

1-1 By: Kacal, et al. (Senate Sponsor - Fraser) H.B. No. 1926
 1-2 (In the Senate - Received from the House April 20, 2015;
 1-3 April 23, 2015, read first time and referred to Committee on
 1-4 Natural Resources and Economic Development; May 4, 2015, reported
 1-5 adversely, with favorable Committee Substitute by the following
 1-6 vote: Yeas 9, Nays 0; May 4, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15			X	
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR H.B. No. 1926 By: Fraser

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the operations of a municipally owned utility or
 1-24 municipal power agency; affecting a provision that is subject to
 1-25 criminal penalties; providing authority to issue bonds.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Section 37.051, Utilities Code, is amended by
 1-28 adding Subsections (g) and (h) to read as follows:

1-29 (g) A municipally owned utility or a municipal power agency
 1-30 created under Chapter 163 may not directly or indirectly construct,
 1-31 install, or extend a transmission facility outside of the municipal
 1-32 boundaries of the municipality that owns the municipally owned
 1-33 utility, or the power agency's boundaries, which for the purposes
 1-34 of this subsection consist of the municipal boundaries of the
 1-35 participating public entities, unless the municipally owned
 1-36 utility or power agency first obtains from the commission, through
 1-37 the application process provided by Section 37.053, a certificate
 1-38 that states that the public convenience and necessity requires or
 1-39 will require the transmission facility. Section 37.056 applies to
 1-40 an application under this subsection. This subsection does not
 1-41 apply to a transmission facility placed in service after September
 1-42 1, 2015, that is developed to interconnect a new natural gas
 1-43 generation facility to the ERCOT transmission grid and for which,
 1-44 on or before January 1, 2015, a municipally owned utility was
 1-45 contractually obligated to purchase at least 190 megawatts of
 1-46 capacity.

1-47 (h) The commission shall adopt rules as necessary to provide
 1-48 exemptions to the application of Subsection (g) that are similar to
 1-49 the exemptions to the application of this section to an electric
 1-50 utility, including exemptions for:

1-51 (1) upgrades to an existing transmission line that do
 1-52 not require any additional land, right-of-way, easement, or other
 1-53 property not owned by the municipally owned utility; and

1-54 (2) the construction, installation, or extension of a
 1-55 transmission facility that is entirely located not more than 10
 1-56 miles outside of a municipally owned utility's certificated service
 1-57 area that occurs before September 1, 2021.

1-58 SECTION 2. Subchapter A, Chapter 35, Utilities Code, is
 1-59 amended by adding Section 35.009 to read as follows:

1-60 Sec. 35.009. AMOUNTS PAID IN LIEU OF AD VALOREM TAXES FOR

2-1 CERTAIN FACILITIES. A municipally owned utility that is required
2-2 to apply for a certificate of public convenience and necessity to
2-3 construct, install, or extend a transmission facility within ERCOT
2-4 under Chapter 37 is entitled to recover, through the utility's
2-5 wholesale transmission rate, reasonable payments made to a taxing
2-6 entity in lieu of ad valorem taxes on that transmission facility,
2-7 provided that:

2-8 (1) the utility enters into a written agreement with
2-9 the governing body of the taxing entity related to the payments;

2-10 (2) the amount paid is the same as the amount the
2-11 utility would have to pay to the taxing entity on that transmission
2-12 facility if the facility were subject to ad valorem taxation;

2-13 (3) the governing body of the taxing entity is not the
2-14 governing body of the utility; and

2-15 (4) the utility provides the commission with a copy of
2-16 the written agreement and any other information the commission
2-17 considers necessary in relation to the agreement.

2-18 SECTION 3. Chapter 163, Utilities Code, is amended by
2-19 adding Subchapter C-1 to read as follows:

2-20 SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER
2-21 AGENCIES

2-22 Sec. 163.071. DEFINITIONS. In this subchapter:

2-23 (1) "Agency" means a municipal power agency for which
2-24 concurrent ordinances are adopted under Section 163.073.

