

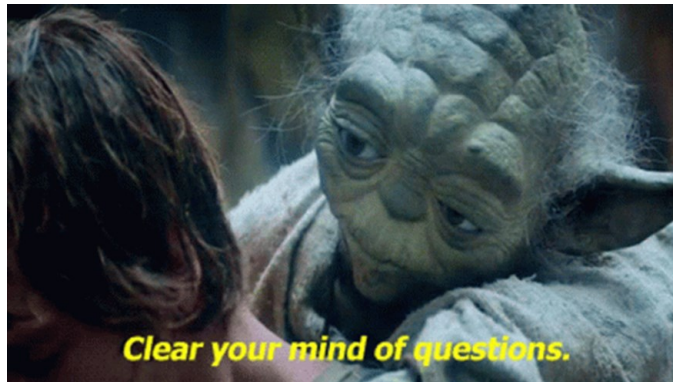
SB 2 / HJR 2 (88th 2nd C.S.):
Welcome to the Whole New
Property Tax World

*Changes to the Composition of
the BOD and ARB.*



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*Changes to the Composition of the
BOD and ARB.*



What remains to be done before the new system provided for in SB 2 (88th 2nd C.S.) begins?

Turmoil has engulfed the Republic. The taxation of property in systems is in dispute. Hoping to resolve the matter a mysterious message is broadcast throughout the galaxy ...

Tex. Const. Art. XVI § 30 (e): The Legislature by general law **MAY PROVIDE** that members of the governing body of an appraisal entity established in a county with a population of 75,000 or more serve terms not to exceed four years.

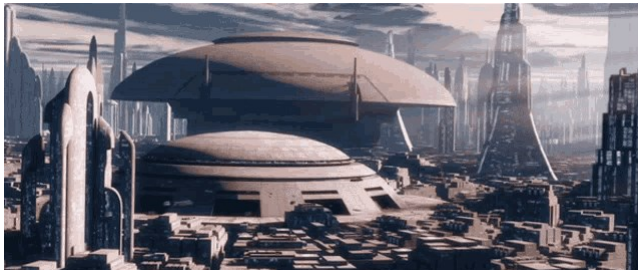
This transmission [H.J.R. 2 (Metcalf)] has created angst and many questions by local administrators on several systems, as the PEOPLE prepare to vote for a \$100,000 ad valorem school tax exemption.



3

What appraisal districts (counties) does the BOD changes in SB 2 apply to?

- CAD BODs in “populous” counties are impacted.
- Counties with a population of 75,000 or more are described as “populous” counties.
 - Per a new Tax Code Section 6.0301 created by SB 2 (88th 2nd C.S.).



4

If my CAD's county population is less than 75,000, what do we do?

- You are in a "less populous" county.
- You WILL NOT have to participate in this new elected BOD member process / system.
- For now, it appears you can continue to follow your current BOD set up.
 - For example, you could keep following Tax Code Section 6.03.
 - 5 Directors appointed by your taxing units.
 - If not appointed to BOD the TAC serves as a nonvoting director.
 - Must be a resident of the District for at least two years preceding the date director takes office.
 - CA calculates the number of votes for taxing units for BOD
 - 2-year term begins on January 1 of even-numbered years.
 - Vacancies filled by nominations from taxing unit and the majority vote of BOD from that list.
 - BOD or taxing units that are not "populous" can still increase the size of their BOD, not to exceed 13 members, per Tax Code Section 6.031.
 - Taxing units can provide for optional staggered terms of BOD per Tax Code Section 6.034.
 - Governing body of a majority of taxing units can disapprove of BOD actions (other than budget per Tax Code Section 6.10).
- However, you should pay attention because this may apply to you and your CAD / BOD someday.



5

How do I know if my District is (or is not) in a "populous" county?

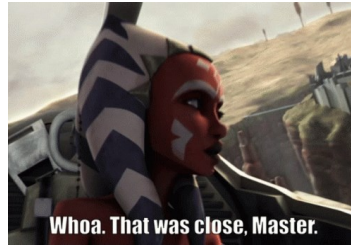
- Texas Govt Code Section 311.005 states "Population" means the population shown by the most recent federal decennial census.
 - In other words, use the 2020 US Census data.
- Texas Association of Counties has helpful information on its website with such data and analysis.
 - <https://txcip.org/tac/census/CountyProfiles.php>



6

Close to being a “populous” county, but not yet.

