

BILL ANALYSIS

Senate Research Center
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S.B. 2627
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Winter storm Uri revealed the failures in our electricity market, specifically the lack of reliability. While reforms from S.B. 3, 87th Legislative Session, addressed many critical system issues, S.B. 2627 seeks to address increased reliability related specifically to dispatchable generation. S.B. 2627 creates a completion bonus and zero interest loan for new dispatchable generation resources directly targeted at "steel in the ground." It also provides low-interest loans for existing dispatchable generators as a mechanism for generators to access capital needed to maintain and make necessary improvements to existing generation resources.

As proposed, S.B. 2627 amends current law relating to funding mechanisms to support the construction, maintenance, and modernization of dispatchable electric generating facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Energy Fund Advisory Committee in SECTION 2 (Section 34.0108, Utilities Code) of this bill.

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 2 (Section 34.0109, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Powering Texas Forward Act.

SECTION 2. Amends Subtitle B, Title 2, Utilities Code, by adding Chapter 34, as follows:

CHAPTER 34. GENERATING FACILITY FUNDING

Sec. 34.0101. DEFINITIONS. Defines "advisory committee," "fund," and "trust company."

Sec. 34.0102. FUND. (a) Provides that the Texas energy fund (fund) is 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 this chapter. Authorizes the PUC to establish separate accounts in the fund.

(b) Provides that the fund and the fund's accounts are kept and held by the Texas Treasury Safekeeping Trust Company (trust company) for and in the name of the PUC.

(c) Authorizes money deposited to the credit of the fund to be used only as provided by this chapter.

(d) Provides that the fund consists of:

(1) 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;

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

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

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

Sec. 34.0103. LOANS FOR MAINTENANCE AND MODERNIZATION. (a) Authorizes the PUC to use money in the fund without further appropriation to provide loans to finance maintenance or modernization of dispatchable electric generating facilities operating in the ERCOT power region. Provides that a generating facility, for the purposes of this section, is considered to be dispatchable if the facility's output can be controlled primarily by forces under human control.

(b) Requires the PUC to give priority to loan applications under this section that the PUC determines will provide the highest ratio of dispatchable megawatts maintained to project costs.

(c) Requires the PUC to evaluate an application for a loan under this section based on the applicant's:

(1) efforts and achievements in conserving resources;

(2) quality of services;

(3) efficiency of operations;

(4) quality of management;

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

(6) previous fund loan history, with a preference toward entities that have not applied for or been granted a loan previously.

(d) Authorizes the PUC to provide a loan under this section only for maintenance or modernization of a facility that has a generation capacity of at least 10 megawatts and is capable of operating for at least five years after the date the loan is received.

(e) Prohibits proceeds of a loan received under this section from being used for:

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

(2) debt payments; or

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

(f) Prohibits an electric utility from receiving a loan under this section.

(g) Authorizes the PUC to require immediate repayment of a loan issued under this section if the recipient of the loan stops operating the facility for which the loan was received before the fifth anniversary of the date on which the loan was disbursed.

(h) Provides that a loan provided under this section:

(1) is required to have a term of five years; and

(2) is required to bear an interest rate of zero percent.

(i) Provides that information submitted to the PUC in an application for a loan under this section is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

Sec. 34.0104. LOANS FOR CONSTRUCTION. (a) Authorizes the PUC to use money in the fund without further appropriation to provide loans to finance the construction of dispatchable electric generating facilities providing power for the ERCOT power region. Provides that a generating facility, for the purposes of this section, is considered to be dispatchable if the facility's output can be controlled primarily by forces under human control. Provides that an electric energy storage facility is not eligible for a loan under this section.

(b) Authorizes the PUC to provide a loan under this section only:

(1) for construction of a facility that will have a generation capacity of at least 10 megawatts the construction of which does not begin before September 1, 2023; and

(2) in an amount that does not exceed 75 percent of the estimated cost of the facility to be constructed.

(c) Requires the PUC to evaluate an application for a loan under this section based on regional and reliability needs in the ERCOT power region and:

(1) the applicant's:

(A) efforts and achievements in conserving resources;

(B) quality of services and management;

(C) efficiency of operations;

(D) history of electricity generation operations in this country; and

(E) previous fund loan history, with a preference toward entities that have not applied for or been granted a loan previously; and

(2) the generation capacity and estimated construction costs of the facility for which the loan is requested.

(d) Prohibits outstanding loans provided under this section from supporting the construction of more than 10,000 megawatts of generation capacity.

(e) Prohibits an electric utility from receiving a loan under this section.

(f) Provides that a loan provided under this section is required to have a term of 20 years and to bear an interest rate of zero percent.

(g) Requires the PUC to require each recipient of a loan under this section to deposit in an escrow account held by the Comptroller of Public Accounts of the State of Texas (comptroller) an amount of money equal to five percent of the estimated cost of constructing the facility for which the loan is provided. Requires that the deposit be made before the loan funds are disbursed. Prohibits the loan recipient from withdrawing the deposit unless authorized by the PUC. Provides that the PUC:

(1) is required to 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 third anniversary of the date the loan funds were disbursed; or

(2) after the third anniversary of the date the loan funds were disbursed, is authorized to 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 fourth anniversary of the date the loan funds were disbursed and the PUC determines that extenuating circumstances justify the delay in completion.

(h) Requires the comptroller to deposit to the credit of the fund any escrow funds described by Subsection (g) that the PUC is prohibited from authorizing to be withdrawn by a loan recipient.

(i) Provides that information submitted to the PUC in an application for a loan under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(j) Provides that this section expires September 1, 2050.

Sec. 34.0105. COMPLETION BONUS. (a) 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. Provides that a generating facility, for the purposes of this section, is considered to be dispatchable if the facility's output can be controlled primarily by forces under human control. Provides that an electric energy storage facility is not eligible for a grant under this section.

(b) Requires that the amount of a grant under this section be based on the megawatts of capacity provided to the ERCOT power region by the facility.

(c) Requires the PUC to provide a grant under this section only for a facility the construction of which begins before December 1, 2024, and is interconnected in the ERCOT power region not later than:

(1) the third anniversary of the date on which the construction began; or

(2) the fourth anniversary of the date on which the construction began if the PUC determines that extenuating circumstances justify the delay in completion.

(d) Provides that information submitted to the PUC in an application for a grant under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 34.0106. MANAGEMENT AND INVESTMENT OF FUND. (a) Requires the trust company to hold 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 is authorized to be used. Provides that the fund is authorized to be invested with the state treasury pool and comingled with other investments.

(b) Provides that 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.

(c) 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.

(d) Requires that the reasonable expenses of managing the fund's assets be paid from the fund.

(e) Requires the trust company annually to provide a written report to the PUC and to the Texas Energy Fund Advisory Committee (advisory committee) with respect to the investment of the fund.

(f) Requires the trust company to adopt a written investment policy that is appropriate for the fund. Requires the trust company to present the investment policy to the investment advisory board established under Section 404.028 (Investment Advisory Board), Government Code. Requires the investment advisory board to submit to the trust company recommendations regarding the policy.

(g) Requires the PUC annually to provide to the trust company a forecast of the cash flows into and out of the fund. Requires the PUC to provide updates to the forecasts as appropriate to ensure that the trust company is able to achieve the objective specified by Subsection (b).

(h) Requires the trust company to disburse money from the fund as directed by the PUC.

Sec. 34.0107. RECEIVERSHIP OF DEFAULT GENERATING FACILITY. (a) Defines "default."

(b) 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 this chapter.

(c) Requires the attorney general, in the event of a default on a loan made under this chapter, 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.

(d) Requires the court to 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:

(1) perform audits;

(2) direct ongoing operation of the assets;

(3) fund reserve accounts;

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

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

(e) 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.

(f) Requires the receiver, after appointment and execution of bond, to take possession of the books, records, accounts, and assets of the defaulting loan recipient specified by the court. Requires the receiver, until discharged by the

court, to perform the duties that the court directs and to strictly observe the final order involved.

(g) Authorizes the court, on a showing of good cause by the defaulting loan recipient, to dissolve the receivership.

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

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

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

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

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

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

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

(b) Provides that a member of the advisory committee serves at the will of the person who appointed the member.

(c) Requires the lieutenant governor to appoint a co-presiding officer of the advisory committee from among the members appointed by the lieutenant governor. Requires the speaker of the house of representatives to appoint a co-presiding officer of the advisory committee from among the members appointed by the speaker.

(d) Authorizes the advisory committee to hold public hearings, formal meetings, and work sessions. Authorizes either co-presiding officer of the advisory committee to call a public hearing, formal meeting, or work session of the advisory committee at any time. Prohibits the advisory committee from taking formal action at a public hearing, formal meeting, or work session unless a quorum of the advisory committee is present.

(e) Provides that a member of the advisory committee, except as otherwise provided by this subsection, is not entitled to receive compensation for service on the advisory committee or reimbursement for expenses incurred in the performance of official duties as a member of the advisory committee. Provides that 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.

(f) Provides that the advisory committee:

(1) is authorized to 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

(2) is required to review the overall operation, function, and structure of the fund at least semiannually.

(g) Authorizes the advisory committee to adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

(h) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the advisory committee.

(i) Provides that the advisory committee is subject to Chapter 325 (Sunset Law), Government Code. Provides that the advisory committee, unless continued in existence as provided by that chapter, is abolished September 1, 2035.

Sec. 34.0109. RULES. (a) Authorizes the PUC by rule to establish procedures for:

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

(2) the administration of the fund.

(b) Requires the PUC to give full consideration to comments and recommendations of the advisory committee before the PUC adopts rules under this chapter.

SECTION 3. Amends Section 35.005, Utilities Code, by adding Subsections (d), (e), and (f), as follows:

(d) Requires the independent organization certified under Section 39.151 (Essential Organizations) for the ERCOT power region to work with electric utilities to ensure that each facility for which a loan or grant is provided under Chapter 34 is fully interconnected in the ERCOT power region not later than the date the facility is ready for commercial operation. Requires the independent organization certified under Section 39.151 for the ERCOT power region to give priority to interconnecting each facility for which a loan or grant is provided under Chapter 34. Requires an electric utility that enters into an interconnection agreement for a facility for which a loan or grant is provided under Chapter 34 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.

(e) Provides that the deadline established by Subsection (d), if the PUC receives an application under Chapter 37 (Certificates of Convenience and Necessity) for a certificate of convenience and necessity related to facilities necessary to interconnect a facility for which a loan or grant is provided under Chapter 34 and does not approve the application before the 90th day after the date the PUC received the application, is extended one day for each day after the 90th day in which the PUC does not approve the application.

(f) Authorizes the PUC to extend the deadline established by Subsection (d) after notice, hearing, and a determination on a showing of good cause that fully interconnecting the facility before the deadline is not feasible.

SECTION 4. Requires the PUC, not later than December 31, 2023, to accept loan applications for loans authorized by Chapter 34, Utilities Code, as added by this Act, approve or deny each loan application, and disburse loan funds for each approved applicant.

SECTION 5. Provides that this Act is contingent upon the passage of the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, providing for the creation of the Texas energy fund and the authorization of other funding mechanisms to support the construction, maintenance, and modernization of electric generating facilities.