

UTILITIES CODE

TITLE 4. DELIVERY OF UTILITY SERVICES

SUBTITLE A. UTILITY CORPORATIONS AND OTHER PROVIDERS

CHAPTER 163. JOINT POWERS AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 163.001. DEFINITIONS. In this chapter:

(1) "Electric facility" means a facility necessary or incidental to generating or transmitting electric power and energy, including:

- (A) a generating unit or plant or a plant site;
- (B) transmission lines;
- (C) a right-of-way or other right relating to a facility; and
- (D) property and equipment.

(2) "Entity" means a person who engages in the authorized generation, transmission, or distribution of electric energy for sale to the public.

(3) "Private entity" means an entity that is not a public entity.

(4) "Public entity" means an entity that is an agency or political subdivision of this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. COOPERATION BY PUBLIC AND PRIVATE ENTITIES

Sec. 163.011. EFFECT OF SUBCHAPTER. This subchapter does not affect:

(1) the statutory purposes prescribed by state law relating to creating, establishing, or operating an entity that co-owns a facility;

(2) an entity's rights or powers in effect on August 27, 1973, relating to the generation, transmission, distribution, or sale of electric power and energy; or

(3) a contract in effect on August 27, 1973.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.012. AUTHORITY TO MAKE AGREEMENTS. Public and private entities may by agreement jointly plan, finance, acquire, construct, own, operate, and maintain electric facilities to:

(1) achieve economies of scale in providing electric energy to the public;

(2) promote the economic development of this state and its natural resources; and

(3) meet the state's future power needs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.013. GENERAL RIGHTS, POWERS, AND DUTIES OF ENTITIES. (a) A participating entity may:

(1) use its means and assets to plan, acquire, construct, own, operate, and maintain its interest in an electric facility;

(2) 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 entity had sole ownership of the electric facility;

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

(4) transfer or otherwise convey the acquired land, property, or property interest or otherwise cause the land, property, or interest to become vested in other participating entities to the extent to which and in the manner in which the participating entities agree.

(b) Each participating entity is a cotenant or co-owner of the electric facility and in relation to the entity's undivided interest in the facility has each right, privilege, exemption, power, duty, and liability the entity would have had if the entity had sole ownership.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.014. USE OF EMINENT DOMAIN. (a) A participating entity has the power of eminent domain to be exercised as provided by this section.

(b) The use of eminent domain authority by a participating entity is governed by the law relating to an eminent domain proceeding involving a municipality in this state.

(c) A participating entity may acquire a fee title to the condemned real property.

(d) A participating entity may not use eminent domain authority to acquire:

(1) an interest in an electric facility that belongs to another entity; or

(2) an interest in real property to drill, mine, or produce from that property oil, gas, geothermal resources, geothermal/geopressured resources, or lignite, coal, sulphur, uranium, plutonium, or other minerals that belong to another person regardless of whether the material is in place or is in the process of being drilled, mined, or produced.

(e) Subsection (d) does not affect the authority of a participating entity to acquire full title to real property for a plant site and any related surface installation or equipment, including a cooling reservoir.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.015. TAXATION. (a) A participating private entity shall render for ad valorem taxation its undivided fractional interest in a jointly owned electric facility. An ad valorem or similar tax shall be imposed separately against the undivided interest of the participating private entity.

(b) A tax or assessment, including an excise tax or sales and use tax, attributable to a property or service bought, sold, leased, or used to construct, maintain, repair, or operate a jointly owned electric facility shall be imposed separately against each participating entity in proportion to the entity's respective undivided interest in the facility.

(c) A participating entity is not liable for a tax or assessment attributable to another participating entity under

Subsection (a) or (b).

(d) A participating entity is entitled to each constitutional or statutory ad valorem or other tax exemption attributable to the jointly owned electric facility or to a property or service bought, sold, leased, or used to construct, maintain, repair, or operate the facility to the extent the entity would have been exempt from the tax if the entity's undivided interest were an entire interest in the facility or in the property or service. The entity is entitled to any applicable exemption certificate or statement provided by law to claim or prove the exemption.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.016. INSURANCE. A participating entity may:

(1) contract for insurance, including specialized insurance for property and risks relating to the ownership, operation, and maintenance of electric facilities;

(2) contract for insurance for the use and benefit of each of the other participating entities as though the insurance was for the sole benefit of the contracting entity; and

(3) cause the rights of the other participating entities to be protected under the contract in accordance with each entity's undivided interest or entitlement under any applicable agreement between the entities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. MUNICIPAL POWER AGENCIES

Sec. 163.051. DEFINITIONS. In this subchapter:

(1) "Agency" means a municipal power agency created under this subchapter.

