

**SUBJECT:** Establishing a fund to support electric facility construction and upgrades

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 13 ayes — Hunter, Hernandez, Anchía, Dean, Geren, Guillen, Metcalf, Raymond, Slawson, Smithee, Spiller, S. Thompson, Turner

0 nays

**SENATE VOTE:** On final passage (May 4) — 27 - 4

**WITNESSES:** For — Katie Coleman, Texas Association of Manufacturers; Mike Alvarado, Wattbridge (*Registered, but did not testify*: Martha Landwehr, BASF Corporation; James Mathis, Dow; Lauren Fairbanks, Freeport LNG; George Kast, Gibbons Lake and Land; Mindy Ellmer, Lyondellbasell, Olin and Tarrant Regional Water District; Julie Moore, Occidental; Mark Gipson, Pioneer Natural Resources; Dana Harris, Samsung Austin Semiconductor; Richard Dyer, Steering Committee of Cities Saved by Oncor; Chris Noonan, Texas Chemical Council; Richard Dyer, Texas Coalition for Affordable Power; Charlie Malouff, Texas Twister, Inc.; Jay Brown, Valero Energy Corporation; and 20 individuals)

Against — John Gordon; Susan Meredith (*Registered, but did not testify*: Jason Sabo, Environment Texas; Thomas Ortman, Nous Energy, Citizens Climate Lobby; Anne Billingsley, ONEOK, Inc; Adrian Shelley, Public Citizen; Josiah Neeley, R Street Institute; Matthew Boms, Texas Advanced Energy Business Alliance; Sandra Haverlah, Texas Consumer Association; and 12 individuals)

On —Bryan Sams, Calpine Corporation; Casey Kelley, Constellation Energy Generation; Cyrus Reed, Lone Star Chapter Sierra Club; Mark Spencer, LS Power Development; Bill Barnes, NRG; Thomas Gleeson, Public Utility Commission of Texas; Michele Richmond, Texas Competitive Power Advocates; Julia Harvey, Texas Electric Cooperatives; Sam Siegel, Vistra; David Carter (*Registered, but did not testify*: Mark Bell, Association of Electric Companies of Texas; Kenan Ogelman,

ERCOT; Joel Yu, Grid Resilience in Texas; Fred Shannon, Hunt Energy Network; Jennifer Coffee, Texas Pipeline Association)

**BACKGROUND:** Some have suggested that increasing funding for certain activities related to dispatchable electric generation facilities could increase the reliability of the state's electric market.

**DIGEST:** CSSB 2627, or the Powering Texas Forward Act, would establish the Texas energy fund as a special fund outside the general revenue fund to be administered and used by the Public Utility Commission (PUC). The fund would consist of:

- money appropriated, credited, transferred, or deposited to the credit of the fund or as authorized by law;
- revenue that the Legislature dedicated for deposit to the credit of the fund;
- investment earnings and interest earned on money in the fund; and
- gifts, grants, and donations.

**ERCOT loans.** PUC could use money in the fund without further appropriation to provide loans to finance upgrades to existing dispatchable electric generating facilities. To be eligible for a loan, facilities would have to provide power for the ERCOT region and the upgrades would be required to increase facility capacity by 100 megawatts. PUC could also provide a loan for the construction of dispatchable electric generating facilities providing power for the ERCOT region that each had a generation capacity of at least 100 megawatts. A construction loan could only be provided:

- for construction of a facility that did not meet the planning model requirements necessary to be included in ERCOT'S Capacity Demand and Reserves Report before June 1, 2023;
- in an amount up to 60 percent of the facility's estimated construction cost; and
- if the agreement ensured that the loan would be the facility's senior debt.

An electric utility other than a river authority could not receive a loan from the fund.

A loan under the bill would have to have a term of 20 years, be payable ratably starting seven years after being issued, and bear an interest rate of 2 percent.

PUC would have to require each loan recipient to deposit 3 percent of the estimated project cost in an escrow account held by the comptroller. The deposit would have to be made before the funds were disbursed, and the recipient could not withdraw the deposit unless authorized by PUC as provided for in the bill. Any escrow funds that PUC could not authorize to be withdrawn would be deposited in the Texas energy fund.

PUC would be required to accept loan applications, approve or deny each application, and disburse loan funds by December 31, 2026, and could not disburse money for a loan under the bill after that date.

