

GOVERNMENT CODE
SUBTITLE F. SPECIFIC AUTHORITY FOR STATE OR LOCAL GOVERNMENT TO
ISSUE SECURITIES

CHAPTER 1371. OBLIGATIONS FOR CERTAIN PUBLIC IMPROVEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1371.001. DEFINITIONS. In this chapter:

(1) "Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase an obligation, purchase or sale agreement, interest rate swap agreement, or commitment or other agreement authorized by a governing body in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing, or redemption of an obligation, interest on an obligation, or both, or as otherwise authorized by this chapter.

(2) "Eligible project" means:

(A) the acquisition or construction of or an improvement, addition, or extension to a public works, including a capital asset or facility incident and related to the operation, maintenance, or administration of the public works, and:

(i) with respect to a property or a facility for the generation of electric power and energy, fuel acquisition or the development or transportation of power, energy, or fuel;

(ii) with respect to a property or a facility for a public transportation system:

(a) a building, terminal, garage, shop, or other structure, rolling stock, equipment, or another facility for mass public transportation; or

(b) a vehicle parking area or a facility necessary or convenient for the beneficial use and access of persons and vehicles to a station, terminal, yard, car, or bus, or for the protection or environmental enhancement of a facility for mass public transportation; and

(iii) with respect to a property or a facility for a port facility, a wharf or dock, a warehouse, grain elevator, or other storage facility, a bunkering facility, port-related railroad or bridge, floating plant or facility, lightering facility, cargo handling facility, towing facility, or any other facility or aid incident to or useful in the operation of a port facility;

(B) a causeway, bridge, tunnel, turnpike, highway, or combination of those facilities, including:

(i) a necessary overpass, underpass, interchange, entrance plaza, tollhouse, service station, approach, fixture, accessory, or item of equipment, or a storage, administration, or other necessary building; and

(ii) a property right or other interest acquired in connection with those facilities;

(C) a public improvement owned by a county that serves the purpose of attracting visitors and tourists to the county, including a civic center, auditorium, exhibition hall, coliseum, stadium, or parking area;

(D) a project for which there exists authorized but unissued obligations approved by a majority of the voters of the issuer, including obligations payable from ad valorem taxes;

(E) a project for which an issuer is authorized to issue revenue bonds secured, in whole or in part, by revenue derived from or related to student loans; or

(F) an approved venue project under Chapter 334 or 335, Local Government Code.

(3) "Governing body" means the board, council, commission, commissioners court, or other designated body, acting individually or jointly as authorized by law, that is authorized by law to issue public securities for or on behalf of an issuer.

(4) "Issuer" means:

(A) a home-rule municipality that:

(i) adopted its charter under Section 5, Article XI, Texas Constitution;

(ii) has a population of 50,000 or more; and

(iii) has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term obligation;

(B) a conservation and reclamation district created and organized as a river authority under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(C) a joint powers agency organized and operating under Chapter 163, Utilities Code;

(D) a metropolitan rapid transit authority or regional transportation authority created, organized, and operating under Chapter 451 or 452, Transportation Code;

(E) a conservation and reclamation district organized or operating as a navigation district under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(F) a district organized or operating under Section 59, Article XVI, Texas Constitution, that has all or part of two or more municipalities within its boundaries;

(G) a state agency, including a state institution of higher education;

(H) a hospital authority created or operating under Chapter 262 or 264, Health and Safety Code, in a county that:

(i) has a population of more than 3.3 million; or

(ii) is included, in whole or in part, in a standard metropolitan statistical area of this state that includes a county with a population of more than 2.2 million;

(I) a hospital district in a county that has a population of more than two million;

(J) a nonprofit corporation organized to exercise the powers of a higher education loan authority under Section 53B.47(e), Education Code;

(K) a county:

(i) that has a population of 3.3 million or more; or

(ii) that, on the date of issuance of obligations under this chapter, has authorized, outstanding, or any combination of authorized and outstanding, indebtedness of at least \$100 million secured by and payable from the county's ad valorem taxes and the authorized long-term indebtedness of which is rated by a nationally recognized rating agency of securities issued by local governments in one of the four highest rating categories for a long-term obligation;

(L) an independent school district that has an average daily attendance of 50,000 or more as determined under Section 42.005, Education Code;

(M) a municipality or county operating under Chapter 334, Local Government Code;

(N) a district created under Chapter 335, Local Government Code; or

(O) a junior college district that has a total headcount enrollment of 40,000 or more based on enrollment in the most recent regular semester.

