

By: Schwertner, et al.
(Hunter)

S.B. No. 2627

Substitute the following for S.B. No. 2627:

By: Spiller

C.S.S.B. No. 2627

A BILL TO BE ENTITLED

AN ACT

relating to funding mechanisms to support the construction and operation of electric facilities.

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

SECTION 1. This Act may be cited as the Powering Texas Forward Act.

SECTION 2. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. FACILITY FUNDING

Sec. 34.0101. DEFINITIONS. In this chapter:

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

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

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

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

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

(c) Money deposited to the credit of the fund may be used

1 only as provided by this chapter.

2 (d) The fund consists of:

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

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

9 (3) investment earnings and interest earned on money
10 in the fund; and

11 (4) gifts, grants, and donations contributed to the
12 fund.

13 Sec. 34.0103. LOANS FOR ERCOT POWER REGION. (a) The
14 commission may use money in the fund without further appropriation
15 to provide loans to finance upgrades to existing dispatchable
16 electric generating facilities providing power for the ERCOT power
17 region that result in a net increase of 100 megawatts of capacity
18 for each facility or the construction of dispatchable electric
19 generating facilities providing power for the ERCOT power region
20 that each have a generation capacity of at least 100 megawatts. For
21 the purposes of this section, a generating facility is considered
22 to be dispatchable if the facility's output can be controlled
23 primarily by forces under human control. An electric energy
24 storage facility is not eligible for a loan under this section.

25 (b) The commission may provide a construction loan under
26 this section only:

27 (1) for construction of a facility that will have a

1 generation capacity of at least 100 megawatts and that does not meet
2 the planning model requirements necessary to be included in the
3 Capacity Demand and Reserves Report of the independent organization
4 certified under Section 39.151 for the ERCOT power region before
5 June 1, 2023;

6 (2) in an amount that does not exceed 60 percent of the
7 estimated cost of the facility to be constructed; and

8 (3) if the agreement ensures that the loan is to be the
9 senior debt secured by the facility.

10 (c) The commission shall evaluate an application for a loan
11 under this section based on:

12 (1) the applicant's:

13 (A) quality of services and management;

14 (B) efficiency of operations;

15 (C) history of electricity generation operations
16 in this state and this country;

17 (D) resource operation attributes;

18 (E) ability to address regional and reliability
19 needs;

20 (F) access to resources essential for operating
21 the facility for which the loan is requested, such as land, water,
22 and reliable infrastructure, as applicable; and

23 (G) evidence of creditworthiness and ability to
24 repay the loan on the terms established in the loan agreement,
25 including the applicant's total assets, total liabilities, net
26 worth, and credit ratings issued by major credit rating agencies;

27 (2) the generation capacity and estimated costs of the

1 project for which the loan is requested; and

2 (3) any other factors the commission considers
3 appropriate.

4 (d) Outstanding loans provided under this section and
5 grants provided under Section 34.0104, considered together, may not
6 support the addition or construction of more than the amount of
7 megawatts of generation capacity needed to meet reliability
8 standards, goals, or operational targets for the ERCOT power
9 region, as determined by the commission.

10 (e) An electric utility other than a river authority may not
11 receive a loan under this section.

12 (f) A loan provided under this section must:

13 (1) have a term of 20 years;

14 (2) be payable ratably starting on the seventh
15 anniversary of the date the loan is issued; and

16 (3) bear an interest rate of two percent.

17 (g) The commission shall require each recipient of a loan
18 under this section to deposit in an escrow account held by the
19 comptroller an amount of money equal to three percent of the
20 estimated cost of the project for which the loan is provided. The
21 deposit must be made before the loan funds are disbursed. The loan
22 recipient may not withdraw the deposit unless authorized by the
23 commission.

24 (h) For money deposited under Subsection (g) for a loan for
25 the construction of a new facility, the commission:

26 (1) shall authorize the loan recipient to withdraw the
27 deposit from the escrow account if the facility for which the loan

1 was provided is interconnected in the ERCOT power region before the
2 fourth anniversary of the date the loan funds were disbursed; or

3 (2) after the fourth anniversary of the date the loan
4 funds were disbursed, may authorize the loan recipient to withdraw
5 the deposit from the escrow account if the facility for which the
6 loan was provided is interconnected in the ERCOT power region not
7 later than the fifth anniversary of the date the loan funds were
8 disbursed and the commission determines that extenuating
9 circumstances justify the delay in completion.

