

**Municipal Finance: The Public Purpose Doctrine and  
the Basics of Borrowing, Depositories, and Investments**

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**By**

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## Purpose

The purpose of this paper is to provide a primer of the following areas of municipal finance: the public purpose doctrine, and the basics of municipal borrowing, municipal depositories, and municipal investments. Each section provides statutory references; secondary resources (including hyperlinks to Internet resources); and an outline of general issues. My intent was to provide a framework to develop a basic understanding of the listed areas of municipal finance and to provide a foundation or starting point for researching issues in these areas.

### I. PUBLIC PURPOSE DOCTRINE

#### A. Authority

##### 1. Texas Constitution Art. 3, §52

- a. This section states in relevant part: “[T]he Legislature shall have no power to authorize any county, city, town or other political subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in such corporation, association or company.”

##### b. Exceptions

- 1) **Economic Development:** Texas Constitution Art. 3, §52-a is an exception to the general rule provided by Art.3, §52, which generally prohibits a city or other political subdivision of the state from lending its credit or granting public money to an individual, association, or corporation. Art. 3, §52-a allows the legislature to provide for the use of public money for economic development purposes. The legislature enacted Chapter 380 of the Texas Local Government Code to authorize cities to provide assistance for economic development, including programs for making loans and grants of public money.
- 2) **Donation of Outdated/Surplus Fire Equipment:** Texas Constitution Art. 3 authorizes a city to donate to underdeveloped countries outdated or surplus equipment, supplies, or other materials used in fighting fires (§52h), and allows cities to donate surplus equipment, supplies, or other materials used in fighting fires to the Texas Forest Service or to a successor agency authorized to cooperate in the development of rural fire protection plans (§52g).

##### 2. Texas Constitution Art. 11, §3

- a. This section states in relevant part: “No county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; . . .”
- b. This provision generally prohibits cities from entering into a joint venture or partnerships.

### 3. Secondary Sources

- a. Brooks, 22 Tex. Prac. Series §8.04 (relating to private aid, grants, stockholder prohibitions)
- b. 16 McQuillins Mun. Corp. §28:52 (3d ed. 2017) (discussing the power to transfer, donate, or dedicate property for particular purposes)

### B. Generally

1. **Purpose of Constitutional Restriction Regarding Use of Public Funds.** The purpose of Art. 3, §52 is to prohibit cities and other political subdivisions from making gifts of public funds to any individual, association, or corporation. A corporation includes a municipal corporation such as a city or an independent school district.<sup>1</sup>
2. **Incidental Benefit of a Private Interest.** Art.3, §52 does not invalidate an expenditure that incidentally benefits a private interest if the expenditure is made for the direct accomplishment of a legitimate public purpose.<sup>2</sup>
3. **Three-Part Public Purpose Test**
  - a. **Generally.** The Texas Supreme Court has provided a three-part test to determine if a statute accomplishes a public purpose: “Specifically, the Legislature must: (1) ensure that the statute’s predominate purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment; and (3) ensure that the political subdivision receives a return benefit.”<sup>3</sup> The Attorney General’s Office has identified similar principals for determining whether a particular expenditure of public funds serves a public purpose.
  - b. **Economic Development.** A city ensures that the public purpose of economic development will be accomplished by a funded business when the city enters into a contract with the business that: (1) outlines the steps the business will take to justify public funding (for example, creation of jobs or expansion of the tax base by construction or enhancement of the physical facilities); (2) includes a claw back provision that would allow the city to seek reimbursement of the incentives provided if the business does not meet its obligations; and (3) includes a tangible means of measuring whether the business has met its obligations under the contract.<sup>4</sup>
4. **Discretion of Governing Body.** The governmental body must determine in the first instance whether an expenditure of funds or extension of credit serves a legitimate public purpose.<sup>5</sup> Such decisions are within the sound discretion of the

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<sup>1</sup> Tex. Att’y Gen. Op. No. GA-0747 (2009) (citing *San Antonio Indep. Sch. Dist. v. Bd. Of Trs. of the San Antonio Elec. & Gas Sys.*, 204 S.W.2d 22, 25 (Tex. Civ. App.—El Paso 1947, writ ref’d n.r.e.)

<sup>2</sup> See *Walker v. City of Georgetown*, 86 S.W.3d 249,260 (Tex. App.—Austin 2002, pet. denied).

<sup>3</sup> *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers’ Comp. Comm’n*, 74 S.W.3d 377, 383 (Tex. 2002).

<sup>4</sup> 2017 Economic Development Handbook, *Texas Municipal League*, p. 164.

<sup>5</sup> See Tex. Att’y Gen. Op. No. GA-0747 (2009) (referencing Tex. Att’y Gen. Op. No. GA-0078 (2003) at 4 (citing *Young v. City of Houston*, 756 S.W.2d 813, 814 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1988, writ denied) (determining public purpose is primarily legislative function); *City of Coleman v. Rhone*, 222 S.W. 646, 649 (Tex. Civ. App. – Eastland 1949, writ ref’d

governing body of a municipality, subject to judicial review. “Texas courts defer to the legislature’s determination of what is a public purpose, since deciding what is a public purpose is primarily a legislative finding.”<sup>6</sup> The governing body may establish a public purpose by making legislative findings, often by “Whereas” clauses, when establishing a program or approving a contract expending public funds.

### C. Examples

1. **Red Light Camera Citation.** Governmental entities payment of a civil penalty for which the entity is liable would not violate Art. 3, §52.<sup>7</sup>
2. **Employment Contract.** Art. 3, §52 does not prohibit the payment of benefits to an employee pursuant to an employment contract.<sup>8</sup>
3. **Travel Expenses for Job Applicant.** Under certain circumstances, spending public funds to pay the travel expenses of a job candidate may not violate Art. 3, §52.<sup>9</sup>
4. **Payment of Claim.** Using public funds to pay a claim where there is no governmental liability is a gift or donation in violation of Art. 3, §52.<sup>10</sup>
5. **Private Party’s Costs of a Zoning Appeal.** Art. 3, §52 would likely prohibit a city from reimbursing a private party for the costs the private party incurred in a successful appeal to a zoning board of adjustment insofar as the payment constitutes an after-the-fact reward or gratuitous payment of public funds rather than an expenditure that accomplishes a municipal public purpose or as a payment of a quid pro quo transaction.<sup>11</sup>
6. **Sale of City Property by a Type-A Municipality.** Art. 3, §52 and Art. 11, §3 would not prohibit a city from selling public real property to a private entity so long as the transaction serves a legitimate public purpose and the city receives a public benefit in return.<sup>12</sup>
7. **Building a Seawall on Private Property.** According to Art. 3, §52, the city may not build and fund a seawall under the Public Improvement District Assessment Act on privately-owned property without first obtaining a sufficient interest in the real property to allow the city to protect the public interest in the seawall.<sup>13</sup>

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(determining public purpose of ordinance is for municipal governing body)).

<sup>6</sup> Tex. Att’y Gen. Open Records Decision No. ORD-660 (1999) (citing *Bullock v. Calvert*, 480 S.W.2d 367, 370 (Tex. 1972); *State v. Austin*, 331 S.W.2d 737 (1960); and *Young v. Houston*, 756 S.W.2d 813, 814 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1988, writ denied)).