(5) "Obligation" means a public security as defined by Section 1201.002 or other special obligation authorized to be issued by an issuer that, before delivery, is rated by a nationally recognized rating agency for municipal securities in one of the three highest rating categories for a short-term debt instrument or one of the four highest rating categories for a long-term debt instrument. The term does not include an obligation payable from ad valorem taxes except as specifically permitted by this chapter.

(6) "Obligation authorization" means a resolution, order, or ordinance of a governing body authorizing the issuance of an obligation.

(7) "Project cost" means a cost or expense incurred in relation to an eligible project. The term includes:

(A) design, planning, engineering, and legal cost;

(B) acquisition cost of land or an interest in land;

(C) construction cost;

(D) cost of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an eligible project; and

(E) financing cost, including:

(i) interest during and after construction;

(ii) underwriter's discount or fee; and

(iii) cost of legal, financial, and other professional services.

- (8) "Public works" means property or a facility for:
- (A) the conservation, storage, supply, treatment, or transmission of water;
 - (B) the treatment, collection, or disposal of water-carried wastes or solid wastes;
 - (C) the generation, transmission, or distribution of electric power and energy;
 - (D) the acquisition, distribution, or storage of gas;
 - (E) a public transportation system as defined by Chapter 452, Transportation Code;
 - (F) an airport as defined by Section 22.001, Transportation Code;
 - (G) a port facility, including a facility for the operation or development of a port or waterway or in aid of navigation or navigation-related commerce in a port or on a waterway;
 - (H) a project as defined by Section 284.001, Transportation Code; or
 - (I) the carrying out of a purpose or function for which an issuer may issue public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 15, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 23, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 769, Sec. 8, 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.011(a), eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 641, Sec. 4, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1005, Sec. 1, eff. June 18, 2005; Acts 2006, 79th Leg., 3rd C.S., ch. 9, Sec. 5, eff. May 26, 2006.

Sec. 1371.002. CONSTRUCTION. This chapter shall be liberally construed to achieve the legislative intent and purposes of this chapter. A power granted by this chapter shall be broadly interpreted to achieve that intent and those purposes.

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

Sec. 1371.003. RELATIONSHIP TO OTHER LAW. (a) This chapter is wholly sufficient authority within itself for the issuance of obligations and the performance of the other acts and procedures authorized by this chapter or under any agreement, without reference to any other laws or any restrictions or limitations contained in those laws.

(b) To the extent of any conflict or inconsistency between this chapter and another law or a municipal charter, this chapter controls.

(c) An issuer may use a provision of another law that does not conflict with this chapter to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this chapter.

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

Sec. 1371.004. EFFECT OF FINDING OR DETERMINATION UNDER DELEGATION OF AUTHORITY. A finding or determination made by an officer or employee acting under the authority delegated to the officer or employee under this chapter has the same force and effect as a finding or determination made by the governing body.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 16, eff. Sept. 1, 1999.

SUBCHAPTER B. ISSUANCE AND APPROVAL OF OBLIGATION

Sec. 1371.051. AUTHORITY TO ISSUE OBLIGATION. As authorized and approved by the governing body of an issuer, the governing body may issue, sell, and deliver an obligation to:

- (1) finance a project cost;
- (2) refund an obligation issued in connection with an eligible project; or

(3) finance all or part of a payment owed or to be owed on:

(A) the establishment of an interest rate lock, interest rate hedging agreement, or other credit agreement; or

(B) the settlement or termination, at maturity or otherwise, of an interest rate lock, interest rate hedging agreement, or other credit agreement, whether the settlement or termination occurs:

(i) at the option of the issuer or the other party to the credit agreement; or

(ii) by operation of the terms of the credit agreement.

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

Amended by Acts 2001, 77th Leg., ch. 769, Sec. 10, eff. Sept. 1, 2001.

Amendment by Acts 1999, 76th Leg., ch. 984, Sec. 2

V.T.C.A., Government Code Sec. 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 2 of Acts 1999, 76th Leg., ch. 984, eff. Sept. 1, 1999, adds Sec. 2(d) of Vernon's Ann.Civ.St. art. 717q [now this chapter] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 227, Sec. 28(a). As so added, Sec. 2(d) reads:

"An issuer that is an independent school district may not issue obligations under this article unless such obligations are authorized in accordance with the provisions of Section 45.003, Education Code."

Sec. 1371.052. TRANSPORTATION AUTHORITY OBLIGATION; ELECTION. (a) A transportation authority created, organized, and operating under Chapter 452, Transportation Code, may not issue an obligation, other than a refunding obligation, that is payable in whole or in part from its sales and use tax revenue and has a maturity longer than five years unless an election required by Section 452.352(b), Transportation Code, has been held and the proposition has been approved.

