

CHAPTER 460

H.B. No. 1528

An Act relating to the authority of certain general-law cities to establish drainage utility systems.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. SHORT TITLE. This Act may be cited as the Municipal Drainage Utility Systems Act.

SECTION 2. PURPOSE. (a) The legislature finds that authority is needed:

(1) to permit certain general-law cities in the state to establish within their corporate limits a municipal drainage utility system;

(2) to provide rules for use and operation and financing of the system;

(3) to protect the public health and safety within cities from loss of life and property caused by surface water overflows and surface water stagnation within their limits;

(4) to delegate to cities the power to find and declare a drainage system established by ordinance under this Act, after a public hearing, a "public utility";

(5) to prescribe bases on which a municipal drainage utility system may be funded and fees in support of the system may be assessed, levied, and collected;

(6) to provide exemptions of certain persons from this Act; and

(7) to prescribe other rules relative to the subject.

(b) This Act is remedial and shall be liberally construed to accomplish its purposes.

SECTION 3. LIMITED APPLICATION. This Act applies only to general-law cities that have a population of more than 20,000 according to the most recent federal census.

SECTION 4. DEFINITIONS. In this Act:

(1) "Benefitted property" means any lot or tract to which drainage service is made available under this Act.

(2) "City" means a general-law city to which this Act applies.

(3) "Cost of service" as applied to a drainage system service to any benefitted property means any, all, or any combination of:

(A) the prorated cost of the acquisition, whether by eminent domain or otherwise, of all land, rights-of-way, options to purchase land, easements, and interests of all kinds in land related to all structures, equipment, and facilities used in draining the benefitted property;

(B) the prorated cost of the acquisition, construction, repair, and maintenance of all structures, equipment, and facilities used in draining the benefitted property;

(C) the prorated cost of architectural engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of all structures, equipment, and facilities used in draining the benefitted property;

(D) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;

(E) the prorated cost of funding and financing charges and interest before and during construction and for a maximum of two years after completion of construction, and the start-up cost of a drainage facility during construction and for a maximum of two years after completion of construction used in draining the benefitted property;

(F) the prorated cost of debt service and reserve requirements of all structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the city; or

(G) all costs of drainage utility system administration.

(4) "Drainage" means bridges, catch-basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, and all appurtenances to these items or any combination of these items, whether natural or artificial, force or gravity, used for or serving the purpose of drawing off surface water from land, carrying the water away, collecting or storing the water, or diverting the water into natural or artificial watercourses.

(5) "Drainage charge" means the levy imposed to recover the cost of service of the city in furnishing drainage for any benefitted property and, if specifically provided by ordinance of the city's governing body, an amount in contribution to funding of future drainage system construction by the city.

(6) "Drainage system" means the drainage owned or controlled, in whole or in part, by the city and dedicated to the service of benefitted property, including provision for additions to the system.

(7) "Facilities" means the property, real, personal, or mixed, used in providing drainage and included in the system.

(8) "Governing body" means the city board of aldermen, commissioners, or council that serves as the legislative body of the city.

(9) "Person" means an individual, firm, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.

(10) "Public utility" means a regularly provided service of drainage by the city on an established schedule of charges through city property dedicated to that service for every person having a freehold interest in land within its corporate limits, employing the police power to implement that service, and provided on nondiscriminatory, reasonably based, and equitable terms, so declared under this Act.

SECTION 5. ADOPTION OF ACT. (a) The governing body of a city, by a three-fourths vote of its entire membership, may adopt this Act by passage of an ordinance declaring the adoption and declaring the drainage of the city to be a public utility, if it finds:

(1) the city will establish a schedule of drainage charges against all land in the city not exempted by this Act from the charges;

(2) the city will provide drainage for all land in the city, except that exempted under this Act and having sufficient drainage furnished by a person other than the city, upon payment of drainage charges;

(3) if the city includes an amount in contribution to funding future drainage facilities in the drainage charge, it will not apply any tax income to the drainage system costs, construction, or operations; and

(4) the city will offer drainage service on nondiscriminatory, reasonably based, and equitable terms.

