

SUBJECT: Constitutional amendment creating funds to finance water projects

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 17 ayes — Pitts, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, L. Gonzales, Hughes, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

4 absent — Dukes, S. King, Márquez, Orr

6 present, not voting — Sylvester Turner, Giddings, Howard, Longoria, McClendon, Muñoz

SENATE VOTE: On final passage, April 23 — 31-0

WITNESSES: No public hearing

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. 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 about 15 percent from various other sources.

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.

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 may issue additional bonds through ongoing bond authority, allowing it 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:

CSSJR 1 would propose a constitutional amendment to create the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT) as special funds in the state treasury outside the general revenue fund.

Money in the funds would be administered, without further appropriation, by the Texas Water Development Board (TWDB) for the purpose of implementing the state water plan, with oversight by the Legislative Budget Board.

Money in the funds and any money appropriated from the Economic Stabilization Fund (Rainy Day Fund) would be dedicated for the purpose of complying with constitutional provisions regarding the spending cap.

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 was dedicated for deposit to the credit of the fund;
- any other revenue that the Legislature by statute dedicated 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.

The Legislature, by general law, could allow the TWDB to enter into bond enhancement agreements to provide additional security for general obligation bonds or revenue bonds, the proceeds of which would be used to finance state water plan projects. The TWDB could also provide direct loans for water projects in the state water plan.

The Legislature, by general law, could allow the TWDB to issue bonds and enter into related credit agreements payable from all revenues available to the SWIRFT.

Any bond enhancement agreements or obligations would have to be payable solely from the SWIFT or from revenues of the SWIRFT and would not be constitutional state debt from the general revenue of the state.

The TWDB would be required, each fiscal year, to set aside amounts sufficient to make payments that became due that fiscal year.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: “The constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan to ensure the availability of adequate water resources. “

**SUPPORTERS
SAY:**

CSSJR 1 would constitutionally create two funds for the implementation of water projects in the state water plan. CSSJR 1 would work together with two bills under consideration by the 83rd Legislature — HB 4 by Ritter and HB 1025 by Pitts. HB 4 would contain the mechanics of the funds, including the prioritization of projects that would receive funding, and HB 1025 would make the appropriation from the Rainy Day Fund for the initial capitalization of the SWIFT.

CSSJR 1 would constitutionally create the SWIFT to assist in the financing of priority projects in the state water plan. The SWIFT would

serve as a water infrastructure bank to enhance TWDB's financing capabilities. The fund would be used to provide a source of revenue or security and a revolving cash flow mechanism that would recycle 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. CSSJR 1 also would constitutionally create the SWIRFT to manage revenue bonds issued by the TWDB and supported by the SWIFT.

These funds would be special funds created inside of the treasury but outside of the general revenue fund, without further appropriation, but with oversight from the Legislative Budget Board. CSSJR 1 would ensure that establishing these funds would not create state debt by providing that any bond enhancement agreements or obligation would be payable solely from the two funds and would not be constitutional state debt from the general revenue of the state. Also, money in the funds would be constitutionally dedicated. Any money appropriated from the Rainy Day Fund also would be dedicated for the purpose of complying with constitutional provisions regarding the spending cap.

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 the state's water supply will be in jeopardy.

The Rainy Day Fund would provide an ideal source of funding for the initial capitalization of the SWIFT. 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.

Providing a funding program for water infrastructure to ensure an adequate water supply would be an appropriate use of the Rainy Day Fund. It was created as a savings account from which the Legislature may appropriate funds in times of emergency, and the state is on the cusp of a drought worse than the 1950s drought of record.

Use of the Rainy Day Fund would not jeopardize the state's credit rating or ability to handle an emergency. The Rainy Day Fund is expected to reach \$11.8 billion by the end of fiscal 2015, according to the comptroller's January 2013 Biennial Revenue Estimate. A transfer of \$2 billion from the fund would leave a comfortable balance for handling an emergency while preserving the state's superior credit rating. Given that the boom in the oil and gas sector shows no sign of slowing, any funds appropriated from the Rainy Day Fund would be quickly replenished. Not spending down the fund could result in its eventual spillover into general revenue for general-purpose spending.

While many entities that could benefit from the loan program created by CSSJR 1 and HB 4 have the credit rating to complete a project without state assistance, financing projects through the SWIFT would offer an incentive of buying down their interest rate in order to encourage development and build-up of projects ahead of the critical need. Entities with the necessary credit rating to finance projects on their own would not typically be interested in using state financial assistance due to the administrative burden and additional oversight involved.

While much of the concern surrounding funding for water supply projects is centered on the debate over which critical need of the state is most deserving, compromises have been reached within the budget to ensure that other priorities, such as education, also receive the necessary funding. Stripping education and transportation from the resolution would allow the voters to make a decision solely on the merits of financing water supply projects rather than tying all of these important issues together.

OPPONENTS
SAY:

While CSSJR 1 would allow the voters to authorize the funds that would finance water projects in the state water plan, the proposed ballot language is very broad and would not clearly illustrate to the voters the amount and source of the money intended to finance the newly created funds. CSSJR 1 would not appropriate any money, but the proposal envisions that the SWIFT would be capitalized initially by a one-time, \$2 billion transfer from the Rainy Day Fund. The supplemental budget bill, HB 1025 by Pitts, is the intended vehicle to make the necessary appropriation from the Rainy Day Fund.

Constitutionally dedicating the money in the funds would preserve the spending cap, but the Rainy Day Fund would still not be an appropriate source of funding. Taking \$2 billion out of the fund would all but ensure a downgrade of the state's superior credit rating and would curtail the state's ability to deal with a revenue shortfall, a natural disaster, or a school finance case decision that required additional state spending on public education.

Further, funding another water lending program would be an unnecessary and inefficient use of Rainy Day funds because entities needing water infrastructure project funding already have tremendous access to capital. TWDB has several lending programs for water infrastructure through bonding programs that use the state's credit rating to guarantee water debt, enabling TWDB to offer inexpensive financing on a long-term basis. Also, TWDB recently received approval for ongoing general obligation bond authority not to exceed \$6 billion at any time.

OTHER
OPPONENTS
SAY:

At one point in the legislative process, this resolution proposed a constitutional amendment that would transfer Rainy Day funds for capitalization of the SWIFT (\$2 billion), transportation (\$2.9 billion), and education (\$800 million). The bill is now shorn of any money for water and any mention of transportation and education. Much of the concern

surrounding funding for water supply projects is centered on the debate over which critical need of the state is most deserving of Rainy Day funding. While water infrastructure is a critical need for the state, funding roads and education also are high priorities.

NOTES:

According to the fiscal note, the cost to publish the resolution would be \$108,921.

The committee substitute differs from the Senate-engrossed resolution in that funding for water projects and the provisions regarding funding for education and transportation do not appear in CSSJR 1.

HB 4 by Ritter, contains the mechanics of the funds, such as the prioritization of projects. HB 4 passed both houses and is awaiting conference committee. Both House and Senate conferees have been appointed. The HRO analysis of HB 4 appears in the March 27 *Daily Floor Report*, Number 41.

HB 1025 by Pitts passed the House on April 26 and was heard in public hearing in the Senate Finance Committee on May 17. The HRO analysis of HB 1025 appears in the April 26 *Daily Floor Report*, Number 60.