

SUBJECT: Creating an infrastructure bank to finance state water plan projects

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 11 ayes — Ritter, Johnson, Ashby, D. Bonnen, Callegari, Keffer, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

WITNESSES: For — Norm Archibald, City of Abilene; Fred Aus, Texas Rural Water Association; Carol Batterton, Water Environment Association of Texas, Texas Association of Clean Water Agencies, and Texas Section of American Water Works Association; Tony Bennett, Texas Association of Manufacturers; Steve Bresnen, North Harris County Regional Water Authority; Julian Castro, City of San Antonio; John Cook, City of El Paso; John W Fainter, Jr., Association of Electric Companies of Texas, Inc.; Jorge Garza, Estrada Hinojosa; Ronald Gertson, Texas Rice Producers Legislative Group; Heather Harward, H204Texas Coalition; Debbra Hastings, Texas Oil and Gas Association; Dan Hatfield, Texas Association of Realtors; Myron Hess, National Wildlife Federation; Billy Howe, Texas Farm Bureau; Laura Huffman, Texas Nature Conservancy; Ken Kramer, Sierra Club - Lone Star Chapter; Joe Leathers, Texas and Southwestern Cattle Raisers Assoc.; Lee Leffingwell, City of Austin; Ronnie Lemons, Freese and Nichols, Inc.; Greg Meszaros, City of Austin, Austin Water Utility; Stephen Minick, Texas Association of Business; John Monaco, Texas Municipal League and City of Mesquite; Becky Motal, Lower Colorado River Authority; Alvin New, City of San Angelo; Jennifer Newton, Associated General Contractors of Texas; Scott Norman, Texas Association of Builders; Joey Park, Texas Wildlife Association; Annise Parker, City of Houston; James Parks, North Texas Municipal Water District; Wes Perry, City of Midland; Robert Puente, San Antonio Water System; Mike Rawlings, The City of Dallas; Hector Rivero, Texas Chemical Council; Dean Robbins, Texas Water Conservation Assn.; Andrew Sansom, The Meadows Center for Water and the Environment; Steve Stagner, American Council of Engineering Companies of Texas; William Thornton, Fort Worth Chamber of Commerce; James Toner, International Bottled Water Association; J. Kevin Ward, Trinity River Authority; William West, Guadalupe-Blanco River Authority; Kip Averitt; Perry Fowler (*Registered, but did not testify*: Jay Barksdale, Dallas

Regional Chamber; Amy Beard, Southwest Water Company; Paul Blanton, Oncor; Jay Brown, Talisman Energy and Valero; Kirby Brown, Ducks Unlimited; Thure Cannon, Texas Pipeline Association; Teddy Carter, Texas Independent Producers and Royalty Owners Association; Tricia Davis, Texas Royalty Council; June Deadrick, CenterPoint Energy; Jim Dow, Pioneer Natural Resources; James Dwyer, Ch2m hill; Mindy Ellmer, Tarrant Regional Water District; Liza Firmin, Chesapeake Energy; Gene Fisseler, NRG Energy; Lauren Francis, City of El Paso; Joe Garcia, City of McAllen; Denise Gentsch, Texas Seed Trade Association; Matthew Geske, Fort Worth Chamber of Commerce; Stephanie Gibson, Texas Retailers Association and Scotts Miracle Gro Co.; Andrea Haughton, Texas Apartment Association; Steve Hazlewood, Dow Chemical Co.; Chastity Hodges, Office of the Mayor of Austin; Chris Hosek, BG Group, Linn Energy, and Texas Water Recycling Association; Jay Howard, Texas Irrigation Council; Shanna Igo, Texas Municipal League; Max Jones, The Greater Houston Partnership; Donald Lee, Texas Conference of Urban Counties; Parker McCollough, Entergy Texas Inc.; Julie Moore, Occidental Petroleum; David Oefinger, Plains Cotton Growers and Texas Pest Management Association; Jessica Oney, Energy Future Holdings; Gardner Pate, Phillips 66; TJ Patterson, City of Fort Worth; Matt Phillips, Brazos River Authority; Jim Reaves, Texas Nursery & Landscape Association; Wendy Reilly, The Technology Association of America-TechAmerica; Patrick Reinhart, El Paso Electric Co.; Grant Ruckel, Energy Transfer; Robert M. Saunders, Red Bluff Water Power Control District; Bill Stevens, Texas Alliance of Energy Producers; Paul Sugg, Texas Association of Counties; Tom Tagliabue, City of Corpus Christi; Patrick Tarlton, American Electric Power; CJ Tredway, Central Harris County Regional Water Authority and Independent Electrical Contractors of Texas; Jerry Valdez, Texas Alliance of Water Providers; Dee Vaughan, Corn Producers Association of Texas; C. E. Williams, Panhandle Groundwater Conservation District; Julie Williams, Chevron USA Inc.; Warren Chisum; Mary Kelly)

