

## **BILL ANALYSIS**

Senate Research Center

S.B. 1782  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1782 addresses the response and resilience of certain utilities, including electric utilities, to major weather-related events or natural disasters, such as the recent February 2021 winter storm crisis. This storm was devastating to Texas, causing unprecedented and horrific impacts. Record-setting, subfreezing temperatures caused forced outages to a substantial portion of the state's generation supply, resulting in widespread load shedding that left millions of Texans to endure the freezing cold without electricity for extended periods. The goal of this bill is to help avoid or mitigate the effects of such catastrophic events in the future.

S.B. 1782 would encourage electric utilities to invest in facilities necessary to help ensure the state has enough generation capacity during a major weather event or natural disaster, invest in sufficient infrastructure in response to such an event, and invest in weatherization and storm-hardening improvements so that electric facilities may withstand such extreme weather conditions. The bill is intended to achieve these benefits while reducing the associated costs to the electric utilities and their customers. The bill also seeks to avoid or mitigate generation outages resulting from the curtailment of natural gas delivery during a weather emergency.

S.B. 1782 revises the definition of system restoration costs that can be recovered through lower-cost securitization financing to promote sufficient hardening of certain utility systems. The bill also provides a securitization approach for recovery of such costs that would eliminate securitization debt from the utility's balance sheet. It provides an exemption to the Public Utility Commission of Texas (PUC) certification process for smaller-scale generation, and allows the PUC to consider a new plant's dual-fuel and fuel storage capabilities in a certification proceeding. The bill prioritizes gas delivery to certain customers during a curtailment, including human needs customers and power generators serving those customers.

As proposed, S.B. 1782 amends current law relating to the response and resilience of certain utilities to major weather-related events or natural disasters.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.402(a), Utilities Code, to redefine "system restoration costs" for purposes of Subchapter I (Securitization for Recovery of System Restoration Costs) to also include reasonable and necessary weatherization and storm-hardening costs incurred, as well as reasonable estimates of costs to be incurred by the electric utility, but provides that such estimates shall be subject to true-up and reconciliation after the actual costs are known.

SECTION 2. Amends Chapter 36, Utilities Code, by adding Subchapter J, as follows:

**SUBCHAPTER J. LOWER COST FINANCING MECHANISM FOR SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS**

Sec. 36.407. LOWER COST FINANCING MECHANISM FOR SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE AND DEFINITIONS. (a) Provides that, except as otherwise specifically provided in this subchapter, the same procedures, standards, and protections for securitization authorized in Subchapter I and, to the extent made applicable to Subchapter I, Subchapter G (Securitization), Chapter 39 (Restructuring of Electrical Utility Industry), apply to the lower cost financing mechanism for securitization of transition costs (or "system restoration costs") as set forth in Subchapter I. Provides that, to the extent any conflict exists between the provisions of this subchapter and Subchapter I or, to the extent made applicable by Subchapter I, Subchapter G, Chapter 39, in cases involving the securitization of system restoration costs under this subchapter, the provisions of this subchapter control.

(b) Provides that the purpose of this subchapter is to make available a lower cost and supplemental financing mechanism to allow an electric utility to obtain timely recovery of system restoration costs under Subchapter I through securitization and the issuance of transition bonds (or "system restoration bonds") by an issuer other than the electric utility or an affiliated special purpose entity. Provides that financing of system restoration costs pursuant to this subchapter is hereby recognized to be a valid and essential public purpose.

(c) Requires that the Texas Electric Utility System Restoration Corporation be created pursuant to this subchapter as a special purpose public corporation and instrumentality of the state for the essential public purpose of providing a lower cost financing mechanism available to the Public Utility Commission of Texas (PUC) and an electric utility to attract low-cost capital to finance system restoration costs.

(d) Provides that system restoration bonds issued consistent with this subchapter will be solely the obligation of the issuer and the corporation (as borrower, if applicable) and will not be a debt of or a pledge of the faith and credit of the state.

(e) Requires that system restoration bonds issued consistent with this subchapter be nonrecourse to the credit or any assets of the state and the PUC.

(f) Provides that this subchapter does not in any way limit or impair the PUC's jurisdiction under Title 2 (Public Utility Regulatory Act) to regulate the rates charged and the services rendered by electric utilities in this state.

(g) Prohibits an electric utility receiving the proceeds of securitization financing under this subchapter from being required to provide utility services to the corporation or the state as a result of receiving such proceeds except in their role as customers of the electric utility, and prohibits this subchapter from creating any obligation of the corporation or any issuer to provide any electric services to the electric utility or its customers.

(h) Defines "corporation," "issuer," and "qualified costs."

Sec. 36.408. CREATION OF THE CORPORATION. (a) Requires the corporation to be incorporated as a nonprofit corporation and instrumentality of the state, and to perform the essential governmental function of financing system restoration costs in accordance with this subchapter. Requires the corporation to perform only those functions consistent with this subchapter, to exercise its powers through a governing board, and to be subject to the regulation of the PUC. Requires the corporation to have a legal existence as a public corporate body and instrumentality of the state separate and distinct from the state.

