

PROPOSED AMENDMENT TO SENATE BILL 3 (87th LEGISLATURE)

PUCT / ERCOT Generation Siting, Reliability, Ratepayer Cost, Cybersecurity, and EESF/BESS Safety Oversight

LEGISLATIVE WORKING DRAFT — FOR LEGISLATIVE COUNSEL REVIEW

Drafting note. This is a policy-to-statute working draft based on the enrolled text of S.B. 3 (87R). It is not represented as final Legislative Council language. Because S.B. 3 amended multiple codes, the proposal focuses on Utilities Code §39.159—the SB 3 provision that directly addresses ERCOT reliability and dispatchable generation—and adds a new §39.1591 for project-specific review. The enrolled SB 3 text already requires ERCOT reliability requirements and competitive procurement of reliability services; this draft expands that framework to project approval/clearance.

Markup key: existing language proposed for deletion is ~~struck through~~; proposed new language is **RED**.

SECTION 1. Utilities Code §39.159 — Reliability and Dispatchable Generation

Sec. 39.159. ~~DISPATCHABLE GENERATION~~ POWER REGION RELIABILITY, DISPATCHABLE GENERATION, AND RESOURCE OVERSIGHT.

(a) For purposes of this section, a generation facility is considered to be non-dispatchable if the facility's output is controlled primarily by forces outside of human control. **For purposes of this section and Section 39.1591, "electric energy storage facility" or "EESF" includes a battery energy storage system or other facility that stores electric energy for later injection into the ERCOT power region.**

(b) The commission shall ensure that the independent organization certified under Section 39.151 for the ERCOT power region:

(1) establishes requirements to meet the reliability needs of the power region;

(2) periodically, but at least annually, determines the quantity and characteristics of ancillary or reliability services necessary to ensure appropriate reliability during extreme heat and extreme cold weather conditions and during times of low non-dispatchable power production in the power region;

(3) procures ancillary or reliability services on a competitive basis to ensure appropriate reliability during extreme heat and extreme cold weather conditions and during times of low non-dispatchable power production in the power region;

(4) develops appropriate qualification and performance requirements for providing services under Subdivision (3), including appropriate penalties for failure to provide the services; and

(5) sizes the services procured under Subdivision (3) to prevent prolonged rotating outages due to net load variability in high demand and low supply scenarios;

(6) establishes and enforces, subject to commission oversight, requirements governing the interconnection, registration, energization, and commercial operation of a large generation resource or EESF based on the reliability, location, ratepayer-cost, emergency-readiness, cybersecurity, foreign-adversary supply-chain, and remote-operation criteria prescribed by Section 39.1591; and

(7) may not grant final interconnection approval, resource registration, energization authorization, or commercial-operation clearance to a resource subject to Section 39.1591 unless the commission has made the findings required by that section.

(c) The commission shall ensure that:

(1) resources that provide services under Subsection (b) are dispatchable and able to meet continuous operating requirements for the season in which the service is procured;

(2) winter resource capability qualifications for a service described by Subsection (b) include on-site fuel storage, dual fuel capability, or fuel supply arrangements to ensure winter performance for several days; and

(3) summer resource capability qualifications for a service described by Subsection (b) include facilities or procedures to ensure operation under drought conditions.

(d) In implementing this section, the commission and the independent organization shall evaluate reliability using actual and reasonably forecast performance, including accredited capacity, dispatchability, availability during critical periods, energy delivered to the grid, storage duration and round-trip efficiency for an EESF, fuel security, and the total system and ratepayer cost of providing reliable electric service per megawatt-hour of energy delivered. Nameplate capacity alone may not be treated as equivalent to reliable energy delivered.

SECTION 2. Add Utilities Code §39.1591 — Large Resource Review and Approval

Sec. 39.1591. LARGE GENERATION AND ELECTRIC ENERGY STORAGE FACILITY REVIEW.

(a) The commission by rule shall establish a review and approval process for each proposed large generation resource (delivering one megawatt-hour of energy or greater) and electric energy storage facility seeking interconnection with, registration in, energization for, or commercial operation in the ERCOT power region.

(b) Before final approval, the commission, with technical analysis by the independent organization, shall conduct and make a written finding on a cost-benefit and reliability analysis that considers at least: (1) proximity to existing and reasonably forecast load, including data centers, artificial-intelligence computing facilities, industrial loads, and high-density urban demand centers; (2) expected annual and critical-period energy delivered; (3) accredited capacity, dispatchability, availability, fuel security, storage duration, and other reliability attributes; (4) expected transmission losses attributable to delivery from the proposed location to principal demand centers; (5) congestion, curtailment, and redispatch costs; (6) the need for new or upgraded transmission facilities or, where necessary to support the reliable integration of wind or solar generation, the reasonably attributable cost of energy storage, backup capability, grid-stabilization services, or other reliability resources, and the portion of those costs reasonably expected to be borne by Texas ratepayers; (7) interconnection and ancillary-service costs; (8) the expected useful life of the resource; and (9) the resulting total system cost and ratepayer cost per megawatt-hour of reliable energy delivered.

