

GOVERNMENT CODE
CHAPTER 1207. REFUNDING BONDS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1207.001. DEFINITIONS. In this chapter:

(1) "Issuer" means this state or any department, board, authority, agency, subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of this state which has the power to borrow money and issue bonds, notes, or other evidences of indebtedness. The term includes a county, municipality, state-supported institution of higher education, junior college district, regional college district, school district, hospital district, water district, road district, navigation district, conservation district, and any other kind or type of political or governmental entity.

(2) "Paying agent" means the person, including the bank or trust company, at whose location payment of refunded obligations is to be made.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.002. AUTHORITY TO ISSUE. An issuer may issue refunding bonds under this chapter to refund all or any part of the issuer's outstanding bonds, notes, or other general or special obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.003. ELECTION. (a) Refunding bonds may be issued without an election in connection with the issuance of the refunding bonds or the creation of an encumbrance in connection with the refunding bonds, except as provided by Subsection (b).

(b) If the constitution of this state requires an election to permit a procedure, action, or matter pertaining to refunding bonds, an election to authorize the procedure, action, or matter shall be held substantially in accordance, to the extent appropriate, with Chapter 1251.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.004. COMBINATION ISSUANCE. Under the terms and with the security set forth in the proceedings that authorize the issuance of the refunding bonds, a governmental entity may issue refunding bonds:

- (1) in combination with new bonds;
- (2) with provision for the subsequent issuance of additional parity bonds or subordinate lien bonds; or
- (3) both in combination with new bonds and with provision for the subsequent issuance of additional bonds.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.005. SOURCES AVAILABLE FOR PAYMENT. Except as provided by Section 1207.0621, a refunding bond may be secured by and made payable from taxes, revenue, or both, another source, or a combination of sources to the extent the issuer is otherwise authorized to secure or pay any type of bond by or from that source or those sources.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.003, eff. Sept. 1, 2001.

Sec. 1207.006. MATURITY. A refunding bond issued under this chapter must mature not later than 40 years after its date.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.007. DELEGATION OF AUTHORITY. (a) In connection with the issuance of refunding bonds, the governing body of an issuer may:

(1) authorize the maximum principal amount of refunding bonds that may be issued and the maximum rate of interest to be borne by the bonds;

(2) identify the potential bonds, notes, or other general or special obligations that may be refunded;

(3) recite the public purpose for which the refunding bonds are to be issued; and

(4) delegate to any officer or employee of the issuer the authority to:

(A) select any specific maturities or series of bonds, notes, or other general or special obligations to be refunded; and

(B) effect the sale of the refunding bonds.

(b) In exercising the authority delegated by the governing body of the issuer to the officer or employee, the officer or employee may establish the terms and details related to the issuance and sale or exchange of the refunding bonds, including:

- (1) the form and designation of the refunding bonds;
- (2) the principal amount of the refunding bonds and the amount of the refunding bonds to mature in each year;
- (3) the dates, price, interest rates, interest payment dates, principal payment dates, and redemption features of the refunding bonds;
- (4) the form of escrow agreement described by Section 1207.062; and
- (5) any other details relating to the issuance and sale or exchange of the refunding bonds as specified by the governing body of the issuer in the proceedings authorizing the issuance of the refunding bonds.

(c) A finding or determination made by an officer or employee acting under the authority delegated to the officer or employee has the same force and effect as a finding or determination made by the governing body of the issuer.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 7, eff. Sept. 1, 1999.

Sec. 1207.008. LIMITATION. (a) An issuer may not issue refunding bonds if the aggregate amount of payments to be made under the refunding bonds exceeds the aggregate amount of payments that would have been made under the terms of the obligations being refunded unless:

(1) the governing body of the issuer, in the proceedings authorizing the issuance of the refunding bonds, finds that the issuance is in the best interests of the issuer; and

(2) the maximum amount by which the aggregate amount of payments to be made under the refunding bonds exceeds the aggregate amount of payments that would have been made under the terms of the obligations being refunded is specified in the proceedings.

(b) An issuer is not required to comply with Subsection (a)(2) if the governing body of the issuer determines and states in the proceedings authorizing the issuance of the refunding bonds that the manner in which the refunding is being executed does not make it practicable to make the determination required by that subsection.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 7, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 769, Sec. 4, eff. Sept. 1, 2001.

