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S.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Energy Insurance Program and other funding mechanisms to support the construction and operation of electric generating facilities.

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

ARTICLE 1. TEXAS ENERGY INSURANCE PROGRAM

SECTION 1.01. Section 11.003(16), Utilities Code, is amended to read as follows:

(16) "Rate" includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility or an entity operating under Section 39.360 for a service, product, or commodity described in the definition of utility in Section 31.002 or 51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

SECTION 1.02. Section 31.002(6), Utilities Code, as amended by Chapters 255 (H.B. 1572) and 389 (S.B. 1202), Acts of the 87th Legislature, Regular Session, 2021, is reenacted and amended to read as follows:

(6) "Electric utility" means a person or river authority that owns or operates for compensation in this state

1 equipment or facilities to produce, generate, transmit,
2 distribute, sell, or furnish electricity in this state. The term
3 includes a lessee, trustee, or receiver of an electric utility and a
4 recreational vehicle park owner who does not comply with Subchapter
5 C, Chapter 184, with regard to the metered sale of electricity at
6 the recreational vehicle park. The term does not include:

- 7 (A) a municipal corporation;
- 8 (B) a qualifying facility;
- 9 (C) a power generation company;
- 10 (D) an exempt wholesale generator;
- 11 (E) a power marketer;
- 12 (F) a corporation described by Section 32.053 to
13 the extent the corporation sells electricity exclusively at
14 wholesale and not to the ultimate consumer;
- 15 (G) an electric cooperative;
- 16 (H) a retail electric provider;
- 17 (I) this state or an agency of this state; ~~[or]~~
- 18 (J) an entity operating under Section 39.360; or
- 19 (K) a person not otherwise an electric utility

20 who:

21 (i) furnishes an electric service or
22 commodity only to itself, its employees, or its tenants as an
23 incident of employment or tenancy, if that service or commodity is
24 not resold to or used by others;

25 (ii) owns or operates in this state
26 equipment or facilities to produce, generate, transmit,
27 distribute, sell, or furnish electric energy to an electric

1 utility, if the equipment or facilities are used primarily to
2 produce and generate electric energy for consumption by that
3 person;

4 (iii) owns or operates in this state a
5 recreational vehicle park that provides metered electric service in
6 accordance with Subchapter C, Chapter 184; ~~[or]~~

7 (iv) owns or operates equipment used solely
8 to provide electricity charging service for consumption by an
9 alternatively fueled vehicle, as defined by Section 502.004,
10 Transportation Code; or

11 (v) ~~[(iv)]~~ is an electric generation
12 equipment lessor or operator.

13 SECTION 1.03. Section 31.002, Utilities Code, is amended by
14 amending Subdivisions (10), (15), (19), and (20) and adding
15 Subdivisions (15-a) and (18-a) to read as follows:

16 (10) "Power generation company":

17 (A) means a person, including a person who owns
18 or operates a distributed natural gas generation facility, that:

19 (i) ~~[(A)]~~ generates electricity that is
20 intended to be sold at wholesale, including the owner or operator of
21 electric energy storage equipment or facilities to which Subchapter
22 E, Chapter 35, applies;

23 (ii) ~~[(B)]~~ does not own a transmission or
24 distribution facility in this state other than an essential
25 interconnecting facility, a facility not dedicated to public use,
26 or a facility otherwise excluded from the definition of "electric
27 utility" under this section; and

1 (iii) [~~(c)~~] does not have a certificated
2 service area, although its affiliated electric utility or
3 transmission and distribution utility may have a certificated
4 service area; and

5 (B) does not include an entity operating under
6 Section 39.360.

7 (15) "Rate" includes:

8 (A) a compensation, tariff, charge, fare, toll,
9 rental, or classification that is directly or indirectly demanded,
10 observed, charged, or collected by an electric utility for a
11 service, product, or commodity described in the definition of
12 electric utility in this section and a rule, practice, or contract
13 affecting the compensation, tariff, charge, fare, toll, rental, or
14 classification that must be approved by a regulatory authority; or

15 (B) Texas Energy Insurance Program charges.

16 (15-a) "Reliability asset" means a gas-fueled
17 generation asset with on-site fuel storage that is located in the
18 ERCOT power region and is owned and operated by an entity certified
19 under Section 39.360 for the purpose of providing power when
20 dispatched under Section 38.079.

21 (18-a) "Texas Energy Insurance Program" means the
22 program established under Section 39.360.

