

1-1 By: Paddie (Senate Sponsor - Hancock) H.B. No. 4492  
 1-2 (In the Senate - Received from the House May 10, 2021;  
 1-3 May 13, 2021, read first time and referred to Committee on Business  
 1-4 & Commerce; May 24, 2021, reported favorably by the following vote:  
 1-5 Yeas 8, Nays 0; May 24, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Nichols	X			
1-9 Campbell	X			
1-10 Creighton			X	
1-11 Johnson	X			
1-12 Menéndez	X			
1-13 Paxton	X			
1-14 Schwertner	X			
1-15 Whitmire	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to securitizing costs associated with electric markets;  
 1-20 granting authority to issue bonds.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Chapter 31, Utilities Code, is amended by adding  
 1-23 Subchapter C to read as follows:

1-24 SUBCHAPTER C. SECURITIZATION CORPORATION

1-25 Sec. 31.101. PURPOSE. (a) The purpose of this subchapter  
 1-26 is to create a corporation dedicated to financing costs that are  
 1-27 eligible for securitization as provided by Subchapter M, Chapter  
 1-28 39, to securitize costs not securitized under Subchapter D, Chapter  
 1-29 41. An entity authorized to securitize costs under Subchapter M,  
 1-30 Chapter 39, subject to any other requirements applicable to the  
 1-31 authorization, may request that the Texas Electric Securitization  
 1-32 Corporation conduct the financing on behalf of the entity.

1-33 (b) The Texas Electric Securitization Corporation is  
 1-34 created under this subchapter as a special purpose public  
 1-35 corporation and instrumentality of the state for the essential  
 1-36 public purpose of providing a lower-cost financing mechanism for  
 1-37 securitization in the manner provided by this subchapter.

1-38 (c) Bonds issued under this subchapter will be the  
 1-39 obligation solely of the issuer and the corporation as borrower, if  
 1-40 applicable, and will not be a debt of or a pledge of the faith and  
 1-41 credit of the state.

1-42 (d) Bonds issued under this subchapter shall be nonrecourse  
 1-43 to the credit or any assets of the state and the commission.

1-44 Sec. 31.102. DEFINITIONS. In this subchapter:

1-45 (1) "Corporation" means the Texas Electric  
 1-46 Securitization Corporation.

1-47 (2) "Issuer" means the corporation or any other  
 1-48 corporation, public trust, public instrumentality, or entity that  
 1-49 issues bonds approved by a financing order.

1-50 Sec. 31.103. CREATION OF CORPORATION. (a) The corporation  
 1-51 is a nonprofit corporation and instrumentality of this state, and  
 1-52 shall perform the essential governmental function of financing  
 1-53 eligible costs in accordance with this subchapter. The corporation:

1-54 (1) shall perform only functions consistent with this  
 1-55 subchapter;

1-56 (2) shall exercise its powers through a governing  
 1-57 board;

1-58 (3) is subject to the regulation of the commission;  
 1-59 and

1-60 (4) has a legal existence as a public corporate body  
 1-61 and instrumentality of the state separate and distinct from the

2-1 state.

2-2 (b) Assets of the corporation may not be considered part of  
 2-3 any state fund. The state may not budget for or provide any state  
 2-4 money to the corporation. The debts, claims, obligations, and  
 2-5 liabilities of the corporation may not be considered to be a debt of  
 2-6 the state or a pledge of its credit.

2-7 (c) The corporation must be self-funded. Before the  
 2-8 imposition of charges to recover securitized amounts, the  
 2-9 corporation may accept and expend for its operating expenses money  
 2-10 that may be received from any source, including financing  
 2-11 agreements with the state, a commercial bank, or another entity to:

2-12 (1) finance the corporation's obligations until the  
 2-13 corporation receives sufficient property to cover its operating  
 2-14 expenses as financing costs; and

2-15 (2) repay any short-term borrowing under any such  
 2-16 financing agreements.

2-17 (d) The corporation has the powers, rights, and privileges  
 2-18 provided for a corporation organized under Chapter 22, Business  
 2-19 Organizations Code, subject to the express exceptions and  
 2-20 limitations provided by this subchapter.

