

Chapter 950

S.B. No. 1580

AN ACT

relating to the use of securitization by electric cooperatives to address certain weather-related extraordinary costs and expenses and to the duty of electric utility market participants to pay certain amounts owed.

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

SECTION 1. Chapter 41, Utilities Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. MARKET PARTICIPATION AND SECURITIZATION

Sec. 41.151. PURPOSE. (a) The purpose of this subchapter is to enable electric cooperatives to use securitization financing to recover extraordinary costs and expenses incurred due to the abnormal weather events that occurred in this state in the period beginning 12:00 a.m., February 12, 2021, and ending at 11:59 p.m., February 20, 2021. This type of debt will reduce the cost of financing the extraordinary costs and expenses relative to the costs that would be incurred using conventional electric cooperative financing methods. The proceeds of the securitized bonds shall 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 the financing shall ensure that securitization provides tangible and quantifiable benefits to its members, greater than would have been

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1 achieved absent the issuance of securitized bonds. Each board that
2 chooses to securitize under this subchapter shall ensure that the
3 structuring and pricing of the securitized bonds are consistent
4 with market conditions and the terms of the financing order. This
5 subchapter may be used by a group of electric cooperatives to issue
6 securitized bonds in a combined securitization transaction.

7 (b) A cooperative that owes the independent organization
8 certified under Section 39.151, Utilities Code, for the ERCOT power
9 region amounts incurred as a result of operations during the period
10 beginning 12:01 a.m., February 12, 2021, and ending at 11:59 p.m.,
11 February 20, 2021, shall:

12 (1) use all means necessary to securitize the amount
13 owed the independent organization, calculated solely according to
14 the protocols of the independent organization in effect during the
15 period of emergency promulgated subject to the approval of the
16 commission; and

17 (2) fully repay the amount described by Subdivision
18 (1) immediately upon receipt of the securitized amount along with
19 any additional amounts necessary to fully satisfy the amount owed.

20 Sec. 41.152. DEFINITIONS. In this subchapter:

21 (1) "Assignee" means any individual, corporation, or
22 other legally recognized entity, including a special purpose
23 entity, to which an interest in securitized property is
24 transferred, other than as security.

25 (2) "Board" means the governing body of an electric
26 cooperative.

27 (3) "Combined securitization transaction" means the

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1 issuance of securitized bonds under this subchapter in a
2 transaction involving at least two electric cooperatives acting
3 together.

4 (4) "Extraordinary costs and expenses" means:

5 (A) costs and expenses incurred by an electric
6 cooperative for electric power and energy purchased during the
7 period of emergency in excess of what would have been paid for the
8 same amount of electric power and energy at the average rate
9 incurred by the electric cooperative for electric power and energy
10 purchased during the month of January 2021;

11 (B) costs and expenses incurred by an electric
12 cooperative to generate and transmit electric power and energy
13 during the period of emergency, including fuel costs, operation and
14 maintenance expenses, overtime costs, and all other costs and
15 expenses that would not have been incurred but for the abnormal
16 weather events; and

17 (C) any charges imposed on the electric
18 cooperative or on a power supplier to the electric cooperative that
19 were passed on to the electric cooperative by the applicable
20 regional transmission organization or independent system operator,
21 resulting from defaults by other market participants of the
22 regional transmission organization or independent system operator
23 for costs relating to the period of emergency.

24 (5) "Financing order" means an order of a board
25 approving the issuance of securitized bonds, which may be through
26 participation in a combined securitization transaction, and the
27 creation of securitized charges for the recovery of qualified

1 costs.

2 (6) "Financing party" means a holder of securitized
3 bonds, including trustees, collateral agents, and other persons
4 acting for the benefit of the holder.

5 (7) "Qualified costs" means up to 100 percent of an
6 electric cooperative's:

7 (A) extraordinary costs and expenses;

8 (B) costs of issuing, supporting, repaying,
9 servicing, and refinancing the securitized bonds, whether incurred
10 or paid upon issuance of the securitized bonds or over the life of
11 the securitized bonds or the refunded securitized bonds, whether
12 incurred directly or allocated in a combined securitization
13 transaction; and

14 (C) any costs of retiring and refunding the
15 electric cooperative's existing debt securities initially issued
16 to finance the extraordinary costs and expenses including interest
17 accrued on debt securities over their term, whether incurred
18 directly or allocated in a combined securitization transaction.

