

HEALTH AND SAFETY CODE

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

CHAPTER 362. SOLID WASTE RESOURCE RECOVERY FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 362.001. SHORT TITLE. This chapter may be cited as the Solid Waste Resource Recovery Financing Act.

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

Sec. 362.002. POLICY AND PURPOSE. (a) The policy of the state is to safeguard the public health, general welfare, and physical property from solid waste pollution by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(b) It is the policy of the state that the processing of solid waste for reuse is essential to the well-being and survival of state inhabitants and the protection of the environment. That processing will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution by preventing further damage to the environment.

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

Sec. 362.003. DEFINITIONS. In this chapter:

(1) "Bond" includes a note or other evidence of indebtedness.

(2) "Cost" means expenses related or incidental to the acquisition, construction, or improvement of a system, including:

(A) real property acquired for a system;

(B) finance charges;

(C) interest before and during construction and for a period the issuer finds reasonable after completion of construction;

(D) expenses incurred for architectural, engineering, and legal services;

- (E) license fees and royalties;
- (F) expenses incurred for plans, specifications, surveys, and estimates;
- (G) expenses incurred in placing the system in operation; and
- (H) administration expenses.

(3) "Issuer" means a district or authority that:

- (A) is created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution;
- (B) is authorized by law to own a waste disposal system; and
- (C) includes within its boundaries all of at least one county.

(4) "Public agency" means:

- (A) an issuer;
- (B) a municipality; or
- (C) another political subdivision or agency of the state authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(5) "Real property" means land, a structure, a franchise or interest in land, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(6) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the issuer's governing body.

(7) "Security agreement" means a trust indenture or other instrument securing bonds.

(8) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(9) "System" means real property, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful:

- (A) in connection with processing solid waste to

extract, recover, reclaim, salvage, reduce, or concentrate the solid waste, or convert it to energy or useful matter or resources including electricity, steam, or other form of energy, metal, fertilizer, glass, or other form of resource; or

(B) in the transportation, receipt, storage, transfer, and handling of solid waste, the preparation, separation, or processing of solid waste for reuse, the handling and transportation of recovered matter, resources, or energy, and the handling, transportation, and disposition of nonrecoverable solid waste residue.

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

Sec. 362.004. EFFECT OF OTHER LAW. (a) This chapter does not limit the authority of the Texas Natural Resource Conservation Commission or a local government to:

- (1) perform a power or duty provided by other law; or
- (2) adopt and enforce rules to carry out duties under Chapter 361 (Solid Waste Disposal Act).

(b) Chapter 361 (Solid Waste Disposal Act) shall be enforced without regard to ownership of a system financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate, or recover damages for, a condition of pollution or other nuisance. A person purchasing or leasing a system under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the system.

(d) An issuer or public agency may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.031, eff. Aug. 12, 1991.

Sec. 362.005. EXCEPTION FOR CERTAIN MATERIAL PRESORTED TO

BE RECYCLED. This chapter does not authorize a public agency to compel burning of material presorted to be recycled.

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

SUBCHAPTER B. OPERATION OF SYSTEM

Sec. 362.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY.

(a) An issuer may acquire, construct, and improve a system for lease or sale as provided by this chapter and may acquire real property as the issuer considers appropriate for the system.

(b) An issuer may lease its system to another person.

(c) An issuer may sell a system, by installment payments or other method of payment, to any person on conditions the issuer considers desirable.

(d) A lease or sales contract entered into under this chapter may be for the term agreed to by the parties, and must provide that it continues in effect until the bonds specified in the lease or contract, or refunding bonds issued in place of those bonds, are fully paid.

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

Sec. 362.012. LOCATION OF SYSTEM. A system may be located on the property of any person.

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

Sec. 362.013. CONTRACT TERMS AND PROCEDURES. (a) The provisions of Chapter [2253](#), Government Code, that relate to performance and payment bonds apply to a contract entered into by an issuer.

(b) An issuer may contract for the acquisition, construction, and improvement of a system on the terms and under the conditions that the governing body of the issuer considers appropriate, including a contract under which a person agrees to perform and supply all services and materials required in connection with the design, construction, and placing into operation of a system.

(c) The issuer shall publish notice of the time and place

the contract will be let in a newspaper of general circulation within the boundaries of the issuer once a week for two consecutive weeks, with the first publication occurring not later than the 15th day before the date the contract will be let.

(d) The issuer shall analyze competitive proposals received in response to the notice and let the contract to the responsible party making the proposal that is most advantageous to the issuer and that will result in the most economical completion of the system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 362.014. PUBLIC AGENCY CONTRACT. (a) A public agency, on terms it considers appropriate, may contract with an issuer or other person who finances, constructs, or improves a system to sell, lease, or dedicate the use of real property or all or part of a solid waste disposal facility for use as part of the system.

(b) A public agency may contract with any person for the supply, collection, or transportation of solid waste for disposal at a system. The public agency may agree in the contract to supply minimum amounts of solid waste and to pay minimum fees for the right to dispose of the solid waste at the system during the term of the contract. The contract may continue in effect for the term of years that the public agency's governing body determines to be desirable. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.015. PAYMENT OF CONTRACT FROM SOURCES OTHER THAN TAXES. (a) A public agency may use any available revenue or resource for, or pledge the revenue or resource to, payment of all or part of the amount due under a contract under Section 362.014. The public agency may agree in the contract to assure availability of payment when required.

(b) The public agency may agree to make sufficient provision in its annual budget to make all payments under the contract.

