

CHAPTER 137

S.B. No. 63

AN ACT

relating to the issuance of anticipation notes by counties and municipalities.

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

SECTION 1. Chapter 1, Title 22, Revised Statutes, is amended by adding Article 717w to read as follows:

Art. 717w. ANTICIPATION NOTES

Sec. 1. DEFINITIONS. In this article:

(1) "Amount available" includes cash, marketable securities, or money in an account that, without legislative or judicial action, may be used to pay an issuer's anticipated expenditures. The term does not include:

(A) money in an account that is subject to a legislative, judicial, or contractual requirement that the account be reimbursed; or

(B) the proceeds of an anticipation note issued under this article.

(2) "Anticipated expenditure" means an expenditure that is payable from anticipated tax or other revenue.

(3) "Anticipation note" means a note issued under this article.

(4) "Cash reserve" means an amount reasonably required by an issuer for the payment of unanticipated expenditures. For purposes of this article, an amount equal to one month's anticipated expenditures is presumed to be reasonably required as a cash reserve.

(5) "Cumulative cash flow deficit" means, for the period for which the amount is determined, the amount by which the sum of an issuer's anticipated expenditures plus the issuer's cash reserve exceeds the amount available for payment of the anticipated expenditures.

(6) "Governing body" means the board, council, commission, court, or other body or group authorized to issue anticipation notes for or on behalf of an issuer.

(7) "Issuer" means a municipality or county.

Sec. 2. **CONFLICT WITH OTHER LAW.** If there is a conflict between this article and another statute, the issuer may use either provision, and it is not necessary for the governing body to designate the law under which the action is being taken.

Sec. 3. **PURPOSES FOR WHICH ANTICIPATION NOTES MAY BE AUTHORIZED.** The commissioners court of a county, on recommendation of the county auditor or budget officer if applicable, or the governing body of a municipality may authorize anticipation notes to:

(1) pay a contractual obligation incurred or to be incurred for the construction of any public work;

(2) pay a contractual obligation incurred or to be incurred for the purchase of materials, supplies, equipment, machinery, buildings, lands, and rights-of-way for an issuer's authorized needs and purposes;

(3) pay a contractual obligation incurred or to be incurred for professional services, including services provided by tax appraisal engineers, engineers, architects, attorneys, mapmakers, auditors, financial advisors, and fiscal agents;

(4) pay operating expenses or current expenses; or

(5) fund the issuer's cumulative cash flow deficit.

Sec. 4. **ADDITIONAL AUTHORITY FOR COUNTIES AND CERTAIN MUNICIPALITIES.** (a) This section applies only to:

(1) a county; or

(2) a municipality that has a population of 80,000 or more, according to the most recent federal census.

(b) Notwithstanding anything in this article to the contrary, the governing body of an issuer described by Subsection (a) of this section may exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), except that the prohibition in that Act on the repayment of an obligation with funds derived from ad valorem taxation does not apply to an issuer exercising the authority granted under this section.

Sec. 5. **AUTHORIZATION OF ANTICIPATION NOTES BY ORDINANCE OR ORDER.** Anticipation notes may be authorized by an ordinance adopted by the governing body of a municipality or by an order adopted by the governing body of a county.

Sec. 6. **RESTRICTIONS ON ANTICIPATION NOTES.** (a) Except as provided by Subsection (b) of this section, anticipation notes issued under this article are subject to:

(1) Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes);

(2) Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes);

(3) Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes);

(4) the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes);

(5) Sections 3.001 through 3.003, Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes); and

(6) Chapter 400, Acts of the 66th Legislature, 1979 (Article 717m-1, Vernon's Texas Civil Statutes).

(b) Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), governs approval by the attorney general of anticipation notes issued under Section 4 of this article.

(c) A governing body may not issue anticipation notes that are to be payable from bonds secured by ad valorem taxes unless the proposition authorizing the issuance of the bonds has been approved by a majority of the voters in an election held by the issuer and the proposition states that anticipation notes may be issued.

(d) A governing body may not use proceeds from the sale of anticipation notes to repay interfund or other borrowing that occurred more than 24 months before the date of the ordinance or order authorizing the issuance of the notes.

(e) Anticipation notes issued for a purpose described by Subdivision (1), (2), or (3) of Section 3 of this article must mature before the seventh anniversary of the date that the attorney general approves the notes.

(f) Anticipation notes issued for a purpose described in Subdivision (4) or (5) of Section 3 of this article must mature before the first anniversary of the date that the attorney general approves the notes.

(g) Anticipation notes issued by a municipality under Subdivision (4) of Section 3 of this article may not exceed 75 percent of the revenues or taxes anticipated to be collected in the fiscal year in which the attorney general approves the notes. Anticipation notes issued by a county under Subdivision (4) of Section 3 of this article may not exceed 50 percent of the revenues or taxes anticipated to be collected in the fiscal year in which the attorney general approves the notes.

Sec. 7. PROVISIONS IN ANTICIPATION NOTES. The governing body may:

- (1) make the notes payable at the times and places determined by the governing body;
- (2) issue the notes in forms and one or more denominations, either in coupon form or registered as to principal and interest, or both;
- (3) make the notes contain options for redemption before the scheduled maturity; and
- (4) make the notes contain other provisions the governing body desires.

Sec. 8. SALE OF ANTICIPATION NOTES. The governing body may sell anticipation notes at public or private sale for cash.

Sec. 9. SOURCE OF PAYMENT. (a) The governing body may provide that anticipation notes will be paid from and secured by revenues, taxes, or the proceeds of bonds to be issued by the issuer.

(b) The governing body may pledge to the payment of anticipation notes revenues, taxes, or the proceeds of bonds to be issued by the issuer. If an ad valorem tax to be assessed and collected in a subsequent fiscal year is pledged to the payment of anticipation notes, the governing body of the issuer shall levy the tax in the ordinance or order that authorizes the issuance of the notes.

SECTION 2. This Act takes effect September 1, 1993. Subsection (c) of Section 6 of this article shall not apply to anticipation notes that are to be payable from bonds secured by ad valorem taxes for projects which have been approved by a majority of the voters of the issuer voting at an election held prior to September 1, 1993.

SECTION 3. 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 the Senate on February 22, 1993, by a viva-voce vote; the Senate concurred in House amendment on April 30, 1993, by a viva-voce vote; passed the House, with amendment, on April 28, 1993, by a non-record vote.

Approved May 11, 1993.

Effective Sept. 1, 1993.