

SUBJECT: Restoring System Benefit Fund programs to assist low-income rate payers

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 8 ayes — P. King, Christian, Turner, Crabb, Oliveira, Smithee, Straus, Swinford

0 nays

1 absent — Hartnett

WITNESSES: For — Lisa Lum, AARP; Bonnie Mathias, ACORN; Lisa Yoram, Jewish Federation of Greater Houston; Carol Biedrzycki, Texas Ratepayers' Organization to Save Energy; Jim Burke, TXU; Randall Chapman; Stephen Davis, Alliance for Retail Markets; Shannon D. Fletcher, National Multiple Sclerosis Society; Michael Jewell, Direct Energy, CPL Retail Energy, WTU Retail Energy; Tim Morstad AARP Texas; Cyrus Reed, Lone Star Chapter of the Sierra Club; Tom "Smitty" Smith, Sommer Templet, Public Citizen; (*Registered, but did not testify*: Ellen Arnold, Goodwill Industries; John W. Fainter, Association of Electric Companies of Texas, Inc.; Michele Gregg, Texas Apartment Association; Derrick J. Richardson, Patricia Richardson, Robert Stubblefield, ACORN; Jason Sabo, United Way of Texas; Karen Hadden, SEED Coalition; Rick Levy, Texas State Association of Electric Workers - IBEW; Jodi Park, Coalition of Texans with Disabilities; Herb Roberts, Repower Energy; Marcie Zlotnik, Startex Power, Texas Energy Association for Marketers)

Against — None

On — (*Registered, but did not testify*: Charles Griffey, Reliant Energy)

BACKGROUND: In 1999, the 76th Legislature enacted SB 7 by Sibley, which restructured the electric utility industry and created the System Benefit Fund (SBF) in Utilities Code, sec. 39.903, administered by the Public Utility Commission (PUC).

Through a 65-cent-per-megawatt-hour assessment on electric ratepayers, SBF disbursements initially provided a 10 percent discount to eligible customers — those with household incomes less than 125 percent of the

federal poverty guidelines or receiving food stamps or Medicaid — in areas affected by electric retail competition. In addition, the SBF has funded energy and consumer education efficiency programs and has helped to offset school funding losses stemming from the decrease in the property values of electric generation facilities attributable to restructuring.

In 2001, the 77th Legislature enacted HB 1902 by Turner, which changed the fund from a separate trust fund to a dedicated account in the general revenue fund. In fiscal 2004-05 and 2006-07, the Legislature did not allocate SBF funds for assistance for low-income electric customers and held the money for certification of the budget because of projected budget shortfalls. The projected SBF balance at the end of fiscal 2007 is approximately \$408 million, and the Legislative Budget Board (LBB) estimates the fund will accrue \$32 million in interest on that money. In addition, the LBB projects that the assessment will generate \$311 million for the SBF in fiscal 2008-09.

DIGEST:

CSHB 551 would amend Utilities Code, sec. 39.903 to:

- require that SBF fees be used only for the program;
- allow for rate reductions between 10 percent and 20 percent for low-income ratepayers;
- create a program to reduce electricity rates for non-profit nursing homes; and
- expand the list of electric ratepayers eligible for automatic enrollment in the program.

Reserving funds. The bill would provide that money collected through the 65-cent-per-megawatt assessment on utility bills be used only for SBF purposes.

Additional rate discounts. The PUC could allow a rate discount of between 10 percent and 20 percent for eligible rate payers, rather than the 10 percent currently permitted for the program.

Nursing home discounts. The bill would require the PUC to use 5 percent of the annual income for the SBF for a program to provide a rate reduction of up to a 20 percent for non-profit nursing homes. At least 50 percent of the residents in an eligible non-profit nursing home would have to be Medicaid-eligible.

Enrolling eligible ratepayers. HB 551 would expand the definition of electric customers eligible to receive the rate discount through the SBF. In addition to ratepayers with household incomes less than 125 percent of poverty or receiving food stamps or Medicaid, the eligibility list also would include a customer who:

- received federal housing assistance;
- had a child in the federal free or reduced-price lunch program; or
- received Lifeline telephone service.

Other sections would delete references to the Texas Department of Human Services and require “each appropriate governmental entity” to submit information to the PUC on qualifying households that automatically would be enrolled for SBF assistance. The PUC would be required to make a quarterly report on the assistance program and prepare an annual report to be completed at the beginning of each regular legislative session. Copies of the quarterly and annual reports would be submitted to all members of the Legislature and the committee overseeing electric utility restructuring.

