

1-1 By: Fraser S.B. No. 776
 1-2 (In the Senate - Filed February 25, 2015; March 2, 2015,
 1-3 read first time and referred to Committee on Natural Resources and
 1-4 Economic Development; March 31, 2015, reported adversely, with
 1-5 favorable Committee Substitute by the following vote: Yeas 10,
 1-6 Nays 0; March 31, 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 S.B. No. 776 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 Subchapter B, Chapter 163, may not directly or
 1-31 indirectly construct, install, or extend a transmission facility
 1-32 outside of the municipally owned utility's certificated service
 1-33 area, the municipal boundaries of the municipality that owns the
 1-34 municipally owned utility, or the power agency's boundaries, which
 1-35 for the purposes of this subsection are the certificated service
 1-36 areas of the participating public entities, unless the municipally
 1-37 owned utility or power agency first obtains from the commission,
 1-38 through the application process provided by Section 37.053, a
 1-39 certificate that states that the public convenience and necessity
 1-40 requires or will require the transmission facility. Section 37.056
 1-41 applies to an application under this subsection. This subsection
 1-42 does not apply to a transmission facility placed in service after
 1-43 September 1, 2015, that is developed to interconnect a new natural
 1-44 gas generation facility to the ERCOT transmission grid and for
 1-45 which, on or before January 1, 2015, a municipally owned utility was
 1-46 contractually obligated to purchase at least 190 megawatts of
 1-47 capacity.

1-48 (h) The commission shall adopt rules as necessary to provide
 1-49 exemptions to the application of Subsection (g) that are similar to
 1-50 the exemptions to the application of this section to an electric
 1-51 utility, including exemptions for:

1-52 (1) upgrades to an existing transmission line that do
 1-53 not require any additional land, right-of-way, easement, or other
 1-54 property not owned by the municipally owned utility; and

1-55 (2) the construction, installation, or extension of a
 1-56 transmission facility that is entirely located not more than 10
 1-57 miles outside of a municipally owned utility's certificated service
 1-58 area that occurs before September 1, 2021.

1-59 SECTION 2. Subchapter A, Chapter 35, Utilities Code, is
 1-60 amended by adding Section 35.009 to read as follows:

2-1 Sec. 35.009. AMOUNTS PAID IN LIEU OF AD VALOREM TAXES FOR
2-2 CERTAIN FACILITIES. A municipally owned utility that is required
2-3 to apply for a certificate of public convenience and necessity to
2-4 construct, install, or extend a transmission facility within ERCOT
2-5 under Chapter 37 is entitled to recover, through the utility's
2-6 wholesale transmission rate, reasonable payments made to a taxing
2-7 entity in lieu of ad valorem taxes on that transmission facility,
2-8 provided that:

2-9 (1) the utility enters into a written agreement with
2-10 the governing body of the taxing entity related to the payments;

2-11 (2) the amount paid is the same as the amount the
2-12 utility would have to pay to the taxing entity on that transmission
2-13 facility if the facility were subject to ad valorem taxation;

2-14 (3) the governing body of the taxing entity is not the
2-15 governing body of the utility; and

2-16 (4) the utility provides the commission with a copy of
2-17 the written agreement and any other information the commission
2-18 considers necessary in relation to the agreement.

2-19 SECTION 3. Chapter 163, Utilities Code, is amended by
2-20 adding Subchapter C-1 to read as follows:

2-21 SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER
2-22 AGENCIES

2-23 Sec. 163.071. DEFINITIONS. In this subchapter:

2-24 (1) "Agency" means a municipal power agency for which
2-25 concurrent ordinances are adopted under Section 163.073.

2-26 (2) "Bond" includes a note, but does not include a
2-27 nonnegotiable purchase money note issued under Section 163.067 or
2-28 163.087.

2-29 (3) "Concurrent ordinance" means an ordinance or order
2-30 adopted under this subchapter by all of the participating public
2-31 entities of an agency.

2-32 (4) "Obligations" means revenue bonds or notes.