County	Population 2020
Hood	61,598
Nacogdoches	64,653
Starr	65,920
Wise	68,632
San Patricio	68,755
Harrison	68,839



7

Congratulations! You just qualified to be a “populous” county.

County	Population 2020
Walker	76,400
Henderson	82,150
Coryell	83,093
Orange	84,808
Angelina	86,395
Victoria	91,319
Liberty	91,628
Bowie	92,893
Bastrop	97,216
Hunt	99,956
Rockwall	107,819
Potter	118,525



8

When do the SB 2 (88th 2nd C.S.) changes to a new system take effect?

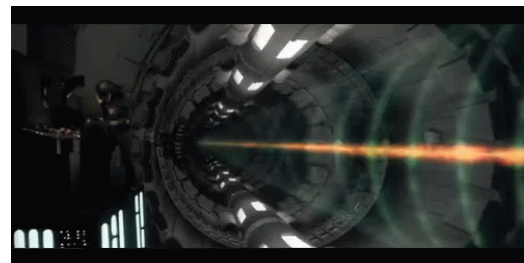
- Most parts of this bill have an effective of July 1, 2024.
- Certain parts of the bill that generally deal with the preparation for elections of BOD members become effective on the 91st day after the last day of the legislative session.
 - (July 13, 2023 + 91 days = October 12, 2023).
- Consult SB 2 to make sure of the effective dates for the portion of the bill you are reviewing.



9

Our CAD uses the $\frac{3}{4}$ Rule and has a population of more than 75,000. What happens to us under the new SB 2 system?

- Per SB 2, **current Tax Code Section 6.031 WILL NOT apply** to “populous” CADs.
- The $\frac{3}{4}$ Rule is therefore eliminated in “populous” counties.
- This becomes effective July 1, 2024.



10

Our CAD uses the $\frac{3}{4}$ Rule and has a population of more than 75,000. What happens to us under the new SB 2 system?

- **One attorney's opinion / interpretation** is this is prospective. So **just carry on** and add the 3 elected BOD members to your group. It all gets culled / rearranged on December 31, 2024.
- **Another attorney's opinion / interpretation**, is a 180 of this. **You will have to change and follow this new BOD system on July 1, 2024.**
 - **5 nominated and appointed BOD members** from taxing units;
 - Selected by Code's original vote / levy scheme.
 - Positions will not be staggered.
 - **3 Elected** BOD members;
 - **1 TAC** in an ex officio capacity.



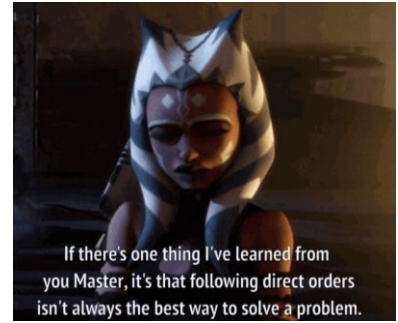
If I think things change our $\frac{3}{4}$ Rule system on July 1, 2024, how the heck in August – December 2023 do I work on converting to this new system!?!?

- IF a certain attorney's opinion is correct, **there does not appear to be anything in SB 2 clearly addressing this.**
- Perhaps this attorney's best idea to bridge the problem is that the BOD eliminates its $\frac{3}{4}$ Rule in 2023.
 - Then the CAD goes back to following Tax Code Section 6.03.
 - The CA sends out nominations and voting per 6.03 in Fall of 2023.
 - Taxing Unit appointments are honored / carried out in 2024+ for 5 appointed directors.



If I think things change our $\frac{3}{4}$ Rule system on July 1, 2024, how the heck in August – December 2023 do I work on converting to this new system!?!

- Other possible wild ideas might be ...
- Perhaps the CA generates places for each seat, like court of appeals justices?
 - Places 1-5 remain. The rest are eliminated on July 1, 2024?
 - This could honor taxing units' votes / wishes?
- Perhaps the members with the top 5 number of votes remain after July 1, 2024?
- What if there are staggered terms too?
 - Perhaps the least experienced are eliminated first?
 - Perhaps the most tenured are eliminated first?
- **You and your BOD should discuss this issue with your attorney for their opinion.**
- **You and your BOD may also want to discuss this issue with your county attorney and see if they will write a letter seeking an AG opinion on how to handle this.**



13

What other things does SB 2 eliminate regarding BODs in populous counties?

