88R14150 JXC-D

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A BILL TO BE ENTITLED

AN ACT

relating to the reliability and resiliency of the power grid in this state; authorizing the issuance of revenue bonds.

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

SECTION 1.  The Public Utility Commission of Texas may not adopt a program that requires load serving entities to purchase credits earned by generators based on generator availability during times of high demand and low supply at a centrally determined clearing price.

SECTION 2.  Section 35.004, Utilities Code, is amended by adding Subsection (i) to read as follows:

(i)  The commission shall require the independent organization certified under Section 39.151 for the ERCOT power region to implement real-time co-optimization of energy and ancillary services in the ERCOT wholesale market.

SECTION 3.  Title 4, Utilities Code, is amended by adding Subtitle C to read as follows:

SUBTITLE C. RELIABILITY AND RESILIENCY OF POWER GRID

CHAPTER 201. GENERAL PROVISIONS

Sec. 201.001.  DEFINITIONS. In this subtitle:

(1)  "Advisory committee" means the utilities reliability fund advisory committee.

(2)  "Commission" means the Public Utility Commission of Texas.

(3)  "Electric utility" has the meaning assigned by Section 31.002, except that the term includes an electric cooperative organized under Chapter 161 and a municipally owned utility.

(4)  "Fund" means the utilities reliability fund.

(5)  "Historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(6)  "Power generation company" has the meaning assigned by Section 31.002.

(7)  "Revenue fund" means the utilities reliability revenue fund.

(8)  "Trust company" means the Texas Treasury Safekeeping Trust Company.

CHAPTER 202. UTILITIES RELIABILITY FUND

Sec. 202.001.  FUND. (a) The utilities reliability fund is a special fund in the state treasury outside the general revenue fund to be used by the commission as authorized by this chapter without further legislative appropriation. The commission may establish separate accounts in the fund and may transfer funds between accounts. The commission may invest, reinvest, and direct the investment of money in the fund. The fund and the fund's accounts may be 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.

(b)  Money deposited to the credit of the fund may be used only as provided by Section 202.003.

(c)  The fund consists of:

(1)  money appropriated to the fund;

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

(3)  the proceeds of any fee or tax imposed by this state that by statute is dedicated for deposit to the credit of the fund;

(4)  any other revenue that the legislature by statute dedicates for deposit to the credit of the fund;

(5)  investment earnings and interest earned on amounts credited to the fund;

(6)  repayments of loans made from the fund; and

(7)  money transferred to the fund from another fund or account to which money from the fund was transferred.

Sec. 202.002.  MANAGEMENT AND INVESTMENT OF FUND. (a) The commission or the trust company may 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 objectives for the investment of the fund are, in order of precedence:

(1)  preservation and safety of the fund principal;

(2)  liquidity; and

(3)  investment yield.

(c)  The commission or the trust company, as directed by the commission, 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 commission or the trust company considers appropriate, the commission or 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)  If the fund is managed by the trust company, 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 the trust company provides investment management services. The trust company may recover fees the trust company charges under this subsection only from the earnings of the fund.

(e)  If the fund is managed by the trust company, the trust company annually shall provide a 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 commission or trust company shall adopt a written investment policy that is appropriate for the fund. If the fund is managed by the trust company:

(1)  the trust company shall present the investment policy to the commission and the investment advisory board established under Section 404.028, Government Code; and

(2)  the commission and investment advisory board shall submit to the trust company recommendations regarding the policy.

(g)  If the fund is managed by the trust company, 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 assist the trust company in achieving the objectives specified by Subsection (b).

(h)  If the fund is managed by the trust company, the company shall disburse money from the fund as directed by the commission. The commission shall direct disbursements from the fund on a schedule specified by the commission. If any applicable revenue bonds are outstanding, the commission shall direct disbursements from the fund not more frequently than twice in any state fiscal year.

