

By: West

S.B. No. 2331

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas power source fund.

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

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

CHAPTER 490D. TEXAS POWER SOURCE FUND

Sec. 490D.001. TEXAS POWER SOURCE FUND. (a) In this section:

(1) "Board of trustees" means the board of trustees of the Texas power source fund.

(2) "Fund" means the Texas power source fund.

(b) The Texas power source fund is created as a trust fund outside the state treasury. Except as otherwise provided by this section, the fund is subject to the general laws of this state governing private sector trusts. Only individuals who are residents of this state and political subdivisions of this state may invest in the fund.

(c) The comptroller shall invest in the fund on the behalf of this state one dollar from the general revenue fund to match each dollar invested by other investors in the fund after the total amount invested by other investors reaches \$500 million. The comptroller may not invest under this subsection more than \$500 million.

(d) In the year of investment, an individual investor in the

1 fund is entitled to an incentive in the amount of non-school ad
2 valorem taxes owed by the investor for that tax year, but not to
3 exceed the lesser of 20 percent of the amount invested in the fund
4 during that year, the total amount of non-school ad valorem taxes
5 owed by the investor for that tax year, or \$3,000. The board of
6 trustees may give the investor the incentive amount in the form of a
7 cash payment from the fund or as additional shares in the fund, as
8 the investor chooses.

9 (e) The fund is managed by a board of trustees consisting of
10 nine members appointed by the governor.

11 (f) Each member of the board must have demonstrated
12 substantial investment expertise. Each member serves for a
13 six-year term expiring February 1 of an odd-numbered year.

14 (g) The governor shall designate a presiding officer from
15 among the members of the board of trustees who serves a term of two
16 years expiring February 1 of each odd-numbered year. A member may
17 serve more than one term as presiding officer.

18 (h) The board of trustees shall manage the fund, and may:

19 (1) employ and retain staff, including a chief
20 executive officer;

21 (2) take any action necessary for the creation,
22 administration, and protection of the fund;

23 (3) enter into investment contracts with investors;

24 (4) adopt rules regarding the operation of the fund;

25 (5) acquire, hold, and dispose of assets;

26 (6) execute contracts;

27 (7) pay expenses of the fund based on an assessment on

1 investor contributions;

2 (8) provide for different classes of voting and
3 non-voting shares; and

4 (9) alternatively, or in combination with its own
5 staff, contract for the management of investments under this
6 section with a private investment management firm or with an
7 investing fund or system electing a member of the board of trustees.

8 (i) The board of trustees shall appoint regional investment
9 boards. Each part of the state must be in the territory of one
10 regional investment board. Each regional investment board shall
11 evaluate potential investment opportunities in its region and make
12 investment decisions in its region. The board of trustees by a vote
13 of six members may override an investment decision of a regional
14 investment board.

15 (j) The fund may invest only in Texas businesses. The fund
16 may invest in publicly traded or closely held businesses.

17 (k) In making investments, the board of trustees and
18 regional investment boards shall exercise the judgment and care
19 under the circumstances then prevailing that persons of ordinary
20 prudence, discretion, and intelligence exercise in the management
21 of their own affairs, not in regard to speculation but in regard to
22 the permanent disposition of their funds, considering the probable
23 income as well as the probable safety of the capital of the fund.

24 (l) The board of trustees shall establish and operate the
25 fund to the extent practicable under the generally accepted
26 business procedures relating to a mutual fund and shall value the
27 investments for determining the purchase or sales price of

1 participating shares of investors in the fund consistent with
2 investment contracts. Evidences of participation in the fund shall
3 be held by the comptroller of public accounts in keeping with the
4 custodial responsibilities of that office.

5 (m) On a quarterly basis, the amount of income realized on
6 investments under this section shall be distributed to each of the
7 investors in the fund in proportion to the number of participating
8 shares of each investor. Capital appreciation becomes a part of the
9 corpus of the fund and shall be distributed in accordance with the
10 investment contracts.

11 (n) The board of trustees shall make arrangements to begin
12 liquidation, phase out investments, and return the principal and
13 capital gains on investments to the investors in the fund not later
14 than the 10th anniversary of the effective date of this section or
15 the date of extension of the fund, as applicable. Except under
16 unusual circumstances where it may be necessary to protect
17 investments previously made, further investments may not be made in
18 or by the fund after the 10th anniversary of the effective date of
19 this section or the date of extension of the fund, as applicable.

20 (o) At the regular legislative session next preceding the
21 10th anniversary of the effective date of this section or the date
22 of extension of the fund, as applicable, the legislature, by
23 two-thirds vote of each house, may extend the duration of the fund
24 for 10 years.

25 (p) The board of trustees may purchase liability insurance
26 for the coverage of the trustees, employees, and agents of the
27 board.

1 (q) Not later than December 1, 2014, the Sunset Advisory
2 Commission shall review the fund and issue a report to the
3 legislature.

4 (r) The board of directors shall make an annual report to the
5 legislature regarding the finances and operation of the fund.

6 (s) The comptroller may adopt rules governing the operation
7 of the fund.

8 SECTION 2. Not later than December 1, 2009, the governor
9 shall appoint the board of trustees of the Texas power source fund.

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