

By: Guillen

H.B. No. 1407

Substitute the following for H.B. No. 1407:

By: Martinez

C.S.H.B. No. 1407

A BILL TO BE ENTITLED

AN ACT

relating to the provision of water or sewer service by public entities operating jointly or concurrently; 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

1 facility by purchase or by exercising the power of eminent domain;
2 ~~[and]~~

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

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

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

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

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

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

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

23 (c) A public utility agency is a:

24 (1) separate agency;

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

26 (3) political entity and corporate body; and

27 (4) retail public utility for the purposes of Chapter

1 13, Water Code.

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

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

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

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

27 SECTION 6. Section 572.058, Local Government Code, is

amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A public utility agency may:

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

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

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

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

(C) a public or private corporation or person;

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

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

(c) Except as limited by a concurrent ordinance under which the public utility agency is created, an agency may exercise any right or power granted by general law to a county or municipality or a district or authority created under Section 59, Article XVI,

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

5 SECTION 7. Subchapter C, Chapter 572, Local Government
6 Code, is amended by adding Section 572.0581 to read as follows:

7 Sec. 572.0581. NO POWER OF EMINENT DOMAIN. Except as
8 provided by Section 572.0585, a public utility agency does not have
9 the power of eminent domain.

10 SECTION 8. Sections 572.061(d) and (e), Local Government
11 Code, are amended to read as follows:

12 (d) Notwithstanding Subsection (a), the Public Utility
13 Commission of Texas has appellate jurisdiction over ~~[the state~~
14 ~~reserves its power to regulate and control]~~ the rates and charges of
15 ~~[by]~~ a public utility agency in the manner provided by Section
16 13.043, Water Code.

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

27 SECTION 9. Section 572.062, Local Government Code, is

amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) to read as follows:

(a) A public utility agency may:

(1) issue obligations, including anticipation notes, to accomplish the purposes of the agency; and

(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:

(1) the revenue of all or part of its facilities, including facilities acquired after the obligations are issued;

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

(3) 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

(4) 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 10. Subchapter C, Chapter 572, Local Government Code, is amended by adding Sections 572.065 and 572.066 to read as follows:

Sec. 572.065. LIABILITY. Liability for the facilities and management of the public utility agency must be transferred to the agency on ownership of the facilities by the agency.

Sec. 572.066. INFRASTRUCTURE INVESTMENTS. A public utility agency may create a funding mechanism to jointly invest in and leverage funding for water infrastructure in Texas with the North American Development Bank.

SECTION 11. Chapter 572, Local Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. RECEIVERSHIP AND TEMPORARY MANAGEMENT

Sec. 572.101. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Utility" and "water supply or sewer service corporation" have the meanings assigned by Section 13.002, Water Code.

(3) "Utility commission" means the Public Utility Commission of Texas.

Sec. 572.102. APPLICABILITY; JURISDICTION. (a) For purposes of this subchapter, a reference in Chapter 13, Water Code, to a person includes a public utility agency.

1 (b) For purposes of this subchapter, the utility commission
2 has the same jurisdiction over a water supply or sewer service
3 corporation that the utility commission has over a utility under
4 Chapter 13, Water Code.

5 Sec. 572.103. RECEIVERSHIP. (a) At the request of the
6 utility commission or the commission, the attorney general shall
7 bring suit for the appointment of a receiver that is a public
8 utility agency in the manner provided by Section 13.412, Water
9 Code, to collect the assets and carry on the business of a utility
10 or water supply or sewer service corporation that:

11 (1) has abandoned operation of its facilities;

12 (2) informs the utility commission or the commission
13 that the owner is abandoning the system;

14 (3) violates a final order of the utility commission
15 or the commission;

16 (4) allows any property owned or controlled by it to be
17 used in violation of a final order of the utility commission or the
18 commission;

19 (5) violates a final judgment issued by a district
20 court in a suit brought by the attorney general under:

21 (A) Chapter 7 or 13, Water Code; or

22 (B) Chapter 341, Health and Safety Code; or

23 (6) violates a final judgment issued by a court in a
24 proceeding to enforce a provision of a permit issued by a
25 groundwater conservation district under Chapter 36, Water Code.

26 (b) To facilitate the regionalization of water and sewer
27 service, the utility commission shall prioritize an application

1 submitted under Section 13.412(g), Water Code, by a public utility
2 agency. The utility commission shall issue an order approving the
3 acquisition proposed in the application not later than the 120th
4 day after the date the utility commission determines the
5 application is complete.

6 Sec. 572.104. TEMPORARY MANAGEMENT. The utility commission
7 or the commission, after providing to the utility or water supply or
8 sewer service corporation notice and an opportunity to be heard by
9 the commissioners at a utility commission or commission meeting,
10 may authorize a public utility agency to temporarily manage and
11 operate a utility or water supply or sewer service corporation in
12 the manner provided by Section 13.4132, Water Code, if the utility
13 or corporation:

14 (1) has discontinued or abandoned operations or the
15 provision of services;

16 (2) has been or is being referred to the attorney
17 general for the appointment of a receiver under Section 572.103;

18 (3) violates a final order of the utility commission
19 or the commission; or

20 (4) allows any property owned or controlled by it to be
21 used in violation of a final order of the utility commission or the
22 commission.

