

CHAPTER 852

S.B. No. 1330

An Act relating to the acquisition, development, and operation of certain islands and related facilities and improvements; providing for financing.

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

SECTION 1. DEFINITION. In this Act “island property” means land on an island located in the channel, canal, bay, inlet, or lake on which is located a municipality to which this Act applies and the facilities and improvements related to the land.

SECTION 2. APPLICATION. This Act applies only to a municipality located on a channel, canal, bay, inlet, or lake connected with the Gulf of Mexico.

SECTION 3. FACILITIES AND IMPROVEMENTS. A municipality to which this Act applies may build, construct, purchase, acquire, lease as lessor or lessee, improve, enlarge, extend, repair, maintain, replace, develop, or operate facilities and improvements necessary or convenient for the proper administration of island property owned by the municipality.

SECTION 4. BONDS. To fund facilities and improvements under this Act, the governing body of the municipality may issue bonds or other obligations payable from taxes, revenues, or both. However, obligations payable from ad valorem taxes, except for refunding, may not be issued unless the issuance has been authorized at an election called and held according to Chapter 1, Title 22, Revised Statutes. Notwithstanding any law or charter provision to the contrary, an election is not required for the issuance of obligations payable solely from revenues if the obligations do not constitute a debt of the municipality or a pledge of its faith and credit and if the owner or holder of the obligation cannot demand payment out of funds raised or to be raised by taxation.

SECTION 5. MANAGEMENT AND CONTROL. (a) During a period when obligations issued under this Act or interest on the bonds is outstanding, the municipality, as provided by the ordinance authorizing the issuance of the obligations, may place the management and control of the island property and the revenue from the island property in the hands of the governing body of the municipality or of a board of trustees provided for in the ordinance, consisting of not more than nine members. However, if the municipality operates under a home-rule charter that requires that the island property be managed or controlled by a board of trustees or commission, that charter controls, and references in this Act to a board of trustees are references to the board of trustees or commission provided for in the charter. The compensation, terms of office, powers, and duties of members of the board of trustees, election or appointment of their successors, and matters pertaining to the organization and duties of the board may be specified by the ordinance, except as provided otherwise by a charter described by this section. In matters about which the ordinance and charter are silent, the laws and rules governing the governing body of the municipality govern the board of trustees.

(b) If the management and control of the island property is placed in the hands of a board of trustees, the board of trustees constitutes a body politic and corporate and may:

- (1) manage, control, maintain, and operate the island property;
- (2) employ a general manager and other officers, employees, and representatives that the board considers appropriate and fix their duties and compensation;
- (3) prepare and adopt budgets, fix charges for services and facilities, authorize expenditures, and manage and control the income and revenue of the island property;
- (4) determine policies and establish rules and procedures for the operation of the island property;
- (5) acquire property and interests in property to carry out the purposes of this Act and construct improvements and facilities on the property;
- (6) contract in its own name, but not in the name of the municipality; contracts involving the expenditure of more than \$5,000 may be awarded only pursuant to competitive bids, except that competitive bids are not required for contracts for personal or professional services, real estate transactions, operation of facilities or improvements under specific agreements for a limited term, or insurance, or contracts for which the board of trustees determines that the time delay required by the competitive bidding process would prevent or substantially impair the operation of the island property;
- (7) issue in the name of the board, with the consent of the governing body of the municipality, revenue bonds or other obligations payable from revenues in the manner provided by this Act and refund previously issued obligations;
- (8) issue in the name of the board, with the consent of the governing body of the municipality, current expense notes drawn against all or part of the current revenues of the board to pay expenses during the fiscal year in which the notes are issued, except that the aggregate amount of the notes outstanding may not exceed 50 percent of an amount equal to the revenues budgeted for that fiscal year less principal and interest on obligations other than current expense notes to be paid from the revenues during that fiscal year;

(9) evidence contractual obligations to pay money by issuing in the name of the board, with the consent of the governing body of the municipality, certificates of participation in the contractual obligations;

(10) sue and be sued in its own name;

(11) adopt, use, and alter a corporate seal; and

(12) establish a security force and commission as peace officers one or more employees of the force who are certified as qualified to be peace officers by the Commission on Law Enforcement Officer Standards and Education; peace officers commissioned under this Act have the rights, privileges, obligations, and duties of other peace officers in this state while they are on the property under the control of the board of trustees or in the actual course and scope of their employment.

