

## INNOVATIVE PROJECT FINANCING

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SCOPE: This paper is not intended to be an exhaustive reference of every method to finance a water or wastewater project. It is intended to explore various methods of financing that are available to various entities that construct water and wastewater projects in Texas. To the extent available or known to the author, this paper will refer to individuals, firms, and web sites where substantially more information will and guidance will be available.

#### A. TEXAS WATER DEVELOPMENT BOARD: [www.twdb.state.tx](http://www.twdb.state.tx)

While not innovative, one may be surprised at the number, size and breath of the loans and grants made by the Texas Water Development Board ("TWDB"). The TWDB provides financial assistance for water and wastewater projects through low interest loans<sup>1</sup> or grants through the following programs:

2. Economically Distressed Area Program.
  - a. Uses: Water and sewer projects
  - b. Type: Loans, grants or a combination of loans and grants
  - c. Applicants: Political Subdivisions or nonprofit water supply corporations
  - d. Funding: Limited
3. Groundwater Conservation District Startup Loan Program:
  - a. Type: Loan
  - b. Uses: Start-up costs for groundwater conservation districts
  - c. Applicants: Art. III, Sec. 59 or Art. XVI, Sec. 52 Districts
  - d. Funding: Limited
4. Clean Water State Revolving Fund Program
  - a. Type: Loan
  - b. Uses: Wastewater treatment and reclamation/reuse projects
  - c. Applicants: Political subdivisions
  - d. Funding: Limited
5. Drinking Water State Revolving Fund Loan Program
  - a. Type: Loan
  - b. Use: Water related infrastructure including water supply and water protection

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<sup>1</sup> 3.60% for insured tax exempt loans to 7.35% for taxable loans

- c. Applicants: Political Subdivisions, WSC and investor owned utilities (“IOU”)
  - d. Funding: Annual project priority rating process
6. State Participation in Regional Water and Wastewater Facilities Program:
    - a. Type: Deferred interest loan
    - b. Use: Regional water and wastewater construction projects
    - c. Applicants: Political subdivisions and WSCs
    - d. Availability: Limited
  7. Water and Wastewater Loan Program:
    - a. Type: Loan
    - b. Uses: Construction of water and wastewater related infrastructure
    - c. Applicants: Political Subdivisions and WSCs
    - d. Availability: Not Restricted
  8. Regional Facility Planning Grant Program:
    - a. Type: Grant
    - b. Use: Planning and analyses to determine the most feasible alternatives to meet regional water supply and wastewater facility needs.
    - c. Political Subdivisions and WSCs.
    - d. Availability: Annual competition for funding
  9. Regional Water Planning Group Grants  
 Type: Grant  
 Uses: Planning for long term water supply needs  
 Applicants: political Subdivisions predetermined by the 16 Regional Water Planning Groups  
 Availability: Limited
  10. Water Research Grant Program  
 Type: Grant  
 Use: Research that relates to the TWDB’s designed research topics  
 Applicants: Political Subdivisions, WSCs, and individuals

It is beyond the scope of this article to examine each program in depth, however, the FY 2003 Drinking Water State Revolving Fund (DWSRF) is worthy of special attention. The DWSRF is cooperative effort between the TWDB and TNRCC. To qualify for funding an applicant’s project must correct a violation or conditions deemed undesirable. Water supply projects must be consistent with the State Water Plan. See the November 15, 2001 announcement of the DWSRF attached to this article.

The Intended Use Plan for fiscal year 2002 developed for the Drinking Water State Revolving Loan Program states that a total of \$434,577,510 is available from all sources which included \$358,686,000 from federal grants, \$71,737,200.00 in state match, and \$4,154,310 from interest from investments and interest and principal repayments from prior loans. From a total of

434+ million dollars available, 29.5 M has been set aside for the TNRCC, 9.6 million for the TWDB, 174.5 million to fund loan commitments and 113.13 million for FY 2001 pending applications. Therefore, only 64 million remains for loans and grants for FY 2002. Attached is a list of the FY 2001 pending applications.

