By:  Metcalf, et al. (Senate Sponsor - Creighton) H.B. No. 1510

(In the Senate - Received from the House April 20, 2021; April 21, 2021, read first time and referred to Committee on Jurisprudence; April 22, 2021, rereferred to Committee on Business & Commerce; May 4, 2021, reported favorably by the following vote: Yeas 7, Nays 0; May 4, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton                      X

Johnson              X

Menéndez                       X

Paxton               X

Schwertner           X

Whitmire             X

A BILL TO BE ENTITLED

AN ACT

relating to the response and resilience of certain electricity service providers to major weather-related events or other natural disasters; granting authority to issue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 36.402(a), Utilities Code, is amended to read as follows:

(a)  In this subchapter, "system restoration costs" means reasonable and necessary costs, including costs expensed, charged to self-insurance reserves, deferred, capitalized, or otherwise financed, that are incurred by an electric utility due to any activity or activities conducted by or on behalf of the electric utility in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of the electric utility as the result of any tropical storm or hurricane, ice or snow storm, flood, or other weather-related event or natural disaster that occurred in calendar year 2008 or thereafter. System restoration costs include mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities. System restoration costs shall include reasonable estimates of the costs of an activity or activities conducted or expected to be conducted by or on behalf of the electric utility in connection with the restoration of service or infrastructure associated with electric power outages, but such estimates shall be subject to true-up and reconciliation after the actual costs are known. System restoration costs 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 such estimates shall be subject to true-up and reconciliation after the actual costs are known.

SECTION 2.  Chapter 36, Utilities Code, is amended by adding Subchapter J to read as follows:

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

Sec. 36.451.  PURPOSE AND APPLICABILITY. (a) Except as otherwise specifically provided by this subchapter, the same procedures, standards, and protections for securitization authorized by Subchapter I of this chapter and, to the extent made applicable to Subchapter I of this chapter, by Subchapter G, Chapter 39, apply to the lower-cost financing mechanism for securitization of transition costs or system restoration costs as provided by Subchapter I. To the extent of any conflict between the provisions of this subchapter and Subchapter I of this chapter or, to the extent made applicable by Subchapter I of this chapter, Subchapter G, Chapter 39, in cases involving the securitization of system restoration costs under this subchapter, the provisions of this subchapter control.

(b)  The purpose of this subchapter is to make available a lower-cost, supplemental financing mechanism to allow an electric utility operating solely outside of ERCOT 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. Financing of system restoration costs under this subchapter is a valid and essential public purpose.

(c)  The Texas Electric Utility System Restoration Corporation is created under this subchapter 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 commission and an electric utility to attract low-cost capital to finance system restoration costs.

(d)  In approving securitization under this subchapter, the commission shall ensure that customers are not harmed as a result of any financing through the Texas Electric Utility System Restoration Corporation and that any financial savings or other benefits are appropriately reflected in customer rates.

(e)  System restoration bonds issued under 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.

(f)  System restoration bonds issued under this subchapter shall be nonrecourse to the credit or any assets of the state and the commission.

(g)  This subchapter does not limit or impair the commission's jurisdiction under this title to regulate the rates charged and the services rendered by electric utilities in this state.

(h)  An electric utility receiving the proceeds of securitization financing under this subchapter is not required to provide utility services to the corporation or the state as a result of receiving such proceeds except in the role of the corporation or the state as a customer of the electric utility. This subchapter does not create an obligation of the corporation or an issuer to provide electric services to the electric utility or its customers.

Sec. 36.452.  DEFINITIONS. (a) In this subchapter:

(1)  "Corporation" means the Texas Electric Utility System Restoration Corporation.

(2)  "Issuer" means the corporation or any other corporation, public trust, public instrumentality, or entity that issues system restoration bonds approved by a financing order.

(b)  For the purposes of this subchapter, "qualified costs," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, also includes all costs of establishing, maintaining, and operating the corporation and all costs of the corporation and an issuer in connection with the issuance and servicing of the system restoration bonds, all as approved in the financing order.

(c)  Except as otherwise specifically provided by this subchapter, any defined terms provided by Subchapter I of this chapter and, if made applicable by Subchapter I of this chapter, Subchapter G, Chapter 39, have the same meaning in this subchapter.

Sec. 36.453.  CREATION OF CORPORATION. (a) The corporation is a nonprofit corporation and instrumentality of the state, and shall perform the essential governmental function of financing system restoration costs in accordance with this subchapter. The corporation:

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

(2)  shall exercise its powers through a governing board;

(3)  is subject to the regulation of the commission; and

(4)  has a legal existence as a public corporate body and instrumentality of the state separate and distinct from the state.

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

(c)  The corporation must be self-funded. Before the imposition of transition charges or system restoration charges, the corporation may accept and expend for its operating expenses money that may be received from any source, including financing agreements with the state, a commercial bank, or another entity to:

(1)  finance the corporation's obligations until the corporation receives sufficient transition property to cover its operating expenses as financing costs; and

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

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

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

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

(g)  The corporation or an issuer may:

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

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

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

(i)  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.

Sec. 36.454.  POWERS AND DUTIES OF CORPORATION. (a) The corporation, in each instance subject to the prior authorization of the commission, shall participate in the financial transactions authorized by this subchapter. The corporation may not engage in business activities except those activities provided for in this subchapter 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.

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

(c)  The corporation may:

(1)  acquire, sell, pledge, or transfer transition property as necessary to effect the purposes of this subchapter 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:

(A)  to acquire transition property and to pledge such transition property, and any other collateral:

(i)  to secure payment of system restoration bonds issued by the corporation, together with payment of any other qualified costs; or

(ii)  to secure repayment of any borrowing from any other issuer of system restoration bonds; or

(B)  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;

(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 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;

(4)  sue or be sued in its corporate name;

(5)  intervene as a party before the commission or any court in this state in any matter involving the corporation's powers and duties;

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

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

(d)  The corporation shall 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.

(e)  The board of the corporation may not authorize any rehabilitation, liquidation, or dissolution of the corporation and a rehabilitation, liquidation, or dissolution of the corporation may not take effect as long as any system restoration bonds are outstanding unless adequate protection and provision have been made for the payment of the bonds pursuant to the documents authorizing the issuance of the bonds. In the event of any rehabilitation, liquidation, or dissolution, the assets of the corporation must 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 all remaining funds of the corporation must be applied and distributed as provided by an order of the commission.

(f)  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, including any obligation to an issuer of any system restoration bonds outstanding, the corporation may not file a voluntary petition under federal bankruptcy law and neither any public official nor any organization, entity, or other person may authorize the corporation to be or to become a debtor under federal bankruptcy law during that period. The state covenants that it will not limit or alter the denial of authority under this subsection or Subsection (e), and the provisions of this subsection and Subsection (e) are hereby made a part of the contractual obligation that is subject to the state pledge set forth in Section 39.310.

(g)  The corporation shall prepare and submit to the commission for approval an annual operating budget. If requested by the commission, the corporation shall prepare and submit an annual report containing the annual operating and financial statements of the corporation and any other appropriate information.

Sec. 36.455.  COMMISSION REGULATION OF CORPORATION. The commission shall regulate the corporation as provided by this subchapter and consistent with the manner in which it regulates public utilities. Notwithstanding the regulation authorized by this section, the corporation is not a public utility.

Sec. 36.456.  FINANCING ORDER. (a) This section applies to the commission's issuance of a financing order under this subchapter.

(b)  Except as otherwise specifically provided by this subchapter, the provisions of Subchapter I of this chapter and, to the extent made applicable to Subchapter I of this chapter, Subchapter G, Chapter 39, that address the commission's issuance of a financing order apply to the commission's issuance of a financing order under this subchapter.

(c)  The corporation and any issuer must be a party to the commission's proceedings that address the issuance of a financing order along with the relevant electric utility.

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

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

(2)  authorize:

(A)  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

(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, secured by a pledge of the specified transition property; or

(ii)  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

(3)  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.

(e)  After issuance of the financing order, the corporation shall 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 commission.

(f)  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. No assets of the state or electric utility are subject to claims by such bondholders. Notwithstanding the provisions of Subchapter G, Chapter 39, following assignment of the transition property, the electric utility does not have any beneficial interest or claim of right in such system restoration charges or in any transition property.

Sec. 36.457.  SEVERABILITY. Effective on the date the first system restoration bonds associated with system restoration costs 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, Subchapter I of this chapter, as that subchapter applies to this subchapter, Subchapter G, Chapter 39, as that subchapter applies to this subchapter, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of system restoration bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, the corporation, an issuer, or a financing party, and those provisions shall remain in full force and effect.

SECTION 3.  Section 37.056(c), Utilities Code, is amended to read as follows:

(c)  The commission shall grant each certificate on a nondiscriminatory basis after considering:

(1)  the adequacy of existing service;

(2)  the need for additional service;

(3)  the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and

(4)  other factors, such as:

(A)  community values;

(B)  recreational and park areas;

(C)  historical and aesthetic values;

(D)  environmental integrity;

(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 in areas outside the ERCOT power region; and

(F)  to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.

SECTION 4.  Section 37.058, Utilities Code, is amended by adding Subsection (e) to read as follows:

(e)  Notwithstanding any other provision of this title, an electric utility operating solely outside of the ERCOT power region may, but shall not be required to, obtain a certificate to install, own, or operate a generation facility with a capacity of 10 megawatts or less.

SECTION 5.  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.

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