

By: King of Parker

H.B. No. 1228

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the phaseout and repeal of the miscellaneous gross
3 receipts tax on utility companies; decreasing the rates of the tax.

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

5 ARTICLE 1. CHANGES EFFECTIVE DURING PHASEOUT OF TAX

6 SECTION 1.01. Effective September 1, 2020, Sections
7 447.013(d) and (e), Government Code, are amended to read as
8 follows:

9 (d) The account consists of:

10 (1) [~~a sub-account in the account that consists of the~~
11 ~~proceeds of bonds issued under Subsection (j)~~];

12 [~~(2)~~] revenues allocated to the account under former
13 Section 182.122(b) [~~182.122~~], Tax Code, before September 1, 2020;

14 (2) [~~(3)~~] any amount appropriated by the legislature
15 for the account;

16 (3) [~~(4)~~] gifts, grants, and other donations received
17 for the account; and

18 (4) [~~(5)~~] interest earned on the investment of money
19 in the account.

20 (e) Money in the account may be appropriated only to the
21 State Energy Conservation Office to award grants or to make or
22 guarantee loans under this section. The total amount of grants that
23 may be awarded under this section in any state fiscal biennium from
24 revenues described by Subsection (d)(1) [~~(d)(2)~~] may not exceed \$20

1 million. The total amount of loans that may be made or guaranteed
2 under this section in any state fiscal biennium from revenues
3 described by Subsection (d)(1) [~~(d)(2)~~] may not exceed \$10 million.

4 SECTION 1.02. (a) Section 182.022(b), Tax Code, is amended
5 to read as follows:

6 (b) The tax rates are:

7 (1) .465 [~~.581~~] percent of the gross receipts from
8 business done in an incorporated city or town having a population of
9 more than 1,000 but less than 2,500 [~~, according to the last federal~~
10 ~~census next preceding the filing of the report~~];

11 (2) .856 [~~1.07~~] percent of the gross receipts from
12 business done in an incorporated city or town having a population of
13 2,500 or more but less than 10,000 [~~, according to the last federal~~
14 ~~census next preceding the filing of the report~~]; and

15 (3) 1.598 [~~1.997~~] percent of the gross receipts from
16 business done in an incorporated city or town having a population of
17 10,000 or more [~~, according to the last federal census next~~
18 ~~preceding the filing of the report~~].

19 (b) This section applies only to a gross receipts tax report
20 due on or after January 31, 2018.

21 SECTION 1.03. (a) Effective October 1, 2018, Section
22 182.022(b), Tax Code, is amended to read as follows:

23 (b) The tax rates are:

24 (1) .349 [~~.581~~] percent of the gross receipts from
25 business done in an incorporated city or town having a population of
26 more than 1,000 but less than 2,500 [~~, according to the last federal~~
27 ~~census next preceding the filing of the report~~];

1 (2) .642 [~~1.07~~] percent of the gross receipts from
2 business done in an incorporated city or town having a population of
3 2,500 or more but less than 10,000[~~, according to the last federal~~
4 ~~census next preceding the filing of the report~~]; and

5 (3) 1.198 [~~1.997~~] percent of the gross receipts from
6 business done in an incorporated city or town having a population of
7 10,000 or more[~~, according to the last federal census next~~
8 ~~preceding the filing of the report~~].

9 (b) This section applies only to a gross receipts tax report
10 due on or after January 31, 2019.

11 SECTION 1.04. (a) Effective October 1, 2019, Section
12 [182.022](#)(b), Tax Code, is amended to read as follows:

13 (b) The tax rates are:

14 (1) .232 [~~.581~~] percent of the gross receipts from
15 business done in an incorporated city or town having a population of
16 more than 1,000 but less than 2,500[~~, according to the last federal~~
17 ~~census next preceding the filing of the report~~];

18 (2) .428 [~~1.07~~] percent of the gross receipts from
19 business done in an incorporated city or town having a population of
20 2,500 or more but less than 10,000[~~, according to the last federal~~
21 ~~census next preceding the filing of the report~~]; and

22 (3) .799 [~~1.997~~] percent of the gross receipts from
23 business done in an incorporated city or town having a population of
24 10,000 or more[~~, according to the last federal census next~~
25 ~~preceding the filing of the report~~].

26 (b) This section applies only to a gross receipts tax report
27 due on or after January 31, 2020.

