

GOVERNMENT CODE
CHAPTER 1433. BONDS FOR DEVELOPMENT OF EMPLOYMENT, INDUSTRIAL, AND
HEALTH RESOURCES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1433.001. SHORT TITLE. This chapter may be cited as the Act for Development of Employment, Industrial, and Health Resources.

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

Sec. 1433.002. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Economic Development.

(2) "District" means a conservation and reclamation district established under Section 59, Article XVI, or Section 52, Article III, Texas Constitution.

(3) "Governing body" means the commissioners court of a county or the governing body of a municipality or district.

(4) "Industrial project" means the land, buildings, equipment, facilities, and improvements found by the governing body to be required or suitable for the promotion of industrial development and for use by manufacturing or industrial enterprise, regardless of whether the land, buildings, equipment, facilities, and improvements are in existence when or are to be acquired or constructed after the finding is made.

(5) "Issuer" means a municipality, county, or district.

(6) "Medical project" means the land, buildings, equipment, facilities, and improvements found by the governing body to be required for public health, research, and medical facilities located in this state, regardless of whether the land, buildings, equipment, facilities, and improvements are in existence when or are to be acquired or constructed after the finding is made.

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

Sec. 1433.003. APPLICABILITY OF CHAPTER TO MUNICIPALITIES. This chapter applies to a municipality only if the municipality:

(1) has the power to impose an ad valorem tax of not less than \$1.50 on each \$100 valuation of taxable property in the municipality; or

(2) is a home-rule municipality.

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

Sec. 1433.004. COST OF PROJECT. For purposes of this chapter, the cost of an industrial project or medical project is:

(1) the cost of acquisitions for the project, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests acquired for the construction;

(2) the cost of all machinery and equipment;

(3) financing charges;

(4) interest accruing before and during construction and until the first anniversary of the date on which the construction is completed;

(5) the cost of estimates, including estimates of revenue, engineering and legal services, plans, specifications, surveys, and other expenses necessary or incident to determining the feasibility and practicability of constructing the project;

(6) administrative expenses; and

(7) other expenses that are necessary or incident to the acquisition of the project, the financing of the acquisition, and the placing of the project in operation.

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

Sec. 1433.005. ULTIMATE LESSEE. For purposes of this chapter, an ultimate lessee is the person, firm, corporation, or company that leases an industrial project or medical project from the lessee of the project.

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

Sec. 1433.006. CORRECTION OF INVALID PROCEDURES. If a court holds that any procedure under this chapter violates the constitution of this state or the United States, the issuer by resolution may provide an alternative procedure that conforms with the constitution.

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

Sec. 1433.007. RELOCATION OR ALTERATION EXPENSE. If a municipality, county, district, or other political subdivision, in the exercise of a power under this chapter, including the power of relocation, makes necessary the relocation or rerouting of, or

alteration of the construction of, a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline, the relocation or rerouting or alteration of construction must be accomplished at the sole expense of the political subdivision. In this section, "sole expense" means the actual cost of the relocation or rerouting or alteration of construction to provide comparable replacement without enhancement of the facility, after deduction of the net salvage value derived from the old facility.

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

Sec. 1433.008. USE OF STATE MONEY. (a) The legislature may not appropriate money to pay all or a part of the obligation of an issuer under this chapter.

(b) The department shall pay any expense it incurs under this chapter from money appropriated to the department.

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

SUBCHAPTER B. POWERS OF ISSUER

Sec. 1433.021. ACQUISITION OF PROJECT; DISPOSITION. (a) An issuer may acquire, by construction, purchase, devise, gift, or lease or by more than one of those methods, an industrial project or medical project that is located in this state and at least a part of which is located within the issuer's territorial limits.

(b) For an issuer that is a municipality, an industrial project or medical project may be located outside the municipality's territorial limits if the project is within the municipality's extraterritorial jurisdiction as determined under Subchapter B, Chapter 42, Local Government Code.

(c) An issuer may sell and convey all or any part of property acquired under this section and make an order relating to the sale or conveyance that the issuer considers conducive to the best interest of the issuer.

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

Sec. 1433.022. LIMITATIONS ON ACQUISITIONS. (a) An issuer may not acquire an industrial project, or any part of an industrial project, by eminent domain.

