

LOCAL GOVERNMENT CODE

TITLE 10. PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES

SUBTITLE B. COUNTY PARKS AND OTHER RECREATIONAL AND CULTURAL
RESOURCES

CHAPTER 321. ISLAND PARKS, BEACH PARKS, AND PUBLIC BEACHES OF
COASTAL COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 321.001. ELIGIBLE COUNTIES. (a) A county that borders on the Gulf of Mexico and that has within its boundaries one or more islands or parts of islands suitable for park purposes may act under this chapter for the purpose of improving, equipping, maintaining, financing, and operating one or more parks on those islands.

(b) The suitability of an island or part of an island for park purposes is conclusively established when the commissioners court of the county by order makes a finding that the island or part of an island is suitable for park purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.002. DEFINITION. In this chapter, "board" means the board of park commissioners.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.003. CREATION OF PARKS BOARD. The commissioners court by order may create a board to be known as the Board of Park Commissioners.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.004. EXERCISE OF POWERS BY COMMISSIONERS COURT.

(a) If the commissioners court has not attempted to create a board, or if the creation of a board is declared by a court to be invalid, the commissioners court may exercise the powers and perform the duties of the board under this chapter. The commissioners court may ratify the actions taken by a board before the declaration of the board's invalidity.

(b) This section does not authorize the commissioners court

to limit or restrict the board from exercising the powers conferred on the board by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. BOARD OF PARK COMMISSIONERS

Sec. 321.021. COMPOSITION; TERM; QUALIFICATIONS. (a) The board must be composed of seven commissioners appointed by the county judge with the approval of the commissioners court.

(b) A commissioner serves for a term of two years from the date of appointment.

(c) A park commissioner may not be an officer or employee of the county or of a municipality in the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.022. VACANCY. A vacancy on the board shall be filled by appointment of the county judge for the unexpired term.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.023. OATH; BOND. (a) Within 15 days after the date a park commissioner is appointed, the commissioner must qualify by taking the official oath and by filing a good and sufficient bond with the county clerk.

(b) The bond must be:

(1) payable to the order of the county judge;

(2) approved by the commissioners court;

(3) in an amount prescribed by the commissioners court of \$5,000 or more; and

(4) conditioned that the commissioner will faithfully perform the duties of park commissioner, including the proper handling of money that comes into the hands of the commissioner in the commissioner's capacity as park commissioner.

(c) The board shall pay the cost of the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.024. CERTIFICATE OF APPOINTMENT. A certificate of appointment executed by the county judge and attested by the county

clerk shall be filed with the county clerk. The certificate is conclusive evidence of the proper appointment of the commissioner. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.025. ORGANIZATION; MEETINGS. (a) The board shall elect from its membership a chairman, vice-chairman, secretary, and treasurer, except that the first chairman shall be designated by the county judge at the time of appointment of the first board. The member designated as the first chairman serves in that capacity until the expiration of the term to which the member was appointed or until the member vacates office during that term.

(b) The offices of secretary and treasurer may be held by the same person. If either the secretary or treasurer is absent or unavailable, the other may act for and perform the duties of the absent or unavailable officer.

(c) The board shall hold regular meetings at times to be fixed by the board and may hold special meetings as necessary.

(d) The board may act on the majority vote of a quorum. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.026. EXPENSES. A park commissioner's approved compensation and expenses shall be paid in due time by the board's check or warrant.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.027. CONFLICT OF INTEREST. (a) A park commissioner or employee of the board may not acquire a direct or indirect pecuniary interest in any improvements, concessions, equipment, or business located in a park administered by the board.

(b) A park commissioner or employee of the board may not have a direct or indirect interest in any contract or proposed contract for construction, materials, or services in connection with or related to a park administered by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.028. SEAL. The board shall adopt a seal, and the seal shall be placed on each lease, deed, or other instrument

usually executed under seal and on other instruments as required by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 321.041. PERSONNEL. (a) The board may employ permanent or temporary personnel, including secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents.

(b) The board shall determine the qualifications, duties, and compensation of employees.