- **SB 2 eliminates Tax Code Section 6.034** (Optional Staggered Terms for Board of Directors) in populous counties.
 - Presumably because SB 2 will mandate staggered terms for BOD members whether elected or appointed by taxing units.
- **SB 2 eliminates Tax Code Section 6.10** (Disapproval of Board Actions [other than budget adoption]) in populous counties.
 - Presumably because SB 2 creates a democratic process with units and the citizens having a voice?



14

For populous counties under the new SB 2 system, how many members will be on the BOD? How many will be elected?

- In total, there will be **9 members** on the BOD when SB 2 (88th 2nd C.S.) is implemented.
 - **Three (3) BOD members will be elected by majority vote** in the county the District is established.
 - **Five (5) BOD members will be appointed by the taxing units** participating in the District.
 - **One (1) member of the BOD will be the County Tax Assessor-Collector** in an ex officio capacity.



15

Do term limits currently in the Tax Code apply under this new system?

- Yes.
- Tax Code Section 6.035 addresses BOD term limits.
- It was not excepted or changed per SB 2.
- Therefore, the “ineligible to serve” language should apply to:
 - Appointed BOD members by taxing units; AND
 - Elected BOD members.



16

What are the term limits under the new system?

- Members will be ineligible to serve on the BOD if they have **served all or part of 5 terms in counties with a population of 120,000 or more.**
 - You will need to unlearn thinking / saying “10 years” (5 terms x 2 years for each)
 - Presumably, this term limit “shot clock” began on January 1, 2022, with the implementation of SB 63 (Nelson) from the 87th Leg.
 - BOD terms prior to SB 2 are **two (2) years.**
 - First BOD terms after SB 2 for elected dir. are almost **2.5 years.**
 - First BOD term for appointed dir. after SB 2 will be **one (1) year.**
 - Then a mix of **four (4) years.**
 - You may need to do some math and tracking to determine if the BOD member has reached all or part of 5 terms.
- Term limits **DO NOT apply** in counties with a population of less than 120,000.



17

What are the eligibility requirements to be on the BOD (elected or appointed) in this new system?

- To be eligible to serve on the BOD, an individual, other than the TAC, **must be a resident of the district (county).**
- The individual, other than the TAC, must have **resided in the district (county) for at least two years immediately preceding the date of taking office.**
- **Members of a governing body or elected official of a taxing unit in the district CAN serve on the BOD.**
 - Examples:
 - Mayors;
 - School Board Trustees;
 - County Commissioners.
- **An employee of a taxing unit that participates in the appraisal district is NOT eligible to serve on the board (unless the individual is also a member of the governing body or an elected official of a taxing unit that participates in the district).**
 - Examples:
 - City Firefighter, Police Officer
 - Teacher, Janitor, Librarian;
 - Deputy Sherriff, Detention Officer, Amin. Secretary.

18

Does Tax Code 6.035 (Restrictions on Eligibility and Conduct of Board Members and Chief Appraisers and Their Relatives) apply to elected AND appointed BOD members under the new system?

- Believe so ...
- **Owing delinquent property taxes disqualifies a person from serving on the CAD board of directors.**
 - The person is ineligible if he or she owns property on which delinquent property taxes have been owed for more than 60 days after the date the person knew or should have known.
 - This disqualification does not apply if the person is paying the delinquent taxes and any penalties and interest under an installment payment agreement or has deferred or abated a suit to collect the delinquent taxes.
- A person is ineligible to serve on the board of directors if the individual is **related within the second degree of consanguinity (blood) or affinity (marriage) to** the following:
 - an appraiser who appraises property for use in a proceeding under the Tax Code; or
 - a person who represents property owners for compensation in proceedings under the Tax Code in the CAD.

19

Does Tax Code 6.035 (Restrictions on Eligibility and Conduct of Board Members and Chief Appraisers and Their Relatives) apply to elected AND appointed BOD members under the new system?

