

CHAPTER 1132

S.B. No. 744

AN ACT

relating to cogeneration by state agencies; the creation, composition, powers, funding, and duties of the State Cogeneration Council; the ability of state agencies to charge for excess cogeneration capacity and energy; and the authority of the Public Utility Commission of Texas to adopt and enforce rules and regulations.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

- (1) "Council" means the State Cogeneration Council.
- (2) "State agency" means any office, department, commission, or board of any branch of state government or any institution of higher education, as defined by Section 61.003, Education Code.
- (3) "Qualifying facility" means any qualifying small power production facility or a qualifying cogeneration facility as defined in Sections 3(17)(C) and 3(18)(B) of the Federal Power Act (16 U.S.C. Sections 796(17)(C) and 796(18)(B)).
- (4) "State agency cogeneration facility" means any qualifying facility constructed or operated by a state agency for the benefit of any state agency facilities located adjacent to or on property contiguous with the site of the qualifying facility.
- (5) "Cogenerating state agency" means any state agency which has constructed or operates a state agency cogeneration facility.
- (6) "Firm power" means power or power-producing capacity that is available to the purchasing party pursuant to a legally enforceable obligation for scheduled availability over a specified term.
- (7) "Nonfirm power" means power provided under an arrangement that does not guarantee scheduled availability, but instead provides for delivery as available.
- (8) "Public Utility Regulatory Act" means the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

SECTION 2. STATE COGENERATION COUNCIL. (a) The State Cogeneration Council is created and is composed of:

- (1) one representative, knowledgeable in the issue of cogeneration, from each of the following state agencies, appointed by and serving at the pleasure of the chairman of the agency:
 - (A) the Public Utility Commission of Texas;
 - (B) the Railroad Commission of Texas;
 - (C) the State Purchasing and General Services Commission; and
 - (D) the Texas Air Control Board;
 - (2) one representative of the office of the Attorney General, appointed by the Attorney General; and
 - (3) one representative of higher education, appointed by the governor.
- (b) At the first meeting of the council following the appointment of a new member, the council shall elect one of its members chairman. The chairman shall vote only in order to break a tie.
- (c) Members of the council serve without compensation for service on the council but are entitled to reimbursement for expenses as provided by the General Appropriations Act.
- (d) The incidental expenses of the council shall be borne by the entities represented on the council. The entities represented are authorized to expend funds to assist the council in the discharge of its duties; provided, however, that the council may not by majority vote or otherwise compel a represented entity to expend funds except by and with the consent of the represented entity.

SECTION 3. DUTIES OF THE COUNCIL. (a) The council shall:

(1) assist, inform, and advise state agencies concerning legal, technical, economic, and contractual issues related to cogeneration; and

(2) based solely on economic and technical grounds, approve or disapprove an application for a state agency cogeneration facility.

(b) The council may contract for the services of experts to assist in the performance of its duties. The expenses of any experts may be funded by the entities represented on the council, general appropriation of the legislature, or specific appropriation or other receipt of oil overcharge funds received by the state.

(c) The council shall adopt such rules and procedures as may be necessary and required in the exercise of its duties. The form of the application required to be filed by a state agency under this Act shall be developed within 60 days of the effective date of this Act.

SECTION 4. STATE AGENCY COGENERATION PROJECTS. (a) Prior to the construction or operation of a state agency cogeneration facility, a state agency shall file the application prescribed by the council with the council for approval.

(b) Upon approval of the application, a state agency may commence construction or operation of a state agency cogeneration facility of the size and design approved.

(c) The size and design of the state agency cogeneration facility shall be limited to that necessary to economically supply the cogenerating state agency, considering the optimum balance of annual thermal and electrical energy requirements, and including expansions anticipated in the near future.

(d) The council shall approve or disapprove the application of a state agency for a state agency cogeneration facility within six months of the filing of the application.

(e) Council approval is not required for the operation or construction of a state agency cogeneration facility that is operating or on which final engineering design has been completed or construction has begun before the effective date of this Act.

(f) Two or more state agencies may jointly construct or operate a state agency cogeneration facility subject to the provisions of this Act.

SECTION 5. AUTHORITY TO SELL POWER. (a) Upon approval of the application required in Section 4 of this Act, any cogenerating state agency may contract for the sale to an electric utility of any or all firm or nonfirm power produced by the state agency cogeneration facility in excess of that required by the cogenerating state agency, in the same manner as a qualifying facility.

(b) Any cogenerating state agency may consult with the council concerning the price and other terms contained in such contract.

(c) Any and all funds collected by each state agency pursuant to sales of firm and nonfirm power shall first be applied to retire any outstanding debt and pay operating expenses resulting from the construction and maintenance of the state agency cogeneration facility. All funds collected by a state agency pursuant to this Act in excess of the funds needed to service the debt and pay the operating expenses of the state agency cogeneration facility shall be deposited in the General Revenue Fund.

SECTION 6. COOPERATION WITH COGENERATING STATE AGENCIES. (a) All political subdivisions, municipalities, and agencies of the state now or hereafter operating, maintaining, or controlling facilities in Texas for providing retail electric utility service shall cooperate with cogenerating state agencies attempting to sell firm or nonfirm power and shall not adopt rates, pricing policies, access restrictions, or other rules or regulations inconsistent with the intent of this Act.

(b) Any state agency may file a petition with the Public Utility Commission of Texas in order to seek enforcement of this section. Upon the filing of a petition by a state agency, the Public Utility Commission of Texas shall have such authority and jurisdiction to determine issues of rates, pricing policies, access restrictions, and other matters regarding state agency cogeneration facilities as may be necessary to enforce this section of this Act, notwithstanding any law to the contrary. The jurisdiction of the commission shall be

continuing until the issues posed in such petition are resolved by final order of the commission.

(c) Any order or ruling of the Public Utility Commission of Texas entered pursuant to this Act shall be deemed to have been entered or adopted under the Public Utility Regulatory Act and, for purposes of enforcement, is subject to enforcement pursuant to Sections 71 through 77 of the Public Utility Regulatory Act.

(d) This section does not otherwise enlarge or modify the jurisdiction of the Public Utility Commission of Texas over any political subdivision, municipality, or agency of the state.

SECTION 7. This Act takes effect September 1, 1987.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 22, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on June 1, 1987, by the following vote: Yeas 31, Nays 0.

Passed the House, with amendments, on May 29, 1987, by the following vote: Yeas 147, Nays 0, one present not voting.

Approved June 20, 1987.

Effective Sept. 1, 1987.