1 SECTION 1.05. (a) Effective October 1, 2020, Section
2 182.022(b), Tax Code, is amended to read as follows:

3 (b) The tax rates are:

4 (1) .116 [~~.581~~] percent of the gross receipts from
5 business done in an incorporated city or town having a population of
6 more than 1,000 but less than 2,500 [~~, according to the last federal~~
7 ~~census next preceding the filing of the report~~];

8 (2) .214 [~~1.07~~] percent of the gross receipts from
9 business done in an incorporated city or town having a population of
10 2,500 or more but less than 10,000 [~~, according to the last federal~~
11 ~~census next preceding the filing of the report~~]; and

12 (3) .399 [~~1.997~~] percent of the gross receipts from
13 business done in an incorporated city or town having a population of
14 10,000 or more [~~, according to the last federal census next~~
15 ~~preceding the filing of the report~~].

16 (b) This section applies only to a gross receipts tax report
17 due on or after January 31, 2021.

18 SECTION 1.06. Section 182.122, Tax Code, as effective until
19 September 1, 2020, is amended by adding Subsection (c) to read as
20 follows:

21 (c) In each state fiscal biennium at the time the
22 comptroller makes the allocation required under this section, the
23 comptroller shall determine the difference between the amount of
24 revenue that would be allocated to the foundation school fund under
25 Subsection (a)(1) during that state fiscal biennium if the tax
26 imposed under Section 182.022 were imposed at the rates in effect on
27 September 30, 2017, and the amount of revenue actually allocated to

1 the foundation school fund under Subsection (a)(1) during that
2 biennium. The comptroller shall transfer from the general revenue
3 fund an amount equal to that difference and credit that amount to
4 the foundation school fund. The transfer required by this
5 subsection is in addition to the allocation of revenue to the
6 foundation school fund under Subsection (a).

7 SECTION 1.07. Section 182.122, Tax Code, as effective
8 September 1, 2020, is amended to read as follows:

9 Sec. 182.122. ALLOCATION OF TAX. (a) Revenues collected
10 under this chapter are allocated:

11 (1) one-fourth to the foundation school fund; and

12 (2) three-fourths to the general revenue fund.

13 (b) In each state fiscal biennium at the time the
14 comptroller makes the allocation required under this section, the
15 comptroller shall determine the difference between the amount of
16 revenue that would be allocated to the foundation school fund under
17 Subsection (a)(1) during that state fiscal biennium if the tax
18 imposed under Section 182.022 were imposed at the rates in effect on
19 September 30, 2017, and the amount of revenue actually allocated to
20 the foundation school fund under Subsection (a)(1) during that
21 biennium. The comptroller shall transfer from the general revenue
22 fund an amount equal to that difference and credit that amount to
23 the foundation school fund. The transfer required by this
24 subsection is in addition to the allocation of revenue to the
25 foundation school fund under Subsection (a).

26 SECTION 1.08. Subchapter E, Chapter 36, Utilities Code, is
27 amended by adding Section 36.2025 to read as follows:

1 Sec. 36.2025. ADJUSTMENT FOR CHANGES IN GROSS RECEIPTS TAX
2 LIABILITY. (a) The commission shall provide in a rate case under
3 Subchapter C or D for the prospective adjustment of an electric
4 utility's billing to reflect a decrease in the utility's tax
5 liability to this state if the decrease results from a reduction in
6 a rate of the miscellaneous gross receipts tax imposed under
7 Chapter 182, Tax Code, before October 1, 2021, or from the repeal of
8 that chapter.

9 (b) The commission shall make an adjustment described by
10 Subsection (a) in the first rate case that begins after a decrease
11 in tax liability occurs. The adjustment remains effective only
12 until a subsequent adjustment under this section.

13 SECTION 1.09. Subchapter G, Chapter 104, Utilities Code, is
14 amended by adding Section 104.302 to read as follows:

15 Sec. 104.302. ADJUSTMENT FOR CHANGES IN GROSS RECEIPTS TAX
16 LIABILITY. (a) The regulatory authority shall provide for the
17 adjustment of a gas utility's billing to reflect a decrease in the
18 utility's tax liability to this state if the decrease results from a
19 reduction in a rate of the miscellaneous gross receipts tax imposed
20 under Chapter 182, Tax Code, before October 1, 2021, or from the
21 repeal of that chapter.

