

## **BILL ANALYSIS**

C.S.S.B. 2627  
By: Schwertner  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Winter Storm Uri revealed failures in the state's electricity market, specifically the lack of reliability. While reforms from S.B. 3 from the 87th Texas Legislature, Regular Session, addressed many critical system issues, there remains a need for increased reliability related specifically to dispatchable generation. C.S.S.B. 2627, the Powering Texas Forward Act, seeks to target money at dispatchable electric generation facilities by providing low-interest loans to construct new facilities and upgrade existing facilities while also providing completion bonus grants for facilities that are interconnected in the ERCOT power region by a certain date.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 2 of this bill.

### **ANALYSIS**

C.S.S.B. 2627 amends the Utilities Code to enact the Powering Texas Forward Act, which establishes funding mechanisms to support the construction and operation of electric facilities.

#### **Texas Energy Fund**

C.S.S.B. 2627 creates the Texas Energy Fund as a special fund in the state treasury outside the general revenue fund to be administered and used by the Public Utility Commission of Texas (PUC) for the purposes authorized by the bill. The bill authorizes the PUC to establish separate accounts in the fund and establishes that the fund and the fund's accounts are to be kept and held by the Texas Treasury Safekeeping Trust Company for and in the name of the PUC.

C.S.S.B. 2627 establishes that the fund consists of the following:

- money appropriated, credited, transferred, or deposited to the credit of the fund by or as authorized by law, including money from any source transferred or deposited to the credit of the fund at the PUC's discretion;
- revenue that the legislature by statute dedicates for deposit to the credit of the fund;
- investment earnings and interest earned on money in the fund; and
- gifts, grants, and donations contributed to the fund.

Money deposited to the credit of the fund may be used only as provided by the bill.

## Loans for ERCOT Power Region

C.S.S.B. 2627 authorizes the PUC to use money in the fund without further appropriation to provide loans to finance upgrades to existing dispatchable electric generating facilities providing power for the ERCOT power region that result in a net increase of 100 megawatts of capacity for each facility or the construction of dispatchable electric generating facilities providing power for the ERCOT power region that each have a generation capacity of at least 100 megawatts. The bill establishes that, for the purposes of these loans, a generating facility is considered to be dispatchable if the facility's output can be controlled primarily by forces under human control. The bill makes an electric energy storage facility and an electric utility other than a river authority ineligible for a loan.

C.S.S.B. 2627 limits the facilities for which the PUC may provide a construction loan to those that will have a generation capacity of at least 100 megawatts and that do not meet the planning model requirements necessary to be included in ERCOT's Capacity Demand and Reserves Report before June 1, 2023. The bill caps the amount of such a loan at 60 percent of the estimated cost of the facility to be constructed and requires that the loan agreement ensure that the loan is to be the senior debt secured by the facility.

C.S.S.B. 2627 requires the PUC to evaluate a loan application based on the following factors:

- the applicant's:
  - quality of services and management;
  - efficiency of operations;
  - history of electricity generation operations in Texas and the United States;
  - resource operation attributes;
  - ability to address regional and reliability needs;
  - access to resources essential for operating the facility for which the loan is requested, such as land, water, and reliable infrastructure, as applicable; and
  - evidence of creditworthiness and ability to repay the loan on the terms established in the loan agreement, including the applicant's total assets, total liabilities, net worth, and credit ratings issued by major credit rating agencies;
- the generation capacity and estimated costs of the project for which the loan is requested; and
- any other factors the PUC considers appropriate.

C.S.S.B. 2627 establishes that a loan must have a term of 20 years and must bear an interest rate of two percent. The bill requires that the loan be payable ratably starting on the seventh anniversary of the date the loan is issued and establishes that outstanding loans and any completion bonus grants provided under the bill, considered together, may not support the addition or construction of more than the amount of megawatts of generation capacity needed to meet reliability standards, goals, or operational targets for the ERCOT power region, as determined by the PUC.

