

## **BILL ANALYSIS**

Senate Research Center

H.B. 3224  
By: Capelo (West)  
State Affairs  
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Engrossed

### **DIGEST**

Currently, several provisions of the Bond and Warrant Law of 1931 are no longer applicable to the procedures relating to the issuance of utility system revenue bonds and time warrant bonds. H.B. 3224 would set forth provisions regarding the issuance of public securities by or on behalf of the state and political subdivisions.

### **PURPOSE**

As proposed, H.B. 3224 sets forth provisions regarding the issuance of public securities by or on behalf of the state and political subdivisions.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that this Act amends a nonsubstantive revision of the law relating to public securities proposed by H.B. 3157, 76th Legislature, Regular Session, 1999. Provides that this Act takes effect September 1, 1999, but only if H.B. 3157 is enacted and becomes law. Provides that if H.B. 3157 is not enacted or does not become law, this Act has no effect.

SECTION 2. Amends Section 1201.027, Government Code, as follows:

Sec. 1201.027. New heading: **AUTHORITY OF ISSUER TO CONTRACT FOR SERVICES.** Provides that the governing body of an issuer has exclusive authority to select, contract with, and determine the basis for compensation of a person to provide legal and other services as may be determined by the governing body to be necessary in connection with the insurer's issuance of public securities or administration of its affairs that pertain to the issuance of public securities. Requires the selection of the legal counsel to be made in accordance with the provisions of Chapter 2254A, applicable to the selection by a governmental entity or a provider of professional engineering services. Deletes existing text relating to the authority of the governing body of a home rule municipality or other political subdivisions and entities having exclusive authority to select and contract with a person to provide a certain service.

SECTION 3. Amends Section 1205.023, Government Code, to include a class action binding on certain persons.

SECTION 4. Amends Section 1205.041(b), Government Code, to require the order, in general terms and without naming them, to advise, rather than to require, the persons described by Subsection (a) and the attorney general of certain rights.

SECTION 5. Amends Section 1205.044, Government Code, to provide that the effect of notice given under Sections 1205.041 and 1205.043 is that each person described by Section 1205.041(a) is a party, rather than defendant, to the action; and the court has jurisdiction over each person to the same extent as if that person were individually named and personally served in the action. Makes a conforming change.

SECTION 6. Amends Section 1205.068(e), Government Code, to provide that an appeal under this section is governed by the rules of the supreme court for accelerated appeals in civil cases.

SECTION 7. Amends Chapter 1207A, Government Code, by adding Sections 1207.007 and 1207.008, as follows:

Sec. 1207.007. DELEGATION OF AUTHORITY. Authorizes the governing body of an issuer, in connection with the issuance of refunding bonds, to take certain actions. Authorizes the officer or employee to establish the terms and details related to the issuance and sale or exchange of certain refunding bonds. Provides that a finding or determination made by an officer or employee acting under the authority delegated to the officer or employee has the same force and effect as a finding or determination made by the governing body of the issuer.

Sec. 1207.008. LIMITATION. Prohibits an issuer from issuing refunding bonds under certain conditions, unless the governing body of the issuer finds that the issuance is in the best interests of the issuer, and the maximum amount by which the aggregate amount of payments to be made under the refunding bonds exceeds a specified amount.

SECTION 8. Amends Section 1207.022, Government Code, to delete existing Subsection (b) relating to the prohibition on the issuance of refunding bonds to make deposits in connection with the refunding of certain electric and gas system bonds.

SECTION 9. Amends Section 1207.025(a), Government Code, to authorize the comptroller to register refunding bonds in the manner provided, rather than to provide that refunding bonds must be registered by the comptroller.

SECTION 10. Amends Section 1207.033, Government Code, by adding Subsections (c) and (d), to provide that, after firm banking and financial arrangements for the discharge and final payment or redemption of the obligations have been made under Subsection (a), all rights of an issuer to initiate certain action amending the terms of the obligations are extinguished. Sets forth the conditions under which the right to call the obligations for redemption is not extinguished. Provides that Subsection (c) applies only to firm banking and financial arrangements made after September 1, 1999, and has no effect on the validity or legality of any such arrangement made before that date.