(b) Before adopting the ordinance, the governing body shall cause to be advertised in a newspaper of general circulation within the city a notice of the time and place of a public hearing

in the city by the governing body for the purpose of considering the proposed adoption ordinance, which must be published in full in the notice. The notice must be published three times before the hearing, the first publication to be not less than the 30th day before the date of the hearing. The hearing, after being convened and in session, may be recessed once for not more than the next five consecutive days before reconvening without necessity of the republication of notice. If the recess is more than five days, the notice of recessed time and place of hearing must be published not less than three calendar days before the date of the hearing.

(c) After passage of the ordinance adopting this Act the city may levy a schedule of drainage charges. The city may not institute any schedule of drainage charges until it has conducted a public hearing on the charges. Notice of the hearing must be given according to the procedure prescribed by Subsection (b) of this section. The proposed ordinance to institute the drainage charges must be published in the notice.

(d) If, as a result of the public hearing, the proposed schedule is not altered, as implemented, by more than 25 percent of the total amount the original schedule would have generated on projection within a year after being instituted, no additional notice or additional public hearing is necessary.

SECTION 6. OPERATION OF DRAINAGE UTILITY SYSTEM. (a) The income of a drainage utility must be segregated and completely identifiable in city accounts. If drainage charges are solely for cost of service, all or any amount of the charges may be transferred to the city general fund except the portion, if any, pledged to retire any outstanding indebtedness or obligation incurred or as a reserve for future construction, repair, or maintenance of the system. All cost of service, however, may be expended only from drainage system income after the first fiscal year of system operation under this Act. However, if the governing body has levied, in the drainage charge, an amount in contribution to the funding of future system improvements (replacement, new construction, or extension), no such amount shall ever be transferable to the general fund.

(b)(1) In setting its schedule of charges for drainage service, the governing body shall base its calculations on an inventory of the lots and tracts within the corporate limits. Approved city tax plats and assessment rolls may be employed for the purpose.

(2) The size, in area, of a parcel of benefitted property as well as its topography, may be considered in assessing the drainage charge to the parcel of benefitted property.

(c) In setting its schedule of charges for drainage service, the governing board may consider the use made of the benefitted property. Official zoning maps of a city may be employed for the purpose.

(d) Lots and tracts of benefitted property may be charged for drainage service on one or more of the bases mentioned in this section, or on any other basis except value of the benefitted property, so long as the basis is directly related to drainage and the terms of the levy, and the classification, if any, of benefitted properties in the city, are nondiscriminatory, equitable, and reasonable.

(e) Rates for drainage charges may be fixed in advance or otherwise and must be equitable for like services in all parts of the city. A deposit for drainage service may not be required as a prior condition to accepting surface flow in the drainage utility system.

(f) Drainage charges may be billed, separately identified, with the city's other public utility billings. If the freehold owners receive no other city public utility service at the benefitted property, billing with the city tax plat number or other identification of the benefitted property may be mailed to the owners at the address where they receive city billing for property receiving other city public utility service. If the freehold owners receive no city public utility service at any other location in the city, a bill may be sent to any known address of the owners. If no address is known, the billing shall be forwarded to the agency or department handling ad valorem tax collection for the city and shall be collected as a lien on the benefitted property pursuant to the procedure prescribed by this Act.

(g) No person, unless his lot or tract is exempted under this Act, shall be permitted to use the drainage system unless he pays the full, established drainage charge.

(h) The governing body shall have the right to change, adjust, and readjust from time to time the rates and charges for drainage service.

