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Spiller

H.B. No. 3544

Substitute the following for H.B. No. 3544:

By: Paddie

C.S.H.B. No. 3544

A BILL TO BE ENTITLED

AN ACT

relating to the use of securitization by electric cooperatives to
address certain weather-related extraordinary costs and expenses.

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

SECTION 1. Chapter 41, Utilities Code, is amended by adding
Subchapter D to read as follows:

SUBCHAPTER D. SECURITIZATION

Sec. 41.151. PURPOSE. The purpose of this subchapter is to
enable electric cooperatives to use securitization financing to
recover extraordinary costs and expenses incurred due to the
abnormal weather events that occurred in this state in the period
beginning 12:00 a.m., February 12, 2021, and ending at 11:59 p.m.,
February 20, 2021. This type of debt will reduce the cost of
financing the extraordinary costs and expenses relative to the
costs that would be incurred using conventional electric
cooperative financing methods. The proceeds of the securitized
bonds shall be used solely for the purposes of financing or
refinancing the extraordinary costs and expenses, including costs
relating to consummation and administration of the securitized
financing. The board of each electric cooperative involved in the
financing shall ensure that securitization provides tangible and
quantifiable benefits to its members, greater than would have been
achieved absent the issuance of securitized bonds. Each board that
chooses to securitize under this subchapter shall ensure that the

1 structuring and pricing of the securitized bonds are consistent
2 with market conditions and the terms of the financing order. This
3 subchapter may be used by a group of electric cooperatives to issue
4 securitized bonds in a combined securitization transaction.

5 Sec. 41.152. DEFINITIONS. In this subchapter:

6 (1) "Assignee" means any individual, corporation, or
7 other legally recognized entity, including a special purpose
8 entity, to which an interest in securitized property is
9 transferred, other than as security.

10 (2) "Board" means the governing body of an electric
11 cooperative.

12 (3) "Combined securitization transaction" means the
13 issuance of securitized bonds under this subchapter in a
14 transaction involving at least two electric cooperatives acting
15 together.

16 (4) "Extraordinary costs and expenses" means:

17 (A) costs and expenses incurred by an electric
18 cooperative for electric power and energy purchased during the
19 period of emergency in excess of what would have been paid for the
20 same amount of electric power and energy at the average rate
21 incurred by the electric cooperative for electric power and energy
22 purchased during the month of January 2021;

23 (B) costs and expenses incurred by an electric
24 cooperative to generate and transmit electric power and energy
25 during the period of emergency, including fuel costs, operation and
26 maintenance expenses, overtime costs, and all other costs and
27 expenses that would not have been incurred but for the abnormal

1 weather events; and

2 (C) any charges imposed on the electric
3 cooperative or on a power supplier to the electric cooperative that
4 were passed on to the electric cooperative by the applicable
5 regional transmission organization or independent system operator,
6 resulting from defaults by other market participants of the
7 regional transmission organization or independent system operator
8 for costs relating to the period of emergency.

9 (5) "Financing order" means an order of a board
10 approving the issuance of securitized bonds, which may be through
11 participation in a combined securitization transaction, and the
12 creation of securitized charges for the recovery of qualified
13 costs.

14 (6) "Financing party" means a holder of securitized
15 bonds, including trustees, collateral agents, and other persons
16 acting for the benefit of the holder.

17 (7) "Qualified costs" means up to 100 percent of an
18 electric cooperative's:

19 (A) extraordinary costs and expenses;

20 (B) costs of issuing, supporting, repaying,
21 servicing, and refinancing the securitized bonds, whether incurred
22 or paid upon issuance of the securitized bonds or over the life of
23 the securitized bonds or the refunded securitized bonds, whether
24 incurred directly or allocated in a combined securitization
25 transaction; and

26 (C) any costs of retiring and refunding the
27 electric cooperative's existing debt securities initially issued

1 to finance the extraordinary costs and expenses including interest
2 accrued on debt securities over their term, whether incurred
3 directly or allocated in a combined securitization transaction.

4 (8) "Period of emergency" means the period beginning
5 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
6 2021.

7 (9) "Securitized bonds" means bonds, debentures,
8 notes, certificates of participation or of beneficial interest, or
9 other evidences of indebtedness or ownership that are issued by an
10 electric cooperative, its successors, or an assignee of the
11 electric cooperative or group of electric cooperatives under a
12 financing order or financing orders, that have a term not longer
13 than 30 years, and that are secured by or payable, primarily, from
14 securitized property and the proceeds thereof and, in a combined
15 securitization transaction, securitized property contributed by
16 other electric cooperatives. If certificates of participation,
17 beneficial interest, or ownership are issued, references in this
18 subchapter to principal, interest, or premium shall refer to
19 comparable amounts under those certificates.

20 (10) "Securitized charges" means nonbypassable
21 amounts to be charged for the use or availability of electric
22 services, approved by the board under a financing order to recover
23 qualified costs, that shall be collected by an electric
24 cooperative, its successors, an assignee, or other collection
25 agents as provided for in the financing order.

26 (11) "Securitized property" means the property right
27 created under this subchapter, including the right, title, and

1 interest of the electric cooperative or its assignee:

2 (A) in and to the securitized charges established
3 under a financing order, including all rights to obtain adjustments
4 in accordance with Section 41.157 and the financing order;

5 (B) to be paid the amount that is determined in a
6 financing order to be the amount that the electric cooperative or
7 its transferee is lawfully entitled to receive under this
8 subchapter and the proceeds thereof; and

9 (C) in and to all revenue, collections, claims,
10 payments, money, or process of or arising from the securitized
11 charges that are the subject of a financing order.

12 Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board shall
13 adopt a financing order to recover the electric cooperative's
14 qualified costs consistent with the standards in Section 41.151.

15 (b) The financing order shall detail the amount of qualified
16 costs to be recovered and the period over which the nonbypassable
17 securitized charges shall be recovered, which period may not exceed
18 30 years.

19 (c) Securitized charges shall be collected and allocated
20 among customers in the manner provided by the financing order.

21 (d) A financing order becomes effective in accordance with
22 its terms, and the financing order, together with the securitized
23 charges authorized in the order, after it takes effect, is
24 irrevocable and not subject to denial, rescission, reduction,
25 impairment, adjustment, or other alteration by further action of
26 the board or by action of any regulatory or other governmental body
27 of this state, except as permitted by Section 41.157. A financing

1 order issued under this subchapter has the same force and effect of
2 a financing order issued under Chapter 39.

3 (e) A financing order may be reviewed by appeal by a member
4 of the electric cooperative to a district court in the county where
5 the electric cooperative is domiciled, filed not later than the
6 15th day after the date the financing order is adopted by the board.
7 The judgment of the district court may be reviewed only by direct
8 appeal to the Supreme Court of Texas filed not later than the 15th
9 day after the date of the entry of judgment. All appeals shall be
10 heard and determined by the district court and the Supreme Court of
11 Texas as expeditiously as possible with lawful precedence over
12 other matters. Review on appeal shall be based solely on the
13 financing order adopted by the board, other information considered
14 by the board in adopting the resolutions, and briefs to the court
15 and shall be limited to whether the financing order conforms to the
16 constitution and laws of this state and the United States and is
17 within the authority of the board under this subchapter.

18 (f) The board or, in a combined securitization transaction,
19 the boards of all participating electric cooperatives, may adopt a
20 financing order or financing orders providing for retiring and
21 refunding securitized bonds on making a finding that the future
22 securitized charges required to service the new securitized bonds,
23 including transaction costs, will be less than the future
24 securitized charges required to service the securitized bonds being
25 refunded. After the indefeasible repayment in full of all
26 outstanding securitized bonds and associated financing costs, the
27 board shall adjust the related securitized charges accordingly.

1 Sec. 41.154. PROPERTY RIGHTS. (a) The rights and interests
2 of an electric cooperative or its subsidiary, affiliate, successor,
3 financing party, or assignee under a financing order, including the
4 right to impose, collect, receive, and enforce the payment of
5 securitized charges authorized in the financing order, shall be
6 only contract rights until the property is first transferred or
7 pledged to an assignee or financing party, as applicable, in
8 connection with the issuance of securitized bonds, at which time
9 the property becomes securitized property.

10 (b) Securitized property that is specified in the financing
11 order constitutes a present vested property right for all purposes,
12 including for purposes of Sections 16 and 17, Article I, Texas
13 Constitution, Section 10, Article I, United States Constitution,
14 and the Fifth Amendment to the United States Constitution, and the
15 laws of this state and the United States, even if the imposition and
16 collection of securitized charges depend on further acts of the
17 electric cooperative or others that may not have yet occurred.

18 (c) Securitized property shall exist regardless of whether
19 securitized charges have been billed, have accrued, or have been
20 collected and notwithstanding the fact that the value or amount of
21 the property is dependent on the future provision of service to
22 customers by the electric cooperative or its successors or assigns.

23 (d) On the issuance of the securitized bonds and the
24 financing order, and when the requirements of Section 41.159 are
25 met, the securitized charges, including their nonbypassability,
26 are irrevocable, final, nondiscretionary, and effective without
27 further action by the electric cooperative or any other person or

1 governmental authority. The financing order shall remain in effect
2 and the property shall continue to exist for the same period as the
3 pledge of the state described in Section 41.160.

4 (e) All revenue, collections, claims, payments, money, or
5 proceeds of or arising from or relating to securitized charges
6 shall constitute proceeds of the securitized property arising from
7 the financing order.

8 Sec. 41.155. NO SETOFF. The interest of an assignee or
9 pledgee in securitized property and in the revenues and collections
10 arising from that property are not subject to setoff, counterclaim,
11 surcharge, recoupment, or defense by the electric cooperative or
12 any other person or in connection with the bankruptcy of the
13 electric cooperative or any other entity. A financing order shall
14 remain in effect and unabated notwithstanding the bankruptcy of the
15 electric cooperative, its successors, or assignees.

16 Sec. 41.156. NO BYPASS. (a) A financing order shall include
17 terms ensuring that the imposition and collection of securitized
18 charges authorized in the order shall be nonbypassable and apply to
19 all customers connected to the electric cooperative's system assets
20 and taking service, regardless of whether the system assets
21 continue to be owned by the electric cooperative.

22 (b) The electric cooperative, its servicer, any entity
23 providing electric transmission or distribution services, and any
24 retail electric provider providing services to a retail customer in
25 the electric cooperative's certificated service area as it existed
26 on the date of enactment of this subchapter are entitled to collect
27 and must remit, consistent with this subchapter and any financing

1 order adopted under this subchapter, the securitized charges from
2 the retail customers and from retail customers that switch to new
3 on-site generation. Such retail customers are required to pay the
4 securitized charges.

5 Sec. 41.157. TRUE-UP. (a) A financing order shall be
6 reviewed and adjusted promptly if after its adoption there are
7 additional charges, reductions, or refunds of extraordinary costs
8 and expenses, to:

9 (1) ensure that there is not an over-collection or an
10 under-collection of extraordinary costs and expenses; and

11 (2) ensure that collections on the securitized
12 property will be sufficient to timely make all periodic and final
13 payments of principal, interest, fees, and other amounts and to
14 timely fund all reserve accounts, if any, related to the
15 securitized bonds.

16 (b) A financing order shall also include a mechanism
17 requiring that securitized charges be reviewed by the board and
18 adjusted at least annually, not later than the 45th day after the
19 anniversary date of the issuance of the securitized bonds, to:

20 (1) correct over-collections or under-collections of
21 the preceding 12 months; and

22 (2) ensure the expected recovery of amounts sufficient
23 to timely provide all payments of debt service and other required
24 amounts and charges in connection with the securitized bonds.

25 (c) The electric cooperatives that are members of a
26 generation and transmission cooperative may include in their
27 financing orders the ability to allocate any true-up amounts over

1 the retail customers of all electric cooperatives that are members
2 of the same generation and transmission cooperative.

3 (d) In a combined securitization transaction, each
4 generation and transmission cooperative may calculate all
5 adjustments and determinations relevant to each true-up by each
6 electric cooperative member of the generation and transmission
7 cooperative participating in the securitization transaction, with
8 the adjustments being allocated across the electric cooperatives in
9 the manner agreed to by all of the participating electric
10 cooperatives under their financing orders.

11 (e) A governmental authority may not disapprove of or alter
12 any adjustments made or proposed to be made under this subchapter
13 other than to correct computation or other manifest errors.

14 Sec. 41.158. TRUE SALE. An agreement by an electric
15 cooperative or assignee to transfer securitized property that
16 expressly states that the transfer is a sale or other absolute
17 transfer signifies that the transaction is a true sale and is not a
18 secured transaction and that title, legal and equitable, has passed
19 to the entity to which the securitized property is transferred. The
20 transaction shall be treated as an absolute sale regardless of
21 whether the purchaser has any recourse against the seller, or any
22 other term of the parties' agreement, including the seller's
23 retention of an equity interest in the securitized property, the
24 fact that the electric cooperative acts as the collector of
25 securitized charges relating to the securitized property, or the
26 treatment of the transfer as a financing for tax, financial
27 reporting, or other purposes.

1 Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
2 DEFAULT. (a) Securitized property does not constitute an account
3 or general intangible under Section 9.106, Business & Commerce
4 Code. The transfer, sale, or assignment, or the creation,
5 granting, perfection, and enforcement of liens and security
6 interests in securitized property are governed by this section and
7 not by the Business & Commerce Code. Securitized property shall
8 constitute property for all purposes, including for contracts
9 securing securitized bonds, regardless of whether the securitized
10 property revenues and proceeds have accrued.

11 (b) A valid and enforceable transfer, sale, or assignment,
12 or lien and security interest, as applicable, in securitized
13 property may be created only by a financing order and the execution
14 and delivery of a transfer, sale, or assignment, or security
15 agreement, as applicable, with a financing party in connection with
16 the issuance of securitized bonds. The transfer, sale, assignment,
17 or lien and security interest, as applicable, shall attach
18 automatically from the time that value is received for the
19 securitized bonds and, on perfection through the filing of notice
20 with the secretary of state in accordance with the rules prescribed
21 under Subsection (d), shall be a continuously perfected transfer,
22 sale, and assignment, or lien and security interest, as applicable,
23 in the securitized property and all proceeds of the property,
24 whether accrued or not, shall have priority in the order of filing
25 and take precedence over any subsequent judicial or other lien
26 creditor. If notice is filed before the 10th day after the date
27 value is received for the securitized bonds, the transfer, sale, or

1 assignment, or security interest, as applicable, shall be perfected
2 retroactive to the date value was received. Otherwise, the
3 transfer, sale, or assignment, or security interest, as applicable,
4 shall be perfected as of the date of filing.

5 (c) Transfer, sale, or assignment of an interest in
6 securitized property to an assignee shall be perfected against all
7 third parties, including subsequent judicial or other lien
8 creditors, when the financing order becomes effective, transfer
9 documents have been delivered to the assignee, and a notice of that
10 transfer has been filed in accordance with the rules prescribed
11 under Subsection (d). However, if notice of the transfer has not
12 been filed in accordance with this subsection before the 10th day
13 after the delivery of transfer documentation, the transfer of the
14 interest is not perfected against third parties until the notice is
15 filed.

16 (d) The secretary of state shall implement this section by
17 establishing and maintaining a separate system of records for the
18 filing of notices under this section and prescribing the rules for
19 those filings based on Chapter 9, Business & Commerce Code, adapted
20 to this subchapter and using the terms defined in this subchapter.

21 (e) The priority of a lien and security interest perfected
22 under this section is not impaired by any later modification of the
23 financing order under Section 41.157 or by the commingling of funds
24 arising from securitized charges with other funds, and any other
25 security interest that may apply to those funds shall be terminated
26 when they are transferred to a segregated account for the assignee
27 or a financing party. If securitized property has been transferred

1 to an assignee, any proceeds of that property shall be held in trust
2 for the assignee.

3 (f) Securitized bonds shall be secured by a statutory lien
4 on the securitized property in favor of the owners or beneficial
5 owners of securitized bonds. The lien shall automatically arise on
6 issuance of the securitized bonds without the need for any action or
7 authorization by the electric cooperative or the board. The lien
8 shall be valid and binding from the time the securitized bonds are
9 executed and delivered. The securitized property shall be
10 immediately subject to the lien, and the lien shall immediately
11 attach to the securitized property and be effective, binding, and
12 enforceable against the electric cooperative, its creditors, their
13 successors, assignees, and all others asserting rights therein,
14 regardless of whether those persons have notice of the lien and
15 without the need for any physical delivery, recordation, filing, or
16 further act. The lien is created by this subchapter and not by any
17 security agreement, but may be enforced by any financing party or
18 their representatives as if they were secured parties under Chapter
19 9, Business & Commerce Code. On application by or on behalf of the
20 financing parties, a district court in the county where the
21 electric cooperative is domiciled may order that amounts arising
22 from securitized charges be transferred to a separate account for
23 the financing parties' benefit.