(b) Prohibits assets of the corporation from being considered part of any state fund. Prohibits the state from budgeting for or providing any general fund appropriations to the corporation, and prohibits the debts, claims, obligations, and liabilities of the corporation from being considered to be a debt of the state or a

pledge of its credit. Requires the corporation to be self-funded. Authorizes the corporation, prior to the imposition of transition charges (or "system restoration charges"), to accept and expend for its operating expenses such funds as may be received from any source, including financing agreements with the state, a commercial bank, or another entity to finance the corporation's obligations until the corporation receives sufficient transition property to cover its operating expenses as financing costs, and to repay any short-term borrowing under any such financing agreement.

(c) Requires the corporation to have the powers, rights, and privileges provided for a corporation organized under Chapter 22 (Nonprofit Corporations), Business Organizations Code, subject to the express exceptions and limitations set forth in this subchapter.

(d) Requires an incorporator selected by the executive director of the PUC to prepare the articles of incorporation of the corporation under Chapter 22, Business Organizations Code, which articles shall be consistent with the provisions of this subchapter.

(e) Provides that state officers, departments, and agencies are authorized to render services to the corporation within their respective functions, as may be requested by the PUC or the corporation.

(f) Authorizes the corporation and any issuer to retain such professionals, financial advisors, and accountants as it may deem necessary to fulfill its duties under this subchapter and to determine their duties and compensation, subject to approval of the PUC.

(g) Requires the governing body of the corporation to be a board of directors that is required to consist of five members appointed by the PUC. Requires that all official action of the governing body require the favorable vote of a majority of the board members present and voting at any meeting of the board of directors.

Sec. 36.409. POWERS AND DUTIES OF THE CORPORATION. (a) Requires the corporation, in each instance subject to the prior authorization of the PUC, to participate in the financial transactions contemplated by this subchapter. Prohibits the corporation from engaging in any other business activities except those activities provided for in this subchapter and those ancillary and incidental thereto. Prohibits the corporation or any issuer from applying any proceeds of system restoration bonds or system restoration charges to any purpose not specified in a financing order, or to any purpose in excess of the amount allowed for such purpose in the order, or to any purpose in contravention of the order.

(b) Requires the governing board of the corporation, pursuant to the provisions of this subchapter, to have the power to employ or retain such persons as are necessary to perform the duties of the corporation.

(c) Authorizes the corporation to:

(1) acquire, sell, pledge, and transfer transition property as necessary to effect the purposes of this subchapter. Authorizes the corporation, in connection therewith, to agree to such terms and conditions as it deems necessary and proper, consistent with the terms of a financing order, (i) to acquire transition property and to pledge such transition property, and any other collateral, (a) to secure payment of system restoration bonds issued by the corporation, together with payment of any other qualified costs, or (b) to secure repayment of any borrowing from any other issuer of system restoration bonds, or (ii) to sell the transition property to another issuer, which may in turn pledge such transition property, together with any other

collateral, to the repayment of system restoration bonds issued by the issuer together with any other qualified costs;

(2) issue system restoration bonds on terms and conditions consistent with a financing order;

(3) borrow funds from an issuer of system restoration bonds to acquire transition property, and pledge such 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. Authorizes the corporation to also borrow funds for initial operating expenses as specified in Section 36.408;

(4) sue or be sued in its corporate name. Provides that the corporation has the authority to intervene as a party before the PUC or any court in this state in any matter involving the corporation's powers and duties;

(5) negotiate and become a party to such contracts as necessary, convenient, or desirable to carry out the purposes of this subchapter; and

(6) engage in corporate actions or undertakings that are permitted for nonprofit corporations in this state and that are not prohibited by, or contrary to, the provisions of this subchapter.

(d) Requires the corporation to maintain separate accounts and records relating to each electric utility that is collecting system restoration charges for all charges, revenues, assets, liabilities, and expenses relating to that utility's related system restoration bond issuances.

(e) Requires that the governing board of the corporation be prohibited from authorizing any rehabilitation, liquidation, or dissolution of the corporation, and prohibits any such rehabilitation, liquidation, or dissolution of the corporation from taking effect as long as any system restoration bonds are outstanding unless adequate protection and provision has been made for the payment of the bonds pursuant to the documents authorizing the issuance of the bonds. Requires that the assets of the corporation, in the event of any rehabilitation, liquidation, or dissolution, be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and that all remaining funds of the corporation be applied and distributed as provided by an order of the PUC.