23 (19) "Transmission and distribution utility" means a
24 person or river authority that owns or operates for compensation in
25 this state equipment or facilities to transmit or distribute
26 electricity, except for facilities necessary to interconnect a
27 generation facility with the transmission or distribution network,

1 a facility not dedicated to public use, or a facility otherwise
2 excluded from the definition of "electric utility" under this
3 section, in a qualifying power region certified under Section
4 39.152, but does not include a municipally owned utility, ~~[or]~~ an
5 electric cooperative, or an entity operating under Section 39.360.

6 (20) "Transmission service" includes construction or
7 enlargement of facilities, transmission over distribution
8 facilities, control area services, scheduling resources,
9 regulation services, reactive power support, voltage control,
10 provision of operating reserves, and any other associated
11 electrical service the commission determines appropriate, except
12 that, on and after the implementation of customer choice, control
13 area services, scheduling resources, regulation services,
14 provision of operating reserves, and reactive power support,
15 voltage control, ~~[and]~~ other services provided by generation
16 resources, and services provided by an entity operating under
17 Section 39.360 are not "transmission service."

18 SECTION 1.04. Section 33.001, Utilities Code, is amended by
19 adding Subsection (b) to read as follows:

20 (b) The governing body of a municipality does not have
21 jurisdiction over the Texas Energy Insurance Program.

22 SECTION 1.05. Section 33.008(a), Utilities Code, is amended
23 to read as follows:

24 (a) Following the end of the freeze period for a
25 municipality that has been served by an electric utility, and
26 following the date a municipally owned utility or an electric
27 cooperative has implemented customer choice for a municipality that

1 has been served by that municipally owned utility or electric
2 cooperative, a municipality may impose on an electric utility,
3 transmission and distribution utility, municipally owned utility,
4 or electric cooperative, as appropriate, that provides
5 distribution service within the municipality a reasonable charge as
6 specified in Subsection (b) for the use of a municipal street,
7 alley, or public way to deliver electricity to a retail customer. A
8 municipality may not impose a charge on:

9 (1) an electric utility, or transmission and
10 distribution utility, municipally owned utility, or electric
11 cooperative for electric service provided outside the
12 municipality;

13 (2) a qualifying facility;

14 (3) an exempt wholesale generator;

15 (4) a power marketer;

16 (5) a retail electric provider;

17 (6) a power generation company;

18 (7) a person that generates electricity on and after
19 January 1, 2002; ~~or~~

20 (8) an aggregator, as that term is defined by Section
21 [39.353](#); or

22 (9) an entity operating under Section 39.360.

23 SECTION 1.06. Section [35.004](#), Utilities Code, is amended by
24 amending Subsections (b) and (c) and adding Subsection (i) to read
25 as follows:

26 (b) The commission shall ensure that an electric utility or
27 transmission and distribution utility provides nondiscriminatory

1 access to wholesale transmission service for qualifying
2 facilities, exempt wholesale generators, power marketers, power
3 generation companies, retail electric providers, entities
4 operating under Section 39.360, and other electric utilities or
5 transmission and distribution utilities.

6 (c) When an electric utility, electric cooperative, or
7 transmission and distribution utility provides wholesale
8 transmission service within ERCOT at the request of a third party,
9 the commission shall ensure that the utility recovers the utility's
10 reasonable costs in providing wholesale transmission services
11 necessary for the transaction from the entity for which the
12 transmission is provided so that the utility's other customers do
13 not bear the costs of the service. An entity operating under
14 Section 39.360 is not a third party for the purposes of this
15 subsection.

16 (i) Services provided by reliability assets when dispatched
17 under Section 38.079 are not considered to be ancillary services.

18 SECTION 1.07. Section 35.005, Utilities Code, is amended by
19 amending Subsection (a) and adding Subsections (d), (e), (f), (g),
20 and (h) to read as follows:

21 (a) The commission may require an electric utility to
22 provide transmission service at wholesale to another electric
23 utility, a qualifying facility, an exempt wholesale generator, an
24 entity operating under Section 39.360, or a power marketer and may
25 determine whether terms for the transmission service are
26 reasonable.

27 (d) To ensure customers in the ERCOT power region can

1 receive promptly the benefits associated with the Texas Energy
2 Insurance Program, the independent organization certified under
3 Section 39.151 for the ERCOT power region shall work with electric
4 utilities to ensure that each reliability asset is fully
5 interconnected in the ERCOT power region not later than the date the
6 reliability asset is ready for commercial operation. The
7 independent organization certified under Section 39.151 for the
8 ERCOT power region shall give priority to interconnecting each
9 reliability asset. An electric utility that enters into an
10 interconnection agreement for a reliability asset shall give
11 priority to interconnecting the reliability asset and complete
12 construction of any facilities necessary to interconnect the
13 reliability asset not later than the date the reliability asset is
14 ready for commercial operation.