(b) An obligation that is exempt from the election requirement of Section 452.352(b), Transportation Code, by the terms of Chapter 452, Transportation Code, is also exempt from the election requirement of this section.

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

Sec. 1371.0521. INDEPENDENT SCHOOL DISTRICT OBLIGATION. An independent school district may not issue an obligation under this chapter unless the obligation is authorized in accordance with Section 45.003, Education Code.

Added by Acts 2001, 77th Leg., ch. 769, Sec. 11, eff. Sept. 1, 2001.

Sec. 1371.053. OBLIGATION AUTHORIZATION. (a) A governing body must adopt or approve an obligation authorization before an obligation may be issued.

(b) The obligation authorization must establish:

(1) the maximum amount of the obligation to be issued or, if applicable, the maximum principal amount that may be outstanding at any time;

(2) the maximum term for which obligations issued under the authorization may be outstanding;

(3) the maximum interest rate the obligation will bear;

(4) subject to Subsection (c)(2), the manner of sale of the obligation, which may be by public or private sale, the price of the obligation, the form of the obligation, and the terms and covenants of the obligation; and

(5) each source securing payment of the obligation.

(c) The obligation authorization may:

(1) provide for the designation of a paying agent and registrar for the obligation; and

(2) authorize one or more designated officers or employees of the issuer to act on behalf of the issuer from time to time in selling and delivering the obligation and setting the dates, price, interest rates, interest payment periods, and other procedures relating to the obligation, as specified in the obligation authorization.

(d) An obligation may:

(1) be issued in a specified form or denomination;

(2) be payable:

(A) at one or more times;

(B) in installments or a specified amount or amounts;

(C) at a specified place or places;

(D) in a specified form;

(E) under specified terms and details; and

(F) in a specified manner; and

(3) be issued as redeemable before maturity at one or more specified times.

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

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 17, eff. Sept. 1, 1999.

Sec. 1371.054. RATE OF INTEREST. (a) An obligation may bear

no interest or bear interest at any rate or rates not to exceed the maximum net effective interest rate allowed by law, whether fixed, variable, floating, adjustable, or otherwise, as determined in accordance with the obligation authorization.

(b) The obligation authorization may provide a formula, index, contract, or other arrangement for the periodic determination of interest rates.

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

Sec. 1371.055. EXECUTION OF OBLIGATION. (a) An obligation may be executed, with or without a seal, with a manual or facsimile signature, as specified in the obligation authorization.

(b) The signature on an obligation of a person who is no longer an officer when the obligation is delivered to the purchaser is valid and sufficient for all purposes.

(c) A person's successor in office may complete the execution, authentication, or delivery of the obligation.

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

Sec. 1371.056. AUTHORITY TO ENTER INTO AND EXECUTE CREDIT AGREEMENTS. (a) A governing body may authorize the execution and delivery of a credit agreement in connection with or related to the authorization, issuance, security, purchase, payment, sale, resale, redemption, remarketing, or exchange of an obligation at any time, without regard to whether a credit agreement was contemplated, authorized, or executed in relation to the initial issuance, sale, or delivery of the obligation.

(b) A credit agreement must contain the terms and be for the period the governing body approves.

(c) The cost to the issuer of a credit agreement may be paid from any source, including:

(1) the proceeds from the sale of the obligation to which the credit agreement relates;

(2) revenue of the issuer that is available to pay the obligation;

(3) any interest on the obligation or that may otherwise be legally used; or

(4) ad valorem taxes to the extent permitted by this chapter.

(d) A credit agreement is an agreement for professional services.

(e) Notwithstanding Subsection (b), the governing body may delegate to an officer or employee the authority, under the terms and for the period approved by the governing body, to:

(1) enter into a credit agreement and transactions under a credit agreement; and

(2) execute any instruments in connection with those transactions.

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

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 18, eff. Sept. 1, 1999.

Sec. 1371.057. REVIEW AND APPROVAL OF OBLIGATION, CREDIT AGREEMENT, AND CONTRACT BY ATTORNEY GENERAL. (a) Before an obligation may be issued or a credit agreement executed, a record of the proceedings of the issuer authorizing the issuance, execution, and delivery of the obligation, the credit agreement, and any contract providing revenue or security to pay the obligation or the credit agreement must be submitted to the attorney general for review.

(b) If the attorney general finds that the credit agreement, contract, and other authorizing proceedings conform to the requirements of the Texas Constitution and this chapter, the attorney general shall approve them and deliver to the comptroller a copy of the attorney general's legal opinion stating that approval and the record of proceedings. After approval, the obligation and credit agreement may be executed and delivered, exchanged, or refinanced from time to time in accordance with those authorizing proceedings.