<sup>7</sup> Tex. Att’y Gen. Op. No. GA-0747 (2009) (regarding whether a school district may expend district funds to pay a civil penalty imposed by a municipality).

<sup>8</sup> Tex. Att’y Gen. Op. No. JC-0115 (1999) (citing Tex. Att’y Gen. Op. No. H-1303 (1978) (other citations omitted)).

<sup>9</sup> Tex. Att’y Gen. Op. No. DM-317 (1995) (discussing whether a county may pay travel expenses of an applicant for the position of county forensic pathologist).

<sup>10</sup> See *State v. City of Austin*, 331 S.W.2d 737, 742 (Tex. 1960); *Tompkins v. Williams*, 62 S.W.2d 70, 71 (Tex. Comm’n App. 1933, judgment adopted).

<sup>11</sup> Tex. Att’y Gen. Op. No. KP-0056 (2016) (regarding whether state law authorizes a city to reimburse a private person for costs incurred in a successful appeal to a zoning board of adjustment).

<sup>12</sup> Tex. Att’y Gen. Op. No. GA-1084 (2014) (addressing the authority of a Type-A municipality to sell real property including a building and improvements located in the middle of a city street).

<sup>13</sup> Tex. Att’y Gen. Op. No. GA-0528 (2007) (discussing whether a seawall funding from PID assessments may be built on

8. **Chamber of Commerce’s Use of City Resources.** Art. 3, § 52 would authorize the use of city resources by a Chamber of Commerce if the use serves a public purpose of the city and sufficient controls exist to ensure public purpose is carried out.<sup>14</sup>

## II. MUNICIPAL BORROWING<sup>15</sup>

### A. Resources

1. Municipal Law and Procedure Manual, Chapter 4, Debt
2. Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration
3. Municipal Finance 101: Basics Every City Attorney Needs to Know by Karen Brophy, City of Irving and Jeanene McIntyre, City of Arlington  
[http://www2.dallasbar.org/upload/uploads/sections/Brophy\\_McIntyre\\_Definitions%5b1%5d.pdf](http://www2.dallasbar.org/upload/uploads/sections/Brophy_McIntyre_Definitions%5b1%5d.pdf)
4. Roles and Responsibilities: The Financing Team in an Initial Municipal Bond Offering  
<http://www.msrb.org/msrb1/pdfs/Financing-Team.pdf>
5. Municipal Debt Instruments – An Overview by Charles M. Williams, Olson & Olson LLP
  - a. Paper  
[https://texascityattorneys.org/2012speakerpapers/FallConference/Municipal\\_Debt\\_Instruments.pdf](https://texascityattorneys.org/2012speakerpapers/FallConference/Municipal_Debt_Instruments.pdf)
  - b. Presentation  
[https://texascityattorneys.org/2012speakerpapers/FallConference/Municipal\\_Debt\\_Instruments\\_ppt.pdf](https://texascityattorneys.org/2012speakerpapers/FallConference/Municipal_Debt_Instruments_ppt.pdf)
6. 2017 Economic Development Handbook, *Texas Municipal League*,  
<https://www.tml.org/DocumentCenter/View/65/2017-Economic-Development-Handbook-PDF>
7. All Bond Counsel Letters from Public Finance Section, Office of the Attorney General of Texas
  - a. Applicability of Certain Election Law Changes to Bond Elections to Be Held on November 5, 2019 and Other Matters (7/19/2019)  
<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/20190719BondLetter.pdf>
  - b. Various Legislative Changes Affecting Public Securities (12/27/2019)  
<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/20191227BondLetter.pdf>

### B. Bonds, Generally

#### 1. Authority

##### a. Constitutional Debt – Tex. Const. Art. 11, §§5 and 7

- 1) Tex. Const. Art. 11, §§5 and 7 generally require that provision be made to levy and collect a tax of a sufficient sum to pay interest and

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privately-owned property).

<sup>14</sup> Tex. Atty’ Gen. Op. No. KP-0181 (2018).

<sup>15</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 54.

create a sinking fund of at least two per cent to repay the principal amount of the obligation.

- 2) A sinking fund (also called the “mandatory redemption fund”) is a fund into which moneys are placed to be used to redeem securities in accordance with a redemption schedule in the bond contract.
- 3) Although Art. 11, §5 references “debt” and Art. 11, §7 references “debt for any purpose,” courts have treated these references to debt and its related provisions as equivalent in municipal cases. Art. 11, §7 also applies to counties.
- 4) There are constitutional and statutory limits on a city’s power to tax; therefore, the additional taxes for bonds plus other taxes may not exceed these restrictions.<sup>16</sup>
- 5) 2011 Amendments to Art. 11, §§5 and 7 and Texas Government Code, Chapter 791 authorize cities or counties to enter multi-year Interlocal Agreements without meeting the tax and sinking fund requirements of these sections of the Constitution.

**b. Texas Supreme Court Definition of “Debt”**

- 1) “The term ‘debt’ as used in the constitution means any pecuniary obligation imposed by contract, except such as were, at the date of the contract, within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year or out of some fund then within the immediate control of the corporation.” *McNeill v. City of Waco*, 33 S.W. 322, 324 (Tex. 1895).
- 2) Court notes exceptions to the constitutional requirement to levy a tax and establish a sinking fund, if the obligation is payable out of either:
  - a) The current revenues for the year of the contract (also, codified in Texas Local Government Code §271.903); or
  - b) Any other fund within the immediate control of a city.
- 3) Expenditures past the current budget year are “subject to appropriation.”

**c. Tex. Const. Art. 3, §52**

- 1) **Specific Authority.** A city must have specific authority to issue bonds for a specific purpose.<sup>17</sup>
- 2) **Constitutional Authority.** Authorizes bonds for several purposes:
  - a) Improvements to rivers, creeks, and streams to prevent overflow or to permit irrigation or navigation.
  - b) Construction of paved, graveled or macadamized roads, and turnpikes.

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<sup>16</sup> Municipal Law and Procedure Manual, p. 12-25.

<sup>17</sup> Tex. Const. Art. 3, §52.

- c) Construction of ponds, lakes, dams, reservoirs, and canals for the purpose of irrigation, drainage, or navigation.<sup>18</sup>
  - 3) **Legislative Authority.** Legislature has authority to allow cities to issue bonds.
- d. **Municipal Bonds.** Texas Government Code §1331.001 authorizes bonds for the following purposes:
  - 1) Construction or purchase of permanent improvements inside the municipal boundaries, including public buildings, waterworks, and sewers.<sup>19</sup>
  - 2) Construction or improvement of streets and bridges of municipality.<sup>20</sup>
  - 3) Construction or purchase of building sites of buildings for the public schools or other institutions of learning inside the municipality, if the municipality has assumed exclusive control over those facilities.<sup>21</sup>
- e. **Authority from Charter.** Tex. Const. Art. 11, §5 and Texas Government Code §1331.052 – a home rule city has the power to issue bonds in the amount and to the extent provided by its charter.