(b) Land previously acquired by an issuer by eminent domain may be sold, leased, or otherwise used in accordance with this chapter, if the governing body determines that:

(1) the use will not interfere with the purpose for which that land was originally acquired or that the land is no longer needed for that purpose;

(2) at least seven years have elapsed since the land was acquired by eminent domain; and

(3) the land was not acquired for park purposes unless the sale or lease of that land has been approved at an election held under Section 1502.055.

(c) An issuer may not acquire or construct an industrial project or medical project for an individual, firm, partnership, or corporation, or make or authorize a lease to an individual, firm, partnership, or corporation if the effect of the lease of that project is to remove the lessee's business from existing facilities in this state.

(d) An issuer may not issue bonds to acquire existing facilities for the purpose of leasing those facilities to the industrial concern from which the facilities are acquired or to another person controlled by the industrial concern.

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

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 31, eff. Sept. 1, 1999.

Sec. 1433.023. AUTHORITY TO ISSUE REVENUE BONDS. (a) Except as provided by Subsection (b), an issuer may issue revenue bonds to pay all or a part of the cost of acquiring, constructing, enlarging, or improving an industrial project, including a project in an enterprise zone designated under Chapter 2303, or a medical project.

(b) A district may not authorize revenue bonds for a medical project.

(c) An issuer may secure the payment of the bonds as provided by this chapter.

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

Sec. 1433.024. LEASE OF PROJECT. (a) An issuer may, in accordance with this chapter, lease any or all of the issuer's industrial projects and medical projects.

(b) An issuer may lease property under this chapter only to a corporation organized under the Texas Non-Profit Corporation Act

(Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).
Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1433.025. ADVERTISING FOR CERTAIN CONTRACTS; PERFORMANCE AND PAYMENT BONDS. (a) A contract for construction or purchase under this chapter involving the expenditure of more than \$2,000 may be made only after advertising in the manner provided by Chapter 252, Local Government Code, or Subchapter C, Chapter 262, Local Government Code, as applicable.

(b) The provisions of Chapter 2253 relating to performance and payment bonds apply to construction contracts let by the issuer.

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

Sec. 1433.026. PROHIBITED OPERATIONS. An issuer may not operate an industrial project as a business or in any manner other than as the lessor of the project.

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

SUBCHAPTER C. PROCEDURE FOR ISSUING BONDS

Sec. 1433.041. DEPARTMENT APPROVAL OF LEASE; APPEAL. (a) An issuer may not begin proceedings to authorize bonds under Section 1433.044 or 1433.061 until the department has given tentative approval to the suggested contents of the lease agreement, and if a lessee is allowed to sublease, the department has tentatively approved the financial responsibility of the ultimate lessee. The department shall investigate a proposed acquisition of existing facilities for compliance with Section 1433.022(d) before tentatively approving an industrial project or medical project.

(b) The department may not give final approval to any agreement unless the department affirmatively finds that the lessee and ultimate lessee have the business experience, financial resources, and responsibility to provide reasonable assurance that all bonds and interest on the bonds to be paid from or because of that agreement will be paid as they become due.

(c) The attorney general may not approve bonds to be issued under this chapter until the department has given final approval to the lease agreement and may not approve the bonds if the provisions for security and payment of lease payments do not conform with this chapter.

(d) An issuer may appeal any adverse ruling or decision of the department under this section to a district court in Travis County. The substantial evidence rule applies to an appeal under this subsection.

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

Sec. 1433.042. REGULATION OF LEASES. The department by rule shall adopt minimum standards for lease agreements and guidelines relating to financial responsibilities of the lessee and any ultimate lessee.

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

Sec. 1433.043. ISSUER'S AUTHORITY. (a) An issuer may issue bonds under this chapter without obtaining the consent of any department, division, commission, board, bureau, or agency of the state, other than the attorney general under Chapter 1202 or the department, and without any proceedings or satisfying any condition precedent other than the proceedings and conditions required by:

- (1) this chapter;
- (2) Subchapter B or D, Chapter 1201; or
- (3) Chapter 1204.

(b) Except as provided by this chapter or by department rule, each governing body has complete authority with respect to bonds and lease agreements governed by this chapter.

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

Sec. 1433.044. BOND RESOLUTION; CALLING ELECTION; PUBLICATION OF RESOLUTION. (a) Before issuing bonds under this chapter, a governing body shall adopt a resolution declaring its intention to issue the bonds.

