

By: Hancock

S.B. No. 1580

A BILL TO BE ENTITLED

AN ACT

relating to electric cooperatives' use of securitization to address extraordinary costs and expenses created by Winter Storm Uri.

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

TITLE II, Chapter 41, Utility Code, is amended by adding new Subchapter D to read as follows:

SUBCHAPTER D. 2021 WEATHER SECURITIZATION

Sec. 41.151. PURPOSE. The purpose of this subchapter is to enable electric cooperatives to use securitization financing to recover extraordinary costs and expenses incurred because of the abnormal weather events from 12:01 A.M. on February 12 through 11:59 P.M. on February 20, 2021. This type of debt will lower the cost of financing such extraordinary costs and expenses relative to the costs that would be incurred using conventional electric cooperative financing methods. The proceeds of the securitized bonds shall be used solely for the purposes of financing or refinancing such extraordinary costs and expenses, including costs relating to consummation and administration of the securitized financing itself. The board of directors of each electric cooperative involved in such financing shall ensure that securitization provides tangible and quantifiable benefits to its

1 members, greater than would have been achieved absent the issuance
2 of securitized bonds. Each board of directors that chooses to
3 securitize pursuant to this Subchapter shall ensure that the
4 structuring and pricing of the securitized bonds result in
5 reasonable securitized bond charges consistent with market
6 conditions and the terms of the financing order. The amount
7 securitized may not exceed the present value of the revenue
8 requirement over the life of the proposed securitized bonds
9 associated with the extraordinary costs and expenses being
10 financed. The present value calculation shall use a discount rate
11 equal to the proposed interest rate on the securitized bonds.

12 Sec. 41.152. DEFINITIONS. In this subchapter:

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

17 (2) "Extraordinary costs and expenses" means (A) costs
18 and expenses incurred by the electric cooperative for power and
19 energy purchased during the period of emergency in excess of what
20 would have been paid for the same amount of power and energy at the
21 average rate paid by the electric cooperative for power and energy
22 purchased during the month of January, 2021, (B) costs and expenses
23 incurred by the electric cooperative to generate and transmit power
24 and energy during the period of emergency (including fuel costs,
25 operation and maintenance expenses, overtime costs and all other
26 costs and expenses that would not have been incurred but for the
27 extreme weather conditions), and (C) any charges imposed on the

1 electric cooperative or on a power supplier to the electric
2 cooperative and passed on to the electric cooperative by the
3 applicable regional transmission organization or independent
4 system operator, resulting from defaults by other market
5 participants in the regional transmission organization or
6 independent system operator for costs relating to the period of
7 emergency.

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

11 (4) "Financing party" means a holder of securitized
12 bonds, including trustees, collateral agents, and other persons
13 acting for the benefit of the holder.

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

22 (6) "Period of emergency" means the period from and
23 including 12:00 A.M. February 12, 2021 to and including 11:59 P.M.
24 February 20, 2021.

25 (7) "Securitized bonds" means bonds, debentures,
26 notes, certificates of participation or of beneficial interest, or
27 other evidences of indebtedness or ownership that are issued by an

1 electric cooperative, its successors or an assignee under a
2 financing order, that have a term not longer than 30 years, and that
3 are secured by or payable, primarily, from transition property and
4 the proceeds thereof. If certificates of participation, beneficial
5 interest, or ownership are issued, references in this subchapter to
6 principal, interest, or premium shall refer to comparable amounts
7 under those certificates.

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

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

18 (A) In and to the transition charges established
19 pursuant to a financing order, including all rights to obtain
20 adjustments in accordance with Section 41.157 and the financing
21 order.

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

1 financing order.

2 Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board of
3 directors shall adopt a financing order to recover the electric
4 cooperative's qualified costs on making a finding that the total
5 amount of revenues to be collected under the financing order is less
6 than the revenue requirement that would be recovered over the
7 remaining life of the transition property using conventional
8 financing methods and that the financing order is consistent with
9 the standards in Section 41.151.

