

1-1 By: Hancock S.B. No. 1580
 1-2 (In the Senate - Filed March 11, 2021; March 24, 2021, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 15, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 15, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1580 By: Hancock

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the use of securitization by electric cooperatives to
 1-22 address certain weather-related extraordinary costs and expenses.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 41, Utilities Code, is amended by adding
 1-25 Subchapter D to read as follows:

1-26 SUBCHAPTER D. SECURITIZATION

1-27 Sec. 41.151. PURPOSE. The purpose of this subchapter is to
 1-28 enable electric cooperatives to use securitization financing to
 1-29 recover extraordinary costs and expenses incurred due to the
 1-30 abnormal weather events that occurred in this state in the period
 1-31 beginning 12:00 a.m., February 12, 2021, and ending at 11:59 p.m.,
 1-32 February 20, 2021. This type of debt will reduce the cost of
 1-33 financing the extraordinary costs and expenses relative to the
 1-34 costs that would be incurred using conventional electric
 1-35 cooperative financing methods. The proceeds of the securitized
 1-36 bonds shall be used solely for the purposes of financing or
 1-37 refinancing the extraordinary costs and expenses, including costs
 1-38 relating to consummation and administration of the securitized
 1-39 financing. The board of each electric cooperative involved in the
 1-40 financing shall ensure that securitization provides tangible and
 1-41 quantifiable benefits to its members, greater than would have been
 1-42 achieved absent the issuance of securitized bonds. Each board that
 1-43 chooses to securitize under this subchapter shall ensure that the
 1-44 structuring and pricing of the securitized bonds are consistent
 1-45 with market conditions and the terms of the financing order. This
 1-46 subchapter may be used by a group of electric cooperatives to issue
 1-47 securitized bonds in a combined securitization transaction.

1-48 Sec. 41.152. DEFINITIONS. In this subchapter:

1-49 (1) "Assignee" means any individual, corporation, or
 1-50 other legally recognized entity, including a special purpose
 1-51 entity, to which an interest in securitized property is
 1-52 transferred, other than as security.

1-53 (2) "Board" means the governing body of an electric
 1-54 cooperative.

1-55 (3) "Combined securitization transaction" means the
 1-56 issuance of securitized bonds under this subchapter in a
 1-57 transaction involving at least two electric cooperatives acting
 1-58 together.

1-59 (4) "Extraordinary costs and expenses" means:

1-60 (A) costs and expenses incurred by an electric

2-1 cooperative for electric power and energy purchased during the
 2-2 period of emergency in excess of what would have been paid for the
 2-3 same amount of electric power and energy at the average rate
 2-4 incurred by the electric cooperative for electric power and energy
 2-5 purchased during the month of January 2021;

2-6 (B) costs and expenses incurred by an electric
 2-7 cooperative to generate and transmit electric power and energy
 2-8 during the period of emergency, including fuel costs, operation and
 2-9 maintenance expenses, overtime costs, and all other costs and
 2-10 expenses that would not have been incurred but for the abnormal
 2-11 weather events; and

2-12 (C) any charges imposed on the electric
 2-13 cooperative or on a power supplier to the electric cooperative that
 2-14 were passed on to the electric cooperative by the applicable
 2-15 regional transmission organization or independent system operator,
 2-16 resulting from defaults by other market participants of the
 2-17 regional transmission organization or independent system operator
 2-18 for costs relating to the period of emergency.

2-19 (5) "Financing order" means an order of a board
 2-20 approving the issuance of securitized bonds, which may be through
 2-21 participation in a combined securitization transaction, and the
 2-22 creation of securitized charges for the recovery of qualified
 2-23 costs.

2-24 (6) "Financing party" means a holder of securitized
 2-25 bonds, including trustees, collateral agents, and other persons
 2-26 acting for the benefit of the holder.

