

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE B. ELECTRIC UTILITIES

Text of chapter effective on voter approval of S.J.R. 93, 88th Leg.,
R.S.

CHAPTER 34. FACILITY FUNDING

SUBCHAPTER A. TEXAS ENERGY FUND; GRANTS AND LOANS

Sec. 34.0101. DEFINITIONS. In this subchapter:

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

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

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

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. [2627](#)), Sec. 2.

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

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

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

(d) 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 commission'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.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

Sec. 34.0103. GRANTS FOR FACILITIES OUTSIDE ERCOT POWER REGION. (a) The commission may 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) In evaluating an application for a grant under this section, the commission:

(1) shall evaluate whether the project for which the grant is requested is reasonable; and

- (2) may consider any other appropriate factors.

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

(d) Proceeds of a grant received under this section may not be used for:

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

- (2) debt payments.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

For expiration of this section, see Subsection (m).

Sec. 34.0104. LOANS FOR ERCOT POWER REGION. (a) The commission may 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. For the purposes of this section, a generating facility is considered to be dispatchable if the facility's output can be controlled primarily by forces under human control. An electric energy storage facility is not eligible for a loan under this section.

(b) The commission may 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 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) The commission shall 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 commission considers

appropriate.

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

(e) An electric utility other than a river authority may not receive a loan under this section.

(f) A loan provided under this section must:

(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) The commission shall require each recipient of a loan under this section to deposit in an escrow account held by the comptroller an amount of money equal to three percent of the estimated cost of the project for which the loan is provided. The deposit must be made before the initial loan funds are disbursed. The loan recipient may not withdraw the deposit unless authorized by the commission.

(h) For money deposited under Subsection (g) for a loan for the construction of a new facility, the commission:

(1) shall 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, may 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 commission determines that extenuating circumstances justify the delay in completion.

(i) For money deposited under Subsection (g) for a loan for an upgrade to an existing facility, the commission:

(1) shall 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, may 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 commission determines that extenuating circumstances justify the delay in completion.

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

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

(l) The commission may not disburse the initial funds for a loan under this section after December 31, 2025.

(m) This section expires September 1, 2050.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

For expiration of this section, see Subsection (j).

Sec. 34.0105. COMPLETION BONUS GRANTS. (a) The commission shall 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. For the purposes of this section, a generating facility is considered to be dispatchable if the facility's output can be controlled primarily by forces under human control. An electric energy storage facility is not eligible for a grant under this section.

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

(c) The commission may 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) The commission shall 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 commission considers appropriate.

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

(f) Unless the commission determines that extenuating circumstances justify extending the deadlines provided by this subsection, the commission may not provide 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) Unless the commission determines that extenuating circumstances justify extending the deadline provided by this subsection, the commission may not provide a grant under this

section for a facility that is interconnected in the ERCOT power region on or after June 1, 2029.

(h) The commission shall 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. The annual payments are subject to being withheld or discounted in accordance with Subsection (i). The total of the annual disbursements may not exceed the maximum amount as limited by Subsection (f).

(i) The commission by rule shall establish performance standards for grant recipients based on reliability metrics, appropriate for the types of facilities for which grants may be provided, for performance during the 100 hours with the least quantity of operating reserves for each year. The commission may not disburse 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 commission for that year. The commission may 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 commission for that year but less than an optimal performance standard established by the commission. The commission shall by rule adopt a system for determining the amount by which the commission will discount an annual payment based on facility performance under this subsection.

(j) This section expires December 1, 2040.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. [2627](#)), Sec. 2.

Sec. 34.0106. LOAN AND GRANT RESTRICTIONS. (a) If the commission has more than four pending applications for loans to be made from the fund on the date the commission awards a loan, the amount of the loan awarded may not exceed 25 percent of the fund balance on that date.

(b) The commission may not provide 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) The commission shall 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 commission. The commission by rule shall adopt performance standards for the purposes of this subsection based on reliability metrics appropriate for the types of facilities for which loans may be provided.

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

(e) The commission may 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.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

Sec. 34.0107. MANAGEMENT AND INVESTMENT OF FUND. (a) The trust company shall hold and invest the fund, and any accounts established in the fund, for and in the name of the commission, taking into account the purposes for which money in the fund may be used. The fund may be invested with the state treasury pool and commingled with other investments.

(b) 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) In managing the assets of the fund, the trust company may 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) The reasonable expenses of managing the fund's assets shall be paid from the fund.

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

(f) The trust company shall adopt a written investment policy that is appropriate for the fund. The trust company shall present the investment policy to the investment advisory board established under Section [404.028](#), Government Code. The investment advisory board shall submit to the trust company recommendations regarding the policy.

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

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

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. [2627](#)), Sec. 2.

Sec. 34.0108. RECEIVERSHIP OF DEFAULT GENERATING FACILITY.

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

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

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

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

(c) In the event of a default on a loan made under this chapter, at the request of the commission, the attorney general

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

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

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

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. [2627](#)), Sec. 2.

Sec. 34.0109. TEXAS ENERGY FUND ADVISORY COMMITTEE.

(a) 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) A member of the advisory committee serves at the will of the person who appointed the member.

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

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

(e) Except as otherwise provided by this subsection, a member of the advisory committee is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee. 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) The advisory committee:

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

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

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

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

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

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

Sec. 34.0110. RULES. (a) The commission by rule may 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) The commission shall give full consideration to comments and recommendations of the advisory committee.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

SUBCHAPTER B. TEXAS POWER PROMISE: BACKUP POWER PACKAGES

Sec. 34.0201. DEFINITION. In this subchapter, "Texas backup power package" means a stand-alone, behind-the-meter, multiday backup power source that can be used for islanding.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

Sec. 34.0202. PURPOSE. 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.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

Sec. 34.0203. COMMISSION DUTIES. (a) The commission shall convene an advisory committee in the manner provided by Chapter

2110, Government Code.

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

(c) The commission shall 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.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

Sec. 34.0204. TEXAS BACKUP POWER PACKAGES. The commission may 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.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 2.

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

(b) The amount of a grant provided under this subchapter may not exceed \$500 per kilowatt of capacity.

(c) The commission may provide a loan under this subchapter for procurement and operating costs.

(d) The commission shall 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) The commission may not provide 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.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. [2627](#)), Sec. 2.