

BILL ANALYSIS

C.S.H.B. 1510
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In February of this year, Winter Storm Uri hit Texas and caused the widespread failure of electric power generation facilities, which resulted in millions of Texans having to endure freezing cold temperatures without electricity for upwards of a week. This event has highlighted the need to ensure that investments are made to prevent the state's generation capacity from dropping to a level that necessitates the load shed response that we saw during Uri. In addition, certain parts of the state are prone to tropical storms and hurricanes, such as Hurricanes Laura and Delta that impacted Southeast Texas last year, which require investment to prepare for and respond to such weather events. These investments, which include weatherization, can be hugely beneficial to the state's generation capacity but would prove costly to electric utilities and their customers. C.S.H.B. 1510 seeks to achieve the benefits of these investments while reducing the associated costs by providing for the recovery of costs incurred through lower-cost securitization financing for certain electric utilities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1510 amends the Utilities Code to set out and revise provisions relating to the response and resilience of certain electricity service providers to major weather-related events or other natural disasters.

System Restoration Costs

C.S.H.B. 1510 includes among the system restoration costs an electric utility may obtain timely recovery of using securitization financing reasonable and necessary weatherization and storm-hardening costs incurred, as well as reasonable estimates of costs to be incurred, by the utility. Those estimates are subject to true-up and reconciliation after the actual costs are known.

Lower-Cost Financing Mechanism for Securitization for Recovery of System Restoration Costs

C.S.H.B. 1510 creates the Texas Electric Utility System Restoration Corporation as a special purpose public corporation and instrumentality of the state for the essential public purpose of providing a lower-cost, supplemental financing mechanism available to the Public Utility

Commission of Texas (PUC) and an electric utility operating solely outside of ERCOT to attract low-cost capital to finance system restoration costs. The bill provides the following with respect to the administration and operation of the corporation:

- the corporation has a legal existence as a public corporate body and instrumentality of the state but is separate and distinct from the state;
- the corporation has the powers, rights, and privileges provided for a nonprofit corporation organized under state law, subject to the express exceptions and limitations provided by the bill;
- an organizer selected by the PUC executive director is required to prepare the corporation's certificate of formation under the Business Organizations Code in a manner consistent with applicable bill provisions;
- the corporation is subject to PUC regulation and, although the corporation is not a public utility, the PUC must regulate the corporation in a manner consistent with how the PUC regulates public utilities;
- the corporation is governed by a board of five directors appointed by the PUC for two-year terms and is required to exercise its powers through that board;
- an official action of the board requires the favorable vote of a majority of the directors present and voting at a meeting of the board;
- regarding the funding of the corporation:
 - the corporation must be self-funded and its assets may not be considered part of any state fund;
 - the state may not budget for or provide any state money to the corporation;
 - the corporation's debts, claims, obligations, and liabilities may not be considered to be a debt of the state or a pledge of the state's credit; and
 - the corporation may, before imposing transition or system restoration charges, accept and expend money received from any source for certain prescribed purposes relating to its operations;
- state officers and agencies may render services to the corporation, within their respective functions, as requested by the PUC or the corporation;
- the corporation's board may employ or retain persons as necessary to perform the duties of the corporation; and
- the corporation must prepare and submit an annual operating budget to the PUC for approval and, if requested by the PUC, prepare and submit an annual report containing the corporation's annual operating and financial statements and any other appropriate information.

C.S.H.B. 1510 authorizes the corporation to do the following:

- acquire, sell, pledge, or transfer transition property as necessary to effect the purposes for which the corporation is created and, in connection with the action, agree to such terms and conditions as the corporation deems necessary and proper, consistent with the terms of a financing order, for the following purposes:
 - to acquire transition property and to pledge such transition property, and any other collateral, to either:
 - secure payment of system restoration bonds issued by the corporation, together with payment of any other qualified costs, as specified by the bill; or
 - secure repayment of any borrowing from any other issuer of system restoration bonds; or
 - to sell the transition property to another issuer, which may in turn pledge that transition property, together with any other collateral, to the repayment of system restoration bonds issued by the issuer together with any other qualified costs;
- issue system restoration bonds on terms and conditions consistent with a financing order;
- borrow funds from an issuer of system restoration bonds to acquire transition property, and pledge that transition property to the repayment of any borrowing from an issuer, together with any related qualified costs, all on terms and conditions consistent with a financing order;

- sue or be sued in its corporate name;
- intervene as a party before the PUC or any court in Texas in any matter involving the corporation's powers and duties;
- negotiate and become a party to contracts as necessary, convenient, or desirable to carry out applicable bill provisions; and
- engage in corporate actions or undertakings that are permitted for nonprofit corporations in Texas and that are not prohibited by, or contrary to, the bill's provisions.

C.S.H.B. 1510 requires the corporation to maintain separate accounts and records relating to each electric utility that collects system restoration charges for all charges, revenues, assets, liabilities, and expenses relating to that utility's related system restoration bond issuances.

C.S.H.B. 1510 requires adequate protection and provision to be made for the payment of any outstanding system restoration bonds in the event of any rehabilitation, liquidation, or dissolution of the corporation and specifies the manner in which corporation assets must be applied in such an event, with priority given to payment of the corporation's debts, liabilities, and obligations. The bill establishes prohibitions against the corporation filing a voluntary petition under federal bankruptcy law or becoming a debtor under that law before the date that is two years and one day after the date that the corporation no longer has any payment obligation with respect to any system restoration bonds. These restrictions expressly will not be limited or altered by the state and are part of the contractual obligation that is subject to the state pledge for the benefit and protection of financing parties and electric utilities.

