

SUBJECT: Creating State Utilities Reliability Fund; authorizing issuance of bonds

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, Lucio, Raymond, Slawson, Smithee

1 nay — Shaheen

2 absent — P. King, Metcalf

WITNESSES: For — JP Urban, AECT; Allan Schurr, Enchanted Rock; Michele Richmond, Texas Competitive Power Advocates; Julia Harvey, Texas Electric Cooperatives, Inc.; (*Registered, but did not testify*: Daniel Womack, Dow, Inc.; Katie Coleman, Texas Association of Manufacturers; Jim Grace, Texas Association of Water Companies; Chris Noonan, Texas Chemical Council; Monty Wynn, Texas Municipal League; Russell T. “Russ” Keene, Texas Public Power Association)

Against — (*Registered, but did not testify*: Catherine Fraser, Environment Texas)

On — Kevin Couch, Connect2educate; Cyrus Reed, Lone Star Chapter Sierra Club; Tom Glass, Protect the Texas Grid; Walt Baum, Texas Cable Association; Piper Montemayor, Texas Comptroller of Public Accounts; Peter Lake, Texas Water Development Board; (*Registered, but did not testify*: Rebecca Trevino and Jeff Walker, Texas Water Development Board)

DIGEST: CSHB 2000 would create the State Utilities Reliability Fund (SURF) to serve as an infrastructure funding source to enhance the financing capabilities of the Texas Water Development Board (TWDB) and the State Utilities Reliability Revenue Fund (SURRF) for managing revenue bonds issued by TWDB that were supported by the SURF.

State Utilities Reliability Fund. The SURF would be a special fund in

the state treasury outside the general revenue fund to be used by TWDB without further legislative appropriation. TWDB could establish separate accounts in the fund, transfer funds between accounts, and invest, reinvest, and direct the investment of money in the fund.

The fund could be held by the Texas Treasury Safekeeping Trust Company or other trustee for and in the name of the board. TWDB would have legal title to money and investments in the fund until money was disbursed under the bill.

The fund would consist of:

- money appropriated to the fund and money transferred or deposited to the fund, including money transferred or deposited at TWDB's discretion;
- the proceeds of any fee or tax that was dedicated to the fund;
- any other revenue that the Legislature dedicated to the fund;
- investment earnings and interest earned on amounts credited to the fund; and
- money transferred to the fund from another fund or account.

Management and investment. TWDB, the trust company, or other trustee could hold and invest the fund for and in the name of the board. The overall objectives for the investment of the fund would be, in order of precedence, preservation and safety of the fund principal, liquidity, and investment yield. The fund could be invested with the state treasury pool.

In managing the fund's assets, TWDB or the trustee could acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

TWDB or the trustee could charge fees to cover costs incurred in managing and investing the fund that were consistent with those charged

to other state and local governmental entities for which the board or trustee provided investment management services. Fees could be recovered only from the earnings of the SURF.

An investment-related contract entered into under the bill would not be subject to state law governing the resolution of certain contract claims against the state.

Use of fund. The SURF could be used only to:

- enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation companies by supporting projects, including projects to weatherize facilities, to provide resilience and continuous service during periods of high demand;
- pay the necessary and reasonable expenses of TWDB in administering the fund; and
- transfer funds to other TWDB programs or funds.

The fund could not be used to subsidize or finance the construction of electric generation facilities. Money from the fund could be used to make payments under a public and private entity agreement to design, develop, finance, or construct a project under the bill.

The use of the fund could be prioritized based on a statewide utility reliability and resiliency plan adopted under the bill.

The TWDB could provide financial assistance from the fund for a water, electric, or natural gas utility project or to a broadband provider for matching funds to participate in a federal program for broadband facilities. Financial assistance could be provided in any form as determined by TWDB, including a loan, a loan guarantee, an equity ownership in a public or private entity, a joint venture with a public or private entity, a grant, an interest rebate, or an interest subsidy.

In providing financial assistance, TWDB could make, enter into, and

enforce certain contracts and agreements and take other actions to accomplish any of TWDB's purposes.

Money in the fund could not be used for the purposes of certification by the comptroller of the state budget.

