

BILL ANALYSIS

Senate Research Center

S.B. 1757
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

ERCOT receives and issues payments to market participants. If a market participant is unable to pay for the transaction, there remains a short-paid invoice. There is a market uplift mechanism that allows for participants to pay off those debts, but it is limited to \$2.5 million per month.

After February's winter storm, the amount of short-paying invoice recipients and estimated cumulative aggregate short pay amount grew to an amount that would not allow ERCOT to uplift these costs to the market in a reasonable amount of time.

S.B. 1757 would create the Texas Electric Securitization Corporation to provide a lower cost financing mechanism for securitizing unpaid and short-paid invoices to ERCOT. The bill would allow the securitization corporation to issue bonds. The corporation would be incorporated as a nonprofit corporation of the state, and its duties would be limited to financing costs associated with unpaid invoices to ERCOT.

The corporation would be self-funded, and the state would not appropriate any funds to pay for it. The financing corporation would be governed by a board of directors consisting of five members appointed by the Public Utility Commission.

The issuance of the bonds must be used solely for the purposes of financing default balances that would otherwise be uplifted to the ERCOT wholesale market, and the Public Utility Commission will ensure that securitization provides financial benefits to wholesale market participants, greater than would have been otherwise achieved without this financing mechanism.

As proposed, S.B. 1757 amends current law relating to securitizing costs of electric services or electric markets.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 3 (Section 39.609, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 31, Utilities Code, by adding Subchapter C, as follows:

SUBCHAPTER C. SECURITIZATION CORPORATION

Sec. 31.101. PURPOSE AND DEFINITIONS. (a) Provides that the purpose of this subchapter is to create a securitization corporation dedicated to financing costs that are eligible for securitization under Subtitle B (Electric Utilities) of this code. Authorizes entities that are permitted to securitize costs, subject to any other requirements applicable to such securitization authority, to request that the Texas Electric Securitization Corporation (corporation) conduct the financing on their behalf.

(b) Requires the corporation to be created pursuant to 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 authorized under this subchapter.

(c) Provides that bonds issued consistent with 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.

(d) Requires that bonds issued consistent with this subchapter be nonrecourse to the credit or any assets of the state or the Public Utility Commission of Texas (PUC).

(e) Defines "corporation" and "issuer."

Sec. 31.102. CREATION OF THE CORPORATION. (a) Requires the corporation to be incorporated as a nonprofit corporation and instrumentality of the state, and to perform the essential governmental function of financing eligible costs in accordance with this subchapter. Requires the corporation to perform only those functions consistent with this subchapter, to exercise its powers through a governing board, and to be subject to the regulation of the PUC. Requires the corporation to have a legal existence as a public corporate body and instrumentality of the state separate and distinct from the state.

(b) Prohibits assets of the corporation from being considered part of any state fund. Prohibits the state from budgeting for or providing any general fund appropriations to the corporation, and 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. Requires the corporation to be self-funded. Authorizes the corporation, prior to the imposition of charges to recover the securitized amounts, to accept and expend for its operating expenses such funds as 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 property to cover its operating expenses as financing costs, and to repay any short-term borrowing under any such financing agreement.

(c) Requires the corporation to have 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 set forth in this subchapter.

(d) Requires an incorporator selected by the executive director of the PUC to prepare the articles of incorporation of the corporation under Chapter 22, Business Organizations Code, which articles are required to be consistent with the provisions of this subchapter.

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

(f) Authorizes the corporation and any issuer to retain such professionals, financial advisors, and accountants as it may deem necessary to fulfill its duties under this subchapter and to determine their duties and compensation, subject to approval of the PUC.

(g) Requires the governing body of the corporation to be a board of directors that is required to consist of five members appointed by the PUC. Requires that all official action of the governing body require the favorable vote of a majority of the board members present and voting at any meeting of the board of directors.

Sec. 31.103. POWERS AND DUTIES OF THE CORPORATION. (a) Requires the corporation, in each instance subject to the prior authorization of the PUC, to participate

in the financial transactions contemplated by this subchapter. Requires the corporation to engage in no other business activities except those activities provided for in this subchapter and those ancillary and incidental thereto. Prohibits the corporation and any issuer from applying any proceeds of bonds or charges to any purpose not specified in a financing order, or to any purpose in excess of the amount allowed for such purpose in the order, or to any purpose in contravention of the order.

(b) Requires the governing board of the corporation, pursuant to the provisions of this subchapter, to have the power to employ or retain such persons as are necessary to perform the duties of the corporation.

(c) Authorizes the corporation to:

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

(i) to acquire property and to pledge such property, and any other collateral:

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

(b) to secure repayment of any borrowing from any other issuer of bonds; or

(ii) to sell the property to another issuer, which may in turn pledge such property, together with any other collateral, to the repayment of bonds issued by the issuer together with any other qualified costs;

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

(3) borrow funds from an issuer of bonds to acquire property, and pledge such 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. Authorizes the corporation to also borrow funds for initial operating expenses;

(4) sue or be sued in its corporate name. Authorizes the corporation to intervene as a party before the PUC or any court in this state in any matter involving the corporation's powers and duties;

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

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

(d) Requires the corporation to maintain separate accounts and records relating to an entity that is collecting charges for all charges, revenues, assets, liabilities, and expenses relating to an entity's related bond issuances.