15 (e) If the commission receives an application under Chapter
16 37 for a certificate of convenience and necessity related to
17 facilities necessary to interconnect a reliability asset, as
18 described by Subsection (d), and does not approve the application
19 before the 90th day after the date the commission received the
20 application, the deadline established by Subsection (d) is extended
21 one day for each day after the 90th day in which the commission does
22 not approve the application.

23 (f) The commission may extend the deadline established by
24 Subsection (d) after notice, hearing, and a determination on a
25 showing of good cause that fully interconnecting the reliability
26 asset before the deadline is not feasible.

27 (g) A transmission facility constructed to interconnect a

1 reliability asset, as described by Subsection (d), is considered to
2 be necessary for the service, accommodation, convenience, or safety
3 of the public for the purposes of Chapter 37.

4 (h) The commission shall permit an electric utility that
5 constructs and operates interconnecting facilities for a
6 reliability asset to recover the reasonable and necessary costs
7 incurred to interconnect the reliability asset.

8 SECTION 1.08. Section 36.001, Utilities Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) The commission may regulate the rates of certified
11 entities in the Texas Energy Insurance Program related to each
12 reliability asset only to the extent provided by Subchapter K. No
13 other provision of this chapter applies to rates related to a
14 reliability asset.

15 SECTION 1.09. Chapter 36, Utilities Code, is amended by
16 adding Subchapter K to read as follows:

17 SUBCHAPTER K. TEXAS ENERGY INSURANCE PROGRAM

18 Sec. 36.501. PROGRAM RATES. (a) If sufficient funding for
19 the Texas Energy Insurance Program is not available from state
20 money, the commission shall set a nonbypassable rate that must be
21 charged by transmission and distribution utilities, municipally
22 owned utilities, and electric cooperatives in the ERCOT power
23 region to provide funding for the Texas Energy Insurance Program.
24 The transmission and distribution utilities, municipally owned
25 utilities, and electric cooperatives shall:

26 (1) charge the nonbypassable rate to their respective
27 customers or, as appropriate, bill the customer's retail electric

1 provider; and

2 (2) remit to the independent organization certified
3 under Section 39.151 for the ERCOT power region each month the rate
4 revenue received under Subdivision (1).

5 (b) The independent organization certified under Section
6 39.151 for the ERCOT power region shall remit the rate revenue
7 received under Subsection (a)(2) to the comptroller.

8 (c) The nonbypassable rate required by Subsection (a) must
9 be based on all reliability asset rates approved under this
10 section.

11 (d) The commission shall set just and reasonable rates for
12 each entity operating under Section 39.360 for constructing,
13 owning, operating, and maintaining reliability assets. The rates
14 must:

15 (1) except as provided by Subdivision (2), be based on
16 the entity's just and reasonable costs of providing service,
17 including variable costs, allowance for funds used during
18 construction, and all costs of constructing, owning, operating, and
19 maintaining reliability assets, subject to:

20 (A) the rate of return on equity accepted by the
21 entity under Section 39.360(h)(1); and

22 (B) the total cost of reliability assets accepted
23 by the entity under Section 39.360(h)(2); and

24 (2) ensure that a certified entity does not receive
25 more than \$100 million per year in revenue per gigawatt of installed
26 generation capacity operated by the entity in the program.

27 (e) In addition to the considerations required by

1 Subsection (d), the commission shall consider the following
2 parameters when setting reliability asset rates for a certified
3 entity:

4 (1) the entity's capital financing structure,
5 including:

6 (A) the capital financing structure of any
7 corporation owned by or affiliated with the entity; and

8 (B) the entity's debt-to-equity ratio, including
9 any debt of the corporate parent that is used to fund any part of the
10 entity's equity;

11 (2) a 40-year depreciable life;

12 (3) allowance for funds used during construction;

13 (4) costs associated with ownership, operations,
14 maintenance, fuel, and other variable costs;

15 (5) reasonably incurred attorney's fees; and

16 (6) the estimated costs of constructing the
17 reliability asset before construction has begun and, after the
18 reliability asset is complete, the actual cost of the asset.

19 (f) Not later than the 185th day after the date a certified
20 entity submits to the commission a rate request for a reliability
21 asset, the commission shall set the reliability asset rate. The
22 commission shall incorporate the approved rate into the
23 commission's calculations of the nonbypassable rate under
24 Subsection (a) and require the newly calculated nonbypassable rate
25 to be collected beginning on the date the reliability asset is
26 commissioned.

27 (g) The comptroller shall disburse in monthly amounts

1 determined by the commission to each certified entity for which the
2 commission has set a reliability asset rate under this section the
3 rate revenue to which the certified entity is entitled.

