

GOVERNMENT CODE

TITLE 9. PUBLIC SECURITIES

SUBTITLE F. SPECIFIC AUTHORITY FOR STATE OR LOCAL GOVERNMENT TO
ISSUE SECURITIES

CHAPTER 1371. OBLIGATIONS FOR CERTAIN PUBLIC IMPROVEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1371.001. DEFINITIONS. In this chapter:

(1) "Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase obligations, purchase or sale agreement, interest rate management agreement, or other commitment or agreement authorized by a governing body in anticipation of, related to, or in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing, or redemption of some or all of an issuer's obligations or interest on obligations, or both, or as otherwise authorized by this chapter.

(2) "Eligible project" means:

(A) the acquisition or construction of or an improvement, addition, or extension to a public works, including a capital asset or facility incident and related to the operation, maintenance, or administration of the public works, and:

(i) with respect to a property or a facility for the generation of electric power and energy, fuel acquisition or the development or transportation of power, energy, or fuel;

(ii) with respect to a property or a facility for a public transportation system:

(a) a building, terminal, garage, shop, or other structure, rolling stock, equipment, or another facility for mass public transportation; or

(b) a vehicle parking area or a facility necessary or convenient for the beneficial use and access of persons and vehicles to a station, terminal, yard, car, or bus, or for the protection or environmental enhancement of a facility

for mass public transportation; and

(iii) with respect to a property or a facility for a port facility, a wharf or dock, a warehouse, grain elevator, or other storage facility, a bunkering facility, port-related railroad or bridge, floating plant or facility, lightering facility, cargo handling facility, towing facility, or any other facility or aid incident to or useful in the operation of a port facility;

(B) a causeway, bridge, tunnel, turnpike, highway, or combination of those facilities, including:

(i) a necessary overpass, underpass, interchange, entrance plaza, tollhouse, service station, approach, fixture, accessory, or item of equipment, or a storage, administration, or other necessary building; and

(ii) a property right or other interest acquired in connection with those facilities;

(C) a public improvement owned by a county that serves the purpose of attracting visitors and tourists to the county, including a civic center, auditorium, exhibition hall, coliseum, stadium, or parking area;

(D) a project for which there exists authorized but unissued obligations approved by a majority of the voters of the issuer or for which the issuer is authorized to issue other indebtedness payable from ad valorem taxes;

(E) a project for which an issuer is authorized to issue revenue bonds secured, in whole or in part, by revenue derived from or related to student loans; or

(F) an approved venue project under Chapter 334 or 335, Local Government Code.

(3) "Governing body" means the board, council, commission, commissioners court, or other designated body, acting individually or jointly as authorized by law, that is authorized by law to issue public securities for or on behalf of an issuer.

(3-a) "Interest rate management agreement" means an agreement that provides for an interest rate transaction, including a swap, basis, forward, option, cap, collar, floor, lock, or hedge transaction, a similar transaction, or any combination of those

types of transactions. The term includes:

(A) a master agreement that provides standard terms for transactions;

(B) an agreement to transfer collateral as security for transactions; or

(C) a confirmation of transactions.

(4) "Issuer" means:

(A) a home-rule municipality that:

(i) adopted its charter under Section 5, Article XI, Texas Constitution;

(ii) has a population of 50,000 or more; and

(iii) has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term obligation;

(B) a conservation and reclamation district created and organized as a river authority under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(C) a joint powers agency organized and operating under Chapter 163, Utilities Code;

(D) a metropolitan rapid transit authority, regional transportation authority, or coordinated county transportation authority created, organized, or operating under Chapter 451, 452, or 460, Transportation Code;

(E) a conservation and reclamation district organized or operating as a navigation district under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(F) a district organized or operating under Section 59, Article XVI, Texas Constitution, that has all or part of two or more municipalities within its boundaries;

(G) a state agency, including a state institution of higher education;

(H) a hospital authority created or operating under Chapter 262 or 264, Health and Safety Code, in a county that:

(i) has a population of more than 3.3 million; or

(ii) is included, in whole or in part, in a

standard metropolitan statistical area of this state that includes a county with a population of more than 2.2 million;

(I) a hospital district in a county that has a population of more than two million;

(J) a nonprofit corporation organized to exercise the powers of a higher education loan authority under Section 53B.47(e), Education Code;

(K) a county:

(i) that has a population of 3.3 million or more; or

(ii) that, on the date of issuance of obligations under this chapter, has authorized, outstanding, or any combination of authorized and outstanding, indebtedness of at least \$100 million secured by and payable from the county's ad valorem taxes and the authorized long-term indebtedness of which is rated by a nationally recognized rating agency of securities issued by local governments in one of the four highest rating categories for a long-term obligation;

(L) an independent school district that has an average daily attendance of 50,000 or more as determined under Section 48.005, Education Code;

(M) a municipality or county operating under Chapter 334, Local Government Code;

(N) a district created under Chapter 335, Local Government Code;

(O) a junior college district that has a total headcount enrollment of 40,000 or more based on enrollment in the most recent regular semester; or

(P) an issuer, as defined by Section 1201.002, that has:

(i) a principal amount of at least \$100 million in outstanding long-term indebtedness, in long-term indebtedness proposed to be issued, or in a combination of outstanding or proposed long-term indebtedness; and

(ii) some amount of long-term indebtedness outstanding or proposed to be issued that is rated in one of the four highest rating categories for long-term debt instruments by a

nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation.

(5) "Obligation" means a public security as defined by Section 1201.002 or other obligation that may be issued by an issuer and that is expected to be rated, and before delivery is rated, by a nationally recognized rating agency for municipal securities in one of the three highest rating categories for a short-term debt instrument or one of the four highest rating categories for a long-term debt instrument. The term does not include an obligation payable wholly or partly from ad valorem taxes unless:

(A) issuance of the obligation or an obligation refunded by the obligation has been approved by the voters of the issuer in an election held for that purpose; or

(B) the issuer:

(i) is authorized by law to issue public securities payable wholly or partly from ad valorem taxes for the purpose for which the obligation is to be issued; and

(ii) has complied with any conditions imposed by law before its pledge of ad valorem taxes to pay the principal of or interest on the obligation.

(6) "Obligation authorization" means a resolution, order, or ordinance of a governing body authorizing the issuance of an obligation.

(7) "Project cost" means a cost or expense incurred in relation to an eligible project. The term includes:

(A) design, planning, engineering, and legal cost;

(B) acquisition cost of land or an interest in land;

(C) construction cost;

(D) cost of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an eligible project; and

(E) financing cost, including:

(i) interest on obligations and payments on

credit agreements during and after construction;

(ii) underwriter's discount or fee; and

(iii) cost of legal, financial, and other professional services.

(8) "Public works" means property or a facility 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 transit authority system, as defined by Section 451.001, Transportation Code, or a public transportation system, as defined by Section 452.001, Transportation Code;

(F) an airport as defined by Section 22.001, Transportation Code;

(G) a port facility, including a facility for the operation or development of a port or waterway or in aid of navigation or navigation-related commerce in a port or on a waterway;

(H) a project as defined by Section 284.001, Transportation Code; or

(I) the carrying out of a purpose or function for which an issuer may issue public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 15, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 23, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 769, Sec. 8, 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.011(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 641 (H.B. 2701), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1005 (H.B. 647), Sec. 1, eff. June 18, 2005.

Acts 2006, 79th Leg., 3rd C.S., Ch. 9 (H.B. 153), Sec. 5, eff.

May 31, 2006.

Acts 2007, 80th Leg., R.S., Ch. 1310 (S.B. 968), Sec. 1, eff.
June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 557 (S.B. 1876), Sec. 4, eff.
September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 928 (H.B. 3070), Sec. 4, eff.
September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.081, eff.
September 1, 2019.

Sec. 1371.002. CONSTRUCTION. This chapter shall be liberally construed to achieve the legislative intent and purposes of this chapter. A power granted by this chapter shall be broadly interpreted to achieve that intent and those purposes.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.003. RELATIONSHIP TO OTHER LAW. (a) This chapter is wholly sufficient authority within itself for the issuance of obligations, the execution of a credit agreement, and the performance of the other acts and procedures authorized by this chapter or under any agreement, without reference to any other laws or any restrictions or limitations contained in those laws. Any restrictions or limitations contained in other laws do not apply to the procedures prescribed by this chapter or to the issuance of obligations, the execution of credit agreements, or the performance of other acts authorized by this chapter.

(b) To the extent of any conflict or inconsistency between this chapter and another law or a municipal charter, this chapter controls.

