

1-1 By: Schwertner S.B. No. 2627
 1-2 (In the Senate - Filed May 1, 2023; May 1, 2023, read first
 1-3 time and referred to Committee on Business & Commerce; May 2, 2023,
 1-4 reported favorably by the following vote: Yeas 8, Nays 0, three
 1-5 present not voting; May 2, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13				X
1-14	X			
1-15				X
1-16	X			
1-17	X			
1-18				X

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to funding mechanisms to support the construction,
 1-22 maintenance, and modernization of dispatchable electric generating
 1-23 facilities.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. This Act may be cited as the Powering Texas
 1-26 Forward Act.

1-27 SECTION 2. Subtitle B, Title 2, Utilities Code, is amended
 1-28 by adding Chapter 34 to read as follows:

1-29 CHAPTER 34. GENERATING FACILITY FUNDING

1-30 Sec. 34.0101. DEFINITIONS. In this chapter:

1-31 (1) "Advisory committee" means the Texas Energy Fund
 1-32 Advisory Committee.

1-33 (2) "Fund" means the Texas energy fund established by
 1-34 Section 49-q, Article III, Texas Constitution.

1-35 (3) "Trust company" means the Texas Treasury
 1-36 Safekeeping Trust Company.

1-37 Sec. 34.0102. FUND. (a) The fund is a special fund in the
 1-38 state treasury outside the general revenue fund to be administered
 1-39 and used by the commission for the purposes authorized by this
 1-40 chapter. The commission may establish separate accounts in the
 1-41 fund.

1-42 (b) The fund and the fund's accounts are kept and held by the
 1-43 trust company for and in the name of the commission.

1-44 (c) Money deposited to the credit of the fund may be used
 1-45 only as provided by this chapter.

1-46 (d) The fund consists of:

1-47 (1) money appropriated, credited, transferred, or
 1-48 deposited to the credit of the fund by or as authorized by law,
 1-49 including money from any source transferred or deposited to the
 1-50 credit of the fund at the commission's discretion;

1-51 (2) revenue that the legislature by statute dedicates
 1-52 for deposit to the credit of the fund;

1-53 (3) investment earnings and interest earned on money
 1-54 in the fund; and

1-55 (4) gifts, grants, and donations contributed to the
 1-56 fund.

1-57 Sec. 34.0103. LOANS FOR MAINTENANCE AND MODERNIZATION. (a)
 1-58 The commission may use money in the fund without further
 1-59 appropriation to provide loans to finance maintenance or
 1-60 modernization of dispatchable electric generating facilities
 1-61 operating in the ERCOT power region. For the purposes of this

2-1 section, a generating facility is considered to be dispatchable if
 2-2 the facility's output can be controlled primarily by forces under
 2-3 human control.
 2-4 (b) The commission shall give priority to loan applications
 2-5 under this section that the commission determines will provide the
 2-6 highest ratio of dispatchable megawatts maintained to project
 2-7 costs.
 2-8 (c) The commission shall evaluate an application for a loan
 2-9 under this section based on the applicant's:
 2-10 (1) efforts and achievements in conserving resources;
 2-11 (2) quality of services;
 2-12 (3) efficiency of operations;
 2-13 (4) quality of management;
 2-14 (5) proposed improvement in availability of the
 2-15 generation facility for which the loan is requested; and
 2-16 (6) previous Texas energy fund loan history, with a
 2-17 preference toward entities that have not applied for or been
 2-18 granted a loan previously.
 2-19 (d) The commission may provide a loan under this section
 2-20 only for maintenance or modernization of a facility that has a
 2-21 generation capacity of at least 10 megawatts and is capable of
 2-22 operating for at least five years after the date the loan is
 2-23 received.
 2-24 (e) Proceeds of a loan received under this section may not
 2-25 be used for:
 2-26 (1) compliance with weatherization standards adopted
 2-27 before December 1, 2023;
 2-28 (2) debt payments; or
 2-29 (3) expenses not related to maintaining or modernizing
 2-30 the electric generating facility.
 2-31 (f) An electric utility may not receive a loan under this
 2-32 section.
 2-33 (g) The commission may require immediate repayment of a loan
 2-34 issued under this section if the recipient of the loan stops
 2-35 operating the facility for which the loan was received before the
 2-36 fifth anniversary of the date on which the loan was disbursed.
 2-37 (h) A loan provided under this section:
 2-38 (1) must have a term of five years; and
 2-39 (2) must bear an interest rate of zero percent.
 2-40 (i) Information submitted to the commission in an
 2-41 application for a loan under this section is confidential and not
 2-42 subject to disclosure under Chapter 552, Government Code.
 2-43 Sec. 34.0104. LOANS FOR CONSTRUCTION. (a) The commission
 2-44 may use money in the fund without further appropriation to provide
 2-45 loans to finance the construction of dispatchable electric
 2-46 generating facilities providing power for the ERCOT power region.
 2-47 For the purposes of this section, a generating facility is
 2-48 considered to be dispatchable if the facility's output can be
 2-49 controlled primarily by forces under human control. An electric
 2-50 energy storage facility is not eligible for a loan under this
 2-51 section.
 2-52 (b) The commission may provide a loan under this section
 2-53 only:
 2-54 (1) for construction of a facility that will have a
 2-55 generation capacity of at least 10 megawatts the construction of
 2-56 which does not begin before September 1, 2023; and
 2-57 (2) in an amount that does not exceed 75 percent of the
 2-58 estimated cost of the facility to be constructed.
 2-59 (c) The commission shall evaluate an application for a loan
 2-60 under this section based on regional and reliability needs in the
 2-61 ERCOT power region and:
 2-62 (1) the applicant's:
 2-63 (A) efforts and achievements in conserving
 2-64 resources;
 2-65 (B) quality of services and management;
 2-66 (C) efficiency of operations;
 2-67 (D) history of electricity generation operations
 2-68 in this country; and
 2-69 (E) previous Texas energy fund loan history, with