2-21 (e) An organizer selected by the executive director of the  
 2-22 commission shall prepare the certificate of formation of the  
 2-23 corporation under Chapters 3 and 22, Business Organizations Code.  
 2-24 The certificate of formation must be consistent with the provisions  
 2-25 of this subchapter.

2-26 (f) State officers and agencies are authorized to render  
 2-27 services to the corporation, within their respective functions, as  
 2-28 may be requested by the commission or the corporation.

2-29 (g) The corporation or an issuer may:

2-30 (1) retain professionals, financial advisors, and  
 2-31 accountants the corporation or issuer considers necessary to  
 2-32 fulfill the corporation's or issuer's duties under this subchapter;  
 2-33 and

2-34 (2) determine the duties and compensation of a person  
 2-35 retained under Subdivision (1), subject to the approval of the  
 2-36 commission.

2-37 (h) The corporation is governed by a board of five directors  
 2-38 appointed by the commission for two-year terms.

2-39 (i) An official action of the board requires the favorable  
 2-40 vote of a majority of the directors present and voting at a meeting  
 2-41 of the board.

2-42 Sec. 31.104. POWERS AND DUTIES OF CORPORATION. (a) The  
 2-43 corporation, in each instance subject to the prior authorization of  
 2-44 the commission, shall participate in the financial transactions  
 2-45 authorized by this subchapter. The corporation may not engage in  
 2-46 business activities except those activities provided for by this  
 2-47 subchapter and those ancillary and incidental to those activities.  
 2-48 The corporation or an issuer may not apply proceeds of bonds or  
 2-49 charges to a purpose not specified in a financing order, to a  
 2-50 purpose in an amount that exceeds the amount allowed for the purpose  
 2-51 in the order, or to a purpose in contravention of the order.

2-52 (b) The board of the corporation, under the provisions of  
 2-53 this subchapter, may employ or retain persons as are necessary to  
 2-54 perform the duties of the corporation.

2-55 (c) The corporation may:

2-56 (1) acquire, sell, pledge, or transfer property as  
 2-57 necessary to effect the purposes of this subchapter and, in  
 2-58 connection with the action, agree to such terms and conditions as  
 2-59 the corporation deems necessary and proper, consistent with the  
 2-60 terms of a financing order:

2-61 (A) to acquire property and to pledge such  
 2-62 property, and any other collateral:

2-63 (i) to secure payment of bonds issued by the  
 2-64 corporation, together with payment of any other qualified costs; or

2-65 (ii) to secure repayment of any borrowing  
 2-66 from any other issuer of bonds; or

2-67 (B) to sell the property to another issuer, which  
 2-68 may in turn pledge that property, together with any other  
 2-69 collateral, to the repayment of bonds issued by the issuer together

