

By: Martinez

H.B. No. 1698

A BILL TO BE ENTITLED

AN ACT

relating to reconstituting the system benefit fund as a trust fund and to uses of the fund.

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

SECTION 1. Section 39.903, Utilities Code, is amended by amending Subsections (a), (b), (d), (e), (h), (i), (j), (j-1), and (l) and adding Subsections (a-1), (j-2), and (j-3) to read as follows:

(a) The commission shall establish a system benefit fund as a trust fund outside of the state treasury to be used ~~[is an account in the general revenue fund. Money in the account may be appropriated]~~ only for the purposes provided by this section ~~[or other law]~~. The commission shall provide for the fund to be held by a financial institution eligible to be a depository for state funds under Chapter 404, Government Code. Interest earned on the ~~[system benefit]~~ fund shall be credited to the fund. Money in the fund may be disbursed from the fund only as provided by this section. ~~[Section 403.095, Government Code, does not apply to the system benefit fund.]~~

(a-1) The commission shall include in the report the commission submits under Section 2101.011, Government Code, information regarding the system benefit fund as if the fund were a fund subject to Subsection (c) of that section.

(b) The ~~[system benefit]~~ fund established under Subsection

1 (a) is financed by a nonbypassable fee set by the commission in an
2 amount not to exceed 65 cents per megawatt hour and [~~—The system~~
3 ~~benefit fund fee is~~] allocated to customers based on the amount of
4 kilowatt hours used. An electric utility shall remit to the fund
5 the fees received from retail electric providers in accordance with
6 procedures prescribed by commission rule.

7 (d) The commission annually shall [~~annually~~] review and
8 approve [~~system benefit~~] fund accounts, projected revenue
9 requirements, and proposed nonbypassable fees. The commission by
10 rule shall adopt payment schedules, reporting requirements, and
11 review procedures, including a method for administrative review, as
12 the commission determines is necessary to ensure that the fund is
13 funded and that disbursements from the fund are properly made.
14 Electric utilities and retail electric providers shall file regular
15 reports as required by commission rule. Municipally owned
16 utilities and electric cooperatives that implement customer choice
17 are subject to commission rules adopted under this section. All
18 records and reports related to the rate reduction program under
19 Subsection (h) are subject to audit on commission request. The
20 commission may require an electric utility or retail electric
21 provider to provide additional information as necessary to assess
22 contributions to and disbursements from the fund, and that
23 information submitted is not subject to disclosure under Chapter
24 552, Government Code. The commission shall issue monthly reports
25 on compliance with reporting requirements and quarterly reports of
26 revenues to and expenditures from the fund. The reports must be
27 made available on the commission's Internet website. [The

1 ~~commission shall report to the electric utility restructuring~~
2 ~~legislative oversight committee if the system benefit fund fee is~~
3 ~~insufficient to fund the purposes set forth in Subsection (e) to the~~
4 ~~extent required by this section.]~~

5 (e) Money in the [~~system benefit~~] fund may be used
6 [~~appropriated to provide funding~~] solely for programs to [~~the~~
7 ~~following regulatory purposes, in the following order of priority~~]:

8 (1) [~~programs to:~~

9 [(A)] assist low-income electric customers by
10 providing the 10 to 20 percent reduced rate prescribed by
11 Subsection (h), using all money available in the fund that is not
12 otherwise dedicated by or used under this section; [and]

13 (2) [(B)] provide [~~one-time~~] bill payment assistance
14 to low-income electric customers [~~who are or who have in their~~
15 ~~households one or more seriously ill or disabled low-income persons~~
16 ~~and~~] who have been threatened with disconnection for nonpayment and
17 who have one or more persons in their households for whom an
18 interruption or suspension of service will create a dangerous or
19 life-threatening condition, using at least two percent of the
20 fund's annual receipts;

21 [~~(2) customer education programs, administrative~~
22 ~~expenses incurred by the commission in implementing and~~
23 ~~administering this chapter, and expenses incurred by the office~~
24 ~~under this chapter,]~~