(c) An issuer may use a provision of another law that does not conflict with this chapter to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1310 (S.B. 968), Sec. 2, eff.
June 15, 2007.

Sec. 1371.004. EFFECT OF FINDING OR DETERMINATION UNDER DELEGATION OF AUTHORITY. A finding or determination made by an officer or employee acting under the authority delegated to the officer or employee under this chapter has the same force and effect as a finding or determination made by the governing body.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 16, eff. Sept. 1, 1999.

SUBCHAPTER B. ISSUANCE AND APPROVAL OF OBLIGATION

Sec. 1371.051. AUTHORITY TO ISSUE OBLIGATION. As authorized and approved by the governing body of an issuer, the governing body may issue, sell, and deliver an obligation to:

(1) finance a project cost;

(2) refund an obligation issued in connection with an eligible project; or

(3) finance all or part of a payment owed or to be owed on:

(A) the establishment of a credit agreement; or

(B) the settlement or termination, at maturity or otherwise, of a credit agreement, whether the settlement or termination occurs:

(i) at the option of the issuer or the other party to the credit agreement; or

(ii) by operation of the terms of the credit agreement.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 769, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1310 (S.B. 968), Sec. 3, eff. June 15, 2007.

Sec. 1371.052. TRANSPORTATION AUTHORITY OBLIGATION; ELECTION. (a) A transportation authority created, organized, and operating under Chapter 452, Transportation Code, may not issue an

obligation, other than a refunding obligation, that is payable in whole or in part from its sales and use tax revenue and has a maturity longer than five years unless an election required by Section 452.352(b), Transportation Code, has been held and the proposition has been approved.

(b) An obligation that is exempt from the election requirement of Section 452.352(b), Transportation Code, by the terms of Chapter 452, Transportation Code, is also exempt from the election requirement of this section.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.0521. INDEPENDENT SCHOOL DISTRICT OBLIGATION. An independent school district may not issue an obligation under this chapter unless the obligation is authorized in accordance with Section 45.003, Education Code.

Added by Acts 2001, 77th Leg., ch. 769, Sec. 11, eff. Sept. 1, 2001.

Sec. 1371.053. OBLIGATION AUTHORIZATION. (a) A governing body must adopt or approve an obligation authorization before an obligation may be issued.

(b) The obligation authorization must establish:

(1) the maximum amount of the obligation to be issued or, if applicable, the maximum principal amount that may be outstanding at any time;

(2) the maximum term for which obligations issued under the authorization may be outstanding;

(3) the maximum interest rate the obligation will bear;

(4) subject to Subsection (c)(2), the manner of sale of the obligation, which may be by public or private sale, the price of the obligation, the form of the obligation, and the terms and covenants of the obligation; and

(5) each source securing payment of the obligation.

(c) The obligation authorization may:

(1) provide for the designation of a paying agent and registrar for the obligation; and

(2) authorize one or more designated officers or

employees of the issuer to act on behalf of the issuer from time to time in selling and delivering the obligation and setting the dates, price, interest rates, interest payment periods, and other procedures relating to the obligation, as specified in the obligation authorization.

(d) An obligation may:

(1) be issued in a specified form or denomination;

(2) be payable:

(A) at one or more times;

(B) in installments or a specified amount or amounts;

(C) at a specified place or places;

(D) in a specified form;

(E) under specified terms and details; and

(F) in a specified manner; and

(3) be issued as redeemable before maturity at one or more specified times.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 17, eff. Sept. 1, 1999.

Sec. 1371.054. RATE OF INTEREST. (a) An obligation may bear no interest or bear interest at any rate or rates not to exceed the maximum net effective interest rate allowed by law, whether fixed, variable, floating, adjustable, or otherwise, as determined in accordance with the obligation authorization.

(b) The obligation authorization may provide a formula, index, contract, or other arrangement for the periodic determination of interest rates.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.055. EXECUTION OF OBLIGATION. (a) An obligation may be executed, with or without a seal, with a manual or facsimile signature, as specified in the obligation authorization.

(b) The signature on an obligation of a person who is no longer an officer when the obligation is delivered to the purchaser is valid and sufficient for all purposes.