10 (b) The financing order shall detail the amount of qualified
11 costs to be recovered and the period over which the nonbypassable
12 transition charges shall be recovered, which period may not exceed
13 30 years.

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

16 (d) A financing order shall become effective in accordance
17 with its terms, and the financing order, together with the
18 transition charges authorized in the order, shall thereafter be
19 irrevocable and not subject to rescission, reduction, impairment,
20 or adjustment or other alteration by further action of the board of
21 directors or by action of any regulatory or other governmental body
22 of the State of Texas, except as permitted by Section 41.157. A
23 financing order issued pursuant to this subchapter shall have the
24 same force and effect of a financing order under Title 2, Chapter
25 39.

26 (e) A financing order may be reviewed by appeal only to a
27 district court where the electric cooperative is domiciled by a

1 member of the electric cooperative filed within 15 days after the
2 financing order is adopted by the board. The judgment of the
3 district court may be reviewed only by direct appeal to the Supreme
4 Court of Texas filed within 15 days after entry of judgment. All
5 appeals shall be heard and determined by the district court and the
6 Supreme Court of Texas as expeditiously as possible with lawful
7 precedence over other matters. Review on appeal shall be based
8 solely on the financing order adopted by the board of directors,
9 other information considered by the board of directors in adopting
10 the resolutions and briefs to the court and shall be limited to
11 whether the financing order conforms to the constitution and laws
12 of this state and the United States and is within the authority of
13 the board of directors under this subchapter.

14 (f) The board of directors may adopt a financing order
15 providing for retiring and refunding securitized bonds on making a
16 finding that the future transition charges required to service the
17 new securitized bonds, including transaction costs, will be less
18 than the future transition charges required to service the
19 securitized bonds being refunded. After the indefeasible repayment
20 in full of all outstanding securitized bonds and associated
21 financing costs, the board of directors shall adjust the related
22 transition charges accordingly.

23 Sec. 41.154. PROPERTY RIGHTS. (a) The rights and interests
24 of an electric cooperative or its subsidiary, affiliate, successor,
25 financing party or assignee under a financing order, including the
26 right to impose, collect, receive and enforce the payment of
27 transition charges authorized in the financing order, shall be only

1 contract rights until such property is first transferred or pledged
2 to an assignee or financing party, as applicable, in connection
3 with the issuance of securitized bonds, at which time such property
4 will become "transition property."

5 (b) Transition property that is specified in the financing
6 order shall constitute a present vested property right for all
7 purposes, including, for the avoidance of doubt, for purposes of
8 the contracts and takings clauses of the constitutions and laws of
9 this state and the United States, even if the imposition and
10 collection of transition charges depends on further acts of the
11 electric cooperative or others that may not have yet occurred.
12 Transition property shall exist whether or not transition charges
13 have been billed, have accrued, or have been collected and
14 notwithstanding the fact that the value or amount of the property is
15 dependent on the future provision of service to customers by the
16 electric cooperative or its successors or assigns. Upon the
17 issuance of the securitized bonds, the financing order, and
18 satisfaction of the requirements of provisions of Section 41.159,
19 the transition charges, including their nonbypassability, shall be
20 irrevocable, final, non-discretionary and effective without
21 further action by the electric cooperative or any other person or
22 governmental authority. The financing order shall remain in effect
23 and the property shall continue to exist for the same period as the
24 pledge of the state described in Section 41.160.

25 (c) All revenues, collections, claims, payments, moneys, or
26 proceeds of or arising from or relating to transition charges shall
27 constitute proceeds of the transition property arising from the

1 financing order.

2

3 Sec. 41.155. NO SETOFF. The interest of an assignee or
4 pledgee in transition property and in the revenues and collections
5 arising from that property are not subject to setoff, counterclaim,
6 surcharge, recoupment or defense by the electric cooperative or any
7 other person or in connection with the bankruptcy of the electric
8 cooperative or any other entity. A financing order shall remain in
9 effect and unabated notwithstanding the bankruptcy of the electric
10 cooperative, its successors, or assignees.

11

12 Sec. 41.156. NO BYPASS. A financing order shall include
13 terms ensuring that the imposition and collection of transition
14 charges authorized in the order shall be nonbypassable and shall
15 apply to all customers connected to the electric cooperative's
16 system assets and taking service, whether or not the system assets
17 continue to be owned by the electric cooperative.

18

19 Sec. 41.157. TRUE-UP. A financing order shall be promptly
20 reviewed and adjusted, if after its adoption there are additional
21 charges or refunds of extraordinary costs and expenses so as to
22 ensure that there is neither an over collection or under collection
23 of extraordinary costs and expenses and that collections on the
24 transition property will be sufficient to timely make all periodic
25 and final payments of principal, interest, fees and other amounts,
26 and to timely fund all reserve accounts, if any, related to the
27 securitized bonds. A financing order shall also include a

1 mechanism requiring that transition charges be reviewed by the
2 board and adjusted at least annually, within 45 days of the
3 anniversary date of the issuance of the securitized bonds, to
4 correct any over collections or under collections of the preceding
5 12 months and to ensure the expected recovery of amounts sufficient
6 to timely provide all payments of debt service and other required
7 amounts and charges in connection with the securitized bonds. No
8 governmental authority shall have the discretion or authority to
9 disapprove of, or alter, any adjustments made or proposed to be made
10 hereunder other than to correct computation or other manifest
11 errors.

12
13 Sec. 41.158. TRUE SALE. An agreement by an electric
14 cooperative or assignee to transfer transition property that
15 expressly states that the transfer is a sale or other absolute
16 transfer signifies that the transaction is a true sale and is not a
17 secured transaction and that title, legal and equitable, has passed
18 to the entity to which the transition property is transferred. The
19 transaction shall be treated as an absolute sale regardless of
20 whether the purchaser has any recourse against the seller, or any
21 other term of the parties' agreement, including the seller's
22 retention of an equity interest in the transition property, the
23 fact that the electric cooperative acts as the collector of
24 transition charges relating to the transition property, or the
25 treatment of the transfer as a financing for tax, accounting,
26 financial reporting, or other purposes.

27

1 Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
2 DEFAULT. (a) Transition property does not constitute an account or
3 general intangible under Section 9.106, Business & Commerce Code.
4 The transfer, sale or assignment, or the creation, granting,
5 perfection, and enforcement of liens and security interests in
6 transition property are governed by this section and not by the
7 Business & Commerce Code. Transition property shall constitute
8 property for all purposes, including for contracts securing
9 securitized bonds, whether or not the transition property revenues
10 and proceeds have accrued.

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

1 security interest, as applicable, shall be perfected retroactive to
2 the date value was received, otherwise, the transfer, sale or
3 assignment, or security interest, as applicable, shall be perfected
4 as of the date of filing.

5 (c) Transfer, sale or assignment of an interest in
6 transition property to an assignee shall be perfected against all
7 third parties, including subsequent judicial or other lien
8 creditors, when the financing order becomes effective, transfer
9 documents have been delivered to the assignee, and a notice of that
10 transfer has been filed in accordance with the rules prescribed
11 under Subsection (d); provided, however, that if notice of the
12 transfer has not been filed in accordance with this subsection
13 within 10 days after the delivery of transfer documentation, the
14 transfer of the interest is not perfected against third parties
15 until the notice is filed.

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

21 (e) The priority of a lien and security interest perfected
22 under this section is not impaired by any later modification of the
23 financing order under Section 41.157 or by the commingling of funds
24 arising from transition charges with other funds, and any other
25 security interest that may apply to those funds shall be terminated
26 when they are transferred to a segregated account for the assignee
27 or a financing party. If transition property has been transferred

1 to an assignee, any proceeds of that property shall be held in trust
2 for the assignee.

3 (f) (1) Securitized bonds shall be secured by a statutory
4 lien on the transition property in favor of the owners or beneficial
5 owners of securitized bonds. The lien shall automatically arise
6 upon issuance of the securitized bonds without the need for any
7 action or authorization by the electric cooperative or the board of
8 directors. The lien shall be valid and binding from the time the
9 securitized bonds are executed and delivered. The transition
10 property shall be immediately subject to the lien, and the lien
11 shall immediately attach to the transition property and be
12 effective, binding, and enforceable against the electric
13 cooperative, its creditors, their successors, assignees, and all
14 others asserting rights therein, irrespective of whether those
15 persons have notice of the lien and without the need for any
16 physical delivery, recordation, filing, or further act. The lien
17 is created by this subchapter and not by any security agreement, but
18 may be enforced by any financing party or their representatives as
19 if they were secured parties under Chapter 9, Business & Commerce
20 Code, and upon application by or on behalf of the financing parties,
21 a district court the electric cooperative is domiciled may order
22 that amounts arising from transition charges be transferred to a
23 separate account for the financing parties' benefit.

24 (2) This statutory lien is a continuously perfected
25 security interest and has priority over any other lien, created by
26 operation of law or otherwise, that may subsequently attach to that
27 transition property or proceeds thereof unless the owners or

1 beneficial owners of securitized bonds as specified in the trust
2 agreement or indenture has agreed in writing otherwise. This
3 statutory lien is a lien on the transition charges and all
4 transition charge revenues or other proceeds that are deposited in
5 any deposit account or other account of the servicer or other person
6 in which transition charge revenues or other proceeds have been
7 commingled with other funds.

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

12 (5) The electric cooperative, any successor or assign
13 of the electric cooperative or any other person with any
14 operational control of any portion of the electric cooperative's
15 system assets, whether as owner, lessee, franchisee or otherwise
16 and any successor servicer of collections of the transition charges
17 shall be bound by the requirements of this subchapter and shall
18 perform and satisfy all obligations imposed pursuant hereto in the
19 same manner and to the same extent as did its predecessor, including
20 the obligation to bill, adjust and enforce the payment of
21 transition charges.

22 (g) If a default or termination occurs under the securitized
23 bonds, the financing parties or their representatives may foreclose
24 on or otherwise enforce their lien and security interest in any
25 transition property as if they were secured parties under Chapter
26 9, Business & Commerce Code, and upon application by the electric
27 cooperative or by or on behalf of the financing parties, a district

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

8 Sec. 41.160. PLEDGE OF STATE. Securitized bonds are not a
9 debt or obligation of the state and are not a charge on its full
10 faith and credit or taxing power. The state irrevocably pledges,
11 however, for the benefit and protection of assignees, financing
12 parties and the electric cooperative, that it will not take or
13 permit, or permit any agency or other governmental authority or
14 political subdivision of the state to take or permit, any action
15 that would impair the value of transition property, or, except as
16 permitted by Section 41.157, reduce, alter, or impair the
17 transition charges to be imposed, collected, and remitted to
18 financing parties, until the principal, interest and premium, and
19 any other charges incurred and contracts to be performed in
20 connection with the related securitized bonds have been paid and
21 performed in full. Any party issuing securitized bonds is
22 authorized to include this pledge in any documentation relating to
23 those bonds.

24
25 Sec. 41.161. TAX EXEMPTION. Transactions involving the
26 transfer and ownership of transition property and the receipt of
27 transition charges are exempt from state and local income, sales,

1 franchise, gross receipts, and other taxes or similar charges.

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

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8 Sec. 41.163. SEVERABILITY. Effective on the date the first
9 securitized bonds are issued under this subchapter, if any
10 provision in this title or portion of this title is held to be
11 invalid or is invalidated, superseded, replaced, repealed, or
12 expires for any reason, that occurrence does not affect the
13 validity or continuation of this subchapter, or any other provision
14 of this title that is relevant to the issuance, administration,
15 payment, retirement, or refunding of securitized bonds or to any
16 actions of the electric cooperative, its successors, an assignee, a
17 collection agent, or a financing party, which shall remain in full
18 force and effect.

19