## 2. Examples of Additional Statutory Authority

- a. Texas Local Government Code §280.003 – purchase land to be used for hospital purposes.
- b. Texas Local Government Code §331.004 – acquiring or improving land, buildings, or historically significant objects for park purposes or for historic or prehistoric preservation purposes.
- c. Texas Government Code, Chapter 1502 – purchase, repair, and construction of a utility system, park, or swimming pool.
- d. Texas Government Code, Chapter 1504 – establish, acquire, lease, construct, improve, enlarge, equip, repair, operate or maintain a civic center, auditorium, opera house, music hall, exhibition hall, coliseum, museum, library, or other municipal building; or a golf course, tennis court, and other similar recreational facility.
- e. Texas Government Code, Chapter 1507 – payment of a final judgment rendered by a court of competent jurisdiction; the judgment must be against the city or payment of the judgment is the responsibility of the city, requiring the city to pay the plaintiff an amount in cash, and the municipality does not have the money available to pay the amount of the judgment plus the interest and cost and expenses associated with judgment or decree.

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<sup>18</sup> Municipal Law and Procedure Manual, pp. 12-16 – 12-17.

<sup>19</sup> Texas Gov't Code, §1331.001(1).

<sup>20</sup> Texas Gov't Code, §1331.001(2).

<sup>21</sup> Texas Gov't Code, §1331.001(3).

- f. Texas Government Code, Chapter 1508 – construct, purchase, or encumber a park, swimming pool, golf course, golf course clubhouse, or ballpark; a fairground or an exposition building; an airport; or land on which such a facility is located.
- g. Texas Transportation Code §22.052 – planning, acquiring, establishing, constructing, improving, or equipping an airport or air navigation facility or the site of an air navigation facility or acquiring or eliminating airport hazards.

**C. General Obligation Debt<sup>22</sup>**

- 1. General obligation debts are payable from and secured by a pledge of future property tax collections, and are often expressed as a percentage of the city’s total assessed valuations.<sup>23</sup>
- 2. Three common forms: General Obligation (G.O.) Bonds, Time Warrants, Certificates of Obligation
  - a. *General Obligation (G.O.) Bonds* (also called ad valorem tax bonds)<sup>24</sup>
    - 1) Long-term financing tool
    - 2) Authorized by voters at a municipal bond election
    - 3) Backed by ad valorem taxes (often referred to as “the full faith and credit of the city”)
    - 4) Issued pursuant to an ordinance adopted by the city council
    - 5) The Attorney General examines them as to legality, then the city delivers the bond to the successful purchaser/bidder for payment in cash
    - 6) Usually issued in \$5,000 denominations
    - 7) Usually provides serial maturities with a certain amount of principle maturing each year over a period not to exceed 40 years
    - 8) The preferred means of borrowing against a pledge of tax revenues
      - a) Have the highest degree of investor acceptance
      - b) Command the lowest interest rates
    - 9) Used by city to pay for public facilities
  - b. *Time Warrants*<sup>25</sup>
    - 1) Do not require voter approval, however
      - a) The law requires that the city council must publish notice of its intent to issue them
      - b) City council must call a referendum election if **10%** of taxpaying voters sign a petition requesting it
    - 2) Payable from ad valorem taxes

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<sup>22</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 62.

<sup>23</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 62.

<sup>24</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 62.

<sup>25</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 62.

- 3) Issued directly to vendors to pay for construction, equipment, and services
  - 4) Procedures are cumbersome and expensive, and results in the city paying a higher rate of interest
  - 5) Still potentially advantageous if there is a project where there has been a cost overrun and bond funds have been exhausted
- c. *Certificates of Obligation (COs)*<sup>26</sup>
- 1) Statute: Texas Local Government Code, Chapter 271
  - 2) Only the following types of cities may issue COs:
    - a) A home rule city (regardless of a charter provision that provides otherwise); or
    - b) A general law city authorized to levy ad valorem taxes of not less than \$1.50 on each \$100 valuation of taxable property.<sup>27</sup>
  - 3) COs can be issued to pay a contractual obligation for:
    - a) Construction of any public work;
    - b) Purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes;
    - c) Payment for professional services (tax appraisers, engineers, architects, attorneys, map makers, auditors, financial advisors, and fiscal agents);<sup>28</sup>
    - d) Construction or equipping a jail;<sup>29</sup>
    - e) Demolishing dangerous structures or restoring historic structures.<sup>30</sup>
  - 4) A city council must authorize COs by ordinance; the certificates may not mature over a period greater than 40 years; and the certificates may not bear interest greater than the “net effective interest rate” of 15%.<sup>31</sup>
  - 5) COs do not require voter authorization, except that upon notice of the city’s intent to issue certificates, if the city secretary receives a petition signed by 5% or more of the qualified voters in the city, then an election on the issue, similar to a bond election, must be held.

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<sup>26</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 63.

<sup>27</sup> Tex. Local Gov’t Code, §271.044.

<sup>28</sup> Tex. Local Gov’t Code, §271.045.

<sup>29</sup> Tex. Local Gov’t Code, §271.046.

<sup>30</sup> Tex. Local Gov’t Code, §271.0461.

<sup>31</sup> Tex. Local Gov’t Code, §271.047; Texas Gov’t Code, §1204.006.

- 6) COs can be issued directly to vendors, or can be sold for cash (like bonds) in certain circumstances, in which case, the attorney general must approve them in the same manner as bonds.<sup>32</sup>

#### **D. Revenue Bonds<sup>33</sup>**

1. Unlike G.O. bonds, revenue bonds do not require voter approval unless required by municipal charter.
2. They are secured by a pledge of revenues from an income-producing facility, often a utility system, such as a water and sewer system, and the bonds are commonly designated with the name of the utility system that pledges the revenue.
3. The utility system revenue bonds are payable solely from the system's net revenues, which are the gross revenues minus operating and maintenance costs.
4. The bonds include a statement on their face that the holder shall never be entitled to demand payment from property taxes. In other words, revenue bonds are not backed by the full faith and credit of the city.

#### **E. Lease-Purchase Agreements<sup>34</sup>**

1. This is a contract entered into between the "lessee" city and the "lessor" which can be either a vendor of personal property or a financing company.
2. The city obtains the use of personal property, typically equipment or vehicles, over a period of time that is generally between 3 and 15 years.
3. The term of the agreement is generally matched to the useful life of the asset.
4. Title passes to the city at the beginning of the lease, and at the end of the lease the city completes the purchase for a nominal fee.
5. This arrangement is not considered "debt" and therefore not subject to the Texas Constitution's restrictions because the lease does not obligate the city beyond the current fiscal period. The lease should contain a non-appropriation clause allowing the city to terminate the lease at the end of each budget year if the city has not appropriated lease funds.

#### **F. Other Types of Indebtedness**

1. **Anticipation notes** – issued to borrow against anticipated revenue—typically federal grant money.<sup>35</sup>
  - a. Appropriate to borrow relatively small amounts of money when the issuance of bonds would be cost prohibitive.
  - b. See Texas Government Code Chapter 1431.
2. **Judgment bonds**
  - a. Bonds issued to pay final judgments and court-approved settlements when the issuer is unable to pay the judgment from other funds.
  - b. See Texas Government Code, Chapter 1507.
3. **Tax note** – tool for alleviating short-term cash flow needs.<sup>36</sup>

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<sup>32</sup> Tex. Local Gov't Code, §271.050.

<sup>33</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 63.

