

**CHAPTER 643**

**S.B. No. 903**

An Act amending Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes); authorizing interim and permanent financing by the issuance of various obligations by or on behalf of governmental agencies and political subdivisions of the State of Texas and the use of funds generated and the making of certain contracts and credit agreements; prescribing the terms and conditions under which such obligations and contracts may be made, issued, delivered, and paid, and the status of such obligations and contracts.

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

**SECTION 1.** Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. As used in this Act, the following terms shall mean:

"(1) 'Issuer' means (A) any incorporated city operating under a home-rule charter adopted pursuant to Article XI, Section 5, of the Constitution of Texas *having a population according to the latest federal decennial census of 90,000 or more and having outstanding long-term debt secured by the revenues of the public utility for which the obligations are being issued which is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long-term obligations*; (B) any conservation and reclamation district created and organized as a river authority under and pursuant to Article III, Section 52, or Article XVI, Section 59, of the Constitution of Texas and by an act of the legislature of the State of Texas; (C) any joint powers agency organized and operating pursuant to Chapter 166, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1435a, Revised Statutes); (D) any metropolitan rapid transit authority or regional transportation authority created, organized, and operating pursuant to Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Revised Statutes) or Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Revised Statutes); ~~and~~ (E) any conservation and reclamation district organized or operating as a navigation district under and pursuant to Article III, Section 52, or Article XVI, Section 59, of the Constitution of Texas; *and (F) any district organized or operating under and pursuant to Article XVI, Section 59, of the Constitution of Texas which has all or part of two or more incorporated cities within its boundaries; and (G) agencies of the State of Texas (including the governing boards of the state institutions of higher education).*

"(2) 'Public utility' means properties and facilities 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 in Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Revised Statutes); (F) an 'airport' as defined in the Municipal Airports Act (Article 46d-1 et seq., Revised Statutes); or (G) a port facility, including facilities for the operation or development of ports and waterways or in aid of navigation and navigation-related commerce in the ports and on the waterways; *and (H) the carrying out of any purpose or function for which the issuer may issue bonds.*

"(3) 'Eligible project' means the acquisition or construction of *and improvements, additions, or extensions to [for]* a public utility, one or more, including capital assets and facilities incident and related to the operation, maintenance, and administration thereof, and, with respect to properties and facilities for (A) the generation of electric power and energy, fuel acquisition, or development or facilities for the transportation thereof; (B) a public transportation system, buildings, structures, terminals, rolling stock, garages, shops, equipment, and other facilities (including vehicle parking areas and facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars, and buses or for the protection and environmental enhancement of such facilities) for mass public transportation; and (C) a port facility, wharves, docks, warehouses, grain elevators, other storage facilities, bunkering facilities, port-related railroads and bridges, floating plants and facilities, lightering facilities, cargo handling facilities, towing facilities, and all other facilities or aids incident to or useful in the operation of a port facility.

"(4) 'Project costs' means all costs and expenses incurred in relation to an eligible project, one or more, including without limitation design, planning, engineering and legal costs, acquisition costs of land, interests in land, right-of-way and easements, construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an eligible project, and financing costs, including interest during construction *and thereafter*, underwriter's discount and/or fees, legal, financial, and other professional services. Project costs attributable to an eligible project and incurred prior to the issuance of any obligations issued to finance an eligible project may be reimbursed from the proceeds of sale of ~~short term~~ obligations.

"(5) 'Obligations' [~~Short term obligations~~] means notes, warrants, or other special obligations authorized to be issued by an issuer under the provisions of this Act *and all 'bonds' as defined in the Bond Procedures Act of 1981 (Article 717k-6, Revised Statutes), which, prior to the delivery thereof [at the time of issuance], have been rated [at least investment grade]* by a nationally recognized rating agency for municipal securities *in either one of the three highest rating categories for short term obligations or one of the four highest rating categories for long term obligations. It is provided, however, that the term 'obligations' does not mean or include any obligations payable from ad valorem taxes.*

“(6) ‘Credit agreement’ means loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase ~~[short term]~~ obligations, purchase or sale agreements, or commitments or other contracts or agreements authorized and approved by the governing body of an issuer in connection with the authorization, issuance, security, exchange, ~~[or]~~ payment, purchase, or redemption of obligations and/or interest thereon ~~[of short term obligations]~~.

“(7) ‘Governing body’ means the board, council, commission, or other designated body (acting either individually or jointly, when authorized by law) authorized by law to issue bonds for or on behalf of an issuer.