(e) Prohibits the governing board of the corporation from authorizing any rehabilitation, liquidation, or dissolution of the corporation, and prohibits such rehabilitation, liquidation, or dissolution of the corporation from taking effect as long as any bonds are outstanding unless adequate protection and provision has been made for the payment of the bonds pursuant to the documents authorizing

the issuance of the bonds. Requires that, in the event of any rehabilitation, liquidation, or dissolution, the assets of the corporation 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 all remaining funds of the corporation be applied and distributed as provided by an order of the PUC.

(f) Prohibits the corporation, prior to the date that is two years and one day after which the corporation no longer has any payment obligation with respect to any bonds, including any obligation to any issuer of any bonds outstanding, from filing and having authority to file a voluntary petition under the Federal Bankruptcy Code, as it may, from time to time, be in effect, and prohibits any public official or any organization, entity, or other person from authorizing the corporation to be or to become a debtor under the Federal Bankruptcy Code during such 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 such subsections 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 an operating budget annually that is required to be submitted for approval to the PUC. Requires the corporation, if requested by the PUC, to prepare and submit an annual report containing, among other appropriate matters, the annual operating and financial statements of the corporation.

Sec. 31.104. COMMISSION REGULATION OF THE CORPORATION. Requires the PUC to regulate the corporation as provided for in this subchapter. Provides that, notwithstanding such regulation, the corporation is not a public utility.

Sec. 31.105. 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 in this subchapter, provisions that apply to a financing order authorized under Subtitle B apply to the PUC's issuance of a financing order under this subchapter for the same purpose.

(c) Requires the corporation and any issuer to be a party to the PUC's proceedings addressing the issuance of a financing order along with the entity requesting securitization.

(d) Requires that a financing order issued under this subchapter in addition to any other applicable requirements under Subtitle B:

(1) require the sale, assignment, or other transfer of certain specified property created by the financing order to the corporation, and following such sale, assignment, or transfer, charges paid under any financing order are required to 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 either:

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

(B) the acquisition of specified property from the entity requesting securitization by the corporation, financed by a loan by an issuer to the corporation of the proceeds of bonds (net of issuance costs), or

by the acquisition by an issuer from the corporation of such property, and in each case, the pledge of such property to the repayment of such loan or bonds, as applicable;

(3) authorize the entity requesting securitization to serve as collection agent to collect the charges and transfer those 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 bonds as specified in the financing order by it or another issuer selected by the corporation and approved by the PUC.

(f) Provides that bonds issued pursuant to a financing order under this section are secured only by the related property and any other funds pledged under the bond documents, and prohibits assets of the state or any entity requesting securitization under Chapter 31 (General Provisions) from being subject to claims by such bondholders. Prohibits the entity requesting securitization, following assignment of the property, from having any beneficial interest or claim of right in such charges or in any property.

Sec. 31.106. SEVERABILITY. Severability clause.

SECTION 3. Amends Chapter 39, Utilities Code, by adding Subchapter M, as follows:

Sec. 39.601. PURPOSE. Provides that the purpose of this subchapter is to enable the independent organization certified under Section 39.151 (Essential Organizations) to use securitization financing to fund substantial balances that would otherwise be uplifted to the wholesale market as a result of market participants defaulting on amounts owed after an extreme pricing event. Provides that securitization will allow wholesale market participants who are owed money to be paid in a more timely manner, while allowing the balance to be repaid over time at a low carrying cost. Requires that the proceeds of the bonds be used solely for the purposes of financing default balances that would otherwise be uplifted to the wholesale market. Requires the PUC to ensure that securitization provides tangible and quantifiable benefits to wholesale market participants, greater than would have been achieved absent the issuance of bonds. Requires the PUC to ensure that the structuring and pricing of the bonds result in the lowest 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 bond associated with default balances that are sought to be securitized. Requires that the present value calculation use a discount rate equal to the proposed interest rate on the bonds.

Sec. 39.602. DEFINITIONS. Defines "assignee," "financing order," "financing party," "qualified costs," and "default charges."

Sec. 39.603. FINANCING ORDERS; TERMS. (a) Authorizes the PUC to adopt a financing order, on application of the independent organization, to recover the costs of a substantial default balance resulting from a significant pricing event on making a finding that such financing is needed to preserve the integrity of the wholesale market and the public interest, after considering the interests of wholesale market participants who are owed balances and the potential impacts of uplifting those balances to the wholesale market without a financing vehicle.

(b) Requires that the financing order detail the amounts to be recovered and the period over which the nonbypassable default charges are required to be recovered, which period is prohibited from exceeding 15 years. Requires that the financing order, if an amount determined under this section is subject to judicial review at the time of the securitization proceeding, include an adjustment mechanism requiring the independent organization to adjust its default charges in a manner that would refund, over the remaining life of the bonds, any overpayments

resulting from securitization of amounts in excess of the amount resulting from a final determination after completion of all appellate reviews. Prohibits the adjustment mechanism from affecting the stream of revenue available to service the bonds. Prohibits an adjustment from being made under this subsection until all appellate reviews, including, if applicable, appellate reviews following a PUC decision on remand of its original orders, have been completed.