25 (3) [~~programs to~~] assist low-income electric
26 customers by providing the targeted energy efficiency programs
27 described by Subsection (f)(2), using at least 12.5 percent of the

1 fund's annual receipts;

2 (4) educate customers, using not more than 3.5 percent
3 of the fund's annual receipts; and

4 (5) pay administrative expenses of administering this
5 section [~~programs to assist low-income electric customers by~~
6 ~~providing the 20 percent reduced rate prescribed by Subsection (h);~~
7 ~~and~~

8 [~~(5) reimbursement to the commission and the Health~~
9 ~~and Human Services Commission for expenses incurred in the~~
10 ~~implementation and administration of an integrated eligibility~~
11 ~~process created under Section 17.007 for customer service discounts~~
12 ~~relating to retail electric service, including outreach expenses~~
13 ~~the commission determines are reasonable and necessary].~~

14 (h) The commission shall adopt rules for a retail electric
15 provider to determine a reduced rate for eligible customers to be
16 discounted off the standard retail service package as approved by
17 the commission under Section 39.106 and shall require a retail
18 electric provider to apply the same reduction to any rate plan under
19 which an eligible low-income customer is receiving service. A
20 retail electric provider may not establish a rate plan that is
21 available only to a low-income customer eligible for a reduced rate
22 under this subsection [~~, or the price to beat established by Section~~
23 ~~39.202, whichever is lower]. Municipally owned utilities and
24 electric cooperatives shall establish a reduced rate for eligible
25 customers to be discounted off the standard retail service package
26 established under Section 40.053 or 41.053, as appropriate. The
27 reduced rate for a retail electric provider shall result in a total~~

1 charge that is at least 10 percent and, if sufficient money in the
2 [~~system benefit~~] fund is available, up to 20 percent, lower than the
3 amount the customer would otherwise be charged. [~~To the extent the~~
4 ~~system benefit fund is insufficient to fund the initial 10 percent~~
5 ~~rate reduction, the commission may increase the fee to an amount not~~
6 ~~more than 65 cents per megawatt hour, as provided by Subsection~~
7 ~~(b).~~] If the fee is set at 65 cents per megawatt hour and [~~or if~~]
8 the commission determines that revenues anticipated to be due to
9 the fund [~~appropriations~~] are insufficient to fund the 10 percent
10 rate reduction, the commission may reduce the rate reduction to
11 less than 10 percent. For a municipally owned utility or electric
12 cooperative, the reduced rate shall be equal to an amount that can
13 be fully funded by that portion of the nonbypassable fee proceeds
14 paid by the municipally owned utility or electric cooperative that
15 is allocated to the utility or cooperative by the commission under
16 Subsection (e) for programs for low-income customers of the utility
17 or cooperative. The reduced rate for municipally owned utilities
18 and electric cooperatives under this section is in addition to any
19 rate reduction that may result from local programs for low-income
20 customers of the municipally owned utilities or electric
21 cooperatives.

22 (i) A retail electric provider, municipally owned utility,
23 or electric cooperative seeking reimbursement from the system
24 benefit fund may not charge an eligible low-income customer a rate
25 higher than the appropriate rate determined under Subsection (h).
26 A [~~retail electric provider not subject to the price to beat, or a~~]
27 municipally owned utility or electric cooperative subject to the

1 nonbypassable fee under Subsection (c) [~~7~~] shall be reimbursed from
2 the system benefit fund for the difference between the reduced rate
3 and the rate established under [~~Section 39.106 or, as appropriate,~~
4 ~~the rate established under~~] Section 40.053 or 41.053, as
5 appropriate. A retail electric provider [~~who is subject to the~~
6 ~~price to beat~~] shall be reimbursed from the system benefit fund for
7 the difference between the reduced rate and the rate established
8 under Section 39.106 or the rate plan under which the customer is
9 receiving service, as appropriate [~~the price to beat~~]. The
10 commission shall adopt rules providing for the reimbursement.

