

AN ACT

relating to financing certain costs associated with electric markets; granting authority to issue bonds; authorizing fees.

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

SECTION 1. Section 404.0241, Government Code, is amended by adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) to read as follows:

(b-1) Notwithstanding any other law, directly or indirectly through a separately managed account or other investment vehicle, the comptroller shall invest not more than \$800 million of the economic stabilization fund balance to finance the default balance as defined by Section 39.602, Utilities Code, to be repaid by ERCOT market participants through default charges established by the Public Utility Commission of Texas. The interest rate charged in connection with the debt obligations must be calculated by adding the rate determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3, based on the credit rating of the independent organization, as defined by Section 39.602, Utilities Code, plus 2.5 percent. The term of the debt obligations may not exceed 30 years.

(b-2) A person may not bring a civil action against this state, the Texas Treasury Safekeeping Trust Company, or an employee, independent contractor, or official of this state, including the comptroller, for any claim, including breach of

1 fiduciary duty or violation of any constitutional, statutory, or
2 regulatory requirement, in connection with any action, inaction,
3 decision, divestment, investment, report, or other determination
4 made or taken in connection with Subsections (b-1), (b-4), and
5 (b-5).

6 (b-3) A person who brings an action described by Subsection
7 (b-2) is liable to the defendant for the defendant's costs and
8 attorney's fees resulting from the action.

9 (b-4) The comptroller shall manage the investments required
10 by Subsection (b-1) as a separate investment portfolio. The
11 comptroller shall provide separate accounting and reporting for the
12 investments in that portfolio. The comptroller shall credit to that
13 portfolio all payments, distributions, interest, and other
14 earnings on the investments in that portfolio.

15 (b-5) The comptroller has any power necessary to accomplish
16 the purposes of managing and investing the assets of the portfolio
17 described by Subsection (b-4). In managing the assets of that
18 portfolio, through procedures and subject to restrictions the
19 comptroller considers appropriate, the comptroller may acquire,
20 sell, transfer, or otherwise assign the investments as appropriate,
21 taking into consideration the purposes, terms, distribution
22 requirements, and other circumstances of that portfolio then
23 prevailing.

24 SECTION 2. Section 39.002, Utilities Code, is amended to
25 read as follows:

26 Sec. 39.002. APPLICABILITY. This chapter, other than
27 Sections 39.151, 39.1516, 39.155, 39.157(e), 39.159, 39.203,

1 39.904, 39.9051, 39.9052, and 39.914(e), and Subchapters M and N,
2 does not apply to a municipally owned utility or an electric
3 cooperative. Sections 39.157(e), 39.203, and 39.904, however,
4 apply only to a municipally owned utility or an electric
5 cooperative that is offering customer choice. If there is a
6 conflict between the specific provisions of this chapter and any
7 other provisions of this title, except for Chapters 40 and 41, the
8 provisions of this chapter control.

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

11 (j-1) Notwithstanding Subsection (j) of this section,
12 Section 39.653(c), or any other law, the independent system
13 operator in the ERCOT power region may not reduce payments to or
14 uplift short-paid amounts to a municipally owned utility that
15 becomes subject to the jurisdiction of that independent system
16 operator on or after May 29, 2021, and before December 30, 2021,
17 related to a default on a payment obligation by a market participant
18 that occurred before May 29, 2021.

19 SECTION 4. Subchapter D, Chapter 39, Utilities Code, is
20 amended by adding Section 39.159 to read as follows:

21 Sec. 39.159. AMOUNTS OWED TO INDEPENDENT ORGANIZATION BY
22 MARKET PARTICIPANTS. (a) The commission shall require that all
23 market participants fully and promptly pay to the independent
24 organization certified under Section 39.151 for the ERCOT power
25 region all amounts owed to the independent organization, or provide
26 for the full and prompt payment of those amounts owed, which must
27 be calculated solely according to the protocols of the independent

1 organization in effect during the period of emergency and subject
2 to the jurisdiction of the commission, to qualify, or to continue
3 to qualify, as a market participant in the ERCOT power region.