(2) "Bond" includes a note, but does not include a nonnegotiable purchase money note issued under Section [163.067](#).

(3) "Concurrent ordinance" means an ordinance or order adopted under this subchapter by two or more public entities that relates to the creation or re-creation of a municipal power agency.

(4) "Obligations" means revenue bonds or notes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.052. CONSTRUCTION. This subchapter shall be liberally construed to carry out its purpose.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.053. CONFLICTS WITH OTHER LAW. This subchapter prevails to the extent of a conflict between this subchapter and any other law, including:

(1) a law regulating the affairs of a municipal corporation; or

(2) a home-rule charter provision.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.054. CREATION OF AGENCY. (a) Public entities may create an agency by concurrent ordinances subject to voter approval.

(b) A public entity may join in the creation of an agency under this subchapter only if on May 8, 1975, and at the time the concurrent ordinance is adopted, the entity was engaged in the authorized generation of electric energy for sale to the public. This subsection does not prohibit a public entity from disposing of its electric generating capabilities after creation of the agency.

(c) An agency is a:

(1) separate municipal corporation;

(2) political subdivision of this state; and

(3) political entity and corporate body.

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.055. RE-CREATION OF AGENCY. (a) The public entities that create an agency may by concurrent ordinances re-create the agency by adding or deleting, or both, a public entity.

(b) The public entities may not re-create an agency if the

re-creation will impair an agency obligation.

(c) Re-creation by adding a public entity is subject to voter approval in accordance with Section [163.058](#).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.056. NOTICE. (a) The governing body of each public entity shall publish notice of its intention to create an agency once a week for two consecutive weeks.

(b) The first publication must appear before the 14th day before the date set for passage of the concurrent ordinance.

(c) The notice must state:

(1) the date, time, and location at which the governing body proposes to enact the concurrent ordinance; and

(2) that an agency will be created on the date on which the concurrent ordinances take effect.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.057. CONTENTS OF CONCURRENT ORDINANCE. A concurrent ordinance creating an agency under Section [163.054](#) or re-creating an agency under Section [163.055](#) must, as adopted by each public entity:

(1) contain identical provisions;

(2) define the boundaries of the agency to include the territory within the boundaries of each participating public entity;

(3) designate the name of the agency; and

(4) designate the number, place, initial term, and manner of appointment of directors in accordance with Section [163.059](#).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.058. ELECTION. (a) An agency may not be created unless the creation is approved by a majority of the qualified voters of each public entity creating the agency at an election called and held for that purpose.

(b) An agency may not be re-created by addition of a public entity unless the re-creation is approved by a majority of the

qualified voters of the additional public entity at an election called and held for that purpose.

(c) Notice of an election under this section shall be given in accordance with Section 1251.003, Government Code. The election shall be called and held in accordance with:

- (1) the Election Code;
- (2) Chapter 1251, Government Code; and
- (3) this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.404, eff. Sept. 1, 2001.

Sec. 163.059. BOARD OF DIRECTORS. (a) The agency shall be governed by a board of directors. The board is responsible for the management, operation, and control of the property belonging to the agency.

(b) The board must include at least four directors. Each director must be appointed by place by the governing bodies of the participating public entities. Each participating public entity is entitled to appoint at least one director.

(c) Directors must serve staggered terms. Successor directors are appointed in the same manner as the original appointees.

(d) To qualify to serve as a director, a person must be a qualified voter and reside in the boundaries of the appointing public entity when the person takes the constitutional oath of office.

(e) An employee, officer, or member of the governing body of a public entity may serve as a director but may not have a personal interest in a contract executed by the agency other than as an employee, officer, or member of the governing body of the public entity.

(f) Directors serve without compensation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.060. POWERS. (a) An agency may not engage in any utility business other than the generation, transmission, and sale or exchange of electric energy to:

(1) a participating public entity; or
(2) a private entity that owns jointly with the agency an electric generating facility in this state.

(b) The agency may:

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

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

(A) department or agency of the United States;

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

(C) public or private person;

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

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

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.061. CONSTRUCTION CONTRACTS. (a) Except as provided by Subsection (c), an agency may award a contract for construction of an improvement that involves the expenditure of more than \$20,000 only on the basis of competitive bids.

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

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.062. SALE OR EXCHANGE OF ELECTRIC ENERGY. (a) An

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

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

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

or

- (3) exchange electric energy with the agency.