(c) The reasonable and necessary costs incurred by the commission, the independent organization, and any independent consultant retained to conduct or support the analysis required by Subsection (b) shall be paid by the developer proposing the generation resource or electric energy storage facility under review. The commission by rule shall establish procedures for assessing and collecting those costs. Such costs may not be recovered from ERCOT market participants or Texas ratepayers through transmission charges, system administration fees, or other socialized charges.

(d) A developer proposing a resource in a remote location shall demonstrate that the location provides a net reliability and ratepayer benefit after transmission losses, congestion, new transmission requirements, and other system costs are included. The commission may deny, condition, or defer approval when a reasonably available alternative resource or location would provide materially greater reliability at materially lower total system cost to Texas ratepayers.

(e) In comparing resource alternatives, the commission shall give preference, when supported by the record, to dispatchable resources—including natural-gas-fueled and nuclear generation—located in or near demand centers when those resources provide greater accredited reliability and a lower total system cost per megawatt-hour of

reliable energy delivered than a proposed remote non-dispatchable generation resource or EESF. The commission may not base a decision solely on resource label or technology type and shall document the reliability and cost findings supporting the preference.

(f) For an EESF/BESS, the commission shall require a site-specific safety and environmental risk assessment addressing: (1) the probability and reasonably foreseeable consequences of thermal runaway, fire, explosion, cascading cell failure, and reignition; (2) the identity and quantity, to the extent reasonably ascertainable, of hazardous combustion or decomposition products; (3) potential air dispersion and exposure; (4) potential contamination of soil, surface water, and groundwater from fire suppression, runoff, damaged cells, or released materials; (5) proximity to residences, schools, hospitals, drinking-water sources, surface waters, critical infrastructure, evacuation routes, and environmentally sensitive areas; (6) expected emergency-response, evacuation, containment, remediation, cleanup, and long-term monitoring costs; and (7) financial assurance sufficient to protect ratepayers and local governments from extraordinary response, remediation, and decommissioning costs.

(g) Before an EESF/BESS may begin commercial operation, the owner or operator must provide the commission, ERCOT, the county commissioners' court, and the affected county emergency-management officials a facility-specific emergency operations and response package, a 24-hour emergency contact, responder training and coordination procedures, isolation and shutdown procedures, and information reasonably necessary for fire, EMS, law-enforcement, evacuation, environmental, and public-health response, subject to lawful protection of security-sensitive information.

(h) The commission and the independent organization shall require each resource subject to this section to demonstrate compliance with applicable state and federal cybersecurity and critical-infrastructure requirements including but not limited to the requirements under the Texas Lone Star Infrastructure Protection Act. The review must address foreign-adversary ownership, control, supply-chain, equipment, software, firmware, communications, remote-access, battery-management, energy-management, inverter, SCADA, and control-system risks. The commission may deny or condition approval if a prohibited or inadequately mitigated foreign-adversary or remote-access risk could materially impair grid reliability, security, or safe operation.

(i) The commission shall require continuing compliance after commercial operation and may audit, inspect, order corrective action, impose administrative penalties authorized by law, or direct the independent organization to suspend or restrict market participation for material noncompliance, subject to due process provided by commission rule.

(j) The commission shall adopt rules providing for public disclosure of the non-security-sensitive portions of each cost-benefit, reliability, and safety finding. Confidential critical-energy-infrastructure and cybersecurity information shall be protected if required by state or federal law.

(k) The commission shall inform the county commissioners' court and any sub-regional planning commission (as defined by Chapter 391 of the Texas Local Government Code and that has notified the commission of its formation and intent to be actively involved in the development, installation and operational planning for generation resources within the area of its jurisdiction), of any generation resource being proposed within that county or sub-region area within seven (7) days of an application being received by ERCOT. The commission shall provide copies of all cost-benefit and reliability analyses, as well as all site-specific safety and environmental risk assessments of the proposed resource to the county commissioners' court and the 391 sub-regional planning commission having jurisdiction at least 30 days before making any final decisions or granting any approvals. The commission shall also coordinate all planning related to the proposed generation resource with any sub-regional planning commissions having jurisdiction over the area in which that resource is proposed to be located.

SECTION 3. Conforming Rulemaking and Enforcement

Not later than one year after the effective date of this Act, the Public Utility Commission of Texas shall adopt rules necessary to implement Sections 39.159 and 39.1591, Utilities Code, as amended or added by this Act.

The commission shall ensure that ERCOT protocols, interconnection procedures, registration requirements, and commercial-operation requirements conform to the rules adopted under this Act.

The commission may phase implementation for projects already substantially advanced in the interconnection process, but must require immediate compliance with emergency-readiness, cybersecurity, foreign-adversary, and material reliability requirements when necessary to protect public safety or grid security.

Source basis: S.B. 3, 87th Legislature, Regular Session, enrolled text; particularly Utilities Code §§35.0021 and 39.159. Official Texas Legislature sources should control over this working draft.