

1-1 By: West S.B. No. 968  
1-2 (In the Senate - Filed February 27, 2007; March 7, 2007,  
1-3 read first time and referred to Committee on Intergovernmental  
1-4 Relations; April 11, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 3, Nays 0;  
1-6 April 11, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 968 By: West

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to financing tools for certain obligations for public  
1-11 improvements.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1371.001, Government Code, is amended by  
1-14 amending Subdivisions (1), (2), (4), (5), (7), and (8) and adding  
1-15 Subdivision (9) to read as follows:

1-16 (1) "Credit agreement" means a loan agreement,  
1-17 revolving credit agreement, agreement establishing a line of  
1-18 credit, letter of credit, reimbursement agreement, insurance  
1-19 contract, commitment to purchase obligations [~~an obligation~~],  
1-20 purchase or sale agreement, interest rate management [~~swap~~]  
1-21 agreement, or other commitment or [~~other~~] agreement authorized by a  
1-22 governing body in anticipation of, related to, or in connection  
1-23 with the authorization, issuance, sale, resale, security,  
1-24 exchange, payment, purchase, remarketing, or redemption of some or  
1-25 all of an issuer's obligations or interest on obligations [~~an~~  
1-26 ~~obligation, interest on an obligation~~], or both, or as otherwise  
1-27 authorized by this chapter.

1-28 (2) "Eligible project" means:

1-29 (A) the acquisition or construction of or an  
1-30 improvement, addition, or extension to a public works, including a  
1-31 capital asset or facility incident and related to the operation,  
1-32 maintenance, or administration of the public works, and:

1-33 (i) with respect to a property or a facility  
1-34 for the generation of electric power and energy, fuel acquisition  
1-35 or the development or transportation of power, energy, or fuel;

1-36 (ii) with respect to a property or a  
1-37 facility for a public transportation system:

1-38 (a) a building, terminal, garage,  
1-39 shop, or other structure, rolling stock, equipment, or another  
1-40 facility for mass public transportation; or

1-41 (b) a vehicle parking area or a  
1-42 facility necessary or convenient for the beneficial use and access  
1-43 of persons and vehicles to a station, terminal, yard, car, or bus,  
1-44 or for the protection or environmental enhancement of a facility  
1-45 for mass public transportation; and

1-46 (iii) with respect to a property or a  
1-47 facility for a port facility, a wharf or dock, a warehouse, grain  
1-48 elevator, or other storage facility, a bunkering facility,  
1-49 port-related railroad or bridge, floating plant or facility,  
1-50 lightering facility, cargo handling facility, towing facility, or  
1-51 any other facility or aid incident to or useful in the operation of  
1-52 a port facility;

1-53 (B) a causeway, bridge, tunnel, turnpike,  
1-54 highway, or combination of those facilities, including:

1-55 (i) a necessary overpass, underpass,  
1-56 interchange, entrance plaza, tollhouse, service station, approach,  
1-57 fixture, accessory, or item of equipment, or a storage,  
1-58 administration, or other necessary building; and

1-59 (ii) a property right or other interest  
1-60 acquired in connection with those facilities;

1-61 (C) a public improvement owned by a county that  
1-62 serves the purpose of attracting visitors and tourists to the  
1-63 county, including a civic center, auditorium, exhibition hall,

2-1 coliseum, stadium, or parking area;

2-2 (D) a project for which there exists authorized

2-3 but unissued obligations approved by a majority of the voters of the

2-4 issuer or for which the issuer is authorized to issue other

2-5 indebtedness~~[, including obligations]~~ payable from ad valorem

2-6 taxes;

2-7 (E) a project for which an issuer is authorized

2-8 to issue revenue bonds secured, in whole or in part, by revenue

2-9 derived from or related to student loans; or

2-10 (F) an approved venue project under Chapter 334

2-11 or 335, Local Government Code.

