

By: Hancock

S.B. No. 1757

A BILL TO BE ENTITLED

AN ACT

relating to securitizing costs of electric services or electric markets.

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 AND DEFINITIONS.

(a) The purpose of this subchapter is to create a securitization corporation dedicated to financing costs that are eligible for securitization under Subtitle B of this code. Entities that are permitted to securitize costs may, subject to any other requirements applicable to such securitization authority, request that the Texas Electric Securitization Corporation conduct the financing on their behalf.

(b) The Texas Electric Securitization Corporation shall be created pursuant to 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 authorized under this subchapter.

(c) Bonds issued consistent with this subchapter will be solely the obligation of the issuer and the corporation (as borrower, if applicable) and will not be a debt of or a pledge of the faith and credit of the state.

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

4 (e) As used in this subchapter:

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

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

10 Sec. 31.102. CREATION OF THE CORPORATION. (a) The
11 corporation shall be incorporated as a nonprofit corporation and
12 instrumentality of the state, and shall perform the essential
13 governmental function of financing eligible costs in accordance
14 with this subchapter. The corporation shall perform only those
15 functions consistent with this subchapter, shall exercise its
16 powers through a governing board, and shall be subject to the
17 regulation of the commission. The corporation shall have a legal
18 existence as a public corporate body and instrumentality of the
19 state separate and distinct from the state.

20 (b) Assets of the corporation shall not be considered part
21 of any state fund. The state shall not budget for or provide any
22 general fund appropriations to the corporation, and the debts,
23 claims, obligations, and liabilities of the corporation shall not
24 be considered to be a debt of the state or a pledge of its credit.
25 The corporation shall be self-funded. Prior to the imposition of
26 charges to recover the securitized amounts, the corporation may
27 accept and expend for its operating expenses such funds as may be

1 received from any source, including financing agreements with the
2 state, a commercial bank, or another entity to finance the
3 corporation's obligations until the corporation receives
4 sufficient property to cover its operating expenses as financing
5 costs, and to repay any short-term borrowing under any such
6 financing agreement.

7 (c) The corporation shall have the powers, rights, and
8 privileges provided for a corporation organized under Chapter 22,
9 Business Organizations Code, subject to the express exceptions and
10 limitations set forth in this subchapter.

11 (d) An incorporator selected by the executive director of
12 the commission shall prepare the articles of incorporation of the
13 corporation under Chapter 22, Business Organizations Code, which
14 articles shall be consistent with the provisions of this
15 subchapter.

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

20 (f) The corporation and any issuer may retain such
21 professionals, financial advisors, and accountants as it may deem
22 necessary to fulfill its duties under this subchapter and may
23 determine their duties and compensation, subject to approval of the
24 commission.

25 (g) The governing body of the corporation shall be a board
26 of directors that shall consist of five members appointed by the
27 commission. All official action of the governing body shall

1 require the favorable vote of a majority of the board members
2 present and voting at any meeting of the board of directors.

3 Sec. 31.103. POWERS AND DUTIES OF THE CORPORATION. (a) The
4 corporation shall, in each instance subject to the prior
5 authorization of the commission, participate in the financial
6 transactions contemplated by this subchapter. The corporation
7 shall engage in no other business activities except those
8 activities provided for in this subchapter and those ancillary and
9 incidental thereto. Neither the corporation nor any issuer shall
10 apply any proceeds of bonds or charges to any purpose not specified
11 in a financing order, or to any purpose in excess of the amount
12 allowed for such purpose in the order, or to any purpose in
13 contravention of the order.

14 (b) The governing board of the corporation shall, pursuant
15 to the provisions of this subchapter, have the power to employ or
16 retain such persons as are necessary to perform the duties of the
17 corporation.

18 (c) The corporation may:

19 (1) Acquire, sell, pledge, and transfer property as
20 necessary to effect the purposes of this subchapter. In connection
21 therewith, the corporation may agree to such terms and conditions
22 as it deems necessary and proper, consistent with the terms of a
23 financing order, (i) to acquire property and to pledge such
24 property, and any other collateral, (a) to secure payment of bonds
25 issued by the corporation, together with payment of any other
26 qualified costs, or (b) to secure repayment of any borrowing from
27 any other issuer of bonds, or (ii) to sell the property to another

1 issuer, which may in turn pledge such property, together with any
2 other collateral, to the repayment of bonds issued by the issuer
3 together with any other qualified costs;

