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Toni Rose  
John Smithee  
David Spiller

# HOUSE RESEARCH ORGANIZATION

## daily floor report

Monday, May 22, 2023  
88th Legislature, Number 70  
The House convenes at 1 p.m.  
Part One

Four bills are on the Major State Calendar, two bills are on the Constitutional Amendments Calendar, and 24 bills are on the General State Calendar for second reading consideration today. The table of contents for Part One of today's Daily Floor Report begins on the following page.

To access the Dynamic Floor Report, visit the following link: <https://hro-dfr.house.texas.gov>.



Gary VanDeaver  
Chairman  
88(R) - 70

# HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, May 22, 2023

88th Legislature, Number 70

Part 1

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- SUBJECT:** Prohibiting certain mandates related to COVID-19 prevention
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 9 ayes — Hunter, Dean, Geren, Guillen, Metcalf, Raymond, Slawson, Smithee, Spiller
- 3 nays — Hernandez, Anchía, Turner
- 1 absent — E. Thompson
- SENATE VOTE:** On final passage (April 3) — 20 - 10
- WITNESSES:** For — Stephanie Schiltz, Texans for Vaccine Choice; Michael Belsick (*Registered, but did not testify*: James Parnell, Dallas Police Association; Ray Hunt, Houston Police Officers’ Union; Michelle Evans, Texans for Vaccine Choice; Tom Glass, Texas Constitutional Enforcement; Cindi Castilla, Texas Eagle Forum; Dallas Reed, Texas Municipal Police Association; AJ Louderback, Texas Sheriffs’ Regional Alliance; Natalie Ibe, True Texas Project; and eight individuals)
- Against — (*Registered, but did not testify*: Mark Wiggins, Association of Texas Professional Educators; Guadalupe Cuellar, City of El Paso; Paul Sugg, Harris County Commissioners Court; Bill Kelly, Mayor’s Office, City of Houston; Leonard Aguilar, Texas AFL-CIO; Eli Melendrez, Texas American Federation of Teachers; Michelle Gallas, Texas Medical Association and Texas Pediatric Society; Elaina Fowler, Texas State Teachers Association; Julie Wheeler, Travis County Commissioners Court; Katherine Schmader, Cynthia Van Maanen, Travis County Democratic Party; Nicole Ma, Sarah Syed, Steven Wu, Woori Juntos; and 79 individuals)
- BACKGROUND:** Some have suggested that prohibiting local governments from implementing certain mandates related to COVID-19 would help to protect individual freedoms.

DIGEST: CSSB 29 would prohibit a governmental entity from implementing, ordering, or otherwise imposing a mandate to prevent the spread of COVID-19 that required:

- a person to wear a face mask or other face covering;
- a person to be vaccinated against COVID-19; or
- the closure of a private business or a public, open-enrollment charter, or private school.

Limitations on mandates related to face masks would not apply to state supported living centers, facilities operated by the Texas Criminal Justice Department or the Texas Juvenile Justice Department, municipal or county jails, or hospitals or other health care facilities owned by a governmental entity that were subject to certain other rules prescribed by a government agency which conflicted with the imitation. Limitations on mandates related to vaccines would apply only to the extent that the prohibition did not conflict with certain federal rules.

The bill 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, 2023.

**SUBJECT:** Establishing requirements for certain electric reliability programs

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

**VOTE:** 13 ayes — Hunter, Hernandez, Anchía, Dean, Geren, Guillen, Metcalf, Raymond, Slawson, Smithee, Spiller, S. Thompson, Turner

0 nays

**SENATE VOTE:** On final passage (April 5) — 31 - 0

**WITNESSES:** For — Katie Coleman, Texas Association of Manufacturers; Warren Lasher, Texas Oil and Gas Association; Brent Bennett, Texas Public Policy Foundation (*Registered, but did not testify*: Julie Williams, Chevron; Kari Gibson, ConocoPhillips; Matthew Wilby, Contour Energy, LLC; Sam Gammage, Dow; Bill Oswald, Koch Companies; Mindy Ellmer, Lyondellbasell and Olin; Anne Billingsley, ONEOK, Inc.; Ashley McConkey, Texas Instruments, Inc.; Tricia Davis, Texas Royalty Council; Karen Marshall; Maria Person; Susan Stewart)

Against — Jean Ryall, Advanced Power Alliance; Mark Bell, Association of Electric Companies of Texas; Bryan Sams, Calpine Corporation; Shannon Ratliff, Cypress Creek Renewables; Terry Naulty, Denton Municipal Electric; Caitlin Smith, Jupiter Power LLC; Bill Barnes, NRG; Scott Harlan, Rockland Capital; Matthew Boms, Texas Advanced Energy Business Alliance; Michele Richmond, Texas Competitive Power Advocates; John Pitts, Texas Energy Buyers Alliance; Mark Stover, Texas Solar Power Association; Daniel Booth, TexGen Power; Sam Siegel, Vistra Corporation; John Gordon; Larry Linenschmidt; Susan Meredith (*Registered, but did not testify*: Hesston Klenk, AES Corp; Josh Schroeder, City of Georgetown; Leslie Pardue, Clearway Energy; Matt Welch, Conservative Texans for Energy Innovation; Jerry Valdez, Constellation Energy Generation; Madeline Symm, Cypress Creek Renewables; Lynnae Willette, EDF Renewables; Farish Mozley, EDP Renewables North America; Mike Meroney, Enel North America; Logan Spence, Engie N.A.; Luke Metzger, Environment Texas; Sandra Haverlah, Environmental Defense Fund; Michael Jewell, Eolian; Darrell Cline,

Garland Power and Light; Tammy Embrey, Invenergy, LLC; Michael Jewell, Octopus Energy; Sloan Byerly, Ørsted; Michael Jewell, Pattern Energy; Michael Jewell, Plus Power; Lisa Hughes, RWE Clean Energy LLC; Robert Nathan, Schneider Electric; Michael Jewell, Solar Energy Industries Association; Mike Alvarado, WattBridge)

On — Pablo Vegas, ERCOT; Cyrus Reed, Lone Star Sierra Club; Carrie Bivens, Potomac Economics; Thomas Gleeson, Public Utility Commission of Texas; Clif Lange, South Texas Electric Coop, Inc.; Catherine Webking, Texas Energy Association for Marketers; Julia Harvey, Texas Electric Cooperatives; Nathan Murphy, Valero Companies; Karl Meeusen, Wärtsilä North America (*Registered, but did not testify*); Martha Landwehr, BASF Corporation; Kari Meyer, CPS Energy)

**BACKGROUND:** Concerns have been raised about the ongoing reliability and resilience of the ERCOT power grid in Texas. Some have suggested that the Legislature should give additional guidance to PUC regarding the implementation of the Performance Credit Mechanism and require ERCOT to ensure minimum performance standards for new energy resources.

**DIGEST:** CSSB 7 would amend the Utilities Code to prohibit the Public Utility Commission (PUC) from requiring retail customers or load-serving entities in the ERCOT power region to purchase credits designed to support a required reserve margin or other capacity or reliability requirement until ERCOT and the wholesale electric monitor completed an updated assessment on the cost to and effects on the ERCOT market of the proposed reliability program, and ERCOT began implementing real time co-optimization of energy and ancillary services in the ERCOT wholesale market.

The assessment would be required to include:

- an evaluation of the cost of new entry and the effects of the proposed reliability program on consumer costs and the competitive retail market;

- a compilation of detailed information regarding cost offsets realized through a reduction in costs in the energy and ancillary services markets and use of reliability unit commitments;
- a set of metrics to measure the effects of the proposed reliability program on system reliability;
- an evaluation of the cost to retain existing dispatchable resources in the ERCOT power region;
- an evaluation of the planned timeline for implementation of real time co-optimization for energy and ancillary services in the ERCOT power region; and
- anticipated market and reliability effects of new and updated ancillary service products.

PUC could not implement a reliability program unless PUC by rule established the essential features of the program, including requirements to meet the reliability needs of the power region. Other essential features required to be in the program would include:

- central procurement of credits;
- limits on participation;
- prohibiting credits that exceed the amount of generation bid;
- penalty structure;
- limiting credits to those able to perform in real time during the tightest intervals of supply and demand;
- providing the electric market monitor the necessary authority and resources to investigate potential market manipulation;
- limits on the net cost of credit on the market;
- ensuring that reliability standard reasonably balanced the incremental reliability benefits to customers relative to cost; and
- certain other items specified in the bill.

PUC and ERCOT would be prohibited from adopting a market rule for the ERCOT power region associated with the implementation of a reliability program that provided a cost advantage to load-serving entities who owned, or whose affiliates owned, generation facilities.

PUC and ERCOT would be required to ensure that the net cost imposed on the ERCOT market for the credits did not exceed \$1 billion annually minus the cost of any lawfully implemented interim solutions, except that the limit could be adjusted proportionally according to the highest net peak demand year-over-year or for inflation, with a base year of 2026 for either adjustment.

The wholesale electric market monitor would be required to biennially evaluate the incremental reliability benefits of the program for consumers compared to the costs to consumers of the program and the costs in the energy and ancillary services market and report the results of each evaluation to the Legislature.

CSSB 7 would require ERCOT to consider implementing an ancillary services program to procure dispatchable reliability reserve services on a day-ahead and real-time basis to account for market certainty. Additionally, PUC would have to require ERCOT to develop and implement a program to ensure minimum generation performance during times of high reliability risk due to low operating reserves. The wholesale electric market monitor would have to submit recommendations for implementing this program by December 1, 2024. The bill would specify that these programs could be implemented simultaneously.

The bill would require PUC to file an annual report with the Legislature that:

- included the estimated annual costs incurred by dispatchable and non-dispatchable generators to guarantee that a firm amount of electric energy would be provided for the ERCOT power grid;
- included the cumulative annual costs incurred in the ERCOT market to facilitate that transmission of dispatchable and non-dispatchable electricity to load to and to interconnect transmission level loads;
- documented the status of the implementation of statute governing ERCOT, including whether related rules and protocols had materially improved the reliability, resilience, and transparency of the electricity market; and

- included recommendations for any additional legislative measures needed to empower PUC to implement market reforms to ensure sufficient dispatchable generation to maintain reliability standards for at least five years after the report's date.

CSSB 7 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, 2023.

NOTES:

According to the Legislative Budget Board, CSSB 7 would have a negative impact of about \$1.4 million through the biennium ending in fiscal 2025.

**SUBJECT:** Establishing a fund to support electric facility construction and upgrades

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

**VOTE:** 13 ayes — Hunter, Hernandez, Anchía, Dean, Geren, Guillen, Metcalf, Raymond, Slawson, Smithee, Spiller, S. Thompson, Turner

0 nays

**SENATE VOTE:** On final passage (May 4) — 27 - 4

**WITNESSES:** For — Katie Coleman, Texas Association of Manufacturers; Mike Alvarado, Wattbridge (*Registered, but did not testify*: Martha Landwehr, BASF Corporation; James Mathis, Dow; Lauren Fairbanks, Freeport LNG; George Kast, Gibbons Lake and Land; Mindy Ellmer, Lyondellbasell, Olin and Tarrant Regional Water District; Julie Moore, Occidental; Mark Gipson, Pioneer Natural Resources; Dana Harris, Samsung Austin Semiconductor; Richard Dyer, Steering Committee of Cities Saved by Oncor; Chris Noonan, Texas Chemical Council; Richard Dyer, Texas Coalition for Affordable Power; Charlie Malouff, Texas Twister, Inc.; Jay Brown, Valero Energy Corporation; and 20 individuals)

Against — John Gordon; Susan Meredith (*Registered, but did not testify*: Jason Sabo, Environment Texas; Thomas Ortman, Nous Energy, Citizens Climate Lobby; Anne Billingsley, ONEOK, Inc; Adrian Shelley, Public Citizen; Josiah Neeley, R Street Institute; Matthew Boms, Texas Advanced Energy Business Alliance; Sandra Haverlah, Texas Consumer Association; and 12 individuals)

On —Bryan Sams, Calpine Corporation; Casey Kelley, Constellation Energy Generation; Cyrus Reed, Lone Star Chapter Sierra Club; Mark Spencer, LS Power Development; Bill Barnes, NRG; Thomas Gleeson, Public Utility Commission of Texas; Michele Richmond, Texas Competitive Power Advocates; Julia Harvey, Texas Electric Cooperatives; Sam Siegel, Vistra; David Carter (*Registered, but did not testify*: Mark Bell, Association of Electric Companies of Texas; Kenan Ogelman,

ERCOT; Joel Yu, Grid Resilience in Texas; Fred Shannon, Hunt Energy Network; Jennifer Coffee, Texas Pipeline Association)

**BACKGROUND:** Some have suggested that increasing funding for certain activities related to dispatchable electric generation facilities could increase the reliability of the state's electric market.

**DIGEST:** CSSB 2627, or the Powering Texas Forward Act, would establish the Texas energy fund as a special fund outside the general revenue fund to be administered and used by the Public Utility Commission (PUC). The fund would consist of:

- money appropriated, credited, transferred, or deposited to the credit of the fund or as authorized by law;
- revenue that the Legislature dedicated for deposit to the credit of the fund;
- investment earnings and interest earned on money in the fund; and
- gifts, grants, and donations.

**ERCOT loans.** PUC could use money in the fund without further appropriation to provide loans to finance upgrades to existing dispatchable electric generating facilities. To be eligible for a loan, facilities would have to provide power for the ERCOT region and the upgrades would be required to increase facility capacity by 100 megawatts. PUC could also provide a loan for the construction of dispatchable electric generating facilities providing power for the ERCOT region that each had a generation capacity of at least 100 megawatts. A construction loan could only be provided:

- for construction of a facility that did not meet the planning model requirements necessary to be included in ERCOT'S Capacity Demand and Reserves Report before June 1, 2023;
- in an amount up to 60 percent of the facility's estimated construction cost; and
- if the agreement ensured that the loan would be the facility's senior debt.

An electric utility other than a river authority could not receive a loan from the fund.

A loan under the bill would have to have a term of 20 years, be payable ratably starting seven years after being issued, and bear an interest rate of 2 percent.

PUC would have to require each loan recipient to deposit 3 percent of the estimated project cost in an escrow account held by the comptroller. The deposit would have to be made before the funds were disbursed, and the recipient could not withdraw the deposit unless authorized by PUC as provided for in the bill. Any escrow funds that PUC could not authorize to be withdrawn would be deposited in the Texas energy fund.

PUC would be required to accept loan applications, approve or deny each application, and disburse loan funds by December 31, 2026, and could not disburse money for a loan under the bill after that date.

**Completion bonus grants.** PUC would be required to provide a completion bonus grant for the construction of dispatchable electric generating facilities in the ERCOT power region using money from the fund. A grant could be provided only for the construction of a facility that:

- would have a generation capacity of at least 100 megawatts;
- did not meet the planning model requirements necessary to be included in ERCOT'S Capacity Demand and Reserves Report before June 1, 2023; and
- was interconnected in the ERCOT power region by December 31, 2028, or, if PUC determined that a delay was justified, before a later date specified by the commission that was no later than June 1, 2029.

The grant amount would have to be based on the megawatts of capacity provided to the ERCOT power region by the facility, and could not exceed \$100,000 per megawatt. PUC could not provide a grant after September 1, 2029.

**Loans and grants.** CSSB 2627 would establish criteria for PUC's evaluation of applications for loans and grants under the bill based on applicant characteristics, generation capacity, and estimated costs. If PUC had more than four pending loan applications for the fund on the date a loan was awarded, the loan could not exceed 25 percent of the fund balance.

Outstanding loans and grants could not support the addition or construction of more than the generation capacity megawatts needed to meet reliability standards, goals, or operational targets for ERCOT as determined by PUC.

PUC could not provide a loan or grant for an electric energy storage facility or a facility that would be used primarily to serve an industrial load or private use network.

Before December 31, 2026, PUC could provide:

- for loans, no more than 80 percent of fund money available on December 1, 2023; and
- for grants, no more than 20 percent of fund money available on December 1, 2026.

**Advisory committee.** CSSB 2627 would establish an advisory committee for the Texas energy fund composed of three members of the Senate appointed by the lieutenant governor and three members of the House of Representatives appointed by the speaker of the House. The committee would have to include one member from the respective committees of each chamber with primary jurisdiction over electricity generation and finance. The lieutenant governor and speaker of the House would each appoint a co-presiding officer from the respective members they appointed.

The committee could hold public hearings, formal meetings, and work sessions, as called by either co-presiding officer. The committee could provide comments and recommendations to PUC regarding rules and would be required to review the overall operation, function, and structure

of the fund at least semiannually. The committee would be subject to the Texas Sunset Act, with a sunset date of September 1, 2035.

**Fund management and investment.** CSSB 2627 would require the Texas Treasury Safekeeping Trust Company to hold and invest the Texas energy fund for and in the name of PUC. The fund could be invested with the state treasury pool and comingled with other investments. The overall objective for fund investment would be to maintain sufficient liquidity to meet fund needs while preserving the fund's purchasing power.

The trust company would be required to provide an annual written report to PUC and the advisory committee and to adopt a written investment policy to be presented to the comptroller's investment advisory board. The board would be required to submit recommendations for the policy to the trust company. PUC would be required to provide the trust company with an annual forecast of the fund's cash flows and provide updates to the forecasts as appropriate to enable the trust company to achieve the fund's investment objective.

**Receivership of default generating facility.** In the event of a default on a loan under the bill, at PUC's request, the attorney general would bring suit in a Travis County district court for the appointment of a receiver to collect the assets and carry on the business of a loan recipient if the action was necessary to cure a default by the recipient. The court would vest a receiver with any power or duty the court found necessary to cure the default. The receiver would be required to execute a bond set by the court to ensure the proper performance of the receiver's duties.

After the appointment and execution of the bond, the receiver would take possession of the books, records, accounts, and assets of the defaulting loan recipient. Until discharged by the court, the receiver would be required to perform the duties directed by the court and strictly observe the final order involved. On a showing of good cause by the defaulting loan recipient, the court could dissolve the receivership.

**Interconnecting facilities.** CSSB 2627 would require ERCOT to work with electric utilities to ensure that each facility that was provided a loan or grant from the energy fund was fully interconnected in the region no

later than the date the facility was ready for commercial operation. ERCOT would be required to give priority to interconnecting facilities that had received loans or grants under the bill except that transmission projects designated as critical for reliability would have to be prioritized over such facilities. The bill would provide for applications, deadlines, and extensions related to interconnecting facilities that received loans or grants from the fund.

**Effective date.** CSSB 2627 would take effect on the date on which the constitutional amendment proposed by the 88<sup>th</sup> Legislature providing for the creation of the Texas energy fund took effect. If the amendment was not approved by voters, the bill would have no effect.

NOTES:

CSSB 2627 is the enabling legislation for CSSJR 93 by Schwertner, which would create the Texas energy fund. CSSJR 93 is set for second reading today.

According to the Legislative Budget Board, CSSB 2627 would have an estimated negative impact to general revenue related funds of about \$1.44 million through fiscal 2024-2025.

SUBJECT: Revising tenure provisions for higher education institution faculty

COMMITTEE: Higher Education — committee substitute recommended

VOTE: *After recommitted:*  
6 ayes — Kuempel, Paul, Burns, Burrows, Clardy, Raney  
5 nays — Bucy, Cole, M. González, Howard, Lalani

SENATE VOTE: On final passage (April 20) — 18 - 11

WITNESSES: None (*considered in a formal meeting on May 18*)

DIGEST: CSSB 18 would revise provisions on tenure for higher education institution faculty.

The bill would define “tenure” as the entitlement of a faculty member of a higher education institution to continue in the faculty member’s academic position unless dismissed by the institution for good cause in accordance with certain policies and procedures adopted by the institution.

The bill would authorize only a higher education institution’s governing board, on the recommendation of the institution’s chief executive officer and the university system’s chancellor, if applicable, to grant tenure. The granting of tenure could not be construed to create a property interest in any attribute of a faculty position beyond a faculty member’s regular annual salary.

The bill would require each higher education institution’s governing board to adopt policies, rather than rules, and procedures regarding tenure. These policies and procedures would have to include a periodic performance evaluation process for all tenured faculty at the institution and would be required to allow for the dismissal of a tenured faculty member at any time after providing the faculty member with appropriate due process, on a determination that there was actual financial exigency or upon the phasing out of the institution’s programs requiring the elimination of the

position. The policies and procedures also would be required to allow for dismissal if the faculty member had:

- exhibited professional incompetence;
- continually or repeatedly failed to perform duties or meet professional responsibilities of the faculty member's position;
- failed to successfully complete any post-tenure review professional development program;
- engaged in conduct involving moral turpitude that adversely affected the institution or the faculty member's performance;
- violated laws, university system policies, or institution policies substantially related to the faculty member's performance;
- been convicted of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;
- engaged in unprofessional conduct that adversely affected the institution or the faculty member's performance; or
- falsified the faculty member's academic credentials.

Such policies and procedures would be required to allow for a tenured faculty member's dismissal at any time on a determination that there was other good cause as defined in the institution's policies.

The governing board's policies and procedures would have to include provisions providing that:

- a faculty member would be subject to revocation of tenure or other appropriate disciplinary action if incompetency, neglect of duty, or other good cause was determined during the required comprehensive performance evaluation process; and
- the evaluation process provided for a short-term development plan that included performance benchmarks for returning to satisfactory performance for a faculty member who received an unsatisfactory rating in any area of any evaluation.

The bill would allow such policies and procedures to include provisions that authorized the summary dismissal of a tenured faculty member based on a finding that the faculty member committed serious misconduct under

the institution's policies at any time after providing the faculty member with appropriate due process. Appropriate due process would include:

- providing the faculty member written notice of the allegations against the faculty member with an explanation of the supporting evidence and an opportunity for the faculty member to respond to the allegations in a hearing with a designated administrator before summarily dismissing the faculty member;
- requiring the designated administrator to consider the faculty member's response and make a written determination of whether the institution would proceed with the summary dismissal;
- promptly providing a copy of the designated administrator's written determination to the faculty member, which clearly indicated whether the faculty member would be summarily dismissed and either included the effective date of the dismissal and information regarding the opportunity for a post-dismissal appeal or stated that the faculty member was not to be summarily dismissed; and
- providing the faculty member with the opportunity for a post-dismissal appeal in accordance with the institution's policies and procedures following a designated administrator's written determination to summarily dismiss a faculty member.

Each governing board would be required to file a copy of the policies and procedures adopted under the bill and any amendments with the Texas Higher Education Coordinating Board by September 1 of each year.

The bill would repeal Education Code sec. 51.942(d), which requires a faculty member subject to termination on the basis of a performance evaluation to be given the opportunity for referral of the matter to a nonbinding alternative dispute resolution process.

The bill would take effect September 1, 2023.

SUPPORTERS  
SAY:

CSSB 18 would help ensure that university faculty who earn tenure uphold their professional and ethical responsibilities and remain accountable to the students and universities that they serve. CSSB 18 would not limit tenure or affect academic freedom but rather would

protect tenure by codifying tenure policies and procedures and requiring appropriate due process prior to a faculty member's dismissal. Although faculty involvement in the process of granting tenure is not required under the bill, individual institutions could determine the level of faculty involvement allowed in the process. As evidenced by the success of the Texas A&M system's tenure policies, which are similar to the provisions of the bill, these tenure standards can attract new professors without discouraging high-quality educators from seeking employment in Texas. The bill would not change tenured faculty members having a property interest in their positions requiring due process prior to termination, and the reasons for termination constituting good cause under the bill are similar to policies already established by the American Association of University Professors. As the bill would not violate current legal standards, there is no reason to expect lawsuits to result from the bill's passage.

CRITICS  
SAY:

CSSB 18 could limit the academic freedom of faculty provided by tenure, which could impede their ability to challenge students and advance scholarship. The discipline and peer review behind current tenure policies help to ensure the sustained high quality of higher education. The bill should require faculty involvement in the awarding of tenure, rather than leaving these decisions to the governing board of an institution. The bill also could hinder universities' capacity to recruit or retain exceptional teaching talent in the state. Such provisions may also encourage institutions to terminate faculty at higher rates as the institutions would no longer incur the financial liabilities resulting from protected property interests for tenured professors.

OTHER  
CRITICS  
SAY:

CSSB 18 could lead to lawsuits against the state, which could cost the state money that would be better used for other purposes.

- SUBJECT:** Authorizing increased funding for certain colleges and institutions
- COMMITTEE:** Higher Education — committee substitute recommended
- VOTE:** 9 ayes — Kuempel, Paul, Bucy, Burns, Clardy, Cole, M. González, Howard, Lalani
- 0 nays
- 2 absent — Burrows, Raney
- SENATE VOTE:** On final passage (April 24) — 30 - 0
- WITNESSES:** None (*considered in a formal meeting on May 16*)
- BACKGROUND:** Texas Constitution art. 8, sec. 22 prohibits the growth rate of state tax revenue appropriations from exceeding the estimated growth rate of the state's economy unless those appropriations are dedicated by the constitution.
- Some have suggested that certain higher education institutions would benefit from capital funding to allow for strategic growth in current or new campuses.
- DIGEST:** CSSJR 81 would amend the Texas Constitution to establish the permanent instruction in manufacturing and technical workforce operations fund and the available instruction in manufacturing and technical workforce operations fund as special funds in the state treasury outside the general revenue fund to be administered without further appropriation. These funds would provide a dedicated funding source for capital projects and equipment purchases related to educational programs offered by the Texas State Technical College System and certain component institutions of the Texas State University System.
- The permanent fund would consist of:

- money appropriated, credited, transferred, or deposited to the credit of the fund;
- any interest or other earnings attributable to the investment of fund money; and
- gifts, grants, and donations.

The available fund would consist of:

- money distributed to the fund from the permanent fund;
- money appropriated, credited, transferred, or deposited to the credit of the fund;
- any interest or other earnings attributable to the investment of fund money; and
- gifts, grants, and donations.

The resolution would allow the comptroller, the Texas State Technical College System board of regents, or the Texas State University System board of regents to establish accounts in the available fund as necessary to administer the fund or pay for certain projects. The resolution also would establish provisions for the comptroller's management of the assets of the funds.

Money could not be appropriated or transferred from the permanent fund or the available fund except as provided by the resolution.

The resolution would require the comptroller to determine the amount available for distribution from the permanent fund to the available fund for each fiscal year. The amount available for distribution would have to be determined in a manner intended to provide the available fund with a stable and predictable stream of annual distributions and to preserve over a rolling 10-year period the purchasing power of the permanent fund. The amount available for distribution could not exceed 5.5 percent of the fair market value of the permanent fund's investment assets.

For each fiscal year, on request of the board of regents of the Texas State Technical College System or the Texas State University System, the comptroller would be required to distribute an amount that did not exceed

that amount determined in the above provisions from the permanent fund to the available fund. Out of the distribution from the permanent fund to the available fund, 50 percent would be appropriated to the board of regents of the Texas State Technical College System and the board of regents of the Texas State University System for certain purposes. The Texas State University System's board of regents could use the appropriated money only for the benefit of the Lamar Institute of Technology, Lamar State College-Orange, Lamar State College-Port Arthur, or, by a majority vote of the Legislature, a higher education institution created as a part of or added to the system on or after January 1, 2024.

Money appropriated from the available fund could not be used for constructing, equipping, repairing, or rehabilitating buildings or other permanent improvements that were to be used for intercollegiate athletics or auxiliary enterprises. An institution, other than a component institution of the Texas State Technical College System or the Texas State University System, that was entitled to participate in certain dedicated funding could not be entitled to participate in the funding provided by the resolution.

The resolution would not impair any obligation created by the issuance of bonds or notes by prior law and all outstanding bonds and notes would be paid in full in accordance with their terms. If the resolution conflicted with any other constitutional provision, the resolution would prevail.

Money appropriated under the resolution that was not spent during the fiscal year for which the appropriation was made would be retained by the Texas State Technical College System or the Texas State University System, as applicable, and could be spent in a subsequent fiscal year for a relevant purpose.

On January 1, 2024, \$1.5 billion would be appropriated from the general revenue fund to the comptroller for immediate deposit to the permanent fund's credit.

For purposes of Texas Constitution art. 8, sec. 22:

- money in the permanent fund and the available fund would be dedicated by the constitution; and
- an appropriation of state tax revenues for depositing money to the credit of the permanent fund or available fund would be treated as if it were an appropriation of revenues dedicated by the constitution.

The resolution would repeal a provision that required the allocation of the annual appropriation to the Texas State Technical College System and its campuses to not exceed 2.2 percent of the total appropriation each fiscal year.

The resolution would make conforming changes to the Texas Constitution to include necessary references to the permanent and available funds.

The resolution would be presented to voters at an election on November 7, 2023, and would read: “The constitutional amendment providing for the creation of the permanent instruction in manufacturing and technical workforce operations fund and the available instruction in manufacturing and technical workforce operations fund to support the capital needs of educational programs offered by the Texas State Technical College System and certain component institutions of the Texas State University System and repealing the limitation on the allocation to the Texas State Technical College System and its campuses of the annual appropriation of certain constitutionally dedicated funding for public institutions of higher education.”

**NOTES:**

According to the Legislative Budget Board, the resolution would have a negative impact of \$1,500,204,406 through the biennium ending August 31, 2025.

- SUBJECT:** Amending the state constitution to create the Texas energy fund
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 13 ayes — Hunter, Hernandez, Anchía, Dean, Geren, Guillen, Metcalf, Raymond, Slawson, Smithee, Spiller, S. Thompson, Turner
- 0 nays
- SENATE VOTE:** On final passage (May 4) — 27 - 4
- WITNESSES:** For — (*Registered, but did not testify:* Martha Landwehr, BASF Corporation; James Mathis, Dow; Mindy Ellmer, Lyondellbasell, Olin and Tarrant Regional Water District; Julie Moore, Occidental; Katie Coleman, Texas Association of Manufacturers; Chris Noonan, Texas Chemical Council; Charlie Malouff, Texas Twister, Inc.; Jay Brown, Valero Energy Corporation; and eight individuals)
- Against — John Gordon (*Registered, but did not testify:* Jason Sabo, Environment Texas; Anne Billingsley, ONEOK, Inc; Adrian Shelley, Public Citizen; Matthew Boms, Texas Advanced Energy Business Alliance; Sandra Haverlah, Texas Consumer Association; Steven Wu, Woori Juntos; and 10 individuals)
- On — (*Registered, but did not testify:* Kenan Ogelman, ERCOT; Joel Yu, Grid Resilience in Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Bill Barnes, NRG; Thomas Gleeson, Public Utility Commission of Texas; Julia Harvey, Texas Electric Cooperatives; Jennifer Coffee, Texas Pipeline Association; Maya Beit-Arie; David Carter )
- BACKGROUND:** Some have suggested that additional state funding is needed to increase the reliability of the state’s electric market, particularly with regard to dispatchable generation.
- DIGEST:** CSSJR 93 would amend the Texas Constitution to create the Texas energy fund as a special fund outside the general revenue fund. Money in the fund could be administered and used, without further appropriation, only

by the Public Utility Commission (PUC) or its successor to provide loans and grants to finance or incentivize the construction, maintenance, modernization, and operation of electric generating facilities, including associated infrastructure, necessary to ensure the reliability or adequacy of an electric power grid in the state. PUC would be required to allocate money from the fund for loans and grants to eligible projects for electric generating facilities that served as backup power sources and in each region of the state in proportion to that region's load share in an electric power grid.

The entity administering the fund could establish separate accounts in the fund for the fund's administration, and expenses of managing fund assets would have to be paid from the fund. The Legislature could appropriate general revenue for the fund, and could transfer money from the fund to general revenue by a provision of a general appropriations act. Money in the fund would be considered constitutionally dedicated and an appropriation of state tax revenues for the fund would be treated as if it were an appropriation of constitutionally dedicated revenues.

The ballot proposal would be presented to voters at an election on November 7, 2023, and would read: "The constitutional amendment providing for the creation of the Texas energy fund to support the construction, maintenance, modernization, and operation of electric generating facilities."

**NOTES:**

CSSB 2627, the enabling legislation for CSSJR 93, is set for second reading consideration today.

According to the Legislative Budget Board, CSSJR 93 would have no cost to the state other than the cost of publication, which would be \$204,406.