

**SUBJECT:** Creating an alternative governance structure for municipal power agencies

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 12 ayes — Cook, Giddings, Craddick, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Oliveira, Smithee, Sylvester Turner

0 nays

**WITNESSES:** For — John Fainter, AECT; Bob Kahn, Texas Municipal Power Agency; (*Registered, but did not testify:* Gary Miller, Bryan Texas Utilities; Kean Register, City of Bryan; Darrel Cline and Tom Hancock, City of Garland, Garland Power and Light; Mark Zion, Texas Public Power Association)

Against — None

On — Tom Oney, LCRA; (*Registered, but did not testify:* Brian Lloyd, Public Utility Commission)

**BACKGROUND:** Utilities Code, ch. 163, subch. C governs municipal power agencies, which operate municipal power generators that serve multiple jurisdictions. The Texas Municipal Power Agency (TMPA), which serves the cities of Bryan, Denton, Garland, and Greenville, is the only entity that has been created under this subchapter. These cities share joint ownership of TMPA facilities and appoint its board of directors.

As stipulated in Subchapter C, the board of directors of TMPA are responsible for the management, operation, and control of the property of TMPA. TMPA may dispose of assets it considers to be unnecessary for the efficient maintenance or operation of its facilities.

Municipal power agencies can issue debt for construction and improvements to electrical facilities.

Utilities Code, ch. 35 governs competition in power transmission services. Chapter 37, subch. B requires wholesale transmission providers to receive

certificates of convenience and necessity (CCN) from the Public Utilities Commission.

DIGEST:

CSHB 1926 would provide statutory authorization for an alternative governance structure for municipal power agencies, such as the Texas Municipal Powers Agency (TMPA), and enable them to wind up some operations by selling property or dissolving it altogether. It would create a new subchapter under Utilities Code, ch. 163. Subchapter C-1 would replicate much of the standing law's language with some exceptions related to governance structure, ability to dispose of property, and ability to dissolve the organization.

For CSHB 1926 to apply to a municipal power agency, ordinances with identical provisions would have to be passed by each participating municipality. The ordinances also would need to state that the municipality had elected that the agency would be governed under Subchapter C-1 on and after the date designated in the ordinance. If each of the constituent municipalities did not pass applicable ordinances, TMPA would continue to be governed under Utilities Code, ch. 163, subch. C.

Agencies governed under CSHB 1926 would have all of the powers granted to municipally owned utilities and municipalities that own utilities, except for the ability to tax.

CSHB 1926 would allow municipal power agencies, such as TMPA, the ability to add or remove a participating entity, such as a municipal government, from participation in the agency's activities. Entities could not be added or removed if their addition or removal would impair the agency's obligations.

The bill would allow the board of directors of an agency to delegate managerial and operational control to employees of the agency. The board would not be able to delegate legislative functions, such as the purchase or sale of agency property, the exercise of eminent domain, adoption or amendment of budgets and rates, and the issuance of debt. Affirmative

votes would be needed from a director from each of the participating municipalities, and, if there were more than six directors, a minimum of six affirmative votes would be needed to repeal a resolution delegating authority to employees.

Directors would have to be registered voters and reside in the area of the appointing municipality, an employee or member of the governing board of an appointing municipality, or a retail electric customer of the appointing municipality. Directors would be considered local public officials under Local Government Code, ch. 171. Directors would serve without compensation, although they would be able to continue receiving compensation from the appointing municipality if they were employees or members of the governing board of the municipality. The governing board of municipalities could remove directors at any time or without cause.

CSHB 1926 would allow participating municipalities to create separate boards of directors — one to administer power generation and another to administer power transmission. To create separate boards of directors, participating municipalities would need to pass concurrent ordinances with identical provisions. There would be no minimum number of members of each board, and each participating municipality would not be entitled to appoint a director to each board.

Municipal power agencies could engage in the provision of wholesale power transmission. Transmission services would be governed under Utilities Code, ch. 35. The agency would need a certificate of convenience for the construction of a transmission facility outside the certificated service areas of the participating municipalities.

