

By: Fraser

S.B. No. 776

A BILL TO BE ENTITLED

AN ACT

relating to the operations of a municipally owned utility or municipal power agency; affecting a provision that is subject to criminal penalties; 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) and (h) to read as follows:

(g) A municipally owned utility or a municipal power agency created under Subchapter B, 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

1 megawatts of capacity.

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

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

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

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

15 Sec. 35.009. AMOUNTS PAID IN LIEU OF AD VALOREM TAXES FOR
16 CERTAIN FACILITIES. A municipally owned utility that is required
17 to apply for a certificate of public convenience and necessity to
18 construct, install, or extend a transmission facility within ERCOT
19 under Chapter 37 is entitled to recover, through the utility's
20 wholesale transmission rate, reasonable payments made to a taxing
21 entity in lieu of ad valorem taxes on that transmission facility,
22 provided that:

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

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

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

8 SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER
9 AGENCIES

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

16 (3) "Concurrent ordinance" means an ordinance or order
17 adopted under this subchapter by all of the participating public
18 entities of an agency.

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

(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.

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;

(2) political subdivision of this state; and

(3) political entity and corporate body.

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

Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES.

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

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

(2) remove a public entity from participation in the

1 agency.

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

4 (1) contain identical provisions;

5 (2) define the boundaries of the agency to include the
6 territory within the boundaries of each participating public
7 entity;

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

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

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

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

14 (a) Public entities may not adopt concurrent ordinances under
15 Section 163.076 adding a participating public entity unless the
16 addition has been approved by a majority of the qualified voters of
17 the additional public entity at an election called and held for that
18 purpose.

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

22 (1) the Election Code;

23 (2) Chapter 1251, Government Code; and

24 (3) this subchapter.

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

27 (b) The board is responsible for the management, operation,

1 and control of the property belonging to the agency.

2 (c) The board may by resolution delegate management or
3 operational authority to an officer, employee, or committee of the
4 agency, except that the delegation may not include legislative
5 functions, including the sale or purchase of agency properties, the
6 exercise of the power of eminent domain, the adoption or amendment
7 of budgets and rates, or the issuance of debt. The board may repeal
8 a resolution delegating management or operational authority:

9 (1) if the board is composed of six or more directors,
10 by the affirmative vote of six directors, including the affirmative
11 vote of at least one director appointed by each participating
12 public entity; or

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

16 (d) The board must include at least four directors. Each
17 director must be appointed by place by the governing bodies of the
18 participating public entities. Each participating public entity is
19 entitled to appoint at least one director.

20 (e) Directors must serve staggered terms. Successor
21 directors are appointed in the same manner as the original
22 appointees.

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

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

27 (2) an employee, officer, or member of the governing

1 body of the appointing public entity; or

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

4 (g) Except as provided by Subsections (h) and (i), an
5 employee, officer, or member of the governing body of a
6 participating public entity serving as a director may not have a
7 personal interest in a contract executed by the agency other than as
8 an employee, officer, or member of the governing body of the public
9 entity.

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

14 (i) An agency and a participating public entity are
15 considered to be political subdivisions for the purposes of Section
16 [131.903](#), Local Government Code.

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

21 (k) A director serves at the discretion of the appointing
22 public entity. The governing body of a public entity that appoints
23 a director may remove the director from office at any time with or
24 without cause. The governing body shall promptly appoint a new
25 director to serve the remainder of the unexpired term of the removed
26 director.

27 Sec. 163.079. SEPARATE BOARDS OF DIRECTORS. (a) The

public entities that created or re-created an agency may amend the creating concurrent ordinances to provide for the agency to be governed by one board of directors for the agency's generation system and another board of directors for the agency's transmission system.

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

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

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

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

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

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

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

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

(A) a participating public entity; or

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

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

1 (b) The agency may:

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

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

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

7 (B) department, agency, or political subdivision
8 of this state; or

9 (C) public or private person;

10 (3) use the uniform system of accounts prescribed for
11 utilities and licenses by the Federal Energy Regulatory Commission;
12 and

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

15 (c) The agency may sell, lease, convey, or otherwise dispose
16 of any right, interest, or property of the agency, including its
17 electric facilities. A sale, lease, conveyance, or other
18 disposition having a value of more than \$10 million shall require
19 prior approval of each participating public entity, unless the
20 public entities have agreed otherwise by written contract or the
21 property was purchased by the agency for mining purposes.

