

Recent Texas Legislation

- Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (Tex. Gov't Code Ann. § 2274.001 *et seq*).
- Prohibition on Contracts with Companies Boycotting Certain Energy Companies (Tex. Gov't Code Ann. § 2274.001 *et seq*).

- Each statute has similar requirements:
 - 1) Contract must be between a governmental entity and a company with 10 or more full-time employees
 - 2) Contract must have a value of \$100,000 or more paid wholly or partly from public funds of the governmental entity.

Both statutes require written verification in the contract from the counterparty as to compliance with the statute.

In the case of the firearms statute, the written verification must state that the counterparty does not “have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association.”

The energy companies statute requires that the counterparty verify that it does not and will not for the course of the contract “boycott energy companies”.

Policy Statements Related to the Legislation

- Republican sponsors of the bill said in their analysis of the proposed legislation that the bill was necessary to “ensure that any company in Texas with a policy that attempts to restrict gun or ammunition sales will not be allowed to benefit from tax dollars through state contracts.”
- “Large banks and other financial institutions in our country have quietly enacted policies to restrict gun sales and exert pressure on the firearm industry,” the bill’s lead sponsor, Sen. Charles Schwertner, a Republican from Georgetown, said in his filings for the proposed legislation. “These institutions hold our money and attempt to use financial pressure to infringe upon our Second Amendment rights. This is unacceptable.”

One Potential Workaround – Assignment of Contract

- Statute states that the written verification must be from the company.
- Unclear that this applies to a subsequent assignee (other than an affiliate).

New York SB 5470: Disclosure Requirements

- SB 5470 requires certain commercial lenders that extend financings of \$2.5 million or less to make certain disclosures to the recipients thereof
- Commercial Lenders: A person/entity that extends a “specific offer of commercial financing”
- It does not apply to depository institutions but does apply to non-depository bank subsidiaries

SB 5470: New York Disclosure Requirements

- “Specific offer of commercial financing”: Extend or arrange or solicit and present specific officers of commercial financing
 - If purely a referral source, probably does not apply
 - If extend an offer on behalf of someone else, might apply
- Does not apply to true leases

SB 5470: New York Disclosure Requirements

- Disclosure Requirements:
 - Truth in Lending type of requirements
 - Must be disclosed at time extending offer and must obtain signature of recipient
- Civil Penalties:
 - Up to \$2,000 per occurrence
 - Up to \$10,000 per occurrence if willful

Changes to Lease Financings in Tennessee

Leases in TN Require Comptroller Approval

- [Tenn. Code Ann. § 9-24-104](#)

- (a) Public entities shall comply with the following requirements in connection with approving and entering into any lease financing that is not an exempt lease financing:
 - (1) Prior to entering into a lease financing, a public entity shall obtain the approval of the comptroller of the treasury or the comptroller's designee pursuant to subsection (b), which approval must be submitted to the governing body of the public entity for consideration in connection with any authorization of such a lease financing;
 - (b) (1) When requesting approval of the comptroller, **the public entity shall submit a plan of lease financing to the comptroller of the treasury** or the comptroller's designee. The comptroller of the treasury or the comptroller's designee may request any additional information as may be required to properly review the proposed plan of lease financing. The comptroller of the treasury or the comptroller's designee shall evaluate each plan of lease financing based on the plan's particular circumstances and shall approve the plan only if a determination is made that the repayment terms are in the public's interest.
- State Comptroller's office has 15 business days to report on approval or disapproval.

Requirements for Comptroller Approval

- Statute Requires a “plan of lease financing”.

The State Comptroller states that the following matters must be addressed in the lease document before consideration will be given to approval:

1. Not to exceed dollar amount.
2. Schedule of estimated principal and interest requirements.
3. Estimate of issuance costs.
4. Lease terms that are reasonable and comparable to debt being issued in current markets.
5. A weighted average maturity of the principal payments not exceeding the life of the property being financed.
6. Lease term that does not exceed the maximum term.
7. Description of property to include estimated useful life and authorization to incur indebtedness.
8. Statement that the lease is payable from all or any portion of revenues of the public entity.
9. Not to exceed interest rate less that state usury maximum.

Lessee and Lessor hereby certify as follows, but only to the extent necessary for approval by the Comptroller's Office pursuant to Tenn. Code Ann Section 9-24-101:

- (1) The Amortization Schedule attached hereto as **Exhibit A** is a true and correct copy of the estimated annual principal and interest requirements due under the Lease, with such calculations based on a nominal annual rate of 4.660%, effective through August 15, 2022, after which date if the Lease has not commenced such rate is subject to change based on the actual closing date and a change in interest rate to reflect _____'s spread over like-term Treasury constant maturities as of March 29, 2022 (as referenced via the Federal Reserve website:
<http://www.federalreserve.gov/releases/h15/update/default.htm>.
Any increase to current Treasury constant maturities prior to commencement shall cause the Base Term Rent to be adjusted accordingly. Base Term Rent will be fixed upon the commencement of the Lease.
- (2) Provided Lessee complies with the terms of the Agreement and subject to potential change to the nominal annual rate of interest (as described above), the total amount of obligations incurred by Lessee under the Agreement are estimated not to exceed \$_____.
- (3) There are no costs of issuance with regard to the Agreement.
- (4) The nominal annual rate of the Agreement shall not exceed 4.660% as set forth in the Amortization Schedule attached hereto as Exhibit A; provided, however, such rate is subject to potential change (as described above).