23 SECTION 12. Section 13.002, Water Code, is amended by
24 adding Subdivision (16-a) and amending Subdivisions (19) and (23)
25 to read as follows:

26 (16-a) "Public utility agency" means a public utility
27 agency created under Chapter 572, Local Government Code.

1 (19) "Retail public utility" means any person,
2 corporation, public utility, water supply or sewer service
3 corporation, municipality, public utility agency, political
4 subdivision or agency operating, maintaining, or controlling in
5 this state facilities for providing potable water service or sewer
6 service, or both, for compensation.

7 (23) "Water and sewer utility," "public utility," or
8 "utility" means any person, corporation, cooperative corporation,
9 affected county, or any combination of these persons or entities,
10 other than a municipal corporation, public utility agency, water
11 supply or sewer service corporation, or ~~a~~ political subdivision
12 of the state, except an affected county, or their lessees,
13 trustees, and receivers, owning or operating for compensation in
14 this state equipment or facilities for the transmission, storage,
15 distribution, sale, or provision of potable water to the public or
16 for the resale of potable water to the public for any use or for the
17 collection, transportation, treatment, or disposal of sewage or
18 other operation of a sewage disposal service for the public, other
19 than equipment or facilities owned and operated for either purpose
20 by a municipality or other political subdivision of this state or a
21 water supply or sewer service corporation, but does not include any
22 person or corporation not otherwise a public utility that furnishes
23 the services or commodity only to itself or its employees or tenants
24 as an incident of that employee service or tenancy when that service
25 or commodity is not resold to or used by others.

26 SECTION 13. Section [13.043](#), Water Code, is amended by
27 amending Subsections (b), (c), and (i) and adding Subsections (i-1)

1 and (j-1) to read as follows:

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

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

7 (2) a utility under the jurisdiction of a municipality
8 inside the corporate limits of the municipality;

9 (3) a municipally owned utility, if the ratepayers
10 reside outside the corporate limits of the municipality, including
11 a decision of a governing body that results in an increase in rates
12 when the municipally owned utility takes over the provision of
13 service to ratepayers previously served by another retail public
14 utility;

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

18 (5) a public utility agency; and

19 (6) [45] a utility owned by an affected county, if the
20 ratepayer's rates are actually or may be adversely affected. For
21 the purposes of this section ratepayers who reside outside the
22 boundaries of the district or authority shall be considered a
23 separate class from ratepayers who reside inside those boundaries.

24 (c) An appeal under Subsection (b) must be initiated by
25 filing a petition for review with the utility commission and the
26 entity providing service within 90 days after the effective day of
27 the rate change or, if appealing under Subdivision (b)(2) or (6)

1 ~~[(5)]~~, within 90 days after the date on which the governing body of
2 the municipality or affected county makes a final decision. The
3 petition must be signed by the lesser of 10,000 or 10 percent of
4 those ratepayers whose rates have been changed and who are eligible
5 to appeal under Subsection (b).

6 (i) The governing body of a municipally owned utility or a
7 political subdivision, other than a public utility agency, within
8 60 days after the date of a final decision on a rate change, shall
9 provide individual written notice to each ratepayer eligible to
10 appeal who resides outside the boundaries of the municipality or
11 the political subdivision. The notice must include, at a minimum,
12 the effective date of the new rates, the new rates, and the location
13 where additional information on rates can be obtained. The
14 governing body of a municipally owned utility or a political
15 subdivision may provide the notice electronically if the utility or
16 political subdivision has access to a ratepayer's e-mail address.

17 (i-1) The board of directors of a public utility agency,
18 within 60 days after the date of a final decision on a rate change,
19 shall provide individual written notice to each ratepayer eligible
20 to appeal the rates. The notice must include, at a minimum, the
21 effective date of the new rates, the new rates, and the location
22 where additional information on rates can be obtained. The board of
23 directors of the public utility agency may provide the notice
24 electronically if the agency has access to a ratepayer's e-mail
25 address.

26 (j-1) Notwithstanding Subsection (j), in an appeal under
27 this section of a rate charged by a public utility agency, the

1 utility commission shall ensure that the rate complies with Section
2 572.061(e), Local Government Code.

3 SECTION 14. Section 13.242, Water Code, is amended by
4 adding Subsection (e) to read as follows:

5 (e) The utility commission may by rule allow a public
6 utility agency that includes a water supply or sewer service
7 corporation as a participant in the agency to render retail water or
8 sewer service without a certificate of public convenience and
9 necessity.

10 SECTION 15. 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, 2025.