4 (b) The independent organization shall report to the
5 commission that a market participant is in default for the failure
6 to pay, or provide for the full and prompt payment of, all amounts
7 owed to the independent organization as calculated in accordance
8 with this section. The commission may not allow the defaulting
9 market participant to continue to be a market participant in the
10 ERCOT power region for any purpose or allow the independent
11 organization to accept the defaulting market participant's loads or
12 generation for scheduling in the ERCOT power region until all
13 amounts owed to the independent organization by the market
14 participant as calculated in this section are fully paid.

15 (c) The commission and the independent organization shall
16 pursue collection in full of amounts owed to the independent
17 organization by any market participant to reduce the costs that
18 would otherwise be borne by other market participants or their
19 customers.

20 SECTION 5. Chapter 39, Utilities Code, is amended by adding
21 Subchapters M and N to read as follows:

22 SUBCHAPTER M. WINTER STORM URI DEFAULT BALANCE FINANCING

23 Sec. 39.601. PURPOSE. (a) The purpose of this subchapter is
24 to address the Winter Storm Uri default balance, as defined by
25 Section 39.602, in a manner that benefits the public interest by:

26 (1) enabling the independent organization to finance
27 the payment of the default balance with debt obligations; and

1 (2) authorizing the commission to contract with the
2 comptroller under Section 404.0241, Government Code, to finance the
3 payment of the default balance with debt obligations.

4 (b) Financing the default balance in the manner provided by
5 this subchapter will:

6 (1) allow wholesale market participants that are owed
7 money to be paid in a more timely manner;

8 (2) replenish financial revenue auction receipts
9 temporarily used by the independent organization to reduce the
10 Winter Storm Uri-related amounts short-paid to the wholesale market
11 participants; and

12 (3) allow the wholesale market to repay the default
13 balance over time.

14 (c) The legislature finds that the financing authorized by
15 this subchapter serves the public purpose of preserving the
16 integrity of the electricity market in the ERCOT power region.

17 (d) The proceeds of debt obligations issued under this
18 subchapter must be used solely for the purpose of financing default
19 balances that otherwise would be or have been uplifted to the
20 wholesale market.

21 (e) The commission shall ensure that the structuring and
22 pricing of debt obligations issued under this subchapter result in
23 the lowest financing costs consistent with market conditions and
24 the terms of the commission's order. The present value calculation
25 must use a discount rate equal to the proposed interest rate on the
26 debt obligations.

27 Sec. 39.602. DEFINITIONS. In this subchapter:

1 (1) "Default balance" means an amount of money of not
2 more than \$800 million that includes only:

3 (A) amounts owed to the independent organization
4 by competitive wholesale market participants from the period of
5 emergency that otherwise would be or have been uplifted to other
6 wholesale market participants;

7 (B) financial revenue auction receipts used by
8 the independent organization to temporarily reduce amounts
9 short-paid to wholesale market participants related to the period
10 of emergency; and

11 (C) reasonable costs incurred by a state agency
12 or the independent organization to implement a debt obligation
13 order under Sections 39.603 and 39.604, including the cost of
14 retiring or refunding existing debt.

15 (2) "Default charges" means charges assessed to
16 wholesale market participants to repay amounts financed under this
17 subchapter to pay the default balance.

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

21 (4) "Period of emergency" means the period beginning
22 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
23 2021.

24 Sec. 39.603. DEBT OBLIGATION ORDER. (a) On application by
25 the independent organization, the commission by order may authorize
26 the independent organization to establish a debt financing
27 mechanism to finance the default balance if the commission finds

1 that the debt obligations are needed to preserve the integrity of
2 the wholesale market and the public interest, after considering:

3 (1) the need to timely replenish financial revenue
4 auction receipts used by the independent organization to reduce
5 amounts short-paid to wholesale market participants;

6 (2) the interests of wholesale market participants
7 that are owed balances; and

8 (3) the potential effects of uplifting those balances
9 to the wholesale market without a financing vehicle.

