

TRANSPORTATION CODE

CHAPTER 54. HARBOR AND PORT FACILITIES IN CERTAIN MUNICIPALITIES  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 54.001. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality that:

(1) is located on:

(A) the Gulf of Mexico; or

(B) a channel, canal, bay, or inlet connected to that gulf; and

(2) has a population of more than 5,000.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.002. DEFINITIONS. In this chapter:

(1) "Board" means a board of trustees established under Section 54.051.

(2) "Obligation" includes a bond.

(3) "Port improvement or facility" means an improvement or facility necessary or convenient for the proper operation of a port or harbor of a municipality, including:

(A) land, an interest in land, or property;

(B) a wharf, pier, or dock;

(C) a roadway or belt railway;

(D) a warehouse, grain elevator, transport facility, handling facility, or storage facility;

(E) a ship repair facility, dumping facility, bunkering facility, floating plant or facility, lightering facility, towing facility, or other facility that a navigation district is authorized to provide;

(F) equipment and supplies; and

(G) any other structure, building, or facility necessary or convenient for the proper operation of a port or harbor of the municipality.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.003. AUTHORITY REGARDING PORT IMPROVEMENTS AND FACILITIES. (a) A municipality that owns and operates a port may construct, acquire, lease, improve, enlarge, extend, repair, maintain, replace, develop, or operate a port improvement or facility.

(b) A port improvement or facility may be constructed on land acquired by purchase, lease, or otherwise, and the land, interest in the land, or port improvement or facility may be conveyed by lease, sublease, or sale by installment or otherwise on the terms the municipality determines to be advantageous.

(c) Each power provided by this section is a public and governmental function, is exercised for a public purpose, and is a matter of public necessity.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.004. AUTHORITY TO IMPOSE TAX; ELECTION.

(a) Notwithstanding any law or charter provision to the contrary, the governing body of a municipality may impose a tax at a rate not to exceed 10 cents on each \$100 of assessed valuation of property for the maintenance and operation of a port or harbor of the municipality.

(b) The tax may be imposed only if it has been approved by a majority of the qualified voters voting at an election held for that purpose.

(c) Section 41.001(a), Election Code, does not apply to the election.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.005. APPLICABILITY OF OTHER LAW. Except to the extent that it conflicts or is inconsistent with this chapter, Subchapter B, Chapter 1502, Government Code, applies to revenue obligations issued under this chapter, and a municipality to which this chapter applies has, with respect to a revenue obligation issued under this chapter, each power granted by that subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

SUBCHAPTER B. MANAGEMENT AND CONTROL OF PORT IMPROVEMENTS AND FACILITIES; BOARD OF TRUSTEES

Sec. 54.051. MANAGEMENT AND CONTROL BY GOVERNING BODY OR BOARD. (a) An ordinance authorizing the issuance of obligations under this chapter may provide that while the principal of or interest on the obligations is outstanding, management and control of the port improvement or facility and of the income and revenue from the port improvement or facility, including the authority to set a charge, prepare a budget, and authorize an expenditure, is vested in:

- (1) the governing body of the municipality; or
- (2) the board of trustees named in the ordinance.

(b) A board may consist of not more than seven members, one of whom must be a member of the governing body of the municipality.

(c) Notwithstanding Subsection (a), if the municipality is operating under a home-rule charter that requires that the port improvement or facility be managed or controlled by a board of trustees, the charter controls.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.052. ORGANIZATION AND DUTIES OF BOARD. (a) An ordinance under Section 54.051 that vests management and control of a port improvement or facility in a board must:

- (1) specify the board members' compensation;
- (2) specify the members' terms of office;
- (3) specify the members' powers and duties and the manner of exercising those powers and duties;
- (4) provide for the election or appointment of the members' successors; and
- (5) specify any other matter relating to the members' organization and duties.

(b) If the municipality is operating under a home-rule charter that contains a provision relating to a matter described by Subsection (a), each provision of the ordinance relating to that matter must be in accordance with and is governed by the charter.

(c) On any matter not covered by the ordinance or the municipal charter, the board is governed by the laws and rules governing the governing body of the municipality to the extent applicable.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.053. CHARACTER OF BOARD; GENERAL POWERS. (a) A board is a body politic and corporate.

