

SENATE AMENDMENTS

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By: Paddie

H.B. No. 4492

A BILL TO BE ENTITLED

AN ACT

relating to securitizing costs associated with electric markets;
granting authority to issue bonds.

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

SECTION 1. Chapter 31, Utilities Code, is amended by adding
Subchapter C to read as follows:

SUBCHAPTER C. SECURITIZATION CORPORATION

Sec. 31.101. PURPOSE. (a) The purpose of this subchapter is to create a corporation dedicated to financing costs that are eligible for securitization as provided by Subchapter M, Chapter 39, to securitize costs not securitized under Subchapter D, Chapter 41. An entity authorized to securitize costs under Subchapter M, Chapter 39, subject to any other requirements applicable to the authorization, may request that the Texas Electric Securitization Corporation conduct the financing on behalf of the entity.

(b) The Texas Electric Securitization Corporation is created under this subchapter as a special purpose public corporation and instrumentality of the state for the essential public purpose of providing a lower-cost financing mechanism for securitization in the manner provided by this subchapter.

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

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

3 Sec. 31.102. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

27 (c) The corporation must be self-funded. Before the

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

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

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

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

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

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

22 (g) The corporation or an issuer may:

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

27 (2) determine the duties and compensation of a person

1 retained under Subdivision (1), subject to the approval of the
2 commission.

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

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

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

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

21 (c) The corporation may:

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

27 (A) to acquire property and to pledge such

1 property, and any other collateral:

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

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

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

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

12 (3) borrow funds:

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

17 (B) for initial operating expenses;

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

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

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

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

1 (d) The corporation shall maintain separate accounts and
2 records relating to each entity that collects charges for all
3 charges, revenues, assets, liabilities, and expenses relating to
4 the entity's related bond issuances.

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

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

1 Subsection (e) are hereby made a part of the contractual obligation
2 that is subject to the state pledge set forth in Section 39.609.

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

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

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

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

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

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

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

1 require that charges paid under any financing order be created,
2 assessed, and collected as the property of the corporation, subject
3 to subsequent sale, assignment, or transfer by the corporation as
4 authorized under this subchapter;

5 (2) authorize:

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

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

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

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

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

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

26 (f) Bonds issued pursuant to a financing order under this
27 section are secured only by the related property and any other funds

1 pledged under the bond documents. No assets of the state or the
2 entity requesting securitization are subject to claims by the
3 holders of the bonds. Following assignment of the property, the
4 entity requesting securitization does not have any beneficial
5 interest or claim of right in such charges or in any property.

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

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

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

1 Chapters 40 and 41, the provisions of this chapter control.

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

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

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

13 SUBCHAPTER M. SECURITIZATION FOR INDEPENDENT ORGANIZATION

14 Sec. 39.601. PURPOSE; USE OF PROCEEDS; BOND CHARGES. (a)
15 The purpose of this subchapter is to enable the independent
16 organization certified under Section 39.151 for the ERCOT power
17 region to use securitization financing to fund substantial default
18 balances that would otherwise be uplifted to the wholesale market
19 as a result of market participants defaulting on amounts owed after
20 an extreme pricing event and extraordinary ancillary service and
21 reliability deployment price adder charges that were uplifted on a
22 load ratio share basis. Securitization will allow wholesale market
23 participants who are owed money to be paid in a more timely manner,
24 while allowing the balance to be repaid over time at a low carrying
25 cost. This subchapter and Subchapter D, Chapter 41, do not change,
26 alter, or reduce the obligation of a market participant to timely
27 and fully pay the debts or obligations of the market participant to

1 the independent organization.

2 (b) The proceeds of bonds issued for the purpose described
3 by Subsection (a) must be used solely for the purpose of financing
4 default balances that otherwise would be or have been uplifted to
5 the wholesale market and uplift balances that were allocated to all
6 load-serving entities on a load ratio share basis as a result of
7 usage during the period of emergency. The commission shall ensure
8 that securitization provides tangible and quantifiable benefits to
9 wholesale market participants, greater than would have been
10 achieved absent the issuance of bonds.

11 (c) The commission shall ensure that the structuring and
12 pricing of the bonds result in the lowest bond charges consistent
13 with market conditions and the terms of the financing order. The
14 present value calculation shall use a discount rate equal to the
15 proposed interest rate on the bonds.

16 (d) The commission shall require that all market
17 participants, including market participants not otherwise subject
18 to this subchapter, pay or make provision for the full and prompt
19 payment to the independent organization certified under Section
20 39.151 for the ERCOT power region of all amounts owed to the
21 independent organization to qualify, or to continue to qualify, as
22 a market participant in the ERCOT power region. The commission and
23 the independent organization shall pursue collection in full of
24 amounts owed to the independent organization by any market
25 participant to reduce the qualifying costs that would otherwise be
26 borne by other market participants or their customers.

27 Sec. 39.602. DEFINITIONS. In this subchapter:

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

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

11 (3) "Financing order" means an order of the commission
12 approving the issuance of bonds and the creation of charges for the
13 recovery of qualified costs.

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

17 (5) "Independent organization" means the independent
18 organization certified under Section 39.151 for the ERCOT power
19 region.

20 (6) "Load-serving entity" means a municipally owned
21 utility, an electric cooperative, or a retail electric provider.

22 (7) "Period of emergency" means the period beginning
23 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
24 2021.

25 (8) "Qualified costs" means a default balance
26 resulting from the period of emergency that otherwise would be or
27 has been uplifted to other wholesale market participants, together

1 with the costs of issuing, supporting, and servicing bonds and any
2 costs of retiring and refunding existing debt in connection with
3 the issuance of the bonds.

4 (9) "Uplift charges" means charges for reliability
5 deployment price adders and ancillary services costs in excess of
6 the commission's system-wide offer cap that were uplifted to
7 load-serving entities on a load ratio share basis due to energy
8 consumption during the period of emergency. The term includes only
9 uplifted amounts and does not include amounts that were part of the
10 prevailing settlement point price.

