LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 21, 2021

TO: Honorable Brian Birdwell, Chair, Senate Committee on Natural Resources & Economic Development

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1520** by Paddie (relating to certain extraordinary costs incurred by certain gas utilities relating to Winter Storm Uri and a study of measures to mitigate similar future costs; providing authority to issue bonds and impose fees and assessments.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1520, Committee Report 2nd House, Substituted : a negative impact of ($168,233,296) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to *General Revenue Related Funds*
2022	($82,297,898)
2023	($85,935,398)
2024	($90,235,398)
2025	($94,735,398)
2026	($99,435,398)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *General Revenue Fund* 1	Probable Savings/(Cost) from *Bond Proceeds-Rev Bonds* 781	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable Revenue (Loss) from *Property Tax Relief Fund* 304
2022	($1,297,898)	($666,481,338)	($81,000,000)	($9,100,000)
2023	($835,398)	($666,481,338)	($85,100,000)	($9,600,000)
2024	($835,398)	($666,481,338)	($89,400,000)	($10,100,000)
2025	($835,398)	($666,481,338)	($93,900,000)	($10,600,000)
2026	($835,398)	($666,481,338)	($98,600,000)	($11,100,000)

Fiscal Year	*Change in Number of State Employees from FY 2021*
2022	8.0
2023	8.0
2024	8.0
2025	8.0
2026	8.0

Fiscal Analysis

The bill would allow the Public Finance Authority (TPFA) to provide a method of financing for customer rate relief bonds authorized by the Railroad Commission (RRC) whose proceeds would be used to reduce the cost that customers would otherwise experience due to the extraordinary costs that gas utilities may incur to secure gas supply and provide service during natural or man-made disasters, system failures, and other catastrophic events and to restore gas utility systems after such events by providing securitization financing enabling gas utilities to recover these costs.

The bill would authorize the creation of a bankruptcy-remote special purpose entity designed to hold financial assets pledged as security for repayment of the bonds, such financial assets consisting of future assessments and fees receivable from utilities customers offsetting exceptional costs incurred during unusual circumstances.

The bill would require RRC to issue a financing order before requesting TPFA to issue the bonds on its behalf. The financing order must include a statement of the aggregated regulatory asset determination to be included in the principal bond amount, not to exceed $10.0 billion for any separate bond issue, and the maximum scheduled final maturity may not exceed 30 years, however the legal final maturity may be longer, based upon rating agency and market considerations. The bill would require the financing order to remain in effect notwithstanding the bankruptcy of the gas utility, the authority or their successors, or assignees. In addition, the bill would require the financing order to include terms ensuring that the imposition and collection of the bond charge are non-bypassable and to also include a true-up charge adjustment mechanism at least annually to correct any overcollections or under collections for the preceding year.

The bill would allow bond proceeds to be deposited with a trustee selected by TPFA or held by the Comptroller of Public Accounts (CPA) in a dedicated trust fund outside of the treasury. Proceeds, including investment income, could only be used to reimburse gas utilities the regulatory asset amount as determined by the financing order, to pay the financing costs of issuing the bonds, and provide bond reserves. Under the provisions of the bill, any excess funds remaining could be used to provide credits to gas utility customers.

The bill would require that bonds would be solely the obligation of the assignee or issuing financing entity and would not be an obligation of the State or any gas utility company. According to TPFA, no fiscal impact to the state is anticipated related to ongoing debt service associated with the customer rate relief bonds. Obligations would be payable solely from assets held in trust by the special purpose entity above.

The bill would exempt any profits made from the sale of the bonds from state and local taxation. It would also exempt the amount a gas utility collects in bond charges from its customers from state and local taxation.

The bill would require RRC to conduct a study of measure to mitigate catastrophic weather events by December 1, 2022.

The bill would take effect September 1, 2021.

Methodology

According to CPA, the bill includes broad language related to tax exemption policy. Subsection (b) of proposed Section 104.375 would exempt from state and local taxes a gas utility's collection of customer rate relief charges from its customers. This would have negative revenue implications for the franchise tax, sales tax, gas utility pipeline tax, and miscellaneous gross receipts tax. As the amount and timing of CRR bond issuance and associated collection of CRR charge amounts is unknown, the fiscal impact to the state of this provision cannot be determined.