SUBCHAPTER B. ADVANCE REFUNDING PROCEDURES

Sec. 1207.021. AUTHORITY TO DEPOSIT WITH COMPTROLLER. (a) An issuer is entitled to deposit with the comptroller an amount of money equal to the sum of:

(1) the principal amount of the bonds, notes, or other obligations to be refunded;

(2) the interest that will accrue on those bonds, notes, or other obligations computed to the due date or redemption date; and

(3) any required redemption premium.

(b) At the time a deposit is made under Subsection (a), the issuer shall deliver to the comptroller a certified copy of the proceedings that authorize the issuance of the obligations to be refunded, or a certified excerpt from those proceedings, that clearly shows:

(1) each amount of interest and the date on which that amount of interest is due on the obligations to be refunded;

(2) the date the principal is subject to redemption; and

(3) the name and address of the paying agent.

(c) The comptroller may rely on a certificate by the issuer as to the amount of the charges made by the paying agent.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.022. LIMITATION. An issuer may issue refunding bonds to make a deposit under this subchapter or Subchapter C only in connection with refunding bonds issued to refund obligations that are:

(1) scheduled to mature not later than the 20th anniversary of the date of the refunding bonds; or

(2) subject to redemption before maturity not later than the 20th anniversary of the date of the refunding bonds.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 8, eff. Sept. 1, 1999.

Sec. 1207.023. AMOUNT OF PRINCIPAL. Refunding bonds for which a deposit is made under this subchapter or Subchapter C may be

issued in an additional amount sufficient to:

- (1) pay the cost and expense of issuing the bonds; or
- (2) finance a debt service reserve, contingency, or other similar fund the issuer considers necessary or advisable.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.024. METHODS AND TERMS OF SALE. (a) Refunding bonds issued to make a deposit under this subchapter or Subchapter C shall be sold for cash in a principal amount necessary to provide all or part of the money required to:

- (1) pay the principal of the obligations to be refunded and the interest to accrue on those obligations to their maturity; or

- (2) redeem the obligations to be refunded, before maturity, on the date or dates the obligations are subject to redemption, including the principal, interest to accrue on the obligations to their redemption date or dates, and any required redemption premium.

(b) The refunding bonds:

- (1) shall be sold under the terms and procedures for the sale as determined by the governing body of the issuer; and

- (2) may be sold at public or private sale.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.025. REGISTRATION BEFORE DEPOSIT; REGISTRATION WITHOUT CANCELLATION OF OBLIGATIONS TO BE REFUNDED. (a) The comptroller may register refunding bonds as provided by Chapter 1202 before a deposit required by this subchapter or Subchapter C is made.

(b) If the issuer has complied with each applicable requirement of this chapter, the comptroller shall register refunding bonds issued to make a deposit under this subchapter without the surrender, exchange, or cancellation of the obligations to be refunded.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 9, eff. Sept. 1, 1999.

Sec. 1207.026. USE OF SALE PROCEEDS TO MAKE DEPOSIT; RIGHTS NOT DEPENDENT ON CANCELLATION OF OBLIGATIONS TO BE REFUNDED. (a) An issuer may sell and deliver refunding bonds that have been registered with the comptroller so as to permit the issuer, in a timely manner determined by the issuer, to use proceeds from the sale to make all or any part of a deposit under this chapter.

(b) An issuer that has complied with this chapter may issue, register, sell, or deliver a refunding bond in lieu of the obligation to be refunded regardless of whether:

- (1) the holder of the obligation to be refunded has surrendered or presented the obligation for payment and cancellation; or

- (2) the obligation to be refunded has been canceled.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.027. COMPTROLLER TO ACCEPT AND KEEP SAFE DEPOSITS. (a) The comptroller shall:

- (1) accept each deposit, payment, or instrument received under this subchapter; and

- (2) safely keep and use the money only for a purpose specified in this subchapter.

(b) Money deposited with the comptroller under this subchapter may not be:

- (1) used by or for the benefit of this state or for the benefit of a creditor of this state, except as provided by Section 1207.032; or

- (2) commingled with other money.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.028. COMPTROLLER TO SEND AND RECORD DEPOSIT OR PAYMENT. (a) After receipt of a deposit or payment under this subchapter, the comptroller shall immediately and by the most expeditious means send to the paying agent for the obligation being refunded an amount equal to the deposit or payment less the amount of any fee charged under Section 1207.032.