- Believe so ...
- **A person who has appraised property for compensation for use in proceedings, represented property owners for compensation in proceedings in the CAD or was a CAD employee at any time within the preceding three years is ineligible to serve on the board of directors.**



20

Does Tax Code 6.036 (Interests in Certain Contracts are Prohibited) apply to elected and appointed BOD members under the new system?

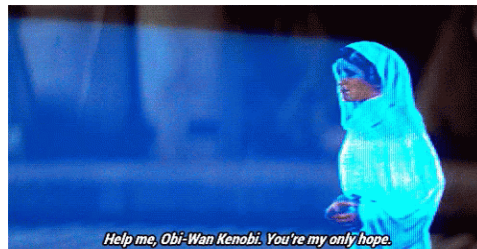
- Believe so ...
- An individual **cannot be a candidate that is elected** or be **an individual who is appointed by a taxing unit to serve** on a CAD BOD **if that person or a business entity the person has a substantial interest in is a party to a contract with the CAD or a taxing unit participating in the CAD** (if the contract relates to a performance of an activity governed by the PTC).



21

Will the Secretary of State develop an application for those wanting to run for CAD BOD in the new system?

- Presumably, yes.
- SB 2 requires Rules to be adopted by the SOS to implement this new system.
- These will likely be adopted and published later this year or early next year prior to the first election in May 2024.



22

How will the elections work under the new system?

- Texas Elections Code, Chapter 144, will apply to candidates running for election to the BOD.
 - Filing deadline is by 5 pm 78 days before uniform election date.
 - Candidate's name may only appear on ballot as an independent.
- To appear on the ballot for CAD BOD in populous counties one **must file an application** for a place on the ballot.
 - The applicant **must also pay a filing fee; OR**
 - Alternatively, one may **file a petition** with the requisite number of signatures to get on the ballot.
- The application will be filed with the county judge where the CAD is established.



23

How will the application and filing fee process to get a place on the ballot work in populous counties under the new system?

- In “populous” counties with a **population of 200,000 or more**, the candidate will need to **pay a \$400 filing fee** when submitting their application.
- In “populous” counties with a **population of less than 200,000**, the candidate will need to **pay a \$200 filing fee** when submitting their application.
- Filing fees will be deposited in the county treasury and credited to the county general fund.



24

How will the applications and petition process to get on the ballot work in populous counties under the new system?

- To appear on the ballot for CAD BOD in populous counties, one **may also file a petition and collect signatures** to be placed on the ballot instead of paying the filing fee.
 - The petition will be filed with the county judge where the CAD is established.
- The minimum number of signatures on the petition is the **lesser of**:
 - 500 OR
 - 2 percent of the total vote received in the county by all candidates running for governor in the most recent general election
 - (Unless this number is less than 50. Then it will be the lesser of 50 or 20% of the total vote).



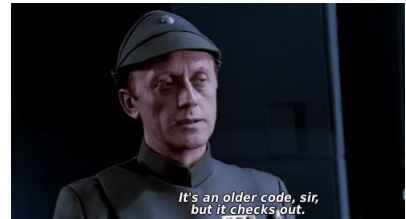
How is the ballot structured for those running for an elected BOD position?

- How the ballot is structured for new BOD elections is not clear.
- IF, for example, 4 individuals run for 3 positions, are the top 3 with the most votes elected to those positions?
- Are the positions each an office / place? If 4 indiv. ran, one place would be contested and the other two not?
- What happens IF the positions are an office / place and no candidate for a particular office receives the majority vote necessary?
 - **IF** this is how the ballot is structured then a **runoff election** for that office would be required.
 - Runoff elections should be handled as per Subchapter B of Chapter 2 of the Election Code.
 - There can only be two candidates in a runoff and the one that gets more votes wins.
 - If there was a tie during the runoff, the candidates determine the winner by casting lots.



Who is responsible for verifying the eligibility of individuals who run for election or are nominated for CAD BOD in populous counties?

- **For elected BOD members**, Texas Elections Code 141.032 appears to place the responsibility of review of the application / petition on the “authority with whom the application is filed.”
 - In this case that would be **the County Judge**.
- There is some ambiguity for **appointed BOD members**.
 - Eligibility could be corrected **by a quo warranto proceeding**, which challenges a person’s right to hold a public office.
 - AG, County or Dist. Attorney file suit in the name of the State of Texas against the office holder in district court of proper county.
 - If there is a guilty verdict, the official is removed from office.
 - Tex. Civ. Practice & Remedies Code Section 66.002
 - **The Chief Appraiser is an administrator and does not appear authorized to determine eligibility.**



Who pays for the election and how much could the election of the 3 BOD members in populous counties be under the new system?