SECTION 11. Amends Section 1207.062, Government Code, by amending Subsections (b) and (c) and adding Subsection (d) and (e), as follows:

(b) Authorizes a deposit under Section 1207.061 to be invested only in direct noncallable obligations of the United States, noncallable obligations of an agency or instrumentality of the United States that are rated as to investment quality by a nationally recognized investment rating firm, and noncallable obligations of a state or agency or a county, or other political entities of a state that have been refunded and that are rated in a certain manner.

(c) Authorizes a deposit under Section 1207.061 to be invested only in certain obligations.

(d) Makes a conforming change.

(e) Prohibits a deposit, notwithstanding Subsection (b), under an escrow agreement entered into under Subsection (a) before September 1, 1999, from being invested in an investment described by Subsection (b) (2) or (3).

SECTION 12. Amends Section 1231.044(b), Government Code, to require the state auditor to prepare a report of the review and file a copy of the report with certain persons, including the board. Makes conforming changes.

SECTION 13. Amends Section 1331.001, Government Code, to delete text relating to the authority of a municipality to issue bonds payable from ad valorem taxes with one or more interest coupons.

SECTION 14. Amends Section 1331.002, Government Code, as follows:

Sec. 1331.002. New heading: SIGNATURES. Requires bonds issued by a municipality under Section 1331.001 to be signed in the manner provided by the proceedings authorizing the issuance of the bonds, rather than by the mayor and countersigned by the municipal secretary. Makes a nonsubstantive change.

SECTION 15. Amends Sections 1371.001(1), (4), and (5), Government Code, to redefine “credit agreement,” “issuer,” and “obligation.”

SECTION 16. Amends Chapter 1371A, Government Code, by adding Section 1371.004, as follows:

Sec. 1371.004. EFFECT OF FINDING OR DETERMINATION UNDER DELEGATION OF AUTHORITY. Provides that a finding or determination made by an officer or employee acting under the authority delegated to the officer or employee has the same force and effect as a finding or determination made by the governing body of the issuer.

SECTION 17. Amends Section 1371.053(a), Government Code, to require a governing body to adopt or approve an obligation authorization before an obligation may be issued, rather than to provide that the issuance of an obligation must be authorized by an obligation authorization.

SECTION 18. Amends Section 1371.056, Government Code, to authorize a governing body to authorize the execution and delivery of a credit agreement in connection with or related to the authorization, issuance, security, purchase, payment, sale, resale, redemption, remarketing, or exchange of an obligation at any time. Authorizes the governing body, notwithstanding Subsection (b), to delegate to an officer or employee the authority, under the terms and for the period approved by the governing body, to enter into a credit agreement and transactions under a credit agreement; and execute any instruments in connections with those transactions. Deletes the existing text of Subsections (a) and (b). Makes conforming changes.

SECTION 19. Amends Chapter 1371B, Government Code, by amending Sections 1371.057 and 1371.058 and adding Sections 1371.059 and 1371.060, as follows:

Sec. 1371.057. REVIEW AND APPROVAL OF OBLIGATION, CREDIT AGREEMENT, AND CONTRACT BY ATTORNEY GENERAL. Requires the attorney general to deliver to the comptroller of public accounts (comptroller) a copy of the attorney general’s legal opinion stating approval and the record of proceedings.

Sec. 1371.058. REGISTRATION. Requires the comptroller to register the record of the proceeding relating to the issuance of obligations or the execution of a credit agreement, on receipt of the documents required by Section 1371.057(b).

Sec. 137.059. VALIDITY AND INCONTESTABILITY. Provides that on approval by the attorney general, registration by the comptroller, and initial delivery of the obligation, a credit agreement, a contract providing revenue or security, an initial obligation, and any obligation subsequently issued under the authorizing proceedings are incontestable in a court or other forum and are valid and binding obligations enforceable according to their terms.

Sec. 1371.060. REFINANCING, RENEWAL, OR REFUNDING OF OBLIGATION OR CREDIT AGREEMENT. Redesignated from existing Section 1371.060.

SECTION 20. Amends Section 1371.103(b), Government Code, to authorize a governing body to secure and pay the cost of a credit agreement executed and delivered in connection with the financing of a project cost with the sources permitted by this chapter; and ad valorem taxes to the extent the project cost relates to an eligible project financed or to be financed with obligations payable from ad valorem taxes.

