

By: Holland

H.B. No. 3544

A BILL TO BE ENTITLED

AN ACT

relating to the restructuring of certain electric utility providers.

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

SECTION 1. Subchapter D, Chapter 41, Utilities Code, is amended by adding Sections 41.151-.163 to read as follows:

Sec. 41.151. PURPOSE. The purpose of this subchapter is to enable electric cooperatives to use securitization financing to recover extraordinary costs and expenses incurred because of the abnormal weather events of February [(START DATE)] through [(END DATE)], 2021. This type of debt will lower the cost of financing such extraordinary costs and expenses relative to the costs that would be incurred using conventional electric cooperative financing methods. The proceeds of the securitized bonds shall be used solely for the purposes of financing or refinancing such extraordinary costs and expenses, including costs relating to consummation and administration of the securitized financing itself. The board of each electric cooperative involved in such financing shall ensure that securitization provides tangible and quantifiable benefits to ratepayers, greater than would have been achieved absent the issuance of securitized bonds. Each board shall ensure that the structuring and pricing of the securitized bonds result in the lowest securitized bond charges consistent with market conditions and the terms of the financing order. The amount

1 securitized may not exceed the present value of the revenue
2 requirement over the life of the proposed securitized bonds
3 associated with the extraordinary costs and expenses being
4 financed. The present value calculation shall use a discount rate
5 equal to the proposed interest rate on the securitized bonds.

6 Sec. 41.152. DEFINITIONS. In this subchapter:

7 (1) "Assignee" means any individual, corporation, or
8 other legally recognized entity, including a special-purpose
9 entity, to which an interest in transition property is transferred,
10 other than as security, including any assignee of that party.

11 (2) "Board" means the board of directors or other
12 governing body of an electric cooperative.

13 (3) "Extraordinary costs and expenses" means (A) costs
14 and expenses incurred by the electric cooperative for power and
15 energy purchased during the period of emergency in excess of what
16 would have been paid for the same amount of power and energy at the
17 average rate paid by the electric cooperative for power and energy
18 purchased during [(the month of January, 2021)], (B) costs and
19 expenses incurred by the electric cooperative to generate and
20 transmit power and energy during the period of emergency (including
21 fuel costs, operation and maintenance expenses, overtime costs and
22 all other costs and expenses that would not have been incurred but
23 for the extreme weather conditions), and (C) any charges imposed on
24 the electric cooperative or on a power supplier to the electric
25 cooperative and passed on to the electric cooperative by the
26 applicable regional transmission organization or independent
27 system operator, resulting from defaults by other market

1 participants in the power pool for costs relating to the period of
2 emergency.

3 (4) "Financing order" means an order of the board
4 approving the issuance of securitized bonds and the creation of
5 transition charges for the recovery of qualified costs.

6 (5) "Financing party" means a holder of securitized
7 bonds, including trustees, collateral agents, and other persons
8 acting for the benefit of the holder.

9 (6) "Qualified costs" means 100 percent of an electric
10 cooperative's extraordinary costs and expenses together with the
11 costs of issuing, supporting, repaying, servicing, and refinancing
12 the securitized bonds, whether incurred or paid upon issuance of
13 the securitized bonds or over the life of the securitized bonds or
14 the refunded securitized bonds, and any costs of retiring and
15 refunding the electric cooperative's existing debt securities
16 initially issued to finance the extraordinary costs and expenses.

17 (7) "Period of emergency" means the period from and
18 including 00:00 February [(START DATE)], 2021 to and including
19 00:00 February [(END DATE)], 2021.

20 (8) "Securitized bonds" means bonds, debentures,
21 notes, certificates of participation or of beneficial interest, or
22 other evidences of indebtedness or ownership that are issued by an
23 electric cooperative, its successors or an assignee under a
24 financing order, that have a term not longer than [(YEARS)] years,
25 and that are secured by or payable, primarily, from transition
26 property and the proceeds thereof. If certificates of
27 participation, beneficial interest, or ownership are issued,

1 references in this subchapter to principal, interest, or premium
2 shall refer to comparable amounts under those certificates.

3 (9) "Transition charges" means nonbypassable amounts
4 to be charged for the use or availability of electric services,
5 approved by the board of the electric cooperative under a financing
6 order to recover qualified costs, that shall be collected by an
7 electric cooperative, its successors, an assignee, or other
8 collection agents as provided for in the financing order.

9 (10) "Transition property" means the property right
10 created pursuant to this subchapter D, including without
11 limitation, the right, title, and interest of the electric
12 cooperative or its assignee:

13 (A) In and to the transition charges established
14 pursuant to a financing order, including all rights to obtain
15 adjustments in accordance with Section 41.157 and the financing
16 order.