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

26 (b) The agency shall publish notice of intent to receive
27 bids once a week for two consecutive weeks in a newspaper of general

circulation in this state. The first publication must appear before the 14th day before the date bids are to be received.

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

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

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

(1) purchase electric energy from the agency;

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

or

(3) exchange electric energy with the agency.

(c) An entity payment for electric energy purchased from the agency is an operating expense of the entity's electric system.

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

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

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

(2) be based on periodic cost of service studies and

subject to modification, unless such a basis for rates and charges is waived by the purchaser by contract; and

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

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

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

(1) limit or alter the power of an agency to establish and collect rates and charges under this section sufficient to pay:

(A) necessary operational and maintenance expenses;

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

(C) sinking funds and reserve fund payments; and

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

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

Sec. 163.084. REVENUE BONDS. (a) The agency may issue

1 revenue bonds to accomplish the purposes of the agency.

2 (b) The agency may pledge to the payment of the obligations
3 the revenues of all or part of its electric facilities, including
4 facilities acquired after the obligations are issued. However,
5 operating and maintenance expenses, including salaries and labor,
6 materials, and repairs of electric facilities necessary to render
7 efficient service, constitute a first lien on and charge against
8 the pledged revenue.

9 (c) The agency may set aside from the proceeds from the sale
10 of the obligations amounts for payment into the interest and
11 sinking fund and reserve fund, and for interest and operating
12 expenses during construction and development, as specified in the
13 proceedings authorizing the obligations.

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

17 (e) Agency obligations are authorized investments for:

- 18 (1) a bank;
19 (2) a savings bank;
20 (3) a trust company;
21 (4) a savings and loan association; and
22 (5) an insurance company.

23 (f) The obligations, when accompanied by all appurtenant,
24 unmatured coupons and to the extent of the lesser of their face
25 value or market value, are eligible to secure the deposit of public
26 funds of this state, a political subdivision of this state, and any
27 other political corporation of this state.

1 Sec. 163.085. REFUNDING BONDS. The agency may issue
2 refunding bonds.

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

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

8 (b) The bonds:

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

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

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

16 (c) The bonds must be signed by the presiding officer or
17 assistant presiding officer of the agency, be attested by the
18 secretary, and bear the seal of the agency. The signatures may be
19 printed on the bonds if authorized by the agency, and the seal may
20 be impressed or printed on the bonds. The agency may adopt or use
21 for any purpose the signature of an individual who has been an
22 officer of the agency, regardless of whether the individual has
23 ceased to be an officer at the time the bonds are delivered to the
24 purchaser.

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

1 (b) Nonnegotiable purchase money notes are:

2 (1) payable in installments;

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

5 (3) not a security or agency obligation.

6 (c) Nonnegotiable purchase money notes may be further
7 secured by a promise to issue bonds or bond anticipation notes to
8 pay the purchase money notes.

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

11 (1) for any purpose for which the agency may issue
12 bonds; or

13 (2) to refund previously issued bond anticipation
14 notes or nonnegotiable purchase money notes.

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

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

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

24 (b) A public entity may issue public securities, as defined
25 by Section 1201.002(2), Government Code, including bonds, notes, or
26 other forms of indebtedness, in the principal amount approved by
27 the governing body of the public entity, for the purpose of

financing electric facilities or improvements to electric facilities to be owned or operated by the agency or otherwise in furtherance of a purpose described by this section.

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

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

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

(2) receive output from the financed facilities; or

(3) receive an ownership interest in the financed facilities upon the dissolution of the agency or an undivided interest in the financed facilities at the time a public entity funds facility improvements.

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

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

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

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

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

5 Sec. 163.090. DISSOLUTION. (a) The participating public
6 entities of an agency may by concurrent ordinance dissolve the
7 agency.

8 (b) Concurrent ordinances dissolving an agency must:

9 (1) contain identical provisions;

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

12 (3) direct the board or boards of the agency to wind up
13 the business and affairs of the agency and to inform the
14 participating public entities by resolution when the winding up of
15 the business and affairs of the agency is complete; and

16 (4) state the date on which the dissolution takes
17 effect, provided that the date provides sufficient time for the
18 board or boards of the agency to wind up agency affairs.

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

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

23 (1) satisfy existing liabilities or obligations;

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

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

27 (e) The assets of the dissolved agency that remain after all

1 liabilities or obligations of the agency have been satisfied shall
2 be distributed to the public entities that created the agency. The
3 public entities shall establish the method of distribution by
4 agreement.

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

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

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