<sup>34</sup> See Tex. Local Gov't Code, §271.005.

<sup>35</sup> Handbook for Mayors and Councilmembers, Chapter 6, Financial Administration, p. 65.

<sup>36</sup> Tex. Gov't Code, §1202.003.

- a. Paid from tax revenue received in the following fiscal years.
- b. Can be used to pay for public improvements.
- 4. **Refunding bonds** – tool for refinancing short-term or long-term debt.<sup>37</sup>
  - a. Documentation similar to that of COs but no publication of notice is required.
  - b. Often used to consolidate several short-term notes.
  - c. No election required.
  - d. According to the recent federal Tax Cuts and Jobs Act, governmental issuers are unable to issue tax-exempt advance refunding bonds beginning January 1, 2018. Advance refunding bonds are bonds issued more than 90 days before the redemption of the refunded bonds.

#### **G. Role of the Attorney General**

- 1. Prior to issuance of a public security, the issuer shall submit the public security and the record of authorization proceedings to the attorney general for review and approval.<sup>38</sup>
  - a. Public securities are defined to include certain instruments, including bonds, notes, certificates of obligation, certificates of participation, or other instruments evidencing a proportionate interest in payment due by an issuer that are incurred under the issuer’s borrowing power and are in the appropriate form.<sup>39</sup>
  - b. Certain time warrants, leases, lease-purchase agreements, installment sale contracts, and bonds that are payable only from current revenues or taxes collected in the year of issuance are excepted from the approval requirement. Each of these obligations, however, may be required to receive approval under other law.<sup>40</sup>
- 2. A public security cannot be issued if it is not approved by the attorney general.
- 3. After the public security is approved by the attorney general, registered by the comptroller, and issued, it is incontestable, except for claim of unconstitutionality.<sup>41</sup>

#### **H. Recent legislation**

##### **1. 2013 Legislation – Bond Elections**

- a. S.B. 637 relates to notice and election order requirements for bond approval elections held by political subdivisions.
- b. S.B. 637 added Section 3.009 and amended Section 4.003 of the Texas Election Code:

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<sup>37</sup> Tex. Gov’t Code, §1202.003.

<sup>38</sup> Tex. Gov’t Code, §1202.003(a) (a); *see also* §1202.001(3) (providing a definition of “public security”) and §1202.007 (providing exceptions).

<sup>39</sup> 2017 Economic Development Handbook, Texas Municipal League, p. 175 (referencing Tex. Gov’t Code §1202.001(3)).

<sup>40</sup> 2017 Economic Development Handbook, Texas Municipal League, p. 175 (referencing Tex. Gov’t Code §1202.007).

<sup>41</sup> Tex. Gov’t Code, §1202.003; *see Noteware v. Turner*, 2019 WL 2180635 (Tex. App.–Houston [1<sup>st</sup> Dist.] 2019) (election contest challenging ballot language setting forth a bond measure was moot where city followed statutory process for issuing bonds).

- 1) Section 3.009 requires additional information in a debt obligation election order
- 2) Section 4.003(f) requires posting of the debt obligation election order:
  - a) At each polling location
  - b) In three public places in the municipality
  - c) On municipality's Internet website, if the municipality maintains a website

## 2. 2015 Legislation

### a. Local Debt Reporting – H.B. 1378

- 1) Every political subdivision must annually compile and report certain financial information, including debt obligation information, the current credit rating, and any other information relevant or necessary to explain the values.
- 2) A political subdivision may provide a link in the report to information that is posted separately on the political subdivision's website.
- 3) As an alternative to preparing a report, a political subdivision may provide all required debt information to the comptroller and have the comptroller post the information on the comptroller's website.
- 4) As an alternative to preparing a report, a city with a population under 15,000 may provide to the comptroller a document that contains the required debt information.
- 5) The annual report must be available for inspection and posted on the political subdivision's website. The contact information for the political subdivision's main office must also be continuously posted on its website.

### b. Certificates of Obligation (C.O.) – H.B. 1378

- 1) A city may not issue a C.O. if the voters voted down a bond proposition for the same purpose within the past three years.
- 2) This does not apply to a case of public calamity, a case in which the issuer needs to act to protect the health of residents, a case of unforeseen damage to public equipment or property, or comply with state or federal regulation.

c. **Capital Appreciation Bonds – H.B. 114.** Establishes new requirements for a city to issue capital appreciation bonds that are secured by property taxes. These requirements do not apply to refunding bonds or capital appreciation bonds for transportation projects. *See item 3 below relating to correction of drafting error in H.B. 114.*

## 3. 2017 Legislation

a. **Capital Appreciation Bonds – S.B. 295.** Cleans up a drafting error in H.B. 114 and provides that refunding bonds and capital appreciation bonds

issued for transportation projects are exempted from the restrictions in all of Section 1201.0245 of the Texas Government Code.

4. **2019 Legislation**

a. **Local Debt – H.B. 440**

- 1) A political subdivision that maintains a website shall prominently post during the 21 days before a general obligation bond election any sample ballot, along with the election order, notice of election, and contents of the proposition.
- 2) A political subdivision may not issue a general obligation bond to purchase, improve, or construct improvements to real property or to purchase personal property if the weighted average maturity of the issue of bonds exceeds 120% of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds.
- 3) A political subdivision other than a school may use the unspent proceeds of issued general obligation bonds only:
  - a) For the specific purpose for which the bonds were authorized;
  - b) To retire the bonds; or
  - c) For a purpose other than the specific purposes for which the bonds were issued if:
    - (i) The specific purposes are accomplished or abandoned; and
    - (ii) The majority of votes cast in an election held in the political subdivision approve the use of the proceeds for the proposed purpose.
- 4) For an election held under subsection 3)c) above:
  - a) The election order and the notice of election shall state the proposed purpose for which the bond proceeds are to be used; and
  - b) The election must be held in the same manner as an election to issue bonds in the political subdivision.

b. **Local Debt – H.B. 477**

- 1) **Election Order.** The document ordering an election to authorize a political subdivision to issue debt obligations shall distinctly state:
  - a) Taxes sufficient to pay the principal and interest on the debt obligation may be imposed (previously stated “annual” principal and interest);
  - b) Maximum number of years authorized (previously, 40 years); and
  - c) The aggregate amount of the outstanding interest on debt obligations of the political subdivision as of the date of the

election is ordered, which may be based on the political subdivision's expectations relative to variable rate debt obligations.

2) **Form of Ballot.** The ballot for a measure seeking voter approval of the issuance of debt obligations by a political subdivision shall specifically state:

- a) A general description of the purposes for which the debt obligations are to be authorized;
- b) The total principal amount of the debt obligations to be authorized; and
- c) The taxes sufficient to pay the principal of and interest on the debt obligations will be imposed.

