

Amend HB 4492 (senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 404.0241, Government Code, is amended by adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) to read as follows:

(b-1) Notwithstanding any other law, directly or indirectly through a separately managed account or other investment vehicle, the comptroller shall invest not more than \$800 million of the economic stabilization fund balance to finance the default balance as defined by Section 39.602, Utilities Code, to be repaid by ERCOT market participants through default charges established by the Public Utility Commission of Texas. The interest rate charged in connection with the debt obligations must be calculated by adding the rate determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3, based on the credit rating of the independent organization, as defined by Section 39.602, Utilities Code, plus 2.5 percent. The term of the debt obligations may not exceed 30 years.

(b-2) A person may not bring a civil action against this state, the Texas Treasury Safekeeping Trust Company, or an employee, independent contractor, or official of this state, including the comptroller, for any claim, including breach of fiduciary duty or violation of any constitutional, statutory, or regulatory requirement, in connection with any action, inaction, decision, divestment, investment, report, or other determination made or taken in connection with Subsections (b-1), (b-4), and (b-5).

(b-3) A person who brings an action described by Subsection (b-2) is liable to the defendant for the defendant's costs and attorney's fees resulting from the action.

(b-4) The comptroller shall manage the investments required by Subsection (b-1) as a separate investment portfolio. The comptroller shall provide separate accounting and reporting for the investments in that portfolio. The comptroller shall credit to that portfolio all payments, distributions, interest, and other earnings on the investments in that portfolio.

(b-5) The comptroller has any power necessary to accomplish

the purposes of managing and investing the assets of the portfolio described by Subsection (b-4). In managing the assets of that portfolio, through procedures and subject to restrictions the comptroller considers appropriate, the comptroller may acquire, sell, transfer, or otherwise assign the investments as appropriate, taking into consideration the purposes, terms, distribution requirements, and other circumstances of that portfolio then prevailing.

SECTION 2. Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.151, 39.1516, 39.155, 39.157(e), 39.159, 39.203, 39.904, 39.9051, 39.9052, and 39.914(e), and Subchapters M and N, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

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

(j-1) Notwithstanding Subsection (j) of this section, Section 39.653(c), or any other law, the independent system operator in the ERCOT power region may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of that independent system operator on or after May 29, 2021, and before December 30, 2021, related to a default on a payment obligation by a market participant that occurred before May 29, 2021.

SECTION 4. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.159 to read as follows:

Sec. 39.159. AMOUNTS OWED TO INDEPENDENT ORGANIZATION BY MARKET PARTICIPANTS. (a) The commission shall require that all market participants fully and promptly pay to the independent organization certified under Section 39.151 for the ERCOT power region all amounts owed to the independent organization, or provide

for the full and prompt payment of those amounts owed, which must be calculated solely according to the protocols of the independent organization in effect during the period of emergency and subject to the jurisdiction of the commission, to qualify, or to continue to qualify, as a market participant in the ERCOT power region.

(b) The independent organization shall report to the commission that a market participant is in default for the failure to pay all amounts owed to the independent organization as calculated in accordance with this section. The commission may not allow the defaulting market participant to continue to be a market participant in the ERCOT power region for any purpose or allow the independent organization to accept the defaulting market participant's loads or generation for scheduling in the ERCOT power region until all amounts owed to the independent organization by the market participant as calculated in this section are fully paid.

(c) The commission and the independent organization shall pursue collection in full of amounts owed to the independent organization by any market participant to reduce the costs that would otherwise be borne by other market participants or their customers.

SECTION 5. Chapter 39, Utilities Code, is amended by adding Subchapters M and N to read as follows:

SUBCHAPTER M. WINTER STORM URI DEFAULT BALANCE FINANCING

Sec. 39.601. PURPOSE. (a) The purpose of this subchapter is to address the Winter Storm Uri default balance, as defined by Section 39.602, in a manner that benefits the public interest by:

(1) enabling the independent organization to finance the payment of the default balance with debt obligations; and

(2) authorizing the commission to contract with the comptroller under Section 404.0241, Government Code, to finance the payment of the default balance with debt obligations.

