

By: Paddie

H.B. No. 4492

A BILL TO BE ENTITLED

AN ACT

relating to securitizing costs associated with electric markets;
granting authority to issue bonds.

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. (a) The purpose of this subchapter is to create a corporation dedicated to financing costs that are eligible for securitization as provided by Subchapter M, Chapter 39, to securitize costs not securitized under Subchapter D, Chapter 41. An entity authorized to securitize costs under Subchapter M, Chapter 39, subject to any other requirements applicable to the authorization, may request that the Texas Electric Securitization Corporation conduct the financing on behalf of the entity.

(b) The Texas Electric Securitization 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 financing mechanism for securitization in the manner provided by this subchapter.

(c) Bonds issued under this subchapter will be the obligation solely 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.

1 (d) Bonds issued under this subchapter shall be nonrecourse
2 to the credit or any assets of the state and the commission.

3 Sec. 31.102. DEFINITIONS. In this subchapter:

4 (1) "Corporation" means the Texas Electric
5 Securitization Corporation.

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

9 Sec. 31.103. CREATION OF CORPORATION. (a) The corporation
10 is a nonprofit corporation and instrumentality of this state, and
11 shall perform the essential governmental function of financing
12 eligible costs in accordance with this subchapter. The corporation:

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

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

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

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

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

27 (c) The corporation must be self-funded. Before the

1 imposition of charges to recover securitized amounts, the
2 corporation may accept and expend for its operating expenses money
3 that may be received from any source, including financing
4 agreements with the state, a commercial bank, or another entity to:

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

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

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

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

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

22 (g) The corporation or an issuer may:

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

27 (2) determine the duties and compensation of a person

1 retained under Subdivision (1), subject to the approval of the
2 commission.

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

5 (i) An official action of the board requires the favorable
6 vote of a majority of the directors present and voting at a meeting
7 of the board.

8 Sec. 31.104. POWERS AND DUTIES OF CORPORATION. (a) The
9 corporation, in each instance subject to the prior authorization of
10 the commission, shall participate in the financial transactions
11 authorized by this subchapter. The corporation may not engage in
12 business activities except those activities provided for by this
13 subchapter and those ancillary and incidental to those activities.
14 The corporation or an issuer may not apply proceeds of bonds or
15 charges to a purpose not specified in a financing order, to a
16 purpose in an amount that exceeds the amount allowed for the purpose
17 in the order, or to a purpose in contravention of the order.

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

21 (c) The corporation may:

22 (1) acquire, sell, pledge, or transfer property as
23 necessary to effect the purposes of this subchapter and, in
24 connection with the action, agree to such terms and conditions as
25 the corporation deems necessary and proper, consistent with the
26 terms of a financing order:

27 (A) to acquire property and to pledge such

1 property, and any other collateral:

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

4 (ii) to secure repayment of any borrowing
5 from any other issuer of bonds; or

6 (B) to sell the property to another issuer, which
7 may in turn pledge that property, together with any other
8 collateral, to the repayment of bonds issued by the issuer together
9 with any other qualified costs;

10 (2) issue bonds on terms and conditions consistent
11 with a financing order;

12 (3) borrow funds:

13 (A) from an issuer of bonds to acquire property,
14 and pledge that property to the repayment of any borrowing from an
15 issuer, together with any related qualified costs, all on terms and
16 conditions consistent with a financing order; or

17 (B) for initial operating expenses;

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

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

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

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

1 (d) The corporation shall maintain separate accounts and
2 records relating to each entity that collects charges for all
3 charges, revenues, assets, liabilities, and expenses relating to
4 the entity's related bond issuances.

5 (e) The board of the corporation may not authorize any
6 rehabilitation, liquidation, or dissolution of the corporation and
7 a rehabilitation, liquidation, or dissolution of the corporation
8 may not take effect as long as any bonds are outstanding unless
9 adequate protection and provision have been made for the payment of
10 the bonds pursuant to the documents authorizing the issuance of the
11 bonds. In the event of any rehabilitation, liquidation, or
12 dissolution, the assets of the corporation must be applied first to
13 pay all debts, liabilities, and obligations of the corporation,
14 including the establishment of reasonable reserves for any
15 contingent liabilities or obligations, and all remaining funds of
16 the corporation must be applied and distributed as provided by an
17 order of the commission.

