HOUSE RESEARCH ORGANIZATION bill analysis — 5/23/1999 — SB 1876 Nixon (Christian)

SUBJECT: Allowing certain cities to increase sales taxes to retire utility debt

COMMITTEE: Ways and Means — favorable, with amendment

VOTE: 8 ayes — Oliveira, McCall, Bonnen, Y. Davis, Hilbert, Keffer, T. King, Ramsay

1 nay — Heflin

2 absent — Craddick, Sadler

SENATE VOTE: On final passage, May 5 — voice vote

WITNESSES: *(On House companion bill, HB 3851:)*
For — Steve Bresnen, Sam Rayburn Municipal Power Agency

Against — None

BACKGROUND: The Joint Powers Act (Utilities Code, sec. 163.001) authorizes cities to form jointly a municipal power agency to provide electricity to member cities. The agency is a separate municipal corporation but has no taxing authority. Cities may create such an agency by concurrent ordinances if voters approve.

The agency may engage in the generation, transmission, and sale or exchange of electric energy only to a member city or a private entity that, with a member city, jointly owns an electric generating facility. The agency may set rates to recover costs, including capital investments, subject to regulation by the Public Utility Commission. The agency also may issue revenue bonds to pay debt on those investments.

DIGEST: SB 1876, as amended, would authorize a member city of a municipal power agency to adopt or abolish a one-half-cent sales and use tax upon approval by the city's voters. A member city with a population of 30,000 or less or that had a municipally owned utility with at least 50,000 meter connections could exceed the local sales-tax cap of 2 percent. The special tax could not be imposed for more than 10 years or after the city had paid its share of the municipal power agency's bonded indebtedness.

An election to adopt or abolish the tax would be called by an order of the governing body of the city or by petition of at least 5 percent of the city's registered voters. Revenue from the tax could be used only to retire the city's share of the municipal power agency's bonded indebtedness in effect on September 1, 1999.

The adoption or abolition of the tax would take effect on the first day of the first calendar quarter after the comptroller received notice of the results of the election. The comptroller could delay the effective date to begin on the first day of the next calendar quarter, if necessary. The city would have to notify the comptroller of the expiration of the tax no later than 60 days before that date.

The bill would take effect September 1, 1999.

SUPPORTERS SAY:

The Sam Rayburn Power Agency includes member cities of Jasper, Liberty, and Livingston. The federal Fuel Use Act of 1978 mandated that all natural gas-fired generation cease by 1990, and those cities' wholesale electricity supplier could not guarantee sufficient energy capacity to serve the city after 1990. As a result, the cities bought a 20 percent share in the coal-fired Unit No. 6 of the Roy S. Nelson Generating Station in West Lake, Louisiana, using tax-exempt municipal power revenue bonds.

Various unanticipated events have increased the original debt on this facility. These small cities have a current debt of $243 million, to be paid over the next 21 years. Utility rates in these cities are the highest in the state because of payment on this debt.

The cities of the Texas Municipal Power Agency, including Denton, Garland, Greenville, and Bryan, are in a similar situation. These cities invested in the coal-fired Gibbons Creek Power Plant near Bryan. They currently owe about $1.3 billion, to be paid over the next 18 years.

Under the current regulated utility system, the cities set rates high enough to cover payments on the debt. If the Legislature approves SB 7, the electric restructuring bill, utility rates in these cities would be much higher than the market price of electricity. Higher electricity costs would discourage new businesses from coming to these cities and would impede economic development. If existing businesses leave, the existing debt would be spread out over even fewer customers, raising each remaining customer's burden.

SB 1876 would allow the member cities of the Sam Rayburn Power Agency and the Texas Municipal Power Agency to implement a one-half-cent sales and use tax to retire their debt on utility generation facilities, even if it would increase the total sales tax to a level above the state cap. The voters of each city would have to approve the tax increase.

SB 1876 would not solve the entire problem but would provide an additional resource for these cities to use to pay down this debt. The cities estimate that the additional one-half-cent sales tax would generate about $2 million per year to pay down the debt.

The cities also could increase property taxes or reduce city services. However, the member cities of the Sam Rayburn Power Agency have a small tax base. Also, the people in those cities are generally of moderate means and could not contribute enough revenue from higher property taxes. Raising the sales tax would allow the cities to collect revenue from tourists that come to the city to visit area lakes, thus decreasing the overall burden to the cities' residents.

Also, if the electric restructuring bill is enacted, cities that choose to compete in the electric market could charge a non-bypassable fee on all customers' electric bills, even if those customers chose a new electric provider. This would help offset the losses those cities would incur from lowering their electric rates to be competitive.

High electricity bills have a greater negative impact on low-income people. Even though they use less electricity than other residential customers, people who are at or below 125 percent of poverty spend from 13 to 44 percent of their total income on utilities. Everyone needs electricity for refrigeration, lighting, cooling, and other utilities. SB 1876 would allow voters in each city to decide whether to implement the additional sales tax.

Some argue that a sales tax is regressive and affects low-income people more than more affluent people. Items subject to the sales tax are somewhat discretionary, whereas electricity is not. Low-income people would be affected less by a small increase in the local sales tax than by an increase in already extremely high electric bills.

OPPONENTS SAY:

Although these cities have a significant problem, they should not be allowed to exceed the 2 percent cap on local taxes. This limit is in effect to prevent overtaxation by local entities, and SB 1876 would represent a substantial change in tax policy in this state. These cities have other options available to raise funds to pay their debt. Besides, many cities make bad investments, but the state does not give them special permission to increase sales taxes above the cap. These cities should not be granted such special permission.

Increasing the sales tax would force low-income people to pay a greater share of the debt. Texas now has the highest state sales tax in the country at 6.25 percent and a local option to increase the tax by an additional 2 percent. According to the comptroller, low-income Texans already shoulder a hugely disproportionate share of the state tax load. SB 1876 would not lower electric bills for customers in these cities but merely would provide an additional means of paying down debt. Low-income people would be hit with increased taxes on top of their already high utility bills.

The cities could increase property taxes, which would not force lower-income people to shoulder a greater burden of the cost. Texas' property taxes are about average compared to those in the rest of the country.

Part of the reason these cities are in this situation is because of the federal Fuel Use Act of 1978. These cities should approach their congressional representatives about assistance from the federal government, because their compliance with federal law is partly responsible for their problem.

NOTES:

The committee amendment would allow Garland and Greenville, in addition to Jasper, Livingston, and Liberty, to exceed the local sales tax cap in implementing the special tax to pay down utility debt.