

By: Schwertner

S.B. No. 2627

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 the purposes of this
19 section, a generating facility is considered to be dispatchable if
20 the facility's output can be controlled primarily by forces under
21 human control.

22 (b) The commission shall give priority to loan applications
23 under this section that the commission determines will provide the
24 highest ratio of dispatchable megawatts maintained to project
25 costs.

26 (c) The commission shall evaluate an application for a loan
27 under this section based on the applicant's:

- 1 (1) efforts and achievements in conserving resources;
- 2 (2) quality of services;
- 3 (3) efficiency of operations;
- 4 (4) quality of management;
- 5 (5) proposed improvement in availability of the
6 generation facility for which the loan is requested; and
- 7 (6) previous Texas energy fund loan history, with a
8 preference toward entities that have not applied for or been
9 granted a loan previously.

10 (d) The commission may provide a loan under this section
11 only for maintenance or modernization of a facility that has a
12 generation capacity of at least 10 megawatts and is capable of
13 operating for at least five years after the date the loan is
14 received.

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

- 17 (1) compliance with weatherization standards adopted
18 before December 1, 2023;
- 19 (2) debt payments; or
- 20 (3) expenses not related to maintaining or modernizing
21 the electric generating facility.

22 (f) An electric utility may not receive a loan under this
23 section.

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

1 (h) A loan provided under this section:

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

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

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

7 Sec. 34.0104. LOANS FOR CONSTRUCTION. (a) The commission
8 may use money in the fund without further appropriation to provide
9 loans to finance the construction of dispatchable electric
10 generating facilities providing power for the ERCOT power region.
11 For the purposes of this section, a generating facility is
12 considered to be dispatchable if the facility's output can be
13 controlled primarily by forces under human control. An electric
14 energy storage facility is not eligible for a loan under this
15 section.

16 (b) The commission may provide a loan under this section
17 only:

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

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

23 (c) The commission shall evaluate an application for a loan
24 under this section based on regional and reliability needs in the
25 ERCOT power region and:

26 (1) the applicant's:

27 (A) efforts and achievements in conserving

1 resources;

2 (B) quality of services and management;

3 (C) efficiency of operations;

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

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

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

11 (d) Outstanding loans provided under this section may not
12 support the construction of more than 10,000 megawatts of
13 generation capacity.

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

16 (f) A loan provided under this section:

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

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

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

3 (2) after the third 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 fourth anniversary of the date the loan funds were
8 disbursed and the commission determines that extenuating
9 circumstances justify the delay in completion.

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

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

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

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

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

1 facility.

2 (c) The commission shall provide a grant under this section
3 only for a facility the construction of which begins before
4 December 1, 2024, and is interconnected in the ERCOT power region
5 not later than:

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

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

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

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

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

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 loan under this
8 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 before the
12 commission adopts rules under this chapter.

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

15 (d) The independent organization certified under Section
16 39.151 for the ERCOT power region shall work with electric
17 utilities to ensure that each facility for which a loan or grant is
18 provided under Chapter 34 is fully interconnected in the ERCOT
19 power region not later than the date the facility is ready for
20 commercial operation. The independent organization certified under
21 Section 39.151 for the ERCOT power region shall give priority to
22 interconnecting each facility for which a loan or grant is provided
23 under Chapter 34. An electric utility that enters into an
24 interconnection agreement for a facility for which a loan or grant
25 is provided under Chapter 34 shall give priority to interconnecting
26 the facility and complete construction of any other facilities
27 necessary to interconnect the facility not later than the date the

1 facility is ready for commercial operation.

2 (e) If the commission receives an application under Chapter
3 37 for a certificate of convenience and necessity related to
4 facilities necessary to interconnect a facility for which a loan or
5 grant is provided under Chapter 34 and does not approve the
6 application before the 90th day after the date the commission
7 received the application, the deadline established by Subsection
8 (d) is extended one day for each day after the 90th day in which the
9 commission does not approve the application.

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

14 SECTION 4. Not later than December 31, 2023, the Public
15 Utility Commission of Texas shall accept loan applications for
16 loans authorized by Chapter 34, Utilities Code, as added by this
17 Act, approve or deny each loan application, and disburse loan funds
18 for each approved applicant.

19 SECTION 5. This Act takes effect on the date on which the
20 constitutional amendment proposed by the 88th Legislature, Regular
21 Session, 2023, providing for the creation of the Texas energy fund
22 and the authorization of other funding mechanisms to support the
23 construction, maintenance, and modernization of electric
24 generating facilities takes effect. If that amendment is not
25 approved by the voters, this Act has no effect.