4 (2) Issue bonds on terms and conditions consistent
5 with a financing order;

6 (3) Borrow funds from an issuer of bonds to acquire
7 property, and pledge such property to the repayment of any
8 borrowing from an issuer, together with any related qualified
9 costs, all on terms and conditions consistent with a financing
10 order. The corporation may also borrow funds for initial operating
11 expenses;

12 (4) Sue or be sued in its corporate name. The
13 corporation has the authority to intervene as a party before the
14 commission or any court in this state in any matter involving the
15 corporation's powers and duties;

16 (5) Negotiate and become a party to such contracts as
17 necessary, convenient, or desirable to carry out the purposes of
18 this subchapter; and

19 (6) Engage in corporate actions or undertakings that
20 are permitted for nonprofit corporations in this state and that are
21 not prohibited by, or contrary to, the provisions of this
22 subchapter.

23 (d) The corporation shall maintain separate accounts and
24 records relating to an entity that is collecting charges for all
25 charges, revenues, assets, liabilities, and expenses relating to an
26 entity's related bond issuances.

27 (e) The governing board of the corporation shall be

1 prohibited from authorizing any rehabilitation, liquidation, or
2 dissolution of the corporation, and no such rehabilitation,
3 liquidation, or dissolution of the corporation shall take effect as
4 long as any bonds are outstanding unless adequate protection and
5 provision has been made for the payment of the bonds pursuant to the
6 documents authorizing the issuance of the bonds. In the event of any
7 rehabilitation, liquidation, or dissolution, the assets of the
8 corporation shall be applied first to pay all debts, liabilities,
9 and obligations of the corporation, including the establishment of
10 reasonable reserves for any contingent liabilities or obligations,
11 and all remaining funds of the corporation shall be applied and
12 distributed as provided by an order of the commission.

13 (f) Prior to the date that is two years and one day after
14 which the corporation no longer has any payment obligation with
15 respect to any bonds, including any obligation to any issuer of any
16 bonds outstanding, the corporation is prohibited from filing and
17 shall have no authority to file a voluntary petition under the
18 Federal Bankruptcy Code, as it may, from time to time, be in effect,
19 and neither any public official nor any organization, entity, or
20 other person shall authorize the corporation to be or to become a
21 debtor under the Federal Bankruptcy Code during such period. The
22 state covenants that it will not limit or alter the denial of
23 authority under this subsection or subsection (e), and the
24 provisions of such subsections are hereby made a part of the
25 contractual obligation that is subject to the state pledge set
26 forth in Section [39.310](#).

27 (g) The corporation shall prepare an operating budget

1 annually that shall be submitted for approval to the commission. If
2 requested by the commission, the corporation shall prepare and
3 submit an annual report containing, among other appropriate
4 matters, the annual operating and financial statements of the
5 corporation.

6 Sec. 31.104. COMMISSION REGULATION OF THE CORPORATION. The
7 commission shall regulate the corporation as provided for in this
8 subchapter. Notwithstanding such regulation, the corporation is
9 not a public utility.

10 Sec. 31.105. FINANCING ORDER. (a) This section applies to
11 the commission's issuance of a financing order under this
12 subchapter.

13 (b) Except as otherwise specifically provided in this
14 subchapter, provisions that apply to a financing order authorized
15 under Subtitle B apply to the commission's issuance of a financing
16 order under this subchapter for the same purpose.

17 (c) The corporation and any issuer shall be a party to the
18 commission's proceedings addressing the issuance of a financing
19 order along with the entity requesting securitization.

20 (d) A financing order issued under this subchapter shall, in
21 addition to any other applicable requirements under Subtitle B:

22 (1) Require the sale, assignment, or other transfer of
23 certain specified property created by the financing order to the
24 corporation, and following such sale, assignment, or transfer,
25 charges paid under any financing order shall be created, assessed,
26 and collected as the property of the corporation, subject to
27 subsequent sale, assignment, or transfer by the corporation as

1 authorized under this subchapter.

2 (2) Authorize either:

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

8 (B) the acquisition of specified property from
9 the entity requesting securitization by the corporation, financed
10 (i) by a loan by an issuer to the corporation of the proceeds of
11 bonds (net of issuance costs), or (ii) by the acquisition by an
12 issuer from the corporation of such property, and in each case, the
13 pledge of such property to the repayment of such loan or bonds, as
14 applicable;

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

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

23 (f) Bonds issued pursuant to a financing order under this
24 section are secured only by the related property and any other funds
25 pledged under the bond documents, and no assets of the state or any
26 entity requesting securitization under this chapter shall be
27 subject to claims by such bondholders. Following assignment of the

1 property, the entity requesting securitization shall not have any
2 beneficial interest or claim of right in such charges or in any
3 property.

4 Sec. 31.106. 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 any other provision of this title that is relevant to
10 the issuance, administration, payment, retirement, or refunding of
11 authorized securitization bonds or to any actions of an entity
12 requesting securitization under this subchapter, its successors,
13 an assignee, a collection agent, the corporation, an issuer, or a
14 financing party, and those provisions shall remain in full force
15 and effect.

16 SECTION 3. Chapter 39, Utilities Code, is amended by adding
17 Subchapter M to read as follows:

18 Sec. 39.601. PURPOSE. The purpose of this subchapter is to
19 enable the independent organization certified under section 39.151
20 to use securitization financing to fund substantial balances that
21 would otherwise be uplifted to the wholesale market as a result of
22 market participants defaulting on amounts owed after an extreme
23 pricing event. Securitization will allow wholesale market
24 participants who are owed money to be paid in a more timely manner,
25 while allowing the balance to be repaid over time at a low carrying
26 cost. The proceeds of the bonds shall be used solely for the
27 purposes of financing default balances that would otherwise be

1 uplifted to the wholesale market. The commission shall ensure that
2 securitization provides tangible and quantifiable benefits to
3 wholesale market participants, greater than would have been
4 achieved absent the issuance of bonds. The commission shall ensure
5 that the structuring and pricing of the bonds result in the lowest
6 bond charges consistent with market conditions and the terms of the
7 financing order. The amount securitized may not exceed the present
8 value of the revenue requirement over the life of the proposed bond
9 associated with default balances that are sought to be securitized.
10 The present value calculation shall use a discount rate equal to the
11 proposed interest rate on the bonds.

12 Sec. 39.602. DEFINITIONS. In this subchapter:

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

17 (2) "Financing order" means an order of the commission
18 approving the issuance of bonds and the creation of charges for the
19 recovery of qualified costs.

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

23 (4) "Qualified costs" means a default balance that
24 would otherwise be uplifted to other wholesale market participants,
25 together with the costs of issuing, supporting, and servicing bonds
26 and any costs of retiring and refunding existing debt in connection
27 with the issuance of the bonds.

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

8 Sec. 39.603. FINANCING ORDERS; TERMS. (a) The commission
9 may adopt a financing order, on application of the independent
10 organization, to recover the costs of a substantial default balance
11 resulting from a significant pricing event on making a finding that
12 such financing is needed to preserve the integrity of the wholesale
13 market and the public interest, after considering the interests of
14 wholesale market participants who are owed balances and the
15 potential impacts of uplifting those balances to the wholesale
16 market without a financing vehicle.

17 (b) The financing order shall detail the amounts to be
18 recovered and the period over which the nonbypassable default
19 charges shall be recovered, which period may not exceed 15 years. If
20 an amount determined under this section is subject to judicial
21 review at the time of the securitization proceeding, the financing
22 order shall include an adjustment mechanism requiring the
23 independent organization to adjust its default charges in a manner
24 that would refund, over the remaining life of the bonds, any
25 overpayments resulting from securitization of amounts in excess of
26 the amount resulting from a final determination after completion of
27 all appellate reviews. The adjustment mechanism may not affect the

1 stream of revenue available to service the bonds. An adjustment may
2 not be made under this subsection until all appellate reviews,
3 including, if applicable, appellate reviews following a commission
4 decision on remand of its original orders, have been completed.

5 (c) Nonbypassable default charges shall be collected and
6 allocated among wholesale market participants on the same basis
7 that they would otherwise be uplifted pursuant to the protocols of
8 the independent organization.

9 (d) A financing order shall become effective in accordance
10 with its terms, and the financing order, together with the default
11 charges authorized in the order, shall thereafter be irrevocable
12 and not subject to reduction, impairment, or adjustment by further
13 action of the commission.

14 (e) The commission shall issue a financing order under
15 Subsections (a) and (g) not later than 90 days after the independent
16 organization files its request for the financing order.

17 (f) A financing order is not subject to rehearing by the
18 commission. A financing order may be reviewed by appeal only to a
19 Travis County district court by a party to the proceeding filed
20 within 15 days after the financing order is signed by the
21 commission. The judgment of the district court may be reviewed only
22 by direct appeal to the Supreme Court of Texas filed within 15 days
23 after entry of judgment. All appeals shall be heard and determined
24 by the district court and the Supreme Court of Texas as
25 expeditiously as possible with lawful precedence over other
26 matters. Review on appeal shall be based solely on the record before
27 the commission and briefs to the court and shall be limited to

1 whether the financing order conforms to the constitution and laws
2 of this state and the United States and is within the authority of
3 the commission under this chapter.

4 (g) At the request of the independent organization, the
5 commission may adopt a financing order providing for retiring and
6 refunding the bonds on making a finding that the future default
7 charges required to service the new bonds, including transaction
8 costs, will be less than the future default charges required to
9 service the bonds being refunded. On the retirement of the refunded
10 bonds, the commission shall adjust the related default charges
11 accordingly.

12 Sec. 39.604. PROPERTY RIGHTS. (a) The rights and interests
13 of the independent organization or its successor under a financing
14 order, including the right to impose, collect, and receive default
15 charges authorized in the order, shall be only contract rights
16 until they are first transferred to an assignee or pledged in
17 connection with the issuance of bonds, at which time they will
18 become "default property."

19 (b) Default property shall constitute a present property
20 right for purposes of contracts concerning the sale or pledge of
21 property, even though the imposition and collection of default
22 charges depends on further acts of the independent organization or
23 others that have not yet occurred. The financing order shall remain
24 in effect and the property shall continue to exist for the same
25 period as the pledge of the state described in Section 36.310.

26 (c) All revenues and collections resulting from default
27 charges shall constitute proceeds only of the default property

1 arising from the financing order.

2 Sec. 39.605. NO SETOFF. The interest of an assignee or
3 pledgee in default property and in the revenues and collections
4 arising from that property are not subject to setoff, counterclaim,
5 surcharge, or defense by the independent organization or any other
6 person or in connection with the bankruptcy of any wholesale market
7 participant. A financing order shall remain in effect and unabated
8 notwithstanding the bankruptcy of the independent organization,
9 its successors, or assignees.

10 Sec. 39.606. NO BYPASS. A financing order shall include
11 terms ensuring that the imposition and collection of default
12 charges authorized in the order shall be nonbypassable.

13 Sec. 39.607. TRUE-UP. A financing order shall include a
14 mechanism requiring that default charges be reviewed and adjusted
15 at least annually, within 45 days of the anniversary date of the
16 issuance of the bonds, to correct any overcollections or
17 undercollections of the preceding 12 months and to ensure the
18 expected recovery of amounts sufficient to timely provide all
19 payments of debt service and other required amounts and charges in
20 connection with the bonds.

21 Sec. 39.609. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
22 DEFAULT. (a) Default property does not constitute an account or
23 general intangible under Section 9.106, Business & Commerce Code.
24 The creation, granting, perfection, and enforcement of liens and
25 security interests in default property are governed by this section
26 and not by the Business & Commerce Code.

27 (b) A valid and enforceable lien and security interest in

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

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

26 (d) The secretary of state shall implement this section by
27 establishing and maintaining a separate system of records for the

1 filing of notices under this section and prescribing the rules for
2 those filings based on Chapter 9, Business & Commerce Code, adapted
3 to this subchapter and using the terms defined in this subchapter.

4 (e) The priority of a lien and security interest perfected
5 under this section is not impaired by any later modification of the
6 financing order under Section 31.607 or by the commingling of funds
7 arising from default charges with other funds, and any other
8 security interest that may apply to those funds shall be terminated
9 when they are transferred to a segregated account for the assignee
10 or a financing party. If default property has been transferred to an
11 assignee, any proceeds of that property shall be held in trust for
12 the assignee.

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

24 Sec. 39.610. PLEDGE OF STATE. Default bonds are not a debt
25 or obligation of the state and are not a charge on its full faith and
26 credit or taxing power. The state pledges, however, for the benefit
27 and protection of financing parties and the independent

1 organization, that it will not take or permit any action that would
2 impair the value of default property, or reduce, alter, or impair
3 the default charges to be imposed, collected, and remitted to
4 financing parties, until the principal, interest and premium, and
5 any other charges incurred and contracts to be performed in
6 connection with the related bonds have been paid and performed in
7 full. Any party issuing under this chapter bonds is authorized to
8 include this pledge in any documentation relating to those bonds.

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

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

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

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