

## CHAPTER 763

## H.B. No. 2371

An Act relating to the creation and operation of municipal parking authorities.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1. DEFINITIONS.** In this chapter:

- (1) "Authority" means a parking authority created under this Act.
- (2) "Board" means the governing body of an authority.
- (3) "Bond" means a note, bond, or other evidence of indebtedness or obligation issued by an authority.
- (4) "Construction" includes acquisition.
- (5) "Federal agency" means the United States, the president of the United States, or a department, corporate agency, or instrumentality of the United States.
- (6) "Improvement" includes extension and enlargement.
- (7) "Project" means a structure, facility, or undertaking of the authority.
- (8) "Parking facility" means a public lot, garage, parking terminal, or other structure or accommodation for the parking of motor vehicles off the street or highway, and includes equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in the parking of vehicles.

**SECTION 2. CREATION OF PARKING AUTHORITY.** (a) The governing body of a municipality by ordinance may create a parking authority, which shall be called "City of (*name of municipality*) Parking Authority." A notice of the creation of the authority shall be published once weekly for four consecutive weeks in a newspaper of general circulation in the municipality. The notice must include the text of the ordinance creating the authority, a synopsis of the articles of incorporation of the authority, and a reference to this Act. Not later than the 10th day after the date of passage of the ordinance, the municipality shall file it with the secretary of state.

(b) The ordinance takes effect 60 days after the date of its last publication, unless there has been filed with the clerk of the municipality a protest petition, as provided by this section, objecting to the adoption of the ordinance and requesting that the ordinance be submitted to the voters of the municipality. The petition must be signed by a number of registered voters of the municipality equal to at least 10 percent of the number of votes cast at the most recent general municipal election. If the petition is filed, the ordinance shall be submitted to a vote at an election called by the governing body of the municipality for that purpose and held, to the extent practicable, according to the election laws of the state applicable to a vote of a municipality on a proposition. The governing body shall call the election for the next uniform election date authorized by Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), that occurs after the 30th day after the municipality verifies that the petition is valid. The municipality must complete the verification process not later than the 10th day after the day the petition is filed.

(c) If a majority of the votes cast at the election are in favor of the ordinance, it takes effect on the certification of the results. If a majority of the votes cast are against the ordinance, it does not take effect.

**SECTION 3. COMPOSITION.** (a) The powers of an authority are exercised by a board composed of five members who are residents of the municipality creating the authority. The presiding officer of the governing body of the municipality shall appoint the members of the board for two-year staggered terms, with the terms of two members expiring on July 1 of each even-numbered year and the terms of three members expiring on July 1 of each odd-numbered year. Vacancies that occur more than 60 days before the expiration date of a term shall be promptly filled for the unexpired term by appointment by the presiding officer of the governing body of the municipality. Appointments must be confirmed by the governing body of the municipality. A member of the board may be removed for cause following a hearing. Removal is by order of the presiding officer of the governing body of the municipality, with the concurrence of two thirds of the members of the governing body of the municipality.

(b) A member holds office until a successor is appointed and qualified. A member may not receive compensation for services as a member, but is entitled to payment for the necessary expenses incurred in the discharge of his duties as a member.

(c) The members of the board shall select from among themselves a chairman, a vice-chairman, and other officers as the board determines. The board may employ a secretary, an executive director, legal staff, technical experts, and other agents and employees that it requires, and may determine the qualifications and fix the compensation of those persons. Three members of the board constitute a quorum. A member of the board is not liable personally on the bonds or other obligations of the authority, and the rights of creditors are solely against the authority. The board may delegate to an agent or employee powers as it considers necessary to carry out the purposes of this Act, and the agent or employee is subject to the supervision and control of the board. The board may manage the properties and business of the authority and adopt bylaws and rules governing the manner in which the business of the authority may be conducted.

