

By: West

S.B. No. 968

Substitute the following for S.B. No. 968:

By: Smith of Harris

C.S.S.B. No. 968

A BILL TO BE ENTITLED

1 AN ACT

2 relating to financing tools for certain obligations for public  
3 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 amending Subdivisions (1), (2), (4), (5), (7), and (8) and adding  
7 Subdivision (3-a) to read as follows:

8 (1) "Credit agreement" means a loan agreement,  
9 revolving credit agreement, agreement establishing a line of  
10 credit, letter of credit, reimbursement agreement, insurance  
11 contract, commitment to purchase obligations [~~an obligation~~],  
12 purchase or sale agreement, interest rate management [~~swap~~]  
13 agreement, or other commitment or [~~other~~] agreement authorized by a  
14 governing body in anticipation of, related to, or in connection  
15 with the authorization, issuance, sale, resale, security,  
16 exchange, payment, purchase, remarketing, or redemption of some or  
17 all of an issuer's obligations or interest on obligations [~~an~~  
18 ~~obligation, interest on an obligation~~], or both, or as otherwise  
19 authorized by this chapter.

20 (2) "Eligible project" means:

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

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

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

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

9 (b) a vehicle parking area or a  
10 facility necessary or convenient for the beneficial use and access  
11 of persons and vehicles to a station, terminal, yard, car, or bus,  
12 or for the protection or environmental enhancement of a facility  
13 for mass public transportation; and

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

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

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

27 (ii) a property right or other interest

1 acquired in connection with those facilities;

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

6 (D) a project for which there exists authorized  
7 but unissued obligations approved by a majority of the voters of the  
8 issuer or for which the issuer is authorized to issue other  
9 indebtedness [~~, including obligations~~] payable from ad valorem  
10 taxes;

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

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

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

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

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

25 (C) a confirmation of transactions.

26 (4) "Issuer" means:

27 (A) a home-rule municipality that:

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

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

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

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

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

13 (D) a metropolitan rapid transit authority or  
14 regional transportation authority created, organized, and  
15 operating under Chapter 451 or 452, Transportation Code;

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

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

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

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

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

1 (ii) is included, in whole or in part, in a  
2 standard metropolitan statistical area of this state that includes  
3 a county with a population of more than 2.2 million;

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

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

9 (K) a county:

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

12 (ii) that, on the date of issuance of  
13 obligations under this chapter, has authorized, outstanding, or any  
14 combination of authorized and outstanding, indebtedness of at least  
15 \$100 million secured by and payable from the county's ad valorem  
16 taxes and the authorized long-term indebtedness of which is rated  
17 by a nationally recognized rating agency of securities issued by  
18 local governments in one of the four highest rating categories for a  
19 long-term obligation;

20 (L) an independent school district that has an  
21 average daily attendance of 50,000 or more as determined under  
22 Section 42.005, Education Code;

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

25 (N) a district created under Chapter 335, Local  
26 Government Code; [~~or~~]

27 (O) a junior college district that has a total

1 headcount enrollment of 40,000 or more based on enrollment in the  
2 most recent regular semester; or

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

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

9 (ii) some amount of long-term indebtedness  
10 outstanding or proposed to be issued that is rated in one of the  
11 four highest rating categories for long-term debt instruments by a  
12 nationally recognized rating agency for municipal securities,  
13 without regard to the effect of any credit agreement or other form  
14 of credit enhancement entered into in connection with the  
15 obligation.

16 (5) "Obligation" means a public security as defined by  
17 Section 1201.002 or other ~~[special]~~ obligation that may [authorized  
18 to] be issued by an issuer and that is expected to be rated, and  
19 before delivery[7] is rated, by a nationally recognized rating  
20 agency for municipal securities in one of the three highest rating  
21 categories for a short-term debt instrument or one of the four  
22 highest rating categories for a long-term debt instrument. The  
23 term does not include an obligation payable wholly or partly from ad  
24 valorem taxes unless:

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

1                   (B) the issuer:

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

5                   (ii) has complied with any conditions  
6 imposed by law before its pledge of ad valorem taxes to pay the  
7 principal of or interest on the obligation [~~except as specifically~~  
8 ~~permitted by this chapter~~].