3-1 with any other qualified costs;  
3-2 (2) issue bonds on terms and conditions consistent  
3-3 with a financing order;  
3-4 (3) borrow funds:  
3-5 (A) from an issuer of bonds to acquire property,  
3-6 and pledge that property to the repayment of any borrowing from an  
3-7 issuer, together with any related qualified costs, all on terms and  
3-8 conditions consistent with a financing order; or  
3-9 (B) for initial operating expenses;  
3-10 (4) sue or be sued in its corporate name;  
3-11 (5) intervene as a party before the commission or any  
3-12 court in this state in any matter involving the corporation's  
3-13 powers and duties;  
3-14 (6) negotiate and become a party to contracts as  
3-15 necessary, convenient, or desirable to carry out the purposes of  
3-16 this subchapter; and  
3-17 (7) engage in corporate actions or undertakings that  
3-18 are permitted for nonprofit corporations in this state and that are  
3-19 not prohibited by, or contrary to, this subchapter.  
3-20 (d) The corporation shall maintain separate accounts and  
3-21 records relating to each entity that collects charges for all  
3-22 charges, revenues, assets, liabilities, and expenses relating to  
3-23 the entity's related bond issuances.  
3-24 (e) The board of the corporation may not authorize any  
3-25 rehabilitation, liquidation, or dissolution of the corporation and  
3-26 a rehabilitation, liquidation, or dissolution of the corporation  
3-27 may not take effect as long as any bonds are outstanding unless  
3-28 adequate protection and provision have been made for the payment of  
3-29 the bonds pursuant to the documents authorizing the issuance of the  
3-30 bonds. In the event of any rehabilitation, liquidation, or  
3-31 dissolution, the assets of the corporation must be applied first to  
3-32 pay all debts, liabilities, and obligations of the corporation,  
3-33 including the establishment of reasonable reserves for any  
3-34 contingent liabilities or obligations, and all remaining funds of  
3-35 the corporation must be applied and distributed as provided by an  
3-36 order of the commission.  
3-37 (f) Before the date that is two years and one day after the  
3-38 date that the corporation no longer has any payment obligation with  
3-39 respect to any bonds, including any obligation to an issuer of any  
3-40 bonds outstanding, the corporation may not file a voluntary  
3-41 petition under federal bankruptcy law and neither any public  
3-42 official nor any organization, entity, or other person may  
3-43 authorize the corporation to be or to become a debtor under federal  
3-44 bankruptcy law during that period. The state covenants that it will  
3-45 not limit or alter the denial of authority under this subsection or  
3-46 Subsection (e), and the provisions of this subsection and  
3-47 Subsection (e) are hereby made a part of the contractual obligation  
3-48 that is subject to the state pledge set forth in Section 39.609.  
3-49 (g) The corporation shall prepare and submit to the  
3-50 commission for approval an annual operating budget. If requested by  
3-51 the commission, the corporation shall prepare and submit an annual  
3-52 report containing the annual operating and financial statements of  
3-53 the corporation and any other appropriate information.  
3-54 Sec. 31.105. COMMISSION REGULATION OF CORPORATION. The  
3-55 commission shall regulate the corporation as provided by this  
3-56 subchapter. Notwithstanding the regulation authorized by this  
3-57 section, the corporation is not a public utility.  
3-58 Sec. 31.106. FINANCING ORDER. (a) This section applies to  
3-59 the commission's issuance of a financing order under this  
3-60 subchapter.  
3-61 (b) Except as otherwise specifically provided by this  
3-62 subchapter, the provisions of this subtitle that address the  
3-63 commission's issuance of a financing order under other provisions  
3-64 of this subtitle also apply to the commission's issuance of a  
3-65 financing order under this subchapter.  
3-66 (c) The corporation and any issuer must be a party to the  
3-67 commission's proceedings that address the issuance of a financing  
3-68 order along with the entity requesting securitization.  
3-69 (d) In addition to the other applicable requirements of this

4-1 subtitle, a financing order issued under this subchapter must:

4-2 (1) require the sale, assignment, or other transfer to  
 4-3 the corporation of certain specified property created by the  
 4-4 financing order and, following that sale, assignment, or transfer,  
 4-5 require that charges paid under any financing order be created,  
 4-6 assessed, and collected as the property of the corporation, subject  
 4-7 to subsequent sale, assignment, or transfer by the corporation as  
 4-8 authorized under this subchapter;

4-9 (2) authorize:

4-10 (A) the issuance of bonds by the corporation  
 4-11 secured by a pledge of specified property, and the application of  
 4-12 the proceeds of those bonds, net of issuance costs, to the  
 4-13 acquisition of the property from the entity requesting  
 4-14 securitization; or

4-15 (B) the acquisition of specified property from  
 4-16 the entity requesting securitization by the corporation, financed:

4-17 (i) by a loan by an issuer to the  
 4-18 corporation of the proceeds of bonds, net of issuance costs; or

4-19 (ii) by the acquisition by an issuer from  
 4-20 the corporation of the property and in each case the pledge of the  
 4-21 property to the repayment of the loan or bonds, as applicable; and

4-22 (3) authorize the entity requesting securitization to  
 4-23 serve as collection agent to collect the charges and transfer the  
 4-24 collected charges to the corporation, the issuer, or a financing  
 4-25 party, as appropriate.

4-26 (e) After issuance of the financing order, the corporation  
 4-27 shall arrange for the issuance of bonds as specified in the  
 4-28 financing order by the corporation or another issuer selected by  
 4-29 the corporation and approved by the commission.

4-30 (f) Bonds issued pursuant to a financing order under this  
 4-31 section are secured only by the related property and any other funds  
 4-32 pledged under the bond documents. No assets of the state or the  
 4-33 entity requesting securitization are subject to claims by the  
 4-34 holders of the bonds. Following assignment of the property, the  
 4-35 entity requesting securitization does not have any beneficial  
 4-36 interest or claim of right in such charges or in any property.

4-37 Sec. 31.107. SEVERABILITY. Effective on the date the first  
 4-38 bonds are issued under this subchapter, if any provision in this  
 4-39 title or portion of this title is held to be invalid or is  
 4-40 invalidated, superseded, replaced, repealed, or expires for any  
 4-41 reason, that occurrence does not affect the validity or  
 4-42 continuation of this subchapter or any other provision of this  
 4-43 title that is relevant to the issuance, administration, payment,  
 4-44 retirement, or refunding of authorized securitization bonds or to  
 4-45 any actions of an entity requesting securitization under this  
 4-46 subchapter, its successors, an assignee, a collection agent, the  
 4-47 corporation, an issuer, or a financing party, and those provisions  
 4-48 shall remain in full force and effect.

4-49 SECTION 2. Section 39.002, Utilities Code, is amended to  
 4-50 read as follows:

4-51 Sec. 39.002. APPLICABILITY. This chapter, other than  
 4-52 Subchapter M and Sections 39.151, 39.1516, 39.155, 39.157(e),  
 4-53 39.203, 39.904, 39.9051, 39.9052, and 39.914(e), does not apply to  
 4-54 a municipally owned utility or an electric cooperative. Sections  
 4-55 39.157(e), 39.203, and 39.904, however, apply only to a municipally  
 4-56 owned utility or an electric cooperative that is offering customer  
 4-57 choice. If there is a conflict between the specific provisions of  
 4-58 this chapter and any other provisions of this title, except for  
 4-59 Chapters 40 and 41, the provisions of this chapter control.

4-60 SECTION 3. Section 39.151, Utilities Code, is amended by  
 4-61 adding Subsection (j-1) to read as follows:

4-62 (j-1) Notwithstanding Subsection (j), the independent  
 4-63 system operator in ERCOT may not reduce payments to or charge uplift  
 4-64 short-paid amounts from a municipally owned utility that becomes  
 4-65 subject to the jurisdiction of the independent system operator in  
 4-66 ERCOT on or after June 1, 2021, and before December 30, 2021,  
 4-67 related to a default on a payment obligation by a market participant  
 4-68 that occurred before June 1, 2021.

4-69 SECTION 4. Chapter 39, Utilities Code, is amended by adding



5-1 Subchapter M to read as follows:

5-2 SUBCHAPTER M. SECURITIZATION FOR INDEPENDENT ORGANIZATION

5-3 Sec. 39.601. PURPOSE; USE OF PROCEEDS; BOND CHARGES. (a)

5-4 The purpose of this subchapter is to enable the independent  
 5-5 organization certified under Section 39.151 for the ERCOT power  
 5-6 region to use securitization financing to fund substantial default  
 5-7 balances that would otherwise be uplifted to the wholesale market  
 5-8 as a result of market participants defaulting on amounts owed after  
 5-9 an extreme pricing event and extraordinary ancillary service and  
 5-10 reliability deployment price adder charges that were uplifted on a  
 5-11 load ratio share basis. Securitization will allow wholesale market  
 5-12 participants who are owed money to be paid in a more timely manner,  
 5-13 while allowing the balance to be repaid over time at a low carrying  
 5-14 cost. This subchapter and Subchapter D, Chapter 41, do not change,  
 5-15 alter, or reduce the obligation of a market participant to timely  
 5-16 and fully pay the debts or obligations of the market participant to  
 5-17 the independent organization.

5-18 (b) The proceeds of bonds issued for the purpose described  
 5-19 by Subsection (a) must be used solely for the purpose of financing  
 5-20 default balances that otherwise would be or have been uplifted to  
 5-21 the wholesale market and uplift balances that were allocated to all  
 5-22 load-serving entities on a load ratio share basis as a result of  
 5-23 usage during the period of emergency. The commission shall ensure  
 5-24 that securitization provides tangible and quantifiable benefits to  
 5-25 wholesale market participants, greater than would have been  
 5-26 achieved absent the issuance of bonds.

5-27 (c) The commission shall ensure that the structuring and  
 5-28 pricing of the bonds result in the lowest bond charges consistent  
 5-29 with market conditions and the terms of the financing order. The  
 5-30 present value calculation shall use a discount rate equal to the  
 5-31 proposed interest rate on the bonds.

5-32 (d) The commission shall require that all market  
 5-33 participants, including market participants not otherwise subject  
 5-34 to this subchapter, pay or make provision for the full and prompt  
 5-35 payment to the independent organization certified under Section  
 5-36 39.151 for the ERCOT power region of all amounts owed to the  
 5-37 independent organization to qualify, or to continue to qualify, as  
 5-38 a market participant in the ERCOT power region. The commission and  
 5-39 the independent organization shall pursue collection in full of  
 5-40 amounts owed to the independent organization by any market  
 5-41 participant to reduce the qualifying costs that would otherwise be  
 5-42 borne by other market participants or their customers.

5-43 Sec. 39.602. DEFINITIONS. In this subchapter:

5-44 (1) "Assignee" means any individual, corporation, or  
 5-45 other legally recognized entity to which an interest in default or  
 5-46 uplift property is transferred, other than as security.

5-47 (2) "Default charges" means nonbypassable amounts to  
 5-48 be charged on all wholesale market transactions administered by the  
 5-49 independent organization certified under Section 39.151 for the  
 5-50 ERCOT power region, approved by the commission under a financing  
 5-51 order to recover qualified costs, that shall be collected by the  
 5-52 independent organization, its successors, an assignee, or other  
 5-53 collection agents as provided by the financing order.

5-54 (3) "Financing order" means an order of the commission  
 5-55 approving the issuance of bonds and the creation of charges for the  
 5-56 recovery of qualified costs.

5-57 (4) "Financing party" means a holder of bonds,  
 5-58 including trustees, collateral agents, and other persons acting for  
 5-59 the benefit of the holder.

5-60 (5) "Independent organization" means the independent  
 5-61 organization certified under Section 39.151 for the ERCOT power  
 5-62 region.

5-63 (6) "Load-serving entity" means a municipally owned  
 5-64 utility, an electric cooperative, or a retail electric provider.

5-65 (7) "Period of emergency" means the period beginning  
 5-66 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,  
 5-67 2021.

5-68 (8) "Qualified costs" means a default balance  
 5-69 resulting from the period of emergency that otherwise would be or

6-1 has been uplifted to other wholesale market participants, together  
6-2 with the costs of issuing, supporting, and servicing bonds and any  
6-3 costs of retiring and refunding existing debt in connection with  
6-4 the issuance of the bonds.

6-5 (9) "Uplift charges" means charges for reliability  
6-6 deployment price adders and ancillary services costs in excess of  
6-7 the commission's system-wide offer cap that were uplifted to  
6-8 load-serving entities on a load ratio share basis due to energy  
6-9 consumption during the period of emergency. The term includes only  
6-10 uplifted amounts and does not include amounts that were part of the  
6-11 prevailing settlement point price.

6-12 Sec. 39.603. FINANCING ORDERS; TERMS. (a) On application  
6-13 of the independent organization, the commission may adopt a  
6-14 financing order to recover the costs of a substantial default or  
6-15 uplift balance of qualified costs resulting from a significant  
6-16 pricing event on making a finding that such financing is needed to  
6-17 preserve the integrity of the wholesale market and the public  
6-18 interest after considering:

6-19 (1) the interests of wholesale market participants who  
6-20 are owed balances; and

6-21 (2) the potential effects of uplifting those balances  
6-22 without a financing vehicle.

6-23 (b) The financing order must detail the amounts to be  
6-24 recovered and the period over which the nonbypassable default or  
6-25 uplift charges shall be recovered. The period may not exceed 30  
6-26 years. If an amount determined under this section is subject to  
6-27 judicial review of a commission order, a bankruptcy proceeding, or  
6-28 another type of litigation at the time of the securitization  
6-29 proceeding, the financing order shall include an adjustment  
6-30 mechanism requiring the independent organization to adjust its  
6-31 default or uplift charges in a manner that would refund, over the  
6-32 remaining life of the bonds, any overpayments resulting from  
6-33 securitization of amounts in excess of the amount resulting from a  
6-34 final determination after completion of all appellate reviews. The  
6-35 adjustment mechanism may not affect the stream of revenue available  
6-36 to service the bonds. An adjustment may not be made under this  
6-37 subsection until all appellate reviews have been completed,  
6-38 including appellate reviews following a commission decision on  
6-39 remand of its original orders, if applicable.

6-40 (c) Nonbypassable default charges must be collected and  
6-41 allocated among wholesale market participants using the same  
6-42 allocation methodology described in the protocols of the  
6-43 independent organization, as they existed on March 1, 2021. The  
6-44 rate associated with the nonbypassable default charges must be  
6-45 assessed on all wholesale market participants, including market  
6-46 participants who are in default but still participating in the  
6-47 wholesale market, and must be based on updated transaction data to  
6-48 prevent market participants from engaging in behavior designed to  
6-49 avoid the nonbypassable default charges.

6-50 (d) Notwithstanding another provision of this subchapter,  
6-51 nonbypassable default charges may not be collected from or  
6-52 allocated to a market participant that:

6-53 (1) would otherwise be subject to an uplift charge  
6-54 solely as a result of acting as a central counterparty  
6-55 clearinghouse in wholesale market transactions in the ERCOT power  
6-56 region; and

6-57 (2) is regulated as a derivatives clearing  
6-58 organization, as defined by the Commodity Exchange Act (7 U.S.C.  
6-59 Section 1a).

6-60 (e) Nonbypassable uplift charges must be allocated to all  
6-61 load-serving entities on a load ratio share basis, excluding the  
6-62 load of entities that have opted out under Subsection (f).

6-63 (f) The commission shall develop a process that allows a  
6-64 load-serving entity and any customer whose demand is greater than  
6-65 one megawatt and is served by a retail electric provider to opt out  
6-66 of the uplift charges by paying in full all invoices owed for usage  
6-67 during the period of emergency. Load-serving entities and  
6-68 individual customers that opt out may not receive any proceeds from  
6-69 the uplift bonds.

7-1 (g) A financing order becomes effective in accordance with  
 7-2 its terms and the financing order, together with the default or  
 7-3 uplift charges authorized in the order, shall be irrevocable and  
 7-4 not subject to reduction, impairment, or adjustment by further  
 7-5 action of the commission after it takes effect.

7-6 (h) The commission shall issue a financing order not later  
 7-7 than the 90th day after the date the independent organization files  
 7-8 a request for the financing order under Subsection (a) or (j).

7-9 (i) A financing order is not subject to rehearing by the  
 7-10 commission. A financing order may be reviewed by appeal by a party  
 7-11 to the proceeding to a Travis County district court filed not later  
 7-12 than the 15th day after the date the financing order is signed by  
 7-13 the commission. The judgment of the district court may be reviewed  
 7-14 only by direct appeal to the Supreme Court of Texas filed not later  
 7-15 than the 15th day after the date of the entry of judgment. All  
 7-16 appeals shall be heard and determined by the district court and the  
 7-17 Supreme Court of Texas as expeditiously as possible with lawful  
 7-18 precedence over other matters. Review on appeal shall be based  
 7-19 solely on the record before the commission and briefs to the court  
 7-20 and shall be limited to whether the financing order conforms to the  
 7-21 constitution and laws of this state and the United States and is  
 7-22 within the authority of the commission under this chapter.

7-23 (j) At the request of the independent organization, the  
 7-24 commission may adopt a financing order providing for retiring and  
 7-25 refunding the bonds on making a finding that the future default or  
 7-26 uplift charges required to service the new bonds, including  
 7-27 transaction costs, will be less than the future default or uplift  
 7-28 charges required to service the bonds being refunded. On the  
 7-29 retirement of the refunded bonds, the commission shall adjust the  
 7-30 related default or uplift charges accordingly.

7-31 Sec. 39.604. PROPERTY RIGHTS. (a) The rights and interests  
 7-32 of the independent organization or its successor under a financing  
 7-33 order, including the right to impose, collect, and receive default  
 7-34 or uplift charges authorized in the order, shall be only contract  
 7-35 rights until they are first transferred to an assignee or pledged in  
 7-36 connection with the issuance of bonds, at which time they will  
 7-37 become default or uplift property, as described by Subsection (b).

7-38 (b) Default or uplift property shall constitute a present  
 7-39 property right for purposes of contracts concerning the sale or  
 7-40 pledge of property, even though the imposition and collection of  
 7-41 default or uplift charges depends on further acts of the  
 7-42 independent organization or others that have not yet occurred. The  
 7-43 financing order shall remain in effect and the property shall  
 7-44 continue to exist for the same period as the pledge of the state  
 7-45 described by Section 39.609.

7-46 (c) All revenues and collections resulting from default or  
 7-47 uplift charges shall constitute proceeds only of the default or  
 7-48 uplift property arising from the financing order.

7-49 Sec. 39.605. INTEREST NOT SUBJECT TO SETOFF. The interest  
 7-50 of an assignee or pledgee in default or uplift property and in the  
 7-51 revenues and collections arising from that property are not subject  
 7-52 to setoff, counterclaim, surcharge, or defense by the independent  
 7-53 organization or any other person or in connection with the  
 7-54 bankruptcy of a wholesale market participant or the independent  
 7-55 organization. A financing order shall remain in effect and  
 7-56 unabated notwithstanding the bankruptcy of the independent  
 7-57 organization, its successors, or assignees.

7-58 Sec. 39.606. DEFAULT AND UPLIFT CHARGES NONBYPASSABLE. A  
 7-59 financing order shall include terms ensuring that the imposition  
 7-60 and collection of default or uplift charges authorized in the order  
 7-61 shall be nonbypassable, other than uplift charges paid under  
 7-62 Section 39.603(f).

7-63 Sec. 39.607. TRUE-UP. A financing order shall include a  
 7-64 mechanism requiring that default or uplift charges be reviewed and  
 7-65 adjusted at least annually, not later than the 45th day after the  
 7-66 anniversary date of the issuance of the bonds, to:

7-67 (1) correct over-collections or under-collections of  
 7-68 the preceding 12 months; and

7-69 (2) ensure the expected recovery of amounts sufficient

8-1 to timely provide all payments of debt service and other required  
8-2 amounts and charges in connection with the bonds.

8-3 Sec. 39.608. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;  
8-4 DEFAULT. (a) Default or uplift property does not constitute an  
8-5 account or general intangible under Section 9.106, Business &  
8-6 Commerce Code. The creation, granting, perfection, and enforcement  
8-7 of liens and security interests in default or uplift property are  
8-8 governed by this section and not by the Business & Commerce Code.

8-9 (b) A valid and enforceable lien and security interest in  
8-10 default or uplift property may be created only by a financing order  
8-11 and the execution and delivery of a security agreement with a  
8-12 financing party in connection with the issuance of bonds. The lien  
8-13 and security interest shall attach automatically from the time that  
8-14 value is received for the bonds and, on perfection through the  
8-15 filing of notice with the secretary of state in accordance with the  
8-16 rules prescribed under Subsection (d), shall be a continuously  
8-17 perfected lien and security interest in the default or uplift  
8-18 property and all proceeds of the property, whether accrued or not,  
8-19 shall have priority in the order of filing and take precedence over  
8-20 any subsequent judicial or other lien creditor. If notice is filed  
8-21 before the 10th day after the date value is received for the default  
8-22 bonds, the security interest shall be perfected retroactive to the  
8-23 date value was received. Otherwise, the security interest shall be  
8-24 perfected as of the date of filing.

8-25 (c) Transfer of an interest in default or uplift property to  
8-26 an assignee shall be perfected against all third parties, including  
8-27 subsequent judicial or other lien creditors, when the financing  
8-28 order becomes effective, transfer documents have been delivered to  
8-29 the assignee, and a notice of that transfer has been filed in  
8-30 accordance with the rules adopted under Subsection (d). However, if  
8-31 notice of the transfer has not been filed in accordance with this  
8-32 subsection before the 10th day after the delivery of transfer  
8-33 documentation, the transfer of the interest is not perfected  
8-34 against third parties until the notice is filed.

8-35 (d) The secretary of state shall implement this section by  
8-36 establishing and maintaining a separate system of records for the  
8-37 filing of notices under this section and adopting the rules for  
8-38 those filings based on Chapter 9, Business & Commerce Code, adapted  
8-39 to this subchapter and using the terms defined by this subchapter.