2-25 (2) "Bond" includes a note, but does not include a
2-26 nonnegotiable purchase money note issued under Section 163.067 or
2-27 163.087.

2-28 (3) "Concurrent ordinance" means an ordinance or order
2-29 adopted under this subchapter by all of the participating public
2-30 entities of an agency.

2-31 (4) "Obligations" means revenue bonds or notes.

2-32 Sec. 163.072. CONSTRUCTION. This subchapter shall be
2-33 liberally construed to carry out its purpose.

2-34 Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE.

2-35 (a) This subchapter applies to a municipal power agency created by
2-36 two or more public entities under Subchapter C or a predecessor
2-37 statute, including an agency re-created under Section 163.055 or a
2-38 predecessor statute.

2-39 (b) The participating public entities of a municipal power
2-40 agency may by concurrent ordinance elect to apply this subchapter
2-41 to the agency as an alternative to Subchapter C.

2-42 (c) Concurrent ordinances described by this section must,
2-43 as adopted by each public entity:

2-44 (1) contain identical provisions; and

2-45 (2) state that the public entity has elected that the
2-46 agency shall, on and after the date designated in the ordinance, be
2-47 governed by the provisions of this subchapter.

2-48 Sec. 163.074. CONFLICTS WITH OTHER LAW. This subchapter
2-49 prevails to the extent of a conflict between this subchapter and any
2-50 other law, including:

2-51 (1) a law regulating the affairs of a municipal
2-52 corporation; or

2-53 (2) a home-rule charter provision.

2-54 Sec. 163.075. NATURE OF AGENCY. (a) An agency is a:

2-55 (1) separate municipal corporation;

2-56 (2) political subdivision of this state; and

2-57 (3) political entity and corporate body.

2-58 (b) An agency may not impose a tax but has all the other
2-59 powers relating to municipally owned utilities and provided by law
2-60 to a municipality that owns a public utility.

2-61 Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES.

2-62 (a) The public entities that created or re-created an agency may
2-63 by concurrent ordinances:

2-64 (1) add a new public entity as a participating public
2-65 entity in the agency; or

2-66 (2) remove a public entity from participation in the
2-67 agency.

2-68 (b) Concurrent ordinances described by this section must,
2-69 as adopted by each public entity:

3-1 (1) contain identical provisions;
3-2 (2) define the boundaries of the agency to include the
3-3 territory within the boundaries of each participating public
3-4 entity;
3-5 (3) designate the name of the agency; and
3-6 (4) designate the number, place, terms, and manner of
3-7 appointment of directors, as provided by Section 163.078.
3-8 (c) The public entities may not add or remove a public
3-9 entity if the addition or removal will impair an agency obligation.
3-10 Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY.
3-11 (a) Public entities may not adopt concurrent ordinances under
3-12 Section 163.076 adding a participating public entity unless the
3-13 addition has been approved by a majority of the qualified voters of
3-14 the additional public entity at an election called and held for that
3-15 purpose.
3-16 (b) Notice of an election under this section shall be given
3-17 in accordance with Section 1251.003, Government Code. The election
3-18 shall be called and held in accordance with:
3-19 (1) the Election Code;
3-20 (2) Chapter 1251, Government Code; and
3-21 (3) this subchapter.
3-22 Sec. 163.078. BOARD OF DIRECTORS. (a) The agency shall be
3-23 governed by a board of directors.
3-24 (b) The board is responsible for the management, operation,
3-25 and control of the property belonging to the agency.
3-26 (c) The board may by resolution delegate management or
3-27 operational authority to an officer, employee, or committee of the
3-28 agency, except that the delegation may not include legislative
3-29 functions, including the sale or purchase of agency properties, the
3-30 exercise of the power of eminent domain, the adoption or amendment
3-31 of budgets and rates, or the issuance of debt. The board may repeal
3-32 a resolution delegating management or operational authority:
3-33 (1) if the board is composed of six or more directors,
3-34 by the affirmative vote of six directors, including the affirmative
3-35 vote of at least one director appointed by each participating
3-36 public entity; or
3-37 (2) if the board is composed of fewer than six
3-38 directors, by the affirmative vote of at least one director
3-39 appointed by each participating public entity.
3-40 (d) The board must include at least four directors. Each
3-41 director must be appointed by place by the governing bodies of the
3-42 participating public entities. Each participating public entity is
3-43 entitled to appoint at least one director.
3-44 (e) Directors must serve staggered terms. Successor
3-45 directors are appointed in the same manner as the original
3-46 appointees.
3-47 (f) To qualify to serve as a director, when the person takes
3-48 the constitutional oath of office, the person must be:
3-49 (1) a qualified voter and reside in the boundaries of
3-50 the appointing public entity;
3-51 (2) an employee, officer, or member of the governing
3-52 body of the appointing public entity; or
3-53 (3) a retail electric customer of the appointing
3-54 public entity.
3-55 (g) Except as provided by Subsections (h) and (i), an
3-56 employee, officer, or member of the governing body of a
3-57 participating public entity serving as a director may not have a
3-58 personal interest in a contract executed by the agency other than as
3-59 an employee, officer, or member of the governing body of the public
3-60 entity.
3-61 (h) An employee, officer, or member of the governing body of
3-62 a participating public entity serving as a director is considered
3-63 to be a local public official for the purposes of Chapter 171, Local
3-64 Government Code.
3-65 (i) An agency and a participating public entity are
3-66 considered to be political subdivisions for the purposes of Section
3-67 131.903, Local Government Code.
3-68 (j) Directors serve without compensation. A director who is
3-69 an employee, officer, or member of the governing body of a

4-1 participating public entity may continue to receive from the public
 4-2 entity the compensation associated with the office or employment.

4-3 (k) A director serves at the discretion of the appointing
 4-4 public entity. The governing body of a public entity that appoints
 4-5 a director may remove the director from office at any time with or
 4-6 without cause. The governing body shall promptly appoint a new
 4-7 director to serve the remainder of the unexpired term of the removed
 4-8 director.

4-9 Sec. 163.079. SEPARATE BOARDS OF DIRECTORS. (a) The
 4-10 public entities that created or re-created an agency may amend the
 4-11 creating concurrent ordinances to provide for the agency to be
 4-12 governed by one board of directors for the agency's generation
 4-13 system and another board of directors for the agency's transmission
 4-14 system.

4-15 (b) The concurrent ordinances as amended must contain
 4-16 identical provisions.

4-17 (c) Section 163.078 applies to the separate boards and to
 4-18 the directors of the separate boards, except that:

4-19 (1) there is no minimum number of directors for a board
 4-20 established under this section;

4-21 (2) each participating public entity is not entitled
 4-22 to appoint a director to each board of an agency; and

4-23 (3) the repeal of a resolution under Section
 4-24 163.078(c) does not require approval by at least one director
 4-25 appointed by each participating public entity.

4-26 (d) Separate boards established under this section are not
 4-27 required to have the same number of directors.

4-28 Sec. 163.080. POWERS. (a) An agency may not engage in any
 4-29 utility business other than:

4-30 (1) the generation and sale or exchange of electric
 4-31 energy to:

4-32 (A) a participating public entity; or

4-33 (B) a private entity that owns jointly with the
 4-34 agency an electric generating facility in this state; or

4-35 (2) the provision of wholesale transmission service
 4-36 under Chapter 35.

4-37 (b) The agency may:

4-38 (1) perform any act necessary to the full exercise of
 4-39 the agency's powers;

4-40 (2) enter into a contract, lease, or agreement with or
 4-41 accept a grant or loan from a:

4-42 (A) department or agency of the United States;

4-43 (B) department, agency, or political subdivision
 4-44 of this state; or

4-45 (C) public or private person;

4-46 (3) use the uniform system of accounts prescribed for
 4-47 utilities and licenses by the Federal Energy Regulatory Commission;
 4-48 and

4-49 (4) adopt rules to govern the operation of the agency
 4-50 and its employees, facilities, and service.

