

1-1 By: Schwertner, King, Kolkhorst S.B. No. 6
 1-2 (In the Senate - Filed March 9, 2023; March 9, 2023, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 4, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0, three present not
 1-6 voting; April 4, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Schwertner	X			
1-9 King	X			
1-10 Birdwell	X			
1-11 Campbell	X			
1-12 Creighton	X			
1-13 Johnson				X
1-14 Kolkhorst	X			
1-15 Menéndez				X
1-16 Middleton	X			
1-17 Nichols	X			
1-18 Zaffirini				X

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 6 By: Schwertner

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the establishment of the Texas Energy Insurance Program
 1-24 and other funding mechanisms to support the construction and
 1-25 operation of electric generating facilities.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 ARTICLE 1. TEXAS ENERGY INSURANCE PROGRAM

1-28 SECTION 1.01. Section 11.003(16), Utilities Code, is
 1-29 amended to read as follows:

1-30 (16) "Rate" includes:

1-31 (A) any compensation, tariff, charge, fare,
 1-32 toll, rental, or classification that is directly or indirectly
 1-33 demanded, observed, charged, or collected by a public utility or an
 1-34 entity operating under Section 39.360 for a service, product, or
 1-35 commodity described in the definition of utility in Section 31.002
 1-36 or 51.002; and

1-37 (B) a rule, practice, or contract affecting the
 1-38 compensation, tariff, charge, fare, toll, rental, or
 1-39 classification.

1-40 SECTION 1.02. Section 31.002(6), Utilities Code, as amended
 1-41 by Chapters 255 (H.B. 1572) and 389 (S.B. 1202), Acts of the 87th
 1-42 Legislature, Regular Session, 2021, is reenacted and amended to
 1-43 read as follows:

1-44 (6) "Electric utility" means a person or river
 1-45 authority that owns or operates for compensation in this state
 1-46 equipment or facilities to produce, generate, transmit,
 1-47 distribute, sell, or furnish electricity in this state. The term
 1-48 includes a lessee, trustee, or receiver of an electric utility and a
 1-49 recreational vehicle park owner who does not comply with Subchapter
 1-50 C, Chapter 184, with regard to the metered sale of electricity at
 1-51 the recreational vehicle park. The term does not include:

1-52 (A) a municipal corporation;

1-53 (B) a qualifying facility;

1-54 (C) a power generation company;

1-55 (D) an exempt wholesale generator;

1-56 (E) a power marketer;

1-57 (F) a corporation described by Section 32.053 to
 1-58 the extent the corporation sells electricity exclusively at
 1-59 wholesale and not to the ultimate consumer;

1-60 (G) an electric cooperative;

- 2-1 (H) a retail electric provider;
- 2-2 (I) this state or an agency of this state; ~~[or]~~
- 2-3 (J) an entity operating under Section 39.360; or
- 2-4 (K) a person not otherwise an electric utility

2-5 who:

2-6 (i) furnishes an electric service or
 2-7 commodity only to itself, its employees, or its tenants as an
 2-8 incident of employment or tenancy, if that service or commodity is
 2-9 not resold to or used by others;

2-10 (ii) owns or operates in this state
 2-11 equipment or facilities to produce, generate, transmit,
 2-12 distribute, sell, or furnish electric energy to an electric
 2-13 utility, if the equipment or facilities are used primarily to
 2-14 produce and generate electric energy for consumption by that
 2-15 person;

2-16 (iii) owns or operates in this state a
 2-17 recreational vehicle park that provides metered electric service in
 2-18 accordance with Subchapter C, Chapter 184; ~~[or]~~

2-19 (iv) owns or operates equipment used solely
 2-20 to provide electricity charging service for consumption by an
 2-21 alternatively fueled vehicle, as defined by Section 502.004,
 2-22 Transportation Code; or

2-23 (v) ~~[(iv)]~~ is an electric generation
 2-24 equipment lessor or operator.

2-25 SECTION 1.03. Section 31.002, Utilities Code, is amended by
 2-26 amending Subdivisions (10), (15), (19), and (20) and adding
 2-27 Subdivisions (15-a) and (18-a) to read as follows:

2-28 (10) "Power generation company":

2-29 (A) means a person, including a person who owns
 2-30 or operates a distributed natural gas generation facility, that:

2-31 (i) ~~[(A)]~~ generates electricity that is
 2-32 intended to be sold at wholesale, including the owner or operator of
 2-33 electric energy storage equipment or facilities to which Subchapter
 2-34 E, Chapter 35, applies;

2-35 (ii) ~~[(B)]~~ does not own a transmission or
 2-36 distribution facility in this state other than an essential
 2-37 interconnecting facility, a facility not dedicated to public use,
 2-38 or a facility otherwise excluded from the definition of "electric
 2-39 utility" under this section; and

2-40 (iii) ~~[(C)]~~ does not have a certificated
 2-41 service area, although its affiliated electric utility or
 2-42 transmission and distribution utility may have a certificated
 2-43 service area; and

2-44 (B) does not include an entity operating under
 2-45 Section 39.360.

2-46 (15) "Rate" includes:

2-47 (A) a compensation, tariff, charge, fare, toll,
 2-48 rental, or classification that is directly or indirectly demanded,
 2-49 observed, charged, or collected by an electric utility for a
 2-50 service, product, or commodity described in the definition of
 2-51 electric utility in this section and a rule, practice, or contract
 2-52 affecting the compensation, tariff, charge, fare, toll, rental, or
 2-53 classification that must be approved by a regulatory authority; or

2-54 (B) Texas Energy Insurance Program charges.

2-55 (15-a) "Reliability asset" means a gas-fueled
 2-56 generation asset with on-site fuel storage that is located in the
 2-57 ERCOT power region and is owned and operated by an entity certified
 2-58 under Section 39.360 for the purpose of providing power when
 2-59 dispatched under Section 38.079.

