

CHAPTER 423

S.B. No. 1093

AN ACT

relating to authorization for a county to create a county utility system board to operate and manage certain utility systems.

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

SECTION 1. Section 1, Chapter 616, Acts of the 72nd Legislature, Regular Session, 1991 (Article 717v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. COUNTIES SUBJECT TO ACT. This Act applies only to a county *that on the date an order is adopted under Section 2A(a) of this Act has [with] a population of 10,000 [1,500] or less, according to the most recent federal census.*

SECTION 2. Chapter 616, Acts of the 72nd Legislature, Regular Session, 1991 (Article 717v, Vernon's Texas Civil Statutes), is amended by adding Section 2A to read as follows:

Sec. 2A. COUNTY UTILITY SYSTEM BOARD. (a) *Instead of being directly responsible for the entire operation and management of the county's wastewater collection and treatment system, water supply and distribution system, or solid waste collection and disposition system, the commissioners court by an order adopted at a regular meeting may make this section applicable to the county and establish a county utility system board.*

(b) *The board is responsible for the operation and management of each utility system placed under its control by the commissioners court's order under Subsection (a) of this section that is owned or in the process of being acquired by the county.*

(c) *The board is composed of five directors. One director must be a member of the commissioners court appointed by the court at its first meeting of each county fiscal year. Four directors shall serve in positions designated as positions 1, 2, 3, and 4 and shall be elected by qualified voters in the county and shall serve for two-year terms beginning October 1 after the election. An election shall be held on the second Saturday of each September. Positions 1 and 3 shall be elected in odd-numbered years and positions 2 and 4 shall be elected in even-numbered years. A candidate must be a qualified voter of the county. The election shall be administered by the county election administrator or by the county clerk if the county does not have a county election administrator. The election shall be governed by the Election Code.*

(d) *The commissioners court shall appoint members to the board to serve until October 1 after the first election is held as provided by Subsection (c) of this section.*

(e) *The directors shall organize by the selection, for a one-year period, of a president, vice-president, secretary, and treasurer. The offices of secretary and treasurer may be combined. The president and vice-president must be members of the board. The person serving as secretary, treasurer, or both need not be a member of the board. The president shall preside at the meetings of the board and act as the board's chief executive officer and budget officer. The vice-president shall assume the duties of the president if the president is incapacitated or absent from a meeting. The secretary shall keep the records and the minutes of the meetings of the board. The treasurer shall be responsible for the deposit of all revenues of any system operated and managed by the board in one or more separate accounts with the county depository, except that any funds set aside for the payment or security of obligations issued on behalf of the board may be deposited with the paying agent for which provision is made in the order authorizing the issuance of the obligations. The board shall require the treasurer to execute a bond in an amount equal to the estimated amount to be held, at any time, by the treasurer. The premium of the bond shall be paid by the board.*

(f) *The president, with the assistance of the business manager, shall prepare a tentative budget showing the anticipated revenues by sources and the expenses of the utility system and the board for the next county fiscal year and submit it to the board no later than June 1. The board shall schedule a public hearing to consider the budget no later than July 1. The final budget shall be adopted by the board no later than July 15 and submitted to the commissioners court for consideration by the commissioners court as a part of the county budget. If a county budget has not been adopted, the budget for the utility system or systems is the same as for the preceding fiscal year, except that the budget is increased proportionally if the previous budget was not for a complete fiscal year. The board and the commissioners court shall include in the budget an amount sufficient to provide for the payment and security of any outstanding obligations approved by the attorney general to the extent the obligations are payable from the revenues of the utility system or systems.*

(g) *The board in its bylaws shall provide procedures for the disbursement of funds it has deposited with the county depository only after the board has determined that the funds for payment were properly budgeted. However, approval of the board is not required for the*

transfer of funds to a paying agent for the payment and security of outstanding obligations approved as to legality by the attorney general. All checks issued by the board shall be signed by at least two persons, one of whom must be an officer of the board.

