

2021 Regular Session

SENATE BILL NO. 223

BY SENATOR JOHNS AND REPRESENTATIVE DAVIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

UTILITIES. Provides relative to financing utility storm repairs and strengthening and stabilizing utilities. (gov sig)

AN ACT

To amend and reenact the introductory paragraph of R.S. 10:9-109(c)(6) and to enact R.S. 45:1237 through 1240 and Subparts B and C of Part VIII of Chapter 9 of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 45:1331 through 1343, relative to financing utility storm repairs and strengthening and stabilizing utilities; to provide additional powers to the Louisiana Utilities Restoration Corporation; to provide with respect to financing orders and issuers of storm recovery bonds; to provide for legislative intent and definitions; to authorize the creation of special public trusts by the Louisiana Utilities Restoration Corporation; to provide for an alternate use of proceeds of system restoration bonds and contents of financing orders; to provide for the beneficiaries and powers of special public trusts; to provide the mode of creation of special public trusts; to place special public trusts under the regulatory jurisdiction of the Public Service Commission or the council of the city of New Orleans; to establish a mechanism by which the special public trusts may make investments and distribute dividends and redemption payments; to provide for trustees and their duties and powers; to provide a corporation pledge of nonimpairment of special public trusts; to prohibit the special

1 public trusts from filing bankruptcy; to provide with respect to transfers of beneficial  
2 interests; to authorize the Louisiana Utilities Restoration Corporation to participate  
3 under the Louisiana Electric Utility Storm Recovery Securitization Act; and to  
4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. The introductory paragraph of R.S. 10:9-109(c)(6) is hereby amended and  
7 reenacted to read as follows:

8 §9-109. Scope

9 \* \* \*

10 (c) Extent to which Chapter does not apply. This Chapter does not apply to  
11 the extent that:

12 \* \* \*

13 (6) R.S. 45:1226 through ~~1236~~ **1240**, the Louisiana Electric Utility Storm  
14 Recovery Securitization Act, expressly governs the creation, perfection, priority, or  
15 enforcement of a security interest in storm recovery property as defined therein or  
16 any interest or right in any storm recovery property, but except to the extent contrary  
17 to express provisions in ~~said~~ the Act:

18 \* \* \*

19 Section 2. R.S. 45:1237 through 1240 are hereby enacted to read as follows:

20 **§1237. Additional assignee; powers and duties of the corporation; expenditures;**

21 **perfection of security interest on storm recovery property;**

22 **limitations on bankruptcy**

23 **A. In addition to the purpose and powers granted pursuant to the**

24 **Louisiana Utilities Restoration Corporation Act, R.S. 45:1311 through 1328, the**

25 **Louisiana Utilities Restoration Corporation, hereinafter referred to as**

26 **"corporation" in this Section and in R.S. 45:1238 through 1240, shall have the**

27 **power and authority to participate as an assignee in the financial transactions**

28 **provided by this Part. Prior to the corporation participating as an assignee, the**

29 **corporation, in each instance, shall receive prior authorization from the**

1 commission. Supplemental to the powers and duties provided in R.S. 45:1313  
2 and R.S. 45:1316, the corporation may perform the functions and activities that  
3 assignees are authorized to do by this Part in financing storm recovery costs  
4 through storm recovery bonds, except the corporation shall not be an issuer of  
5 storm recovery bonds. The corporation's exercise of powers provided in this  
6 Part is the performance of an essential governmental function of the  
7 corporation.

8 B. Financing of storm recovery costs pursuant to this Part is hereby  
9 recognized to be a valid public purpose for the corporation. The corporation  
10 may negotiate and become a party to such contracts as are necessary,  
11 convenient, or desirable to carry out the purposes of this Part. The corporation  
12 may perform such other acts as are necessary, convenient, or desirable to  
13 effectuate the purposes of this Part.

14 C. The expenditure of money by the corporation pursuant to this Part  
15 shall be under the direction of its governing board and the regulation of the  
16 commission. Such money shall only be paid by the corporation in accordance  
17 with this Part and approved by the commission, pursuant to the procedures  
18 established by commission regulations or orders, as applicable. If authorized in  
19 a commission order, the corporation may purchase storm recovery property  
20 from an electric utility by using the net proceeds of storm recovery bonds that  
21 were loaned to the corporation by the issuer of storm recovery bonds that were  
22 approved by a financing order. The corporation shall not apply any proceeds  
23 of storm recovery bonds or storm recovery charges to any purpose not specified  
24 in a commission order, to any purpose in excess of the amount allowed for such  
25 purpose in the order, or to any purpose in contravention of the order.

26 D. In addition to the restrictions required by R.S. 45:1324, the governing  
27 board of the corporation shall be prohibited from authorizing any  
28 rehabilitation, liquidation, or dissolution of the corporation, and no such  
29 rehabilitation, liquidation, or dissolution of the corporation shall take effect, as

1 long as any storm recovery bonds issued in a transaction involving the  
2 corporation are outstanding, unless adequate protection and provision has been  
3 made for the payment of the bonds pursuant to the documents authorizing the  
4 issuance of the bonds. Prior to the date that is two years and one day after  
5 which the corporation no longer has any payment obligation outstanding to any  
6 issuer of storm recovery bonds, the corporation shall be prohibited from filing  
7 and shall have no authority to file a voluntary petition under the Federal  
8 Bankruptcy Code, as it may, from time to time, be in effect, and neither any  
9 public official nor any organization, entity, or other person shall authorize the  
10 corporation to be or to become a debtor under the Federal Bankruptcy Code  
11 during such period. The provisions of this Subsection shall be part of any  
12 contractual obligation owed to the holders of storm recovery bonds issued under  
13 this Part involving the corporation. Any such contractual obligation shall not  
14 subsequently be modified by state law during the period of the contractual  
15 obligation, and the state of Louisiana and the Louisiana Legislature hereby  
16 covenant with the holders that the state and any public instrumentality thereof  
17 and the Louisiana Legislature shall not limit or alter the denial of authority  
18 pursuant to this Subsection during the period referred to in this Subsection.

19 E.(1) When the corporation is involved in the issuance of storm recovery  
20 bonds, the corporation shall pledge to, and agree with, the financing parties that  
21 until the storm recovery bonds and any ancillary agreements have been paid  
22 and performed in full, the corporation shall not do any of the following:

23 (a) Take or permit any action that impairs or would impair the value of  
24 storm recovery property.

25 (b) Except as allowed pursuant to this Paragraph and except for  
26 adjustments under any true-up mechanism established by the commission,  
27 reduce, alter, or impair storm recovery charges that are to be imposed,  
28 collected, and remitted for the benefit of the financing parties, until all  
29 principal, interest, premium, financing costs and other fees, expenses, or

1 charges incurred, and any contracts to be performed, in connection with the  
2 related storm recovery bonds have been paid and performed in full. Nothing in  
3 this Paragraph shall preclude limitation or alteration if and when full  
4 compensation is made by law for the full protection of the storm recovery  
5 charges collected pursuant to a financing order and full protection of the  
6 holders of storm recovery bonds and any assignee or financing party.

7 (2) Any person or entity that issues storm recovery bonds may include  
8 the pledge specified in this Subsection in the bonds and related documentation.

9 F. For purposes of this Part, including without limitation all financing  
10 statements referenced in this Part, the corporation is considered to be a public  
11 entity under R.S. 39:1421(2) and a governmental unit under R.S.  
12 10:9-102(a)(45). Notwithstanding any provision of law to the contrary, including  
13 without limitation R.S. 33:4548.7 and R.S. 39:1430.1, the filing of a financing  
14 statement pursuant to this Part is the exclusive method of perfecting a sale,  
15 assignment, transfer, or pledge of or security interest or lien on storm recovery  
16 property or any right, title, or interest of an assignee or secured party including  
17 an issuer of storm recovery bonds therein, including without limitation to  
18 perfect a security interest granted by the corporation or by a governmental unit  
19 issuer. The provisions of this Section and R.S. 45:1239 shall not be interpreted  
20 to conflict with or modify the provisions of R.S. 10:9-109(c)(6) and R.S. 45:1230  
21 through 1232. Financing statements referenced in this Part where the debtor,  
22 buyer, or secured party is a public entity and a governmental unit nevertheless  
23 shall be filed as provided in this Part.