3) **Voter Information Document.**

- a) A political subdivision with at least 250 registered voters (on the date the election is called) shall prepare a voter information document for each proposition to be voted on the election and post the document:
  - (i) On election day and during early voting in a prominent location at each polling place;
  - (ii) Not later than the 21<sup>st</sup> day before the election, in three public places in the boundaries of the political subdivision holding the election; and
  - (iii) During the 21 days before the election, on the political subdivision's website.
- b) Authorizes a political subdivision to include the voter information document in the debt obligation election order.
- c) The voter information document shall distinctly state:
  - (i) The language that will appear on the ballot;
  - (ii) The following information formatted as a table:
    - The principal of the debt obligations to be authorized;
    - The estimated interest for the debt obligations to be authorized;
    - The estimated combined principal and interest required to pay on time and in full the debt obligations to be authorized; and
    - As of the date the political subdivision adopts the debt election order:
      - The principal of all outstanding debt obligations of the political subdivision;

- The estimated remaining interest on all outstanding debt obligations of the political subdivision, which may be based on the political subdivision's expectations relative to the interest due on any variable rate debt obligations; and
  - The estimated combined principal and interest required to pay on time and in full outstanding debt obligations of the political subdivision, which may be based on the political subdivision's expectations relative to the interest due on any variable debt obligations;
  - The estimated maximum annual increase in the amount of taxes that would be imposed on a residence homestead with an appraisal value of \$100,000 to repay the debt obligations (based upon assumptions made by the governing body of the political subdivision); and
  - Any other information that the political subdivision considers relevant or necessary to explain the information required to be included in the voter information document.
- d) The political subdivision shall identify in the voter information document the major assumptions made in connection with the statement in Section 3)c) above including:
- (i) The amortization of the political subdivision's debt obligations, including outstanding debt obligations and the proposed debt obligations;
  - (ii) Changes in estimated future appraised values within the political subdivision; and
  - (iii) The assumed interest rate on the proposed debt obligations.
- e) A political subdivision that maintains a webpage to provide the information in Section 3) above on its website in an easily accessible manner beginning not later than the 21<sup>st</sup> day before election day and ending on the day after the date of the debt obligation election.

4) **C.O.'s.**

- a) The timeframe to publish newspaper notice of intention to issue a certificate of obligation (C.O.) is extended from 30 to 45 days before the passage of the ordinance/order.
- b) An issuer of C.O.'s that maintains a website shall continuously post notice of intention to issue a C.O. on its website for at least 45 days before the passage of the C.O. issuance ordinance.
- c) The notice of intention to issue a C.O. shall include the following information:
  - (i) The then-current principal of all outstanding debt obligations of the issuer;
  - (ii) The then-current combined principal and interest required to pay all outstanding debt obligations of the issuer on time and in full, which may be based on the issuer's expectations relative to the interest due on any variable interest rate debt obligations;
  - (iii) The maximum principal amount of the C.O.'s to be authorized;
  - (iv) The estimated combined principal and interest required to pay the C.O.'s to be authorized on time and in full;
  - (v) The estimated interest rate for the C.O.'s to be authorized or the maximum interest rate for the certificates may not exceed the maximum legal interest rate; and
  - (vi) The maximum maturity date of the C.O.'s to be authorized.

**c. S.B. 30 – Bond Propositions**

- 1) Each single specific purpose for which bonds requiring voter approval are to be issued shall be printed on the ballot as a separate proposition.
- 2) A proposition may include as a specific purpose one or more structures or improvements serving the substantially same purpose and may include related improvements and equipment necessary to accomplish the specific purpose; and
- 3) A proposition seeking approval of the issuance of bonds shall specifically provide:
  - a) A plain language description of the single specific purpose for which the bonds are to be authorized;
  - b) Total principal amount of the debt obligations to be authorized; and
  - c) That taxes sufficient to pay the principal and interest on the debt obligations will be imposed.

## I. 86<sup>th</sup> Texas Legislature Interim Charges (2019)

1. **Senate Intergovernmental Relations Committee:** Monitors the implementation of legislation addressed by the Senate Committee on Intergovernmental Relations passed by the 86th Legislature, as well as relevant agencies and programs under the committee's jurisdiction. Specifically, make recommendations for any legislation needed to improve, enhance, or complete implementation of the following: (1) Senate Bill 1303, relating to landowner rights in a city's extraterritorial jurisdiction; (2) Senate Bill 1474, relating to private activity bonds; and (3) House Bill 2330, relating to simplifying disaster assistance.

### 2. Resource

a. TML Legislative Update, Number 42, November 8, 2019 (Lt. Governor Releases Interim Committee Charges)

<https://www.tml.org/DocumentCenter/View/1397/LU2019-42>

## III. MUNICIPAL DEPOSITORIES

### A. Statutes

1. Local Government Code, Chapters 105 and 131
2. Government Code, Chapter 2257

### B. Resources

1. Legal Q&A by Bill Longley, TML Legislative Counsel (Nov. 2014)  
<https://www.tml.org/DocumentCenter/View/167/Cities---Depositories---2014-11-PDF>
2. Conflicts of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors (August 2019) (Selection of City Depository – pages 14-15)  
[https://www.tml.org/DocumentCenter/View/1261/Conflicts-and-Disclosure-Laws\\_August-2019?bidId=](https://www.tml.org/DocumentCenter/View/1261/Conflicts-and-Disclosure-Laws_August-2019?bidId=)
3. Municipal Law and Procedure Manual, Chapter 11, Article 4, Depositories and Investments.

C. **Requirement.** The city council shall designate the bank, credit union, or savings association that will serve as the depository for the municipality's funds.<sup>42</sup>

### D. Process

1. **Designated officer.** The city council shall designate the treasurer of the municipality or another officer as the "designated officer."<sup>43</sup>
2. **Adopt written policy [Optional].** If the city council desires to consider institutions not doing business within the city, then the city council must adopt a written policy specifically allowing the consideration of applications received by institutions not doing business within the city, after taking into consideration what is in the best interest of the city.<sup>44</sup>

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<sup>42</sup> Tex. Local Gov't Code, §105.016(a).

<sup>43</sup> Tex. Local Gov't Code, §105.001(8).

<sup>44</sup> Tex. Local Gov't Code, §105.011; *see also* Municipal Law and Procedure Manual, p. 11-10.

3. **Notice.** The designated officer must give notice to banks, credit unions, or savings associations requesting the submission of applications for depository services, and notice must include:
  - a. The name and address of the designated officer receiving the applications;
  - b. The date and time the applications are to be received by the designated officer; and
  - c. The date, time, and place the city council will consider the selection of one or more depositories.<sup>45</sup>
4. **Receipt of application.** A financial institution must deliver its application on or before the date specified in the notice. The designated officer may not consider any application received after the date and time on the notice for receiving applications.<sup>46</sup>
5. **Review.** The designated officer reviews the applications and evaluates the terms and conditions for performance, such as the type and costs of service, consistent with any policy guidelines adopted by city council.<sup>47</sup>
6. **Specifications.** The designated officer presents the specifications of each application to city council.
7. **Selection and designation.** The city council may authorize the execution of one or more contracts, may reject any and all of the applications, and readvertise if all applications are rejected.<sup>48</sup> The city council shall designate, by order recorded in its minutes, the financial institution to serve as the depository for municipal funds.<sup>49</sup>
8. **Deadline for security.** The financial institution selected by the city council must, not later than five days before the commencement of the term of the depository services contract, provide security for the municipal funds which will be deposited pursuant to the depository services contract.<sup>50</sup> If the financial institution fails to meet this deadline, the selection of such financial institution is void, and the city council may consider the application it deems to be the next most advantageous depository service application.<sup>51</sup>
9. **Security**
  - a. Chapter 2257 of the Texas Government Code provides the requirements for the security, namely, the type, level, substitution, possession, release, and method of valuation of the security needed.<sup>52</sup>
  - b. A surety bond may qualify as security if:
    - 1) Executed by one or more solvent surety companies authorized to do business in Texas;

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<sup>45</sup> Tex. Local Gov't Code, §105.012(b).

