

HEALTH AND SAFETY CODE CHAPTER 223. HOSPITAL PROJECT FINANCING ACT

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE A. FINANCING, CONSTRUCTING, AND INSPECTING HEALTH

FACILITIES

CHAPTER 223. HOSPITAL PROJECT FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 223.001. SHORT TITLE. This chapter may be cited as the Hospital Project Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.002. DEFINITIONS. In this chapter:

(1) "Authority" means a public health authority, including a hospital authority created under Chapter 262 or 264.

(2) "Bond" includes a note.

(3) "Issuer" means an authority, municipality, county, or hospital district.

(4) "Hospital project" means existing or future real, personal, or mixed property, or an interest in that property, other than a nursing home licensed or required to be licensed under the authority of this state, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be necessary for medical care, research, training, or teaching in this state. A hospital project may include one or more of the following properties if found by the governing body of an issuer to be necessary or convenient for the project:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as:

(i) a hospital, clinic, health facility, extended care facility, outpatient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or

system;

(ii) a multiunit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(iii) a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment; or

(iv) a medical or dental research facility, medical or dental training facility, or another facility used in the education or training of health care personnel;

(C) property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(D) any other structure, facility, or equipment related or essential to the operation of a health facility or system.

(5) "Nonprofit organization" means:

(A) a nonprofit corporation established under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) an association, foundation, trust, cooperative, or similar person no part of the net earnings of which is distributable to any private shareholder or individual and that incurs a contractual obligation with an issuer with respect to a hospital project under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.003. HOSPITAL PROJECT COSTS. (a) Hospital project costs include costs related to:

(1) the acquisition of land, a right-of-way, an option to purchase land, an easement, or another interest in land related to a hospital project;

(2) the acquisition, construction, repair, renovation, remodeling, or improvement of a structure to be used as

or with a hospital project;

(3) site preparation, including demolishing or removing a structure the removal of which is necessary or incident to providing a hospital project;

(4) expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project, including architectural, engineering, legal, and related services, plans and specifications, studios, surveys, and cost and revenue estimates;

(5) machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project for operation;

(6) financing charges and interest accruing before and during construction, and after completion of construction for not more than two years;

(7) the start-up of a hospital project during construction and after completion of construction for not more than two years;

(8) hospital project financing, including:

(A) legal, accounting, and appraisal fees, expenses, and disbursements;

(B) printing, engraving, and reproduction services; and

(C) an initial or acceptance fee of a trustee or paying agent;

(9) the provision of the hospital project by the issuer, including:

(A) costs incurred directly or indirectly by the issuer;

(B) reimbursement of reasonable sums to the issuer for time spent by its employees in providing the hospital project and its financing; and

(C) the appraisal obtained under Section 223.011(d)(2); and

(10) the authorization, preparation, sale, issuance, and delivery of bonds under this chapter, including:

(A) related fees, charges, and expenses;

(B) expenses and costs described by Section 223.029(b); and

(C) expenses incurred in carrying out a trust agreement relating to hospital project bonds.

(b) The listing of items of cost in Subsection (a) is not inclusive of all hospital costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. FINANCING HOSPITAL PROJECTS

Sec. 223.011. PROVIDING HOSPITAL PROJECTS. (a) An issuer acting for itself or through a nonprofit organization may provide one or more hospital projects by acquisition, construction, or improvement. An acquisition may occur by purchase, devise, gift, lease, or a combination of those methods.

(b) A hospital project must be located in this state and within or partially within the issuer's boundaries, except that a hospital project of a municipality may be located:

(1) outside the municipality's limits if it is within the municipality's extraterritorial jurisdiction; or

(2) in another municipality if the governing body of the other municipality consents to the former municipality's provision of the project.

(c) An issuer may only acquire a hospital project from a nonprofit organization that has been in existence and has operated the hospital project for at least three years before the date of acquisition by the issuer.

(d) An issuer must affirmatively find that the cost of an acquired hospital project is not more than:

(1) the actual audited cost of the hospital project to the date of acquisition; or

(2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.012. TITLE TO PROJECTS. (a) An issuer may vest title to a hospital project provided under this chapter in a

nonprofit organization.

(b) If the issuer vests the title in a nonprofit organization, it may retain a mortgage interest in the hospital project. The mortgage interest expires when all bonds of the issuer sold to provide the hospital project are paid or provision has been made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.013. CONTRACTS RELATING TO HOSPITAL PROJECT.

(a) An issuer may execute a contract, including a lease, with a nonprofit organization with respect to a hospital project. A contract may authorize the nonprofit organization to use, operate, or acquire the hospital project on the terms, including payment provisions, the issuer's governing body determines to be advisable.

