

BILL ANALYSIS

Senate Research Center

S.B. 968
By: West, Royce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, cities are subject to risks when certain sophisticated financial tools are used to attempt to reduce borrowing costs for debt issuances for city improvements. Current law allows cities to use certain financial tools to reduce certain costs, however, cities that lack experience with certain types of financing instruments need protection.

S.B. 968 authorizes state agency and local government issuers of debt obligations to employ modern interest rate management products in order to reduce borrowing costs, manage interest rate management products, and manage interest rate risks. The bill requires cities to observe prudent financial practices in authorizing and monitoring interest rate management agreements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1371.001, Government Code, by amending Subdivisions (1), (2), (4), (5), (7), and (8) and adding Subdivision (3-a), to redefine "credit agreement," "eligible project," "issuer," "obligation," "project cost," "public works," and define "interest rate management agreement."

SECTION 2. Amends Section 1371.003(a), Government Code, to provide that this chapter is wholly sufficient authority within itself for the execution of a credit agreement. Provides that 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.

SECTION 3. Amends Section 1371.051, Government Code, as follows:

Sec. 1371.051. **AUTHORITY TO ISSUE OBLIGATION.** Deletes existing text authorizing the governing body of an issuer to issue, sell, and deliver an obligation to finance all or part of a payment owed or to be owed on the establishment of an interest rate lock or interest rate hedging agreement or the settlement or termination, at maturity or otherwise, of an interest rate lock or interest rate hedging agreement.

SECTION 4. Amends Section 1371.056, Government Code, as follows:

Sec. 1371.056. **AUTHORITY TO ENTER INTO AND EXECUTE CREDIT AGREEMENTS.** (a) Authorizes an issuer to 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 obligations have been authorized or issued, or credit agreement was contemplated, authorized, or executed in relation to the initial issuance, sale, or delivery of the obligations. Deletes existing text authorizing a governing body to authorize the execution and delivery of a credit agreement in connection with or related to the authorization, issuance, security, purchase, payment, sale, resale, redemption, remarketing, or exchange of an obligation at any time, without regard to whether a credit

agreement was contemplated, authorized, or executed in relation to the initial issuance, sale, or delivery of the obligation.

(b) Requires a credit agreement to substantially contain the terms and be for the period the governing body approves, except as provided by this section. Authorizes a credit agreement to provide certain conditions.

(c) Authorizes the governing body to 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. Requires the delegation to include limits on certain costs and terms.

(d) Redesignated from existing Subsection (c). Authorizes the cost to the issuer of a credit agreement or payments owed by an issuer under a credit agreement to be paid from and secured by any source, including certain monetary sources.

(e) Redesignated from Subsection (d). Provides that a credit agreement is an agreement for professional services but is not a contract subject to Subchapter I(Adjudication of Claims Arising Under Written Contracts With Local Government Entities),, Chapter 271 Local Government Code. Makes a nonsubstantive change.

(f) Establishes certain requirements and authorizations 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.

(g) Authorizes payments received by an issuer under a credit agreement or on termination of all or part of a credit agreement to be used to make certain payments.

(h) Authorizes an issuer to 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. Authorizes the agreement to specify the payment by a specific amount, by a formula, or by a process or algorithm.

(i) Authorizes a credit agreement secured in the manner described by Subsection (d)(4) to be executed without an election or the imposition of an ad valorem tax for the credit agreement unless required by the Texas Constitution. Requires an election to be held substantially in the manner provided for an election under Chapter 1251 (Bond Elections) if the Texas Constitution requires an election for the credit agreement.

(j) Authorizes an issuer to enter into an interest rate management agreement transaction only under certain conditions.

(k) Sets forth certain conditions under which an issuer is authorized to enter into an interest rate management transaction.

(l) Requires the governing body of the issuer to review and ratify or modify its related risk management policy at least biennially while an interest rate management agreement transaction is outstanding. Deletes existing text authorizing the governing body to delegate to an officer or employee the authority, under the terms and for the period approved by the governing body, to enter into a credit agreement and transactions under a credit agreement, and execute any instruments in connection with those transactions, notwithstanding Subsection (b).

SECTION 5. Amends Section 1371.057, Government Code, as follows:

Sec. 1371.057. REVIEW AND APPROVAL OF OBLIGATION, CREDIT AGREEMENT, AND CONTRACT BY ATTORNEY GENERAL. (a) Requires 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 the credit agreement to be submitted to the attorney general for review before an obligation may be issued or a credit agreement executed.