2-33 Sec. 163.072. CONSTRUCTION. This subchapter shall be
2-34 liberally construed to carry out its purpose.

2-35 Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE.

2-36 (a) This subchapter applies to a municipal power agency created by
2-37 two or more public entities under Subchapter C or a predecessor
2-38 statute, including an agency re-created under Section 163.055 or a
2-39 predecessor statute.

2-40 (b) The participating public entities of a municipal power
2-41 agency may by concurrent ordinance elect to apply this subchapter
2-42 to the agency as an alternative to Subchapter C.

2-43 (c) Concurrent ordinances described by this section must,
2-44 as adopted by each public entity:

2-45 (1) contain identical provisions; and

2-46 (2) state that the public entity has elected that the
2-47 agency shall, on and after the date designated in the ordinance, be
2-48 governed by the provisions of this subchapter.

2-49 Sec. 163.074. CONFLICTS WITH OTHER LAW. This subchapter
2-50 prevails to the extent of a conflict between this subchapter and any
2-51 other law, including:

2-52 (1) a law regulating the affairs of a municipal
2-53 corporation; or

2-54 (2) a home-rule charter provision.

2-55 Sec. 163.075. NATURE OF AGENCY. (a) An agency is a:

2-56 (1) separate municipal corporation;

2-57 (2) political subdivision of this state; and

2-58 (3) political entity and corporate body.

2-59 (b) An agency may not impose a tax but has all the other
2-60 powers relating to municipally owned utilities and provided by law
2-61 to a municipality that owns a public utility.

2-62 Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES.

2-63 (a) The public entities that created or re-created an agency may
2-64 by concurrent ordinances:

2-65 (1) add a new public entity as a participating public
2-66 entity in the agency; or

2-67 (2) remove a public entity from participation in the
2-68 agency.

2-69 (b) Concurrent ordinances described by this section must,

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

4-1 an employee, officer, or member of the governing body of a
 4-2 participating public entity may continue to receive from the public
 4-3 entity the compensation associated with the office or employment.

4-4 (k) A director serves at the discretion of the appointing
 4-5 public entity. The governing body of a public entity that appoints
 4-6 a director may remove the director from office at any time with or
 4-7 without cause. The governing body shall promptly appoint a new
 4-8 director to serve the remainder of the unexpired term of the removed
 4-9 director.

4-10 Sec. 163.079. SEPARATE BOARDS OF DIRECTORS. (a) The
 4-11 public entities that created or re-created an agency may amend the
 4-12 creating concurrent ordinances to provide for the agency to be
 4-13 governed by one board of directors for the agency's generation
 4-14 system and another board of directors for the agency's transmission
 4-15 system.

4-16 (b) The concurrent ordinances as amended must contain
 4-17 identical provisions.

4-18 (c) Section 163.078 applies to the separate boards and to
 4-19 the directors of the separate boards, except that:

4-20 (1) there is no minimum number of directors for a board
 4-21 established under this section;

4-22 (2) each participating public entity is not entitled
 4-23 to appoint a director to each board of an agency; and

4-24 (3) the repeal of a resolution under Section
 4-25 163.078(c) does not require approval by at least one director
 4-26 appointed by each participating public entity.

4-27 (d) Separate boards established under this section are not
 4-28 required to have the same number of directors.

4-29 Sec. 163.080. POWERS. (a) An agency may not engage in any
 4-30 utility business other than:

4-31 (1) the generation and sale or exchange of electric
 4-32 energy to:

4-33 (A) a participating public entity; or

4-34 (B) a private entity that owns jointly with the
 4-35 agency an electric generating facility in this state; or

4-36 (2) the provision of wholesale transmission service
 4-37 under Chapter 35.

