

By: Hunter

H.B. No. 4834

A BILL TO BE ENTITLED

AN ACT

relating to the use of the Texas energy reliability 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. TEXAS ENERGY RELIABILITY FUND

Sec. 34.0101. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Texas Energy Reliability Fund Advisory Committee.

(2) "Fund" means the Texas energy reliability 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 the construction of:

18 (A) a dispatchable facility that uses a source of  
19 heat to generate electricity; or

20 (B) additional generating capacity for a  
21 dispatchable facility that uses a source of heat to generate  
22 electricity; and

23 (2) pay the necessary and reasonable expenses of  
24 administering the fund.

25 (b) For the purposes of this section, a generating facility  
26 is considered to be dispatchable if the facility's output can be  
27 controlled primarily by forces within human control.

1       (c) An entity is eligible to receive a loan under this  
2 chapter only if the entity is authorized by this title to operate  
3 the type of facility for which the loan is requested.

4       (d) The commission may provide a loan under this chapter  
5 that bears interest at a rate or rates determined by the commission,  
6 including a rate or rates below prevailing market rates.

7       (e) The commission may provide a loan under this chapter  
8 only if the commission finds that the facility for which the loan is  
9 provided is necessary for the service, accommodation, convenience,  
10 or safety of the public. The commission shall provide each loan on a  
11 nondiscriminatory basis after considering the factors listed in  
12 Sections 37.056(c), (c-1), and (d).

13       (f) The commission shall require a person who applies for a  
14 loan under this chapter to include in the loan application a plan to  
15 ensure that the project for which the loan is requested will be  
16 operational not later than the fifth anniversary of the date the  
17 loan is disbursed.

18       (g) Information submitted to the commission in an  
19 application for a loan under this chapter is confidential and not  
20 subject to disclosure under Chapter 552, Government Code.

21       Sec. 34.0104. MANAGEMENT AND INVESTMENT OF FUND. (a) The  
22 trust company shall hold and invest the fund, and any accounts  
23 established in the fund, for and in the name of the commission,  
24 taking into account the purposes for which money in the fund may be  
25 used. The fund may be invested with the state treasury pool.

26       (b) The overall objective for the investment of the fund is  
27 to maintain sufficient liquidity to meet the needs of the fund while

1 striving to preserve the purchasing power of the fund.

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

13 (d) The trust company may charge fees to cover its costs  
14 incurred in managing and investing the fund. The fees must be  
15 consistent with the fees the trust company charges other state and  
16 local governmental entities for which it provides investment  
17 management services. The trust company may recover fees it charges  
18 under this subsection only from the earnings of the fund.

19 (e) The trust company annually shall provide a written  
20 report to the commission and to the advisory committee with respect  
21 to the investment of the fund. The trust company shall contract  
22 with a certified public accountant to conduct an independent audit  
23 of the fund annually and shall present the results of each annual  
24 audit to the commission and to the advisory committee. This  
25 subsection does not affect the state auditor's authority to conduct  
26 an audit of the fund under Chapter 321, Government Code.

27 (f) The trust company shall adopt a written investment

1 policy that is appropriate for the fund. The trust company shall  
2 present the investment policy to the investment advisory board  
3 established under Section 404.028, Government Code. The investment  
4 advisory board shall submit to the trust company recommendations  
5 regarding the policy.

6 (g) The commission annually shall provide to the trust  
7 company a forecast of the cash flows into and out of the fund. The  
8 commission shall provide updates to the forecasts as appropriate to  
9 ensure that the trust company is able to achieve the objective  
10 specified by Subsection (b).

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

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

15 Sec. 34.0105. TEXAS ENERGY RELIABILITY FUND ADVISORY  
16 COMMITTEE. (a) The advisory committee is composed of the following  
17 seven members:

18 (1) the comptroller or a person designated by the  
19 comptroller;

20 (2) three members of the senate appointed by the  
21 lieutenant governor, including:

22 (A) a member of the committee of the senate  
23 having primary jurisdiction over matters relating to the generation  
24 of electricity; and

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

27 (3) three members of the house of representatives

1 appointed by the speaker of the house of representatives,  
2 including:

3 (A) a member of the committee of the house of  
4 representatives having primary jurisdiction over the generation of  
5 electricity; and

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

8 (b) The commission shall provide staff support for the  
9 advisory committee.

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

12 (d) The lieutenant governor shall appoint a co-presiding  
13 officer of the advisory committee from among the members appointed  
14 by the lieutenant governor. The speaker of the house of  
15 representatives shall appoint a co-presiding officer of the  
16 advisory committee from among the members appointed by the speaker.

17 (e) The advisory committee may hold public hearings, formal  
18 meetings, and work sessions. Either co-presiding officer of the  
19 advisory committee may call a public hearing, formal meeting, or  
20 work session of the advisory committee at any time. The advisory  
21 committee may not take formal action at a public hearing, formal  
22 meeting, or work session unless a quorum of the committee is  
23 present.

24 (f) Except as otherwise provided by this subsection, a  
25 member of the advisory committee is not entitled to receive  
26 compensation for service on the committee or reimbursement for  
27 expenses incurred in the performance of official duties as a member

1 of the committee. Service on the advisory committee by a member of  
2 the senate or house of representatives is considered legislative  
3 service for which the member is entitled to reimbursement and other  
4 benefits in the same manner and to the same extent as for other  
5 legislative service.

6 (g) The advisory committee:

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

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

12 (h) The advisory committee may adopt rules, procedures, and  
13 policies as needed to administer this section and implement its  
14 responsibilities.

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

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

21 Sec. 34.0106. RULES. (a) The commission by rule may  
22 establish procedures for:

23 (1) the application for and award of a loan under this  
24 chapter; and

25 (2) the administration of the fund.

26 (b) The commission shall give full consideration to  
27 comments and recommendations of the advisory committee before it

1 adopts rules under this chapter.

2           SECTION 2. This Act takes effect on the date on which the  
3 constitutional amendment proposed by the 88th Legislature, Regular  
4 Session, 2023, providing for the creation of the Texas energy  
5 reliability fund to finance construction of electric generating  
6 facilities takes effect. If that amendment is not approved by the  
7 voters, this Act has no effect.