22 (b) Each adjustment described by Subsection (a):

23 (1) shall be made effective at the same time as the
24 decrease of tax liability or as soon after that decrease occurs as
25 is reasonably practicable; and

26 (2) remains effective only until a subsequent
27 adjustment under this section.

1 (c) This section does not apply to a gas utility if the
2 regulatory authority enters an order for the utility under
3 Subchapter C or D that accounts for the reduction or repeal of tax
4 liability described by Subsection (a).

5 (d) An adjustment under this section is not a rate case
6 under Subchapter C or D.

7 SECTION 1.10. Subchapter F, Chapter 13, Water Code, is
8 amended by adding Section 13.1885 to read as follows:

9 Sec. 13.1885. ADJUSTMENT FOR CHANGES IN GROSS RECEIPTS TAX
10 LIABILITY. (a) The regulatory authority shall provide for the
11 adjustment of a utility's billing to reflect a decrease in the
12 utility's tax liability to this state if the decrease results from a
13 reduction in a rate of the miscellaneous gross receipts tax imposed
14 under Chapter 182, Tax Code, before October 1, 2021, or from the
15 repeal of that chapter.

16 (b) Each adjustment described by Subsection (a):

17 (1) shall be made effective at the same time as the
18 decrease of tax liability or as soon after that decrease occurs as
19 is reasonably practicable; and

20 (2) remains effective only until a subsequent
21 adjustment under this section.

22 (c) This section does not apply to a utility if the
23 regulatory authority determines the utility's rates by an order
24 issued under this subchapter for the utility that accounts for the
25 reduction or repeal of tax liability described by Subsection (a).

26 (d) An adjustment under this section is an uncontested
27 matter not subject to a contested case hearing. An adjustment under

1 this section is not a rate case.

2 ARTICLE 2. REPEAL OF TAX ON OCTOBER 1, 2021, AND CHANGES EFFECTIVE
3 ON REPEAL OF TAX

4 SECTION 2.01. (a) The following provisions of the Tax Code
5 are repealed:

- 6 (1) the heading to Chapter 182;
- 7 (2) the headings to Subchapters B and C, Chapter 182;
- 8 (3) Sections 182.021, 182.022, 182.023, and 182.027;
- 9 (4) Subchapters E, F, and G, Chapter 182; and
- 10 (5) Section 191.089.

11 (b) The repeal by this section of the provisions of Chapter
12 182, Tax Code, listed in Subsection (a) of this section does not
13 affect the taxes imposed under that chapter before the effective
14 date of this article. The provisions of Chapter 182 in effect
15 immediately before the effective date of this article that relate
16 to the collection and enforcement of the taxes accruing before the
17 effective date of this article and to the allocation of revenue from
18 those taxes are continued in effect for purposes of collecting and
19 enforcing those taxes, including enforcing the requirements to file
20 tax reports and make tax payments on or before October 31, 2021, and
21 allocating revenue from those taxes.

22 (c) The repeal by this section of the provisions of Chapter
23 182, Tax Code, listed in Subsection (a) and Section 191.089, Tax
24 Code, does not affect the imposition of a penalty under Chapter 182,
25 Tax Code, for conduct occurring before the effective date of this
26 article. For purposes of this subsection, conduct occurs before
27 the effective date of this article if any element of the conduct

1 subject to the imposition of the penalty occurs before that date.
2 Conduct occurring before the effective date of this article is
3 governed by the law in effect when the conduct occurred, and the
4 former law is continued in effect for that purpose.

5 SECTION 2.02. Section 91.904, Natural Resources Code, is
6 amended to read as follows:

7 Sec. 91.904. CONSTRUCTION OF SUBCHAPTER. This subchapter
8 may not be construed to:

9 (1) limit the authority of a saltwater pipeline
10 facility to use a public right-of-way under any other law;

11 (2) affect the authority of a municipality to:

12 (A) regulate the use of a public right-of-way by
13 a saltwater pipeline operator under any other law; or

14 (B) require payment of any applicable charge
15 under Section 253.003, Utilities [~~182.025, Tax~~] Code; or

16 (3) require a county or municipality to:

17 (A) grant a right to a saltwater pipeline
18 operator that applies to a public road or right-of-way and that is
19 broader than the county's or municipality's legal interest in the
20 public road or right-of-way; or

21 (B) grant more than a surface right to a
22 saltwater pipeline operator in a right-of-way acquired by
23 prescription.

