

By: Fraser
(Kacal, Cook)

S.B. No. 776

Substitute the following for S.B. No. 776:

By: Huberty

C.S.S.B. No. 776

A BILL TO BE ENTITLED

AN ACT

relating to the operations of a municipally owned utility or
municipal power agency; providing authority to issue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 37.051, Utilities Code, is amended by
adding Subsections (g), (h), and (i) to read as follows:

(g) A municipally owned utility or a municipal power agency
created under Chapter 163 may not directly or indirectly construct,
install, or extend a transmission facility outside of the municipal
boundaries of the municipality that owns the municipally owned
utility, or the power agency's boundaries, which for the purposes
of this subsection consist of the municipal boundaries of the
participating public entities, unless the municipally owned
utility or power agency first obtains from the commission, through
the application process provided by Section 37.053, a certificate
that states that the public convenience and necessity requires or
will require the transmission facility. Section 37.056 applies to
an application under this subsection. This subsection does not
apply to a transmission facility placed in service after September
1, 2015, that is developed to interconnect a new natural gas
generation facility to the ERCOT transmission grid and for which,
on or before January 1, 2015, a municipally owned utility was
contractually obligated to purchase at least 190 megawatts of
capacity.

1 (h) The commission shall adopt rules as necessary to provide
2 exemptions to the application of Subsection (g) that are similar to
3 the exemptions to the application of this section to an electric
4 utility, including exemptions for:

5 (1) upgrades to an existing transmission line that do
6 not require any additional land, right-of-way, easement, or other
7 property not owned by the municipally owned utility; and

8 (2) the construction, installation, or extension of a
9 transmission facility that is entirely located not more than 10
10 miles outside of a municipally owned utility's certificated service
11 area that occurs before September 1, 2021.

12 (i) The commission, not later than the 185th day after the
13 date the application is filed, shall approve an application filed
14 under Subsection (g) for a facility that is to be constructed under
15 an interconnection agreement appended to an offer of settlement
16 approved in a final order of the Federal Energy Regulatory
17 Commission that was issued in Docket No. TX11-01-001 on or before
18 December 31, 2014, directing physical connection between the ERCOT
19 and SERC regions under Sections 210, 211, and 212 of the Federal
20 Power Act (16 U.S.C. Sections 824i, 824j, and 824k). In approving
21 the application, the commission may prescribe reasonable
22 conditions to protect the public interest that are consistent with
23 the final order of the Federal Energy Regulatory Commission.

24 SECTION 2. Subchapter A, Chapter 35, Utilities Code, is
25 amended by adding Section 35.009 to read as follows:

26 Sec. 35.009. AMOUNTS PAID IN LIEU OF AD VALOREM TAXES FOR
27 CERTAIN FACILITIES. A municipally owned utility that is required

1 to apply for a certificate of public convenience and necessity to
2 construct, install, or extend a transmission facility within ERCOT
3 under Chapter 37 is entitled to recover, through the utility's
4 wholesale transmission rate, reasonable payments made to a taxing
5 entity in lieu of ad valorem taxes on that transmission facility,
6 provided that:

7 (1) the utility enters into a written agreement with
8 the governing body of the taxing entity related to the payments;

9 (2) the amount paid is the same as the amount the
10 utility would have to pay to the taxing entity on that transmission
11 facility if the facility were subject to ad valorem taxation;

12 (3) the governing body of the taxing entity is not the
13 governing body of the utility; and

14 (4) the utility provides the commission with a copy of
15 the written agreement and any other information the commission
16 considers necessary in relation to the agreement.

17 SECTION 3. Chapter 163, Utilities Code, is amended by
18 adding Subchapter C-1 to read as follows:

19 SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER

20 AGENCIES

21 Sec. 163.071. DEFINITIONS. In this subchapter:

22 (1) "Agency" means a municipal power agency for which
23 concurrent ordinances are adopted under Section 163.073.

24 (2) "Bond" includes a note, but does not include a
25 nonnegotiable purchase money note issued under Section [163.067](#) or
26 [163.087](#).

27 (3) "Concurrent ordinance" means an ordinance or order

adopted under this subchapter by all of the participating public entities of an agency.

(4) "Obligations" means revenue bonds or notes.