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

Sec. 202.003.  USE OF FUND; PAYMENTS TO AND FROM OTHER FUNDS OR ACCOUNTS. (a) The commission or the trust company at the direction of the commission shall make disbursements from the fund to the revenue fund in the amounts the commission determines are needed for disbursement through the financing structures developed to meet the goals of the fund, including transfer of those amounts to other commission programs or funds as necessary, or for debt service payments on or security provisions of the commission's revenue bonds, after considering all other sources available for those purposes.

(b)  The fund may be used only to:

(1)  enhance the reliability and resiliency of the power grid in this state by installing dispatchable generation capacity;

(2)  pay the necessary and reasonable expenses of the commission in administering the fund; and

(3)  transfer funds to other programs or funds.

(c)  The commission may provide financial assistance from the fund for:

(1)  an electric utility project; or

(2)  a power generation company project.

(d)  Financial assistance under Subsection (c) may be provided in any form as determined by the commission, including a market rate, low-interest, or no-interest loan, a loan guarantee, an equity ownership in a public or private entity, a joint venture with a public or private entity, a grant, an interest rebate, or an interest subsidy. The commission may not provide more than two loans from the fund to the same entity.

(e)  In providing financial assistance under Subsection (c), the commission may make, enter into, and enforce contracts, agreements, including management agreements, for the management of any of the commission's property, leases, indentures, mortgages, deeds of trust, security agreements, pledge agreements, credit agreements, overrides or other revenue sharing mechanisms, repurchase agreements, and other instruments with any person, including any lender and any federal, state, or local governmental agency, and to take other actions as may accomplish any of its purposes.

(f)  The commission may contract with and provide for the compensation of consultants and agents, including engineers, attorneys, management consultants, financial advisors, indexing agents, and other experts, as the business of the commission under this chapter may require.

(g)  Money in the fund may not be used for the purposes of certification under Section 403.121, Government Code.

Sec. 202.004.  PRIORITIZATION OF PROJECTS BY COMMISSION. (a) The commission, for the purpose of providing financial assistance under this chapter, shall prioritize projects that enhance the reliability and resiliency of the power grid in this state.

(b)  The commission shall establish a point system for prioritizing projects for which financial assistance is sought from the commission. The system must include a standard for the commission to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed with the commission.

(c)  The commission may consider the following criteria in prioritizing projects:

(1)  other funding sources secured by the applicant for the project, including any capital to be provided by the applicant;

(2)  the financial capacity of the applicant to repay the financial assistance provided; and

(3)  the ability of the applicant to timely leverage state financing with local, federal, or private funding.

(d)  The commission shall consider federal tax subsidies in prioritizing projects.

Sec. 202.005.  ADVISORY COMMITTEE. (a) The utilities reliability fund advisory committee is composed of the following 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 finance; and

(B)  a member of the committee of the senate having primary jurisdiction over natural resources;

(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 appropriations; and

(B)  a member of the committee of the house of representatives having primary jurisdiction over natural resources;

(4)  the chief executive of the Office of Public Utility Counsel, or a person designated by the chief executive of the Office of Public Utility Counsel;

(5)  the presiding officer of the commission, or a person designated by the presiding officer of the commission;

(6)  the chair of the Texas Reliability Entity board of directors, or a person designated by a public vote of the Texas Reliability Entity; and

(7)  an unaffiliated board member of the Electric Reliability Council of Texas, appointed in a public meeting of the Electric Reliability Council of Texas.

(b)  The commission shall provide staff as necessary to assist the advisory committee.

(c)  An appointed member of the advisory committee serves at the will of the officer 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, and the speaker of the house of representatives shall appoint a co-presiding officer of the committee from among the members appointed by the speaker.