A municipal power agency could sell, lease, convey, or otherwise dispose of its property, rights, and interests. If the value of one of these assets was greater than \$10 million, the disposition would have to be approved by each participating municipality.

CSHB 1926 would authorize these agencies to issue public securities for financing or improving electric facilities. These securities could include

provisions that would allow third parties to use the agency's facilities, receive output from the facilities, or, in the case of the agency's dissolution, receive an ownership interest in the facilities. Participating municipalities could issue debt to finance their stakes in a municipal power agency.

Municipal power agencies could be dissolved under CSHB 1926. To dissolve an agency, each participating municipality would need to pass ordinances that had identical provisions, state the agency would be dissolved upon the winding up of agency affairs, direct the board or boards to wind up the agency's business, and state the date of the dissolution. An agency could not be dissolved if it would impair the rights or remedies of creditors. The agency would continue to exist to satisfy existing debts, liquidate its assets, and take other action needed to end its affairs.

Remaining assets that belonged to the dissolved agency would have to be distributed to the participating municipalities. These participants would decide how the assets were divided. Any agreements between municipalities and the agency created before the effective date of CSHB 1926 would be enforceable under the terms of the agreement.

CSHB 1926 would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 1926 would provide the Texas Municipal Power Agency (TMPA) with the flexibility and options needed for possible future restructuring, which are not explicitly available to TMPA under current statute. The agency has served its purpose, but the power sales contract between TMPA and its member cities is set to expire on September 1, 2018. This forward-looking legislation considers the future of TMPA and would clean up the Utilities Code to address current circumstances.

Many of the options being considered by the cities participating in TMPA are of questionable validity under the current Utilities Code. These include winding up the organization, transferring assets such as the power plant and transmission lines to one or more of the member cities, or transferring

operations and assets to a private operator. Current statute has no provisions for dissolution at all. The bill would allow TMPA to distribute its assets among participating cities upon dissolution and would provide a procedure for dissolution. CSHB 1926 would be needed for the cities to pursue these options.

None of the participating cities gets most or all of its electricity from TMPA. As a result, TMPA is a remnant of 1970s electrical needs. Ending local governments' participation in TMPA or dissolving the agency could reduce the administrative overhead for participating entities.

Current statute requires the board of directors to be engaged in the operational details of TMPA. This is burdensome, and CSHB 1926 would give the board the legal authority to delegate responsibility to staff. More substantive issues, such as the disposition of assets, would remain with the board of directors under CSHB 1926.

The deregulation of electricity markets has created opportunities for separate generation and transmission businesses. Currently, TMPA faces barriers to participate in these opportunities by having only one board of directors. CSHB 1926 would enable TMPA to split the generation and transmission operations so the agency or its successor organizations could participate in these opportunities.

Currently, only TMPA can issue debt to improve or expand its facilities. CSHB 1926 would allow the participating cities to issue debt to finance their participation in the agency.

TMPA has no plans to expand its transmission capacity beyond its member cities or potential new member cities. It acts as a public service providing power, not a competitor in the transmission business. It is unlikely that transmission lines would be built far away from its current service area or future service area.

OPPONENTS  
SAY:

CSHB 1926 would give TMPA the authority to expand its transmission services across the ERCOT service area, which is nearly the entire state.

The agency could expand its transmission lines to areas far outside its service area in East and North Texas, running lines in areas with no prior relationship with TMPA. CSHB 1926 would treat TMPA as both a municipally owned utility and as a municipality that owns a utility, entities that are not required to pay property taxes. However, CSHB 1926 would allow TMPA to sell transmission services on the competitive market, putting one foot in the private sector. School districts and other jurisdictions through which TMPA transmission lines could run could be denied property taxes from assets used in TMPA's market-related activities.

NOTES:

CSHB 1926 differs from the original bill by adding a provision that would make transmission operations by TPMA subject to Utilities Code, ch. 37, which would require the transmission operations get certificates of convenience and necessity (CCN) from the Public Utilities Commission.

The Senate companion bill, SB 745 by Estes, was considered in a public hearing of the Senate Natural Resources and Economic Development Committee on March 17 and left pending.