2-60 (18-a) "Texas Energy Insurance Program" means the
 2-61 program established under Section 39.360.

2-62 (19) "Transmission and distribution utility" means a
 2-63 person or river authority that owns or operates for compensation in
 2-64 this state equipment or facilities to transmit or distribute
 2-65 electricity, except for facilities necessary to interconnect a
 2-66 generation facility with the transmission or distribution network,
 2-67 a facility not dedicated to public use, or a facility otherwise
 2-68 excluded from the definition of "electric utility" under this
 2-69 section, in a qualifying power region certified under Section

3-1 39.152, but does not include a municipally owned utility, ~~[or]~~ an
3-2 electric cooperative, or an entity operating under Section 39.360.

3-3 (20) "Transmission service" includes construction or
3-4 enlargement of facilities, transmission over distribution
3-5 facilities, control area services, scheduling resources,
3-6 regulation services, reactive power support, voltage control,
3-7 provision of operating reserves, and any other associated
3-8 electrical service the commission determines appropriate, except
3-9 that, on and after the implementation of customer choice, control
3-10 area services, scheduling resources, regulation services,
3-11 provision of operating reserves, and reactive power support,
3-12 voltage control, ~~[and]~~ other services provided by generation
3-13 resources, and services provided by an entity operating under
3-14 Section 39.360 are not "transmission service."

3-15 SECTION 1.04. Section 33.001, Utilities Code, is amended by
3-16 adding Subsection (b) to read as follows:

3-17 (b) The governing body of a municipality does not have
3-18 jurisdiction over the Texas Energy Insurance Program.

3-19 SECTION 1.05. Section 33.008(a), Utilities Code, is amended
3-20 to read as follows:

3-21 (a) Following the end of the freeze period for a
3-22 municipality that has been served by an electric utility, and
3-23 following the date a municipally owned utility or an electric
3-24 cooperative has implemented customer choice for a municipality that
3-25 has been served by that municipally owned utility or electric
3-26 cooperative, a municipality may impose on an electric utility,
3-27 transmission and distribution utility, municipally owned utility,
3-28 or electric cooperative, as appropriate, that provides
3-29 distribution service within the municipality a reasonable charge as
3-30 specified in Subsection (b) for the use of a municipal street,
3-31 alley, or public way to deliver electricity to a retail customer. A
3-32 municipality may not impose a charge on:

3-33 (1) an electric utility, or transmission and
3-34 distribution utility, municipally owned utility, or electric
3-35 cooperative for electric service provided outside the
3-36 municipality;

3-37 (2) a qualifying facility;

3-38 (3) an exempt wholesale generator;

3-39 (4) a power marketer;

3-40 (5) a retail electric provider;

3-41 (6) a power generation company;

3-42 (7) a person that generates electricity on and after
3-43 January 1, 2002; ~~[or]~~

3-44 (8) an aggregator, as that term is defined by Section
3-45 39.353; or

3-46 (9) an entity operating under Section 39.360.

3-47 SECTION 1.06. Section 35.004, Utilities Code, is amended by
3-48 amending Subsections (b) and (c) and adding Subsection (i) to read
3-49 as follows:

3-50 (b) The commission shall ensure that an electric utility or
3-51 transmission and distribution utility provides nondiscriminatory
3-52 access to wholesale transmission service for qualifying
3-53 facilities, exempt wholesale generators, power marketers, power
3-54 generation companies, retail electric providers, entities
3-55 operating under Section 39.360, and other electric utilities or
3-56 transmission and distribution utilities.

3-57 (c) When an electric utility, electric cooperative, or
3-58 transmission and distribution utility provides wholesale
3-59 transmission service within ERCOT at the request of a third party,
3-60 the commission shall ensure that the utility recovers the utility's
3-61 reasonable costs in providing wholesale transmission services
3-62 necessary for the transaction from the entity for which the
3-63 transmission is provided so that the utility's other customers do
3-64 not bear the costs of the service. An entity operating under
3-65 Section 39.360 is not a third party for the purposes of this
3-66 subsection.

3-67 (i) Services provided by reliability assets when dispatched
3-68 under Section 38.079 are not considered to be ancillary services.

3-69 SECTION 1.07. Section 35.005, Utilities Code, is amended by

4-1 amending Subsection (a) and adding Subsections (d), (e), (f), (g),
4-2 and (h) to read as follows:

4-3 (a) The commission may require an electric utility to
4-4 provide transmission service at wholesale to another electric
4-5 utility, a qualifying facility, an exempt wholesale generator, an
4-6 entity operating under Section 39.360, or a power marketer and may
4-7 determine whether terms for the transmission service are
4-8 reasonable.

4-9 (d) To ensure customers in the ERCOT power region can
4-10 receive promptly the benefits associated with the Texas Energy
4-11 Insurance Program, the independent organization certified under
4-12 Section 39.151 for the ERCOT power region shall work with electric
4-13 utilities to ensure that each reliability asset is fully
4-14 interconnected in the ERCOT power region not later than the date the
4-15 reliability asset is ready for commercial operation. The
4-16 independent organization certified under Section 39.151 for the
4-17 ERCOT power region shall give priority to interconnecting each
4-18 reliability asset. An electric utility that enters into an
4-19 interconnection agreement for a reliability asset shall give
4-20 priority to interconnecting the reliability asset and complete
4-21 construction of any facilities necessary to interconnect the
4-22 reliability asset not later than the date the reliability asset is
4-23 ready for commercial operation.