In addition, Lessee hereby certifies as follows, but only to the extent necessary for approval by the Comptroller's Office pursuant to Tenn. Code Ann Section 9-24-101:

- (1) The terms and conditions of the Agreement are reasonable and comparable to other debt issuances offered in the market for similar equipment and term.
 - (2) The weighted average maturity of the principal payments under the Agreement of 1.493 years does not exceed the estimated weighted average life of the Equipment of approximately 6 years. The expected useful life of the Equipment is six years.
 - (3) The term of the Agreement does not exceed the maximum term of debt that could be issued by Lessee to finance the Equipment.
-
- (4) The purpose of the Agreement is to acquire technology equipment, specifically _____, used for instructional purposes.
 - (5) Lessee is authorized to incur indebtedness for the project pursuant to Tenn. Code Ann. § 7-51-902.
 - (6) The total Lease Payments under the Agreement are payable from all or a portion of the revenues of Lessee.
 - (7) The nominal annual rate of the Agreement as set forth in the Amortization Schedule attached hereto as **Exhibit A** is less than the state usury maximum, as per Tenn. Code Ann. §47-14-103.

Reedy Creek Improvement District

- Reedy Creek Improvement District is a progressive form of government, created in 1967 by a special Act of the Florida Legislature, the purpose of which is to support and administer certain aspects of the economic development and tourism within District boundaries. The District encompasses approximately 25,000 acres in both Orange and Osceola counties, servicing 19 landowners, including Walt Disney Co. and its wholly-owned affiliates. RCID operates in accordance with its Charter and Chapter 189, *Florida Statutes, The Uniform Special Districts Accountability Act*.
- The District oversees:
 - land use and environmental protections
 - essential public services (*e.g.* fire protection, emergency medical services, potable water production, treatment, storage, pumping & distribution, reclaimed water distribution, chilled and hot water systems, wastewater services, drainage and flood control, electric power generation & distribution, and solid waste and recyclables collection & disposal)
 - Operation and maintenance of all public roadways & bridges.
- The District funds its operations, services, and capital improvements by assessing taxes and fees to the District's landowners and lessees, and by issuing ad valorem and utility revenue bonds.

- The special designation means that Disney can make its own decisions on the planning and permitting process for construction on its property, levy taxes within the District to pay for its own essential services (fire and medical) and even generate some of its own electricity. According to experts, Disney has saved millions of dollars in fees and taxes.
- Disney leveraged the above benefits to build out its resort properties at lower costs.
- With its special status revoked (effective June 1, 2023), Disney will have to negotiate with the governments in Orange and Osceola counties over using the counties' services. The change could also leave its residents with higher taxes, with some experts estimating up to a 20 percent hike.

Reedy Creek Debt

- The District has about one billion in outstanding debt.
- Florida law states that upon the dissolution of a special district, the responsibility for repayment of the District's debt falls to the local government. In Reedy Creek's case, this responsibility would fall to Orange County (which encompasses most of the District), Osceola County, the City of Bay Lake and Lake Buena Vista. Title to all property owned by the District will also pass to these entities.
- A separate law promises bondholders that the State would not interfere with the District's tax collections.
- Governor DeSantis' office said that a plan for Reedy Creek is being developed and could be made public within the next few weeks. Governor DeSantis has gone on record stating that "the bonds will be paid by Disney."

- The District uploaded a statement while the legislation was working through the State of Florida legislature.
 - The Reedy Creek Act in part provides that the State (1) will not limit or alter the rights of the District (a) to own, acquire, construct, reconstruct, improve, maintain, operate or furnish the projects or to levy and collect the taxes, assessments, rentals, rates, fees, tolls, fares and other charges provided for in the Reedy Creek Act, and (b) to fulfill the terms of any agreement made with the holders of any bonds or other obligations of the District; and (2) that it will not in any way impair the rights or remedies of the holders, and that it will not modify in ACTIVE 64301335v2 ACTIVE 64301335v4 any way the exemption from taxation provided in the Reedy Creek Act, until all such bonds together with interest thereon, and all costs and expenses in connection with any act or proceeding by or on behalf of such holders, are fully met and discharged.
 - “In light of the State of Florida’s pledge to the District’s bondholders, Reedy Creek expects to explore its options while continuing its present operations, including levying and collecting its ad valorem taxes and collecting its utility revenues, paying debt service on its ad valorem tax bonds and utility revenue bonds, complying with its bond covenants and operating and maintaining its properties.”

Possible Paths Forward

- The legislation referenced on the previous slide is no longer in force after the new law takes effect next year. (One state lawmaker has proposed this would be the case).
- The courts or additional legislation could help determine how to split up the District's debt amount the four local government entities.
- Lawmakers could authorize a less powerful version of the District for purposes of servicing the outstanding debt.
- Florida courts could invalidate the new law and things will go back to the way they were prior to the new law.

Consequences to Local Governments

- One public official from Orange County said at a press conference that Reedy Creek currently covers the cost of police, fire and 911 services. The cost of those services would be “catastrophic” for the County’s budget. Osceola County stated that it is evaluating the impact of any shifts in cost to its budget.