Prioritization of projects. TWDB would have to establish a point system for prioritizing projects for which financial assistance was sought. The system would have to include a standard for the board to apply in determining whether a project qualified for assistance at the time of application.

TWDB would have to give the highest consideration in awarding points to projects that would have a substantial effect, including projects that would harden facilities to protect against extreme weather and fuel supply disruptions, enhance resiliency of existing facilities during periods of high demand, and enhance the availability of fuel or water to existing power generation resources to improve their reliability to provide continuous and adequate electric service during periods of high demand.

In prioritizing projects, the board also could consider other funding sources secured by the applicant, the financial capacity of the applicant to repay the assistance provided, and the ability of the applicant to timely leverage state financing with local, federal, or private funding. TWDB would be prohibited from considering federal tax subsidies in prioritizing projects.

Reliability and resiliency plan. The bill would allow TWDB to develop and conduct a study of the needs, causes, and methods to address reliability and resiliency of the industries affected by the bill and develop a statewide reliability and resiliency plan. TWDB could use money from the SURF to contract and engage outside entities to develop the study or plan.

Cooperation with other state agencies. The Public Utility Commission (PUC), the Railroad Commission (RRC), and other state agencies would

have to provide resources to TWDB as necessary to carry out the bill, including entering into contracts between TWDB and other state agencies to provide staff or services.

TWDB could require PUC to review and recommend for approval electric utility and broadband provider projects for TWDB assistance under the bill and inspect electric utility and broadband provider projects after assistance. TWDB could require RRC to do the same for natural gas utility projects.

Reporting and transparency requirements. By December 1 of each even-numbered year, TWDB would have to report to the governor, lieutenant governor, House speaker, and the Legislature on the use of SURF.

TWDB would have to post on its website the progress made in enhancing critical water, electric, natural gas, and broadband infrastructure to withstand periods of high demand and a description of each funded project with the expected completion date. The information would have to be posted on the website by March 1, 2022.

Other provisions. TWDB would have to adopt policies and procedures to mitigate or minimize the adverse effects of federal laws and regulations relating to income taxes, arbitrage, rebates, and related matters that could restrict the board's ability to freely invest all or part of the SURF or to receive and retain all the earnings from the fund.

Any reconstruction or changes to the regulatory market structures of the industries identified in the bill would not be in conflict with its purpose.

State Utilities Reliability Revenue Fund. The SURRF would be a special fund in the state treasury outside the general revenue fund to be used by TWDB without further legislative appropriation.

The SURRF would consist of:

- money appropriated to the fund and money transferred or

deposited, including money transferred or deposited at TWDB's discretion;

- the proceeds of any fee or tax that was dedicated to the fund;
- any other revenue dedicated to the fund by the Legislature;
- investment earnings and interest earned on amounts credited to the fund;
- the proceeds from the sale of revenue bonds issued by TWDB that were designated to provide money for the fund;
- repayments of loans made from the fund; and
- money disbursed to the fund from the SURF.

Management and investment. Money deposited to the SURRF would be invested as determined by TWDB and could be invested with the state treasury pool. The SURRF and any associated accounts would be kept and maintained by TWDB.

At the direction of TWDB, the SURRF and any associated accounts could be managed by the comptroller or a corporate trustee that was a trust company or a bank that had the powers of a trust company for and on behalf of TWDB and could be invested as provided by an order, resolution, or rule of the board.

Use of revenue fund. Money in the SURRF could be used only to provide financial assistance under terms specified by TWDB for projects that enhanced the reliability and resiliency of water, electric, natural gas, broadband, and power generation infrastructure in the state, including projects that enhanced the ability of infrastructure to withstand periods of high demand and projects to weatherize infrastructure.

Financial assistance for projects could be provided in any form determined by TWDB, including a loan, a loan guarantee, equity ownership in a public or private entity, a joint venture with a public or private entity, a grant, and interest rebate, or a subsidy. In providing financial assistance, TWDB could make, enter into, and enforce certain contracts and agreements and take other actions to accomplish the board's purposes.