4-38 (b) The agency may:

4-39 (1) perform any act necessary to the full exercise of
 4-40 the agency's powers;

4-41 (2) enter into a contract, lease, or agreement with or
 4-42 accept a grant or loan from a:

4-43 (A) department or agency of the United States;

4-44 (B) department, agency, or political subdivision
 4-45 of this state; or

4-46 (C) public or private person;

4-47 (3) use the uniform system of accounts prescribed for
 4-48 utilities and licenses by the Federal Energy Regulatory Commission;
 4-49 and

4-50 (4) adopt rules to govern the operation of the agency
 4-51 and its employees, facilities, and service.

4-52 (c) The agency may sell, lease, convey, or otherwise dispose
 4-53 of any right, interest, or property of the agency, including its
 4-54 electric facilities. A sale, lease, conveyance, or other
 4-55 disposition having a value of more than \$10 million shall require
 4-56 prior approval of each participating public entity, unless the
 4-57 public entities have agreed otherwise by written contract or the
 4-58 property was purchased by the agency for mining purposes.

4-59 Sec. 163.081. CONSTRUCTION CONTRACTS. (a) Except as
 4-60 provided by Subsection (c), an agency may award a contract for
 4-61 construction of an improvement that involves the expenditure of
 4-62 more than \$20,000 only on the basis of competitive bids.

4-63 (b) The agency shall publish notice of intent to receive
 4-64 bids once a week for two consecutive weeks in a newspaper of general
 4-65 circulation in this state. The first publication must appear
 4-66 before the 14th day before the date bids are to be received.

4-67 (c) An entity that has joint ownership of the improvement to
 4-68 be constructed or that is an agent of a joint owner shall award a
 4-69 contract using the entity's contracting procedures.

5-1 Sec. 163.082. SALE OR EXCHANGE OF ELECTRIC ENERGY. (a) An
 5-2 agency may participate through appropriate contracts in power
 5-3 pooling and power exchange agreements with other entities through
 5-4 direct or indirect system interconnections.

5-5 (b) An entity that participates with an agency under this
 5-6 section may:

5-7 (1) purchase electric energy from the agency;
 5-8 (2) sell or dispose of electric energy to the agency;

5-9 or

5-10 (3) exchange electric energy with the agency.

5-11 (c) An entity payment for electric energy purchased from the
 5-12 agency is an operating expense of the entity's electric system.

5-13 (d) An agency contract to sell or exchange electric energy
 5-14 may require the purchaser to pay for the electric energy regardless
 5-15 of whether the electric energy is produced or delivered.

5-16 Sec. 163.083. RATES AND CHARGES. (a) An agency may
 5-17 establish and maintain rates and charges for electric power and
 5-18 energy the agency delivers, transmits, or exchanges. The rates and
 5-19 charges must:

5-20 (1) be reasonable and in accordance with prudent
 5-21 utility practices;

5-22 (2) be based on periodic cost of service studies and
 5-23 subject to modification, unless such a basis for rates and charges
 5-24 is waived by the purchaser by contract; and

5-25 (3) be developed to recover the agency's cost of
 5-26 producing and transmitting the electric power and energy, as
 5-27 applicable, which cost must include the amortization of capital
 5-28 investment.

5-29 (b) Notwithstanding Subsection (a), this state reserves its
 5-30 power to regulate an agency's rates and charges for electric energy
 5-31 supplied by the agency's facilities.

5-32 (c) Until obligations issued under this chapter have been
 5-33 paid and discharged, with all interest on the obligations, interest
 5-34 on unpaid interest installments on the obligations, and other
 5-35 connected and incurred costs or expenses, this state pledges to and
 5-36 agrees with the purchasers and successive holders of the
 5-37 obligations that it will not:

5-38 (1) limit or alter the power of an agency to establish
 5-39 and collect rates and charges under this section sufficient to pay:

5-40 (A) necessary operational and maintenance
 5-41 expenses;

5-42 (B) interest and principal on obligations issued
 5-43 by the agency;

5-44 (C) sinking funds and reserve fund payments; and

5-45 (D) other charges necessary to fulfill the terms
 5-46 of any agreement; or

5-47 (2) take any action that will impair the rights or
 5-48 remedies of the holders of the obligations.

