

**SUBJECT:** Requiring repayment to the rainy day fund

**COMMITTEE:** Appropriations — committee substitute recommended

**VOTE:** 16 ayes — Heflin, Luna, Berman, B. Brown, F. Brown, J. Davis, Deshotel, Ellis, Gutierrez, Hamric, Hope, Menendez, Pitts, Solis, Stick, Wohlgemuth

0 nays

13 absent — Branch, Crownover, Dukes, Eiland, Hupp, Isett, E. Jones, Kolkhorst, McClendon, Pickett, Raymond, Truitt, Turner

**WITNESSES:** For — None

Against — None

On — James LeBas, Comptroller's Office

**BACKGROUND:** The Economic Stabilization Fund or "rainy day fund," established in Texas Constitution, Art. 3, sec. 49-g, by a constitutional amendment in 1988, is appropriated half of any unencumbered revenue at the end of a biennium and 75 percent of any oil or natural-gas- production tax revenue that exceeds the amount collected in fiscal 1987. No transfers of unencumbered revenue have occurred since 1991, as the state's budgets have left no such revenue at the end of fiscal biennia. However, the rainy day fund has received about \$1 billion from excess natural-gas- production tax revenues since 1997. The fund may not exceed an amount equal to 10 percent of the general revenue (minus certain types of income and funds) received during the previous biennium. The fund balance projected at the end of the current biennium — \$1.2 billion — would represent about 2 percent of general revenue appropriated for fiscal 2002-03.

Generally, money in the rainy day fund may be spent only as approved by at least three-fifths of the members present in each house. Spending from the fund generally may not exceed the amount of any unanticipated deficit or revenue shortfall. However, any amount from the fund may be spent for any purpose if at least two-thirds of the members present in each house approve it.

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The Legislature authorized transfers from the rainy fund for the foundation school program in 1989 and for criminal justice programs in 1993.

Art. 3, sec. 49a of the Constitution requires the comptroller to submit before a regular session statements disclosing the financial condition of the state at the close of the last fiscal period, an estimate of the revenues and expenditures for the current fiscal year, and an estimate of anticipated revenue for the upcoming biennium.

**DIGEST:**

HJR 2 would amend Texas Constitution, Art. 3, sec. 49-g to require any money borrowed from the rainy day fund to be returned the following biennium. The comptroller would deduct any amounts owed to the rainy day fund from the biennial revenue estimate, then return one-half of the owed funds in the first year of the biennium and the other half in the second year, unless the comptroller determined that fiscal conditions made unequal transfers necessary.

If repaying the fund would cause it to exceed the constitutionally mandated cap of 10 percent of the amount of general revenue the previous biennium, the comptroller would adjust repayment to preserve the cap.

The proposed amendment would include special provisions that would apply to any appropriation made by the 78th Legislature from the rainy day fund. Any amount borrowed, whether before or after the amendment was approved by voters, would have to be repaid during the fiscal year beginning September 1, 2005, including appropriations made from the fund for fiscal year 2003.

The proposal would be presented to the voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment requiring that money appropriated from the state's rainy day fund be repaid to the rainy day fund during the next state fiscal biennium."

**SUPPORTERS  
SAY:**

Texas voters should have the opportunity to decide whether rainy day funds should be repaid in a timely manner. With a shortfall for fiscal 2003 and a tough economic situation, the House approved borrowing \$789 million from the fund in HB 7 by Heflin. Unless voters approve this resolution or a similar statute, there is no mandate for the Legislature to repay those funds.

The resolution temporarily would delay the repayment by one biennia for borrowing by the 78th Legislature. Because the borrowing would be used for fiscal 2003 appropriations, the state otherwise would be required to repay it out of fiscal 2004-05 general revenue. With a gap of almost \$10 billion between the appropriation for fiscal 2002-03 and the anticipated general revenue for fiscal 2004-05, repayment during the coming biennium would be extremely difficult. The delay only would be for one biennia, however, and the state would be required to begin repaying in fiscal 2006.

The state should return the borrowed funds in order to build back the balance of the rainy day fund. Over the history of the rainy day fund, the balance was low because surpluses often were spent before they could be deposited into the fund. Due to higher excess natural-gas-production tax revenues, the fund balance rose to a substantial level over recent years. If the House proposal to borrow from the fund were enacted, the balance would drop to about \$400 million. The resolution would ensure that future borrowing from the fund also would be repaid. This would give a constitutional protection to the fund ensuring that it never would be depleted.

Repaying the rainy day fund has fiscal benefits to the state. Bond credit rating agencies consider the presence of a reserve fund and the relative size of that fund when determining a state's creditworthiness. Repaying the rainy day fund, could save on debt-service payments for new bond issues.

It is prudent to require the return of the borrowed funds over the course of a biennium, rather than in one fiscal year because it would spread the impact of the repayment across both years.

**OPPONENTS  
SAY:**

Future budgets should not be locked into the decisions of past legislatures. The state has never experienced a double-dip contraction in state finances, but it could. If the rainy day fund was tapped when the first wave of contraction hit, the budget problems during the second wave could be exacerbated by the constitutionally required repayment deadline. The state should repay the rainy day fund, but should be wary about setting a firm repayment schedule.

**NOTES:**

The committee substitute differs from the joint resolution as introduced by including the provision that would instruct the comptroller to deduct any amounts owed to the rainy day fund from the biennial revenue estimate. It

also includes the special provisions that temporarily would delay the repayment of borrowed funds by the 78th Legislature.

The fiscal note attached to HJR 2 estimates a cost to the state of \$85,275 for the publication of the resolution. If the state borrowed the anticipated \$789 million from the rainy day fund, the bill also would cost the state the repayment in fiscal 2006-07.

HB 7 by Heflin, the supplemental appropriations bill that would appropriate about \$789 million from the rainy day fund to cover an anticipated fiscal 2003 shortfall and fund economic development projects, passed the House on April 17 and was referred to the Senate Finance Committee.

HB 3207 by Heflin, which would return the entire amount of any funds borrowed from the rainy day fund for fiscal 2003 to the fund in fiscal 2006, is on today's Major State Calendar.