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

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.063. RATES AND CHARGES. (a) An agency may establish and maintain rates and charges for electric power and energy the agency delivers, transmits, or exchanges. The rates and charges must:

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

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

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

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

(c) Until obligations issued under this subchapter have been paid and discharged, with all interest on the obligations, interest on unpaid interest installments on the obligations, and other connected and incurred costs or expenses, this state pledges to and agrees with the purchasers and successive holders of the

obligations that it will not:

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

(A) necessary operational and maintenance expenses;

(B) interest and principal on obligations issued by the agency;

(C) sinking funds and reserve fund payments; and

(D) other charges necessary to fulfill the terms of any agreement; or

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.064. REVENUE BONDS. (a) The agency may issue revenue bonds to accomplish the purposes of the agency.

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

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

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

(e) Agency obligations are authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association; and

(5) an insurance company.

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.065. REFUNDING BONDS. The agency may issue refunding bonds.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.066. ISSUANCE, FORM, AND PROVISIONS OF BONDS. (a) Agency bonds that are payable from agency revenues or anticipated bond proceeds and the records relating to their issuance must be submitted to the attorney general for examination before delivery.

(b) The bonds:

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

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

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

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.067. NONNEGOTIABLE PURCHASE MONEY NOTES. (a) The agency may issue nonnegotiable purchase money notes to acquire land or fuel resources.

- (b) Nonnegotiable purchase money notes are:
- (1) payable in installments;
 - (2) secured by the property acquired with the notes or other collateral the agency substitutes; and
 - (3) not a security or agency obligation.

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.068. BOND ANTICIPATION NOTES. (a) The agency may issue bond anticipation notes:

(1) for any purpose for which the agency may issue bonds; or

(2) to refund previously issued bond anticipation notes or nonnegotiable purchase money notes.

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

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

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

Sec. 163.071. DEFINITIONS. In this subchapter:

(1) "Agency" means a municipal power agency for which concurrent ordinances are adopted under Section [163.073](#).

(2) "Bond" includes a note, but does not include a nonnegotiable purchase money note issued under Section [163.067](#) or [163.087](#).

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

(4) "Obligations" means revenue bonds or notes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. [776](#)), Sec. 3,

eff. September 1, 2015.

Sec. 163.072. CONSTRUCTION. This subchapter shall be liberally construed to carry out its purpose.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE.

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

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

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

(1) contain identical provisions; and

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

(1) a law regulating the affairs of a municipal corporation; or

(2) a home-rule charter provision.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

(1) separate municipal corporation;

(2) political subdivision of this state; and

(3) political entity and corporate body.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES.

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

(1) add a new public entity as a participating public entity in the agency; or

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

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

(1) contain identical provisions;

(2) define the boundaries of the agency to include the territory within the boundaries of each participating public entity;

(3) designate the name of the agency; and

(4) designate the number, place, terms, and manner of appointment of directors, as provided by Section 163.078.

(c) The public entities may not add or remove a public entity if the addition or removal will impair an agency obligation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY.

(a) Public entities may not adopt concurrent ordinances under Section 163.076 adding a participating public entity unless the addition has been approved by a majority of the qualified voters of the additional public entity at an election called and held for that purpose.

(b) Notice of an election under this section shall be given in accordance with Section 1251.003, Government Code. The election shall be called and held in accordance with:

(1) the Election Code;

(2) Chapter 1251, Government Code; and

(3) this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.078. BOARD OF DIRECTORS. (a) The agency shall be governed by a board of directors.

(b) The board is responsible for the management, operation, and control of the property belonging to the agency.

(c) The board may by resolution delegate management or operational authority to an officer, employee, or committee of the agency, except that the delegation may not include legislative functions, including the sale or purchase of agency properties, the exercise of the power of eminent domain, the adoption or amendment of budgets and rates, or the issuance of debt. The board may repeal a resolution delegating management or operational authority:

(1) if the board is composed of six or more directors, by the affirmative vote of six directors, including the affirmative vote of at least one director appointed by each participating public entity; or

(2) if the board is composed of fewer than six directors, by the affirmative vote of at least one director appointed by each participating public entity.

(d) The board must include at least four directors. Each director must be appointed by place by the governing bodies of the participating public entities. Each participating public entity is entitled to appoint at least one director.

(e) Directors must serve staggered terms. Successor directors are appointed in the same manner as the original appointees.

(f) To qualify to serve as a director, when the person takes the constitutional oath of office, the person must be:

(1) a qualified voter and reside in the boundaries of the appointing public entity;

(2) an employee, officer, or member of the governing body of the appointing public entity; or

(3) a retail electric customer of the appointing

public entity.

(g) Except as provided by Subsections (h) and (i), an employee, officer, or member of the governing body of a participating public entity serving as a director may not have a personal interest in a contract executed by the agency other than as an employee, officer, or member of the governing body of the public entity.