SECTION 6. SECURITY. (a) Obligations payable from revenues issued under this Act may be payable from and secured solely by a pledge of the net revenues derived or to be derived from the operation of the island property. The issuer shall charge and collect fees, tolls, and charges, while the obligations or interest on the obligations is outstanding and unpaid, in an amount sufficient to pay maintenance and operating expenses of the island property, the interest on the obligations as it accrues, and the principal of the obligations as it matures and shall make other payments prescribed in the bond ordinance or resolution or other proceedings authorizing and relating to the issuance of the obligations. For the purposes of this section "net revenues" means an amount equal to the gross revenues derived from the operation of the island property less the reasonable expenses of maintaining and operating that island property. The obligations may be sold at public or private sale, notwithstanding the provision of a general or special law or charter to the contrary. Revenue eligible for use as security includes revenue from leases, subleases, sales, or contracts of sale entered into by the municipality or the board of trustees with respect to the island property.

(b) In addition, the obligations may be secured by a trust indenture and a mortgage or deed of trust lien or other security interest on island property. In connection with the issuance of revenue obligations, the municipality or the board may lease as lessor, sublease as sublessor, or sell island property to be constructed or acquired with the proceeds of the obligations. This lease, sublease, or contract of sale may contain terms and provisions that the municipality or the board considers advantageous. The terms of the lease, sublease, or contract of sale may obligate the lessee or purchaser of the island property to make payments in amounts adequate to pay the principal, interest, and premium on the revenue obligations as they come due.

SECTION 7. ORDINANCE OR RESOLUTION. The ordinance of the governing body or the resolution of the board authorizing the issuance of revenue obligations may provide for the flow of funds, the establishment and maintenance of an interest and sinking fund, reserve fund, or other fund, and the depositing of funds and may make covenants with respect to the obligations, the pledged revenues, and the operation, maintenance, and upkeep of the island property considered appropriate. The ordinance or resolution and other proceedings may prohibit the further issuance of obligations payable from the pledged revenues or may reserve the right to issue additional obligations to be secured by a pledge of and payable from the net revenues on a parity with or subordinate to the lien and pledge securing the obligations being issued, subject to the conditions provided by the ordinance, resolution, or other proceedings. The ordinance or resolution and other proceedings may provide that surplus net revenues received from the operation of the island property may be used for the payment of interest on and principal of tax obligations issued by the municipality under this Act. The ordinance or resolution and other proceedings may contain other provisions and covenants not prohibited by the state constitution or this Act.

SECTION 8. FORM AND ISSUANCE. (a) Obligations issued by the governing body under this Act must be authorized by ordinance of the governing body of the municipality, issued in the name of the municipality, signed by the mayor or presiding officer of the municipality, countersigned by the municipality's secretary or clerk, and impressed with the seal of the municipality. However, the ordinance may provide for the obligations and coupons attached to the obligations to be signed by the facsimile signatures of those officers and for the seal of the municipality on the obligations to be a facsimile seal.

(b) Obligations authorized by resolution of the board of trustees shall be issued in the name of the board of trustees, signed by the chairman or presiding officer of the board of trustees, countersigned by the secretary or assistant secretary, and impressed with the seal of the board of trustees. However, the resolution may provide for facsimile signatures and seals on the obligations and interest coupons attached to the obligations.

(c) All obligations must mature serially or otherwise not later than 40 years after their date of issuance and may be sold at public or private sale at a price and under terms determined by the

governing body or board of trustees to be the most advantageous reasonably obtainable, except that the obligations must bear interest at a rate or rates not exceeding the maximum permitted by law. The obligations may be made callable before maturity at the times and prices prescribed in the ordinance or resolution. The obligations may be made registrable as to principal, interest, or both.

(d) All obligations other than current expense notes and the record relating to their issuance shall be submitted to the attorney general. If the obligations have been authorized in accordance with this Act, the attorney general shall approve them and deliver them to the comptroller, who shall register them. On approval, registration, and delivery to the purchasers, they are incontestable except for forgery or fraud. If a revenue obligation recites that it is secured by a pledge of the proceeds of a contract, a copy of the contract and the proceedings authorizing it shall be submitted to the attorney general for approval, and the approval by the attorney general of the obligations constitutes an approval of the contract. After approval, the contract is incontestable except for forgery or fraud.

