



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 27, 2024

To All Bond Counsel:

RE: Increased Costs of Public Improvement Districts

This letter provides guidance to issuers of public improvement district bonds when the actual cost of improvements materially exceeds the estimated cost of improvements as determined by the governing body at creation.

A petition for the establishment of a public improvement district must state the "estimated cost of the improvement", which is stated in the notice for the creation hearing.<sup>1</sup> At creation, the issuer must make findings by resolution as to the estimated cost of the improvement.<sup>2</sup> After creation, when the issuer seeks to levy assessments, the notice of the assessment hearing must include the "cost of the improvement."<sup>3</sup> In other words, at creation the governing body must provide a good faith estimate<sup>4</sup> of the costs, with the actual costs being determined at the assessment hearing.<sup>5</sup> If the actual costs materially exceed this estimate<sup>6</sup>, the issuer will likely need to provide the reasons for the substantial increase. Upon a reasonable showing made in good faith, and assuming that the actual costs were properly noticed and assessed, the fact that the actual costs exceed the estimated costs will not preclude bond approval. We ask that you preclear the matter with this office prior to pricing the bonds to avoid any uncertainty.

We have provided this letter pursuant to our authority under section 402.044 of the Government Code, which requires that we advise the proper legal authorities about the issuance of bonds that by law require the attorney general's approval. However, please note that this letter does not dictate how a court may rule in a legal proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Brock".

Leslie Brock  
Assistant Attorney General Chief,  
Public Finance Division

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<sup>1</sup> Tex. Loc. Gov't Code §§ 372.005(a)(2), 372.009(c)(3).

<sup>2</sup> Tex. Loc. Gov't Code § 372.009(b)(3).

<sup>3</sup> Tex. Loc. Gov't Code § 372.016(b)(3).

<sup>4</sup> Stating an astronomically high estimate that has no reasonable relation to the proposed improvement costs is not a good faith estimate.

<sup>5</sup> An estimate should not be seen as a cap on expenses, but the true estimate that the developer and the governing body believe at the time of creation will be the overall actual costs.

<sup>6</sup> Generally, if the actual costs exceed the estimated costs by 10% or more, we will deem it material.