(b) A board may:

(1) manage, control, maintain, and operate each port improvement or facility constituting a port or harbor of the municipality;

(2) employ a general manager and any other officer, employee, or representative the board considers appropriate;

(3) notwithstanding any law or charter provision to the contrary:

(A) prepare and adopt a budget for the operation of a port or harbor of the municipality;

(B) set charges for a service or facility;

(C) authorize an expenditure; and

(D) manage and control the income and revenue of each port or harbor of the municipality;

(4) determine policies and adopt rules and procedures for the operation of each port or harbor of the municipality;

(5) acquire property or an interest in property for any purpose set forth in Section 54.003 in the manner provided by this chapter and construct a port improvement or facility on the property;

(6) contract in its own name, but not in the name of the municipality;

(7) sue and be sued in its own name;

(8) adopt, use, and alter a corporate seal;

(9) establish a port security force, employ public security officers licensed by the Commission on Law Enforcement Officer Standards and Education, and commission employees of the force as peace officers;

(10) own, establish, construct, improve, equip, maintain, operate, regulate, protect, or police any transportation facility and any necessary appurtenance to that facility;

(11) construct, lease, improve, enlarge, extend, repair, maintain, replace, develop, or operate a port improvement or facility;

(12) exercise all powers of a municipality relating to the creation of an economic development program under Chapter 380, Local Government Code, for the purpose of making grants and loans; and

(13) exercise any additional power granted by the ordinance or charter.

(c) A board has the power to construct a port improvement or facility on land acquired by purchase, lease, or otherwise, and a board may convey by lease, sublease, or sale by installment or otherwise, on the terms the board determines to be advantageous,

the land, interest in the land, or port improvement or facility.

(d) Each power provided by this section is a public and governmental function, is exercised for a public purpose, and is a matter of public necessity.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 169, Sec. 1, eff. September 1, 2007.

Sec. 54.054. COMPETITIVE BIDDING. (a) Except as otherwise provided by this chapter, the board may award a contract involving the expenditure of more than \$25,000 only by competitive bidding.

(b) Competitive bidding is not required:

(1) for a contract or expenditure exempt from competitive bidding under Section 252.022, Local Government Code, or another applicable law;

(2) for a contract for:

(A) personal or professional services;

(B) a real estate transaction;

(C) operation of a port improvement or facility under a specific agreement for a limited term; or

(D) insurance; or

(3) if the board determines that the delay posed by the competitive bidding procedure would prevent or substantially impair the operation of a port.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 169, Sec. 2, eff. September 1, 2007.

Sec. 54.055. APPROVAL BY ORDINANCE REQUIRED FOR SALE OF REAL PROPERTY. Notwithstanding any other provision of this chapter, a board may sell real property only if the governing body of the municipality by ordinance approves the sale.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.056. BOARD ACT OR PROCEEDING PRESUMED VALID.

(a) A governmental act or proceeding of a board is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable law if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred; or

(3) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

Added by Acts 2007, 80th Leg., R.S., Ch. 169, Sec. 3, eff. September 1, 2007.

#### SUBCHAPTER C. OBLIGATIONS

Sec. 54.101. DEFINITION. In this subchapter, "net revenue" means the gross revenue derived from the operation of a port improvement or facility the net revenue of which is pledged to the payment of an obligation less:

(1) the reasonable expenses of maintaining and operating the port improvement or facility, including necessary repair, maintenance, and insurance of the port improvement or facility; and

(2) if the municipality pledging the net revenue is a home-rule municipality, any annual payment of the municipality provided for in the charter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.102. AUTHORITY OF MUNICIPALITY TO ISSUE OBLIGATIONS. The governing body of a municipality by ordinance may issue in the name of the municipality obligations payable from taxes, revenue, or both to provide money for a port improvement or facility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.103. ELECTION. (a) Obligations payable from ad valorem taxes, other than refunding obligations, may be issued only if authorized by a majority of the qualified voters voting at an election held under Chapter 1251, Government Code.

(b) Notwithstanding any law or charter provision to the contrary, an election is not required to authorize the issuance under this chapter of obligations payable solely from revenue if:

- (1) the obligations are not:
  - (A) a debt of the municipality; or
  - (B) a pledge of the faith and credit of the municipality; and
- (2) the owner or holder of an obligation is not entitled to demand payment from money raised by taxation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.104. AUTHORITY OF BOARD TO ISSUE OBLIGATIONS. (a) A board by resolution may issue in the name of the board, with the consent of the governing body of the municipality:

- (1) obligations payable from revenue in the manner provided by this chapter to provide money for a port improvement or facility or to refund previously issued obligations;
- (2) expense warrants drawn against the revenue of the board to pay expenses during the fiscal year of the board in which the warrants are issued; or
- (3) certificates of participation in contractual obligations to pay money.