(c) If the obligation authorization provides that the issuer intends to refinance an obligation or loan under a credit agreement with refunding bonds issued under Chapter 1207, then the obligation or loan shall be treated, for purposes of attorney general review and approval, as having the intended term and payment schedule 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. 19, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 1005, Sec. 2, eff. June 18, 2005.

Sec. 1371.058. REGISTRATION. On receipt of the documents required by Section 1371.057(b), the comptroller shall register the record of the proceedings relating to the issuance of obligations or the execution of a credit agreement.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 19, eff. Sept. 1, 1999.

Sec. 1371.059. VALIDITY AND INCONTESTABILITY. On approval by the attorney general, registration by the comptroller, and initial delivery of the obligation, a credit agreement, a contract providing revenue or security, an initial obligation, and any obligation subsequently issued under the authorizing proceedings are incontestable in a court or other forum and are valid and binding obligations enforceable according to their terms.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Redesignated from V.T.C.A., Government Code Sec. 1371.057(c) and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 19, eff. Sept. 1, 1999.

Sec. 1371.060. REFINANCING, RENEWAL, OR REFUNDING OF OBLIGATION OR CREDIT AGREEMENT. An obligation, including accrued interest, or a credit agreement may from time to time be refinanced, renewed, or refunded by the issuance of another obligation or credit agreement.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1371.058 by Acts 1999, 76th Leg., ch. 1064, Sec. 19, eff. Sept. 1, 1999.

SUBCHAPTER C. FINANCIAL ASPECTS OF OBLIGATION

Sec. 1371.101. OBLIGATION AS NEGOTIABLE INSTRUMENT AND INVESTMENT SECURITY. An obligation is:

(1) a negotiable instrument; and

(2) an investment security to which Chapter 8, Business & Commerce Code, applies.

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

Sec. 1371.102. USE OF CERTAIN PROCEEDS. (a) The proceeds from the sale of an obligation may be deposited or invested in any manner and in any obligation specified in the obligation authorization.

(b) A project cost incurred before the issuance of an obligation issued to finance the related eligible project may be reimbursed from the proceeds from the sale of the obligation.

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

Sec. 1371.103. SECURITY FOR OBLIGATION. (a) An obligation must be secured solely by:

(1) the proceeds from the sale of other obligations;

(2) the proceeds from the sale of revenue bonds payable from the revenue to be received from a public works or a specified user of a public works;

(3) any revenue that the issuer is authorized by the constitution, a statute, or the charter of a home-rule municipality to pledge to the payment of an obligation;

(4) a credit agreement; or

(5) any combination of those sources.

(b) A governing body may secure an obligation and pay the cost of a credit agreement executed and delivered in connection with the financing of a project cost with:

(1) the sources permitted by this chapter; and

(2) ad valorem taxes to the extent the project cost relates to an eligible project financed or to be financed with obligations payable from ad valorem taxes.

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

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 20, eff. Sept. 1, 1999.

Sec. 1371.104. SOURCE OF REPAYMENT OF OBLIGATION. An obligation must be repaid from:

(1) a source of security for the payment of the obligation;

(2) money received from a credit agreement; or

(3) any other revenue legally available for the payment of the obligation.

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

Sec. 1371.105. PLEDGE OR LIEN ON RESOURCES, ASSETS, OR FUND OF ISSUER. (a) A pledge or lien provided for in the resolution, order, ordinance, or other proceedings authorizing a public security, a credit agreement, or another agreement on a resource of the issuer, including revenue or income, on an asset of the issuer, or on a fund maintained by the issuer to secure payment of the

public security or to secure a payment required by a credit agreement or other agreement:

(1) is valid and binding without further action by the issuer according to its terms and without being filed or recorded, except in the records of the issuer;

(2) is effective from the time of payment for and delivery of the public security or execution of the credit agreement or other agreement until:

(A) the public security or other payment has been paid;

(B) payment of the public security has been provided for; or

(C) each term of the credit agreement or other agreement has been satisfied; and

(3) is effective as to an item on hand or later received, and the item is subject to the lien or pledge without physical delivery of the item or other action.

(b) This section does not exempt an issuer from a duty to:

(1) record a lien on real property; or

(2) submit a public security issue for approval by the attorney general and registration by the comptroller.

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

Sec. 1371.106. PLEDGE OF OR LIEN ON SALES OR USE TAX REVENUE. This chapter does not affect a restriction imposed by Chapter 321, Tax Code, on a pledge of or lien on sales and use tax revenue.

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