Against — None

On — Carolyn Brittin, Melanie Callahan, Piper Montemayor, Texas Water Development Board; Patrick Moore, Legislative Budget Board; Josiah Neeley, Texas Public Policy Foundation

BACKGROUND: The State Water Plan is designed to meet water needs during times of drought. Its purpose is to ensure that cities, rural communities, farms,

ranches, businesses, and industries have enough water during a repeat of the 1950s drought conditions. In Texas, each of 16 regional water-planning groups is responsible for creating a 50-year regional plan and refining it every five years so conditions can be monitored and assumptions reassessed. The Texas Water Development Board (TWDB) develops the state plan, which includes policy recommendations to the Legislature, with information from regional plans.

The 2012 state water plan includes the cost of water management strategies and estimates of state financial assistance required to implement them. It also details economic losses likely to occur if these water supply needs cannot be met. Regional water-planning groups recommended water management strategies that would account for another 9 million acre-feet of water (an acre-foot of water is 325,851 gallons) by 2060 if all strategies were implemented, including 562 unique water supply projects. About 34 percent of the water would come from conservation and reuse, about 17 percent from new major reservoirs, about 34 percent from other surface water supplies, and the remaining 15 percent from various other sources.

According to TWDB, critical water shortages will increase over the next 50 years. As reported in the 2012 state water plan, the total needs are projected to increase by 130 percent, or 8.3 million acre-feet, between 2010 and 2060. Among TWDB's recommendations to the Legislature to facilitate implementation of the 2012 state water plan is the development of a long-term, affordable, and sustainable method to provide financing assistance to implement water supply projects.

The state does not have a dedicated funding source for water infrastructure to support the anticipated future rise in public demand on the water supply. Existing state funding for water management strategies within the state water plan relies primarily on general obligation bond issuances that finance loans to local and regional water suppliers. On November 8, 2011, voters approved a constitutional amendment (Proposition 2) authorizing additional general obligation bond authority not to exceed \$6 billion at any time. With this authority, the TWDB now can issue additional bonds through an ongoing bond authority, allowing the board to offer access to financing on a long-term basis. Bonds issued by the TWDB are either self-supporting, with debt service that is met through loan repayments, or non-self-supporting, which requires general revenue to assist with debt service payments, as directed by the Legislature through the appropriations process.

DIGEST:

CSHB 4 would create special funds outside of the state treasury to implement the state water plan and provide a prioritization funding system on the regional and state levels, with consideration given to conservation and reuse projects and projects in rural areas. The bill would create an advisory committee to advise and make recommendations to the Texas Water Development Board (TWDB) on rule-making and the overall operation and structure of the funds.

State Water Implementation Fund for Texas (SWIFT) and State Water Implementation Revenue Fund for Texas (SWIRFT). The SWIFT and the SWIRFT would be special funds outside of the state treasury to be used by the TWDB, without further legislative appropriation, to provide financial assistance to local and regional entities to implement the state water plan.

