

A BILL TO BE ENTITLED

1 AN ACT
2 relating to funding mechanisms to support the construction,
3 maintenance, and modernization of dispatchable electric generating
4 facilities.

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

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

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

10 CHAPTER 34. GENERATING FACILITY FUNDING

11 Sec. 34.0101. DEFINITIONS. In this chapter:

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

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

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

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

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

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

3 (d) The fund consists of:

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

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

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

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

14 Sec. 34.0103. LOANS FOR MAINTENANCE AND MODERNIZATION. (a)
15 The commission may use money in the fund without further
16 appropriation to provide loans to finance maintenance or
17 modernization of dispatchable electric generating facilities
18 operating in the ERCOT power region. For purposes of a loan under
19 this subsection the commission may permit loan proceeds to be used
20 for the construction of fuel transportation infrastructure. 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 storage
24 facility is not eligible for a loan under this section. The
25 commission shall publish a list of the activities that constitute
26 maintenance or modernization for the purposes of this section.

27 (b) The commission shall give priority to loan applications

1 under this section that the commission determines will provide the
2 highest ratio of dispatchable megawatts maintained to project
3 costs.

4 (c) In evaluating an application for a loan under this
5 section, the commission may consider any appropriate factor and
6 shall consider the applicant's:

7 (1) efforts and achievements in conserving resources;

8 (2) quality of services;

9 (3) efficiency of operations;

10 (4) quality of management;

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

13 (6) previous Texas energy fund loan history, with a
14 preference toward entities that have not applied for or been
15 granted a loan previously;

16 (7) access to resources essential for operating the
17 facility for which the loan is requested, such as land, water, and
18 reliable infrastructure, as applicable; and

19 (8) evidence of creditworthiness and ability to repay
20 the loan on the terms established in the loan agreement, including
21 the applicant's total assets, total liabilities, net worth, and
22 credit ratings issued by major credit rating agencies.

23 (d) The commission may provide a loan under this section
24 only for maintenance or modernization of a facility that has a
25 generation capacity of at least 100 megawatts and is capable of
26 operating for at least five years after the date the loan is
27 received. For purposes of a loan under this subsection the

1 commission may permit loan proceeds to be used for the construction
2 of fuel transportation infrastructure.

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

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

7 (2) debt payments; or

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

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

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

16 (h) A loan provided under this section:

17 (1) must have a term of five years; and

18 (2) must bear an interest rate of zero percent.

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

22 Sec. 34.0104. LOANS FOR CONSTRUCTION. (a) The commission
23 may use money in the fund without further appropriation to provide
24 loans to finance the construction of dispatchable electric
25 generating facilities providing power for the ERCOT power region.
26 For the purposes of this section, a generating facility is
27 considered to be dispatchable if the facility's output can be

1 controlled primarily by forces under human control. An electric
2 energy storage facility is not eligible for a loan under this
3 section.

4 (b) The commission may provide a loan under this section
5 only:

6 (1) for construction of a facility that will have a
7 generation capacity of at least 100 megawatts and that does not meet
8 the planning model requirements necessary to be included in the
9 Capacity Demand and Reserves Report of the independent organization
10 certified under Section 39.151 for the ERCOT power region before
11 June 1, 2023; and

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

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

16 (1) the applicant's:

17 (A) quality of services and management;

18 (B) efficiency of operations;

19 (C) history of electricity generation operations
20 in this state and this country;

21 (D) resource operation attributes;

22 (E) ability to address regional and reliability
23 needs;

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

27 (G) evidence of creditworthiness and ability to

1 repay the loan on the terms established in the loan agreement,
2 including the applicant's total assets, total liabilities, net
3 worth, and credit ratings issued by major credit rating agencies;

4 (2) the generation capacity and estimated
5 construction costs of the facility for which the loan is requested;
6 and

7 (3) any other factors the commission considers
8 appropriate.

9 (d) Outstanding loans provided under this section and
10 grants provided under Section 34.0105, considered together, may not
11 support the construction of more than 10,000 megawatts of
12 generation capacity.