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

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

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

15                   (C) construction cost;

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

19                   (E) financing cost, including:

20                   (i) interest on obligations and payments on  
21 credit agreements during and after construction;

22                   (ii) underwriter's discount or fee; and

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

25                   (8) "Public works" means property or a facility for:

26                   (A) the conservation, storage, supply,  
27 treatment, or transmission of water;

1 (B) the treatment, collection, or disposal of  
2 water-carried wastes or solid wastes;

3 (C) the generation, transmission, or  
4 distribution of electric power and energy;

5 (D) the acquisition, distribution, or storage of  
6 gas;

7 (E) a transit authority system, as defined by  
8 Section 451.001, Transportation Code, or a public transportation  
9 system, as defined by Section 452.001 [~~Chapter 452~~], Transportation  
10 Code;

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

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

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

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

21 SECTION 2. Section 1371.003(a), Government Code, is amended  
22 to read as follows:

23 (a) This chapter is wholly sufficient authority within  
24 itself for the issuance of obligations, the execution of a credit  
25 agreement, and the performance of the other acts and procedures  
26 authorized by this chapter or under any agreement, without  
27 reference to any other laws or any restrictions or limitations

1 contained in those laws. Any restrictions or limitations contained  
2 in other laws do not apply to the procedures prescribed by this  
3 chapter or to the issuance of obligations, the execution of credit  
4 agreements, or the performance of other acts authorized by this  
5 chapter.

6 SECTION 3. Section 1371.051, Government Code, is amended to  
7 read as follows:

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

- 11 (1) finance a project cost;
- 12 (2) refund an obligation issued in connection with an  
13 eligible project; or
- 14 (3) finance all or part of a payment owed or to be owed  
15 on:

16 (A) the establishment of a [~~an interest rate~~  
17 ~~lock, interest rate hedging agreement, or other~~] credit agreement;  
18 or

19 (B) the settlement or termination, at maturity or  
20 otherwise, of a [~~an interest rate lock, interest rate hedging~~  
21 ~~agreement, or other~~] credit agreement, whether the settlement or  
22 termination occurs:

- 23 (i) at the option of the issuer or the other  
24 party to the credit agreement; or
- 25 (ii) by operation of the terms of the credit  
26 agreement.

27 SECTION 4. Section 1371.056, Government Code, is amended to

1 read as follows:

2           Sec. 1371.056. AUTHORITY TO ENTER INTO AND EXECUTE CREDIT  
3 AGREEMENTS. (a) An issuer [~~A governing body~~] may execute and  
4 deliver any number of credit agreements in anticipation of, related  
5 to, or [~~authorize the execution and delivery of a credit agreement~~]  
6 in connection with [~~or related to~~] the authorization, issuance,  
7 security, purchase, payment, sale, resale, redemption,  
8 remarketing, or exchange of some or all of the issuer's obligations  
9 or interest on obligations, or both, [~~an obligation~~] at any time,  
10 without regard to whether the:

11                   (1) obligations have been authorized or issued; or  
12                   (2) [~~a~~] credit agreement was contemplated,  
13 authorized, or executed in relation to the initial issuance, sale,  
14 or delivery of the obligations [~~obligation~~].

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

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

23           (c) The governing body may delegate to any number of  
24 officers or employees of the issuer the authority to approve  
25 specific terms of, to execute and deliver, or to terminate or amend  
26 in accordance with its terms, a credit agreement or transactions  
27 under a credit agreement on the behalf of the issuer, subject to any

1 condition the governing body specifies. The delegation must include  
2 limits on:

3 (1) the principal amount or the notional amount;

4 (2) the term;

5 (3) the rate;

6 (4) the source of payment;

7 (5) the security;

8 (6) the identity or credit rating of an authorized  
9 counterparty;

10 (7) the duration of the authorization; and

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

12 (A) fixed or floating rates;

13 (B) economic consequences;

14 (C) early termination provisions;

15 (D) type;

16 (E) provider; and

17 (F) costs of credit enhancement.

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

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

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

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

27 (4) ad valorem taxes if the credit agreement is

1 authorized in anticipation of, in relation to, or in connection  
2 with an obligation that is wholly or partly payable from or is to be  
3 wholly or partly payable from ad valorem taxes [~~to the extent~~  
4 ~~permitted by this chapter~~].

5 (e) [~~(d)~~] A credit agreement is an agreement for  
6 professional services but is not a contract subject to Subchapter  
7 I, Chapter 271, Local Government Code.

8 (f) If a credit agreement is authorized and is executed in  
9 anticipation of the issuance of an obligation described by Section  
10 1371.001(5)(B) because the issuer is authorized by Subchapter C,  
11 Chapter 271, Local Government Code, to issue certificates of  
12 obligation:

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

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

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

1 authorize the credit agreement or the date the order or ordinance is  
2 adopted;

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

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

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

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

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

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

27 (h) An issuer may agree to pay or receive a payment on early

1 termination of an interest rate management agreement due to a  
2 breach or for another reason as provided by the interest rate  
3 management agreement. The agreement may specify the payment by a  
4 specific amount, by a formula, or by a process or algorithm.

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

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

14 (1) if the issuer has either entered into at least  
15 three interest rate management transactions before November 1,  
16 2006, or has entered into one or more interest rate management  
17 transactions with notional amounts totaling at least \$400 million  
18 before that date; or

19 (2) as provided by Subsection (k).