2-12 (4) "Issuer" means:

2-13 (A) a home-rule municipality that:

2-14 (i) adopted its charter under Section 5,

2-15 Article XI, Texas Constitution;

2-16 (ii) has a population of 50,000 or more; and

2-17 (iii) has outstanding long-term

2-18 indebtedness that is rated by a nationally recognized rating agency

2-19 for municipal securities in one of the four highest rating

2-20 categories for a long-term obligation;

2-21 (B) a conservation and reclamation district

2-22 created and organized as a river authority under Section 52,

2-23 Article III, or Section 59, Article XVI, Texas Constitution;

2-24 (C) a joint powers agency organized and operating

2-25 under Chapter 163, Utilities Code;

2-26 (D) a metropolitan rapid transit authority or

2-27 regional transportation authority created, organized, and

2-28 operating under Chapter 451 or 452, Transportation Code;

2-29 (E) a conservation and reclamation district

2-30 organized or operating as a navigation district under Section 52,

2-31 Article III, or Section 59, Article XVI, Texas Constitution;

2-32 (F) a district organized or operating under

2-33 Section 59, Article XVI, Texas Constitution, that has all or part of

2-34 two or more municipalities within its boundaries;

2-35 (G) a state agency, including a state institution

2-36 of higher education;

2-37 (H) a hospital authority created or operating

2-38 under Chapter 262 or 264, Health and Safety Code, in a county that:

2-39 (i) has a population of more than 3.3

2-40 million; or

2-41 (ii) is included, in whole or in part, in a

2-42 standard metropolitan statistical area of this state that includes

2-43 a county with a population of more than 2.2 million;

2-44 (I) a hospital district in a county that has a

2-45 population of more than two million;

2-46 (J) a nonprofit corporation organized to

2-47 exercise the powers of a higher education loan authority under

2-48 Section 53B.47(e), Education Code;

2-49 (K) a county:

2-50 (i) that has a population of 3.3 million or

2-51 more; or

2-52 (ii) that, on the date of issuance of

2-53 obligations under this chapter, has authorized, outstanding, or any

2-54 combination of authorized and outstanding, indebtedness of at least

2-55 \$100 million secured by and payable from the county's ad valorem

2-56 taxes and the authorized long-term indebtedness of which is rated

2-57 by a nationally recognized rating agency of securities issued by

2-58 local governments in one of the four highest rating categories for a

2-59 long-term obligation;

2-60 (L) an independent school district that has an

2-61 average daily attendance of 50,000 or more as determined under

2-62 Section 42.005, Education Code;

2-63 (M) a municipality or county operating under

2-64 Chapter 334, Local Government Code;

2-65 (N) a district created under Chapter 335, Local

2-66 Government Code; ~~[or]~~

2-67 (O) a junior college district that has a total

2-68 headcount enrollment of 40,000 or more based on enrollment in the

2-69 most recent regular semester; or

3-1 (P) an issuer, as defined by Section 1201.002,  
 3-2 that has:

3-3 (i) a principal amount of at least \$100  
 3-4 million in outstanding long-term indebtedness, in long-term  
 3-5 indebtedness proposed to be issued, or in a combination of  
 3-6 outstanding or proposed long-term indebtedness; and

3-7 (ii) some amount of long-term indebtedness  
 3-8 outstanding or proposed to be issued that is rated in one of the  
 3-9 four highest rating categories for long-term debt instruments by a  
 3-10 nationally recognized rating agency for municipal securities,  
 3-11 without regard to the effect of any credit agreement or other form  
 3-12 of credit enhancement entered into in connection with the  
 3-13 obligation.

3-14 (5) "Obligation" means a public security as defined by  
 3-15 Section 1201.002 or other ~~[special]~~ obligation that may [authorized  
 3-16 to] be issued by an issuer and that is expected to be rated, and  
 3-17 before delivery[~~]~~ is rated, by a nationally recognized rating  
 3-18 agency for municipal securities in one of the three highest rating  
 3-19 categories for a short-term debt instrument or one of the four  
 3-20 highest rating categories for a long-term debt instrument. The  
 3-21 term does not include an obligation payable wholly or partly from ad  
 3-22 valorem taxes unless:

3-23 (A) issuance of the obligation or an obligation  
 3-24 refunded by the obligation has been approved by the voters of the  
 3-25 issuer in an election held for that purpose; or

3-26 (B) the issuer:  
 3-27 (i) is authorized by law to issue public  
 3-28 securities payable wholly or partly from ad valorem taxes for the  
 3-29 purpose for which the obligation is to be issued; and

3-30 (ii) has complied with any conditions  
 3-31 imposed by law before its pledge of ad valorem taxes to pay the  
 3-32 principal of or interest on the obligation [except as specifically  
 3-33 permitted by this chapter].

