

By: Hinojosa of Nueces, et al.
(Guillen)

S.B. No. 1169

A BILL TO BE ENTITLED

AN ACT

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

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 fee, a charge, an assessment, or other revenue of an
16 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(b), Local Government Code, is
27 amended 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.

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

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

SECTION 8. Sections 572.061(d) and (e), Local Government

Code, are amended to read as follows:

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

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

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

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

5 (3) special assessments imposed by a public entity and
6 provided by contract to the agency; or

7 (4) any other funds of the agency.

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

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

18 SECTION 10. Subchapter C, Chapter 572, Local Government
19 Code, is amended by adding Sections 572.065 and 572.066 to read as
20 follows:

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

24 Sec. 572.066. INFRASTRUCTURE INVESTMENTS. A public utility
25 agency may create a funding mechanism to jointly invest in and
26 leverage funding for water infrastructure in Texas with the North
27 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.

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

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

(1) has abandoned operation of its facilities;

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

1 (3) violates a final order of the utility commission
2 or the commission;

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

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

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

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

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

13 (b) To facilitate the regionalization of water and sewer
14 service, the utility commission shall prioritize an application
15 submitted under Section 13.412(g), Water Code, by a public utility
16 agency. The utility commission shall issue an order approving the
17 acquisition proposed in the application not later than the 120th
18 day after the date the utility commission determines the
19 application is complete.

20 Sec. 572.104. TEMPORARY MANAGEMENT. The utility commission
21 or the commission, after providing to the utility or water supply or
22 sewer service corporation notice and an opportunity to be heard by
23 the commissioners at a utility commission or commission meeting,
24 may authorize a public utility agency to temporarily manage and
25 operate a utility or water supply or sewer service corporation in
26 the manner provided by Section 13.4132, Water Code, if the utility
27 or corporation:

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

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

5 (3) violates a final order of the utility commission
6 or the commission; or

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

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

13 (16-a) "Public utility agency" means a public utility
14 agency created under Chapter 572, Local Government Code.

15 (19) "Retail public utility" means any person,
16 corporation, public utility, water supply or sewer service
17 corporation, municipality, public utility agency, political
18 subdivision or agency operating, maintaining, or controlling in
19 this state facilities for providing potable water service or sewer
20 service, or both, for compensation.

21 (23) "Water and sewer utility," "public utility," or
22 "utility" means any person, corporation, cooperative corporation,
23 affected county, or any combination of these persons or entities,
24 other than a municipal corporation, public utility agency, water
25 supply or sewer service corporation, or ~~a~~ political subdivision
26 of the state, except an affected county, or their lessees,
27 trustees, and receivers, owning or operating for compensation in

1 this state equipment or facilities for the transmission, storage,
2 distribution, sale, or provision of potable water to the public or
3 for the resale of potable water to the public for any use or for the
4 collection, transportation, treatment, or disposal of sewage or
5 other operation of a sewage disposal service for the public, other
6 than equipment or facilities owned and operated for either purpose
7 by a municipality or other political subdivision of this state or a
8 water supply or sewer service corporation, but does not include any
9 person or corporation not otherwise a public utility that furnishes
10 the services or commodity only to itself or its employees or tenants
11 as an incident of that employee service or tenancy when that service
12 or commodity is not resold to or used by others.

13 SECTION 13. Section 13.043, Water Code, is amended by
14 amending Subsections (b), (c), and (i) and adding Subsections (i-1)
15 and (j-1) to read as follows:

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

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

21 (2) a utility under the jurisdiction of a municipality
22 inside the corporate limits of the municipality;

23 (3) a municipally owned utility, if the ratepayers
24 reside outside the corporate limits of the municipality, including
25 a decision of a governing body that results in an increase in rates
26 when the municipally owned utility takes over the provision of
27 service to ratepayers previously served by another retail public

1 utility;

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

5 (5) a public utility agency; and

6 (6) ~~[(5)]~~ a utility owned by an affected county, if the
7 ratepayer's rates are actually or may be adversely affected. For
8 the purposes of this section ratepayers who reside outside the
9 boundaries of the district or authority shall be considered a
10 separate class from ratepayers who reside inside those boundaries.

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

20 (i) The governing body of a municipally owned utility or a
21 political subdivision, other than a public utility agency, within
22 60 days after the date of a final decision on a rate change, shall
23 provide individual written notice to each ratepayer eligible to
24 appeal who resides outside the boundaries of the municipality or
25 the political subdivision. The notice must include, at a minimum,
26 the effective date of the new rates, the new rates, and the location
27 where additional information on rates can be obtained. The

governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

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

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

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

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

SECTION 15. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2025.