(c) The public agency may fix, charge, and collect, from its inhabitants or other users or beneficiaries of a service or facility provided in connection with the contract, a fee, rate,

charge, rental, or other amount for the service or facility, including a water charge, sewage charge, solid waste disposal fee or charge, garbage collection or handling fee, or other fee or charge. The public agency may use those amounts for, or pledge them to, payments required under the contract, and may agree in the contract to make that use or pledge in an amount sufficient to make all or part of the payments when due.

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

Sec. 362.016. PAYMENT OF CONTRACT FROM TAXES. (a) A public agency that has taxing power and that, when it enters into a contract under Section 362.014, is using its general funds, including tax revenue, to pay all or part of the cost of providing solid waste collection, transportation, and disposal services may agree that the payments under the contract are an obligation against the public agency's taxing power.

(b) Except as provided by Subsection (c), a person is not entitled to demand payment from taxes during any period unless the contracting person is willing and able to receive and dispose of solid waste during the period as provided by the contract.

(c) A public agency that has taxing power may hold an election substantially in accordance with Chapter 1251, Government Code, applicable to issuance of bonds by a municipality to determine whether a contract may be an obligation secured by the taxing power of the public agency to an extent not permitted by Subsection (b). If it is determined by a favorable vote at the election that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under the contract, and that the payments are to be made unconditionally regardless of whether the contracting person is willing and able to receive and dispose of solid waste as provided by the contract, the contract is an obligation secured by the public agency's taxing power to the extent provided. The ballot proposition at the election must plainly state that ad valorem tax funds may be used to make contract payments if the contractor cannot receive or dispose of solid waste because of mechanical failure of the facility financed by the bonds or for other reasons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.269, eff. Sept. 1, 2001.

Sec. 362.017. INDUSTRIAL DEVELOPMENT CORPORATION. (a) A public agency that has entered into a contract under Section [362.014](#) may sponsor the creation of an industrial development corporation under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) The corporation may issue bonds, notes, or other evidences of indebtedness under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to finance the cost of a system under the contract regardless of whether the system is located within the boundaries of the public agency.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 3.15, eff. April 1, 2009.

Sec. 362.018. 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, who 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 bonds issued to finance a system.

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

Sec. 362.019. TAXATION. (a) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(b) A system purchased or leased under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer according to state law. An item purchased or leased as part of a system is subject to all applicable state taxation.

SUBCHAPTER C. BONDS

Sec. 362.031. AUTHORITY TO ISSUE BONDS AND BOND ANTICIPATION NOTES. (a) An issuer may issue bonds, payable from revenues of the issuer, to finance or refinance the cost of acquiring, constructing, or improving a system.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) The issuer may declare an emergency because funds are not available to pay the principal of and interest on its bonds or to meet other needs of the issuer and may issue bond anticipation notes to borrow the needed money. The bond anticipation notes may bear interest at any fixed, floating, or other type of rate, and must mature within one year of their date. The bond anticipation notes shall be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of the notes.

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

Sec. 362.032. FORM AND PROCEDURE. (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the issuer's governing body;

(2) be attested by the secretary of the issuer's governing body; and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the issuer's governing body, except that the designation must include:

(1) the name of each person guaranteeing the contractual obligation of each person leasing or purchasing the system; or

(2) a statement, if applicable, that a group of persons will be leasing or purchasing the system.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser.

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

Sec. 362.033. TERMS. Bonds issued under this chapter must mature serially or in another manner not more than 40 years after they are issued. The bonds may:

(1) bear interest at a fixed, floating, or other type of rate, and be sold at public or private sale at a price or under terms that the issuer's governing body determines to be the most advantageous reasonably obtainable;

(2) be made callable before maturity at times and prices prescribed by the issuer's governing body;

(3) be in coupon form; and

(4) be registrable as to principal or as to principal and interest.

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

Sec. 362.034. APPROVAL AND REGISTRATION. (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or contract of sale previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable.

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

Sec. 362.035. PLEDGE OF REVENUE AND OTHER AMOUNTS AS

SECURITY. (a) Bonds are payable solely from and shall be secured by a pledge of:

(1) revenues of the issuer derived from the lease or sale of a system;

(2) amounts attributable to bond proceeds; or

(3) amounts obtained through the exercise of a remedy provided by the governing body's resolution or a security agreement securing the bonds in the manner specified in the resolution or security agreement.

(b) The governing body shall fix and periodically revise payments under a lease or contract for sale of a system so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement.

(c) The governing body may direct the investment of money in the funds created by the resolution or security agreement, and may delegate this authority to its authorized agent.

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

Sec. 362.036. SECURITY MAY APPLY TO ADDITIONAL BONDS. (a) A pledge under Section 362.035 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge.

(b) Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law.

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

Sec. 362.037. TRUST AS SECURITY. (a) The issuer's governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank that has trust powers and that is located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 362.038, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the

trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's system as provided by the trust indenture;

(4) provide in other manners for protection and enforcement of bondholders' rights and remedies as is reasonable and proper; and

(5) provide for the issuance of replacement bonds for lost, stolen, or mutilated bonds.

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

Sec. 362.038. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated system of the issuer's governing body and all property and rights appurtenant to the system.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the system, sell the system to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the system and rights purchased.

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

Sec. 362.039. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income.

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

Sec. 362.040. INVESTMENT AND USE OF PROCEEDS. (a) The governing body of the issuer may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds shall be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds shall be invested in the manner provided by the resolution or security agreement.

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of sales contract or lease revenue. 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. 362.041. REFUNDING BONDS. (a) The governing body of an issuer may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption

premium applicable to the original bonds up to their option date or maturity date.

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

Sec. 362.042. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS.

(a) Bonds issued under this chapter 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; and

(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

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

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

Sec. 362.043. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds.

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