24 §1238. Financing orders including the Louisiana Utilities Restoration  
25 Corporation

26 A. Notwithstanding the provisions of R.S. 45:1228(C)(3), in a financing  
27 order issued to an electric utility by the commission to create storm recovery  
28 property, the financing order may provide that such storm recovery property  
29 shall be sold, assigned, or transferred by the electric utility to the corporation.

1           **B. When an electric utility petitions the commission for a financing order**  
2           **pursuant to this Section, the corporation shall be a party to the commission's**  
3           **proceedings along with the pertinent utility.**

4           **§1239. Alternative issuers; additional powers and duties for the corporation;**  
5           **limitations; approval of storm recovery bonds by the State Bond Commission;**  
6           **financing order requirements**

7           **A. Notwithstanding any provisions to the contrary in R.S. 45:1228 and**  
8           **R.S. 45:1233, when the corporation is participating in a securitization financing**  
9           **transaction pursuant to this Part, the financing order may authorize any**  
10           **Louisiana public entity that has a separate corporate existence and that is**  
11           **eligible to issue debt on which interest is exempt from income taxation under**  
12           **the laws of the United States to be the issuer of the storm recovery bonds. After**  
13           **the issuance of such financing order, the corporation shall arrange for the**  
14           **issuance of the storm recovery bonds as specified in the financing order by an**  
15           **issuer selected by the corporation and approved by the commission. The**  
16           **corporation shall enter into a loan transaction with the issuer and then transfer**  
17           **the net proceeds of such storm recovery bonds received by the corporation to**  
18           **the pertinent utility as the purchase price of the storm recovery property.**

19           **B. The corporation shall not itself have the authority to issue storm**  
20           **recovery bonds. The corporation may issue promissory notes to issuers**  
21           **pursuant to this Part.**

22           **C. When storm recovery bonds are issued pursuant to this Section, the**  
23           **bonds shall be approved by the State Bond Commission.**

24           **§1240. Additional authority**

25           **A. The provisions of R.S. 45:1237 through 1239 shall be additional and**  
26           **alternative authority and shall provide the full method together with the other**  
27           **provisions of this Part for the exercise of the powers herein granted and**  
28           **accomplishment of the things authorized hereby and shall be regarded as**  
29           **supplemental and additional to powers conferred by other laws. All rights and**

1 powers herein granted by this Part to the corporation and the issuers of storm  
2 recovery bonds shall be cumulative with those derived from other sources and  
3 shall not, except as expressly stated herein, be construed in limitation thereof.

4 B. A utility may finance storm recovery costs pursuant to R.S. 45:1237  
5 through 1239 that were incurred prior to the effective date of those Sections. To  
6 the extent that a utility has made application for a determination of eligible  
7 storm recovery costs prior to the effective date of R.S. 45:1237 through 1239,  
8 that application may provide the basis in part for the commission's financing  
9 order relying in part upon those Sections.

10 Section 3. Subparts B and C of Part VIII of Chapter 9 of Title 45 of the Louisiana  
11 Revised Statutes of 1950, comprised of R.S. 45:1331 through 1343, are hereby enacted to  
12 read as follows:

13 SUBPART B. SPECIAL PUBLIC TRUSTS

14 §1331. Legislative findings and purpose

15 A. The Louisiana Legislature declared in Subpart A of this Part that the  
16 restoration and rebuilding of utility systems after natural disasters using  
17 low-cost capital, thereby minimizing the cost to ratepayers, is a valid public  
18 purpose. Supporting the financial strength and stability of utility companies  
19 that already have restored and rebuilt, partially or completely, their utility  
20 systems after natural disasters is a valid public purpose in the best interests of  
21 the citizens of the state.

22 B. The Louisiana Legislature finds and declares it to be prudent and in  
23 the best interests of the state of Louisiana to consider and make available an  
24 additional alternate financing technique to support the financial strength and  
25 stability of utility companies that have undertaken past, and will undertake  
26 future, utility system restoration. Therefore, the Louisiana Utilities Restoration  
27 Corporation may create special public trusts for the purpose of providing an  
28 alternate financing mechanism available to the Public Service Commission and  
29 the council of the city of New Orleans, as applicable, to attract low-cost capital

1 to finance utility system restoration and capital investments and contributions  
2 to financially strengthen and stabilize utilities. Special public trusts are  
3 nonbusiness entities authorized by this Subpart as a special type of public  
4 corporation.

5 C. The purpose of this Subpart is to minimize costs charged to  
6 ratepayers for system restoration costs by providing the corporation with a  
7 beneficial interest in a trust that the corporation shall pledge as further security  
8 for its obligations to the issuer of the system restoration bonds. The alternate  
9 financing technique contemplated by this Subpart used in conjunction with  
10 Subpart A of this Part enables the corporation to finance, directly or indirectly,  
11 system restoration costs with low-cost capital. Financing of system restoration  
12 costs using this alternate financing technique pursuant to this Subpart will  
13 additionally safeguard the system restoration bonds so issued and reduce costs  
14 to ratepayers. The Louisiana Legislature further finds that this alternate  
15 financing technique is a valid public purpose.

16 D. Securitization financings pursuant to this Subpart, if authorized by  
17 the commission in its sole discretion, shall include a commitment by the related  
18 utility that the proceeds from the issuance of the system restoration bonds shall  
19 be in lieu of recovery of system restoration costs through the regular rate  
20 making process to the extent of those securitization financing proceeds.

21 §1332. Definitions

22 For purposes of this Subpart, the terms defined in R.S. 45:1312 have the  
23 same meaning in this Subpart, except where a term is expressly modified in this  
24 Subpart, and as used in this Subpart:

25 (1) "Affiliate" means, when used with reference to a specified person, an  
26 entity that directly or indirectly through one or more intermediaries controls  
27 or is controlled by or is under common control with the entity specified. For the  
28 purpose of this term, "control", "controlled by", and "under common control  
29 with", means the possession, direct or indirect, of the power to direct or cause

1 the direction of the management and policies of an entity whether through the  
2 ownership of voting securities, by contract, or otherwise.

3 (2) "Contributed proceeds" means the monies contributed by the  
4 corporation to a trust. In each instance, the contributed proceeds shall be the  
5 amount of the net proceeds received by the corporation from an issuance of  
6 system restoration bonds in accordance with the terms of a financing order.

7 (3) "Pledgee" means an issuer as pledgee of the corporation or an  
8 applicable financing party as pledgee of an issuer.

9 (4) "Preferred interests" means preferred equity interests in a utility  
10 affiliate that pay preferred dividends to the trust that purchased those  
11 preferred equity interests.

12 (5) "Purchase proceeds" means the proceeds received by a utility  
13 affiliate from the sale of its preferred interests to a trust.

14 (6) "Related bonds" means, with respect to a trust, the system  
15 restoration bonds that funded the net proceeds transferred by an issuer to the  
16 corporation and then contributed by the corporation to that trust.

17 (7) "Related utility" means, with respect to a trust, the utility that is a  
18 beneficiary of such trust and that obtains a financing order pursuant to this  
19 Subpart. The related utility shall be an affiliate of the utility affiliate that sells  
20 its preferred interests to such trust for purchase proceeds.

21 (8) "Trust" means an express special public trust created only pursuant  
22 to and in compliance with the provisions of this Subpart. A trust for purposes  
23 of this Subpart shall not be an issuer of system restoration bonds and shall not  
24 be created pursuant to the public trust law, R.S. 9:2341 et seq.

25 (9) "Trust agreement" means, with respect to a trust, the written  
26 instrument that created the trust together with all proper amendments.