(c) A person's successor in office may complete the execution, authentication, or delivery of the obligation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.056. AUTHORITY TO ENTER INTO AND EXECUTE CREDIT AGREEMENTS. (a) An issuer may execute and deliver any number of credit agreements in anticipation of, related to, or in connection with the authorization, issuance, security, purchase, payment, sale, resale, redemption, remarketing, or exchange of some or all of the issuer's obligations or interest on obligations, or both, at any time, without regard to whether the:

- (1) obligations have been authorized or issued; or
- (2) credit agreement was contemplated, authorized, or executed in relation to the initial issuance, sale, or delivery of the obligations.

(b) Except as provided by this section, a credit agreement must substantially contain the terms and be for the period the governing body approves. A credit agreement may provide that it:

- (1) may be terminated with or without cause; or
- (2) becomes effective at the option of another party to the credit agreement, if the governing body first finds that the option serves best the interests of the issuer.

(c) The governing body may delegate to any number of officers or employees of the issuer the authority to approve specific terms of, to execute and deliver, or to terminate or amend in accordance with its terms, a credit agreement or transactions under a credit agreement on the behalf of the issuer, subject to any condition the governing body specifies. The delegation must include limits on:

- (1) the principal amount or the notional amount;
- (2) the term;
- (3) the rate;
- (4) the source of payment;
- (5) the security;
- (6) the identity or credit rating of an authorized counterparty;
- (7) the duration of the authorization; and

(8) for an interest rate management agreement, the:

- (A) fixed or floating rates;
- (B) economic consequences;
- (C) early termination provisions;
- (D) type;
- (E) provider; and
- (F) costs of credit enhancement.

(d) The cost to the issuer of a credit agreement or payments owed by an issuer under a credit agreement may be paid from and secured by any source, including:

(1) the proceeds from the sale of the obligation to which the credit agreement relates;

(2) any revenue and money of the issuer that is available to pay the obligation;

(3) any interest on the obligation or that may otherwise be legally used; or

(4) ad valorem taxes if the credit agreement is authorized in anticipation of, in relation to, or in connection with an obligation that is wholly or partly payable from or is to be wholly or partly payable from ad valorem taxes.

(e) A credit agreement is an agreement for professional services but is not a contract subject to Subchapter I, Chapter 271, Local Government Code.

(f) If a credit agreement is authorized and is executed in anticipation of the issuance of an obligation described by Section 1371.001(5)(B) because the issuer is authorized by Subchapter C, Chapter 271, Local Government Code, to issue certificates of obligation:

(1) notice required by Section 271.049, Local Government Code, in addition to the other requirements for the notice, must describe the time and place tentatively set for the adoption of the order or ordinance authorizing the credit agreement, the maximum amount and term of the obligations and credit agreement, and the manner in which the certificates of obligation and credit agreement will be paid; and

(2) the issuer may enter into the credit agreement and issue the certificates of obligation only if:

(A) the municipal secretary or clerk or person with similar authority does not receive a petition signed by at least five percent of the registered voters of the issuer that protests the issuance of the certificates of obligation or the execution of the credit agreement before the later of the date tentatively set for the adoption of the order or ordinance to authorize the credit agreement or the date the order or ordinance is adopted;

(B) the issuance and execution are approved at an election held for that purpose conducted as provided for a bond election under Chapter 1251; or

(C) notice is not required by Section 271.049, Local Government Code, before the certificates of obligation are authorized.

(g) Payments received by an issuer under a credit agreement or on termination of all or part of a credit agreement may be used to:

(1) pay the obligations in anticipation of which, in relation to which, or in connection with which the credit agreement was entered into or pay the costs to be financed by the obligations in anticipation of which, in relation to which, or in connection with which the credit agreement was entered into;

(2) pay other liabilities or expenses that are secured on parity with or senior to the obligations in anticipation of which, in relation to which, or in connection with which the credit agreement was entered into; or

(3) after the satisfaction of the obligations or costs described by Subdivision (1) and of the liabilities and expenses described by Subdivision (2) that are due, make payments for any other purpose for which the issuer may issue obligations under this subchapter or that is otherwise authorized by law, unless the credit agreement is paid primarily from ad valorem taxes.

(h) An issuer may agree to pay or receive a payment on early termination of an interest rate management agreement due to a breach or for another reason as provided by the interest rate management agreement. The agreement may specify the payment by a specific amount, by a formula, or by a process or algorithm.