Sec. 163.072. CONSTRUCTION. This subchapter shall be liberally construed to carry out its purpose.

Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE.

(a) This subchapter applies to a municipal power agency created by two or more public entities under Subchapter C or a predecessor statute, including an agency re-created under Section 163.055 or a predecessor statute.

(b) The participating public entities of a municipal power agency may by concurrent ordinance elect to apply this subchapter to the agency as an alternative to Subchapter C.

(c) Concurrent ordinances described by this section must, as adopted by each public entity:

(1) contain identical provisions; and

(2) state that the public entity has elected that the agency shall, on and after the date designated in the ordinance, be governed by the provisions of this subchapter.

Sec. 163.074. CONFLICTS WITH OTHER LAW. This subchapter prevails to the extent of a conflict between this subchapter and any other law, including:

(1) a law regulating the affairs of a municipal corporation; or

(2) a home-rule charter provision.

Sec. 163.075. NATURE OF AGENCY. (a) An agency is a:

(1) separate municipal corporation;

1 (2) political subdivision of this state; and

2 (3) political entity and corporate body.

3 (b) An agency may not impose a tax but has all the other
4 powers relating to municipally owned utilities and provided by law
5 to a municipality that owns a public utility.

6 Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES.

7 (a) The public entities that created or re-created an agency may
8 by concurrent ordinances:

9 (1) add a new public entity as a participating public
10 entity in the agency; or

11 (2) remove a public entity from participation in the
12 agency.

13 (b) Concurrent ordinances described by this section must,
14 as adopted by each public entity:

15 (1) contain identical provisions;

16 (2) define the boundaries of the agency to include the
17 territory within the boundaries of each participating public
18 entity;

19 (3) designate the name of the agency; and

20 (4) designate the number, place, terms, and manner of
21 appointment of directors, as provided by Section 163.078.

22 (c) The public entities may not add or remove a public
23 entity if the addition or removal will impair an agency obligation.

24 Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY.

25 (a) Public entities may not adopt concurrent ordinances under
26 Section 163.076 adding a participating public entity unless the
27 addition has been approved by a majority of the qualified voters of

1 the additional public entity at an election called and held for that
2 purpose.

3 (b) Notice of an election under this section shall be given
4 in accordance with Section 1251.003, Government Code. The election
5 shall be called and held in accordance with:

6 (1) the Election Code;

7 (2) Chapter 1251, Government Code; and

8 (3) this subchapter.

9 Sec. 163.078. BOARD OF DIRECTORS. (a) The agency shall be
10 governed by a board of directors.

11 (b) The board is responsible for the management, operation,
12 and control of the property belonging to the agency.

13 (c) The board may by resolution delegate management or
14 operational authority to an officer, employee, or committee of the
15 agency, except that the delegation may not include legislative
16 functions, including the sale or purchase of agency properties, the
17 exercise of the power of eminent domain, the adoption or amendment
18 of budgets and rates, or the issuance of debt. The board may repeal
19 a resolution delegating management or operational authority:

20 (1) if the board is composed of six or more directors,
21 by the affirmative vote of six directors, including the affirmative
22 vote of at least one director appointed by each participating
23 public entity; or

24 (2) if the board is composed of fewer than six
25 directors, by the affirmative vote of at least one director
26 appointed by each participating public entity.

27 (d) The board must include at least four directors. Each

1 director must be appointed by place by the governing bodies of the
2 participating public entities. Each participating public entity is
3 entitled to appoint at least one director.

4 (e) Directors must serve staggered terms. Successor
5 directors are appointed in the same manner as the original
6 appointees.

7 (f) To qualify to serve as a director, when the person takes
8 the constitutional oath of office, the person must be:

9 (1) a qualified voter and reside in the boundaries of
10 the appointing public entity;

11 (2) an employee, officer, or member of the governing
12 body of the appointing public entity; or

13 (3) a retail electric customer of the appointing
14 public entity.

15 (g) Except as provided by Subsections (h) and (i), an
16 employee, officer, or member of the governing body of a
17 participating public entity serving as a director may not have a
18 personal interest in a contract executed by the agency other than as
19 an employee, officer, or member of the governing body of the public
20 entity.

21 (h) An employee, officer, or member of the governing body of
22 a participating public entity serving as a director is considered
23 to be a local public official for the purposes of Chapter 171, Local
24 Government Code.