Currently funding is sought for 77 water system projects for a total amount of more than 606 million. The projects range from 78 million sought by the City of Eagle Pass for new treatment plant to \$15,000 sought by Cedar Hill PWS for new ground storage capacity. Attached is an alphabetical listing of this projects that made the “cut” for fiscal year 2002.

**B. USDA - RURAL UTILITY SERVICE (“RUS”)**

[www.rurdev.usda.gov/rus/index](http://www.rurdev.usda.gov/rus/index)

Another popular source of funding is through what is know as RUS loans made by the United States Department of Agriculture (“USDA”). Water and Environmental Programs (W E P) provides loans, grants and loan guarantees for drinking water, sanitary sewer, solid waste and storm drainage facilities in rural areas and cities and towns of 10,000 or less through the following programs:

1. Water and Waste Disposal Loans. The purpose of these loans are to develop water and waste disposal (including solid waste disposal and storm drainage) systems in rural areas and towns with a population not in excess of 10,000. The funds are available to political subdivisions and WSCs. R U S also guarantees water and waste disposal loans made by banks and other eligible lenders.

2. Water and Waste Disposal Grants. The purpose of these grants is to reduce water and waste disposal costs to a reasonable level for rural users. Grants may be made for up to 75 percent of eligible project costs in some cases. The same types of applicants are eligible for grants as are for loans.

3. Technical Assistance and Training (T A T) Grants. These grants are available to nonprofit organizations to provide technical assistance and training to associations on a wide range of issues relating to the delivery of water and waste disposal service.

4. Solid Waste Management Grants: These grants are made to public and private nonprofit organizations for providing technical assistance and training to associations to reduce or eliminate pollution of water resources and improve planning and management of solid waste facilities.

5. Emergency Community Water Assistance Grants: The purpose grants are to assist rural communities that have had a significant decline in quantity or quality of drinking water. Grants can be made in rural areas and cities or towns with a population not in excess of 10,000 and a median household income of 100 percent of a State's non-metropolitan median household income. Grants may be made for 100 percent of project costs. The maximum grant is \$500,000 when a significant decline in quantity or quality of water occurred within 2 years, or \$75,000 to make emergency repairs and replacement of facilities on existing systems.

6. Rural Water Circuit Rider Technical Assistance: The purpose of this program is to provide technical assistance for the operation of rural water systems. R U S through contracting, has assisted rural water systems with day-to-day operational, financial, and management problems. The assistance may be requested by officials of rural water systems or R U S. The program complements R U S' loan supervision responsibilities. R U S contracts with the National Rural Water Association (N R W A) to provide this service. N R W A State Affiliates do the work in their State(s).

In 2000, the last year for which figures are available, the USDA made 226 million dollars available to improve drinking water and wastewater service in rural areas. The grants and loans were distributed among 113 projects in 41 states and are estimated to benefit 380,000 rural residents. For Texas this fiscal year \_\_\_ million is available for water and waste disposal loans through the RUS programs.

The loan application process is probably more arduous and time consuming than any other loan process. The loans, however, are generally for a term of forty (40) years at interest rates in the 4% to 5% range which a WSC simply cannot obtain from any other lender.

In the last few years, however, WSC and SUD have encountered strong opposition from regional planning groups controlled by municipalities because of their fear the federal loans made to WSCs and SUDs limit a municipalities ability to manage and benefit from growth. This is because a 7 USC § 1926b preempts §13.255 of the Texas Water Code. See *North Alamo Water Supply Corporation v. City of San Juan*, 90 F.3rd 910 (5<sup>th</sup> Cir. 1996) wherein the court stated as follows:

“The service area of a federally indebted water association is sacrosanct. Every federal court to have interpreted § 1962(b) has concluded that the statute should be liberally interpreted to protect FmHA [now USDA] indebted rural water associations from municipal encroachment.”

Therefore, notwithstanding the fact that a WSC qualifies for an RUS loan and it is undisputed that the project to be funded by the loan is needed and should be built, the loans and the projects are opposed by nearby municipalities and regional authorities that provide wholesale water and wastewater treatment to not only the municipalities in the area but also the WSCs that have applied for an RUS loan. Texas, however, has never been a stranger to power politics which is alive and well today.