(i) A credit agreement secured in the manner described by Subsection (d)(4) may be executed without an election or the imposition of an ad valorem tax for the credit agreement unless required by the Texas Constitution. If the Texas Constitution requires an election for the credit agreement, the election must be held substantially in the manner provided for an election under Chapter 1251.

(j) An issuer may enter into an interest rate management agreement transaction only:

(1) if the issuer has either entered into at least three interest rate management transactions before November 1, 2006, or has entered into one or more interest rate management transactions with notional amounts totaling at least \$400 million before that date; or

(2) as provided by Subsection (k).

(k) An issuer may enter into an interest rate management transaction if:

(1) the governing body has adopted, amended, or ratified during the preceding two years a risk management policy governing entering into and managing interest rate management agreements and transactions that addresses:

(A) conditions, if any, under which the issuer may enter into an interest rate management agreement transaction without independent advice from a financial advisor or swap advisor who has experience in interest rate management transactions; and

(B) authorized purposes, permitted types and creditworthiness of counterparties, credit risks and other risks, liquidity, methods of selection of counterparties, and limits concerning awarding a transaction, monitoring, and exposure;

(2) the issuer has received from the counterparty:

(A) if the transaction was not awarded through a competitive bidding process:

(i) a statement that, in the counterparty's judgment, the difference in basis points between the rate of the transaction and the mid-market rate for a comparable transaction falls within the commonly occurring range for comparable transactions;

(ii) a statement of the amount of the difference as determined by the counterparty; or

(iii) if the counterparty does not know of a comparable transaction or mid-market rate, a statement of another suitable measure of pricing acceptable to the counterparty; and

(B) the counterparty's disclosure of any payments the counterparty made to another person to procure the transaction; and

(3) the governing body or an authorized officer or employee of the issuer has determined that the transaction will conform to the issuer's interest rate management agreement policy after reviewing a report of the chief financial officer of the issuer that identifies with respect to the transaction:

(A) its purpose;

(B) the anticipated economic benefit and the method used to determine the anticipated benefit;

(C) the use of the receipts of the transaction;

(D) the notional amount, amortization, and average life compared to the related obligation;

(E) any floating indices;

(F) its effective date and duration;

(G) the identity and credit rating of the counterparties;

(H) the cost and anticipated benefit of transaction insurance;

(I) the financial advisors and the legal advisors and their fees;

(J) any security for scheduled and early termination payments;

(K) any associated risks and risk mitigation features; and

(L) early termination provisions.

(1) While an interest rate management agreement transaction is outstanding, the governing body of the issuer shall review and ratify or modify its related risk management policy at least biennially.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 18, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1310 (S.B. 968), Sec. 4, eff. June 15, 2007.

Sec. 1371.057. REVIEW AND APPROVAL OF OBLIGATION, CREDIT AGREEMENT, AND CONTRACT BY ATTORNEY GENERAL. (a) Before an obligation may be issued or a credit agreement executed, a record of the proceedings of the issuer authorizing the issuance, execution, and delivery of the obligation or credit agreement and any contract providing revenue or security to pay the obligation or credit agreement must be submitted to the attorney general for review.

(b) If the attorney general finds that the proceedings authorizing an obligation or credit agreement conform to the requirements of the Texas Constitution and this chapter, the attorney general shall approve them and deliver to the comptroller a copy of the attorney general's legal opinion stating that approval and the record of proceedings. After approval, the obligation or credit agreement may be executed and delivered, exchanged, or refinanced from time to time in accordance with those authorizing proceedings.

(c) If the authorization of an obligation or of a credit agreement provides that the issuer intends to refinance the obligation or a payment under the credit agreement with refunding bonds issued under Chapter 1207, then the obligation or payment shall be treated, for purposes of attorney general review and approval, as having the intended term and payment schedule of the refunding bonds.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 19, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1005 (H.B. 647), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1310 (S.B. 968), Sec. 5, eff. June 15, 2007.

Sec. 1371.058. REGISTRATION. On receipt of the documents required by Section 1371.057(b), the comptroller shall register the record of the proceedings relating to the issuance of obligations or the execution of a credit agreement.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 19, eff. Sept. 1, 1999.

Sec. 1371.059. VALIDITY AND INCONTESTABILITY. (a) If proceedings to authorize an obligation or credit agreement are approved by the attorney general and registered by the comptroller, each obligation or credit agreement, as applicable, or a contract providing revenue or security included in or executed and delivered according to the authorizing proceedings is incontestable in a court or other forum and is valid, binding, and enforceable according to its terms.