- Elections Code 1.014 charges the expenses of an election to the authority who orders the election.
 - **This appears to be the CAD.**
- Costs appear to vary based on the number of registered voters and possibly by entities who also have officers running (and thus sharing items on the ballot).
- Brent South and TAAD have sent out membercad blasts asking for data.
 - Austin County - \$38K
 - Bell County - \$79K
 - Brazoria County - \$86K+
 - Cameron CAD - \$370K
 - Dallas County - \$1,267,000
 - Denton County \$500K
 - Galveston County - \$462K
 - Harris County - \$14,000,000
 - Parker County \$35-70K
 - Williamson County – \$300-\$350K
- Each unit would pay their percentage of CAD budget based on their percentage if the levy in the District.
- **Figure out your potential costs and start talking to your taxing units about it!**



We have already set our budget or are in the process. How do we pay for this?

- Many CADs have adopted their budgets for the 2024 fiscal year.
 - You may need to do a budget amendment pursuant to Tax Code Section 6.06(c).
 - You may unfortunately have to drain your reserves.



29

What if my entities refuse to pay for these elections to implement the new SB 2 system?



- Hope you just have one and the majority conforms?
- In the end, CADs will have to comply.
 - Use reserves?
- When refilling account / budget if a unit refuses to pay timely they could be hit with penalties and interest (unless waived for good cause).
- Obviously a politically sensitive tightrope for a CA or BOD to walk.
 - Tread carefully!

30

What happens if at least 3 people do not run for positions as an elected BOD member in a populous county under the new system?

- Presumably, this creates at least one vacancy on the new board.
- This position will be **filled by a majority vote of the BOD** after body is sworn in and seated.



31

Let's talk about the TAC. What does *ex officio* mean?

- Webster's Dictionary states "*ex officio*" means "as a result of one's status or position."
 - Therefore, as a result of being the TAC.
- Robert's Rules of Order denotes how one becomes a member of a body.
- The rights of an *ex officio* member are the same as other members unless otherwise stated in laws or rules.



32

Will the TAC be a voting member on the BOD in the new SB 2 system for populous counties?

- SB 2 uses the term “*ex officio*” for the TAC on the BOD.
- But it is silent on whether the TAC is a voting member or a non-voting member.
 - Tax Code 6.03 currently states the TAC is a “nonvoting director” (if not appointed to BOD).
 - With the silence on nonvoting status in SB 2 ...
 - AND with 9 members on the BOD in new system there will be enough for a tie-breaker
 - Believe TACs will be voting members of BOD in populous counties.
 - On or after July 1, 2024.



33

Will BOD terms be staggered for elected members? How will this be accomplished in the new system for populous counties?

- Yes. Eventually there will be staggering.
- For elected BOD members, initial elections will be held on a uniform election date in May 2024.
- Winners who run will take office July 1, 2024.
 - They will roughly serve a 2.5-year term.
 - Terms expire December 31, 2026.
- BOD members will run for election held on a uniform election date in November 2026.
 - Winners’ terms will begin on January 1, 2027.
- Staggering will start for the elected BOD members at the first meeting after the 2026 election.
 - The 3 elected directors shall draw lots to determine which director shall serve a term of two years and which two directors shall serve a term of four years.
- Thereafter all elected directors will serve four-year terms.
 - These will begin on January 1 of every other odd-numbered year.
- Elections will be every even numbered year.

34

Will BOD terms be staggered for appointed members? How will this be accomplished in the new system for populous counties?