3-34 (7) "Project cost" means a cost or expense incurred in  
 3-35 relation to an eligible project. The term includes:

3-36 (A) design, planning, engineering, and legal  
 3-37 cost;

3-38 (B) acquisition cost of land or an interest in  
 3-39 land;

3-40 (C) construction cost;

3-41 (D) cost of machinery, equipment, and other  
 3-42 capital assets incident and related to the operation, maintenance,  
 3-43 and administration of an eligible project; and

3-44 (E) financing cost, including:  
 3-45 (i) interest on obligations and payments on  
 3-46 credit agreements during and after construction;

3-47 (ii) underwriter's discount or fee; and  
 3-48 (iii) cost of legal, financial, and other  
 3-49 professional services.

3-50 (8) "Publicworks" means property or a facility for:  
 3-51 (A) the conservation, storage, supply,  
 3-52 treatment, or transmission of water;

3-53 (B) the treatment, collection, or disposal of  
 3-54 water-carried wastes or solid wastes;

3-55 (C) the generation, transmission, or  
 3-56 distribution of electric power and energy;

3-57 (D) the acquisition, distribution, or storage of  
 3-58 gas;

3-59 (E) a transit authority system, as defined by  
 3-60 Section 451.001, Transportation Code, or a public transportation  
 3-61 system, as defined by Section 452.001 [Chapter 452], Transportation  
 3-62 Code;

3-63 (F) an airport as defined by Section 22.001,  
 3-64 Transportation Code;

3-65 (G) a port facility, including a facility for the  
 3-66 operation or development of a port or waterway or in aid of  
 3-67 navigation or navigation-related commerce in a port or on a  
 3-68 waterway;

3-69 (H) a project as defined by Section 284.001,

4-1 Transportation Code; or  
 4-2 (I) the carrying out of a purpose or function for  
 4-3 which an issuer may issue public securities.

4-4 (9) "Interest rate management agreement" means an  
 4-5 agreement that provides for an interest rate transaction, including  
 4-6 a swap, basis, forward, option, cap, collar, floor, lock, or hedge  
 4-7 transaction, a similar transaction, or any combination of those  
 4-8 types of transactions. The term includes:

4-9 (A) a master agreement that provides standard  
 4-10 terms for transactions;

4-11 (B) an agreement to transfer collateral as  
 4-12 security for transactions; or

4-13 (C) a confirmation of transactions.

4-14 SECTION 2. Subsection (a), Section 1371.003, Government  
 4-15 Code, is amended to read as follows:

4-16 (a) This chapter is wholly sufficient authority within  
 4-17 itself for the issuance of obligations, the execution of a credit  
 4-18 agreement, and the performance of the other acts and procedures  
 4-19 authorized by this chapter or under any agreement, without  
 4-20 reference to any other laws or any restrictions or limitations  
 4-21 contained in those laws. Any restrictions or limitations contained  
 4-22 in other laws do not apply to the procedures prescribed by this  
 4-23 chapter or to the issuance of obligations, the execution of credit  
 4-24 agreements, or the performance of other acts authorized by this  
 4-25 chapter.

4-26 SECTION 3. Section 1371.051, Government Code, is amended to  
 4-27 read as follows:

4-28 Sec. 1371.051. AUTHORITY TO ISSUE OBLIGATION. As  
 4-29 authorized and approved by the governing body of an issuer, the  
 4-30 governing body may issue, sell, and deliver an obligation to:

4-31 (1) finance a project cost;

4-32 (2) refund an obligation issued in connection with an  
 4-33 eligible project; or

4-34 (3) finance all or part of a payment owed or to be owed  
 4-35 on:

4-36 (A) the establishment of a ~~[an interest rate~~  
 4-37 ~~lock, interest rate hedging agreement, or other]~~ credit agreement;  
 4-38 or

4-39 (B) the settlement or termination, at maturity or  
 4-40 otherwise, of a ~~[an interest rate lock, interest rate hedging~~  
 4-41 ~~agreement, or other]~~ credit agreement, whether the settlement or  
 4-42 termination occurs:

4-43 (i) at the option of the issuer or the other  
 4-44 party to the credit agreement; or

4-45 (ii) by operation of the terms of the credit  
 4-46 agreement.