18 (f) Before the date that is two years and one day after the
19 date that the corporation no longer has any payment obligation with
20 respect to any bonds, including any obligation to an issuer of any
21 bonds outstanding, the corporation may not file a voluntary
22 petition under federal bankruptcy law and neither any public
23 official nor any organization, entity, or other person may
24 authorize the corporation to be or to become a debtor under federal
25 bankruptcy law during that period. The state covenants that it will
26 not limit or alter the denial of authority under this subsection or
27 Subsection (e), and the provisions of this subsection and

1 Subsection (e) are hereby made a part of the contractual obligation
2 that is subject to the state pledge set forth in Section 39.609.

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

8 Sec. 31.105. COMMISSION REGULATION OF CORPORATION. The
9 commission shall regulate the corporation as provided by this
10 subchapter. Notwithstanding the regulation authorized by this
11 section, the corporation is not a public utility.

12 Sec. 31.106. FINANCING ORDER. (a) This section applies to
13 the commission's issuance of a financing order under this
14 subchapter.

15 (b) Except as otherwise specifically provided by this
16 subchapter, the provisions of this subtitle that address the
17 commission's issuance of a financing order under other provisions
18 of this subtitle also apply to the commission's issuance of a
19 financing order under this subchapter.

20 (c) The corporation and any issuer must be a party to the
21 commission's proceedings that address the issuance of a financing
22 order along with the entity requesting securitization.

23 (d) In addition to the other applicable requirements of this
24 subtitle, a financing order issued under this subchapter must:

25 (1) require the sale, assignment, or other transfer to
26 the corporation of certain specified property created by the
27 financing order and, following that sale, assignment, or transfer,

1 require that charges paid under any financing order be created,
2 assessed, and collected as the property of the corporation, subject
3 to subsequent sale, assignment, or transfer by the corporation as
4 authorized under this subchapter;

5 (2) authorize:

6 (A) the issuance of bonds by the corporation
7 secured by a pledge of specified property, and the application of
8 the proceeds of those bonds, net of issuance costs, to the
9 acquisition of the property from the entity requesting
10 securitization; or

11 (B) the acquisition of specified property from
12 the entity requesting securitization by the corporation, financed:

13 (i) by a loan by an issuer to the
14 corporation of the proceeds of bonds, net of issuance costs; or

15 (ii) by the acquisition by an issuer from
16 the corporation of the property and in each case the pledge of the
17 property to the repayment of the loan or bonds, as applicable; and

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

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

26 (f) Bonds issued pursuant to a financing order under this
27 section are secured only by the related property and any other funds

1 pledged under the bond documents. No assets of the state or the
2 entity requesting securitization are subject to claims by the
3 holders of the bonds. Following assignment of the property, the
4 entity requesting securitization does not have any beneficial
5 interest or claim of right in such charges or in any property.

6 Sec. 31.107. SEVERABILITY. Effective on the date the first
7 bonds are issued under this subchapter, if any provision in this
8 title or portion of this title is held to be invalid or is
9 invalidated, superseded, replaced, repealed, or expires for any
10 reason, that occurrence does not affect the validity or
11 continuation of this subchapter or any other provision of this
12 title that is relevant to the issuance, administration, payment,
13 retirement, or refunding of authorized securitization bonds or to
14 any actions of an entity requesting securitization under this
15 subchapter, its successors, an assignee, a collection agent, the
16 corporation, an issuer, or a financing party, and those provisions
17 shall remain in full force and effect.

18 SECTION 2. Section 39.002, Utilities Code, is amended to
19 read as follows:

20 Sec. 39.002. APPLICABILITY. This chapter, other than
21 Subchapter M and Sections 39.151, 39.1516, 39.155, 39.157(e),
22 39.203, 39.904, 39.9051, 39.9052, and 39.914(e), does not apply to
23 a municipally owned utility or an electric cooperative. Sections
24 39.157(e), 39.203, and 39.904, however, apply only to a municipally
25 owned utility or an electric cooperative that is offering customer
26 choice. If there is a conflict between the specific provisions of
27 this chapter and any other provisions of this title, except for

1 Chapters 40 and 41, the provisions of this chapter control.

2 SECTION 3. Section 39.151, Utilities Code, is amended by
3 adding Subsection (j-1) to read as follows:

4 (j-1) Notwithstanding Subsection (j), the independent
5 system operator in ERCOT may not reduce payments to or charge uplift
6 short-paid amounts from a municipally owned utility that becomes
7 subject to the jurisdiction of the independent system operator in
8 ERCOT on or after June 1, 2021, and before December 30, 2021,
9 related to a default on a payment obligation by a market participant
10 that occurred before June 1, 2021.

11 SECTION 4. Chapter 39, Utilities Code, is amended by adding
12 Subchapter M to read as follows:

13 SUBCHAPTER M. SECURITIZATION FOR INDEPENDENT ORGANIZATION

14 Sec. 39.601. PURPOSE; USE OF PROCEEDS; BOND CHARGES. (a)
15 The purpose of this subchapter is to enable the independent
16 organization certified under Section 39.151 for the ERCOT power
17 region to use securitization financing to fund substantial default
18 balances that would otherwise be uplifted to the wholesale market
19 as a result of market participants defaulting on amounts owed after
20 an extreme pricing event and extraordinary ancillary service and
21 reliability deployment price adder charges that were uplifted on a
22 load ratio share basis. Securitization will allow wholesale market
23 participants who are owed money to be paid in a more timely manner,
24 while allowing the balance to be repaid over time at a low carrying
25 cost. This subchapter and Subchapter D, Chapter 41, do not change,
26 alter, or reduce the obligation of a market participant to timely
27 and fully pay the debts or obligations of the market participant to

1 the independent organization.

2 (b) The proceeds of bonds issued for the purpose described
3 by Subsection (a) must be used solely for the purpose of financing
4 default balances that otherwise would be or have been uplifted to
5 the wholesale market and uplift balances that were allocated to all
6 load-serving entities on a load ratio share basis as a result of
7 usage during the period of emergency. The commission shall ensure
8 that securitization provides tangible and quantifiable benefits to
9 wholesale market participants, greater than would have been
10 achieved absent the issuance of bonds.

11 (c) The commission shall ensure that the structuring and
12 pricing of the bonds result in the lowest bond charges consistent
13 with market conditions and the terms of the financing order. The
14 present value calculation shall use a discount rate equal to the
15 proposed interest rate on the bonds.

16 (d) The commission shall require that all market
17 participants, including market participants not otherwise subject
18 to this subchapter, pay or make provision for the full and prompt
19 payment to the independent organization certified under Section
20 39.151 for the ERCOT power region of all amounts owed to the
21 independent organization to qualify, or to continue to qualify, as
22 a market participant in the ERCOT power region. The commission and
23 the independent organization shall pursue collection in full of
24 amounts owed to the independent organization by any market
25 participant to reduce the qualifying costs that would otherwise be
26 borne by other market participants or their customers.

27 Sec. 39.602. DEFINITIONS. In this subchapter:

1 (1) "Assignee" means any individual, corporation, or
2 other legally recognized entity to which an interest in default or
3 uplift property is transferred, other than as security.

4 (2) "Default charges" means nonbypassable amounts to
5 be charged on all wholesale market transactions administered by the
6 independent organization certified under Section 39.151 for the
7 ERCOT power region, approved by the commission under a financing
8 order to recover qualified costs, that shall be collected by the
9 independent organization, its successors, an assignee, or other
10 collection agents as provided by the financing order.

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

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

17 (5) "Independent organization" means the independent
18 organization certified under Section 39.151 for the ERCOT power
19 region.