25 (i) An agency and a participating public entity are
26 considered to be political subdivisions for the purposes of Section
27 [131.903](#), Local Government Code.

1 (j) Directors serve without compensation. A director who is
2 an employee, officer, or member of the governing body of a
3 participating public entity may continue to receive from the public
4 entity the compensation associated with the office or employment.

5 (k) A director serves at the discretion of the appointing
6 public entity. The governing body of a public entity that appoints
7 a director may remove the director from office at any time with or
8 without cause. The governing body shall promptly appoint a new
9 director to serve the remainder of the unexpired term of the removed
10 director.

11 Sec. 163.079. SEPARATE BOARDS OF DIRECTORS. (a) The
12 public entities that created or re-created an agency may amend the
13 creating concurrent ordinances to provide for the agency to be
14 governed by one board of directors for the agency's generation
15 system and another board of directors for the agency's transmission
16 system.

17 (b) The concurrent ordinances as amended must contain
18 identical provisions.

19 (c) Section 163.078 applies to the separate boards and to
20 the directors of the separate boards, except that:

21 (1) there is no minimum number of directors for a board
22 established under this section;

23 (2) each participating public entity is not entitled
24 to appoint a director to each board of an agency; and

25 (3) the repeal of a resolution under Section
26 163.078(c) does not require approval by at least one director
27 appointed by each participating public entity.

1 (d) Separate boards established under this section are not
2 required to have the same number of directors.

3 Sec. 163.080. POWERS. (a) An agency may not engage in any
4 utility business other than:

5 (1) the generation and sale or exchange of electric
6 energy to:

7 (A) a participating public entity; or

8 (B) a private entity that owns jointly with the
9 agency an electric generating facility in this state; or

10 (2) the provision of wholesale transmission service
11 under Chapter 35.

12 (b) The agency may:

13 (1) perform any act necessary to the full exercise of
14 the agency's powers;

15 (2) enter into a contract, lease, or agreement with or
16 accept a grant or loan from a:

17 (A) department or agency of the United States;

18 (B) department, agency, or political subdivision
19 of this state; or

20 (C) public or private person;

21 (3) use the uniform system of accounts prescribed for
22 utilities and licenses by the Federal Energy Regulatory Commission;
23 and

24 (4) adopt rules to govern the operation of the agency
25 and its employees, facilities, and service.

26 (c) The agency may sell, lease, convey, or otherwise dispose
27 of any right, interest, or property of the agency, including its

1 electric facilities. A sale, lease, conveyance, or other
2 disposition having a value of more than \$10 million shall require
3 prior approval of each participating public entity, unless the
4 public entities have agreed otherwise by written contract or the
5 property was purchased by the agency for mining purposes.

6 Sec. 163.081. CONSTRUCTION CONTRACTS. (a) Except as
7 provided by Subsection (c), an agency may award a contract for
8 construction of an improvement that involves the expenditure of
9 more than \$20,000 only on the basis of competitive bids.

10 (b) The agency shall publish notice of intent to receive
11 bids once a week for two consecutive weeks in a newspaper of general
12 circulation in this state. The first publication must appear
13 before the 14th day before the date bids are to be received.

14 (c) An entity that has joint ownership of the improvement to
15 be constructed or that is an agent of a joint owner shall award a
16 contract using the entity's contracting procedures.

17 Sec. 163.082. SALE OR EXCHANGE OF ELECTRIC ENERGY. (a) An
18 agency may participate through appropriate contracts in power
19 pooling and power exchange agreements with other entities through
20 direct or indirect system interconnections.

21 (b) An entity that participates with an agency under this
22 section may:

23 (1) purchase electric energy from the agency;

24 (2) sell or dispose of electric energy to the agency;

25 or

26 (3) exchange electric energy with the agency.

27 (c) An entity payment for electric energy purchased from the

1 agency is an operating expense of the entity's electric system.

2 (d) An agency contract to sell or exchange electric energy
3 may require the purchaser to pay for the electric energy regardless
4 of whether the electric energy is produced or delivered.

