

By: Perry

S.B. No. 857

A BILL TO BE ENTITLED

AN ACT

relating to the use of the electric generating facility fund to finance construction and maintenance of electric generating and transmission facilities in the ERCOT power region; authorizing an assessment.

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 and associated transmission 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

1 trust company for and in the name of the commission. The commission
2 has legal title to money and investments in the fund until money is
3 disbursed from the fund as provided by this chapter and commission
4 rules.

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

7 (d) The fund consists of:

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

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

15 (3) investment earnings and interest earned on money
16 in the fund.

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

19 (1) make a loan to finance construction or maintenance
20 of:

21 (A) a facility that uses natural gas, clean coal,
22 nuclear energy, or another source of heat to generate electricity;

23 (B) a hydroelectric generating facility; or

24 (C) an essential interconnecting transmission
25 facility necessary to effect a sale of electric energy at wholesale
26 from a facility described by Paragraph (A) or (B); and

27 (2) pay the necessary and reasonable expenses of

1 administering the fund.

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

5 (c) The commission shall:

6 (1) require that an applicant for a loan include with
7 the application proof that the applicant has applied for or been
8 issued all federal permits required for the operation of the
9 proposed electric generating or transmission facility; and

10 (2) give priority to applicants who have been issued
11 all federal permits required for the operation of the proposed
12 electric generating or transmission facility.

13 (d) The amount of a loan for the construction of an electric
14 generating facility may not exceed 25 percent of the estimated
15 total cost of constructing the facility.

16 (e) The commission may make a loan for the maintenance of an
17 electric generating or transmission facility only if the commission
18 has determined that the ERCOT power region has emergency reserve
19 electric generation capacity sufficient to prevent blackout
20 conditions caused by shortages of generated power in the ERCOT
21 power region.

22 (f) The commission:

23 (1) may use for loans not more than 80 percent of the
24 fund balance per biennium for facilities that use natural gas,
25 clean coal, or another source of heat, other than nuclear energy, to
26 generate electricity;

27 (2) shall use for loans at least 10 percent of the fund

1 balance per biennium for nuclear or hydroelectric generating
2 facilities; and

3 (3) may use for loans not more than 10 percent of the
4 fund balance per biennium for transmission facilities described by
5 Subsection (a)(1)(C).

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

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

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

25 (d) The trust company may charge fees to cover its costs
26 incurred in managing and investing the fund. The fees must be
27 consistent with the fees the trust company charges other state and

1 local governmental entities for which it provides investment
2 management services. The trust company may recover fees it charges
3 under this subsection only from the earnings of the fund.

4 (e) The trust company annually shall provide a written
5 report to the commission and to the advisory committee with respect
6 to the investment of the fund. The trust company shall contract
7 with a certified public accountant to conduct an independent audit
8 of the fund annually and shall present the results of each annual
9 audit to the commission and to the advisory committee. This
10 subsection does not affect the state auditor's authority to conduct
11 an audit of the fund under Chapter 321, Government Code.

12 (f) The trust company shall adopt a written investment
13 policy that is appropriate for the fund. The trust company shall
14 present the investment policy to the investment advisory board
15 established under Section 404.028, Government Code. The investment
16 advisory board shall submit to the trust company recommendations
17 regarding the policy.

18 (g) The commission annually shall provide to the trust
19 company a forecast of the cash flows into and out of the fund. The
20 commission shall provide updates to the forecasts as appropriate to
21 ensure that the trust company is able to achieve the objective
22 specified by Subsection (b).

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

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

27 Sec. 34.0105. ELECTRIC GENERATING FACILITY FUND ADVISORY

1 COMMITTEE. (a) The advisory committee is composed of the following
2 seven members:

3 (1) the comptroller or a person designated by the
4 comptroller;

5 (2) three members of the senate appointed by the
6 lieutenant governor, including:

7 (A) a member of the committee of the senate
8 having primary jurisdiction over matters relating to the generation
9 of electricity; and

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

12 (3) three members of the house of representatives
13 appointed by the speaker of the house of representatives,
14 including:

15 (A) a member of the committee of the house of
16 representatives having primary jurisdiction over the generation of
17 electricity; and

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

20 (b) The commission shall provide staff support for the
21 advisory committee.

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

24 (d) The lieutenant governor shall appoint a co-presiding
25 officer of the advisory committee from among the members appointed
26 by the lieutenant governor. The speaker of the house of
27 representatives shall appoint a co-presiding officer of the

1 committee from among the members appointed by the speaker.

2 (e) The advisory committee may hold public hearings, formal
3 meetings, or work sessions. Either co-presiding officer of the
4 advisory committee may call a public hearing, formal meeting, or
5 work session of the advisory committee at any time. The advisory
6 committee may not take formal action at a public hearing, formal
7 meeting, or work session unless a quorum of the committee is
8 present.

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

18 (g) The advisory committee:

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

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

24 (h) The advisory committee may adopt rules, procedures, and
25 policies as needed to administer this section and implement its
26 responsibilities.

27 (i) Chapter 2110, Government Code, does not apply to the

1 size, composition, or duration of the advisory committee.

2 (j) The advisory committee is subject to Chapter 325,
3 Government Code (Texas Sunset Act). Unless continued in existence
4 as provided by that chapter, the advisory committee is abolished
5 and this section expires September 1, 2033.

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

8 (1) the application for and award of a loan under this
9 chapter; and

10 (2) the administration of the fund.

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

14 Sec. 34.0107. ELECTRIC GENERATING FACILITY FUND
15 ASSESSMENT. (a) An assessment is imposed on the gross receipts of
16 each retail electric provider providing retail service in the ERCOT
17 power region.

18 (b) The commission shall impose the assessment as a
19 percentage of gross receipts from rates charged to an ultimate
20 consumer in the ERCOT power region and establish the percentage at a
21 rate to ensure that the balance of the fund is sufficient to provide
22 funding for the construction of electric generating facilities to
23 provide emergency reserve generation capacity sufficient to
24 prevent blackout conditions caused by shortages of generated power
25 in the ERCOT power region. The commission may establish different
26 assessments for gross receipts from rates charged to commercial and
27 residential customers.

1 (c) A retail electric provider may collect from its
2 customers the assessment imposed under this section as an
3 additional item separately stated on the customer bill as "electric
4 generating facility fund assessment."

5 (d) The comptroller shall collect the assessment and any
6 penalty or interest due under this chapter and deposit the money
7 collected in the fund on a schedule determined by the comptroller.
8 The comptroller may impose a late payment penalty of not more than
9 10 percent of the amount due for a late payment of an assessment
10 required under this chapter. The comptroller may collect interest
11 on an assessment payment that is delinquent for more than 30 days at
12 an annual rate of 12 percent on the amount of the assessment and any
13 penalty due.

14 SECTION 2. This Act takes effect on the date on which the
15 constitutional amendment proposed by the 88th Legislature, Regular
16 Session, 2023, providing for the creation of the electric
17 generating facility fund to finance construction and maintenance of
18 electric facilities is approved by the voters. If that amendment is
19 not approved by the voters, this Act has no effect.