20 (6) "Load-serving entity" means a municipally owned
21 utility, an electric cooperative, or a retail electric provider.

22 (7) "Period of emergency" means the period beginning
23 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
24 2021.

25 (8) "Qualified costs" means a default balance
26 resulting from the period of emergency that otherwise would be or
27 has been uplifted to other wholesale market participants, together

1 with the costs of issuing, supporting, and servicing bonds and any
2 costs of retiring and refunding existing debt in connection with
3 the issuance of the bonds.

4 (9) "Uplift charges" means charges for reliability
5 deployment price adders and ancillary services costs in excess of
6 the commission's system-wide offer cap that were uplifted to
7 load-serving entities on a load ratio share basis due to energy
8 consumption during the period of emergency. The term includes only
9 uplifted amounts and does not include amounts that were part of the
10 prevailing settlement point price.

11 Sec. 39.603. FINANCING ORDERS; TERMS. (a) On application
12 of the independent organization, the commission may adopt a
13 financing order to recover the costs of a substantial default or
14 uplift balance of qualified costs resulting from a significant
15 pricing event on making a finding that such financing is needed to
16 preserve the integrity of the wholesale market and the public
17 interest after considering:

18 (1) the interests of wholesale market participants who
19 are owed balances; and

20 (2) the potential effects of uplifting those balances
21 without a financing vehicle.

22 (b) The financing order must detail the amounts to be
23 recovered and the period over which the nonbypassable default or
24 uplift charges shall be recovered. The period may not exceed 30
25 years. If an amount determined under this section is subject to
26 judicial review of a commission order, a bankruptcy proceeding, or
27 another type of litigation at the time of the securitization

1 proceeding, the financing order shall include an adjustment
2 mechanism requiring the independent organization to adjust its
3 default or uplift charges in a manner that would refund, over the
4 remaining life of the bonds, any overpayments resulting from
5 securitization of amounts in excess of the amount resulting from a
6 final determination after completion of all appellate reviews. The
7 adjustment mechanism may not affect the stream of revenue available
8 to service the bonds. An adjustment may not be made under this
9 subsection until all appellate reviews have been completed,
10 including appellate reviews following a commission decision on
11 remand of its original orders, if applicable.

12 (c) Nonbypassable default charges must be collected and
13 allocated among wholesale market participants using the same
14 allocation methodology described in the protocols of the
15 independent organization, as they existed on March 1, 2021. The
16 rate associated with the nonbypassable default charges must be
17 assessed on all wholesale market participants, including market
18 participants who are in default but still participating in the
19 wholesale market, and must be based on updated transaction data to
20 prevent market participants from engaging in behavior designed to
21 avoid the nonbypassable default charges.

22 (d) Notwithstanding another provision of this subchapter,
23 nonbypassable default charges may not be collected from or
24 allocated to a market participant that:

25 (1) would otherwise be subject to an uplift charge
26 solely as a result of acting as a central counterparty
27 clearinghouse in wholesale market transactions in the ERCOT power

1 region; and

2 (2) is regulated as a derivatives clearing
3 organization, as defined by the Commodity Exchange Act (7 U.S.C.
4 Section 1a).

5 (e) Nonbypassable uplift charges must be allocated to all
6 load-serving entities on a load ratio share basis, excluding the
7 load of entities that have opted out under Subsection (f).

8 (f) The commission shall develop a process that allows a
9 load-serving entity and any customer whose demand is greater than
10 one megawatt and is served by a retail electric provider to opt out
11 of the uplift charges by paying in full all invoices owed for usage
12 during the period of emergency. Load-serving entities and
13 individual customers that opt out may not receive any proceeds from
14 the uplift bonds.

15 (g) A financing order becomes effective in accordance with
16 its terms and the financing order, together with the default or
17 uplift charges authorized in the order, shall be irrevocable and
18 not subject to reduction, impairment, or adjustment by further
19 action of the commission after it takes effect.

20 (h) The commission shall issue a financing order not later
21 than the 90th day after the date the independent organization files
22 a request for the financing order under Subsection (a) or (j).