5 Sec. 163.083. RATES AND CHARGES. (a) An agency may
6 establish and maintain rates and charges for electric power and
7 energy the agency delivers, transmits, or exchanges. The rates and
8 charges must:

9 (1) be reasonable and in accordance with prudent
10 utility practices;

11 (2) be based on periodic cost of service studies and
12 subject to modification, unless such a basis for rates and charges
13 is waived by the purchaser by contract; and

14 (3) be developed to recover the agency's cost of
15 producing and transmitting the electric power and energy, as
16 applicable, which cost must include the amortization of capital
17 investment.

18 (b) Notwithstanding Subsection (a), this state reserves its
19 power to regulate an agency's rates and charges for electric energy
20 supplied by the agency's facilities.

21 (c) Until obligations issued under this chapter have been
22 paid and discharged, with all interest on the obligations, interest
23 on unpaid interest installments on the obligations, and other
24 connected and incurred costs or expenses, this state pledges to and
25 agrees with the purchasers and successive holders of the
26 obligations that it will not:

27 (1) limit or alter the power of an agency to establish

1 and collect rates and charges under this section sufficient to pay:

2 (A) necessary operational and maintenance
3 expenses;

4 (B) interest and principal on obligations issued
5 by the agency;

6 (C) sinking funds and reserve fund payments; and

7 (D) other charges necessary to fulfill the terms
8 of any agreement; or

9 (2) take any action that will impair the rights or
10 remedies of the holders of the obligations.

11 Sec. 163.084. REVENUE BONDS. (a) The agency may issue
12 revenue bonds to accomplish the purposes of the agency.

13 (b) The agency may pledge to the payment of the obligations
14 the revenues of all or part of its electric facilities, including
15 facilities acquired after the obligations are issued. However,
16 operating and maintenance expenses, including salaries and labor,
17 materials, and repairs of electric facilities necessary to render
18 efficient service, constitute a first lien on and charge against
19 the pledged revenue.

20 (c) The agency may set aside from the proceeds from the sale
21 of the obligations amounts for payment into the interest and
22 sinking fund and reserve fund, and for interest and operating
23 expenses during construction and development, as specified in the
24 proceedings authorizing the obligations.

25 (d) Obligation proceeds may be invested, pending their use,
26 in securities, interest-bearing certificates, or time deposits as
27 specified in the authorizing proceedings.

1 (e) Agency obligations are authorized investments for:

2 (1) a bank;

3 (2) a savings bank;

4 (3) a trust company;

5 (4) a savings and loan association; and

6 (5) an insurance company.

7 (f) The obligations, when accompanied by all appurtenant,
8 unmatured coupons and to the extent of the lesser of their face
9 value or market value, are eligible to secure the deposit of public
10 funds of this state, a political subdivision of this state, and any
11 other political corporation of this state.

12 Sec. 163.085. REFUNDING BONDS. The agency may issue
13 refunding bonds.

14 Sec. 163.086. ISSUANCE, FORM, AND PROVISIONS OF BONDS.

15 (a) Agency bonds that are payable from agency revenues or
16 anticipated bond proceeds and the records relating to their
17 issuance must be submitted to the attorney general for examination
18 before delivery.

19 (b) The bonds:

20 (1) must mature serially or otherwise not more than 50
21 years after the date of issuance;

22 (2) may be made redeemable before maturity at the time
23 and at the price or prices set by the agency; and

24 (3) may be sold at public or private sale under the
25 terms and for the price the agency determines to be in the best
26 interest of the agency.

27 (c) The bonds must be signed by the presiding officer or

1 assistant presiding officer of the agency, be attested by the
2 secretary, and bear the seal of the agency. The signatures may be
3 printed on the bonds if authorized by the agency, and the seal may
4 be impressed or printed on the bonds. The agency may adopt or use
5 for any purpose the signature of an individual who has been an
6 officer of the agency, regardless of whether the individual has
7 ceased to be an officer at the time the bonds are delivered to the
8 purchaser.

9 Sec. 163.087. NONNEGOTIABLE PURCHASE MONEY NOTES. (a) The
10 agency may issue nonnegotiable purchase money notes to acquire land
11 or fuel resources.

12 (b) Nonnegotiable purchase money notes are:

13 (1) payable in installments;

14 (2) secured by the property acquired with the notes or
15 other collateral the agency substitutes; and

16 (3) not a security or agency obligation.