11 (j) The commission shall adopt rules providing for methods
12 of enrolling customers eligible to receive reduced rates under
13 Subsection (h), including methods for a customer to self-enroll
14 through the commission or through an administrator designated by
15 the commission. The rules must provide for automatic enrollment as
16 one enrollment option. The Health and [~~Texas Department of~~] Human
17 Services Commission and other governmental entities, on request of
18 the commission, shall assist in the adoption and implementation of
19 these rules. The commission and the Health and [~~Texas Department~~
20 ~~of~~] Human Services Commission shall enter into a memorandum of
21 understanding establishing the respective duties of the agencies
22 [~~commission and the department~~] in relation to [~~the~~] automatic
23 enrollment. An electric customer who self-enrolls for the rate
24 reduction program under Subsection (h) is eligible for a period of
25 13 months after the date the customer's eligibility is established.
26 The commission annually shall audit the status of an appropriate
27 sample of customers who self-enroll.

1 (j-1) The commission shall adopt rules governing the bill
2 payment assistance programs [~~program~~] provided under Subsection
3 (e)(2) [~~(e)(1)(B). The rules must provide that a customer is~~
4 ~~eligible to receive the assistance only if the assistance is~~
5 ~~necessary to prevent the disconnection of service for nonpayment of~~
6 ~~bills and the electric customer is or has in the customer's~~
7 ~~household one or more seriously ill or disabled low-income persons~~
8 ~~whose health or safety may be injured by the disconnection]~~. The
9 commission may prescribe the documentation necessary to
10 demonstrate eligibility for the assistance and may establish
11 additional eligibility criteria. The Health and Human Services
12 Commission, on request of the commission, shall assist in the
13 adoption and implementation of these rules.

14 (j-2) The commission, in the terms of a contract governing
15 the actions of a contractor trustee managing the fund, shall
16 establish limits on allowable costs to the fund for auditing and
17 administering the fund, allowable costs to the fund for
18 administering programs under this section, and allowable costs for
19 enrolling customers in the rate reduction program under Subsection
20 (h).

21 (j-3) The commission annually shall issue a projection of
22 revenues and expenses for the fund and programs under this section.
23 If the commission determines during an even-numbered year that the
24 fund will be insufficient to fund the minimum rate reduction under
25 Subsection (h) for the following state fiscal biennium, on or
26 before January 15 of the next odd-numbered year the commission
27 shall issue a report to the legislature concerning the sufficiency

1 of the fund.

2 (1) For the purposes of this section, a "low-income electric
3 customer" is an electric customer:

4 (1) whose household income is not more than 125
5 percent of the federal poverty guidelines; or

6 (2) whose household includes at least one person who,
7 based on household income, qualified for and participates in at
8 least one of the following public assistance programs for persons
9 with low incomes:

10 (A) [who receives] food stamps, [from the Texas
11 Department of Human Services or] medical assistance, or the
12 children's health insurance program, as approved by the Health and
13 Human Services Commission;

14 (B) federal housing assistance;

15 (C) the national school lunch program for free or
16 reduced-price lunches; or

17 (D) lifeline telephone service [from a state
18 agency administering a part of the medical assistance program].

19 SECTION 2. The Public Utility Commission of Texas shall
20 adopt rules under Section 39.903, Utilities Code, and reinstate the
21 low-income discount program under Subsection (h) of that section,
22 as amended by this Act, as soon as is practicable. Fees for the
23 system benefit fund collected under Section 39.903, Utilities Code,
24 before the effective date of this Act shall be remitted to the
25 comptroller of public accounts for deposit in the general revenue
26 fund. Fees for the system benefit fund collected under Section
27 39.903, Utilities Code, after the effective date of this Act shall

1 be remitted to the Public Utility Commission of Texas not later than
2 31 days after the fees are collected until the commission adopts
3 rules governing the remittance of the fees to the trust fund
4 established under that section, as amended by this Act. The Public
5 Utility Commission of Texas shall hold fees remitted to it under
6 this section in trust for the benefit of the system benefit fund
7 until that fund is established as provided by this Act and shall
8 transfer those fees to the fund on the date the fund is established.

9 SECTION 3. This Act takes effect September 1, 2009.