

By: Shaheen

H.B. No. 2286

A BILL TO BE ENTITLED

AN ACT

relating to the use of the electric generating facility fund to finance construction of electric generating facilities in the ERCOT power region; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. ELECTRIC GENERATING FACILITY FUND

Sec. 34.0101. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Electric Generating Facility Fund Advisory Committee.

(2) "Fund" means the electric generating facility fund established by Section 49-g, Article III, Texas Constitution.

(3) "Trust company" means the Texas Treasury Safekeeping Trust Company.

Sec. 34.0102. FUND. (a) The fund is a special fund in the state treasury outside the general revenue fund to be administered and used, without further appropriation, by the commission to provide loans to finance the construction of electric generating facilities in the ERCOT power region. The commission may establish separate accounts in the fund.

(b) The fund and the fund's accounts are kept and held by the trust company for and in the name of the commission. The commission has legal title to money and investments in the fund until money is

1 disbursed from the fund as provided by this chapter and commission
2 rules.

3 (c) Money deposited to the credit of the fund may be used
4 only as provided by this chapter.

5 (d) The fund consists of:

6 (1) money transferred or deposited to the credit of
7 the fund by or as authorized by law, including money from any source
8 transferred or deposited to the credit of the fund at the
9 commission's discretion;

10 (2) revenue, including the proceeds of any fee,
11 assessment, or tax imposed by this state, that general law
12 dedicates for deposit to the credit of the fund; and

13 (3) investment earnings and interest earned on money
14 in the fund.

15 Sec. 34.0103. LOANS. (a) The commission may use money in
16 the fund to:

17 (1) make a loan to finance construction of a facility
18 that uses a source of heat to generate electricity; and

19 (2) pay the necessary and reasonable expenses of
20 administering the fund.

21 (b) An entity is eligible to receive a loan under this
22 chapter only if the entity is authorized by this title to operate
23 the type of facility for which the loan is requested.

24 (c) The commission may provide a loan under this chapter
25 that bears interest at a rate or rates determined by the commission,
26 including a rate or rates below prevailing market rates.

27 Sec. 34.0104. MANAGEMENT AND INVESTMENT OF FUND. (a) The

1 trust company shall hold and invest the fund, and any accounts
2 established in the fund, for and in the name of the commission,
3 taking into account the purposes for which money in the fund may be
4 used. The fund may be invested with the state treasury pool.

5 (b) The overall objective for the investment of the fund is
6 to maintain sufficient liquidity to meet the needs of the fund while
7 striving to preserve the purchasing power of the fund.

8 (c) The trust company has any power necessary to accomplish
9 the purposes of managing and investing the assets of the fund. In
10 managing the assets of the fund, through procedures and subject to
11 restrictions the trust company considers appropriate, the trust
12 company may acquire, exchange, sell, supervise, manage, or retain
13 any kind of investment that a prudent investor, exercising
14 reasonable care, skill, and caution, would acquire or retain in
15 light of the purposes, terms, distribution requirements, and other
16 circumstances of the fund then prevailing, taking into
17 consideration the investment of all the assets of the fund rather
18 than a single investment.

19 (d) The trust company may charge fees to cover its costs
20 incurred in managing and investing the fund. The fees must be
21 consistent with the fees the trust company charges other state and
22 local governmental entities for which it provides investment
23 management services. The trust company may recover fees it charges
24 under this subsection only from the earnings of the fund.

25 (e) The trust company annually shall provide a written
26 report to the commission and to the advisory committee with respect
27 to the investment of the fund. The trust company shall contract

1 with a certified public accountant to conduct an independent audit
2 of the fund annually and shall present the results of each annual
3 audit to the commission and to the advisory committee. This
4 subsection does not affect the state auditor's authority to conduct
5 an audit of the fund under Chapter 321, Government Code.