(c) Requires that nonbypassable default charges be collected and allocated among wholesale market participants on the same basis that they would otherwise be uplifted pursuant to the protocols of the independent organization.

(d) Requires that a financing order become effective in accordance with its terms, and the financing order, together with the default charges authorized in the order, thereafter be irrevocable and not subject to reduction, impairment, or adjustment by further action of the PUC.

(e) Requires the PUC to issue a financing order under Subsections (a) and (g) not later than 90 days after the independent organization files its request for the financing order.

(f) Provides that a financing order is not subject to rehearing by the PUC. Authorizes a financing order to be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the financing order is signed by the PUC. Authorizes the judgment of the district court to be reviewed only by direct appeal to the Supreme Court of Texas (supreme court) filed within 15 days after entry of judgment. Requires that all appeals be heard and determined by the district court and the supreme court as expeditiously as possible with lawful precedence over other matters. Requires that review on appeal be based solely on the record before the PUC 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 PUC under this chapter.

(g) Authorizes the PUC, at the request of the independent organization, to adopt a financing order providing for retiring and refunding the bonds on making a finding that the future default charges required to service the new bonds, including transaction costs, will be less than the future default charges required to service the bonds being refunded. Requires the PUC, on the retirement of the refunded bonds, to adjust the related default charges accordingly.

Sec. 39.604. PROPERTY RIGHTS. (a) Requires that the rights and interests of the independent organization or its successor under a financing order, including the right to impose, collect, and receive default charges authorized in the order, be only contract rights until they are first transferred to an assignee or pledged in connection with the issuance of bonds, at which time they will become "default property."

(b) Requires that default property constitute a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of default charges depends on further acts of the independent organization or others that have not yet occurred. Requires that the financing order remain in effect and requires that the property continue to exist for the same period as the pledge of the state described in Section 36.310.

(c) Requires that all revenues and collections resulting from default charges constitute proceeds only of the default property arising from the financing order.

Sec. 39.605. NO SETOFF. Provides that the interest of an assignee or pledgee in default property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the independent organization or any other person or in connection with the bankruptcy of any wholesale market participant.

Requires that a financing order remain in effect and unabated notwithstanding the bankruptcy of the independent organization, its successors, or assignees.

Sec. 39.606. NO BYPASS. Requires that a financing order include terms ensuring that the imposition and collection of default charges authorized in the order shall be nonbypassable.

Sec. 39.607. TRUE-UP. Requires that a financing order include a mechanism requiring that default charges be reviewed and adjusted at least annually, within 45 days of the anniversary date of the issuance of the bonds, to correct any overcollections or undercollections 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 bonds.

Sec. 39.609. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT.

(a) Provides that default property does not constitute an account or general intangible under Section 9.106 (Control of Investment Property), Business & Commerce Code. Provides that the creation, granting, perfection, and enforcement of liens and security interests in default property are governed by this section and not by the Business & Commerce Code.

(b) Authorizes a valid and enforceable lien and security interest in default property to be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of bonds. Requires that the lien and security interest attach automatically from the time that value is received for the 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 lien and security interest in the default property and all proceeds of the property, whether accrued or not, are required to have priority in the order of filing and take precedence over any subsequent judicial or other lien creditor. Requires that the security interest, if notice is filed within 10 days after value is received for the default bonds, be perfected retroactive to the date value was received, otherwise, be perfected as of the date of filing.

(c) Requires that transfer of an interest in default 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 31.607 or by the commingling of funds arising from default charges with other funds, and any other security interest that may apply to those funds are required to be terminated when they are transferred to a segregated account for the assignee or a financing party. Requires that any proceeds of that property, if default property has been transferred to an assignee, be held in trust for the assignee.

(f) Authorizes the financing parties or their representatives, if a default or termination occurs under the bonds, to foreclose on or otherwise enforce their lien and security interest in any default property as if they were secured parties under Chapter 9, Business & Commerce Code, and authorizes the PUC to order that amounts arising from default 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 Travis County, on application by or on behalf of the financing parties, to order the sequestration and payment to them of revenues arising from the default charges.

Sec. 39.610. PLEDGE OF STATE. Provides that default 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 pledges, however, for the benefit and protection of financing parties and the independent organization, that it will not take or permit any action that would impair the value of default property, or reduce, alter, or impair the default 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 bonds have been paid and performed in full. Authorizes any party issuing under Chapter 39 (Restructuring of Electric Utility Industry) bonds to include this pledge in any documentation relating to those bonds.

Sec. 39.611. TAX EXEMPTION. Provides that transactions involving the transfer and ownership of default property and the receipt of default charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

Sec. 39.612. NOT PUBLIC UTILITY. Prohibits an assignee or financing party from being considered to be a public utility or person providing electric service solely by virtue of the transactions described in this subchapter.

Sec. 39.613. SEVERABILITY. Severability clause.

SECTION 2. Effective date: September 1, 2021.