C.S.S.B. 2627 requires that the PUC require each loan recipient to deposit in an escrow account held by the comptroller of public accounts an amount of money equal to three percent of the estimated cost of the project for which the loan is provided. The deposit must be made before the loan funds are disbursed, and the recipient may not withdraw the deposit unless authorized by the PUC. The bill requires the comptroller to deposit to the credit of the fund any escrow funds that the PUC may not authorize to be withdrawn by a loan recipient.

For money deposited in an escrow account for a loan for the construction of a new facility, C.S.S.B. 2627 provides that the PUC:

- must authorize the loan recipient to withdraw the deposit from the escrow account if the facility for which the loan was provided is interconnected in the ERCOT power region before the fourth anniversary of the date the loan funds were disbursed; or

- after the fourth anniversary of the date the loan funds were disbursed, may authorize the loan recipient to withdraw the deposit from the escrow account if the facility for which the loan was provided is interconnected in the ERCOT power region not later than the fifth anniversary of the date the loan funds were disbursed and the PUC determines that extenuating circumstances justify the delay in completion.

For money deposited in an escrow account for a loan for an upgrade to an existing facility, C.S.S.B. 2627 provides that the PUC:

- must authorize the loan recipient to withdraw the deposit from the escrow account if the project for which the loan was provided is completed before the third anniversary of the date the loan funds were disbursed; or
- after the third anniversary of the date the loan funds were disbursed, may authorize the loan recipient to withdraw the deposit from the escrow account if the project for which the loan was provided is completed not later than the fourth anniversary of the date the loan funds were disbursed and the PUC determines that extenuating circumstances justify the delay in completion.

C.S.S.B. 2627 requires the PUC, not later than December 31, 2026, to accept loan applications, approve or deny each application, and distribute loan funds for each approved applicant. The bill makes information submitted to the PUC in a loan application confidential and exempt from disclosure under state public information law.

C.S.S.B. 2627 prohibits the PUC from disbursing money for a loan after December 31, 2026.

### **Completion Bonus Grants**

C.S.S.B. 2627 requires the PUC to provide, using money available in the fund for the purpose without further appropriation, a completion bonus grant for the construction of dispatchable electric generating facilities in the ERCOT power region. The bill establishes that, for purposes of these grants, a generating facility is considered to be dispatchable if the facility's output can be controlled primarily by forces under human control. The bill makes an electric energy storage facility ineligible for a completion bonus grant.

C.S.S.B. 2627 requires that the amount of a completion bonus grant be based on the megawatts of capacity provided to the ERCOT power region by the facility and caps the amount of such a grant at \$100,000 per megawatt of capacity provided by the facility. The bill limits eligibility for a completion bonus grant to a facility that, as follows:

- will have a generation capacity of at least 100 megawatts;
- does not meet the planning model requirements necessary to be included in ERCOT's Capacity Demand and Reserves Report before June 1, 2023; and
- is interconnected in the ERCOT power region not later than December 31, 2028, or, if the PUC determines that extenuating circumstances justify a delay in the facility's completion, before a later date as specified by the PUC that must be not later than June 1, 2029.

C.S.S.B. 2627 requires the PUC to evaluate completion bonus grant applications based on the following factors:

- the applicant's:
  - quality of services and management;
  - efficiency of operations;
  - history of electricity generation operations in Texas and the United States;
  - resource operation attributes; and
  - ability to address regional and reliability needs;
- the generation capacity and estimated construction costs of the facility for which the grant is requested; and
- any other factors the PUC considers appropriate.

The bill makes information submitted to the PUC in a completion bonus grant application confidential and exempt from disclosure under state public information law.

C.S.S.B. 2627 prohibits the PUC from providing a completion bonus grant after September 1, 2029.

### **Loan and Grant Restrictions**

C.S.S.B. 2627 establishes that, if the PUC has more than four pending applications for loans to be made from the fund on the date the PUC awards a loan, the amount of the loan awarded may not exceed 25 percent of the fund balance on that date. The bill prohibits the PUC from providing a loan or a grant from the fund for a facility if the facility will be used primarily to serve an industrial load or private use network.

Before December 31, 2026, the PUC may provide:

- for loans for the ERCOT power region, not more than 80 percent of the money available in the fund on December 1, 2023; and
- for completion bonus grants, not more than 20 percent of the money available in the fund on December 1, 2023.

These provisions expire December 31, 2026.

### **Management and Investment of Fund**

C.S.S.B. 2627 requires the Texas Treasury Safekeeping Trust Company to hold and invest the fund, and any accounts established in the fund, for and in the name of the PUC, taking into account the purposes for which money in the fund may be used. The fund may be invested with the state treasury pool and commingled with other investments, and the overall objective for the investment of the fund is to maintain sufficient liquidity to meet the needs of the fund while striving to preserve the purchasing power of the fund over a full economic cycle.

C.S.S.B. 2627 authorizes the trust company, in managing the assets of the fund, to acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment. The reasonable expenses of managing the fund's assets are to be paid from the fund.

C.S.S.B. 2627 requires the trust company annually to provide a written report to the PUC and to the Texas Energy Fund Advisory Committee established by the bill with respect to the investment of the fund. The bill requires the trust company to adopt a written investment policy that is appropriate for the fund and to present the investment policy to the investment advisory board. The bill requires the investment advisory board to submit to the trust company recommendations regarding the policy.

C.S.S.B. 2627 requires the PUC annually to provide to the trust company a forecast of the cash flows into and out of the fund and requires the PUC to provide updates to the forecasts as appropriate to ensure that the trust company is able to achieve the fund's investment objective. The bill requires the trust company to disburse money from the fund as directed by the PUC.

### **Texas Energy Fund Advisory Committee**

C.S.S.B. 2627 establishes the Texas Energy Fund Advisory Committee, which is composed of the following six members:

- three members of the senate appointed by the lieutenant governor, including:
  - a member of the committee of the senate having primary jurisdiction over matters relating to the generation of electricity; and

- a member of the committee of the senate having primary jurisdiction over finance; and
- three members of the house of representatives appointed by the speaker of the house of representatives, including:
  - a member of the committee of the house of representatives having primary jurisdiction over the generation of electricity; and
  - a member of the committee of the house of representatives having primary jurisdiction over finance.

The bill establishes that a member of the advisory committee serves at the will of the person who appointed the member and provides for the appointment of co-presiding officers of the committee.

C.S.S.B. 2627 authorizes the advisory committee to hold public hearings, formal meetings, and work sessions and authorizes either co-presiding officer to call a public hearing, formal meeting, or work session of the advisory committee at any time. The bill prohibits the advisory committee from taking formal action at a public hearing, formal meeting, or work session unless a quorum of the committee is present. A member of the advisory committee is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee. However, service on the advisory committee by a member of the senate or house of representatives is considered legislative service for which the member is entitled to reimbursement and other benefits in the same manner and to the same extent as for other legislative service.

C.S.S.B. 2627 provides that the advisory committee:

- may provide comments and recommendations to the PUC for the PUC to use in adopting rules regarding the use of the fund or on any other matter; and
- must review the overall operation, function, and structure of the fund at least semiannually.

The bill authorizes the advisory committee to adopt rules, procedures, and policies as needed to implement its responsibilities and administer the bill provisions governing the advisory committee. The bill makes Government Code provisions regarding state agency advisory committees inapplicable with respect to the size, composition, or duration of the advisory committee. The bill subjects the advisory committee to the Texas Sunset Act and sets the advisory committee to be abolished September 1, 2035, unless continued in existence as provided by that act.

### **Receivership of Default Generating Facility**

C.S.S.B. 2627 prohibits the state, including the PUC, the advisory committee, and the trust company, from retaining an ownership interest in a project or facility for which a loan is provided under the bill's provisions. The bill requires the attorney general, in the event of a default on such a loan and at the request of the PUC, to bring suit in a district court in Travis County for the appointment of a receiver to collect the assets and carry on the business of a loan recipient if the action is necessary to cure a default by the recipient. The court must vest a receiver appointed by the court with any power or duty the court finds necessary to cure the default, including the power or duty to do the following:

- perform audits;
- direct ongoing operation of the assets;
- fund reserve accounts;
- make payments of the principal of or interest on bonds, securities, or other obligations; and
- take any other action necessary to prevent or to remedy the default, including the sale of assets.