4-51 (c) The agency may sell, lease, convey, or otherwise dispose
 4-52 of any right, interest, or property of the agency, including its
 4-53 electric facilities. A sale, lease, conveyance, or other
 4-54 disposition having a value of more than \$10 million shall require
 4-55 prior approval of each participating public entity, unless the
 4-56 public entities have agreed otherwise by written contract or the
 4-57 property was purchased by the agency for mining purposes.

4-58 Sec. 163.081. CONSTRUCTION CONTRACTS. (a) Except as
 4-59 provided by Subsection (c), an agency may award a contract for
 4-60 construction of an improvement that involves the expenditure of
 4-61 more than \$20,000 only on the basis of competitive bids.

4-62 (b) The agency shall publish notice of intent to receive
 4-63 bids once a week for two consecutive weeks in a newspaper of general
 4-64 circulation in this state. The first publication must appear
 4-65 before the 14th day before the date bids are to be received.

4-66 (c) An entity that has joint ownership of the improvement to
 4-67 be constructed or that is an agent of a joint owner shall award a
 4-68 contract using the entity's contracting procedures.

4-69 Sec. 163.082. SALE OR EXCHANGE OF ELECTRIC ENERGY. (a) An

5-1 agency may participate through appropriate contracts in power
 5-2 pooling and power exchange agreements with other entities through
 5-3 direct or indirect system interconnections.

5-4 (b) An entity that participates with an agency under this
 5-5 section may:

5-6 (1) purchase electric energy from the agency;

5-7 (2) sell or dispose of electric energy to the agency;

5-8 or

5-9 (3) exchange electric energy with the agency.

5-10 (c) An entity payment for electric energy purchased from the
 5-11 agency is an operating expense of the entity's electric system.

5-12 (d) An agency contract to sell or exchange electric energy
 5-13 may require the purchaser to pay for the electric energy regardless
 5-14 of whether the electric energy is produced or delivered.

5-15 Sec. 163.083. RATES AND CHARGES. (a) An agency may
 5-16 establish and maintain rates and charges for electric power and
 5-17 energy the agency delivers, transmits, or exchanges. The rates and
 5-18 charges must:

5-19 (1) be reasonable and in accordance with prudent
 5-20 utility practices;

5-21 (2) be based on periodic cost of service studies and
 5-22 subject to modification, unless such a basis for rates and charges
 5-23 is waived by the purchaser by contract; and

5-24 (3) be developed to recover the agency's cost of
 5-25 producing and transmitting the electric power and energy, as
 5-26 applicable, which cost must include the amortization of capital
 5-27 investment.

5-28 (b) Notwithstanding Subsection (a), this state reserves its
 5-29 power to regulate an agency's rates and charges for electric energy
 5-30 supplied by the agency's facilities.

5-31 (c) Until obligations issued under this chapter have been
 5-32 paid and discharged, with all interest on the obligations, interest
 5-33 on unpaid interest installments on the obligations, and other
 5-34 connected and incurred costs or expenses, this state pledges to and
 5-35 agrees with the purchasers and successive holders of the
 5-36 obligations that it will not:

5-37 (1) limit or alter the power of an agency to establish
 5-38 and collect rates and charges under this section sufficient to pay:

5-39 (A) necessary operational and maintenance
 5-40 expenses;

5-41 (B) interest and principal on obligations issued
 5-42 by the agency;

5-43 (C) sinking funds and reserve fund payments; and

5-44 (D) other charges necessary to fulfill the terms
 5-45 of any agreement; or

5-46 (2) take any action that will impair the rights or
 5-47 remedies of the holders of the obligations.

5-48 Sec. 163.084. REVENUE BONDS. (a) The agency may issue
 5-49 revenue bonds to accomplish the purposes of the agency.

