

BILL ANALYSIS

C.S.H.B. 1926
By: Kacal
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Several decades ago, the legislature created a joint power agency to collectively generate, transmit, and sell electric power to several municipalities. Interested parties contend that this agency is operating under a power sales contract with the municipalities that is set to expire in the near future and that under current statute these municipalities cannot make certain changes to the agency. C.S.H.B. 1926 seeks to allow member municipalities to make these changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1926 amends the Utilities Code to create alternate governance applicable to a municipal power agency created by two or more public entities under statutory provisions relating to municipal power agencies created as joint powers agencies or under a predecessor statute, including a re-created agency. The bill authorizes participating public entities of a municipal power agency, by concurrent ordinance, to elect to apply the bill's provisions to the agency as an alternative to statutory provisions relating to municipal power agencies created as joint powers agencies. The bill requires a concurrent ordinance, adopted by each public entity, to contain identical provisions and to state that the public entity has elected that the agency shall, on and after the date designated in the ordinance, be governed by the bill's provisions. The bill's provisions prevail to the extent of a conflict between the bill's provisions and any other law, including a law regulating the affairs of a municipal corporation or a home-rule charter provision and are required to be liberally construed to carry out its purpose.

C.S.H.B. 1926 establishes that a municipal power agency to which the bill applies is a separate municipal corporation, a political subdivision of this state, and a political entity and corporate body. The bill prohibits an agency from imposing a tax but grants an agency all the other powers relating to municipally owned utilities and provided by law to a municipality that owns a public utility. The bill authorizes the public entities that created or re-created an agency, by concurrent ordinances, to add a new public entity as a participating public entity in the agency or remove a public entity from participation in the agency. The bill requires such concurrent ordinances, as adopted by each public entity, to contain identical provisions, to define the boundaries of the agency to include the territory within the boundaries of each participating public entity, to designate the name of the agency, and to designate the number, place, terms, and manner of appointment of directors, as provided by the bill. The bill prohibits the public entities from

adding or removing a public entity if the addition or removal will impair an agency obligation. The bill prohibits the public entities from adopting concurrent ordinances 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. The bill provides for the process and procedures of such an election.

C.S.H.B. 1926 requires the agency to be governed by a board of at least four directors who are appointed by place by the governing bodies of the participating public entities and serve staggered terms and makes the board responsible for the management, operation, and control of the property belonging to the agency. The bill sets out provisions relating to the composition of the board, director terms, director qualifications, removals and filling vacancies, and compensation, among other requirements relating to the board and its operation. The bill prohibits an employee, officer, or member of the governing body of a participating public entity serving as a director from having 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 and establishes that such a person is considered to be a local public official for the purposes of Local Government Code provisions relating to regulation of conflicts of interest of officers of municipalities, counties, and certain other local governments. The bill establishes that an agency and a participating public entity are considered to be political subdivisions for the purposes of Local Government Code provisions relating to conflicts of interest.

C.S.H.B. 1926 authorizes the public entities that created or re-created an agency to 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. The bill requires such concurrent ordinances as amended to contain identical provisions. The bill's provisions relating to a single board of directors apply to the separate boards with certain exceptions.

C.S.H.B. 1926 prohibits an agency from engaging in any utility business other than the generation and sale or exchange of electric energy to a participating public entity or a private entity that owns jointly with the agency an electric generating facility in Texas or the provision of wholesale transmission service under statutory provisions relating to alternative energy providers. The bill authorizes the agency to perform any act necessary to the full exercise of the agency's powers; enter into a contract, lease, or agreement with or accept a grant or loan from a department or agency of the United States, department, agency, or political subdivision of Texas, or public or private person; use the uniform system of accounts prescribed for utilities and licenses by the Federal Energy Regulatory Commission; and adopt rules to govern the operation of the agency and its employees, facilities, and service. The bill authorizes the agency to sell, lease, convey, or otherwise dispose of any right, interest, or property of the agency, including its electric facilities. The bill establishes that any such sale, lease, conveyance, or other disposition having a value of more than \$10 million requires 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. After September 1, 2015, and subject to exceptions to certification requirements under statutory provisions relating to certificates of convenience and necessity and Public Utility Commission of Texas rules, the bill requires a certificate of convenience and necessity for the construction, installation, or extension of a transmission facility by the agency outside the certificated service areas of the participating public entities or the agency's boundaries, which, for purposes of this requirement are the certificated service areas of the participating public entities.

C.S.H.B. 1926 authorizes an agency to award a contract for construction of an improvement that involves the expenditure of more than \$20,000 only on the basis of competitive bids and provides for the bidding and contracting process. The bill requires an entity that has joint ownership of the improvement to be constructed or that is an agent of a joint owner to award a contract using the entity's contracting procedures. The bill authorizes an agency to participate through appropriate contracts in power pooling and power exchange agreements with other

entities through direct or indirect system interconnections. The bill authorizes an entity that participates with an agency in the sale or exchange of electric energy to purchase electric energy from the agency; sell or dispose of electric energy to the agency; or exchange electric energy with the agency. The bill establishes that an entity payment for electric energy purchased from the agency is an operating expense of the entity's electric system. The bill authorizes an agency contract to sell or exchange electric energy to require the purchaser to pay for the electric energy regardless of whether the electric energy is produced or delivered.

C.S.H.B. 1926 authorizes an agency to establish and maintain rates and charges for electric power and energy the agency delivers, transmits, or exchanges and sets out requirements for such rates and charges. The bill establishes that the state reserves its power to regulate an agency's rates and charges for electric energy supplied by the agency's facilities. The bill establishes that the state pledges to and agrees with the purchasers and successive holders of obligations issued under specified provisions that it will not engage in certain specified activities until such obligations 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.

