

By: Branch

H.B. No. 3539

A BILL TO BE ENTITLED

AN ACT

1
2 relating to interest rate management agreements related to
3 financing certain public improvements.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 1371.001, Government Code, is amended by
6 adding Subdivisions (2-a), (3-a), and (3-b) to read as follows:

7 (2-a) "Fair value," with respect to an interest rate
8 management transaction, means the value or range of values
9 specified by an independent financial advisor or swap advisor
10 engaged by the issuer to provide the value or range of values.

11 (3-a) "Independent financial advisor or swap
12 advisor," with respect to an interest rate management transaction,
13 means a dealer or investment advisor registered in accordance with
14 Section 12 or 12-1, The Securities Act (Article 581-12 or 581-12-1,
15 Vernon's Texas Civil Statutes), who:

16 (A) is subject to rules of the Municipal
17 Securities Rulemaking Board;

18 (B) has experience in providing service to
19 issuers in connection with the issuance of securities and with the
20 execution and validation of credit agreements; and

21 (C) has certified to the relevant issuer that:

22 (i) the advisor is a financial advisor;

23 (ii) the advisor and the advisor's
24 affiliates have not received any payment, remuneration, or thing of

1 value from any party other than the issuer in connection with the
2 interest rate management transaction;

3 (iii) the advisor and the advisor's
4 affiliates do not have any financial interest in the interest rate
5 management transaction or in a related instrument;

6 (iv) the advisor is in compliance with the
7 Municipal Securities Rulemaking Board's rules G-37 and G-38 with
8 respect to the advisor's engagement by the issuer; and

9 (v) the advisor will comply with the
10 Municipal Securities Rulemaking Board's rules G-17, G-19, and G-23
11 with respect to the advisor's engagement by the issuer.

12 (3-b) "Interest rate management agreement" means an
13 agreement that provides for an interest rate transaction, including
14 a swap, basis, forward, option, cap, collar, floor, lock, hedge, a
15 similar transaction, or any combination of those types of
16 transactions. The term includes:

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

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

21 (C) a confirmation of transactions.

22 SECTION 2. Subchapter B, Chapter 1371, Government Code, is
23 amended by adding Section 1371.061 to read as follows:

24 Sec. 1371.061. LIMITED AUTHORITY TO ENTER INTO INTEREST
25 RATE MANAGEMENT AGREEMENTS. (a) An issuer may enter into an
26 interest rate management agreement only as authorized by this
27 section.

1 (b) Subsections (c)-(e) do not apply to an issuer described
2 by this subsection. An issuer may enter into an interest rate
3 management agreement if, before September 1, 2006, the issuer has
4 entered into:

5 (1) an interest rate management transaction involving
6 a total of \$500 million in notional amount; or

7 (2) at least three interest rate management
8 transactions.

9 (c) An issuer other than an issuer described by Subsection
10 (b) may enter into an interest rate management agreement only if:

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

15 (A) any conditions under which the issuer may
16 enter into an interest rate management agreement without the advice
17 of an independent financial advisor or swap advisor;

18 (B) the justification for entering into interest
19 rate management agreements without the advice of an independent
20 financial advisor or swap advisor;

21 (C) authorized purposes;

22 (D) permitted types, creditworthiness, and
23 methods of selection of counterparties;

24 (E) credit risks and other risks;

25 (F) liquidity; and

26 (G) award, monitoring, and exposure limits;

27 (2) the issuer has received the transaction

1 counterparty's:

2 (A) certificate that the difference in basis
3 points between the rate of the transaction and the mid-market rate
4 for a comparable transaction is in the commonly occurring range for
5 comparable transactions, unless the transaction is awarded through
6 a competitive bidding process; and

7 (B) disclosure of the counterparty's payments to
8 any third parties in connection with the transaction; and

9 (3) the governing body or an authorized officer or
10 employee of the issuer has determined that the transaction will
11 conform to the issuer's interest rate management agreement policy.

12 (d) Unless the governing body has authorized entering into
13 and managing interest rate management agreements and transactions
14 without the advice of an independent financial advisor or swap
15 advisor under a risk management policy the governing body has
16 adopted, amended, or ratified during the preceding two years, the
17 determination under Subsection (c)(3) may be made only after the
18 governing body or the authorized officer or employee of the issuer
19 has considered a report of an independent financial advisor or swap
20 advisor that, with respect to the transaction, states:

21 (1) its purpose;

22 (2) the anticipated economic benefit and the method of
23 calculating that benefit;

24 (3) the use of transaction receipts;

25 (4) the notional amount, amortization, and average
26 life in comparison to the related obligation;

27 (5) any floating indices;

- 1 (6) its effective date and duration;
2 (7) the identity and credit rating of the
3 counterparty;
4 (8) the cost and anticipated benefit of transaction
5 insurance;
6 (9) the fees of financial and legal advisors;
7 (10) the security for scheduled and early termination
8 payments;
9 (11) the associated risks and risk mitigation
10 features; and
11 (12) any early termination provisions.

12 (e) While an interest rate management agreement is
13 outstanding, the governing body shall review and amend or ratify
14 its risk management policy at least once every two years.

15 SECTION 3. The changes in law made by this Act apply only to
16 proceedings related to authorizing the issuance of obligations or
17 the execution of credit agreements or interest rate management
18 agreements that are initiated on or after the effective date of this
19 Act and to transactions related to the obligations or agreements.
20 Proceedings related to authorizing the issuance of obligations or
21 the execution of credit agreements or interest rate management
22 agreements that are initiated before the effective date of this
23 Act, and transactions related to the obligations or agreements, are
24 governed by the law in effect on the date the proceedings were
25 initiated, and the former law is continued in effect for that
26 purpose.

27 SECTION 4. This Act takes effect September 1, 2007.