(b) Notwithstanding any other provision of this chapter, a board may issue obligations only if the governing body of the municipality by ordinance approves the issuance.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.105. LIMITATION ON AGGREGATE AMOUNT OF EXPENSE WARRANTS. The aggregate amount of expense warrants issued under Section 54.104(a)(2) that are outstanding at any time during a fiscal year may not exceed 50 percent of the difference between:

- (1) the revenue of the board budgeted for that fiscal year; and
- (2) the principal of and interest on board obligations other than expense warrants to be paid from the revenue of the board during that fiscal year.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.106. MATURITY OF OBLIGATION. An obligation issued under this chapter must mature not later than 40 years after its date.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.107. SIGNATURES. (a) An obligation issued by a municipality under this chapter must be signed by the mayor or presiding officer of the municipality and countersigned by the municipal secretary or municipal clerk.

(b) An obligation authorized by a board under this subchapter must be signed by the presiding officer of the board and countersigned by the secretary or assistant secretary.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.108. SALE OF OBLIGATIONS. (a) Obligations issued under this chapter shall be sold at a public or private sale under terms determined by the governing body or the board issuing the obligations to be the most advantageous and reasonably obtainable.

(b) Subsection (a) applies to obligations payable from revenue notwithstanding any restriction in a municipal charter to the contrary.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.109. CONTENTS OF ORDINANCE OR RESOLUTION AUTHORIZING ISSUANCE OF OBLIGATIONS PAYABLE FROM REVENUE.

(a) The ordinance of the governing body of the municipality or the resolution of the board authorizing the issuance of obligations payable from revenue may:

- (1) provide for the flow of funds and the establishment and maintenance of an interest and sinking fund, reserve fund, or other fund;
- (2) specify a depository for the money; and
- (3) contain any additional covenant, as considered appropriate, with respect to the obligations, the pledged revenue, and the operation and maintenance of each port improvement or facility the net revenue of which is pledged, including provisions for:

- (A) the lease of a port improvement or facility;

and

(B) the use or pledge of money derived from that lease.

(b) The ordinance or resolution or another proceeding may:

(1) prohibit the further issuance of obligations payable from pledged revenue; or

(2) reserve the right to issue additional obligations to be secured by a pledge of and payable from the net revenue on a parity with, or subordinate to, the lien and pledge in support of the obligations being issued, subject to any condition provided by the ordinance, resolution, or other proceeding.

(c) The ordinance, resolution, or other proceeding may provide for an annual payment to the general fund of the municipality to be made from revenue received from the operation of the port improvement or facility the net revenue of which is pledged. The amount of the payment may be specified in:

(1) the ordinance, resolution, or proceeding; or

(2) the charter of the municipality if the municipality is a home-rule municipality.

(d) The ordinance, resolution, or other proceeding may provide that surplus net revenue received from the operation of the port improvement or facility the net revenue of which is pledged may be used for the payment of the principal of and interest on any obligation payable from taxes issued by the municipality under this chapter.

(e) The ordinance, resolution, or other proceeding may contain other provisions and covenants. If the municipality is a home-rule municipality, the provisions must be consistent with any charter provision relating to the port improvement or facility that is not inconsistent with this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.110. REVIEW AND APPROVAL OF CONTRACTS RELATING TO REVENUE OBLIGATIONS. (a) If revenue obligations issued under this chapter state that they are secured in whole or in part by a pledge of the proceeds from a contract, including a lease contract, a copy of the contract and of the proceedings authorizing the contract must be submitted to the attorney general with the record relating to the issuance of the obligations.

(b) The approval by the attorney general of the obligations is approval of the contract.

(c) After approval, the contract is incontestable except for forgery or fraud.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.111. SECURITY FOR AND PAYMENT OF OBLIGATIONS PAYABLE FROM REVENUE. (a) Obligations issued under this chapter and payable from revenue may be secured solely by and paid from a pledge of the net revenue derived from the operation of all or a designated part of a port improvement or facility then in existence or to be improved, constructed, or acquired.

(b) While the principal of or interest on the obligations is outstanding, the issuer shall:

(1) impose and collect charges in an amount sufficient to pay:

(A) maintenance and operation expenses of the port improvement or facility the net revenue of which is pledged;

(B) the interest on the obligations as it accrues; and

(C) the principal of the obligations as the obligations mature; and

(2) make any other payment prescribed by the ordinance, resolution, or other proceeding authorizing or relating to the issuance of the obligations.