<sup>46</sup> Tex. Local Gov't Code, §105.013.

<sup>47</sup> Tex. Local Gov't Code, §105.014.

<sup>48</sup> Tex. Local Gov't Code, §105.015.

<sup>49</sup> Tex. Local Gov't Code, §105.016.

<sup>50</sup> Tex. Local Gov't Code, §§105.016(b) and 105.031.

<sup>51</sup> Tex. Local Gov't Code, §105.016.

<sup>52</sup> Tex. Local Gov't Code, §105.031.

- 2) Is payable to the municipality; and
- 3) Has been approved by the city council.<sup>53</sup>
- c. Since Chapter 2257 trumps any other law relating to security for deposit of public funds in case of a conflict, ensure that the bond meets all the requirements of Local Government Code §105.033.

**10. Deposit of funds**

- a. The designated officer shall transfer to financial institution all municipal funds covered by the depository services contract **within 60 days** of city council’s designation of the depository.<sup>54</sup>
- b. As soon as practicable, the designated officer shall deposit any money covered by the contract received after the depository is designated.<sup>55</sup>

**E. Institutions Not Located Within City**

- 1. A city may not select a financial institution located outside of Texas.<sup>56</sup> An out-of-state financial institution is not considered to be located out of the state if the governing body of the municipality designates a branch office of such an institution that is located in Texas.<sup>57</sup> The following are not considered a depository for purposes of Section 131.901:
  - a. A paying agent or trustee for specific bonds or obligation; or
  - b. An institution selected by a governing body to provide safekeeping services.<sup>58</sup>
- 2. The city council can consider the application of a bank, credit union, or savings association that is not located in the municipality if:
  - a. The financial institution:
    - 1) Maintains a branch office in Texas; and
    - 2) Offers within Texas the services required by the depository services contract; and
  - b. The city council, prior to giving notice requesting submission of applications for depository, has adopted a written policy specifically allowing the consideration of applications received by institutions not doing business within the city, after taking into consideration what is in the best interest of the city.<sup>59</sup>

**F. Depository Services Agreement**

- 1. **Requirements.** The municipality should enter into a depository contract including the following statutorily required conditions:
  - a. Keep the municipal funds covered by the depository services contract;<sup>60</sup>

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<sup>53</sup> Tex. Local Gov’t Code, §105.033.

<sup>54</sup> Tex. Local Gov’t Code, §105.073.

<sup>55</sup> Tex. Local Gov’t Code, §105.073.

<sup>56</sup> Tex. Local Gov’t Code, §131.901; *see also* Municipal Law and Procedure Manual, p. 11-10.

<sup>57</sup> Tex. Local Gov’t Code, §131.901(a).

<sup>58</sup> Tex. Local Gov’t Code, §131.901(b).

<sup>59</sup> Tex. Local Gov’t Code, §105.011; *see also* Municipal Law and Procedure Manual, p. 11-10.

<sup>60</sup> Tex. Local Gov’t Code, §105.034(a)(1).

- b. Perform all duties and obligations imposed on the depository by law and under the depository services contract;<sup>61</sup>
  - c. Pay on presentation all checks drawn and properly payable on a demand deposit account with the depository;<sup>62</sup>
  - d. Pay all transfers properly payable as directed by a designated officer;<sup>63</sup>
  - e. Provide and maintain security at an amount not less than the amount of the deposit of public funds, increased by the amount of any accrued interest, and reduced to the extent that the United States or an instrumentality of the United States insures the deposit;<sup>64</sup>
  - f. Account for the municipal funds as required by law;<sup>65</sup> and
  - g. Relating to the possession, substitution, or release of security, which includes:
    - 1) Requiring the depository to execute a new bond or pledge additional securities for the deposit of municipal funds;<sup>66</sup>
    - 2) Substituting one security for another;
    - 3) Releasing securities pledged by a depository in excess of the amount required by Chapter 105 of the Texas Local Government Code;
    - 4) The time period in which such addition, substitution, or release of security by a depository may occur; and
    - 5) Any other matters relating to the possession, substitution, or release of security the municipality considers necessary for its protection.<sup>67</sup>
2. **Selection of new depository.** If the depository fails for any reason to comply with these requirements, then the city council may select a new depository using the same procedures as before.<sup>68</sup>
  3. **Term.** The term of the agreement may not exceed five (5) years.<sup>69</sup>
  4. **Venue.** By statute, any suit relating to a depository services contract must be tried in the county where the city hall of the municipality is located.<sup>70</sup> Therefore, be sure to include this language in the venue provision of the depository services contract.

**G. Additional Services.** A municipality may enter into a separate contract with financial institutions, including banks, credit unions and service associations, for additional services if a municipality's governing body determines that additional financial services are necessary in the administration, collection, investment and transfer of municipal funds.<sup>71</sup>

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<sup>61</sup> Tex. Local Gov't Code, §105.034(a)(2).

<sup>62</sup> Tex. Local Gov't Code, §105.034(a)(3).

<sup>63</sup> Tex. Local Gov't Code, §105.034(a)(4).

<sup>64</sup> Tex. Local Gov't Code, §105.034(a)(5); Gov't Code, Ch. 2257.022.

<sup>65</sup> Tex. Local Gov't Code, §105.034(a)(6).

<sup>66</sup> Tex. Local Gov't Code, §105.051(a)(1).

<sup>67</sup> Tex. Local Gov't Code, §105.051(a)(2-5).

<sup>68</sup> Tex. Local Gov't Code, §105.051(b).

<sup>69</sup> Tex. Local Gov't Code, §105.017.

<sup>70</sup> Tex. Local Gov't Code, §105.034(b).

<sup>71</sup> Tex. Local Gov't Code, §105.018.

## H. Payment of Funds<sup>72</sup>

### 1. Generally

- a. A municipality's funds may be paid out of the depository only at the direction of a designated officer.<sup>73</sup>
- b. The designated officer may draw a check on a depository only on a warrant signed by the mayor and attested by the municipal clerk,<sup>74</sup> unless the city council adopts procedures as provided below.
- c. If there is sufficient money in a fund in a depository, a warrant can be drawn on that fund by the designated officer.<sup>75</sup>
- d. In order to draw a check on any funds designated in the depository services agreement, a designated officer must adhere to all notice requirements according to the terms of the contract with the depository.<sup>76</sup>
- e. The mayor and city secretary may not draw a warrant on a special fund in a depository or under the control of the designated officer that was created to pay the bonded indebtedness of the municipality other than to pay the principal of or interest on the indebtedness or to invest the fund as provided by law.<sup>77</sup>
- f. The designated officer may not pay or draw a check to pay money out of a special fund that was created to pay the bonded indebtedness of the municipality other than to pay the principal of or interest on the indebtedness or to invest the fund as provided by law.<sup>78</sup>

### 2. Notwithstanding the provisions listed above, the city council may adopt procedures:

- a. Governing the method by which the designated officer is authorized to direct payments from the funds of the municipality on deposit with a depository;<sup>79</sup>
- b. Governing the method of payment of obligations of the municipality, including payment by check, draft, wire transfer, or other method of payment mutually acceptable to the municipality and the depository; and<sup>80</sup>
- c. The governing body determines are necessary to ensure the safety and integrity of the payment process.<sup>81</sup>

### 3. If a municipality adopts any such procedures, a copy shall be filed with the depository. Further, the designated officer and the depository shall agree upon

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<sup>72</sup> Municipal Law and Procedure Manual, p. 11-14.