(b) A contract may include the sale of a hospital project to a nonprofit organization, including a nonprofit organization using the hospital project. The terms of the sale may include installment payments. The sale must be fully consummated when all bonds of the issuer issued to provide the hospital project are paid or provision is made for their final payment if, during the time the bonds or interest on the bonds remains unpaid, there is no failure to make any payments owing under any lease or contract at the time and in the manner as the payments come due.

(c) A contract under this chapter may be for the term agreed to by the parties and may provide that the contract continues until the bonds specified in the contract, or refunding or substitution bonds issued in place of those bonds, are fully paid or provision is made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.014. AUTHORITY OF ISSUER. An issuer has full and complete authority relating to its bonds, a lease agreement in which the issuer is a lessor, or a sale or other contract, subject only to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.015. OBLIGATIONS LIMITED. (a) The issuer may not

incur a financial obligation under this chapter that cannot be paid from the proceeds of hospital project bonds, revenues derived from operating a hospital project, or other revenues that may be provided by a nonprofit organization in accordance with this chapter.

(b) The legislature or an issuer may not make an appropriation to pay any part of a cost of a hospital project or any operating cost of a hospital project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.016. EMINENT DOMAIN. (a) Under this chapter, an issuer may not acquire by eminent domain a hospital project, or any part of a hospital project, to be sold or leased under this chapter.

(b) Land previously acquired by eminent domain by an issuer may be sold or leased under this chapter if the governing body of the issuer determines that:

(1) the use of the land will not interfere with the purpose for which the land was originally acquired or that the land is no longer needed for that purpose;

(2) at least seven years have elapsed since the date the land was acquired by eminent domain; and

(3) the land was not acquired for park purposes or, if the land was acquired for park purposes, the sale or lease of parkland has been approved at an election held under Section 1502.055, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.250, eff. Sept. 1, 2001.

SUBCHAPTER C. HOSPITAL PROJECT BONDS

Sec. 223.021. ISSUANCE OF HOSPITAL PROJECT BONDS. (a) An issuer may provide for the issuance of negotiable revenue bonds or other evidences of indebtedness for paying hospital project costs. The bonds may be issued subject only to the requirements of this chapter.

(b) As the governing body of the issuer determines to be in the best interest of the issuer, one or more series of bonds may be issued for each hospital project, or more than one hospital project

may be combined in one or more series of bonds, but each hospital project may be considered separately with respect to Subsections (c), (d), and (e), and Sections 223.022-223.024.

(c) Before issuing bonds, the governing body of an issuer must adopt a resolution:

(1) declaring its intention to issue bonds; and

(2) stating the maximum amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of the bonds.

(d) Unless the governing body of the issuer orders an election on the issuance of the bonds, a substantial copy of the resolution shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first publication must be made not earlier than the 45th day before the tentative date stated in the resolution. The third publication must be made not later than the 11th day before the tentative date.

(e) Before authorizing the issuance of any bonds or ordering an election on any matters authorized by this chapter, the issuer must deposit with the chief administrative officer of the issuer a complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the name of each owner of the nonprofit organization for whom the hospital project is to be constructed. The required description is public information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.022. ELECTION ON BONDS. (a) The governing body of an issuer shall order and hold an election on the question of the issuance of hospital project bonds if at least five percent or 20,000 of the voters qualified to vote in an election held by the issuer, whichever is less, file a written protest against the issuance of the bonds before the close of business on the business day before the tentative date in the resolution for the authorization of the bonds.

(b) The issuer's governing body may order an election on its own motion without the filing of a protest.

(c) In addition to the contents required by the Election Code, the election order must specify the location of and the presiding judge and alternate judge for each polling place.

(d) Notice of a bond election shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first notice must be published not earlier than the 45th day before the date set for the election, and the third notice must be published not later than the 11th day before the date set for the election.

(e) The election shall be conducted in accordance with the general laws pertaining to bond elections in municipalities, except as modified by this chapter.

(f) The ballot shall provide for voting for or against the proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects."

(g) The governing body shall declare whether a majority of the voters voting in the election approve the proposition.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.023. ELECTION RESULTS. (a) If the proposition is approved by a majority of the voters voting in the election, the issuer may authorize the bonds.

(b) If the proposition is not approved, an election on the issuing of revenue bonds for the hospital project that was the subject of the election may not be ordered within six months after that election, and bonds may not be issued for the hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of the bonds.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.024. PROTEST NOT FILED. If a protest requiring an election is not filed under Section 223.022(a) and an election is not called under Section 223.022(b), the issuer may issue the bonds under the resolution without an election for two years after the tentative date specified in the resolution.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.025. LIMITATIONS ON BONDS. (a) Bonds issued in accordance with this chapter are not general obligations or a pledge of the faith and credit of this state, the issuer, or another political subdivision of this state. The bonds are payable solely from revenues of the hospital project for which they are issued or from other revenues provided by a nonprofit organization. Money of this state or a political subdivision of this state from any source, including tax revenue, but excluding revenue of the hospital project being financed with the bonds, may not be used to pay the principal of, any redemption premium for, or interest on revenue bonds or refunding bonds issued under this chapter.

(b) Each revenue bond must state on its face that:

(1) this state, the issuer, or any political subdivision of this state is not obligated to pay the principal of, any redemption premium for, or interest on the bonds except from the revenues pledged for that purpose; and

(2) the faith, credit, or the taxing power of this state, the issuer, or any political subdivision of this state is not pledged to the payment of the principal of, any redemption premium for, or interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.026. FORM AND TERM OF BONDS. (a) The issuer shall determine the form of the bonds, the date of the bond issue, the price and interest rate of the bonds, and the maturity for the bonds, which may not be more than 40 years after its date.

(b) The issuer may:

(1) make the bonds redeemable before maturity and determine the prices and conditions for early redemption;

(2) determine:

(A) the interest coupons to be attached to the bonds;

(B) the denominations of the bonds; and

(C) the places of payment of the bonds' principal, any redemption premium, and interest;

(3) issue the bonds in coupon or in registered form, or

both;

(4) make the bonds payable to a specific person;

(5) provide for the registration of coupon bonds as to principal or as to principal and interest; and

(6) provide for the conversion of coupon bonds into registered bonds without coupons and for the reconversion into coupon bonds of any registered bonds without coupons.

(c) If the duty of conversion or reconversion of a bond is imposed on a trustee in a trust agreement, the substituted bonds need not be reapproved by the attorney general, and the bonds remain incontestable.

(d) The issuer may provide for execution of the bonds and any coupons using a facsimile signature under Chapter 618, Government Code. If the signature or a facsimile signature of a person who has been an officer appears on a bond or coupon, the signature or facsimile signature is valid and sufficient for all purposes, regardless of whether the person is an officer when the bonds are delivered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.251, eff. Sept. 1, 2001.

Sec. 223.027. DEDICATED REPAYMENT REVENUE. The principal of, any redemption premium for, and interest on hospital project bonds are payable from and secured, as specified by the resolution of the governing body or in any trust agreement or other instrument securing the bonds, by a pledge of all or part of the revenues of the issuer to be derived from:

(1) the ownership, operation, lease, use, mortgage, or sale of the hospital project for which the bonds have been issued; or

(2) other revenues provided by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.028. SECURITY FOR BONDS. (a) Bonds issued under this chapter may be secured by a trust agreement between the issuer and a trust company or bank having the powers of a trust company in

this state.

(b) A trust agreement may pledge or assign lease income, contract payments, fees, or other charges to be received from a nonprofit organization. The governing body of the issuer may secure the bonds additionally by a mortgage, a deed of trust lien, or other security interest on a designated hospital project vesting in the trustee the power to sell the hospital project for the payment of the indebtedness, the power to operate the hospital project, and any other power for the further security of the bonds.

(c) The trust agreement may:

(1) evidence a pledge of all or any part of the revenue of the issuer from the ownership, operation, lease, use, mortgage, or sale of a hospital project for the payment of principal of, any redemption premium for, and interest on the bonds when due and payable;

(2) provide for the creation and maintenance of reserves;

(3) set forth the rights and remedies of the bondholders and of the trustee;

(4) restrict the individual right of action by bondholders as is customary in trust agreements securing bonds and debentures of corporations;

(5) contain provisions the issuer considers reasonable and proper for the security of the bondholders; and

(6) provide for the issuance of bonds to replace lost, stolen, or mutilated bonds.

(d) A trust agreement or resolution providing for the issuance of bonds may provide for protecting and enforcing the rights and remedies of the bondholders as reasonable and proper, including covenants setting forth the duties of the issuer and the nonprofit organization in relation to:

(1) the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which the bonds are issued; and

(2) the custody, safeguarding, and application of all money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.029. USE OF PROCEEDS. (a) The proceeds of the bonds may be:

(1) used only for the payment of hospital project costs for which the bonds are issued; and

(2) disbursed in the manner and subject to the restrictions provided in the resolution authorizing the issuance or in the trust agreement securing the bonds.

(b) The issuer shall be paid, from the proceeds of its bonds, money in the amount equal to:

(1) the issuer's actual expenditures for financing, legal, printing, and other expenses incurred in issuing, selling, and delivering the bonds; and

(2) the compensation paid to the issuer's employees for the time the employees spent on activities related to the issuance, sale, and delivery of the bonds.