19 (8) "Period of emergency" means the period beginning
20 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
21 2021.

22 (9) "Securitized bonds" means bonds, debentures,
23 notes, certificates of participation or of beneficial interest, or
24 other evidences of indebtedness or ownership that are issued by an
25 electric cooperative, its successors, or an assignee of the
26 electric cooperative or group of electric cooperatives under a
27 financing order or financing orders, that have a term not longer

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1 than 30 years, and that are secured by or payable, primarily, from
2 securitized property and the proceeds thereof and, in a combined
3 securitization transaction, securitized property contributed by
4 other electric cooperatives. If certificates of participation,
5 beneficial interest, or ownership are issued, references in this
6 subchapter to principal, interest, or premium shall refer to
7 comparable amounts under those certificates.

8 (10) "Securitized charges" means nonbypassable
9 amounts to be charged for the use or availability of electric
10 services, approved by the board under a financing order to recover
11 qualified costs, that shall be collected by an electric
12 cooperative, its successors, an assignee, or other collection
13 agents as provided for in the financing order.

14 (11) "Securitized property" means the property right
15 created under this subchapter, including the right, title, and
16 interest of the electric cooperative or its assignee:

17 (A) in and to the securitized charges established
18 under a financing order, including all rights to obtain adjustments
19 in accordance with Section 41.157 and the financing order;

20 (B) to be paid the amount that is determined in a
21 financing order to be the amount that the electric cooperative or
22 its transferee is lawfully entitled to receive under this
23 subchapter and the proceeds thereof; and

24 (C) in and to all revenue, collections, claims,
25 payments, money, or process of or arising from the securitized
26 charges that are the subject of a financing order.

27 Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board shall

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adopt a financing order to recover the electric cooperative's
qualified costs consistent with the standards in Section 41.151.

(b) The financing order shall detail the amount of qualified
costs to be recovered and the period over which the nonbypassable
securitized charges shall be recovered, which period may not exceed
30 years.

(c) Securitized charges shall be collected and allocated
among customers in the manner provided by the financing order.

(d) A financing order becomes effective in accordance with
its terms, and the financing order, together with the securitized
charges authorized in the order, after it takes effect, is
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
of this state, except as permitted by Section 41.157. A financing
order issued under this subchapter has the same force and effect of
a financing order issued under Chapter 39.

(e) A financing order may be reviewed by appeal by a member
of the electric cooperative to a district court in the county where
the electric cooperative is domiciled, filed not later than the
15th day after the date the financing order is adopted by the board.
The judgment of the district court may be reviewed only by direct
appeal to the Supreme Court of Texas filed not later than the 15th
day after the date of the entry of judgment. All appeals shall be
heard and determined by the district court and the Supreme Court of
Texas as expeditiously as possible with lawful precedence over
other matters. Review on appeal shall 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 shall 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) The board or, in a combined securitization transaction, the boards of all participating electric cooperatives, may adopt a financing order or financing orders providing for retiring and refunding securitized bonds on making a finding that the future securitized charges required to service the new securitized bonds, including transaction costs, will be less than the future securitized charges required to service the securitized bonds being refunded. After the indefeasible repayment in full of all outstanding securitized bonds and associated financing costs, the board shall adjust the related securitized charges accordingly.

Sec. 41.154. PROPERTY RIGHTS. (a) 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 securitized charges authorized in the financing order, shall be only contract rights until the 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 the property becomes securitized property.

(b) Securitized property that is specified in the financing order constitutes a present vested property right for all purposes, including for purposes of Sections 16 and 17, Article I, Texas

Constitution, Section 10, Article I, United States Constitution, and the Fifth Amendment to the United States Constitution, and the laws of this state and the United States, even if the imposition and collection of securitized charges depend on further acts of the electric cooperative or others that may not have yet occurred.

(c) Securitized property shall exist regardless of whether securitized 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.

(d) On the issuance of the securitized bonds and the financing order, and when the requirements of Section 41.159 are met, the securitized charges, including their nonbypassability, are irrevocable, final, nondiscretionary, and effective without further action by the electric cooperative or any other person or governmental authority. The financing order shall remain in effect and the property shall continue to exist for the same period as the pledge of the state described in Section 41.160.

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

Sec. 41.155. NO SETOFF. The interest of an assignee or pledgee in securitized 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

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1 electric cooperative or any other entity. A financing order shall
2 remain in effect and unabated notwithstanding the bankruptcy of the
3 electric cooperative, its successors, or assignees.

4 Sec. 41.156. NO BYPASS. (a) A financing order shall
5 include terms ensuring that the imposition and collection of
6 securitized charges authorized in the order shall be nonbypassable
7 and apply to all customers connected to the electric cooperative's
8 system assets and taking service, regardless of whether the system
9 assets continue to be owned by the electric cooperative.

10 (b) The electric cooperative, its servicer, any entity
11 providing electric transmission or distribution services, and any
12 retail electric provider providing services to a retail customer in
13 the electric cooperative's certificated service area as it existed
14 on the date of enactment of this subchapter are entitled to collect
15 and must remit, consistent with this subchapter and any financing
16 order adopted under this subchapter, the securitized charges from
17 the retail customers and from retail customers that switch to new
18 on-site generation. Such retail customers are required to pay the
19 securitized charges.

20 Sec. 41.157. TRUE-UP. (a) A financing order shall be
21 reviewed and adjusted promptly if after its adoption there are
22 additional charges, reductions, or refunds of extraordinary costs
23 and expenses, to:

24 (1) ensure that there is not an over-collection or an
25 under-collection of extraordinary costs and expenses; and

26 (2) ensure that collections on the securitized
27 property will be sufficient to timely make all periodic and final

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payments of principal, interest, fees, and other amounts and to
timely fund all reserve accounts, if any, related to the
securitized bonds.

(b) A financing order shall also include a mechanism
requiring that securitized charges be reviewed by the board and
adjusted at least annually, not later than the 45th day after the
anniversary date of the issuance of the securitized bonds, to:

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

(2) 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.

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

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

(e) A governmental authority may not disapprove of or alter
any adjustments made or proposed to be made under this subchapter

1 other than to correct computation or other manifest errors.

2 Sec. 41.158. TRUE SALE. An agreement by an electric
3 cooperative or assignee to transfer securitized property that
4 expressly states that the transfer is a sale or other absolute
5 transfer signifies that the transaction is a true sale and is not a
6 secured transaction and that title, legal and equitable, has passed
7 to the entity to which the securitized property is transferred. The
8 transaction shall be treated as an absolute sale regardless of
9 whether the purchaser has any recourse against the seller, or any
10 other term of the parties' agreement, including the seller's
11 retention of an equity interest in the securitized property, the
12 fact that the electric cooperative acts as the collector of
13 securitized charges relating to the securitized property, or the
14 treatment of the transfer as a financing for tax, financial
15 reporting, or other purposes.

16 Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
17 DEFAULT. (a) Securitized property does not constitute an account
18 or general intangible under Section 9.106, Business & Commerce
19 Code. The transfer, sale, or assignment, or the creation,
20 granting, perfection, and enforcement of liens and security
21 interests in securitized property are governed by this section and
22 not by the Business & Commerce Code. Securitized property shall
23 constitute property for all purposes, including for contracts
24 securing securitized bonds, regardless of whether the securitized
25 property revenues and proceeds have accrued.

26 (b) A valid and enforceable transfer, sale, or assignment,
27 or lien and security interest, as applicable, in securitized

property may 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. The transfer, sale, assignment, or lien and security interest, as applicable, shall 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 in accordance with the rules prescribed under Subsection (d), shall be a continuously perfected transfer, sale, and assignment, or lien and security interest, as applicable, in the securitized property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing and take precedence over any subsequent judicial or other lien creditor. If notice is filed before the 10th day after the date value is received for the securitized bonds, the transfer, sale, or assignment, or security interest, as applicable, shall be perfected retroactive to the date value was received. Otherwise, the transfer, sale, or assignment, or security interest, as applicable, shall be perfected as of the date of filing.

(c) Transfer, sale, or assignment of an interest in securitized property to an assignee shall 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). However, if notice of the transfer has not been filed in accordance with this subsection before the 10th day

1 after the delivery of transfer documentation, the transfer of the
2 interest is not perfected against third parties until the notice is
3 filed.

