

By: Paxton

S.B. No. 1950

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the use of securitization by electric cooperatives to
3 address extraordinary costs and expenses resulting from Winter
4 Storm Uri.

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

6 SECTION 1. Chapter 41, Utilities Code, is amended by adding
7 Subchapter D to read as follows:

8 SUBCHAPTER D. WEATHER SECURITIZATION

9 Sec. 41.151. PURPOSE. The purpose of this subchapter is to
10 enable electric cooperatives to use securitization financing to
11 recover extraordinary costs and expenses incurred because of the
12 abnormal weather events from 12:01 a.m. on February 12, 2021,
13 through 11:59 p.m. on February 20, 2021. This type of debt will
14 lower the cost of financing such extraordinary costs and expenses
15 relative to the costs that would be incurred using conventional
16 electric cooperative financing methods. The proceeds of the
17 securitized bonds shall be used solely for the purposes of
18 financing or refinancing such extraordinary costs and expenses,
19 including costs relating to consummation and administration of the
20 securitized financing itself. The board of directors of each
21 electric cooperative involved in such financing shall ensure that
22 securitization provides tangible and quantifiable benefits to its
23 members, greater than would have been achieved absent the issuance
24 of securitized bonds. Each board of directors that chooses to

1 securitize pursuant to this subchapter shall ensure that the
2 structuring and pricing of the securitized bonds result in
3 reasonable securitized bond charges consistent with market
4 conditions and the terms of the financing order. The amount
5 securitized may not exceed the present value of the revenue
6 requirement over the life of the proposed securitized bonds
7 associated with the extraordinary costs and expenses being
8 financed. The present value calculation shall use a discount rate
9 equal to the proposed interest rate on the securitized bonds.

10 Sec. 41.152. DEFINITIONS. In this subchapter:

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

15 (2) "Extraordinary costs and expenses" means:

16 (A) costs and expenses incurred by the electric
17 cooperative for power and energy purchased during the period of
18 emergency in excess of what would have been paid for the same amount
19 of power and energy at the average rate paid by the electric
20 cooperative for power and energy purchased during the month of
21 January 2021;

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

1 (C) any charges imposed on the electric
2 cooperative or on a power supplier to the electric cooperative and
3 passed on to the electric cooperative by the applicable regional
4 transmission organization or independent system operator resulting
5 from defaults by other market participants in the regional
6 transmission organization or independent system operator for costs
7 relating to the period of 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 12:01
23 a.m. on February 12, 2021, through 11:59 p.m. on February 20, 2021.

24 (7) "Securitized bonds" means bonds, debentures,
25 notes, certificates of participation or of beneficial interest, or
26 other evidences of indebtedness or ownership that are issued by an
27 electric cooperative, its successors, or an assignee under a

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

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

13 (9) "Transition property" means the property right
14 created pursuant to this subchapter, including the right, title,
15 and interest of the electric cooperative or its assignee:

16 (A) in and to the transition charges established
17 pursuant to a financing order, including all rights to obtain
18 adjustments in accordance with Section 41.157 and the financing
19 order; and

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

27 Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board of

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

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

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

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

23 (e) A financing order may be reviewed by appeal only to a
24 district court of the county where the electric cooperative is
25 domiciled by a member of the electric cooperative filed within 15
26 days after the financing order is adopted by the board of directors.
27 The judgment of the district court may be reviewed only by direct

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

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

21 Sec. 41.154. PROPERTY RIGHTS. (a) The rights and interests
22 of an electric cooperative or its subsidiary, affiliate, successor,
23 financing party, or assignee under a financing order, including the
24 right to impose, collect, receive, and enforce the payment of
25 transition charges authorized in the financing order, shall be only
26 contract rights until such property is first transferred or pledged
27 to an assignee or financing party, as applicable, in connection

1 with the issuance of securitized bonds, at which time such property
2 becomes transition property.

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

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

27 Sec. 41.155. NO SETOFF. The interest of an assignee or

1 pledgee in transition property and in the revenues and collections
2 arising from that property are not subject to setoff, counterclaim,
3 surcharge, recoupment, or defense by the electric cooperative or
4 any other person or in connection with the bankruptcy of the
5 electric cooperative or any other entity. A financing order shall
6 remain in effect and unabated notwithstanding the bankruptcy of the
7 electric cooperative, its successors, or assignees.

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

14 Sec. 41.157. TRUE-UP. A financing order shall be promptly
15 reviewed and adjusted if, after its adoption, there are additional
16 charges or refunds of extraordinary costs and expenses so as to
17 ensure that there is neither an over-collection nor-under
18 collection of extraordinary costs and expenses and that collections
19 on the transition property will be sufficient to timely make all
20 periodic and final payments of principal, interest, fees, and other
21 amounts and to timely fund all reserve accounts, if any, related to
22 the securitized bonds. A financing order shall also include a
23 mechanism requiring that transition charges be reviewed by the
24 board of directors and adjusted at least annually, within 45 days
25 after the anniversary date of the issuance of the securitized
26 bonds, to correct any over-collections or under-collections of the
27 preceding 12 months and to ensure the expected recovery of amounts

1 sufficient to timely provide all payments of debt service and other
2 required amounts and charges in connection with the securitized
3 bonds. No governmental authority shall have the discretion or
4 authority to disapprove of, or alter, any adjustments made or
5 proposed to be made hereunder other than to correct computation or
6 other manifest errors.

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

21 Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
22 DEFAULT. (a) Transition property does not constitute an account or
23 general intangible under Section 9.106, Business & Commerce Code.
24 The transfer, sale, or assignment, or the creation, granting,
25 perfection, and enforcement, of liens and security interests in
26 transition property are governed by this section and not by the
27 Business & Commerce Code. Transition property shall constitute

1 property for all purposes, including for contracts securing
2 securitized bonds, whether or not the transition property revenues
3 and proceeds have accrued.

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

25 (c) Transfer, sale, or assignment of an interest in
26 transition property to an assignee shall be perfected against all
27 third parties, including subsequent judicial or other lien

1 creditors, when the financing order becomes effective, transfer
2 documents have been delivered to the assignee, and a notice of that
3 transfer has been filed in accordance with the rules prescribed
4 under Subsection (d); provided, however, that if notice of the
5 transfer has not been filed in accordance with this subsection
6 within 10 days after the delivery of transfer documentation, the
7 transfer of the interest is not perfected against third parties
8 until the notice is filed.

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

14 (e) The priority of a lien and security interest perfected
15 under this section is not impaired by any later modification of the
16 financing order under Section 41.157 or by the commingling of funds
17 arising from transition charges with other funds, and any other
18 security interest that may apply to those funds shall be terminated
19 when they are transferred to a segregated account for the assignee
20 or a financing party. If transition property has been transferred
21 to an assignee, any proceeds of that property shall be held in trust
22 for the assignee.

23 (f)(1) Securitized bonds shall be secured by a statutory
24 lien on the transition property in favor of the owners or beneficial
25 owners of securitized bonds. The lien shall automatically arise
26 upon issuance of the securitized bonds without the need for any
27 action or authorization by the electric cooperative or the board of

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

18 (2) This statutory lien is a continuously perfected
19 security interest and has priority over any other lien, created by
20 operation of law or otherwise, that may subsequently attach to that
21 transition property or proceeds thereof unless the owners or
22 beneficial owners of securitized bonds as specified in the trust
23 agreement or indenture have agreed in writing otherwise. This
24 statutory lien is a lien on the transition charges and all
25 transition charge revenues or other proceeds that are deposited in
26 any deposit account or other account of the servicer or other person
27 in which transition charge revenues or other proceeds have been

1 commingled with other funds.

2 (3) The statutory lien is not adversely affected or
3 impaired by, among other things, the commingling of transition
4 charge revenues or other proceeds from transition charges with
5 other amounts regardless of the person holding such amounts.

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

16 (g) If a default or termination occurs under the securitized
17 bonds, the financing parties or their representatives may foreclose
18 on or otherwise enforce their lien and security interest in any
19 transition property as if they were secured parties under Chapter
20 9, Business & Commerce Code, and upon application by the electric
21 cooperative or by or on behalf of the financing parties, a district
22 court of Travis County may order that amounts arising from
23 transition charges be transferred to a separate account for the
24 financing parties' benefit, to which their lien and security
25 interest shall apply. On application by or on behalf of the
26 financing parties, a district court of the county where the
27 electric cooperative is domiciled shall order the sequestration and

1 payment to them of revenues arising from the transition charges.

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

18 Sec. 41.161. TAX EXEMPTION. Transactions involving the
19 transfer and ownership of transition property and the receipt of
20 transition charges are exempt from state and local income, sales,
21 franchise, gross receipts, and other taxes or similar charges.

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

26 Sec. 41.163. SEVERABILITY. Effective on the date the first
27 securitized bonds are issued under this subchapter, if any

1 provision in this title or portion of this title is held to be
2 invalid or is invalidated, superseded, replaced, or repealed or
3 expires for any reason, that occurrence does not affect the
4 validity or continuation of this subchapter, or any other provision
5 of this title that is relevant to the issuance, administration,
6 payment, retirement, or refunding of securitized bonds or to any
7 actions of the electric cooperative, its successors, an assignee, a
8 collection agent, or a financing party, which shall remain in full
9 force and effect.

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