

BILL ANALYSIS

C.S.H.B. 2701
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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. C.S.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.

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. 2701 amends the Local Government Code to authorize a public entity participating in a water and wastewater public utility cooperation to do the following:

- make an acquisition through a purchase from a public or private entity to acquire, for the use and benefit of each participating public entity, land, easements, and property for a facility by purchase or by exercising the power of eminent domain; and
- for the use and benefit of each participating public entity, acquire by purchase an applicable public utility, other than an affected county to which subdivision platting requirements in a county near the international border apply.

C.S.H.B. 2701 includes a water supply or sewer service corporation in the definition of "public entity" and includes a retail water or wastewater public utility in the definition of "public utility agency" for purposes of provisions governing water and wastewater public utilities. The bill clarifies that for purposes of certain provisions governing the creation of a water and wastewater public utility agency, an "obligation" is a bond note secured by a revenue, fee, charge, assessment, or other revenue of an agency available for that purpose.

C.S.H.B. 2701 authorizes a public entity participating in a water or wastewater public utility agency to withdraw from the 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. The bill prohibits such an entity from withdrawing from the agency if bonds, notes, or other obligations of the agency are secured by the revenues of the entity, unless the agency adopts a resolution approving the withdrawal. Upon withdrawal, the entity 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.

C.S.H.B. 2701 specifies the following with respect to a water or wastewater public utility agency:

- the necessary acts that the agency may perform to the full exercise of the agency's powers include acts necessary to acquire, finance, own, operate, or manage a facility of the agency;
- the agreements that the agency may make include an interlocal cooperation contract;
- those agreements are 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; and
- that the sale, lease, conveyance or other disposal of any right, interest, or property the agency considers to be unnecessary for the efficient operation or maintenance of its facilities is with respect to all or a portion of such ownership.

Except as limited by a concurrent ordinance under which the agency is created, an agency may exercise any right or power granted by general law to a county or municipality or a conservation and reclamation district to accomplish the purposes of the agency, including issuing bonds payable from special assessments in the manner provided by the Public Improvement District Assessment Act. These provisions do not authorize the agency to impose a tax.

C.S.H.B. 2701 clarifies that the Public Utility Commission of Texas (PUC) has appellate jurisdiction over the rates and charges of a water and wastewater public utility agency, including a retail water or sewer public utility, in the manner provided by applicable provisions of the Water Code. The bill removes a statutory provision establishing that, until certain obligations have been paid and discarded, the state pledges to and agrees with the purchasers and successive holders of the obligations that it will not limit or alter the powers of a public utility agency to establish and collect rates and charges that will produce revenue sufficient to pay certain costs and obligations. The bill establishes instead that the state pledges to and agrees with the purchasers and successive holders of such obligations in any appeal proceeding regarding the public utility agency and that the PUC will establish the rates and charges that will produce sufficient revenue.

C.S.H.B. 2701 authorizes a water or wastewater public utility agency to do the following:

- finance or refund the acquisition, construction, expansion, and improvement of all or a portion of a facility relating to an agency purpose;
- pledge to the payment of the obligations the revenue of all or part of its facilities, including facilities acquired after the obligations are issued:
 - revenues received from a public entity by contract as authorized by a concurrent ordinance;
 - special assessments:
 - imposed by the agency in the manner provided by the Public Improvement District Assessment Act; or
 - imposed by a public entity and provided by contract to the agency; or
 - any other agency funds.

The bill prohibits an applicable public utility 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. This provision does not apply to the use of revenue from a facility owned by the agency to secure or collateralize a new facility. The bill requires liability for an agency's facilities and management to be transferred to the agency on ownership of the facilities by the agency.

C.S.H.B. 2701 amends the Water Code to authorize ratepayers of a water and wastewater public utility agency to appeal a decision of the agency that affects their water, drainage, or sewer rates to the PUC. The bill requires the board of directors of the public utility 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 the rates. The notice must 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. The board of directors may provide the notice electronically if the agency has access to a ratepayer's email address. In an appeal of a rate charged by a public utility agency, the PUC must ensure that the rate complies with the requirement for rates and charges to be able to produce revenue sufficient to pay certain costs and obligations.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2701 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a water supply or sewer service corporation in the definition of "public entity" and a retail water or wastewater public utility in the definition of "public utility agency" for purposes of provisions governing water and wastewater public utilities, whereas the introduced did not provide for these entities to be included in those definitions.

The substitute, in a provision that is not in the introduced, removes language in a statutory provision establishing that, until certain obligations have been paid and discarded, the state pledges to and agrees with the purchasers and successive holders of the obligations that it will not limit or alter the powers of a public utility agency to establish and collect rates and charges that will produce sufficient revenue. Moreover, the substitute further revises that statutory provision to establish instead that the state pledges to and agrees with the purchasers and successive holders of such obligations in any appeal proceeding regarding the public utility agency and that the PUC will establish the rates and charges that will produce sufficient revenue.

The substitute, but not the introduced, includes provisions related to applicable public utility agency ratepayers that do the following:

- clarify that the PUC has appellate jurisdiction over the rates and charges of a water and wastewater public utility agency, including a retail water or sewer public utility, in the manner provided by applicable provisions of the Water Code;
- authorize ratepayers to appeal a decision of the agency that affects their water, drainage, or sewer rates to the PUC;
- require the board of directors of the public utility agency within 60 days after the date of a final decision on a rate change, to provide individual written notice with specified information to each ratepayer eligible to appeal the rates;
- authorize the board of directors to provide the notice electronically; and
- require in an appeal of a rate charged by a public utility agency, that the PUC must ensure that the rate complies with the requirement for rates and charges to be able to produce sufficient revenue.