

BILL ANALYSIS

Senate Research Center

S.B. 1580
By: Hancock
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1580 provides electric cooperatives the option to utilize the financial tool of securitized financing to fund the unprecedented impact of winter storm Uri.

Cooperatives are consumer-owned, non-profit structures, and therefore these entities' cost of service is borne entirely by their ratepayers. The extraordinary costs incurred during the winter freeze will be built into the rates of electric co-op members entirely. Securitization of these costs would enable electric cooperatives to manage the impact of the storm in a least-cost fashion, without any cost to the state.

The mechanism to do this is the issuance of rate reduction bonds. Long-term debt instruments that will be paid back over many years rather than being built into customer bills all at once.

Securitization offers a path to long-term financing that the worst hit cooperatives may not have at all, absent this mechanism. Securitization is by no means unprecedented in either the utility industry at large or for electric cooperatives. Investor-owned utilities have used this mechanism to fund the cost of weather-related disasters such as hurricanes, and cooperatives were authorized by the legislature to use it back in the late 1990s as an option to recover any stranded investments resulting from utility deregulation.

Securitization provides a market-based vehicle for access to the lowest cost and otherwise unavailable financing and allows a cooperative's members to spread these costs over a broad horizon to minimize the impact on their pocketbooks in the near-term.

In the absence of this legislation, it is unlikely many cooperatives will be able to finance the costs of the storm, and their consumers would have serious difficulty bearing the costs if they were simply passed on. This is the best option for cooperatives to continue taking care of their own costs.

As proposed, S.B. 1580 amends current law relating to electric cooperatives' use of securitization to address extraordinary costs and expenses created by Winter Storm Uri.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in Section 41.159(d), Utility Code, of this bill.

SECTION BY SECTION ANALYSIS

Amends Title II, Chapter 41, Utility Code, by adding Subchapter D, as follows:

SUBCHAPTER D. 2021 WEATHER SECURITIZATION

Sec. 41.151. **PURPOSE.** Provides that the purpose of this subchapter is to enable electric cooperatives to use securitization financing to recover extraordinary costs and expenses incurred because of the abnormal weather events from 12:01 A.M. on February 12 through 11:59 P.M. on February 20, 2021. Provides that this type of debt will lower the cost of financing such extraordinary costs and expenses relative to the costs that

would be incurred using conventional electric cooperative financing methods. Requires that the proceeds of the securitized bonds be used solely for the purposes of financing or refinancing such extraordinary costs and expenses, including costs relating to consummation and administration of the securitized financing itself. Requires the board of directors of each electric cooperative (board) involved in such financing to ensure that securitization provides tangible and quantifiable benefits to its members, greater than would have been achieved absent the issuance of securitized bonds. Requires each board that chooses to securitize pursuant to this subchapter to ensure that the structuring and pricing of the securitized bonds result in reasonable securitized bond charges consistent with market conditions and the terms of the financing order. Prohibits the amount securitized from exceeding the present value of the revenue requirement over the life of the proposed securitized bonds associated with the extraordinary costs and expenses being financed. Requires that the present value calculation use a discount rate equal to the proposed interest rate on the securitized bonds.

Sec. 41.152. DEFINITIONS. Defines "assignee," "extraordinary costs and expenses," "financing order," "financing party," "qualified costs," "period of emergency," "securitized bonds," "transition charges," and "transition property."

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

(b) Requires that the financing order detail the amount of qualified costs to be recovered and the period over which the nonbypassable transition charges are required to be recovered, which period is prohibited from exceeding 30 years.

(c) Requires that transition charges be collected and allocated among customers in such manner as set forth in the financing order.

(d) Requires that a financing order become effective in accordance with its terms, and that the financing order, together with the transition charges authorized in the order, thereafter be irrevocable and not subject to rescission, reduction, impairment, or adjustment or other alteration by further action of the board or by action of any regulatory or other governmental body of the State of Texas, except as permitted by Section 41.157. Requires that a financing order issued pursuant to this subchapter have the same force and effect of a financing order under Title 2 (Public Utility Regulatory Act), Chapter 39 (Restructuring of Electric Utility Industry).

(e) Authorizes a financing order to be reviewed by appeal only to a district court where the electric cooperative is domiciled by a member of the electric cooperative filed within 15 days after the financing order is adopted by the board. Authorizes review of the judgment of the district court only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. Requires that all appeals be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Requires that review on appeal be based solely on the financing order adopted by the board, other information considered by the board in adopting the resolutions and briefs to the court and be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this subchapter.

(f) Authorizes the board to adopt a financing order providing for retiring and refunding securitized bonds on making a finding that the future transition charges required to service the new securitized bonds, including transaction costs, will be less than the future transition charges required to service the securitized bonds

being refunded. Requires the board, after the indefeasible repayment in full of all outstanding securitized bonds and associated financing costs, to adjust the related transition charges accordingly.

Sec. 41.154. **PROPERTY RIGHTS.** (a) Requires that the rights and interests of an electric cooperative or its subsidiary, affiliate, successor, financing party or assignee under a financing order, including the right to impose, collect, receive and enforce the payment of transition charges authorized in the financing order, be only contract rights until such property is first transferred or pledged to an assignee or financing party, as applicable, in connection with the issuance of securitized bonds, at which time such property will become "transition property."