5-50 (b) The agency may pledge to the payment of the obligations
 5-51 the revenues of all or part of its electric facilities, including
 5-52 facilities acquired after the obligations are issued. However,
 5-53 operating and maintenance expenses, including salaries and labor,
 5-54 materials, and repairs of electric facilities necessary to render
 5-55 efficient service, constitute a first lien on and charge against
 5-56 the pledged revenue.

5-57 (c) The agency may set aside from the proceeds from the sale
 5-58 of the obligations amounts for payment into the interest and
 5-59 sinking fund and reserve fund, and for interest and operating
 5-60 expenses during construction and development, as specified in the
 5-61 proceedings authorizing the obligations.

5-62 (d) Obligation proceeds may be invested, pending their use,
 5-63 in securities, interest-bearing certificates, or time deposits as
 5-64 specified in the authorizing proceedings.

5-65 (e) Agency obligations are authorized investments for:

5-66 (1) a bank;

5-67 (2) a savings bank;

5-68 (3) a trust company;

5-69 (4) a savings and loan association; and

6-1 (5) an insurance company.

6-2 (f) The obligations, when accompanied by all appurtenant,
6-3 unmatured coupons and to the extent of the lesser of their face
6-4 value or market value, are eligible to secure the deposit of public
6-5 funds of this state, a political subdivision of this state, and any
6-6 other political corporation of this state.

6-7 Sec. 163.085. REFUNDING BONDS. The agency may issue
6-8 refunding bonds.

6-9 Sec. 163.086. ISSUANCE, FORM, AND PROVISIONS OF BONDS.

6-10 (a) Agency bonds that are payable from agency revenues or
6-11 anticipated bond proceeds and the records relating to their
6-12 issuance must be submitted to the attorney general for examination
6-13 before delivery.

6-14 (b) The bonds:

6-15 (1) must mature serially or otherwise not more than 50
6-16 years after the date of issuance;

6-17 (2) may be made redeemable before maturity at the time
6-18 and at the price or prices set by the agency; and

6-19 (3) may be sold at public or private sale under the
6-20 terms and for the price the agency determines to be in the best
6-21 interest of the agency.

6-22 (c) The bonds must be signed by the presiding officer or
6-23 assistant presiding officer of the agency, be attested by the
6-24 secretary, and bear the seal of the agency. The signatures may be
6-25 printed on the bonds if authorized by the agency, and the seal may
6-26 be impressed or printed on the bonds. The agency may adopt or use
6-27 for any purpose the signature of an individual who has been an
6-28 officer of the agency, regardless of whether the individual has
6-29 ceased to be an officer at the time the bonds are delivered to the
6-30 purchaser.

6-31 Sec. 163.087. NONNEGOTIABLE PURCHASE MONEY NOTES. (a) The
6-32 agency may issue nonnegotiable purchase money notes to acquire land
6-33 or fuel resources.

6-34 (b) Nonnegotiable purchase money notes are:

6-35 (1) payable in installments;

6-36 (2) secured by the property acquired with the notes or
6-37 other collateral the agency substitutes; and

6-38 (3) not a security or agency obligation.

6-39 (c) Nonnegotiable purchase money notes may be further
6-40 secured by a promise to issue bonds or bond anticipation notes to
6-41 pay the purchase money notes.

6-42 Sec. 163.088. BOND ANTICIPATION NOTES. (a) The agency may
6-43 issue bond anticipation notes:

6-44 (1) for any purpose for which the agency may issue
6-45 bonds; or

6-46 (2) to refund previously issued bond anticipation
6-47 notes or nonnegotiable purchase money notes.

6-48 (b) Bond anticipation notes are subject to the limitations
6-49 and conditions prescribed by this subchapter for bonds.

6-50 (c) The agency may contract with purchasers of bond
6-51 anticipation notes that the proceeds of one or more series of bonds
6-52 will be used to pay or refund the notes.