27 (10) "Utility affiliate" means an affiliate of the utility that obtains a  
28 financing order pursuant to this Subpart.

29 §1333. Additional powers of the corporation and the commission

1           A. The corporation may create express special public trusts for the  
2 furtherance and accomplishment of the corporation's function and purpose  
3 pursuant to this Part.

4           B. (1) Notwithstanding any provisions to the contrary in Subpart A of  
5 this Part, including without limitation R.S. 45:1316(A), R.S. 45:1318(C)(5)(a)  
6 and (E), and 45:1322(B), (D), and (E), a financing order may require that the  
7 corporation shall contribute to a trust all of the net proceeds from the issuance  
8 of system restoration bonds and the trust shall use all such contributed proceeds  
9 to purchase preferred interests from a utility affiliate of the related utility.

10           (2) Notwithstanding any provisions to the contrary in Subpart A of this  
11 Part, R.S. 45:1318(C)(5)(a) and 45:1321(K) shall not apply to securitization  
12 financing pursuant to this Subpart and a utility affiliate that sells its preferred  
13 interests to a trust shall use those purchase proceeds for corporate purposes  
14 supporting the related utility's financial strength and stability and thereby  
15 promote the economic welfare of the citizens of the state.

16           (3) In order for this Subpart to be used, a utility shall request in its  
17 application to the commission pursuant to R.S. 45:1318, or in a supplement  
18 thereto, that a trust shall be used by the corporation in its distribution of system  
19 restoration bonds' proceeds.

20           C. A financing order may create system restoration property pursuant  
21 to this Part without including all the requirements of R.S. 45:1318(C)(5)(a), if  
22 the financing order includes all the requirements of R.S. 45:1337(A), and if the  
23 commission, in such financing order, requires the corporation to transfer the  
24 net proceeds of the system restoration bonds to a trust that has the related  
25 utility as a beneficiary, subject to the express conditions and requirements set  
26 forth in the financing order that, upon receipt of the purchase proceeds by the  
27 utility affiliate from that trust, such related utility shall do all of the following:

28           (1) Set aside in a restricted escrow account, in an amount and manner  
29 required by the commission, any monies or investments used to fund the related

1 utility's storm damage reserve.

2 (2) Not seek to recover the system restoration costs approved by that  
3 applicable financing order, to the extent of the system restoration bonds  
4 proceeds, from any of its commission-jurisdictional customers.

5 (3) Flow through to the benefit of its customers in a manner determined  
6 by the commission the amount of any insurance proceeds, federal government  
7 grants, or similar source of permanent reimbursement received by the related  
8 utility after the issuance of the financing order relating to that same system  
9 restoration activity and those same system restoration costs.

10 D. A financing order that is issued pursuant to this Subpart shall require  
11 that, upon receipt of the purchase proceeds by a utility affiliate, the related  
12 utility fully release any claims or rights that the related utility has to recover,  
13 in any manner, from its commission-jurisdictional customers any of the system  
14 restoration costs covered by the financing order, to the extent of the amount of  
15 the related bonds' proceeds.

16 §1334. Special public trusts authorized; powers and duties for the special public  
17 trust; expenditures; limitations of the special public trust; public records law;  
18 domicile; subject to legislative audit; liability protection for beneficiaries

19 A. The corporation may create trusts in movable property, with the  
20 corporation and a utility as the two beneficiaries thereof, by and with the  
21 express approval of the commission, including authorization in a financing  
22 order. A trust shall own, administer, and distribute the trust property  
23 contributed and earned for the benefit of its beneficiaries and, when applicable,  
24 a pledgee. The operations and activities of a trust shall be managed by an  
25 independent trustee pursuant to R.S. 45:1338. A trust is a separate juridical  
26 person and only the trust owns the trust property.

27 B. A trust shall not itself have the power to be an issuer of system  
28 restoration bonds. Furthermore, a trust shall not have the power to issue other  
29 bonds, notes, obligations, or other evidences of indebtedness. System restoration

1       **bonds shall not be the debt of a trust.**

2               **C. No funds of the corporation or the commission shall be charged with**  
3       **or expended for the operation of a trust. The costs of creating a trust incurred**  
4       **before its trust agreement becomes effective may be included in issuance costs**  
5       **if the commission so provides in a financing order. The costs associated with the**  
6       **operation of a trust after it is organized pursuant to R.S. 45:1335, shall be paid**  
7       **solely from the related utility's share of the dividend income or redemption**  
8       **proceeds from preferred interests, as provided in R.S. 45:1338.**

9               **D. A public trust created pursuant to this Subpart shall have a legal**  
10       **existence separate and distinct from the state and the trust's settlor and**  
11       **beneficiaries, and from other public trusts. A trust is not and shall not be a**  
12       **political subdivision, nor a department, unit, agency, board, or commission of**  
13       **the state. Assets of a trust shall not be considered part of the general fund of the**  
14       **state or any other fund in the state treasury. The state, the commission, and the**  
15       **corporation shall not budget for or provide appropriations to a trust. The**  
16       **monies of each trust created under this Subpart shall be maintained by that**  
17       **trust as a separate and special fund, separate and apart from the funds of the**  
18       **corporation or other trusts. A trust shall perform only those functions**  
19       **consistent with this Subpart and shall exercise its powers through its trustee**  
20       **established under its trust agreement in accordance with R.S. 45:1338. A trust**  
21       **shall have the power only to engage in activities necessary to accomplish its**  
22       **purposes as expressed in this Subpart, and in its trust agreement, or which may**  
23       **be incidental thereto, including the authority to sue and be sued, and to make**  
24       **contracts. A trust shall not apply any contributed proceeds of system**  
25       **restoration bonds or proceeds from distributions in respect of preferred**  
26       **interests to any purpose not specified in its approved trust agreement, or to any**  
27       **purpose in excess of the amount allowed for such purpose in its approved trust**  
28       **agreement, or to any purpose in contravention of a commission order. A trust**  
29       **created pursuant to this Subpart shall be a special purpose public corporation**

1 of the Louisiana Utilities Restoration Corporation. This special purpose status  
2 does not affect or diminish the rights, powers, duties, and remedies of the  
3 trustee and the beneficiaries, as determined by the provisions of the trust  
4 agreement and as expressly provided in this Subpart. The special purpose status  
5 does not apply for purposes of applicable federal and state taxation laws. A  
6 trust created pursuant to this Subpart functions as a trust with respect to its  
7 beneficiaries and is not a corporation or business entity formed under the  
8 Business Corporation Act. A trust's primary purpose is to preserve the trust  
9 property as provided for in this Subpart. A trust is intended to be a trust for  
10 federal income tax purposes and shall not be a partnership or corporation for  
11 federal or state tax purposes. A trust shall not be subject to the state franchise  
12 tax.

13 E. A trust created under this Subpart shall be subject to the Public  
14 Records Law, R.S. 44:1 et seq.

15 F. The domicile of a trust shall be the parish of East Baton Rouge.

16 G. The books and accounts of a trust shall be subject to examination by  
17 the legislative auditor. Every trust agreement shall provide for an annual,  
18 independent audit of the trust by a certified public accountant.

19 H. No beneficiary shall be charged personally with any liability  
20 whatsoever by reason of any act or omission committed or suffered in the  
21 performance of the trust's operations.

22 §1335. Mode of creation; acceptance of beneficial interests; amendments

23 A. A trust shall be created, organized, structured, and empowered by a  
24 written instrument, which shall be in accordance with this Subpart. A trust  
25 agreement shall be subscribed by the corporation as settlor by authentic act or  
26 by act under private signature executed in the presence of two witnesses and  
27 duly acknowledged by the settlor or by the affidavit of one of the attesting  
28 witnesses. A trust agreement shall become effective upon acceptance by the  
29 trustee and the beneficiaries as provided in this Section. A trust's existence as

1 a juridical person begins, and the trust is duly organized, when its trust  
2 agreement becomes effective, even if no property is contributed to that trust  
3 until a later time. Upon effectiveness, a trust agreement shall be and constitute  
4 a binding contract among the corporation as settlor, the beneficiaries and the  
5 trustee, for the acceptance of the beneficial interests in the trust by the  
6 designated beneficiaries, and the application of the proceeds of the trust  
7 property and its operation for the purposes and in accordance with the  
8 stipulations of the approved trust agreement. A trust agreement shall not be an  
9 ancillary agreement as defined in R.S. 45:1312(1).