10 (b) The order must state:

11 (1) the default balance to be financed; and

12 (2) the period over which the default charges must be
13 assessed to repay the debt obligations, which may not exceed 30
14 years.

15 (c) The order must include an adjustment mechanism
16 requiring the independent organization to adjust default charges to
17 refund, over the remaining period of the default charges, any
18 payments made by a market participant toward unpaid obligations
19 from the period of emergency that were included in the financed
20 default balance.

21 (d) The independent organization shall collect from and
22 allocate among wholesale market participants the default charges
23 using the same allocated pro rata share methodology under which the
24 charges would otherwise be uplifted under the protocols in effect
25 on March 1, 2021. The default charges must be assessed on all
26 wholesale market participants, including market participants who
27 are in default but still participating in the wholesale market and

1 who enter the market after a debt obligation order is issued under
2 this subchapter, and may be based on periodically updated
3 transaction data to prevent market participants from engaging in
4 behavior designed to avoid the default charges.

5 (e) Not later than the 30th day after the date the
6 independent organization receives a default charge payment from a
7 wholesale market participant, the independent organization shall
8 remit the payment to the comptroller toward repayment of debt
9 obligations in which the comptroller made an investment under
10 Section 404.0241(b-1), Government Code, if applicable.

11 (f) Notwithstanding another provision of this subchapter,
12 default charges may not be collected from or allocated to a market
13 participant that:

14 (1) otherwise would be subject to a default charge
15 solely as a result of acting as a central counterparty
16 clearinghouse in wholesale market transactions in the ERCOT power
17 region; and

18 (2) is regulated as a derivatives clearing
19 organization, as defined by Section 1a, Commodity Exchange Act (7
20 U.S.C. Section 1a).

21 (g) Not later than the 90th day after the date the
22 independent organization files an application for an order under
23 Subsection (a), the commission shall issue an order described by
24 Subsection (a) or an order denying the application. The order
25 becomes effective in accordance with its terms and the order,
26 together with the default charges authorized in the order, shall be
27 irrevocable and not subject to reduction, impairment, or adjustment

1 by further action of the commission after the order takes effect.
2 Notwithstanding this requirement, the commission may refinance any
3 debt obligations created by an order issued under this subchapter
4 if the commission determines that the refinancing is in the public
5 interest, considering the interest of both the ERCOT market and the
6 state's interest in the economic stabilization fund, and otherwise
7 meets the requirements of this subchapter.

8 (h) An order described by Subsection (a) or (g) is not
9 subject to rehearing by the commission. The order may be reviewed by
10 appeal by a party to the proceeding to a Travis County district
11 court that is filed not later than the 15th day after the date the
12 order is signed by the commission. The judgment of the district
13 court may be reviewed only by a direct appeal to the Supreme Court
14 of Texas that is filed not later than the 15th day after the date of
15 the entry of judgment. All appeals shall be heard and determined by
16 the district court and the Supreme Court of Texas as expeditiously
17 as possible with lawful precedence over other matters. Review on
18 appeal shall be based solely on the record before the commission and
19 briefs to the court and shall be limited to whether the order
20 conforms to the constitution and laws of this state and the United
21 States and is within the authority of the commission under this
22 chapter.

23 (i) A debt obligation issued under this section is a
24 nonrecourse debt secured solely by the default charges explicitly
25 assessed to repay the obligation. The independent organization's
26 obligations authorized under this section do not create personal
27 liability for the independent organization.

1 Sec. 39.604. COMMISSION-AUTHORIZED FINANCING. (a) The
2 commission may contract with another state agency with expertise in
3 public financing to establish a debt financing mechanism for the
4 payment of the default balance as defined in this subchapter, under
5 an order that meets the requirements of Section 39.603. This
6 section does not apply to a default balance securitized under
7 Subchapter D, Chapter 41.

8 (b) The contracted state agency and any issuer, along with
9 the independent organization, must be a party to the commission's
10 proceedings that address the issuance of an order.

11 (c) In addition to the other applicable requirements of this
12 subtitle, an order issued under this section must:

13 (1) require the sale, assignment, or other transfer to
14 the contracted state agency of default charges created by the order
15 and, following that sale, assignment, or transfer, require that
16 default charges paid under any order be created, assessed, and
17 collected as the property of the contracted state agency, subject
18 to subsequent sale, assignment, or transfer by the contracted state
19 agency as authorized under this subchapter;

20 (2) authorize:

21 (A) the issuance of debt obligations by the
22 contracted state agency secured by a pledge of default charge
23 revenue, and the application of the proceeds of those debt
24 obligations, net of issuance costs, to the independent
25 organization; or

26 (B) the acquisition of default charge revenue
27 from the independent organization by the contracted state agency,

1 financed:

2 (i) by a loan by an issuer to the contracted
3 state agency of the proceeds of debt obligations, net of issuance
4 costs; or

5 (ii) by the acquisition by an issuer from
6 the contracted state agency of the default charge revenue and in
7 each case the pledge of the revenue to the repayment of the loan or
8 other debt obligation, as applicable; and

9 (3) authorize the independent organization to serve as
10 collection agent to collect the default charges and transfer the
11 collected default charges to the contracted state agency or the
12 issuer, as appropriate.

13 (d) After issuance of the order, the contracted state agency
14 shall arrange for the issuance of debt obligations, as specified by
15 the order, by the contracted state agency or another issuer
16 selected by the contracted state agency and approved by the
17 commission.

18 (e) Debt obligations issued pursuant to an order issued
19 under this section are secured only by the default charge revenue
20 and any other funds pledged under the bond documents. No assets of
21 the state or the independent organization are subject to claims by
22 the holders of the debt obligations. Following assignment of the
23 default charge revenue, the independent organization does not have
24 any beneficial interest or claim of right in the revenue.

25 (f) Effective on the date the first debt obligations are
26 issued under this subchapter, if any provision of this title or
27 portion of this title is held to be invalid or is invalidated,

1 superseded, replaced, or repealed, or expires for any reason, that
2 occurrence does not affect the validity or continuation of this
3 subchapter or any other provision of this title that is relevant to
4 the issuance, administration, payment, retirement, or refunding of
5 debt obligations authorized under this subchapter or to any actions
6 of the independent organization, its successors, an assignee, a
7 collection agent, the contracted state agency, or an issuer and
8 those provisions shall remain in full force and effect.

9 Sec. 39.605. DEFAULT CHARGES NONBYPASSABLE. An order
10 issued under Section 39.603 or 39.604 must:

11 (1) include terms ensuring that the imposition and
12 collection of default charges authorized in the order shall be
13 nonbypassable by wholesale market participants; and

14 (2) authorize the independent organization to
15 establish appropriate fees and other methods for pursuing amounts
16 owed from entities exiting the wholesale market.

17 Sec. 39.606. TRUE-UP MECHANISM. An order issued under
18 Section 39.603 or 39.604 must include a mechanism requiring that
19 default charges be reviewed and adjusted at least annually, not
20 later than the 45th day after the anniversary date of the issuance
21 of the order, to:

22 (1) correct over-collections or under-collections
23 over the preceding 12 months; and

24 (2) ensure the expected recovery of amounts sufficient
25 to timely provide all payments of debt service.

26 Sec. 39.607. TAX EXEMPTION. The transfer and receipt of
27 default charges are exempt from state and local sales and use,

1 franchise, and gross receipts taxes.

2 Sec. 39.608. PROPERTY RIGHTS. (a) The rights and interests
3 of the independent organization or its successor under a debt
4 obligation order issued under this subchapter, including the right
5 to impose, collect, and receive default charges, shall be only
6 contract rights until they are first transferred to an assignee or
7 pledged in connection with an investment agreement entered into
8 under Section 404.0241, Government Code, or the issuance of debt
9 obligations, at which time they will become default property, as
10 described by Subsection (b).

11 (b) Default property shall constitute a present property
12 right for purposes of contracts concerning the sale or pledge of
13 property, even though the imposition and collection of default
14 charges depends on further acts of the independent organization or
15 others that have not yet occurred. A debt obligation order issued
16 under this subchapter shall remain in effect and the property shall
17 continue to exist for the same period as the pledge of the state
18 described by Section 39.609.

19 (c) All revenues and collections resulting from default
20 charges shall constitute proceeds only of the default property
21 arising from the debt obligation order.

22 Sec. 39.609. PLEDGE OF STATE. Debt obligations issued
23 pursuant to this subchapter, including any bonds, are not a debt or
24 obligation of the state and are not a charge on its full faith and
25 credit or taxing power. The state pledges, however, for the benefit
26 and protection of financing parties and the independent
27 organization that it will not take or permit any action that would

1 impair the value of default property, or reduce, alter, or impair
2 the default charges to be imposed, collected, and remitted to
3 financing parties, until the principal, interest and premium, and
4 any other charges incurred and contracts to be performed in
5 connection with the related debt obligations have been paid and
6 performed in full. Any party issuing a debt obligation under this
7 subchapter is authorized to include this pledge in any
8 documentation relating to the obligation.

9 SUBCHAPTER N. WINTER STORM URI UPLIFT FINANCING

10 Sec. 39.651. PURPOSE; USE OF PROCEEDS. (a) The purpose of
11 this subchapter is to address the Winter Storm Uri uplift balance
12 by:

13 (1) enabling the independent organization certified
14 under Section 39.151 for the ERCOT power region to finance the
15 uplift balance on behalf of wholesale market participants through
16 debt obligations; and

17 (2) authorizing the commission to contract with
18 another state agency to finance the payment of the uplift balance
19 with debt obligations or use any another financial mechanism
20 consistent with this subchapter for that purpose.

21 (b) Financing the uplift balance in the manner provided by
22 this subchapter will allow wholesale market participants who were
23 assessed extraordinary uplift charges due to consumption during the
24 period of emergency to pay those charges over a longer period of
25 time, alleviating liquidity issues and reducing the risk of
26 additional defaults in the wholesale market.

27 (c) The legislature finds that authorizing financing under

1 this subchapter serves the public purpose of allowing the
2 commission to stabilize the wholesale electricity market in the
3 ERCOT power region.

4 (d) The proceeds of debt obligations issued under this
5 subchapter must be used solely for the purpose of financing
6 reliability deployment price adder charges and ancillary service
7 costs that exceeded the commission's system-wide offer cap and were
8 uplifted to load-serving entities based on consumption during the
9 period of emergency. A load-serving entity that receives proceeds
10 from the debt obligations may use the proceeds solely for the
11 purposes of fulfilling payment obligations directly related to such
12 costs and refunding such costs to retail customers who have paid or
13 otherwise would be obligated to pay such costs.

14 (e) The commission shall ensure that the structuring and
15 pricing of the debt obligations results in the lowest uplift
16 charges consistent with market conditions and the terms of the
17 order issued under this subchapter. The present value calculation
18 must use a discount rate equal to the proposed interest rate on the
19 debt obligations.

20 Sec. 39.652. DEFINITIONS. In this subchapter:

21 (1) "Independent organization" means the independent
22 organization certified under Section 39.151 for the ERCOT power
23 region.

24 (2) "Load-serving entity" means a municipally owned
25 utility, an electric cooperative, or a retail electric provider.

26 (3) "Period of emergency" means the period beginning
27 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20,

1 2021.

2 (4) "Uplift balance" means an amount of money of not
3 more than \$2.1 billion that was uplifted to load-serving entities
4 on a load ratio share basis due to energy consumption during the
5 period of emergency for reliability deployment price adder charges
6 and ancillary services costs in excess of the commission's
7 system-wide offer cap, excluding amounts securitized under
8 Subchapter D, Chapter 41. The term does not include amounts that
9 were part of the prevailing settlement point price during the
10 period of emergency.

11 (5) "Uplift charges" means charges assessed to
12 load-serving entities to repay amounts financed under this
13 subchapter to pay the uplift balance and reasonable costs incurred
14 by a state agency or the independent organization to implement a
15 debt obligation order under Section 39.653, 39.654, or 39.655,
16 including the cost of retiring or refunding existing debt.

17 Sec. 39.653. DEBT OBLIGATION ORDER. (a) The independent
18 organization shall file an application with the commission to
19 establish a debt financing mechanism for the payment of the uplift
20 balance if the commission finds that such financing will support
21 the financial integrity of the wholesale market and is necessary to
22 protect the public interest, considering the impacts on both
23 wholesale market participants and retail customers.

24 (b) An order issued under this section must:

25 (1) state the uplift balance to be financed;

26 (2) state the period over which the uplift charges
27 must be assessed to repay the debt obligations, which may not exceed

1 30 years; and

2 (3) provide the process for remitting the proceeds of
3 the financing to load-serving entities who were exposed to the
4 costs included in the uplift balance, including a requirement for
5 the load-serving entities to submit documentation of their
6 exposure.

7 (c) The independent organization shall assess uplift
8 charges to all load-serving entities on a load ratio share basis,
9 which may be translated to a kWh charge, including load serving
10 entities who enter the market after an order has been issued under
11 this subchapter, but excluding the load of entities that opt out
12 under Subsection (d).

13 (d) The commission shall develop a one-time process that
14 allows municipally owned utilities, electric cooperatives, river
15 authorities, a retail electric provider that has the same corporate
16 parent as each of the provider's customers, a retail electric
17 provider that is an affiliate of each of the provider's customers,
18 and transmission-voltage customers served by a retail electric
19 provider to opt out of the uplift charges by paying in full all
20 invoices owed for usage during the period of emergency.
21 Load-serving entities and transmission-voltage customers that opt
22 out under this subsection shall not receive any proceeds from the
23 uplift financing.

24 (e) An order issued under this section must include a
25 requirement that any load-serving entity that receives proceeds
26 from the financing that exceed the entity's actual exposure to
27 uplift charges from consumption during the period of emergency

1 notify the independent organization and remit any excess receipts.
2 Any payments received under this subsection must be credited
3 against the uplift balance to reduce the remaining uplift charges.

4 (f) Not later than the 90th day after the date the
5 independent organization files an application for an order under
6 Subsection (a), the commission shall issue an order described by
7 Subsection (a) or an order denying the application. The order
8 becomes effective in accordance with its terms and the order,
9 together with the uplift charges authorized in the order, shall be
10 irrevocable and not subject to reduction, impairment, or adjustment
11 by further action of the commission after it takes effect.
12 Notwithstanding this requirement, the commission may refinance any
13 debt obligations created by an order under this subchapter if the
14 commission determines that the refinancing is in the public
15 interest and otherwise meets the requirements of this subchapter.

16 (g) An order issued under this section is not subject to
17 rehearing by the commission. An order may be reviewed by appeal by a
18 party to the proceeding to a Travis County district court filed not
19 later than the 15th day after the date the order is signed by the
20 commission. The judgment of the district court may be reviewed only
21 by direct appeal to the Supreme Court of Texas filed not later than
22 the 15th day after the date of the entry of judgment. All appeals
23 shall be heard and determined by the district court and the Supreme
24 Court of Texas as expeditiously as possible with lawful precedence
25 over other matters. Review on appeal shall be based solely on the
26 record before the commission and briefs to the court and shall be
27 limited to whether the order conforms to the constitution and laws

1 of this state and the United States and is within the authority of
2 the commission under this chapter.

3 (h) A debt obligation issued under this section is a
4 nonrecourse debt secured solely by the uplift charges explicitly
5 assessed to repay the obligation. The independent organization's
6 obligations authorized under this section do not create personal
7 liability for the independent organization.

8 (i) This section does not apply to any balance securitized
9 under Subchapter D, Chapter 41.

10 Sec. 39.654. COMMISSION-AUTHORIZED FINANCING. (a) The
11 commission may contract with another state agency with expertise in
12 public financing to establish a debt financing mechanism to finance
13 the payment of the uplift balance under an order that meets the
14 requirements of Section 39.653.

15 (b) The contracted state agency and any issuer must be a
16 party to the commission's proceedings that address the issuance of
17 an order along with the independent organization.

18 (c) In addition to the other applicable requirements of this
19 subtitle, an order issued under this section must:

20 (1) require the sale, assignment, or other transfer to
21 the contracted state agency of uplift charges created by the order
22 and, following that sale, assignment, or transfer, require that
23 uplift charges paid under any order be created, assessed, and
24 collected as the property of the contracted state agency, subject
25 to subsequent sale, assignment, or transfer by the contracted state
26 agency as authorized under this subchapter;

27 (2) authorize:

1 (A) the issuance of debt obligations by the
2 contracted state agency secured by a pledge of uplift charge
3 revenue, and the application of the proceeds of those debt
4 obligations, net of issuance costs, to the independent
5 organization; or

6 (B) the acquisition of uplift charge revenue from
7 the independent organization by the contracted state agency,
8 financed:

9 (i) by a loan by an issuer to the contracted
10 state agency of the proceeds of debt obligations, net of issuance
11 costs; or

12 (ii) by the acquisition by an issuer from
13 the contracted state agency of the uplift charge revenue and in each
14 case the pledge of the revenue to the repayment of the loan or debt
15 obligations, as applicable; and

16 (3) authorize the independent organization to serve as
17 collection agent to collect the uplift charges and transfer the
18 collected uplift charges to the contracted state agency or the
19 issuer, as appropriate.

20 (d) After issuance of the order, the contracted state agency
21 shall arrange for the issuance of debt obligations, as specified by
22 the order, by the contracted state agency or another issuer
23 selected by the contracted state agency and approved by the
24 commission.

25 (e) Debt obligations issued pursuant to an order issued
26 under this section are secured only by the uplift charge revenue and
27 any other funds pledged under the bond documents. No assets of the

1 state or the independent organization are subject to claims by the
2 holders of the debt obligations. Following assignment of the
3 uplift charge revenue, the independent organization does not have
4 any beneficial interest or claim of right in the revenue.

5 Sec. 39.655. OTHER FINANCIAL MECHANISM. The commission may
6 use a financial mechanism other than the mechanisms described by
7 Sections 39.653 and 39.654 that meets the requirements of this
8 subchapter to accomplish the purposes of this subchapter.

9 Sec. 39.656. UPLIFT CHARGES NONBYPASSABLE. An order issued
10 under Section 39.653, 39.654, or 39.655 must:

11 (1) include terms ensuring that the imposition and
12 collection of uplift charges authorized in the order shall be
13 nonbypassable, except for entities excluded under Section
14 39.653(d); and

15 (2) authorize the independent organization to
16 establish appropriate fees and other methods for pursuing amounts
17 owed from entities exiting the wholesale market.

18 Sec. 39.657. TRUE-UP. An order shall include a mechanism
19 requiring that uplift charges be reviewed and adjusted at least
20 annually, not later than the 45th day after the anniversary date of
21 the issuance of the debt obligations, to:

22 (1) correct over-collections or under-collections
23 over the preceding 12 months; and

24 (2) ensure the expected recovery of amounts sufficient
25 to timely provide all payments of debt service and other required
26 amounts and charges in connection with the debt obligations.

27 Sec. 39.658. TAX EXEMPTION. Transactions involving the

1 transfer and ownership of uplift property and the receipt of uplift
2 charges are exempt from state and local income, sales, franchise,
3 gross receipts, and other taxes or similar charges.

4 Sec. 39.659. SEVERABILITY. Effective on the date the first
5 debt obligations are issued under this subchapter, if any provision
6 in this title or portion of this title is held to be invalid or is
7 invalidated, superseded, replaced, repealed, or expires for any
8 reason, that occurrence does not affect the validity or
9 continuation of this subchapter or any other provision of this
10 title that is relevant to the issuance, administration, payment,
11 retirement, or refunding of debt obligations or to any actions of
12 the independent organization, its successors, an assignee, a
13 collection agent, or a financing party, which shall remain in full
14 force and effect.

