

BILL ANALYSIS

Senate Research Center
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H.B. 1510
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1510 addresses the response and resilience of certain utilities, including electric utilities, to major weather-related events or natural disasters, such as the recent February 2021 winter storm crisis. This storm was devastating to Texas, causing unprecedented and horrific impacts. Record-setting, subfreezing temperatures caused forced outages to a substantial portion of the state's generation supply, resulting in widespread load shedding that left millions of Texans to endure the freezing cold without electricity for extended periods. The goal of this bill is to help avoid or mitigate the effects of such catastrophic events in the future.

H.B. 1510 would encourage electric utilities to invest in facilities necessary to help ensure the state has enough generation capacity during a major weather event or natural disaster, invest in sufficient infrastructure in response to such an event, and invest in weatherization and storm-hardening improvements so that electric facilities may withstand such extreme weather conditions. The bill is intended to achieve these benefits while reducing the associated costs to the electric utilities and their customers. The bill also seeks to avoid or mitigate generation outages resulting from the curtailment of natural gas delivery during a weather emergency.

H.B. 1510 revises the definition of system restoration costs that can be recovered through lower-cost securitization financing to promote sufficient hardening of certain utility systems. The bill also provides a securitization approach for recovery of such costs that would eliminate securitization debt from the utility's balance sheet. It provides an exemption to the Public Utility Commission of Texas (PUC) certification process for smaller-scale generation, and allows the PUC to consider a new plant's dual-fuel and fuel storage capabilities in a certification proceeding. The bill prioritizes gas delivery to certain customers during a curtailment, including human needs customers and power generators serving those customers.

H.B. 1510 amends current law relating to the response and resilience of certain electricity service providers to major weather-related events or other natural disasters and grants authority to issue bonds.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.402(a), Utilities Code, as follows:

- (a) Provides that system restoration costs include reasonable and necessary weatherization and storm-hardening costs incurred, as well as reasonable estimates of costs to be incurred, by the electric utility, but provides that such estimates are required to be subject to true-up and reconciliation after the actual costs are known.

SECTION 2. Amends Chapter 36, Utilities Code, by adding Subchapter J, as follows:

SUBCHAPTER J. LOWER-COST FINANCING MECHANISM FOR SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS

Sec. 36.451. PURPOSE AND APPLICABILITY. (a) Provides that, except as otherwise specifically provided by this subchapter, the same procedures, standards, and protections for securitization authorized by Subchapter I (Securitization for Recovery of System) of this chapter and, to the extent made applicable to Subchapter I of this chapter, by Subchapter G (Securitization), Chapter 39 (Restructuring of Electric Utility Industry), apply to the lower-cost financing mechanism for securitization of transition costs or system restoration costs as provided by Subchapter I. Provides that to the extent of any conflict between the provisions of this subchapter and Subchapter I of this chapter or, to the extent made applicable by Subchapter I of this chapter, Subchapter G, Chapter 39, in cases involving the securitization of system restoration costs under this subchapter, the provisions of this subchapter control.

(b) Provides that the purpose of this subchapter is to make available a lower-cost, supplemental financing mechanism to allow an electric utility operating solely outside of the Electric Reliability Council of Texas (ERCOT) to obtain timely recovery of system restoration costs under Subchapter I through securitization and the issuance of transition bonds or system restoration bonds by an issuer other than the electric utility or an affiliated special purpose entity. Provides that financing of system restoration costs under this subchapter is a valid and essential public purpose.

(c) Provides that the Texas Electric Utility System Restoration Corporation (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, supplemental financing mechanism available to the Public Utility Commission of Texas (PUC) and an electric utility to attract low-cost capital to finance system restoration costs.

(d) Requires the PUC, in approving securitization under this subchapter, to ensure that customers are not harmed as a result of any financing through the corporation and that any financial savings or other benefits are appropriately reflected in customer rates.

(e) Provides that system restoration bonds issued under this subchapter will be solely the obligation of the issuer and the corporation as borrower, if applicable, and will not be a debt of or a pledge of the faith and credit of the state.

(f) Requires that system restoration bonds issued under this subchapter be nonrecourse to the credit or any assets of the state and the PUC.

(g) Provides that this subchapter does not limit or impair the PUC's jurisdiction under Title 2 (Public Utility Regulatory Act) to regulate the rates charged and the services rendered by electric utilities in this state.