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

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

20 (2) the potential effects of uplifting those balances
21 without a financing vehicle.

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

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

12 (c) Nonbypassable default charges must be collected and
13 allocated among wholesale market participants using the same
14 allocation methodology described in the protocols of the
15 independent organization, as they existed on March 1, 2021. The
16 rate associated with the nonbypassable default charges must be
17 assessed on all wholesale market participants, including market
18 participants who are in default but still participating in the
19 wholesale market, and must be based on updated transaction data to
20 prevent market participants from engaging in behavior designed to
21 avoid the nonbypassable default charges.

22 (d) Notwithstanding another provision of this subchapter,
23 nonbypassable default charges may not be collected from or
24 allocated to a market participant that:

25 (1) would otherwise be subject to an uplift charge
26 solely as a result of acting as a central counterparty
27 clearinghouse in wholesale market transactions in the ERCOT power

1 region; and

2 (2) is regulated as a derivatives clearing
3 organization, as defined by the Commodity Exchange Act (7 U.S.C.
4 Section 1a).

5 (e) Nonbypassable uplift charges must be allocated to all
6 load-serving entities on a load ratio share basis, excluding the
7 load of entities that have opted out under Subsection (f).

8 (f) The commission shall develop a process that allows a
9 load-serving entity and any customer whose demand is greater than
10 one megawatt and is served by a retail electric provider to opt out
11 of the uplift charges by paying in full all invoices owed for usage
12 during the period of emergency. Load-serving entities and
13 individual customers that opt out may not receive any proceeds from
14 the uplift bonds.

15 (g) A financing order becomes effective in accordance with
16 its terms and the financing order, together with the default or
17 uplift charges authorized in the order, shall be irrevocable and
18 not subject to reduction, impairment, or adjustment by further
19 action of the commission after it takes effect.

20 (h) The commission shall issue a financing order not later
21 than the 90th day after the date the independent organization files
22 a request for the financing order under Subsection (a) or (j).

23 (i) A financing order is not subject to rehearing by the
24 commission. A financing order may be reviewed by appeal by a party
25 to the proceeding to a Travis County district court filed not later
26 than the 15th day after the date the financing order is signed by
27 the commission. The judgment of the district court may be reviewed

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

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

18 Sec. 39.604. PROPERTY RIGHTS. (a) The rights and interests
19 of the independent organization or its successor under a financing
20 order, including the right to impose, collect, and receive default
21 or uplift charges authorized in the order, shall be only contract
22 rights until they are first transferred to an assignee or pledged in
23 connection with the issuance of bonds, at which time they will
24 become default or uplift property, as described by Subsection (b).

25 (b) Default or uplift property shall constitute a present
26 property right for purposes of contracts concerning the sale or
27 pledge of property, even though the imposition and collection of

1 default or uplift charges depends on further acts of the
2 independent organization or others that have not yet occurred. The
3 financing order shall remain in effect and the property shall
4 continue to exist for the same period as the pledge of the state
5 described by Section 39.609.

6 (c) All revenues and collections resulting from default or
7 uplift charges shall constitute proceeds only of the default or
8 uplift property arising from the financing order.

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

18 Sec. 39.606. DEFAULT AND UPLIFT CHARGES NONBYPASSABLE. A
19 financing order shall include terms ensuring that the imposition
20 and collection of default or uplift charges authorized in the order
21 shall be nonbypassable, other than uplift charges paid under
22 Section 39.603(f).

23 Sec. 39.607. TRUE-UP. A financing order shall include a
24 mechanism requiring that default or uplift charges be reviewed and
25 adjusted at least annually, not later than the 45th day after the
26 anniversary date of the issuance of the bonds, to:

27 (1) correct over-collections or under-collections of

1 the preceding 12 months; and

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

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

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

27 (c) Transfer of an interest in default or uplift property to

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

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

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

24 (f) If a default or termination occurs under the bonds, the
25 financing parties or their representatives may foreclose on or
26 otherwise enforce their lien and security interest in any property
27 as if they were secured parties under Chapter 9, Business & Commerce

1 Code, and the commission may order that amounts arising from
2 default or uplift charges be transferred to a separate account for
3 the 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 Travis County shall order
6 the sequestration and payment to them of revenues arising from the
7 default or uplift charges.

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

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

26 Sec. 39.611. NOT PUBLIC UTILITY. An assignee or financing
27 party may not be considered to be a public utility or person

1 providing electric service solely by virtue of the transactions
2 described in this subchapter.

3 Sec. 39.612. SEVERABILITY. Effective on the date the first
4 bonds are issued under this subchapter, if any provision in this
5 title or portion of this title is held to be invalid or is
6 invalidated, superseded, replaced, repealed, or expires for any
7 reason, that occurrence does not affect the validity or
8 continuation of this subchapter or any other provision of this
9 title that is relevant to the issuance, administration, payment,
10 retirement, or refunding of bonds or to any actions of the
11 independent organization, its successors, an assignee, a
12 collection agent, or a financing party, which shall remain in full
13 force and effect.

14 Sec. 39.613. CUSTOMER CHARGES. All load-serving entities
15 that receive offsets to specific uplift charges from the
16 independent organization under this subchapter must adjust
17 customer invoices to reflect the offsets for any charges that were
18 or would otherwise be passed through to customers under the terms of
19 service with the load-serving entity, including by providing a
20 refund for any offset charges that were previously paid. An
21 electric cooperative, including an electric cooperative that
22 elects to receive offsets, shall not otherwise become subject to
23 rate regulation by the commission and receipt of offsets does not
24 affect the applicability of Chapter 41 to an electric cooperative.

25 SECTION 5. This Act takes effect on the date on which Senate
26 Bill No. 1580, House Bill No. 3544, or other similar legislation of
27 the 87th Legislature, Regular Session, 2021, relating to the use of

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1 securitization by electric cooperatives to address weather-related
2 extraordinary costs and expenses becomes law.