6 (f) The trust company shall adopt a written investment
7 policy that is appropriate for the fund. The trust company shall
8 present the investment policy to the investment advisory board
9 established under Section 404.028, Government Code. The investment
10 advisory board shall submit to the trust company recommendations
11 regarding the policy.

12 (g) The commission annually shall provide to the trust
13 company a forecast of the cash flows into and out of the fund. The
14 commission shall provide updates to the forecasts as appropriate to
15 ensure that the trust company is able to achieve the objective
16 specified by Subsection (b).

17 (h) The trust company shall disburse money from the fund as
18 directed by the commission.

19 (i) An investment-related contract entered into under this
20 section is not subject to Chapter 2260, Government Code.

21 Sec. 34.0105. ELECTRIC GENERATING FACILITY FUND ADVISORY
22 COMMITTEE. (a) The advisory committee is composed of the following
23 seven members:

24 (1) the comptroller or a person designated by the
25 comptroller;

26 (2) three members of the senate appointed by the
27 lieutenant governor, including:

1 (A) a member of the committee of the senate
2 having primary jurisdiction over matters relating to the generation
3 of electricity; and

4 (B) a member of the committee of the senate
5 having primary jurisdiction over finance; and

6 (3) three members of the house of representatives
7 appointed by the speaker of the house of representatives,
8 including:

9 (A) a member of the committee of the house of
10 representatives having primary jurisdiction over the generation of
11 electricity; and

12 (B) a member of the committee of the house of
13 representatives having primary jurisdiction over finance.

14 (b) The commission shall provide staff support for the
15 advisory committee.

16 (c) An appointed member of the advisory committee serves at
17 the will of the person who appointed the member.

18 (d) The lieutenant governor shall appoint a co-presiding
19 officer of the advisory committee from among the members appointed
20 by the lieutenant governor. The speaker of the house of
21 representatives shall appoint a co-presiding officer of the
22 advisory committee from among the members appointed by the speaker.

23 (e) The advisory committee may hold public hearings, formal
24 meetings, and work sessions. Either co-presiding officer of the
25 advisory committee may call a public hearing, formal meeting, or
26 work session of the advisory committee at any time. The advisory
27 committee may not take formal action at a public hearing, formal

1 meeting, or work session unless a quorum of the committee is
2 present.

3 (f) Except as otherwise provided by this subsection, a
4 member of the advisory committee is not entitled to receive
5 compensation for service on the committee or reimbursement for
6 expenses incurred in the performance of official duties as a member
7 of the committee. Service on the advisory committee by a member of
8 the senate or house of representatives is considered legislative
9 service for which the member is entitled to reimbursement and other
10 benefits in the same manner and to the same extent as for other
11 legislative service.

12 (g) The advisory committee:

13 (1) may provide comments and recommendations to the
14 commission for the commission to use in adopting rules regarding
15 the use of the fund or on any other matter; and

16 (2) shall review the overall operation, function, and
17 structure of the fund at least semiannually.

18 (h) The advisory committee may adopt rules, procedures, and
19 policies as needed to administer this section and implement its
20 responsibilities.

21 (i) Chapter 2110, Government Code, does not apply to the
22 size, composition, or duration of the advisory committee.

23 (j) The advisory committee is subject to Chapter 325,
24 Government Code (Texas Sunset Act). Unless continued in existence
25 as provided by that chapter, the advisory committee is abolished
26 September 1, 2035.

27 Sec. 34.0106. RULES. (a) The commission by rule may

1 establish procedures for:

2 (1) the application for and award of a loan under this
3 chapter; and

4 (2) the administration of the fund.

5 (b) The commission shall give full consideration to
6 comments and recommendations of the advisory committee before it
7 adopts rules under this chapter.

8 SECTION 2. This Act takes effect on the date on which the
9 constitutional amendment proposed by the 88th Legislature, Regular
10 Session, 2023, providing for the creation of the electric
11 generating facility fund to finance construction of electric
12 generating facilities takes effect. If that amendment is not
13 approved by the voters, this Act has no effect.