2-27 (7) "Qualified costs" means up to 100 percent of an
 2-28 electric cooperative's:

2-29 (A) extraordinary costs and expenses;

2-30 (B) costs of issuing, supporting, repaying,
 2-31 servicing, and refinancing the securitized bonds, whether incurred
 2-32 or paid upon issuance of the securitized bonds or over the life of
 2-33 the securitized bonds or the refunded securitized bonds, whether
 2-34 incurred directly or allocated in a combined securitization
 2-35 transaction; and

2-36 (C) any costs of retiring and refunding the
 2-37 electric cooperative's existing debt securities initially issued
 2-38 to finance the extraordinary costs and expenses including interest
 2-39 accrued on debt securities over their term, whether incurred
 2-40 directly or allocated in a combined securitization transaction.

2-41 (8) "Period of emergency" means the period beginning
 2-42 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
 2-43 2021.

2-44 (9) "Securitized bonds" means bonds, debentures,
 2-45 notes, certificates of participation or of beneficial interest, or
 2-46 other evidences of indebtedness or ownership that are issued by an
 2-47 electric cooperative, its successors, or an assignee of the
 2-48 electric cooperative or group of electric cooperatives under a
 2-49 financing order or financing orders, that have a term not longer
 2-50 than 30 years, and that are secured by or payable, primarily, from
 2-51 securitized property and the proceeds thereof and, in a combined
 2-52 securitization transaction, securitized property contributed by
 2-53 other electric cooperatives. If certificates of participation,
 2-54 beneficial interest, or ownership are issued, references in this
 2-55 subchapter to principal, interest, or premium shall refer to
 2-56 comparable amounts under those certificates.

2-57 (10) "Securitized charges" means nonbypassable
 2-58 amounts to be charged for the use or availability of electric
 2-59 services, approved by the board under a financing order to recover
 2-60 qualified costs, that shall be collected by an electric
 2-61 cooperative, its successors, an assignee, or other collection
 2-62 agents as provided for in the financing order.

2-63 (11) "Securitized property" means the property right
 2-64 created under this subchapter, including the right, title, and
 2-65 interest of the electric cooperative or its assignee:

2-66 (A) in and to the securitized charges established
 2-67 under a financing order, including all rights to obtain adjustments
 2-68 in accordance with Section 41.157 and the financing order;