5-49 Sec. 163.084. REVENUE BONDS. (a) The agency may issue
 5-50 revenue bonds to accomplish the purposes of the agency.

5-51 (b) The agency may pledge to the payment of the obligations
 5-52 the revenues of all or part of its electric facilities, including
 5-53 facilities acquired after the obligations are issued. However,
 5-54 operating and maintenance expenses, including salaries and labor,
 5-55 materials, and repairs of electric facilities necessary to render
 5-56 efficient service, constitute a first lien on and charge against
 5-57 the pledged revenue.

5-58 (c) The agency may set aside from the proceeds from the sale
 5-59 of the obligations amounts for payment into the interest and
 5-60 sinking fund and reserve fund, and for interest and operating
 5-61 expenses during construction and development, as specified in the
 5-62 proceedings authorizing the obligations.

5-63 (d) Obligation proceeds may be invested, pending their use,
 5-64 in securities, interest-bearing certificates, or time deposits as
 5-65 specified in the authorizing proceedings.

5-66 (e) Agency obligations are authorized investments for:

5-67 (1) a bank;

5-68 (2) a savings bank;

5-69 (3) a trust company;

6-1 (4) a savings and loan association; and
6-2 (5) an insurance company.

6-3 (f) The obligations, when accompanied by all appurtenant,
6-4 unmatured coupons and to the extent of the lesser of their face
6-5 value or market value, are eligible to secure the deposit of public
6-6 funds of this state, a political subdivision of this state, and any
6-7 other political corporation of this state.

6-8 Sec. 163.085. REFUNDING BONDS. The agency may issue
6-9 refunding bonds.

6-10 Sec. 163.086. ISSUANCE, FORM, AND PROVISIONS OF BONDS.

6-11 (a) Agency bonds that are payable from agency revenues or
6-12 anticipated bond proceeds and the records relating to their
6-13 issuance must be submitted to the attorney general for examination
6-14 before delivery.

6-15 (b) The bonds:

6-16 (1) must mature serially or otherwise not more than 50
6-17 years after the date of issuance;

6-18 (2) may be made redeemable before maturity at the time
6-19 and at the price or prices set by the agency; and

6-20 (3) may be sold at public or private sale under the
6-21 terms and for the price the agency determines to be in the best
6-22 interest of the agency.

6-23 (c) The bonds must be signed by the presiding officer or
6-24 assistant presiding officer of the agency, be attested by the
6-25 secretary, and bear the seal of the agency. The signatures may be
6-26 printed on the bonds if authorized by the agency, and the seal may
6-27 be impressed or printed on the bonds. The agency may adopt or use
6-28 for any purpose the signature of an individual who has been an
6-29 officer of the agency, regardless of whether the individual has
6-30 ceased to be an officer at the time the bonds are delivered to the
6-31 purchaser.

6-32 Sec. 163.087. NONNEGOTIABLE PURCHASE MONEY NOTES. (a) The
6-33 agency may issue nonnegotiable purchase money notes to acquire land
6-34 or fuel resources.

6-35 (b) Nonnegotiable purchase money notes are:

6-36 (1) payable in installments;

6-37 (2) secured by the property acquired with the notes or
6-38 other collateral the agency substitutes; and

6-39 (3) not a security or agency obligation.

6-40 (c) Nonnegotiable purchase money notes may be further
6-41 secured by a promise to issue bonds or bond anticipation notes to
6-42 pay the purchase money notes.

6-43 Sec. 163.088. BOND ANTICIPATION NOTES. (a) The agency may
6-44 issue bond anticipation notes:

6-45 (1) for any purpose for which the agency may issue
6-46 bonds; or

6-47 (2) to refund previously issued bond anticipation
6-48 notes or nonnegotiable purchase money notes.

6-49 (b) Bond anticipation notes are subject to the limitations
6-50 and conditions prescribed by this subchapter for bonds.

6-51 (c) The agency may contract with purchasers of bond
6-52 anticipation notes that the proceeds of one or more series of bonds
6-53 will be used to pay or refund the notes.