### **C. STATUTORY AUTHORITY TO ISSUE DEBT FOR WATER AND WASTEWATER PROJECTS.**

While many powers political subdivisions and corporations may to inferred or presumed because the power is necessary to preform its stated purpose, obligation or duty, Texas courts have never found an inherit power to issue public debt without specific statutory authority. Therefore, it may be useful to review the statutes that specifically allow political subdivisions to issue debit instruments to finance the construction of water and wastewater facilities. Unless your are an

experience bond attorney, you may be surprised at the number of statutes to authorize the issuance of debt to finance water and wastewater facilities. The following is a list and brief description of statutory authority that is currently available.<sup>2</sup>

**Development Corporation Act of 1979** - Vernon's Ann.Civ.St. article 5190.6

This Act authorizes municipalities to create nonprofit development corporation to develop certain types of projects for the promotion and development of new and expanded business enterprises for purposes of promoting employment and the public welfare. A development corporation has the powers of a nonprofit corporation created pursuant to the Texas Non-Profit Corporation Act, Vernon's Ann.Civ.St. article 1396-1.01 *et seq.* A development corporation may sell or lease a project, make loans to provide financing for a project, issue bonds to pay for the cost of a project, and mortgage and pledge the project as security for payment. The bonds may be secured by a pledge of revenues derived from the lease or sale of the projects, or from a 1/2¢ sales and use tax levied by the municipality.

The proceeds of the sales tax may be applied to projects for the promotion or manufacture of industrial facilities, recycling facilities, distribution centers, small warehouse and storage facilities, air or water pollution control facilities, water supply facilities, development or redevelopment of closed military bases, athletic facilities, parks and related public space improvements, tourism and entertainment facilities, commercial facilities, job training, certain public facility improvements, transportation improvements, infrastructure improvements, development and institution of water supply facilities, water conservation programs, other business related improvements, and affordable housing.

**Anticipation Notes** - Chapter 1431, Texas Government Code

Cities, counties and eligible countywide districts may issue anticipation notes to pay contractual obligations incurred for construction of a public work; the purchase of materials, supplies, equipment, machinery, buildings, lands, and rights-of-way for the city's authorized needs and purposes; for a professional service including that provided by a tax appraisal engineer, engineer, architect, attorney, mapmaker, auditor, financial advisor, or fiscal agent; for operating or current expenses; or for a city's cumulative cash flow deficit, as defined by this Act. Anticipation notes may also be sold to the Texas Agricultural Finance Authority for participation in a rural economic development program. Anticipation notes may not be issued to pay interfund borrowing or other borrowing that occurred earlier than 24 months before the date of the ordinance authorizing the issuance of the notes. Anticipation notes issued to pay operating expenses may not exceed 75% of the revenue or taxes anticipated to be collected in the fiscal year in which issued. There are limits on the maturity of the notes depending on the purpose for which they were issued. Anticipation notes are payable from revenue or taxes (but not a combination of these two sources) or from proceeds of bonds issued by a city. Anticipation notes to be paid from bonds payable from ad

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<sup>2</sup> Special acknowledgment is due to David Petruska of Winstead Sechrest & Minick, P.C., [www.winstead.com](http://www.winstead.com) for compiling this list and authorizing its use in this article.

valorem taxes may not be issued unless the proposition authorizing the issuance of the bonds includes a statement that anticipation notes may be issued.

### **Bonds for Utilities** - Chapter 1501, Texas Government Code

SUBCHAPTER A: A city that owns a sewer system and disposal plant that serves other cities and territory and military establishments outside the city limits may issue revenue bonds to finance the purchase or construction of an additional sewage disposal facility.

SUBCHAPTER C: A city that receives electricity from a privately-owned electric plant and system, part of which is located in New Mexico, may acquire, own, and operate all of any part of that electric plant and system and may issue revenue bonds to finance such acquisition.

SUBCHAPTER D: A general law city may issue certificates of indebtedness to pay a final judgment of a court in a lawsuit arising from the city's operation of a natural gas system the city owns, or for settlement of such a lawsuit. Before issuing the certificates, a notice of intent must be published and if a petition is not presented which meets the requirements of this Act, the certificates may be issued. If a valid petition is presented, an election must be held to authorize the issuance. The certificates are payable from ad valorem taxes.