10 B. Before the execution of a trust agreement, that instrument shall be  
11 approved by the commission in a financing order, or by the use of an approval  
12 method provided in a financing order.

13 C. Before a trust agreement and a trust become effective, the trust  
14 agreement shall be accepted by the trustees and the beneficiaries. The trustee  
15 may accept the trust in the trust agreement, or in a separate written instrument  
16 within a reasonable amount of time after the trust agreement's execution. Each  
17 beneficiary may accept the trust in the trust agreement or by written acceptance  
18 of the beneficial interest endorsed thereon. The corporation settlor and the  
19 related utility shall be the trust's only beneficiaries.

20 D. Promptly after a trust agreement takes effect, the trust agreement,  
21 together with any separate written acceptances, shall be recorded in the  
22 conveyance records of the clerk of court of the parish of East Baton Rouge.

23 E. A trust agreement may be modified, amended, terminated, or  
24 rescinded only with the express approval of the commission, the corporation,  
25 the beneficiary-related utility, and its trustee. Each amendment to a trust  
26 agreement shall be recorded in the conveyance records of the clerk of court of  
27 the parish of East Baton Rouge.

28 F. A trust shall have duration for the term specified in the trust  
29 agreement. Notwithstanding any provisions of the trust agreement or the

1 provisions of Subsection E of this Section, no termination, rescission,  
2 rehabilitation, liquidation, or dissolution of a trust shall take effect as long as  
3 any of the related bonds are outstanding. Upon termination, the trustee shall file  
4 a certificate of termination of the trust agreement in the conveyance records of  
5 the clerk of court of the parish of East Baton Rouge.

6 G. Each trust agreement shall establish a name for its trust that is  
7 distinguishable from the name of every other trust previously created by the  
8 corporation and from the name of any entity registered with the secretary of  
9 state. The name shall not imply that the trust is a political subdivision or an  
10 administrative agency of this state.

11 §1336. Regulation by the commission

12 A. The commission shall regulate each trust concomitant with the  
13 commission's regulation of the related utility. Notwithstanding such regulation,  
14 a trust shall not be considered a public utility and shall not be considered an  
15 agent of any utility.

16 B. Any expenses of examination by the commission shall be charged only  
17 to the trust being examined and recovered only from the related utility's share  
18 of the distributions or redemptions in respect of the preferred interests held by  
19 that trust as provided in R.S. 45:1338.

20 §1337. Permitted use of funds

21 A. A trust shall perform only those functions consistent with and  
22 effectuate only the purposes set forth in this Subpart. A trust shall acquire and  
23 subscribe for preferred interests of a utility affiliate using all of the contributed  
24 proceeds of system restoration bonds received from the corporation as settlor.  
25 Notwithstanding the provisions of R.S. 45:1318(C)(5)(a), a financing order  
26 issued under this Subpart shall require the corporation to transfer the net  
27 proceeds of the system restoration bonds it receives, pursuant to R.S.  
28 45:1318(C)(3), to a trust whose beneficiary is the related utility that is collecting  
29 the applicable system restoration charges. A financing order shall require that

1 trust to use those contributed proceeds as provided in this Subsection, shall  
2 require that trust to use the distributions in respect of the purchased preferred  
3 interests as provided in Subsection C of this Section, and shall require that the  
4 trust be subject to the express conditions and requirements set forth in the  
5 financing order described in Subsection B of this Section.

6 B. A financing order issued under this Subpart shall include the related  
7 utility's commitment that, upon receipt of the purchase proceeds by the utility  
8 affiliate, the related utility shall fully release any claims or rights to recover the  
9 system restoration costs approved by that financing order, to the extent of such  
10 related bonds' proceeds, from any of its commission-jurisdictional customers,  
11 and shall set aside in a restricted reserve account, in an amount and manner  
12 required by the commission, any monies or investments used to fund the  
13 utility's storm damage reserve. The primary purpose of this Subpart is to serve  
14 the public good and to benefit the public as a whole as part of a regulatory  
15 program that is intended to minimize the rates charged by utilities and to  
16 strengthen the financial position of utilities that have restored and rebuilt their  
17 systems after storms. The purchase proceeds are not payments for any electric  
18 or gas service provided by the related utility to any person and are not  
19 payments in the nature of insurance, or otherwise as direct compensation for  
20 losses by the related utility from storms. Instead, the purchase proceeds are  
21 made in exchange for the preferred interests, the dividend income, and  
22 redemption payments attributable thereto and for the related utility's  
23 obligations set forth in the financing order.

24 C. A trust shall pay distributions, whether dividend income, redemption  
25 payments, or otherwise, in respect of the preferred interests only to the  
26 beneficiaries of the trust, shared between the beneficiaries, as specified in the  
27 approved trust agreement, or when applicable, to a permitted pledgee, and for  
28 expenses permitted by R.S. 45:1338(D). A trust may cause the periodic  
29 redemption of the preferred interests only as provided in the approved trust

1 agreement. The terms and attributes of the preferred interests purchased by a  
2 trust shall be approved by the commission in a financing order or by the use of  
3 an approval method provided in a financing order.

4 D. System restoration bonds issued pursuant to a financing order under  
5 this Subpart shall not be debt of a trust. System restoration bonds shall be  
6 nonrecourse to the credit or any assets of a trust, other than the trust's  
7 obligation to distribute proceeds to the corporation or a pledgee as specified in  
8 the trust agreement and pursuant to the pledge by the corporation to the issuer  
9 of the related bonds as security for repayment of a loan to the corporation by  
10 the issuer. The terms of the indenture, and other financing documents  
11 pertaining to system restoration bonds issued pursuant to this Subpart shall be  
12 consistent with this Section.

13 §1338. Trustee requirements; duties and powers; compensation; liability  
14 protection

15 A. The trustee of a trust shall not serve as a trustee under an indenture  
16 pertaining to the related bonds authorized by the financing order relating to  
17 that trust. Additionally, only the following entities shall serve as a trustee of a  
18 trust established pursuant to this Subpart:

19 (1) A federally insured depository institution organized under the laws  
20 of this state, another state, or the United States.

21 (2) A financial institution or trust company organized under the laws of  
22 this state or the United States, authorized to exercise trust or fiduciary powers  
23 under the laws of this state or the United States, or a trust company, organized  
24 under the laws of another state, and operating in this state pursuant to R.S.  
25 6:626(A)(1) and (2).

26 B. An original trustee, an alternate trustee, or a successor trustee may  
27 be designated in the trust agreement or chosen by the use of a method provided  
28 in the trust agreement.

29 C. A trustee who accepts a trust established pursuant to this Subpart

1        submits to the jurisdiction of the courts of this state.

2            D. A trust acting through its trustee may employ or retain such  
3        attorneys, accountants, and other professionals as it may deem necessary to  
4        carry out its duties under this Subpart and the trust agreement, and may  
5        determine their duties and compensation subject to regulation by the  
6        commission in its discretion. The compensation of a trustee and such  
7        professionals, and other costs to operate a trust, shall not be included within  
8        financing costs as defined in R.S. 45:1312. All such compensation and other  
9        costs shall first be paid from the related utility's share as beneficiary of the  
10       dividend income that the trust receives from the preferred interests. If the  
11       related utility's share of dividend income is insufficient to pay these expenses,  
12       then the expenses shall be paid from the related utility's share as beneficiary of  
13       redemption payments, in respect of the preferred interests.