4-24 (e) If the commission receives an application under Chapter
4-25 37 for a certificate of convenience and necessity related to
4-26 facilities necessary to interconnect a reliability asset, as
4-27 described by Subsection (d), and does not approve the application
4-28 before the 90th day after the date the commission received the
4-29 application, the deadline established by Subsection (d) is extended
4-30 one day for each day after the 90th day in which the commission does
4-31 not approve the application.

4-32 (f) The commission may extend the deadline established by
4-33 Subsection (d) after notice, hearing, and a determination on a
4-34 showing of good cause that fully interconnecting the reliability
4-35 asset before the deadline is not feasible.

4-36 (g) A transmission facility constructed to interconnect a
4-37 reliability asset, as described by Subsection (d), is considered to
4-38 be necessary for the service, accommodation, convenience, or safety
4-39 of the public for the purposes of Chapter 37.

4-40 (h) The commission shall permit an electric utility that
4-41 constructs and operates interconnecting facilities for a
4-42 reliability asset to recover the reasonable and necessary costs
4-43 incurred to interconnect the reliability asset.

4-44 SECTION 1.08. Section 36.001, Utilities Code, is amended by
4-45 adding Subsection (c) to read as follows:

4-46 (c) The commission may regulate the rates of certified
4-47 entities in the Texas Energy Insurance Program related to each
4-48 reliability asset only to the extent provided by Subchapter K. No
4-49 other provision of this chapter applies to rates related to a
4-50 reliability asset.

4-51 SECTION 1.09. Chapter 36, Utilities Code, is amended by
4-52 adding Subchapter K to read as follows:

4-53 SUBCHAPTER K. TEXAS ENERGY INSURANCE PROGRAM

4-54 Sec. 36.501. PROGRAM RATES. (a) If sufficient funding for
4-55 the Texas Energy Insurance Program is not available from state
4-56 money, the commission shall set a nonbypassable rate that must be
4-57 charged by transmission and distribution utilities, municipally
4-58 owned utilities, and electric cooperatives in the ERCOT power
4-59 region to provide funding for the Texas Energy Insurance Program.
4-60 The transmission and distribution utilities, municipally owned
4-61 utilities, and electric cooperatives shall:

4-62 (1) charge the nonbypassable rate to their respective
4-63 customers or, as appropriate, bill the customer's retail electric
4-64 provider; and

4-65 (2) remit to the independent organization certified
4-66 under Section 39.151 for the ERCOT power region each month the rate
4-67 revenue received under Subdivision (1).

4-68 (b) The independent organization certified under Section
4-69 39.151 for the ERCOT power region shall remit the rate revenue

5-1 received under Subsection (a)(2) to the comptroller.

5-2 (c) The nonbypassable rate required by Subsection (a) must
5-3 be based on all reliability asset rates approved under this
5-4 section.

5-5 (d) The commission shall set just and reasonable rates for
5-6 each entity operating under Section 39.360 for constructing,
5-7 owning, operating, and maintaining reliability assets. The rates
5-8 must:

5-9 (1) except as provided by Subdivision (2), be based on
5-10 the entity's just and reasonable costs of providing service,
5-11 including variable costs, allowance for funds used during
5-12 construction, and all costs of constructing, owning, operating, and
5-13 maintaining reliability assets, subject to:

5-14 (A) the rate of return on equity accepted by the
5-15 entity under Section 39.360(h)(1); and

5-16 (B) the total cost of reliability assets accepted
5-17 by the entity under Section 39.360(h)(2); and

5-18 (2) ensure that a certified entity does not receive
5-19 more than \$100 million per year in revenue per gigawatt of installed
5-20 generation capacity operated by the entity in the program.

5-21 (e) In addition to the considerations required by
5-22 Subsection (d), the commission shall consider the following
5-23 parameters when setting reliability asset rates for a certified
5-24 entity:

5-25 (1) the entity's capital financing structure,
5-26 including:

5-27 (A) the capital financing structure of any
5-28 corporation owned by or affiliated with the entity; and

5-29 (B) the entity's debt-to-equity ratio, including
5-30 any debt of the corporate parent that is used to fund any part of the
5-31 entity's equity;

5-32 (2) a 40-year depreciable life;

5-33 (3) allowance for funds used during construction;

5-34 (4) costs associated with ownership, operations,
5-35 maintenance, fuel, and other variable costs;

5-36 (5) reasonably incurred attorney's fees; and

5-37 (6) the estimated costs of constructing the
5-38 reliability asset before construction has begun and, after the
5-39 reliability asset is complete, the actual cost of the asset.

5-40 (f) Not later than the 185th day after the date a certified
5-41 entity submits to the commission a rate request for a reliability
5-42 asset, the commission shall set the reliability asset rate. The
5-43 commission shall incorporate the approved rate into the
5-44 commission's calculations of the nonbypassable rate under
5-45 Subsection (a) and require the newly calculated nonbypassable rate
5-46 to be collected beginning on the date the reliability asset is
5-47 commissioned.

5-48 (g) The comptroller shall disburse in monthly amounts
5-49 determined by the commission to each certified entity for which the
5-50 commission has set a reliability asset rate under this section the
5-51 rate revenue to which the certified entity is entitled.

5-52 (h) Not later than the 185th day after the commercial
5-53 operation date of a reliability asset, the commission shall:

5-54 (1) adjust the previously established rates for the
5-55 asset to reflect the actual construction costs if the commission
5-56 determines those costs were prudently incurred; and

5-57 (2) in collaboration with the independent
5-58 organization certified under Section 39.151 for the ERCOT power
5-59 region, reconcile any over-collections or under-collections.

5-60 (i) The commission shall adjust the rates for each
5-61 reliability asset annually to reflect changes to the costs of
5-62 ownership, operations and maintenance, and variable costs,
5-63 including fuel costs and interest rates. The adjustment must be
5-64 based on an annual filing by the certified entity that shows the
5-65 actual costs the entity incurred over the preceding year. The
5-66 commission shall apply any market revenues earned by the certified
5-67 entity for the operation of the reliability asset under Section
5-68 38.079 in the prior year as an offset to the rates. The review for a
5-69 rate adjustment under this subsection is limited to verifying the

6-1 accuracy of the incurred costs, the reconciliation of any
 6-2 over-collections or under-collections, and the calculation of the
 6-3 rates. A certified entity is not entitled to recover more than \$10
 6-4 million per year for a single capital cost unless the commission
 6-5 approves the cost before the entity incurs the cost.

6-6 Sec. 36.502. STRANDED COST RECOVERY. The commission by
 6-7 rule shall establish a process to allow certified entities in the
 6-8 Texas Energy Insurance Program to recover stranded costs if the
 6-9 Texas Energy Insurance Program is repealed or lacks sufficient
 6-10 funding.

6-11 SECTION 1.10. Subchapter D, Chapter 38, Utilities Code, is
 6-12 amended by adding Section 38.079 to read as follows:

6-13 Sec. 38.079. TEXAS ENERGY INSURANCE PROGRAM. (a)
 6-14 Reliability assets may be dispatched by the independent
 6-15 organization certified under Section 39.151 for the ERCOT power
 6-16 region in a manner that minimizes wholesale electric market
 6-17 effects. Dispatch may occur:

6-18 (1) when the independent organization determines that
 6-19 without generation by a regional reliability asset, an overload of
 6-20 a transmission system element will result in load shed for that
 6-21 region;

6-22 (2) when the independent organization determines that
 6-23 the operation of a reliability asset is needed to resolve an actual
 6-24 or anticipated violation of transmission security criteria;

6-25 (3) as a last resort to avoid ordering involuntary
 6-26 load shedding; and

6-27 (4) for not more than 336 hours per year for testing
 6-28 purposes and as directed by the independent organization.

6-29 (b) The commission shall require the independent
 6-30 organization to:

6-31 (1) develop deployment criteria and protocols for
 6-32 reliability assets, including a maximum notice time for deployment,
 6-33 minimum run times, and other operational requirements needed to
 6-34 support reliability; and

6-35 (2) allow the state to collect revenue under Section
 6-36 36.501(b) but ensure that reliability assets do not participate in
 6-37 the day-ahead or real-time ERCOT markets.

6-38 (c) The commission shall address long-term resource
 6-39 adequacy and investment in the wholesale electric market in
 6-40 conjunction with implementation of the Texas Energy Insurance
 6-41 Program.

6-42 SECTION 1.11. Section 39.154, Utilities Code, is amended by
 6-43 adding Subsection (f) to read as follows:

6-44 (f) For purposes of this section and Section 39.158, a
 6-45 reliability asset is not considered to be installed generation
 6-46 capacity.

6-47 SECTION 1.12. Section 39.155, Utilities Code, is amended by
 6-48 amending Subsections (a) and (b) and adding Subsection (e) to read
 6-49 as follows:

6-50 (a) Each person, municipally owned utility, electric
 6-51 cooperative, and river authority that owns generation facilities
 6-52 and offers electricity for sale in this state, other than an entity
 6-53 operating under Section 39.360, shall report to the commission its
 6-54 installed generation capacity, the total amount of capacity
 6-55 available for sale to others, the total amount of capacity under
 6-56 contract to others, the total amount of capacity dedicated to its
 6-57 own use, its annual wholesale power sales in the state, its annual
 6-58 retail power sales in the state, and any other information
 6-59 necessary for the commission to assess market power or the
 6-60 development of a competitive retail market in the state. The
 6-61 commission shall by rule prescribe the nature and detail of the
 6-62 reporting requirements and shall administer those reporting
 6-63 requirements in a manner that ensures the confidentiality of
 6-64 competitively sensitive information.

6-65 (b) The ERCOT independent system operator shall submit an
 6-66 annual report to the commission identifying existing and potential
 6-67 transmission and distribution constraints and system needs within
 6-68 ERCOT, alternatives for meeting system needs, and recommendations
 6-69 for meeting system needs. The first report shall be submitted on or

7-1 before October 1, 1999. Subsequent reports shall be submitted by
 7-2 January 15 of each year or as determined necessary by the
 7-3 commission. The reports required by this subsection must include a
 7-4 section identifying existing and potential transmission
 7-5 constraints that could affect the availability of any reliability
 7-6 asset and include alternatives for meeting identified needs.

7-7 (e) Entities operating under Section 39.360 are not
 7-8 considered to have market power when dispatched by an order of the
 7-9 independent organization certified under Section 39.151 for the
 7-10 ERCOT power region.

7-11 SECTION 1.13. Subchapter H, Chapter 39, Utilities Code, is
 7-12 amended by adding Section 39.360 to read as follows:

7-13 Sec. 39.360. CERTIFICATION OF TEXAS ENERGY INSURANCE
 7-14 PROGRAM. (a) The commission may certify one or more entities to
 7-15 operate as participants in the Texas Energy Insurance Program by
 7-16 owning and operating reliability assets. The commission may
 7-17 certify any number of entities to operate any number of reliability
 7-18 assets, but may not certify a total of more than 10 gigawatts of
 7-19 generating capacity for the entire Texas Energy Insurance Program.

7-20 (b) An entity may not operate as part of the Texas Energy
 7-21 Insurance Program unless the entity is certified by the commission
 7-22 under this section.

7-23 (c) The commission shall:

7-24 (1) issue at least one request for proposals from
 7-25 qualified applicants to serve as part of the Texas Energy Insurance
 7-26 Program; and

7-27 (2) if the commission receives at least two
 7-28 applications from qualified applicants in response to the request
 7-29 described by Subdivision (1) before the expiration of the period
 7-30 provided by Subsection (e), select and certify at least two
 7-31 qualified applicants not later than the 90th day after the date the
 7-32 commission issues the request.

7-33 (d) To ensure efficient distribution of reliability assets,
 7-34 the commission may designate regions in the ERCOT power region and
 7-35 issue requests for proposals under Subsection (c) for specific
 7-36 amounts of generation capacity by region.

7-37 (e) An applicant must submit an application under
 7-38 Subsection (c) not later than the 60th day after the date the
 7-39 commission issues a request for proposals under that subsection.

7-40 (f) An entity that is prohibited by this title from owning
 7-41 or operating a generation asset may apply to be certified to be part
 7-42 of the Texas Energy Insurance Program under this section.

7-43 (g) To be certified as part of the Texas Energy Insurance
 7-44 Program, an applicant must:

7-45 (1) establish financial stability and expertise by
 7-46 demonstrating that:

7-47 (A) the applicant or the applicant's parent
 7-48 company or operating partner has an investment grade credit rating;
 7-49 and

7-50 (B) the applicant or the applicant's parent
 7-51 company or operating partner is able to fund the investment as
 7-52 demonstrated by proof of access to adequate financing;

7-53 (2) establish industry expertise by demonstrating
 7-54 that the applicant is a river authority that owns or operates
 7-55 generation facilities, an electric utility, a municipally owned
 7-56 utility, or an electric cooperative, or the applicant or the
 7-57 applicant's parent company owns or operates electric generation
 7-58 assets totaling at least 2,500 megawatts;

7-59 (3) establish project quality standards by
 7-60 demonstrating that:

7-61 (A) the applicant is able to provide a parent
 7-62 performance guarantee that the independent organization certified
 7-63 under Section 39.151 for the ERCOT power region or the commission
 7-64 may draw upon during each season, as defined by the independent
 7-65 organization, if a reliability asset does not perform and
 7-66 performance is not excused under Subsection (m), in the amount of
 7-67 \$400 million for every gigawatt of generating capacity for which
 7-68 the applicant is applying to be certified; and

7-69 (B) each reliability asset will be weatherized,

8-1 capable of starting up and generating electricity without requiring
 8-2 outside power or support from the grid, and in operation not later
 8-3 than the last day of the 48th month after certification, unless
 8-4 interconnection delays require a later operation date; and

8-5 (4) pledge:

8-6 (A) that any net revenue earned during testing or
 8-7 operating would be for the benefit of the ERCOT power region; and

8-8 (B) not to sell any reliability asset over the
 8-9 life of the reliability asset while the applicant is certified as
 8-10 part of the Texas Energy Insurance Program without prior approval
 8-11 of the commission.

8-12 (h) Each applicant must provide in the application a
 8-13 statement:

8-14 (1) agreeing to a rate of return on equity the
 8-15 applicant will accept while operating as part of the Texas Energy
 8-16 Insurance Program, which may not exceed 10 percent;

8-17 (2) of the total cost of reliability assets for which
 8-18 the applicant will request recovery under Subchapter K, Chapter 36,
 8-19 while operating as part of the Texas Energy Insurance Program,
 8-20 which may not exceed \$1 billion per gigawatt of installed
 8-21 generation capacity operated in the program; and

8-22 (3) agreeing to the rates and revenues authorized
 8-23 under Subchapter K, Chapter 36.

8-24 (i) The commission may certify an entity to be part of the
 8-25 Texas Energy Insurance Program if the entity submits a qualifying
 8-26 application that includes:

8-27 (1) proof that the requirements of Subsection (g) have
 8-28 been met;

8-29 (2) a description of the location or proposed location
 8-30 of each reliability asset;

8-31 (3) a commitment to construct, own, operate, and
 8-32 maintain reliability assets for a time period not less than the
 8-33 useful life of the assets;

8-34 (4) a commitment that the reliability assets will
 8-35 include at each site resources to allow the provision of generation
 8-36 at full load for at least 168 continuous hours or the maximum number
 8-37 of continuous hours authorized for continuous operation under
 8-38 permits issued under state and federal law;

8-39 (5) an affidavit affirming that the reliability assets
 8-40 will be available to dispatch in a manner that provides the
 8-41 independent organization certified under Section 39.151 for the
 8-42 ERCOT power region, in times of emergency, natural disaster, and
 8-43 testing, with access to power at full output for up to seven
 8-44 consecutive days, after accounting for ramp up and ramp down times
 8-45 required by the independent organization;

8-46 (6) proof of the posting of a parent performance
 8-47 guarantee that the independent organization certified under
 8-48 Section 39.151 for the ERCOT power region or the commission may draw
 8-49 upon during each season, as defined by the independent
 8-50 organization, if a reliability asset does not perform and
 8-51 performance is not excused under Subsection (m), in the amount of
 8-52 \$400 million for every gigawatt of generating capacity for which
 8-53 the applicant is applying to be certified;

8-54 (7) proof that the applicant or the applicant's parent
 8-55 company or operating partner meets the requirements of Subsection
 8-56 (g)(1); and

8-57 (8) proof that the applicant can follow telemetry from
 8-58 the independent organization certified under Section 39.151 for the
 8-59 ERCOT power region.

8-60 (j) The commission shall provide a process to amend a
 8-61 certificate to account for the addition of any new reliability
 8-62 asset.

8-63 (k) The commission may not revoke a certificate unless after
 8-64 notice and an opportunity for hearing before the commission, the
 8-65 commission finds that the certified entity:

8-66 (1) failed to dispatch sufficient energy from
 8-67 reliability assets when called upon by the independent organization
 8-68 certified under Section 39.151 for the ERCOT power region or the
 8-69 commission and the failure cannot be excused by factors outside the

9-1 entity's control;

9-2 (2) has not fulfilled commitments made in the entity's
 9-3 application or complied with statutory or regulatory requirements
 9-4 of being certified, after reasonable notice from the commission; or

9-5 (3) no longer meets the eligibility requirements for
 9-6 participating in the Texas Energy Insurance Program, unless the
 9-7 entity has presented an actionable plan acceptable to the
 9-8 commission to meet the requirements.

9-9 (1) Each certified entity shall comply with the
 9-10 commissioning requirements and reliability standards adopted by
 9-11 the independent organization certified under Section 39.151 for the
 9-12 ERCOT power region to ensure the reliability of the ERCOT region.

9-13 (m) The commission or the independent organization
 9-14 certified under Section 39.151 for the ERCOT power region may not
 9-15 draw upon a parent performance guarantee provided by a certified
 9-16 entity and may not impose a fine or penalty on a certified entity
 9-17 for failure to provide service to the extent that the inability to
 9-18 provide service is the result of:

9-19 (1) the actions of a transmission service provider
 9-20 related to transmission service; or

9-21 (2) the actions of the independent organization
 9-22 certified under Section 39.151 for the ERCOT power region,
 9-23 including scheduled routine maintenance.

9-24 (n) The commission may not require a bond, letter of credit,
 9-25 or other security from a certified entity except for a parent
 9-26 performance guarantee described by this section and may not require
 9-27 the expansion of a parent performance guarantee. If drawn upon, a
 9-28 parent performance guarantee may not be required to be replenished
 9-29 or expanded. If the parent performance guarantee for a reliability
 9-30 asset is exhausted, the commission may decertify the certified
 9-31 entity to operate the asset. The commission may consult with the
 9-32 Legislative Budget Board in implementing this subsection.

9-33 (o) A certification issued under this section may be
 9-34 transferred only with the prior approval of the commission. Before
 9-35 transferring ownership of a reliability asset to another entity, a
 9-36 certified entity must apply to the commission for permission to
 9-37 transfer the asset. The commission may not approve the transfer of
 9-38 a reliability asset that is sold unless the sale is conditioned on
 9-39 the purchaser owning, operating, and maintaining the asset for the
 9-40 duration of the commitment made under Subsection (i)(3). A
 9-41 transfer of a reliability asset under this subsection does not
 9-42 affect the participation of the asset in the Texas Energy Insurance
 9-43 Program. If the commission does not approve the transfer and the
 9-44 entity sells the asset, the commission shall decertify the entity
 9-45 to operate that asset as part of the Texas Energy Insurance Program.

9-46 (p) On the request of a certified entity, after the 40th
 9-47 anniversary of the commissioning date of a reliability asset, the
 9-48 commission shall decertify the entity to operate the asset as a
 9-49 reliability asset and allow the entity to apply to operate the asset
 9-50 in the competitive market.

9-51 SECTION 1.14. Section 382.05155, Health and Safety Code, is
 9-52 amended by adding Subsection (b-1) to read as follows:

9-53 (b-1) A permit for a reliability asset, as defined by
 9-54 Section 31.002, Utilities Code, is considered to benefit the
 9-55 economy of this state for the purposes of Subsection (b).

9-56 SECTION 1.15. Not later than February 1, 2024, the Public
 9-57 Utility Commission of Texas shall issue a request for proposals
 9-58 required by Section 39.360(c), Utilities Code, as added by this
 9-59 article.

9-60 SECTION 1.16. The Public Utility Commission of Texas shall
 9-61 adopt any rules necessary to implement this article not later than
 9-62 December 1, 2023.

9-63 SECTION 1.17. To the extent of any conflict, this article
 9-64 prevails over another Act of the 88th Legislature, Regular Session,
 9-65 2023, relating to nonsubstantive additions to and corrections in
 9-66 enacted codes.

9-67 SECTION 1.18. This article takes effect September 1, 2023.

9-68 ARTICLE 2. GENERATING FACILITY FUNDING

9-69 SECTION 2.01. Subtitle B, Title 2, Utilities Code, is

10-1 amended by adding Chapter 34 to read as follows:

10-2 CHAPTER 34. GENERATING FACILITY FUNDING

10-3 Sec. 34.0101. DEFINITIONS. In this chapter:

10-4 (1) "Advisory committee" means the Texas Energy
 10-5 Insurance Fund Advisory Committee.

10-6 (2) "Fund" means the Texas energy insurance fund
 10-7 established by Section 49-q, Article III, Texas Constitution.

10-8 (3) "Trust company" means the Texas Treasury
 10-9 Safekeeping Trust Company.

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

10-15 (b) The fund and the fund's accounts are kept and held by the
 10-16 trust company for and in the name of the commission.

10-17 (c) Money deposited to the credit of the fund may be used
 10-18 only as provided by this chapter.

10-19 (d) The fund consists of:

10-20 (1) money appropriated, credited, transferred, or
 10-21 deposited to the credit of the fund by or as authorized by law,
 10-22 including money from any source transferred or deposited to the
 10-23 credit of the fund at the commission's discretion;

10-24 (2) revenue that the legislature by statute dedicates
 10-25 for deposit to the credit of the fund;

10-26 (3) investment earnings and interest earned on money
 10-27 in the fund; and

10-28 (4) gifts, grants, and donations contributed to the
 10-29 fund.

10-30 Sec. 34.0103. LOANS FOR MAINTENANCE AND MODERNIZATION. (a)
 10-31 The commission may use money in the fund without further
 10-32 appropriation to provide loans to finance maintenance or
 10-33 modernization of dispatchable electric generating facilities
 10-34 operating in the ERCOT power region. For the purposes of this
 10-35 section, a generating facility is considered to be dispatchable if
 10-36 the facility's output can be controlled primarily by forces under
 10-37 human control.

10-38 (b) Each year, the commission shall produce a list of
 10-39 dispatchable electric generating facilities operating in the ERCOT
 10-40 power region and estimate the potential costs to maintain and
 10-41 modernize the facilities during the following five years. The
 10-42 commission shall give priority to loan applications under this
 10-43 section that the commission determines will provide the highest
 10-44 ratio of dispatchable megawatts maintained to project costs.

10-45 (c) The commission shall evaluate an application for a loan
 10-46 under this section based on the applicant's:

10-47 (1) efforts and achievements in conserving resources;

10-48 (2) quality of services;

10-49 (3) efficiency of operations;

10-50 (4) quality of management;

10-51 (5) proposed improvement in availability of the
 10-52 generation facility for which the loan is requested; and

10-53 (6) previous Texas energy insurance fund loan history,
 10-54 with a preference toward entities that have not applied for or been
 10-55 granted a loan previously.

10-56 (d) The commission may provide a loan under this section
 10-57 only for maintenance or modernization of a facility that is capable
 10-58 of operating for at least five years after the date the loan is
 10-59 received.

10-60 (e) Proceeds of a loan received under this section may not
 10-61 be used for:

10-62 (1) compliance with weatherization standards adopted
 10-63 after December 1, 2023;

10-64 (2) debt payments; or

10-65 (3) expenses not related to maintaining or modernizing
 10-66 the electric generating facility.

10-67 (f) An electric utility may not receive a loan under this
 10-68 section.

10-69 (g) The commission may require immediate repayment of a loan

11-1 issued under this section if the recipient of the loan stops
 11-2 operating the facility for which the loan was received before the
 11-3 fifth anniversary of the date on which the loan was disbursed.

11-4 (h) A loan provided under this chapter may not bear an
 11-5 interest rate of more than zero percent.

11-6 (i) Information submitted to the commission in an
 11-7 application for a loan under this chapter is confidential and not
 11-8 subject to disclosure under Chapter 552, Government Code.

11-9 Sec. 34.0104. SOURCES OF MONEY FOR LOANS FOR TEXAS ENERGY
 11-10 INSURANCE PROGRAM RELIABILITY ASSETS. The commission may use any
 11-11 money appropriated to the commission for the purpose of providing a
 11-12 loan, at zero percent interest, to an entity certified under
 11-13 Section 39.360 to be used to reduce debt associated with
 11-14 constructing or operating a reliability asset. The commission may
 11-15 use without legislative appropriation money from the fund for that
 11-16 purpose.

11-17 Sec. 34.0105. MAXIMUM LOAN AMOUNT. If the commission has
 11-18 more than four pending applications for loans to be made from the
 11-19 fund on the date the commission awards a loan, the amount of the
 11-20 loan awarded may not exceed 25 percent of the fund balance on that
 11-21 date.

11-22 Sec. 34.0106. MANAGEMENT AND INVESTMENT OF FUND. (a) The
 11-23 trust company shall hold the fund, and any accounts established in
 11-24 the fund, for and in the name of the commission, taking into account
 11-25 the purposes for which money in the fund may be used. The fund may
 11-26 be invested with the state treasury pool and comingled with other
 11-27 investments.

11-28 (b) The overall objective for the investment of the fund is
 11-29 to maintain sufficient liquidity to meet the needs of the fund while
 11-30 striving to preserve the purchasing power of the fund.

11-31 (c) In managing the assets of the fund, the trust company
 11-32 may acquire, exchange, sell, supervise, manage, or retain any kind
 11-33 of investment that a prudent investor, exercising reasonable care,
 11-34 skill, and caution, would acquire or retain in light of the
 11-35 purposes, terms, distribution requirements, and other
 11-36 circumstances of the fund then prevailing, taking into
 11-37 consideration the investment of all the assets of the fund rather
 11-38 than a single investment.

11-39 (d) The reasonable expenses of managing the fund's assets
 11-40 shall be paid from the fund.

11-41 (e) The trust company annually shall provide a written
 11-42 report to the commission and to the advisory committee with respect
 11-43 to the investment of the fund.

11-44 (f) The trust company shall adopt a written investment
 11-45 policy that is appropriate for the fund. The trust company shall
 11-46 present the investment policy to the investment advisory board
 11-47 established under Section 404.028, Government Code. The investment
 11-48 advisory board shall submit to the trust company recommendations
 11-49 regarding the policy.

11-50 (g) The commission annually shall provide to the trust
 11-51 company a forecast of the cash flows into and out of the fund. The
 11-52 commission shall provide updates to the forecasts as appropriate to
 11-53 ensure that the trust company is able to achieve the objective
 11-54 specified by Subsection (b).

11-55 (h) The trust company shall disburse money from the fund as
 11-56 directed by the commission.

11-57 Sec. 34.0107. RECEIVERSHIP OF DEFAULT GENERATING FACILITY.

11-58 (a) In this section, "default" means:

11-59 (1) default in payment of the principal of or interest
 11-60 on a loan; or

11-61 (2) a failure to perform any of the terms of a loan.

11-62 (b) The state, including the commission, the advisory
 11-63 committee, and the trust company, may not retain an ownership
 11-64 interest in a project or facility for which a loan is provided under
 11-65 this chapter.

11-66 (c) In the event of a default on a loan made under this
 11-67 chapter, at the request of the commission, the attorney general
 11-68 shall bring suit in a district court in Travis County for the
 11-69 appointment of a receiver to collect the assets and carry on the

12-1 business of a loan recipient if the action is necessary to cure a
 12-2 default by the recipient.

