

By: West

S.J.R. No. 51

1 SENATE JOINT RESOLUTION

2 proposing a constitutional amendment establishing the Texas power
3 source fund.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 16, Texas Constitution, is amended by
6 adding Section 73 to read as follows:

7 Sec. 73. (a) In this section:

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

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

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

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

23 (d) In the year of investment, an individual investor in the
24 fund is entitled to an incentive in the amount of non-school ad

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

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

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

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

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

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

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

22 (3) enter into investment contracts with investors;

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

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

25 (6) execute contracts;

26 (7) pay expenses of the fund based on an assessment on
27 investor contributions;

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

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

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

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

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

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

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

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

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

20 (o) At the regular legislative session next preceding the
21 10th anniversary of the date of the adoption of this section or the
22 date 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) The legislature shall provide by law for the periodic
2 review of the board of trustees in the same manner and at the same
3 intervals as it provides for review of other state agencies, except
4 that the legislature shall provide that the board of trustees is not
5 subject to abolishment as part of the review process.

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

8 (s) The legislature by general law may provide for the
9 operation of the fund and may authorize an executive officer or
10 agency to adopt rules governing the operation of the fund.

11 (t) This section is self-executing and takes effect on its
12 adoption by the voters. All state officials named in this section
13 and the comptroller of public accounts shall take all necessary
14 actions for the implementation of this section. The legislature
15 shall provide by law for full disclosure of all details concerning
16 investments authorized by this section.

17 SECTION 2. This proposed constitutional amendment shall be
18 submitted to the voters at an election to be held November 3, 2009.
19 The ballot shall be printed to permit voting for or against the
20 proposition: "The constitutional amendment establishing the Texas
21 power source fund."