SUBJECT: Removing authorization for GLO to sell power to certain public customers

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

WITNESSES: For — Julia Rathgeber, Association of Electric Companies of Texas; Thomas Brocato, Steering Committee of Cities Served by Oncor, Steering Committee of Cities Served by Atmos, Texas Coalition for Affordable Power; Larry Autry, TXU Energy; (*Registered, but did not testify*: Edward Ross, Direct Energy; Cyrus Reed, Lone Star Chapter Sierra Club; Jessica Oney, NRG; Catherine Webking, Texas Energy Association for Marketers; Dax Gonzalez, Texas Association of School Boards; Richard Webster, Texas Association of School Business Officials; Michele Gregg, Texas Competitive Power Advocates; Michael Geary, Texas Conservative Coalition; Mance Zachary, Vistra Energy)

Against — None

On — Ken Mills, Texas General Land Office

BACKGROUND: Utilities Code sec. 35.102 allows the commissioner of the General Land Office to sell or otherwise convey power, generated from oil and gas or mining royalties taken in kind, directly to public retail customers, including state agencies, institutions of higher education, public school districts, political subdivisions, military installations, or Department of Veterans Affairs facilities. Revenue from these sales is directed to the Texas Permanent School Fund.

Tax Code sec. 182.022 imposes a miscellaneous gross receipts tax on each utility company that sells to consumers in an incorporated city or town with a population over 1,000.

DIGEST: HB 2263 would remove the authorization of the commissioner of the General Land Office (GLO) to sell power directly to a public retail customer and would repeal related sections of statute.

GLO or an entity contracting with GLO could continue to provide retail electric services until the date the agreement with the customer expired. An agreement could be extended to a date no later than January 1, 2024.

The bill would prohibit the miscellaneous gross receipts tax under Tax Code sec. 182.022 from being imposed on the sale of electricity to a public school district customer. The exemption would take effect January 1, 2024, and would not affect taxes imposed before that date.

The Public Utility Commission would be required to provide electric utilities with the adjustment of the utilities' billing of a public school district customer to reflect a decrease in tax liability resulting from this bill. An adjustment would have to be made effective at the same time as the decrease of tax liability or as soon as practicable. An adjustment would not be classified as a rate case.

A retail electric provider would have to adjust the billing of a public school district customer as soon as practicable after January 1, 2024 to reflect a decrease in tax liability resulting from this bill.

HB 2263 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY: HB 2263 would abolish the General Land Office's state power program, which was initially set up when the state deregulated its electric market. The program was intended to serve as a transition program to ensure public entities had purchase options but has since outlived that purpose. Deregulation was successful, but the GLO continues to compete with the free market while unfairly taking advantage of the fact that the agency is not charged a gross receipts tax and can use the state's brand and resources.

This bill would phase out the state power program responsibly over five years to allow contracts to wind down. All public schools also would be exempt from the gross receipts tax beginning in 2024 to level the playing field by providing tax relief for school districts not currently in the power program. While this bill would exempt school districts, other public retail customers also could be exempted by other legislation.

OPPONENTS SAY:

While HB 2263 would make positive changes for the electric market, it should be amended to expand the exemption from the gross receipts tax to cities as well as school districts. The tax is ultimately passed on to the customer, including cities, by electric providers. It does not make sense for public funds to be used to pay state taxes.

NOTES:

According to the Legislative Budget Board, the bill would cost the Permanent School Fund $660,509 in fiscal 2020 and $1.2 million in fiscal 2021. The bill also would cost general revenue $5.4 million and the Foundation School Fund $1.8 million beginning in fiscal 2024.