

## **BILL ANALYSIS**

C.S.H.B. 2000  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Following Winter Storm Uri, which paralyzed the state's power grid in February of this year leaving millions of Texans without power during record cold temperatures, there have been calls for the state to take action to address the reliability and resiliency of the state's energy infrastructure and ensure there will be adequate energy capacity during times of peak energy demand in the future. C.S.H.B. 2000 seeks to answer these calls by creating the state utilities reliability fund (SURF) and the state utilities reliability revenue fund (SURRF) 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 Texas.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Water Development Board and the State Utilities Reliability Fund Advisory Committee in SECTION 2 of this bill.

### **ANALYSIS**

#### **State Utilities Reliability Fund and State Utilities Reliability Revenue Fund**

C.S.H.B. 2000 amends the Utilities Code to set out provisions creating the state utilities reliability fund to serve as an infrastructure funding source in order to enhance the capabilities of the Texas Water Development Board (TWDB), under a constitutionally created program and a revenue bond program, to assist in financing projects that increase the reliability and resiliency of utilities, broadband providers, and power generation resources in Texas. The bill also sets out provisions creating the state utilities reliability revenue fund for use in managing the revenue bonds issued by the TWDB.

#### **State Utilities Reliability Fund (SURF)**

C.S.H.B. 2000 creates the SURF as a special fund in the state treasury outside the general revenue fund to be used by the TWDB without further legislative appropriation. The bill sets out the composition of the SURF and authorizes the TWDB to establish separate accounts in the SURF and transfer funds between accounts. The bill authorizes the TWDB to invest, reinvest, and direct the investment of money in the SURF and provides that the SURF and the accounts therein may be kept and held by the Texas Treasury Safekeeping Trust Company or other trustee selected by the TWDB for and in its name. The TWDB has legal title to money and investments in the SURF until money is disbursed as provided by the bill's provisions and TWDB rules.

C.S.H.B. 2000 sets out provisions relating to the management of the SURF and the investment of the money therein. The TWDB must adopt, and may amend from time to time at its discretion, policies and procedures for the purpose of mitigating or minimizing the adverse effects, if any, of federal laws and regulations relating to income taxes, arbitrage, rebates, and related matters that may restrict its ability to freely invest all or part of the SURF or to receive and retain all the earnings from the SURF.

C.S.H.B. 2000 restricts use of the SURF to the following purposes:

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

The bill authorizes the TWDB to provide financial assistance from the SURF for a water, electric, or natural gas utility project or for a broadband provider to provide matching funds to enable the provider's participation in a federal program for broadband facilities. The financial assistance may be provided in any form as determined by the 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, the TWDB may make, enter into, and enforce certain contracts and agreements and may take other actions to accomplish any of the TWDB's purposes. Money from the SURF may also be used to make payments under a public and private entity agreement to design, develop, finance, or construct an applicable reliability or resiliency project. The bill prohibits the SURF from being used to subsidize or finance the construction of electric generation facilities or for the purposes of certification of available funds by the comptroller of public accounts for the state budget.

C.S.H.B. 2000 requires the TWDB to establish a point system for prioritizing projects for which financial assistance is sought that includes a standard for the TWDB to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed. The bill sets out additional provisions related to the prioritization of projects, including a requirement that the TWDB give highest consideration in awarding points to projects that will have a substantial effect. The bill requires the TWDB to adopt rules providing for the use of money in the SURF that are consistent with the bill's provisions, including rules establishing standards for determining whether projects meet the criteria for a financial award and rules specifying the manner for prioritizing projects.

C.S.H.B. 2000 authorizes the TWDB, at any time, to develop and conduct a study of the needs, causes, and methods to address reliability and resiliency of the industries affected by the SURF and the related bill provisions and to develop a statewide reliability and resiliency plan. The TWDB may, at any time, use money from the SURF to contract and engage outside entities to develop a study or plan considered necessary by the TWDB.

C.S.H.B. 2000 requires the TWDB, not later than December 1 of each even-numbered year, to provide a report to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature regarding the use of the SURF. The bill requires the TWDB to post the following information regarding the use of the SURF on its website not later than March 1, 2022, and to regularly update the information posted:

- the progress made in enhancing critical water, electric, natural gas, and broadband infrastructure to withstand periods of high demand; and
- a description of each project funded through the SURF, including the expected date of completion of the project.

C.S.H.B. 2000 creates the seven-member State Utilities Reliability Fund Advisory Committee. The bill sets out the composition of the advisory committee and provides for the appointment of its members and for its administration and operation. The bill excepts the advisory committee from Government Code provisions governing state agency advisory committees with respect to its size, composition, and duration. The advisory committee is subject to the Texas Sunset Act and, unless continued in existence as provided by that act, is abolished September 1, 2035.

C.S.H.B. 2000 does the following in establishing the advisory committee's powers and duties:

- requires the advisory committee to submit comments and recommendations to the TWDB not later than September 1, 2022, regarding the use of money in the SURF and the related state utilities reliability revenue fund for use by the TWDB in adopting its rules and the policies and procedures to mitigate or minimize adverse effects of certain federal laws and sets out requirements for the content of this submission;
- requires the advisory committee to review the overall operation, function, and structure of the SURF at least semiannually and authorizes the advisory committee to provide comments and recommendations to the TWDB on any matter;
- requires the advisory committee to make recommendations to the TWDB regarding information to be posted on the TWDB website;
- requires the advisory committee to evaluate, and authorizes the advisory committee to provide comments or recommendations on, the feasibility of the state owning, constructing, and operating water, electric, natural gas, or broadband facilities;
- requires the advisory committee to make recommendations to the TWDB to improve the participation level if the aggregate level of participation of historically underutilized businesses (HUBs) in projects that receive SURF funding does not meet statewide annual goals; and
- authorizes the advisory committee to adopt rules, procedures, and policies as needed to administer the applicable bill provisions and implement its responsibilities.

The bill requires the executive administrator of the TWDB to provide an annual report to the advisory committee on the TWDB's compliance with statewide annual goals relating to HUBs and the participation level of HUBs in projects that receive SURF funding. The TWDB must give full consideration to the advisory committee's recommendations before adopting its rules. The bill requires the TWDB to propose those rules not later than March 1, 2023.

C.S.H.B. 2000 requires the Public Utility Commission of Texas (PUC), the Railroad Commission of Texas (RRC), and other state agencies to provide resources to the TWDB as necessary in carrying out its powers and duties with respect to the SURF. The TWDB may require the PUC to review and recommend for approval electric utility and broadband provider projects for TWDB assistance through the SURF and to inspect these projects after assistance is provided. The TWDB may also require the RRC to review and recommend for approval natural gas utility projects for TWDB assistance through the SURF and to inspect these projects after assistance is provided. The bill authorizes the TWDB to require any other agency to provide services to the TWDB to ensure the goals of the fund and the related bill provisions are met.

#### State Utilities Reliability Revenue Fund (SURRF)

C.S.H.B. 2000 creates the SURRF as a special fund in the state treasury outside the general revenue fund to be used by the TWDB without further legislative appropriation. The bill sets out the composition of the SURRF and authorizes the TWDB to establish separate accounts in the SURRF and to transfer money between accounts. The bill provides that the TWDB has legal title to money and investments in the SURRF until the money is disbursed as provided by the bill and TWDB rules and sets out provisions relating to the management and investment of the SURRF and the money deposited therein.

C.S.H.B. 2000 restricts use of money in the SURRF to providing financial assistance for projects that enhance the reliability and resiliency of water, electric, natural gas, broadband, and power

generation infrastructure in Texas, including projects that enhance the ability of infrastructure to withstand periods of high demand and projects to weatherize infrastructure. The bill authorizes the financial assistance to be provided in any form determined by the TWDB that meets the needs and goals of the state and the applicants, including in the same means authorized for providing assistance from the SURF. In providing the financial assistance, the TWDB may make, enter into, and enforce certain contracts and agreements and may take other actions to accomplish any of the TWDB's purposes. The bill prohibits money in the SURRF from being used for the purposes of certification of available funds by the comptroller for the state budget.

C.S.H.B. 2000 authorizes the TWDB to issue revenue bonds for the purpose of providing money for the SURRF and refunding revenue bonds or bonds and obligations issued or incurred in accordance with other provisions of law. The revenue bonds are special obligations of the TWDB payable only from and secured by designated income and receipts of the SURRF or of one or more accounts therein, as determined by the TWDB. The bill sets out additional provisions regarding the issuance of the revenue bonds, including with respect to, among other things, interest and the rate of maturity of bonds issued, and authorizes the TWDB to require SURRF participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations. The bill establishes a procedure for examination and approval of the issuance of the revenue bonds by the attorney general and for the registration of approved revenue bonds by the comptroller. After approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

C.S.H.B. 2000 authorizes the proceeds received from the sale of revenue bonds to be deposited or invested in any manner and in such investments as may be specified in the resolution or other proceedings authorizing those obligations. Money in the SURRF or accounts created by the bill or created in the resolution or other proceedings authorizing the revenue bonds may be invested in any manner and in any obligations as may be specified in the resolution or other proceedings.