SUBCHAPTER E: A city with a population of more than 275,000 which has a city water and sewer system operated by a water board may issue revenue bonds to purchase property from a water control and improvement district to improve or extend the city's water and sewer system. Bonds may be issued only after publication of a notice of intent to issue if a valid protest petition is not filed, or if a valid protest petition is filed, if the bonds are approved by the voters at an election held for that purpose.

SUBCHAPTER F: If a city has a population of more than 275,000 in which a majority of the qualified voters have approved a contract between the city and a river authority created under Article XVI, Section 59 of the Texas Constitution, through which the city will acquire a water supply project from the river authority, and if the city holds a permit from the TNRCC to use the water supply, that city may issue revenue bonds to pay all or a portion of the costs of the water supply project (to include dams, reservoirs, outlet facilities, and land, easements, or flowage rights). The bonds are payable from the revenues of the city's water system, or if the water system is combined with the sanitary sewer system, then from the combined system. Before issuing the bonds, the city must publish notice of its intent to do so, and may issue the bonds without an election if the city does not receive a petition which meets the requirements of this Act.

### **Bonds for Municipal Utilities, Parks, or Pools** - Chapter 1502, Texas Government Code

A city may acquire, purchase, construct, improve, enlarge, equip, operate, or maintain any property, interests in property, buildings, structures, activities, services, operations, or other facilities with respect to a utility system (electric, water, sewer, solid waste disposal, drainage, or natural gas system), a park, or a swimming pool.

The city may issue bonds and other obligations to provide funds to accomplish the purposes described above, and may pledge revenues from its utility system, parks, or swimming pool to payment of the obligations, and may place a lien on the facilities to further secure the obligations. These obligations may not be paid with tax revenues. The management of the system may be vested in the city council or in a board of trustees named by the city.

A city with a population of 50,000 or more may exercise any authority granted to a governing body under Chapter 1371 of the Texas Government Code (see above), in connection with the issuance of any obligations under this Chapter; however, any city may use the authority to enter into credit agreements provided in Chapter 1371 of the Texas Government Code to enter into a credit agreement to establish a reserve fund in connection with the issuance of obligations hereunder.

### **Certificates of Obligation** - Chapter 271, Subchapter C, Texas Local Government Code

Most political subdivisions may issue certificates of obligation for the following purposes:

(1) to pay a contractual obligation to be incurred for the construction of any public work; purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes; and payment of contractual obligations for professional services; and

(2) to pay the city's obligations incurred by contract for interests in and rights to water or sewer treatment capacity in connection with a water supply and transmission project to be constructed in whole or in part on behalf of the city by another governmental entity pursuant to a written agreement authorized under Section 402.014 of the Texas Local Government Code or Section 791.026 of the Texas Government Code (there is a limit as to amount of certificates which may be issued for this purpose); and

A notice of intention to issue the certificates must be published once a week for two consecutive weeks, with the date of first publication to occur before the 14th day before the date set for passage of the ordinance authorizing the sale of the certificates. The certificates may be sold without voter approval if the city does not receive a petition meeting the requirements of this Subchapter.

### **Acquisition of Property by Condemnation or Purchase** - Chapter 273, Texas Local Government Code

A city may issue bonds or warrants to purchase or condemn property under this Chapter and to improve and equip that property. The bonds or warrants are to be payable from taxes. The property must be used for parks and playgrounds; hospitals; the extension, improvement, and enlargement of its water system, including riparian rights, water supply reservoirs, standpipes, watersheds, and dams; the laying, building, maintenance, and construction of water mains; the laying, erection, establishment, and maintenance of necessary appurtenances or facilities that will furnish a supply of water to city residents; sewage plants and systems; rights-of-way for water and

sewer lines; airports and landing fields; incinerators and garbage disposal plants; streets, boulevards, alleys, or other public ways; or a right-of-way needed in connection with any of these purposes.