(h) An employee, officer, or member of the governing body of a participating public entity serving as a director is considered to be a local public official for the purposes of Chapter 171, Local Government Code.

(i) An agency and a participating public entity are considered to be political subdivisions for the purposes of Section 131.903, Local Government Code.

(j) Directors serve without compensation. A director who is an employee, officer, or member of the governing body of a participating public entity may continue to receive from the public entity the compensation associated with the office or employment.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

(b) The concurrent ordinances as amended must contain identical provisions.

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

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

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

(3) the repeal of a resolution under Section [163.078\(c\)](#) does not require approval by at least one director appointed by each participating public entity.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. [776](#)), Sec. 3, eff. September 1, 2015.

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

(1) the generation and sale or exchange of electric energy to:

(A) a participating public entity; or

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

(2) the provision of wholesale transmission service under Chapter [35](#).

(b) The agency may:

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

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

(A) department or agency of the United States;

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

(C) public or private person;

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

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

(c) The agency may sell, lease, convey, or otherwise dispose of any right, interest, or property of the agency, including its

electric facilities. A sale, lease, conveyance, or other disposition having a value of more than \$10 million shall require prior approval of each participating public entity, unless the public entities have agreed otherwise by written contract or the property was purchased by the agency for mining purposes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

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

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

or

- (3) exchange electric energy with the agency.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

(1) be reasonable and in accordance with prudent utility practices;

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

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

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

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

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

(A) necessary operational and maintenance expenses;

(B) interest and principal on obligations issued by the agency;

(C) sinking funds and reserve fund payments; and

(D) other charges necessary to fulfill the terms of any agreement; or

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3,

eff. September 1, 2015.

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

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

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

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

(e) Agency obligations are authorized investments for:

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.085. REFUNDING BONDS. The agency may issue refunding bonds.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.086. ISSUANCE, FORM, AND PROVISIONS OF BONDS.

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

(b) The bonds:

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

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

(b) Nonnegotiable purchase money notes are:

(1) payable in installments;

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

(3) not a security or agency obligation.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

(1) for any purpose for which the agency may issue bonds; or

(2) to refund previously issued bond anticipation notes or nonnegotiable purchase money notes.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

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

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

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

(1) use the financed facilities or portions of the facilities;

(2) receive output from the financed facilities; or

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

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

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

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

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

(b) Concurrent ordinances dissolving an agency must:

(1) contain identical provisions;

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

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

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

(c) The participating public entities may not dissolve an

agency if the dissolution will impair the rights or remedies of holders of obligations issued by the agency.

(d) The dissolved agency continues to exist to:

- (1) satisfy existing liabilities or obligations;
- (2) collect, distribute, or liquidate its assets; and
- (3) take any other action required to adjust and wind up its business and affairs.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

SUBCHAPTER D. AGENCY RECEIVING POWER THROUGH INTERSTATE SYSTEM

Sec. 163.101. CREATION. (a) Notwithstanding Section 163.054, two or more public entities may create a municipal power agency governed by Subchapter C if the entities:

- (1) are municipalities;
- (2) are engaged in the distribution and sale of electric energy to the public; and
- (3) receive a major portion of their power through or from an interstate electric system.

(b) The entities must comply with the provisions of Subchapter C relating to the creation of a municipal power agency, including the concurrent ordinance and election provisions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.102. POWERS. (a) An agency created under this subchapter may:

(1) generate and transmit electric power and energy inside and outside this state;

(2) sell, purchase, or exchange electric power and energy with entities inside or outside this state; and

(3) construct or acquire new steam electric generating facilities, but only if the facilities are owned jointly by the agency and one or more private entities.

(b) This section does not authorize an agency created under this subchapter to engage in the distribution and retail sale of electric power and energy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. ELECTRIC COOPERATIVE CORPORATIONS

Sec. 163.121. CREATION. An electric cooperative corporation may join one or more public entities to create a joint powers agency as if the corporation were also a public entity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.122. APPLICATION OF OPEN MEETINGS LAW. A joint powers agency created under this subchapter is a governmental body subject to Chapter 551, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.123. AUTHORITY OF PUBLIC UTILITY COMMISSION. A joint powers agency created under this subchapter is:

(1) subject to all applicable provisions of Title 2; and

(2) under the jurisdiction of the Public Utility Commission of Texas as provided by Title 2.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.124. POWER TO ISSUE CERTAIN BONDS OR SECURITIES. This subchapter does not authorize an electric cooperative corporation to issue bonds or other securities that are tax exempt under federal law.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.