

AN ACT

relating to the response and resilience of certain electricity service providers to major weather-related events or other natural disasters; granting authority to issue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.402(a), Utilities Code, is amended to read as follows:

(a) In this subchapter, "system restoration costs" means reasonable and necessary costs, including costs expensed, charged to self-insurance reserves, deferred, capitalized, or otherwise financed, that are incurred by an electric utility due to any activity or activities conducted by or on behalf of the electric utility in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of the electric utility as the result of any tropical storm or hurricane, ice or snow storm, flood, or other weather-related event or natural disaster that occurred in calendar year 2008 or thereafter. System restoration costs include mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities. System restoration costs shall include reasonable estimates of the costs of an activity or activities conducted or expected to be conducted by or on behalf of the electric utility in connection with the

1 restoration of service or infrastructure associated with electric  
2 power outages, but such estimates shall be subject to true-up and  
3 reconciliation after the actual costs are known. System restoration  
4 costs include reasonable and necessary weatherization and  
5 storm-hardening costs incurred, as well as reasonable estimates of  
6 costs to be incurred, by the electric utility, but such estimates  
7 shall be subject to true-up and reconciliation after the actual  
8 costs are known.

9 SECTION 2. Chapter 36, Utilities Code, is amended by adding  
10 Subchapter J to read as follows:

11 SUBCHAPTER J. LOWER-COST FINANCING MECHANISM FOR SECURITIZATION  
12 FOR RECOVERY OF SYSTEM RESTORATION COSTS

13 Sec. 36.451. PURPOSE AND APPLICABILITY. (a) Except as  
14 otherwise specifically provided by this subchapter, the same  
15 procedures, standards, and protections for securitization  
16 authorized by Subchapter I of this chapter and, to the extent made  
17 applicable to Subchapter I of this chapter, by Subchapter G,  
18 Chapter 39, apply to the lower-cost financing mechanism for  
19 securitization of transition costs or system restoration costs as  
20 provided by Subchapter I. To the extent of any conflict between the  
21 provisions of this subchapter and Subchapter I of this chapter or,  
22 to the extent made applicable by Subchapter I of this chapter,  
23 Subchapter G, Chapter 39, in cases involving the securitization of  
24 system restoration costs under this subchapter, the provisions of  
25 this subchapter control.

26 (b) The purpose of this subchapter is to make available a  
27 lower-cost, supplemental financing mechanism to allow an electric

1 utility operating solely outside of ERCOT to obtain timely recovery  
2 of system restoration costs under Subchapter I through  
3 securitization and the issuance of transition bonds or system  
4 restoration bonds by an issuer other than the electric utility or an  
5 affiliated special purpose entity. Financing of system restoration  
6 costs under this subchapter is a valid and essential public  
7 purpose.

8 (c) The Texas Electric Utility System Restoration  
9 Corporation is created under this subchapter as a special purpose  
10 public corporation and instrumentality of the state for the  
11 essential public purpose of providing a lower-cost, supplemental  
12 financing mechanism available to the commission and an electric  
13 utility to attract low-cost capital to finance system restoration  
14 costs.

15 (d) In approving securitization under this subchapter, the  
16 commission shall ensure that customers are not harmed as a result of  
17 any financing through the Texas Electric Utility System Restoration  
18 Corporation and that any financial savings or other benefits are  
19 appropriately reflected in customer rates.

20 (e) System restoration bonds issued under this subchapter  
21 will be solely the obligation of the issuer and the corporation as  
22 borrower, if applicable, and will not be a debt of or a pledge of the  
23 faith and credit of the state.

24 (f) System restoration bonds issued under this subchapter  
25 shall be nonrecourse to the credit or any assets of the state and  
26 the commission.

27 (g) This subchapter does not limit or impair the

1 commission's jurisdiction under this title to regulate the rates  
2 charged and the services rendered by electric utilities in this  
3 state.

4 (h) An electric utility receiving the proceeds of  
5 securitization financing under this subchapter is not required to  
6 provide utility services to the corporation or the state as a result  
7 of receiving such proceeds except in the role of the corporation or  
8 the state as a customer of the electric utility. This subchapter  
9 does not create an obligation of the corporation or an issuer to  
10 provide electric services to the electric utility or its customers.

11 Sec. 36.452. DEFINITIONS. (a) In this subchapter:

12 (1) "Corporation" means the Texas Electric Utility  
13 System Restoration Corporation.