### **Energy or Water Conservation Measures** - Chapter 302, Texas Local Government Code

A political subdivision may finance energy or water conservation measures with respect to buildings or facilities under a lease-purchase contract with a final maturity that does not exceed 15 years; with the proceeds of bonds; or an installment purchase contract with a final maturity that does not exceed 15 years. The contract must guarantee the savings that the city will realize due to implementing the energy or water conservation measures. If the term of the contract exceeds one year, the city's payment obligations under the contract in any one year during the term of the contract may not exceed the total energy, water, wastewater, and operating cost savings resulting from automatic monitoring and control, divided by the number of years in the contract term. A contract authorized under this Chapter may include a contract for the installation or implementation of: (1) insulation of buildings; (2) storm windows or doors, caulking or weather stripping, glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption; (3) automatic energy control systems, including computer software and technical data licenses; (4) heating, ventilating, or air conditioning system modifications or replacements that reduce energy or water consumption; (5) lighting fixtures that increase energy efficiency; (6) energy recovery systems; (7) electric system improvements; (8) water-conserving fixtures or equipment; (9) water-conserving landscape irrigation equipment; (10) landscaping measures that reduce watering demands; (11) rainwater and storm-water harvesting equipment; (12) equipment for recycling or reuse of water originating on the premises or from other sources; (13) equipment needed to capture water from nonconventional sources; (14) metering equipment needed to segregate water use in order to identify water conservation opportunities; or (15) any other energy or water conservation related improvements.

### **Public Improvement District Assessment Act** - Chapter 372, Texas Local Government Code

The Act authorizes a municipality or county to create a public improvement district ("PID") for the purpose of undertaking public improvements projects including landscaping; erection of fountains, lighting and signs; acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks, streets, roadways, or rights-of-way; construction or improvement of pedestrian malls; acquisition and installation of art; acquisition and construction of libraries, off-street parking facilities, mass transportation facilities, water, wastewater, or drainage facilities; parks; and other similar projects. A PID also can pay for advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation and cultural enhancements, and general operation and administrative expenses. A PID is financed through assessments against property in the PID and in part by special benefits received from improved property by ordinance of the municipality, which assessments accrue interest and constitute a first lien against assessed property. Additionally, a PID is authorized to issue general obligation and revenue bonds. Revenue bonds may be secured by mortgages and liens on and by

revenue generated from improvements constructed by the PID, including revenue derived from installment payments of special assessments.

Additionally, a home-rule municipality may create improvement districts for the purposes of improving a river, creek, bayou, stream or other body of water; a street; or an alley and draining, grading, filling, or otherwise protecting and improving the territory within the municipality's limits. The improvement district has the power to issue bonds to finance any such improvements, and the home-rule municipality may require owners who specially benefit from enhanced value from the improvements to pay the costs thereof. If the improvements are financed, the municipality shall make a personal charge against those property owners and fix a lien against that property by special assessment.

### **Municipal Management Districts** - Chapter 375, Texas Local Government Code

Pursuant to this Act, a municipal management district may be created in an area devoted primarily to commercial development and business activity inside the boundaries of a city with a population of at least 25,000 or in an area devoted primarily to commercial development or business activity; a district may not be created in a city with a population of more than 1,500,000 unless the district will be outside a radius of 3.5 miles from the county courthouse or was created by special law. To create the district, a petition meeting the requirements of Chapter 375 must be presented to the Texas Natural Resource Conservation Commission (the "TNRCC") and the TNRCC must publish notice and hold a hearing regarding the creation, and then vote on creating the district. The city must approve the directors which will serve on the board of the district. A district has the powers available to municipal utility districts, road districts, road utility districts (including the power to levy taxes for mass transit systems), and powers relating to toll roads. Districts may issue general obligation and revenue bonds to finance improvement projects and/or services, payable from taxes, assessments, impact fees, revenues, grants, gifts, contracts, leases, or any combination of these sources. Before issuing bonds, the district must obtain the approval of the city; before issuing bonds for water, sewage, or drainage facilities, the district must also obtain the approval of the TNRCC.