TWDB could use money in the SURRF as a source of revenue or security for the payment of the principal of and interest on revenue bonds issued by the board or to pay the necessary and reasonable expenses of paying agents, bond counsel, and financial advisory services and similar costs incurred by the TWDB in administering the SURRF.

TWDB, the comptroller, or the corporate trustee managing the SURRF would have to withdraw from the revenue fund and pay to a person any amounts for the timely payment of the principal of and interest on bonds that matured or became due and any related costs.

Money in the SURRF could not be used for the purposes of certification by the comptroller of the state budget.

Issuance of revenue bonds. TWDB could issue revenue bonds to provide money for the SURRF or to refund revenue bonds or bonds and obligations issued or incurred in accordance with other law.

Revenue bonds issued under the bill would be special obligations of the board payable only from and secured by designated income and receipts of the SURRF, including principal of and interest paid and to be paid on revenue fund assets or income from accounts created within the SURRF. Revenue bonds issued under the bill would not constitute indebtedness of the state as prohibited by the constitution.

Revenue bonds issued under the bill would have to be authorized by resolution of TWDB and would have the form and characteristics and bear the designations as provided by the resolution.

The bill would provide additional provisions on the issuance of revenue bonds, including on the bond's interest and the rate of maturity, and would allow the TWDB to require SURRF participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.

All proceedings on the issuance of revenue bonds would have to be submitted to the attorney general for approval, and the revenue bonds would be registered by the comptroller. After approval and registration, the revenue bonds would be incontestable in any court and would be valid and binding obligations in accordance with their terms.

Proceeds received from the sale of revenue bonds could be deposited or invested in any manner and in such investments as could be specified in the resolution or other proceedings authorizing those obligations. Money in the SURRF or associated accounts could be invested in any manner and in any obligations that could be specified in the resolution or other proceedings.

SURF advisory committee. The bill would create the SURF advisory committee, which would be composed of seven members, including:

- the comptroller or a person designated by the comptroller;
- three members of the Senate appointed by the lieutenant governor, including members of the Senate committees having primary jurisdiction over natural resources and finance; and
- three members of the House appointed by the speaker, including members of the House committees having primary jurisdiction over natural resources and appropriations.

The lieutenant governor and House speaker each would appoint a co-presiding officer of the advisory committee from among the members they appointed.

The advisory committee would be required to submit comments and recommendations as outlined in the bill to TWDB on the use of money in the SURF and the SURRF for use in adopting rules, policies, and procedures related to the bill. The committee also would review the overall operation, function, and structure of the SURF at least semiannually and could provide comments and recommendations to TWDB on any matter.

The advisory committee would have to evaluate and could provide comments on the feasibility of the state owning, constructing, and operating water, electric, natural gas, or broadband facilities to enhance reliability and resiliency.

The executive administrator of TWDB would have to provide an annual report to the SURF advisory committee on the board's compliance with statewide annual goals related to historically underutilized businesses and the participation level of such businesses in projects that received funding under the bill. If the level of participation did not meet statewide annual goals, the advisory committee would have to make recommendations to improve the participation level.

The advisory committee would be subject to the Texas Sunset Act, and would be abolished September 1, 2035, unless continued.

Weatherization study. The bill would require the executive administrator of TWDB, in coordination with the PUC, the RRC, the Texas Commission on Environmental Quality, and the ERCOT organization, to study and submit to the SURF advisory committee a report on:

- the need for financial assistance from the state to weatherize water, electric, and natural gas utility facilities and broadband provider facilities;
- the need for financial assistance from the state to provide adequate capacity during periods of high demand for electric and natural gas utilities; and
- the financing structures desirable to potential applicants for such financial assistance.

The report would have to be submitted by December 31, 2022, and costs of the report could be paid from the SURF.

Other provisions. The bill would allow TWDB to use the water loan assistance program to provide loans or grants for projects that enhanced the reliability and resiliency of water utilities by weatherizing facilities.

The bill also would allow the TWDB to sell to the SURF any bonds or obligations purchased with money in the SURRF and could apply the proceeds of the sale as provided for under the bill's provisions relating to the SURRF.