6-53 Sec. 163.089. PUBLIC SECURITIES. (a) It is a public
6-54 purpose for a public entity that has participated in the creation of
6-55 an agency to pay costs of planning, acquisition, construction,
6-56 ownership, operation, and maintenance of electric facilities.

6-57 (b) A public entity may issue public securities, as defined
6-58 by Section 1201.002(2), Government Code, including bonds, notes, or
6-59 other forms of indebtedness, in the principal amount approved by
6-60 the governing body of the public entity, for the purpose of
6-61 financing electric facilities or improvements to electric
6-62 facilities to be owned or operated by the agency or otherwise in
6-63 furtherance of a purpose described by this section.

6-64 (c) A public entity and an agency may agree in a contract, or
6-65 by other official action of the public entity and agency, to terms
6-66 and conditions governing the use by the agency of the proceeds of
6-67 the public securities issued by a public entity for a purpose
6-68 described by this section.

6-69 (d) A contract or other official action described by

7-1 Subsection (c) may include provisions with respect to, and
7-2 conclusively establish sufficient consideration for, the use of the
7-3 proceeds. The consideration may include the right to:

7-4 (1) use the financed facilities or portions of the
7-5 facilities;

7-6 (2) receive output from the financed facilities; or

7-7 (3) receive an ownership interest in the financed
7-8 facilities upon the dissolution of the agency or an undivided
7-9 interest in the financed facilities at the time a public entity
7-10 funds facility improvements.

7-11 (e) A contract or other official action described by
7-12 Subsection (c) may contain other terms and extend for any period on
7-13 which all of the parties agree.

7-14 (f) A public security issued for the purposes described by
7-15 this section may include:

7-16 (1) debt obligations issued in accordance with Chapter
7-17 1207, 1331, 1371, 1431, or 1502, Government Code, or Chapter 271,
7-18 Local Government Code; or

7-19 (2) other types or forms of debt that the public entity
7-20 is authorized to issue.

7-21 (g) Each participating public entity may exercise any power
7-22 of an issuer under Chapter 1371, Government Code.

7-23 Sec. 163.090. DISSOLUTION. (a) The participating public
7-24 entities of an agency may by concurrent ordinance dissolve the
7-25 agency.

7-26 (b) Concurrent ordinances dissolving an agency must:

7-27 (1) contain identical provisions;

7-28 (2) state that the agency will be dissolved upon the
7-29 winding up of agency affairs;

7-30 (3) direct the board or boards of the agency to wind up
7-31 the business and affairs of the agency and to inform the
7-32 participating public entities by resolution when the winding up of
7-33 the business and affairs of the agency is complete; and

7-34 (4) state the date on which the dissolution takes
7-35 effect, provided that the date provides sufficient time for the
7-36 board or boards of the agency to wind up agency affairs.

7-37 (c) The participating public entities may not dissolve an
7-38 agency if the dissolution will impair the rights or remedies of
7-39 holders of obligations issued by the agency.

7-40 (d) The dissolved agency continues to exist to:

7-41 (1) satisfy existing liabilities or obligations;

7-42 (2) collect, distribute, or liquidate its assets; and

7-43 (3) take any other action required to adjust and wind
7-44 up its business and affairs.

7-45 (e) The assets of the dissolved agency that remain after all
7-46 liabilities or obligations of the agency have been satisfied shall
7-47 be distributed to the public entities that created the agency. The
7-48 public entities shall establish the method of distribution by
7-49 agreement.

7-50 (f) An agreement between a public entity and an agency
7-51 entered into before September 1, 2015, regarding the distribution
7-52 of the agency's assets after dissolution is enforceable according
7-53 to the terms of the agreement, regardless of a provision to the
7-54 contrary in this subchapter.

7-55 SECTION 4. The changes in law made by this Act apply only to
7-56 a transmission facility for which construction began on or after
7-57 the effective date of this Act.

7-58 SECTION 5. This Act takes effect September 1, 2015.

7-59 * * * * *