24 (g) The statutory lien is a continuously perfected security
25 interest and has priority over any other lien, created by operation
26 of law or otherwise, that may subsequently attach to that
27 securitized property or proceeds thereof unless the owners or

1 beneficial owners of securitized bonds as specified in the trust
2 agreement or indenture have agreed in writing otherwise. The
3 statutory lien is a lien on the securitized charges and all
4 securitized charge revenues or other proceeds that are deposited in
5 any deposit account or other account of the servicer or other person
6 in which securitized charge revenues or other proceeds have been
7 commingled with other funds.

8 (h) The statutory lien is not adversely affected or impaired
9 by, among other things, the commingling of securitized charge
10 revenues or other proceeds from securitized charges with other
11 amounts regardless of the person holding those amounts.

12 (i) The electric cooperative, any successor or assignee of
13 the electric cooperative, or any other person with any operational
14 control of any portion of the electric cooperative's system assets,
15 whether as owner, lessee, franchisee, or otherwise, and any
16 successor servicer of collections of the securitized charges shall
17 be bound by the requirements of this subchapter and shall perform
18 and satisfy all obligations imposed under this subchapter in the
19 same manner and to the same extent as did its predecessor, including
20 the obligation to bill, adjust, and enforce the payment of
21 securitized charges.

22 (j) If a default or termination occurs under the securitized
23 bonds, the financing parties or their representatives may foreclose
24 on or otherwise enforce their lien and security interest in any
25 securitized property as if they were secured parties under Chapter
26 9, Business & Commerce Code, and on application by the electric
27 cooperative or by or on behalf of the financing parties, a district

1 court in the county where the electric cooperative is domiciled may
2 order that amounts arising from securitized charges be transferred
3 to a separate account for the financing parties' benefit, to which
4 their lien and security interest shall apply. On application by or
5 on behalf of the financing parties, a district court in the county
6 where the electric cooperative is domiciled shall order the
7 sequestration and payment to them of revenues arising from the
8 securitized charges.

9 Sec. 41.160. PLEDGE OF STATE. Securitized bonds are not a
10 debt or obligation of the state and are not a charge on its full
11 faith and credit or taxing power. The state pledges, however, for
12 the benefit and protection of assignees, financing parties, and the
13 electric cooperative, that it will not take or permit, or permit any
14 agency or other governmental authority or political subdivision of
15 the state to take or permit, any action that would impair the value
16 of securitized property, or, except as permitted by Section 41.157,
17 reduce, alter, or impair the securitized charges to be imposed,
18 collected, and remitted to financing parties, until the principal,
19 interest and premium, and any other charges incurred and contracts
20 to be performed in connection with the related securitized bonds
21 have been paid and performed in full. Any party issuing securitized
22 bonds is authorized to include this pledge in any documentation
23 relating to those bonds.

24 Sec. 41.161. TAX EXEMPTION. Transactions involving the
25 transfer and ownership of securitized property and the receipt of
26 securitized charges are exempt from state and local income, sales,
27 franchise, gross receipts, and other taxes or similar charges.

1 Sec. 41.162. NOT PUBLIC UTILITY. An assignee or financing
2 party may not be considered to be a public utility, electric
3 cooperative, or person providing electric service solely by virtue
4 of the transactions described in this subchapter.

5 Sec. 41.163. SEVERABILITY. Effective on the date the first
6 securitized bonds are issued under this subchapter, if any
7 provision in this title or portion of this title is held to be
8 invalid or is invalidated, superseded, replaced, repealed, or
9 expires for any reason, that occurrence does not affect the
10 validity or continuation of this subchapter or any other provision
11 of this title that is relevant to the issuance, administration,
12 payment, retirement, or refunding of securitized bonds or to any
13 actions of the electric cooperative, its successors, an assignee, a
14 collection agent, or a financing party, which shall remain in full
15 force and effect.

16 SECTION 2. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2021.