

By: Guillen

H.B. No. 2701

A BILL TO BE ENTITLED

AN ACT

relating to public utility agencies; providing authority to issue bonds; providing authority to impose assessments.

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

SECTION 1. Section 572.001(3), Local Government Code, is amended to read as follows:

(3) "Public entity" means a political entity or corporate body of this state, including a county, municipality, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, or a water supply or sewer service corporation.

SECTION 2. Section 572.012(a), Local Government Code, is amended to read as follows:

(a) Each participating public entity may:

(1) use the entity's money to plan, acquire, construct, own, operate, and maintain its interest in a facility;

(2) share in the facility;

(3) issue bonds and other securities to raise money for a purpose described by Subdivision (1) in the same manner and to the same extent and subject to the same conditions as would be applicable if the public entity had sole ownership of the facility;

(4) acquire, for the use and benefit of each participating public entity, land, easements, and property for a facility by purchase or by exercising the power of eminent domain;

1 ~~[and]~~

2 (5) transfer or otherwise convey the land, property,
3 or property interest or otherwise have the land, property, or
4 property interest become vested in other participating public
5 entities to the extent and in the manner agreed between the
6 entities;

7 (6) make an acquisition described by Subdivision (4)
8 through a purchase from a public or private entity; and

9 (7) for the use and benefit of each participating
10 public entity, acquire by purchase a public utility, as defined by
11 Section 13.002, Water Code, other than an affected county.

12 SECTION 3. Sections 572.051(2) and (3), Local Government
13 Code, are amended to read as follows:

14 (2) "Obligation" means a ~~[revenue]~~ bond or note
15 secured by a revenue, fee, charge, assessment, or other revenue of
16 an agency available for that purpose.

17 (3) "Public utility agency" means an agency created
18 under this subchapter by two or more public entities to acquire,
19 plan, finance, construct, own, operate, or maintain facilities.

20 SECTION 4. Sections 572.052(c) and (d), Local Government
21 Code, are amended to read as follows:

22 (c) A public utility agency is a:

23 (1) separate agency;

24 (2) political subdivision of this state; ~~[and]~~

25 (3) political entity and corporate body; and

26 (4) retail public utility for the purposes of Chapter
27 13, Water Code.

1 (d) A public utility agency may not impose a tax but has all
2 the other powers and obligations that are related to facilities and
3 that are provided by law to a municipality that owns a facility,
4 except as provided by Section 572.061.

5 SECTION 5. Section 572.053, Local Government Code, is
6 amended to read as follows:

7 Sec. 572.053. CHANGES IN PUBLIC ENTITIES PARTICIPATING IN
8 PUBLIC UTILITY AGENCY. (a) The public entities that participate in
9 a public utility agency may by concurrent ordinances add a public
10 entity to, or delete a public entity from, participation in the
11 public utility agency.

12 (b) A participating public entity may withdraw from a public
13 utility agency by providing an ordinance or resolution of the
14 governing body of the participating public entity to the agency not
15 later than the 180th day before the proposed date of withdrawal. A
16 participating public entity may not withdraw from a public utility
17 agency under this subsection if bonds, notes, or other obligations
18 of the agency are secured by the revenues of the participating
19 public entity, unless the agency adopts a resolution approving the
20 withdrawal. Upon withdrawal, a participating public entity assumes
21 the outstanding debt attributable to that entity from the agency on
22 a prorated basis equal to that entity's benefit and has, without
23 compensation from the agency, no further rights, duties, or
24 obligations relating to the agency or ability to receive service
25 from the facilities of the agency.

