

By: Metcalf, Moody, Burrows, Paddie, Hefner,
et al.

H.B. No. 1510

A BILL TO BE ENTITLED

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

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

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

8 (a) In this subchapter, "system restoration costs" means
9 reasonable and necessary costs, including costs expensed, charged
10 to self-insurance reserves, deferred, capitalized, or otherwise
11 financed, that are incurred by an electric utility due to any
12 activity or activities conducted by or on behalf of the electric
13 utility in connection with the restoration of service and
14 infrastructure associated with electric power outages affecting
15 customers of the electric utility as the result of any tropical
16 storm or hurricane, ice or snow storm, flood, or other
17 weather-related event or natural disaster that occurred in calendar
18 year 2008 or thereafter. System restoration costs include
19 mobilization, staging, and construction, reconstruction,
20 replacement, or repair of electric generation, transmission,
21 distribution, or general plant facilities. System restoration
22 costs shall include reasonable estimates of the costs of an
23 activity or activities conducted or expected to be conducted by or
24 on behalf of the electric utility in connection with the

1 restoration of service or infrastructure associated with electric
2 power outages, but such estimates shall be subject to true-up and
3 reconciliation after the actual costs are known. System restoration
4 costs include reasonable and necessary weatherization and
5 storm-hardening costs incurred, as well as reasonable estimates of
6 costs to be incurred, by the electric utility, but such estimates
7 shall be subject to true-up and reconciliation after the actual
8 costs are known.

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

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

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

26 (b) The purpose of this subchapter is to make available a
27 lower-cost, supplemental financing mechanism to allow an electric

1 utility operating solely outside of ERCOT to obtain timely recovery
2 of system restoration costs under Subchapter I through
3 securitization and the issuance of transition bonds or system
4 restoration bonds by an issuer other than the electric utility or an
5 affiliated special purpose entity. Financing of system restoration
6 costs under this subchapter is a valid and essential public
7 purpose.

8 (c) The Texas Electric Utility System Restoration
9 Corporation is created under this subchapter as a special purpose
10 public corporation and instrumentality of the state for the
11 essential public purpose of providing a lower-cost, supplemental
12 financing mechanism available to the commission and an electric
13 utility to attract low-cost capital to finance system restoration
14 costs.

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

20 (e) System restoration bonds issued under this subchapter
21 will be solely the obligation of the issuer and the corporation as
22 borrower, if applicable, and will not be a debt of or a pledge of the
23 faith and credit of the state.

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

27 (g) This subchapter does not limit or impair the

1 commission's jurisdiction under this title to regulate the rates
2 charged and the services rendered by electric utilities in this
3 state.

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

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

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

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

17 (b) For the purposes of this subchapter, "qualified costs,"
18 as defined by Section 39.302 and as used in Subchapter G, Chapter
19 39, also includes all costs of establishing, maintaining, and
20 operating the corporation and all costs of the corporation and an
21 issuer in connection with the issuance and servicing of the system
22 restoration bonds, all as approved in the financing order.

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

27 Sec. 36.453. CREATION OF CORPORATION. (a) The corporation

1 is a nonprofit corporation and instrumentality of the state, and
2 shall perform the essential governmental function of financing
3 system restoration costs in accordance with this subchapter. The
4 corporation:

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

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

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

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

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

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

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

27 (2) repay any short-term borrowing under any such

1 financing agreements.

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

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

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

14 (g) The corporation or an issuer may:

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

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

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

24 (i) An official action of the board requires the favorable
25 vote of a majority of the directors present and voting at a meeting
26 of the board.

27 Sec. 36.454. POWERS AND DUTIES OF CORPORATION. (a) The

1 corporation, in each instance subject to the prior authorization of
2 the commission, shall participate in the financial transactions
3 authorized by this subchapter. The corporation may not engage in
4 business activities except those activities provided for in this
5 subchapter and those ancillary and incidental thereto. The
6 corporation or an issuer may not apply proceeds of system
7 restoration bonds or system restoration charges to a purpose not
8 specified in a financing order, to a purpose in an amount that
9 exceeds the amount allowed for such purpose in the order, or to a
10 purpose in contravention of the order.

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

14 (c) The corporation may:

15 (1) acquire, sell, pledge, or transfer transition
16 property as necessary to effect the purposes of this subchapter
17 and, in connection with the action, agree to such terms and
18 conditions as the corporation deems necessary and proper,
19 consistent with the terms of a financing order:

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

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

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

27 (B) to sell the transition property to another

1 issuer, which may in turn pledge that transition property, together
2 with any other collateral, to the repayment of system restoration
3 bonds issued by the issuer together with any other qualified costs;

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

6 (3) borrow funds from an issuer of system restoration
7 bonds to acquire transition property, and pledge that transition
8 property to the repayment of any borrowing from an issuer, together
9 with any related qualified costs, all on terms and conditions
10 consistent with a financing order;

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

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

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

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

21 (d) The corporation shall maintain separate accounts and
22 records relating to each electric utility that collects system
23 restoration charges for all charges, revenues, assets,
24 liabilities, and expenses relating to that utility's related system
25 restoration bond issuances.

26 (e) The board of the corporation may not authorize any
27 rehabilitation, liquidation, or dissolution of the corporation and

1 a rehabilitation, liquidation, or dissolution of the corporation
2 may not take effect as long as any system restoration bonds are
3 outstanding unless adequate protection and provision have been made
4 for the payment of the bonds pursuant to the documents authorizing
5 the issuance of the bonds. In the event of any rehabilitation,
6 liquidation, or dissolution, the assets of the corporation must be
7 applied first to pay all debts, liabilities, and obligations of the
8 corporation, including the establishment of reasonable reserves
9 for any contingent liabilities or obligations, and all remaining
10 funds of the corporation must be applied and distributed as
11 provided by an order of the commission.

12 (f) Before the date that is two years and one day after the
13 date that the corporation no longer has any payment obligation with
14 respect to any system restoration bonds, including any obligation
15 to an issuer of any system restoration bonds outstanding, the
16 corporation may not file a voluntary petition under federal
17 bankruptcy law and neither any public official nor any
18 organization, entity, or other person may authorize the corporation
19 to be or to become a debtor under federal bankruptcy law during that
20 period. The state covenants that it will not limit or alter the
21 denial of authority under this subsection or Subsection (e), and
22 the provisions of this subsection and Subsection (e) are hereby
23 made a part of the contractual obligation that is subject to the
24 state pledge set forth in Section [39.310](#).

25 (g) The corporation shall prepare and submit to the
26 commission for approval an annual operating budget. If requested by
27 the commission, the corporation shall prepare and submit an annual

1 report containing the annual operating and financial statements of
2 the corporation and any other appropriate information.

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

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

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

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

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

22 (1) require the sale, assignment, or other transfer to
23 the corporation of certain specified transition property created by
24 the financing order in the manner contemplated by Section 39.308,
25 and, following that sale, assignment, or transfer, require that
26 system restoration charges paid under any financing order be
27 created, assessed, and collected as the property of the

1 corporation, subject to subsequent sale, assignment, or transfer by
2 the corporation as authorized under this subchapter;

3 (2) authorize:

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

9 (B) the acquisition of specified transition
10 property from the electric utility by the corporation financed:

11 (i) by a loan by an issuer to the
12 corporation of the proceeds of system restoration bonds, net of
13 issuance costs, secured by a pledge of the specified transition
14 property; or

15 (ii) by the acquisition by an issuer from
16 the corporation of the transition property financed from the net
17 proceeds of transition bonds issued by the issuer; and

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

22 (e) After issuance of the financing order, the corporation
23 shall arrange for the issuance of system restoration bonds as
24 specified in the financing order by it or another issuer selected by
25 the corporation and approved by the commission.

26 (f) System restoration bonds issued pursuant to a financing
27 order under this section are secured only by the related transition

1 property and any other funds pledged under the bond documents. No
2 assets of the state or electric utility are subject to claims by
3 such bondholders. Notwithstanding the provisions of Subchapter G,
4 Chapter 39, following assignment of the transition property, the
5 electric utility does not have any beneficial interest or claim of
6 right in such system restoration charges or in any transition
7 property.

8 Sec. 36.457. SEVERABILITY. Effective on the date the first
9 system restoration bonds associated with system restoration costs
10 are issued under this subchapter, if any provision in this title or
11 portion of this title is held to be invalid or is invalidated,
12 superseded, replaced, repealed, or expires for any reason, that
13 occurrence does not affect the validity or continuation of this
14 subchapter, Subchapter I of this chapter, as that subchapter
15 applies to this subchapter, Subchapter G, Chapter 39, as that
16 subchapter applies to this subchapter, or any part of those
17 provisions, or any other provision of this title that is relevant to
18 the issuance, administration, payment, retirement, or refunding of
19 system restoration bonds or to any actions of the electric utility,
20 its successors, an assignee, a collection agent, the corporation,
21 an issuer, or a financing party, and those provisions shall remain
22 in full force and effect.

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

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

27 (1) the adequacy of existing service;

1 (2) the need for additional service;

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

5 (4) other factors, such as:

6 (A) community values;

7 (B) recreational and park areas;

8 (C) historical and aesthetic values;

9 (D) environmental integrity;

10 (E) the probable improvement of service or
11 lowering of cost to consumers in the area if the certificate is
12 granted, including any potential economic or reliability benefits
13 associated with dual fuel and fuel storage capabilities in areas
14 outside the ERCOT power region; and

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

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

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

25 SECTION 5. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

H.B. No. 1510

1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2021.