- New Tax Code Section 6.0301 in SB 2 mandates that the **BOD members appointed by the taxing units** serve staggered terms.
- **SB 2 in section 5.13(d) of the Bill provides that all sitting appointed BOD members serving on December 31, 2024, have terms that expire on January 1, 2025.**
- **By December 31, 2024, the taxing units will appoint five (5) BOD members to staggered terms to take office on January 1, 2025.**
 - Presumably, the openings would be for appointing 2 one-year directors and 3 three-year directors.
 - How they are selected for the length of these terms is not spelled out.
 - An idea is when the CA sends out information about votes and nominations, the CA could assign place numbers and identify which places are 1 year and which are 3 year. That way the taxing units could appoint who they want to appropriate places / terms.
 - Another idea is the appointed BOD members draw lots at the first meeting in 2025 to determine who serves the 2 one-year terms and who gets the 3 three-year terms.
 - Wait and see what the Legislature, Comptroller, or an AG Opinion advise?
- Thereafter all appointed directors in populous counties will serve four-year terms.
 - Nominations process will be in every other odd numbered year.
 - Terms will begin on January 1 of every other even numbered year.

35

If entity appointments to the BOD are staggered will the larger voting entities be able to “stack the BOD” because they will have the largest number of votes for half of the BOD?

- Yes.
 - It appears so per previous slide on appointed BOD members.



36

How are BOD vacancies filled in populous counties under the new system?

- A vacancy for an appointed director will be filled by the governing bodies entitled to nominate and vote for directors.
 - Nominations will be submitted by those units to the CA within 45 days of notice of vacancy from the BOD.
 - The CA will prepare and deliver a list of nominees within the next five days.
 - By *majority vote*, the BOD will select and appoint one of the nominees from the list to fill the vacancy.



37

How are BOD vacancies filled in populous counties under the new system?

- A vacancy by an elected member to the BOD will be filled by a *majority vote of the BOD*.
 - The person filling the vacancy must meet the qualifications required of an elected director at a general election.



38

Will there still be a recall process for appointed BOD members in populous counties under the new SB 2 system? If so, how will it work?

- Yes. There will be a recall process under the new system.
- Taxing units may still recall their [appointed BOD member](#).
- A governing body of a participating taxing unit can recall an appointed member of the CAD BOD it casts votes for.
- The recall must be a resolution.
- It must be filed with the CA.
- It must state the taxing unit is calling for the recall of the member.
- Within 10 days after the filing by the unit with the CA, the CA shall deliver written notice of the filed resolution with the other taxing units entitled to vote in appointing the member.



39

Under SB 2, who will appoint ARB members under the new system?

- In populous counties over 75,000 in population (new section 6.0301) ARB members will be appointed by the BOD.
 - Appointment to the ARB by the BOD must be by majority vote.
 - Also at least 2 members of the majority must be elected members of the BOD.
 - So, the elected BOD members votes count / weigh more.
 - More than a voting TAC on the BOD.
 - Is this super-voting power constitutional???
 - This also applies to qualified indiv. who would serve on ARB special panels.
 - ARB members will still serve terms, of two years, beginning on January 1.
 - ARB terms will be staggered.



40

Under SB 2, who will appoint ARB members under the new system?

- In counties with less than 75,000 in population (Section 6.03), based on legislation from 2021, the local administrative judge will still appoint ARB members.
- The TLO will provide clerical assistance and deliver applications to either the BOD or LAJ.
 - Effective January 1, 2024.



41

When does the BOD in populous counties begin appointing members of the ARB?

- SB 2 does not specify who makes appointments to the ARB on January 1, 2024.
- This portion of SB 2 becomes effective July 1, 2024.
- So, presumably it takes effect after the BOD elections in May 2024 and taking office by elected BOD members on July 1, 2024, since two elected members must approve of ARB membership.
 - You would still follow Tax Code 6.41(e) on replacing members of the ARB.



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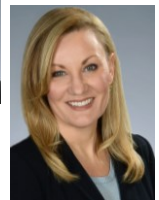
Who would appoint the ARB chair and Secretary in populous counties under SB 2's new system?

- In populous counties, with more than 75,000 in population, **the ARB Chair and Secretary will be by majority vote**, with at least two members of the majority being elected members of the BOD.



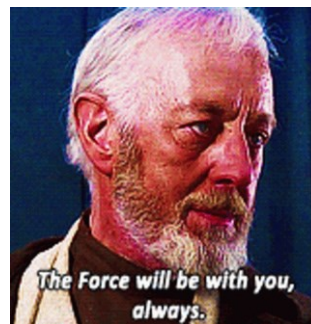
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A hat tip and thank you to my Jedi Masters...



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Remember – Do. Or do not. May the Force Be with you, always.



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