The TWDB could establish separate accounts in the funds and would have legal title to money and investments within them.

The SWIFT would be held in escrow and in trust for the TWDB by the Texas Treasury Safekeeping Trust Company, a division of the Comptroller of Public Accounts. The trust company would manage and invest the assets of the SWIFT and would disburse money from the fund as directed by the TWDB. The trust company would be required to report to the TWDB and the advisory committee with respect to the investment of the fund and contract with a certified public accountant to conduct an independent annual audit of the fund. This would not affect the State Auditor's authority to audit the fund.

The comptroller, as custodian, would administer the SWIRFT and, at the direction of the TWDB, could hold the fund in escrow and in trust until the funds could be invested as provided by the TWDB.

The SWIFT and the SWIRFT would consist of:

- money transferred or deposited by law to the credit of the fund, including money from any source transferred or deposited at the TWDB's discretion;
- the proceeds of any fee or tax imposed by the state that by statute would be dedicated for deposit to the credit of the fund;
- any other revenue that the Legislature by statute would dedicate for deposit to the credit of the fund;
- investment earnings and interest earned on amounts credited to the

fund; and

- money transferred to the SWIFT under a bond enhancement agreement and proceeds from the sale of bonds, including revenue bonds, to provide money for the SWIRFT.

TWDB could use the SWIFT, through a bond enhancement agreement with the trust company, to provide a source of revenue for debt service payments in place of general revenue or for security for the payment of the principal of and interest on general obligation bonds or revenue bonds to finance or refinance projects included in the state water plan. The proceeds could be used through the SWIRFT, the Water Infrastructure Fund, the Rural Water Assistance Fund, the State Participation Account in the Texas Water Development Fund II, and the Agriculture Water Conservation Fund.

The SWIRFT would provide additional support for the issuance of revenue bonds.

Money in the funds would be available to provide support for low-interest loans, longer repayment terms for loans, deferral of loan payments, and incremental repurchase terms for projects in which the state owns an interest.

An applicant could not receive financial assistance until a water conservation plan had been submitted and implemented and the regional water-planning group had complied.

Conservation/reuse and rural needs. CSHB 4 would require the TWDB to undertake to apply at least 10 percent of funds for projects designed to serve rural areas and 20 percent for water conservation or reuse. TWDB would be required to adopt rules establishing standards for determining whether projects met these criteria.

Prioritization of projects by regional groups. CSHB 4 would require each of the 16 regional water-planning groups to prioritize projects in their regions to meet long-term and short-term needs based on:

- the decade the project was needed;
- its feasibility, including practicability from a scientific, hydrological, and water availability standpoint;
- its viability, including whether the project was a comprehensive solution with a measurable outcome;

- its sustainability, including how long the project would effectively deliver the water it proposes; and
- its cost-effectiveness, including the unit cost of water to be supplied.

The TWDB would create a stakeholder committee composed of a member from each regional water-planning group to establish uniform standards in prioritizing projects. The TWDB would be required to consult with the stakeholder group from time to time regarding regional prioritization of projects.

Prioritization of projects by TWDB. TWDB would be required to adopt rules to develop a point system to prioritize projects included in the state water plan for the purpose of providing financial assistance.

In awarding points, TWDB would have to give highest consideration to projects that would serve large populations, provide assistance to a diverse urban and rural population, or provide regionalization. Other criteria would include:

- the amount of local contribution to finance the project;
- the financial capacity of the applicant to repay;
- the ability of the board and applicant to timely leverage state financing with local and federal funds;
- whether there was an emergency need;
- if the project was "shovel ready" at the time of application;
- the effect on water conservation, including the prevention of water loss; and
- the priority given by the regional water-planning group.

