

BILL ANALYSIS

Senate Research Center

S.B. 2627
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Business & Commerce
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Enrolled

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.

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

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 2 (Sections 34.0105, 34.0106, 34.0110, and 34.0205, Utilities Code), and SECTION 3 (Section 35.005, Utilities Code) of this bill.

Rulemaking authority is expressly granted to the Texas Energy Fund Advisory Committee in SECTION 2 (Section 34.0109, Utilities Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 4 (Section 382.069, Health and Safety 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. FACILITY FUNDING

SUBCHAPTER A. TEXAS ENERGY FUND; GRANTS AND LOANS

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. GRANTS FOR FACILITIES OUTSIDE ERCOT POWER REGION. (a) Authorizes the PUC to use money in the fund without further appropriation to provide grants to be used for transmission and distribution infrastructure and electric generating facilities in this state outside the ERCOT power region for:

- (1) facility modernization;
- (2) facility weatherization;
- (3) reliability and resiliency facility enhancements; or
- (4) vegetation management.

(b) Provides that the PUC, in evaluating an application for a grant under this section:

- (1) is required to evaluate whether the project for which the grant is requested is reasonable; and
- (2) is authorized to consider any other appropriate factors.

(c) 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 (Public Information), Government Code.

(d) Prohibits proceeds of a grant received under this section from being used for:

- (1) compliance with weatherization standards adopted before December 1, 2023; or
- (2) debt payments.

Sec. 34.0104. LOANS FOR ERCOT POWER REGION. (a) Authorizes the PUC to use money in the fund without further appropriation to provide loans to finance upgrades to existing dispatchable electric generating facilities providing power for the ERCOT power region that result in a net increase of at least 100 megawatts of capacity for each facility or the construction of dispatchable electric generating facilities providing power for the ERCOT power region that each have a generation capacity of at least 100 megawatts. 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 construction loan under this section only:

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

(2) in an amount that does not exceed 60 percent of the estimated cost of the facility to be constructed; and

(3) if the agreement ensures that the loan is to be the senior debt secured by the facility.

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

(1) the applicant's:

(A) quality of services and management;

(B) efficiency of operations;

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

(D) resource operation attributes;

(E) ability to address regional and reliability needs;

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

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

(2) the generation capacity and estimated costs of the project for which the loan is requested; and

(3) any other factors the PUC considers appropriate.

(d) Prohibits outstanding loans provided under this section and grants provided under Section 34.0105, considered together, from supporting the addition or construction of more than 10,000 megawatts of generation capacity.

(e) Prohibits an electric utility other than a river authority from receiving a loan under this section.

(f) Requires that a loan provided under this section:

(1) have a term of 20 years;

(2) be payable ratably starting on the third anniversary of the estimated commercial operation date of the facility for which the loan was provided, as stated in the loan application; and

(3) bear an interest rate of three 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 three percent of the estimated cost of the project for which the loan is provided. Requires that the deposit be made before the initial loan funds are disbursed. Prohibits the loan recipient from withdrawing the deposit unless authorized by the PUC.

(h) Provides that the PUC, for money deposited under Subsection (g) for a loan for the construction of a new facility:

(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 fourth anniversary of the date the initial loan funds were disbursed; or

(2) after the fourth anniversary of the date the initial 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 fifth anniversary of the date the initial loan funds were disbursed and the PUC determines that extenuating circumstances justify the delay in completion.

(i) Provides that the PUC, for money deposited under Subsection (g) for a loan for an upgrade to an existing facility:

(1) is required to authorize the loan recipient to withdraw the deposit from the escrow account if the project for which the loan was provided is completed before the third anniversary of the date the initial loan funds were disbursed; or

(2) after the third anniversary of the date the initial loan funds were disbursed, is authorized to authorize the loan recipient to withdraw the deposit from the escrow account if the project for which the loan was provided is completed not later than the fourth anniversary of the date the initial loan funds were disbursed and the PUC determines that extenuating circumstances justify the delay in completion.

(j) 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.

(k) 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.

(l) Prohibits the PUC from disbursing the initial funds for a loan under this section after December 31, 2025.