**SECTION 4. PURPOSES AND POWERS.** (a) The authority may:

- (1) implement and maintain public operated parking facilities;
- (2) conduct research necessary for efficient operation of off-street parking or parking terminal facilities;
- (3) establish a permanent coordinated system of parking or parking terminal facilities;
- (4) plan, design, locate, acquire, hold, construct, improve, maintain, operate, own, or lease land and facilities for the parking of vehicles;
- (5) sue and be sued, implead and be impleaded, and complain and defend in court;
- (6) adopt, use, and alter a corporate seal;
- (7) acquire, purchase, hold, lease as lessee, or use a franchise, property, or an interest in property, as necessary or desirable for carrying out the purpose of this Act;
- (8) sell, lease as lessor, exchange, transfer, or dispose of property or an interest in property;
- (9) acquire, construct, improve, maintain, repair, or operate a project;
- (10) adopt bylaws for the management and regulation of its affairs;
- (11) appoint officers, agents, employees, and servants, and prescribe their duties and fix their compensation;
- (12) collect charges for use of its facilities at reasonable rates determined by the authority for the purposes of paying the expenses and obligations of the authority; a person questioning the reasonableness of a rate or charge of the authority may bring suit against the authority in a district court in the county in which the project is located;
- (13) make contracts and execute instruments necessary or convenient to carry on its business;
- (14) borrow money and accept grants from, and enter into contracts, leases, or other transactions with, a federal agency, an agency or department of the state, a municipality, a corporation, or another authority;
- (15) exercise the power of eminent domain;
- (16) pledge, hypothecate, or otherwise encumber the revenues or receipts of the authority, as security for the obligations of the authority;
- (17) act as necessary to accomplish its purposes, the promotion of its business, and the general welfare of the authority;
- (18) enter into contracts of group insurance for the benefit of its employees, and set up a retirement or pension fund for the employees;
- (19) use with the consent of the municipality appointed officers, agents, employees, and facilities of the municipality, and pay the municipality for the use; and

(20) dedicate its real property to the public purposes for a street or highway.

(b) The authority may not pledge the credit or taxing power of the state, a municipality, or a political subdivision of the state, nor may its obligations be considered obligations of the state, a municipality, or a political subdivision. The state, a municipality, or a political subdivision may not be liable for the payment of the principal of or interest on the obligations.

(c) The authority may not sell goods and may not provide services other than those necessary for the parking of vehicles in authority facilities.

**SECTION 5. FINANCING.** (a) In addition to bonds provided for by this Act, the authority, subject to the specific authorization and approval of the municipality creating it, may finance the creation and establishment of parking facilities by one or more of the following methods:

(1) parking fees and special charges derived from the use of parking facilities;

(2) general fund appropriations;

(3) parking meter revenues; and

(4) gifts, bequests, devises, or grants-in-aid.

(b) A municipality establishing an authority under this Act, on a two-thirds vote of its governing body, may pay to the authority money necessary to:

(1) acquire all or part of the land on which the authority intends to erect a parking facility;

(2) construct all or part of a parking facility;

(3) pay operating expenses of the authority and debt service on outstanding bonds of the authority; or

(4) make payments into a reserve fund for the payment of the principal of and interest on indebtedness of the authority, as may be provided by a resolution of the authority authorizing the issuance of revenue bonds or a trust indenture securing revenue bonds.

(c) The municipality, to provide funds for use under Subsection (b) of this section, may issue general obligation bonds, secured by the faith and credit of the municipality, payable from unlimited ad valorem taxes on all of the real estate in the municipality subject to taxation, and may levy those taxes in an unlimited rate or amount.

(d) The municipality may guarantee revenue bonds of the authority issued under this Act by pledging its full faith and credit to the payment of the principal of and interest on the revenue bonds. The aggregate amount of general obligation bonds issued by a municipality under this subsection, the indebtedness guaranteed, and the taxes levied are in addition to, and not subject to the limitations of, statutory debt or tax limitation of the municipality. The municipality may fund the guarantee by levying an ad valorem tax on real estate subject to taxation, not to exceed a rate of one-hundredth of one percent, or may use other money of the municipality available for this purpose.

(e) An agreement by the municipality to guarantee the revenue bonds of the authority, to maintain a reserve fund, or to pay debt service or operating expenses of the authority may be included in a contract with holders of revenue bonds of the authority, and may be pledged by the authority to the payment of the revenue bonds.

**SECTION 6. BONDS.** (a) The authority by resolution may issue revenue bonds to finance a parking facility, the acquisition, construction, reconstruction, and repair of property related to the facility, and the necessary expenses of financing the facility and its operation. The total principal amount of the bonds outstanding at one time may not exceed \$20 million. The bonds must be dated, must bear interest at a rate or rates, must mature at a time or times not exceeding 25 years from their date of issuance, and may be made redeemable before maturity at a price or prices, and under terms and conditions, all as provided by the board before the issuance of the bonds. The board shall determine the form of bonds, including interest coupons, if any, and the manner of execution of the bonds. The board shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at a bank or trust company within the state. The bonds are negotiable instruments and may be sold in the manner and for the price determined to be in the best interests of the municipality. A bond may not be for a term extending beyond the existence of the authority.