(f) Provides that, prior to the date that is two years and one day after which the corporation no longer has any payment obligation with respect to any system restoration bonds, including any obligation to any issuer of any system restoration bonds outstanding, the corporation is prohibited from filing and from having any authority to file a voluntary petition under the Federal Bankruptcy Code, as it may, from time to time, be in effect, and provides that neither any public official nor any organization, entity, or other person shall authorize the corporation to be or to become a debtor under the Federal Bankruptcy Code during such period. Provides that the state covenants that it will not limit or alter the denial of authority under this subsection or subsection (e), and that the provisions of such subsections are hereby made a part of the contractual obligation that is subject to the state pledge set forth in Section 39.310 (Pledge of State).

(g) Requires the corporation to prepare an operating budget annually that is required to be submitted for approval to the PUC. Requires the corporation, if requested by the PUC, to prepare and submit an annual report containing, among other appropriate matters, the annual operating and financial statements of the corporation.

Sec. 36.410. COMMISSION REGULATION OF THE CORPORATION. Requires that the PUC regulate the corporation as provided for in this subchapter. Requires such regulation to be concomitant with the PUC's regulation of public utilities. Provides that, notwithstanding such regulation, the corporation is not a public utility.

Sec. 36.411. FINANCING ORDER. (a) Provides that this section applies to the PUC's issuance of a financing order under this subchapter.

(b) Provides that, except as otherwise specifically provided in this subchapter, the provisions in Subchapter I and, to the extent made applicable to Subchapter I, Subchapter G, Chapter 39, addressing the PUC's issuance of a financing order apply to the PUC's issuance of a financing order under this subchapter.

(c) Requires the corporation and any issuer to be a party to the PUC's proceedings addressing the issuance of a financing order along with the pertinent electric utility.

(d) Requires that a financing order issued under this subchapter, in addition to the requirements of Subchapter I (as applicable):

(1) require the sale, assignment, or other transfer of certain specified transition property created by the financing order to the corporation (in the manner contemplated by Section 39.308 (True Sale)), and following such sale, assignment, or transfer, 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 this subchapter.

(2) authorize either:

(A) the issuance of system restoration bonds by the corporation secured by a pledge of such specified transition property, and the application of the proceeds of such system restoration bonds (net of issuance costs) to the acquisition of the transition property from the electric utility; or

(B) the acquisition of specified transition property from the electric utility by the corporation, financed (i) by a loan by an issuer to the corporation of the proceeds of system restoration bonds (net of issuance costs), or (ii) by the acquisition by an issuer from the corporation of such transition property, and in each case, the pledge of such transition property to the repayment of such loan or system restoration bonds, as applicable;

(3) authorize the electric utility to serve as collection agent to collect the system restoration charges and transfer those collected charges to the corporation, the issuer, or a financing party, as appropriate.

(e) 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.

(f) Provides that system restoration bonds issued pursuant to a financing order under this section are secured only by the related transition property and any other funds pledged under the bond documents, and requires that no assets of the state or electric utility are to be subject to claims by such bondholders. Prohibits the electric utility, notwithstanding the provisions in Subchapter G, Chapter 39, following assignment of the transition property, from having any beneficial interest or claim of right in such system restoration charges or in any transition property.

Sec. 36.412. SEVERABILITY. Severability clause.

SECTION 3. Amends Section 37.051, Utilities Code, by adding Subsection (d), to provide that, notwithstanding any other provision of Title 2, an electric utility is authorized to, but is prohibited from being required to, obtain a certificate to install, own, or operate a generation facility with a capacity of ten megawatts or less.

SECTION 4. Amends Section 37.056(c)(4)(E), Utilities Code, as follows:

(E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted, including any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities; and

SECTION 5. Amends Subchapter F, Chapter 104, Utilities Code, by adding Section 104.259, as follows:

Sec. 104.259. PRIORITIES DURING NATURAL GAS CURTAILMENT. (a) Requires a gas utility, if the curtailment of natural gas is necessary during a state of disaster as declared by the governor or an extreme weather emergency as defined in Section 104.258 (Disconnection of Gas Service), to observe the following priorities for the continued delivery of gas in descending order:

(1) deliveries of natural gas by gas utilities to residences, hospitals, schools, churches, and other human needs customers, and deliveries to local distribution companies that serve human needs customers.

(2) deliveries of natural gas by gas utilities to electric generation facilities that serve human needs customers.

(3) deliveries of natural gas by gas utilities to small industrial and regular commercial loads, defined as those customers using less than 3,000,000 cubic feet of gas per day, and delivery of gas for use as pilot lights or in accessory or auxiliary equipment essential to avoid serious damage to industrial plants;

(4) deliveries of natural gas by gas utilities to large users of gas for fuel as raw material where an alternate fuel source cannot be used and operation and plant production would be curtailed or completely cease when gas is curtailed;

(5) deliveries of natural gas by gas utilities to large users of gas for boiler fuel or other fuel users where an alternate fuel source can be used. Provides that this category is not to be determined by whether or not a user has actually installed alternate fuel facilities, but whether or not an alternate fuel could be used.

SECTION 6. Effective date: upon passage or September 1, 2021.