2-69 (B) to be paid the amount that is determined in a

3-1 financing order to be the amount that the electric cooperative or
 3-2 its transferee is lawfully entitled to receive under this
 3-3 subchapter and the proceeds thereof; and
 3-4 (C) in and to all revenue, collections, claims,
 3-5 payments, money, or process of or arising from the securitized
 3-6 charges that are the subject of a financing order.
 3-7 Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board shall
 3-8 adopt a financing order to recover the electric cooperative's
 3-9 qualified costs consistent with the standards in Section 41.151.
 3-10 (b) The financing order shall detail the amount of qualified
 3-11 costs to be recovered and the period over which the nonbypassable
 3-12 securitized charges shall be recovered, which period may not exceed
 3-13 30 years.
 3-14 (c) Securitized charges shall be collected and allocated
 3-15 among customers in the manner provided by the financing order.
 3-16 (d) A financing order becomes effective in accordance with
 3-17 its terms, and the financing order, together with the securitized
 3-18 charges authorized in the order, after it takes effect, is
 3-19 irrevocable and not subject to denial, rescission, reduction,
 3-20 impairment, adjustment, or other alteration by further action of
 3-21 the board or by action of any regulatory or other governmental body
 3-22 of this state, except as permitted by Section 41.157. A financing
 3-23 order issued under this subchapter has the same force and effect of
 3-24 a financing order issued under Chapter 39.
 3-25 (e) A financing order may be reviewed by appeal by a member
 3-26 of the electric cooperative to a district court in the county where
 3-27 the electric cooperative is domiciled, filed not later than the
 3-28 15th day after the date the financing order is adopted by the board.
 3-29 The judgment of the district court may be reviewed only by direct
 3-30 appeal to the Supreme Court of Texas filed not later than the 15th
 3-31 day after the date of the entry of judgment. All appeals shall be
 3-32 heard and determined by the district court and the Supreme Court of
 3-33 Texas as expeditiously as possible with lawful precedence over
 3-34 other matters. Review on appeal shall be based solely on the
 3-35 financing order adopted by the board, other information considered
 3-36 by the board in adopting the resolutions, and briefs to the court
 3-37 and shall be limited to whether the financing order conforms to the
 3-38 constitution and laws of this state and the United States and is
 3-39 within the authority of the board under this subchapter.
 3-40 (f) The board or, in a combined securitization transaction,
 3-41 the boards of all participating electric cooperatives, may adopt a
 3-42 financing order or financing orders providing for retiring and
 3-43 refunding securitized bonds on making a finding that the future
 3-44 securitized charges required to service the new securitized bonds,
 3-45 including transaction costs, will be less than the future
 3-46 securitized charges required to service the securitized bonds being
 3-47 refunded. After the indefeasible repayment in full of all
 3-48 outstanding securitized bonds and associated financing costs, the
 3-49 board shall adjust the related securitized charges accordingly.
 3-50 Sec. 41.154. PROPERTY RIGHTS. (a) The rights and interests
 3-51 of an electric cooperative or its subsidiary, affiliate, successor,
 3-52 financing party, or assignee under a financing order, including the
 3-53 right to impose, collect, receive, and enforce the payment of
 3-54 securitized charges authorized in the financing order, shall be
 3-55 only contract rights until the property is first transferred or
 3-56 pledged to an assignee or financing party, as applicable, in
 3-57 connection with the issuance of securitized bonds, at which time
 3-58 the property becomes securitized property.
 3-59 (b) Securitized property that is specified in the financing
 3-60 order constitutes a present vested property right for all purposes,
 3-61 including for purposes of Sections 16 and 17, Article I, Texas
 3-62 Constitution, Section 10, Article I, United States Constitution,
 3-63 and the Fifth Amendment to the United States Constitution, and the
 3-64 laws of this state and the United States, even if the imposition and
 3-65 collection of securitized charges depend on further acts of the
 3-66 electric cooperative or others that may not have yet occurred.
 3-67 (c) Securitized property shall exist regardless of whether
 3-68 securitized charges have been billed, have accrued, or have been
 3-69 collected and notwithstanding the fact that the value or amount of

4-1 the property is dependent on the future provision of service to
 4-2 customers by the electric cooperative or its successors or assigns.

4-3 (d) On the issuance of the securitized bonds and the
 4-4 financing order, and when the requirements of Section 41.159 are
 4-5 met, the securitized charges, including their nonbypassability,
 4-6 are irrevocable, final, nondiscretionary, and effective without
 4-7 further action by the electric cooperative or any other person or
 4-8 governmental authority. The financing order shall remain in effect
 4-9 and the property shall continue to exist for the same period as the
 4-10 pledge of the state described in Section 41.160.

4-11 (e) All revenue, collections, claims, payments, money, or
 4-12 proceeds of or arising from or relating to securitized charges
 4-13 shall constitute proceeds of the securitized property arising from
 4-14 the financing order.

4-15 Sec. 41.155. NO SETOFF. The interest of an assignee or
 4-16 pledgee in securitized property and in the revenues and collections
 4-17 arising from that property are not subject to setoff, counterclaim,
 4-18 surcharge, recoupment, or defense by the electric cooperative or
 4-19 any other person or in connection with the bankruptcy of the
 4-20 electric cooperative or any other entity. A financing order shall
 4-21 remain in effect and unabated notwithstanding the bankruptcy of the
 4-22 electric cooperative, its successors, or assignees.

4-23 Sec. 41.156. NO BYPASS. (a) A financing order shall
 4-24 include terms ensuring that the imposition and collection of
 4-25 securitized charges authorized in the order shall be nonbypassable
 4-26 and apply to all customers connected to the electric cooperative's
 4-27 system assets and taking service, regardless of whether the system
 4-28 assets continue to be owned by the electric cooperative.

4-29 (b) The electric cooperative, its servicer, any entity
 4-30 providing electric transmission or distribution services, and any
 4-31 retail electric provider providing services to a retail customer in
 4-32 the electric cooperative's certificated service area as it existed
 4-33 on the date of enactment of this subchapter are entitled to collect
 4-34 and must remit, consistent with this subchapter and any financing
 4-35 order adopted under this subchapter, the securitized charges from
 4-36 the retail customers and from retail customers that switch to new
 4-37 on-site generation. Such retail customers are required to pay the
 4-38 securitized charges.

4-39 Sec. 41.157. TRUE-UP. (a) A financing order shall be
 4-40 reviewed and adjusted promptly if after its adoption there are
 4-41 additional charges, reductions, or refunds of extraordinary costs
 4-42 and expenses, to:

4-43 (1) ensure that there is not an over-collection or an
 4-44 under-collection of extraordinary costs and expenses; and

4-45 (2) ensure that collections on the securitized
 4-46 property will be sufficient to timely make all periodic and final
 4-47 payments of principal, interest, fees, and other amounts and to
 4-48 timely fund all reserve accounts, if any, related to the
 4-49 securitized bonds.

4-50 (b) A financing order shall also include a mechanism
 4-51 requiring that securitized charges be reviewed by the board and
 4-52 adjusted at least annually, not later than the 45th day after the
 4-53 anniversary date of the issuance of the securitized bonds, to:

4-54 (1) correct over-collections or under-collections of
 4-55 the preceding 12 months; and

4-56 (2) ensure the expected recovery of amounts sufficient
 4-57 to timely provide all payments of debt service and other required
 4-58 amounts and charges in connection with the securitized bonds.

4-59 (c) The electric cooperatives that are members of a
 4-60 generation and transmission cooperative may include in their
 4-61 financing orders the ability to allocate any true-up amounts over
 4-62 the retail customers of all electric cooperatives that are members
 4-63 of the same generation and transmission cooperative.

4-64 (d) In a combined securitization transaction, each
 4-65 generation and transmission cooperative may calculate all
 4-66 adjustments and determinations relevant to each true-up by each
 4-67 electric cooperative member of the generation and transmission
 4-68 cooperative participating in the securitization transaction, with
 4-69 the adjustments being allocated across the electric cooperatives in

5-1 the manner agreed to by all of the participating electric
5-2 cooperatives under their financing orders.

5-3 (e) A governmental authority may not disapprove of or alter
5-4 any adjustments made or proposed to be made under this subchapter
5-5 other than to correct computation or other manifest errors.

5-6 Sec. 41.158. TRUE SALE. An agreement by an electric
5-7 cooperative or assignee to transfer securitized property that
5-8 expressly states that the transfer is a sale or other absolute
5-9 transfer signifies that the transaction is a true sale and is not a
5-10 secured transaction and that title, legal and equitable, has passed
5-11 to the entity to which the securitized property is transferred. The
5-12 transaction shall be treated as an absolute sale regardless of
5-13 whether the purchaser has any recourse against the seller, or any
5-14 other term of the parties' agreement, including the seller's
5-15 retention of an equity interest in the securitized property, the
5-16 fact that the electric cooperative acts as the collector of
5-17 securitized charges relating to the securitized property, or the
5-18 treatment of the transfer as a financing for tax, financial
5-19 reporting, or other purposes.

5-20 Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
5-21 DEFAULT. (a) Securitized property does not constitute an account
5-22 or general intangible under Section 9.106, Business & Commerce
5-23 Code. The transfer, sale, or assignment, or the creation,
5-24 granting, perfection, and enforcement of liens and security
5-25 interests in securitized property are governed by this section and
5-26 not by the Business & Commerce Code. Securitized property shall
5-27 constitute property for all purposes, including for contracts
5-28 securing securitized bonds, regardless of whether the securitized
5-29 property revenues and proceeds have accrued.

5-30 (b) A valid and enforceable transfer, sale, or assignment,
5-31 or lien and security interest, as applicable, in securitized
5-32 property may be created only by a financing order and the execution
5-33 and delivery of a transfer, sale, or assignment, or security
5-34 agreement, as applicable, with a financing party in connection with
5-35 the issuance of securitized bonds. The transfer, sale, assignment,
5-36 or lien and security interest, as applicable, shall attach
5-37 automatically from the time that value is received for the
5-38 securitized bonds and, on perfection through the filing of notice
5-39 with the secretary of state in accordance with the rules prescribed
5-40 under Subsection (d), shall be a continuously perfected transfer,
5-41 sale, and assignment, or lien and security interest, as applicable,
5-42 in the securitized property and all proceeds of the property,
5-43 whether accrued or not, shall have priority in the order of filing
5-44 and take precedence over any subsequent judicial or other lien
5-45 creditor. If notice is filed before the 10th day after the date
5-46 value is received for the securitized bonds, the transfer, sale, or
5-47 assignment, or security interest, as applicable, shall be perfected
5-48 retroactive to the date value was received. Otherwise, the
5-49 transfer, sale, or assignment, or security interest, as applicable,
5-50 shall be perfected as of the date of filing.

5-51 (c) Transfer, sale, or assignment of an interest in
5-52 securitized property to an assignee shall be perfected against all
5-53 third parties, including subsequent judicial or other lien
5-54 creditors, when the financing order becomes effective, transfer
5-55 documents have been delivered to the assignee, and a notice of that
5-56 transfer has been filed in accordance with the rules prescribed
5-57 under Subsection (d). However, if notice of the transfer has not
5-58 been filed in accordance with this subsection before the 10th day
5-59 after the delivery of transfer documentation, the transfer of the
5-60 interest is not perfected against third parties until the notice is
5-61 filed.

5-62 (d) The secretary of state shall implement this section by
5-63 establishing and maintaining a separate system of records for the
5-64 filing of notices under this section and prescribing the rules for
5-65 those filings based on Chapter 9, Business & Commerce Code, adapted
5-66 to this subchapter and using the terms defined in this subchapter.

5-67 (e) The priority of a lien and security interest perfected
5-68 under this section is not impaired by any later modification of the
5-69 financing order under Section 41.157 or by the commingling of funds

6-1 arising from securitized charges with other funds, and any other
6-2 security interest that may apply to those funds shall be terminated
6-3 when they are transferred to a segregated account for the assignee
6-4 or a financing party. If securitized property has been transferred
6-5 to an assignee, any proceeds of that property shall be held in trust
6-6 for the assignee.

6-7 (f) Securitized bonds shall be secured by a statutory lien
6-8 on the securitized property in favor of the owners or beneficial
6-9 owners of securitized bonds. The lien shall automatically arise on
6-10 issuance of the securitized bonds without the need for any action or
6-11 authorization by the electric cooperative or the board. The lien
6-12 shall be valid and binding from the time the securitized bonds are
6-13 executed and delivered. The securitized property shall be
6-14 immediately subject to the lien, and the lien shall immediately
6-15 attach to the securitized property and be effective, binding, and
6-16 enforceable against the electric cooperative, its creditors, their
6-17 successors, assignees, and all others asserting rights therein,
6-18 regardless of whether those persons have notice of the lien and
6-19 without the need for any physical delivery, recordation, filing, or
6-20 further act. The lien is created by this subchapter and not by any
6-21 security agreement, but may be enforced by any financing party or
6-22 their representatives as if they were secured parties under Chapter
6-23 9, Business & Commerce Code. On application by or on behalf of the
6-24 financing parties, a district court in the county where the
6-25 electric cooperative is domiciled may order that amounts arising
6-26 from securitized charges be transferred to a separate account for
6-27 the financing parties' benefit.

6-28 (g) The statutory lien is a continuously perfected security
6-29 interest and has priority over any other lien, created by operation
6-30 of law or otherwise, that may subsequently attach to that
6-31 securitized property or proceeds thereof unless the owners or
6-32 beneficial owners of securitized bonds as specified in the trust
6-33 agreement or indenture have agreed in writing otherwise. The
6-34 statutory lien is a lien on the securitized charges and all
6-35 securitized charge revenues or other proceeds that are deposited in
6-36 any deposit account or other account of the servicer or other person
6-37 in which securitized charge revenues or other proceeds have been
6-38 commingled with other funds.