(h) The board may establish rates and charges for services, fees for connections and reconnections, security deposits, and other charges required for efficient operation of each utility system for which it has responsibility.

(i) The board may not:

(1) incur or issue any obligation payable, in whole or in part, from ad valorem taxes; or

(2) exercise the power of eminent domain.

(j) The board may provide for extensions and improvements to a system but may not provide for the extension of service to any area within the boundaries or extraterritorial jurisdiction of a municipality or conservation and reclamation district established under Article XVI, Section 59, of the Texas Constitution without the consent of the governing body of the municipality or district.

(k) With the approval of the commissioners court, the board may purchase an existing privately owned wastewater collection and treatment system or water supply and distribution system that supplies retail utility service in the county. With the consent of the directors of a conservation and reclamation district established within the county, the commissioners court may assume the outstanding obligations of the district and provide for the abolition of the district. The area of the former district must remain secondarily liable for the payment of any taxes pledged to the payment of outstanding indebtedness of the former district until the indebtedness has been paid, provision has been made for the payment of the obligations, or the obligations have been refunded by the county. These taxes, if required, shall be levied against the area of the former district by the commissioners court as the successor to the district.

(l) The board may adopt bylaws consistent with this Act to regulate its affairs and establish the area within the county in which it has responsibility for providing utility service. The service area of the board may not include territory that on the effective date of this Act is served by another utility under a certificate of public convenience and necessity unless the certificate ceases to be effective. The bylaws may provide for a seal for the board.

(m) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), Subchapter C, Chapter 262, Local Government Code, and the Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes) and their subsequent amendments. The board is a governmental unit for the purpose of Chapter 101, Civil Practice and Remedies Code, and its subsequent amendments and all of its activities are in the performance of an essential governmental function.

(n) The county, by the adoption of an order at a regular meeting of the commissioners court, may authorize the issuance of obligations payable in whole or in part from ad valorem taxes on behalf of the board for the purpose of acquiring, improving, repairing, or extending the county's wastewater collection system, treatment system, water supply and distribution system, or solid waste collection and disposition system. If the obligations are payable from ad valorem taxes and revenues, the board must also approve the issuance of the obligations. If obligations are to be issued for one or more of those purposes and are to be payable solely from the gross revenues of one or more systems, the board, by resolution, may authorize the issuance. This section does not prohibit an appropriation by the county of any available funds for assistance in the maintenance or operation of a system, but an agreement or pledge to do so beyond the then current fiscal year is not effective unless there is compliance with Article XI, Section 7, of the Texas Constitution. The following provisions and their subsequent amendments apply to and govern the county and the board when operating under this section:

(1) Chapter 271, Local Government Code;

(2) the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes);

(3) Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes);

(4) Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes);

(5) Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes);

(6) Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes); and

(7) Sections 2 to 9 of this Act.

(o) The maturity of an obligation issued under this section may not exceed 40 years.

(p) Each member of the board is entitled to reimbursement for actual expenses incurred in the conduct of the business of the board and a fee for each meeting attended as established by the commissioners court.

SECTION 3. An action taken by or on behalf of the commissioners court of a county in the acceptance of grants for the construction of a water supply and distribution system or a wastewater collection and treatment system or the acceptance of a conveyance of such a system, or an action taken by or on behalf of the county since the acquisition of such a system, including the operation of the system, is ratified, confirmed, and validated. This section does not validate an action that is the subject of litigation on the effective date of this Act.

SECTION 4. After the effective date of this Act and before the beginning of the next county fiscal year, the board shall operate with the budget applicable to the utility systems for the current fiscal year.

SECTION 5. At the first election following the creation of a county utility system board, four directors shall be elected. After taking office the directors shall draw lots to determine which directors serve one-year terms and which directors serve two-year terms.

SECTION 6: 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 the Senate on April 30, 1993: Yeas 28, Nays 0; passed the House on May 21, 1993: Yeas 132, Nays 0, two present not voting.

Approved June 6, 1993.

Effective June 6, 1993.