4-47 SECTION 4. Section 1371.056, Government Code, is amended to  
 4-48 read as follows:

4-49 Sec. 1371.056. AUTHORITY TO ENTER INTO AND EXECUTE CREDIT  
 4-50 AGREEMENTS. (a) An issuer [A governing body] may execute and  
 4-51 deliver any number of credit agreements in anticipation of, related  
 4-52 to, or [authorize the execution and delivery of a credit agreement]  
 4-53 in connection with [or related to] the authorization, issuance,  
 4-54 security, purchase, payment, sale, resale, redemption,  
 4-55 remarketing, or exchange of some or all of the issuer's obligations  
 4-56 or interest on obligations, or both, [an obligation] at any time,  
 4-57 without regard to whether the:

4-58 (1) obligations have been authorized or issued; or

4-59 (2) [a] credit agreement was contemplated,  
 4-60 authorized, or executed in relation to the initial issuance, sale,  
 4-61 or delivery of the obligations [obligation].

4-62 (b) Except as provided by this section, a [A] credit  
 4-63 agreement must substantially contain the terms and be for the  
 4-64 period the governing body approves. A credit agreement may provide  
 4-65 that it:

4-66 (1) may be terminated with or without cause; or

4-67 (2) becomes effective at the option of another party  
 4-68 to the credit agreement, if the governing body first finds that the  
 4-69 option serves best the interests of the issuer.

5-1 (c) The governing body may delegate to any number of  
 5-2 officers or employees of the issuer the authority to approve  
 5-3 specific terms of, to execute and deliver, or to terminate or amend  
 5-4 in accordance with its terms a credit agreement or transactions  
 5-5 under a credit agreement on the behalf of the issuer, subject to any  
 5-6 condition the governing body specifies. The delegation must  
 5-7 include limits on:

- 5-8 (1) the principal amount or the notional amount;  
 5-9 (2) the term;  
 5-10 (3) the rate;  
 5-11 (4) the source of payment;  
 5-12 (5) the security;  
 5-13 (6) the identity or credit rating of an authorized  
 5-14 counterparty;  
 5-15 (7) the duration of the authorization; and  
 5-16 (8) for an interest rate management agreement, the:  
 5-17 (A) fixed or floating rates;  
 5-18 (B) economic consequences;  
 5-19 (C) early termination provisions;  
 5-20 (D) type;  
 5-21 (E) provider; and  
 5-22 (F) costs of credit enhancement.

5-23 (d) The cost to the issuer of a credit agreement or payments  
 5-24 owed by an issuer under a credit agreement may be paid from and  
 5-25 secured by any source, including:

- 5-26 (1) the proceeds from the sale of the obligation to  
 5-27 which the credit agreement relates;  
 5-28 (2) any revenue and money of the issuer that is  
 5-29 available to pay the obligation;  
 5-30 (3) any interest on the obligation or that may  
 5-31 otherwise be legally used; or  
 5-32 (4) ad valorem taxes if the credit agreement is  
 5-33 authorized in anticipation of, in relation to, or in connection  
 5-34 with an obligation that is wholly or partly payable from or is to be  
 5-35 wholly or partly payable from ad valorem taxes [to the extent  
 5-36 permitted by this chapter].

5-37 (e) ~~[(d)]~~ A credit agreement is an agreement for  
 5-38 professional services but is not a contract subject to Subchapter  
 5-39 I, Chapter 271, Local Government Code.

5-40 (f) If a credit agreement is authorized and is executed in  
 5-41 anticipation of the issuance of an obligation described by Section  
 5-42 1371.001(5)(B) because the issuer is authorized by Subchapter C,  
 5-43 Chapter 271, Local Government Code, to issue certificates of  
 5-44 obligation:

5-45 (1) notice required by Section 271.049, Local  
 5-46 Government Code, in addition to the other requirements for the  
 5-47 notice, must describe the time and place tentatively set for the  
 5-48 adoption of the order or ordinance authorizing the credit  
 5-49 agreement, the maximum amount and term of the obligations and  
 5-50 credit agreement, and the manner in which the certificates of  
 5-51 obligation and credit agreement will be paid; and

5-52 (2) the issuer may enter into the credit agreement and  
 5-53 issue the certificates of obligation only if:

5-54 (A) the municipal secretary or clerk or person  
 5-55 with similar authority does not receive a petition signed by at  
 5-56 least five percent of the registered voters of the issuer that  
 5-57 protests the issuance of the certificates of obligation or the  
 5-58 execution of the credit agreement before the later of the date  
 5-59 tentatively set for the adoption of the order or ordinance to  
 5-60 authorize the credit agreement or the date the order or ordinance is  
 5-61 adopted;

5-62 (B) the issuance and execution are approved at an  
 5-63 election held for that purpose conducted as provided for a bond  
 5-64 election under Chapter 1251; or

5-65 (C) notice is not required by Section 271.049,  
 5-66 Local Government Code, before the certificates of obligation are  
 5-67 authorized.