The bill would take effect on September 1, 2007, and would require the PUC to adopt rules to implement changes in the program by January 1, 2008.

**SUPPORTERS
SAY:**

CSHB 551 would help restore the SBF as a permanent and stable program to provide many low-income Texans with assistance to pay their utility bills. This would help the Legislature live up to its commitments when it established the SBF in 1999 to lessen the costs of transition to competition for residential ratepayers during the restructuring of electric utilities. Using the SBF as it was intended would provide transparency in budgeting and truth in taxation.

Restoration of the Low-Income Telephone and Electric Utilities Program (LITE-UP TEXAS) again would provide assistance to the 710,000 households who were receiving the discounts before the program ended. According to an energy affordability study published in 2006, nearly one-half million Texas households have incomes below 50 percent of the federal poverty level and spend 56.3 percent of their income on home energy bills. Another 285,000 households have incomes between 50 percent and 74 percent of poverty and spend 22.5 percent of their income on home energy bills. These Texans need LITE-UP TEXAS to be reactivated, and the expanded eligibility categories and automatic sign-up

provisions would ensure that even more low-income households benefit, including those receiving telephone service through the successful Lifeline program.

The bill could fund weatherization programs that were reduced when SBF money first was diverted for other budget items in fiscal 2004. Simple repairs and replacement of older appliances in low-income households yield significant returns in energy savings and lower utility bills. Studies show that local communities lost almost \$10.7 million in jobs and sales of building products and energy-efficient equipment when the weatherization program was curtailed in fiscal 2004-05.

Extending the discount to non-profit nursing homes would provide some assistance to low-income Texans who no longer can live in their homes because of age or disability. The provision is narrowly tailored and would apply only to non-profit nursing homes with at least 50 percent of residents eligible for Medicaid so that the program would assist those with the greatest needs.

CSHB 551 is a prospective bill that would ensure that the fund was used for its intended purposes from fiscal 2008 forward. Designating the SBF as a trust fund, as the original version of the bill would have done, is a worthy goal that should be considered during the appropriations process next session. There is enough flexibility to ensure that a portion of the fund would be used as intended for customer education without making a separate appropriation in CSHB 551.

The state already empowers private enterprise to serve as tax collectors. Merchants routinely collect and remit sales taxes from their customers. Similarly, utilities should not be exempt from collecting taxes.

**OPPONENTS
SAY:**

The creation of dedicated funds does not provide a sound method of budgeting and can lead to poor policy choices. SBF funds have been used to support essential government services in recent years and may be necessary to contribute to important programs again in the event of future general revenue shortfalls. In addition, the dedication of funds can create the illusion that a permanent solution exists for funding a program that requires no further state tax dollars. This is a common misperception about the extent to which the state lottery funds public education, for example. Dedicated funds are short-term fixes that delay more comprehensive decisions on state budget priorities.

Utility bills should not be used as tax collection vehicles. Monthly electric statements list line after line of special taxes and fees. This money may go to worthwhile goals, but these extra charges become burdensome to consumers.

OTHER
OPPONENTS
SAY:

Establishing the SBF as a trust fund outside general revenue remains an imperfect solution, but doing so would provide more protection of the program than would the committee substitute.

While the nursing home discount in CSHB 551 is a good idea, it should be extended to all nursing homes, not just non-profit institutions.

NOTES:

HB 551 was placed on the General State Calendar on March 26 and was postponed until April 2. The bill was recommitted to the House Regulated Industries Committee on a point of order.

The committee substitute differs from the original bill by deleting provisions that would establish the SBF as a trust fund outside the state treasury and appropriate at least \$12 million for consumer education programs in both fiscal 2008 and fiscal 2009. The original version of the bill was reported earlier and considered by the House before being recommitted.

On April 12, Rep. Turner added an amendment identical to CSHB 551 to SB 482 by Frasier, which would promote electricity competition for consumers. The House passed SB 482 on April 13.

The House engrossed version of HB 1 by Chisum, the proposed general appropriations act for fiscal 2008-09, would appropriate \$170 million from the SBF for fiscal 2008-09 to fund the low-income discount program to pay 10 percent of the monthly electricity bills for selected low-income residents. In fiscal 2008, \$80 million of this total would assist an estimated 375,000 households, and in fiscal 2009, \$90 million would aid an estimated 389,000 households.

SB 485 by Frasier, which is similar to HB 551 and the companion to HB 1192 by P. King, was heard and left pending by the Senate Business and Commerce Committee on February 20.