14           E. A trust agreement may provide indemnity to a trustee for expenses  
15        properly incurred by the trustee in the administration of the trust property, but  
16        such amounts shall only be paid from the related utility's portion of the trust  
17        property, or directly from the related utility, if the related utility agrees to such  
18        direct payment.

19           F. A trustee shall administer a trust solely in the interest of the  
20        beneficiaries, and if applicable, a pledgee, in accordance with the trust  
21        agreement. A trust shall keep and render clear and accurate accounts of the  
22        administration of the trusts at least annually to the beneficiaries as specified in  
23        the trust agreement. Upon the request of the beneficiary, a trustee, within a  
24        reasonable time, shall provide a beneficiary complete and accurate information  
25        as to the nature and the amount of the trust property. The trustee shall permit  
26        the beneficiary or its agents to inspect the subject matter of the trust, the  
27        accounts, and any other documents relating to the trust.

28           G. A trustee shall administer the trust as a prudent person would  
29        administer it. A trustee shall invest trust property only in preferred interests as

1 provided in this Subpart and the applicable trust agreement. A trustee shall  
2 have no liability whatsoever by reason of investing within the limitations of the  
3 foregoing requirement. The nature and extent of the duties and powers of a  
4 trustee shall be determined by the provisions of the trust agreement, except as  
5 otherwise expressly provided in this Subpart. A trust agreement may relieve the  
6 trustee from liability, except a liability relief provision in a trust agreement shall  
7 not be effective to relieve the trustee from liability for breach of the duty of  
8 loyalty to a beneficiary, or for breach of trust committed in bad faith.

9 H. Except for redemptions of preferred interests as authorized by the  
10 trust agreement, a trustee may not sell or encumber trust property.

11 §1339. Corporation additional pledge to financing parties

12 A. The corporation shall pledge to and agree with the issuer for the  
13 benefit of the issuer, the bondholders, and other financing parties, that until the  
14 related bonds and any ancillary agreements have been paid and performed in  
15 full, the corporation shall not do any of the following:

16 (1) Take or permit any action that impairs or would impair the value of  
17 the corporation's beneficial interest in the applicable trust, other than the  
18 distributions of dividend income and redemption proceeds contemplated in this  
19 Subpart and in the trust agreement.

20 (2) Approve or allow a modification or amendment pertaining to the  
21 corporation's beneficial interest in the applicable trust, or a termination or  
22 rescission of the applicable trust agreement or the applicable trust, or in any  
23 other way impair the rights and remedies of the corporation as beneficiary  
24 under the applicable trust, provided that nothing shall preclude the  
25 distributions of dividend income and the redemption proceeds that are  
26 contemplated in this Subpart and in the trust agreement.

27 B. For purposes of this Section and R.S. 45:1340, the term "bondholder"  
28 means a person who holds a system restoration bond, including in book entry  
29 form.

1           **§1340. Limitation on bankruptcy**

2           **A. Prior to the date that is two years and one day after which the**  
3           **corporation no longer has any payment obligation outstanding to the issuer of**  
4           **the related bonds, a trust shall be prohibited from filing and shall have no**  
5           **authority to file a voluntary petition under the Federal Bankruptcy Code, as it**  
6           **may, from time to time, be in effect. The provisions of this Section shall be part**  
7           **of any contractual obligation owed to the bondholders of the related bonds**  
8           **issued pursuant to this Subpart. This contractual obligation shall not**  
9           **subsequently be modified by state law during the period of this contractual**  
10           **obligation, and the state of Louisiana and the Louisiana Legislature hereby**  
11           **covenant with the bondholders of the related bonds that the state and the**  
12           **Louisiana Legislature shall not limit or alter the denial of authority pursuant**  
13           **to this Section during the period referred to in this Subsection.**

14           **B. A trust shall be subject to the provisions of R.S. 13:4741 and R.S.**  
15           **39:619 through 622.**

16           **§1341. Transfers by beneficiaries**

17           **A. The trust's beneficiaries shall have no power over the trust or the**  
18           **trust property. A beneficiary shall not alienate or encumber its beneficial**  
19           **interest in a trust, except as solely permitted by Subsection B of this Section.**

20           **B. If authorized in the pertinent financing order, a trust agreement shall**  
21           **permit the corporation to encumber the whole or any part of its interest as**  
22           **beneficiary in favor of the issuer of the related bonds as additional security for**  
23           **the corporation's repayment of the loan of the net proceeds of the related bonds**  
24           **made to the corporation by that issuer. The issuer also may pledge that**  
25           **collateral. In such instance, the trust agreement shall require the trustee to pay**  
26           **a pledgee all or a portion of a distribution owing to the corporation after the**  
27           **trustee receives a notification, authenticated by the corporation or the pledgee,**  
28           **that the amount due or to become due has been assigned and that payment is to**  
29           **be made to the pledgee, notwithstanding any provisions in R.S. 10:9-406. A**

1 trustee may request the pledgee to seasonably furnish reasonable proof that the  
2 assignment to the pledgee has been made, and unless the pledgee complies, the  
3 trustee may pay the corporation, even if the trustee has received a notification  
4 pursuant to this Subsection. As to trust property, the pledgee may seize only  
5 distributions of dividend income and redemption payments that have been  
6 authorized by the trustee and not yet paid to the corporation beneficiary as  
7 pledgor.

8 C. A trust agreement shall provide that the interest of the related utility  
9 beneficiary shall not be subject to voluntary or involuntary alienation or  
10 encumbrance. Such a restraint upon voluntary alienation or encumbrance is  
11 valid. However, a restraint upon involuntary alienation, or encumbrance by a  
12 beneficiary, is subject to the limitations in Subsection D of this Section.

13 D. A creditor of a related utility beneficiary may seize only distributions  
14 of dividend income and redemption proceeds that have been authorized by the  
15 trustee and have not yet been paid to such beneficiary.

16 E. For purposes of R.S. 39:1430.1, the corporation's beneficial interest  
17 in a trust, including without limitation, the corporation's rights under a trust  
18 agreement, interests in income and principal, and income, receipts and proceeds  
19 from distributions from a trust, whether dividend income, redemption  
20 payments or otherwise, shall be considered to be income, revenues, monies,  
21 receipts, and contract rights pursuant to R.S. 39:1430.1, and shall be subject to  
22 the provisions of R.S. 39:1430.1. A pledge and security interest granted by the  
23 corporation in such rights, interests, income, receipts and proceeds pursuant to  
24 this Subpart shall be effective as to the applicable trustee from the time a copy  
25 of the pledge or security agreement is received by the trustee, and shall be valid,  
26 perfected, and enforceable against the corporation and other third parties from  
27 the time when the pledge and grant is made without any notice or filing of any  
28 kind. Without limiting the foregoing, notwithstanding that the corporation's  
29 interest in a trust is a general intangible pursuant to the Louisiana Uniform

1 Commercial Code - Secured Transaction R.S. 10:9-101 et seq., the filing of a  
2 financing statement is not required to perfect a pledgee's security interest in the  
3 corporation's movable property described in this Subsection. This pledge and  
4 security interest pursuant to this Subsection shall secure all obligations, then  
5 existing or thereafter arising, provided in the pledge or security agreement. A  
6 perfected pledge and security interest pursuant to this Subsection shall be a  
7 continuously perfected privilege and security interest in all movable property  
8 described in this Subsection whether or not the interests, income, receipts,  
9 proceeds, or distributions have accrued. Conflicting pledges, if allowed, shall  
10 rank according to priority in time of perfection.

11 F. Insofar as the provisions of this Section are inconsistent with the  
12 provisions of R.S. 10:9-406 or 10:9-408, the provisions of this Section shall be  
13 controlling.

14 §1342. Construction and effect

15 A. This Subpart and all powers granted hereby, shall be liberally  
16 construed to effectuate its and their purposes, without implied limitations  
17 thereon. All rights and powers granted in this Subpart to the commission, the  
18 corporation, and a trust, shall be cumulative with those derived from other  
19 sources and shall not, except as expressly stated herein, be construed in  
20 limitation thereof.

