

- SUBJECT:** Perfecting public securities issued by governmental entities
- COMMITTEE:** Financial Institutions — favorable, without amendment
- VOTE:** 6 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Menendez
0 nays
3 absent — Marchant, Pitts, Wise
- WITNESSES:** For — John Boehm, Fulbright and Jaworski; Jeff Leuschel; John Rubottom, Lower Colorado River Authority; Tom Utter, City of Corpus Christi;
Registered but did not testify: Cary Grace, City of Houston; Shanna Igo, Texas Municipal League; Donald Lee, Texas Conference of Urban Counties; Betty Scott, City of Fort Worth
Against — None
- BACKGROUND:** The 76th Legislature enacted amendments (SB 1058 by Carona) to the Uniform Commercial Code (UCC), set to take effect July 1, 2001. Under this statute, when governmental entities issue bonds, they will not be authorized to transfer control over their public funds, as required to perfect security interests in deposit accounts and certain investments. As a result, security interests granted by state agencies, municipalities, and other political subdivisions to secure their bonds and other public securities will be unperfected. However, Business and Commerce Code, sec. 9.109(c)(2) contemplates that Texas will enact a statute that exempts security interests created by governmental entities to secure public debts.
- DIGEST:** HB 1385 would add chapter 1208 to the Government Code, relating to the perfection, validity, enforcement, and priority of security interests for public entities. A security agreement issued by a public entity would be perfected from the time the security agreement was entered into or adopted until the termination of the security interest. It would be valid and effective according to its terms as to all property of the government unit stated to be covered by the agreement. It would be ranked as a priority in order of the time of perfection and could be enforced as provided by the security agreement or the law that authorized the agreement.

The bill would subordinate the rights of other creditors to those with a perfected security interest. It also would specify that a security interest in real property would be perfected when the security agreement or other official instrument was duly recorded in the real property records of the county in which the property was located.

HB 1385 would not create or exempt an issuer from a duty to submit public securities to the attorney general for approval and to register them with the comptroller. It also would not authorize an issuer to enter into or adopt a security agreement.

The bill would specify that the new chapter 1208 is the statute contemplated by Business and Commerce Code, sec. 9.109(c)(2), and that an issuer would be considered to be a governmental unit for purposes of that statute.

HB 1385 would take effect July 1, 2001, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

Enactment of HB 1385 is important to preserve the proven methods of perfecting security interests in public debts. The UCC previously has not applied to liens on governmental entities. Historically, separate laws have dealt with public debts and those of private entities. HB 1385 would continue the clear authority to issue public securities, such as municipal bonds, to pledge revenues to secure those public securities and to perfect that pledge without having to go through steps under the UCC that traditionally apply to commercial transactions.

Model language for the UCC, enacted by the 76th Legislature, contemplates separate state laws to address this matter, rather than have the UCC apply to governmental entities. A number of states already have enacted laws to preserve the status quo regarding perfection of public securities, and other states have similar legislation pending.

When a public entity pledges to use revenues to pay off bonds or when it passes an ordinance or resolution for that purpose, that should be sufficient, as it has been for more than 50 years, to perfect security interests in those public revenues. Failure to enact this legislation would increase the interest

costs for public indebtedness, because such debts no longer would be secured by reliable collateral.

Continuing to require a governmental entity to submit public securities to the attorney general for approval would be more cost-effective and protective of the public interest than appointing a third party, such as a trustee, which the UCC would required for commercial transactions.

In proceedings for the adjustments of their debts under the federal Bankruptcy Code, political subdivisions generally are authorized to exercise the powers of a bankruptcy trustee. Accordingly, after July 1, 2001, it is likely that a Texas political subdivision could avoid its pledge to secure payments of its public securities, unless the Texas UCC is further amended, or other statutes are enacted, to avoid this result. The bill would address this concern by providing an automatic perfection mechanism for the security pledged to the payment of public securities issued by a Texas political subdivision.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion bill, SB 565 by Armbrister, passed the Senate by 30-0 on March 6 and was reported favorably, without amendment, by the House Financial Institutions Committee on April 5, making it eligible to be considered in lieu of HB 1385.