

By: Paxton, Pitts, McCall, Oliveira, Raymond

H.B. No. 4076

Substitute the following for H.B. No. 4076:

By: Otto

C.S.H.B. No. 4076

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of the Texas Power Source.

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

4 SECTION 1. Subtitle F, Title 4, Government Code, is amended
5 by adding Chapter 490D to read as follows:

6 CHAPTER 490D. TEXAS POWER SOURCE

7 Sec. 490D.001. DEFINITIONS. In this chapter:

8 (1) "Investment team" means the nonprofit corporation
9 contracted by the oversight committee to manage the investments of
10 the Texas Power Source.

11 (2) "Oversight committee" means the committee
12 appointed by the governor with management and control of the Texas
13 Power Source.

14 (3) "Selection committee" means the committee
15 appointed by the governor to nominate members of the board of
16 directors of the investment team.

17 (4) "Texas Power Source" means the account created
18 under this chapter.

19 Sec. 490D.002. PURPOSE. (a) The Texas Power Source is
20 established to invest in Texas businesses and assets and to attract
21 capital to invest in Texas businesses and assets.

22 (b) The establishment, management, and investment of the
23 Texas Power Source is a program under Section 52-a, Article III,
24 Texas Constitution.

1 Sec. 490D.003. TEXAS POWER SOURCE. (a) The Texas Power
2 Source is an account outside the state treasury.

3 (b) The comptroller shall deposit funds in the Texas Power
4 Source as provided by the General Appropriations Act.

5 Sec. 490D.004. OVERSIGHT COMMITTEE. (a) The governor shall
6 appoint a nine-member oversight committee.

7 (b) The oversight committee has control and management of
8 the Texas Power Source.

9 (c) The oversight committee shall consider and approve or
10 reject nominees to the board of directors of the investment team.
11 The oversight committee shall approve nominees to the board of
12 directors of the investment team who have demonstrated and
13 substantial investment expertise.

14 (d) The governor may remove and replace members of the
15 oversight committee.

16 Sec. 490D.005. SELECTION COMMITTEE. (a) The governor, in
17 consultation with the lieutenant governor and the speaker of the
18 house of representatives, shall appoint a five-member selection
19 committee.

20 (b) The selection committee shall identify and select
21 nominees to the board of directors of the investment team. The
22 selection committee shall engage an executive search firm to ensure
23 each selection is conducted with due diligence. The selection
24 committee shall submit the names of nominees to the oversight
25 committee for approval.

26 (c) The governor may remove and replace members of the
27 selection committee.

1 Sec. 490D.006. INVESTMENT TEAM. (a) The investment team
2 must be organized as a nonprofit corporation under the Business
3 Organizations Code. The investment team is not a state agency and
4 the board of directors of the investment team are not state
5 employees.

6 (b) The oversight committee shall enter into a contract with
7 the investment team for the investment team to invest the Texas
8 Power Source. The investment team may not engage in any business
9 other than investing funds designated by the oversight committee
10 under the contract.

11 (c) The oversight committee must approve the:

12 (1) certificate of formation and bylaws of the
13 investment team and any amendment to the certificate of formation
14 or bylaws;

15 (2) investment policies of the investment team,
16 including changes to those policies;

17 (3) audit and ethics committee of the investment team;
18 and

19 (4) code of ethics of the investment team.

20 (d) The contract between the oversight committee and the
21 investment team must provide for industry-standard compensation
22 for the team's services. The contract may provide for an
23 asset-based fee and a performance-based fee. The contract must
24 contain representations by the investment team that it has all
25 required licenses and registrations to act as investment manager of
26 the Texas Power Source. The investment team compensation is an
27 expense of the Texas Power Source. The contract must allow the

1 investment team to purchase, as an expense of the Texas Power
2 Source, liability insurance for the coverage of the board of
3 directors, employees, and agents of the investment team.

4 (e) Under the contract between the oversight committee and
5 the investment team, the oversight committee may delegate to the
6 investment team the discretion and authority to:

7 (1) employ and retain staff within budgetary
8 constraints;

9 (2) acquire and dispose of the fund's assets for
10 investment purposes;

11 (3) determine all matters relating to the manner,
12 method, terms, conditions, and timing of investments and engage
13 consultants and analysts in connection with those matters;

14 (4) select brokers, dealers, and other intermediaries
15 by or through whom investments are executed;

16 (5) take any action necessary for the administration
17 and protection of the Texas Power Source;

18 (6) exercise all voting and other powers and
19 privileges attributable to an investment under contract by the
20 Texas Power Source;

21 (7) make and execute all documents and take all other
22 actions as necessary or appropriate to carry out the investment
23 team's duties under this chapter; and

24 (8) pay expenses of the Texas Power Source.

25 Sec. 490D.007. INVESTMENT STRATEGY; AUTHORIZED
26 INVESTMENTS. (a) The oversight committee shall ensure that the
27 Texas Power Source is invested in accordance with the investment

1 strategy under this section.

2 (b) The contract between the oversight committee and the
3 investment team must require the investment team to comply with the
4 investment strategy under this section.

5 (c) The Texas Power Source shall be invested according to an
6 investment strategy that maximizes the total investment return, as
7 described by this section, to this state. The total return may be
8 measured by the sum of:

9 (1) the direct taxpayer return, represented by the
10 creation of jobs in this state and the stimulation of the economy of
11 this state resulting from the aggregate invested capital; and

12 (2) the capital return, represented by the return to
13 this state of invested and appreciated capital.