ADOPTED

RV 31.0
MAY 26 2021

as amended

Lately Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY:

Kelly Harrison

1 Amend H.B. No. 4492 (senate committee printing) by striking
2 all below the enacting clause and substituting the following:

3 SECTION 1. Section 404.0241, Government Code, is amended by
4 adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) to read as
5 follows:

6 (b-1) Notwithstanding any other law, directly or indirectly
7 through a separately managed account or other investment vehicle,
8 the comptroller shall invest not more than \$800 million of the
9 economic stabilization fund balance to finance the default balance
10 as defined by Section 39.602, Utilities Code, to be repaid by ERCOT
11 market participants through default charges established by the
12 Public Utility Commission of Texas. The interest rate charged in
13 connection with the debt obligations must be calculated by adding
14 the rate determined by the Municipal Market Data Municipal Electric
15 Index, as published by Refinitiv TM3, based on the credit rating of
16 the independent organization, as defined by Section 39.602,
17 Utilities Code, plus 2.5 percent. The term of the debt obligations
18 may not exceed 30 years.

19 (b-2) A person may not bring a civil action against this
20 state, the Texas Treasury Safekeeping Trust Company, or an
21 employee, independent contractor, or official of this state,
22 including the comptroller, for any claim, including breach of
23 fiduciary duty or violation of any constitutional, statutory, or
24 regulatory requirement, in connection with any action, inaction,
25 decision, divestment, investment, report, or other determination
26 made or taken in connection with Subsections (b-1), (b-4), and
27 (b-5).

28 (b-3) A person who brings an action described by Subsection
29 (b-2) is liable to the defendant for the defendant's costs and

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1 attorney's fees resulting from the action.

2 (b-4) The comptroller shall manage the investments required
3 by Subsection (b-1) as a separate investment portfolio. The
4 comptroller shall provide separate accounting and reporting for the
5 investments in that portfolio. The comptroller shall credit to that
6 portfolio all payments, distributions, interest, and other
7 earnings on the investments in that portfolio.

8 (b-5) The comptroller has any power necessary to accomplish
9 the purposes of managing and investing the assets of the portfolio
10 described by Subsection (b-4). In managing the assets of that
11 portfolio, through procedures and subject to restrictions the
12 comptroller considers appropriate, the comptroller may acquire,
13 sell, transfer, or otherwise assign the investments as appropriate,
14 taking into consideration the purposes, terms, distribution
15 requirements, and other circumstances of that portfolio then
16 prevailing.

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

19 Sec. 39.002. APPLICABILITY. This chapter, other than
20 Sections 39.151, 39.1516, 39.155, 39.157(e), 39.159, 39.203,
21 39.904, 39.9051, 39.9052, and 39.914(e), and Subchapters M and N,
22 does not apply to a municipally owned utility or an electric
23 cooperative. Sections 39.157(e), 39.203, and 39.904, however,
24 apply only to a municipally owned utility or an electric
25 cooperative that is offering customer choice. If there is a
26 conflict between the specific provisions of this chapter and any
27 other provisions of this title, except for Chapters 40 and 41, the
28 provisions of this chapter control.

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

31 (j-1) Notwithstanding Subsection (j) of this section,

1 Section 39.653(c), or any other law, the independent system
2 operator in the ERCOT power region may not reduce payments to or
3 uplift short-paid amounts to a municipally owned utility that
4 becomes subject to the jurisdiction of that independent system
5 operator on or after May 29, 2021, and before December 30, 2021,
6 related to a default on a payment obligation by a market participant
7 that occurred before May 29, 2021.

8 SECTION 4. Subchapter D, Chapter 39, Utilities Code, is
9 amended by adding Section 39.159 to read as follows:

10 Sec. 39.159. AMOUNTS OWED TO INDEPENDENT ORGANIZATION BY
11 MARKET PARTICIPANTS. (a) The commission shall require that all
12 market participants fully and promptly pay to the independent
13 organization certified under Section 39.151 for the ERCOT power
14 region all amounts owed to the independent organization, or provide
15 for the full and prompt payment of those amounts owed, which must
16 be calculated solely according to the protocols of the independent
17 organization in effect during the period of emergency and subject
18 to the jurisdiction of the commission, to qualify, or to continue
19 to qualify, as a market participant in the ERCOT power region.

20 (b) The independent organization shall report to the
21 commission that a market participant is in default for the failure
22 to pay all amounts owed to the independent organization as
23 calculated in accordance with this section. The commission may not
24 allow the defaulting market participant to continue to be a market
25 participant in the ERCOT power region for any purpose or allow the
26 independent organization to accept the defaulting market
27 participant's loads or generation for scheduling in the ERCOT power
28 region until all amounts owed to the independent organization by
29 the market participant as calculated in this section are fully
30 paid.

31 (c) The commission and the independent organization shall

1 pursue collection in full of amounts owed to the independent
2 organization by any market participant to reduce the costs that
3 would otherwise be borne by other market participants or their
4 customers.

5 SECTION 5. Chapter 39, Utilities Code, is amended by adding
6 Subchapters M and N to read as follows:

7 SUBCHAPTER M. WINTER STORM URI DEFAULT BALANCE FINANCING

8 Sec. 39.601. PURPOSE. (a) The purpose of this subchapter is
9 to address the Winter Storm Uri default balance, as defined by
10 Section 39.602, in a manner that benefits the public interest by:

11 (1) enabling the independent organization to finance
12 the payment of the default balance with debt obligations; and

13 (2) authorizing the commission to contract with the
14 comptroller under Section 404.0241, Government Code, to finance the
15 payment of the default balance with debt obligations.

16 (b) Financing the default balance in the manner provided by
17 this subchapter will:

18 (1) allow wholesale market participants that are owed
19 money to be paid in a more timely manner;

20 (2) replenish financial revenue auction receipts
21 temporarily used by the independent organization to reduce the
22 Winter Storm Uri-related amounts short-paid to the wholesale market
23 participants; and

24 (3) allow the wholesale market to repay the default
25 balance over time.