26 SECTION 6. Section 572.058, Local Government Code, is
27 amended by amending Subsection (b) and adding Subsection (c) to

1 read as follows:

2 (b) A public utility agency may:

3 (1) perform any act necessary to the full exercise of
4 the agency's powers, including acts necessary to acquire, finance,
5 own, operate, or manage a facility of the agency;

6 (2) enter into a contract, lease, or agreement,
7 including an interlocal contract as authorized by Chapter 791,
8 Government Code, with or accept a grant or loan from any of the
9 following entities for the management and operation of an agency
10 facility or the acquisition, construction, financing, maintenance,
11 operation, provision, or receipt of a facility, service, or product
12 [a]:

13 (A) a department or agency of the United States;

14 (B) a department, agency, or municipality or
15 other political subdivision of this state; or

16 (C) a public or private corporation or person;

17 (3) sell, lease, convey, or otherwise dispose of all
18 or a portion of any right, interest, or property the agency
19 considers to be unnecessary for the efficient operation or
20 maintenance of its facilities; and

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

23 (c) Except as limited by a concurrent ordinance under which
24 the public utility agency is created, an agency may exercise any
25 right or power granted by general law to a county or municipality or
26 a district or authority created under Section 59, Article XVI,
27 Texas Constitution, to accomplish the purposes of the agency,

1 including issuing bonds payable from special assessments in the
2 manner provided by Chapter 372. This subsection does not authorize
3 a public utility agency to impose a tax.

4 SECTION 7. Sections 572.061(d) and (e), Local Government
5 Code, are amended to read as follows:

6 (d) Notwithstanding Subsection (a), the Public Utility
7 Commission of Texas has appellate jurisdiction over ~~[the state~~
8 ~~reserves its power to regulate and control]~~ the rates and charges of
9 ~~[by]~~ a public utility agency in the manner provided by Section
10 13.043, Water Code.

11 (e) This ~~[Until obligations issued under this subchapter~~
12 ~~have been paid and discharged, this]~~ state pledges to and agrees
13 with the purchasers and successive holders of ~~[the]~~ obligations
14 issued under this subchapter that in any appeal proceeding
15 regarding the public utility agency conducted under Section 13.043,
16 Water Code, the Public Utility Commission of Texas ~~[it]~~ will ~~[not~~
17 ~~limit or alter the powers of the agency to]~~ establish ~~[and collect]~~
18 rates and charges that will produce revenue sufficient to pay for
19 those items specified in Subsections (a) and (b) and any other
20 obligations of the agency in connection with those items.

21 SECTION 8. Section 572.062, Local Government Code, is
22 amended by amending Subsections (a) and (b) and adding Subsections
23 (b-1) and (b-2) to read as follows:

24 (a) A public utility agency may:
25 (1) issue obligations, including anticipation notes,
26 to accomplish the purposes of the agency; and
27 (2) finance or refund the acquisition, construction,

expansion, and improvement of all or a portion of a facility relating to an agency purpose.

(b) Except as provided by Subsection (b-1), the [The] public utility agency may pledge to the payment of the obligations the revenue of all or part of its facilities, including facilities acquired after the obligations are issued:

(1) revenues received from a public entity by contract as authorized by a concurrent ordinance;

(2) special assessments:

(A) imposed by the agency in the manner provided by Chapter 372; or

(B) imposed by a public entity and provided by contract to the agency; or

(3) any other funds of the agency.

(b-1) Operation [However, —operation] and maintenance expenses, including salaries and labor, materials, and repairs of facilities necessary to render efficient service, are a first lien on and charge against the pledged revenue.

(b-2) A public utility agency may not use a facility owned by the agency to secure or collateralize a new facility without the approval by resolution of each participating public entity participating in the joint financing of the new facility. This subsection does not apply to the use of revenue from a facility owned by the agency to secure or collateralize a new facility.

SECTION 9. Subchapter C, Chapter 572, Local Government Code, is amended by adding Section 572.065 to read as follows:

Sec. 572.065. LIABILITY. Liability for the facilities and

1 management of the agency must be transferred to the agency on
2 ownership of the facilities by the agency.

3 SECTION 10. Section 13.002, Water Code, is amended by
4 adding Subdivision (16-a) and amending Subdivisions (19) and (23)
5 to read as follows:

6 (16-a) "Public utility agency" means a public utility
7 agency created under Chapter 572, Local Government Code.

8 (19) "Retail public utility" means any person,
9 corporation, public utility, water supply or sewer service
10 corporation, municipality, public utility agency, political
11 subdivision or agency operating, maintaining, or controlling in
12 this state facilities for providing potable water service or sewer
13 service, or both, for compensation.

