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Texas Bills Propose Significant Reforms to Infrastructure Financing

Two bills of note pertaining specifically to certificates of obligation are being considered by the Texas Legislature. House Bill (HB) 1453 and Senate Bill (SB) 470 are substantially similar, with some key distinctions, in making significant proposed amendments to the Certificate of Obligation Act. Certificates of obligation are a non-voted ad valorem and revenue and tax-secured financing tool that enables local governments to respond proactively to financing critical infrastructure needs rather than delaying until the next bond election cycle.

Pursuant to HB 1453 and SB 470, certificates of obligation can only be issued to (1) comply with a state or federal law or rule for which the issuer has been notified of noncompliance; (2) mitigate the impact of a public health emergency; (3) finance the cleanup, mitigation, or remediation of a declared natural disaster; (4) comply with a court order; and (5) pay for professional services necessary for a public work.

The bills seek to amend the definition of “Public work” to no longer include public safety facilities; judicial facilities; administrative office buildings; animal shelters; libraries; the rehabilitation, expansion, reconstruction, or maintenance of an existing stadium, arena, civic center, convention center, or coliseum; and hotels. However, SB 470 does seek to expand the definition to include telecommunications, wireless communications, or information technology systems and any computer application hardware or software or a cybersecurity system.

The bills both seek to place limitations upon when issuance can be authorized by an issuer. HB 1453 would require the issuer to enter into the public work construction contract by the 180th day after its governing body authorizes the issuance of the certificates; and SB 470, the 90th day after authorization.

Among other notable changes, both bills seek to reduce the maximum maturity of certificates from 40 years to 30 years, and, with certain exceptions, increase the blackout period after a failed

bond election from three years to five years. Additionally, the bills seek to amend the Certificate of Obligation Act's provisions allowing for a petition protesting the issuance of the certificates. Both bills would decrease the required number of signatures on a petition from five percent of qualified voters to two percent of registered voters. If a petition with the minimum required number of signatures is received by the issuer before the date tentatively set for the authorization of the issuance, or before the authorization, the issuer cannot authorize the issuance of the certificates unless the issuance is approved at an election.

For more information on these new requirements, please contact the authors or any attorney with Frost Brown Todd's [Public Finance Practice Group](#).

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