C.S.H.B. 1926 authorizes the agency to issue revenue bonds to accomplish the purposes of the agency and sets out the requirements and provisions for the issue and proceeds and authorizes the agency to issue refunding bonds. The bill requires agency bonds that are payable from agency revenues or anticipated bond proceeds and the records relating to their issuance to be submitted to the attorney general for examination before delivery and sets out additional requirements and provisions relating to the issuance of agency bonds.

C.S.H.B. 1926 authorizes the agency to issue nonnegotiable purchase money notes to acquire land or fuel resources and describes such a note. The bill establishes that such notes may be further secured by a promise to issue bonds or bond anticipation notes to pay the purchase money notes.

C.S.H.B. 1926 authorizes the agency to issue bond anticipation notes for any purpose for which the agency may issue bonds or to refund previously issued bond anticipation notes or nonnegotiable purchase money notes. The bill subjects bond anticipation notes to the limitations and conditions prescribed by the bill's provisions for bonds. The bill authorizes the agency to 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.

C.S.H.B. 1926 establishes that 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. The bill authorizes a public entity to issue public securities, 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 the bill. The bill authorizes a public entity and an agency to 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 the bill and sets out provisions related to such an agreement. The bill authorizes such a public security to include certain debt obligations issued in accordance with specified Government Code and Local Government Code provisions or to include other types or forms of debt that the public entity is authorized to issue. The bill authorizes each participating public entity to exercise any power of an issuer under Government Code provisions relating to obligations for certain public improvements.

C.S.H.B. 1926 authorizes the participating public entities of an agency, by concurrent ordinance, to dissolve the agency and sets out requirements relating to the dissolution. The bill prohibits the participating public entities from dissolving an agency if the dissolution will impair the rights or

remedies of holders of obligations issued by the agency. The bill establishes that the dissolved agency continues to exist to perform certain specified actions, requires the assets of the dissolved agency that remain after all liabilities or obligations of the agency have been satisfied to be distributed to the public entities that created the agency, and requires the public entities to establish the method of distribution by agreement. The bill establishes that such an agreement between a public entity and an agency entered into before September 1, 2015, is enforceable according to the terms of the agreement, regardless of a provision to the contrary in the bill's provisions.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1926 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Chapter 163, Utilities Code, is amended by adding Subchapter C-1 to read as follows: <u>SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER AGENCIES</u>	SECTION 1. Chapter 163, Utilities Code, is amended by adding Subchapter C-1 to read as follows: <u>SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER AGENCIES</u>
<u>Sec. 163.071. DEFINITIONS.</u>	<u>Sec. 163.071. DEFINITIONS.</u>
<u>Sec. 163.072. CONSTRUCTION.</u>	<u>Sec. 163.072. CONSTRUCTION.</u>
<u>Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE.</u>	<u>Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE.</u>
<u>Sec. 163.074. CONFLICTS WITH OTHER LAW.</u>	<u>Sec. 163.074. CONFLICTS WITH OTHER LAW.</u>
<u>Sec. 163.075. NATURE OF AGENCY.</u>	<u>Sec. 163.075. NATURE OF AGENCY.</u>
<u>Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES.</u>	<u>Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES.</u>
<u>Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY.</u>	<u>Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY.</u>
<u>Sec. 163.078. BOARD OF DIRECTORS.</u>	<u>Sec. 163.078. BOARD OF DIRECTORS.</u>
<u>Sec. 163.079. SEPARATE BOARDS OF DIRECTORS.</u>	<u>Sec. 163.079. SEPARATE BOARDS OF DIRECTORS.</u>
<u>Sec. 163.080. POWERS. (a) An agency may not engage in any utility business other than:</u> <u>(1) the generation and sale or exchange of</u>	<u>Sec. 163.080. POWERS. (a) An agency may not engage in any utility business other than:</u> <u>(1) the generation and sale or exchange of</u>

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.

Sec. 163.081. CONSTRUCTION CONTRACTS.

Sec. 163.082. SALE OR EXCHANGE OF ELECTRIC ENERGY.

Sec. 163.083. RATES AND CHARGES.

Sec. 163.084. REVENUE BONDS.

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(d) After September 1, 2015, and subject to exceptions to certification requirements in Chapter 37 and commission rules, a certificate under Chapter 37 is required for the construction, installation, or extension of a transmission facility by the agency outside the certificated service areas of the participating public entities or the agency's boundaries, which, for purposes of this subsection, are the certificated service areas of the participating public entities.

Sec. 163.081. CONSTRUCTION CONTRACTS.

Sec. 163.082. SALE OR EXCHANGE OF ELECTRIC ENERGY.

Sec. 163.083. RATES AND CHARGES.

Sec. 163.084. REVENUE BONDS.

Sec. 163.085. REFUNDING BONDS.

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

Sec. 163.087. NONNEGOTIABLE PURCHASE MONEY NOTES.

Sec. 163.088. BOND ANTICIPATION NOTES.

Sec. 163.089. PUBLIC SECURITIES.

Sec. 163.090. DISSOLUTION.

SECTION 2. This Act takes effect September 1, 2015.

Sec. 163.085. REFUNDING BONDS.

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

Sec. 163.087. NONNEGOTIABLE PURCHASE MONEY NOTES.

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Sec. 163.089. PUBLIC SECURITIES.

Sec. 163.090. DISSOLUTION.

SECTION 2. Same as introduced version.