17 (c) Nonnegotiable purchase money notes may be further
18 secured by a promise to issue bonds or bond anticipation notes to
19 pay the purchase money notes.

20 Sec. 163.088. BOND ANTICIPATION NOTES. (a) The agency may
21 issue bond anticipation notes:

22 (1) for any purpose for which the agency may issue
23 bonds; or

24 (2) to refund previously issued bond anticipation
25 notes or nonnegotiable purchase money notes.

26 (b) Bond anticipation notes are subject to the limitations
27 and conditions prescribed by this subchapter for bonds.

1 (c) The agency may contract with purchasers of bond
2 anticipation notes that the proceeds of one or more series of bonds
3 will be used to pay or refund the notes.

4 Sec. 163.089. PUBLIC SECURITIES. (a) It is a public
5 purpose for a public entity that has participated in the creation of
6 an agency to pay costs of planning, acquisition, construction,
7 ownership, operation, and maintenance of electric facilities.

8 (b) A public entity may issue public securities, as defined
9 by Section 1201.002(2), Government Code, including bonds, notes, or
10 other forms of indebtedness, in the principal amount approved by
11 the governing body of the public entity, for the purpose of
12 financing electric facilities or improvements to electric
13 facilities to be owned or operated by the agency or otherwise in
14 furtherance of a purpose described by this section.

15 (c) A public entity and an agency may agree in a contract, or
16 by other official action of the public entity and agency, to terms
17 and conditions governing the use by the agency of the proceeds of
18 the public securities issued by a public entity for a purpose
19 described by this section.

20 (d) A contract or other official action described by
21 Subsection (c) may include provisions with respect to, and
22 conclusively establish sufficient consideration for, the use of the
23 proceeds. The consideration may include the right to:

24 (1) use the financed facilities or portions of the
25 facilities;

26 (2) receive output from the financed facilities; or

27 (3) receive an ownership interest in the financed

1 facilities upon the dissolution of the agency or an undivided
2 interest in the financed facilities at the time a public entity
3 funds facility improvements.

4 (e) A contract or other official action described by
5 Subsection (c) may contain other terms and extend for any period on
6 which all of the parties agree.

7 (f) A public security issued for the purposes described by
8 this section may include:

9 (1) debt obligations issued in accordance with Chapter
10 1207, 1331, 1371, 1431, or 1502, Government Code, or Chapter 271,
11 Local Government Code; or

12 (2) other types or forms of debt that the public entity
13 is authorized to issue.

14 (g) Each participating public entity may exercise any power
15 of an issuer under Chapter 1371, Government Code.

16 Sec. 163.090. DISSOLUTION. (a) The participating public
17 entities of an agency may by concurrent ordinance dissolve the
18 agency.

19 (b) Concurrent ordinances dissolving an agency must:

20 (1) contain identical provisions;

21 (2) state that the agency will be dissolved upon the
22 winding up of agency affairs;

23 (3) direct the board or boards of the agency to wind up
24 the business and affairs of the agency and to inform the
25 participating public entities by resolution when the winding up of
26 the business and affairs of the agency is complete; and

27 (4) state the date on which the dissolution takes

1 effect, provided that the date provides sufficient time for the
2 board or boards of the agency to wind up agency affairs.

3 (c) The participating public entities may not dissolve an
4 agency if the dissolution will impair the rights or remedies of
5 holders of obligations issued by the agency.

6 (d) The dissolved agency continues to exist to:

7 (1) satisfy existing liabilities or obligations;

8 (2) collect, distribute, or liquidate its assets; and

9 (3) take any other action required to adjust and wind
10 up its business and affairs.

11 (e) The assets of the dissolved agency that remain after all
12 liabilities or obligations of the agency have been satisfied shall
13 be distributed to the public entities that created the agency. The
14 public entities shall establish the method of distribution by
15 agreement.

16 (f) An agreement between a public entity and an agency
17 entered into before September 1, 2015, regarding the distribution
18 of the agency's assets after dissolution is enforceable according
19 to the terms of the agreement, regardless of a provision to the
20 contrary in this subchapter.

21 SECTION 4. The changes in law made by this Act apply only to
22 a transmission facility for which construction began on or after
23 the effective date of this Act.

24 SECTION 5. This Act takes effect September 1, 2015.