(b) The bonds are not a pledge of the faith and credit of a municipality or the state, but are payable only from revenues under this Act, and the bonds must contain on their face a statement to that effect.

(c) The resolution authorizing the issuance of the bonds must pledge the revenues to be received from the parking facility for which the bonds are issued. The resolution may also pledge parking meter revenues for that purpose and may provide for mortgaging the parking facility as additional security. The resolution may contain other provisions for protecting and enforcing the rights and remedies of the bondholders as permitted by this Act, and may contain limitations on the issuance of additional revenue bonds as the board considers proper. Expenses

incurred in carrying out the provisions of the ordinance may be treated as a part of the cost of operation of the facility.

(d) The resolution may contain provisions, which must be included as part of the contract with the bondholders, relating to:

(1) the construction, improvement, operation, extension, enlargement, maintenance, and repair of the project and the duties of the authority with reference to these activities;

(2) limitations on the purposes for which the proceeds of the bonds or of a loan or grant from the United States may be used;

(3) the rate of tolls and other charges for use of the facilities of or for the services rendered by the authority;

(4) the setting aside, regulation, and disposition of reserves or sinking funds; and

(5) other agreements with the bondholders.

(e) An authority may enter into deeds of trust, indentures, or other agreements as security for bonds, and may assign and pledge all or part of the revenues or receipts of the authority under the agreement. The deed of trust, indenture, or other agreement may contain provisions relating to:

(1) the construction, improvement, operation, maintenance, and repair of a project and the duties of the authority with reference to the project;

(2) the application and safeguarding of funds under the control of the authority;

(3) the rights and remedies of the trustee and bondholders, including restrictions on a right of action of bondholders; and

(4) the terms and provisions of the bonds or the resolutions authorizing their issuance.

(f) The bonds are negotiable instruments under the law of the state.

**SECTION 7. REMEDIES OF BONDHOLDERS.** (a) The rights and remedies of bondholders under this section are in addition to any rights and remedies lawfully granted to the bondholders by a resolution providing for the issuance of bonds or by a deed of trust, indenture, or other agreement under which the bonds are issued.

(b) If the authority fails to pay the principal of or interest on a bond before the 61st day after the day payment is due, violates this Act, or breaches another agreement with a bondholder, the holders of 25 percent of the aggregate principal amount of the bonds outstanding, by instrument filed in the office of the recorder of deeds of the county in which the authority is located, and proved or acknowledged in the same manner as required by law for a deed to be recorded, may appoint a trustee to represent the bondholders.

(c) The trustee appointed under this section or a trustee under a deed of trust, indenture, or other agreement under this Act may, and on written request of the holders of 25 percent of the aggregate principal amount of the bonds outstanding, unless provided otherwise by the deed of trust, indenture, or agreement, shall in the trustee's own name:

(1) bring an action to enforce the rights of the bondholders;

(2) bring suit on the bonds;

(3) require the authority to account as if it were the trustee of an express trust for the bondholders; or

(4) sue to enjoin violations of law or the rights of the bondholders.

(d) By notice in writing to the authority the trustee may declare bonds due and payable. If the authority cures all defaults, the trustee, with the consent of the holders of 25 percent of the aggregate principal amount of the bonds then outstanding, unless provided otherwise by the deed of trust, indenture, or agreement, may rescind the declaration.

(e) A District Court in the county in which the authority is located has jurisdiction of an action by the trustee. A trustee appointed or acting under a deed of trust, indenture, or other agreement is entitled to the appointment of a receiver, who may enter and take possession of all or part of the facilities of the authority and the revenues or receipts that may be applicable to the payment of the bonds in default, and who may operate and maintain the facilities and collect and receive rent and other revenues of the facilities. The receiver shall deposit the money in a separate account and apply it in the manner the court directs. In an action by the trustee, any fees, attorney's fees, and expenses of the trustee and the receiver and the costs and disbursements allowed by the court are a first charge on the revenues and receipts from the facilities of the authority that are applicable to the payment of the bonds in default. The trustee may exercise the powers necessary or appropriate for carrying out the trustee's functions under this section or incident to the general representation of the bondholders in the enforcement and protection of their rights.

(f) This Act does not authorize a bondholder or a receiver or trustee appointed under this Act to sell, assign, mortgage, or otherwise dispose of the assets of the authority. A receiver may only operate and maintain the facilities of the authority as the court directs.

**SECTION 8. BONDS EXEMPT.** A revenue bond issued under this Act, a transfer of the bond, income from the bond, and a profit made on the sale of the bond are free from taxation by the state, a subdivision of the state, or a municipality.