(c) The board may employ a manager for one or more parks and give the manager full authority for the management and operation of the parks subject only to the direction and orders of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.042. DEPOSITORIES AND DISBURSEMENTS. (a) Money belonging to or under control of the board shall be deposited and secured in substantially the manner prescribed by law for county funds.

(b) The board shall select one or more depositories.

(c) A warrant or check for the withdrawal of money must be signed by an officer of the board and one other commissioner or by two bonded employees of the board. The board by resolution entered in its minutes shall designate any employees authorized to sign a check or warrant.

(d) The board may disburse funds under its control for any lawful purpose for the benefit of a park under its control.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.043. CONTRACTS. (a) The board may without advertisement enter into a contract, including a lease or other agreement, with any person as the board considers necessary or convenient to carry out the purposes and powers granted by this chapter, including a contract connected with, incident to, or affecting the acquisition, financing, construction, equipment,

maintenance, or operation of a facility located or to be located in or pertaining to a park under its control.

(b) To be effective, a contract must be:

- (1) approved by resolution of the board;
- (2) executed by the chairman or vice-chairman; and
- (3) attested by the secretary or treasurer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.044. LEASES AND OPERATING AGREEMENTS. (a) Concurrent with or at any time before the authorization for issuance of bonds secured by a pledge of the revenues of a designated facility of a park, the board may enter into a contract, including a lease, with any person for the operation of the facility. The contract must specify the consideration or specify the method of determining the consideration. The contract may be for a period determined by the board.

(b) The revenues from the contract may be pledged in the resolution or indenture as security or additional security for the revenue bonds. If the contract is concurrent with the authorization for issuance of the bonds, the revenues constitute the sole or substantially all the security for the bonds.

(c) The contract must require that the rentals, tolls, and charges to be enforced by the lessee for the use or services provided by the facility be sufficient to yield at least in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of the facility, plus an amount that will assure income to the board to permit and assure payments into the funds and accounts in the manner, at the times, and in the amounts specified in the resolution.

(d) The contract may provide that the rentals, tolls, and charges may be sufficient to yield a reasonable profit to the other party to the contract, but to be realized only after payment in full of the obligation to the board.

(e) The contract may provide for payment of the annual consideration or rental in approximately equal monthly installments, and that failure to pay any required payment when due

may be declared to be a breach of contract entitling the board under rules prescribed in the contract to declare the contract forfeited and to take over the operation and maintenance of the facility. That remedy is cumulative of all others.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.045. RULES. The board may adopt reasonable rules applicable to tenants, concessioners, residents, and users of park facilities regulating hunting, fishing, boating, camping, and all other recreational and business privileges in the parks under the control of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.046. GRANTS. The board may accept grants and gratuities in any form from any source approved by the board, including the government of the United States, this state, a public or private corporation, or any other person, for the purpose of promoting, establishing, or accomplishing the objectives, purposes, and powers provided by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.047. FINANCIAL STATEMENT; BUDGET. (a) On or before July 1 of each year, the board shall prepare and file with the county judge a complete financial statement showing the financial status of the board and the board's properties, funds, and indebtedness.

(b) The financial statement must be in two parts or prepared to show separately all information concerning:

(1) revenue bonds, the pledged income from facilities, and expenditures of that revenue; and

(2) money appropriated to the board by the commissioners court and realized from taxation and money realized from the sale of tax-supported bonds previously issued by the commissioners court.

(c) At the same time the financial statement is filed, the board shall file with the county judge a proposed budget of its needs for the next calendar year. To the extent that the board is

able to finance its operations and to maintain its property from the revenues of facilities the income of which is pledged to the revenue bonds, no approval or authorization of the commissioners court is necessary. However, the budget may involve only anticipated supplemental expenditures.

(d) The county judge shall incorporate the requested budget in the county budget to be prepared each year. As part of the county's tentative budget, the items certified by the board are subject to the procedure for county budget prescribed by Chapter 111.

(e) The board shall operate the parks under its control the revenues of which are pledged to the payment of bonds in a manner that will produce gross revenues sufficient to pay the operation and maintenance expenses of the facilities without seeking from the commissioners court the appropriation of additional money for those expenses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.048. SUITS; LEGAL SERVICES. (a) The board may sue and be sued in its own name.