The bill requires the receiver to execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties. After appointment and execution of bond, the receiver must take possession of the books, records, accounts, and assets of the defaulting loan

recipient specified by the court. The bill requires the receiver, until discharged by the court, to perform the duties that the court directs and strictly observe the final order involved. On a showing of good cause by the defaulting loan recipient, the court may dissolve the receivership.

### **Rulemaking Authority**

C.S.S.B. 2627 authorizes the PUC by rule to establish procedures for the administration of the fund and for the application for and award of a grant or loan made from the fund. The bill requires the PUC to give full consideration to comments and recommendations of the advisory committee.

### **Interconnection of Facilities**

C.S.S.B. 2627 requires ERCOT to work with electric utilities to ensure that each facility in the ERCOT power region for which a loan or grant is provided under the bill's provisions is fully interconnected in the region not later than the date the facility is ready for commercial operation. The bill requires ERCOT to give priority to interconnecting each facility for which such a loan or grant is provided, except that ERCOT must prioritize transmission projects that it has formally designated as critical for reliability over a facility for which a loan or grant is provided. In addition, the bill requires an electric utility that enters into an interconnection agreement for a facility for which a loan or grant is provided under the bill's provisions to give priority to interconnecting the facility and complete construction of any other facilities necessary to interconnect the facility not later than the date the facility is ready for commercial operation, except that the utility must prioritize transmission projects that ERCOT has formally designated as critical for reliability over a facility for which a loan or grant is provided.

C.S.S.B. 2627 establishes that if the PUC receives an application for a certificate of convenience and necessity related to facilities necessary to interconnect a facility for which a loan or grant is provided under the bill's provisions and does not approve the application before the 90th day after the date of receipt, the deadline for interconnection is extended one day for each day after the 90th day in which the PUC does not approve the application. Moreover, the bill authorizes the PUC to extend the deadline for interconnection after notice, hearing, and a determination on a showing of good cause that fully interconnecting the facility before the deadline is not feasible.

### **EFFECTIVE DATE**

The date on which the constitutional amendment providing for the creation of the Texas Energy Fund to support the construction and operation of electric facilities takes effect, if approved by the voters.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 2627 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a provision authorizing the PUC to establish by rule procedures for the application for and award of a grant or loan under the bill's provisions, whereas the engrossed provided only for rulemaking authority to establish procedures for the application for and award of a loan. The substitute omits the provision from the engrossed limiting eligibility for any loan or grant provided under the bill to facilities that participate in the ERCOT wholesale electricity market.

Both the engrossed and the substitute provide for the issuance of loans from money in the fund to finance the construction of dispatchable electric generating facilities providing power for the ERCOT power region that will have a generation capacity of at least 100 megawatts. However,

the substitute expands the authorized use of these loans to include the financing of upgrades to existing dispatchable electric generating facilities providing power for the ERCOT power region that result in a net increase of 100 megawatts of capacity for each facility. With respect to these loans, the substitute makes additional revisions to the engrossed as follows:

- whereas the engrossed capped the amount of a loan at 75 percent of the estimated cost of the facility to be constructed, the substitute instead caps the amount of the loan at 60 percent of that estimated cost;
- the substitute includes a requirement not in the engrossed for the loan agreement to ensure that the loan is to be the senior debt secured by the facility;
- whereas the engrossed made all electric utilities ineligible to receive a loan, the substitute excludes river authorities from that ineligibility;
- the substitute includes a requirement not in the engrossed for a loan to be payable ratably starting on the seventh anniversary of the date the loan was issued;
- whereas the engrossed required a loan to bear a zero percent interest rate, the substitute requires that the interest rate instead be two percent;
- regarding the authorized withdrawal of escrow funds for a loan for the construction of a new facility:
  - whereas the engrossed required the PUC to authorize a loan recipient to withdraw escrow funds if the facility for which the loan was provided is interconnected in the ERCOT power region before the third anniversary of the date the loan funds were disbursed, the substitute requires the PUC to authorize the funds to be withdrawn if the facility is interconnected in the ERCOT power region before the fourth anniversary of the date of disbursement; and
  - whereas the engrossed authorized the PUC to authorize a loan recipient to withdraw escrow funds if the facility for which the loan was provided is interconnected in the ERCOT power region after the third anniversary of the date the loan funds were disbursed but not later than the fourth anniversary of the date of disbursement, the substitute authorizes the PUC instead to authorize the funds to be withdrawn if the facility is interconnected in the ERCOT power region after the fourth anniversary of the disbursement date but not later than the fifth anniversary of the disbursement date;
- the substitute includes provisions not in the engrossed providing the following with respect to the authorized withdrawal of escrow funds for a loan for an upgrade to an existing facility:
  - the PUC must authorize the loan recipient to withdraw the deposit from the escrow account if the project for which the loan was provided is completed before the third anniversary of the date the loan funds were disbursed; and
  - if the project for which the loan was provided is completed after the third anniversary of the date the loan funds were disbursed but not later than the fourth anniversary of the date of disbursement, the PUC may authorize the loan recipient to withdraw the deposit from the escrow account if the PUC determines that extenuating circumstances justify the delay in completion; and
- whereas the engrossed set the provisions relating to the loans to expire September 1, 2050, the substitute instead includes a provision prohibiting the PUC from disbursing money for a loan after December 31, 2026.

The substitute omits provisions from the engrossed providing for the issuance of five-year, zero-interest loans from money in the fund for use in financing maintenance or modernization of dispatchable electric generating facilities operating in the ERCOT power region that have a generation capacity of at least 100 megawatts and that have the capability to continue operating for at least five years after the date the loan is received, including financing the construction of fuel transportation infrastructure.

The engrossed conditioned eligibility for a completion bonus grant in part on the facility being interconnected in the ERCOT power region not later than December 31, 2026, or, if the PUC determines that extenuating circumstances justify a delay in the facility's completion, before a

later date as specified by the PUC that must be not later than June 1, 2027. The substitute revises that provision in the engrossed to change those dates to December 31, 2028, and June 1, 2029, respectively. Whereas the engrossed capped the amount of a completion bonus grant at \$200,000 per megawatt hour of capacity provided by the facility, the substitute caps that grant amount at \$100,000 per megawatt hour of capacity provided. Moreover, while the engrossed set provisions relating to the completion bonus grants to expire December 1, 2028, the substitute instead prohibits the PUC from providing such a grant after September 1, 2029.

The engrossed included a provision establishing that outstanding construction loans and completion bonus grants, considered together, may not support the construction of more than 10,000 megawatts of generation capacity. The substitute instead provides that outstanding loans provided for constructing or upgrading facilities and completion bonus grants, considered together, may not support the addition or construction of more than the amount of megawatts of generation capacity needed to meet reliability standards, goals, or operational targets for the ERCOT power region, as determined by the PUC.

The engrossed capped the amount of the balance of the fund that the PUC may use for maintenance and modernization loans at five percent per biennium and capped the amount of that balance that the PUC may use for construction loans at 75 percent per biennium. Instead, the substitute caps the amount that the PUC may provide for all loans issued under the bill at 80 percent of the money available in the fund on December 1, 2023. In addition, the substitute includes the following provisions that were not in the engrossed:

- a provision capping the amount of money that may be used for completion bonus grants at 20 percent of the money available in the fund on December 1, 2023; and
- provisions establishing that the caps apply before December 31, 2026, and expire on that date.

The substitute changes the deadline for the PUC to accept loan applications, approve or deny each application, and disburse loan funds for approved applicants from December 31, 2023, as in the engrossed, to December 31, 2026.

The substitute revises the provisions in the engrossed requiring that priority in interconnection be given to facilities that receive a loan or grant under the bill's provisions to establish exceptions to those requirements for transmission projects that ERCOT has formally designated as critical for reliability.