(e)  The advisory committee shall hold public hearings, formal meetings, or work sessions in a location with audio and video capacity. The commission shall broadcast over the Internet live video and audio of each public hearing, formal meeting, or work session of the advisory committee and provide access to each broadcast on the commission's Internet website. Either co-presiding officer of the advisory committee may call a public hearing, formal meeting, or work session of the advisory committee after issuing a public notice not later than the seventh day before the date of the public hearing, formal meeting, or work session. The public notice must include an agenda with formal actions included. 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. The commission shall provide access on the commission's Internet website to the public notices, recordings of the live broadcasts, and minutes of public hearings, formal meetings, and work sessions.

(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 shall submit comments and recommendations to the commission regarding the use of money in the fund and in the revenue fund for use by the commission in adopting rules under Section 202.006 and in adopting policies and procedures under Section 202.008. The submission must include:

(1)  comments and recommendations on rulemaking related to the prioritization of projects in accordance with Section 202.004;

(2)  comments and recommendations on rulemaking related to establishing standards for determining whether projects meet the criteria provided by Section 202.003;

(3)  an evaluation of the available programs for providing financing for projects authorized by this chapter and guidelines for implementing those programs;

(4)  an evaluation of the lending practices of the commission and guidelines for lending standards;

(5)  an evaluation of the use of funds by the commission to provide support for financial assistance for projects that enhance the reliability and resiliency of the power grid in this state;

(6)  an evaluation of methods for encouraging participation in the programs established under this chapter by companies domiciled in this state or that employ a significant number of residents of this state; and

(7)  an evaluation of the overall operation, function, and structure of the fund.

(h)  The advisory committee shall review the overall operation, function, and structure of the fund at least semiannually and may provide comments and recommendations to the commission on any matter.

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

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

(k)  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 and this section expires September 1, 2035.

(l)  The advisory committee shall make recommendations to the commission regarding information to be posted on the commission's Internet website under Section 202.007(b).

(m)  The commission shall provide an annual report to the advisory committee on:

(1)  the commission's compliance with statewide annual goals relating to historically underutilized businesses; and

(2)  the participation level of historically underutilized businesses in projects that receive funding under this chapter.

(n)  If the aggregate level of participation by historically underutilized businesses in projects that receive funding under this chapter does not meet statewide annual goals adopted under Chapter 2161, Government Code, the advisory committee shall make recommendations to the commission to improve the participation level.

Sec. 202.006.  RULES. (a) The commission shall adopt rules providing for the use of money in the fund that are consistent with this subchapter, including rules:

(1)  establishing standards for determining whether projects meet the criteria provided by Section 202.003;

(2)  providing for public access to information on financing assistance applications and providing for consideration of public comment before financing decisions are made; and

(3)  specifying the manner for prioritizing projects for purposes of Section 202.004.

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

Sec. 202.007.  REPORTING AND TRANSPARENCY REQUIREMENTS. (a) Not later than December 1 of each even-numbered year, the commission shall provide a report to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature regarding the use of the fund.

(b)  The commission shall post on the commission's Internet website a description of each project funded through the fund, including the expected date of completion of the project.

Sec. 202.008.  POLICIES AND PROCEDURES TO MITIGATE OR MINIMIZE ADVERSE EFFECTS OF CERTAIN FEDERAL LAWS. The commission shall adopt, and may amend from time to time at the commission's discretion, policies and procedures for the purpose of mitigating or minimizing the adverse effects, if any, of federal laws and regulations relating to income taxes, arbitrage, rebates, and related matters that may restrict the commission's ability to freely invest all or part of the fund or to receive and retain all the earnings from the fund.

Sec. 202.009.  PUBLIC PRIVATE PARTNERSHIPS. Money from the fund may be used to make payments under a public and private entity agreement to design, develop, finance, or construct a project described by this chapter.

CHAPTER 203. UTILITIES RELIABILITY REVENUE FUND

Sec. 203.001.  REVENUE FUND. (a) The utilities reliability revenue fund is a special fund in the state treasury outside the general revenue fund to be used by the commission as authorized by this chapter without further legislative appropriation. The commission may establish separate accounts in the revenue fund and may transfer money between accounts. The commission has legal title to money and investments in the revenue fund until the money is disbursed as provided by this chapter and commission rules.