(b) The board may request from the county attorney the legal services it requires. In addition or in the alternative, the board may employ and compensate its own legal staff.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.049. RECORDS. The board shall keep a complete account of each board meeting and proceeding and shall maintain the records of the board in a secure manner. Those records are the property of the board and are subject to inspection by the commissioners court at all reasonable times during office hours on business days. The preservation, microfilming, destruction, or other disposition of the records of the board is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 62, eff. Sept. 1, 1989.

SUBCHAPTER D. REVENUE BONDS

Sec. 321.071. ISSUANCE; PURPOSE. (a) For the purpose of providing funds for the acquisition of permanent improvements to the island parks, or for the acquisition or construction of facilities to be used in or connected with or incident to the parks, the county may issue revenue bonds from time to time.

(b) The bonds are fully negotiable instruments under Chapter 3, Business & Commerce Code, and other laws of this state.

(c) Included among the permanent improvements and facilities that may be acquired through the issuance of bonds are bath houses; bathing beaches; swimming pools; athletic fields; golf courses; stadiums; coliseums; auditoriums; pavilions; buildings and grounds for assembly, entertainment, health, and recreation; restaurants and refreshment places; yacht basins; and landing strips and airports.

(d) The bonds must be authorized by order of the commissioners court passed on its own motion. The order of the commissioners court may make covenants on behalf of the county as the court considers necessary and advisable, and the court shall perform or cause to be performed any covenants so made.

(e) The bonds must be issued in the name of the county, signed by the county judge, attested by the county clerk, and impressed with the seal of the commissioners court.

(f) The bonds must mature serially or otherwise in not more than 40 years and may be sold at a price and under terms determined by the county to be the most advantageous reasonably obtainable. The net effective interest rate may not exceed the maximum rate provided by Chapter 1204, Government Code.

(g) The order authorizing the issuance of the bonds shall prescribe the details as to the bonds. It may contain provisions for the calling of the bonds for redemption before their respective maturity dates at particular prices and times. Except for rights of redemption expressly reserved in the order and the bonds, the bonds are not subject to redemption before their scheduled maturity dates.

(h) The bonds may be made payable at times and places inside

or outside this state as prescribed in the order.

(i) The bonds may be made registrable as to principal or both principal and interest.

(j) The bonds may be issued in one or more series.

(k) An election is not required for issuance of the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.319, eff. Sept. 1, 2001.

Sec. 321.072. PLEDGE OF REVENUES. (a) Revenue bonds may be secured by a pledge of all or part of the net revenues from the operation of one or more parks under control of the board, from the facilities of or incident to the parks, or from the parks and the facilities.

(b) The net revenues of one or more contracts, operating contracts, leases, or agreements may be pledged as the sole security or as additional security for the support of the bonds.

(c) Any revenue other than that described by Subsection (a) or (b) may be pledged as the principal or as additional security for the bonds, as specified in the order.

(d) The order authorizing issuance of bonds may reserve the right, under conditions specified in the order, to issue additional bonds that will be on a parity with or subordinate to the bonds then being issued.

(e) While any bonds are outstanding, no additional bonds of equal dignity may be issued against the pledged revenues except to the extent and in the manner expressly permitted in the order.

(f) In this chapter, "net revenues" means the gross revenues from the operation of the park or parks and the facilities, leases, agreements, or contracts incident to the park or parks, the revenues of which have been pledged, after deduction of the necessary expenses as provided by Section [321.075](#).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.073. PROCEEDS. (a) The proceeds of the bonds shall be used under the restrictions provided in the order. The holders of the bonds and any trustee provided for in respect to the bonds have a lien on the proceeds until so applied, but neither the

depository of those funds nor the trustee is obligated to see to the proper application of the funds except as expressly provided in the order or the indenture securing the bonds.

(b) From the bond proceeds there may be set aside:

(1) an amount for payment of interest on the bonds estimated to accrue during the construction period and any additional period prescribed in the order; and

(2) an amount for the interest and sinking fund or another reserve fund provided for in the order.