(c) If the amount of proceeds exceeds the cost of the hospital project for which the bonds are issued, the excess shall be deposited to the credit of the sinking fund for the bonds.

(d) The governing body of the issuer may provide for a bond reserve fund in the resolution authorizing the bonds or an instrument securing the bonds and may set aside amounts from the proceeds for payments into the reserve fund.

(e) Proceeds from the sale of bonds may be invested in:

(1) direct, indirect, or guaranteed obligations of the United States that mature in a manner specified by the resolution authorizing the bonds or another instrument securing the bonds; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(f) The issuer's governing body may designate a trust company or a bank with trust powers to act as depository for proceeds of bonds or revenues from a lease or other contract. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.030. TEMPORARY OBLIGATIONS. (a) Before the issuance of definitive bonds, the issuer may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery.

(b) The term of an interim receipt or temporary bond may not be more than two years.

(c) The issuer shall submit the interim receipts or temporary bonds to the attorney general in accordance with Section 223.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.031. EXAMINATION OF BONDS. (a) After issuance of the bonds is authorized and before delivery of the bonds to their purchasers, the bonds and the proceedings authorizing their issuance and securing the bonds shall be presented to the attorney general for examination.

(b) If the bonds state that they are secured by a pledge of all or part of the revenues of the issuer to be derived from a lease or other contract, the contract shall also be submitted to the attorney general.

(c) If the attorney general finds that the bonds have been authorized in accordance with state law and any contract securing the bonds has been made in accordance with state law, the attorney general shall approve the bonds and contract.

(d) The comptroller shall register the bonds when they are approved. After approval and registration, the bonds and contract submitted with the bonds are valid and binding obligations according to their terms and are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.032. REFUNDING BONDS. (a) An issuer by resolution may authorize the issuance of revenue bonds to refund:

(1) outstanding bonds or other evidences of indebtedness that have been issued to provide a hospital project;
or

(2) outstanding obligations, mortgages, or advances

issued, made, or given by a nonprofit organization for the cost of a hospital project.

(b) The amounts refunded may include the principal of and any redemption premium for the bonds or other evidences of indebtedness, and any interest accruing to the date of redemption.

(c) The bonds or other evidences of indebtedness to be refunded need not have been issued under this chapter and need not have been originally issued by the issuer of the refunding bonds.

(d) This subchapter governs the issuance of refunding bonds, the maturities and other details of the bonds, the rights of the bondholders, and rights, duties, and obligations of the refunding bond issuer.

(e) The issuer may issue the refunding bonds in exchange or substitution for outstanding bonds or other evidences of indebtedness or may sell the refunding bonds and use the proceeds for paying or redeeming outstanding bonds or other evidences of indebtedness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.033. ENFORCEMENT OF AGREEMENTS. (a) An agreement made under this chapter may provide, in the event of default in the payment of the principal of, interest on, or any redemption premium for bonds subject to the agreement or in the performance of an agreement contained in the proceedings, mortgage, or instruments relating to the bonds, for enforcement of the payment or performance by:

(1) mandamus; or

(2) the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with the resolution, mortgage, or instruments.

(b) A mortgage to secure hospital project bonds may provide for foreclosure and the sale of the property secured by the mortgage on default in the mortgage payment or the violation of an agreement contained in the mortgage. The foreclosure and sale may occur under proceedings in equity or in any other manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder

of any of the bonds secured by the mortgage may be the purchaser at a foreclosure sale if the trustee or bondholder is the highest bidder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.034. MEMBERSHIP OF GOVERNING BODY NOT SUBJECT TO CHANGE. The resolution authorizing the issuance of hospital project bonds, the trust agreement securing the bonds, or any other agreement relating to the bonds may not prescribe the method of selecting or the term of office of any member of the issuer's governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.035. BONDS TAX EXEMPT. The bonds issued under this chapter, their transfer, and interest from the bonds, including profit made from their sale, are exempt from taxation by this state and a municipality or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.036. BONDS AS SECURITIES. (a) Bonds issued under this chapter and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A lease agreement, sales agreement, or other contract under this chapter is not a security under The Securities Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.037. BONDS AS INVESTMENTS. (a) Unless the bonds issued under this chapter are ineligible for investments in accordance with the criteria established in other statutes, rulings, or regulations of this state or the United States, the bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;

(4) a savings and loan association;
(5) an insurance company;
(6) a fiduciary;
(7) a trustee or guardian; and
(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of this state.

(b) The bonds may secure the deposits of public funds of this state or a municipality, county, school district, or other political corporation or subdivision of this state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.038. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer or nonprofit organization, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.