5-68 (g) Payments received by an issuer under a credit agreement  
 5-69 or on termination of all or part of a credit agreement may be used

6-1 to:

6-2 (1) pay the obligations in anticipation of which, in  
 6-3 relation to which, or in connection with which the credit agreement  
 6-4 was entered into or pay the costs to be financed by the obligations  
 6-5 in anticipation of which, in relation to which, or in connection  
 6-6 with which the credit agreement was entered into;

6-7 (2) pay other liabilities or expenses that are secured  
 6-8 on parity with or senior to the obligations in anticipation of  
 6-9 which, in relation to which, or in connection with which the credit  
 6-10 agreement was entered into; or

6-11 (3) after the satisfaction of the obligations or costs  
 6-12 described by Subdivision (1) and of the liabilities and expenses  
 6-13 described by Subdivision (2) that are due, make payments for any  
 6-14 other purpose for which the issuer may issue obligations under this  
 6-15 subchapter or that is otherwise authorized by law, unless the  
 6-16 credit agreement is paid primarily from ad valorem taxes.

6-17 (h) An issuer may agree to pay or receive a payment on early  
 6-18 termination of an interest rate management agreement due to a  
 6-19 breach or for another reason as provided by the interest rate  
 6-20 management agreement. The agreement may specify the payment by a  
 6-21 specific amount, by a formula, or by a process or algorithm.

6-22 (i) A credit agreement secured in the manner described by  
 6-23 Subsection (d)(4) may be executed without an election or the  
 6-24 imposition of an ad valorem tax for the credit agreement unless  
 6-25 required by the Texas Constitution. If the Texas Constitution  
 6-26 requires an election for the credit agreement, the election must be  
 6-27 held substantially in the manner provided for an election under  
 6-28 Chapter 1251.

6-29 (j) An issuer may enter into an interest rate management  
 6-30 agreement transaction only:

6-31 (1) if the issuer has either entered into at least  
 6-32 three interest rate management transactions before November 1,  
 6-33 2006, or has entered into one or more interest rate management  
 6-34 transactions with notional amounts totaling at least \$400 million  
 6-35 before that date; or

6-36 (2) as provided by Subsection (k).

6-37 (k) An issuer may enter into an interest rate management  
 6-38 transaction if:

6-39 (1) the governing body has adopted, amended, or  
 6-40 ratified during the preceding two years a risk management policy  
 6-41 governing entering into and managing interest rate management  
 6-42 agreements and transactions that addresses:

6-43 (A) conditions, if any, under which the issuer  
 6-44 may enter into an interest rate management agreement transaction  
 6-45 without independent advice from a financial advisor or swap advisor  
 6-46 who has experience in interest rate management transactions; and

6-47 (B) authorized purposes, permitted types and  
 6-48 creditworthiness of counterparties, credit risks and other risks,  
 6-49 liquidity, methods of selection of counterparties, and limits  
 6-50 concerning awarding a transaction, monitoring, and exposure;

6-51 (2) the issuer has received from the counterparty:

6-52 (A) if the transaction was not awarded through a  
 6-53 competitive bidding process:

6-54 (i) a statement that, in the counterparty's  
 6-55 judgment, the difference in basis points between the rate of the  
 6-56 transaction and the mid-market rate for a comparable transaction  
 6-57 falls within the commonly occurring range for comparable  
 6-58 transactions;

6-59 (ii) a statement of the amount of the  
 6-60 difference as determined by the counterparty; or

6-61 (iii) if the counterparty does not know of a  
 6-62 comparable transaction or mid-market rate, a statement of another  
 6-63 suitable measure of pricing acceptable to the counterparty; and

6-64 (B) the counterparty's disclosure of any  
 6-65 payments the counterparty made to another person to procure the  
 6-66 transaction; and