17 (B) To be paid the amount that is determined in a
18 financing order to be the amount that the electric cooperative or
19 its transferee is lawfully entitled to receive pursuant to the
20 provisions of this subchapter and the proceeds thereof, and in and
21 to all revenues, collections, claims, payments, moneys, or process
22 of or arising from the transition charges that are the subject of a
23 financing order.

24 Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board shall
25 adopt a financing order to recover the electric cooperative's
26 qualified costs on making a finding that the total amount of
27 revenues to be collected under the financing order is less than the

1 revenue requirement that would be recovered over the remaining life
2 of the transition property using conventional financing methods and
3 that the financing order is consistent with the standards in
4 Section 41.151.

5 (b) The financing order shall detail the amount of qualified
6 costs to be recovered and the period over which the nonbypassable
7 transition charges shall be recovered, which period may not exceed
8 [(YEARS)] years.

9 (c) Transition charges shall be collected and allocated
10 among customers in such manner as set forth in the financing order.

11 (d) A financing order shall become effective in accordance
12 with its terms, and the financing order, together with the
13 transition charges authorized in the order, shall thereafter be
14 irrevocable and not subject to rescission, reduction, impairment,
15 or adjustment or other alteration by further action of the board or
16 by action of any regulatory or other governmental body of the State
17 of Texas, except as permitted by Section 41.157. A financing order
18 issued pursuant to this subchapter shall have the same force and
19 effect of a financing order under Title 2, Chapter 39.

20 (e) A financing order may be reviewed by appeal only to a
21 Travis County district court by a member of the electric
22 cooperative filed within 15 days after the financing order is
23 adopted by the board. The judgment of the district court may be
24 reviewed only by direct appeal to the Supreme Court of Texas filed
25 within 15 days after entry of judgment. All appeals shall be heard
26 and determined by the district court and the Supreme Court of Texas
27 as expeditiously as possible with lawful precedence over other

1 matters. Review on appeal shall be based solely on the financing
2 order adopted by the board, other information considered by the
3 board in adopting the resolutions and briefs to the court and shall
4 be limited to whether the financing order conforms to the
5 constitution and laws of this state and the United States and is
6 within the authority of the board under this subchapter.

7 (f) The board may adopt a financing order providing for
8 retiring and refunding securitized bonds on making a finding that
9 the future transition charges required to service the new
10 securitized bonds, including transaction costs, will be less than
11 the future transition charges required to service the securitized
12 bonds being refunded. After the indefeasible repayment in full of
13 all outstanding securitized bonds and associated financing costs,
14 the board shall adjust the related transition charges accordingly.

15 Sec. 41.154. PROPERTY RIGHTS. (a) The rights and interests
16 of an electric cooperative or its subsidiary, affiliate, successor,
17 financing party or assignee under a financing order, including the
18 right to impose, collect, receive and enforce the payment of
19 transition charges authorized in the financing order, shall be only
20 contract rights until such property is first transferred or pledged
21 to an assignee or financing party, as applicable, in connection
22 with the issuance of securitized bonds, at which time such property
23 will become "transition property."

24 (b) Transition property that is specified in the financing
25 order shall constitute a present vested property right for all
26 purposes, including, for the avoidance of doubt, for purposes of
27 the contracts and takings clauses of the constitutions and laws of

1 this state and the United States, even if the imposition and
2 collection of transition charges depends on further acts of the
3 electric cooperative or others that may not have yet occurred.
4 Transition property shall exist whether or not transition charges
5 have been billed, have accrued, or have been collected and
6 notwithstanding the fact that the value or amount of the property is
7 dependent on the future provision of service to customers by the
8 electric cooperative or its successors or assigns. Upon the
9 issuance of the securitized bonds, the financing order, and
10 satisfaction of the requirements of provisions of Section 41.159,
11 the transition charges, including their nonbypassability, shall be
12 irrevocable, final, non-discretionary and effective without
13 further action by the electric cooperative or any other person or
14 governmental authority. The financing order shall remain in effect
15 and the property shall continue to exist for the same period as the
16 pledge of the state described in Section 41.160.

17 (c) All revenues, collections, claims, payments, moneys, or
18 proceeds of or arising from or relating to transition charges shall
19 constitute proceeds of the transition property arising from the
20 financing order.

21 Sec. 41.155. NO SETOFF. The interest of an assignee or
22 pledgee in transition property and in the revenues and collections
23 arising from that property are not subject to setoff, counterclaim,
24 surcharge, recoupment or defense by the electric cooperative or any
25 other person or in connection with the bankruptcy of the electric
26 cooperative or any other entity. A financing order shall remain in
27 effect and unabated notwithstanding the bankruptcy of the electric

1 cooperative, its successors, or assignees.

2 Sec. 41.156. NO BYPASS. A financing order shall include
3 terms ensuring that the imposition and collection of transition
4 charges authorized in the order shall be nonbypassable and shall
5 apply to all customers connected to the electric cooperative's
6 system assets and taking service, whether or not the system assets
7 continue to be owned by the electric cooperative.

8 Sec. 41.157. TRUE-UP. A financing order shall be promptly
9 reviewed and adjusted, if after its adoption there are additional
10 charges or refunds of extraordinary costs and expenses so as to
11 ensure that there is neither an over collection or under collection
12 of extraordinary costs and expenses and that collections on the
13 transition property will be sufficient to timely make all periodic
14 and final payments of principal, interest, fees and other amounts,
15 [(and to timely fund all reserve accounts, if any,)] related to the
16 securitized bonds. A financing order shall also include a
17 mechanism requiring that transition charges be reviewed by the
18 board and adjusted at least annually, within 45 days of the
19 anniversary date of the issuance of the securitized bonds, to
20 correct any over collections or under collections of the preceding
21 12 months and to ensure the expected recovery of amounts sufficient
22 to timely provide all payments of debt service and other required
23 amounts and charges in connection with the securitized bonds. No
24 governmental authority shall have the discretion or authority to
25 disapprove of, or alter, any adjustments made or proposed to be made
26 hereunder other than to correct computation or other manifest
27 errors.

1 Sec. 41.158. TRUE SALE. An agreement by an electric
2 cooperative or assignee to transfer transition property that
3 expressly states that the transfer is a sale or other absolute
4 transfer signifies that the transaction is a true sale and is not a
5 secured transaction and that title, legal and equitable, has passed
6 to the entity to which the transition property is transferred. The
7 transaction shall be treated as an absolute sale regardless of
8 whether the purchaser has any recourse against the seller, or any
9 other term of the parties' agreement, including the seller's
10 retention of an equity interest in the transition property, the
11 fact that the electric cooperative acts as the collector of
12 transition charges relating to the transition property, or the
13 treatment of the transfer as a financing for tax, accounting,
14 financial reporting, or other purposes.

15 Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
16 DEFAULT. (a) Transition property does not constitute an account or
17 general intangible under Section 9.106, Business & Commerce Code.
18 The transfer, sale or assignment, or the creation, granting,
19 perfection, and enforcement of liens and security interests in
20 transition property are governed by this section and not by the
21 Business & Commerce Code. Transition property shall constitute
22 property for all purposes, including for contracts securing
23 securitized bonds, whether or not the transition property revenues
24 and proceeds have accrued.

25 (b) A valid and enforceable transfer, sale or assignment, or
26 lien and security interest, as applicable, in transition property
27 may be created only by a financing order and the execution and

1 delivery of a transfer, sale or assignment, or security agreement,
2 as applicable, with a financing party in connection with the
3 issuance of securitized bonds. The transfer, sale, assignment, or
4 lien and security interest, as applicable, shall attach
5 automatically from the time that value is received for the
6 securitized bonds and, on perfection through the filing of notice
7 with the secretary of state in accordance with the rules prescribed
8 under Subsection (d), shall be a continuously perfected transfer,
9 sale and assignment or lien and security interest, as applicable,
10 in the transition property and all proceeds of the property,
11 whether accrued or not, shall have priority in the order of filing
12 and take precedence over any subsequent judicial or other lien
13 creditor. If notice is filed within 10 days after value is received
14 for the securitized bonds, the transfer, sale, or assignment, or
15 security interest, as applicable, shall be perfected retroactive to
16 the date value was received, otherwise, the transfer, sale or
17 assignment, or security interest, as applicable, shall be perfected
18 as of the date of filing.

19 (c) Transfer, sale or assignment of an interest in
20 transition property to an assignee shall be perfected against all
21 third parties, including subsequent judicial or other lien
22 creditors, when the financing order becomes effective, transfer
23 documents have been delivered to the assignee, and a notice of that
24 transfer has been filed in accordance with the rules prescribed
25 under Subsection (d); provided, however, that if notice of the
26 transfer has not been filed in accordance with this subsection
27 within 10 days after the delivery of transfer documentation, the

1 transfer of the interest is not perfected against third parties
2 until the notice is filed.

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

8 (e) The priority of a lien and security interest perfected
9 under this section is not impaired by any later modification of the
10 financing order under Section 41.157 or by the commingling of funds
11 arising from transition charges with other funds, and any other
12 security interest that may apply to those funds shall be terminated
13 when they are transferred to a segregated account for the assignee
14 or a financing party. If transition property has been transferred
15 to an assignee, any proceeds of that property shall be held in trust
16 for the assignee.