24 SECTION 2.03. Section 37.101(d), Utilities Code, is amended
25 to read as follows:

26 (d) This section does not:

27 (1) limit the power of a city, town, or village to

1 incorporate or of a municipality to extend its boundaries by
2 annexation; or

3 (2) prohibit a municipality from levying a tax or
4 other special charge for the use of the streets as authorized by
5 Section 253.003 [~~182.025, Tax Code~~].

6 SECTION 2.04. Section 41.005, Utilities Code, is amended to
7 read as follows:

8 Sec. 41.005. LIMITATION ON MUNICIPAL AUTHORITY.
9 Notwithstanding any other provision of this title, a municipality
10 may not directly or indirectly regulate the rates, operations, and
11 services of an electric cooperative, except, with respect to
12 operations, to the extent necessary to protect the public health,
13 safety, or welfare. This section does not prohibit a municipality
14 from making a lawful charge for the use of public rights-of-way
15 within the municipality as provided by Sections [~~Section 182.025,~~
16 ~~Tax Code, and Section~~] 33.008 and 253.003. An electric cooperative
17 shall be an electric utility for purposes of Sections [~~Section~~
18 ~~182.025, Tax Code, and Section~~] 33.008 and 253.003.

19 SECTION 2.05. Section 121.2025(a), Utilities Code, is
20 amended to read as follows:

21 (a) Except as otherwise provided by this section or Section
22 253.003 [~~182.025, Tax Code~~], a municipality may not assess a charge
23 for the placement, construction, maintenance, repair, replacement,
24 operation, use, relocation, or removal of a gas pipeline facility
25 on, along, under, or across a public road, highway, street, alley,
26 stream, canal, or other public way.

27 SECTION 2.06. Section 121.211(g), Utilities Code, is

1 amended to read as follows:

2 (g) Each operator of a natural gas distribution system and
3 each natural gas master meter operator shall recover as a surcharge
4 to its existing rates the amounts paid to the commission under this
5 section. Amounts collected under this subsection by an
6 investor-owned natural gas distribution system or a cooperatively
7 owned natural gas distribution system shall not be included in the
8 revenue or gross receipts of the company for the purpose of
9 calculating municipal franchise fees or any tax imposed under
10 [~~Subchapter B, Chapter 182, Tax Code, or under~~] Chapter 122 or
11 Section 253.003. Those amounts are not subject to a sales and use
12 tax imposed by Chapter 151, Tax Code, or Subtitle C, Title 3, Tax
13 Code.

14 SECTION 2.07. Section 181.005(b), Utilities Code, is
15 amended to read as follows:

16 (b) The right granted by Subsection (a) relating to the use
17 of a municipal street or alley is subject to the payment of charges
18 in accordance with Sections [~~Section~~] 121.2025 and 253.003 [~~of this~~
19 ~~code and Sections 182.025 and 182.026, Tax Code~~].

20 SECTION 2.08. Section 181.047(d), Utilities Code, is
21 amended to read as follows:

22 (d) This section does not prohibit a municipality from
23 imposing a tax or special charge for the use of a street as
24 authorized by [~~Subchapter B,~~] Chapter 253 [~~182, Tax Code~~].

25 SECTION 2.09. (a) Title 5, Utilities Code, is amended by
26 adding Chapter 253 to read as follows:

27 CHAPTER 253. TAXES AND CHARGES IMPOSED ON OR PROHIBITED FROM BEING

1 IMPOSED ON CERTAIN UTILITIES LOCATED IN INCORPORATED AREAS

2 Sec. 253.001. DEFINITIONS. (a) In this chapter:

3 (1) "Business" means the provision of gas,
4 electricity, or water.

5 (2) "Distribution service" has the meaning assigned by
6 Section 33.008.

7 (3) "Electric utility" has the meaning assigned by
8 Section 31.002.

9 (4) "Public utility" means:

10 (A) a person who owns or operates a gas or water
11 works or water plant used for local sale and distribution located in
12 an incorporated city or town in this state; or

13 (B) an electric utility or transmission and
14 distribution utility providing distribution service in an
15 incorporated city or town in this state.

16 (5) "Transmission and distribution utility" has the
17 meaning assigned by Section 31.002.