SECTION 9. FUNDS. From the proceeds of sale of obligations there may be appropriated or set aside an amount for the payment of interest expected to accrue during the period of construction, an amount necessary to pay expenses related to the issuance, sale, and delivery of the obligations, and amounts required by the ordinance or resolution to be deposited into a reserve fund or other fund.

SECTION 10. REFUNDING OBLIGATIONS. (a) The governing body of the municipality may issue tax obligations for the purpose of refunding outstanding tax obligations.

(b) The governing body or the board of trustees, with the approval of the governing body, may issue revenue obligations for the purpose of refunding outstanding revenue obligations. Revenue refunding obligations may be combined with new or original revenue obligations into one series or issue. Revenue refunding obligations may be issued to refund obligations of more than one series or issue, and pledges related to the outstanding obligations may be combined for the security of the revenue refunding obligations. The revenue refunding obligations may be secured by pledges of other or additional net revenues. The issuance of revenue refunding obligations does not impair the contract rights of the holders of outstanding revenue obligations that are not refunded. Revenue refunding obligations may bear interest at a rate higher than that borne by the obligations refunded, except that the interest rate may not exceed the rate permitted by this Act.

(c) Refunding obligations must be authorized and executed and mature as provided by this Act for original obligations. The attorney general shall approve them as in the case of original obligations, and the comptroller shall register them on surrender and cancellation of the obligations refunded, except that if the ordinance or resolution authorizing their issuance provides that they be sold at public or private sale and the proceeds deposited in a place where the refunded obligations are payable or with the State Treasurer and the refunding obligations are issued in an amount sufficient to pay the principal of the refunded obligations and the interest on the refunded obligations until their option or maturity dates, the comptroller shall register them without the surrender and cancellation of the refunded obligations. Proceeds of revenue refunding obligations deposited in a place where the refunded obligations are payable or with the State Treasurer shall be held under an escrow agreement under which the proceeds and interest earned on the proceeds will be available for the payment of the interest on and principal of the refunded obligations as they become due. The escrow agreement may provide that the proceeds, until they are needed to pay interest and principal, may be invested in direct obligations of the United States. Interest earned on these investments may be pledged to the payment of the principal of and interest on the refunded obligations or the refunding obligations or may be considered as revenues of the island property.

(d) A refunding obligation approved by the attorney general and registered by the comptroller is incontestable except for forgery or fraud.

(e) The provisions of this Act relating to original obligations, to the extent applicable, apply to refunding obligations.

SECTION 11. OTHER LAW. To the extent applicable, Articles 1111 through 1118, Revised Statutes, apply to revenue obligations issued under this Act, and a municipality to which this Act applies has, in relation to revenue obligations issued under this Act, the powers granted by those articles. If those articles conflict with this Act, this Act prevails. A municipality may not mortgage or encumber improvements and facilities being financed by obligations payable from ad valorem taxes, unless authorized at the election required by Section 4 of this Act.

SECTION 12. AUTHORIZED INVESTMENTS AND SECURITY. Obligations issued under this Act are investment securities governed by Chapter 8, Business & Commerce Code, and legal and authorized investments for a bank, trust company, savings and loan association,

insurance company, fiduciary, trustee, guardian, and for a sinking fund of a city, town, village, county, school district, or other political corporation or subdivision of the state. The obligations may secure the deposit of public funds of the state, or a city, town, village, county, school district, or other political corporation or subdivision of the state and may provide this security to the extent of their face value if accompanied by all unmatured interest coupons.

SECTION 13. VALIDATION. Revenue obligations issued by a municipality before the effective date of this Act that are payable from the revenues of improvements and facilities on island property and proceedings relating to the obligations are validated. This section does not apply to litigation pending on the effective date of this Act in which the validity of such a matter is in question.

SECTION 14. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 25, 1985, by the following vote: Yeas 30, Nays 0; passed the House on May 21, 1985, by the following vote: Yeas 143, Nays 0, two present not voting.

Approved: June 15, 1985

Effective: Immediately