6-54 Sec. 163.089. PUBLIC SECURITIES. (a) It is a public
6-55 purpose for a public entity that has participated in the creation of
6-56 an agency to pay costs of planning, acquisition, construction,
6-57 ownership, operation, and maintenance of electric facilities.

6-58 (b) A public entity may issue public securities, as defined
6-59 by Section 1201.002(2), Government Code, including bonds, notes, or
6-60 other forms of indebtedness, in the principal amount approved by
6-61 the governing body of the public entity, for the purpose of
6-62 financing electric facilities or improvements to electric
6-63 facilities to be owned or operated by the agency or otherwise in
6-64 furtherance of a purpose described by this section.

6-65 (c) A public entity and an agency may agree in a contract, or
6-66 by other official action of the public entity and agency, to terms
6-67 and conditions governing the use by the agency of the proceeds of
6-68 the public securities issued by a public entity for a purpose
6-69 described by this section.

7-1 (d) A contract or other official action described by
7-2 Subsection (c) may include provisions with respect to, and
7-3 conclusively establish sufficient consideration for, the use of the
7-4 proceeds. The consideration may include the right to:

7-5 (1) use the financed facilities or portions of the
7-6 facilities;

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

7-8 (3) receive an ownership interest in the financed
7-9 facilities upon the dissolution of the agency or an undivided
7-10 interest in the financed facilities at the time a public entity
7-11 funds facility improvements.

7-12 (e) A contract or other official action described by
7-13 Subsection (c) may contain other terms and extend for any period on
7-14 which all of the parties agree.

7-15 (f) A public security issued for the purposes described by
7-16 this section may include:

7-17 (1) debt obligations issued in accordance with Chapter
7-18 1207, 1331, 1371, 1431, or 1502, Government Code, or Chapter 271,
7-19 Local Government Code; or

7-20 (2) other types or forms of debt that the public entity
7-21 is authorized to issue.

7-22 (g) Each participating public entity may exercise any power
7-23 of an issuer under Chapter 1371, Government Code.

7-24 Sec. 163.090. DISSOLUTION. (a) The participating public
7-25 entities of an agency may by concurrent ordinance dissolve the
7-26 agency.

7-27 (b) Concurrent ordinances dissolving an agency must:

7-28 (1) contain identical provisions;

7-29 (2) state that the agency will be dissolved upon the
7-30 winding up of agency affairs;

7-31 (3) direct the board or boards of the agency to wind up
7-32 the business and affairs of the agency and to inform the
7-33 participating public entities by resolution when the winding up of
7-34 the business and affairs of the agency is complete; and

7-35 (4) state the date on which the dissolution takes
7-36 effect, provided that the date provides sufficient time for the
7-37 board or boards of the agency to wind up agency affairs.

7-38 (c) The participating public entities may not dissolve an
7-39 agency if the dissolution will impair the rights or remedies of
7-40 holders of obligations issued by the agency.

7-41 (d) The dissolved agency continues to exist to:

7-42 (1) satisfy existing liabilities or obligations;

7-43 (2) collect, distribute, or liquidate its assets; and

7-44 (3) take any other action required to adjust and wind
7-45 up its business and affairs.

7-46 (e) The assets of the dissolved agency that remain after all
7-47 liabilities or obligations of the agency have been satisfied shall
7-48 be distributed to the public entities that created the agency. The
7-49 public entities shall establish the method of distribution by
7-50 agreement.

7-51 (f) An agreement between a public entity and an agency
7-52 entered into before September 1, 2015, regarding the distribution
7-53 of the agency's assets after dissolution is enforceable according
7-54 to the terms of the agreement, regardless of a provision to the
7-55 contrary in this subchapter.

7-56 SECTION 4. The changes in law made by this Act apply only to
7-57 a transmission facility for which construction began on or after
7-58 the effective date of this Act.

7-59 SECTION 5. This Act takes effect September 1, 2015.

7-60 * * * * *