(b) Financing the default balance in the manner provided by this subchapter will:

(1) allow wholesale market participants that are owed money to be paid in a more timely manner;

(2) replenish financial revenue auction receipts

temporarily used by the independent organization to reduce the Winter Storm Uri-related amounts short-paid to the wholesale market participants; and

(3) allow the wholesale market to repay the default balance over time.

(c) The legislature finds that the financing authorized by this subchapter serves the public purpose of preserving the integrity of the electricity market in the ERCOT power region.

(d) The proceeds of debt obligations issued under this subchapter must be used solely for the purpose of financing default balances that otherwise would be or have been uplifted to the wholesale market.

(e) The commission shall ensure that the structuring and pricing of debt obligations issued under this subchapter result in the lowest financing costs consistent with market conditions and the terms of the commission's order. The present value calculation must use a discount rate equal to the proposed interest rate on the debt obligations.

Sec. 39.602. DEFINITIONS. In this subchapter:

(1) "Default balance" means an amount of money of not more than \$800 million that includes only:

(A) amounts owed to the independent organization by competitive wholesale market participants from the period of emergency that otherwise would be or have been uplifted to other wholesale market participants; and

(B) financial revenue auction receipts used by the independent organization to temporarily reduce amounts short-paid to wholesale market participants related to the period of emergency.

(2) "Default charges" means charges assessed to wholesale market participants to repay amounts financed under this subchapter to pay the default balance.

(3) "Independent organization" means the independent organization certified under Section 39.151 for the ERCOT power region.

(4) "Period of emergency" means the period beginning 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20,

2021.

Sec. 39.603. DEBT OBLIGATION ORDER. (a) On application by the independent organization, the commission by order may authorize the independent organization to establish a debt financing mechanism to finance the default balance if the commission finds that the debt obligations are needed to preserve the integrity of the wholesale market and the public interest, after considering:

(1) the need to timely replenish financial revenue auction receipts used by the independent organization to reduce amounts short-paid to wholesale market participants;

(2) the interests of wholesale market participants that are owed balances; and

(3) the potential effects of uplifting those balances to the wholesale market without a financing vehicle.

(b) The order must state:

(1) the default balance to be financed; and

(2) the period over which the default charges must be assessed to repay the debt obligations, which may not exceed 30 years.

(c) The order must include an adjustment mechanism requiring the independent organization to adjust default charges to refund, over the remaining period of the default charges, any payments made by a competitive load-serving entity toward unpaid obligations from the period of emergency that were included in the financed default balance.

(d) The independent organization shall collect from and allocate among wholesale market participants the default charges using the same allocated pro rata share methodology under which the charges would otherwise be uplifted under the protocols in effect on March 1, 2021. The default charges must be assessed on all wholesale market participants, including market participants who are in default but still participating in the wholesale market, and may be based on periodically updated transaction data to prevent market participants from engaging in behavior designed to avoid the default charges.

(e) Not later than the 30th day after the date the independent organization receives a default charge payment from a

wholesale market participant, the independent organization shall remit the payment to the comptroller toward repayment of debt obligations in which the comptroller made an investment under Section 404.0241(b-1), Government Code, if applicable.

(f) Notwithstanding another provision of this subchapter, default charges may not be collected from or allocated to a market participant that:

(1) otherwise would be subject to a default charge solely as a result of acting as a central counterparty clearinghouse in wholesale market transactions in the ERCOT power region; and

(2) is regulated as a derivatives clearing organization, as defined by Section 1a, Commodity Exchange Act (7 U.S.C. Section 1a).

(g) Not later than the 90th day after the date the independent organization files an application for an order under Subsection (a), the commission shall issue an order described by Subsection (a) or an order denying the application. The order becomes effective in accordance with its terms and the order, together with the default charges authorized in the order, shall be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission after the order takes effect. Notwithstanding this requirement, the commission may refinance any debt obligations created by a finance order issued under this subchapter if the commission determines that the refinancing is in the public interest, considering the interest of both the ERCOT market and the state's interest in the economic stabilization fund, and otherwise meets the requirements of this subchapter.

(h) An order described by Subsection (a) or (g) is not subject to rehearing by the commission. The order may be reviewed by appeal by a party to the proceeding to a Travis County district court that is filed not later than the 15th day after the date the order is signed by the commission. The judgment of the district court may be reviewed only by a direct appeal to the Supreme Court of Texas that is filed not later than the 15th day after the date of the entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously

as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.

