

AN ACT

relating to the establishment of debt management policies and guidelines by the Bond Review Board, including the approval by the board of certain interest rate management agreements, and to other matters affecting public finance.

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

SECTION 1. Section 1201.027, Government Code, is amended by adding Subsection (d) to read as follows:

(d) An issuer of a state security, as defined by Section 1231.001, that selects or contracts with a person to provide services under Subsection (a) shall, on request, submit to the Bond Review Board:

(1) the request for proposals to provide the services not later than the date the request for proposals is published;

(2) each final proposal received to provide the services before a contract for the services is entered into by the issuer; and

(3) an executed contract entered into by an issuer for services under Subsection (a).

SECTION 2. Section 1231.001, Government Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Interest rate management agreement" means an agreement that provides for an interest rate transaction, including a swap, basis, forward, option, cap, collar, floor, lock, or hedge

1 transaction, for a transaction similar to those types of
2 transactions, or for a combination of any of those types of
3 transactions. The term includes:

4 (A) a master agreement that provides standard
5 terms for transactions;

6 (B) an agreement to transfer collateral as
7 security for transactions; and

8 (C) a confirmation of transactions.

9 SECTION 3. Subdivision (2), Section 1231.001, Government
10 Code, is amended to read as follows:

11 (2) "State security" means:

12 (A) an obligation, including a bond, issued by:

13 (i) a state agency;

14 (ii) an entity that is expressly created by
15 statute and has statewide jurisdiction; or

16 (iii) an entity issuing the obligation on
17 behalf of this state or on behalf of an entity described by
18 Subparagraph (i) or (ii); ~~or~~

19 (B) an installment sale or lease-purchase
20 obligation that is issued by or on behalf of an entity described by
21 Paragraph (A) and that has:

22 (i) a stated term of more than five years;

23 or

24 (ii) an initial principal amount of more
25 than \$250,000; or

26 (C) an obligation, including a bond, that is
27 issued under Chapter 53, Education Code, at the request of or for

1 the benefit of an institution of higher education as defined by
2 Section 61.003, Education Code, other than a public junior college.

3 SECTION 4. Subsection (c), Section 1231.023, Government
4 Code, is amended to read as follows:

5 (c) The board shall adopt policies that:

6 (1) provide a mechanism for evaluating the amount of
7 state debt that can be managed prudently;

8 (2) address opportunities to consolidate debt
9 authority;

10 (3) include guidelines for:

11 (A) appropriate levels of reserves;

12 (B) the types of state security that should be
13 issued under various circumstances; and

14 (C) the terms or structure of a state security;

15 (4) help the board and issuers of state securities to
16 evaluate:

17 (A) the potential risks involved in the issuance
18 of a state security or in the execution of an interest rate
19 management agreement; and

20 (B) the effect that the issuance of a state
21 security or that the execution of an interest rate management
22 agreement will have on the finances and on the overall debt position
23 of the issuer and of the state; and

24 (5) recommend other advisable practices related to the
25 issuance of a state security.

26 SECTION 5. Subchapter D, Chapter 1231, Government Code, is
27 amended by adding Section 1231.063 to read as follows:

1 Sec. 1231.063. DEBT AFFORDABILITY STUDY. (a) The board,
2 in consultation with the Legislative Budget Board, shall annually
3 prepare a study regarding the state's current debt burden by:

4 (1) analyzing the state's historical debt use and
5 financial and economic resources to determine the amount of
6 additional not self-supporting debt the state can accommodate; and

7 (2) monitoring how annual changes and new debt
8 authorizations affect the mechanism described in Subsection (b).

9 (b) The study must include a mechanism that can be used to
10 determine, at a minimum, the state's debt affordability and serve
11 as a guideline for debt authorizations and debt service
12 appropriations. The mechanism must be designed to calculate:

13 (1) the not self-supporting debt service as a
14 percentage of unrestricted revenues;

15 (2) the ratio of not self-supporting debt to personal
16 income;

17 (3) the amount of not self-supporting debt per capita;

18 (4) the rate of debt retirement; and

19 (5) the ratio of not self-supporting debt service to
20 budgeted or expended general revenue.