6-39 (h) The statutory lien is not adversely affected or impaired
6-40 by, among other things, the commingling of securitized charge
6-41 revenues or other proceeds from securitized charges with other
6-42 amounts regardless of the person holding those amounts.

6-43 (i) The electric cooperative, any successor or assignee of
6-44 the electric cooperative, or any other person with any operational
6-45 control of any portion of the electric cooperative's system assets,
6-46 whether as owner, lessee, franchisee, or otherwise, and any
6-47 successor servicer of collections of the securitized charges shall
6-48 be bound by the requirements of this subchapter and shall perform
6-49 and satisfy all obligations imposed under this subchapter in the
6-50 same manner and to the same extent as did its predecessor, including
6-51 the obligation to bill, adjust, and enforce the payment of
6-52 securitized charges.

6-53 (j) If a default or termination occurs under the securitized
6-54 bonds, the financing parties or their representatives may foreclose
6-55 on or otherwise enforce their lien and security interest in any
6-56 securitized property as if they were secured parties under Chapter
6-57 9, Business & Commerce Code, and on application by the electric
6-58 cooperative or by or on behalf of the financing parties, a district
6-59 court in the county where the electric cooperative is domiciled may
6-60 order that amounts arising from securitized charges be transferred
6-61 to a separate account for the financing parties' benefit, to which
6-62 their lien and security interest shall apply. On application by or
6-63 on behalf of the financing parties, a district court in the county
6-64 where the electric cooperative is domiciled shall order the
6-65 sequestration and payment to them of revenues arising from the
6-66 securitized charges.

6-67 Sec. 41.160. PLEDGE OF STATE. Securitized bonds are not a
6-68 debt or obligation of the state and are not a charge on its full
6-69 faith and credit or taxing power. The state pledges, however, for

7-1 the benefit and protection of assignees, financing parties, and the
7-2 electric cooperative, that it will not take or permit, or permit any
7-3 agency or other governmental authority or political subdivision of
7-4 the state to take or permit, any action that would impair the value
7-5 of securitized property, or, except as permitted by Section 41.157,
7-6 reduce, alter, or impair the securitized charges to be imposed,
7-7 collected, and remitted to financing parties, until the principal,
7-8 interest and premium, and any other charges incurred and contracts
7-9 to be performed in connection with the related securitized bonds
7-10 have been paid and performed in full. Any party issuing securitized
7-11 bonds is authorized to include this pledge in any documentation
7-12 relating to those bonds.

7-13 Sec. 41.161. TAX EXEMPTION. Transactions involving the
7-14 transfer and ownership of securitized property and the receipt of
7-15 securitized charges are exempt from state and local income, sales,
7-16 franchise, gross receipts, and other taxes or similar charges.

7-17 Sec. 41.162. NOT PUBLIC UTILITY. An assignee or financing
7-18 party may not be considered to be a public utility, electric
7-19 cooperative, or person providing electric service solely by virtue
7-20 of the transactions described in this subchapter.

7-21 Sec. 41.163. SEVERABILITY. Effective on the date the first
7-22 securitized bonds are issued under this subchapter, if any
7-23 provision in this title or portion of this title is held to be
7-24 invalid or is invalidated, superseded, replaced, repealed, or
7-25 expires for any reason, that occurrence does not affect the
7-26 validity or continuation of this subchapter or any other provision
7-27 of this title that is relevant to the issuance, administration,
7-28 payment, retirement, or refunding of securitized bonds or to any
7-29 actions of the electric cooperative, its successors, an assignee, a
7-30 collection agent, or a financing party, which shall remain in full
7-31 force and effect.

7-32 SECTION 2. This Act takes effect immediately if it receives
7-33 a vote of two-thirds of all the members elected to each house, as
7-34 provided by Section 39, Article III, Texas Constitution. If this
7-35 Act does not receive the vote necessary for immediate effect, this
7-36 Act takes effect September 1, 2021.

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