SWIFT advisory committee. CSHB 4 would create a seven-member committee to provide oversight for the SWIFT made up of:

- the comptroller, or a person designated by the comptroller;
- three members of the Senate, appointed by the lieutenant governor, including a member of the Finance Committee and a member of Natural Resources Committee; and
- three members of the House appointed by the speaker, including a member of the Appropriations Committee and a member of the Natural Resources Committee.

The advisory committee would submit to the TWDB:

- recommendations concerning rules in the use and management of

the money in the SWIFT;

- recommendations about the rules in project prioritization and standards for criteria of projects for rural areas and conservation and reuse projects; and
- recommendations regarding SWIFT after a review of its overall operation and structure.

The advisory committee would be subject to the Texas Sunset Act and would be abolished September 1, 2023, unless continued.

Reporting requirement. The TWDB would be required to provide a report regarding the use of the fund by December 1 every even-numbered year to the governor, lieutenant governor, speaker of the House, and members of the Legislature.

Effective date. This bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 4 is necessary to ensure that meaningful financial assistance is available to provide an adequate water supply for the state's future, especially in times of drought.

The bill would create the State Water Implementation Fund for Texas (SWIFT) to serve as a water infrastructure bank to enhance the financing capabilities of the Texas Water Development Board (TWDB). The fund would provide a source of revenue or security and a revolving cash flow mechanism that recycled money back to the fund to protect the corpus. Money in the fund would be available immediately to provide support for low-interest loans, longer loan repayment terms, incremental repurchase terms for projects in which the state owned an interest, and deferral of loan payments. CSHB 4 also would create the State Water Implementation Revenue Fund for Texas (SWIRFT) to manage revenue bonds issued by the TWDB and supported by the SWIFT.

According to TWDB, critical water shortages will increase over the next 50 years, requiring a long-term, reliable funding source to finance water and wastewater projects. The state water plan has identified projects intended to help avoid catastrophic conditions during a drought, but rising costs for local water providers, the capital-intensive investment required to implement large-scale projects, and the financial constraints on some communities necessitate a dedicated source of funding to help develop those projects. The capital cost to design, build, or implement the

recommended strategies and projects between now and 2060 will be \$53 billion. Municipal water providers are expected to need nearly \$27 billion in state financial assistance to implement these strategies. Any delay in funding would put long-term planning of water projects in jeopardy and increase the overall cost to customers.

Unless the state fully implements its state water plan, 50 percent of Texans by 2060 will lack an adequate supply of water during times of drought. Without an adequate supply of clean, affordable water, the state's economy and public health would be irrevocably harmed. Water shortages during drought conditions cost Texas business and workers billions of dollars in lost income every year. If Texas does not implement the state water plan, those losses could grow to \$116 billion annually. Until the state identifies and dedicates a permanent source of revenue to pay for the water infrastructure projects outlined in the state water plan, the future of our state's water supply will be in jeopardy.

CSHB 4 includes multiple provisions to ensure that the fund would be handled appropriately and equitably, with an emphasis on water conservation and projects for rural areas. The bill also would require prioritization of projects to receive state financial assistance at the regional and state levels. It would provide checks and balances to protect the integrity and management of the funds, including creating an advisory committee to oversee the overall operation and structure of the funds and rules for prioritization and requiring the TWDB to report on the use of the fund. CSHB 4 would provide a comprehensive approach to manage water resources wisely for future generations.

The Rainy Day Fund would provide an ideal source of funding for the initial capitalization of the SWIFT, as envisioned by HB 11 and supported by the governor. This investment would seed a revolving fund that could grow with limited need for further state allocations. A one-time, \$2 billion capitalization of the SWIFT could be used in conjunction with the TWDB's existing \$6 billion evergreen bonding authorization to provide a meaningful funding solution for larger Texas water projects and financing for many of Texas' smaller communities. Without the initial capitalization of \$2 billion from the Rainy Day Fund, revenue would have to be raised elsewhere, such as with a fee or tax.

