

BILL ANALYSIS

Senate Research Center
88R22823 DIO-F

H.B. 2701
By: Guillen (LaMantia)
Local Government
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Changes need to be made to state laws governing public utility agencies in Texas. Certain public entities need more authority to issue bonds and impose assessments to raise money for the acquisition, construction, ownership, operation, and maintenance of facilities, and public utility agencies need to have the power to acquire a public utility for the use and benefit of each participating public entity. H.B. 2701 seeks to address these issues by granting certain public utility agencies the power to perform any act necessary to the full exercise of the agency's powers, including acts necessary to acquire, finance, own, operate, or manage a facility of the agency. H.B. 2701 also authorizes ratepayers of applicable public utility agencies to appeal agency decisions that affect their water, drainage, or sewer rates to the Public Utility Commission of Texas.

H.B. 2701 amends current law relating to public utility agencies, provides authority to issue bonds, and provides authority to impose assessments.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 572.001(3), Local Government Code, to redefine "public entity" to include a water supply or sewer service corporation.

SECTION 2. Amends Section 572.012(a), Local Government Code, as follows:

(a) Authorizes each participating public entity to take certain actions, including making an acquisition described by Subdivision (4) (relating to an acquisition, for the use and benefit of each participating public entity, of land, easements, and property for a facility by purchase or by exercising the power of eminent domain) through a purchase from a public or private entity and, for the use and benefit of each participating public entity, acquiring by purchase a public utility, as defined by Section 13.002 (Definitions), Water Code, other than an affected county. Makes nonsubstantive changes.

SECTION 3. Amends Sections 572.051(2) and (3), Local Government Code, to redefine "obligation" and "public utility agency."

SECTION 4. Amends Sections 572.052(c) and (d), Local Government Code, as follows:

(c) Provides that a public utility agency (agency) is a:

(1) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions; and

(4) retail public utility for the purposes of Chapter 13 (Water Rates and Services), Water Code.

(d) Prohibits an agency from imposing a tax but provides that an agency has all the other powers and obligations that are related to facilities and that are provided by law to a municipality that owns a facility, except as provided by Section 572.061 (Rates and Charges).

SECTION 5. Amends Section 572.053, Local Government Code, as follows:

Sec. 572.053. CHANGES IN PUBLIC ENTITIES PARTICIPATING IN PUBLIC UTILITY AGENCY. (a) Creates this subsection from existing text.

(b) Authorizes a participating public entity to withdraw from an agency by providing an ordinance or resolution of the governing body of the participating public entity to the agency not later than the 180th day before the proposed date of withdrawal. Prohibits a participating public entity from withdrawing from an agency under this subsection if bonds, notes, or other obligations of the agency are secured by the revenues of the participating public entity, unless the agency adopts a resolution approving the withdrawal. Provides that a participating public entity, upon withdrawal, assumes the outstanding debt attributable to that entity from the agency on a prorated basis equal to that entity's benefit and has, without compensation from the agency, no further rights, duties, or obligations relating to the agency or ability to receive service from the facilities of the agency.

SECTION 6. Amends Section 572.058, Local Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes an agency to:

(1) perform any act necessary to the full exercise of the agency's powers, including acts necessary to acquire, finance, own, operate, or manage a facility of the agency;

(2) enter into a contract, lease, or agreement, including an interlocal contract as authorized by Chapter 791 (Interlocal Cooperation Contracts), Government Code, with or accept a grant or loan from certain entities for the management and operation of an agency facility or the acquisition, construction, financing, maintenance, operation, provision, or receipt of a facility, service, or product. Makes nonsubstantive changes;

(3) sell, lease, convey, or otherwise dispose of all or a portion of any right, interest, or property the agency considers to be unnecessary for the efficient operation or maintenance of its facilities; and

(4) makes no changes to this subdivision.

(c) Authorizes an agency, except as limited by a concurrent ordinance under which the agency is created, to exercise any right or power granted by general law to a county or municipality or a district or authority created under Section 59 (Conservation and Development of Natural Resources; Development of Parks and Recreational Facilities; Conservation and Reclamation Districts; Indebtedness and Taxation Authorized), Article XVI (General Provisions), Texas Constitution, to accomplish the purposes of the agency, including issuing bonds payable from special assessments in the manner provided by Chapter 372 (Improvement Districts in Municipalities and Counties). Provides that this subsection does not authorize an agency to impose a tax.