(i) A debt obligation issued under this section is a nonrecourse debt secured solely by the default charges explicitly assessed to repay the obligation. The independent organization's obligations authorized under this section do not create personal liability for the independent organization.

Sec. 39.604. COMMISSION-AUTHORIZED FINANCING. (a) The commission may contract with another state agency with expertise in public financing to establish a debt financing mechanism for the payment of the default balance as defined in this subchapter. This section does not apply to a default balance securitized under Subchapter D, Chapter 41.

(b) Except as otherwise specifically provided by this section, the provisions of this subtitle that address the commission's issuance of an order under other provisions of this subtitle also apply to the commission's issuance of an order under this section.

(c) The contracted state agency and any issuer, along with the independent organization, must be a party to the commission's proceedings that address the issuance of an order.

(d) In addition to the other applicable requirements of this subtitle, an order issued under this section must:

(1) require the sale, assignment, or other transfer to the contracted state agency of default charges created by the order and, following that sale, assignment, or transfer, require that default charges paid under any order be created, assessed, and collected as the property of the contracted state agency, subject to subsequent sale, assignment, or transfer by the contracted state agency as authorized under this subchapter;

(2) authorize:

(A) the issuance of debt obligations by the contracted state agency secured by a pledge of default charge

revenue, and the application of the proceeds of those debt obligations, net of issuance costs, to the independent organization; or

(B) the acquisition of default charge revenue from the independent organization by the contracted state agency, financed:

(i) by a loan by an issuer to the contracted state agency of the proceeds of debt obligations, net of issuance costs; or

(ii) by the acquisition by an issuer from the contracted state agency of the default charge revenue and in each case the pledge of the revenue to the repayment of the loan or other debt obligation, as applicable; and

(3) authorize the independent organization to serve as collection agent to collect the default charges and transfer the collected default charges to the contracted state agency or the issuer, as appropriate.

(e) After issuance of the order, the contracted state agency shall arrange for the issuance of debt obligations, as specified by the order, by the contracted state agency or another issuer selected by the contracted state agency and approved by the commission.

(f) Debt obligations issued pursuant to an order issued under this section are secured only by the default charge revenue and any other funds pledged under the bond documents. No assets of the state or the independent organization are subject to claims by the holders of the debt obligations. Following assignment of the default charge revenue, the independent organization does not have any beneficial interest or claim of right in the revenue.

(g) Effective on the date the first debt obligations are issued under this subchapter, if any provision of this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of debt obligations authorized under this subchapter or to any actions



of the independent organization, its successors, an assignee, a collection agent, the contracted state agency, or an issuer and those provisions shall remain in full force and effect.

Sec. 39.605. DEFAULT CHARGES NONBYPASSABLE. An order issued under Section 39.603 or 39.604 must:

(1) include terms ensuring that the imposition and collection of default charges authorized in the order shall be nonbypassable by wholesale market participants; and

(2) authorize the independent organization to establish appropriate fees and other methods for pursuing amounts owed from entities exiting the wholesale market.

Sec. 39.606. TRUE-UP MECHANISM. An order issued under Section 39.603 or 39.604 must include a mechanism requiring that default charges be reviewed and adjusted at least annually, not later than the 45th day after the anniversary date of the issuance of the order, to:

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

(2) ensure the expected recovery of amounts sufficient to timely provide all payments of debt service.

Sec. 39.607. TAX EXEMPTION. The transfer and receipt of default charges are exempt from state and local sales and use, franchise, and gross receipts taxes.

#### SUBCHAPTER N. WINTER STORM URI UPLIFT FINANCING

Sec. 39.651. PURPOSE; USE OF PROCEEDS. (a) The purpose of this subchapter is to address the Winter Storm Uri uplift balance by:

(1) enabling the independent organization certified under Section 39.151 for the ERCOT power region to finance the uplift balance on behalf of wholesale market participants through debt obligations; and

(2) authorizing the commission to contract with another state agency to finance the payment of the uplift balance with debt obligations or use any another financial mechanism consistent with this subchapter for that purpose.

(b) Financing the uplift balance in the manner provided by this subchapter will allow wholesale market participants who were

assessed extraordinary uplift charges due to consumption during the period of emergency to pay those charges over a longer period of time, alleviating liquidity issues and reducing the risk of additional defaults in the wholesale market.