According to the CPA, the exemption from taxation of “any transactions relating to customer rate relief bonds” provided by Subsection (a) of proposed Section 104.375 is ambiguous. The CPA indicates it would resolve the ambiguity by rule and construe such transactions to be only transactions to issue, transfer the ownership of, or provide other financial administration of the bonds. A purchase of a taxable item by a gas utility with proceeds from the bonds would not be deemed a transaction relating to the bonds eligible for tax exemption and would be subject to tax under Chapter 151, Tax Code unless otherwise exempted by that chapter. A purchase of a taxable item, including computer hardware and software, office supplies, data processing services, utilities, and telecommunications services, as may be used by an agent, trustee, attorney, accountant, financial institution, or other service provider engaged in issuance or subsequent administration of the bonds would not be deemed a transaction relating to the bonds eligible for tax exemption and would be subject to tax under Chapter 151, Tax Code unless otherwise exempted by that chapter. A sale of gas or service by a gas utility, regardless whether or to what extent the sale depends on use of property financed with the bond proceeds, would not be deemed a transaction relating to the bonds and would be subject to tax under Chapters 151 and 182, Tax Code unless otherwise exempted by those chapters. Revenue received by a gas utility from customers as payment for gas service, regardless whether or to what extent provision of the gas service depends on use of property financed with the bond proceeds, would not be deemed revenue from a transaction relating to the bonds and would not be excludable from revenue under Section 171.1011, Tax Code. Revenue received by an agent, trustee, attorney, accountant, financial institution, or other service provider as compensation for the performance of services in the issuance, transfer of ownership, or administration of the bonds would be deemed revenue from a transaction relating to the bonds and excludable from revenue under Section 171.1011, Tax Code, if the receipt was separately stated from charges for other services provided to the issuer or owner of the bonds.

According to the CPA, subsection (c) of Section 104.375 would be construed as referring to the recognition of an expense for purposes of rate making by an agency with jurisdiction for regulating the rates of a gas utility and would not be construed to have any meaning with respect to the determination of tax liabilities for any tax administered by the CPA or claims for remuneration from the state.

The CPA reports that, subject to the interpretation of proposed Section 104.375 as outlined above, the proposed section would have negative fiscal implications in amounts that cannot be estimated, but an expression of legislative intent contrary to the interpretation of the proposed section as outlined above would result in estimated negative fiscal implications as indicated below, which include reserves for reductions in sales and use, franchise, and gross receipts tax revenue should claims by gas utility companies and financial service providers of exemption from sales and use and gross receipts taxes and exclusions of revenue for purposes of franchise tax based on the ambiguous language provided by proposed Section 104.375 prevail.

Based on information provided by CPA, the exemption would negatively impact revenue to the General Revenue Fund by $81.0 million in fiscal year 2022 and $85.1 million in fiscal year 2023 and to Property Tax Relief Fund No. 305 by $9.1 million in fiscal year 2022 and $9.6 million in fiscal year 2023.

According to RRC, the agency would require General Revenue funding for $714,780 and 7.0 FTEs each fiscal year for 3.0 financial analyst positions ($233,586), 2.0 attorney positions ($145,578), 2.0 administrative assistant positions ($75,828), operating expenses ($105,000), and employee benefits ($154,788). In addition, the agency would incur a one-time cost of $410,000 in fiscal year 2022 for a professional services contractor to review costs ($200,000) and to conduct the study to mitigate catastrophic weather events ($210,000). The positions would prepare financial orders and establish schedules, filing requirements, and processes for the assessment a gas utility's assets, develop an application review process to ensure the collection and enforcement of non-by-passable charges, and review transactions that occur during a natural or man-made disaster, system failure, or other catastrophic event for each regulatory asset filing.

Based on information provided by the Bond Review Board (BRB), the estimate for debt-service payments for the issuance of the maximum allowable revenue debt under the provisions of the bill ($10.0 billion), is estimated to be $666,360,720 each fiscal year. This analysis assumes that (1) the bonds would be payable from and secured by the Customer Rate Relief property, including charges; (2) the bonds would have a thirty-year maturity; (3) a fixed interest rate of 5.0 percent in fiscal year 2022 and 5.25 percent in fiscal year 2022 and for each subsequent fiscal year; (4) all bonds in the amount of $10.0 billion would be issued by September 1, 2021 with principal payments every August 1, and semi-annual interest payments every February 1 and August 1, beginning February 1, 2022; (5) cost of issuance and bond insurance fees are excluded; and (6) an approximate level of debt service payments throughout the life of the bonds.

Based on information provided by the Office of Court Administration, no significant fiscal impact to the state court system is anticipated due to implementing the provisions of the bill.

Based on information provided by TPFA, the administrative duties associated with the issuance of the bonds and the creation of the special purpose entity would require General Revenue funding of $173,118 in fiscal year

2022 and $120,618 in fiscal year 2023 for a one-time cost to create a non-profit corporation to act as the issuing and financing entity ($52,500) and for 1.0 attorney position with a salary of $90,000 with benefit costs of $30,618.

Based on information provided by the Public Utility Commission, no fiscal impact to the agency is anticipated.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

No fiscal implications related to technology are anticipated.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 212 Office of Court Admin, 304 Comptroller of Public Accounts, 347 Public Finance Authority, 352 Bond Review Board, 455 Railroad Commission, 473 Public Utility Commission of Texas

LBB Staff: JMc, AJL, MW, DA, CMA, SD