

By: Paddie

H.B. No. 4492

Substitute the following for H.B. No. 4492:

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C.S.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. 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.

(d) Bonds issued under this subchapter shall be nonrecourse

1 to the credit or any assets of the state and the commission.

2 Sec. 31.102. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

26 (c) The corporation must be self-funded. Before the
27 imposition of charges to recover securitized amounts, the

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

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

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

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

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

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

21 (g) The corporation or an issuer may:

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

26 (2) determine the duties and compensation of a person
27 retained under Subdivision (1), subject to the approval of the

1 commission.

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

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

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

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

20 (c) The corporation may:

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

26 (A) to acquire property and to pledge such
27 property, and any other collateral:

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

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

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

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

11 (3) borrow funds:

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

16 (B) for initial operating expenses;

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

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

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

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

27 (d) The corporation shall maintain separate accounts and

1 records relating to each entity that collects charges for all
2 charges, revenues, assets, liabilities, and expenses relating to
3 the entity's related bond issuances.

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

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

1 that is subject to the state pledge set forth in Section 39.609.

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

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

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

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

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

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

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

1 assessed, and collected as the property of the corporation, subject
2 to subsequent sale, assignment, or transfer by the corporation as
3 authorized under this subchapter;

4 (2) authorize:

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

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

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

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

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

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

25 (f) Bonds issued pursuant to a financing order under this
26 section are secured only by the related property and any other funds
27 pledged under the bond documents. No assets of the state or the

1 entity requesting securitization are subject to claims by the
2 holders of the bonds. Following assignment of the property, the
3 entity requesting securitization does not have any beneficial
4 interest or claim of right in such charges or in any property.

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

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

19 Sec. 39.002. APPLICABILITY. This chapter, other than
20 Sections [39.151](#), [39.1516](#), [39.155](#), [39.157\(e\)](#), [39.203](#), [39.904](#),
21 [39.9051](#), [39.9052](#), and [39.914\(e\)](#), does not apply to a municipally
22 owned utility or an electric cooperative. Sections [39.157\(e\)](#),
23 [39.203](#), and [39.904](#), however, apply only to a municipally owned
24 utility or an electric cooperative that is offering customer
25 choice. If there is a conflict between the specific provisions of
26 this chapter and any other provisions of this title, except for
27 Chapters [40](#) and [41](#), the provisions of this chapter control.

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

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

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

12 SUBCHAPTER M. SECURITIZATION FOR INDEPENDENT ORGANIZATION

13 Sec. 39.601. PURPOSE; USE OF PROCEEDS; BOND CHARGES. (a)
14 The purpose of this subchapter is to enable the independent
15 organization certified under Section 39.151 for the ERCOT power
16 region to use securitization financing to fund substantial balances
17 that would otherwise be uplifted to the wholesale market as a result
18 of market participants defaulting on amounts owed after an extreme
19 pricing event. Securitization will allow wholesale market
20 participants who are owed money to be paid in a more timely manner,
21 while allowing the balance to be repaid over time at a low carrying
22 cost.

23 (b) The proceeds of bonds issued for the purpose described
24 by Subsection (a) must be used solely for the purpose of financing
25 default balances that otherwise would be or have been uplifted to
26 the wholesale market. The commission shall ensure that
27 securitization provides tangible and quantifiable benefits to

1 wholesale market participants, greater than would have been
2 achieved absent the issuance of bonds.

3 (c) The commission shall ensure that the structuring and
4 pricing of the bonds result in the lowest bond charges consistent
5 with market conditions and the terms of the financing order. The
6 present value calculation shall use a discount rate equal to the
7 proposed interest rate on the bonds.

8 Sec. 39.602. DEFINITIONS. In this subchapter:

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

12 (2) "Default charges" means nonbypassable amounts to
13 be charged on all wholesale market transactions administered by the
14 independent organization certified under Section 39.151 for the
15 ERCOT power region, approved by the commission under a financing
16 order to recover qualified costs, that shall be collected by the
17 independent organization, its successors, an assignee, or other
18 collection agents as provided by the financing order.

19 (3) "Financing order" means an order of the commission
20 approving the issuance of bonds and the creation of charges for the
21 recovery of qualified costs.

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

25 (5) "Independent organization" means the independent
26 organization certified under Section 39.151 for the ERCOT power
27 region.

1 (6) "Period of emergency" means the period beginning
2 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
3 2021.

4 (7) "Qualified costs" means a default balance
5 resulting from the period of emergency that otherwise would be or
6 has been uplifted to other wholesale market participants, together
7 with the costs of issuing, supporting, and servicing bonds and any
8 costs of retiring and refunding existing debt in connection with
9 the issuance of the bonds.

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

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

19 (2) the potential effects of uplifting those balances
20 to the wholesale market without a financing vehicle.

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

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

10 (c) Nonbypassable default charges must be collected from
11 and allocated among wholesale market participants using the same
12 methodology under which the charges would otherwise be uplifted
13 under the protocols of the independent organization in effect on
14 March 1, 2021. The rate associated with the nonbypassable default
15 charges must be assessed on all wholesale market participants and
16 may be based on updated transaction data to prevent market
17 participants from engaging in behavior designed to avoid the
18 nonbypassable default charges.

19 (d) A financing order becomes effective in accordance with
20 its terms and the financing order, together with the default
21 charges authorized in the order, shall be irrevocable and not
22 subject to reduction, impairment, or adjustment by further action
23 of the commission after it takes effect.

24 (e) The commission shall issue a financing order not later
25 than the 90th day after the date the independent organization files
26 a request for the financing order under Subsection (a) or (g).

27 (f) A financing order is not subject to rehearing by the

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

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

22 Sec. 39.604. PROPERTY RIGHTS. (a) The rights and interests
23 of the independent organization or its successor under a financing
24 order, including the right to impose, collect, and receive default
25 charges authorized in the order, shall be only contract rights
26 until they are first transferred to an assignee or pledged in
27 connection with the issuance of bonds, at which time they will

1 become default property, as described by Subsection (b).

2 (b) Default property shall constitute a present property
3 right for purposes of contracts concerning the sale or pledge of
4 property, even though the imposition and collection of default
5 charges depends on further acts of the independent organization or
6 others that have not yet occurred. The financing order shall remain
7 in effect and the property shall continue to exist for the same
8 period as the pledge of the state described by Section 39.609.

9 (c) All revenues and collections resulting from default
10 charges shall constitute proceeds only of the default property
11 arising from the financing order.

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

21 Sec. 39.606. DEFAULT CHARGES NONBYPASSABLE. A financing
22 order shall include terms ensuring that the imposition and
23 collection of default charges authorized in the order shall be
24 nonbypassable.

25 Sec. 39.607. TRUE-UP. A financing order shall include a
26 mechanism requiring that default charges be reviewed and adjusted
27 at least annually, not later than the 45th day after the anniversary

1 date of the issuance of the bonds, to:

2 (1) correct over-collections or under-collections of
3 the preceding 12 months; and

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

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

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

1 perfected as of the date of filing.

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

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

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

26 (f) If a default or termination occurs under the bonds, the
27 financing parties or their representatives may foreclose on or

1 otherwise enforce their lien and security interest in any property
2 as if they were secured parties under Chapter 9, Business & Commerce
3 Code, and the commission may order that amounts arising from
4 default charges be transferred to a separate account for the
5 financing parties' benefit, to which their lien and security
6 interest shall apply. On application by or on behalf of the
7 financing parties, a district court of Travis County shall order
8 the sequestration and payment to them of revenues arising from the
9 default charges.

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

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

27 Sec. 39.611. NOT PUBLIC UTILITY. An assignee or financing

1 party may not be considered to be a public utility or person
2 providing electric service solely by virtue of the transactions
3 described in this subchapter.

4 Sec. 39.612. SEVERABILITY. Effective on the date the first
5 bonds are issued under this subchapter, if any provision in this
6 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 bonds or to any actions of the
12 independent organization, its successors, an assignee, a
13 collection agent, or a financing party, which shall remain in full
14 force and effect.

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