4 (h) Not later than the 185th day after the commercial
5 operation date of a reliability asset, the commission shall:

6 (1) adjust the previously established rates for the
7 asset to reflect the actual construction costs if the commission
8 determines those costs were prudently incurred; and

9 (2) in collaboration with the independent
10 organization certified under Section 39.151 for the ERCOT power
11 region, reconcile any over-collections or under-collections.

12 (i) The commission shall adjust the rates for each
13 reliability asset annually to reflect changes to the costs of
14 ownership, operations and maintenance, and variable costs,
15 including fuel costs and interest rates. The adjustment must be
16 based on an annual filing by the certified entity that shows the
17 actual costs the entity incurred over the preceding year. The
18 commission shall apply any market revenues earned by the certified
19 entity for the operation of the reliability asset under Section
20 38.079 in the prior year as an offset to the rates. The review for a
21 rate adjustment under this subsection is limited to verifying the
22 accuracy of the incurred costs, the reconciliation of any
23 over-collections or under-collections, and the calculation of the
24 rates. A certified entity is not entitled to recover more than \$10
25 million per year for a single capital cost unless the commission
26 approves the cost before the entity incurs the cost.

27 Sec. 36.502. STRANDED COST RECOVERY. The commission by

1 rule shall establish a process to allow certified entities in the
2 Texas Energy Insurance Program to recover stranded costs if the
3 Texas Energy Insurance Program is repealed or lacks sufficient
4 funding.

5 SECTION 1.10. Subchapter D, Chapter 38, Utilities Code, is
6 amended by adding Section 38.079 to read as follows:

7 Sec. 38.079. TEXAS ENERGY INSURANCE PROGRAM. (a)
8 Reliability assets may be dispatched by the independent
9 organization certified under Section 39.151 for the ERCOT power
10 region in a manner that minimizes wholesale electric market
11 effects. Dispatch may occur:

12 (1) when the independent organization determines that
13 without generation by a regional reliability asset, an overload of
14 a transmission system element will result in load shed for that
15 region;

16 (2) when the independent organization determines that
17 the operation of a reliability asset is needed to resolve an actual
18 or anticipated violation of transmission security criteria;

19 (3) as a last resort to avoid ordering involuntary
20 load shedding; and

21 (4) for not more than 336 hours per year for testing
22 purposes and as directed by the independent organization.

23 (b) The commission shall require the independent
24 organization to:

25 (1) develop deployment criteria and protocols for
26 reliability assets, including a maximum notice time for deployment,
27 minimum run times, and other operational requirements needed to

1 support reliability; and

2 (2) allow the state to collect revenue under Section
3 36.501(b) but ensure that reliability assets do not participate in
4 the day-ahead or real-time ERCOT markets.

5 (c) The commission shall address long-term resource
6 adequacy and investment in the wholesale electric market in
7 conjunction with implementation of the Texas Energy Insurance
8 Program.

9 SECTION 1.11. Section 39.154, Utilities Code, is amended by
10 adding Subsection (f) to read as follows:

11 (f) For purposes of this section and Section 39.158, a
12 reliability asset is not considered to be installed generation
13 capacity.

14 SECTION 1.12. Section 39.155, Utilities Code, is amended by
15 amending Subsections (a) and (b) and adding Subsection (e) to read
16 as follows:

17 (a) Each person, municipally owned utility, electric
18 cooperative, and river authority that owns generation facilities
19 and offers electricity for sale in this state, other than an entity
20 operating under Section 39.360, shall report to the commission its
21 installed generation capacity, the total amount of capacity
22 available for sale to others, the total amount of capacity under
23 contract to others, the total amount of capacity dedicated to its
24 own use, its annual wholesale power sales in the state, its annual
25 retail power sales in the state, and any other information
26 necessary for the commission to assess market power or the
27 development of a competitive retail market in the state. The

1 commission shall by rule prescribe the nature and detail of the
2 reporting requirements and shall administer those reporting
3 requirements in a manner that ensures the confidentiality of
4 competitively sensitive information.

5 (b) The ERCOT independent system operator shall submit an
6 annual report to the commission identifying existing and potential
7 transmission and distribution constraints and system needs within
8 ERCOT, alternatives for meeting system needs, and recommendations
9 for meeting system needs. The first report shall be submitted on or
10 before October 1, 1999. Subsequent reports shall be submitted by
11 January 15 of each year or as determined necessary by the
12 commission. The reports required by this subsection must include a
13 section identifying existing and potential transmission
14 constraints that could affect the availability of any reliability
15 asset and include alternatives for meeting identified needs.

16 (e) Entities operating under Section 39.360 are not
17 considered to have market power when dispatched by an order of the
18 independent organization certified under Section 39.151 for the
19 ERCOT power region.