14 (2) "Issuer" means the corporation or any other  
15 corporation, public trust, public instrumentality, or entity that  
16 issues system restoration bonds approved by a financing order.

17 (b) For the purposes of this subchapter, "qualified costs,"  
18 as defined by Section 39.302 and as used in Subchapter G, Chapter  
19 39, also includes all costs of establishing, maintaining, and  
20 operating the corporation and all costs of the corporation and an  
21 issuer in connection with the issuance and servicing of the system  
22 restoration bonds, all as approved in the financing order.

23 (c) Except as otherwise specifically provided by this  
24 subchapter, any defined terms provided by Subchapter I of this  
25 chapter and, if made applicable by Subchapter I of this chapter,  
26 Subchapter G, Chapter 39, have the same meaning in this subchapter.

27 Sec. 36.453. CREATION OF CORPORATION. (a) The corporation

1 is a nonprofit corporation and instrumentality of the state, and  
2 shall perform the essential governmental function of financing  
3 system restoration costs in accordance with this subchapter. The  
4 corporation:

5 (1) shall perform only functions consistent with this  
6 subchapter;

7 (2) shall exercise its powers through a governing  
8 board;

9 (3) is subject to the regulation of the commission;  
10 and

11 (4) has a legal existence as a public corporate body  
12 and instrumentality of the state separate and distinct from the  
13 state.

14 (b) Assets of the corporation may not be considered part of  
15 any state fund. The state may not budget for or provide any state  
16 money to the corporation. The debts, claims, obligations, and  
17 liabilities of the corporation may not be considered to be a debt of  
18 the state or a pledge of its credit.

19 (c) The corporation must be self-funded. Before the  
20 imposition of transition charges or system restoration charges, the  
21 corporation may accept and expend for its operating expenses money  
22 that may be received from any source, including financing  
23 agreements with the state, a commercial bank, or another entity to:

24 (1) finance the corporation's obligations until the  
25 corporation receives sufficient transition property to cover its  
26 operating expenses as financing costs; and

27 (2) repay any short-term borrowing under any such

1 financing agreements.

2 (d) The corporation has the powers, rights, and privileges  
3 provided for a corporation organized under Chapter 22, Business  
4 Organizations Code, subject to the express exceptions and  
5 limitations provided by this subchapter.

6 (e) An organizer selected by the executive director of the  
7 commission shall prepare the certificate of formation of the  
8 corporation under Chapters 3 and 22, Business Organizations Code.  
9 The certificate of formation must be consistent with the provisions  
10 of this subchapter.

11 (f) State officers and agencies are authorized to render  
12 services to the corporation, within their respective functions, as  
13 may be requested by the commission or the corporation.

14 (g) The corporation or an issuer may:

15 (1) retain professionals, financial advisors, and  
16 accountants the corporation or issuer considers necessary to  
17 fulfill the corporation's or issuer's duties under this subchapter;  
18 and

19 (2) determine the duties and compensation of a person  
20 retained under Subdivision (1), subject to the approval of the  
21 commission.

22 (h) The corporation is governed by a board of five directors  
23 appointed by the commission for two-year terms.

24 (i) An official action of the board requires the favorable  
25 vote of a majority of the directors present and voting at a meeting  
26 of the board.

27 Sec. 36.454. POWERS AND DUTIES OF CORPORATION. (a) The

1 corporation, in each instance subject to the prior authorization of  
2 the commission, shall participate in the financial transactions  
3 authorized by this subchapter. The corporation may not engage in  
4 business activities except those activities provided for in this  
5 subchapter and those ancillary and incidental thereto. The  
6 corporation or an issuer may not apply proceeds of system  
7 restoration bonds or system restoration charges to a purpose not  
8 specified in a financing order, to a purpose in an amount that  
9 exceeds the amount allowed for such purpose in the order, or to a  
10 purpose in contravention of the order.

11 (b) The board of the corporation, under the provisions of  
12 this subchapter, may employ or retain persons as are necessary to  
13 perform the duties of the corporation.

14 (c) The corporation may:

15 (1) acquire, sell, pledge, or transfer transition  
16 property as necessary to effect the purposes of this subchapter  
17 and, in connection with the action, agree to such terms and  
18 conditions as the corporation deems necessary and proper,  
19 consistent with the terms of a financing order:

20 (A) to acquire transition property and to pledge  
21 such transition property, and any other collateral:

22 (i) to secure payment of system restoration  
23 bonds issued by the corporation, together with payment of any other  
24 qualified costs; or

25 (ii) to secure repayment of any borrowing  
26 from any other issuer of system restoration bonds; or

27 (B) to sell the transition property to another

1 issuer, which may in turn pledge that transition property, together  
2 with any other collateral, to the repayment of system restoration  
3 bonds issued by the issuer together with any other qualified costs;

4 (2) issue system restoration bonds on terms and  
5 conditions consistent with a financing order;

6 (3) borrow funds from an issuer of system restoration  
7 bonds to acquire transition property, and pledge that transition  
8 property to the repayment of any borrowing from an issuer, together  
9 with any related qualified costs, all on terms and conditions  
10 consistent with a financing order;

11 (4) sue or be sued in its corporate name;

12 (5) intervene as a party before the commission or any  
13 court in this state in any matter involving the corporation's  
14 powers and duties;

15 (6) negotiate and become a party to contracts as  
16 necessary, convenient, or desirable to carry out the purposes of  
17 this subchapter; and

18 (7) engage in corporate actions or undertakings that  
19 are permitted for nonprofit corporations in this state and that are  
20 not prohibited by, or contrary to, this subchapter.

21 (d) The corporation shall maintain separate accounts and  
22 records relating to each electric utility that collects system  
23 restoration charges for all charges, revenues, assets,  
24 liabilities, and expenses relating to that utility's related system  
25 restoration bond issuances.

26 (e) The board of the corporation may not authorize any  
27 rehabilitation, liquidation, or dissolution of the corporation and



1 a rehabilitation, liquidation, or dissolution of the corporation  
2 may not take effect as long as any system restoration bonds are  
3 outstanding unless adequate protection and provision have been made  
4 for the payment of the bonds pursuant to the documents authorizing  
5 the issuance of the bonds. In the event of any rehabilitation,  
6 liquidation, or dissolution, the assets of the corporation must be  
7 applied first to pay all debts, liabilities, and obligations of the  
8 corporation, including the establishment of reasonable reserves  
9 for any contingent liabilities or obligations, and all remaining  
10 funds of the corporation must be applied and distributed as  
11 provided by an order of the commission.

12 (f) Before the date that is two years and one day after the  
13 date that the corporation no longer has any payment obligation with  
14 respect to any system restoration bonds, including any obligation  
15 to an issuer of any system restoration bonds outstanding, the  
16 corporation may not file a voluntary petition under federal  
17 bankruptcy law and neither any public official nor any  
18 organization, entity, or other person may authorize the corporation  
19 to be or to become a debtor under federal bankruptcy law during that  
20 period. The state covenants that it will not limit or alter the  
21 denial of authority under this subsection or Subsection (e), and  
22 the provisions of this subsection and Subsection (e) are hereby  
23 made a part of the contractual obligation that is subject to the  
24 state pledge set forth in Section [39.310](#).

25 (g) The corporation shall prepare and submit to the  
26 commission for approval an annual operating budget. If requested by  
27 the commission, the corporation shall prepare and submit an annual

1 report containing the annual operating and financial statements of  
2 the corporation and any other appropriate information.

3 Sec. 36.455. COMMISSION REGULATION OF CORPORATION. The  
4 commission shall regulate the corporation as provided by this  
5 subchapter and consistent with the manner in which it regulates  
6 public utilities. Notwithstanding the regulation authorized by  
7 this section, the corporation is not a public utility.

8 Sec. 36.456. FINANCING ORDER. (a) This section applies to  
9 the commission's issuance of a financing order under this  
10 subchapter.

11 (b) Except as otherwise specifically provided by this  
12 subchapter, the provisions of Subchapter I of this chapter and, to  
13 the extent made applicable to Subchapter I of this chapter,  
14 Subchapter G, Chapter 39, that address the commission's issuance of  
15 a financing order apply to the commission's issuance of a financing  
16 order under this subchapter.

17 (c) The corporation and any issuer must be a party to the  
18 commission's proceedings that address the issuance of a financing  
19 order along with the relevant electric utility.

20 (d) In addition to the requirements of Subchapter I, as  
21 applicable, a financing order issued under this subchapter must:

22 (1) require the sale, assignment, or other transfer to  
23 the corporation of certain specified transition property created by  
24 the financing order in the manner contemplated by Section 39.308,  
25 and, following that sale, assignment, or transfer, require that  
26 system restoration charges paid under any financing order be  
27 created, assessed, and collected as the property of the

1 corporation, subject to subsequent sale, assignment, or transfer by  
2 the corporation as authorized under this subchapter;

3 (2) authorize:

4 (A) the issuance of system restoration bonds by  
5 the corporation secured by a pledge of specified transition  
6 property, and the application of the proceeds of those system  
7 restoration bonds, net of issuance costs, to the acquisition of the  
8 transition property from the electric utility; or

9 (B) the acquisition of specified transition  
10 property from the electric utility by the corporation financed:

11 (i) by a loan by an issuer to the  
12 corporation of the proceeds of system restoration bonds, net of  
13 issuance costs, secured by a pledge of the specified transition  
14 property; or

15 (ii) by the acquisition by an issuer from  
16 the corporation of the transition property financed from the net  
17 proceeds of transition bonds issued by the issuer; and

18 (3) authorize the electric utility to serve as  
19 collection agent to collect the system restoration charges and  
20 transfer the collected charges to the corporation, the issuer, or a  
21 financing party, as appropriate.

22 (e) After issuance of the financing order, the corporation  
23 shall arrange for the issuance of system restoration bonds as  
24 specified in the financing order by it or another issuer selected by  
25 the corporation and approved by the commission.

26 (f) System restoration bonds issued pursuant to a financing  
27 order under this section are secured only by the related transition

1 property and any other funds pledged under the bond documents. No  
2 assets of the state or electric utility are subject to claims by  
3 such bondholders. Notwithstanding the provisions of Subchapter G,  
4 Chapter 39, following assignment of the transition property, the  
5 electric utility does not have any beneficial interest or claim of  
6 right in such system restoration charges or in any transition  
7 property.

8 Sec. 36.457. SEVERABILITY. Effective on the date the first  
9 system restoration bonds associated with system restoration costs  
10 are issued under this subchapter, if any provision in this title or  
11 portion of this title is held to be invalid or is invalidated,  
12 superseded, replaced, repealed, or expires for any reason, that  
13 occurrence does not affect the validity or continuation of this  
14 subchapter, Subchapter I of this chapter, as that subchapter  
15 applies to this subchapter, Subchapter G, Chapter 39, as that  
16 subchapter applies to this subchapter, or any part of those  
17 provisions, or any other provision of this title that is relevant to  
18 the issuance, administration, payment, retirement, or refunding of  
19 system restoration bonds or to any actions of the electric utility,  
20 its successors, an assignee, a collection agent, the corporation,  
21 an issuer, or a financing party, and those provisions shall remain  
22 in full force and effect.

23 SECTION 3. Section 37.056(c), Utilities Code, is amended to  
24 read as follows:

25 (c) The commission shall grant each certificate on a  
26 nondiscriminatory basis after considering:

27 (1) the adequacy of existing service;

1 (2) the need for additional service;

2 (3) the effect of granting the certificate on the  
3 recipient of the certificate and any electric utility serving the  
4 proximate area; and

5 (4) other factors, such as:

6 (A) community values;

7 (B) recreational and park areas;

8 (C) historical and aesthetic values;

9 (D) environmental integrity;

10 (E) the probable improvement of service or  
11 lowering of cost to consumers in the area if the certificate is  
12 granted, including any potential economic or reliability benefits  
13 associated with dual fuel and fuel storage capabilities in areas  
14 outside the ERCOT power region; and

15 (F) to the extent applicable, the effect of  
16 granting the certificate on the ability of this state to meet the  
17 goal established by Section 39.904(a) of this title.

18 SECTION 4. Section 37.058, Utilities Code, is amended by  
19 adding Subsection (e) to read as follows:

20 (e) Notwithstanding any other provision of this title, an  
21 electric utility operating solely outside of the ERCOT power region  
22 may, but shall not be required to, obtain a certificate to install,  
23 own, or operate a generation facility with a capacity of 10  
24 megawatts or less.

25 SECTION 5. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

H.B. No. 1510

- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2021.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1510 was passed by the House on April 20, 2021, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1510 was passed by the Senate on May 19, 2021, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor