

GOVERNMENT CODE

CHAPTER 1502. PUBLIC SECURITIES FOR MUNICIPAL UTILITIES, PARKS, OR POOLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1502.001. DEFINITIONS. In this chapter:

(1) "Combined system" means any combination of one or more of the following:

- (A) an electric system;
- (B) a water system;
- (C) a sewer system;
- (D) a solid waste disposal system;
- (E) a drainage utility system; and
- (F) a natural gas system.

(2) "Public security" has the meaning assigned by Section 1201.002.

(3) "Utility system" means an electric, water, sewer, solid waste disposal, drainage utility, or natural gas system. The term includes one or more combined systems.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.002. GENERAL AUTHORITY FOR UTILITY SYSTEMS, PARKS, AND POOLS. (a) A municipality may acquire, purchase, construct, improve, enlarge, equip, operate, or maintain any property, interests in property, buildings, structures, activities, services, operations, or other facilities, with respect to:

- (1) a utility system;
- (2) a park; or
- (3) a swimming pool.

(b) The governing body of a municipality may authorize the execution and delivery of contracts between the municipality and any person to accomplish any purpose described by Subsection (a).

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.003. CREATION AND MAINTENANCE OF COMBINED SYSTEM. Notwithstanding any law or municipal charter provision to the contrary, the governing body of a municipality may create and maintain one or more combined systems on a finding by the governing body that it is in the best interests of the municipality to create and maintain the combined system. A finding by a governing body under this section is conclusive and incontestable.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.004. CONFLICT WITH MUNICIPAL CHARTER. To the extent of a conflict between this chapter and a municipal charter, this chapter controls.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

SUBCHAPTER B. PUBLIC SECURITIES FOR UTILITY SYSTEMS, PARKS, OR POOLS

Sec. 1502.051. AUTHORITY TO ISSUE PUBLIC SECURITIES. (a) The governing body of a municipality may provide funds to acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, or related infrastructure for:

- (1) a utility system;
- (2) a park; or
- (3) a swimming pool.

(b) In connection with exercising the authority to provide funds for the purposes described by Subsection (a)(1), the governing body of a municipality may provide funds to acquire, purchase, or otherwise obtain any interest in property, including additional water or riparian rights.

(c) The governing body of a municipality may issue public securities and incur obligations under contracts in accordance with this chapter for any purpose authorized by law in connection with providing funds for a purpose described by Subsection (a) or (b)

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.052. PLEDGE OF REVENUE. (a) The governing body of a municipality may pledge to the payment of any public securities issued or any obligations incurred under Section 1502.051(c) all or any part of the revenue of:

- (1) a utility system;

- (2) a park; or
- (3) a swimming pool.

(b) The governing body of a municipality may grant a lien on the revenue pledged under Subsection (a). The lien has the priority determined by the governing body, subject to the provisions of Section 1502.056.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.054 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.053. GRANT OF FRANCHISE. As additional security for public securities issued or obligations incurred under this chapter, the municipality by the terms of the encumbrance may grant a purchaser under sale or foreclosure a franchise to operate the encumbered utility system, park, or pool for a term not to exceed 20 years from the date of purchase, subject to all laws regulating the operation of the utility system, park, or pool in force at the time of the sale or foreclosure.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.055 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.054. OBLIGATIONS NOT PAYABLE FROM TAXES. (a) A public security issued or an obligation incurred under this chapter:

- (1) is not a debt of the municipality;
- (2) may be a charge only on the encumbered utility system, park, or pool; and
- (3) may not be included in determining the municipality's power to issue public securities for any purpose authorized by law.

(b) Each public security or other evidence of indebtedness issued or included under this chapter must contain the following provision: "The holder of this obligation is not entitled to demand payment of this obligation out of any money raised by taxation."

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.056 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.055. ELECTION. (a) Unless authorized by a majority vote of the qualified voters of the municipality, a municipality may not sell a utility system, park, or pool.

(b) The governing body of the municipality shall hold an election under this section in the manner provided for bond elections in the municipality.

(c) This section does not apply to the sale of an unencumbered natural gas system owned by a municipality with a population of more than 100,000.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.057 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 769, Sec. 12, eff. Sept. 1, 2001.

Sec. 1502.056. OPERATING EXPENSES AS FIRST LIEN. (a) If the revenue of a utility system, park, or swimming pool secures the payment of public securities issued or obligations incurred under this chapter, each expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions necessary to provide efficient service, and each proper item of expense, is a first lien against that revenue.

(b) An expense for a repair or extension is a first lien only if, in the judgment of the governing body of the municipality, the repair or extension is necessary to:

- (1) keep the plant or utility system in operation and provide adequate service to the municipality and its residents; or
- (2) respond to a physical accident or condition that would otherwise impair the original securities.

(c) A contract between a municipality and an issuer, as defined by Section 1201.002, under which the municipality obtains from the issuer or the issuer provides part or all of the facilities or services of a utility system to the municipality may provide that payments made by the municipality from the revenue of the utility system are an operating expense of the municipality's utility system.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.058 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.057. CHARGES FOR SERVICES. (a) A municipality

shall impose and collect charges for services provided by a utility system in amounts at least sufficient to pay:

(1) all operating, maintenance, depreciation, replacement, improvement, and interest charges in connection with the utility system;

(2) for an interest and sinking fund sufficient to pay any public securities issued or obligations incurred for any purpose described by Section 1502.002 relating to the utility system; and

(3) any outstanding debt against the system.

(b) The rates charged for services provided by a utility system must be equal and uniform. A municipality may not allow any free service except for:

(1) municipal public schools; or

(2) buildings and institutions operated by the municipality.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.059 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.058. LIMITATION ON USE OF REVENUE. (a) Except as provided by Subsection (b) or (c), by Section 1502.059, or by Section 271.052, Local Government Code, a municipality may not use the revenue of a utility system, park, or swimming pool to pay any other debt, expense, or obligation of the municipality until the debt secured by the revenue is finally paid.

(b) This section does not apply to a payment made in lieu of ad valorem taxes previously paid by a private owner of a utility system.

(c) This section does not apply to a payment made from surplus revenue of a utility system, park, or swimming pool, as provided by the proceedings authorizing the issuance of public securities under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.060 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.059. TRANSFER OF REVENUE TO GENERAL FUND. Notwithstanding Section 1502.058(a) or a similar law or municipal charter provision, a municipality and its officers and utility trustees may transfer to the municipality's general fund and may use for general or special purposes revenue of any municipally owned utility system in the amount and to the extent authorized in the indenture, deed of trust, or ordinance providing for and securing payment of public securities issued under this chapter or similar law.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.061 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.060. USE AND INVESTMENT OF PROCEEDS. (a) To the extent provided by the proceedings authorizing the issuance of the public securities issued under this chapter, a municipality may:

(1) use proceeds from the sale of public securities issued to provide funds for a utility system under this chapter for any purpose authorized by Section 1502.051(a)(1) or (b);

(2) use proceeds from the sale of public securities issued to provide funds for a park under this chapter for any purpose authorized by Section 1502.051(a)(2); or

(3) use proceeds from the sale of public securities to provide funds for a swimming pool under this chapter for any purpose authorized by Section 1502.051(a)(3).

(b) A municipality may use proceeds from the sale of public securities issued under this chapter to pay interest on the public securities during the period of the acquisition or construction of any facilities to be provided through the issuance of the public securities, and for one year after completion of the acquisition or construction of the facilities.

(c) A municipality may use proceeds from the sale of public securities issued under this chapter to:

(1) provide a reserve for the payment of debt service on the public securities;

(2) provide a reserve for extraordinary repairs and replacements; or

(3) obtain a credit agreement as provided by Section 1502.064.

(d) A municipality may invest proceeds from the sale of public securities issued under this chapter to the extent and in the

manner provided in the proceedings authorizing the issuance of the public securities.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.061. ADDITIONAL OBLIGATIONS TO IMPROVE OR EXTEND UTILITY SYSTEM. (a) A municipality that has outstanding public securities secured by the net revenue of a utility system may issue additional public securities or incur other obligations for a purpose described by Section 1502.051(a)(1) or (b).

(b) Except as provided by Subsection (c), public securities issued under Subsection (a) constitute a lien on the revenue of the affected system:

(1) in the order of issuance; and

(2) inferior to a lien securing payment of outstanding public securities, as determined by the governing body of the municipality.

(c) A municipality may issue additional public securities under this section on a parity and of equal dignity with the outstanding public securities if the ordinance, deed of trust, or indenture of trust authorizing or securing the outstanding public securities provides for the subsequent issuance of additional parity public securities, subject to that ordinance, deed of trust, or indenture of trust.

(d) To the extent of a conflict or inconsistency between this section and another law, this section controls.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.064 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.062. MATURITY. A public security issued under this chapter must mature not later than 50 years after its date.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.063. ADDITIONAL AUTHORITY OF MUNICIPALITY WITH A POPULATION OF 50,000 OR MORE. Notwithstanding any other provision of this chapter, in connection with the issuance of public securities under this chapter, the governing body of a municipality with a population of 50,000 or more may exercise any authority granted to a governing body under Chapter 1371 in connection with the issuance of obligations under that chapter.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.064. CREDIT AGREEMENT FOR RESERVE FUND. (a) The governing body of a municipality may provide that in lieu of or in addition to providing a cash reserve, a credit agreement, as defined by Section 1371.001, may be used to provide the reserve.

(b) A credit agreement obtained to provide a reserve must be submitted to the attorney general for examination and approval. After approval by the attorney general, the credit agreement is incontestable in any court or other forum for any reason and is a valid and binding obligation of the municipality in accordance with its terms for all purposes.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.065. REFUNDING BONDS. A municipality may issue public securities in the manner provided by applicable law to refund or otherwise refinance any obligation incurred under this chapter to which revenue has been pledged.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.066. RECORDS. The mayor of the municipality shall establish and maintain a complete system of records for a utility system, park, or swimming pool the revenue of which is encumbered under this chapter that:

(1) shows any free service provided and the value of the free service; and

(2) shows separately the amounts spent and the amounts set aside for operation, salaries, labor, materials, repairs, maintenance, depreciation, replacements, extensions, interest, and the creation of a sinking fund to pay the public securities and debt.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.067 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.067. RECORDS: NONCASH BASIS. (a) A municipality may maintain its records on facilities under this chapter or any

other municipal records on a basis other than a cash basis to the extent permitted or required under generally accepted accounting principles for a governmental entity.

(b) A change in accounting methods does not affect the terms of an existing contract with respect to the power to issue additional obligations payable from the facilities.  
Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.068 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.068. ANNUAL REPORT. (a) Annually, on the date determined by the governing body of the municipality, the superintendent or manager of a utility system, park, or pool or another person designated by the governing body shall file with the mayor and governing body of the municipality a detailed report of the operation of the system, park, or pool for the preceding 12-month period specified by the governing body.

(b) The report must show the total amount of money collected and the balance due, and the total disbursements made and the amounts remaining unpaid, resulting from the operation of the utility system, park, or pool during that year.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.069 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.069. OFFENSES; PENALTY. (a) A mayor commits an offense if the mayor fails to:

(1) establish the system of records required by Section 1502.066 before the 91st day after the date the utility system, park, or pool is completed; or

(2) maintain the system of records required by Section 1502.066.

(b) The person responsible for filing a report required by Section 1502.068 commits an offense if the person fails to timely file the report.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$1,000.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.070 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.070. MANAGEMENT AND CONTROL OF UTILITY SYSTEM. (a) Management and control of a utility system may be vested in:

(1) the municipality's governing body; or

(2) a board of trustees named in the proceedings adopted by the municipality and consisting of not more than five members, one of whom must be the mayor of the municipality.

(b) The compensation of the trustees shall be specified by the proceedings. The compensation may not exceed five percent of the gross receipts of the utility system in any year.

(c) The proceedings of the municipality may specify the terms of office of the board of trustees, their powers and duties, the manner of exercising those powers and duties, the election of successor trustees, and any matter relating to the organization and duties of the board. On any matter not covered by the proceedings, the board of trustees is governed by the laws and rules governing the municipality's governing body, to the extent applicable.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.071 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.071. RULES. (a) The governing body or board of trustees having management and control of a utility system may adopt rules to:

(1) govern the provision of and payment for service; and

(2) provide for the discontinuance of service for failure to pay when due until payment is made.

(b) The governing body may provide penalties for:

(1) the violation of a rule adopted under this section;

(2) the use of service without the consent or knowledge of the authorities in charge; or

(3) any interference with, trespass on, or injury to a system or appliance or the premises on which the system or appliance is located.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.072 and amended

by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.072. TRUSTEE. The proceedings adopted by the governing body of a municipality may provide for:

(1) the selection of a trustee to sell the encumbered facility on default in the payment of principal or interest under the contract;

(2) the selection of a successor trustee if the original trustee is disqualified or fails to act; and

(3) the collection by the trustee of a fee of not more than five percent of the principal.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 1502.073 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.073. NOTICE TO GOVERNING BODY BEFORE FORECLOSURE OR OTHER ACTION. (a) Unless written notice is given to the governing body of the municipality and to any board of trustees in accordance with this section that there is a default in payment of any installment of principal or interest on an obligation issued under this subchapter and that payment has been demanded:

(1) a collection fee may not accrue;

(2) a foreclosure proceeding may not be begun in a court or through a trustee; and

(3) an option to mature any part of the obligation because of the default may not be exercised.

(b) A notice under Subsection (a) must be sent by prepaid registered mail to each member of the governing body and each member of any board of trustees, addressed to the member at the post office in the municipality.

(c) An action described by Subsection (a) may not be taken before the 91st day after the date the notice is mailed.

(d) A payment of a delinquent installment of principal and interest that is paid before the expiration of the period prescribed by Subsection (c) and that is accompanied by a payment of interest as prescribed in the contract, at a rate not to exceed 10 percent per year, from the date of default until the date of payment, has the same effect as if paid on the date the installment was originally due.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.074 by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.

Sec. 1502.074. CIVIL ENFORCEMENT. A person who resides in a municipality and is a taxpayer or holder of a public security issued or an obligation incurred under this chapter and secured by the revenue of the municipality's utility system, park, or swimming pool as provided by this chapter is entitled to enforce this chapter by appropriate civil action in a district court in the county in which the municipality is located.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 1502.076 and amended by Acts 1999, 76th Leg., ch. 1064, Sec. 22, eff. Sept. 1, 1999.