20 SECTION 1.13. Subchapter H, Chapter 39, Utilities Code, is
21 amended by adding Section 39.360 to read as follows:

22 Sec. 39.360. CERTIFICATION OF TEXAS ENERGY INSURANCE
23 PROGRAM. (a) The commission may certify one or more entities to
24 operate as participants in the Texas Energy Insurance Program by
25 owning and operating reliability assets. The commission may
26 certify any number of entities to operate any number of reliability
27 assets, but may not certify a total of more than 10 gigawatts of

1 generating capacity for the entire Texas Energy Insurance Program.

2 (b) An entity may not operate as part of the Texas Energy
3 Insurance Program unless the entity is certified by the commission
4 under this section.

5 (c) The commission shall:

6 (1) issue at least one request for proposals from
7 qualified applicants to serve as part of the Texas Energy Insurance
8 Program; and

9 (2) if the commission receives at least two
10 applications from qualified applicants in response to the request
11 described by Subdivision (1) before the expiration of the period
12 provided by Subsection (e), select and certify at least two
13 qualified applicants not later than the 90th day after the date the
14 commission issues the request.

15 (d) To ensure efficient distribution of reliability assets,
16 the commission may designate regions in the ERCOT power region and
17 issue requests for proposals under Subsection (c) for specific
18 amounts of generation capacity by region.

19 (e) An applicant must submit an application under
20 Subsection (c) not later than the 60th day after the date the
21 commission issues a request for proposals under that subsection.

22 (f) An entity that is prohibited by this title from owning
23 or operating a generation asset may apply to be certified to be part
24 of the Texas Energy Insurance Program under this section.

25 (g) To be certified as part of the Texas Energy Insurance
26 Program, an applicant must:

27 (1) establish financial stability and expertise by

1 demonstrating that:

2 (A) the applicant or the applicant's parent
3 company or operating partner has an investment grade credit rating;
4 and

5 (B) the applicant or the applicant's parent
6 company or operating partner is able to fund the investment as
7 demonstrated by proof of access to adequate financing;

8 (2) establish industry expertise by demonstrating
9 that the applicant is a river authority that owns or operates
10 generation facilities, an electric utility, a municipally owned
11 utility, or an electric cooperative, or the applicant or the
12 applicant's parent company owns or operates electric generation
13 assets totaling at least 2,500 megawatts;

14 (3) establish project quality standards by
15 demonstrating that:

16 (A) the applicant is able to provide a parent
17 performance guarantee that the independent organization certified
18 under Section 39.151 for the ERCOT power region or the commission
19 may draw upon during each season, as defined by the independent
20 organization, if a reliability asset does not perform and
21 performance is not excused under Subsection (m), in the amount of
22 \$400 million for every gigawatt of generating capacity for which
23 the applicant is applying to be certified; and

24 (B) each reliability asset will be weatherized,
25 capable of starting up and generating electricity without requiring
26 outside power or support from the grid, and in operation not later
27 than the last day of the 48th month after certification, unless

1 interconnection delays require a later operation date; and

2 (4) pledge:

3 (A) that any net revenue earned during testing or
4 operating would be for the benefit of the ERCOT power region; and

5 (B) not to sell any reliability asset over the
6 life of the reliability asset while the applicant is certified as
7 part of the Texas Energy Insurance Program without prior approval
8 of the commission.

9 (h) Each applicant must provide in the application a
10 statement:

11 (1) agreeing to a rate of return on equity the
12 applicant will accept while operating as part of the Texas Energy
13 Insurance Program, which may not exceed 10 percent;

14 (2) of the total cost of reliability assets for which
15 the applicant will request recovery under Subchapter K, Chapter 36,
16 while operating as part of the Texas Energy Insurance Program,
17 which may not exceed \$1 billion per gigawatt of installed
18 generation capacity operated in the program; and

19 (3) agreeing to the rates and revenues authorized
20 under Subchapter K, Chapter 36.

21 (i) The commission may certify an entity to be part of the
22 Texas Energy Insurance Program if the entity submits a qualifying
23 application that includes:

24 (1) proof that the requirements of Subsection (g) have
25 been met;

26 (2) a description of the location or proposed location
27 of each reliability asset;

1 (3) a commitment to construct, own, operate, and
2 maintain reliability assets for a time period not less than the
3 useful life of the assets;

4 (4) a commitment that the reliability assets will
5 include at each site resources to allow the provision of generation
6 at full load for at least 168 continuous hours or the maximum number
7 of continuous hours authorized for continuous operation under
8 permits issued under state and federal law;