(b) Notwithstanding Subsection (a) and Section 1371.003, and except as provided by this subsection, an obligation authorized by this chapter is not valid, binding, or enforceable unless the obligation is approved by the attorney general and registered by the comptroller in accordance with Chapter 1202. The attorney general's approval and registration by the comptroller is not required for an obligation:

(1) to which Chapter 1202 does not apply or that is exempt from approval and registration as provided by Section 1202.007(a)(1), (2), (3), (4), (6), or (7); or

(2) that matures within one year after the issuer receives payment for the obligation, regardless of whether the obligation is evidenced by an instrument with a nominal term of longer than one year.

(c) An issuer in the proceedings to authorize obligations or a credit agreement, or in a credit agreement, may agree to waive sovereign immunity from suit or liability for the purpose of adjudicating a claim to enforce the credit agreement or obligation or for damages for breach of the credit agreement or obligation. This subsection does not apply to an issuer that is:

(1) a state agency, including a state institution of

higher education; or

(2) a county with a population of 1.5 million or more.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Redesignated from Government Code Sec. 1371.057(c) and amended by

Acts 1999, 76th Leg., ch. 1064, Sec. 19, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1310 (S.B. 968), Sec. 6, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 24, eff. September 1, 2011.

Sec. 1371.060. REFINANCING, RENEWAL, OR REFUNDING OF OBLIGATION OR CREDIT AGREEMENT. An obligation, including accrued interest, or a credit agreement may from time to time be refinanced, renewed, or refunded by the issuance of another obligation or credit agreement.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Renumbered from Government Code Sec. 1371.058 by Acts 1999, 76th Leg., ch. 1064, Sec. 19, eff. Sept. 1, 1999.

Sec. 1371.061. MANAGEMENT REPORTS. (a) If a governing body authorizes an interest rate management agreement transaction, the governing body shall designate an officer of the issuer to monitor and report on the transaction. At least annually, the designated officer shall present to the governing body a written report, signed by the designated officer, on all outstanding interest rate management agreement transactions conducted for the issuer. The report must:

(1) describe the terms of the transactions;

(2) contain a statement:

(A) of the fair value of each transaction;

(B) of the value of any collateral posted to or by the issuer under the transactions with each counterparty at the year's end; and

(C) reviewing the transactions' cash flows;

(3) identify with respect to each transaction the counterparty, any guarantor of the counterparty's obligations

under the transaction, and the credit ratings of the counterparty and the guarantor; and

(4) state whether the continuation of the transactions under the agreement would comply with the issuer's interest rate management agreement policy.

(b) This section does not apply to an issuer that has entered into:

(1) at least three interest rate management agreement transactions before November 1, 2006; or

(2) one or more interest rate management agreement transactions with notional amounts totaling at least \$400 million before November 1, 2006.

Added by Acts 2007, 80th Leg., R.S., Ch. 1310 (S.B. 968), Sec. 7, eff. June 15, 2007.

SUBCHAPTER C. FINANCIAL ASPECTS OF OBLIGATION

Sec. 1371.101. OBLIGATION AS NEGOTIABLE INSTRUMENT AND INVESTMENT SECURITY. An obligation is:

(1) a negotiable instrument; and

(2) an investment security to which Chapter 8, Business & Commerce Code, applies.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.102. USE OF CERTAIN PROCEEDS. (a) The proceeds from the sale of an obligation may be deposited or invested in any manner and in any obligation specified in the obligation authorization.

(b) A project cost incurred before the issuance of an obligation issued to finance the related eligible project may be reimbursed from the proceeds from the sale of the obligation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.103. SECURITY FOR OBLIGATION. (a) An obligation must be secured solely by:

(1) the proceeds from the sale of other obligations;

(2) the proceeds from the sale of revenue bonds

payable from the revenue to be received from a public works or a specified user of a public works;

(3) any revenue that the issuer is authorized by the constitution, a statute, or the charter of a home-rule municipality to pledge to the payment of an obligation;

(4) a credit agreement; or

(5) any combination of those sources.