(c) The legislature finds that authorizing financing under this subchapter serves the public purpose of allowing the commission to stabilize the wholesale electricity market in the ERCOT power region.

(d) The proceeds of debt obligations issued under this subchapter must be used solely for the purpose of financing reliability deployment price adder charges and ancillary service costs that exceeded the commission's system-wide offer cap and were uplifted to load-serving entities based on consumption during the period of emergency. A load-serving entity that receives proceeds from the debt obligations may use the proceeds solely for the purposes of fulfilling payment obligations directly related to such costs and refunding such costs to retail customers who have paid or otherwise would be obligated to pay such costs.

(e) The commission shall ensure that the structuring and pricing of the debt obligations results in the lowest uplift charges consistent with market conditions and the terms of the order issued under this subchapter. The present value calculation must use a discount rate equal to the proposed interest rate on the debt obligations.

Sec. 39.652. DEFINITIONS. In this subchapter:

(1) "Independent organization" means the independent organization certified under Section 39.151 for the ERCOT power region.

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

(3) "Period of emergency" means the period beginning 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20, 2021.

(4) "Uplift balance" means an amount of money of not more than \$2.1 billion that was uplifted to load-serving entities on a load ratio share basis due to energy consumption during the period of emergency for reliability deployment price adder charges

and ancillary services costs in excess of the commission's system-wide offer cap, excluding amounts securitized under Subchapter D, Chapter 41. The term does not include amounts that were part of the prevailing settlement point price during the period of emergency.

(5) "Uplift charges" means charges assessed to load-serving entities to repay amounts financed under this subchapter to pay the uplift balance.

Sec. 39.653. DEBT OBLIGATION ORDER. (a) On application of the independent organization, the commission by order may authorize the independent organization to establish a debt financing mechanism for the payment of the uplift balance if the commission finds that such financing will support the financial integrity of the wholesale market and is necessary to protect the public interest, considering the impacts on both wholesale market participants and retail customers.

(b) An order issued under this section must:

(1) state the uplift balance to be financed;

(2) state the period over which the uplift charges must be assessed to repay the debt obligations, which may not exceed 30 years; and

(3) provide the process for remitting the proceeds of the financing to load-serving entities who were exposed to the costs included in the uplift balance, including a requirement for the load-serving entities to submit documentation of their exposure.

(c) The independent organization shall assess uplift charges to all load-serving entities on a load ratio share basis, which may be translated to a kWh charge, including load serving entities who enter the market after an order has been issued under this subchapter, but excluding the load of entities that opt out under Subsection (d).

(d) The commission shall develop a one-time process that allows municipally owned utilities, electric cooperatives, river authorities, and transmission-voltage customers served by a retail electric provider to opt out of the uplift charges by paying in full all invoices owed for usage during the period of emergency.

Load-serving entities and transmission-voltage customers that opt out under this subsection shall not receive any proceeds from the uplift financing.

(e) An order issued under this section must include a requirement that any load-serving entity or transmission-voltage customer who receives proceeds from the financing that exceed the entity's or customer's actual exposure to uplift charges from consumption during the period of emergency notify the independent organization and remit any excess receipts. Any payments received under this subsection must be credited against the uplift balance to reduce the remaining uplift charges.

(f) Not later than the 90th day after the date the independent organization files an application for an order under Subsection (a), the commission shall issue an order described by Subsection (a) or an order denying the application. The order becomes effective in accordance with its terms and the order, together with the uplift charges authorized in the order, shall be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission after it takes effect. Notwithstanding this requirement, the commission may refinance any debt obligations created by a finance order under this subchapter if the commission determines that the refinancing is in the public interest and otherwise meets the requirements of this subchapter.

(g) An order issued under this section is not subject to rehearing by the commission. An order may be reviewed by appeal by a party to the proceeding to a Travis County district court filed not later than the 15th day after the date the order is signed by the commission. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed not later than the 15th day after the date of the entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.

(h) A debt obligation issued under this section is a nonrecourse debt secured solely by the default charges explicitly assessed to repay the obligation. The independent organization's obligations authorized under this section do not create personal liability for the independent organization.