14 (d) In implementing the investment strategy, the investment
15 team may consider the current economic conditions and give
16 significant weight to the direct taxpayer return, as described by
17 Subsection (c)(1), as appropriate. In implementing the investment
18 strategy, the investment team shall consider both the current
19 return and future potential returns.

20 (e) Eighty percent of the Texas Power Source assets shall be
21 invested according to a co-investment strategy in a manner that
22 leverages the resources and investing experience of private-sector
23 investors in order to ensure an efficient allocation of Texas Power
24 Source assets. Under the co-investment strategy, the investment
25 team shall make investment decisions identical to those made by
26 substantial and experienced private-sector investors, such as
27 seasoned venture capital investors. The amount of Texas Power

1 Source assets invested in a co-investment may not be greater than
2 the amount of assets invested by the private-sector investor. The
3 investment team shall make co-investments on terms and conditions
4 that are necessary and reasonably calculated to attract significant
5 investment by private-sector investors, from both inside and
6 outside this state, and in such a way as to maximize the aggregate
7 capital deployed into the economy of this state in accordance with
8 the objectives of the investment strategy. To the extent allowed by
9 law, the co-investment terms may include the deployment of debt,
10 equity, or subsidies as necessary to facilitate an appropriate
11 investment.

12 (f) Twenty percent of the Texas Power Source assets shall be
13 invested in small businesses. The total amount of investments made
14 in small businesses under the control of any individual may not
15 exceed \$2 million. Investments under this subsection may be made
16 with or without coinvestor participation.

17 (g) The assets of the Texas Power Source may be invested
18 only in businesses, public or private, with operations and assets
19 substantially located in this state and only in investments with
20 the potential for job and economic growth in this state in
21 accordance with the investment strategy.

22 (h) All income and returns realized on investments shall be
23 retained in the Texas Power Source and made available for
24 additional investments until the Texas Power Source is dissolved.

25 Sec. 490D.008. OVERSIGHT. (a) The oversight committee
26 shall review the activities of the investment team to ensure
27 compliance with the investment strategy and operating guidelines

1 provided by this chapter.

2 (b) On a determination by at least two-thirds of the members
3 of the oversight committee that the activities of the investment
4 team are in material noncompliance with the provisions of this
5 chapter or the terms of the investment team's contract, the state
6 oversight committee may remove any or all of the members of the
7 board of directors of the investment team. The selection committee
8 shall nominate members to fill vacancies created by the removal of
9 members of the board of directors.

10 (c) The investment team shall make quarterly reports to the
11 oversight committee and annual reports to the state oversight
12 committee and the legislature regarding the finances and operation
13 of the Texas Power Source.

14 Sec. 490D.009. DISSOLUTION. (a) The investment team shall
15 begin dissolution of the Texas Power Source not later than
16 September 1, 2019, or the 10th anniversary of the date of extension
17 of the Texas Power Source, as applicable. The investment team shall
18 use reasonable efforts to plan the orderly liquidation of
19 investments so that all investments will be liquidated before
20 September 1, 2020, or the 11th anniversary of the date of extension
21 of the Texas Power Source, as applicable.

22 (b) Except under unusual circumstances in which it may be
23 necessary to protect investments previously made, further
24 investments may not be made in or by the Texas Power Source after
25 September 1, 2019, or the 10th anniversary of the date of extension,
26 as applicable.

27 (c) Upon dissolution, the Texas Power Source's assets shall

1 be returned to the comptroller.

2 (d) At the regular legislative session next preceding
3 September 1, 2019, or the 10th anniversary of the date of the
4 previous extension of the Texas Power Source, as applicable, the
5 legislature, by a two-thirds vote of the members present in each
6 house, may extend the duration of the Texas Power Source for 10
7 years.

8 Sec. 490D.010. RESTRICTIONS ON LOBBYING EXPENDITURES. (a) A
9 political subdivision or private entity that receives Texas Power
10 Source funds may not use those funds to pay:

11 (1) lobbying expenses;

12 (2) a person or entity that is required to register
13 with the Texas Ethics Commission under Chapter 305;

14 (3) a partner, employee, employer, relative,
15 contractor, consultant, or related entity of a person described by
16 Subdivision (2); or

17 (4) a person that has been hired to represent
18 associations or other entities for the purpose of affecting the
19 outcome of legislation, agency rules, ordinances, or other
20 government policies.

21 (b) A person serving on the selection committee, oversight
22 committee, or board of directors of the investment team or as an
23 employee of the investment team may not receive or give a gift in
24 exchange for taking an action in connection with the person's
25 duties under this chapter.

26 Sec. 490D.011. PROHIBITED ACTS. The Texas Power Source and
27 persons on the oversight committee, selection committee, or board

1 of directors of the investment team may not use Texas Power Source
2 money under the person's control, including appropriated money,
3 capital appreciation, or money invested in a co-investment, to
4 finance or otherwise support the candidacy of a person for an office
5 of a local or county government, of the legislative, executive, or
6 judicial branch of state government, or of the government of the
7 United States.

8 SECTION 2. Not later than the 30th day after the effective
9 date of this Act, the governor shall appoint the members of the
10 selection committee and the oversight committee under Chapter 490D,
11 Government Code, as added by this Act.

12 SECTION 3. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2009.