21 (c) Not later than December 1 of each year, the board shall
22 submit the annual study to:

23 (1) the governor;

24 (2) the comptroller;

25 (3) the presiding officer of each house of the
26 legislature; and

27 (4) the Senate Committee on Finance and House

1 Appropriations Committee.

2 (d) The annual study submitted under Subsection (c) must
3 include a target and limit ratio for not self-supporting debt
4 service as a percentage of unrestricted revenues.

5 SECTION 6. Subchapter C, Chapter 1232, Government Code, is
6 amended by adding Section 1232.124 to read as follows:

7 Sec. 1232.124. PREFERENCE FOR TEXAS BUSINESSES. If the
8 authority contracts with a private entity to issue bonds under this
9 chapter, the authority shall consider contracting with:

10 (1) an entity that has a place of business in this
11 state; and

12 (2) a historically underutilized business as defined
13 by Section 2161.001.

14 SECTION 7. Chapter 1371, Government Code, is amended by
15 adding Subchapter D to read as follows:

16 SUBCHAPTER D. ADVISERS RETAINED FOR THE ISSUANCE OF PUBLIC
17 SECURITIES AND RELATED MATTERS

18 Sec. 1371.151. DEFINITIONS. In this subchapter:

19 (1) "Advice" means the advice provided by an adviser
20 regarding activities described by Sections 1371.154(b)(2)(A)-(C).

21 (2) "Adviser" means a person who provides advice
22 regarding activities described by Sections 1371.154(b)(2)(A)-(C).

23 (3) "Interest rate management agreement" means an
24 agreement that provides for an interest rate transaction,
25 including:

26 (A) a swap, basis, forward, option, cap, collar,
27 floor, lock, or hedge; or

1 (B) any combination of these types of agreements
2 or transactions.

3 (4) "Municipal finance professional" means an
4 individual, other than an individual whose functions are solely
5 clerical or ministerial, whose activities include:

6 (A) underwriting, trading, or the sale of
7 municipal securities;

8 (B) financial advisory or consultant services
9 for issuers in connection with the issuance of public securities,
10 the execution and delivery of interest rate management agreements,
11 or the investment of the proceeds of public securities;

12 (C) research or investment advice with respect to
13 municipal securities, provided that the research or advice relates
14 to an activity described by Paragraph (A) or (B); or

15 (D) any other activity that involves direct or
16 indirect communication with public investors regarding public
17 securities, provided that the activity relates to an activity
18 described by Paragraph (A) or (B).

19 (5) "Public security" has the meaning assigned by
20 Section 1202.001.

21 Sec. 1371.152. EXEMPTIONS. This subchapter does not apply
22 to:

23 (1) an issuer who has more than \$3 billion in
24 outstanding obligations as of September 1, 2007, or to a nonprofit
25 corporation investing funds on behalf of such an issuer;

26 (2) a person acting as a financial adviser with
27 respect to an issuance of public securities by an issuer created

1 under Chapter 222, Water Code, delivered before January 1, 2010,
2 under a contract that was in effect on September 1, 2007, and that
3 has not been modified since that date;

4 (3) an employee of an issuer providing advice to the
5 issuer or to another issuer;

6 (4) a state agency:

7 (A) created by Section 49-b, Article III, Texas
8 Constitution; or

9 (B) the head of which is an officer in the
10 executive department under Section 1, Article IV, Texas
11 Constitution; or

12 (5) a corporation created under Section 4B,
13 Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas
14 Civil Statutes), by a municipality located in a county bordering
15 the Rio Grande River.

16 Sec. 1371.153. EXEMPTIONS FOR CERTAIN ADVICE. This
17 subchapter does not apply to advice to an issuer regarding:

18 (1) a loan or a line of credit by a depository
19 institution to an issuer in a transaction not involving the
20 issuance of a public security offered to a third party or parties;
21 or

22 (2) a deposit of funds with a depository institution
23 in compliance with another statute of this state.