23 (i) A financing order is not subject to rehearing by the
24 commission. A financing order may be reviewed by appeal by a party
25 to the proceeding to a Travis County district court filed not later
26 than the 15th day after the date the financing order is signed by
27 the commission. The judgment of the district court may be reviewed

1 only by direct appeal to the Supreme Court of Texas filed not later
2 than the 15th day after the date of the entry of judgment. All
3 appeals shall be heard and determined by the district court and the
4 Supreme Court of Texas as expeditiously as possible with lawful
5 precedence over other matters. Review on appeal shall be based
6 solely on the record before the commission and briefs to the court
7 and shall be limited to whether the financing order conforms to the
8 constitution and laws of this state and the United States and is
9 within the authority of the commission under this chapter.

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

18 Sec. 39.604. PROPERTY RIGHTS. (a) The rights and interests
19 of the independent organization or its successor under a financing
20 order, including the right to impose, collect, and receive default
21 or uplift charges authorized in the order, shall be only contract
22 rights until they are first transferred to an assignee or pledged in
23 connection with the issuance of bonds, at which time they will
24 become default or uplift property, as described by Subsection (b).

25 (b) Default or uplift property shall constitute a present
26 property right for purposes of contracts concerning the sale or
27 pledge of property, even though the imposition and collection of

1 default or uplift charges depends on further acts of the
2 independent organization or others that have not yet occurred. The
3 financing order shall remain in effect and the property shall
4 continue to exist for the same period as the pledge of the state
5 described by Section 39.609.

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

9 Sec. 39.605. INTEREST NOT SUBJECT TO SETOFF. The interest
10 of an assignee or pledgee in default or uplift property and in the
11 revenues and collections arising from that property are not subject
12 to setoff, counterclaim, surcharge, or defense by the independent
13 organization or any other person or in connection with the
14 bankruptcy of a wholesale market participant or the independent
15 organization. A financing order shall remain in effect and
16 unabated notwithstanding the bankruptcy of the independent
17 organization, its successors, or assignees.

18 Sec. 39.606. DEFAULT AND UPLIFT CHARGES NONBYPASSABLE. A
19 financing order shall include terms ensuring that the imposition
20 and collection of default or uplift charges authorized in the order
21 shall be nonbypassable, other than uplift charges paid under
22 Section 39.603(f).

23 Sec. 39.607. TRUE-UP. A financing order shall include a
24 mechanism requiring that default or uplift charges be reviewed and
25 adjusted at least annually, not later than the 45th day after the
26 anniversary date of the issuance of the bonds, to:

27 (1) correct over-collections or under-collections of

1 the preceding 12 months; and

2 (2) ensure the expected recovery of amounts sufficient
3 to timely provide all payments of debt service and other required
4 amounts and charges in connection with the bonds.

5 Sec. 39.608. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
6 DEFAULT. (a) Default or uplift property does not constitute an
7 account or general intangible under Section 9.106, Business &
8 Commerce Code. The creation, granting, perfection, and enforcement
9 of liens and security interests in default or uplift property are
10 governed by this section and not by the Business & Commerce Code.

11 (b) A valid and enforceable lien and security interest in
12 default or uplift property may be created only by a financing order
13 and the execution and delivery of a security agreement with a
14 financing party in connection with the issuance of bonds. The lien
15 and security interest shall attach automatically from the time that
16 value is received for the bonds and, on perfection through the
17 filing of notice with the secretary of state in accordance with the
18 rules prescribed under Subsection (d), shall be a continuously
19 perfected lien and security interest in the default or uplift
20 property and all proceeds of the property, whether accrued or not,
21 shall have priority in the order of filing and take precedence over
22 any subsequent judicial or other lien creditor. If notice is filed
23 before the 10th day after the date value is received for the default
24 bonds, the security interest shall be perfected retroactive to the
25 date value was received. Otherwise, the security interest shall be
26 perfected as of the date of filing.