9 (5) an affidavit affirming that the reliability assets
10 will be available to dispatch in a manner that provides the
11 independent organization certified under Section 39.151 for the
12 ERCOT power region, in times of emergency, natural disaster, and
13 testing, with access to power at full output for up to seven
14 consecutive days, after accounting for ramp up and ramp down times
15 required by the independent organization;

16 (6) proof of the posting of a parent performance
17 guarantee that the independent organization certified under
18 Section 39.151 for the ERCOT power region or the commission may draw
19 upon during each season, as defined by the independent
20 organization, if a reliability asset does not perform and
21 performance is not excused under Subsection (m), in the amount of
22 \$400 million for every gigawatt of generating capacity for which
23 the applicant is applying to be certified;

24 (7) proof that the applicant or the applicant's parent
25 company or operating partner meets the requirements of Subsection
26 (g)(1); and

27 (8) proof that the applicant can follow telemetry from

1 the independent organization certified under Section 39.151 for the
2 ERCOT power region.

3 (j) The commission shall provide a process to amend a
4 certificate to account for the addition of any new reliability
5 asset.

6 (k) The commission may not revoke a certificate unless after
7 notice and an opportunity for hearing before the commission, the
8 commission finds that the certified entity:

9 (1) failed to dispatch sufficient energy from
10 reliability assets when called upon by the independent organization
11 certified under Section 39.151 for the ERCOT power region or the
12 commission and the failure cannot be excused by factors outside the
13 entity's control;

14 (2) has not fulfilled commitments made in the entity's
15 application or complied with statutory or regulatory requirements
16 of being certified, after reasonable notice from the commission; or

17 (3) no longer meets the eligibility requirements for
18 participating in the Texas Energy Insurance Program, unless the
19 entity has presented an actionable plan acceptable to the
20 commission to meet the requirements.

21 (l) Each certified entity shall comply with the
22 commissioning requirements and reliability standards adopted by
23 the independent organization certified under Section 39.151 for the
24 ERCOT power region to ensure the reliability of the ERCOT region.

25 (m) The commission or the independent organization
26 certified under Section 39.151 for the ERCOT power region may not
27 draw upon a parent performance guarantee provided by a certified

1 entity and may not impose a fine or penalty on a certified entity
2 for failure to provide service to the extent that the inability to
3 provide service is the result of:

4 (1) the actions of a transmission service provider
5 related to transmission service; or

6 (2) the actions of the independent organization
7 certified under Section 39.151 for the ERCOT power region,
8 including scheduled routine maintenance.

9 (n) The commission may not require a bond, letter of credit,
10 or other security from a certified entity except for a parent
11 performance guarantee described by this section and may not require
12 the expansion of a parent performance guarantee. If drawn upon, a
13 parent performance guarantee may not be required to be replenished
14 or expanded. If the parent performance guarantee for a reliability
15 asset is exhausted, the commission may decertify the certified
16 entity to operate the asset. The commission may consult with the
17 Legislative Budget Board in implementing this subsection.

18 (o) A certification issued under this section may be
19 transferred only with the prior approval of the commission. Before
20 transferring ownership of a reliability asset to another entity, a
21 certified entity must apply to the commission for permission to
22 transfer the asset. The commission may not approve the transfer of
23 a reliability asset that is sold unless the sale is conditioned on
24 the purchaser owning, operating, and maintaining the asset for the
25 duration of the commitment made under Subsection (i)(3). A
26 transfer of a reliability asset under this subsection does not
27 affect the participation of the asset in the Texas Energy Insurance

1 Program. If the commission does not approve the transfer and the
2 entity sells the asset, the commission shall decertify the entity
3 to operate that asset as part of the Texas Energy Insurance Program.

4 (p) On the request of a certified entity, after the 40th
5 anniversary of the commissioning date of a reliability asset, the
6 commission shall decertify the entity to operate the asset as a
7 reliability asset and allow the entity to apply to operate the asset
8 in the competitive market.

9 SECTION 1.14. Section 382.05155, Health and Safety Code, is
10 amended by adding Subsection (b-1) to read as follows:

11 (b-1) A permit for a reliability asset, as defined by
12 Section 31.002, Utilities Code, is considered to benefit the
13 economy of this state for the purposes of Subsection (b).

14 SECTION 1.15. Not later than February 1, 2024, the Public
15 Utility Commission of Texas shall issue a request for proposals
16 required by Section 39.360(c), Utilities Code, as added by this
17 article.

18 SECTION 1.16. The Public Utility Commission of Texas shall
19 adopt any rules necessary to implement this article not later than
20 December 1, 2023.

21 SECTION 1.17. To the extent of any conflict, this article
22 prevails over another Act of the 88th Legislature, Regular Session,
23 2023, relating to nonsubstantive additions to and corrections in
24 enacted codes.