(h) Provides that an electric utility receiving the proceeds of securitization financing under this subchapter is not required to provide utility services to the corporation or the state as a result of receiving such proceeds except in the role of the corporation or the state as a customer of the electric utility. Provides that this subchapter does not create an obligation of the corporation or an issuer to provide electric services to the electric utility or its customers.

Sec. 36.452. DEFINITIONS. (a) Defines "corporation" and "issuer."

(b) Defines "qualified costs."

(c) Provides that, except as otherwise specifically provided by this subchapter, any defined terms provided by Subchapter I of this chapter and, if made applicable by Subchapter I of this chapter, Subchapter G, Chapter 39, have the same meaning in this subchapter.

Sec. 36.453. CREATION OF CORPORATION. (a) Provides that the corporation is a nonprofit corporation and instrumentality of the state, and is required to perform the essential governmental function of financing system restoration costs in accordance with this subchapter. Provides that the corporation is required to perform only functions consistent with this subchapter, is required to exercise its powers through a governing board, is subject to the regulation of the PUC, and has a legal existence as a public corporate body and instrumentality of the state separate and distinct from the state.

(b) Prohibits the assets of the corporation from being considered part of any state fund. Prohibits the state from budgeting for or providing any state money to the corporation. Prohibits the debts, claims, obligations, and liabilities of the corporation from being considered to be a debt of the state or a pledge of its credit.

(c) Requires the corporation to be self-funded. Authorizes the corporation, before the imposition of transition charges or system restoration charges, to accept and expend for its operating expenses money that may be received from any source, including financing agreements with the state, a commercial bank, or another entity to finance the corporation's obligations until the corporation receives sufficient transition property to cover its operating expenses as financing costs, and to repay any short-term borrowing under any such financing agreements.

(d) Provides that the corporation has the powers, rights, and privileges provided for a corporation organized under Chapter 22 (Nonprofit Corporations), Business Organizations Code, subject to the express exceptions and limitations provided by this subchapter.

(e) Requires an organizer selected by the executive director of the PUC to prepare the certificate of formation of the corporation under Chapters 3 (Formation and Governance) and 22, Business Organizations Code. Requires that the certificate of formation be consistent with the provisions of this subchapter.

(f) Authorizes state officers and agencies to render services to the corporation, within their respective functions, as may be requested by the PUC or the corporation.

(g) Authorizes the corporation or an issuer to:

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

(2) determine the duties and compensation of a person retained under Subdivision (1), subject to the approval of the PUC.

(h) Provides that the corporation is governed by a board of five directors appointed by the PUC for two-year terms.

(i) Provides that an official action of the board requires the favorable vote of a majority of the directors present and voting at a meeting of the board.

Sec. 36.454. POWERS AND DUTIES OF CORPORATION. (a) Requires the corporation, in each instance subject to the prior authorization of the PUC, to participate in the financial transactions authorized by this subchapter. Prohibits the corporation from engaging in business activities except those activities provided for in this subchapter and those ancillary and incidental thereto. Prohibits the corporation or an issuer from applying proceeds of system restoration bonds or system restoration charges to a purpose not specified in a financing order, to a purpose in an amount that exceeds the amount allowed for such purpose in the order, or to a purpose in contravention of the order.

(b) Authorizes the board of the corporation, under the provisions of this subchapter, to employ or retain persons as are necessary to perform the duties of the corporation.

(c) Authorizes the corporation to:

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

(A) to acquire transition property and to pledge such transition property, and any other collateral to secure payment of system restoration bonds issued by the corporation, together with payment of any other qualified costs, or to secure repayment of any borrowing from any other issuer of system restoration bonds; or

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

(2) issue system restoration bonds on terms and conditions consistent with a financing order;

(3) borrow funds from an issuer of system restoration bonds to acquire transition property, and pledge that transition property to the repayment of any borrowing from an issuer, together with any related qualified costs, all on terms and conditions consistent with a financing order;

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

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

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

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

(d) Requires the corporation to maintain separate accounts and records relating to each electric utility that collects system restoration charges for all charges, revenues, assets, liabilities, and expenses relating to that utility's related system restoration bond issuances.

(e) Prohibits the board of the corporation from authorizing any rehabilitation, liquidation, or dissolution of the corporation and prohibits a rehabilitation, liquidation, or dissolution of the corporation from taking effect as long as any system restoration bonds are outstanding unless adequate protection and provision have been made for the payment of the bonds pursuant to the documents authorizing the issuance of the bonds. Requires that the assets of the corporation, in the event of any rehabilitation, liquidation, or dissolution, be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and requires that all remaining funds of the corporation be applied and distributed as provided by an order of the PUC.