26 (c) The legislature finds that the financing authorized by
27 this subchapter serves the public purpose of preserving the
28 integrity of the electricity market in the ERCOT power region.

29 (d) The proceeds of debt obligations issued under this
30 subchapter must be used solely for the purpose of financing default
31 balances that otherwise would be or have been uplifted to the

1 wholesale market.

2 (e) The commission shall ensure that the structuring and
3 pricing of debt obligations issued under this subchapter result in
4 the lowest financing costs consistent with market conditions and
5 the terms of the commission's order. The present value calculation
6 must use a discount rate equal to the proposed interest rate on the
7 debt obligations.

8 Sec. 39.602. DEFINITIONS. In this subchapter:

9 (1) "Default balance" means an amount of money of not
10 more than \$800 million that includes only:

11 (A) amounts owed to the independent organization
12 by competitive wholesale market participants from the period of
13 emergency that otherwise would be or have been uplifted to other
14 wholesale market participants; and

15 (B) financial revenue auction receipts used by
16 the independent organization to temporarily reduce amounts
17 short-paid to wholesale market participants related to the period
18 of emergency.

19 (2) "Default charges" means charges assessed to
20 wholesale market participants to repay amounts financed under this
21 subchapter to pay the default balance.

22 (3) "Independent organization" means the independent
23 organization certified under Section 39.151 for the ERCOT power
24 region.

25 (4) "Period of emergency" means the period beginning
26 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
27 2021.

28 Sec. 39.603. DEBT OBLIGATION ORDER. (a) On application by
29 the independent organization, the commission by order may authorize
30 the independent organization to establish a debt financing
31 mechanism to finance the default balance if the commission finds

1 that the debt obligations are needed to preserve the integrity of
2 the wholesale market and the public interest, after considering:

3 (1) the need to timely replenish financial revenue
4 auction receipts used by the independent organization to reduce
5 amounts short-paid to wholesale market participants;

6 (2) the interests of wholesale market participants
7 that are owed balances; and

8 (3) the potential effects of uplifting those balances
9 to the wholesale market without a financing vehicle.

10 (b) The order must state:

11 (1) the default balance to be financed; and

12 (2) the period over which the default charges must be
13 assessed to repay the debt obligations, which may not exceed 30
14 years.

15 (c) The order must include an adjustment mechanism
16 requiring the independent organization to adjust default charges to
17 refund, over the remaining period of the default charges, any
18 payments made by a competitive load-serving entity toward unpaid
19 obligations from the period of emergency that were included in the
20 financed default balance.

21 (d) The independent organization shall collect from and
22 allocate among wholesale market participants the default charges
23 using the same allocated pro rata share methodology under which the
24 charges would otherwise be uplifted under the protocols in effect
25 on March 1, 2021. The default charges must be assessed on all
26 wholesale market participants, including market participants who
27 are in default but still participating in the wholesale market, and
28 may be based on periodically updated transaction data to prevent
29 market participants from engaging in behavior designed to avoid the
30 default charges.

31 (e) Not later than the 30th day after the date the

1 independent organization receives a default charge payment from a
2 wholesale market participant, the independent organization shall
3 remit the payment to the comptroller toward repayment of debt
4 obligations in which the comptroller made an investment under
5 Section 404.0241(b-1), Government Code, if applicable.

6 (f) Notwithstanding another provision of this subchapter,
7 default charges may not be collected from or allocated to a market
8 participant that:

9 (1) otherwise would be subject to a default charge
10 solely as a result of acting as a central counterparty
11 clearinghouse in wholesale market transactions in the ERCOT power
12 region; and

13 (2) is regulated as a derivatives clearing
14 organization, as defined by Section 1a, Commodity Exchange Act (7
15 U.S.C. Section 1a).

16 (g) Not later than the 90th day after the date the
17 independent organization files an application for an order under
18 Subsection (a), the commission shall issue an order described by
19 Subsection (a) or an order denying the application. The order
20 becomes effective in accordance with its terms and the order,
21 together with the default charges authorized in the order, shall be
22 irrevocable and not subject to reduction, impairment, or adjustment
23 by further action of the commission after the order takes effect.
24 Notwithstanding this requirement, the commission may refinance any
25 debt obligations created by a finance order issued under this
26 subchapter if the commission determines that the refinancing is in
27 the public interest, considering the interest of both the ERCOT
28 market and the state's interest in the economic stabilization fund,
29 and otherwise meets the requirements of this subchapter.

30 (h) An order described by Subsection (a) or (g) is not
31 subject to rehearing by the commission. The order may be reviewed by

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

14 (i) A debt obligation issued under this section is a
15 nonrecourse debt secured solely by the default charges explicitly
16 assessed to repay the obligation. The independent organization's
17 obligations authorized under this section do not create personal
18 liability for the independent organization.

19 Sec. 39.604. COMMISSION-AUTHORIZED FINANCING. (a) The
20 commission may contract with another state agency with expertise in
21 public financing to establish a debt financing mechanism for the
22 payment of the default balance as defined in this subchapter. This
23 section does not apply to a default balance securitized under
24 Subchapter D, Chapter 41.

25 (b) Except as otherwise specifically provided by this
26 section, the provisions of this subtitle that address the
27 commission's issuance of an order under other provisions of this
28 subtitle also apply to the commission's issuance of an order under
29 this section.

30 (c) The contracted state agency and any issuer, along with
31 the independent organization, must be a party to the commission's

1 proceedings that address the issuance of an order.

