

By: Sparks

S.B. No. 2490

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of certificates of obligation by local governments.

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

SECTION 1. This Act shall be known as the Certificate of Obligation Reform Act of 2023.

SECTION 2. Sections 271.043, 271.045, and 271.0461, Local Government Code, are amended to read as follows:

Sec. 271.043. DEFINITIONS. In this subchapter:

(10) "Public work" means:

(i) streets, roads, highways, bridges, sidewalks, parks, landfills, parking structures, or airports;

(ii) telecommunications, wireless communications, information technology systems, applications, hardware, or software;

(iii) cybersecurity; or

(iv) as part of any utility system, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, or flood control and drainage project.

Sec. 271.045. PURPOSES FOR WHICH CERTIFICATES MAY BE AUTHORIZED. (a) The governing body of an issuer may authorize only the necessary certificates to pay a contractual obligation to be incurred for the construction, renovation, repair, or

1 improvement of a public work:

2 (1) to comply with a state or federal law, rule, or
3 regulation if the political subdivision has been officially
4 notified of noncompliance with the law, rule, or regulation;

5 (2) if the governing body believes the construction,
6 renovation, repair, or improvement of a public work is necessary to
7 mitigate the impact of:

8 (i) a public health emergency that poses an
9 imminent danger to a resident's physical health or safety in the
10 governing body's jurisdiction; or

11 (ii) a natural disaster in the governing body's
12 jurisdiction and:

13 (A) the governor declares or renews a
14 declaration of a state of disaster under Section 418.014,
15 Government Code, in that fiscal year, and the governor's
16 designation of the area threatened includes all or part of the
17 geographic territory of the local government; or

18 (B) the presiding officer of the governing
19 body of a political subdivision declares or renews a declaration of
20 a local state of disaster under Section 418.108, Government Code,
21 in that fiscal year, and the presiding officer's designation of the
22 area threatened includes all or part of the geographic territory of
23 the local government; or

24 (3) if a court renders a decision that requires the
25 local government to construct, renovate, repair, or improve a
26 public work.

27 ~~[(1) construction of any public work,~~

1 ~~(2) purchase of materials, supplies, equipment, machinery,~~
2 ~~buildings, land, and rights-of-way for authorized needs and~~
3 ~~purposes; or~~

4 ~~(3) payment of contractual obligations for professional~~
5 ~~services, including services provided by tax appraisers,~~
6 ~~engineers, architects, attorneys, map makers, auditors, financial~~
7 ~~advisors, and fiscal agents.]~~

8 (b) If necessary because of change orders, the governing
9 body of an issuer may authorize certificates [~~maybe authorized~~] in
10 an amount not to exceed 15 [~~25~~] percent of a contractual obligation
11 incurred for the construction of public works, but certificates may
12 be delivered only in the amount necessary to discharge contractual
13 obligations.

14 (c) The governing body of a municipality may issue
15 certificates of obligation to pay all or part of a municipality's
16 obligations incurred by contract for interests in and rights to
17 water or sewer treatment capacity in connection with a water supply
18 and transmission project or sewer treatment or collection project
19 to be constructed in whole or in part on behalf of the municipality
20 by another governmental entity or political subdivision pursuant to
21 a written agreement expressly authorized under Section 552.014 of
22 this code or Section 791.026, Government Code.

23 (d) In exercising its authority to issue certificates of
24 obligation for the purposes specified in Subsection (c), the
25 municipality must limit the principal amount of certificates to be
26 issued for the purpose of funding its contractual obligations to an
27 amount equal to (i) the aggregate of the contractual payments or the

1 total costs allocated or attributed, under generally accepted
2 accounting principles, to the capital costs of the project, as
3 opposed to any maintenance or operating costs to be paid under the
4 written agreement or (ii) the total cost of the project multiplied
5 by the percentage of the nameplate capacity of the project acquired
6 or conveyed by the written agreement to the municipality, whichever
7 limitation is applicable to the contractual interests or rights
8 being conveyed or identified in the written agreement.

9 (e) Work that is directly attributable under generally
10 accepted accounting principles to the costs of the project and that
11 is performed by employees of the issuer may be allocated or
12 attributed to the capital costs of the project.

13 (f) If the governing body of an issuer authorizes
14 certificates to pay a contractual obligation under this section,
15 the governing body must enter into a contract or written agreement
16 for the construction, renovation, repair, or improvement of a
17 public work not later than 90 days after the governing body
18 authorizes the certificates.

19 (g) If the governing body of an issuer authorizes
20 certificates to pay a contractual obligation under Subsection
21 (a)(2)(i), the governing body shall adopt a resolution stating the
22 conditions and circumstances of the public health emergency.

23 (h) The provisions of this subchapter relating to
24 advertisement for competitive bids apply to contractual
25 obligations to be incurred for a purpose for which certificates are
26 to be issued under this section.

27 Sec. 271.0461. ADDITIONAL PURPOSE FOR CERTIFICATES:

1 DEMOLITION OF DANGEROUS STRUCTURES [~~OR RESTORATION OF HISTORIC~~
2 ~~STRUCTURES~~]. Certificates may be issued by any municipality for
3 the payment of contractual obligations to be incurred in
4 demolishing dangerous structures [~~or restoring historic~~
5 ~~structures~~] and may be sold for cash, subject to the restrictions
6 and other conditions of Section [271.050](#).

7 SECTION 3. Sections [271.047](#)(c) and (d), Local Government
8 Code, are amended to read as follows:

9 (c) A certificate may not mature over a period greater than
10 30 [~~40~~] years from the date of the certificate and may not bear
11 interest at a rate greater than that allowed by Chapter [1204](#),
12 Government Code.

13 (d) Except as provided by this subsection, the governing
14 body of an issuer may not authorize a certificate to pay a
15 contractual obligation to be incurred if a bond proposition to
16 authorize the issuance of bonds for the same purpose was submitted
17 to the voters during the preceding five [~~three~~] years and failed to
18 be approved. A governing body may authorize a certificate that the
19 governing body is otherwise prohibited from authorizing under this
20 subsection:

21 (1) in a case described by Sections [271.056](#)(1)-(3);
22 and

23 (2) to comply with a state or federal law, rule, or
24 regulation if the political subdivision has been officially
25 notified of noncompliance with the law, rule, or regulation.

26 SECTION 4. Section [271.049](#)(c), Local Government Code, is
27 amended to read as follows:

1 (c) If before the date tentatively set for the authorization
2 of the issuance of the certificates or if before the authorization,
3 the municipal secretary or clerk if the issuer is a municipality, or
4 the county clerk if the issuer is a county, receives a petition
5 signed by at least two [~~five~~] percent of the qualified voters of the
6 issuer protesting the issuance of the certificates, the issuer may
7 not authorize the issuance of the certificates unless the issuance
8 is approved at an election ordered, held, and conducted in the
9 manner provided for bond elections under Chapter 1251, Government
10 Code.

11 SECTION 5. Section 271.046, Local Government Code, is
12 repealed.

13 SECTION 6. Chapter 271, Local Government Code, as amended
14 by this Act, applies to a certificate issued on or after the
15 effective date of this Act.

16 SECTION 7. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2023.