8-40 (e) The priority of a lien and security interest perfected  
8-41 under this section is not impaired by any later modification of the  
8-42 financing order under Section 39.607 or by the commingling of funds  
8-43 arising from default or uplift charges with other funds, and any  
8-44 other security interest that may apply to those funds shall be  
8-45 terminated when they are transferred to a segregated account for  
8-46 the assignee or a financing party. If default or uplift property  
8-47 has been transferred to an assignee, any proceeds of that property  
8-48 shall be held in trust for the assignee.

8-49 (f) If a default or termination occurs under the bonds, the  
8-50 financing parties or their representatives may foreclose on or  
8-51 otherwise enforce their lien and security interest in any property  
8-52 as if they were secured parties under Chapter 9, Business & Commerce  
8-53 Code, and the commission may order that amounts arising from  
8-54 default or uplift charges be transferred to a separate account for  
8-55 the financing parties' benefit, to which their lien and security  
8-56 interest shall apply. On application by or on behalf of the  
8-57 financing parties, a district court of Travis County shall order  
8-58 the sequestration and payment to them of revenues arising from the  
8-59 default or uplift charges.

8-60 Sec. 39.609. PLEDGE OF STATE. Default bonds are not a debt  
8-61 or obligation of the state and are not a charge on its full faith and  
8-62 credit or taxing power. The state pledges, however, for the benefit  
8-63 and protection of financing parties and the independent  
8-64 organization that it will not take or permit any action that would  
8-65 impair the value of default or uplift property, or reduce, alter, or  
8-66 impair the default or uplift charges to be imposed, collected, and  
8-67 remitted to financing parties, until the principal, interest and  
8-68 premium, and any other charges incurred and contracts to be  
8-69 performed in connection with the related bonds have been paid and



9-1 performed in full. Any party issuing bonds under this subchapter is  
9-2 authorized to include this pledge in any documentation relating to  
9-3 those bonds.

9-4 Sec. 39.610. TAX EXEMPTION. Transactions involving the  
9-5 transfer and ownership of default or uplift property and the  
9-6 receipt of default or uplift charges are exempt from state and local  
9-7 income, sales, franchise, gross receipts, and other taxes or  
9-8 similar charges.

9-9 Sec. 39.611. NOT PUBLIC UTILITY. An assignee or financing  
9-10 party may not be considered to be a public utility or person  
9-11 providing electric service solely by virtue of the transactions  
9-12 described in this subchapter.

9-13 Sec. 39.612. SEVERABILITY. Effective on the date the first  
9-14 bonds are issued under this subchapter, if any provision in this  
9-15 title or portion of this title is held to be invalid or is  
9-16 invalidated, superseded, replaced, repealed, or expires for any  
9-17 reason, that occurrence does not affect the validity or  
9-18 continuation of this subchapter or any other provision of this  
9-19 title that is relevant to the issuance, administration, payment,  
9-20 retirement, or refunding of bonds or to any actions of the  
9-21 independent organization, its successors, an assignee, a  
9-22 collection agent, or a financing party, which shall remain in full  
9-23 force and effect.

9-24 Sec. 39.613. CUSTOMER CHARGES. All load-serving entities  
9-25 that receive offsets to specific uplift charges from the  
9-26 independent organization under this subchapter must adjust  
9-27 customer invoices to reflect the offsets for any charges that were  
9-28 or would otherwise be passed through to customers under the terms of  
9-29 service with the load-serving entity, including by providing a  
9-30 refund for any offset charges that were previously paid. An  
9-31 electric cooperative, including an electric cooperative that  
9-32 elects to receive offsets, shall not otherwise become subject to  
9-33 rate regulation by the commission and receipt of offsets does not  
9-34 affect the applicability of Chapter 41 to an electric cooperative.

9-35 SECTION 5. This Act takes effect on the date on which Senate  
9-36 Bill No. 1580, House Bill No. 3544, or other similar legislation of  
9-37 the 87th Legislature, Regular Session, 2021, relating to the use of  
9-38 securitization by electric cooperatives to address weather-related  
9-39 extraordinary costs and expenses becomes law.

9-40

\* \* \* \* \*