SECTION 21. Amends the heading to Chapter 1502, Government Code, as follows:

CHAPTER 1502. New heading: PUBLIC SECURITIES FOR  
MUNICIPAL UTILITIES, PARKS, OR POOLS

SECTION 22. Amends Subchapters A and B, Chapter 1502, Government Code, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1502.001. New heading: DEFINITIONS. Defines “combined system,” “public security,” and “utility system.” Deletes existing definition of “paying agent.”

Sec. 1502.002. GENERAL AUTHORITY FOR UTILITY SYSTEMS, PARKS, AND POOLS.

Authorizes a municipality to take certain actions with respect to a utility system, a park, or a swimming pool. Authorizes the governing body of a municipality to authorize the execution and delivery of certain contracts.

Sec. 1502.003. CREATION AND MAINTENANCE OF COMBINED SYSTEM. Authorizes the governing body of a municipality, notwithstanding any law or municipal charter provision to the contrary, to create and maintain one or more combined systems on a finding by the governing body that it is in the best interests of the municipality to create and maintain the combined system. Provides that a finding by a governing body under this section is conclusive and incontestable.

Sec. 1502.004. CONFLICT WITH MUNICIPAL CHARTER. Provides that to the extent of conflict between this chapter and a municipal charter, this chapter controls.

#### SUBCHAPTER B. New heading: PUBLIC SECURITIES FOR UTILITY SYSTEMS, PARKS, OR POOLS

Sec. 1502.051. AUTHORITY TO ISSUE PUBLIC SECURITIES. Authorizes the governing body of a municipality to provide funds for certain acquisitions, purchases, improvements, and equipment for a utility system, a park, or a swimming pool. Authorizes the governing body, in connection with exercising the authority to provide funds for the purpose described by Subsection (a) (1), to acquire, purchase, or otherwise obtain interest in property, including additional water or riparian rights. Authorizes the governing body of a municipality to issue public securities and to incur obligations under contracts in accordance with this chapter for any purpose authorized by law in connection with providing funds for a purpose described by Subsection (a) or (b). Deletes existing definitions of “encumbered facility” and “utility system.”

Sec. 1502.052. PLEDGE OF REVENUE. Authorizes the governing body of a municipality to pledge to the payment of any public securities issued or any obligations incurred under Section 1502.51(c), all or any part of the revenue of a utility system, a park, or a swimming pool. Authorizes the governing body of a municipality to grant a lien on the revenue pledged under Subsection (a). Provides that the lien has the priority determined by the governing body, subject to the provisions of Section 1502.056. Deletes text from existing Sections 1502.052, 1502.053, and 1502.054.

Sec. 1502.053. GRANT OF FRANCHISE. Redesignated from Section 1502.055. Authorizes the municipality to grant a purchaser under sale or foreclosure a franchise to operate the encumbered utility system, park, or pool, rather than facility or property, for a certain time period, subject to all laws regulating the operation of the utility system, park, or pool in force at the time of the sale or foreclosure, as additional security for public securities issued or obligations incurred under this chapter.

Sec. 1502.054. OBLIGATIONS NOT PAYABLE FROM TAXES. Redesignated from Section 1502.056. Sets forth specified provisions of a public security issued or an obligation incurred under this chapter, rather than subchapter, including it may be a charge only on the encumbered utility, park, or pool, rather than facility or property; and may not be included in determining the municipality’s power to issue public securities, rather than bonds, for any purpose authorized by law. Requires each public security, rather than contract, bond, note, or other evidence of indebtedness issued or included under this chapter, rather than subchapter to contain a certain provision.

Sec. 1502.055. ELECTION. Redesignated from Section 1502.057. Deletes text prohibiting the municipality from encumbering a utility system, park, or swimming pool for more than \$10,000. Deletes text providing that encumbrances authorized by this section apply only to bonds payable from revenue derived from the encumbered system. Makes conforming changes.

Sec. 1502.056. OPERATING EXPENSES AS FIRST LIEN. Redesignated from Section 1502.058. Provides that, if the revenue of a utility system, park, or swimming pool secures the payment of public securities issued or obligations incurred under this chapter, rather than is encumbered under this subchapter, each expense of operation and maintenance is a first lien against that revenue. Authorizes certain contracts between a municipality and an issuer to provide that payments made by the municipality from the revenue of the utility system are an operating

expense of the municipality's utility system.