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

Sec. 34.0105. COMPLETION BONUS GRANTS. (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) Authorizes the PUC to provide a grant under this section only for construction of a facility that:

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

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

(d) Requires the PUC to evaluate an application for a grant under this section based on:

(1) the applicant's:

(A) quality of services and management;

(B) efficiency of operations;

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

(D) resource operation attributes; and

(E) ability to address regional and reliability needs;

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

(3) any other factors the PUC considers appropriate.

(e) 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.

(f) Prohibits the PUC, unless the PUC determines that extenuating circumstances justify extending the deadlines provided by this subsection, from providing a grant under this section of more than:

(1) \$120,000 per megawatt of capacity provided by a facility that is interconnected in the ERCOT power region before June 1, 2026; or

(2) \$80,000 per megawatt of capacity provided by a facility that is interconnected in the ERCOT power region on or after June 1, 2026, and before June 1, 2029.

(g) Prohibits the PUC, unless the PUC determines that extenuating circumstances justify extending the deadline provided by this subsection, from providing a grant under this section for a facility that is interconnected in the ERCOT power region on or after June 1, 2029.

(h) Requires the PUC to provide for the proceeds of each grant awarded under this section to be disbursed to the grant recipient by equal annual payments over a 10-year period that begins on the first anniversary of the commercial operations date of the facility for which the grant is provided. Provides that the annual payments are subject to being withheld or discounted in accordance with Subsection (i).

Prohibits the total of the annual disbursements from exceeding the maximum amount as limited by Subsection (f).

(i) Requires the PUC by rule to establish performance standards for grant recipients based on reliability metrics, appropriate for the types of facilities for which grants are authorized to be provided, for performance during the 100 hours with the least quantity of operating reserves for each year. Prohibits the PUC from disbursing a grant recipient's annual payment under Subsection (h) if the performance of the facility for which the grant was provided is equal to or below the median performance standard established under this subsection during a test period designated by the PUC for that year. Authorizes the PUC to disburse a discounted amount of a grant recipient's annual payment under Subsection (h) if the performance of the facility for which the grant was provided is above the median performance standard established under this subsection during a test period designated by the PUC for that year but less than an optimal performance standard established by the PUC. Requires the PUC by rule to adopt a system for determining the amount by which the PUC will discount an annual payment based on facility performance under this subsection.

(j) Provides that this section expires December 1, 2040.

Sec. 34.0106. LOAN AND GRANT RESTRICTIONS. (a) Prohibits the amount of the loan awarded, if the PUC has more than four pending applications for loans to be made from the fund on the date the PUC awards a loan, from exceeding 25 percent of the fund balance on that date.

(b) Prohibits the PUC from providing a loan or a grant under this chapter:

(1) for a facility that will be used primarily to serve an industrial load or private use network; or

(2) for the construction or operation of a natural gas transmission pipeline.

(c) Requires the PUC to require each recipient of a loan under this chapter to enter into a debt covenant that requires the recipient to meet facility performance standards adopted by the PUC. Requires the PUC by rule to adopt performance standards for the purposes of this subsection based on reliability metrics appropriate for the types of facilities for which loans are authorized to be provided.

(d) Requires each facility for which a loan or grant is provided under Section 34.0104 or 34.0105 to participate in the ERCOT wholesale electricity market.

(e) Authorizes the PUC to provide from the fund:

(1) for grants under Section 34.0103, not more than \$1 billion;

(2) for loans and grants under Sections 34.0104 and 34.0105, not more than \$7.2 billion; and

(3) for grants or loans under Subchapter B, not more than \$1.8 billion.

Sec. 34.0107. MANAGEMENT AND INVESTMENT OF FUND. (a) Requires the trust company to hold and invest 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 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 over a full economic cycle.

(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. 34.0108. 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. 34.0109. 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. 34.0110. RULES. (a) Authorizes the PUC by rule to establish procedures for:

(1) the application for and award of a grant or 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.

SUBCHAPTER B. TEXAS POWER PROMISE: BACKUP POWER PACKAGES

Sec. 34.0201. DEFINITION. Defines "Texas backup power package."