(b) Requires the attorney general to approve and deliver to the comptroller of public accounts (comptroller) a copy of the attorney general's legal opinion stating that approval and the record of proceedings 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. Deletes existing text requiring the attorney general to approve and deliver to the comptroller a copy of the attorney general's legal opinion stating that approval and the record of proceedings if the attorney general finds that the credit agreement, contract, and other authorizing proceedings conform to the requirements of the Texas Constitution and this chapter. Makes conforming changes.

(c) Requires an obligation or payment to be treated, for purposes of attorney general review and approval, as having the intended term and payment schedule of the refunding bonds 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 (Refunding Bonds). Deletes existing text requiring an obligation or loan to be treated, for purposes of attorney general review and approval, as having the intended term and payment schedule of the refunding bonds if the obligation authorization provides that the issuer intends to refinance an obligation or loan under a credit agreement with refunding bonds issued under Chapter 1207 (Refunding Bonds).

SECTION 6. Amends Section 1371.059, Government Code, as follows:

Sec. 1371.059. VALIDITY AND INCONTESTABILITY. (a) Provides for the validity, enforceability, and incontestability of 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. Deletes text to make nonsubstantive changes.

(b) Provides that 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 (Examination and Registration of Public Securities), Government Code, notwithstanding Subsection (a) and Section 1371.003 (Relationship to Other Law), Government Code, and except as provided by this subsection. Provides that the attorney general's approval and registration by the comptroller is not required for certain obligations.

(c) Authorizes an issuer, other than a state agency including an institution of higher education, to 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 in the proceedings to authorize obligations or a credit agreement, or in a credit agreement. Provides that this subsection does not apply to an issuer that is a state agency, including a state institution of higher education or a county with a population of 900,000 or more.

SECTION 7. Amends Subchapter B, Chapter 1371, Government Code, by adding Section 1371.061, as follows:

Sec. 1371.061. MANAGEMENT REPORTS. (a) Requires a governing body to designate an officer of the issuer to monitor and report on an interest rate management agreement transaction if the governmental body authorizes a transaction. Requires the designated officer to 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 at least annually. Requires the report to contain certain information.

(b) Provides that this section does not apply to an issuer that has entered into at least three interest rate management agreement transactions before November 1, 2006, or one or more interest rate management agreement transactions with notional amounts totaling at least \$400 million before November 1, 2006.

SECTION 8. Amends Subchapter C, Chapter 65, Education Code, by adding Section 65.461, as follows:

Sec. 65.461. BOND ENHANCEMENT AGREEMENTS. (a) Defines "bond" or "note" and "bond enhancement agreement."

(b) Authorizes the board of regents of the University of Texas System (board) at any time and from time to time to enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the bonds or notes issued or to be issued, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Provides that a bond enhancement agreement is an agreement for professional services and is required to contain the terms and conditions and be for the period that the board authorizes. Authorizes the fees and expenses of the board in connection with a bond enhancement agreement to be paid from and secured from certain sources. Provides that payments due from the board under a bond enhancement agreement relating to bonds or notes issued pursuant to Section 18 (Texas A&M University System; University of Texas System; Bonds or Notes Payable From Income of Available University Fund), Article VII, Texas Constitution, are deemed to be for the support and maintenance of the University of Texas System administration and are authorized to be paid from the available university fund.

(c) Authorizes the resolution of the board authorizing a bond enhancement agreement to authorize one or more designated officers or employees of the board to act on behalf of the board in entering into and delivering the bond enhancement agreement and in determining or setting the counterparty and terms of the bond enhancement agreement specified in the resolution.

(d) Authorizes the resolution of the board authorizing a financing program pursuant to Section 65.46 (Powers Related to Issuance of Bonds and Notes) to include authorization of one or more bond enhancement agreements.

(e) Provides that the bond enhancement agreement is not a credit agreement for purposes of Chapter 1371 (Obligations for Certain Public Improvements), Government Code, or Section 65.46 of this chapter, or any successor to such laws, unless the board or its designee elects otherwise in its authorization or approval of a bond enhancement agreement.

(f) Requires this section to be construed liberally to effect the legislative intent and purposes of this section, and requires all powers granted by this section to be broadly interpreted to effect that intent and those purposes and not as a limitation of powers.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Provides that an agreement described by this section is ratified in all respects, without regard to whether the agreement to waive sovereign immunity is limited to the extent

permitted by law, if the agreement is entered into before the effective date of this Act by an issuer as defined by Section 1371.001(4) (Definitions), Government Code, that has authority by statute or under its charter to sue and be sued or to plead and be impleaded, and waives sovereign immunity from suit or liability for breach of an obligation or of a credit agreement authorized by Chapter 1371, Government Code.

SECTION 11. Effective date: upon passage or September 1, 2007.