Sec. 39.654. COMMISSION-AUTHORIZED FINANCING. (a) The commission may contract with another state agency with expertise in public financing to establish a debt financing mechanism to finance the payment of the uplift balance. This section does not apply to any balance securitized under Subchapter D, Chapter 41.

(b) Except as otherwise specifically provided by this section, the provisions of this subtitle that address the commission's issuance of an order under other provisions of this subtitle also apply to the commission's issuance of an order under this section.

(c) The contracted state agency and any issuer must be a party to the commission's proceedings that address the issuance of an order along with the independent organization.

(d) In addition to the other applicable requirements of this subtitle, an order issued under this section must:

(1) require the sale, assignment, or other transfer to the contracted state agency of uplift charges created by the order and, following that sale, assignment, or transfer, require that uplift charges paid under any order be created, assessed, and collected as the property of the contracted state agency, subject to subsequent sale, assignment, or transfer by the contracted state agency as authorized under this subchapter;

(2) authorize:

(A) the issuance of debt obligations by the contracted state agency secured by a pledge of uplift charge revenue, and the application of the proceeds of those debt obligations, net of issuance costs, to the independent organization; or

(B) the acquisition of uplift charge revenue from the independent organization by the contracted state agency, financed:

(i) by a loan by an issuer to the contracted

state agency of the proceeds of debt obligations, net of issuance costs; or

(ii) by the acquisition by an issuer from the contracted state agency of the uplift charge revenue and in each case the pledge of the revenue to the repayment of the loan or debt obligations, as applicable; and

(3) authorize the independent organization to serve as collection agent to collect the uplift charges and transfer the collected uplift charges to the contracted state agency or the issuer, as appropriate.

(e) After issuance of the order, the contracted state agency shall arrange for the issuance of debt obligations, as specified by the order, by the contracted state agency or another issuer selected by the contracted state agency and approved by the commission.

(f) Debt obligations issued pursuant to an order issued under this section are secured only by the uplift charge revenue and any other funds pledged under the bond documents. No assets of the state or the independent organization are subject to claims by the holders of the debt obligations. Following assignment of the uplift charge revenue, the independent organization does not have any beneficial interest or claim of right in the revenue.

(g) Effective on the date the first debt obligations are issued under this subchapter, if any provision of this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of debt obligations authorized under this subchapter or to any actions of the independent organization, its successors, an assignee, a collection agent, the contracted state agency, or an issuer and those provisions shall remain in full force and effect.

Sec. 39.655. OTHER FINANCIAL MECHANISM. The commission may use a financial mechanism other than the mechanisms described by Sections 39.653 and 39.654 that meets the requirements of this subchapter to accomplish the purposes of this subchapter.

Sec. 39.656. UPLIFT CHARGES NONBYPASSABLE. An order must include terms ensuring that the imposition and collection of uplift charges authorized by the order shall be nonbypassable.

Sec. 39.657. TRUE-UP. An order shall include a mechanism requiring that uplift charges be reviewed and adjusted at least annually, not later than the 45th day after the anniversary date of the issuance of the debt obligations, to:

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

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

Sec. 39.658. TAX EXEMPTION. Transactions involving the transfer and ownership of uplift property and the receipt of uplift charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

Sec. 39.659. SEVERABILITY. Effective on the date the first debt obligations are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of debt obligations or to any actions of the independent organization, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

Sec. 39.660. CUSTOMER CHARGES. All load-serving entities that receive offsets to specific uplift charges from the independent organization under this subchapter must adjust customer invoices to reflect the offsets for any charges that were or would otherwise be passed through to customers under the terms of service with the load-serving entity, including by providing a refund for any offset charges that were previously paid. An electric cooperative, including an electric cooperative that elects to receive offsets, shall not otherwise become subject to rate regulation by the commission and receipt of offsets does not

affect the applicability of Chapter 41 to an electric cooperative.

Sec. 39.661. ENFORCEMENT. The commission may use any enforcement mechanism established by Chapter 15 or this chapter, including revocation of certification by the commission, against any entity that fails to remit excess receipts from the uplift balance financing under Section 39.653(e) or otherwise misappropriates or misuses amounts received from the uplift balance financing this subchapter.

SECTION 6. Sections 404.0241(b-2) and (b-3), Government Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act.

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