21 B. System restoration bonds may be issued pursuant to Subpart A of this  
22 Part alone, or pursuant to this Subpart, together with Subpart A of this Part as  
23 modified by this Subpart. References in this Subpart to a financing order issued  
24 pursuant to this Subpart, mean that the financing order is issued pursuant to  
25 this Subpart, and in conjunction with Subpart A of this Part, as modified by this  
26 Subpart.

27 C. A utility may finance system restoration costs pursuant to this  
28 Subpart that were incurred by a utility prior to the effective date of this  
29 Subpart. Further, to the extent that a utility has made application for a

1 determination of eligible system restoration costs prior to the effective date of  
 2 this Subpart, that application may provide the basis in part for the  
 3 commission's financing order pursuant to this Subpart and subject to R.S.  
 4 45:1333(B)(3).

5 D. The failure of a utility, its utility affiliate, a trust, or the trustee or any  
 6 beneficiary thereof to perform their respective obligations pursuant to this  
 7 Subpart, or under the trust agreement, or applicable financing order, shall not  
 8 affect or impair the system restoration property, or any rights of the  
 9 corporation, the issuer or any financing party under the financing order,  
 10 including without limitation the right to receive billed and collected system  
 11 restoration charges. Nothing in this Subsection shall be construed to deny, limit,  
 12 or diminish the commission's jurisdiction and authority to enforce the  
 13 provisions of any financing order upon the utility.

#### 14 SUBPART C. ADDITIONAL POWERS

##### 15 §1343. Corporation participation

16 The corporation may, in each instance, subject to the prior authorization  
 17 of the commission, participate in financing transactions contemplated by the  
 18 Louisiana Electric Utility Storm Recovery Securitization Act, Part V-B of  
 19 Chapter 9 of Title 45 of the Louisiana Revised Statutes of 1950, comprised of  
 20 R.S. 45:1226 through 1240.

21 Section 4. The Louisiana State Law Institute is hereby directed to redesignate the  
 22 existing R.S. 45:1311 through 1328 as Subpart A of Part VIII of Chapter 9 of Title 45 of the  
 23 Louisiana Revised Statutes of 1950, with the heading "System Restoration Bonds".

24 Section 5. This Act shall become effective upon signature by the governor, or, if not  
 25 signed by the governor, upon expiration of the time for bills to become law without signature  
 26 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If  
 27 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 28 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Elizabeth O'Quin.

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## DIGEST

SB 223 Engrossed

2021 Regular Session

Johns

Present law provides that the provisions of the Uniform Commercial Code - Secured Transactions shall not apply to the La. Electric Utility Storm Recovery Securitization Act, except for the provisions related to financing statements, perfection, and the effect of perfection or nonperfection, the priority of certain security interests, and the enforcement of security interests.

Proposed law provides the provisions of the Uniform Commercial Code - Secured Transactions shall not apply to certain powers granted to the La. Utilities Restoration Corporation (corporation).

Proposed law provides additional powers to a corporation under the La. Electric Utility Storm Recovery Securitization Act and authorizes a corporation to be an assignee for financing storm costs. Provides before the corporation may be an assignee, it must seek prior authorization from the Public Service Commission (commission). Provides the corporation may perform the functions and activities that assignees are authorized to do in financing storm recovery costs through storm recovery bonds, except the corporation shall not be an issuer of storm recovery bonds. Provides the corporation's exercise of its powers is the performance of an essential governmental function of the corporation under this proposed law.

Proposed law provides the financing of storm recovery costs is a valid public purpose for the corporation. Provides the corporation may negotiate and be a party to certain contracts and other acts in order to carry out the purposes of the La. Electric Utility Storm Recovery Securitization Act.

Proposed law provides the corporation's expenditure of money is under the direction of its governing board and the commission in accordance with the La. Electric Utility Storm Recovery Securitization Act. Provides such money shall only be paid by the corporation if approved by the commission in accordance with the La. Electric Utility Storm Recovery Securitization Act, and pursuant to procedures established by the commission regulations or orders, as applicable. Provides if the commissions order authorizes the corporation, the corporation may purchase storm recovery property from an electric utility using the net proceeds of storm recovery bonds the issuer of the storm recovery bonds loaned it. Provides the corporation is required to only use the proceeds of the storm recovery bonds or storm recovery charges as specified in the order, or use the proceeds for any purpose that is not in excess of the amount allowed in the order, or to any purpose allowed in the order.

Proposed law provides that in addition to the restrictions for filing bankruptcy in law, the corporation is prohibited from any rehabilitation, liquidation, or dissolution of the corporation and unless adequate protection and provisions have been made for payment for the payment of bonds, no such action shall take effect as long as any storm recovery bonds are outstanding. Provides the corporation is prohibited from filing a voluntary petition for bankruptcy until two years and one day after the corporation has satisfied the payment obligations to any issuer of any storm recovery bonds outstanding. Provides provisions must be included with any contractual obligation for storm recovery bonds under proposed law. Provides the contractual obligation shall not subsequently be modified by state law during the period of the contractual obligation, and this state and the legislature contract with the holders that the state shall not limit or alter the denial of authority during the period referred to in proposed law.

Proposed law provides when a corporation is involved in the issuance of storm recovery

bonds, the corporation shall pledge to and agree with the issuer that until the storm recovery bonds and any ancillary agreements have been paid and performed in full, the corporation shall not do any of the following:

- (1) Take or permit an action that impairs or would impair the value of storm recovery property.
- (2) Except as provided under proposed law and except for adjustments under any true-up mechanism established by the commission, reduce, alter, or impair storm recovery charges that are to be imposed, collected, and remitted for the benefit of the financing parties until any and all obligations of related storm recovery bonds have been paid or performed in full. Provides this does not preclude the limitation or alteration of the contract if it has been paid or performed in full under this proposed law.

Proposed law provides any person or entity issuing storm recovery bonds may include the pledge in the bonds and related documentation under proposed law.

Proposed law provides a corporation is considered a public entity and a governmental unit under law and for the purpose of the La. Electric Utility Storm Recovery Securitization Act. Provides notwithstanding any provision of law to the contrary, including without limitation the law on revenue bonds and any pledge made by the Louisiana Local Government Environmental Facilities and Community Development, the filing of a financing statement for storm recovery bonds is the method for perfecting a sale, assignment, transfer, or pledge of or security interest or lien on a storm recovery property or any right, title or interest of an assignee or secured party, including an issuer of storm recovery bonds which includes perfecting a security interest that was granted by a corporation or by a governmental unit issuer under the La. Electric Utility Storm Recovery Securitization Act. Provides proposed law is not to be interpreted to conflict with or modify certain provisions of present law. Provides for the filing of financing statements.

Proposed law provides notwithstanding the financing orders in law, a financing order issued to an electric utility by the commission for storm recovery property may provide the storm recovery property may be sold, assigned, or transferred by the electric utility to the corporation.

Proposed law provides when an electric utility petitions the commission for a financing order, the corporation and the utility shall be a party to the commission's proceedings under proposed law.

Proposed law provides that notwithstanding any provisions to the contrary. Relative to financing orders and storm recovery bonds, when a corporation participates in a securitization financing transaction pursuant to the La. Electric Utility Storm Recovery Securitization Act, the financing order may authorize a state public entity that has a separate corporate existence and that is eligible to issue debt on interest that is exempt from federal income tax to be the issuer of the storm recovery bonds. Provides the corporation must arrange to have storm recovery bonds specified in the financing order be issued to an issuer selected by the corporation and approved by the commission. Provides the corporation is required to enter a loan transaction with the issuer of the storm recovery bonds and the corporation must transfer the net proceeds of bonds to the pertinent utility as the purchase price of the storm recovery property.

Proposed law provides the corporation cannot issue storm recovery bonds. Provides a corporation may issue promissory notes under the La. Electric Utility Storm Recovery Securitization Act.

Proposed law provides storm recovery bonds issued requires approval by the State Bond Commission.