27 (c) Transfer of an interest in default or uplift property to

1 an assignee shall be perfected against all third parties, including
2 subsequent judicial or other lien creditors, when the financing
3 order becomes effective, transfer documents have been delivered to
4 the assignee, and a notice of that transfer has been filed in
5 accordance with the rules adopted under Subsection (d). However, if
6 notice of the transfer has not been filed in accordance with this
7 subsection before the 10th day after the delivery of transfer
8 documentation, the transfer of the interest is not perfected
9 against third parties until the notice is filed.

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

15 (e) The priority of a lien and security interest perfected
16 under this section is not impaired by any later modification of the
17 financing order under Section 39.607 or by the commingling of funds
18 arising from default or uplift charges with other funds, and any
19 other security interest that may apply to those funds shall be
20 terminated when they are transferred to a segregated account for
21 the assignee or a financing party. If default or uplift property
22 has been transferred to an assignee, any proceeds of that property
23 shall be held in trust for the assignee.

24 (f) If a default or termination occurs under the bonds, the
25 financing parties or their representatives may foreclose on or
26 otherwise enforce their lien and security interest in any property
27 as if they were secured parties under Chapter 9, Business & Commerce

1 Code, and the commission may order that amounts arising from
2 default or uplift charges be transferred to a separate account for
3 the financing parties' benefit, to which their lien and security
4 interest shall apply. On application by or on behalf of the
5 financing parties, a district court of Travis County shall order
6 the sequestration and payment to them of revenues arising from the
7 default or uplift charges.

8 Sec. 39.609. PLEDGE OF STATE. Default bonds are not a debt
9 or obligation of the state and are not a charge on its full faith and
10 credit or taxing power. The state pledges, however, for the benefit
11 and protection of financing parties and the independent
12 organization that it will not take or permit any action that would
13 impair the value of default or uplift property, or reduce, alter, or
14 impair the default or uplift charges to be imposed, collected, and
15 remitted to financing parties, until the principal, interest and
16 premium, and any other charges incurred and contracts to be
17 performed in connection with the related bonds have been paid and
18 performed in full. Any party issuing bonds under this subchapter is
19 authorized to include this pledge in any documentation relating to
20 those bonds.

21 Sec. 39.610. TAX EXEMPTION. Transactions involving the
22 transfer and ownership of default or uplift property and the
23 receipt of default or uplift charges are exempt from state and local
24 income, sales, franchise, gross receipts, and other taxes or
25 similar charges.

26 Sec. 39.611. NOT PUBLIC UTILITY. An assignee or financing
27 party may not be considered to be a public utility or person

1 providing electric service solely by virtue of the transactions
2 described in this subchapter.

3 Sec. 39.612. SEVERABILITY. Effective on the date the first
4 bonds are issued under this subchapter, if any provision in this
5 title or portion of this title is held to be invalid or is
6 invalidated, superseded, replaced, repealed, or expires for any
7 reason, that occurrence does not affect the validity or
8 continuation of this subchapter or any other provision of this
9 title that is relevant to the issuance, administration, payment,
10 retirement, or refunding of bonds or to any actions of the
11 independent organization, its successors, an assignee, a
12 collection agent, or a financing party, which shall remain in full
13 force and effect.

14 Sec. 39.613. CUSTOMER CHARGES. All load-serving entities
15 that receive offsets to specific uplift charges from the
16 independent organization under this subchapter must adjust
17 customer invoices to reflect the offsets for any charges that were
18 or would otherwise be passed through to customers under the terms of
19 service with the load-serving entity, including by providing a
20 refund for any offset charges that were previously paid. An
21 electric cooperative, including an electric cooperative that
22 elects to receive offsets, shall not otherwise become subject to
23 rate regulation by the commission and receipt of offsets does not
24 affect the applicability of Chapter 41 to an electric cooperative.

25 SECTION 5. This Act takes effect on the date on which Senate
26 Bill No. 1580, House Bill No. 3544, or other similar legislation of
27 the 87th Legislature, Regular Session, 2021, relating to the use of

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1 securitization by electric cooperatives to address weather-related
2 extraordinary costs and expenses becomes law.