(b) The resolution must specify:

- (1) the amount of bonds proposed to be issued;
- (2) the purpose for which the bonds are to be issued;

and

(3) the date on which the governing body proposes to authorize the issuance of the bonds.

(c) The governing body may call an election on the issuance of the bonds.

(d) If an election is not called under Subsection (c), the governing body shall publish the resolution once a week for at least

two consecutive weeks in at least one newspaper of general circulation in the territorial limits of the issuer. The first publication must be not less than 14 days before the date specified in the resolution for the authorization of the bonds.

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

Sec. 1433.045. PROTEST. (a) If at least 10 percent of the registered voters of the issuer file a written protest against the issuance of the bonds on or before the date specified for the authorization of the bonds, the governing body shall hold an election on the issuance of the bonds.

(b) If a written protest is not filed, the bonds may be issued without an election at any time before the second anniversary of the date specified in the resolution.

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

Sec. 1433.046. ELECTION ORDER. In addition to the requirements provided by Chapter 3, Election Code, an order calling an election under this subchapter must include the location of each polling place and the election judges and clerks appointed for each polling place.

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

Sec. 1433.047. NOTICE OF ELECTION. Notice of an election under this subchapter shall be published once a week for at least two consecutive weeks, in at least one newspaper of general circulation within the territorial limits of the issuer. The first publication must be not less than 14 days before the date of the election.

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

Sec. 1433.048. BALLOT PROPOSITION; ELECTION PROCEDURES. (a) The ballot for an election held under this subchapter shall be printed to permit voting for or against the proposition: "The issuance of revenue bonds for the (medical project or industrial project)."

(b) The election shall be conducted in accordance with the general laws of this state relating to general elections, except as modified by this chapter.

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

Sec. 1433.049. RESULTS OF ELECTION. (a) Within 10 days after the election, or as soon after that as possible, the governing body of the issuer shall convene and canvass the returns of the election.

(b) If a majority of the voters voting in a bond election vote in favor of the proposition, the governing body shall find and declare that the results favor the proposition, and subject to Section 1433.041, the governing body may proceed with the authorization of the bonds.

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

SUBCHAPTER D. BONDS

Sec. 1433.061. ISSUANCE OF BONDS. (a) A series of bonds may be issued for each industrial project or medical project. Any projects may be combined in a single series of bonds if the governing body considers the combination to be in the best interest of the issuer, but each project shall be considered separately with respect to this subsection and Subchapter C.

(b) Bonds must be issued and delivered before the third anniversary of the later of the date of the tentative approval of the department or the date of the final judgment of any litigation affecting the validity of the bonds or the provision made for their payment. This subsection does not prohibit the department from conditioning its approval of an industrial project or medical project on the completion of the financing of the project within a shorter period.

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

Sec. 1433.062. MONEY USED TO PAY BONDS; PROHIBITION ON CERTAIN OBLIGATIONS. (a) The principal of and the interest on bonds authorized under this chapter are payable only from the money provided for that payment and from the revenue of the industrial project or medical project for which the bonds were authorized.

(b) An issuer may not incur financial obligations that cannot be paid from revenue from the lease of an industrial project or medical project.

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

Sec. 1433.063. BONDS NOT DEBT OF STATE OR ISSUER. (a) A bond issued under this chapter is not a debt or a pledge of the faith and credit of this state, the issuer, or any other political subdivision or agency of this state.

(b) A bond issued under this chapter must contain on its face a statement that:

(1) this state, the issuer, or any other political subdivision or agency of this state is not obligated to pay the principal of or the interest on the bond except from revenue of the industrial project or medical project for which the bond is issued; and

(2) the faith and credit and the taxing power of this state, the issuer, or any other political subdivision or agency of this state are not pledged to the payment of the principal of or the interest on the bond.

(c) Each bond issued under this chapter must contain substantially the following language: "No pecuniary obligation is or may be imposed on the issuer of this bond in the event of a failure to pay all or part of the principal or interest on the bond, except that the issuer is obligated to apply rental income it receives from the (industrial project or medical project) to those purposes."

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

Sec. 1433.064. MATURITY. A 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. 1433.065. SALE OF BONDS. Bonds issued under this chapter shall be sold to the highest bidder for cash and may not be exchanged for property.