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

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

26 (A) conditions, if any, under which the issuer  
27 may enter into an interest rate management agreement transaction

1 without independent advice from a financial advisor or swap advisor  
2 who has experience in interest rate management transactions; and

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

7 (2) the issuer has received from the counterparty:

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

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

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

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

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

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

- 1           (A) its purpose;  
2           (B) the anticipated economic benefit and the  
3 method used to determine the anticipated benefit;  
4           (C) the use of the receipts of the transaction;  
5           (D) the notional amount, amortization, and  
6 average life compared to the related obligation;  
7           (E) any floating indices;  
8           (F) its effective date and duration;  
9           (G) the identity and credit rating of the  
10 counterparties;  
11           (H) the cost and anticipated benefit of  
12 transaction insurance;  
13           (I) the financial advisors and the legal advisors  
14 and their fees;  
15           (J) any security for scheduled and early  
16 termination payments;  
17           (K) any associated risks and risk mitigation  
18 features; and  
19           (L) early termination provisions.

20           (1) While an interest rate management agreement transaction  
21 is outstanding, the governing body of the issuer shall review and  
22 ratify or modify its related risk management policy at least  
23 biennially [~~(e) Notwithstanding Subsection (b), the governing body~~  
24 ~~may delegate to an officer or employee the authority, under the~~  
25 ~~terms and for the period approved by the governing body, to:~~

26           ~~[(1) enter into a credit agreement and transactions~~  
27 ~~under a credit agreement; and~~

1           ~~[(2) execute any instruments in connection with those~~  
2 ~~transactions].~~

3           SECTION 5. Section 1371.057, Government Code, is amended to  
4 read as follows:

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

13           (b) If the attorney general finds that the ~~[credit~~  
14 ~~agreement, contract, and other authorizing]~~ proceedings  
15 authorizing an obligation or credit agreement conform to the  
16 requirements of the Texas Constitution and this chapter, the  
17 attorney general shall approve them and deliver to the comptroller  
18 a copy of the attorney general's legal opinion stating that  
19 approval and the record of proceedings. After approval, the  
20 obligation or ~~[and]~~ credit agreement may be executed and delivered,  
21 exchanged, or refinanced from time to time in accordance with those  
22 authorizing proceedings.

23           (c) If the ~~[obligation]~~ authorization of an obligation or of  
24 a credit agreement provides that the issuer intends to refinance  
25 the ~~[an]~~ obligation or a payment ~~[loan]~~ under the ~~[a]~~ credit  
26 agreement with refunding bonds issued under Chapter 1207, then the  
27 obligation or payment ~~[loan]~~ shall be treated, for purposes of

1 attorney general review and approval, as having the intended term  
2 and payment schedule of the refunding bonds.

3 SECTION 6. Section 1371.059, Government Code, is amended to  
4 read as follows:

5 Sec. 1371.059. VALIDITY AND INCONTESTABILITY. (a) If  
6 proceedings to authorize an obligation or credit agreement are  
7 approved [~~On approval~~] by the attorney general and registered [~~7~~  
8 ~~registration~~] by the comptroller, each obligation or [~~and initial~~  
9 ~~delivery of the obligation, a~~] credit agreement, as applicable, or  
10 [~~7~~] a contract providing revenue or security included in or  
11 executed and delivered according to [~~7, an initial obligation, and~~  
12 ~~any obligation subsequently issued under~~] the authorizing  
13 proceedings is [~~are~~] incontestable in a court or other forum and is  
14 [~~are~~] valid, and binding, and [~~obligations~~] enforceable  
15 according to its [~~their~~] terms.

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

23 (1) to which Chapter 1202 does not apply or that is  
24 exempt from approval and registration as provided by Section  
25 1202.007(a)(1), (2), (3), (4), (6), or (7); or

26 (2) that matures within one year after the issuer  
27 receives payment for the obligation, regardless of whether the

1 obligation is evidenced by an instrument with a nominal term of  
2 longer than one year.

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

9 (1) a state agency, including a state institution of  
10 higher education; or

11 (2) a county with a population of 900,000 or more.

12 SECTION 7. Subchapter B, Chapter 1371, Government Code, is  
13 amended by adding Section 1371.061 to read as follows:

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

22 (1) describe the terms of the transactions;

23 (2) contain a statement:

24 (A) of the fair value of each transaction;

25 (B) of the value of any collateral posted to or by

26 the issuer under the transactions with each counterparty at the

27 year's end; and

1           (C) reviewing the transactions' cash flows;

2           (3) identify with respect to each transaction the  
3 counterparty, any guarantor of the counterparty's obligations  
4 under the transaction, and the credit ratings of the counterparty  
5 and the guarantor; and

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

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

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

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

16           SECTION 8. Subchapter C, Chapter 65, Education Code, is  
17 amended by adding Section 65.461 to read as follows:

18           Sec. 65.461. BOND ENHANCEMENT AGREEMENTS. (a) In this  
19 section:

20           (1) "Bond" or "note" means a bond or note that the  
21 board is authorized to issue according to law, including Section  
22 18, Article VII, Texas Constitution, Chapter 55 or 66 of this code,  
23 or other applicable law.