(f) Prohibits the corporation, before the date that is two years and one day after the date that the corporation no longer has any payment obligation with respect to any system restoration bonds, including any obligation to an issuer of any system restoration bonds outstanding, from filing a voluntary petition under federal bankruptcy law and prohibits any public official or any organization, entity, or other person from authorizing the corporation to be or to become a debtor under federal bankruptcy law during that period. Provides that the state covenants that it will not limit or alter the denial of authority under this subsection or Subsection (e), and the provisions of this subsection and Subsection (e) are hereby made a part of the contractual obligation that is subject to the state pledge set forth in Section 39.310 (Pledge of State).

(g) Requires the corporation to prepare and submit to the PUC for approval an annual operating budget. Requires the corporation, if requested by the PUC, to prepare and submit an annual report containing the annual operating and financial statements of the corporation and any other appropriate information.

Sec. 36.455. COMMISSION REGULATION OF CORPORATION. Requires the PUC to regulate the corporation as provided by this subchapter and consistent with the manner in which it regulates public utilities. Provides that, notwithstanding the regulation authorized by this section, the corporation is not a public utility.

Sec. 36.456. FINANCING ORDER. (a) Provides that this section applies to the PUC's issuance of a financing order under this subchapter.

(b) Provides that, except as otherwise specifically provided by this subchapter, the provisions of Subchapter I of this chapter and, to the extent made applicable to Subchapter I of this chapter, Subchapter G, Chapter 39, that address the PUC's issuance of a financing order apply to the PUC's issuance of a financing order under this subchapter.

(c) Requires the corporation and any issuer to be a party to the PUC's proceedings that address the issuance of a financing order along with the relevant electric utility.

(d) Requires that a financing order issued under this subchapter, in addition to the requirements of Subchapter I, as applicable:

(1) require the sale, assignment, or other transfer to the corporation of certain specified transition property created by the financing order in the manner contemplated by Section 39.308 (True Sale), and, following that sale, assignment, or transfer, require that system restoration charges paid under any financing order be created, assessed, and collected as the property of the corporation, subject to subsequent sale, assignment, or transfer by the corporation as authorized under this subchapter;

(2) authorize:

(A) the issuance of system restoration bonds by the corporation secured by a pledge of specified transition property, and the application of the proceeds of those system restoration bonds, net of issuance costs, to the acquisition of the transition property from the electric utility; or

(B) the acquisition of specified transition property from the electric utility by the corporation financed by a loan by an issuer to the corporation of the proceeds of system restoration bonds, net of issuance costs, secured by a pledge of the specified transition property, or financed by the acquisition by an issuer from the

corporation of the transition property financed from the net proceeds of transition bonds issued by the issuer; and

(3) authorize the electric utility to serve as collection agent to collect the system restoration charges and transfer the collected charges to the corporation, the issuer, or a financing party, as appropriate.

(e) Requires the corporation, after issuance of the financing order, to arrange for the issuance of system restoration bonds as specified in the financing order by it or another issuer selected by the corporation and approved by the PUC.

(f) Provides that system restoration bonds issued pursuant to a financing order under this section are secured only by the related transition property and any other funds pledged under the bond documents. Provides that no assets of the state or electric utility are subject to claims by such bondholders. Provides that, notwithstanding the provisions of Subchapter G, Chapter 39, following assignment of the transition property, the electric utility does not have any beneficial interest or claim of right in such system restoration charges or in any transition property.

Sec. 36.457. SEVERABILITY. Severability clause.

SECTION 3. Amends Section 37.056(c), Utilities Code, as follows:

(c) Requires the PUC to grant each certificate on a nondiscriminatory basis after considering:

(1)-(3) makes no changes to these subdivisions; and

(4) certain other factors, including the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted, including any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities in areas outside the ERCOT power region.

SECTION 4. Amends Section 37.058, Utilities Code, by adding Subsection (e), as follows:

(e) Authorizes, but does not require, an electric utility operating solely outside of the ERCOT power region to obtain a certificate to install, own, or operate a generation facility with a capacity of 10 megawatts or less, notwithstanding any other provision of Title 2.

SECTION 5. Effective date: upon passage or September 1, 2021.