3-1 a preference toward entities that have not applied for or been
3-2 granted a loan previously; and
3-3 (2) the generation capacity and estimated
3-4 construction costs of the facility for which the loan is requested.
3-5 (d) Outstanding loans provided under this section may not
3-6 support the construction of more than 10,000 megawatts of
3-7 generation capacity.
3-8 (e) An electric utility may not receive a loan under this
3-9 section.
3-10 (f) A loan provided under this section:
3-11 (1) must have a term of 20 years; and
3-12 (2) must bear an interest rate of zero percent.
3-13 (g) The commission shall require each recipient of a loan
3-14 under this section to deposit in an escrow account held by the
3-15 comptroller an amount of money equal to five percent of the
3-16 estimated cost of constructing the facility for which the loan is
3-17 provided. The deposit must be made before the loan funds are
3-18 disbursed. The loan recipient may not withdraw the deposit unless
3-19 authorized by the commission. The commission:
3-20 (1) shall authorize the loan recipient to withdraw the
3-21 deposit from the escrow account if the facility for which the loan
3-22 was provided is interconnected in the ERCOT power region before the
3-23 third anniversary of the date the loan funds were disbursed; or
3-24 (2) after the third anniversary of the date the loan
3-25 funds were disbursed, may authorize the loan recipient to withdraw
3-26 the deposit from the escrow account if the facility for which the
3-27 loan was provided is interconnected in the ERCOT power region not
3-28 later than the fourth anniversary of the date the loan funds were
3-29 disbursed and the commission determines that extenuating
3-30 circumstances justify the delay in completion.
3-31 (h) The comptroller shall deposit to the credit of the fund
3-32 any escrow funds described by Subsection (g) that the commission
3-33 may not authorize to be withdrawn by a loan recipient.
3-34 (i) Information submitted to the commission in an
3-35 application for a loan under this section is confidential and not
3-36 subject to disclosure under Chapter 552, Government Code.
3-37 (j) This section expires September 1, 2050.
3-38 Sec. 34.0105. COMPLETION BONUS. (a) The commission shall
3-39 provide, using money available in the fund for the purpose without
3-40 further appropriation, a completion bonus grant for the
3-41 construction of dispatchable electric generating facilities in the
3-42 ERCOT power region. For the purposes of this section, a generating
3-43 facility is considered to be dispatchable if the facility's output
3-44 can be controlled primarily by forces under human control. An
3-45 electric energy storage facility is not eligible for a grant under
3-46 this section.
3-47 (b) The amount of a grant under this section must be based on
3-48 the megawatts of capacity provided to the ERCOT power region by the
3-49 facility.
3-50 (c) The commission shall provide a grant under this section
3-51 only for a facility the construction of which begins before
3-52 December 1, 2024, and is interconnected in the ERCOT power region
3-53 not later than:
3-54 (1) the third anniversary of the date on which the
3-55 construction began; or
3-56 (2) the fourth anniversary of the date on which the
3-57 construction began if the commission determines that extenuating
3-58 circumstances justify the delay in completion.
3-59 (d) Information submitted to the commission in an
3-60 application for a grant under this section is confidential and not
3-61 subject to disclosure under Chapter 552, Government Code.
3-62 Sec. 34.0106. MANAGEMENT AND INVESTMENT OF FUND. (a) The
3-63 trust company shall hold the fund, and any accounts established in
3-64 the fund, for and in the name of the commission, taking into account
3-65 the purposes for which money in the fund may be used. The fund may
3-66 be invested with the state treasury pool and comingled with other
3-67 investments.
3-68 (b) The overall objective for the investment of the fund is
3-69 to maintain sufficient liquidity to meet the needs of the fund while

4-1 striving to preserve the purchasing power of the fund.

4-2 (c) In managing the assets of the fund, the trust company
 4-3 may acquire, exchange, sell, supervise, manage, or retain any kind
 4-4 of investment that a prudent investor, exercising reasonable care,
 4-5 skill, and caution, would acquire or retain in light of the
 4-6 purposes, terms, distribution requirements, and other
 4-7 circumstances of the fund then prevailing, taking into
 4-8 consideration the investment of all the assets of the fund rather
 4-9 than a single investment.

4-10 (d) The reasonable expenses of managing the fund's assets
 4-11 shall be paid from the fund.

4-12 (e) The trust company annually shall provide a written
 4-13 report to the commission and to the advisory committee with respect
 4-14 to the investment of the fund.

4-15 (f) The trust company shall adopt a written investment
 4-16 policy that is appropriate for the fund. The trust company shall
 4-17 present the investment policy to the investment advisory board
 4-18 established under Section 404.028, Government Code. The investment
 4-19 advisory board shall submit to the trust company recommendations
 4-20 regarding the policy.

4-21 (g) The commission annually shall provide to the trust
 4-22 company a forecast of the cash flows into and out of the fund. The
 4-23 commission shall provide updates to the forecasts as appropriate to
 4-24 ensure that the trust company is able to achieve the objective
 4-25 specified by Subsection (b).

4-26 (h) The trust company shall disburse money from the fund as
 4-27 directed by the commission.

4-28 Sec. 34.0107. RECEIVERSHIP OF DEFAULT GENERATING FACILITY.

4-29 (a) In this section, "default" means:

4-30 (1) default in payment of the principal of or interest
 4-31 on a loan; or

4-32 (2) a failure to perform any of the terms of a loan.

4-33 (b) The state, including the commission, the advisory
 4-34 committee, and the trust company, may not retain an ownership
 4-35 interest in a project or facility for which a loan is provided under
 4-36 this chapter.

4-37 (c) In the event of a default on a loan made under this
 4-38 chapter, at the request of the commission, the attorney general
 4-39 shall bring suit in a district court in Travis County for the
 4-40 appointment of a receiver to collect the assets and carry on the
 4-41 business of a loan recipient if the action is necessary to cure a
 4-42 default by the recipient.

4-43 (d) The court shall vest a receiver appointed by the court
 4-44 with any power or duty the court finds necessary to cure the
 4-45 default, including the power or duty to:

4-46 (1) perform audits;

4-47 (2) direct ongoing operation of the assets;

4-48 (3) fund reserve accounts;

4-49 (4) make payments of the principal of or interest on
 4-50 bonds, securities, or other obligations; and

4-51 (5) take any other action necessary to prevent or to
 4-52 remedy the default, including the sale of assets.

4-53 (e) The receiver shall execute a bond in an amount to be set
 4-54 by the court to ensure the proper performance of the receiver's
 4-55 duties.

4-56 (f) After appointment and execution of bond, the receiver
 4-57 shall take possession of the books, records, accounts, and assets
 4-58 of the defaulting loan recipient specified by the court. Until
 4-59 discharged by the court, the receiver shall perform the duties that
 4-60 the court directs and shall strictly observe the final order
 4-61 involved.

4-62 (g) On a showing of good cause by the defaulting loan
 4-63 recipient, the court may dissolve the receivership.

4-64 Sec. 34.0108. TEXAS ENERGY FUND ADVISORY COMMITTEE. (a)
 4-65 The advisory committee is composed of the following six members:

4-66 (1) three members of the senate appointed by the
 4-67 lieutenant governor, including:

4-68 (A) a member of the committee of the senate
 4-69 having primary jurisdiction over matters relating to the generation

5-1 of electricity; and

5-2 (B) a member of the committee of the senate
5-3 having primary jurisdiction over finance; and

5-4 (2) three members of the house of representatives
5-5 appointed by the speaker of the house of representatives,
5-6 including:

5-7 (A) a member of the committee of the house of
5-8 representatives having primary jurisdiction over the generation of
5-9 electricity; and

5-10 (B) a member of the committee of the house of
5-11 representatives having primary jurisdiction over finance.

5-12 (b) A member of the advisory committee serves at the will of
5-13 the person who appointed the member.

5-14 (c) The lieutenant governor shall appoint a co-presiding
5-15 officer of the advisory committee from among the members appointed
5-16 by the lieutenant governor. The speaker of the house of
5-17 representatives shall appoint a co-presiding officer of the
5-18 advisory committee from among the members appointed by the speaker.

5-19 (d) The advisory committee may hold public hearings, formal
5-20 meetings, and work sessions. Either co-presiding officer of the
5-21 advisory committee may call a public hearing, formal meeting, or
5-22 work session of the advisory committee at any time. The advisory
5-23 committee may not take formal action at a public hearing, formal
5-24 meeting, or work session unless a quorum of the committee is
5-25 present.

5-26 (e) Except as otherwise provided by this subsection, a
5-27 member of the advisory committee is not entitled to receive
5-28 compensation for service on the committee or reimbursement for
5-29 expenses incurred in the performance of official duties as a member
5-30 of the committee. Service on the advisory committee by a member of
5-31 the senate or house of representatives is considered legislative
5-32 service for which the member is entitled to reimbursement and other
5-33 benefits in the same manner and to the same extent as for other
5-34 legislative service.

5-35 (f) The advisory committee:

5-36 (1) may provide comments and recommendations to the
5-37 commission for the commission to use in adopting rules regarding
5-38 the use of the fund or on any other matter; and

5-39 (2) shall review the overall operation, function, and
5-40 structure of the fund at least semiannually.

5-41 (g) The advisory committee may adopt rules, procedures, and
5-42 policies as needed to administer this section and implement its
5-43 responsibilities.

5-44 (h) Chapter 2110, Government Code, does not apply to the
5-45 size, composition, or duration of the advisory committee.

5-46 (i) The advisory committee is subject to Chapter 325,
5-47 Government Code (Texas Sunset Act). Unless continued in existence
5-48 as provided by that chapter, the advisory committee is abolished
5-49 September 1, 2035.

5-50 Sec. 34.0109. RULES. (a) The commission by rule may
5-51 establish procedures for:

5-52 (1) the application for and award of a loan under this
5-53 chapter; and

5-54 (2) the administration of the fund.

5-55 (b) The commission shall give full consideration to
5-56 comments and recommendations of the advisory committee before the
5-57 commission adopts rules under this chapter.

5-58 SECTION 3. Section 35.005, Utilities Code, is amended by
5-59 adding Subsections (d), (e), and (f) to read as follows:

5-60 (d) The independent organization certified under Section
5-61 39.151 for the ERCOT power region shall work with electric
5-62 utilities to ensure that each facility for which a loan or grant is
5-63 provided under Chapter 34 is fully interconnected in the ERCOT
5-64 power region not later than the date the facility is ready for
5-65 commercial operation. The independent organization certified under
5-66 Section 39.151 for the ERCOT power region shall give priority to
5-67 interconnecting each facility for which a loan or grant is provided
5-68 under Chapter 34. An electric utility that enters into an
5-69 interconnection agreement for a facility for which a loan or grant

6-1 is provided under Chapter 34 shall give priority to interconnecting
6-2 the facility and complete construction of any other facilities
6-3 necessary to interconnect the facility not later than the date the
6-4 facility is ready for commercial operation.

6-5 (e) If the commission receives an application under Chapter
6-6 37 for a certificate of convenience and necessity related to
6-7 facilities necessary to interconnect a facility for which a loan or
6-8 grant is provided under Chapter 34 and does not approve the
6-9 application before the 90th day after the date the commission
6-10 received the application, the deadline established by Subsection
6-11 (d) is extended one day for each day after the 90th day in which the
6-12 commission does not approve the application.

6-13 (f) The commission may extend the deadline established by
6-14 Subsection (d) after notice, hearing, and a determination on a
6-15 showing of good cause that fully interconnecting the facility
6-16 before the deadline is not feasible.

6-17 SECTION 4. Not later than December 31, 2023, the Public
6-18 Utility Commission of Texas shall accept loan applications for
6-19 loans authorized by Chapter 34, Utilities Code, as added by this
6-20 Act, approve or deny each loan application, and disburse loan funds
6-21 for each approved applicant.

6-22 SECTION 5. This Act takes effect on the date on which the
6-23 constitutional amendment proposed by the 88th Legislature, Regular
6-24 Session, 2023, providing for the creation of the Texas energy fund
6-25 and the authorization of other funding mechanisms to support the
6-26 construction, maintenance, and modernization of electric
6-27 generating facilities takes effect. If that amendment is not
6-28 approved by the voters, this Act has no effect.

6-29 * * * * *