(c) Proceeds remaining after the amounts are set aside under Subsection (b) shall be used for the payment of all expenses necessarily incurred in the issuance and sale of the bonds and then for the purposes specified in the bond order and in this chapter.

(d) Any surplus remaining after accomplishment of the bond purposes shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, with any remainder being deposited to the credit of the fund established in the order for debt service.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.074. APPROVAL AND REGISTRATION. (a) Before the bonds are delivered to the purchaser, the bonds and the records pertaining to the bonds must be submitted to the attorney general for examination and approval. The attorney general shall approve the bonds if issued in accordance with this subchapter.

(b) Bonds approved by the attorney general and registered with the comptroller of public accounts are incontestable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.075. FEES AND REVENUE. (a) In this section, "fee" includes any fee, charge, or toll.

(b) The expense of operation and maintenance of facilities the revenues of which are pledged to the payment of bonds are a first lien on and charge against the income of the facilities. While any of the bonds or interest remains outstanding, the board shall charge or require the payment of fees for the use of the facilities. The board shall determine the rate of fees charged by

it for the use, operation, or lease of the facilities. Fees must be equal and uniform within the classes defined by the board and must be in amounts that will yield revenues at least sufficient to pay the expenses of operation and maintenance and to make the payment prescribed in the order for debt service. "Debt service," as defined in the order, may include the payment of principal and interest as each matures, the establishment and maintenance of funds for extensions and improvements, an operating reserve, and an interest and sinking fund reserve.

(c) The board shall fix the fees in amounts that are sufficient to comply with the covenants in the order and with this chapter.

(d) If part of the security for the bonds consists of money to be received by the board as consideration for facilities belonging to the board but operated by a person other than the board under a lease or operating contract, the board shall fix the fees to be charged by the person for use of and services rendered by the facilities. The fees must be in amounts at least sufficient to assure receipt by the board of money that the board is committed to pay from that source for debt service under the terms of the order. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.076. REFUNDING BONDS. (a) Fully negotiable bonds may be issued by the commissioners court for the purpose of refunding original bonds issued under this subchapter.

(b) The refunding bonds must be authorized and may be secured in the manner provided by this subchapter for original bonds.

(c) Refunding bonds may be sold and the proceeds used to retire the original bonds, or may be used in exchange for the original bonds, as provided in the order authorizing their issuance.

(d) An election is not required for issuance of the refunding bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.077. BONDS NOT STATE OR COUNTY DEBT. (a) The

bonds are not a debt of the county or this state within the meaning of any constitutional or statutory provision, but are payable solely from the revenues pledged to their payment as provided by this subchapter.

(b) Each bond must contain on its face substantially the following provision: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

(c) The bonds may not be considered in determining the power of the county to incur obligations payable from taxation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.078. MISCELLANEOUS PROVISIONS. (a) In this section, "fee" includes a fee, charge, or toll.

(b) This section applies to revenue bonds issued under this subchapter.

(c) The bond order may require that the bonds contain a recital that they are issued pursuant to and in strict conformity with this subchapter. If made, that recital is conclusive evidence of the validity of the bonds and the regularity of their issuance.

(d) Each bond is exempt from taxation by this state or by a municipal corporation, county, or other political subdivision or taxing district of the state.

(e) If provided for in the order, an indenture securing the bonds may be executed between the county commissioners court and a corporate trustee. The order may also provide for execution of the indenture by a corporate or individual cotrustee. A corporate trustee or corporate cotrustee must be a trust company or a bank located inside or outside this state that has the powers of a trust company.

(f) Either the order or an indenture may contain provisions for protecting or enforcing the rights or remedies of the bondholders as considered by the commissioners court to be reasonable, proper, and not in violation of law. The provisions may include covenants setting forth the duties of the board in reference to the maintenance, operation or repair, and insurance of the facility the revenues of which are pledged, including within

the discretion of the commissioners court insurance against loss of use and occupancy. The provisions may also include covenants for the custody, safeguarding, and application of money received from the sale of the bonds and from the revenues received from the operation of the project.