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

Sec. 1433.066. INTERIM RECEIPTS; TEMPORARY BONDS. Before the preparation of definitive bonds, an issuer may, under the restrictions applicable to the definitive bonds, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the definitive bonds are executed and available for delivery.

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

Sec. 1433.067. USE OF BOND PROCEEDS. The proceeds of the bonds of each issue may be used only for the payment of the cost of the industrial project or medical project for which the bonds were issued, and shall be disbursed in the manner and under any restrictions provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. Any proceeds of the bonds of an issue that exceed the cost of the project for which the bonds were issued shall be deposited to the credit of the sinking fund for those bonds.

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

Sec. 1433.068. REFUNDING BONDS. (a) An issuer by resolution may provide for the issuance of revenue refunding bonds to:

(1) refund any outstanding bonds issued under this chapter; and

(2) construct improvements, extensions, or enlargements to the industrial project or medical project in connection with which the bonds being refunded were issued.

(b) An issuer may issue revenue refunding bonds in exchange for outstanding bonds, notwithstanding Section 1433.065, or the issuer may use the proceeds from the sale of the revenue refunding bonds to redeem outstanding bonds.

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

Sec. 1433.069. EXEMPTIONS FROM TAXATION AND SECURITIES ACT. (a) A bond issued under this chapter and the issuance and transfer of the bond, including any profit made in the sale of the bond, are exempt from taxation by this state or by a political subdivision of this state.

(b) A bond issued under this chapter and any coupon representing interest on the bond are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(c) A lease agreement under this chapter is not a security under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

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

SUBCHAPTER E. AGREEMENTS RELATING TO BONDS

Sec. 1433.101. SECURITY FOR BOND; TRUST AGREEMENT. (a) A bond issued under this chapter may be secured by a trust agreement between the issuer and a trust company or a bank having the powers of a trust company in this state.

(b) A trust agreement may:

(1) assign the lease revenue to be received from the

lessee or the ultimate lessee of the industrial project or medical project for which the bond proceeds are used; or

(2) pledge the lease revenue for the payment of principal of and interest on the bond as they become due and payable and may provide for the creation and maintenance of reserves for that purpose.

(c) A trust agreement or a resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants that state the duties of the issuer or lessee relating to:

(1) the acquisition of property for the industrial project or medical project in connection with which the bonds were authorized;

(2) the construction, improvement, maintenance, repair, operation, and insurance of the project; and

(3) the custody, protection, and application of all money related to the project.

(d) An issuer may require a bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of the bonds or of revenue of the issuer to furnish indemnifying bonds or to pledge securities.

(e) A trust agreement may state the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. A trust agreement may contain additional provisions for the security of the bondholders.

(f) All expenses incurred in carrying out a trust agreement may be treated as a part of the cost of the operation of the industrial project or medical project.

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

Sec. 1433.102. DEFAULT IN LEASE AGREEMENT OR MORTGAGE; ENFORCEMENT. (a) An agreement relating to an industrial project or medical project between the issuer and the lessee or between a lessee and ultimate lessee must be for the benefit of the issuer. The agreement must provide that, in the event of a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in a proceeding, mortgage, or instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver with the power to charge rents and to apply the revenue from the project in accordance with the resolution, mortgage, or instrument.

(b) A mortgage to secure bonds issued under this chapter may also provide that, in the event of a default in the payment of the mortgage or a violation of an agreement contained in the mortgage, the mortgage may be foreclosed and the property securing the bonds may be sold in any manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder of any of the bonds secured by the mortgage may purchase the property at a foreclosure sale if the person is the highest bidder.

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

Sec. 1433.103. PURCHASE OPTION. (a) An issuer may grant a lessee or ultimate lessee an option to purchase all or a part of an industrial project or medical project when all bonds of the issuer delivered to provide those facilities have been paid or provision has been made for their final payment, if, while the bonds or interest on the bonds remains unpaid, the lease rentals are paid in the manner required and when the rentals become due.

(b) For purposes of this section, a payment is considered to be paid in the manner required and when it becomes due if no event of default is declared and the payment is made within 15 calendar days of the date it is scheduled to become due.

(c) This section is the exclusive authority to convey or grant an option to purchase an industrial project or medical project.

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