Effective date. The bill would take effect on the date the constitutional amendment proposed by the 87th Legislature, Regular Session, 2021, providing for the creation of the State Utilities Reliability Fund and the State Utilities Reliability Revenue Fund was approved by voters. If that amendment was not approved by voters, the bill would have no effect.

SUPPORTERS
SAY:

CSHB 2000 would help enhance the reliability and resiliency of the state's energy infrastructure by creating the State Utilities Reliability Fund (SURF) and the State Utilities Reliability Revenue Fund (SURRF) to provide financing for projects that would ensure adequate capacity during periods of high demand. During Winter Storm Uri in February, much of the state's power generation capacity was unavailable or went offline because of operations failures related to icy weather and low temperatures, contributing to millions of Texans experiencing widespread, extended power outages.

After the storm, the governor issued an emergency item calling on the Legislature to mandate the winterization of the state's power system and to ensure that necessary funding was available. Modeled on the successful State Water Implementation Fund for Texas program also administered by the Texas Water Development Board (TWDB), the bill would allow the TWDB to take advantage of a broad range of financing options and provide the board the flexibility necessary to design and implement the SURF program to accomplish these goals.

The bill would offer an important tool to entities facing significant costs resulting from the winter storm, including those that do not have access to rate recovery in the competitive market. By allowing entities to access market-rate and low-cost financing options with extended repayment terms and loan deferrals that otherwise might not be available for projects

to support reliable service, the bill would provide a safeguard for financing the possible implementation of proposals before the Legislature mandating weatherization and other requirements on the power system.

With a proposed amendment to the Texas Constitution under the associated HJR 2, the bill would engage the public with the legislative process and provide Texas voters the ultimate decision on whether to authorize funds to finance projects to enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation resources in the state.

It would be unnecessary to more specifically define types of projects that would be eligible for funding assistance under the SURF program. CSHB 2000 would allow the fund to be used for projects to enhance both resiliency and reliability, which would be broad enough to encompass a wide range of projects.

CRITICS
SAY:

Because CSHB 2000 would authorize the use of public funds for private entities, the bill should ensure the public had access to information and the ability to provide input and review before any potential funding decisions made by the TWDB.

Broadband providers should not be treated the same as electric, water, and natural gas utilities on issues of adequate capacity during periods of high demand. While the broadband industry does experience such periods, they normally are not associated with weather events but rather with, for example, a transition from work or school to home, as many experienced at the beginning of the coronavirus pandemic. Therefore, weatherization is not the best mechanism to enhance reliability of broadband providers. To better address adequate capacity for broadband providers, the bill instead should specify that the SURF program could be used to expand access to and adoption of broadband capabilities.

OTHER
CRITICS
SAY:

CSHJR 2 should specify other projects, in addition to weatherization, to be eligible for financial assistance under the SURF program. Rather than focusing narrowly on extreme weather events, the bill should specify that

projects to harden facilities against potential attack and to address outages and interruptions caused by more frequent events, such as flooding, would be eligible for financial assistance under the program to ensure resilience and reliability of the power system against all potential hazards and threats, both natural and manmade. To further enhance the resiliency of the power supply, CSHJR 2 should expand the use of the SURF program to include projects focused on reducing energy demand, including energy efficiency, demand response, weatherization of buildings and homes, and conservation efforts.

The bill could expand TWDB's programs outside of its historical authority and expertise, and the board already is tasked with managing a new state flood program and state flood plan. CSHB 2000 should ensure the board has access to resources to adequately implement the bill.

NOTES:

CSHB 2000 is the enabling legislation for HJR 2, which would amend the Texas Constitution to create the State Utilities Reliability Fund and the State Utilities Reliability Revenue Fund. HJR 2 is set for consideration on today's Constitutional Amendments Calendar.

According to the Legislative Budget Board, the fiscal implications of implementing the bill could not be determined because the amount and timing of any appropriations, transfers, earnings, and bond proceeds associated with the bill were unknown.

Two contingency riders, one for \$2 billion from the Economic Stabilization Fund and one for \$2 billion from federal funds, were placed in Art. 11 of the House-passed version of SB 1 by Nelson (Bonnen), the general appropriations act for fiscal 2022-23, to implement the bill.