88R10094 JXC-D

By:  Hunter H.B. No. 4834

A BILL TO BE ENTITLED

AN ACT

relating to the use of the Texas energy reliability fund to finance construction of electric generating facilities in the ERCOT power region; authorizing fees.

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. TEXAS ENERGY RELIABILITY FUND

Sec. 34.0101.  DEFINITIONS. In this chapter:

(1)  "Advisory committee" means the Texas Energy Reliability Fund Advisory Committee.

(2)  "Fund" means the Texas energy reliability fund established by Section 49-q, 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 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 trust company for and in the name of the commission. The commission has legal title to money and investments in the fund until money is disbursed from the fund as provided by this chapter and commission rules.

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

(d)  The fund consists of:

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

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

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

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

(1)  make a loan to finance the construction of:

(A)  a dispatchable facility that uses a source of heat to generate electricity; or

(B)  additional generating capacity for a dispatchable facility that uses a source of heat to generate electricity; and

(2)  pay the necessary and reasonable expenses of administering the fund.

(b)  For the purposes of this section, a generating facility is considered to be dispatchable if the facility's output can be controlled primarily by forces within human control.

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

(d)  The commission may provide a loan under this chapter that bears interest at a rate or rates determined by the commission, including a rate or rates below prevailing market rates.

(e)  The commission may provide a loan under this chapter only if the commission finds that the facility for which the loan is provided is necessary for the service, accommodation, convenience, or safety of the public. The commission shall provide each loan on a nondiscriminatory basis after considering the factors listed in Sections 37.056(c), (c-1), and (d).

(f)  The commission shall require a person who applies for a loan under this chapter to include in the loan application a plan to ensure that the project for which the loan is requested will be operational not later than the fifth anniversary of the date the loan is disbursed.

(g)  Information submitted to the commission in an application for a loan under this chapter is confidential and not subject to disclosure under Chapter 552, Government Code.

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

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

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

(d)  The trust company may charge fees to cover its costs incurred in managing and investing the fund. The fees must be consistent with the fees the trust company charges other state and local governmental entities for which it provides investment management services. The trust company may recover fees it charges under this subsection only from the earnings of the fund.

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

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

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

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

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

Sec. 34.0105.  TEXAS ENERGY RELIABILITY FUND ADVISORY COMMITTEE. (a) The advisory committee is composed of the following seven members:

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

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

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

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

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

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

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

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

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

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

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

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

(g)  The advisory committee:

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

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

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

(i)  Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(j)  The advisory committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory committee is abolished September 1, 2035.

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

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

(2)  the administration of the fund.

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

SECTION 2.  This Act takes effect on the date on which the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, providing for the creation of the Texas energy reliability fund to finance construction of electric generating facilities takes effect. If that amendment is not approved by the voters, this Act has no effect.