14 (23) "Water and sewer utility," "public utility," or
15 "utility" means any person, corporation, cooperative corporation,
16 affected county, or any combination of these persons or entities,
17 other than a municipal corporation, public utility agency, water
18 supply or sewer service corporation, or ~~a~~ political subdivision
19 of the state, except an affected county, or their lessees,
20 trustees, and receivers, owning or operating for compensation in
21 this state equipment or facilities for the transmission, storage,
22 distribution, sale, or provision of potable water to the public or
23 for the resale of potable water to the public for any use or for the
24 collection, transportation, treatment, or disposal of sewage or
25 other operation of a sewage disposal service for the public, other
26 than equipment or facilities owned and operated for either purpose
27 by a municipality or other political subdivision of this state or a

1 water supply or sewer service corporation, but does not include any
2 person or corporation not otherwise a public utility that furnishes
3 the services or commodity only to itself or its employees or tenants
4 as an incident of that employee service or tenancy when that service
5 or commodity is not resold to or used by others.

6 SECTION 11. Section 13.043, Water Code, is amended by
7 amending Subsections (b), (c), and (i) and adding Subsections (i-1)
8 and (j-1) to read as follows:

9 (b) Ratepayers of the following entities may appeal the
10 decision of the governing body of the entity affecting their water,
11 drainage, or sewer rates to the utility commission:

12 (1) a nonprofit water supply or sewer service
13 corporation created and operating under Chapter 67;

14 (2) a utility under the jurisdiction of a municipality
15 inside the corporate limits of the municipality;

16 (3) a municipally owned utility, if the ratepayers
17 reside outside the corporate limits of the municipality, including
18 a decision of a governing body that results in an increase in rates
19 when the municipally owned utility takes over the provision of
20 service to ratepayers previously served by another retail public
21 utility;

22 (4) a district or authority created under Article III,
23 Section 52, or Article XVI, Section 59, of the Texas Constitution
24 that provides water or sewer service to household users;

25 (5) a public utility agency; and

26 (6) [45] a utility owned by an affected county, if the
27 ratepayer's rates are actually or may be adversely affected. For

1 the purposes of this section ratepayers who reside outside the
2 boundaries of the district or authority shall be considered a
3 separate class from ratepayers who reside inside those boundaries.

4 (c) An appeal under Subsection (b) must be initiated by
5 filing a petition for review with the utility commission and the
6 entity providing service within 90 days after the effective day of
7 the rate change or, if appealing under Subdivision (b)(2) or (6)
8 [~~(5)~~], within 90 days after the date on which the governing body of
9 the municipality or affected county makes a final decision. The
10 petition must be signed by the lesser of 10,000 or 10 percent of
11 those ratepayers whose rates have been changed and who are eligible
12 to appeal under Subsection (b).

13 (i) The governing body of a municipally owned utility or a
14 political subdivision, other than a public utility agency, within
15 60 days after the date of a final decision on a rate change, shall
16 provide individual written notice to each ratepayer eligible to
17 appeal who resides outside the boundaries of the municipality or
18 the political subdivision. The notice must include, at a minimum,
19 the effective date of the new rates, the new rates, and the location
20 where additional information on rates can be obtained. The
21 governing body of a municipally owned utility or a political
22 subdivision may provide the notice electronically if the utility or
23 political subdivision has access to a ratepayer's e-mail address.

24 (i-1) The board of directors of a public utility agency,
25 within 60 days after the date of a final decision on a rate change,
26 shall provide individual written notice to each ratepayer eligible
27 to appeal the rates. The notice must include, at a minimum, the

1 effective date of the new rates, the new rates, and the location
2 where additional information on rates can be obtained. The board of
3 directors of the public utility agency may provide the notice
4 electronically if the agency has access to a ratepayer's e-mail
5 address.

6 (j-1) Notwithstanding Subsection (j), in an appeal under
7 this section of a rate charged by a public utility agency, the
8 utility commission shall ensure that the rate complies with Section
9 [572.061](#)(e), Local Government Code.

10 SECTION 12. This Act takes effect immediately if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section [39](#), Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for immediate
14 effect, this Act takes effect September 1, 2023.