

BILL ANALYSIS

Senate Research Center
84R1033 JXC-F

S.B. 745
By: Estes
Natural Resources & Economic Development
3/13/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1975, the legislature passed what later became Subchapter C to Chapter 163 (Joint Power Agencies) of the Utilities Code to allow the cities of Bryan, Denton, Garland, and Greenville to create a "Joint Powers Agency" to collectively generate, transmit, and sell power to themselves. They formed the Texas Municipal Power Agency (TMPA), which built the Gibbons Creek Steam Electric Station in Grimes County, as well as related transmission facilities to serve the four cities.

The construction and operation of the TMPA has been funded by a long-term power sales contract under which each member city is responsible for a specified percentage of the TMPA's cost and is entitled to the same percentage of its electrical output. This long-term power sales contract is scheduled to terminate on September 1, 2018, which is the same date that all of the TMPA's generation debt will be paid off. The member cities are now negotiating the future of the TMPA and desire more flexibility in their enabling act, including the ability to change the governing structure, dispose of assets, and dissolve the TMPA.

S.B. 745 adds a new Subchapter C-1 to Chapter 163 of the Utilities Code which any joint powers agency created under Subchapter C could opt into to obtain greater flexibility in managing and disposing of assets. The new subchapter contains all of the operative provisions of the old subchapter, but adds new provisions that increase flexibility. The new provisions include language allowing the TMPA to dispose of assets and dissolve if the member cities wish for it to do so. It also allows the board of directors to delegate operational authority to officers, employees, or committees, changes the eligibility requirements for serving on the board of directors, and allows a member city to remove board members appointed by it, with or without cause. The new subchapter created by this bill allows a member city to establish separate governing boards for generation and transmission. Adoption of the new subchapter requires unanimous consent of the joint powers agency's member cities.

As proposed, S.B. 745 amends current law relating to the governance of certain municipal power agencies and provides authority to issue bonds.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to an agency (municipal power agency for which concurrent ordinances are adopted under Section 163.073, Utilities Code) in SECTION 1 (Section 163.080, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 163, Utilities Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER AGENCIES

Sec. 163.071. DEFINITIONS. Defines "agency," "bond," "concurrent ordinance," and "obligations."

Sec. 163.072. CONSTRUCTION. Requires that this subchapter be liberally construed to carry out its purpose.

Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE. (a) Provides that this subchapter applies to a municipal power agency created by two or more public entities under Subchapter C (Municipal Power Agencies) or a predecessor statute, including an agency re-created under Section 163.055 (Re-Creation of Agency) or a predecessor statute.

(b) Authorizes the participating public entities of a municipal power agency by concurrent ordinance to elect to apply this subchapter to the agency (relating to a municipal power agency for which concurrent ordinances are adopted under this section) as an alternative to Subchapter C.

(c) Requires that concurrent ordinances described by this section, as adopted by each public entity:

(1) contain identical provisions; and

(2) state that the public entity has elected that the agency shall, on and after the date designated in the ordinance, be governed by the provisions of this subchapter.

Sec. 163.074. CONFLICTS WITH OTHER LAW. Provides that this subchapter prevails to the extent of a conflict between this subchapter and any other law, including a law regulating the affairs of a municipal corporation or a home-rule charter provision.

Sec. 163.075. NATURE OF AGENCY. (a) Provides that an agency is a separate municipal corporation, political subdivision of this state, and political entity and corporate body.

(b) Prohibits an agency from imposing a tax but provides that it has all the other powers relating to municipally owned utilities and provided by law to a municipality that owns a public utility.

Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES. (a) Authorizes the public entities that created or re-created an agency to, by concurrent ordinances, add a new public entity as a participating public entity in the agency or remove a public entity from participation in the agency.

(b) Requires that concurrent ordinances described by this section, as adopted by each public entity, contain certain information and sets forth the information to be contained in the concurrent ordinances.

(c) Prohibits public entities from adding or removing a public entity if the addition or removal will impair an agency obligation.

Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY. (a) Prohibits public entities from adopting concurrent ordinances under Section 163.076 adding a participating public entity 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.

(b) Requires that notice of an election under this section be given in accordance with Section 1251.003 (Conduct of Election), Government Code. Requires that the election be called and held in accordance with the Election Code, Chapter 1251 (Bond Elections), Government Code, and this subchapter.

Sec. 163.078. BOARD OF DIRECTORS. (a) Requires the agency to be governed by a board of directors (board).

(b) Provides that the board is responsible for the management, operation, and control of the property belonging to the agency.

(c) Authorizes the board to by resolution delegate management or operational authority to an officer, employee, or committee of the agency, except that the delegation is prohibited from including legislative functions, including the sale or purchase of agency properties, the exercise of the power of eminent domain, the adoption or amendment of budgets and rates, or the issuance of debt. Authorizes the board to repeal a resolution delegating management or operational authority:

(1) if the board is composed of six or more directors, by the affirmative vote of six directors, including the affirmative vote of at least one director appointed by each participating public entity; or

(2) if the board is composed of fewer than six directors, by the affirmative vote of at least one director appointed by each participating public entity.