Sec. 34.0202. PURPOSE. Provides that the purpose of this subchapter is to facilitate and provide funding for the design, procurement, installation, and use of Texas backup power packages to ensure the reliability or adequacy of an electric power grid in this state for facilities on which communities rely for health, safety, and well-being.

Sec. 34.0203. COMMISSION DUTIES. (a) Requires the PUC to convene an advisory committee in the manner provided by Chapter 2110 (State Agency Advisory Committees), Government Code.

(b) Requires the advisory committee to recommend criteria for the PUC to employ in making a grant or loan under this subchapter.

(c) Requires the PUC to contract with a research entity that has experience in microgrid design to analyze critical facility characteristics and requirements in this state and develop for Texas backup power packages:

(1) sets of specifications for standard backup power packages of various sizes that can serve most critical facilities in this state; and

(2) specifications for standard interconnection, communications, and controls for Texas backup power packages.

Sec. 34.0204. TEXAS BACKUP POWER PACKAGES. Authorizes the PUC to use money in the Texas energy fund without further appropriation to provide a grant or loan for the operation of a Texas backup power package that:

(1) is engineered to minimize operation costs;

(2) uses interconnection technology and controls that enable immediate islanding from the power grid and stand-alone operation for the host facility;

(3) is capable of operating for at least 48 continuous hours without refueling or connecting to a separate power source;

(4) is designed so that one or more Texas backup power packages can be aggregated on-site to serve not more than 2.5 megawatts of load at the host facility;

(5) provides power sourced from:

(A) a combination of natural gas or propane with photovoltaic panels and battery storage; or

(B) battery storage on an electric school bus; and

(6) is not used by the owner or host facility for the sale of energy or ancillary services.

Sec. 34.0205. GRANTS AND LOANS. (a) Authorizes the PUC by rule to establish procedures for the application for and award of a grant or loan under this subchapter.

(b) Prohibits the amount of a grant provided under this subchapter from exceeding \$500 per kilowatt of capacity.

(c) Authorizes the PUC to provide a loan under this subchapter for procurement and operating costs.

(d) Requires the PUC to maintain and publish a list of approved vendors eligible to assist with the sale, installation, operation, and ongoing maintenance of Texas backup power packages.

(e) Prohibits the PUC from providing a grant or loan under this subchapter for:

(1) a commercial energy system, a private school, or a for-profit entity that does not directly serve public safety and human health; or

(2) a source of backup power that does not follow the design and use standards of a Texas backup power package.

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

(d) Provides that this subsection applies only to a facility in the ERCOT power region for which a loan or grant is provided under Subchapter A, Chapter 34. Requires the independent organization certified under Section 39.151 for the ERCOT power region to work with electric utilities to ensure that each facility in the ERCOT power region for which a loan or grant is provided is fully interconnected in the 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 except that the organization is required to prioritize transmission projects that the organization has formally designated as critical for reliability over a facility for which a loan or grant is provided. Requires an electric utility that enters into an interconnection agreement for a facility for which a loan or grant is provided 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 except that the utility is required to prioritize transmission projects that the independent organization

certified under Section 39.151 for the ERCOT power region has formally designated as critical for reliability over a facility for which a loan or grant is provided.

(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 to which Subsection (d) applies 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.

(g) Defines "Texas backup power package." Requires the PUC by rule to adopt procedures to expedite an electric utility interconnection request for a Texas backup power package for which a loan or grant is awarded under Chapter 34.

SECTION 4. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.069, as follows:

Sec. 382.069. TEXAS BACKUP POWER PACKAGE. (a) Defines "Texas backup power package."

(b) Requires the Texas Commission on Environmental Quality by rule to adopt a process to expedite the permitting of a Texas backup power package for which a permit is required under Chapter 382 (Clean Air Act) and for which a loan or grant is awarded under Chapter 34, Utilities Code.

SECTION 5. Requires the PUC, not later than June 1, 2024, to begin accepting loan applications for loans authorized by Subchapter A, Chapter 34, Utilities Code, as added by this Act. Requires the PUC, not later than December 31, 2025, to approve or deny each loan application and disburse initial loan funds for each approved applicant.

SECTION 6. 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 to support the construction, maintenance, modernization, and operation of electric generating facilities.