### **Public Utility Agencies** - Subchapter C, Chapter 423, Texas Local Government Code

Pursuant to this Act, a public utility agency may be created by two or more public entities (including cities) to plan, finance, construct, own, operate, or maintain facilities, if the public entities have the authority to engage in the collection, transportation, treatment, or disposal of sewage or the conservation, storage, transportation, treatment, or distribution of water. Notice of the intent to create an agency must be published and if the public entities are not presented with a petition meeting the requirements of this Act, the agency may be created without voter approval. An agency may only engage in providing water and sewer services, and may issue obligations to accomplish its purposes which must be payable from agency revenues. An agency may not levy taxes.

## Districts Created Pursuant to the Texas Water Code

In general, the following types of districts may be created by a political subdivision or individual after presentation of a petition to a particular governmental entity and a public hearing regarding creation, and in some cases after a confirmation or creation election and/or approval by the TNRCC. In most cases, the districts may issue revenue and/or tax-backed obligations; tax-backed obligations may be issued only after the voters approve such bonds. These district are now governed by Chapter 49 of the Water Code. Financing is governed by Subchapter E and F of Chapter 49 which includes Revenue Notes (§ 49.153) Bond and Tax Anticipation Notes, §49.154; and traditional bonds §49.181 et al. In some cases, bonds may not be issued without the approval of the TNRCC.

<b>Type of District</b>	<b>Type of Infrastructure</b>
Water Control & Improvement District (Chapter 51)	If Art. III, Sec. 52 district, improvements to waterways to prevent overflows and aid irrigation and navigation or construction of water supply projects for irrigation, drainage, navigation  If Art. XVI, Sec. 59 district, projects for water supply, navigation, irrigation, control of flood water, reclamation of forests, preservation of natural resources
Underground Water Conservation District (Chapter 52)	Preservation of underground water
Fresh Water Supply District (Chapter 53)	Conservation and transmission of water
Municipal Utility District (Chapter 54)	Water supply; wastewater services; storm water control; irrigation; navigation; parks and recreational facilities; solid waste disposal; road utility district powers after following certain procedures; street lighting and repair and maintenance
Water Improvement District (Chapter 55)	Irrigation; and if Art. XVI, Sec. 59 district, improvements for supply and delivery of water
Drainage District (Chapter 56)	Canals, drains, ditches, watercourses, and levees
Levee Improvement District (Chapter 57)	Flood water control; levees
Irrigation District (Chapter 58)	Irrigation of agricultural land; drainage of irrigation water
Regional District	Water, wastewater, drainage, and solid

(Chapter 59)	waste disposal
Navigation District (Chapters 60, 61, 62, 63)	Port facilities; promotion and development fund in certain cities for port facilities
Special Utility District (Chapter 65)	Water supply and transmission; fire fighting facilities; water purification
Storm water Control District (Chapter 66)	Control storm water and flood water

**Nonprofit Water Supply or Sewer Service Corporations** - Chapter 67, Texas Water Code

Water supply and sewer service corporations may be created to provide such services and flood control and drainage for a city. Three or more individuals may form the corporation. A corporation has the powers of a nonprofit corporation formed pursuant to the Texas Non-Profit Corporation Act and may issue revenue bonds, notes, or warrants for its purposes.

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**Bonds for County Water Improvements** - Chapter 1474, Texas Government Code

A county may issue bonds in an amount not to exceed one-fourth of the assessed value of the real property in the county for constructing, purchasing, or maintaining a pool, lake, reservoir, dam, canal, or waterway for irrigation purposes or to aid in irrigation; to enlarge any such irrigation improvement; or to pay expenses incidental to the construction, purchase, maintenance, or enlargement. Upon petition of at least 50 registered voters in the county, the county shall order an election to approve the issuance of bonds for constructing, purchasing, or maintaining a pool, lake, reservoir, dam, canal, or waterway for irrigation purposes or to aid in irrigation; to enlarge any such irrigation improvement; or to pay expenses incidental to the construction, purchase, maintenance, or enlargement; a two-thirds vote of the qualified voters in the county voting in the election is needed to approve the bonds.

If a county has constructed or purchased an improvement under this Chapter that has been damaged and it is necessary to raise money to repair the damage, the county may issue bonds or notes under this Chapter for that purpose. The final maturity of a note issued under this Chapter may not exceed 20 years. The notes may not be issued until approved by two-thirds of the qualified voters voting at an election held for this purpose.

A county may issue bonds for the improvement of a river, creek, or stream to prevent overflow and for all necessary drainage purposes in connection with that purpose.

If a county contains one or more districts organized under Section 52, Article III or Section 59, Article XVI of the Texas Constitution, the ratio of the debt of a district to the assessed value of real property in the district, expressed as a percentage, together with the ratio of the proposed county debt to the assessed value of real property in the county, expressed as a percentage, may not exceed one-fourth of the assessed value of real property in the county or in the district.

A county that proposes to issue bonds under this Chapter shall bring an action in a district court in the county or in a district court in Travis County to determine the validity of the bonds, in the manner provided by Section 55.491 et seq. of the Texas Water Code for the validation of water improvement district bonds.

### **Obligations for Certain Other County Purposes** - Chapter 1477, Texas Government Code

SUBCHAPTER B: BONDS FOR WATER SUPPLY FOR COUNTY PURPOSES: Any county which adopted the law codified by this Subchapter by a unanimous vote of the members of the commissioners court before September 2, 1963, may issue bonds to acquire by purchase, construction, or otherwise an adequate source of surface or underground fresh water for supplying water to the county's courthouse or for other county purposes, and the county, in connection with the acquisition of such water, may purchase, construct, repair, and maintain a pool, lake, or reservoir, a well, a dam, and any water treatment and distribution facility which may be required. The aggregate principal amount of bonds which may be issued under this Subchapter may not exceed \$250,000. The bonds must be secured by the net revenues of the project and may also be secured by an ad valorem tax imposed under Section 9, Article VIII of the Texas Constitution. The bonds may not be issued until approved by the voters, even if tax revenues are not pledged to payment of the bonds. Note that if the bonds are partially secured by taxes, in determining the availability of the taxing power of the county to issue other obligations payable from that tax, these bonds will be considered as being wholly payable from that tax. Any water not needed for county purposes may be sold to any political subdivision or state agency or to any individual or corporation. However, water may not be sold for irrigation purposes at all, and if an adequate water supply was available to the entity to whom the County intends to sell water at the time this law was adopted by the county, water may not be sold to that entity.

### **Property by Condemnation or Purchase** - Chapter 273, Texas Local Government Code

A county may issue bonds or warrants to purchase or condemn property under this Chapter and to improve and equip that property. The bonds or warrants are to be payable from taxes. The property must be used for parks and playgrounds; hospitals; the extension, improvement, and enlargement of its water system, including riparian rights, water supply reservoirs, stand pipes, watersheds, and dams; the laying, building, maintenance, and construction of water mains; the laying, erection, establishment, and maintenance of necessary appurtenances or facilities that will furnish a supply of water; sewage plants and systems; rights-of-way for water and sewer lines;

airports and landing fields; incinerators and garbage disposal plants; streets, boulevards, alleys, or other public ways; or a right-of-way needed in connection with any of these purposes.

### **County Water Supply** - Chapter 412, Texas Local Government Code

An affected county (adjacent to an international border or which has a per capita income that averaged 25% below and an unemployment rate that averaged 25% above the State average for a certain period) and any county seeking to serve an unincorporated area of the county, may own, operate, or maintain a water or sewer utility in the same manner in which a city may do so under Chapter 402, Texas Local Government Code. Any county may issue revenue bonds to finance the water or sewer utility system, but a county with a population of 2.8 million or more may also issue general obligation bonds to finance the system if approved by the voters.

### **Water, Wastewater, or Solid Waste Systems for Counties** - Chapter 413, Texas Local Government Code

A county which has a population of 10,000 or less according to the most recent federal census, and which establishes a county utility system board to operate and manage the county's water, wastewater, and/or solid waste system, may issue revenue bonds to acquire, improve, repair, or extend the systems.