6-67 (3) the governing body or an authorized officer or  
 6-68 employee of the issuer has determined that the transaction will  
 6-69 conform to the issuer's interest rate management agreement policy

7-1 after reviewing a report of the chief financial officer of the  
7-2 issuer that identifies with respect to the transaction:

- 7-3 (A) its purpose;  
7-4 (B) the anticipated economic benefit and the  
7-5 method used to determine the anticipated benefit;  
7-6 (C) the use of the receipts of the transaction;  
7-7 (D) the notional amount, amortization, and  
7-8 average life compared to the related obligation;  
7-9 (E) any floating indices;  
7-10 (F) its effective date and duration;  
7-11 (G) the identity and credit rating of the  
7-12 counterparties;  
7-13 (H) the cost and anticipated benefit of  
7-14 transaction insurance;  
7-15 (I) the financial advisors and the legal advisors  
7-16 and their fees;  
7-17 (J) any security for scheduled and early  
7-18 termination payments;  
7-19 (K) any associated risks and risk mitigation  
7-20 features; and  
7-21 (L) early termination provisions.

7-22 (1) While an interest rate management agreement transaction  
7-23 is outstanding, the governing body of the issuer shall review and  
7-24 ratify or modify its related risk management policy at least  
7-25 biennially [~~(e) Notwithstanding Subsection (b), the governing body~~  
7-26 may delegate to an officer or employee the authority, under the  
7-27 terms and for the period approved by the governing body, to:

- 7-28 [(1) enter into a credit agreement and transactions  
7-29 under a credit agreement; and  
7-30 [(2) execute any instruments in connection with those  
7-31 transactions].

7-32 SECTION 5. Section 1371.057, Government Code, is amended to  
7-33 read as follows:

7-34 Sec. 1371.057. REVIEW AND APPROVAL OF OBLIGATION, CREDIT  
7-35 AGREEMENT, AND CONTRACT BY ATTORNEY GENERAL. (a) Before an  
7-36 obligation may be issued or a credit agreement executed, a record of  
7-37 the proceedings of the issuer authorizing the issuance, execution,  
7-38 and delivery of the obligation or [~~the~~] credit agreement[~~7~~] and  
7-39 any contract providing revenue or security to pay the obligation or  
7-40 [~~the~~] credit agreement must be submitted to the attorney general  
7-41 for review.

7-42 (b) If the attorney general finds that the [~~credit~~  
7-43 ~~agreement, contract, and other authorizing~~] proceedings  
7-44 authorizing an obligation or credit agreement conform to the  
7-45 requirements of the Texas Constitution and this chapter, the  
7-46 attorney general shall approve them and deliver to the comptroller  
7-47 a copy of the attorney general's legal opinion stating that  
7-48 approval and the record of proceedings. After approval, the  
7-49 obligation or [~~and~~] credit agreement may be executed and delivered,  
7-50 exchanged, or refinanced from time to time in accordance with those  
7-51 authorizing proceedings.

7-52 (c) If the [~~obligation~~] authorization of an obligation or of  
7-53 a credit agreement provides that the issuer intends to refinance  
7-54 the [~~an~~] obligation or a payment [~~loan~~] under the [~~a~~] credit  
7-55 agreement with refunding bonds issued under Chapter 1207, then the  
7-56 obligation or payment [~~loan~~] shall be treated, for purposes of  
7-57 attorney general review and approval, as having the intended term  
7-58 and payment schedule of the refunding bonds.

7-59 SECTION 6. Section 1371.059, Government Code, is amended to  
7-60 read as follows:

7-61 Sec. 1371.059. VALIDITY AND INCONTESTABILITY. (a) If  
7-62 proceedings to authorize an obligation or credit agreement are  
7-63 approved [~~On approval~~] by the attorney general and registered[~~7~~  
7-64 registration] by the comptroller, each obligation or [~~and initial~~  
7-65 ~~delivery of the obligation, a] credit agreement, as applicable,~~  
7-66 or[~~7~~] a contract providing revenue or security included in or  
7-67 executed and delivered according to[~~, an initial obligation, and~~  
7-68 any obligation subsequently issued under] the authorizing  
7-69 proceedings is [~~are~~] incontestable in a court or other forum and is

8-1 ~~[are]~~ valid, [and] binding, and [obligations] enforceable  
 8-2 according to its [their] terms.