Sec. 1502.057. CHARGES FOR SERVICES. Redesignated from Section 1502.059. Requires a municipality to impose and collect charges for services provided by a utility system, rather than an encumbered system, in specified amounts, including for an interest and sinking fund sufficient to pay any public securities issued or obligations incurred for any purpose described by Section 1502.002 relating to the utility system. Deletes text requiring a municipality to impose and collect charges for interest and sinking fund sufficient to pay any bonds issued to purchase, construct, or improve the encumbered system. Makes conforming changes.

Sec. 1502.058. LIMITATION ON USE OF REVENUE. Redesignated from Section 1502.060. Prohibits a municipality from using the revenue of a utility system, park, or swimming pool to pay any other debt, expense, or obligation, except as otherwise provided by Subsection (b) or (c), by Section 1502.059 or by Section 271.052, Local Government Code. Provides that this section does not apply to a payment made from surplus revenue of a utility system, park, or swimming pool. Makes conforming changes.

Sec. 1502.059. TRANSFER OF REVENUE TO GENERAL FUND. Redesignated from Section 1502.061. Authorizes a municipality and its officers and utility trustees, notwithstanding Section 1502.058(a), rather than 1502.060(a), or a similar law or municipal charter provision, to transfer certain revenue to the municipality's general fund. Makes conforming changes.

Sec. 1502.060. USE AND INVESTMENT OF PROCEEDS. Sets forth a municipality's authorized uses of proceeds, to the extent provided by the proceedings authorizing the issuance of the public securities issued under this chapter. Authorizes a municipality to use certain proceeds to pay interest on the public securities during a specified time period. Sets forth the authorized uses of certain proceeds. Authorizes a municipality to invest certain proceeds to the extent and in the manner provided in the proceedings authorizing the issuance of the public securities. Deletes existing Sections 1502.062 and 1502.063.

Sec. 1502.061. ADDITIONAL OBLIGATIONS TO IMPROVE OR EXTEND UTILITY SYSTEM. Redesignated from Section 152.064. Authorizes a municipality that has outstanding public securities secured by the net revenue of a utility system, rather than one or more utility systems, to issue additional public securities or incur other obligations for a purpose described by Section 1502.051 (a) (1) or (b). Sets forth the public securities issued under Subsection (a), which constitute a lien on the revenue of the affected system, including inferior to a lien securing payment of outstanding public securities, as determined by the governing body of the municipality. Deletes text relating to the issuance of bonds for the improvement or extension of one or more utility system. Deletes text authorizing the additional bonds to be payable from the operation of the utility system or systems. Makes conforming changes.

Sec. 1502.062. MATURITY. Requires a public security issued under this chapter to mature not later than 50 years after its date.

Sec. 1502.063. ADDITIONAL AUTHORITY OF MUNICIPALITY WITH A POPULATION OF 50,000 OR MORE. Authorizes the governing body of a municipality with a population of 50,000 or more, notwithstanding any other provision of this chapter, to exercise any authority granted to a governing body under Chapter 1371 in connection with the issuance of obligations under that chapter.

Sec. 1502.064. CREDIT AGREEMENT FOR RESERVE FUND. Authorizes the governing body of a municipality to provide that in lieu of or in addition to providing a cash reserve, a credit agreement, as defined by Section 1371.001, may be used to provide the reserve. Requires a credit agreement obtained to provide a reserve to be submitted to the attorney general for examination and approval. Provides that, after approval by the attorney general, the credit agreement is incontestable in any court or other forum for any reason and is a valid and binding obligation of the municipality in accordance with its terms for all purposes.

Sec. 1502.065. REFUNDING BONDS. Authorizes a municipality to issue public securities in the manner provided by applicable law to refund or otherwise refinance any obligation incurred under this chapter to which revenue has been pledged. Deletes existing Sections 1502.065 and

1502.066.

Sec. 1502.066. RECORDS. Redesignated from Section 1502.067. Makes conforming changes.