(b) The comptroller shall notify the paying agent to send to the comptroller the obligation being refunded.

(c) After the comptroller has made a record of its payment and cancellation, the comptroller shall send the obligation being refunded and any interest coupon to the issuer.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.029. SELECTION OF PAYING AGENT. If there is more

than one paying agent for an obligation being refunded, the comptroller shall send the money directly to:

(1) the paying agent located in this state, if only one paying agent is located in this state;

(2) the paying agent located in this state having the largest capital and surplus, if more than one paying agent is located in this state; or

(3) the paying agent having the largest capital and surplus, if no paying agent is located in this state and more than one paying agent is located in another state.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.030. ESTABLISHMENT AND USE OF TRUST FUND. (a) The paying agent shall deposit the money received from the comptroller, except that amount representing the charges of the paying agent, in an interest and sinking fund to be established and maintained as a trust fund for the payment of the obligation being refunded.

(b) The paying agent shall, from the interest and sinking fund, pay or redeem the obligations to be refunded when properly presented for payment or redemption.

(c) If there is more than one paying agent, the agent to whom the comptroller sent the money under Section 1207.029 shall make appropriate financial arrangements to ensure that the necessary money will be available to any other paying agent to pay or redeem an obligation to be refunded when presented for payment or redemption.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.031. WITHDRAWAL OF DEPOSIT. (a) An issuer that has made the deposit and payments required by this subchapter may apply to the comptroller to withdraw from the paying agent the amount of money deposited to the credit of the account of an obligation that has been refunded, including interest and premium, if any, by exhibiting the canceled obligation to the comptroller. The comptroller shall make a proper record of payment and cancellation of that obligation.

(b) An issuer may withdraw money deposited under this subchapter only if:

(1) the conditions stated in Subsection (a) are met; or

(2) the attorney general certifies to the comptroller that the issuer's payment of the obligation as to which the deposit was made is barred by limitation and forbidden by law.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.032. COMPTROLLER FEES. The comptroller may charge a reasonable fee for a service performed under this subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.033. DISCHARGE. (a) A deposit of money made under this chapter is considered to be the making of firm banking and financial arrangements for the discharge and final payment or redemption of the obligations to be refunded or to be paid or redeemed wholly or partly without the issuance of refunding bonds if the deposit is made on or before the payment or redemption date or dates of the obligations.

(b) An issuer may provide in the proceedings authorizing the issuance of the refunding bonds that the refunding bonds are subordinate to the obligations to be refunded. The subordination may be made only in the manner and to the extent specifically provided by those proceedings.

(c) After firm banking and financial arrangements for the discharge and final payment or redemption of the obligations have been made under Subsection (a), all rights of an issuer to initiate proceedings to call the obligations for redemption or take any other action amending the terms of the obligations are extinguished. The right to call the obligations for redemption is not extinguished if the issuer:

(1) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the obligations for redemption;

(2) gives notice of the reservation of that right to the owners of the obligations immediately following the making of the firm banking and financial arrangements; and

(3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(d) Subsection (c) applies only to firm banking and financial arrangements made on or after September 1, 1999, and has no effect on the validity or legality of any such arrangements made

before that date.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 10, eff. Sept. 1, 1999.

Sec. 1207.034. RIGHT TO DEMAND OR RECEIVE EARLY PAYMENT. The holder of an obligation to be refunded by refunding bonds may not demand or receive payment of the obligation to be refunded before its scheduled maturity date, due date, or redemption date unless the proceedings authorizing the refunding bonds specifically provide for the earlier payment.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.035. CONFLICT OR INCONSISTENCY WITH OTHER LAWS. To the extent of a conflict or inconsistency between this subchapter and another law, this subchapter controls.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. DIRECT DEPOSIT WITH PAYING AGENT

Sec. 1207.061. AUTHORITY TO DEPOSIT DIRECTLY. (a) An issuer may, in lieu of making a deposit with the comptroller under Subchapter B, deposit an amount of money sufficient to provide for the payment or redemption of the obligations, including assumed obligations, to be refunded or to be paid or redeemed in whole or in part without issuing refunding bonds, directly with:

(1) a paying agent for any of the obligations to be refunded, paid, or redeemed;

(2) the trustee under a trust indenture, deed of trust, or similar instrument providing security for the obligations to be refunded, paid, or redeemed; or

(3) a trust company or commercial bank other than one described by Subdivision (1) or (2) that:

(A) does not act as a depository for the issuer; and

(B) is named in the proceedings of the issuer authorizing execution of an agreement under Section 1207.062.

