

LOCAL GOVERNMENT CODE

TITLE 10. PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES
SUBTITLE C. PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES
PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT
CHAPTER 337. CULTURAL EDUCATION FACILITIES FINANCE CORPORATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 337.001. SHORT TITLE. This chapter may be cited as the Cultural Education Facilities Finance Corporation Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.002. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the health, education, and general welfare of the people of this state require the development of new and expanded cultural and community facilities for the purpose of:

(A) exhibition and promotion of and education about:

(i) performing, dramatic, visual, and literary arts;

(ii) culture and history of races, ethnic groups, and national heritage groups; and

(iii) history, natural history, and science;

(B) promotion of and education about health and physical fitness, public health and safety, conservation and preservation of the environment or natural resources, child care, adoption, children's services, substance abuse counseling, family counseling, and care of persons who are elderly or have disabilities;

(C) administration of the provision and granting of charitable services and grants in accomplishment of the purposes described by Paragraph (B);

(D) promotion of and education about activities devoted to general cultural improvement, including scouting

programs and programs by which agencies seek to provide facilities for retreats in urban or rural settings;

(E) support of agencies devoted to the eradication, elimination, or amelioration of one or more diseases or afflictions affecting health or improving the condition of individuals or groups within a community; and

(F) provision of public health and safety and charitable services to communities in times of catastrophe or disaster;

(2) the existence, development, and expansion of cultural facilities are essential to the continuing education, health, general welfare, and comfort of the citizens of this state;

(3) the means and measures authorized and the assistance provided by this chapter are in the public interest and serve a public purpose in promoting the health, education, and general welfare of the people of this state by securing and maintaining cultural facilities and the resulting advancement of culture and civilization;

(4) qualified cultural organizations in this state have invested substantial funds in useful and beneficial cultural facilities and have experienced difficulty in undertaking additional projects because of:

(A) the partial inadequacy of their own funds or of funds potentially available from local subscription sources; and

(B) limitations of local financial institutions in providing necessary financing for these facilities;

(5) qualified nonprofit corporations in this state have invested substantial funds in useful and beneficial cultural facilities and have experienced difficulty in undertaking additional projects because of:

(A) the inadequacy of their own funds or of funds potentially available from local subscription sources; and

(B) limitations of local financial institutions in providing necessary financing for these facilities; and

(6) the enactment of this chapter will:

(A) secure for present and future generations the benefits and nurturance derived from these cultural facilities; and

(B) enhance the public health and welfare of communities receiving the benefit of the cultural facilities.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.003. CONSTRUCTION. (a) This chapter shall be liberally construed to carry out the intention of the legislature.

(b) If this chapter conflicts with a provision of another law, this chapter prevails.

(c) It is the intent of the legislature that a corporation authorized under this chapter is a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of the municipality or county on behalf of which the corporation is created, all within the meaning of Section 103, Internal Revenue Code of 1986, and the regulations adopted and rulings issued under that section, and this chapter shall be construed accordingly.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.004. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a corporation.

(2) "Bond" means a bond, note, interim certificate, or other evidence of indebtedness of a corporation issued under this chapter.

(3) "Corporation" means a cultural education facilities finance corporation created under this chapter.

(4) "Cost," as applied to a cultural facility, means the cost of the cultural facility, including:

(A) the cost of the acquisition of land or a right-of-way, an option to purchase land, an easement, a leasehold estate in land, or another interest in land related to the cultural facility;

(B) the cost of acquisition, construction, repair, renovation, remodeling, or improvement of a building or structure to be used as or in conjunction with the cultural facility;

(C) the cost of site preparation, including the cost of demolishing or removing a building or structure the removal of which is necessary or incident to providing the cultural facility;

(D) the cost of architectural, engineering, legal, and related services; the cost of the preparation of a plan, specification, study, survey, or estimate of cost and revenue; and other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of the cultural facility;

(E) the cost of machinery, equipment, furnishings, and facilities necessary or incident to the equipping of the cultural facility so that the cultural facility may be placed in operation;

(F) the cost of finance charges, interest, marketing, and start-up of the cultural facility before and during construction and for not more than two years after completion of construction;

(G) costs paid or incurred in connection with the financing of the cultural facility, including out-of-pocket expenses; bond insurance; a letter of credit, standby bond purchase agreement, or liquidity facility; financing, legal, accounting, financial advisory, and appraisal fees; expenses and disbursements; a policy of title insurance; printing, engraving, and reproduction services; and the initial or acceptance fee of a trustee, paying agent, remarketing agent, tender agent, or indexing agent; and

(H) direct and indirect costs of the corporation incurred in connection with providing the cultural facility, including reasonable sums to reimburse the corporation for time spent by the corporation's agents or employees in providing and financing the cultural facility.

(5) "Cultural facility" means any capital expenditure by a user. The term includes:

(A) real property or an interest in real property, including buildings and improvements, or equipment, furnishings, or other personal property that:

(i) is found by the board to be necessary or convenient to finance, refinance, acquire, construct, enlarge, remodel, renovate, improve, furnish, or equip for cultural education or community benefit;

(ii) is made available for use by the general public, the user, or a community group; and

(iii) is used for a purpose described by Section 337.002(1);

(B) a facility in which any of the following entities engage in any activity in which the entity is permitted to engage:

(i) a nonprofit corporation exempt from the franchise tax under Section 171.063, Tax Code;

(ii) an organization described in Section 11.18, Tax Code; or

(iii) an organization described in Section 501(c)(3), Internal Revenue Code of 1986; and

(C) facilities incidental, subordinate, or related to or appropriate in connection with property described by Paragraph (A) or (B), regardless of the date of construction or acquisition.

(6) "Furnishings" include works of art, books, artifacts, scientific instruments, stage sets, musical scores, collections, and other property necessary or useful for the purposes of the cultural facility.

(7) "User" means a nonprofit corporation exempt from the franchise tax under Section 171.063, Tax Code, an organization described in Section 11.18, Tax Code, or an organization described in Section 501(c)(3), Internal Revenue Code of 1986, that will own, use, operate, or develop a cultural facility after the financing, acquisition, or construction of the cultural facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.005. ADOPTION OF ALTERNATE PROCEDURE. If a procedure under this chapter is held by a court to be unconstitutional, a corporation by resolution may provide an

alternate procedure conforming to the constitution.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Sec. 337.011. AUTHORITY TO CREATE. (a) A municipality or county may create a nonmember, nonstock, public, cultural educational facilities finance corporation for the sole purpose of acquiring, constructing, providing, improving, financing, and refinancing cultural facilities for the public purposes stated in this chapter.

(b) The municipality or county shall create and organize the corporation in the same manner as a health facilities development corporation is created and organized under Chapter 221, Health and Safety Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.012. GENERAL POWERS. (a) A corporation has the same powers, authority, and rights:

(1) with respect to cultural facilities and health facilities that a health facilities development corporation has with respect to health facilities under Chapter 221, Health and Safety Code; and

(2) with respect to educational facilities, housing facilities, and other facilities incidental, subordinate, or related to those facilities that a nonprofit corporation created under Section 53.35(b), Education Code, or an authority created under Section 53.11, Education Code, has under Chapter 53, Education Code.

(b) Except as provided by this chapter, a corporation has the same rights and powers as a corporation organized under the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or formed under the Texas Nonprofit Corporation Law, as described by Section 1.008(d), Business Organizations Code.

(c) The powers of a corporation under Subsection (a) include the power to:

(1) acquire, purchase, lease, mortgage, and convey property with respect to a facility;

(2) borrow money by issuing bonds, notes, and other obligations;

(3) lend money for the corporation's corporate purposes;

(4) invest and reinvest the corporation's funds; and

(5) secure the corporation's bonds, notes, and obligations by mortgaging, pledging, assigning, or otherwise encumbering the corporation's property or assets.

(d) Except as otherwise provided by this chapter, any bonds, notes, or other obligations authorized under Subsection (c) must be issued in accordance with Chapter 1201, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.013. SCOPE OF AUTHORITY. (a) Notwithstanding any provision of Chapter 221, Health and Safety Code, or Chapter 53, Education Code, a corporation may exercise:

(1) the authority of the corporation inside or outside the limits of:

(A) the municipality that created the corporation if the municipality is located in a county with a population of more than 300,000; or

(B) the county that created the corporation if the county has a population of more than 300,000; and

(2) the powers of the corporation on behalf of a user outside of this state if the user also conducts lawful activities in this state.

(b) A corporation may exercise the authority of the corporation without the consent or other action of any person that would otherwise be required under Chapter 221, Health and Safety Code, or Chapter 53, Education Code, unless the articles of incorporation or bylaws of the corporation provide differently.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec.

20.004(a), eff. September 1, 2017.

Sec. 337.014. LIMITATION ON AUTHORITY. The authority of a corporation may not preempt the police powers of any sponsoring entity or any other laws regulating or empowering sponsoring entities to regulate the activities of the corporation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.015. LIMITATION ON CORPORATE PURPOSES. (a) A municipality or county that creates a corporation may limit the corporation's purposes in the proceedings directing the creation of the corporation by prohibiting the corporation from financing particular types of cultural facilities, including a cultural facility to be used for a purpose specified in the proceedings.

(b) As a condition of providing financing, a corporation may restrict a person receiving financing from using a cultural facility for a particular purpose.

(c) A restriction imposed by a municipality or county on a corporation may be enforced by the governing body of the sponsoring entity by injunction or mandamus.

(d) A violation of a restriction by a corporation may not impair the validity of an obligation incurred by the corporation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.