C.S.H.B. 2000 authorizes the TWDB to 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 TWDB and 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. The TWDB, comptroller, or corporate trustee managing the SURRF at the direction of the TWDB must withdraw from the SURRF and pay to a person any amounts, as determined by the TWDB, for the timely payment of the principal of and interest on revenue bonds that mature or become due and any cost related to the bonds that become due, including payments under related credit agreements.

C.S.H.B. 2000 establishes that these provisions establishing the SURRF are cumulative of other laws on the subject and the TWDB may use provisions of other applicable laws in the issuance of bonds and other obligations but that these provisions are wholly sufficient authority for the issuance of bonds and other obligations and the performance of all other related acts and procedures authorized by these provisions. The bill authorizes the TWDB to exercise the authority granted to the governing body of an issuer with regard to the issuance of obligations for certain public improvements.

### **Water Code Provisions**

C.S.H.B. 2000 amends the Water Code to authorize the TWDB to use the water loan assistance fund to provide loans or grants to water utilities for projects that enhance the reliability and resiliency of those utilities by weatherizing facilities. The bill also authorizes the TWDB to sell to the SURF any bonds or obligations purchased with money in the SURRF and to apply the proceeds of the sale in the manner provided by the bill's provisions establishing the SURRF.

## Study

C.S.H.B. 2000 requires the executive administrator of the TWDB, in coordination with the PUC, the Texas Commission on Environmental Quality (TCEQ), the RRC, and the independent organization that is certified by the PUC to perform certain essential market functions for the ERCOT power region, to conduct a study regarding:

- the need for state financial assistance to do the following:
  - weatherize the facilities of water, electric, and natural gas utilities and broadband providers; and
  - 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 bill sets out provisions regarding a certain report. These provisions expire September 1, 2023.

## Definitions

C.S.H.B. 2000 defines, among other terms, "broadband provider," "facilities," "natural gas utility," and "water utility" and assigns definitions to "electric utility" and "power generation company."

## Legislative Findings and Intent

C.S.H.B. 2000 includes certain legislative findings and intent regarding the importance of providing for the reliability and resiliency of utilities, broadband providers, and power generation resources in Texas.

## EFFECTIVE DATE

The date on which 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 Texas takes effect, if approved by the voters.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2000 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute provides for the funding of projects through the SURF and the SURRF to address the resiliency and reliability of utilities, broadband providers, and power generation resources in Texas, whereas the original provides only for the funding of projects to address the reliability of utilities and broadband utilities.

The substitute revises the original's provisions regarding the SURF as follows:

- authorizes the SURF to be managed and invested by the TWDB, the trust company, or another trustee selected by the TWDB, whereas the original required the trust company to do so;
- authorizes the TWDB to transfer funds between accounts established in the SURF, whereas the original did not;
- establishes an order of precedence with respect to the objectives set out for the investment of SURF funds that was absent from the original and includes investment yield as a new objective for investment; and
- omits the requirement in the original for the TWDB to direct disbursements from the SURF by the trustee, if applicable, on a semiannual schedule.

The substitute changes the manner in which money is disbursed from the SURF to the SURRF. Whereas the original provided for the TWDB to direct the trust company to enter into bond enhancement agreements pursuant to which disbursements from the SURF to the SURRF would be made for debt service payments, the substitute omits all provisions relating to bond enhancement agreements. The substitute instead provides for the disbursement from the SURF to the SURRF in the amounts needed for disbursement through the financing structures developed to meet the goals of the SURF, including transfer to other TWDB programs or funds as necessary, or for those debt service payments.

The substitute includes provisions not in the original authorizing the TWDB to provide financial assistance from the SURF for utility projects and for a broadband provider to provide matching funds to enable the provider to participate in a federal program for broadband facilities. The substitute includes additional provisions not in the original regarding the assistance provided from the SURF that do the following:

- authorize the assistance to be provided in any form as determined by the TWDB;
- authorize the TWDB, in providing assistance, to make, enter into, and enforce certain contracts and agreements and to take other necessary actions; and
- prohibit the SURF from being used to subsidize or finance the construction of electric generation facilities.