15 Sec. 39.660. CUSTOMER CHARGES. All load-serving entities
16 that receive offsets to specific uplift charges from the
17 independent organization under this subchapter must adjust
18 customer invoices to reflect the offsets for any charges that were
19 or would otherwise be passed through to customers under the terms of
20 service with the load-serving entity, including by providing a
21 refund for any offset charges that were previously paid. An
22 electric cooperative, including an electric cooperative that
23 elects to receive offsets, shall not otherwise become subject to
24 rate regulation by the commission and receipt of offsets does not
25 affect the applicability of Chapter 41 to an electric cooperative.

26 Sec. 39.661. ENFORCEMENT. The commission may use any
27 enforcement mechanism established by Chapter 15 or this chapter,

1 including revocation of certification by the commission, against
2 any entity that fails to remit excess receipts from the uplift
3 balance financing under Section 39.653(e) or otherwise
4 misappropriates or misuses amounts received from the uplift balance
5 financing this subchapter.

6 Sec. 39.662. PROPERTY RIGHTS. (a) The rights and interests
7 of the independent organization or its successor under a debt
8 obligation order issued under this subchapter, including the right
9 to impose, collect, and receive uplift charges authorized in a debt
10 obligation order under this subchapter, shall be only contract
11 rights until they are first transferred to an assignee or pledged in
12 connection with the issuance of a financing agreement entered into
13 under Section 39.654(a) or the issuance of debt obligations, at
14 which time they will become uplift property, as described by
15 Subsection (b).

16 (b) Uplift property shall constitute a present property
17 right for purposes of contracts concerning the sale or pledge of
18 property, even though the imposition and collection of uplift
19 charges depends on further acts of the independent organization or
20 others that have not yet occurred. A debt obligation order issued
21 under this subchapter shall remain in effect and the property shall
22 continue to exist for the same period as the pledge of the state
23 described by Section 39.663.

24 (c) All revenues and collections resulting from uplift
25 charges shall constitute proceeds only of the uplift property
26 arising from the debt obligation order.

27 Sec. 39.663. PLEDGE OF STATE. Debt obligations issued

1 pursuant to this subchapter, including any bonds, are not a debt or
2 obligation of the state and are not a charge on its full faith and
3 credit or taxing power. The state pledges, however, for the benefit
4 and protection of financing parties and the independent
5 organization that it will not take or permit any action that would
6 impair the value of uplift property, or reduce, alter, or impair the
7 uplift charges to be imposed, collected, and remitted to financing
8 parties, until the principal, interest and premium, and any other
9 charges incurred and contracts to be performed in connection with
10 the related debt obligations have been paid and performed in full.
11 Any party issuing a debt obligation under this subchapter is
12 authorized to include this pledge in any documentation relating to
13 the obligation.

14 Sec. 39.664. LEGAL ACTIONS INVOLVING PRICING OR UPLIFT
15 ACTIONS. A load-serving entity that receives proceeds from the
16 financing under this subchapter shall return an amount of the
17 proceeds equal to any amount of money received by the entity due to
18 litigation seeking judicial review of pricing or uplift actions
19 taken by the commission or the independent organization in
20 connection with the period of emergency.

21 SECTION 6. The independent organization to which Section
22 39.653(a), Utilities Code, applies shall file the application
23 required by that section not later than the 30th day after the
24 effective date of this Act.

25 SECTION 7. Sections 404.0241(b-2) and (b-3), Government
26 Code, as added by this Act, apply only to a cause of action that
27 accrues on or after the effective date of this Act.

1 SECTION 8. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 4492 was passed by the House on May 6, 2021, by the following vote: Yeas 129, Nays 15, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 4492 on May 28, 2021, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 4492 on May 30, 2021, by the following vote: Yeas 116, Nays 18, 2 present, not voting.

Chief Clerk of the House

H.B. No. 4492

I certify that H.B. No. 4492 was passed by the Senate, with amendments, on May 26, 2021, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 4492 on May 30, 2021, by the following vote: Yeas 25, Nays 6.

Secretary of the Senate

APPROVED: _____

Date

Governor