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

15 (f) A loan provided under this section:

16 (1) must have a term of 20 years; and

17 (2) must bear an interest rate of zero percent.

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

25 (1) shall authorize the loan recipient to withdraw the
26 deposit from the escrow account if the facility for which the loan
27 was provided is interconnected in the ERCOT power region before the

1 third anniversary of the date the loan funds were disbursed; or

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

9 (h) The comptroller shall deposit to the credit of the fund
10 any escrow funds described by Subsection (g) that the commission
11 may not authorize to be withdrawn by a loan recipient.

12 (i) Information submitted to the commission in an
13 application for a loan under this section is confidential and not
14 subject to disclosure under Chapter 552, Government Code.

15 (j) This section expires September 1, 2050.

16 Sec. 34.0105. COMPLETION BONUS GRANTS. (a) The commission
17 shall provide, using money available in the fund for the purpose
18 without further appropriation, a completion bonus grant for the
19 construction of dispatchable electric generating facilities in the
20 ERCOT power region. For the purposes of this section, a generating
21 facility is considered to be dispatchable if the facility's output
22 can be controlled primarily by forces under human control. An
23 electric energy storage facility is not eligible for a grant under
24 this section.

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

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

3 (1) will have a generation capacity of at least 100
4 megawatts;

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

9 (3) is interconnected in the ERCOT power region not
10 later than December 31, 2026, or, if the commission determines that
11 extenuating circumstances justify a delay in the facility's
12 completion, before a later date as specified by the commission that
13 must be not later than June 1, 2027.

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

16 (1) the applicant's:

17 (A) quality of services and management;

18 (B) efficiency of operations;

19 (C) history of electricity generation operations
20 in this state and this country;

21 (D) resource operation attributes; and

22 (E) ability to address regional and reliability
23 needs;

24 (2) the generation capacity and estimated
25 construction costs of the facility for which the grant is
26 requested; and

27 (3) any other factors the commission considers

1 appropriate.

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

5 (f) The commission may not provide a grant under this
6 section of more than \$200,000 per megawatt of capacity provided by
7 the facility.

8 (g) This section expires December 1, 2028.

9 Sec. 34.01055. LOAN AND GRANT RESTRICTIONS. (a) If the
10 commission has more than four pending applications for loans to be
11 made from the fund on the date the commission awards a loan, the
12 amount of the loan awarded may not exceed 25 percent of the fund
13 balance on that date.

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

17 (c) Each facility for which a loan or grant is provided
18 under this chapter must participate in the ERCOT wholesale
19 electricity market.

20 (d) The commission may provide:

21 (1) not more than five percent of the balance of the
22 fund per biennium for loans for maintenance and modernization under
23 Section 34.0103; and

24 (2) not more than 75 percent of the balance of the fund
25 per biennium for loans for construction under Section 34.0104.

26 Sec. 34.0106. MANAGEMENT AND INVESTMENT OF FUND. (a) The
27 trust company shall hold and invest the fund, and any accounts

1 established in the fund, for and in the name of the commission,
2 taking into account the purposes for which money in the fund may be
3 used. The fund may be invested with the state treasury pool and
4 commingled with other investments.

5 (b) The overall objective for the investment of the fund is
6 to maintain sufficient liquidity to meet the needs of the fund while
7 striving to preserve the purchasing power of the fund over a full
8 economic cycle.

9 (c) In managing the assets of the fund, the trust company
10 may acquire, exchange, sell, supervise, manage, or retain any kind
11 of investment that a prudent investor, exercising reasonable care,
12 skill, and caution, would acquire or retain in light of the
13 purposes, terms, distribution requirements, and other
14 circumstances of the fund then prevailing, taking into
15 consideration the investment of all the assets of the fund rather
16 than a single investment.

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

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

22 (f) The trust company shall adopt a written investment
23 policy that is appropriate for the fund. The trust company shall
24 present the investment policy to the investment advisory board
25 established under Section 404.028, Government Code. The investment
26 advisory board shall submit to the trust company recommendations
27 regarding the policy.