10 (i) For money deposited under Subsection (g) for a loan for
11 an upgrade to an existing facility, the commission:

12 (1) shall authorize the loan recipient to withdraw the
13 deposit from the escrow account if the project for which the loan
14 was provided is completed before the third anniversary of the date
15 the loan funds were disbursed; or

16 (2) after the third anniversary of the date the loan
17 funds were disbursed, may authorize the loan recipient to withdraw
18 the deposit from the escrow account if the project for which the
19 loan was provided is completed not later than the fourth
20 anniversary of the date the loan funds were disbursed and the
21 commission determines that extenuating circumstances justify the
22 delay in completion.

23 (j) The comptroller shall deposit to the credit of the fund
24 any escrow funds described by Subsection (g) that the commission
25 may not authorize to be withdrawn by a loan recipient.

26 (k) Information submitted to the commission in an
27 application for a loan under this section is confidential and not

1 subject to disclosure under Chapter 552, Government Code.

2 (1) The commission may not disburse money for a loan under
3 this section after December 31, 2026.

4 Sec. 34.0104. COMPLETION BONUS GRANTS. (a) The commission
5 shall provide, using money available in the fund for the purpose
6 without further appropriation, a completion bonus grant for the
7 construction of dispatchable electric generating facilities in the
8 ERCOT power region. For the purposes of this section, a generating
9 facility is considered to be dispatchable if the facility's output
10 can be controlled primarily by forces under human control. An
11 electric energy storage facility is not eligible for a grant under
12 this section.

13 (b) The amount of a grant under this section must be based on
14 the megawatts of capacity provided to the ERCOT power region by the
15 facility.

16 (c) The commission may provide a grant under this section
17 only for construction of a facility that:

18 (1) will have a generation capacity of at least 100
19 megawatts;

20 (2) does not meet the planning model requirements
21 necessary to be included in the Capacity Demand and Reserves Report
22 of the independent organization certified under Section 39.151 for
23 the ERCOT power region before June 1, 2023; and

24 (3) is interconnected in the ERCOT power region not
25 later than December 31, 2028, or, if the commission determines that
26 extenuating circumstances justify a delay in the facility's
27 completion, before a later date as specified by the commission that

1 must be not later than June 1, 2029.

2 (d) The commission shall evaluate an application for a grant
3 under this section based on:

4 (1) the applicant's:

5 (A) quality of services and management;

6 (B) efficiency of operations;

7 (C) history of electricity generation operations
8 in this state and this country;

9 (D) resource operation attributes; and

10 (E) ability to address regional and reliability
11 needs;

12 (2) the generation capacity and estimated
13 construction costs of the facility for which the grant is
14 requested; and

15 (3) any other factors the commission considers
16 appropriate.

17 (e) Information submitted to the commission in an
18 application for a grant under this section is confidential and not
19 subject to disclosure under Chapter 552, Government Code.

20 (f) The commission may not provide a grant under this
21 section of more than \$100,000 per megawatt of capacity provided by
22 the facility.

23 (g) The commission may not provide a grant under this
24 section after September 1, 2029.

25 Sec. 34.0105. LOAN AND GRANT RESTRICTIONS. (a) If the
26 commission has more than four pending applications for loans to be
27 made from the fund on the date the commission awards a loan, the

1 amount of the loan awarded may not exceed 25 percent of the fund
2 balance on that date.

3 (b) The commission may not provide a loan or a grant for a
4 facility under this chapter if the facility will be used primarily
5 to serve an industrial load or private use network.

6 (c) Before December 31, 2026, the commission may provide:

7 (1) for loans under Section 34.0103, not more than 80
8 percent of the money available in the fund on December 1, 2023; and

9 (2) for grants under Section 34.0104, not more than 20
10 percent of the money available in the fund on December 1, 2023.

11 (d) Subsection (c) and this subsection expire December 31,
12 2026.

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

19 (b) The overall objective for the investment of the fund is
20 to maintain sufficient liquidity to meet the needs of the fund while
21 striving to preserve the purchasing power of the fund over a full
22 economic cycle.

23 (c) In managing the assets of the fund, the trust company
24 may acquire, exchange, sell, supervise, manage, or retain any kind
25 of investment that a prudent investor, exercising reasonable care,
26 skill, and caution, would acquire or retain in light of the
27 purposes, terms, distribution requirements, and other

1 circumstances of the fund then prevailing, taking into
2 consideration the investment of all the assets of the fund rather
3 than a single investment.

4 (d) The reasonable expenses of managing the fund's assets
5 shall be paid from the fund.

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

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

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

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

22 Sec. 34.0107. RECEIVERSHIP OF DEFAULT GENERATING FACILITY.

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

24 (1) default in payment of the principal of or interest
25 on a loan; or

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

27 (b) The state, including the commission, the advisory

1 committee, and the trust company, may not retain an ownership
2 interest in a project or facility for which a loan is provided under
3 this chapter.

4 (c) In the event of a default on a loan made under this
5 chapter, at the request of the commission, the attorney general
6 shall bring suit in a district court in Travis County for the
7 appointment of a receiver to collect the assets and carry on the
8 business of a loan recipient if the action is necessary to cure a
9 default by the recipient.

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

- 13 (1) perform audits;
14 (2) direct ongoing operation of the assets;
15 (3) fund reserve accounts;
16 (4) make payments of the principal of or interest on
17 bonds, securities, or other obligations; and
18 (5) take any other action necessary to prevent or to
19 remedy the default, including the sale of assets.

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

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

1 involved.

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

4 Sec. 34.0108. TEXAS ENERGY FUND ADVISORY COMMITTEE. (a)
5 The advisory committee is composed of the following six members:

6 (1) three members of the senate appointed by the
7 lieutenant governor, including:

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

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

13 (2) three members of the house of representatives
14 appointed by the speaker of the house of representatives,
15 including:

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

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

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

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

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

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

17 (f) The advisory committee:

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

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

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

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

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

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

7 (1) the application for and award of a grant or loan
8 under this chapter; and

9 (2) the administration of the fund.

10 (b) The commission shall give full consideration to
11 comments and recommendations of the advisory committee.

12 SECTION 3. Section 35.005, Utilities Code, is amended by
13 adding Subsections (d), (e), and (f) to read as follows:

14 (d) The independent organization certified under Section
15 39.151 for the ERCOT power region shall work with electric
16 utilities to ensure that each facility in the ERCOT power region for
17 which a loan or grant is provided under Chapter 34 is fully
18 interconnected in the region not later than the date the facility is
19 ready for commercial operation. The independent organization
20 certified under Section 39.151 for the ERCOT power region shall
21 give priority to interconnecting each facility for which a loan or
22 grant is provided under Chapter 34 except that the organization
23 shall prioritize transmission projects that the organization has
24 formally designated as critical for reliability over a facility for
25 which a loan or grant is provided under Chapter 34. An electric
26 utility that enters into an interconnection agreement for a
27 facility for which a loan or grant is provided under Chapter 34

1 shall give priority to interconnecting the facility and complete
2 construction of any other facilities necessary to interconnect the
3 facility not later than the date the facility is ready for
4 commercial operation except that the utility shall prioritize
5 transmission projects that the independent organization certified
6 under Section 39.151 for the ERCOT power region has formally
7 designated as critical for reliability over a facility for which a
8 loan or grant is provided under Chapter 34.

9 (e) If the commission receives an application under Chapter
10 37 for a certificate of convenience and necessity related to
11 facilities necessary to interconnect a facility for which a loan or
12 grant is provided under Chapter 34 and does not approve the
13 application before the 90th day after the date the commission
14 received the application, the deadline established by Subsection
15 (d) is extended one day for each day after the 90th day in which the
16 commission does not approve the application.

17 (f) The commission may extend the deadline established by
18 Subsection (d) after notice, hearing, and a determination on a
19 showing of good cause that fully interconnecting the facility
20 before the deadline is not feasible.

21 SECTION 4. Not later than December 31, 2026, the Public
22 Utility Commission of Texas shall accept loan applications for
23 loans authorized by Chapter 34, Utilities Code, as added by this
24 Act, approve or deny each loan application, and disburse loan funds
25 for each approved applicant.

26 SECTION 5. This Act takes effect on the date on which the
27 constitutional amendment proposed by the 88th Legislature, Regular

C.S.S.B. No. 2627

1 Session, 2023, providing for the creation of the Texas energy fund
2 to support the construction and operation of electric facilities
3 takes effect. If that amendment is not approved by the voters, this
4 Act has no effect.