Proposed law provides a utility may finance storm recovery costs using additional alternatives for costs incurred before the effective date to the extent that the utility has made an application for a determination of eligibility for their storm recovery costs under these additional alternatives may be the basis for the commission's financing order that relied on the proposed law.

Proposed law provides for legislative intent and the creation of special public trusts.

Proposed law provides that the securitization financing as provided in proposed law, if authorized by the commission, shall include a commitment by the utility that the proceeds from these bonds are in lieu of recovery of system restoration costs through the regular rate making process to the extent of those securitization financing proceeds.

Proposed law defines the following terms:

- (1) "Affiliate" means, when referring to a specified person, an entity that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the entity specified. The term, "control", "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract, or otherwise.
- (2) "Contributed proceeds" means the money a corporation contributes to a trust, the contributed proceeds are the corporation's net proceeds from an issuance of system restoration bonds in accordance with the terms of a financing order.
- (3) "Pledgee" means an issuer as pledgee of the corporation or an applicable financing party as pledgee of an issuer.
- (4) "Preferred interests" means preferred equity interests in a utility affiliate that pay the preferred dividends to the trust that purchased the preferred equity interests.
- (5) "Purchase proceeds" means proceeds received by a utility affiliate from the sale of its preferred interests to a trust.
- (6) "Related bonds" means with respect to a trust, the system restoration bonds that funded the net proceeds transferred by an issuer to the corporation and then contributed by the corporation to that trust.
- (7) "Related utility" means the utility that is a beneficiary of a trust and obtains a financing order under the provisions of proposed law. Provides the related utility is an affiliate of the utility affiliate that sells its preferred interests to the trust for purchase proceeds.
- (8) "Trust" means an express special public trust created only pursuant to and in compliance with the provisions of proposed law. Provides this trust shall not be an issuer of system restoration bonds and is not created under the public trust laws.
- (9) "Trust agreement" means a written instrument that creates the trust together with all amendments.
- (10) "Utility affiliate" means an affiliate of the utility that obtained a financing order under the provisions of the proposed law.

Proposed law provides a corporation may create express special public trusts to accomplish a corporation's function and purpose under the provisions of proposed law.

Proposed law provides that a financing order may authorize a corporation to contribute to

a trust all of its net proceeds from the issuance of system restoration bonds and the trust is required to use all the proceeds to purchase preferred interest from the related utility.

Proposed law provides certain provisions of the La. Energy Emergency Relief Act do not apply to securitization financing under the provisions of proposed law. Requires the utility affiliate sell its preferred interests to the trust. Requires the related utility to purchase proceeds for corporate purposes that supports the related utility's financial strength and stability and promotes the economic welfare of the citizens of the state.

Proposed law provides the utility must request in its application to the commission that a trust shall be used in its distribution of system restoration bonds proceeds.

Proposed law provides the financing order may create the system restoration property pursuant to proposed law, and provides the financing order does not have to meet all the requirements for financing orders if the commission in its order requires the corporation to transfer the net proceeds of the bonds to a trust that has the related utility as a beneficiary, who is subject to the financing order and upon receipt of the purchased proceeds by the related utility with the trust, requires the related utility to do the following:

- (1) Sets aside in a restricted escrow account, the money or investment used to fund the related utility's storm damage reserve.
- (2) Not seek to recover the system restoration costs, to the extent of the bond's proceeds from its commission-jurisdictional customers.
- (3) Flow through that benefits its customers the amount of any insurance proceeds, federal government grants, or similar source of permanent reimbursement receive by the related utility after the issuance of the financing order, relating to that system restoration activity and those same system restoration costs.

Proposed law provides the financing order requires, upon receipt of purchase proceeds by the related utility affiliate, the related utility fully release any claim the utility has to recover from its commission-jurisdictional customers any of the system restoration costs covered by the financing order.

Proposed law provides the corporation may create a trust in movable property, with the corporation and the related utility as the beneficiaries, when the commission approves the financing order. Provides the trust owns, administers, and distributes the trust property that contributes and earns for the benefit of its beneficiaries and, if applicable, a pledgee. Provides an independent trustee manages the operations and activities of the trust. Provides only the trust owns trust property.

Proposed law provides the trust does not have the power to be an issuer of system restoration bonds or issue these bonds, notes, or obligations, and these bonds are not a debt of the trust.

Proposed law provides no funds of the corporation or the commission shall be charged with or expended for the operation expenses for the trust. Provides if the financing order authorizes it, the costs of creating a trust before its trust agreement becomes effective may include the issuance costs. Provides the costs associated with the operation of the trust shall be paid solely from the related utility's share of the dividend income or redemption proceeds from preferred interests.

Proposed law provides a public trust shall have a legal existence that is separate and distinct from the state and the trust's settlors and beneficiaries, and other public trusts. Provides the trust is not a political subdivision, department, unit, agency, board, or commission of the state. Provides the trust assets are not part of the state's general fund or any funds in the state treasury. Further provides the state, the commission, and the corporation shall not budget for or provide appropriations to the trust and the monies in each fund created shall be held in

separate funds.

Proposed law provides for powers and functions of the trust.

Proposed law subjects the special public trust to the Public Records Law.

Proposed law provides the trust's domicile is the parish of East Baton Rouge.

Proposed law provides the legislative auditor may examine the trust's books and accounts, and requires the trust agreement includes provisions the trust has an annual, independent audit by a certified public accountant.

Proposed law provides the beneficiary is not charged personally with any liability by reason of any act or omission committed or suffered in the performance of the trust's operations.

Proposed law provides the trust shall be created, organized, structured, and empowered by a written instrument in accordance with the provisions of proposed law. Provides the corporation is the settlor of the trust agreement either by authentic act or by act under private signature executed in the presence of two witnesses, and is duly acknowledged by the settlor or by the affidavit of one of the attesting witnesses. Provides the trust agreement is effective upon the trustee's acceptance and the beneficiaries as provided in the proposed law. Further, provides when the trust agreement is in effect, the trust is a juridical person, even if the trust has no property until a later time, and the trust agreement constitutes a binding contract between the corporation as settlor, the beneficiaries and the trustee, for the acceptance of the beneficial interests in the trust by the designated beneficiaries, and the application of the proceeds of the trust property and its operation for the purposes, and in accordance with the stipulations of the approved trust agreement. Provides the trust agreement shall not be an ancillary agreement as defined pursuant to the Louisiana Utilities Restoration Corporation Act.

Proposed law provides before the execution of a trust agreement, it needs approval from the commission.

Proposed law provides the trustees and beneficiaries have to accept the trust agreement before it becomes effective. Provides the corporation settlor and the related utility are the only beneficiaries of the trust.

Proposed law requires after the trust agreement takes effect, the trust agreement be recorded in the conveyance records of the clerk of court of the parish of East Baton Rouge.

Proposed law provides when the trust agreement is modified, amended, terminated, or rescinded, these changes require approval from the commission, the corporation, the beneficiary related utility, and the trustee. Further provides these changes be recorded in the conveyance records of the clerk of court of the parish of East Baton Rouge.

Proposed law provides the trust has a duration that is specified in the trust agreement. Provides notwithstanding any provisions of the trust agreement or the proposed law above, the termination, rescission, rehabilitation, liquidation, or dissolution of the trust may take effect if any of the related bonds are outstanding. Provides once the trust is terminated, the trustee is required to file a certificate of termination in the conveyance records of the clerk of court of the parish of East Baton Rouge.

Proposed law provides for requirement in naming a trust.

Proposed law provides the commission shall regulate each trust concomitant with the commission's regulation of the related utility and notwithstanding such regulation, a trust shall not be considered a public utility or an agent of any utility.

Proposed law provides any expenses of examination by the commission shall be charged to the trust being examined and recovered and from the related utility's share of the distributions or redemptions in respect of the preferred interests held by that trust.

