



Texas Association of School Boards

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org

Serving Texas Schools Since 1949

Public Hearing for Payment in Excess of Amount Owed Under Contract

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Texas Local Government Code section 180.007 requires political subdivisions, including school districts, to hold a public hearing before paying an employee or former employee more than an amount owed under a contract. This hearing has specific statutory requirements described below. Since this legislation was passed in 2013, many questions have arisen about when a hearing is required under Section 180.007. It appears clear that a hearing is not required when employee raises are awarded in conjunction with the annual budget cycle if an employee's contract specifies that the employee will be paid according to the compensation plan adopted by the board. The statute is less clear about when school districts should hold a public hearing when pay is increased at other times.

The legislative history indicates that the legislature passed this statute to increase public awareness of the amount paid for a buyout of an employee's contract that exceeds the amount owed under the contract. Notably, during the hearing on the proposed legislation, Representative Aycock stated, ". . . and that would include people like school superintendents, coaches, people like that—if you're going to pay more than the face value of the contract—I think you oughta explain to the public why you are doing it." [Hearings on Tex. H.B. 483 Before the House Comm. on Gov't Efficiency and Reform](#), 83rd Leg., R.S. (Mar. 18, 2013) (statement of Representative Jimmie Don Aycock).

Complying with the public hearing requirement is not complicated, and holding a hearing ensures that a political subdivision is not violating the constitutional prohibition on gifting public funds. Tex. Const. art. III, §§ 51, 52(a), 53; art. XI §3; art. XVI § 6(a). Conservatively, TASB Legal Services recommends that districts conduct a public hearing if the district is uncertain as to whether a hearing is required by law. The public hearing can be held at a regular or special meeting of the board as long as notice of the hearing is posted in accordance with the Texas Open Meetings Act. At the public hearing, the board must state: 1) the reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose served by the excess payment; and 2) the exact amount of the excess payment, the source of the payment, the terms for distribution of the payment that effect and maintain the public purpose of the excess payment. Tex. Loc. Gov't Code § 180.007(c). While public comment is not specifically required under the statute, TASB Legal Services recommends that the meeting notice include an agenda item for a hearing regarding a payment in excess of a contractual amount and permit the public to comment during the hearing.

Frequently asked questions relating to the hearing requirement under Texas Local Government Code section 180.007:

Is a hearing required if pay is increased in exchange for performance of additional duties?

It depends. If the duties were incorporated into the employment contract and were part of the compensation plan adopted by the board, a hearing is likely not necessary. If the duties are incorporated into a new contract, a hearing is probably not required. If the duties are in addition to current duties and not otherwise set out in writing, the board should consider holding a hearing under Texas Local Government Code section 180.007. Determining the need for a hearing will require careful analysis of the job duties encompassed by the contract and the compensation plan adopted by the board. If in doubt, the board should hold a hearing or seek advice from the school district's attorney.

Is a hearing required if the district provides raises for at-will employees?

Arguably, no. The statute requires a hearing based on payments in excess of "an amount owed under a contract." Tex. Loc. Gov't Code § 180.007(a). Because at-will employees, by definition, are not contractually bound to a district an increase of compensation would not require a hearing. Please note, however, that any increase in pay for non-contract employees should be established by the board before the pay period in which the work begins.

If a district holds a hearing with the required elements, is a district authorized to provide a mid-year pay increase for a contract employee?

Based on the legislative history, the purpose of this law was to make the public aware of the use of public funds for contract buyouts that exceed the face value of the contract. There is no indication that the legislature added this law to make it easier to award a bonus or otherwise increase the compensation of a district employee after work has started for a contract year. To overcome a gift of public funds challenge under article III, section 52 of the Texas Constitution, a governmental body must not only ensure that the payment accomplishes a public purpose, but must also retain control over the funds and ensure that the district receives a return benefit. Tex. Att'y Gen. Op. No. GA-204 (2004). The public hearing requirement under Texas Local Government Code section 180.007 addresses one element of this test, stating a public purpose. However, the attorney general cites to two additional provisions of the Texas Constitution, sections 44 and 53, of article III, which prohibit extra compensation after work on a contract has been performed. Tex. Att'y Gen Op. No. GA-204 (2004). A board finding of a public purpose provided in the public hearing under Section 180.007 would not overcome a challenge that public compensation cannot be increased retroactively. For additional information about mid-year pay increases for school district employees, see [Mid-Year Pay Increases of School District Employees](#), available on TASB School Law eSource.

Is a hearing required for contract buyouts?

Based on the legislative history, the purpose of this law is to make the public aware of the use of public funds for contract buyouts that exceed the face value of the contract. However, all contract buyout negotiations are different, and school attorneys have differing opinions as to whether a public hearing is required in all situations. If the buyout was provided for in the contract, a public hearing is probably not required. If the amount of the buyout is equal to or less than the compensation the employee would receive if he or she completed the contract, an argument could be made that the payment would not fall within the hearing requirement of Texas Local Government Code section 180.007. If the buyout amount exceeds what the employee would receive if he or she completed the contract, a hearing is required. In this and all aspects of a contract buyout, we recommend that the district work closely with its school attorney for legal advice specific to the district's situation.

Is a hearing required if a district increases superintendent compensation mid-year?

It depends. If the board votes to increase compensation for the superintendent, and the salary adjustment is not made in conjunction with signing a new contract, the board should hold a hearing in compliance with Texas Local Government Code section 180.007. On the other hand, a hearing may not be necessary if the raise becomes effective at the same time the board issues a new contract or becomes effective at the start of the next school year. Remember that school districts must disclose superintendent compensation annually as part of the Financial Integrity Rating System (FIRST) Disclosures.

Sample Script for Payment in Excess of Contractual amount

TASB Legal Services recommends that the notice for a meeting that includes a hearing for a payment in excess of a contractual amount include an item on the agenda reading "Public hearing regarding increase in compensation to employee in accordance with Texas Local Government Code section 180.007." While not specifically required by the statute, TASB recommends that the board should provide an opportunity for public comment after such item. If the employee receiving the payment is in a position of high public interest, the position should be listed on the meeting notice.

At the hearing itself, after board discussion and public comment, the board's motion should state the following:

"I move that _____ (district name) Independent School District Board approve an excess compensation payment to _____ (name of employee or former employee) of \$ _____, payable (monthly/annually/for the next ____ months). This payment is being made for the public purpose of _____ (state the reason the district is increasing the compensation beyond the contract amount). The funds for this increase will come from _____ (state source of the payment). The payment will be distributed (describe the frequency of the payment, i.e.: lump sum, each pay period, and any terms related to the public purpose served by making the excess payment)."

Conclusion

Since this provision was added to the Texas Local Government Code it has not been interpreted by any court or administrative decision. As such, this law is open to interpretation. If you have questions about how to apply Texas Local Government Code section 180.007 to a mid-year pay increase in your district, we recommend the district contact its school attorney for advice specific to the district's situation. If you have questions about this article or any other legal issue, feel free to call the toll free TASB Legal Line at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at [.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/public_hearing_payment_excess_amount_owed_under_co.pdf](https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/public_hearing_payment_excess_amount_owed_under_co.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://www.schoollawesource.tasb.org).

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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