(c) Obligations payable from revenue may be secured:

(1) solely by a pledge of all or part of the revenue from any lease, sublease, sale, or contract of sale entered into by the municipality or board with respect to the port improvement or facility to be financed with the obligations; or

(2) as provided by Subdivision (1) and by a trust indenture and a mortgage or deed of trust lien on or security interest in the port improvement or facility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.112. USE OF CERTAIN PROCEEDS. From the proceeds from the sale of obligations issued under this chapter, there may be appropriated or set aside:

(1) an amount for the payment of interest expected to

accrue while a port improvement or facility is under construction;

(2) an amount necessary to pay all expenses incurred and to be incurred in the issuance, sale, and delivery of the obligations; and

(3) an amount required by the ordinance or resolution authorizing the issuance of the obligations to be deposited to the credit of a reserve fund or other fund specified by the ordinance or resolution.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.113. LEASE OR SALE OF PORT IMPROVEMENTS AND FACILITIES. (a) In connection with the issuance of obligations payable from revenue, a municipality or board may lease, sublease, or sell to any person, firm, corporation, partnership, political subdivision of this state, or agency of the United States any port improvement or facility to be constructed or acquired with the proceeds of the obligations.

(b) A lease, sublease, or contract of sale may contain any provision the municipality or board determines advantageous, including, in the case of a lease, a provision for:

(1) the sale of a port improvement or facility at the termination of the lease; or

(2) the management and operation of a port improvement or facility by the lessee.

(c) A lease or contract of sale may provide that the lessee or purchaser of a port improvement or facility is unconditionally obligated to make payments for use or purchase of the port improvement or facility in amounts adequate to timely pay the principal of and interest and premium on the obligations issued to finance the construction or acquisition of the port improvement or facility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.114. ENCUMBRANCE OF PORT IMPROVEMENTS OR FACILITIES FINANCED BY OBLIGATIONS PAYABLE FROM AD VALOREM TAXES. A municipality may not encumber a port improvement or facility financed by obligations payable from ad valorem taxes unless authorized at the election required by Section 54.103.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

#### SUBCHAPTER D. REFUNDING OBLIGATIONS

Sec. 54.151. APPLICABILITY OF LAW RELATING TO ORIGINAL OBLIGATIONS. The provisions of this chapter relating to original obligations apply to refunding obligations issued under this chapter to the extent the provisions can be made to apply.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.152. AUTHORITY TO ISSUE TAX REFUNDING OBLIGATIONS. The governing body of a municipality, under the procedures provided by this chapter, may issue tax obligations to refund outstanding tax obligations, including original or refunding obligations, issued by the municipality under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.153. AUTHORITY TO ISSUE REVENUE REFUNDING OBLIGATIONS. The governing body of a municipality or a board, under the procedures provided by this chapter, may issue obligations payable from revenue to refund outstanding obligations payable from revenue, including original or refunding obligations:

(1) issued under this chapter;

(2) issued for a purpose described by Section 54.003;

or

(3) payable from the revenue of a port improvement or facility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.154. TERMS OF ISSUANCE OF REVENUE REFUNDING OBLIGATIONS. (a) Revenue refunding obligations may:

(1) be combined with new or original revenue obligations into one series or issue;

(2) be issued to refund obligations of more than one series or issue;

(3) combine the pledges securing the obligations to be refunded to secure the revenue refunding obligations; or

(4) be secured by a pledge of other or additional net revenue.

(b) A revenue refunding obligation may bear interest at a rate higher than that of the obligation to be refunded.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.155. REGISTRATION OF REFUNDING OBLIGATIONS BY COMPTROLLER. (a) Except as provided by Subsection (b), the

comptroller shall register refunding obligations on surrender and cancellation of the obligations to be refunded.

(b) The comptroller shall register refunding obligations without the surrender and cancellation of the obligations to be refunded if the ordinance or resolution authorizing the issuance of the refunding obligations requires that:

(1) the obligations be sold at public or private sale; and

(2) the proceeds from the sale be deposited:

(A) in a place where the underlying obligations are payable; or

(B) with the comptroller.

(c) Refunding obligations to which Subsection (b) applies may be issued in an amount sufficient to pay the principal of and interest on the obligations to be refunded to the option or maturity date of the obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.

Sec. 54.156. ESCROW AGREEMENT. (a) The proceeds from revenue refunding obligations that are deposited as provided by Section 54.155(b)(2) shall be deposited under an escrow agreement so that the proceeds and interest earned from the investment of the proceeds will be available to pay the principal of and interest on the obligations to be refunded as each becomes due.

(b) The escrow agreement may provide that the proceeds may, until needed to pay principal and interest as each becomes due, be invested in direct obligations of the United States.

(c) Interest earned on an investment described by Subsection (b):

(1) may be pledged to the payment of the principal of and interest on the obligations to be refunded or the refunding obligations; or

(2) shall be considered as revenue of the applicable port improvement or facility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1999.