25 SECTION 1.18. This article takes effect September 1, 2023.

26 ARTICLE 2. GENERATING FACILITY FUNDING

27 SECTION 2.01. Subtitle B, Title 2, Utilities Code, is

1 amended by adding Chapter 34 to read as follows:

2 CHAPTER 34. GENERATING FACILITY FUNDING

3 Sec. 34.0101. DEFINITIONS. In this chapter:

4 (1) "Advisory committee" means the Texas Energy
5 Insurance Fund Advisory Committee.

6 (2) "Fund" means the Texas energy insurance fund
7 established by Section 49-q, Article III, Texas Constitution.

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

10 Sec. 34.0102. FUND. (a) The fund is a special fund in the
11 state treasury outside the general revenue fund to be administered
12 and used by the commission for the purposes authorized by this
13 chapter. The commission may establish separate accounts in the
14 fund.

15 (b) The fund and the fund's accounts are kept and held by the
16 trust company for and in the name of the commission.

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

19 (d) The fund consists of:

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

24 (2) revenue that the legislature by statute dedicates
25 for deposit to the credit of the fund;

26 (3) investment earnings and interest earned on money
27 in the fund; and

1 (4) gifts, grants, and donations contributed to the
2 fund.

3 Sec. 34.0103. LOANS FOR MAINTENANCE AND MODERNIZATION. (a)

4 The commission may use money in the fund without further
5 appropriation to provide loans to finance maintenance or
6 modernization of dispatchable electric generating facilities
7 operating in the ERCOT power region. For the purposes of this
8 section, a generating facility is considered to be dispatchable if
9 the facility's output can be controlled primarily by forces under
10 human control.

11 (b) Each year, the commission shall produce a list of
12 dispatchable electric generating facilities operating in the ERCOT
13 power region and estimate the potential costs to maintain and
14 modernize the facilities during the following five years. The
15 commission shall give priority to loan applications under this
16 section that the commission determines will provide the highest
17 ratio of dispatchable megawatts maintained to project costs.

18 (c) The commission shall evaluate an application for a loan
19 under this section based on the applicant's:

- 20 (1) efforts and achievements in conserving resources;
21 (2) quality of services;
22 (3) efficiency of operations;
23 (4) quality of management;
24 (5) proposed improvement in availability of the
25 generation facility for which the loan is requested; and
26 (6) previous Texas energy insurance fund loan history,
27 with a preference toward entities that have not applied for or been

1 granted a loan previously.

2 (d) The commission may provide a loan under this section
3 only for maintenance or modernization of a facility that is capable
4 of operating for at least five years after the date the loan is
5 received.

6 (e) Proceeds of a loan received under this section may not
7 be used for:

8 (1) compliance with weatherization standards adopted
9 before December 1, 2023;

10 (2) debt payments; or

11 (3) expenses not related to maintaining or modernizing
12 the electric generating facility.

13 (f) An electric utility may not receive a loan under this
14 section.

15 (g) The commission may require immediate repayment of a loan
16 issued under this section if the recipient of the loan stops
17 operating the facility for which the loan was received before the
18 fifth anniversary of the date on which the loan was disbursed.

19 (h) A loan provided under this chapter may not bear an
20 interest rate of more than zero percent.

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

24 Sec. 34.0104. SOURCES OF MONEY FOR LOANS FOR TEXAS ENERGY
25 INSURANCE PROGRAM RELIABILITY ASSETS. The commission may use any
26 money appropriated to the commission for the purpose of providing a
27 loan, at zero percent interest, to an entity certified under

1 Section 39.360 to be used to reduce debt associated with
2 constructing or operating a reliability asset. The commission may
3 use without legislative appropriation money from the fund for that
4 purpose.

5 Sec. 34.0105. MAXIMUM LOAN AMOUNT. If the commission has
6 more than four pending applications for loans to be made from the
7 fund on the date the commission awards a loan, the amount of the
8 loan awarded may not exceed 25 percent of the fund balance on that
9 date.

10 Sec. 34.0106. MANAGEMENT AND INVESTMENT OF FUND. (a) The
11 trust company shall hold the fund, and any accounts established in
12 the fund, for and in the name of the commission, taking into account
13 the purposes for which money in the fund may be used. The fund may
14 be invested with the state treasury pool and comingled with other
15 investments.

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

19 (c) In managing the assets of the fund, the trust company
20 may acquire, exchange, sell, supervise, manage, or retain any kind
21 of investment that a prudent investor, exercising reasonable care,
22 skill, and caution, would acquire or retain in light of the
23 purposes, terms, distribution requirements, and other
24 circumstances of the fund then prevailing, taking into
25 consideration the investment of all the assets of the fund rather
26 than a single investment.