(d) Requires the board to include at least four directors. Requires each director to be appointed by place by the governing bodies of the participating public entities. Entitles each participating public entity to appoint at least one director.

(e) Requires directors to serve staggered terms. Provides that successor directors are appointed in the same manner as the original appointees.

(f) Requires a person, to qualify to serve as a director, when the person takes the constitutional oath of office, to be:

(1) a qualified voter and reside in the boundaries of the appointing public entity;

(2) an employee, officer, or member of the governing body of the appointing public entity; or

(3) a retail electric customer of the appointing public entity.

(g) Prohibits an employee, officer, or member of the governing body of a participating public entity serving as a director, except as provided by Subsections (h) and (i), 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.

(h) Provides that an employee, officer, or member of the governing body of a participating public entity serving as a director is considered to be a local public official for the purposes of Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments), Local Government Code.

(i) Provides that an agency and a participating public entity are considered to be political subdivisions for the purposes of Section 131.903 (Conflict of Interest), Local Government Code.

(j) Provides that directors serve without compensation. Authorizes a director who is an employee, officer, or member of the governing body of a participating public entity to continue to receive from the public entity the compensation associated with the office or employment.

(k) Provides that a director serves at the discretion of the appointing public entity. Authorizes the governing body of a public entity that appoints a director to remove the director from office at any time with or without cause. Requires the

governing body to promptly appoint a new director to serve the remainder of the unexpired term of the removed director.

Sec. 163.079. SEPARATE BOARDS OF DIRECTORS. (a) 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 for the agency's generation system and another board for the agency's transmission system.

(b) Requires that the concurrent ordinances as amended contain identical provisions.

(c) Provides that Section 163.078 applies to the separate boards and to the directors of the separate boards, except that:

(1) there is no minimum number of directors for a board established under this section;

(2) each participating public entity is not entitled to appoint a director to each board of an agency; and

(3) the repeal of a resolution under Section 163.078(c) does not require approval by at least one director appointed by each participating public entity.

(d) Provides that separate boards established under this section are not required to have the same number of directors.

Sec. 163.080. POWERS. (a) Prohibits an agency from engaging in any utility business other than:

(1) 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 this state; or

(2) the provision of wholesale transmission service under Chapter 35 (Alternative Energy Providers).

(b) Authorizes the agency to:

(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 department or agency of the United States, department, agency, or political subdivision of this state, or 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) Authorizes the agency to sell, lease, convey, or otherwise dispose of any right, interest, or property of the agency, including its electric facilities. Requires that a sale, lease, conveyance, or other disposition having a value of more than \$10 million 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. Authorizes an agency, except as provided by Subsection (c), 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.

(b) Requires the agency to publish notice of intent to receive bids once a week for two consecutive weeks in a newspaper of general circulation in this state. Requires that the first publication appear before the 14th day before the date bids are to be received.

(c) 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.

Sec. 163.082. SALE OR EXCHANGE OF ELECTRIC ENERGY. (a) Authorizes an agency to participate through appropriate contracts in power pooling and power exchange agreements with other entities through direct or indirect system interconnections.

(b) Authorizes an entity that participates with an agency under this section to:

- (1) purchase electric energy from the agency;
- (2) sell or dispose of electric energy to the agency; or
- (3) exchange electric energy with the agency.

(c) Provides that an entity payment for electric energy purchased from the agency is an operating expense of the entity's electric system.

(d) Provides that an agency contract to sell or exchange electric energy may require the purchaser to pay for the electric energy regardless of whether the electric energy is produced or delivered.

Sec. 163.083. RATES AND CHARGES. (a) Authorizes an agency to establish and maintain rates and charges for electric power and energy the agency delivers, transmits, or exchanges. Requires that the rates and charges:

- (1) be reasonable and in accordance with prudent utility practices;
- (2) be based on periodic cost of service studies and subject to modification, unless such a basis for rates and charges is waived by the purchaser by contract; and
- (3) be developed to recover the agency's cost of producing and transmitting the electric power and energy, as applicable, which cost must include the amortization of capital investment.

(b) Provides that, notwithstanding Subsection (a), this state reserves its power to regulate an agency's rates and charges for electric energy supplied by the agency's facilities.

(c) Provides that until obligations issued under this chapter 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, this state pledges to and agrees with the purchasers and successive holders of the obligations that it will not:

- (1) limit or alter the power of an agency to establish and collect rates and charges under this section sufficient to pay certain stated expenses; or

(2) take any action that will impair the rights or remedies of the holders of the obligations.

Sec. 163.084. REVENUE BONDS. (a) Authorizes the agency to issue revenue bonds to accomplish the purposes of the agency.

(b) Authorizes the agency to pledge to the payment of the obligations the revenues of all or part of its electric facilities, including facilities acquired after the obligations are issued. Provides that, however, operating and maintenance expenses, including salaries and labor, materials, and repairs of electric facilities necessary to render efficient service constitute a first lien on and charge against the pledged revenue.