<sup>73</sup> Tex. Local Gov't Code, §105.074(a).

<sup>74</sup> Tex. Local Gov't Code, §105.074(b).

<sup>75</sup> Tex. Local Gov't Code, §105.074(c).

<sup>76</sup> Tex. Local Gov't Code, §105.074(d).

<sup>77</sup> Tex. Local Gov't Code, §105.074(e).

<sup>78</sup> Tex. Local Gov't Code, §105.074(f).

<sup>79</sup> Tex. Local Gov't Code, §105.074(g).

<sup>80</sup> Tex. Local Gov't Code, §105.074(g).

<sup>81</sup> Tex. Local Gov't Code, §105.074(g).

record-keeping safeguards and other measures necessary to ensure the safety and integrity of the payment process.<sup>82</sup> These safeguards must be approved by the city council if they are consistent with and do not contravene the procedures already adopted.<sup>83</sup>

- I. **Conflicts of Interest.** Absent a home rule charter that states otherwise, the following relationships do not disqualify a financial institution from serving as a municipal depository:
  1. A municipal officer or employee who does not have the duty to select the depository is an officer, director or shareholder of the bank;
  2. One or more officers or employees of the city who have a duty to select the depository are officers or directors of the financial institution or own or have a beneficial interest, individually or collectively, in 10% or less of the outstanding capital stock of the bank, if:
    - a. The majority of remaining members of the board, committee, or other body of the municipality vote to select the bank as the depository; and
    - b. The interested officer or employee does not vote or take part in the proceedings.<sup>84</sup>
- J. **Special Depository.** If a municipal depository suspends business or is taken charge of by a state or federal bank regulatory agency, the city council may select by contract a special depository for the funds in the suspended financial institution.<sup>85</sup> Chapter 131 of the Texas Local Government Code provides duties of the special depository<sup>86</sup> and requirements for the special depository contract<sup>87</sup> and bond(s).<sup>88</sup> Finally, a city may pursue legal remedies against a suspended bank when it determines that it is in the best interest of the public.<sup>89</sup>

#### IV. MUNICIPAL INVESTMENTS

##### A. Authority

###### 1. Constitution

- a. **Texas Constitution Art. 3, §52(e).** This provision states, “A county, city, town, or other political corporation or subdivision of the state may invest its funds as authorized by law.”
- b. **Texas Constitution Art. 11, §3.** This provision authorizes a county, city, or other municipal corporation from investing its funds as authorized by law.

###### 2. Statute.

- a. **Public Funds Investment Act (“PFIA”):** Chapter 2256, Texas Government Code
- b. **Prohibition on Investing Public Money in Certain Investments:** Chapter 2270, Texas Government Code

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<sup>82</sup> Tex. Local Gov’t Code, section 105.074(h).

<sup>83</sup> Tex. Local Gov’t Code, section 105.074(h).

<sup>84</sup> Tex. Local Gov’t Code, §131.903.

<sup>85</sup> Tex. Local Gov’t Code, §131.001, Municipal Law and Procedure Manual, p. 11-11.

<sup>86</sup> Tex. Local Gov’t Code, §131.002.

<sup>87</sup> Tex. Local Gov’t Code, §131.003.

<sup>88</sup> Tex. Local Gov’t Code, §131.004.

<sup>89</sup> Tex. Local Gov’t Code, §131.902.

## B. Resources

1. Municipal Law and Procedure Manual, Chapter 11, Article 3, Public Funds.
2. Government Treasurers' Organization of Texas – Investment Policy Certification Program: Investment Policy Certification Checklist <https://gtot.unt.edu/file/889>
3. 2011 Legislative Revisions (HB 2226)
  - a. UNT Center for Public Management Resource: <http://pacs.unt.edu/cpm/sites/default/files/2011%20PFIA%20Legislative%20Changes.pdf>
  - b. City of Irving Investment Policy (the underlined items in the policy reflect revisions due to the 2011 Legislative revisions): <http://texascityattorneys.org/wp-content/uploads/2013/06/FinancePresentationHandout-CityofIrvingInvestmentPolicy2012Handout.pdf>
4. 2017 Legislative Revisions (see G. below for description of new legislation) <https://www.tml.org/457/June-2-2017-Number-22>

C. **Compliance Required.** A city must comply with the PFIA in order to invest public funds.

D. **PFIA Requirements.** The PFIA requires a city to do the following before it invests its public funds:

1. **Written investment policy.** City council must adopt a written investment policy by ordinance or resolution. The written policy must contain a statement emphasizing safety and liquidity.
  - a. Regardless of its size, a city must have a written policy if it has any cash or bank investments.
  - b. The city council must review the policy at least once a year and take formal action regarding such review, including documenting any revisions to the policy.
2. **List of authorized investments.** Policy must include a list of authorized investments that comply with the PFIA. The policy must also include a list of authorized investments and the permitted maximum maturity of any individual investment, as well as the maximum weighted average maturity (WAM) of funds. The policy must include the method used by the investing entity to monitor the market price of acquired investments.
3. **Invest in authorized investments.** Only invest its funds in investments authorized by its written investment policy.
4. **Training.** A city official must complete training relating to the PFIA. The treasurer, the chief financial officer [if she/he is not the treasurer], and the investment officer must attend at least one training session relating to their responsibilities pursuant to PFIA within twelve months of taking office, and must continue to do so at least once every two fiscal years.
  - a. **2015 legislation**
    - 1) **H.B. 870** – reduces the amount of training hours from ten hours every two years to eight hours every two years.

- 2) **H.B. 1148** – A city investment officer must take only the initial 10 hour training under the PFIA but no continuing investment training if the city: (a) does not invest funds; (2) or only deposits city funds in interest-bearing deposit accounts or certificates of deposit.
- E. **No Stocks.** Cities may not invest in corporate stocks, also called equities.
- F. **Penalty for Noncompliance.** Although no penalty provision, credit agencies and auditors are aware of the requirements of the PFIA, and failure to follow it, may impact credit ratings or it may result in negative comments in an audit.
- G. **2017 Legislation**
1. **H.B. 1003** – relating to investment of public funds. *Effective immediately (6/14/17).*
    - a. **Interest-Bearing Banking Deposits.** Adds interest-bearing banking deposits that are guaranteed or insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance to the list of authorized investments under the PFIA
    - b. **Repurchase Agreements, Guaranteed Investment Contracts, and Hedging Transactions.** With respect to execution of a repurchase agreement, a guaranteed investment contract by an investing entity, or a hedging contract (and any related security, credit, or insurance agreement), an issuer may agree to waive sovereign immunity from suit or liability for breach of agreement for the purpose of adjudicating a claim to enforce the repurchase agreement, guaranteed investment contract, or hedging contract for damages for breach of the repurchase agreement, guaranteed investment contract, or hedging contract. *See* Item 5) below for more information regarding Hedging Transactions.
    - c. **No-Load Money Market.** Providing that no-load money market is an authorized investment under the PFIA:
      - 1) If it complies with certain federal Securities and Exchange Commission (SEC) Rule 2a-7 (17 C.F.R. §270.2a-7); or
      - 2) If the mutual fund is registered with the SEC; has an average weighted maturity of less than two years and either has a duration of one year or more and is invested exclusively in obligations authorized by the PFIA or has a duration of less than a year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities.
    - d. **Investment Pool.**
      - 1) Among other requirements, an investment pool must now furnish to the investment officer or other authorized representative of the investing entity the investment pool’s policy regarding holding deposits in cash.
      - 2) A public funds investment pool that uses amortized cost or fair value accounting must mark its portfolio to market daily and to

the extent reasonably possible, stabilize at \$1.00 net asset value, when rounded and expressed to two decimal places.

