By:  Creighton S.B. No. 1782

A BILL TO BE ENTITLED

AN ACT

relating to the response and resilience of certain utilities to major weather-related events or natural disasters.

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 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 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. 36.407.  LOWER COST FINANCING MECHANISM FOR SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE AND DEFINITIONS.

(a)  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, Chapter 39, apply to the lower cost financing mechanism for securitization of transition costs (or "system restoration costs") as set forth in Subchapter I. 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)  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. Financing of system restoration costs pursuant to this subchapter is hereby recognized to be a valid and essential public purpose.

(c)  The Texas Electric Utility System Restoration 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 available to the commission and an electric utility to attract low-cost capital to finance system restoration costs.

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

(f)  This subchapter does not in any way 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.

(g)  An electric utility receiving the proceeds of securitization financing under this subchapter shall not be 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, nor shall this subchapter create any obligation of the corporation or any issuer to provide any electric services to the electric utility or its customers.

(h)  As used in this subchapter:

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

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

(3)  For 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 any issuer in connection with the issuance and servicing of the system restoration bonds, all as approved in the financing order.

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

Sec. 36.408.  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 system restoration 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 transition charges (or "system restoration charges"), 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 transition 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. 36.409.  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 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)  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 transition 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 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. The corporation may also borrow funds for initial operating expenses as specified in Section 36.408;

(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 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)  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 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. 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 system restoration bonds, including any obligation to any issuer of any system restoration 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. 36.410.  COMMISSION REGULATION OF THE CORPORATION. The commission shall regulate the corporation as provided for in this subchapter. Such regulation shall be concomitant with the commission's regulation of public utilities. Notwithstanding such regulation, the corporation is not a public utility.

Sec. 36.411.  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, the provisions in Subchapter I and, to the extent made applicable to Subchapter I, Subchapter G, Chapter 39, addressing 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 shall be a party to the commission's proceedings addressing the issuance of a financing order along with the pertinent electric utility.

(d)  A financing order issued under this subchapter shall, 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), and following such sale, assignment, or transfer, system restoration 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 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)  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, and no assets of the state or electric utility shall be subject to claims by such bondholders. Notwithstanding the provisions in Subchapter G, Chapter 39, following assignment of the transition property, the electric utility shall not have any beneficial interest or claim of right in such system restoration charges or in any transition property.

Sec. 36.412.  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, as it applies to this subchapter, Subchapter G, Chapter 39, as it 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 37.051, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d)  Notwithstanding any other provision of this title, an electric utility may, but shall not be required to, obtain a certificate to install, own, or operate a generation facility with a capacity of ten megawatts or less.

SECTION 4.  Section 37.056(c)(4)(E), Utilities Code, is amended to read 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.  Subchapter F, Chapter 104, Utilities Code, is amended by adding Section 104.259 to read as follows:

Sec. 104.259.  PRIORITIES DURING NATURAL GAS CURTAILMENT. (a) 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, a gas utility shall 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. 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.  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.