

By: Estes

S.B. No. 745

A BILL TO BE ENTITLED

AN ACT

relating to the governance of certain municipal power agencies;
providing authority to issue bonds.

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

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

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

Sec. 163.071. DEFINITIONS. In this subchapter:

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

(2) "Bond" includes a note, but does not include a
nonnegotiable purchase money note issued under Section 163.067 or
163.087.

(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

1 predecessor statute.

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

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

7 (1) contain identical provisions; and

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

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

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

16 (2) a home-rule charter provision.

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

18 (1) separate municipal corporation;

19 (2) political subdivision of this state; and

20 (3) political entity and corporate body.

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

24 Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES. (a)
25 The public entities that created or re-created an agency may by
26 concurrent ordinances:

27 (1) add a new public entity as a participating public

1 entity in the agency; or

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

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

6 (1) contain identical provisions;

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

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

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

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

15 Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY. (a)
16 Public entities may not adopt concurrent ordinances under Section
17 163.076 adding a participating public entity unless the addition
18 has been approved by a majority of the qualified voters of the
19 additional public entity at an election called and held for that
20 purpose.

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

24 (1) the Election Code;

25 (2) Chapter 1251, Government Code; and

26 (3) this subchapter.

27 Sec. 163.078. BOARD OF DIRECTORS. (a) The agency shall be

1 governed by a board of directors.

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

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

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

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

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

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

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

27 (1) a qualified voter and reside in the boundaries of

1 the appointing public entity;

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

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

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

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

16 (i) An agency and a participating public entity are
17 considered to be political subdivisions for the purposes of Section
18 131.903, Local Government Code.

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

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

1 director.

2 Sec. 163.079. SEPARATE BOARDS OF DIRECTORS. (a) The public
3 entities that created or re-created an agency may amend the
4 creating concurrent ordinances to provide for the agency to be
5 governed by one board of directors for the agency's generation
6 system and another board of directors for the agency's transmission
7 system.

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

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

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

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

16 (3) the repeal of a resolution under Section
17 163.078(c) does not require approval by at least one director
18 appointed by each participating public entity.

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

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

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

25 (A) a participating public entity; or

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

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

3 (b) The agency may:

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

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

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

9 (B) department, agency, or political subdivision
10 of this state; or

11 (C) public or private person;

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

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

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

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

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

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

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

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

- 14 (1) purchase electric energy from the agency;
15 (2) sell or dispose of electric energy to the agency;

16 or

- 17 (3) exchange electric energy with the agency.

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

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

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

- 27 (1) be reasonable and in accordance with prudent

1 utility practices;

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

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

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

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

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

20 (A) necessary operational and maintenance
21 expenses;

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

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

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

27 (2) take any action that will impair the rights or

1 remedies of the holders of the obligations.

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

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

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

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

19 (e) Agency obligations are authorized investments for:

20 (1) a bank;

21 (2) a savings bank;

22 (3) a trust company;

23 (4) a savings and loan association; and

24 (5) an insurance company.

25 (f) The obligations, when accompanied by all appurtenant,
26 unmatured coupons and to the extent of the lesser of their face
27 value or market value, are eligible to secure the deposit of public

1 funds of this state, a political subdivision of this state, and any
2 other political corporation of this state.

3 Sec. 163.085. REFUNDING BONDS. The agency may issue
4 refunding bonds.

5 Sec. 163.086. ISSUANCE, FORM, AND PROVISIONS OF BONDS. (a)
6 Agency bonds that are payable from agency revenues or anticipated
7 bond proceeds and the records relating to their issuance must be
8 submitted to the attorney general for examination before delivery.

9 (b) The bonds:

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

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

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

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

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

1 or fuel resources.

2 (b) Nonnegotiable purchase money notes are:

3 (1) payable in installments;

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

6 (3) not a security or agency obligation.

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

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

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

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

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

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

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

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

1 the governing body of the public entity, for the purpose of
2 financing electric facilities or improvements to electric
3 facilities to be owned or operated by the agency or otherwise in
4 furtherance of a purpose described by this section.

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

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

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

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

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

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

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

26 (1) debt obligations issued in accordance with Chapter
27 1207, 1331, 1371, 1431, or 1502, Government Code, or Chapter 271,

1 Local Government Code; or

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

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

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

9 (b) Concurrent ordinances dissolving an agency must:

10 (1) contain identical provisions;

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

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

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

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

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

24 (1) satisfy existing liabilities or obligations;

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

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

1 (e) The assets of the dissolved agency that remain after all
2 liabilities or obligations of the agency have been satisfied shall
3 be distributed to the public entities that created the agency. The
4 public entities shall establish the method of distribution by
5 agreement.

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

11 SECTION 2. This Act takes effect September 1, 2015.