- 3) If the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, the governing body of the public funds investment pool shall take action as the body determines necessary to eliminate or reduce to the extent reasonably practicable any dilution or unfair result to existing participants, including a sale of portfolio holdings to attempt to maintain the ratio between 0.995 and 1.005.
- 4) A public funds investment pool that uses amortized cost shall report its yield to its investors pursuant to SEC regulations relating to reporting by money market funds.

**e. Hedging Transactions.**

- 1) Establishing hedging transactions as an investment authorized by the PFIA for an “eligible entity,” defined as a political subdivision that has a principal amount of at least \$250 million in outstanding long-term indebtedness; long-term indebtedness proposed to be issued; or a combination of outstanding long-term indebtedness and long-term indebtedness proposed to be issued; and outstanding long-term indebtedness that is rated in one of the four highest rating categories for long-term debt by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation.
- 2) This section of the PFIA prevails over another law or a municipal charter to the extent there is any conflict.
- 3) The governing body of an eligible entity shall establish the entity’s policy for hedging transactions.
- 4) An eligible entity may enter into hedging transactions, including hedging contracts, and related security, credit, and insurance agreements in connection with commodities used by an eligible entity in the entity’s general operations, with the acquisition or construction of a capital project, or with an “eligible project,” as defined by §1371.001 of the Texas Government Code.
- 5) A hedging transaction must comply with regulations of the federal Commodity Futures Trading Commission and the federal SEC.
- 6) An eligible entity may pledge as security for and to the payment of a hedging contract (or a security, credit, or insurance agreement) any general or special revenue or funds the entity is

authorized by law to pledge to the payment of any other obligation.

- 7) An eligible entity may credit any amount the entity receives under a hedging contract against expenses associated with the commodity purchase.
  - 8) An eligible entity's cost of or payment under a hedging contract may be considered an operation and maintenance expense of the eligible entity, an acquisition expense of the eligible entity; a project cost of an eligible project; or a construction expense of the eligible entity.
2. **H.B. 1238** – relating to investment training for officers of public housing authorities, created under Chapter 392 of the Texas Local Government Code. This legislation reduces the number of required training hours for officers of public housing authorities, from 10 hours to five hours. Investment training is not required if the housing authority does not invest housing authority funds or only deposit funds in interest bearing deposit accounts or certificates of deposits. **Effective September 1, 2017. (NOTE: Section 8.015 of SB 1488 makes the same revisions as Section 1 of HB 1238.)**
3. **H.B. 1701** – relating to the presentation of the investment policy of certain governmental entities to a business organization that conducts investment transactions for the entity. This legislation revises the types of business entities that are subject to the acknowledgement requirement of the PFIA. **Effective September 1, 2017.**
- a. Requires that a written copy of the investment policy must be provided to any “business organization” offering to engage in an investment transaction with an investing entity.
  - b. “Business entity” is defined as an investment pool or investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio that has accepted authority granted by the entity under the contract to exercise investment discretion relating to the investing entity's funds.
  - c. The qualified representative of the business organization offering to engage in an investment transaction with an investing entity shall execute a written instrument in a form acceptable to the investing entity and the business organization substantially to the effect that the business organization has:
    - 1) Received and reviewed the entity's investment policy; and
    - 2) Acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the entity and the organization that are not authorized by the entity's investment policy, except that this authorization:

- a) Is dependent on an analysis of the makeup of the entity's entire portfolio;
  - b) Requires an interpretation of subjective investment standards; or
  - c) Relates to investment transactions of the entity that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority. **(This final item is what was added by HB 1701.)**
- 4. **H.B. 2647** –relating to authorized investments of public funds. **Effective immediately (6/15/17).** Adds the following as authorized investments under the PFIA:
  - a. Interest-bearing banking deposits that are guaranteed or insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.
  - b. Other interest-bearing banking deposits that meet certain requirements, as provided in Section 2256.009(a)(7) of the Texas Government Code.
- 5. **H.B. 2928** – relating to including the obligations of Federal Home Loan Banks as authorized investments for a governmental entity and the requirements for certificates of deposit or share certificates held as authorized investments for a governmental entity. **Effective September 1, 2017.**
  - a. Obligations, including letters of credit of the Federal Home Loan Banks are added as authorized investments under the PFIA.
  - b. Adding the requirement that a certificate of deposit or share investment, which are authorized investment under the PFIA, must be secured in accordance with Chapter 2257 of the Texas Government Code (the "Public Funds Collateral Act").
- 6. **S.B. 253** – relating to investment prohibitions and divestment requirements for certain investments of public money. **Effective immediately (5/23/17).**
  - a. Except as provided by Chapter 2270 of the Texas Government Code, an entity is not required to liquidate investments that were authorized investments at the time of purchase.
  - b. Chapter 806 of the Texas Government Code is redesignated as Chapter 2270 of the Texas Government Code, and the Chapter is renamed "Prohibition on Investing Public Money in Certain Investments."
- 7. **S.B. 2551** – firefighter and EMT disease presumption. **Effective immediately (6/10/19).** Provisions of the Public Funds Investment Act does not apply to the investment of assets in an account for the payment of death benefits and lifetime income, under the provisions of the Workers' Compensation Act, established by a pool (two or more political subdivisions collectively self-insuring under an interlocal agreement) or a political subdivision that self-insures itself.
- 8. **H.B. 2706** – relating to authorized investments for governmental entities. **Effective on 9/1/19.**

- a. For cities, a fully collateralized repurchase agreements is an authorized investment if it is secured by a combination of cash and other obligations, now including commercial paper.
- b. Revising the stated maturity date for commercial paper, an authorized investment, to 365 days, instead of 270 days, or fewer from the date of its issuance.
- c. Requires “yield,” for purposes of an investment pool for which a \$1.00 net asset value is maintained, to be calculated consistent with regulations governing the registration of open-ended management investment companies under the Investment Act of 1940, as promulgated by the federal Securities and Exchange Commission.
- d. Adds a new Section 2256.0208, Texas Government, relating to local government investment of bond proceeds and pledged revenue. Such proceeds and revenue shall be invested in accordance with statutory provisions governing the debt issuance or the applicable agreement and the local government’s investment policy relating thereto.