

**Appendix A: Texas Government Code  
Chapter 791 Interlocal Cooperation Act**

## **APPENDIX A**

### **Texas Government Code Chapter 791 Interlocal Cooperation Act**

#### § 791.001 PURPOSE

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The purpose of this chapter is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state.

#### § 791.002 SHORT TITLE

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This chapter may be cited as the Interlocal Cooperation Act.

#### § 791.003 DEFINITIONS

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(1) "Administrative functions" means functions normally associated with the routine operation of government, including tax assessment and collection, personnel services, purchasing, records management services, data processing, warehousing, equipment repair, and printing.

(2) "Interlocal contract" means a contract or agreement made under this chapter.

(3) "Government functions and services" means all or part of a function or service in any of the following areas:

- (A) police protection and detention services;
- (B) fire protection;
- (C) streets, roads, and drainage;
- (D) public health and welfare;
- (E) parks and recreation;
- (F) library and museum services;
- (G) records center services;
- (H) waste disposal;
- (I) planning;
- (J) engineering;
- (K) administrative functions;
- (L) public funds investments; or
- (M) comprehensive health care and hospital services; or
- (N) other governmental functions in which the contracting parties are mutually interested

(4) "Local government" means a:

- (A) county, municipality, special district, or other political subdivision of this state or another state;
- (B) local government corporation created under Subchapter D, Chapter 431, Transportation Code;
- (C) political subdivision corporation created under Chapter 305, Local Government Code
- (D) local workforce development board created under Section 2308.253; or
- (E) combination of two or more entities described by Paragraph (A), (B), (C), or (D).

(5) "Political subdivision" includes any corporate and political entity organized under state law.

#### § 791.004 INTERLOCAL CONTRACT: DUAL OFFICE HOLDING

A person acting under an interlocal contract does not, because of that action, hold more than one civil office of emolument (i.e. salary, profit) or more than one office of honor, trust, or profit.

#### § 791.005 EFFECT OF CHAPTER

This chapter does not affect an act done or a right, duty, or penalty existing before May 31, 1971.

#### § 791.006 LIABILITY IN FIRE PROTECTION CONTRACT OR PROVISION OF LAW ENFORCEMENT SERVICES

(a) If governmental units contract under this chapter to furnish or obtain services of a fire department, the governmental unit that would have been responsible for furnishing the services in the absence of a contract is responsible for any civil liability that arises from the furnishing of those services.

(a-1) Notwithstanding Subsection (a), if a municipality, county, rural fire prevention district, emergency services district, fire protection agency, regional planning commission, or joint board enters into a contract with a governmental unit under this chapter to furnish or obtain fire or emergency services, the parties to the contract may agree to assign responsibility for civil liability that arises from the furnishing or obtaining of services under the contract in any manner agreed to by the parties. To assign responsibility for civil liability under this subsection, the parties to the contract must assign responsibility in a written provision of the contract that specifically references this subsection and states that the assignment of liability is intended to be different than liability otherwise assigned under Subsection (a).

(b) In the absence of a contract, if a municipality or county furnishes law enforcement services to another municipality or county, the governmental unit that requests and obtains

the services is responsible for any civil liability that arises from the furnishing of those services.

(c) Nothing in this section adds to or changes the liability limits and immunities for a governmental unit provided by the Texas Tort Claims Act, Chapter 101, Civil Practice and Remedies Code, or other law.

(d) Notwithstanding any other provision of this chapter, a contract under this chapter is not a joint enterprise for the purpose of assigning or determining liability.

[Sections 791.007 – 791.010 reserved for expansion]

## **SUBCHAPTER B: GENERAL INTERLOCAL CONTRACTING AUTHORITY**

### **§ 791.011 CONTRACTING AUTHORITY; TERMS**

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(a) A local government may contract or agree with another local government or a federally recognized Indian tribe, as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services in accordance with this chapter.

(b) A party to an interlocal contract may contract with a:

- (1) state agency, as that term is defined by Section 771.002; or
- (2) similar agency of a state that borders this state.

(c) An interlocal contract may be to:

- (1) study the feasibility of the performance of a governmental function or service by an interlocal contract; or
- (2) provide a governmental function or service that each party to the contract is authorized to perform individually.

(d) An interlocal contract must:

- (1) be authorized by the governing body of each party unless a party to the contract;
- (2) state the purpose, terms, rights, and duties of contracting parties; and
- (3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

(e) An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services and functions performed under the contract.

(f) An interlocal contract may be renewed annually.

