

**Financing**

Definitions

*“Contract”*

“Contract” means an agreement entered into under the authority of the Public Property Finance Act, Local Government Code 271.001 through 271.009, but does not mean a contract solely for the construction of improvements to real property. *Local Gov’t Code 271.003(2)*

*“Improvement”*

“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. *Local Gov’t Code 271.003(10)*

*“Real Property”*

“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(11)*

Proposed Contract

The board of trustees of a school district, including a community college district or junior college district, 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 after 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, a written petition signed by a least five percent of the registered voters of the district is filed with the board of trustees 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 as prescribed by the Election Code does not apply to an election held under this section.

*Local Gov’t Code 271.004(b)–(c)*

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 of public accounts shall register them. Following approval and registration, the contract is incontestable and is a binding obligation according to its terms. <i>Local Govt Code 271.004(g)-(i)</i>
College District Obligation	The contract is a special obligation of the school district if ad valorem taxes are not pledged to the payment of the contract. If the contract provides that payments by the school district are to be made from maintenance taxes previously approved by the voters of the college 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 obligation of the school district may be evidenced by one or more negotiable promissory notes. <i>Local Govt Code 271.004(d)-(f)</i>
Cash Purchases with Available Funds	The requirements of the Public Property Finance Act, Local Government Code 271.001 through 271.009, do not apply to cash purchases of real property made with moneys from available funds. <i>Bandera Indep. Sch. Dist. v. Hamilton, 2 S.W.3d 367 (Tex. App.—San Antonio 1999, pet. denied)</i>
<b>Eminent Domain</b>	<p>A college 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), 130.084</i></p> <p>A governmental entity, including a college 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>Govt Code 2206.001(b)</i></p>
Procedures	When exercising the right of eminent domain, a college district must follow the procedures found at Government Code Chapter 2206, Subchapter B and Property Code Chapter 21, Subchapter B. <i>Govt Code 2206.001(a); Property Code 21.011</i>
Reporting	Except as provided by Government Code 2206.154(b), not later than February 1 of each year, public and private entities, including common carriers, authorized by the state by a general or special law to exercise the power of eminent domain 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 entity shall submit the report in a form and in the manner prescribed by the comptroller.

In addition to the annual report, an entity described above shall report to the comptroller any changes to the entity's eminent domain authority information reported under this section not later than the 90th day after the date on which the change occurred.

*Gov't Code 2206.151, .154(a), (c)*

*Initial Report*

An entity created before and in existence for at least 180 days on September 1, 2015, shall submit the entity's initial report not later than February 1, 2016. *Gov't Code 2206.154(a-1)*

Repurchase of Real  
Property

A person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property as provided by Property Code Chapter 21, Subchapter E if the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use, no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the tenth anniversary of that date, or the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the tenth anniversary of the date of acquisition. Not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property, the entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice in accordance with Property Code 21.103. *Property Code 21.101–.102*