Sec. 1502.067. RECORDS: NONCASH BASIS. Redesignated from Section 1502.068. Makes conforming changes.

Sec. 1502.068. ANNUAL REPORT. Redesignated from Section 1502.069. Requires the superintendent or manager of a utility system, park, or pool or another person designated by the governing body, annually, on the date determined by the governing body of the municipality, to file with the mayor and governing body of the municipality a detailed report of the operation of the system, park, or pool, rather than plant, for the preceding 12-month period specified by the governing body. Deletes text relating to the requirements of the superintendent or manager of a plant encumbered under this subchapter. Makes conforming changes.

Sec. 1502.069. OFFENSES; PENALTY. Redesignated from Section 1502.070. Provides that a mayor commits an offense if the mayor fails to: establish the system of records required by Section 1502.066, rather than Section 1502.067, before the 91st day after the date the utility system, park, or pool is completed; or maintains the system of records required by Section 1502.066, rather than 1502.067. Provides that the person responsible for filing the report required by Section 1502.068 commits an offense if the person, rather than superintendent or manager, fails to timely file the report.

Sec. 1502.070. New heading: MANAGEMENT AND CONTROL OF UTILITY SYSTEM. Redesignated from Section 1502.071. Authorizes management and control of a utility system to be vested in certain authorities. Provides that on any matter not covered by the proceedings, rather than contract, the board of trustees is governed by the laws and rules governing the municipality's governing body, to the extent applicable. Deletes text relating to the authority given by a contract under which a facility is encumbered. Makes conforming changes.

Sec. 1502.071. RULES. Redesignated from Section 1502.072. Makes a conforming change.

Sec. 1502.072. TRUSTEE. Redesignated from Section 1502.073. Sets forth what the authorized proceedings adopted by the governing body of a municipality provide for.

Sec. 1502.073. NOTICE TO GOVERNING BODY BEFORE FORECLOSURE OR OTHER ACTION. Redesignated from Section 1502.074. Deletes existing Section 1502.075.

Sec. 1502.074. CIVIL ENFORCEMENT. Redesignated from Section 1502.076. Provides that a person who resides in a municipality and is a taxpayer or holder of a public security issued or an obligation incurred, rather than issued, under this chapter, rather than subchapter and secured by the revenue of the municipality's utility system, park, or swimming pool as provided by this chapter is entitled to enforce this chapter. Deletes existing Section 1502.077.

SECTION 23. Amends Section 1506.164, Government Code, to provide that this subchapter is cumulative of all other law on the subject, but this subchapter is wholly sufficient authority within itself for the issuance of bonds and the performance of the other acts and procedures authorized by this subchapter without reference to any other law or any restrictions or limitations contained in that law, except as specifically provided by this subchapter.

SECTION 24. Amends Section 152.001(a), Water Code, to provided that this chapter applies only to a river authority that, directly or through a corporation created under Section 152.051, is engaged in the distribution and sale of electric energy to the public.

SECTION 25. Amends Section 152.052, Water Code, by adding Subsection (d), to authorize a corporation created under Section 152.051 and the creating river authority to share officers, directors, employees, equipment and facilities, and provide goods or services to each other at cost without the requirement of competitive bidding.

SECTION 26. Amends Chapter 152B, Water Code, by adding Sections 152.056 and 152.057, as follows:

Sec. 152.056. TRANSFER OF RIVER AUTHORITY ASSETS TO CORPORATION. Authorizes the board of directors of a river authority (board), notwithstanding any other law, to sell, lease, loan or otherwise transfer some, all, or substantially all of the electric generation property of the river authority to a corporation created under Section 152.051. Requires the property transfer to be made under terms approved by the board.

Sec. 152.057. APPLICATION OF OTHER LAW TO RIVER AUTHORITY. Provides that reference in any other law to certain river authorities includes a river authority that has created a corporation under Section 152.051 that is engaged in the distribution and sale of electric energy to the public.

SECTION 27. Amends Section 152.156, Water Code, to delete text authorizing an economic development program to involve the granting or lending of money, services, or property to a person engaged in certain economic development activities.

SECTION 28. Amends Section 152.201, Water Code, to provide that this chapter constitutes full authority for a river authority to issue revenue bonds and other obligations without reference to any other law. Makes a conforming change.

