

By: Paddie

H.B. No. 4492

A BILL TO BE ENTITLED

AN ACT

relating to the restructuring of certain electric utility providers.

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

SECTION 1. Chapter 39, Utilities Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. SECURITIZATION OF EXTRAORDINARY COSTS

Sec. 39.601. PURPOSE. The purpose of this subchapter is to reduce the cost that customers would otherwise experience due to the extraordinary costs that electric utilities incurred and may incur to secure electric supply and provide service during natural and man-made disasters, system failures, and other catastrophic events and to restore electric utility systems after such events by providing securitization financing enabling electric utilities to recover these costs. This financing mechanism will provide rate relief to customers by extending the timeframe over which the extraordinary costs are recovered from customers and support the financial strength and stability of electric utility companies. The commission shall determine that securitization provides tangible and quantifiable benefits to customers, greater than would have been achieved absent the issuance of the bonds. The commission shall determine that the structuring and pricing of the bonds result in bond charges consistent with the terms of the applicable financing order and market conditions at the time of the pricing of

1 the bonds. The proceeds of the bonds shall be used solely for the
2 purpose of reducing the amount of the regulatory asset determined
3 by the commission to be reasonable and other purposes provided
4 herein.

5 Sec. 39.602. DEFINITIONS. In this subchapter:

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

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

12 (3) "Extraordinary costs and expenses" means:

13 (A) costs and expenses incurred by the electric
14 utility for power and energy purchased during a period of emergency
15 in excess of what would have been paid for the same amount of power
16 and energy at the average rate paid by the electric utility for
17 power and energy purchased during a month outside the period
18 emergency;

19 (B) costs and expenses incurred by the electric
20 utility to generate and transmit power and energy during the period
21 of emergency (including fuel costs, operation and maintenance
22 expenses, overtime costs and all other costs and expenses that
23 would not have been incurred but for the extreme weather
24 conditions); and

25 (C) any charges imposed on the electric utility
26 or on a power supplier to the electric utility and passed on to the
27 electric utility by the applicable regional transmission

1 organization or independent system operator, resulting from
2 defaults by other market participants in the power pool for costs
3 relating to the period of emergency.

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

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

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

18 (7) "Period of emergency" means the period from and
19 including 00:00 February [(START DATE)], 2021 to and including
20 00:00 February [(END DATE)], 2021.

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

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

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

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

14 (A) In and to the transition charges established
15 pursuant to a financing order, including all rights to obtain
16 adjustments in accordance with Section 39.607 and the financing
17 order.

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

25 Sec. 39.603. FINANCING ORDERS; TERMS. (a) The board shall
26 adopt a financing order to recover the electric utility's qualified
27 costs on making a finding that the total amount of revenues to be

1 collected under the financing order is less than the revenue
2 requirement that would be recovered over the remaining life of the
3 transition property using conventional financing methods and that
4 the financing order is consistent with the standards in Section
5 39.601.

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

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

12 (d) A financing order shall become effective in accordance
13 with its terms, and the financing order, together with the
14 transition charges authorized in the order, shall thereafter be
15 irrevocable and not subject to rescission, reduction, impairment,
16 or adjustment or other alteration by further action of the board or
17 by action of any regulatory or other governmental body of the State
18 of Texas, except as permitted by Section 39.607. A financing order
19 issued pursuant to this subchapter shall have the same force and
20 effect of a financing order under Title 2, Chapter 39.

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

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

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

16 Sec. 39.604. PROPERTY RIGHTS. (a) The rights and interests
17 of an electric utility or its subsidiary, affiliate, successor,
18 financing party or assignee under a financing order, including the
19 right to impose, collect, receive and enforce the payment of
20 transition charges authorized in the financing order, shall be only
21 contract rights until such property is first transferred or pledged
22 to an assignee or financing party, as applicable, in connection
23 with the issuance of securitized bonds, at which time such property
24 will become "transition property."

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

1 the contracts and takings clauses of the constitutions and laws of
2 this state and the United States, even if the imposition and
3 collection of transition charges depends on further acts of the
4 electric utility or others that may not have yet occurred.
5 Transition property shall exist whether or not transition charges
6 have been billed, have accrued, or have been collected and
7 notwithstanding the fact that the value or amount of the property is
8 dependent on the future provision of service to customers by the
9 electric utility or its successors or assigns. Upon the issuance of
10 the securitized bonds, the financing order, and satisfaction of the
11 requirements of provisions of Section 39.609, the transition
12 charges, including their nonbypassability, shall be irrevocable,
13 final, non-discretionary and effective without further action by
14 the electric utility or any other person or governmental authority.
15 The financing order shall remain in effect and the property shall
16 continue to exist for the same period as the pledge of the state
17 described in Section 39.670.

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

22 Sec. 39.605. NO SETOFF. The interest of an assignee or
23 pledgee in transition property and in the revenues and collections
24 arising from that property are not subject to setoff, counterclaim,
25 surcharge, recoupment or defense by the electric utility or any
26 other person or in connection with the bankruptcy of the electric
27 utility or any other entity. A financing order shall remain in

1 effect and unabated notwithstanding the bankruptcy of the electric
2 utility, its successors, or assignees.

3 Sec. 39.606. NO BYPASS. A financing order shall include
4 terms ensuring that the imposition and collection of transition
5 charges authorized in the order shall be nonbypassable and shall
6 apply to all customers connected to the electric utility's system
7 assets and taking service, whether or not the system assets
8 continue to be owned by the electric utility.

9 Sec. 39.607. TRUE-UP. A financing order shall be promptly
10 reviewed and adjusted, if after its adoption there are additional
11 charges or refunds of extraordinary costs and expenses so as to
12 ensure that there is neither an over collection or under collection
13 of extraordinary costs and expenses and that collections on the
14 transition property will be sufficient to timely make all periodic
15 and final payments of principal, interest, fees and other amounts,
16 [(and to timely fund all reserve accounts, if any,)] related to the
17 securitized bonds. A financing order shall also include a mechanism
18 requiring that transition charges be reviewed by the board and
19 adjusted at least annually, within 45 days of the anniversary date
20 of the issuance of the securitized bonds, to correct any over
21 collections or under collections of the preceding 12 months and to
22 ensure the expected recovery of amounts sufficient to timely
23 provide all payments of debt service and other required amounts and
24 charges in connection with the securitized bonds. No governmental
25 authority shall have the discretion or authority to disapprove of,
26 or alter, any adjustments made or proposed to be made hereunder
27 other than to correct computation or other manifest errors.

1 Sec. 39.608. TRUE SALE. An agreement by an electric utility
2 or assignee to transfer transition property that expressly states
3 that the transfer is a sale or other absolute transfer signifies
4 that the transaction is a true sale and is not a secured transaction
5 and that title, legal and equitable, has passed to the entity to
6 which the transition property is transferred. The transaction shall
7 be treated as an absolute sale regardless of whether the purchaser
8 has any recourse against the seller, or any other term of the
9 parties' agreement, including the seller's retention of an equity
10 interest in the transition property, the fact that the electric
11 utility acts as the collector of transition charges relating to the
12 transition property, or the treatment of the transfer as a
13 financing for tax, accounting, financial reporting, or other
14 purposes.

15 Sec. 39.609. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
16 DEFAULT. (a) Transition property does not constitute an account or
17 general intangible under Section 9.106, Business & Commerce Code.
18 The transfer, sale or assignment, or the creation, granting,
19 perfection, and enforcement of liens and security interests in
20 transition property are governed by this section and not by the
21 Business & Commerce Code. Transition property shall constitute
22 property for all purposes, including for contracts securing
23 securitized bonds, whether or not the transition property revenues
24 and proceeds have accrued.

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

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

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

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

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

8 (e) The priority of a lien and security interest perfected
9 under this section is not impaired by any later modification of the
10 financing order under Section 39.607 or by the commingling of funds
11 arising from transition charges with other funds, and any other
12 security interest that may apply to those funds shall be terminated
13 when they are transferred to a segregated account for the assignee
14 or a financing party. If transition property has been transferred
15 to an assignee, any proceeds of that property shall be held in trust
16 for the assignee.

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

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

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

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

25 (i) The electric utility, any successor or assign of the
26 electric utility or any other person with any operational control
27 of any portion of the electric utility system assets, whether as

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

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

20 Sec. 39.610. PLEDGE OF STATE. Securitized bonds are not a
21 debt or obligation of the state and are not a charge on its full
22 faith and credit or taxing power. The state irrevocably pledges,
23 however, for the benefit and protection of assignees, financing
24 parties and the electric utility, that it will not take or permit,
25 or permit any agency or other governmental authority or political
26 subdivision of the state to take or permit, any action that would
27 impair the value of transition property, or, except as permitted by

1 Section 39.607, reduce, alter, or impair the transition charges to
2 be imposed, collected, and remitted to financing parties, until the
3 principal, interest and premium, and any other charges incurred and
4 contracts to be performed in connection with the related
5 securitized bonds have been paid and performed in full. Any party
6 issuing securitized bonds is authorized to include this pledge in
7 any documentation relating to those bonds.

8 Sec. 39.611. TAX EXEMPTION. Transactions involving the
9 transfer and ownership of transition property and the receipt of
10 transition charges are exempt from state and local income, sales,
11 franchise, gross receipts, and other taxes or similar charges.

12 Sec. 39.612. NOT PUBLIC UTILITY. An assignee or financing
13 party may not be considered to be a public utility, electric utility
14 or person providing electric service solely by virtue of the
15 transactions described in this subchapter.

16 Sec. 39.613. SEVERABILITY. Effective on the date the first
17 securitized bonds are issued under this subchapter, if any
18 provision in this title or portion of this title is held to be
19 invalid or is invalidated, superseded, replaced, repealed, or
20 expires for any reason, that occurrence does not affect the
21 validity or continuation of this subchapter, or any other provision
22 of this title that is relevant to the issuance, administration,
23 payment, retirement, or refunding of securitized bonds or to any
24 actions of the electric utility, its successors, an assignee, a
25 collection agent, or a financing party, which shall remain in full
26 force and effect.

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