

Texas Public Finance Authority
Procedures for the designation and operation of Pricing Committees
October 2008
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- I. Objective:** The objective of this procedure is to provide guidance for the designation and function of Pricing Committees of the Board for negotiated sales of the Authority's bonds.
- II. Background and Legal Authority:** The Authority is an "Issuer" as defined in Chapter 1371, Texas Government Code. Under section 1371.053(c), the Board may authorize one or more of its designated members to act on its behalf in selling bonds including setting the price, interest rates and other terms and conditions, in accordance with a resolution adopted by the Board. Members of the Board designated under the Authority of section 1371.053(c) are referred to herein as a "Pricing Committee."

Under Chapter 341, Acts 1999, 76th Legislature, adding Section 1232.1191 to the Authority's organic law (Texas Gov't Code, ch. 1232), a Pricing Committee of the Board is not subject to the open meetings law. This amendment was enacted for the limited goal to permit the Authority some flexibility in scheduling a bond sale when such flexibility would reasonably be expected to give the State an economic advantage, (rather than having to lock in a date in advance through an arbitrary 8-day posting), and to permit a Pricing Committee to discuss and decide final terms in private, to the State's competitive advantage.

In discussions between the Public Finance Division of the Attorney General's office and the Bond Counsel, the best or preferred practices in implementing the statutory authority were considered to be either (1) the designation of one or more specific individuals, with one or more "alternates" or (2) the designation of all members of the Board as the Pricing Committee. The latter was suggested by the Attorney General's office as an acceptable method to permit the Board to schedule a negotiated sale when the Board, the Authority's Executive Director and Financial Advisors consider it most advantageous economically, and to accommodate potential scheduling conflicts. To reasonably implement this alternative, operating procedures are recommended to set forth specifically how the members required to attend the pricing would be determined.

- III. Responsibility:** The Executive Director and General Counsel are primarily responsible for ensuring compliance with this procedure. The Pricing Committee will be responsible for reviewing the complete financial analysis of the bond issue, which includes costs of issuance and underwriters' compensation, and the marketing plan, which includes the priority of orders.

IV. Procedures:

- A. The Board must designate a Pricing Committee in a duly convened open meeting.

- B. Since a pricing is not subject to the open meetings law, no specific number of Pricing Committee members must attend the pricing, and one or more members may participate in the pricing by telephone conference. However, all members of the pricing committee or their alternates must participate.

- C. If the planned negotiated sale may or must be scheduled at a time certain, and at least three Board members can confirm their availability at that time, the Board will designate the three members to serve as the Pricing Committee and one additional member as an alternate.
 - 1. At least two days before the date of pricing, the Executive Director will confirm whether the designated members of the Pricing Committee will attend the pricing either in person or by telephone conference call.
 - 2. If a designated member of the Pricing Committee will not be able to attend the pricing, the Executive Director will confirm the need to call upon the alternate and make appropriate final arrangements with the alternate and other members of the Pricing Committee.
 - 3. All members of the Pricing Committee will be required to agree upon the final terms of the bond sale and evidence their agreement by signing a Pricing Certificate.
 - 4. The Authority may obtain the signatures of members of the Pricing Committee for the pricing certificate in advance of the pricing to hold in escrow and be released upon adoption of the certificate by the Pricing Committee members. The General Counsel will obtain authorization for the release of the signature pages from the individual members of the Pricing Committee orally confirming the approval of the Pricing Certificate terms during the pricing call, and will confirm the receipt of that authorization by electronic mail following the call.

- D. If the pricing cannot or should not be scheduled in advance because the economic costs or benefits to the State are significantly dependent on market conditions or other extenuating circumstances, and at least three Board members are not able to confirm their availability to attend the pricing, the Board may designate the entire Board as constituting a Pricing Committee.
 - 1. After consulting with the Financial Advisors and the Underwriters, the

Executive Director will notify the Pricing Committee of a recommended date and location of the planned pricing and other factors relevant to the bond sale and determine which members and alternates are able to participate as Pricing Committee members. The Executive Director will notify the Chairman of the pricing schedule and participants.

2. The Pricing Committee will be expected to attend the pricing, participate in the negotiation of the bond sale, agree to the final terms of the bonds, by phone or in person, and sign a Pricing Certificate.
- E. Required Records and Documentation of the actions of the Board and the Pricing Committee. The action of the Board designating a Pricing Committee under paragraph C. or D. above shall be recorded in the minutes of the open meeting and included in the Board's resolution authorizing the particular bond issue.