

SUBJECT: Amending the constitution to create funds for utilities reliability projects

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

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

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

DIGEST: CSHJR 2 would amend the Texas Constitution to create the State Utilities Reliability Fund (SURF) and the State Utilities Reliability Revenue Fund (SURRF) as special funds in the state treasury outside the general revenue fund to be administered, without further appropriation, by the Texas Water Development Board (TWDB).

The SURF and SURRF could be used only to support projects to enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation resources in the state,

including projects to weatherize facilities. Financial assistance from the funds could be provided directly to private entities or to utilities owned by public or private entities.

**State Utilities Reliability Fund.** The SURF would consist of:

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

The SURF could be used only to support projects to enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation resources in the state, including projects to weatherize facilities.

The TWDB would have to provide written notice to the Legislative Budget Board (LBB) before the execution of each loan agreement and provide a copy of the proposed agreement for LBB approval. The proposed agreement would be considered approved unless the LBB issued a written disapproval within 21 days of receiving the submission.

For the purposes of the constitutional limit on the rate of growth of appropriations, an appropriation from the Economic Stabilization Fund to the SURF would be considered an appropriation of state tax revenues dedicated by the constitution.

**State Utilities Reliability Revenue Fund.** The SURRF would consist of:

- money appropriated to the fund and money transferred or deposited to the fund by general law, including money transferred or deposited at TWDB's discretion;
- proceeds of any fee or tax that was dedicated to the fund and any

- other revenue dedicated by the Legislature;
- investment earnings and interest earned on credited amounts;
  - proceeds from the sale of bonds, including revenue bonds issued by TWDB to provide money for the fund;
  - repayments of loans made from the fund; and
  - money disbursed to the fund from the SURF.

The Legislature could authorize TWDB to issue bonds, make loans, and enter into related credit agreements that were payable from revenues available to the SURRF.

TWDB would have to provide written notice to the LBB before issuing a bond or entering into a related credit agreement payable from the SURRF and provide a copy of the proposed bond or agreement for LBB approval. The proposed bond or agreement would be considered approved unless the LBB issued a written disapproval within 21 days of receiving the submission.

Each fiscal year that amounts became due under the bonds or agreements, TWDB would have to transfer from revenue deposited to the SURRF in that fiscal year an amount that was sufficient to pay the principal of and interest on the bonds that matured or became due and any related cost.

Any obligations issued by TWDB would be special obligations payable solely from amounts in the SURRF and could not be a constitutional state debt payable from general revenue.

Any dedication or appropriation of revenue to the credit of the SURRF could not be modified so as to impair any outstanding bonds secured by a pledge of that revenue unless provisions had been made for a full discharge of those bonds. Money in the SURRF would be dedicated for purposes of the constitutional limit on the rate of growth of appropriations.

**Ballot proposal.** The ballot proposal would be presented to voters at an election on November 2, 2021, and would read: "The constitutional

amendment creating the State Utilities Reliability Fund and the State Utilities Reliability Revenue Fund to provide financial support for projects that enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation resources in this state."

**SUPPORTERS  
SAY:**

CSHJR 2 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 to help 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 SURF program 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 program to accomplish these goals.

The resolution, in combination with enabling legislation HB 2000, 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, CSHJR 2 and HB 2000 would provide a safeguard for financing the possible implementation of proposals before the Legislature mandating weatherization and other requirements on the power system.

By proposing an amendment to the Texas Constitution, CSHJR 2 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. CSHJR 2 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 CSHJR 2 would authorize the use of public funds for private entities, the legislation should ensure the public has access to information and the ability to provide input and review before potential funding decisions are made by the TWDB.

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 resolution and its enabling legislation 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.

NOTES:

HB 2000 by Huberty, the enabling legislation for CSHJR 2, is set for second-reading consideration today on the Major State Calendar.

According to the Legislative Budget Board, CSHJR 2 would have no fiscal implication to the state other than the cost for publication of the resolution, which would be \$178,333.