“Section 2. The governing body of an issuer is hereby authorized and empowered to issue, sell, and deliver ~~[short term]~~ obligations and execute credit agreements in relation thereto to finance project costs of an eligible project, or to refund obligations issued in connection with an eligible project, subject to the limitations contained herein. Obligations ~~[Short term obligations]~~ shall be secured solely by (A) the proceeds of sale of other ~~[short term]~~ obligations; (B) the proceeds of sale of revenue bonds payable from the revenue to be received from a public utility or a specified user of a public utility; ~~[of a public utility, one or more, operated and maintained by an issuer, or]~~ (C) any revenues which the issuer is authorized by any statute, city home-rule charter, or constitutional provision to pledge to the payment of any obligations; or (D) any one or more of such sources, including credit agreements, all as the governing body of the issuer shall provide in the resolution, order, or ordinance authorizing the issuance of the ~~[short term]~~ obligations. Obligations ~~[Short term obligations]~~ shall be repaid from the source or sources securing the payment thereof, funds received from a credit agreement, or from any other revenues otherwise legally available for the payment thereof, except funds derived from ad valorem taxation.

“Section 3. The issuance of ~~[short term]~~ obligations shall be authorized by resolution, order, or ordinance of the governing body of an issuer, which resolution, order, or ordinance shall fix the maximum amount of ~~[short term]~~ obligations to be issued or, if applicable, the maximum principal amount which may be outstanding at any time, the maximum term ~~[short term]~~ obligations issued and delivered pursuant to such authorization shall be outstanding, the maximum interest rate to be borne by the ~~[short term]~~ obligations, the manner of sale (which may be by either public or private sale), price, form, terms, conditions, and the covenants thereof. The resolution, order, or ordinance authorizing the issuance of ~~[short term]~~ obligations may provide for the designation of a paying agent and registrar for the ~~[short term]~~ obligations and may authorize one or more designated officers or employees of the issuer to act on behalf of the issuer from time to time in the selling and delivering of ~~[short term]~~ obligations authorized and fixing the dates, price, interest rates, interest payment periods, and other procedures as may be specified in the resolution, order, or ordinance. Obligations ~~[Short term obligations]~~ may be issued in such form or such denomination, payable at such time or times, in such amount or amounts or installments, at such place or places, in such form, under such terms, conditions, and details, in such manner, redeemable prior to maturity at any time or times, bearing no interest, or bearing interest at any rate or rates (either fixed, variable, floating, adjustable, or otherwise, all as determined in accordance with the resolution, order, or ordinance providing for the issuance of the obligations, which resolution, order, or ordinance may provide a formula, index, contract, or any other arrangement for the periodic determination of interest rates), ~~[or variable, or floating according to any clearly stated formula, calculation, or method]~~ not to exceed the maximum net effective interest rate allowed by law and may be signed or otherwise executed in such manner, with manual or facsimile signatures, and with or without a seal, all as shall be specified by the governing body of the issuer in the resolution, order, or ordinance authorizing the issuance of the ~~[short term]~~ obligations. The proceeds received from the sale of obligations may be deposited or invested in any manner and in such obligations as may be specified in the resolution, order, ordinance, or other proceedings authorizing the obligations. In the event any officer or officers whose signatures are on any ~~[short term]~~ obligations cease to be such officer or officers before the delivery thereof to the purchaser, such signature or signatures shall nevertheless be valid and sufficient for all purposes and the successor or successors in office of any such officer or officers shall be fully authorized to complete the execution, authentication, or delivery of said ~~[short term]~~ obligations to the purchaser or purchasers thereof.

“Section 4. The governing body of an issuer may enter into credit agreements in conjunction with the issuance, payment, sale, resale, or exchange of obligations to enhance the security for or provide for the payment, redemption, or remarketing of the obligations and interest on the obligations or to reduce the interest payable on the obligations. A credit agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the governing body of the issuer approves. The cost to the issuer of the credit agreement may be paid from the proceeds of the sale of the obligations to which the credit agreement relates or from any other source, including revenues of the issuer that are available for the purpose of paying the

*obligations and the interest on the obligations or that may otherwise be legally available to make those payments. [contract for the future sale of short term obligations pursuant to which the purchasers are committed to purchase the short term obligations from time to time on the terms and conditions stated in the contract, including any credit agreement executed in connection therewith, and may pay such consideration as it considers proper for the commitments. Notwithstanding any law to the contrary, including any procedural requirements with respect thereto, an issuer shall be authorized and empowered to pledge or encumber the revenues of a public utility, one or more, subject to applicable statutory liens and liens securing indebtedness payable therefrom, as security for the repayment of a credit agreement. Short term obligations issued pursuant to such a contract shall mature within five years from the date of the contract.]*

*"Section 5. Obligations [Short term obligations] (including accrued interest) may from time to time be refinanced, renewed, or refunded by the issuance of other [short term] obligations [and may be funded by the issuance of revenue bonds payable solely from the revenues of a public utility, one or more. Short term obligations, refunding short term obligations, renewals of short term obligations, or short term obligations issued to refinance short term obligations shall not be outstanding for a total elapsed time of more than five years from the date of the passage of the resolution, order, or ordinance authorizing the issuance thereof].*

*"Section 6. Preliminary to the issuance and delivery of [short term] obligations, the resolution, order, or ordinance authorizing the issuance thereof, together with any credit agreements, and any contracts providing revenues or security to pay the obligations, shall be submitted to the attorney general for his review. If the attorney general shall find that such credit agreement or agreements, if any, contracts, if any, and other authorizing proceedings conform to the requirements of the Texas Constitution and this Act, the attorney general shall approve them [same shall be approved]. Thereafter, the [short term] obligations authorized therein may be executed and delivered, exchanged, or refinanced from time to time in accordance with the authorizing proceedings. Upon such approval by the attorney general and initial delivery of any [short term] obligations so authorized, any such [the] credit agreements, any such contracts providing revenues or security, such initial [and short term] obligations and all other obligations thereafter issued pursuant to the authorizing proceedings, [thereto and secured thereby] shall be incontestable for any cause in any court or other forum and shall be valid and binding obligations enforceable in accordance with their respective terms and provisions. [Registration of short term obligations by the comptroller of public accounts shall not be required.]*

*"Section 7. All [short term] obligations issued by an issuer shall constitute negotiable instruments and are investment securities governed by Chapter 8, Business & Commerce Code, notwithstanding any provisions of law or court decision to the contrary and are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees and for the sinking fund of cities, towns, villages, school districts, and other political subdivisions or public agencies of the State of Texas. Said [short term] obligations also are eligible to secure deposits of any public funds of the state or any political subdivision or public agency of the state and are lawful and sufficient security for the deposits to the extent of their market value.*

*"Section 8. This Act shall be construed liberally to effectuate the legislative intent and purposes of this Act, and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.*

*"Section 9. In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of the Act or the applications of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.*

*"Section 10. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of [the short term] obligations and the performance of the other acts and procedures authorized hereby, or under any agreement, without reference to any other laws or [of] any restrictions or limitations contained therein; that to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law or home-rule charter, the provisions of this Act shall prevail and control; provided, however, that any issuer shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.*

*“Section 11. When the governing body of any issuer provides in the resolution, order, ordinance, or other proceedings authorizing the issuance of any bond, any credit agreement, or any other agreement for a pledge or lien on revenues, income, or other resources of the issuer, or the assets of the issuer, or any fund maintained by the issuer to secure payment of the bonds or to secure payments required by a credit agreement or other agreement, such pledge or lien shall be valid and binding in accordance with its terms without further action on the part of the issuer and without any filing or recording with respect thereto except in the records of the issuer. All such liens and pledges shall be effective from the time of payment for and delivery of the bonds or execution of the credit agreement or other agreement until the bonds or other payments have been paid or payment of the bonds has been provided for or the terms of the credit agreement or other agreement have been satisfied and shall be fully effective as to items then on hand and thereafter received, and said items shall be subject to such liens or pledges without any physical delivery thereof or further act. Nothing contained in this section shall relieve any issuer of any obligation to file or record any lien on realty or submit any bond issue for approval by the attorney general and registration by the comptroller of public accounts. This Act does not affect a restriction imposed by the Local Sales and Use Tax Act (Article 1066c, Vernon’s Texas Civil Statutes) on a pledge of or lien on sales or use tax revenue.”*

**SECTION 2.** 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 May 17, 1985, by the following vote: Yeas 30, Nays 0; Senate concurred in House amendments on May 27, 1985, by the following vote: Yeas 31, Nays 0; passed the House, with amendments, on May 24, 1985, by the following vote: Yeas 146, Nays 2, one present not voting.

Approved: June 14, 1985

Effective: Immediately