24 Sec. 1371.154. FINANCIAL ADVISER OR INVESTMENT ADVISER
25 QUALIFICATIONS AND REQUIREMENTS FOR CERTAIN AGREEMENTS AND
26 TRANSACTIONS. (a) This section applies to a financial adviser or
27 an investment adviser who advises the issuer in connection with:

1 (1) an interest rate management agreement;

2 (2) the execution or delivery of a public security; or

3 (3) the investment of the public security proceeds.

4 (b) To be eligible to be a financial adviser or an
5 investment adviser under this subchapter, the adviser must:

6 (1) be registered:

7 (A) as a dealer or investment adviser in
8 accordance with Section 12 or 12-1, The Securities Act (Article
9 581-12 or 581-12-1, Vernon's Texas Civil Statutes); or

10 (B) with the United States Securities and
11 Exchange Commission under the Investment Advisers Act of 1940 (15
12 U.S.C. Section 80b-1 et seq.), if the adviser is providing advice on
13 the investment of bond proceeds and not on the issuance of a public
14 security or an interest rate management agreement;

15 (2) have relevant experience in providing advice to
16 issuers in connection with:

17 (A) the issuance of public securities;

18 (B) the valuation of interest rate management
19 agreements; or

20 (C) the investment of public security proceeds;
21 and

22 (3) acknowledge in writing to the issuer that in
23 connection with the transaction for which the adviser is providing
24 advice the adviser:

25 (A) is acting as the issuer's agent; and

26 (B) has complied with the requirements of this
27 subchapter.

1 Sec. 1371.155. REQUIREMENTS. (a) An adviser, including an
2 adviser that is not required to be registered under Section
3 1371.154(b)(1)(A), shall comply with the following with respect to
4 all services contemplated under this subchapter to be provided in
5 this state:

6 (1) in conducting services as an adviser of the
7 issuer, the adviser shall deal fairly with all persons and may not
8 engage in any deceptive, dishonest, or unfair practice;

9 (2) in recommending to an issuer any transaction
10 involving the issuance of public securities, the execution and
11 delivery of interest rate management agreements, or the investment
12 of proceeds of securities, the adviser shall have reasonable
13 grounds for making the recommendation based on the information made
14 available by the issuer or information the adviser otherwise knows
15 about the issuer;

16 (3) the adviser may not in any year, directly or
17 indirectly, give or permit to be given to an employee or an elected
18 or appointed official of an issuer gifts or services of value,
19 including gratuities, that have a total cumulative value of more
20 than \$100;

21 (4) the adviser may not, directly or indirectly,
22 provide or agree to provide payment to a person who is not
23 affiliated with the adviser for a solicitation of advisory business
24 for the adviser; and

25 (5) the adviser may not act as adviser to an issuer
26 before the second anniversary of the date of making a contribution
27 to an official of the issuer if the contribution is made by:

1 (A) the adviser;

2 (B) a municipal finance professional associated
3 with the adviser; or

4 (C) a political action committee controlled by
5 the adviser or by a municipal finance profession associated with
6 the adviser.

7 (b) Notwithstanding Subsection (a)(3), this section does
8 not prohibit an adviser, including an adviser that is not required
9 to be registered under Section 1371.154(b)(1)(A), from:

10 (1) giving an employee or an elected or appointed
11 official of an issuer occasional gifts of meals or tickets to
12 theatrical, sporting, or other entertainments hosted by the
13 adviser;

14 (2) sponsoring legitimate business functions for the
15 issuer that are recognized by the Internal Revenue Service as
16 deductible business expenses; or

17 (3) providing to the issuer or an employee or elected
18 or appointed official of the issuer gifts of reminder advertising.

19 (c) A gift or sponsorship given or provided by an adviser,
20 including an adviser that is not required to be registered under
21 Section 1371.154(b)(1)(A), to an issuer under Subsection (b) may
22 not be so frequent or so extensive that a question of impropriety is
23 raised.