1 (g) The commission annually shall provide to the trust
2 company a forecast of the cash flows into and out of the fund. The
3 commission shall provide updates to the forecasts as appropriate to
4 ensure that the trust company is able to achieve the objective
5 specified by Subsection (b).

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

8 Sec. 34.0107. RECEIVERSHIP OF DEFAULT GENERATING FACILITY.

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

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

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

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

17 (c) In the event of a default on a loan made under this
18 chapter, at the request of the commission, the attorney general
19 shall bring suit in a district court in Travis County for the
20 appointment of a receiver to collect the assets and carry on the
21 business of a loan recipient if the action is necessary to cure a
22 default by the recipient.

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

26 (1) perform audits;

27 (2) direct ongoing operation of the assets;

1 (3) fund reserve accounts;

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

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

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

9 (f) After appointment and execution of bond, the receiver
10 shall take possession of the books, records, accounts, and assets
11 of the defaulting loan recipient specified by the court. Until
12 discharged by the court, the receiver shall perform the duties that
13 the court directs and shall strictly observe the final order
14 involved.

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

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

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

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

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

26 (2) three members of the house of representatives
27 appointed by the speaker of the house of representatives,

1 including:

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

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

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

9 (c) The lieutenant governor shall appoint a co-presiding
10 officer of the advisory committee from among the members appointed
11 by the lieutenant governor. The speaker of the house of
12 representatives shall appoint a co-presiding officer of the
13 advisory committee from among the members appointed by the speaker.

14 (d) The advisory committee may hold public hearings, formal
15 meetings, and work sessions. Either co-presiding officer of the
16 advisory committee may call a public hearing, formal meeting, or
17 work session of the advisory committee at any time. The advisory
18 committee may not take formal action at a public hearing, formal
19 meeting, or work session unless a quorum of the committee is
20 present.

21 (e) Except as otherwise provided by this subsection, a
22 member of the advisory committee is not entitled to receive
23 compensation for service on the committee or reimbursement for
24 expenses incurred in the performance of official duties as a member
25 of the committee. Service on the advisory committee by a member of
26 the senate or house of representatives is considered legislative
27 service for which the member is entitled to reimbursement and other

1 benefits in the same manner and to the same extent as for other
2 legislative service.

3 (f) The advisory committee:

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

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

9 (g) The advisory committee may adopt rules, procedures, and
10 policies as needed to administer this section and implement its
11 responsibilities.

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

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

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

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

22 (2) the administration of the fund.

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

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

27 (d) The independent organization certified under Section

1 39.151 for the ERCOT power region shall work with electric
2 utilities to ensure that each facility for which a loan or grant is
3 provided under Chapter 34 is fully interconnected in the ERCOT
4 power region not later than the date the facility is ready for
5 commercial operation. The independent organization certified under
6 Section 39.151 for the ERCOT power region shall give priority to
7 interconnecting each facility for which a loan or grant is provided
8 under Chapter 34. An electric utility that enters into an
9 interconnection agreement for a facility for which a loan or grant
10 is provided under Chapter 34 shall give priority to interconnecting
11 the facility and complete construction of any other facilities
12 necessary to interconnect the facility not later than the date the
13 facility is ready for commercial operation.

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

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

26 SECTION 4. Not later than December 31, 2023, the Public
27 Utility Commission of Texas shall accept loan applications for

1 loans authorized by Chapter 34, Utilities Code, as added by this
2 Act, approve or deny each loan application, and disburse loan funds
3 for each approved applicant.

4 SECTION 5. This Act takes effect on the date on which the
5 constitutional amendment proposed by the 88th Legislature, Regular
6 Session, 2023, providing for the creation of the Texas energy fund
7 and the authorization of other funding mechanisms to support the
8 construction, maintenance, and modernization of electric
9 generating facilities takes effect. If that amendment is not
10 approved by the voters, this Act has no effect.