SECTION 7. Amends Sections 572.061(d) and (e), Local Government Code, as follows:

(d) Provides that the Public Utility Commission of Texas (PUC), notwithstanding Subsection (a) (relating to requiring an agency to charge rates sufficient to produce revenue adequate to meet certain criteria), has appellate jurisdiction over the rates and

charges of an agency in the manner provided by Section 13.043 (Appellate Jurisdiction), Water Code. Deletes existing text providing that the state, notwithstanding Subsection (a), reserves its power to regulate and control the rates and charges by an agency.

(e) Provides that this state pledges to and agrees with the purchasers and successive holders of obligations issued under Subchapter C (Public Utility Agencies) that in any appeal proceeding regarding the agency conducted under Section 13.043, Water Code, the PUC will establish rates and charges that will produce revenue sufficient to pay for those items specified in Subsections (a) and (b) (relating to authorizing an agency to also establish a reasonable depreciation and emergency fund) and any other obligations of the agency in connection with those items. Deletes existing text providing that this state, until obligations issued under this subchapter have been paid and discharged, pledges to and agrees with the purchasers and successive holders of the obligations that it will not limit or alter the powers of the agency to establish and collect rates and charges that will produce revenue sufficient to pay for those items specified in Subsections (a) and (b) and any other obligations of the agency in connection with those items.

SECTION 8. Amends Section 572.062, Local Government Code, by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2), as follows:

(a) Authorizes an agency to :

(1) issue obligations, including anticipation notes, to accomplish the purposes of the agency; and

(2) finance or refund the acquisition, construction, expansion, and improvement of all or a portion of a facility relating to an agency purpose.

(b) Authorizes the agency, except as provided by Subsection (b-1) (relating to providing that operation and maintenance expenses are a first lien on and charge against the pledged revenue), to pledge to the payment of the obligations the revenue of all or part of its facilities, including facilities acquired after the obligations are issued:

(1) revenues received from a public entity by contract as authorized by a concurrent ordinance;

(2) special assessments:

(A) imposed by the agency in the manner provided by Chapter 372; or

(B) imposed by a public entity and provided by contract to the agency; or

(3) any other funds of the agency.

(b-1) Creates this subsection from existing text and makes a nonsubstantive change.

(b-2) Prohibits an agency from using a facility owned by the agency to secure or collateralize a new facility without the approval by resolution of each participating public entity participating in the joint financing of the new facility. Provides that this subsection does not apply to the use of revenue from a facility owned by the agency to secure or collateralize a new facility.

SECTION 9. Amends Subchapter C, Chapter 572, Local Government Code, by adding Section 572.065, as follows:

Sec. 572.065. LIABILITY. Requires that liability for the facilities and management of the agency be transferred to the agency on ownership of the facilities by the agency.

SECTION 10. Amends Section 13.002, Water Code, by adding Subdivision (16-a) and amending Subdivisions (19) and (23), to define "public utility agency" and to redefine "retail public utility," "water and sewer utility," "public utility," and "utility."

SECTION 11. Amends Section 13.043, Water Code, by amending Subsections (b), (c), and (i) and adding Subsections (i-1) and (j-1), as follows:

(b) Authorizes ratepayers of certain entities to appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the PUC, including an agency. Makes a nonsubstantive change.

(c) Makes a conforming change to this subsection.

(i) Requires the governing body of a municipally owned utility or a political subdivision, other than an agency, within 60 days after the date of a final decision on a rate change, to provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision.

(i-1) Requires the board of directors of an agency (board), within 60 days after the date of a final decision on a rate change, to provide individual written notice to each ratepayer eligible to appeal the rates. Requires that the notice include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. Authorizes the board to provide the notice electronically if the agency has access to a ratepayer's e-mail address.

(j-1) Requires the PUC, notwithstanding Subsection (j) (relating to requiring the PUC, in an appeal under this section, to ensure that every appealed rate is just and reasonable), in an appeal under this section of a rate charged by an agency, to ensure that the rate complies with Section 572.061(e), Local Government Code.

SECTION 12. Effective date: upon passage or September 1, 2023.