**Completion bonus grants.** PUC would be required to provide a completion bonus grant for the construction of dispatchable electric generating facilities in the ERCOT power region using money from the fund. A grant could be provided only for the construction of a facility that:

- would have a generation capacity of at least 100 megawatts;
- did not meet the planning model requirements necessary to be included in ERCOT'S Capacity Demand and Reserves Report before June 1, 2023; and
- was interconnected in the ERCOT power region by December 31, 2028, or, if PUC determined that a delay was justified, before a later date specified by the commission that was no later than June 1, 2029.

The grant amount would have to be based on the megawatts of capacity provided to the ERCOT power region by the facility, and could not exceed \$100,000 per megawatt. PUC could not provide a grant after

September 1, 2029.

**Loans and grants.** CSSB 2627 would establish criteria for PUC's evaluation of applications for loans and grants under the bill based on applicant characteristics, generation capacity, and estimated costs. If PUC had more than four pending loan applications for the fund on the date a loan was awarded, the loan could not exceed 25 percent of the fund balance.

Outstanding loans and grants could not support the addition or construction of more than the generation capacity megawatts needed to meet reliability standards, goals, or operational targets for ERCOT as determined by PUC.

PUC could not provide a loan or grant for an electric energy storage facility or a facility that would be used primarily to serve an industrial load or private use network.

Before December 31, 2026, PUC could provide:

- for loans, no more than 80 percent of fund money available on December 1, 2023; and
- for grants, no more than 20 percent of fund money available on December 1, 2026.

**Advisory committee.** CSSB 2627 would establish an advisory committee for the Texas energy fund composed of three members of the Senate appointed by the lieutenant governor and three members of the House of Representatives appointed by the speaker of the House. The committee would have to include one member from the respective committees of each chamber with primary jurisdiction over electricity generation and finance. The lieutenant governor and speaker of the House would each appoint a co-presiding officer from the respective members they appointed.

The committee could hold public hearings, formal meetings, and work

sessions, as called by either co-presiding officer. The committee could provide comments and recommendations to PUC regarding rules and would be required to review the overall operation, function, and structure of the fund at least semiannually. The committee would be subject to the Texas Sunset Act, with a sunset date of September 1, 2035.

**Fund management and investment.** CSSB 2627 would require the Texas Treasury Safekeeping Trust Company to hold and invest the Texas energy fund for and in the name of PUC. The fund could be invested with the state treasury pool and comingled with other investments. The overall objective for fund investment would be to maintain sufficient liquidity to meet fund needs while preserving the fund's purchasing power.

The trust company would be required to provide an annual written report to PUC and the advisory committee and to adopt a written investment policy to be presented to the comptroller's investment advisory board. The board would be required to submit recommendations for the policy to the trust company. PUC would be required to provide the trust company with an annual forecast of the fund's cash flows and provide updates to the forecasts as appropriate to enable the trust company to achieve the fund's investment objective.

**Receivership of default generating facility.** In the event of a default on a loan under the bill, at PUC's request, the attorney general would bring suit in a Travis County district court for the appointment of a receiver to collect the assets and carry on the business of a loan recipient if the action was necessary to cure a default by the recipient. The court would vest a receiver with any power or duty the court found necessary to cure the default. The receiver would be required to execute a bond set by the court to ensure the proper performance of the receiver's duties.

After the appointment and execution of the bond, the receiver would take possession of the books, records, accounts, and assets of the defaulting loan recipient. Until discharged by the court, the receiver would be required to perform the duties directed by the court and strictly observe the final order involved. On a showing of good cause by the defaulting

loan recipient, the court could dissolve the receivership.

**Interconnecting facilities.** CSSB 2627 would require ERCOT to work with electric utilities to ensure that each facility that was provided a loan or grant from the energy fund was fully interconnected in the region no later than the date the facility was ready for commercial operation. ERCOT would be required to give priority to interconnecting facilities that had received loans or grants under the bill except that transmission projects designated as critical for reliability would have to be prioritized over such facilities. The bill would provide for applications, deadlines, and extensions related to interconnecting facilities that received loans or grants from the fund.

**Effective date.** CSSB 2627 would take effect on the date on which the constitutional amendment proposed by the 88<sup>th</sup> Legislature providing for the creation of the Texas energy fund took effect. If the amendment was not approved by voters, the bill would have no effect.

NOTES:

CSSB 2627 is the enabling legislation for CSSJR 93 by Schwertner, which would create the Texas energy fund. CSSJR 93 is set for second reading today.

According to the Legislative Budget Board, CSSB 2627 would have an estimated negative impact to general revenue related funds of about \$1.44 million through fiscal 2024-2025.