

**SUBJECT:** Securitization by electric cooperatives of certain weather-related costs

**COMMITTEE:** State Affairs — favorable, without amendment

**VOTE:** 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

**SENATE VOTE:** On final passage, April 28 — 31-0

**WITNESSES:** None

**DIGEST:** SB 1580 would enable electric cooperatives to use securitization financing to recover extraordinary costs and expenses incurred due to the abnormal weather events that occurred in the state in the period of emergency beginning 12:00 a.m., February 12, 2021, and ending at 11:59 p.m., February 20, 2021.

"Extraordinary costs and expenses" would mean costs and expenses incurred by an electric cooperative:

- for electric power and energy purchased during the period of emergency in excess of what would have been paid for the same amount at the average rate incurred by the electric cooperative for electric power and energy purchased during the month of January 2021; and
- to generate and transmit electric power and energy during the period of emergency, including fuel costs, operation and maintenance expenses, overtime costs, and all other costs and expenses that would not have been incurred but for the abnormal weather events.

They also would include any charges imposed on the electric cooperative or on any of its power suppliers that were passed on to the electric cooperative by the applicable regional transmission organization or

independent system operator, resulting from defaults by other market participants for costs relating to the period of emergency.

**Standards.** The proceeds of the securitized bonds would have to be used solely for the purposes of financing or refinancing the extraordinary costs and expenses, including costs relating to consummation and administration of the securitized financing.

The board of each electric cooperative involved in financing under the bill would have to ensure that securitization provided tangible and quantifiable benefits to its members greater than would have been achieved absent the issuance of securitized bonds. Each board that chose to securitize would have to ensure that the structuring and pricing of the securitized bonds were consistent with market conditions and the terms of the financing order. The bill could be used by a group of electric cooperatives to issue securitized bonds in a combined securitization transaction.

**Financing order.** The governing body of an electric cooperative (board) would have to adopt a financing order to recover the electric cooperative's qualified costs consistent with the standards under the bill.

"Qualified costs" would mean up to 100 percent of an electric cooperative's:

- extraordinary costs and expenses;
- costs of issuing, supporting, repaying, servicing, and refinancing the securitized bonds, whether incurred or paid upon issuance of the bonds or over the life of the bonds or the refunded bonds, whether incurred directly or allocated in a combined securitization transaction; and
- any costs of retiring and refunding the electric cooperative's existing debt securities initially issued to finance the extraordinary costs and expenses, including interest accrued on debt securities over their term, whether incurred directly or allocated in a combined securitization transaction.

The financing order would have to detail the amount of qualified costs to be recovered and the period over which the nonbypassable securitized charges would be recovered, which could not exceed 30 years. Securitized charges would be collected and allocated among customers in the manner provided by the financing order.

A financing order would become effective in accordance with its terms. After it took effect, the order would be irrevocable and not subject to denial, rescission, reduction, impairment, adjustment, or other alteration by further action of the board or by action of any regulatory or other governmental body, except as permitted under the bill. A financing order issued under the bill would have the same force and effect of an order issued under current law.

The board or, in a combined securitization transaction, the boards of all participating electric cooperatives, could adopt a financing order providing for retiring and refunding securitized bonds on finding that the future securitized charges required to service the new bonds would be less than the future securitized charges required to service the bonds being refunded. After the indefeasible repayment in full of all outstanding securitized bonds and associated costs, the board would have to adjust the related securitized charges accordingly.

The bill would establish processes and criteria for the review of a financing order on appeal by a member of the electric cooperative to a district court and the review of the district court's judgment by direct appeal to the Supreme Court of Texas.

**Property rights.** The rights and interests of an electric cooperative or its subsidiary, affiliate, successor, financing party, or assignee under a financing order would be only contract rights until the property was first transferred or pledged to an assignee or financing party in connection with the issuance of securitized bonds, at which time the property would become securitized property.

Securitized property that was specified in the financing order would

constitute a present vested property right for all purposes, including for purposes of state and federal laws, even if the imposition and collection of securitized charges depended on further acts of the electric cooperative or others that might not have yet occurred.

Securitized property would exist regardless of whether securitized charges had been billed, had accrued, or had been collected and notwithstanding the fact that the value or amount of the property was dependent on the future provision of service to customers by the electric cooperative or its successors.

On the issuance of the securitized bonds and the financing order, and when the bill's requirements related to security interests were met, the securitized charges, including their nonbypassability, would be irrevocable, final, nondiscretionary, and effective without further action by the electric cooperative or any other person or governmental authority. The financing order would remain in effect and the property would continue to exist for the same period as the pledge of the state under the bill.

All revenue, collections, claims, payments, money, or proceeds of or arising from or relating to securitized charges would constitute proceeds of the securitized property arising from the financing order.

**No setoff.** The interest of an assignee or pledgee in securitized property and in the revenues and collections arising from that property would not be 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. A financing order would remain in effect and unabated notwithstanding the bankruptcy of the electric cooperative, its successors, or assignees.

**No bypass.** A financing order would have to include terms ensuring that the imposition and collection of securitized charges would be nonbypassable and apply to all customers connected to the electric cooperative's system assets and taking service, regardless of whether the

system assets continued to be owned by the electric cooperative.