The bill would require that 20 percent of projects funded be for water conservation or reuse and that 10 percent serve rural areas. While the state

water plan calls for 34 percent of future water needs to come from conservation and water reuse projects, such projects account for only 11 percent of the financial assistance requested. Overall conservation efforts, including the prevention of water loss, are considered in the state's prioritization of strategies. The bill also would prevent an applicant from receiving financial assistance until a water conservation plan had been submitted and implemented and the regional water-planning group had complied.

While some say the bill should do more to protect the environment, any project considered for financial assistance already would have been through the permitting process at the Texas Commission on Environmental Quality, which considers stream flows and environmental impact.

**OPPONENTS
SAY:**

CSHB 4 envisions that the initial capitalization of the SWIFT be a one-time, \$2 billion transfer from the Rainy Day Fund, which would not be an appropriate source of funding because it could count against the state's spending cap. The spending cap is an important tool in limiting the size and scope of government. CSHB 4 would provide the structure of the fund, while HB 11 would provide the money. Without enactment of HB 11, CSHB 4 merely would set up an unfunded financing structure outside the state treasury. Revenue would have to be raised elsewhere, such as with a fee or tax.

**OTHER
OPPONENTS
SAY:**

CSHB 4 would not dedicate enough money to conservation and reuse. The state water plan calls for 34 percent of future water needs to come from conservation and water reuse projects, but the bill would set aside only 20 percent of the funds for those purposes. Also, a separate allocation should be made for water conservation, rather than a combined amount for both conservation and reuse.

The other 80 percent of funds not directed to conservation and reuse could go to projects harmful to rivers, streams, and wildlife. Prioritization should be more protective of spring flows and instream flows and also should ensure efficient use of the water supply. Current water supplies should be fully utilized before more dams and pipelines are built. Prioritizing improved efficiency of water use is the most cost-effective way to meet future water needs in Texas. Also, landowner rights should be considered because several of the projects in the state water plan are reservoirs that are built by acquiring and flooding land, much of which is private

property.

While the bill would make an effort to set aside 10 percent of funds for projects designed to serve rural areas, TWDB's prioritization point system should create a more level playing field for rural projects seeking financial assistance. An agricultural conservation project in the Panhandle, for example, would have difficulty competing with a project that would serve a large population. Some of the projects in smaller communities may be competing with large municipalities that have the credit rating and/or bond authority to complete a project without financial assistance from the state, while the SWIFT could be the only financing opportunity for many smaller communities.

CSHB 4 should include the regional water-planning group's priority ranking as one of the highest considerations when awarding points. This could help make the prioritization process more fair for projects that benefit smaller communities and agricultural conservation.

Because TWDB would adopt rules establishing standards for determining whether projects served rural areas, it would be appropriate to define "rural" in statute. There are various types of rural users, such as municipalities, water utilities, and agricultural users, not all of which should receive equal priority for funding.

The prioritization process also should provide more emphasis on projects that met the most immediate need. Water supply projects designed to meet near-term needs that cannot reasonably be met through improved water efficiency measures should receive priority consideration.

NOTES:

HB 11 by Ritter would authorize a one-time \$2 billion transfer from the Rainy Day Fund into the SWIFT as the initial capitalization for the infrastructure bank and revolving fund program. The bill was left pending after a public hearing on March 11 in the House Appropriations Subcommittee on Budget Transparency and Reform.

SB 4 by Fraser also contains a provision that would create the SWIFT. SB 4 was left pending after a public hearing on February 19 in the Senate Natural Resources Committee.

Fiscal implication. CSHB 4 would not have a significant fiscal implication to the state although there could be a need for additional

program administration funding depending on the ultimate disposition of the funds.

Comparison of original to substitute. CSHB 4 differs from the bill as filed in that it would:

- create the SWIRFT to provide additional support for the issuance of revenue bonds;
- specify the bill's intent;
- create a prioritization system on the state and regional level;
- reserve 10 percent of the funds for projects designed to serve rural areas; and
- remove the requirement reserving funds for education.