

CHAPTER 1006

H.B. No. 1432

AN ACT

relating to the powers of a river authority that engages in the distribution and sale of electric energy; granting the authority to issue bonds.

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

SECTION 1. Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes), is amended by adding Sections 4A and 4B to read as follows:

*Sec. 4A. (a) The board of directors of a river authority that is engaged in the distribution and sale of electric energy to the public may create by order one or more nonprofit corporations to act on behalf of the authority as its duly constituted authority and instrumentality to exercise any power of the authority under law except a power relating to solid waste management activities or activities as an "exempt wholesale generator" as defined by the Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79z-5a(a)),*

but including the authority to acquire, develop, operate, and sell fuel, fuel reserves, and mineral interests.

(b) When exercising a power under this Act, a corporation created under this Act and the board of directors of the corporation have the same powers as the creating river authority and the authority's board.

(c) The board of directors of the authority shall appoint the directors of a nonprofit corporation created under this section. A member of the authority's board of directors may serve as a member of the nonprofit corporation's board. The corporation's directors serve at the will of the authority's directors.

(d) The budget of a nonprofit corporation created under this section must be approved by the board of directors of the authority. The activities of the corporation are subject to the continuing review and supervision of the authority's board of directors.

(e) The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and its subsequent amendments apply to and govern a corporation created under this section. Sections 5-20 and 33-36, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), and their subsequent amendments apply to and govern a corporation created under this section, except that a reference in those sections to an Act includes this Act, as appropriate, and a reference to a unit includes a river authority to which this Act applies.

(f) The property of a nonprofit corporation created under this section is not exempt from taxes and special assessments of the state or of a municipality, county, or other political subdivision of the state.

(g) The board of directors of the nonprofit corporation may issue bonds or other obligations or otherwise borrow money on behalf of the river authority to carry out any of its corporate purposes. The issuance of any bonds or obligations must be approved by the board of directors of the river authority. Bonds and other obligations issued or entered into by the nonprofit corporation and the proceedings authorizing the issuance or the entering into of an obligation shall be submitted to the attorney general for examination. If the attorney general finds that the bonds or other obligations have been authorized in accordance with the Texas Constitution and this Act, the attorney general shall approve them, and they shall be registered by the comptroller. After approval and registration the bonds and obligations are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

(h) In addition to other authority granted by this Act, the board of directors of the nonprofit corporation may exercise the powers granted to the governing body of an issuer and a public agency with regard to the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), and Chapter 845, Acts of the 67th Legislature, Regular Session, 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and their subsequent amendments.

Sec. 4B. (a) A river authority that is engaged in the distribution and sale of electric energy to the public or a corporation created under Section 4A of this Act may enter into a hedging contract and related security and insurance agreements in relation to crude oil, fuel oil, natural gas, and electric energy to protect against loss due to price fluctuations. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission.

(b) A payment made by a river authority or a nonprofit corporation under a hedging contract or related agreement in relation to fuel supplies or fuel reserves constitutes a fuel expense, and the authority or nonprofit corporation may credit any amounts it receives under the contract or agreement against fuel expenses.

(c) Except as provided by Subsection (d) of this section, the board of directors of a river authority may determine and designate the amount of money to be invested in a hedging transaction.

(d) The directors of the river authority by formal policy shall regulate the investment of funds in crude oil, fuel oil, natural gas, and electric energy futures contracts or in options on those futures contracts. The policy must provide restrictions and procedures for making

*the investments that a person of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, would follow in the management of the person's own affairs, not in regard to speculation but in regard to the permanent disposition of the person's funds, considering the probable income as well as the probable safety of the person's capital. The investment may be made only for hedging purposes.*

*(e) In this section, "hedging" means the buying and selling of crude oil, fuel oil, natural gas, and electric energy futures or options or similar contracts on those commodity futures as a protection against loss due to price fluctuation.*

*(f) This section does not in any way limit the authority of the Public Utility Commission to determine the recoverability of cost from rate payers.*

SECTION 2. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 12, 1993, by a non-record vote; the House refused to concur in Senate amendments to H.B. No. 1432 on May 27, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 1432 on May 30, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993: Yeas 29, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 1432 on May 30, 1993: Yeas 31, Nays 0.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.