4 (d) The secretary of state shall implement this section by
5 establishing and maintaining a separate system of records for the
6 filing of notices under this section and prescribing the rules for
7 those filings based on Chapter 9, Business & Commerce Code, adapted
8 to this subchapter and using the terms defined in this subchapter.

9 (e) The priority of a lien and security interest perfected
10 under this section is not impaired by any later modification of the
11 financing order under Section 41.157 or by the commingling of funds
12 arising from securitized charges with other funds, and any other
13 security interest that may apply to those funds shall be terminated
14 when they are transferred to a segregated account for the assignee
15 or a financing party. If securitized property has been transferred
16 to an assignee, any proceeds of that property shall be held in trust
17 for the assignee.

18 (f) Securitized bonds shall be secured by a statutory lien
19 on the securitized property in favor of the owners or beneficial
20 owners of securitized bonds. The lien shall automatically arise on
21 issuance of the securitized bonds without the need for any action or
22 authorization by the electric cooperative or the board. The lien
23 shall be valid and binding from the time the securitized bonds are
24 executed and delivered. The securitized property shall be
25 immediately subject to the lien, and the lien shall immediately
26 attach to the securitized property and be effective, binding, and
27 enforceable against the electric cooperative, its creditors, their

successors, assignees, and all others asserting rights therein,
regardless of whether those persons have notice of the lien and
without the need for any physical delivery, recordation, filing, or
further act. 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. On application by or on behalf of the
financing parties, a district court in the county where the
electric cooperative is domiciled may order that amounts arising
from securitized charges be transferred to a separate account for
the financing parties' benefit.

(g) The 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
securitized property or proceeds thereof unless the owners or
beneficial owners of securitized bonds as specified in the trust
agreement or indenture have agreed in writing otherwise. The
statutory lien is a lien on the securitized charges and all
securitized charge revenues or other proceeds that are deposited in
any deposit account or other account of the servicer or other person
in which securitized charge revenues or other proceeds have been
commingled with other funds.

(h) The statutory lien is not adversely affected or impaired
by, among other things, the commingling of securitized charge
revenues or other proceeds from securitized charges with other
amounts regardless of the person holding those amounts.

(i) The electric cooperative, any successor or assignee of

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1 the electric cooperative, or any other person with any operational
2 control of any portion of the electric cooperative's system assets,
3 whether as owner, lessee, franchisee, or otherwise, and any
4 successor servicer of collections of the securitized charges shall
5 be bound by the requirements of this subchapter and shall perform
6 and satisfy all obligations imposed under this subchapter in the
7 same manner and to the same extent as did its predecessor, including
8 the obligation to bill, adjust, and enforce the payment of
9 securitized charges.

10 (j) If a default or termination occurs under the securitized
11 bonds, the financing parties or their representatives may foreclose
12 on or otherwise enforce their lien and security interest in any
13 securitized property as if they were secured parties under Chapter
14 9, Business & Commerce Code, and on application by the electric
15 cooperative or by or on behalf of the financing parties, a district
16 court in the county where the electric cooperative is domiciled may
17 order that amounts arising from securitized charges be transferred
18 to a separate account for the financing parties' benefit, to which
19 their lien and security interest shall apply. On application by or
20 on behalf of the financing parties, a district court in the county
21 where the electric cooperative is domiciled shall order the
22 sequestration and payment to them of revenues arising from the
23 securitized charges.

24 Sec. 41.160. PLEDGE OF STATE. Securitized bonds are not a
25 debt or obligation of the state and are not a charge on its full
26 faith and credit or taxing power. The state pledges, however, for
27 the benefit and protection of assignees, financing parties, and the

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1 electric cooperative, that it will not take or permit, or permit any
2 agency or other governmental authority or political subdivision of
3 the state to take or permit, any action that would impair the value
4 of securitized property, or, except as permitted by Section 41.157,
5 reduce, alter, or impair the securitized charges to be imposed,
6 collected, and remitted to financing parties, until the principal,
7 interest and premium, and any other charges incurred and contracts
8 to be performed in connection with the related securitized bonds
9 have been paid and performed in full. Any party issuing securitized
10 bonds is authorized to include this pledge in any documentation
11 relating to those bonds.

12 Sec. 41.161. TAX EXEMPTION. Transactions involving the
13 transfer and ownership of securitized property and the receipt of
14 securitized charges are exempt from state and local income, sales,
15 franchise, gross receipts, and other taxes or similar charges.

