By:  Hancock S.B. No. 1757

A BILL TO BE ENTITLED

AN ACT

relating to securitizing costs of electric services or electric markets.

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

SECTION 1.  Chapter 31, Utilities Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. SECURITIZATION CORPORATION

Sec. 31.101.  PURPOSE AND DEFINITIONS.

(a)  The purpose of this subchapter is to create a securitization corporation dedicated to financing costs that are eligible for securitization under Subtitle B of this code. Entities that are permitted to securitize costs may, subject to any other requirements applicable to such securitization authority, request that the Texas Electric Securitization Corporation conduct the financing on their behalf.

(b)  The Texas Electric Securitization Corporation shall 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 for securitization authorized under this subchapter.

 (c)  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.

(d)  Bonds issued consistent with this subchapter shall be nonrecourse to the credit or any assets of the state or the commission.

(e)  As used in this subchapter:

(1)  "corporation" means the Texas Electric Securitization Corporation.

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

Sec. 31.102.  CREATION OF THE CORPORATION. (a) The corporation shall be incorporated as a nonprofit corporation and instrumentality of the state, and shall perform the essential governmental function of financing eligible costs in accordance with this subchapter. The corporation shall perform only those functions consistent with this subchapter, shall exercise its powers through a governing board, and shall be subject to the regulation of the commission. The corporation shall have a legal existence as a public corporate body and instrumentality of the state separate and distinct from the state.

(b)  Assets of the corporation shall not be considered part of any state fund. The state shall not budget for or provide any general fund appropriations to the corporation, and the debts, claims, obligations, and liabilities of the corporation shall not be considered to be a debt of the state or a pledge of its credit. The corporation shall be self-funded. Prior to the imposition of charges to recover the securitized amounts, the corporation may 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 property to cover its operating expenses as financing costs, and to repay any short-term borrowing under any such financing agreement.

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

(d)  An incorporator selected by the executive director of the commission shall 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)  State officers, departments, and agencies are authorized to render services to the corporation within their respective functions, as may be requested by the commission or the corporation.

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

(g)  The governing body of the corporation shall be a board of directors that shall consist of five members appointed by the commission. All official action of the governing body shall require the favorable vote of a majority of the board members present and voting at any meeting of the board of directors.

Sec. 31.103.  POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall, in each instance subject to the prior authorization of the commission, participate in the financial transactions contemplated by this subchapter. The corporation shall engage in no other business activities except those activities provided for in this subchapter and those ancillary and incidental thereto. Neither the corporation nor any issuer shall apply any proceeds of bonds or 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)  The governing board of the corporation shall, pursuant to the provisions of this subchapter, have the power to employ or retain such persons as are necessary to perform the duties of the corporation.

(c)  The corporation may:

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

(2)  Issue bonds on terms and conditions consistent with a financing order;

(3)  Borrow funds from an issuer of bonds to acquire property, and pledge such 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. The corporation may also borrow funds for initial operating expenses;

 (4)  Sue or be sued in its corporate name. The corporation has the authority to intervene as a party before the commission 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)  The corporation shall maintain separate accounts and records relating to an entity that is collecting charges for all charges, revenues, assets, liabilities, and expenses relating to an entity's related bond issuances.

(e)  The governing board of the corporation shall be prohibited from authorizing any rehabilitation, liquidation, or dissolution of the corporation, and no such rehabilitation, liquidation, or dissolution of the corporation shall take effect as long as any 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. In the event of any rehabilitation, liquidation, or dissolution, the assets of the corporation shall 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 shall be applied and distributed as provided by an order of the commission.

(f)  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 bonds, including any obligation to any issuer of any bonds outstanding, the corporation is prohibited from filing and shall have no authority to file a voluntary petition under the Federal Bankruptcy Code, as it may, from time to time, be in effect, and 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.  The state covenants that it will not limit or alter the denial of authority under this subsection or subsection (e), and 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.

(g)  The corporation shall prepare an operating budget annually that shall be submitted for approval to the commission. If requested by the commission, the corporation shall prepare and submit an annual report containing, among other appropriate matters, the annual operating and financial statements of the corporation.

Sec. 31.104.  COMMISSION REGULATION OF THE CORPORATION. The commission shall regulate the corporation as provided for in this subchapter. Notwithstanding such regulation, the corporation is not a public utility.

Sec. 31.105.  FINANCING ORDER. (a) This section applies to the commission's issuance of a financing order under this subchapter.

(b)  Except as otherwise specifically provided in this subchapter, provisions that apply to a financing order authorized under Subtitle B apply to the commission's issuance of a financing order under this subchapter for the same purpose.

(c)  The corporation and any issuer shall be a party to the commission's proceedings addressing the issuance of a financing order along with the entity requesting securitization.

(d)  A financing order issued under this subchapter shall, in addition to any other applicable requirements under Subtitle B:

(1)  Require the sale, assignment, or other transfer of certain specified property created by the financing order to the corporation, and following such sale, assignment, or transfer, charges paid under any financing order shall 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 bonds by the corporation secured by a pledge of such specified property, and the application of the proceeds of such bonds (net of issuance costs) to the acquisition of the property from the entity requesting securitization; or

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

(3)  Authorize the entity requesting securitization to serve as collection agent to collect the charges and transfer those 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 bonds as specified in the financing order by it or another issuer selected by the corporation and approved by the commission.

(f)  Bonds issued pursuant to a financing order under this section are secured only by the related property and any other funds pledged under the bond documents, and no assets of the state or any entity requesting securitization under this chapter shall be subject to claims by such bondholders. Following assignment of the property, the entity requesting securitization shall not have any beneficial interest or claim of right in such charges or in any property.

Sec. 31.106.  SEVERABILITY. Effective on the date the first bonds 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 any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of authorized securitization bonds or to any actions of an entity requesting securitization under this subchapter, 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.  Chapter 39, Utilities Code, is amended by adding Subchapter M to read as follows:

Sec. 39.601.  PURPOSE. The purpose of this subchapter is to enable the independent organization certified under section 39.151 to use securitization financing to fund substantial balances that would otherwise be uplifted to the wholesale market as a result of market participants defaulting on amounts owed after an extreme pricing event. Securitization will allow wholesale market participants who are owed money to be paid in a more timely manner, while allowing the balance to be repaid over time at a low carrying cost. The proceeds of the bonds shall be used solely for the purposes of financing default balances that would otherwise be uplifted to the wholesale market. The commission shall ensure that securitization provides tangible and quantifiable benefits to wholesale market participants, greater than would have been achieved absent the issuance of bonds. The commission shall ensure that the structuring and pricing of the bonds result in the lowest bond charges consistent with market conditions and the terms of the financing order. The amount securitized may not exceed the present value of the revenue requirement over the life of the proposed bond associated with default balances that are sought to be securitized. The present value calculation shall use a discount rate equal to the proposed interest rate on the bonds.

Sec. 39.602.  DEFINITIONS. In this subchapter:

(1)  "Assignee" means any individual, corporation, or other legally recognized entity to which an interest in default property is transferred, other than as security, including any assignee of that party.

(2)  "Financing order" means an order of the commission approving the issuance of bonds and the creation of charges for the recovery of qualified costs.

(3)  "Financing party" means a holder of bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

(4)  "Qualified costs" means a default balance that would otherwise be uplifted to other wholesale market participants, together with the costs of issuing, supporting, and servicing bonds and any costs of retiring and refunding existing debt in connection with the issuance of the bonds.

(7)  "Default charges" means nonbypassable amounts to be charged on all wholesale market transactions administered by the independent organization certified under section 39.151, approved by the commission under a financing order to recover qualified costs, that shall be collected by the independent organization, its successors, an assignee, or other collection agents as provided for in the financing order.

Sec. 39.603.  FINANCING ORDERS; TERMS. (a) The commission may adopt a financing order, on application of the independent organization, to recover the costs of a substantial default balance resulting from a significant pricing event on making a finding that such financing is needed to preserve the integrity of the wholesale market and the public interest, after considering the interests of wholesale market participants who are owed balances and the potential impacts of uplifting those balances to the wholesale market without a financing vehicle.

(b)  The financing order shall detail the amounts to be recovered and the period over which the nonbypassable default charges shall be recovered, which period may not exceed 15 years. If an amount determined under this section is subject to judicial review at the time of the securitization proceeding, the financing order shall include an adjustment mechanism requiring the independent organization to adjust its default charges in a manner that would refund, over the remaining life of the bonds, any overpayments resulting from securitization of amounts in excess of the amount resulting from a final determination after completion of all appellate reviews. The adjustment mechanism may not affect the stream of revenue available to service the bonds. An adjustment may not be made under this subsection until all appellate reviews, including, if applicable, appellate reviews following a commission decision on remand of its original orders, have been completed.

(c)  Nonbypassable default charges shall be collected and allocated among wholesale market participants on the same basis that they would otherwise be uplifted pursuant to the protocols of the independent organization.

(d)  A financing order shall become effective in accordance with its terms, and the financing order, together with the default charges authorized in the order, shall thereafter be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission.

(e)  The commission shall issue a financing order under Subsections (a) and (g) not later than 90 days after the independent organization files its request for the financing order.

(f)  A financing order is not subject to rehearing by the commission. A financing order may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the financing 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 within 15 days after 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 financing 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.

(g)  At the request of the independent organization, the commission may adopt a financing order providing for retiring and refunding the bonds on making a finding that the future default charges required to service the new bonds, including transaction costs, will be less than the future default charges required to service the bonds being refunded. On the retirement of the refunded bonds, the commission shall adjust the related default charges accordingly.

Sec. 39.604.  PROPERTY RIGHTS. (a) The rights and interests of the independent organization or its successor under a financing order, including the right to impose, collect, and receive default charges authorized in the order, shall be only contract rights until they are first transferred to an assignee or pledged in connection with the issuance of bonds, at which time they will become "default property."

(b)  Default property shall constitute a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of default charges depends on further acts of the independent organization or others that have not yet occurred. The financing order shall remain in effect and the property shall continue to exist for the same period as the pledge of the state described in Section 36.310.

(c)  All revenues and collections resulting from default charges shall constitute proceeds only of the default property arising from the financing order.

Sec. 39.605.  NO SETOFF. The interest of an assignee or pledgee in default property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the independent organization or any other person or in connection with the bankruptcy of any wholesale market participant. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the independent organization, its successors, or assignees.

Sec. 39.606.  NO BYPASS. A financing order shall include terms ensuring that the imposition and collection of default charges authorized in the order shall be nonbypassable.

Sec. 39.607.  TRUE-UP. A financing order shall include a mechanism requiring that default charges be reviewed and adjusted at least annually, within 45 days of the anniversary date of the issuance of the bonds, to correct any overcollections or undercollections of the preceding 12 months and to 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 bonds.

Sec. 39.609.  SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT. (a) Default property does not constitute an account or general intangible under Section 9.106, Business & Commerce Code. The creation, granting, perfection, and enforcement of liens and security interests in default property are governed by this section and not by the Business & Commerce Code.

(b)  A valid and enforceable lien and security interest in default property may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of bonds. The lien and security interest shall attach automatically from the time that value is received for the bonds and, on perfection through the filing of notice with the secretary of state in accordance with the rules prescribed under Subsection (d), shall be a continuously perfected lien and security interest in the default property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing and take precedence over any subsequent judicial or other lien creditor. If notice is filed within 10 days after value is received for the default bonds, the security interest shall be perfected retroactive to the date value was received, otherwise, the security interest shall be perfected as of the date of filing.

(c)  Transfer of an interest in default property to an assignee shall be perfected against all third parties, including subsequent judicial or other lien creditors, when the financing order becomes effective, transfer documents have been delivered to the assignee, and a notice of that transfer has been filed in accordance with the rules prescribed under Subsection (d); provided, however, that if notice of the transfer has not been filed in accordance with this subsection within 10 days after the delivery of transfer documentation, the transfer of the interest is not perfected against third parties until the notice is filed.

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

(e)  The priority of a lien and security interest perfected under this section is not impaired by any later modification of the financing order under Section 31.607 or by the commingling of funds arising from default charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If default property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(f)  If a default or termination occurs under the bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any default property as if they were secured parties under Chapter 9, Business & Commerce Code, and the commission may order that amounts arising from default charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, a district court of Travis County shall order the sequestration and payment to them of revenues arising from the default charges.

Sec. 39.610.  PLEDGE OF STATE. Default bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power. The state pledges, however, for the benefit and protection of financing parties and the independent organization, that it will not take or permit any action that would impair the value of default property, or reduce, alter, or impair the default charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related bonds have been paid and performed in full. Any party issuing under this chapter bonds is authorized to include this pledge in any documentation relating to those bonds.

Sec. 39.611.  TAX EXEMPTION. Transactions involving the transfer and ownership of default property and the receipt of default charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

Sec. 39.612.  NOT PUBLIC UTILITY. An assignee or financing party may not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in this subchapter.

Sec. 39.613.  SEVERABILITY. Effective on the date the first bonds 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 subchapteror any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

SECTION 2.  This Act takes effect September 1, 2021.