SECTION 29. Amends Chapter 152, Water Code, by adding Subchapter G, as follows:

SUBCHAPTER G. ELECTRIC TRANSMISSION SERVICES AND  
FACILITIES OF RIVER AUTHORITY

Sec. 152.301. ELECTRIC TRANSMISSION SERVICES AND FACILITIES. Sets forth a river authority's authorized activities.

Sec. 152.302. LIMITATION ON ELECTRIC TRANSMISSION FACILITIES. Provides that this subchapter does not authorize a river authority to construct electric transmission facilities for an ultimate consumer of electricity to enable that consumer to bypass the transmission or distribution facilities of its existing provider.

SECTION 30. Amends Section 418.107(d), Government Code, to require the time warrants issued in accordance with Chapter 252, Local Government Code, in the case of a municipality, or Chapter 262C, Local Government Code, in the case of a county, rather than in accordance with the Bond and Warrant Law of 1931, Article 2368a, V.T.C.S. Provides that time warrants issued for financing permanent construction or improvement for emergency management purposes are subject to the right of the voters to require a referendum vote under Section 252.045 or 262.029, Local Government Code, as applicable, rather than Section 4 of the Bond and Warrant Law of 1931.

SECTION 31. Amends Section 1433.022(b), Government Code, to make a conforming change.

SECTION 32. Amends Sections 263.026(b) and (i), Health and Safety Code, to make standard recodification changes.

SECTION 33. Amends Section 264.033, Health and Safety Code, to make a standard recodification change.

SECTION 34. Amends Section 383.013(c), Health and Safety Code, to make conforming changes.

SECTION 35. Amends Section 43.074(f), Local Government Code, to make conforming changes.

SECTION 36. Amends Section 43.075(h), Local Government Code, to make a conforming change.

SECTION 37. Amends Sections 43.076(h) and (i), Local Government Code, to provide that, except as otherwise provided by this section, Chapter 1502B, Government Code, applies to the revenue refunding bonds, but an election for the issuance of the bonds is not required. Requires revenue refunding bonds or general obligation bonds to be issued in the manner provided by Chapter 1207, Government Code. Makes conforming changes.

SECTION 38. Amends Section 252.045(c), Local Government Code, to authorize the time warrants to mature over a term exceeding 40 years only under certain conditions. Makes standard recodification and

conforming changes.

SECTION 39. Amends Section 271.042, Local Government Code, to delete text relating to a procedures and conflicts of law under Chapter 252 of this code and the Bond and Warrant Law of 1931.

SECTION 40. Amends Section 280.001(c), Local Government Code, to make conforming and nonsubstantive changes.

SECTION 41. Amends Section 441.008(b), Local Government Code, to require the commissioners court to impose related taxes in compliance with Chapter 1251, rather than Chapter 1253, Government Code.

SECTION 42. Amends Section 22.053(b), Transportation Code, to make conforming changes.

SECTION 43. Amends Section 367.068(a), Transportation Code, to delete the application of Chapter 1253, Government Code, to certain procedures, rights, and accomplishments.

SECTION 44. Amends Section 16.345(b), Water Code, to make standard recodification and conforming changes.

SECTION 45. Amends Section 2(h), Chapter 702, Acts of the 68th Legislature, Regular Session, 1983, (Article 717r, V.T.C.S.), to make standard recodification changes.

SECTION 46. Provides that all public securities authorized and issued by any issuer before September 1, 1999, a public security authorization approved or adopted by an issuer in connection with the authorization and issuance of the public securities, and any contracts or agreements executed and delivered in connection with the public securities that were approved by the public security authorization are validated, ratified, and confirmed in all respects. Defines “issuer,” “public security,” and “public security authorization.”

SECTION 47. Repealers:

- (1) Section 1207.081(c), Government Code;
- (2) Chapter 1253, Government Code;
- (3) Subchapter C, Chapter 1331, Government Code;
- (4) Section 1473.052(c), Government Code;
- (5) Subchapters C-K, Chapter 1502, Government Code;
- (6) Subchapters B and D, Chapter 1504, Government Code; and
- (7) Subchapters B and F, Chapter 1509, Government Code.

SECTION 48. Emergency clause.  
Effective date: 90 days after adjournment.