8-3 (b) Notwithstanding Subsection (a) and Section 1371.003,  
 8-4 and except as provided by this subsection, an obligation authorized  
 8-5 by this chapter is not valid, binding, or enforceable unless the  
 8-6 obligation is approved by the attorney general and registered by  
 8-7 the comptroller in accordance with Chapter 1202. The attorney  
 8-8 general's approval and registration by the comptroller is not  
 8-9 required for an obligation:

8-10 (1) to which Chapter 1202 does not apply or that is  
 8-11 exempt from approval and registration as provided by Section  
 8-12 1202.007(a)(1), (2), (3), (4), (6), or (7); or

8-13 (2) that matures within one year after the issuer  
 8-14 receives payment for the obligation, regardless of whether the  
 8-15 obligation is evidenced by an instrument with a nominal term of  
 8-16 longer than one year.

8-17 (c) An issuer, other than a state agency including an  
 8-18 institution of higher education, in the proceedings to authorize  
 8-19 obligations or a credit agreement, or in a credit agreement, may  
 8-20 agree to waive sovereign immunity from suit or liability for the  
 8-21 purpose of adjudicating a claim to enforce the credit agreement or  
 8-22 obligation or for damages for breach of the credit agreement or  
 8-23 obligation.

8-24 SECTION 7. Subchapter B, Chapter 1371, Government Code, is  
 8-25 amended by adding Section 1371.061 to read as follows:

8-26 Sec. 1371.061. MANAGEMENT REPORTS. (a) If a governing  
 8-27 body authorizes an interest rate management agreement transaction,  
 8-28 the governing body shall designate an officer of the issuer to  
 8-29 monitor and report on the transaction. At least annually, the  
 8-30 designated officer shall present to the governing body a written  
 8-31 report, signed by the designated officer, on all outstanding  
 8-32 interest rate management agreement transactions conducted for the  
 8-33 issuer. The report must:

8-34 (1) describe the terms of the transactions;

8-35 (2) contain a statement:

8-36 (A) of the fair value of each transaction;

8-37 (B) of the value of any collateral posted to or by  
 8-38 the issuer under the transactions with each counterparty at the  
 8-39 year's end; and

8-40 (C) reviewing the transactions' cash flows;

8-41 (3) identify with respect to each transaction the  
 8-42 counterparty, any guarantor of the counterparty's obligations  
 8-43 under the transaction, and the credit ratings of the counterparty  
 8-44 and the guarantor; and

8-45 (4) state whether the continuation of the transactions  
 8-46 under the agreement would comply with the issuer's interest rate  
 8-47 management agreement policy.

8-48 (b) This section does not apply to an issuer that has  
 8-49 entered into:

8-50 (1) at least three interest rate management agreement  
 8-51 transactions before November 1, 2006; or

8-52 (2) one or more interest rate management agreement  
 8-53 transactions with notional amounts totaling at least \$400 million  
 8-54 before November 1, 2006.

8-55 SECTION 8. The changes in law made by this Act apply only to  
 8-56 proceedings related to authorizing the issuance of obligations or  
 8-57 the execution of credit agreements or interest rate management  
 8-58 agreements that are adopted on or after the effective date of this  
 8-59 Act and to transactions related to the obligations or agreements.  
 8-60 Proceedings related to authorizing the issuance of obligations or  
 8-61 the execution of credit agreements or interest rate management  
 8-62 agreements that are adopted before the effective date of this Act,  
 8-63 and transactions related to the obligations or agreements, are  
 8-64 governed by the law in effect on the date the proceedings were  
 8-65 initiated, and the former law is continued in effect for that  
 8-66 purpose.

8-67 SECTION 9. An agreement described by this section is  
 8-68 ratified in all respects, without regard to whether the agreement  
 8-69 to waive sovereign immunity is limited to the extent permitted by



9-1 law, if the agreement:

9-2 (1) is entered into before the effective date of this  
9-3 Act by an issuer as defined by Subdivision (4), Section 1371.001,  
9-4 Government Code, that has authority by statute or under its charter  
9-5 to sue and be sued or to plead and be impleaded; and

9-6 (2) waives sovereign immunity from suit or liability  
9-7 for breach of an obligation or of a credit agreement authorized by  
9-8 Chapter 1371, Government Code.

9-9 SECTION 10. This Act takes effect September 1, 2007.

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