(i) The city shall periodically compile, or cause to be compiled, lists of delinquent drainage charges as of January 1 against benefitted property within its corporate limits, including the amounts in dollars, the penalties and interest prescribed by general ordinance, and the names of the record freehold owners, if known, and their addresses. The information may be sent to the owners with or as a part of their ad valorem tax statements; otherwise, the information, as notice, shall be sent certified mail, return receipt requested, to any known address of the owners, properly stamped. After deliveries to the addresses of the notices of delinquencies have been made, a lien may be fixed for the charges, penalties, and interest against the benefitted property

by publishing the lists once, along with the unknown owners and owners of unknown addresses, in a newspaper of general circulation in the city. The chief executive officer of the city may then execute a certificate to the county clerk attesting that the lists are true and correct, that notices and publications under this Act have been accomplished, and that the delinquencies are unpaid. Certified copies of the lists and of the publishers' affidavits for the notices shall be attached to the certificate, with a separately reproduced certificate for each benefitted property executed by the city officer charged with administration of the drainage utility system. Alternatively, instead of separate delinquency certificates for each benefitted property, on computer ad valorem tax lien filings made by the city's tax collection officer or agency, a separate line item on the filings designated "Drn.Chg.," showing the tax plat or other identifying number for the benefitted property, the names of record owners, if known, and, if unknown, "owners unknown," the year in which due, and the total amount of money owing and delinquent, may be entered, and the filing of the tax lien shall be considered a filing of the drainage charge lien. The county clerk shall charge for each separate delinquency certificate for a benefitted property filed the then applicable fee for filing and recording a document not otherwise named by the statutory fee law and shall maintain a "Drainage Lien Index" for the certificates.

(j) Petitions in suits to foreclose drainage liens shall be filed in a civil court at law having jurisdiction of the amount in controversy. Attorney's fees and other costs of collection may be assessed and collected in reasonable amounts as the court may determine, but in no case less than the costs of suit, penalties, and simple interest not exceeding 10 percent.

(k) The city may adopt by ordinance and enforce other rules as it considers appropriate to carry out the operation of the drainage utility system.

(l) The city may issue, by majority vote of its governing body, drainage revenue bonds and may use without limitation as to any other provision of this Act or any other law the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes). Without limiting the generality of the foregoing, the city may pledge income received by contracts for its providing drainage to other governments or government subdivisions, within or without its corporate limits.

SECTION 7. DISCONTINUANCE OF DRAINAGE UTILITY SYSTEM. (a) If, after not less than five years of substantially continuous operation of a municipal drainage system, the governing body determines that the system should be discontinued, this Act's powers revoked, and provision for drainage in the city should be made by ad valorem taxes, after notice and public hearing in accordance with Section 5 of this Act, the governing body may pass an ordinance to that effect and, after passage of the ordinance, act accordingly.

(b) In that event, this Act may not again be adopted by the city in less than five years after discontinuing its drainage system under this Act.

(c) A discontinuance does not affect any written obligation of the city for funding or for purchase of equipment, materials, or labor for the drainage system that is not then fully paid or otherwise discharged.

(d) No claims for damages due to alleged failure of the drainage system filed with the city before the passage of the ordinance discontinuing the drainage system are abated by the discontinuance.

SECTION 8. EXEMPTIONS. The following persons and lots or tracts in which they hold freehold interests may be exempt from this Act and all ordinances, resolutions, rules, or regulations made under this Act:

- (1) the State of Texas;
- (2) counties;
- (3) other municipalities;
- (4) school districts; and
- (5) persons with wholly sufficient, complete, and private drainage systems discharging in a stream.

SECTION 9. EXISTING FACILITIES INCLUDABLE. Existing drainage facilities, materials, and supplies of the city may be incorporated into the drainage utility system.

SECTION 10. VALIDATION. (a) Acts and transactions of cities adopting this Act occurring in preparation for or implementation of a drainage utility system, if adopted not later than the 60th day after the date of this Act's final passage, are ratified and confirmed.

(b) This section does not apply to any matter that on the date of final passage:

- (1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or
- (2) has been held invalid by a final judgment of a court of competent jurisdiction.

SECTION 11. EFFECTIVE DATE. This Act takes effect October 1, 1985.

SECTION 12. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 18, 1985, by a non-record vote; passed by the Senate on May 21, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 11, 1985

Effective: October 1, 1985