(g) Any bank or trust company in this state may act as depository for the proceeds of the bonds, the revenues derived for operation of the facilities the revenues of which are pledged, or for the special funds created to assure payment of the principal of and interest on the bonds, including reserve funds and accounts. The depository may furnish indemnity bonds or pledge securities as required by the board.

(h) The commissioners court may select the depository or depositories without the necessity of seeking competitive bids. The deposits must be secured in the manner required by law for the security of county funds. The order or indenture may bind the commissioners court to the use of direct obligations of the United States or obligations unconditionally guaranteed by the United States as security for the deposits.

(i) The bond order or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. The order may contain other suitable provisions the commissioners court considers reasonable and proper for the security of the bondholders, including:

(1) covenants prescribing occurrences that constitute events of default and the terms and conditions on which any or all of the bonds become due, or may be declared to be due, before maturity; and

(2) covenants as to the rights, liabilities, powers, and duties arising from the breach by the commissioners court of any of its duties or obligations.

(j) Any bondholder or a trustee for a bondholder may by mandamus or other proceeding in a court of competent jurisdiction enforce the bondholder's rights against the commissioners court or its agents and employees or against any lessee of any facility the revenues of which are pledged to the bonds. These rights include

the right to require the board to impose, establish, and enforce fees sufficient and effective to carry out the agreements contained in the order or indenture, the right to perform all agreements and covenants in the order and the duties arising from the order or indenture, and the right in the event of default as defined in the order or indenture to apply for and obtain the appointment of a receiver for any of the properties involved. If a receiver is appointed, the receiver shall enter and take possession of the facilities the revenues of which have been pledged. The receiver shall retain possession until the commissioners court is no longer in default or until relieved by a court, and shall collect and receive all revenues and fees arising from the retained property in the same manner as the commissioners court. The receiver shall dispose of and apply the money in accordance with the obligations of the commissioners court under the order or indenture and as the court may direct.

(k) This chapter does not authorize a bondholder to require the commissioners court to use any funds in the payment of the principal of or interest on the bonds except the revenues pledged for that payment.

(l) The order or indenture may contain provisions to the effect that while the revenues of the park facilities are pledged to the payment of bonds, no free service may be rendered by any of those facilities for which fees are to be effective under the order.

(m) The bonds are legally authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, and trustees and for the sinking funds and other funds of this state or of a municipal corporation, county, political subdivision, public agency, or taxing district in this state. The bonds are eligible to secure the deposit of any public funds of this state and any public funds of a municipal corporation, county, political subdivision, public agency, or taxing district in this state, and the bonds are lawful and sufficient security for those deposits to the extent of their face value when accompanied by all unmatured appurtenant coupons.

(n) The order, the indenture, and this chapter constitute an irrevocable contract between the board and county and the

bondholders.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. COASTAL COUNTY ISLAND PARK, BEACH PARK, AND PUBLIC
BEACH RULES

Sec. 321.101. APPLICABILITY. Notwithstanding Section 321.001, this subchapter applies only to:

(1) a county described by Section 321.001; and
(2) a county that borders on the Gulf of Mexico and has within its boundaries a beach that:

(A) is wholly or partly operated by the county as a park; or

(B) is otherwise controlled or maintained by the county.

Added by Acts 2019, 86th Leg., R.S., Ch. 226 (H.B. 1628), Sec. 1, eff. September 1, 2019.

Sec. 321.102. RULES. The commissioners court of a county by order may adopt reasonable rules on camping, access, litter, resource protection, or waste disposal if the rules:

(1) are consistent with Chapter 352 of this code, Chapters 61 and 63, Natural Resources Code, and rules adopted under those chapters; and

(2) apply only in the following locations controlled or maintained by the county:

(A) an island park;

(B) a beach park; or

(C) any part of a public beach.

Added by Acts 2019, 86th Leg., R.S., Ch. 226 (H.B. 1628), Sec. 1, eff. September 1, 2019.

Sec. 321.103. OFFENSE. (a) A person commits an offense if the person violates a rule adopted under Section 321.102.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2019, 86th Leg., R.S., Ch. 226 (H.B. 1628), Sec. 1, eff. September 1, 2019.