(g) A governmental entity of this state or another state that makes purchases or provides purchasing services under an interlocal contract for a state agency, as the term is defined by Section 771.002, must comply with Chapter 2161 in making or providing the services.

#### § 791.012 LAW APPLICABLE TO CONTRACTING PARTIES

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Local governments that are parties to an interlocal contract for the performance of a service may, in performing the service, apply the law applicable to a party as agreed by the parties.

#### § 791.013 CONTRACT SUPERVISION AND ADMINISTRATION

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(a) To supervise the performance of an interlocal contract, the parties to the contract may

(1) create an administrative agency

(2) designate an existing local government; or

(3) contract with an organization that qualifies for exemption from federal income tax under Section 501(c), Internal Revenue Code...

(b) The agency, designated local government, or organization described by Subsection (a) (3) may employ personnel, perform administrative activities, and provide administrative services necessary to perform interlocal contract.

(c) All property that is held and used for a public purpose by the administrative agency or designated local government is exempt from or subject to taxation in the same manner as if the property were held and used by the participating political jurisdictions.

(d) An administrative agency created under this section may acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States, or any other nation:

(1) a patent for the invention or discover of:

(A) any new and useful process, machine, manufacture, composition of matter, art, or method;

(B) any new use of a known process, machine, manufacture, composition of matter, art, or method

(C) any new and useful improvement on a known process, machine, manufacture, composition of matter, art, or method;

(2) a copyright of an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(3) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the agency uses to identify and distinguish the agency's goods and services from other goods and services; and

(4) other evidence of protection of exclusivity issued for intellectual property.

#### § 791.014 APPROVAL REQUIREMENT FOR COUNTIES

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(a) Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the commissioners court of a county must give specific written approval for the project.

(b) The approval must:

(1) be given in a document other than the interlocal contract;

(2) describe the type of project to be undertaken; and

(3) identify the project's location.

(c) The county may not accept and another local government may not offer payment for a project undertaken without approval required by this section.

(d) A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:

(1) The county begins the project without the approval required by this section; and

(2) The local government makes the payment before the project is begun by the county.

#### § 791.015 SUBMISSION OF DISPUTES TO ALTERNATIVE DISPUTE RESOLUTION

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Local governments that are parties to an interlocal contract may provide in the contract for the submission of disputes arising under the contract to the alternative dispute resolution procedures authorized by Chapter 2009.

[Sections 791.016 – 791.020 reserved for expansion]

## **SUBCHAPTER C: SPECIFIC INTERLOCAL CONTRACTING AUTHORITY**

### **§ 791.021 CONTRACTS FOR REGIONAL CORRECTIONAL FACILITIES**

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The parties to an interlocal contract may contract with the institutional division of the Texas Department of Criminal Justice for the construction, operation, and maintenance of a regional correctional facility if:

- (1) title to the land on which the facility is to be constructed is deeded to the institutional division; and
- (2) the parties execute a contract relating to the payment of costs for housing, maintenance, and rehabilitative treatment of persons held in jails who cannot otherwise be transferred under authority of existing statutes to the direct responsibility of the institutional division.

### **§ 791.022 CONTRACTS FOR REGIONAL JAIL FACILITIES**

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(a) In this section:

- (1) "Facility" means a regional jail facility constructed or acquired under this section.
- (2) "Jailer" means a person with authority to supervise the operation and maintenance of a facility as provided by this section.

(b) A political subdivision of the state, by resolution of its governing body, may contract with one or more political subdivisions of the state to participate in the ownership, construction, and operation of a regional jail facility.

(c) The facility must be located within the geographic boundaries of one of the participating political subdivisions. The facility is not required to be located in a county seat.

(d) Before acquiring and constructing the facility, the participating political subdivisions shall issue bonds to finance the facility's acquisition and construction. The bonds must be issued in the manner prescribed by law for issuance of permanent improvement bonds.

(e) To supervise the operation and maintenance of a facility, the participating political subdivisions may agree to:

- (1) appoint as jailer of the facility the police chief or sheriff of the political subdivision in which the facility is located;
- (2) form a committee composed of the sheriff or police chief of each participating political subdivision to appoint a jailer of the facility; or

(3) authorize the police chief or sheriff of each participating political subdivision to continue to supervise and manage those prisoners incarcerated in the facility under the authority of that officer.

(f) If participating political subdivisions provide for facility supervision under Subsection (e), the person designated to supervise operation and maintenance of the facility shall supervise the prisoners incarcerated in the facility.