27 (d) The reasonable expenses of managing the fund's assets

1 shall be paid from the fund.

2 (e) The trust company annually shall provide a written
3 report to the commission and to the advisory committee with respect
4 to the investment of the fund.

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

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

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

18 Sec. 34.0107. RECEIVERSHIP OF DEFAULT GENERATING FACILITY.

19 (a) In this section, "default" means:

20 (1) default in payment of the principal of or interest
21 on a loan; or

22 (2) a failure to perform any of the terms of a loan.

23 (b) The state, including the commission, the advisory
24 committee, and the trust company, may not retain an ownership
25 interest in a project or facility for which a loan is provided under
26 this chapter.

27 (c) In the event of a default on a loan made under this

1 chapter, at the request of the commission, the attorney general
2 shall bring suit in a district court in Travis County for the
3 appointment of a receiver to collect the assets and carry on the
4 business of a loan recipient if the action is necessary to cure a
5 default by the recipient.

6 (d) The court shall vest a receiver appointed by the court
7 with any power or duty the court finds necessary to cure the
8 default, including the power or duty to:

9 (1) perform audits;

10 (2) direct ongoing operation of the assets;

11 (3) fund reserve accounts;

12 (4) make payments of the principal of or interest on
13 bonds, securities, or other obligations; and

14 (5) take any other action necessary to prevent or to
15 remedy the default, including the sale of assets.

16 (e) The receiver shall execute a bond in an amount to be set
17 by the court to ensure the proper performance of the receiver's
18 duties.

19 (f) After appointment and execution of bond, the receiver
20 shall take possession of the books, records, accounts, and assets
21 of the defaulting loan recipient specified by the court. Until
22 discharged by the court, the receiver shall perform the duties that
23 the court directs and shall strictly observe the final order
24 involved.

25 (g) On a showing of good cause by the defaulting loan
26 recipient, the court may dissolve the receivership.

27 Sec. 34.0108. TEXAS ENERGY INSURANCE FUND ADVISORY

1 COMMITTEE. (a) The advisory committee is composed of the following
2 six members:

3 (1) three members of the senate appointed by the
4 lieutenant governor, including:

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

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

10 (2) three members of the house of representatives
11 appointed by the speaker of the house of representatives,
12 including:

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

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

18 (b) A member of the advisory committee serves at the will of
19 the person who appointed the member.

20 (c) The lieutenant governor shall appoint a co-presiding
21 officer of the advisory committee from among the members appointed
22 by the lieutenant governor. The speaker of the house of
23 representatives shall appoint a co-presiding officer of the
24 advisory committee from among the members appointed by the speaker.

25 (d) The advisory committee may hold public hearings, formal
26 meetings, and work sessions. Either co-presiding officer of the
27 advisory committee may call a public hearing, formal meeting, or

1 work session of the advisory committee at any time. The advisory
2 committee may not take formal action at a public hearing, formal
3 meeting, or work session unless a quorum of the committee is
4 present.

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

14 (f) The advisory committee:

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

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

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

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

25 (i) The advisory committee is subject to Chapter 325,
26 Government Code (Texas Sunset Act). Unless continued in existence
27 as provided by that chapter, the advisory committee is abolished

1 September 1, 2035.

2 Sec. 34.0109. RULES. (a) The commission by rule may
3 establish procedures for:

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

6 (2) the administration of the fund.

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

10 Sec. 34.0110. TEXAS ENERGY INSURANCE PROGRAM CUSTOMER
11 PAYMENTS. (a) The commission may use any money appropriated to the
12 commission for the purpose of offsetting amounts owed to certified
13 entities under Section 36.501 on behalf of customers of
14 transmission and distribution utilities, municipally owned
15 utilities, and electric cooperatives. The commission may use
16 without legislative appropriation money from the fund for that
17 purpose.

18 (b) The comptroller shall deposit revenue received under
19 Section 36.501(b) to the credit of the fund.

20 (c) Money obtained by the independent organization
21 certified under Section 39.151 for the ERCOT power region or the
22 commission through drawing upon a parent performance guarantee as
23 described by Section 39.360(g)(3) must be deposited to the credit
24 of the fund.

25 (d) The comptroller shall make the disbursements required
26 by Section 36.501(g) from the fund.

27 SECTION 2.02. This article takes effect on the date on which

S.B. No. 6

1 the constitutional amendment proposed by the 88th Legislature,
2 Regular Session, 2023, providing for the creation of the Texas
3 energy insurance fund and the authorization of other funding
4 mechanisms to support the construction and operation of electric
5 generating facilities takes effect. If that amendment is not
6 approved by the voters, this article has no effect.