24 (d) Notwithstanding Subsection (a)(5), this section does
25 not prohibit an adviser, including an adviser that is not required
26 to be registered under Section 1371.154(b)(1)(A), from acting as an
27 adviser to an issuer if the only contributions made to an official

1 of the issuer before the second anniversary of the date of making a
2 contribution described by Subsection (a)(5):

3 (1) were made by municipal finance professionals who
4 were entitled to vote; and

5 (2) were not in excess of \$250 for each election.

6 SECTION 8. Section 1372.031, Government Code, is amended to
7 read as follows:

8 Sec. 1372.031. PRIORITIES FOR RESERVATIONS AMONG CERTAIN
9 ISSUERS. (a) Except as provided by Subsection (b) and subject
10 [Subject] to Sections 1372.0321 and 1372.0231, if, on or before
11 October 20, more than one issuer in a category described by Section
12 1372.022(a)(2), (3), (4), or (6) applies for a reservation of the
13 state ceiling for the next program year, the board shall grant
14 reservations in that category in the order determined by the board
15 by lot.

16 (b) Until August 1 of the program year, within the category
17 described by Section 1372.022(a)(6), the board shall grant priority
18 to the Texas Economic Development Bank for projects that the Texas
19 Economic Development and Tourism Office determines meet the
20 governor's criteria for funding from the Texas Enterprise Fund.
21 Notwithstanding the priority, the Texas Economic Development Bank
22 may not receive an amount greater than one-sixth of the portion of
23 the state ceiling available under Section 1372.022(a)(6) on January
24 1 of the program year.

25 (c) In selecting projects for reservations of the state
26 ceiling for a program year under Subsection (b), among those
27 projects the Texas Economic Development and Tourism Office

1 determines meet the governor's criteria for funding from the Texas
2 Enterprise Fund the office shall give priority to obtaining
3 reservations for those projects located or to be located in an
4 economically depressed or blighted area, as defined by Section
5 2306.004, or in an enterprise zone designated under Chapter 2303.

6 (d) This section and Section 1372.063 do not give a priority
7 to any project described by Subsection (b) for the purpose of
8 selecting projects for reservations under Section 1372.022(b).

9 (e) The Texas Economic Development Bank is subject to
10 Section 1201.027(d).

11 SECTION 9. Section 1372.063, Government Code, is amended to
12 read as follows:

13 Sec. 1372.063. PRIORITY 1 CARRYFORWARD CLASSIFICATION. The
14 priority 1 carryforward classification applies to:

15 (1) an issuer of a state-voted issue; and

16 (2) a state agency, other than an issuer of a
17 state-voted issue, that applies for a carryforward designation for
18 a project that:

19 (A) is described by Section 1372.067(a)(2); and

20 (B) the Texas Economic Development and Tourism
21 Office determines meets the governor's criteria for funding from
22 the Texas Enterprise Fund.

23 SECTION 10. Subsection (d), Section 1201.027, Government
24 Code, as added by this Act, applies only to:

25 (1) a contract for which the solicitation of
26 applicable bids, offers, qualifications, proposals, or other
27 similar expressions of interest is published on or after September

1 1, 2007; or

2 (2) if no solicitation described by Subdivision (1) of
3 this section is published in relation to the contract, a contract
4 entered into on or after September 15, 2007.

5 SECTION 11. (a) Except as provided by Subsection (b) of
6 this section, this Act takes effect September 1, 2007.

7 (b) Sections 1371.154 and 1371.155, Government Code, as
8 added by this Act, take effect January 1, 2008.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1332 passed the Senate on May 3, 2007, by the following vote: Yeas 31, Nays 0; May 25, 2007, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2007, House granted request of the Senate; May 27, 2007, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1332 passed the House, with amendments, on May 23, 2007, by the following vote: Yeas 138, Nays 9, one present not voting; May 26, 2007, House granted request of the Senate for appointment of Conference Committee; May 27, 2007, House adopted Conference Committee Report by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor