

PURCHASING AND ACQUISITION
REAL PROPERTY AND IMPROVEMENTS

CHG
(LEGAL)

Cash Purchases with Available Funds The Public Property Finance Act (Local Government Code Chapter 271, Subchapter A) does not include cash purchases of real property made with moneys from available funds. *Bandera v. Hamilton*, 2 S.W.3d 367 (Tex. App.—San Antonio 1999, pet. denied)

Public Property Finance Act
Definitions “Contract” means an agreement entered into under Local Government Code Chapter 271, Subchapter A (the Public Property Finance Act) but does not mean a contract solely for the construction of improvements to real property.

“Improvement” means a permanent building, structure, fixture, or fence that is erected on or affixed to land but does not include a transportable building or structure whether or not it is affixed to land.

“Real property” means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property.

Local Gov’t Code 271.003(2), (10), (11)

Proposed Contract The board may execute, perform, and make payments under a contract under the Public Property Finance Act for the use or purchase or other acquisition of real property or an improvement to real property. If the board proposes to enter into such a contract, the board shall publish notice of intent to enter into the contract not less than 60 days before the date set to approve execution of the contract in a newspaper with general circulation in the district. The notice must summarize the major provisions of the proposed contract. The notice shall estimate the construction and other costs, but the board shall not publish the first advertisement for bids for construction of improvements until 60 days has expired from the publication of the notice of intent to enter into the contract. *Local Gov’t Code 271.004(a)*

Petition and Referendum If, within 60 days of the date of publication of the notice of intent required above, a written petition signed by a least five percent of the registered voters of the district is filed with the board requesting that the board order a referendum on the question of whether the contract should be approved, the board may not approve the contract or publish the first advertisement for bids for construction of improvements unless the question is approved by a majority of the votes received in a referendum ordered and held on the question. The referendum shall be held in accordance with the applicable provisions of the Election Code. The requirement that an election must be held on a uniform election date does not apply to an election held under Local Government Code 271.004. *Local Gov’t Code 271.004(b)–(c)*

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Submission to Attorney General	A lease-purchase contract entered into by the district under Local Government Code 271.004 and the records relating to its execution must be submitted to the attorney general for examination as to their validity. If the attorney general finds that the contract has been authorized in accordance with the law, the attorney general shall approve them, and the comptroller shall register the contract. Following approval and registration, the contract is incontestable and is a binding obligation according to its terms. <i>Local Gov't Code 271.004(g)–(i)</i>
District Obligation	<p>A contract under Local Government Code 271.004 is a special obligation of a district if ad valorem taxes are not pledged to the payment of the contract. If the contract provides that payments by the district are to be made from maintenance taxes previously approved by voters of the district and are subject to annual appropriation or are paid from a source other than ad valorem taxes, the payments under the contract shall not be considered indebtedness under Tax Code 26.04(c). All or part of the district's obligation may be evidenced by one or more negotiable promissory notes. <i>Local Gov't Code 271.004 (d)–(f)</i></p> <p>[For information on competitive procedures under the Public Property Finance Act, see CHH.]</p>
State Assistance— Instructional Facilities	A district may receive state assistance in connection with a lease-purchase agreement concerning an instructional facility in accordance with Education Code 46.004. A lease purchase agreement must be for a term of at least eight years to be eligible to be paid with state and local funds under Education Code Chapter 46, Subchapter A. <i>Education Code 46.004; 19 TAC 61.1032</i>
Eminent Domain	<p>A district may, by the exercise of the right of eminent domain, acquire the fee simple title to real property on which to construct school buildings or for any other public use necessary for the district. <i>Education Code 11.155(a)</i></p> <p>[For information regarding athletic stadium authorities and eminent domain, see CCE.]</p> <p>A district may not take private property through the use of eminent domain if the taking confers a private benefit on a particular private party through the use of the property, is for a public use that is merely a pretext to confer a private benefit on a particular private party, or is not for a public use. <i>Gov't Code 2206.001(b)</i></p>
Procedures	The procedures in the Truth in Condemnation Procedures Act, Government Code Chapter 2206, Subchapter B, apply to the use of eminent domain under the laws of this state by a governmental entity. <i>Gov't Code 2206.052</i>

Exercise of the eminent domain authority in all cases is governed by Property Code Chapter 21, Subchapter B. *Property Code 21.011*

Annual Report to
Comptroller

Except as provided below, not later than February 1 of each year, a district shall submit to the comptroller a report containing records and other information specified by Government Code Chapter 2206, Subchapter D for the purpose of providing the comptroller with information to maintain the eminent domain database under Government Code 2206.153. The district shall submit the report in a form and in the manner prescribed by the comptroller.

In addition to the required annual report, the district shall report to the comptroller any changes to the district's reported eminent domain authority information not later than the 90th day after the date on which the change occurred.

Exception

A district located in a county with a population of less than 25,000 is required to file an annual report only if the district's eminent domain authority information has changed from the information reported in the most recent annual report filed by the district. If for the current annual reporting period the district's eminent domain authority information is the same as the information reflected for the district in the eminent domain database for the previous annual reporting period, the district, not later than February 1 of the current annual reporting period, shall confirm the accuracy of the information by electronically updating the district's previously filed report with the comptroller in the manner prescribed by the comptroller.

Gov't Code 2206.154

*Penalties for
Noncompliance*

If a district does not timely submit a report that complies with these provisions, the comptroller shall provide written notice to the district under Government Code 2206.155(a).

If the district does not report the required information not later than the 30th day after the date the comptroller provides notice, the district is subject to penalties as prescribed by Government Code 2206.155.

The reporting, failure to report, or late submission of a report by a district does not affect the entity's authority to exercise the power of eminent domain.

Gov't Code 2206.155, .156