2 (d) In addition to the other applicable requirements of this
3 subtitle, an order issued under this section must:

4 (1) require the sale, assignment, or other transfer to
5 the contracted state agency of default charges created by the order
6 and, following that sale, assignment, or transfer, require that
7 default charges paid under any order be created, assessed, and
8 collected as the property of the contracted state agency, subject
9 to subsequent sale, assignment, or transfer by the contracted state
10 agency as authorized under this subchapter;

11 (2) authorize:

12 (A) the issuance of debt obligations by the
13 contracted state agency secured by a pledge of default charge
14 revenue, and the application of the proceeds of those debt
15 obligations, net of issuance costs, to the independent
16 organization; or

17 (B) the acquisition of default charge revenue
18 from the independent organization by the contracted state agency,
19 financed:

20 (i) by a loan by an issuer to the contracted
21 state agency of the proceeds of debt obligations, net of issuance
22 costs; or

23 (ii) by the acquisition by an issuer from
24 the contracted state agency of the default charge revenue and in
25 each case the pledge of the revenue to the repayment of the loan or
26 other debt obligation, as applicable; and

27 (3) authorize the independent organization to serve as
28 collection agent to collect the default charges and transfer the
29 collected default charges to the contracted state agency or the
30 issuer, as appropriate.

31 (e) After issuance of the order, the contracted state agency

1 shall arrange for the issuance of debt obligations, as specified by
2 the order, by the contracted state agency or another issuer
3 selected by the contracted state agency and approved by the
4 commission.

5 (f) Debt obligations issued pursuant to an order issued
6 under this section are secured only by the default charge revenue
7 and any other funds pledged under the bond documents. No assets of
8 the state or the independent organization are subject to claims by
9 the holders of the debt obligations. Following assignment of the
10 default charge revenue, the independent organization does not have
11 any beneficial interest or claim of right in the revenue.

12 (g) Effective on the date the first debt obligations are
13 issued under this subchapter, if any provision of this title or
14 portion of this title is held to be invalid or is invalidated,
15 superseded, replaced, or repealed, or expires for any reason, that
16 occurrence does not affect the validity or continuation of this
17 subchapter or any other provision of this title that is relevant to
18 the issuance, administration, payment, retirement, or refunding of
19 debt obligations authorized under this subchapter or to any actions
20 of the independent organization, its successors, an assignee, a
21 collection agent, the contracted state agency, or an issuer and
22 those provisions shall remain in full force and effect.

23 Sec. 39.605. DEFAULT CHARGES NONBYPASSABLE. An order
24 issued under Section 39.603 or 39.604 must:

25 (1) include terms ensuring that the imposition and
26 collection of default charges authorized in the order shall be
27 nonbypassable by wholesale market participants; and

28 (2) authorize the independent organization to
29 establish appropriate fees and other methods for pursuing amounts
30 owed from entities exiting the wholesale market.

31 Sec. 39.606. TRUE-UP MECHANISM. An order issued under

1 Section 39.603 or 39.604 must include a mechanism requiring that
2 default charges be reviewed and adjusted at least annually, not
3 later than the 45th day after the anniversary date of the issuance
4 of the order, to:

5 (1) correct over-collections or under-collections
6 over the preceding 12 months; and

7 (2) ensure the expected recovery of amounts sufficient
8 to timely provide all payments of debt service.

9 Sec. 39.607. TAX EXEMPTION. The transfer and receipt of
10 default charges are exempt from state and local sales and use,
11 franchise, and gross receipts taxes.

12 SUBCHAPTER N. WINTER STORM URI UPLIFT FINANCING

13 Sec. 39.651. PURPOSE; USE OF PROCEEDS. (a) The purpose of
14 this subchapter is to address the Winter Storm Uri uplift balance
15 by:

16 (1) enabling the independent organization certified
17 under Section 39.151 for the ERCOT power region to finance the
18 uplift balance on behalf of wholesale market participants through
19 debt obligations; and

20 (2) authorizing the commission to contract with
21 another state agency to finance the payment of the uplift balance
22 with debt obligations or use any another financial mechanism
23 consistent with this subchapter for that purpose.

24 (b) Financing the uplift balance in the manner provided by
25 this subchapter will allow wholesale market participants who were
26 assessed extraordinary uplift charges due to consumption during the
27 period of emergency to pay those charges over a longer period of
28 time, alleviating liquidity issues and reducing the risk of
29 additional defaults in the wholesale market.

30 (c) The legislature finds that authorizing financing under
31 this subchapter serves the public purpose of allowing the

1 commission to stabilize the wholesale electricity market in the
2 ERCOT power region.

3 (d) The proceeds of debt obligations issued under this
4 subchapter must be used solely for the purpose of financing
5 reliability deployment price adder charges and ancillary service
6 costs that exceeded the commission's system-wide offer cap and were
7 uplifted to load-serving entities based on consumption during the
8 period of emergency. A load-serving entity that receives proceeds
9 from the debt obligations may use the proceeds solely for the
10 purposes of fulfilling payment obligations directly related to such
11 costs and refunding such costs to retail customers who have paid or
12 otherwise would be obligated to pay such costs.

13 (e) The commission shall ensure that the structuring and
14 pricing of the debt obligations results in the lowest uplift
15 charges consistent with market conditions and the terms of the
16 order issued under this subchapter. The present value calculation
17 must use a discount rate equal to the proposed interest rate on the
18 debt obligations.

19 Sec. 39.652. DEFINITIONS. In this subchapter:

20 (1) "Independent organization" means the independent
21 organization certified under Section 39.151 for the ERCOT power
22 region.

23 (2) "Load-serving entity" means a municipally owned
24 utility, an electric cooperative, or a retail electric provider.

25 (3) "Period of emergency" means the period beginning
26 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
27 2021.

28 (4) "Uplift balance" means an amount of money of not
29 more than \$2.1 billion that was uplifted to load-serving entities
30 on a load ratio share basis due to energy consumption during the
31 period of emergency for reliability deployment price adder charges

1 and ancillary services costs in excess of the commission's
2 system-wide offer cap, excluding amounts securitized under
3 Subchapter D, Chapter 41. The term does not include amounts that
4 were part of the prevailing settlement point price during the
5 period of emergency.

6 (5) "Uplift charges" means charges assessed to
7 load-serving entities to repay amounts financed under this
8 subchapter to pay the uplift balance.

9 Sec. 39.653. DEBT OBLIGATION ORDER. (a) On application of
10 the independent organization, the commission by order may authorize
11 the independent organization to establish a debt financing
12 mechanism for the payment of the uplift balance if the commission
13 finds that such financing will support the financial integrity of
14 the wholesale market and is necessary to protect the public
15 interest, considering the impacts on both wholesale market
16 participants and retail customers.

17 (b) An order issued under this section must:

18 (1) state the uplift balance to be financed;

19 (2) state the period over which the uplift charges
20 must be assessed to repay the debt obligations, which may not exceed
21 30 years; and

22 (3) provide the process for remitting the proceeds of
23 the financing to load-serving entities who were exposed to the
24 costs included in the uplift balance, including a requirement for
25 the load-serving entities to submit documentation of their
26 exposure.

27 (c) The independent organization shall assess uplift
28 charges to all load-serving entities on a load ratio share basis,
29 which may be translated to a kWh charge, including load serving
30 entities who enter the market after an order has been issued under
31 this subchapter, but excluding the load of entities that opt out

1 under Subsection (d).

2 (d) The commission shall develop a one-time process that
3 allows municipally owned utilities, electric cooperatives, river
4 authorities, and transmission-voltage customers served by a retail
5 electric provider to opt out of the uplift charges by paying in full
6 all invoices owed for usage during the period of emergency.
7 Load-serving entities and transmission-voltage customers that opt
8 out under this subsection shall not receive any proceeds from the
9 uplift financing.

10 (e) An order issued under this section must include a
11 requirement that any load-serving entity or transmission-voltage
12 customer who receives proceeds from the financing that exceed the
13 entity's or customer's actual exposure to uplift charges from
14 consumption during the period of emergency notify the independent
15 organization and remit any excess receipts. Any payments received
16 under this subsection must be credited against the uplift balance
17 to reduce the remaining uplift charges.

18 (f) Not later than the 90th day after the date the
19 independent organization files an application for an order under
20 Subsection (a), the commission shall issue an order described by
21 Subsection (a) or an order denying the application. The order
22 becomes effective in accordance with its terms and the order,
23 together with the uplift charges authorized in the order, shall be
24 irrevocable and not subject to reduction, impairment, or adjustment
25 by further action of the commission after it takes effect.
26 Notwithstanding this requirement, the commission may refinance any
27 debt obligations created by a finance order under this subchapter
28 if the commission determines that the refinancing is in the public
29 interest and otherwise meets the requirements of this subchapter.

30 (g) An order issued under this section is not subject to
31 rehearing by the commission. An order may be reviewed by appeal by a

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

13 (h) A debt obligation issued under this section is a
14 nonrecourse debt secured solely by the default charges explicitly
15 assessed to repay the obligation. The independent organization's
16 obligations authorized under this section do not create personal
17 liability for the independent organization.

18 Sec. 39.654. COMMISSION-AUTHORIZED FINANCING. (a) The
19 commission may contract with another state agency with expertise in
20 public financing to establish a debt financing mechanism to finance
21 the payment of the uplift balance. This section does not apply to
22 any balance securitized under Subchapter D, Chapter 41.

23 (b) Except as otherwise specifically provided by this
24 section, the provisions of this subtitle that address the
25 commission's issuance of an order under other provisions of this
26 subtitle also apply to the commission's issuance of an order under
27 this section.

28 (c) The contracted state agency and any issuer must be a
29 party to the commission's proceedings that address the issuance of
30 an order along with the independent organization.

31 (d) In addition to the other applicable requirements of this

1 subtitle, an order issued under this section must:

2 (1) require the sale, assignment, or other transfer to
3 the contracted state agency of uplift charges created by the order
4 and, following that sale, assignment, or transfer, require that
5 uplift charges paid under any order be created, assessed, and
6 collected as the property of the contracted state agency, subject
7 to subsequent sale, assignment, or transfer by the contracted state
8 agency as authorized under this subchapter;

9 (2) authorize:

10 (A) the issuance of debt obligations by the
11 contracted state agency secured by a pledge of uplift charge
12 revenue, and the application of the proceeds of those debt
13 obligations, net of issuance costs, to the independent
14 organization; or

15 (B) the acquisition of uplift charge revenue from
16 the independent organization by the contracted state agency,
17 financed:

18 (i) by a loan by an issuer to the contracted
19 state agency of the proceeds of debt obligations, net of issuance
20 costs; or

21 (ii) by the acquisition by an issuer from
22 the contracted state agency of the uplift charge revenue and in each
23 case the pledge of the revenue to the repayment of the loan or debt
24 obligations, as applicable; and

25 (3) authorize the independent organization to serve as
26 collection agent to collect the uplift charges and transfer the
27 collected uplift charges to the contracted state agency or the
28 issuer, as appropriate.

29 (e) After issuance of the order, the contracted state agency
30 shall arrange for the issuance of debt obligations, as specified by
31 the order, by the contracted state agency or another issuer

1 selected by the contracted state agency and approved by the
2 commission.

3 (f) Debt obligations issued pursuant to an order issued
4 under this section are secured only by the uplift charge revenue and
5 any other funds pledged under the bond documents. No assets of the
6 state or the independent organization are subject to claims by the
7 holders of the debt obligations. Following assignment of the
8 uplift charge revenue, the independent organization does not have
9 any beneficial interest or claim of right in the revenue.

10 (g) Effective on the date the first debt obligations are
11 issued under this subchapter, if any provision of this title or
12 portion of this title is held to be invalid or is invalidated,
13 superseded, replaced, or repealed, or expires for any reason, that
14 occurrence does not affect the validity or continuation of this
15 subchapter or any other provision of this title that is relevant to
16 the issuance, administration, payment, retirement, or refunding of
17 debt obligations authorized under this subchapter or to any actions
18 of the independent organization, its successors, an assignee, a
19 collection agent, the contracted state agency, or an issuer and
20 those provisions shall remain in full force and effect.

21 Sec. 39.655. OTHER FINANCIAL MECHANISM. The commission may
22 use a financial mechanism other than the mechanisms described by
23 Sections 39.653 and 39.654 that meets the requirements of this
24 subchapter to accomplish the purposes of this subchapter.

25 Sec. 39.656. UPLIFT CHARGES NONBYPASSABLE. An order must
26 include terms ensuring that the imposition and collection of uplift
27 charges authorized by the order shall be nonbypassable.

28 Sec. 39.657. TRUE-UP. An order shall include a mechanism
29 requiring that uplift charges be reviewed and adjusted at least
30 annually, not later than the 45th day after the anniversary date of
31 the issuance of the debt obligations, to:

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

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

6 Sec. 39.658. TAX EXEMPTION. Transactions involving the
7 transfer and ownership of uplift property and the receipt of uplift
8 charges are exempt from state and local income, sales, franchise,
9 gross receipts, and other taxes or similar charges.

10 Sec. 39.659. SEVERABILITY. Effective on the date the first
11 debt obligations are issued under this subchapter, if any provision
12 in this title or portion of this title is held to be invalid or is
13 invalidated, superseded, replaced, repealed, or expires for any
14 reason, that occurrence does not affect the validity or
15 continuation of this subchapter or any other provision of this
16 title that is relevant to the issuance, administration, payment,
17 retirement, or refunding of debt obligations or to any actions of
18 the independent organization, its successors, an assignee, a
19 collection agent, or a financing party, which shall remain in full
20 force and effect.

21 Sec. 39.660. CUSTOMER CHARGES. All load-serving entities
22 that receive offsets to specific uplift charges from the
23 independent organization under this subchapter must adjust
24 customer invoices to reflect the offsets for any charges that were
25 or would otherwise be passed through to customers under the terms of
26 service with the load-serving entity, including by providing a
27 refund for any offset charges that were previously paid. An
28 electric cooperative, including an electric cooperative that
29 elects to receive offsets, shall not otherwise become subject to
30 rate regulation by the commission and receipt of offsets does not
31 affect the applicability of Chapter 41 to an electric cooperative.

1 Sec. 39.661. ENFORCEMENT. The commission may use any
2 enforcement mechanism established by Chapter 15 or this chapter,
3 including revocation of certification by the commission, against
4 any entity that fails to remit excess receipts from the uplift
5 balance financing under Section 39.653(e) or otherwise
6 misappropriates or misuses amounts received from the uplift balance
7 financing this subchapter.

8 SECTION 6. Sections 404.0241(b-2) and (b-3), Government
9 Code, as added by this Act, apply only to a cause of action that
10 accrues on or after the effective date of this Act.

11 SECTION 7. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2021.

ADOPTED

MAY 26 2021

FLOOR AMENDMENT NO. _____

Lately Saw
Secretary of the Senate

BY: _____

L. W. Kelleher

Amend Amendment No. 1 by Hancock to H.B. No. 4492 by adding the following appropriately numbered SECTION to the amendment and renumbering the subsequent SECTIONS of the amendment accordingly:

SECTION ____ . Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.159 and 39.160 to read as follows:

Sec. 39.159. RESTITUTION REQUIRED. A wholesale market participant that receives funds from the financing mechanism authorized under Subchapter M or N shall repay the funds if the participant or an employee of the participant:

(1) submits a false certification that the participant provided all records required under Subchapter M or N to the attorney general;

(2) engages in false, misleading, or deceptive conduct related to Winter Storm Uri as determined in a proceeding under Section 17.46, Business & Commerce Code; or

(3) is convicted for criminal conduct arising out of activities related to Winter Storm Uri.

Sec. 39.160. INFORMATION DISCLOSURE REQUIRED FOR PARTICIPATION IN FINANCING. (a) Before a wholesale market participant may receive money from a financing mechanism authorized under Subchapter M or N, the participant must:

(1) submit to the attorney general:

(A) all documents, e-mails, or text messages relating to financial security transactions used to hedge or offset

the cost of fuel or energy in February 2021; and

(B) all documents, e-mails, or text messages relating to qualified cost information for February 2021; and

(2) submit to the corporation an affidavit certifying that the participant has complied with Subdivision (1).

(b) Information provided to the attorney general under Subsection (a) is confidential and not subject to public disclosure under Chapter 552, Government Code.

(c) A market participant may not receive money under Subchapter M or N if the participant asserts a privilege as a reason for not fully complying with Subsection (a).

ADOPTED

MAY 26 2021

Lately Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 3

BY: 

1 Amend Amendment No. 1 by Nancock to H.B. No. 4492 in
2 SECTION 5 of the bill as proposed by the amendment, in added
3 Section 39.653, Utilities Code (page 14, line 4), between
4 "authorities," and "and" by inserting "a retail electric provider
5 that has the same corporate parent as each of the provider's
6 customers, a retail electric provider that is an affiliate of each
7 of the provider's customers,".

ADOPTED
MAY 26 2021

Lately Law
Secretary of the Senate

FLOOR AMENDMENT NO. 4

BY: *J. J. King*

1 Amend Amendment No. 1 by *Nancock* to H.B. No. 4492 in
2 SECTION 5 of the bill as proposed by the amendment, in added
3 Subchapter N, Chapter 39, Utilities Code, following added Section
4 39.661 (page 19, between lines 7 and 8), by inserting the
5 following:

6 Sec. 39.662. LEGAL ACTIONS INVOLVING PRICING OR UPLIFT
7 ACTIONS. A load-serving entity that receives financial assistance
8 under this subchapter may not initiate, pursue, or continue a legal
9 action that seeks judicial review of pricing or uplift actions
10 taken by the commission or the independent organization certified
11 under Section 39.151 for the ERCOT power region in connection with
12 the period of emergency.

ADOPTED

RV 20.11

MAY 26 2021

Lacey Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 5

BY: *[Signature]*
[Signature]

1 Amend Amendment No. 1 by Hancock to H.B. No. 4492 as
2 follows:

3 (1) In the recital to SECTION 5 of the bill as proposed by
4 the amendment (page 4, line 6), strike "M and N" and substitute
5 "M, N, and O".

6 (2) In SECTION 5 of the bill as proposed by the amendment, in
7 added Section 39.651(d), Utilities Code (page 12, lines 5 through
8 8), strike "reliability deployment price adder charges and
9 ancillary service costs that exceeded the commission's system-wide
10 offer cap and were uplifted to load-serving entities based on
11 consumption during the period of emergency" and substitute "the
12 uplift balance".

13 (3) In SECTION 5 of the bill as proposed by the amendment, in
14 added Section 39.652(4), Utilities Code (page 13, lines 3 through
15 5), strike "The term does not include amounts that were part of
16 the prevailing settlement point price during the period of
17 emergency.", and substitute "In addition to that uplifted amount
18 of money, the term includes reliability deployment price adders
19 included in the cost of energy used to supply end-use customers
20 during the period beginning 12:01 a.m., February 18, 2021, and
21 ending 9 a.m., February 19, 2021."

22 (4) After added Subchapter N, Chapter 39, Utilities Code (page
23 19, between lines 7 and 8), insert the following:

SUBCHAPTER O. WINTER STORM URI RATEPAYER ASSISTANCE

24 Sec. 36.701. WINTER STORM URI RATEPAYER ASSISTANCE. (a) The

1 legislature finds that Winter Storm Uri was a public calamity.

2 (b) The commission may contract with the comptroller to
3 establish a debt financing mechanism for the financing of bill
4 payment assistance grants under this subchapter in the same manner
5 that the commission may establish a debt financing mechanism under
6 Section 39.654.

7 (c) The commission may provide or collaborate with the
8 comptroller to provide one-time bill payment assistance grants to
9 residential retail customers of municipally owned utilities,
10 electric cooperatives, and retail electric providers in the ERCOT
11 power region who received service during Winter Storm Uri. The
12 commission may collaborate with the comptroller to review taxes or
13 fees savings for rate payers.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 27, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB4492 by Paddie (Relating to securitizing costs associated with electric markets; granting authority to issue bonds.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4492, As Passed 2nd House : a negative impact of (\$460,668) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2022	(\$232,834)
2023	(\$227,834)
2024	(\$227,834)
2025	(\$227,834)
2026	(\$227,834)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from Economic Stabilization Fund 599	Probable Revenue Gain/(Loss) from Debt Obligation Account	Change in Number of State Employees from FY 2021
2022	(\$232,834)	(\$808,573,000)	\$800,000,000	2.0
2023	(\$227,834)	(\$9,078,000)		2.0
2024	(\$227,834)	(\$9,178,000)		2.0
2025	(\$227,834)	(\$10,522,000)		2.0
2026	(\$227,834)	(\$9,035,000)		2.0

Fiscal Analysis

The bill would direct the Comptroller to invest not more than \$800 million of the Economic Stabilization Fund (ESF) in debt obligations issued by the Electric Reliability Council of Texas (ERCOT). The bill would enable ERCOT to issue debt obligations to finance substantial balances owed by wholesale market participants and that would otherwise be uplifted as a result of Winter Storm Uri. The bill would also authorize the Public Utility Commission (PUC), on application of ERCOT, to adopt an order authorizing the issuance of debt obligations. The bill would exempt from state and local sales and use, franchise, and gross receipts taxes the transfer and receipt of default charges relating to the debt obligations.

Methodology

The fiscal impact of investing \$800 million from the ESF in debt obligations is based on the 2022-23 Biennial Revenue Estimate, as revised May 3, 2021. The table shows the Comptroller's estimate of the fiscal impact of an initial transfer of \$800 million out of the ESF 0599 to a new account for investment in ERCOT issued debt obligations, and the subsequent loss of interest to Fund 0599. The timing, amounts, and strategy of the investment in debt obligations is unknown at this time and therefore the fiscal impact of the new debt obligations account for fiscal years 2023-2026 cannot be estimated. The return on such debt obligations, per provisions of the bill, likely would exceed returns from the ESF's current investment portfolio, but would carry longer terms and greater risk.

The Texas Public Finance Authority (TPFA) anticipates that the fiscal impact to TPFA for financing the Winter Storm Uri default balances and uplift balances would consist of the administrative cost to issue the bonds and collect and manage default charges. TPFA anticipates it would need one Attorney III and one Financial Analyst II to complete these administrative tasks. This is assuming that TPFA's upfront administrative costs during fiscal years 2022-2023 would be funded through a direct appropriation to the TPFA from the general revenue fund. TPFA indicates that such an appropriation is necessary so that the financing platform will be in place when a financing order is received from the PUC. Ongoing administrative and other operating costs could be funded out of receipts from the ongoing ERCOT charges authorized by the bill. The future expenditure of such funds would require an appropriation.

Technology

TPFA anticipates technological costs of \$5,000 in FY 2022.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 307 Secretary of State, 347 Public Finance Authority, 352 Bond Review Board, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

LBB Staff: JMc, CMA, MB, RRE, SZ

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 19, 2021

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB4492** by Paddie (Relating to securitizing costs associated with electric markets; granting authority to issue bonds.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

It is assumed that the costs associated with the bill's provisions relating to securitizing costs associated with electric markets and granting authority to issue bonds could be absorbed using existing resources. The effective date of the bill is contingent on passage of other legislation.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

LBB Staff: JMc, SZ, MB, RRE, SMAT

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 15, 2021

TO: Honorable Chris Paddie, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB4492 by Paddie (relating to securitizing costs associated with electric markets; granting authority to issue bonds.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

It is assumed that the costs associated with the bill's provisions relating to securitizing costs associated with electric markets and granting authority to issue bonds could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

LBB Staff: JMc, SMAT, MB, RRE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 31, 2021

TO: Honorable Chris Paddie, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB4492 by Paddie (Relating to the restructuring of certain electric utility providers.), **As Introduced**

No significant fiscal implication to the State is anticipated.

It is assumed that the costs associated with the bill's provisions relating to the restructuring of certain electric utility providers could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

LBB Staff: JMc, SMAT, MB, RRE