(b)  Money deposited to the credit of the revenue fund may be used only as provided by Section 203.003.

(c)  The revenue fund consists of:

(1)  money appropriated to the revenue fund;

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

(3)  the proceeds of any fee or tax imposed by this state that by statute is dedicated for deposit to the credit of the revenue fund;

(4)  any other revenue that the legislature by statute dedicates for deposit to the credit of the revenue fund;

(5)  investment earnings and interest earned on amounts credited to the revenue fund;

(6)  the proceeds from the sale of revenue bonds issued by the commission under this chapter that are designated by the commission for the purpose of providing money for the revenue fund;

(7)  repayments of loans made from the revenue fund; and

(8)  money disbursed to the revenue fund from the utilities reliability fund as authorized by Section 202.003.

Sec. 203.002.  MANAGEMENT AND INVESTMENT OF REVENUE FUND. (a) Money deposited to the credit of the revenue fund shall be invested as determined by the commission. The revenue fund may be invested with the state treasury pool.

(b)  The revenue fund and any accounts established in the revenue fund shall be kept and maintained by or at the direction of the commission.

(c)  At the direction of the commission, the revenue fund and any accounts established in the revenue fund may be managed by the commission, the comptroller, or a corporate trustee that is a trust company or a bank that has the powers of a trust company for and on behalf of the commission and, pending use of the revenue fund and accounts for the purposes provided by this chapter, may be invested as provided by an order, resolution, or rule of the commission.

(d)  The commission, comptroller, or corporate trustee shall manage the revenue fund in strict accordance with this chapter and the orders, resolutions, and rules of the commission.

Sec. 203.003.  USE OF REVENUE FUND. (a) Money in the revenue fund may be used by the commission only to provide financial assistance under terms specified by the commission for projects that enhance the reliability and resiliency of the power grid in this state by installing dispatchable generation capacity.

(b)  Financial assistance for projects under Subsection (a) may be provided in any form determined by the commission that meets the needs and goals of this state and the applicants, including a market rate, low-interest, or no-interest loan, loan guarantee, equity ownership in a public or private entity, a joint venture with a public or private entity, a grant, an interest rebate, or an interest subsidy.

(c)  In providing financial assistance under Subsection (a), the commission may:

(1)  make, enter into, and enforce contracts and agreements, including management agreements, for the management of any of the commission's property, leases, indentures, mortgages, deeds of trust, security agreements, pledge agreements, credit agreements, overrides or other revenue sharing mechanisms, repurchase agreements, and other instruments with any person, including any lender and any federal, state, or local governmental agency;

(2)  contract with and provide for the compensation of consultants and agents, including engineers, attorneys, management consultants, financial advisors, indexing agents, and other experts, as the business of the commission may require; and

(3)  take other actions to accomplish any of the commission's purposes.

(d)  The commission may use money in the revenue fund:

(1)  as a source of revenue or security for the payment of the principal of and interest on revenue bonds issued by the commission under this chapter;

(2)  to pay the necessary and reasonable expenses of paying agents, bond counsel, and financial advisory services and similar costs incurred by the commission in administering the revenue fund; or

(3)  to transfer money to the fund as necessary.

(e)  The commission, comptroller, or corporate trustee managing the revenue fund at the direction of the commission shall withdraw from the revenue fund and pay to a person any amounts, as determined by the commission, for the timely payment of:

(1)  the principal of and interest on bonds described by Subsection (d)(1) that mature or become due; and

(2)  any cost related to bonds described by Subsection (d)(1) that become due, including payments under related credit agreements.

(f)  Money in the revenue fund may not be used for the purpose of certification under Section 403.121, Government Code.