(c) Authorizes the agency to set aside from the proceeds from the sale of the obligations amounts for payment into the interest and sinking fund and reserve fund, and for interest and operating expenses during construction and development, as specified in the proceedings authorizing the obligations.

(d) Provides that the obligation proceeds may be invested, pending their use, in securities, interest-bearing certificates, or time deposits as specified in the authorizing proceedings.

(e) Provides that agency obligations are authorized investments for a bank, a savings bank, a trust company, a savings and loan association, and an insurance company.

(f) Provides that the obligations, when accompanied by all appurtenant, unmatured coupons and to the extent of the lesser of their face value or market value, are eligible to secure the deposit of public funds of this state, a political subdivision of this state, and any other political corporation of this state.

Sec. 163.085. REFUNDING BONDS. Authorizes the agency to issue refunding bonds.

Sec. 163.086. ISSUANCE, FORM, AND PROVISIONS OF BONDS. (a) Requires that agency bonds that are payable from agency revenues or anticipated bond proceeds and the records relating to their issuance be submitted to the attorney general of the State of Texas for examination before delivery.

(b) Provides that the bonds:

(1) must mature serially or otherwise not more than 50 years after the date of issuance;

(2) may be made redeemable before maturity at the time and at the price or prices set by the agency; and

(3) may be sold at public or private sale under the terms and for the price the agency determines to be in the best interest of the agency.

(c) Requires that the bonds be signed by the presiding officer or assistant presiding officer of the agency, be attested by the secretary, and bear the seal of the agency. Provides that the signatures may be printed on the bonds if authorized by the agency, and that the seal may be impressed or printed on the bonds. Authorizes the agency to adopt or use for any purpose the signature of an individual who has been an officer of the agency, regardless of whether the individual has ceased to be an officer at the time the bonds are delivered to the purchaser.

Sec. 163.087. NONNEGOTIABLE PURCHASE MONEY NOTES. (a) Authorizes the agency to issue nonnegotiable purchase money notes to acquire land or fuel resources.

(b) Provides that nonnegotiable purchase money notes are:

(1) payable in installments;

(2) secured by the property acquired with the notes or other collateral the agency substitutes; and

(3) not a security or agency obligation.

(c) Provides that the nonnegotiable purchase money notes may be further secured by a promise to issue bonds or bond anticipation notes to pay the purchase money notes.

Sec. 163.088. BOND ANTICIPATION NOTES. (a) Authorizes the agency to issue bond anticipation notes:

(1) for any purpose for which the agency may issue bonds; or

(2) to refund previously issued bond anticipation notes or nonnegotiable purchase money notes.

(b) Provides that bond anticipation notes are subject to the limitations and conditions prescribed by this subchapter for bonds.

(c) 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.

Sec. 163.089. PUBLIC SECURITIES. (a) Provides 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.

(b) Authorizes a public entity to issue public securities, as defined by Section 1201.002(2) (defining "public security"), Government Code, 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 this section.

(c) 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 this section.

(d) Provides that a contract or other official action described by Subsection (c) may include provisions with respect to, and conclusively establish sufficient consideration for, the use of the proceeds. Provides that the consideration may include the right to:

(1) use the financed facilities or portions of the facilities;

(2) receive output from the financed facilities; or

(3) receive an ownership interest in the financed facilities upon the dissolution of the agency or an undivided interest in the financed facilities at the time a public entity funds facility improvements.

(e) Provides that a contract or other official action described by Subsection (c) may contain other terms and extend for any period on which all of the parties agree.

(f) Provides that a public security issued for the purposes described by this section may include:

(1) debt obligations issued in accordance with Chapter 1207 (Refunding Bonds), 1331 (Municipal Bonds), 1371 (Obligations for Certain Public Improvements), 1431 (Anticipation Notes), or 1502 (Public Securities for Municipal Utilities, Parks, or Pools), Government Code, or Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments), Local Government Code; or

(2) other types or forms of debt that the public entity is authorized to issue.

(g) Authorizes each participating public entity to exercise any power of an issuer under Chapter 1371, Government Code.

Sec. 163.090. DISSOLUTION. (a) Authorizes the participating public entities of an agency to by concurrent ordinance dissolve the agency.

(b) Requires that concurrent ordinances dissolving an agency meet certain requirements and sets forth the requirements for these concurrent ordinances.

(c) 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.

(d) Provides that the dissolved agency continues to exist to:

(1) satisfy existing liabilities or obligations;

(2) collect, distribute, or liquidate its assets; and

(3) take any other action required to adjust and wind up its business and affairs.

(e) Requires that the assets of the dissolved agency that remain after all liabilities or obligations of the agency have been satisfied be distributed to the public entities that created the agency. Requires the public entities to establish the method of distribution by agreement.

(f) Provides that an agreement between a public entity and an agency entered into before September 1, 2015, regarding the distribution of the agency's assets after dissolution is enforceable according to the terms of the agreement, regardless of a provision to the contrary in this subchapter.

SECTION 2. Effective date: September 1, 2015.