24           (2) "Bond enhancement agreement" means an interest  
25 rate swap agreement, a currency swap agreement, a forward payment  
26 conversion agreement, an agreement providing for payments based on  
27 levels of or changes in interest rates or currency exchange rates,

1 an agreement to exchange cash flows or a series of payments, or  
2 other agreement, including an option, put, or call, to hedge or  
3 modify payment, currency, rate, spread, or other exposure.

4 (b) The board may at any time and from time to time enter  
5 into one or more bond enhancement agreements that the board  
6 determines to be necessary or appropriate to place the obligation  
7 of the board, as represented by the bonds or notes issued or to be  
8 issued, in whole or in part, on the interest rate, currency, cash  
9 flow, or other basis desired by the board. A bond enhancement  
10 agreement is an agreement for professional services and shall  
11 contain the terms and conditions and be for the period that the  
12 board authorizes. The fees and expenses of the board in connection  
13 with a bond enhancement agreement, including any payments due from  
14 the board under a bond enhancement agreement, may be paid from and  
15 secured by a lien on and pledge of all or any part of any of the  
16 revenue funds of the board and its institutions, proceeds of the  
17 sale of bonds or notes to which the bond enhancement agreement  
18 relates, or from any other source that is legally available for the  
19 purpose of paying the bonds or notes and the interest on the bonds  
20 or notes or that may otherwise be legally available to make those  
21 payments. Payments due from the board under a bond enhancement  
22 agreement relating to bonds or notes issued pursuant to Section 18,  
23 Article VII, Texas Constitution, are deemed to be for the support  
24 and maintenance of The University of Texas System administration  
25 and may be paid from the available university fund.

26 (c) The resolution of the board authorizing a bond  
27 enhancement agreement may authorize one or more designated officers

1 or employees of the board to act on behalf of the board in entering  
2 into and delivering the bond enhancement agreement and in  
3 determining or setting the counterparty and terms of the bond  
4 enhancement agreement specified in the resolution.

5 (d) The resolution of the board authorizing a financing  
6 program pursuant to Section 65.46 may include authorization of one  
7 or more bond enhancement agreements.

8 (e) Unless the board or its designee elects otherwise in its  
9 authorization or approval of a bond enhancement agreement, the bond  
10 enhancement agreement is not a credit agreement for purposes of  
11 Chapter 1371, Government Code, or Section 65.46 of this chapter, or  
12 any successor to such laws, regardless of whether the bonds or notes  
13 relating to the bond enhancement agreement were issued in part  
14 under either such law.

15 (f) This section shall be construed liberally to effect the  
16 legislative intent and purposes of this section, and all powers  
17 granted by this section shall be broadly interpreted to effect that  
18 intent and those purposes and not as a limitation of powers.

19 SECTION 9. The changes in law made by this Act apply only to  
20 proceedings related to authorizing the issuance of obligations or  
21 the execution of credit agreements or interest rate management  
22 agreements that are adopted on or after the effective date of this  
23 Act and to transactions related to the obligations or agreements.  
24 Proceedings related to authorizing the issuance of obligations or  
25 the execution of credit agreements or interest rate management  
26 agreements that are adopted before the effective date of this Act,  
27 and transactions related to the obligations or agreements, are

1 governed by the law in effect on the date the proceedings were  
2 initiated and the former law is continued in effect for that  
3 purpose.

4 SECTION 10. An agreement described by this section is  
5 ratified in all respects, without regard to whether the agreement  
6 to waive sovereign immunity is limited to the extent permitted by  
7 law, if the agreement:

8 (1) is entered into before the effective date of this  
9 Act by an issuer as defined by Section 1371.001(4), Government  
10 Code, that has authority by statute or under its charter to sue and  
11 be sued or to plead and be impleaded; and

12 (2) waives sovereign immunity from suit or liability  
13 for breach of an obligation or of a credit agreement authorized by  
14 Chapter 1371, Government Code.

15 SECTION 11. This Act takes effect immediately if it  
16 receives a vote of two-thirds of all the members elected to each  
17 house, as provided by Section 39, Article III, Texas Constitution.  
18 If this Act does not receive the vote necessary for immediate  
19 effect, this Act takes effect September 1, 2007.