18 (6) "Utility company" means, except as provided by
19 Subsection (b), a person:

20 (A) who owns or operates a gas or water works or
21 water plant used for local sale and distribution located in an
22 incorporated city or town in this state; or

23 (B) who owns or operates an electric light or
24 electric power works or light plant used for local sale and
25 distribution located in an incorporated city or town in this state,
26 or who is a retail electric provider, as that term is defined in
27 Section 31.002, including a retail electric provider owned,

1 operated, or controlled by an electric cooperative, that makes
2 local sales in an incorporated city or town in this state.

3 (b) For purposes of this chapter, "utility company" does not
4 include a person who owns an electric light or electric power or gas
5 plant used for distribution but who does not make retail sales to
6 the ultimate consumer in an incorporated city or town in this state.

7 (b) Sections 182.024, 182.025, and 182.026, Tax Code, are
8 transferred to Chapter 253, Utilities Code, as added by this
9 section, redesignated as Sections 253.002, 253.003, and 253.004,
10 Utilities Code, respectively, and amended to read as follows:

11 Sec. 253.002 [182.024]. TAX OR CHARGE BY CERTAIN POLITICAL
12 SUBDIVISIONS. No city or other political subdivision of this state
13 may impose an occupation tax or charge of any sort on a utility
14 company located in an incorporated city or town with a population of
15 more than 1,000 [taxed under this subchapter].

16 Sec. 253.003 [182.025]. CHARGES BY A CITY. (a) An
17 incorporated city or town may make a reasonable lawful charge for
18 the use of a city street, alley, or public way by a public utility in
19 the course of its business.

20 (b) The total charges, however designated or measured, may
21 not exceed two percent of the gross receipts of the public utility
22 for the sale of gas or water within the city.

23 (c) The total charges, however designated or measured,
24 relating to distribution service of an electric utility or
25 transmission and distribution utility within the city may not
26 exceed the amount or amounts prescribed by Section 33.008[
27 ~~Utilities Code~~]. The charges paid by an electric utility or

1 transmission and distribution utility under this subsection may be
2 only for distribution service.

3 (d) If a public utility located in an incorporated city or
4 town with a population of more than 1,000 [~~taxed under this~~
5 ~~subchapter~~] pays a special tax, rental, contribution, or charge
6 under a contract or franchise executed before May 1, 1941, the city
7 shall credit the payment against the amount owed by the public
8 utility on any charge allowable under Subsection (a) [~~of this~~
9 ~~section~~].

10 [~~(c) In this section:~~

11 [~~(1) "Distribution service" has the meaning assigned~~
12 ~~by Section 33.008, Utilities Code.~~

13 [~~(2) "Electric utility" has the meaning assigned by~~
14 ~~Section 31.002, Utilities Code.~~

15 [~~(3) "Public utility" means:~~

16 [~~(A) a person who owns or operates a gas or water~~
17 ~~works or water plant used for local sale and distribution located~~
18 ~~within an incorporated city or town in this state, or~~

19 [~~(B) an electric utility or transmission and~~
20 ~~distribution utility providing distribution service within an~~
21 ~~incorporated city or town in this state.~~

22 [~~(4) "Transmission and distribution utility" has the~~
23 ~~meaning assigned by Section 31.002, Utilities Code.]~~

24 Sec. 253.004 [~~182.026~~]. APPLICABILITY AND EFFECT OF
25 CHAPTER [~~SUBCHAPTER NOT APPLICABLE~~]. (a) This chapter
26 [~~subchapter~~] does not apply to a utility company owned and operated
27 by a city, town, county, water improvement district, or

1 conservation district.

2 (b) This chapter [~~subchapter~~] does not:

3 (1) affect collection of ad valorem taxes; or

4 (2) impair or alter a provision of a contract,
5 agreement, or franchise made between a city and a public utility
6 company relating to a payment made to the city.

7 SECTION 2.10. Section 13.247(c), Water Code, is amended to
8 read as follows:

9 (c) This section may not be construed as limiting the power
10 of municipalities to incorporate or extend their boundaries by
11 annexation, or as prohibiting any municipality from levying taxes
12 and other special charges for the use of the streets as are
13 authorized by Section 253.003, Utilities [~~182.025, Tax~~] Code.

14 ARTICLE 3. EFFECTIVE DATE

15 SECTION 3.01. (a) Except as provided by Subsection (b) of
16 this section, this Act takes effect October 1, 2017.

17 (b) Article 2 of this Act takes effect October 1, 2021.