

CHAPTER 88

S.B. No. 436

AN ACT

relating to sewer services to municipalities under privatization contracts.

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

SECTION 1. Chapter 13, Texas Water Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. PRIVATIZATION CONTRACTS

Sec. 13.501. DEFINITIONS. In this subchapter:

(1) "Eligible city" means any municipality whose waterworks and sewer system is operated by a board of utility trustees pursuant to provisions of a home-rule charter.

(2) "Privatization contract" means any contract, agreement, or letter of intent or group of the same by which any eligible city contracts with a service provider to provide for the financing, acquisition, improvement, or construction of sewage treatment and disposal facilities pursuant to which such service provider or its assignee or subcontractor will own, operate, and maintain such facilities and provide sewage treatment and disposal services to the eligible city or any contract pursuant to which such service provider agrees to operate and maintain, or have its subcontractor operate and maintain all or any part of the eligible city's sewage treatment and disposal facilities. Any privatization contract may be for such term and contain such provisions as the governing body of an eligible city shall determine to be in the best interests of the eligible city, including provisions relating to allocation of liabilities, indemnification, and purchase of all or a portion of the facilities. Payments by an eligible city under a privatization contract shall, if so provided, constitute an operating expense of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system, except that any payment for purchase of the facilities shall be payable from a pledge and lien on the net revenues of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system.

(3) "Service provider" means any person or group of persons who is a party to a privatization contract which thereby contracts to provide sewage treatment and disposal services to an eligible city.

Sec. 13.502. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

Sec. 13.503. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of Chapter 13 as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the commission; provided, however, this provision shall not affect the application of Chapter 13 to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of Chapter 13 with respect to such other person or municipality.

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

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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 March 26, 1987, by the following vote: Yeas 30, Nays 0. Passed the House on April 30, 1987, by the following vote: Yeas 142, Nays 0, one present not voting.

Approved May 14, 1987.

Effective May 14, 1987.