With respect to the prioritization of projects for financial assistance from the SURF, the original included projects that weatherize facilities to protect against cold weather and that create excess capacity to be used during periods of high demand among the projects having substantial effect to which the TWDB must give the highest consideration in awarding points to projects. The substitute changes the projects included in the category receiving that highest consideration to projects that will do the following:

- 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 the reliability of those resources to provide continuous and adequate electric service during periods of high demand.

The original set out a list of additional criteria the TWDB must consider in prioritizing projects. The substitute makes the consideration of the additional criteria optional and omits the following from the list of additional criteria:

- the ability of the TWDB to timely leverage state financing with local, federal, or private funding;
- whether there is an emergency need for the project; and
- whether the applicant is ready to proceed with the project at the time of the application.

The substitute prohibits the TWDB from considering federal tax subsidies in prioritizing projects, whereas the original did not.

The substitute replaces the requirement in the original for the comments and recommendations submitted by the advisory committee to the TWDB regarding the use of money in the SURF and the SURRF to include an evaluation of methods for encouraging participation in the procurement process by companies domiciled in Texas or that employ a significant number of Texas residents with a requirement for that submission to include an evaluation of methods for encouraging participation in the programs established with respect to the SURF by these companies.

The substitute omits the original's requirement that a description of the current status of each project funded through the SURF be included among the information the TWDB must post on its website.

The substitute includes the following provisions that are not in the original that do the following:

- require the PUC, the RRC, and other state agencies to provide resources to the TWDB as necessary in carrying out the bill's provisions establishing the SURF;
- authorize the TWDB at any time to develop and conduct a utility reliability and resiliency study and to develop from that study a statewide reliability and resiliency plan;
- authorize the TWDB at any time to use money from the SURF to contract and engage outside entities to develop a study or plan the TWDB considers necessary;
- establish that any reconstruction or changes to the regulatory market structures of the industries identified in the bill's provisions establishing the SURF are not in conflict with the purpose of the provisions; and
- authorize money from the SURF to be used to make payments under a public and private entity agreement to design, develop, finance, or construct an applicable project.

The substitute includes provisions that are absent from the original to do the following:

- authorize the water loan assistance fund to provide loans or grants to water utilities for projects that enhance the reliability and resiliency of those utilities by weatherizing facilities; and
- require the executive administrator of the TWDB, in coordination with certain specified entities, to conduct a study regarding the need for certain state financial assistance for certain purposes and provide for a related report.

With respect to the SURRF, the substitute revises the original's provisions to do the following:

- provide that the money in the SURRF may be used to provide financial assistance for projects more generally, whereas the original specifically mentioned only the financing or refinancing of projects;
- omit the provision providing that the SURRF is established to be a revolving finance program; and
- authorize the TWDB to transfer money between accounts established in the SURRF.

The original limited the manner in which the financing of projects may be provided using money in the SURRF to be in the form of loans. The substitute expands this provision so as to authorize the financial assistance to be provided in any form determined by the TWDB that meets the needs and goals of the state and the applicants. The substitute includes provisions not in the original authorizing the TWDB, in providing that assistance, to make, enter into, and enforce certain contracts and agreements and to take other necessary actions.

The original authorized the TWDB to sell to the Texas Water Resources Finance Authority or to the SURF any political subdivision bonds purchased with money in the SURRF. The substitute revises this authorization to instead authorize the TWDB to sell any bonds or obligations purchased with SURRF money to the SURF, omitting all references to the finance authority.

The substitute includes a provision not in the original requiring the executive administrator of the TWDB, in coordination with the PUC, TCEQ, the RRC, and the independent organization for the ERCOT power region, to conduct a study for submission to the advisory committee regarding the need for financial assistance from the state to weatherize the applicable facilities, the need for financial assistance from the state to provide adequate capacity during periods of high demand for electric utilities and natural gas utilities, and the financing structures desirable to potential applicants for the applicable assistance.

Whereas the original requires the TWDB to propose its rules not later than the later of the 90th day after the date the TWDB receives recommendations from the advisory committee or March 1, 2023, the substitute retains only March 1, 2023, as the deadline for the proposal of the rules.

The substitute revises the legislative findings and intent as set out in the original.

The substitute revises the definitions established in the original for "electric utility," "facilities," "natural gas utility," and "water utility."

The substitute, in its effective date provision contingent on the passage of the relevant constitutional amendment, describes the purpose of the SURF and the SURRF but this purpose does not appear in the original's effective date provision.