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

(c) Requires that all revenues, collections, claims, payments, moneys, or proceeds of or arising from or relating to transition charges constitute proceeds of the transition property arising from the financing order.

Sec. 41.155. **NO SETOFF.** Provides that the interest of an assignee or pledgee in transition property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, recoupment or defense by the electric cooperative or any other person or in connection with the bankruptcy of the electric cooperative or any other entity. Requires that a financing order remain in effect and unabated notwithstanding the bankruptcy of the electric cooperative, its successors, or assignees.

Sec. 41.156. **NO BYPASS.** Requires that a financing order include terms ensuring that the imposition and collection of transition charges authorized in the order is required to be nonbypassable and to apply to all customers connected to the electric cooperative's system assets and taking service, whether or not the system assets continue to be owned by the electric cooperative.

Sec. 41.157. **TRUE-UP.** Requires that a financing order be promptly reviewed and adjusted, if after its adoption there are additional charges or refunds of extraordinary costs and expenses so as to ensure that there is neither an over collection or under collection of extraordinary costs and expenses and that collections on the transition property will be sufficient to timely make all periodic and final payments of principal, interest, fees and other amounts, and to timely fund all reserve accounts, if any, related to the securitized bonds. Requires that a financing order also include a mechanism requiring that transition charges be reviewed by the board and adjusted at least annually, within 45 days of the anniversary date of the issuance of the securitized bonds, to correct any over collections or under collections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitized bonds. Prohibits any

governmental authority from having the discretion or authority to disapprove of, or alter, any adjustments made or proposed to be made hereunder other than to correct computation or other manifest errors.

Sec. 41.158. TRUE SALE. Provides that an agreement by an electric cooperative or assignee to transfer transition property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the transition property is transferred. Requires that the transaction be treated as an absolute sale regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the transition property, the fact that the electric cooperative acts as the collector of transition charges relating to the transition property, or the treatment of the transfer as a financing for tax, accounting, financial reporting, or other purposes.

Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT. (a) Provides that transition property does not constitute an account or general intangible under Section 9.106 (Control of Investment Property), Business & Commerce Code. Provides that the transfer, sale or assignment, or the creation, granting, perfection, and enforcement of liens and security interests in transition property are governed by this section and not by the Business & Commerce Code. Requires that transition property constitute property for all purposes, including for contracts securing securitized bonds, whether or not the transition property revenues and proceeds have accrued.

(b) Authorizes that a valid and enforceable transfer, sale or assignment, or lien and security interest, as applicable, in transition property be created only by a financing order and the execution and delivery of a transfer, sale or assignment, or security agreement, as applicable, with a financing party in connection with the issuance of securitized bonds. Requires that the transfer, sale, assignment, or lien and security interest, as applicable, attach automatically from the time that value is received for the securitized bonds and, on perfection through the filing of notice with the secretary of state (SOS) in accordance with the rules prescribed under Subsection (d), be a continuously perfected transfer, sale and assignment or lien and security interest, as applicable, in the transition property and all proceeds of the property, whether accrued or not, and have priority in the order of filing and take precedence over any subsequent judicial or other lien creditor. Requires that the transfer, sale, or assignment, or security interest, as applicable, if notice is filed within 10 days after value is received for the securitized bonds, be perfected retroactive to the date value was received, otherwise, the transfer, sale or assignment, or security interest, as applicable, is required to be perfected as of the date of filing.

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

(d) Requires SOS to implement this section by establishing and maintaining a separate system of records for the filing of notices under this section and prescribing the rules for those filings based on Chapter 9 (Secured Transactions), Business & Commerce Code, adapted to this subchapter and using the terms defined in this subchapter.

(e) Provides that the priority of a lien and security interest perfected under this section is not impaired by any later modification of the financing order under

Section 41.157 or by the commingling of funds arising from transition charges with other funds, and any other security interest that may apply to those funds is required to be terminated when they are transferred to a segregated account for the assignee or a financing party. Requires that any proceeds of transition property, if that property has been transferred to an assignee, be held in trust for the assignee.

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

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

(4) Prohibits the statutory lien from adversely being affected or impaired by, among other things, the commingling of transition charge revenues or other proceeds from transition charges with other amounts regardless of the person holding such amounts.

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

(g) Authorizes the financing parties or their representatives, if a default or termination occurs under the securitized bonds, to foreclose on or otherwise enforce their lien and security interest in any transition property as if they were secured parties under Chapter 9, Business & Commerce Code, and upon application by the electric cooperative or by or on behalf of the financing parties, a district court of Travis County is authorized to order that amounts arising from transition charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest are required to apply. Requires a district court of the county where the electric cooperative is domiciled to order the

sequestration and payment to them of revenues arising from the transition charges.

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

Sec. 41.161. TAX EXEMPTION. Provides that transactions involving the transfer and ownership of transition property and the receipt of transition charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

Sec. 41.162. NOT PUBLIC UTILITY. Prohibits an assignee or financing party from being considered to be a public utility, electric cooperative or person providing electric service solely by virtue of the transactions described in this subchapter.

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