

BILL ANALYSIS

S.B. 1169
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Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that counties and municipalities operating independently when managing public utility projects can lead to fragmented planning, inefficient use of resources, and difficulty securing funding for major infrastructure improvements and that this lack of regional coordination can result in unequal access to utilities, higher costs for individual jurisdictions, and delays in necessary upgrades. S.B. 1169 seeks to address this issue by revising provisions relating to public utility agencies in order to incentivize and provide for better regional collaboration and to reduce redundancy, improve infrastructure efficiency, and ensure ratepayer protection.

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 rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 14 of this bill.

ANALYSIS

S.B. 1169 amends the Local Government Code to authorize a public entity participating in an applicable water or sewer facility to do the following:

- make an acquisition through a purchase from a public or private entity, for the use and benefit of each participating public entity, of land, easements, and property for a facility; and
- acquire by purchase an applicable public utility, other than an affected county, for the use and benefit of each participating public entity.

S.B. 1169 specifically includes a water supply or sewer service corporation as a public entity for purposes of provisions relating to public utility agencies for the provision of water or sewer service. The bill changes the definition of "obligation" applicable to such an agency from meaning a revenue bond or note to meaning a bond or note secured by a fee, a charge, an assessment, or other revenue of an agency available for that purpose. The bill expands the purposes for which an agency may be created to include the acquisition of an applicable water or sewer facility and specifies that an agency is a retail public utility for the purposes of Water Code provisions relating to water rates and services and that an agency, in addition to having all the powers, other than taxing authority, that are related to facilities and that are provided by law to a municipality that owns a facility, also has all the other obligations that are so related and provided.

S.B. 1169 authorizes a participating public entity to withdraw from a public utility agency by providing an ordinance or resolution of the entity's governing body to the agency not later than the 180th day before the proposed date of withdrawal. The bill prohibits the 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 agency's facilities.

S.B. 1169 specifies the following with respect to a public utility agency:

- the necessary acts that an 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 contracts, leases, and agreements into which an agency may enter with, and the grants and loans that an agency may accept from, applicable entities 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;
- such contracts, leases, and agreements include an interlocal contract as authorized by the Interlocal Cooperation Act; and
- the sale, lease, conveyance, or other disposal of any right, interest, or property an agency considers to be unnecessary for the efficient operation or maintenance of its facilities is with respect to all or a portion of such right, interest, or property.

S.B. 1169 establishes that, except as provided by statutory provisions applicable to a public utility agency domiciled in a county with a population of more than 1.2 million, a public utility agency does not have the power of eminent domain.

S.B. 1169 replaces a provision establishing that the state reserves its power to regulate and control the rates and charges by a public utility agency with a provision establishing that the Public Utility Commission of Texas (PUC) has appellate jurisdiction over such rates and charges in the manner provided by applicable provisions of the Water Code. Relatedly, the bill also replaces a provision establishing that, until agency obligations have been paid and discharged, 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 the agency to establish and collect rates and charges that will produce revenue sufficient to pay for applicable items and obligations with a provision establishing that the state pledges to and agrees with such purchasers and successive holders that in any appeal proceeding regarding the agency, the PUC will establish rates and charges that will produce revenue sufficient to pay for such items and obligations.

S.B. 1169 specifies that the obligations a public utility agency may issue to accomplish agency purposes include anticipation notes. The bill authorizes an agency to finance or refund the acquisition, construction, expansion, and improvement of all or a portion of a facility relating to an agency purpose. The bill includes the following as funds an agency may pledge to the payment of obligations:

- revenues received from a public entity by contract as authorized by a concurrent ordinance;
- special assessments imposed by a public entity and provided by contract to the agency; or
- any other agency funds.

The bill 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. This prohibition expressly does not apply to the use of revenue from a facility owned by the agency to secure or collateralize a new facility.

S.B. 1169 requires liability for a public utility agency's facilities and management to be transferred to the agency on ownership of the facilities by the agency. The bill authorizes an agency to create a funding mechanism to jointly invest in and leverage funding for water infrastructure in Texas with the North American Development Bank.

S.B. 1169 requires the attorney general, at the request of the PUC or the Texas Commission on Environmental Quality (TCEQ), to bring suit for the appointment of a receiver that is a public utility agency, in the manner provided by Water Code water rates and services provisions for the receivership of a water or sewer utility, to collect the assets and carry on the business of a utility or water supply or sewer service corporation that:

- has abandoned operation of its facilities;
- informs the PUC or the TCEQ that the owner is abandoning the system;
- violates a final order of the PUC or the TCEQ;
- allows any property owned or controlled by it to be used in violation of a final order of the PUC or the TCEQ;
- violates a final judgment issued by a district court in a suit brought by the attorney general under:
 - Water Code provisions relating to water administration enforcement or relating to water rates and services; or
 - Health and Safety Code provisions relating to minimum standards of sanitation and health protection measures; or
- violates a final judgment issued by a court in a proceeding to enforce a provision of a permit issued by a groundwater conservation district under Water Code provisions relating to such districts.

The bill requires the PUC, for purposes of facilitating the regionalization of water and sewer service, to prioritize an application submitted by the public utility agency for the acquisition of facilities, and the transfer of the certificate of convenience and necessity, of the utility or water supply or sewer service corporation under receivership. The bill requires the PUC to issue an order approving the acquisition proposed in the application not later than the 120th day after the date the PUC determines the application is complete. The bill authorizes the PUC or the TCEQ, after providing to the utility or water supply or sewer service corporation notice and an opportunity to be heard by the commissioners at a PUC or TCEQ meeting, to authorize a public utility agency to temporarily manage and operate a utility or water supply or sewer service corporation in the manner provided by Water Code water rates and services provisions relating to the temporary management and operation of a utility if the utility or corporation:

- has discontinued or abandoned operations or the provision of services;
- has been or is being referred to the attorney general for the appointment of a receiver under these provisions of the bill;
- violates a final order of the PUC or the TCEQ; or
- allows any property owned or controlled by it to be used in violation of a final order of the PUC or the TCEQ.

The bill establishes the following for purposes of these provisions of the bill:

- a reference in Water Code water rates and services provisions to a person includes a public utility agency; and
- the PUC has the same jurisdiction over a water supply or sewer service corporation that the PUC has over a utility under such provisions.

The bill defines "utility" and "water supply or sewer service corporation" by reference to Water Code water rates and services provisions.

S.B. 1169 amends the Water Code to include a public utility agency that operates, maintains, or controls in Texas facilities for providing potable water service or sewer service, or both, for compensation as a retail public utility for purposes of provisions relating to water rates and services, and to exclude a public utility agency as a water and sewer utility, public utility, or utility for such purposes. The bill includes ratepayers of a public utility agency among the ratepayers who may appeal a decision of the governing body of the entity affecting their water,

drainage, or sewer rates to the PUC. Relatedly, the bill makes provisions regarding notice to ratepayers after a final decision on a rate change that apply to a municipally owned utility and a political subdivision applicable also to a public utility agency, except that the bill specifies, for an agency, such ratepayers as ratepayers eligible to appeal the rates, rather than, as applicable to such a utility or political subdivision, ratepayers eligible to appeal who reside outside the boundaries of the municipality or the political subdivision. The bill requires the PUC, in an appeal of a rate charged by a public utility agency, to ensure that the rate complies with the bill's provision that the PUC-established rates and charges produce revenue sufficient to pay for specified items and obligations.

S.B. 1169 authorizes the PUC by rule to allow a public utility agency that includes a water supply or sewer service corporation as a participant in the agency to render retail water or sewer service without a certificate of public convenience and necessity.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.