## **BANK LOANS**

Many smaller projects can be financed through traditional bank loans. Although some political subdivisions are prohibited from source of funds, all WSCs, IOUs, and public facility or development corporations may and do borrow money by way of traditional interim construction loans. These loans may be at tax exempt or taxable rates depending on the nature of the borrower. Most sophisticated lenders are eager to make the loans because they understand that it cash flow loan to a utility that selling a product that every household and business in its service area must purchase on a daily basis and the borrower has a state sponsored monopoly pursuant to a Certificate of Convenience and Necessity or CCN. Some of these loans must be approved by the TRNCC, Attorney General's office or both. After construction these loans may be refinanced by a bond issue or with a number of financial institutions including insurance companies, mortgage bankers, or CoBank.

CoBank in Denver Colorado, [www.cobank.com](http://www.cobank.com), specializes in loans to WSCs and special districts. In order to qualify the utility must serve largely unincorporated areas or communities of 20,000 or less population. CoBank has over 24 billion in assets and a part of the Farm Credit System. CoBank offers a wide variety of programs and can tailor a loan to fit most any need of a qualifying utility.

## **LEASE PURCHASE CONTRACTS**

To finance the purchase of tangible personal property, many utilities have found the lease purchase financing to have attractive rates, low setup or processing costs and simplified paper work. Many financial institutions have leasing subsidiaries that offer taxable and tax exempt rates. Lease purchase agreements are authorized by §271.005 of the Local Government Code which states that “[t]he governing body of a governmental agency may execute, perform, and make payments under a contract with any person for the use or the purchase or other acquisition of any personal property, or the financing thereof.”

Some political subdivisions may be required to comply with the competitive bidding statutes. Contracts that requires the payment of an aggregate amount of more than \$100,000.00 may be submitted to the Attorney General for approval and registration. The term of a lease purchase contract may not exceed twenty-five (25) years. In addition, each lease purchase contracted executed by a political subdivisions is subject to annual non-appropriation pursuant to §271.903 of the Local Government Code.

Large tickets items from construction equipment, meters, pumps, valves, to ground storage and elevated tanks may be financed through lease purchase contracts. The key is whether the personal property may be removed from where it has been installed and installed in another location without destroying the functional integrity of the property. In addition to fast processing and low issuance costs, lease purchase contracts do not require voter approval.

## **IMPACT FEES.**

Since 1987, one of the most popular methods of financing additional to water and sewer infrastructure has been through the collection of impact fees pursuant to Chapter 395 of the Local Government Code. A municipality or district or authority created under Art. III, §52 or Art. XVI, §59 of the Texas Constitution may impose an impact fee on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development.

## **TNRCC STEP GRANTS.**

### How It Works

Experienced Texas STEP agents will work collaboratively with community residents to pull together local resources (people power and affordable budgets) to initiate a drinking water and/or wastewater project. Advice and guidance on a wide range of concerns and cost-cutting techniques are provided by STEP agents, including:

project planning and development;

financial analysis;

engineering;

community organizing;

recruiting, training and keeping volunteers;

liability insurance;

project approval; and

- . identify state, local and national resources and funding which are available to self-help projects.

#### Is STEP Right for Your Community?

Communities with a willingness to use their own resources (human, material and financial) to solve water and wastewater problems for less cost are best suited for STEP. Following a determination of the community's resources, locally controlled projects are initiated based on residents' ability (capacity) and readiness to solve the problem.

STEP communities must have the following components:

- . Capacity — Are there enough people to make the project work?
- . "Sparkplugs" — At least one key person within the community must want to solve the problem and be committed to stay with the project until it is completed.
- . Readiness - STEP works best for communities where the residents believe they have a problem (not places where others tell them they have a problem) and that there is an urgent need to solve that problem for themselves.

In determining whether STEP is right for your community, complete the Texas STEP Community Assessment or contact Mike Lindner, Texas STEP Coordinator at [mlindner@tnrcc.state.tx.us](mailto:mlindner@tnrcc.state.tx.us) or by phone at 512-239-3045.

#### Additional Information

Texas STEP is a partnership between the TNRCC, Texas Department of Housing and Community Affairs, the Texas Department of Health, the Texas Water Development Board, and the General Land Office with support from the national Small Towns Environment Program of the Rensselaerville Institute.