C.S.H.B. 1510 sets out provisions relating to the issuance of a financing order by the PUC under the bill's provisions. The bill establishes the applicability of related state law to the PUC's issuance of the order and requires the corporation and any issuer to be a party to the PUC proceedings that address the issuance of the order along with the relevant electric utility. The bill requires the order to do the following:

- require the sale, assignment, or other transfer to the corporation of certain specified transition property created by the order and, following that sale, assignment, or transfer, require that system restoration charges paid under any financing order be created, assessed, and collected as the property of the corporation, subject to subsequent sale, assignment, or transfer by the corporation as authorized under the bill's provisions;
- authorize the following:
 - the issuance of system restoration bonds by the corporation secured by a pledge of specified transition property, and the application of the proceeds of those system restoration bonds, net of issuance costs, to the acquisition of the transition property from the electric utility; or
 - the acquisition of specified transition property from the electric utility by the corporation financed in the following ways:
 - by a loan by an issuer to the corporation of the proceeds of system restoration bonds, net of issuance costs, secured by a pledge of the specified transition property; or
 - by the acquisition by an issuer from the corporation of the transition property financed from the net proceeds of transition bonds issued by the issuer; and
- authorize the electric utility to serve as collection agent to collect the system restoration charges and transfer the collected charges to the corporation, the issuer, or a financing party, as appropriate.

C.S.H.B. 1510 requires the corporation, after issuance of the financing order, to arrange for the issuance of system restoration bonds as specified in the financing order by it or another issuer selected by the corporation and approved by the PUC. System restoration bonds issued pursuant to the financing order are secured only by the related transition property and any other funds pledged under the bond documents, and no assets of the state or the electric utility are subject to claims by bondholders. Following assignment of the transition property, the electric utility

expressly does not have any beneficial interest or claim of right in such system restoration charges or in any transition property.

C.S.H.B. 1510 requires the corporation, in each instance subject to PUC prior authorization, to participate in the financial transactions authorized by the bill. The corporation may not engage in business activities except those activities specified by the bill and those ancillary and incidental thereto. The corporation or an issuer may not apply proceeds of system restoration bonds or system restoration charges to a purpose not specified in a financing order, to a purpose in an amount that exceeds the amount allowed for such purpose in the order, or to a purpose in contravention of the order. The bill authorizes the corporation or an issuer to retain professionals, financial advisors, and accountants as considered necessary to fulfill the corporation's or issuer's duties and determine the duties and compensation of a person retained, subject to PUC approval.

C.S.H.B. 1510 provides the following:

- in approving securitization, the PUC must ensure that customers are not harmed as a result of any financing through the corporation and that any financial savings or other benefits are appropriately reflected in customer rates;
- system restoration bonds are solely the obligation of the issuer and the corporation as borrower, if applicable, and are not a debt of or a pledge of the faith and credit of the state;
- system restoration bonds are nonrecourse to the credit or any assets of the state and the PUC;
- the bill does not limit or impair PUC jurisdiction under the Public Utility Regulatory Act to regulate the rates charged and the services rendered by electric utilities in Texas;
- an electric utility receiving the proceeds of securitization financing is not required to provide utility services to the corporation or the state as a result of receiving those proceeds except in the role of the corporation or the state as a customer of the utility; and
- the bill does not create an obligation of the corporation or an issuer to provide electric services to an electric utility or its customers.

C.S.H.B. 1510 does the following with respect to the bill's provisions regarding the corporation and related securitization financing:

- establishes their severability;
- establishes the purpose of the provisions;
- establishes the applicability of other state law governing securitization for the recovery of certain costs, including relevant definitions, to the provisions;
- sets out certain other applicable definitions.

Certificates of Convenience and Necessity

C.S.H.B. 1510 does the following with respect to a grant or denial of a certificate of convenience and necessity:

- requires the PUC, in determining whether to grant a certificate of convenience and necessity, to consider any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities in areas outside the ERCOT power region to consumers in the area if the certificate is granted; and
- authorizes, but expressly does not require, an electric utility operating solely outside of ERCOT to obtain a certificate to install, own, or operate a generation facility with a capacity of 10 megawatts or less.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1510 differs from the original in minor and nonsubstantive ways to conform to certain bill drafting conventions, the following summarizes only the substantial differences between the introduced and committee substitute versions of the bill.

The substitute makes the following changes with respect to the financing mechanism for securitization and the corporation:

- limits the electric utilities for which the financing mechanism is available to those operating solely outside of ERCOT;
- includes a provision requiring the PUC, in approving securitization, to ensure that customers are not harmed as a result of any financing through the corporation and that any financial savings or other benefits are appropriately reflected in customer rates;
- changes the prohibition against providing any general fund appropriations to the corporation to a prohibition against providing any state money to the corporation; and
- sets the term of office for a member of the corporation's board at two years.

The substitute limits the potential economic or reliability benefits associated with dual fuel and fuel storage capabilities that the PUC must consider in determining whether to grant a certificate of convenience and necessity to potential benefits in areas outside the ERCOT power region.

The substitute limits the applicability of the provision providing that an electric utility may, but is expressly not required to, obtain a certificate of convenience and necessity to install, own, or operate certain low-capacity generation facilities to the utilities operating solely outside of the ERCOT power region.

The substitute does not include provisions establishing priorities for a gas utility's continued delivery of natural gas if the curtailment of natural gas is necessary during a declared state of disaster or an extreme weather emergency.