

- SUBJECT:** Moving oversight and spending of System Benefit Fund to the PUC
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 12 ayes — Solomons, Menendez, Cook, Farabee, Gallego, Geren, Harless, Hilderbran, Lucio, Maldonado, Swinford, S. Turner
- 0 nays
- 3 absent — Craddick, Jones, Oliveira
- WITNESSES:** For — Carol Biedrzycki, Texas Ratepayers Organization to Save Energy; Ruth Bowling, Carlos Higgins, Texas Silver-Haired Legislature; Randall Chapman, Texas Legal Services Center; Esther Darnell, AARP; Stephen Davis, Alliance for Retail Markets; Randall Ellis, One Voice; Lynda Ender, The Senior Source Texas Senior Advocacy Coalition; John Fainter, Jr., Association of Electric Companies of Texas, Inc.; Cyrus Reed, Lone Star Chapter, Sierra Club; (*Registered, but did not testify*: Luke Bellsnyder, Texas Association of Manufacturers, Melissa Cubria, Texas Public Interest Research Group; Kristen Doyle, Cities Aggregation Power Project, South Texas Aggregation Project, Steering Committee of Cities Served by ONCOR; Devonne Foutz, Texas Silver Haired-Legislature; Lisa Lewis-Nourzad, Jewish Federation of Houston, MS-Multiple Sclerosis; James Mason, Texas Impact; Ellen McKee; David Power, Public Citizen; Christopher Winland, Good Company and Associates)
- Against — Robert Webb
- On — Don Ballard, Public Utility Commission; (*Registered, but did not testify*: Barry Smitherman, Public Utility Commission)
- 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 in areas affected by electric retail competition. The program

also provides one-time bill payments for seriously ill or disabled low-income electricity customers who have been threatened with disconnection for non-payment. In addition, the SBF has funded customer education and efficiency programs and has helped to offset school funding losses stemming from electric generation facility restructuring.

SB 7 imposed the assessment only on electric ratepayers served by investor-owned utilities in the service area of the Electric Reliability Council of Texas (ERCOT), which operates the electric grid and manages the deregulated market for most of Texas. SB 7 added Utilities Code, sec. 39.903(b), which provides that the assessment would be charged to electric utility customers of municipal utilities or electric cooperatives in ERCOT only six months after these utilities chose to opt into retail competition.

Currently, no ERCOT municipal utility or electric cooperative has elected to join the competitive market, and the Legislature has delayed the transition to retail competition in non-ERCOT areas of the state.

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 House-passed version of SB 1, the general appropriations bill for fiscal 2010-11, would appropriate \$231 million from the System Benefit Fund to provide eligible low-income rate payers with a 15 percent electric discount for the entire year. This would be an increase of \$46.8 million from fiscal 2008-09 and would include another \$4.3 million for customer education and \$1.4 million for electric market oversight, both eligible System Benefit Fund programs. The House-passed proposal would leave an estimated \$688.6 million balance in the SBF at the end of fiscal 2011.

**DIGEST:**

CSHB 1182 would amend Utilities Code, sec 39.903(a) to provide that the SBF would become a trust fund held outside the state treasury, and that the PUC could spend the funds on eligible activities without further legislative approval or appropriation.

The bill would require that PUC adopt rules to ensure that low-income utility programs provided a 10-to-20 percent discount and would eliminate the one-time limit on assistance to seriously ill or disabled low-income electric customers facing disconnection due to nonpayment.

After low-income discount programs and assistance to prevent service disconnection, the PUC would be required to give priority to weatherization programs; after this would come funding for customer education programs on selecting retail electric providers and administrative expenses.

Other provisions would:

- remove the PUC's authority to reduce the discount to less than 10 percent if there were insufficient funds to provide the assistance;
- require that telephone customers who qualify for Lifeline telephone service automatically be enrolled in the SBF; and
- require that municipal utilities and electric cooperatives provide the SBF discount beginning on the first day of the sixth month after the utilities decide to implement retail competition.

Funds already collected for the SBF before September 1, 2011, the date the bill would become effective, would remain on deposit in the general revenue fund, and collections of the electric bill assessments made after that date would be held in the PUC-managed trust fund.

The PUC would be required to adopt or revise its SBF rules by January 1, 2012.

**SUPPORTERS  
SAY:**

CSHB 1182 would ensure that all of the SBF would be used as it was intended, to help low-income Texans to pay their utility bills and remove the possibility of using the money for budget certification. A separate trust fund under control of the PUC and outside of the appropriations process would help Texas live up to commitments made when electric restructuring was authorized in 1999.

CSHB 1182 would allow the fund to be used for its intended purposes from fiscal 2012 forward. The 82nd Legislature still would make decisions about SBF allocations for the fiscal 2012-13 biennium, and any remaining balances would remain in the general revenue fund for legislative

appropriations. The bill would encourage future Legislatures to fulfill the commitment to low-income electric payers

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CSHB 1182 would address the ongoing need to help low-income Texas electricity customers that, unfortunately, seems likely to continue. Currently, the caseload for SBF assistance grows at 1.5 percent each month, and more Texas utility customers would qualify for the discount should food stamp or Medicaid programs expand through federal stimulus funding. The PUC projects that 548,000 will qualify for SBF assistance in 2010, and 655,000 in 2011.

The PUC would be qualified to make allocations for SBF programs based on the priorities that would be established in CSHB 1182. The commission already must consider complex and controversial topics when making decisions on monitoring competitive wholesale and retail markets. PUC already has well-established procedures for public review and comments in its decision-making process. During several summers, the commission considered and adopted emergency rules on disconnection policies for nonpayment of bills, so commissioners already are familiar with crafting policies that affect directly low-income electric customers.

The bill would again give priority to weatherization programs reduced when SBF money first was diverted for other budget items in fiscal 2004. While federal stimulus funds could be available to Texas for weatherization during the upcoming fiscal year, the SBF would provide predictable and secure funding for future weatherization assistance. 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 SBF weatherization program was curtailed in fiscal 2004-05.

**OPPONENTS  
SAY:**

Moving the System Benefit Fund outside the appropriations process — which has been tried already — would not necessarily mean that all funds would be used. The appointed Public Utility Commissioners could be less responsive to needs of low-income electricity customers than the elected members of the Legislature have been in the past. In its recommendations for this budget cycle, the PUC requested a level of assistance that would still leave significant unallocated balances remaining in the SBF. Moving the SBF off of the budget still could mean that the funds would not help

fully low-income Texas electric customers and could accumulate without being used.

The PUC, an unelected regulatory agency, would not be the appropriate entity to set spending priorities among programs providing assistance for low-income discounts, disconnection policies, and weatherization.

Sufficient, if not too much, funding for weatherization programs would be available to Texas through federal stimulus funds, so there would be no need to allocate more weatherization assistance through the SBF.

OTHER  
OPPONENTS  
SAY:

The Legislature should end the System Benefit Fund program much like it did last session with the Telecommunications Infrastructure Fund and allocate the remaining SBF balances. Assessing a fee on electric bills to run essentially a social service that redistributes wealth among utility customers is questionable public policy. Utility bills should not be used as tax collection vehicles. Monthly electric statements list line after line of special taxes and fees, and while this money may go to worthwhile goals, these extra charges become burdensome to consumers.

NOTES:

The substitute differs from the original bill in having the bill take effect on September 1, 2011, rather than on September 1, 2009, and requiring that the PUC revise its SBF rules by January 1, 2012, rather than by January 1, 2010, as in the bill as filed.

The Legislative Budget Board fiscal note estimates that the bill would result in a \$164.2 million loss to the current SBF in fiscal 2012 and a gain of \$139.3 million to the SBF trust fund that would be created by CSHB 1182.

In 2007, the House passed HB 551 by Turner, which would have required that the SBF be used only for eligible low-income utility discounts, weatherization, and education programs, but the bill died in the Senate Finance Committee.