(b) A governing body may secure an obligation and pay the cost of a credit agreement executed and delivered in connection with the financing of a project cost with:

(1) the sources permitted by this chapter; and

(2) ad valorem taxes to the extent the project cost relates to an eligible project financed or to be financed with obligations payable from ad valorem taxes.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 20, eff. Sept. 1, 1999.

Sec. 1371.104. SOURCE OF REPAYMENT OF OBLIGATION. An obligation must be repaid from:

(1) a source of security for the payment of the obligation;

(2) money received from a credit agreement; or

(3) any other revenue legally available for the payment of the obligation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.105. PLEDGE OR LIEN ON RESOURCES, ASSETS, OR FUND OF ISSUER. (a) A pledge or lien provided for in the resolution, order, ordinance, or other proceedings authorizing a public security, a credit agreement, or another agreement on a resource of the issuer, including revenue or income, on an asset of the issuer, or on a fund maintained by the issuer to secure payment of the public security or to secure a payment required by a credit agreement or other agreement:

(1) is valid and binding without further action by the issuer according to its terms and without being filed or recorded,

except in the records of the issuer;

(2) is effective from the time of payment for and delivery of the public security or execution of the credit agreement or other agreement until:

(A) the public security or other payment has been paid;

(B) payment of the public security has been provided for; or

(C) each term of the credit agreement or other agreement has been satisfied; and

(3) is effective as to an item on hand or later received, and the item is subject to the lien or pledge without physical delivery of the item or other action.

(b) This section does not exempt an issuer from a duty to:

(1) record a lien on real property; or

(2) submit a public security issue for approval by the attorney general and registration by the comptroller.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1371.106. PLEDGE OF OR LIEN ON SALES OR USE TAX REVENUE. This chapter does not affect a restriction imposed by Chapter 321, Tax Code, on a pledge of or lien on sales and use tax revenue.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. ADVISERS RETAINED FOR THE ISSUANCE OF PUBLIC SECURITIES AND RELATED MATTERS

Sec. 1371.151. DEFINITIONS. In this subchapter:

(1) "Advice" means the advice provided by an adviser regarding activities described by Sections 1371.154(b)(2)(A)-(C).

(2) "Adviser" means a person who provides advice regarding activities described by Sections 1371.154(b)(2)(A)-(C).

(3) "Interest rate management agreement" means an agreement that provides for an interest rate transaction, including:

(A) a swap, basis, forward, option, cap, collar,

floor, lock, or hedge; or

(B) any combination of these types of agreements or transactions.

(4) "Municipal finance professional" means an individual, other than an individual whose functions are solely clerical or ministerial, whose activities include:

(A) underwriting, trading, or the sale of municipal securities;

(B) financial advisory or consultant services for issuers in connection with the issuance of public securities, the execution and delivery of interest rate management agreements, or the investment of the proceeds of public securities;

(C) research or investment advice with respect to municipal securities, provided that the research or advice relates to an activity described by Paragraph (A) or (B); or

(D) any other activity that involves direct or indirect communication with public investors regarding public securities, provided that the activity relates to an activity described by Paragraph (A) or (B).

(5) "Public security" has the meaning assigned by Section [1202.001](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 991 (S.B. [1332](#)), Sec. 7, eff. September 1, 2007.

Sec. 1371.152. EXEMPTIONS. This subchapter does not apply to:

(1) an issuer who has more than \$3 billion in outstanding obligations as of September 1, 2007, or to a nonprofit corporation investing funds on behalf of such an issuer;

(2) a person acting as a financial adviser with respect to an issuance of public securities by an issuer created under Chapter [8503](#), Special District Local Laws Code, delivered before January 1, 2010, under a contract that was in effect on September 1, 2007, and that has not been modified since that date;

(3) an employee of an issuer providing advice to the issuer or to another issuer;

(4) a state agency:

(A) created by Section [49-b](#), Article III, Texas Constitution; or

(B) the head of which is an officer in the executive department under Section [1](#), Article IV, Texas Constitution; or

(5) a corporation created under Chapter [505](#), Local Government Code, by a municipality located in a county bordering the Rio Grande River.

Added by Acts 2007, 80th Leg., R.S., Ch. 991 (S.B. [1332](#)), Sec. 7, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 11.015, eff. September 1, 2009.