17 (f) (1) Securitized bonds shall be secured by a statutory
18 lien on the transition property in favor of the owners or beneficial
19 owners of securitized bonds. The lien shall automatically arise
20 upon issuance of the securitized bonds without the need for any
21 action or authorization by the electric cooperative or the board.
22 The lien shall be valid and binding from the time the securitized
23 bonds are executed and delivered. The transition property shall be
24 immediately subject to the lien, and the lien shall immediately
25 attach to the transition property and be effective, binding, and
26 enforceable against the electric cooperative, its creditors, their
27 successors, assignees, and all others asserting rights therein,

1 irrespective of whether those persons have notice of the lien and
2 without the need for any physical delivery, recordation, filing, or
3 further act. The lien is created by this subchapter and not by any
4 security agreement, but may be enforced by any financing party or
5 their representatives as if they were secured parties under Chapter
6 9, Business & Commerce Code, and upon application by or on behalf of
7 the financing parties, a district court of Travis County may order
8 that amounts arising from transition charges be transferred to a
9 separate account for the financing parties' benefit.

10 (2) This statutory lien is a continuously perfected
11 security interest and has priority over any other lien, created by
12 operation of law or otherwise, that may subsequently attach to that
13 transition property or proceeds thereof unless the owners or
14 beneficial owners of securitized bonds as specified in the trust
15 agreement or indenture has agreed in writing otherwise. This
16 statutory lien is a lien on the transition charges and all
17 transition charge revenues or other proceeds that are deposited in
18 any deposit account or other account of the servicer or other person
19 in which transition charge revenues or other proceeds have been
20 commingled with other funds.

21 (4) The statutory lien shall not adversely be affected
22 or impaired by, among other things, the commingling of transition
23 charge revenues or other proceeds from transition charges with
24 other amounts regardless of the person holding such amounts.

25 (5) The electric cooperative, any successor or assign
26 of the electric cooperative or any other person with any
27 operational control of any portion of the electric cooperative's

1 system assets, whether as owner, lessee, franchisee or otherwise
2 and any successor servicer of collections of the transition charges
3 shall be bound by the requirements of this subchapter and shall
4 perform and satisfy all obligations imposed pursuant hereto in the
5 same manner and to the same extent as did its predecessor, including
6 the obligation to bill, adjust and enforce the payment of
7 transition charges.

8 (g) If a default or termination occurs under the securitized
9 bonds, the financing parties or their representatives may foreclose
10 on or otherwise enforce their lien and security interest in any
11 transition property as if they were secured parties under Chapter
12 9, Business & Commerce Code, and upon application by the electric
13 cooperative or by or on behalf of the financing parties, a district
14 court of Travis County may order that amounts arising from
15 transition charges be transferred to a separate account for the
16 financing parties' benefit, to which their lien and security
17 interest shall apply. On application by or on behalf of the
18 financing parties, a district court of Travis County shall order
19 the sequestration and payment to them of revenues arising from the
20 transition charges.

21 Sec. 41.160. PLEDGE OF STATE. Securitized bonds are not a
22 debt or obligation of the state and are not a charge on its full
23 faith and credit or taxing power. The state irrevocably pledges,
24 however, for the benefit and protection of assignees, financing
25 parties and the electric cooperative, that it will not take or
26 permit, or permit any agency or other governmental authority or
27 political subdivision of the state to take or permit, any action

1 that would impair the value of transition property, or, except as
2 permitted by Section 41.157, reduce, alter, or impair the
3 transition charges to be imposed, collected, and remitted to
4 financing parties, until the principal, interest and premium, and
5 any other charges incurred and contracts to be performed in
6 connection with the related securitized bonds have been paid and
7 performed in full. Any party issuing securitized bonds is
8 authorized to include this pledge in any documentation relating to
9 those bonds.

10 Sec. 41.161. TAX EXEMPTION. Transactions involving the
11 transfer and ownership of transition property and the receipt of
12 transition charges are exempt from state and local income, sales,
13 franchise, gross receipts, and other taxes or similar charges.

14 Sec. 41.162. NOT PUBLIC UTILITY. An assignee or financing
15 party may not be considered to be a public utility, electric
16 cooperative or person providing electric service solely by virtue
17 of the transactions described in this subchapter.

18 Sec. 41.163. SEVERABILITY. Effective on the date the first
19 securitized bonds are issued under this subchapter, if any
20 provision in this title or portion of this title is held to be
21 invalid or is invalidated, superseded, replaced, repealed, or
22 expires for any reason, that occurrence does not affect the
23 validity or continuation of this subchapter, or any other provision
24 of this title that is relevant to the issuance, administration,
25 payment, retirement, or refunding of securitized bonds or to any
26 actions of the electric cooperative, its successors, an assignee, a
27 collection agent, or a financing party, which shall remain in full

1 force and effect.

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