Sec. 203.004.  ISSUANCE OF REVENUE BONDS. (a) The commission may issue revenue bonds for the purpose of providing money for the revenue fund.

(b)  The commission may issue revenue bonds to refund revenue bonds or bonds and obligations issued or incurred in accordance with other provisions of law.

(c)  Revenue bonds issued under this chapter are special obligations of the commission payable only from and secured by designated income and receipts of the revenue fund, or of one or more accounts in the revenue fund, including principal of and interest paid and to be paid on revenue fund assets or income from accounts created within the revenue fund by the commission, as determined by the commission.

(d)  Revenue bonds issued under this chapter do not constitute indebtedness of the state as prohibited by the constitution.

(e)  The commission may require revenue fund participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.

(f)  Revenue bonds issued under this chapter must be authorized by resolution of the commission and must have the form and characteristics and bear the designations as the resolution provides.

(g)  Revenue bonds issued under this chapter may:

(1)  bear interest at the rate or rates payable annually or otherwise;

(2)  be dated;

(3)  mature at the time or times, serially, as term revenue bonds, or otherwise in not more than 50 years from their dates;

(4)  be callable before stated maturity on the terms and at the prices, be in the denominations, be in the form, either coupon or registered, carry registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or one denomination for bonds of other denominations, and successive exchange of registered revenue bonds for coupon revenue bonds, be executed in the manner, and be payable at the place or places inside or outside the state, as provided by the resolution;

(5)  be issued in temporary or permanent form;

(6)  be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the commission to be the most advantageous reasonably obtainable; and

(7)  be issued on a parity with and be secured in the manner as other revenue bonds authorized to be issued by this chapter or may be issued without parity and secured differently than other revenue bonds.

(h)  All proceedings relating to the issuance of revenue bonds issued under this chapter shall be submitted to the attorney general for examination. If the attorney general finds that the revenue bonds have been authorized in accordance with law, the attorney general shall approve the revenue bonds, and the revenue bonds shall be registered by the comptroller. After the approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

(i)  The proceeds received from the sale of revenue bonds issued under this chapter may be deposited or invested in any manner and in such investments as may be specified in the resolution or other proceedings authorizing those obligations. Money in the revenue fund or accounts created by this chapter or created in the resolution or other proceedings authorizing the revenue bonds may be invested in any manner and in any obligations as may be specified in the resolution or other proceedings.

Sec. 203.005.  CHAPTER CUMULATIVE OF OTHER LAWS. (a) This chapter is cumulative of other laws on the subject, and the commission may use provisions of other applicable laws in the issuance of bonds and other obligations, but this chapter is wholly sufficient authority for the issuance of bonds and other obligations and the performance of all other acts and procedures authorized by this chapter.

(b)  In addition to other authority granted by this chapter, the commission may exercise the authority granted to the governing body of an issuer with regard to the issuance of obligations under Chapter 1371, Government Code.

SECTION 4.  As soon as practicable after the effective date of this Act, the lieutenant governor and the speaker of the house of representatives shall appoint the initial appointive members of the utilities reliability fund advisory committee as provided by Section 202.005, Utilities Code, as added by this Act.

SECTION 5.  (a) Not later than June 1, 2025, the utilities reliability fund advisory committee shall submit recommendations to the Public Utility Commission of Texas on the rules to be adopted by the commission under Section 202.006(a), Utilities Code, as added by this Act.

(b)  Not later than December 1, 2025, the commission shall adopt rules under Section 202.006, Utilities Code, as added by this Act.

SECTION 6.  The Public Utility Commission of Texas shall post the information described by Section 202.007(b), Utilities Code, as added by this Act, on the commission's Internet website not later than March 1, 2024.

SECTION 7.  This Act takes effect on the date on which the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, creating the utilities reliability fund and the utilities reliability revenue fund to provide financial support for projects that enhance the reliability and resiliency of the power grid in this state takes effect. If that amendment is not approved by the voters, this Act has no effect.