Appendices 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 one of certain types specified by the local law definition; and (2) "affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance." The types 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 types are local bills or general bills and note that the rules require notice for bills described by those categories even if the constitution does not require notice.

The initial determination of whether notice is required and is attached 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.)

In contrast, 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.

Note however, that 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."

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

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

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

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.)

Content of Notice; Procedure for Publication

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 shall: (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 59, Article XVI, provides, in regard to a local bill subject to that section, only that the notice shall: (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. Section 9, Article IX, provides, in regard to a local bill subject to that section, only that 30 days' public notice to the affected district is required.

The rules of the senate and house state 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.)

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

(1) the notice must be published in a newspaper published in the county that includes the affected area;

(2) the notice must state the general purpose and substance of the proposed law (publication of the caption of the proposed bill [see Appendix I] in conjunction with an affidavit of publication [see the form included in Appendix J] should be sufficient);

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

(4) if no newspaper is published in a county covered by the proposed bill, notice must be posted on the courthouse door and in five other places in the 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 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).

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 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 the notice was not properly published, the enrolled bill rule requires that evidence on the issue be excluded. As a result, compliance with the notice requirements, both the constitutional and rules requirements, during the legislative process is the primary issue in determining whether to publish notice.

BRACKET BILLS

A bill to enact a law that would be applicable only to a particular class of political subdivisions or geographic areas through use of population figures or another classification device (commonly known as a "bracket bill") is not a local bill but rather is a bill proposing general law. If the classification scheme (or "bracket") is reasonable or is determined by characteristics bearing a logical relationship to the purpose of the law, the bill does not violate the constitutional prohibition on local laws. *Miller v. El Paso County*, 150 S.W.2d 1000, 1002 (Tex. 1941). In general, laws employing a classification scheme are valid unless the bracket is so narrow as to constitute an unconstitutional local law.

Because, by definition, a bracket bill proposes general law, publication of notice of intent to introduce a bracket bill is not required or useful. Further, publication of notice for a bracket bill would not save the bill from constitutional infirmity. Rule 8, Section 10(b), House Rules, expressly provides that a bill may not be considered by the house or by committee if the bracket is for the purpose of avoiding designation of a political subdivision by name, while clarifying that consideration of a bill is not prohibited if the classification criteria reasonably relate to the purpose of the bill.

To survive a constitutional challenge under Section 56, Article III, a law that has limited application to a class of political subdivisions or geographic areas must be broadly drafted. 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. *Id.* at 1001-1002.

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 in the future 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.

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.

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 as creating an invalid local law. 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. Comm'n App. 1931, opinion adopted); *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.

In determining whether a bracket meets the reasonable basis requirement, the classification may be analyzed in either of two ways. Under the first method of analysis, first, the purposes and subject of the law are identified. Then, the criteria used to create the bracket are examined. The criteria used to create the bracket 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)). 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.

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 greater than 650,000 and operating a teaching hospital).

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 may not be used. For example, a bill using population criteria that are tied to a specific census is likely to violate Section 56, Article III. *Bobbitt*, 36 S.W.2d at 471-472 (Tex. Comm'n App. 1931, opinion adopted) (bracket drawn to only one city "just as clearly" as if the city had been named). However, in some circumstances, a closed class may be justifiable if a reasonable basis for the class is found. 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).

A second method of analysis for determining whether a bill's bracketing scheme has a reasonable basis requires an examination of the statewide impact 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 statute or if the bill treats 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.*

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?*

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 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 OR 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, and

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. 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, Sections 9(b) and (c), House Rules

(b) Eleven copies of every bill relating to conservation and reclamation districts and governed by the provisions of Article XVI, Section 59, of the Texas Constitution, with copies of the notice to introduce the bill attached, must be filed with the chief clerk at the time that the bill is introduced 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.

(c) No bill may be laid before the house on first reading until it is in compliance with the provisions of this section.

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

APPENDIX G. 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 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 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 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 in the proposed 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 to a person who owns real property in the proposed district if the property cannot be subject to an assessment by the district.

APPENDIX I. NOTICE OF INTENT TO INTRODUCE

NOTICE

This is to give notice of intent to introduce in the 81st 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)