Sec. 1371.153. EXEMPTIONS FOR CERTAIN ADVICE. This subchapter does not apply to advice to an issuer regarding:

(1) a loan or a line of credit by a depository institution to an issuer in a transaction not involving the issuance of a public security offered to a third party or parties; or

(2) a deposit of funds with a depository institution in compliance with another statute of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 991 (S.B. [1332](#)), Sec. 7, eff. September 1, 2007.

Sec. 1371.154. FINANCIAL ADVISER OR INVESTMENT ADVISER QUALIFICATIONS AND REQUIREMENTS FOR CERTAIN AGREEMENTS AND TRANSACTIONS. (a) This section applies to a financial adviser or an investment adviser who advises the issuer in connection with:

(1) an interest rate management agreement;

(2) the execution or delivery of a public security; or

(3) the investment of the public security proceeds.

(b) To be eligible to be a financial adviser or an investment adviser under this subchapter, the adviser must:

(1) be registered:

(A) as a dealer or investment adviser in accordance with Section [4004.051](#), [4004.052](#), or [4004.302](#);

(B) with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), if the adviser is providing advice on the investment of bond proceeds and not on the issuance of a public security or an interest rate management agreement; or

(C) with the United States Securities and Exchange Commission as a municipal advisor under Section 15B, Securities Exchange Act of 1934 (15 U.S.C. Section 78o-4);

(2) have relevant experience in providing advice to issuers in connection with:

(A) the issuance of public securities;

(B) the valuation of interest rate management agreements; or

(C) the investment of public security proceeds; and

(3) acknowledge in writing to the issuer that in connection with the transaction for which the adviser is providing advice the adviser:

(A) is acting as the issuer's agent; and

(B) has complied with the requirements of this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 991 (S.B. [1332](#)), Sec. 7, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 575 (H.B. [3132](#)), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 2.25, eff. January 1, 2022.

Sec. 1371.155. REQUIREMENTS. (a) An adviser, including an adviser that is not required to be registered under Section [1371.154](#)(b)(1)(A), shall comply with the following with respect to all services contemplated under this subchapter to be provided in this state:

(1) in conducting services as an adviser of the issuer, the adviser shall deal fairly with all persons and may not engage in any deceptive, dishonest, or unfair practice;

(2) in recommending to an issuer any transaction involving the issuance of public securities, the execution and delivery of interest rate management agreements, or the investment of proceeds of securities, the adviser shall have reasonable grounds for making the recommendation based on the information made available by the issuer or information the adviser otherwise knows about the issuer;

(3) the adviser may not in any year, directly or indirectly, give or permit to be given to an employee or an elected or appointed official of an issuer gifts or services of value, including gratuities, that have a total cumulative value of more than \$100;

(4) the adviser may not, directly or indirectly, provide or agree to provide payment to a person who is not affiliated with the adviser for a solicitation of advisory business for the adviser; and

(5) the adviser may not act as adviser to an issuer before the second anniversary of the date of making a contribution to an official of the issuer if the contribution is made by:

(A) the adviser;

(B) a municipal finance professional associated with the adviser; or

(C) a political action committee controlled by the adviser or by a municipal finance profession associated with the adviser.

(b) Notwithstanding Subsection (a)(3), this section does not prohibit an adviser, including an adviser that is not required to be registered under Section [1371.154](#)(b)(1)(A), from:

(1) giving an employee or an elected or appointed official of an issuer occasional gifts of meals or tickets to theatrical, sporting, or other entertainments hosted by the adviser;

(2) sponsoring legitimate business functions for the issuer that are recognized by the Internal Revenue Service as deductible business expenses; or

(3) providing to the issuer or an employee or elected or appointed official of the issuer gifts of reminder advertising.

(c) A gift or sponsorship given or provided by an adviser, including an adviser that is not required to be registered under Section 1371.154(b)(1)(A), to an issuer under Subsection (b) may not be so frequent or so extensive that a question of impropriety is raised.

(d) Notwithstanding Subsection (a)(5), this section does not prohibit an adviser, including an adviser that is not required to be registered under Section 1371.154(b)(1)(A), from acting as an adviser to an issuer if the only contributions made to an official of the issuer before the second anniversary of the date of making a contribution described by Subsection (a)(5):

(1) were made by municipal finance professionals who were entitled to vote; and

(2) were not in excess of \$250 for each election.

Added by Acts 2007, 80th Leg., R.S., Ch. 991 (S.B. 1332), Sec. 7, eff. September 1, 2007.