(g) When a prisoner is transferred from the facility to the originating political subdivision, the appropriate law enforcement officer of the originating political subdivision shall assume supervision and responsibility for the prisoner.

(h) While a prisoner is incarcerated in a facility, a police chief or sheriff not assigned to supervise the facility is not liable for the escape of the prisoner or for any injury or damage caused by or to the prisoner unless the escape, injury, or damage is directly caused by the police chief or sheriff.

(i) The political subdivisions may employ or authorize the jailer of the facility to employ personnel necessary to operate and maintain the facility.

(j) The jailer of the facility and any assistant jailers must be commissioned peace officers.

#### § 791.023 CONTRACTS FOR STATE CRIMINAL JUSTICE

The state or an agency of the state may contract with one or more entities to finance, construct, operate, maintain, or manage a criminal justice facility provided, in the exercise of the governmental power, for the benefit of the state in accordance with this chapter and:

(1) Subchapter A, Chapter 494, Government Code;

(2) Subchapter D, Chapter 361, Local Government Code ; or

(3) the Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271, Local Government Code).

#### § 791.024 CONTRACTS FOR COMMUNITY CORRECTIONS FACILITIES

A community supervision and corrections department established under Section 76.002 may agree with the state, an agency of the state, or a local government to finance, construct, operate, maintain, or manage a community corrections facility under Section 76.010(b) or a county correctional center under Subchapter H, Chapter 351, Local Government Code.

#### § 791.025 CONTRACTS FOR PURCHASES

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(a) A local government, including a council of governments, may agree with another local government or with the state or a state agency, including the comptroller, to purchase goods and services.

(b) A local government, including a council of governments, may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. This subsection does not apply to services provided by firefighters, police officers, or emergency medical personnel.

(c) A local government that purchases goods and services under this section satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and services.

(d) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

#### § 791.026 CONTRACTS FOR WATER SUPPLY AND WASTEWATER TREATMENT FACILITIES

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(a) A municipality, district, or river authority of this state may contract with another municipality, district, or river authority of this state to obtain or provide part or all of:

- (1) water supply or wastewater treatment facilities; or
- (2) a lease or operation of water supply facilities or wastewater treatment facilities.

(b) The contract may provide that the municipality, district, or river authority obtaining one of the services may not obtain those services from a source other than a contracting party, except as provided by the contract.

(c) If a contract includes a term described by Subsection (b), payments made under the contract are the paying party's operating expenses for its water supply system, wastewater treatment facilities, or both.

(d) The contract may:

- (1) contain terms and extend for any period on which the parties agree;
- (2) require the purchaser to develop alternative or replacement supplies prior to the expiration date of the contract and may provide for enforcement of such terms by court order; and
- (3) provide that it will continue in effect until bonds specified by the contract and any refunding bonds issued to pay those bonds are paid.

(e) Where a contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.

(f) Tax revenue may not be pledged to the payment of amounts agreed to be paid under the contract.

(g) The powers granted by this section prevail over a limitation contained in another law.

#### § 791.027 EMERGENCY ASSISTANCE

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(a) A local government may provide emergency assistance to another local government, whether or not the local governments have previously agreed or contracted to provide that kind of assistance, if:

- (1) in the opinion of the presiding officer of the governing body of the local government desiring emergency assistance, a state of civil emergency exists in the local government that requires assistance from another local government and the presiding officer requests the assistance; and

- (2) before the emergency assistance is provided, the governing body of the local government that is to provide the assistance authorizes that local government to provide the assistance by resolution or other official action.

(b) This section does not apply to emergency assistance provided by law enforcement officers under Chapter 362, Local Government Code.

#### § 791.028 CONTRACTS FOR JOINT PAYMENT OF ROAD CONSTRUCTION AND IMPROVEMENTS

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a) In this section:

- (1) "Highway project" means the acquisition, design, construction, improvement, or beautification of a state or local highway, turnpike, or road project.

(2) "Transportation corporation" means a corporation created under Chapter 431, Transportation Code.

(b) A local government may contract with another local government, a state agency, or a transportation corporation to pay jointly all or part of the costs of a highway project, including the cost of an easement or interest in land required for or beneficial to the project.

(c) A local government and a transportation corporation, in accordance with a contract executed under this section, may:

(1) jointly undertake a highway project;

(2) acquire an easement, land, or an interest in land, in or outside a right-of-way of a highway project, as necessary for or beneficial to a highway project; or

(3) adjust utilities for the project.

(d) If a contract under this section provides for payments over a term of years, a local government may levy ad valorem taxes in an amount necessary to make the payments required by the contract as they become due.