**SECTION 9. MONEY; EXAMINATION OF ACCOUNTS.** (a) Money of an authority shall be paid to the treasurer of the authority who shall deposit it in a separate account in a bank or trust company. The money may be paid out on the warrant or other order of the chairman of the authority or of another person the authority authorizes.

(b) The authority at least annually shall have an examination of its books, accounts, and records conducted by a certified public accountant. A copy of the audit shall be delivered to the municipality creating the authority. A concise financial statement shall be published annually in a newspaper of general circulation in the municipality in which the principal office of the authority is located. If the publication is not made by the authority, the municipality shall publish the statement at the expense of the authority. If the authority fails to make a required audit, an auditor or accountant designated by the municipality may examine, at the expense of the authority, the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and other matters relating to its finances, operation, and affairs.

(c) The attorney general may examine the books, accounts, and records of an authority.

**SECTION 10. CONTRACTS WITH MUNICIPALITY.** (a) The authority may enter agreements with the municipality for the conveyance of property, as provided by this section.

(b) The municipality, by resolution or instruments authorized by a resolution, may convey to the authority property for use by the authority in a project. The legal title to real property conveyed remains with the municipality, but the authority may use and occupy the property as long as it exists. Legal title to personal property conveyed passes to the authority.

(c) The municipality may acquire real property for a project or for building or improving roads leading to a project. The municipality may close roads as is necessary or convenient for the purposes of this Act.

(d) A contract between the municipality and the authority may be pledged by the authority to secure its bonds and a pledged contract may not be modified except as provided by the terms of the pledge. The governing body of the municipality may authorize the contracts without further authorization. A payment required to be made by the municipality under the contract may be made regardless of whether the payment is provided for in the municipality's budget, but the payment shall be included in the next budget of the municipality.

(e) The authority may acquire real property for a project in the name of the municipality, at the expense of the authority, by purchase or condemnation under the laws relating to the condemnation of land by the municipality. The authority may use and occupy the real property as long as it exists.

(f) If the authority determines that real property is no longer required for a project, and the property was acquired at the expense of the municipality, the authority may give the use and occupancy of the property to the municipality. If the property was acquired at the expense of the authority, the authority may sell, lease, or otherwise dispose of the property and may use the proceeds for the purposes of this Act.

**SECTION 11. TAX EXEMPT STATUS OF AUTHORITY.** The property of an authority is exempt from taxation, unless otherwise specifically provided by a statute or in the ordinance or resolution creating the authority. The authority may invest in direct obligations of the United States the portion of the proceeds received from the sale of bonds or other funds that the authority considers available for this purpose.

**SECTION 12. CONTRACTS.** The authority shall let contracts in the same manner, to the extent practicable, as is provided by law for contracts of the municipality, except that if the estimated expense of a contract does not exceed \$5,000, the contract may be entered into without public bidding.

**SECTION 13. ACTIONS AGAINST AUTHORITY.** Except where there is actual notice on the part of the authority that death has occurred or that the claimant has received some injury or that property of the claimant has been damaged, in an action against the authority for damages, injuries to property, or personal injuries or death, any person making a claim shall give notice of the same to the authority against which such claim is made, reasonably describing the damage or injury claimed, and the time, manner, and place of the incident from which it arose, within six months from the date of the incident.

**SECTION 14. DURATION AND TERMINATION OF AUTHORITY.** The authority's existence expires 25 years after the date it is created, except that the municipality that created the authority may extend its existence for not more than 10 years by certified ordinance filed with

the secretary of state, and the authority continues to exist until all its liabilities or bonds issued by its board or by the municipality on its behalf have been paid. On the authority's ceasing to exist, its rights and properties pass to the municipality.

**SECTION 15. BONDS - LEGAL INVESTMENTS.** The bonds are securities in which a public officer or body of this state, municipality or municipal subdivision, insurance company, bank, trust company, savings and loan association, or investment company may invest. However, the bonds are not eligible for the investment of funds of a trust, estate, or guardianship under the control of an individual fiduciary. The bonds may be deposited with a public officer or body of this state or a municipality or municipal subdivision for any purpose for which the deposit of bonds or other obligations of this state may be deposited.

**SECTION 16. EFFECTIVE DATE.** This Act takes effect September 1, 1985.

**SECTION 17. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 17, 1985, by the following vote: Yeas 133, Nays 1, 1 present, not voting; House concurred in Senate amendments to H.B. No. 2371 on May 27, 1985, by a non-record vote; passed by the Senate, with amendments, on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 14, 1985

Effective: September 1, 1985