The electric cooperative, its servicer, any entity providing electric transmission or distribution services, and any retail electric provider in the electric cooperative's certificated service area as it existed on the bill's effective date would be entitled to collect and would have to remit the securitized charges from the retail customers and from retail customers that switched to new on-site generation. Such retail customers would be required to pay the securitized charges.

**True-up mechanism.** A financing order would have to be reviewed and adjusted promptly if after its adoption there were additional charges, reductions, or refunds of extraordinary costs and expenses to ensure that there was not an over- or under-collection of extraordinary costs and expenses and ensure that collections on the securitized property would be sufficient to timely make all periodic and final payments and fund all reserve accounts related to the bonds.

A financing order also would have to include a mechanism requiring that securitized charges be reviewed by the board and adjusted at least annually within 45 days of the anniversary of the issuance of the bonds to correct over- or under-collections of the previous 12 months and ensure the expected recovery of amounts sufficient to provide for the timely payment of debt service and other required charges.

The electric cooperatives that were members of a generation and transmission cooperative could include in their financing orders the ability to allocate any true-up amounts over the retail customers of all electric cooperatives that were members of the same cooperative.

In a combined securitization transaction, each generation and transmission cooperative could calculate all adjustments and determinations relevant to each true-up by each member of the generation and transmission cooperative participating in the securitization transaction, with the adjustments being allocated across the cooperatives in the manner agreed to by all of the participating cooperatives under their financing orders.

A governmental authority could not disapprove of or alter any adjustments made or proposed to be made other than to correct computation or other manifest errors.

**True sale.** An agreement by an electric cooperative or assignee to transfer securitized property that expressly stated that the transfer was a sale or other absolute transfer would signify that the transaction was a true sale and was not a secured transaction and that title, legal and equitable, had passed to the entity to which the securitized property was transferred. The transaction would be treated as an absolute sale regardless of whether the purchaser had any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitized property, the fact that the electric cooperative acted as the collector of securitized charges relating to the securitized property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

**Security interests.** Securitized property would not constitute an account or general intangible under law governing the control of investment property. The transfer, sale, or assignment, or the creation, granting, perfection, and enforcement of liens and security interests in securitized property would be governed by the bill and not by the Business and Commerce Code.

**Pledge of state.** Securitized bonds would not be a debt or obligation of the state and would not be a charge on its full faith and credit or taxing power.

The state would pledge that it would not take or permit, or permit any agency or other governmental authority or political subdivision to take or permit, any action that would impair the value of securitized property or reduce, alter, or impair the securitized charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges and contracts had been paid and performed in full. Any party issuing securitized bonds would be authorized to include this pledge in any documentation relating to those bonds.

**Tax exemption.** Transactions involving the transfer and ownership of securitized property and the receipt of securitized charges would be exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

**Not public utility.** An assignee or financing party could not be considered to be a public utility, electric cooperative, or person providing electric service solely by virtue of transactions under the bill.

**Severability.** Effective on the date the first bonds were issued, if any provision of the Public Utility Regulatory Act was held to be invalid or was invalidated, superseded, replaced, repealed, or expired for any reason, that occurrence would not affect the validity or continuation of the bill or any other provision of the act 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. Those provisions would remain in full force and effect.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

**SUPPORTERS  
SAY:**

SB 1580 would minimize the impact to electric cooperatives and their customers of the high costs associated with Winter Storm Uri by allowing electric cooperatives to cover extraordinary costs and expenses that resulted from the storm through securitization, a low-cost financial tool that allows for low interest rates on bonds and provides greater quantifiable benefits to ratepayers than conventional financing methods.

Electric cooperatives are consumer-owned, non-profit structures, and the cost of service from cooperatives is borne entirely by their ratepayers. The winter storm caused electric generation assets to trip off-line, resulting in extended power outages that affected millions of Texans. Many electric cooperatives incurred extraordinary costs and expenses to continue providing and attempting to restore service to customers. These

extraordinary costs will be built into rates and directly passed on to ratepayers.

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. Securitization is a tried and true method that has been used previously in Texas for electricity utilities. This method allows entities to use the creditworthiness of the state to lower interest rates, ensuring ratepayers would not be impacted by additional fees. The long-term debt instrument spreads costs over many years rather than being built into customer bills all at once, minimizing the near-term impact on ratepayers. In addition, the bill would allow electric cooperatives to aggregate together to get a better rate on the securitized costs.

Absent this mechanism, it is unlikely many cooperatives would be able to finance the costs of the storm, and their customers would have serious challenges bearing the costs if they were simply passed on in full. This is the best option for cooperatives to continue taking care of their own costs. The bill would not require any cooperative to use this financing method but simply would give them the option. SB 1580 would ensure that the impacts of February's storm did not have lasting ramifications on the state's electric cooperatives.

**CRITICS  
SAY:**

SB 1580 is unlikely to resolve the financial challenges faced by electric cooperatives as a result of the winter storm. In legally structured pools of electric cooperatives, the bond credit rating is set by the least creditworthy obligated entity. This would mean the bonds likely would have higher interest rates that might not significantly reduce the costs for the revenue shortfall, which could result in large monthly costs on customer bills. Further, securitization normally is used in a regulated environment, and electric cooperatives do not have the oversight to assure the necessary irrevocable, nonbypassable charge on ratepayer bills.

**NOTES:**

The House companion bill, HB 3544 by Holland, was considered by the House State Affairs Committee in a public hearing on April 1, reported favorably as substituted on April 22, and sent to the Calendars Committee.