12-3 (d) The court shall vest a receiver appointed by the court
 12-4 with any power or duty the court finds necessary to cure the
 12-5 default, including the power or duty to:

12-6 (1) perform audits;

12-7 (2) direct ongoing operation of the assets;

12-8 (3) fund reserve accounts;

12-9 (4) make payments of the principal of or interest on
 12-10 bonds, securities, or other obligations; and

12-11 (5) take any other action necessary to prevent or to
 12-12 remedy the default, including the sale of assets.

12-13 (e) The receiver shall execute a bond in an amount to be set
 12-14 by the court to ensure the proper performance of the receiver's
 12-15 duties.

12-16 (f) After appointment and execution of bond, the receiver
 12-17 shall take possession of the books, records, accounts, and assets
 12-18 of the defaulting loan recipient specified by the court. Until
 12-19 discharged by the court, the receiver shall perform the duties that
 12-20 the court directs and shall strictly observe the final order
 12-21 involved.

12-22 (g) On a showing of good cause by the defaulting loan
 12-23 recipient, the court may dissolve the receivership.

12-24 Sec. 34.0108. TEXAS ENERGY INSURANCE FUND ADVISORY
 12-25 COMMITTEE. (a) The advisory committee is composed of the following
 12-26 six members:

12-27 (1) three members of the senate appointed by the
 12-28 lieutenant governor, including:

12-29 (A) a member of the committee of the senate
 12-30 having primary jurisdiction over matters relating to the generation
 12-31 of electricity; and

12-32 (B) a member of the committee of the senate
 12-33 having primary jurisdiction over finance; and

12-34 (2) three members of the house of representatives
 12-35 appointed by the speaker of the house of representatives,
 12-36 including:

12-37 (A) a member of the committee of the house of
 12-38 representatives having primary jurisdiction over the generation of
 12-39 electricity; and

12-40 (B) a member of the committee of the house of
 12-41 representatives having primary jurisdiction over finance.

12-42 (b) A member of the advisory committee serves at the will of
 12-43 the person who appointed the member.

12-44 (c) The lieutenant governor shall appoint a co-presiding
 12-45 officer of the advisory committee from among the members appointed
 12-46 by the lieutenant governor. The speaker of the house of
 12-47 representatives shall appoint a co-presiding officer of the
 12-48 advisory committee from among the members appointed by the speaker.

12-49 (d) The advisory committee may hold public hearings, formal
 12-50 meetings, and work sessions. Either co-presiding officer of the
 12-51 advisory committee may call a public hearing, formal meeting, or
 12-52 work session of the advisory committee at any time. The advisory
 12-53 committee may not take formal action at a public hearing, formal
 12-54 meeting, or work session unless a quorum of the committee is
 12-55 present.

12-56 (e) Except as otherwise provided by this subsection, a
 12-57 member of the advisory committee is not entitled to receive
 12-58 compensation for service on the committee or reimbursement for
 12-59 expenses incurred in the performance of official duties as a member
 12-60 of the committee. Service on the advisory committee by a member of
 12-61 the senate or house of representatives is considered legislative
 12-62 service for which the member is entitled to reimbursement and other
 12-63 benefits in the same manner and to the same extent as for other
 12-64 legislative service.

12-65 (f) The advisory committee:

12-66 (1) may provide comments and recommendations to the
 12-67 commission for the commission to use in adopting rules regarding
 12-68 the use of the fund or on any other matter; and

12-69 (2) shall review the overall operation, function, and

13-1 structure of the fund at least semiannually.
13-2 (g) The advisory committee may adopt rules, procedures, and
13-3 policies as needed to administer this section and implement its
13-4 responsibilities.

13-5 (h) Chapter 2110, Government Code, does not apply to the
13-6 size, composition, or duration of the advisory committee.

13-7 (i) The advisory committee is subject to Chapter 325,
13-8 Government Code (Texas Sunset Act). Unless continued in existence
13-9 as provided by that chapter, the advisory committee is abolished
13-10 September 1, 2035.

13-11 Sec. 34.0109. RULES. (a) The commission by rule may
13-12 establish procedures for:

13-13 (1) the application for and award of a loan under this
13-14 chapter; and

13-15 (2) the administration of the fund.

13-16 (b) The commission shall give full consideration to
13-17 comments and recommendations of the advisory committee before the
13-18 commission adopts rules under this chapter.

13-19 Sec. 34.0110. TEXAS ENERGY INSURANCE PROGRAM CUSTOMER
13-20 PAYMENTS. (a) The commission may use any money appropriated to the
13-21 commission for the purpose of offsetting amounts owed to certified
13-22 entities under Section 36.501 on behalf of customers of
13-23 transmission and distribution utilities, municipally owned
13-24 utilities, and electric cooperatives. The commission may use
13-25 without legislative appropriation money from the fund for that
13-26 purpose.

13-27 (b) The comptroller shall deposit revenue received under
13-28 Section 36.501(b) to the credit of the fund.

13-29 (c) Money obtained by the independent organization
13-30 certified under Section 39.151 for the ERCOT power region or the
13-31 commission through drawing upon a parent performance guarantee as
13-32 described by Section 39.360(g)(3) must be deposited to the credit
13-33 of the fund.

13-34 (d) The comptroller shall make the disbursements required
13-35 by Section 36.501(g) from the fund.

13-36 SECTION 2.02. This article takes effect on the date on which
13-37 the constitutional amendment proposed by the 88th Legislature,
13-38 Regular Session, 2023, providing for the creation of the Texas
13-39 energy insurance fund and the authorization of other funding
13-40 mechanisms to support the construction and operation of electric
13-41 generating facilities takes effect. If that amendment is not
13-42 approved by the voters, this article has no effect.

13-43 * * * * *