16 Sec. 41.162. NOT PUBLIC UTILITY. An assignee or financing
17 party may not be considered to be a public utility, electric
18 cooperative, or person providing electric service solely by virtue
19 of the transactions described in this subchapter.

20 Sec. 41.163. SEVERABILITY. Effective on the date the first
21 securitized bonds are issued under this subchapter, if any
22 provision in this title or portion of this title is held to be
23 invalid or is invalidated, superseded, replaced, repealed, or
24 expires for any reason, that occurrence does not affect the
25 validity or continuation of this subchapter or any other provision
26 of this title that is relevant to the issuance, administration,
27 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.

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

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.1516, 39.155, 39.157(e), 39.159, 39.160, 39.203, 39.904, 39.9051, 39.9052, and 39.914(e), does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

SECTION 3. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.159 and 39.160 to read as follows:

Sec. 39.159. CHARGES FOR CERTAIN MARKET PARTICIPANTS.
Notwithstanding any other law, no default or uplift charge or repayment may be allocated to or collected from a market participant that:

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

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

1 Sec. 39.160. DEFAULT OF MARKET PARTICIPANT. (a) The
 2 commission shall require that all market participants pay or make
 3 provision for the full and prompt payment of amounts owed
 4 calculated solely according to the protocols in effect during the
 5 period of emergency to the independent organization certified under
 6 Section 39.151 for the ERCOT power region to qualify, or to continue
 7 to qualify, as a market participant in the ERCOT power region.

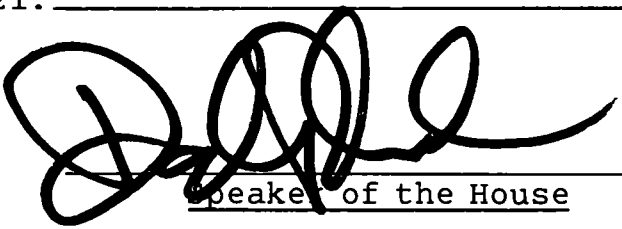
8 (b) If a market participant has failed to fully repay all
 9 amounts calculated solely under the protocols in effect during the
 10 period of emergency of the independent organization certified under
 11 Section 39.151 for the ERCOT power region, the independent
 12 organization shall report the market participant as in default to
 13 the commission. The commission may not allow the independent
 14 organization to accept the defaulting market participant's loads or
 15 generation for scheduling in the ERCOT power region, or allow the
 16 defaulting market participant to be a market participant in the
 17 ERCOT power region for any purpose, until all amounts owed to the
 18 independent organization by the market participant as calculated
 19 under the protocols are paid in full.

20 (c) The commission and the independent organization
 21 certified under Section 39.151 for the ERCOT power region shall
 22 pursue collection in full of amounts owed to the independent
 23 organization by the defaulting market participant.


24 SECTION 4. This Act takes effect immediately if it receives
 25 a vote of two-thirds of all the members elected to each house, as
 26 provided by Section 39, Article III, Texas Constitution. If this
 27 Act does not receive the vote necessary for immediate effect, this

1 Act takes effect September 1, 2021.

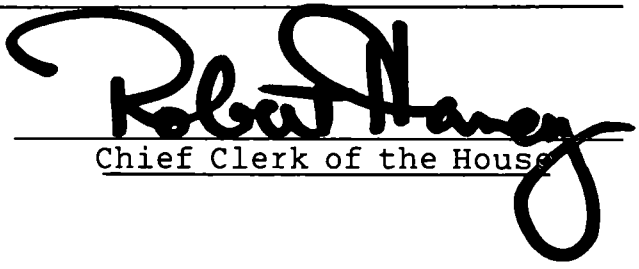

President of the Senate


Speaker of the House

I hereby certify that S.B. No. 1580 passed the Senate on April 28, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 28, 2021, by the following vote: Yeas 31, Nays 0.


Secretary of the Senate

I hereby certify that S.B. No. 1580 passed the House, with amendment, on May 25, 2021, by the following vote: Yeas 144, Nays 0, one present not voting.


Chief Clerk of the House

Approved:

6-16-21
Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

12 pm O'CLOCK

JUN 18 2021


Secretary of State