(b) An issuer may make a deposit under this section from any source, including the proceeds from the sale of the refunding bonds.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 769, Sec. 5, eff. Sept. 1, 2001.

Sec. 1207.062. ESCROW AGREEMENT. (a) An issuer may enter into an escrow or similar agreement with a person described by Section 1207.061(a) with respect to the safekeeping, investment, administration, and disposition of a deposit made under Section 1207.061.

(b) A deposit under Section 1207.061 may be invested only in:

(1) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by the United States;

(2) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; and

(3) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

(c) A deposit under Section 1207.061 may be invested only in obligations that mature and bear interest payable at times and in amounts sufficient to provide for the scheduled payment or redemption of the obligation to be refunded. The obligations may be in book-entry form.

(d) An issuer shall enter into an agreement under Subsection (a) if an obligation to be refunded is scheduled to be paid or redeemed on a date later than the next scheduled interest payment date on the obligation.

(e) Notwithstanding Subsection (b), a deposit under an escrow agreement entered into under Subsection (a) before September

1, 1999, may not be invested in an investment described by Subsection (b)(2) or (3).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 769, Sec. 6, eff. Sept. 1, 2001.

Sec. 1207.0621. SOURCES AVAILABLE FOR PAYMENT. An issuer may pledge to the payment of a refunding bond issued to make a deposit under this subchapter:

(1) any surplus income to be earned from the investment of a deposit made under this subchapter;

(2) any other available revenue, income, or resource;

or
(3) both surplus income described by Subdivision (1) and any other available revenue, income, or resource.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 8.003, eff. Sept. 1, 2001.

Sec. 1207.063. DUTY TO COMPLY. A person described by Section 1201.061(a) that enters into an agreement under Section 1207.062 shall comply with each term of that agreement and, from the deposited money and in the manner and to the extent provided by the agreement, make available to any other paying agent or trustee for an obligation of the same or a different series of obligations to be refunded, paid, or redeemed, the amounts required by the terms of the obligation to pay or redeem the principal of and interest on the obligation when due.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 769, Sec. 7, eff. Sept. 1, 2001.

Sec. 1207.064. INCONTESTABILITY OF CERTAIN ESCROW AGREEMENTS AND CONTRACTS. After the registration of a refunding bond and the sale and delivery of the bond to the purchaser, the proceedings that authorize the refunding bond, any escrow agreement relating to the refunding bond, and any contract providing security or payments with respect to the refunding bond are:

(1) incontestable in any court or other forum for any reason; and

(2) valid and binding obligations in accordance with their terms for any purpose.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. EXCHANGE REFUNDING PROCEDURES

Sec. 1207.081. ISSUANCE IN EXCHANGE FOR OBLIGATION TO BE REFUNDED; LIMITATION. (a) Refunding bonds may be issued to be exchanged under this subchapter for, and on the surrender and cancellation of, the obligations to be refunded.

(b) The comptroller shall register a refunding bond and deliver it to the holder of the obligation to be refunded, in accordance with the proceedings authorizing the refunding bond. The exchange may be made in one delivery or in installment deliveries.

(c) Repealed by Acts 1999, 76th Leg., ch. 1064, Sec. 47(1), eff. Sept. 1, 1999.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 47(1), eff. Sept. 1, 1999.

Sec. 1207.082. LIMITATION ON AUTHORITY TO PARTIALLY REFUND. An issuer may issue refunding bonds to be exchanged under this subchapter to refund part of an outstanding issue of bonds, notes, or other obligations only if the issuer demonstrates to the attorney general at the time of the refunding that, based on then current conditions, the issuer will have adequate resources available at the times required to provide for the payment of the unrefunded part of the outstanding issue when due.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.083. OTHER POWERS OF ISSUER. To the extent necessary or convenient in carrying out a power under this subchapter, an issuer may use the provisions of any other law that does not conflict with this subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1207.084. CONFLICT OR INCONSISTENCY WITH OTHER LAWS. When bonds are being issued to be exchanged under this subchapter, to the extent of a conflict or inconsistency between this subchapter and another law, this subchapter controls.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.