#### § 791.029 CONTRACTS FOR REGIONAL RECORDS CENTERS

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(a) By resolution of its governing body, a political subdivision of the state may contract with another political subdivision of the state to participate in the ownership, construction, and operation of a regional records center.

(b) Before acquiring or constructing the records center, a participating political subdivision may issue bonds to finance the acquisition and construction of the records center in the manner prescribed by law for the issuance of permanent improvement bonds.

(c) The records center may not be used to store a record whose retention period is listed as permanent on a records retention schedule issued by the Texas State Library and Archives Commission under Section 441.158, unless the center meets standards for the care and storage of records of permanent value established by rules adopted by the commission under Section 203.048, Local Government Code.

(d) The Texas State Library and Archives Commission shall provide assistance and advice to local governments in the establishment and design of regional records centers.

## § 791.030 HEALTH CARE AND HOSPITAL SERVICES

A local government may contract with another local government authorized to provide health care and hospital services to provide those services for the local government's officers and employees and their dependents.

## § 791.031 TRANSPORTATION INFRASTRUCTURE

(a) This section applies only to a local government, other than a school district, that is authorized to impose ad valorem taxes on real property.

(b) The Texas Department of Transportation may enter into an interlocal contract with a local government for the financing of transportation infrastructure that is constructed or that is to be constructed in the territory of the local government by the department in a corridor of land on which no existing state or federal highway is located.

(c) The agreement must include:

- (1) the duration of the agreement, which may not exceed 12 years;
- (2) a description of each transportation infrastructure project or proposed project;
- (3) a map showing the location of each project and property included in the contract; and
- (4) an estimate of the cost of each project.

(d) The agreement may establish one or more transportation infrastructure zones. The Texas Department of Transportation and the local government may agree that at one or more specified times, the local government will pay to the Texas Department of Transportation an amount that is calculated on the basis of increased ad valorem tax collections in a zone that are attributable to increased values of property located in the zone resulting from an infrastructure project. The amount may not exceed an amount that is equal to 30 percent of the increase in ad valorem tax collections for the specified period.

(e) Money received by the Texas Department of Transportation under this section may be used:

- (1) to provide a local match for the acquisition of right-of-way in the territory of the local government; or
- (2) for design, construction, operation, or maintenance of transportation facilities in the territory of the local government.

§ 791.032 CONSTRUCTION, IMPROVEMENT, AND REPAIR OF STREETS IN MUNICIPALITIES

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With the approval of the governing body of a municipality, a local government may enter into an interlocal contract with the municipality to finance the construction, improvement, maintenance, or repair of streets or alleys in the municipality, including portions of the municipality's streets or alleys that are not an integral part of or a connecting link to other roads or highways.

§ 791.033 CONTRACTS TO CONSTRUCT, MAINTAIN, OR OPERATE FACILITIES ON STATE HIGHWAY SYSTEM

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(a) In this section, "state highway system" means the highways in this state included in the plan providing for a system of state highways prepared under Section 201.103, Transportation Code.

(b) A local government may enter into and make payments under an agreement with another local government for the design, development, financing, construction, maintenance, operation, extension, expansion, or improvement of a toll or nontoll project or facility on the state highway system located within the boundaries of the local government or, as a continuation of the project or facility, within the boundaries of an adjacent local government.

(c) An agreement under this section must be approved by the Texas Department of Transportation.

(d) Notwithstanding Section 791.011(d), to make payments under an agreement under this section, a local government may:

(1) pledge revenue from any available source, including payments received under an agreement with the Texas Department of Transportation under Section 222.104, Transportation Code;

(2) pledge, levy, and collect taxes to the extent permitted by law; or

(3) provide for a combination of Subdivisions (1) and (2).

(e) The term of an agreement under this section may not exceed 40 years.

(f) Any election required to permit action under this section must be held in conformance with the Election Code or other law applicable to the local government.

(g) In connection with an agreement under this section, a county or municipality may exercise any of the rights and powers granted to the governing body of an issuer under Chapter 1371.

(h) This section is wholly sufficient authority for the execution of agreements, the pledge of revenues, taxes, or any combination of revenues and taxes, and the performance of other acts and procedures authorized by this section by a local government without reference to any other provision of law or any restriction or limitation contained in those provisions, except as specifically provided by this section. To the extent of any conflict or inconsistency between this section and any other law, this section shall prevail and control. A local government may use any law not in conflict with this section to the extent convenient or necessary to carry out any power or authority, expressed or implied, granted by this section.