Proposed law provides the trust shall perform only those functions consistent with and effectuate only the purposes of proposed law. Provides the trust shall acquire and subscribe for preferred interests of a utility affiliate using all of the contributed proceeds of system restoration bonds received from the corporation as settlor. Provides notwithstanding the law on requiring the corporation to transfer the proceeds of the system restoration bonds, the financing order must require the corporation to transfer the net proceeds of the system restoration bonds it receives as required by law, to a trust that has as a beneficiary and a related utility that is collecting the applicable system restoration charges. Provides the financing order requires the trust to use those contributed proceeds as provided in proposed law, requires the trust use the distributions that are purchased preferred interests as provided in proposed law, and requires that they be subject to the requirements set forth in the proposed law.

Proposed law provides the financing order shall include the related utility's commitment that, upon receipt of the purchase proceeds by the utility affiliate, the related utility shall fully release any claims or rights to recover the system restoration costs, to the extent the related bonds' proceeds, are from any of its commission-jurisdictional customers, and requires the related utility to set aside in a restricted reserve account, an amount and manner the commission requires, and the use of this money or investment is to fund the utility's storm damage reserve.

Proposed law provides the trust pay distributions, in respect of the preferred interests to the beneficiaries of the trust shared between the beneficiaries, as specified in the approved trust agreement, or when applicable, to a permitted pledgee, and for expenses permitted under proposed law. Provides the trust may cause the periodic redemption of the preferred interests only as provided in the approved trust agreement. Further provides that the terms shall be approved by the commission in the financing order or by the use of an alternate approval method.

Proposed law provides system restoration bonds in a financing order are not a debt of the trust when it is issued pursuant to the provisions of proposed law. Provides these bonds are nonrecourse to the credit or any assets of a trust, other than the trust's obligation to distribute proceeds to the corporation or a pledgee as specified in the trust agreement and pursuant to the pledge by the corporation, to the issuer of the related bonds, as security for repayment of a loan to the corporation by the issuer. Provides the terms of the indenture, and other financing documents pertaining to system restoration bonds issued under the provisions of proposed law must be consistent with proposed law.

Proposed law provides the trustee of a trust shall not serve as a trustee under an indenture pertaining to the related bonds authorized by the financing order relating to that trust and only the following entities shall serve as a trustee of a trust established under proposed law:

- (1) A federally insured depository institution organized under the laws of this state, another state, or the United States.
- (2) A financial institution or trust company organized under the laws of this state or the United States, authorized to exercise trust or fiduciary powers under the laws of this state or the United States, or a trust company, organized under the laws of another state, and operating in this state pursuant to the laws for out-of-state trust companies.

Proposed law provides an original trustee, an alternate trustee, or a successor trustee may designate in the trust agreement or chosen by the use of a method used in the trust agreement.

Proposed law provides the trustee who accepts the trust under the provisions of proposed law submits to the jurisdiction of the courts of this state.

Proposed law provides the trust acting through its trustee may employ or retain attorneys, accountants, and other professionals it deems necessary to carry out its duties under the provisions of proposed law. Proposed law provides that the compensation of a trustee, professionals, and other costs to operate a trust is not included within the financing costs. Provides all compensation and other costs is first to be paid from the related utility's beneficiary share of the dividend income the trust receives from its preferred interests. Provides if the related utility's dividend income is insufficient to pay these expenses, the expenses are paid from the related utility's beneficiary share of redemption payments in respect of the preferred interests.

Proposed law provides the trust agreement may provide indemnity to a trustee for expenses the trustee incurred for the administration of trust property, but the amounts are only paid from the related utility's portion of the trust property or directly from the related utility, if the related utility agrees to such direct payment.

Proposed law provides the trustee administers the trust in the interest of the beneficiaries, and if applicable, a pledgee, in accordance with the trust agreement. Provides the trust keep for the beneficiaries at least annually, accurate accounts of its administration as specified in the trust agreement. Provides the beneficiary may request the trustee within a reasonable time provide the beneficiary complete and accurate information as to the nature and the amount of the trust property, and the trustee permits the beneficiary or its agents to inspect the accounts and any other documents relating to the trust.

Proposed law provides the trustee administers the trust as a prudent person would administer it. Provides the trustee invest the trust property only in preferred interests as provided in proposed law and the applicable trust agreement. Proposed law provides the trustee shall have no liability for investing within the limitations as required. Provides the trustee's duties and powers of a trustee be included in the trust agreement, except as provided under the provisions of proposed law. Provides the trust agreement may relieve the trustee from liability, unless the liability is for breach of the duty of loyalty to a beneficiary, or for breach of trust committed in bad faith.

Proposed law provides the trustee may not sell or encumber trust property except for redemptions of preferred interests as authorized by the trust agreement.

Proposed law provides the corporation pledge to and agree with the issuer, for the benefit of the issuer, the bondholders, and other financing parties, that until the related bonds and any ancillary agreements have been paid and performed in full, the corporation shall not do either of the following:

- (1) Take or permit any action that impairs or would impair the value of the corporation's beneficial interest in the applicable trust, other than the distributions of dividend income and redemption proceeds and in the trust agreement.
- (2) Approve or allow a modification or amendment pertaining to the corporation's beneficial interest in the applicable trust, or a termination or rescission of the applicable trust agreement or the applicable trust, or in any other way impair the rights and remedies of the corporation as beneficiary under the applicable trust, provided that nothing shall preclude the distributions of dividend income, and the redemption proceeds and in the trust agreement.

Proposed law defines "bondholder" as a person who holds a system restoration bond including in book entry form.

Proposed law provides that prior to the date that is two years and one day after which the

corporation no longer has any payment obligation outstanding to the issuer of the related bonds, a trust is prohibited from filing and has no authority to file a voluntary petition under federal law. Provides the limitation of bankruptcy provisions under the proposed law provisions for bankruptcy are included in the contractual obligation owed to the bondholders under the provisions of proposed law. Provides during the time of the contractual obligation, the state is not permitted to modify proposed law, and the state and the legislature will make a covenant with the bondholders that the state and the legislature will not limit or alter the denial of authority pursuant to proposed law bankruptcy limitations during the period referred to in proposed law.

Proposed law provides trust's beneficiaries have no power over the trust or the trust property and the beneficiary shall not alienate or encumber its beneficial interest in a trust, except what is authorized under proposed law.

Proposed law provides if authorized in the financial order, a trust agreement must permit the corporation to encumber its interest as beneficiary in favor of the issuer of the related bonds as additional security for the repayment of the loan of the net proceeds of the related bonds made to a corporation by that issuer. Provides the trust agreement requires the trustee to pay the pledgee all or a portion of a distribution owing to the corporation after the trustee receives notification, which is authenticated by the corporation or the pledgee, that the amount due or to become due has been assigned and payment is to be made to the pledgee. Provides the trustee may request the pledgee furnish proof of assignment, and unless the pledgee complies, the trustee may pay the corporation, even if the trustee has received a notification pursuant to proposed law. Provides the pledgee may seize only distributions of dividend income and redemption payments that the trustee authorized, but has not been paid to the corporation beneficiary as pledgor.

Proposed law provides the trust agreement requires the interest of the related utility beneficiary is not subject to voluntary or involuntary alienation or encumbrance. Provides the restraint is valid, but a restraint is subject to the limitations of a creditor.

Proposed law provides the creditor of a related utility beneficiary may seize only distributions of dividend income and redemption proceeds that have been authorized by the trustee and have not yet been paid to such beneficiary.

Proposed law provides the corporation's beneficial interest in a trust, interests in income and principal, receipts, and proceeds from trust distributions shall be considered to be income, revenues, monies, receipts and the contract rights. Provides the pledge and security interest the corporation granted is effective when the trustee receives a copy of the pledge or the trustee receives the security agreement and is valid, perfected, and enforceable against the corporation, and other third parties from the time when the pledge and grant is made without any notice or filing of any kind under the provisions of proposed law. Provides the filing of a financing statement is not required to perfect the pledgee's security interest under proposed law. Provides the pledge and security interest secures all obligations that exist or arise under proposed law. Provides the perfected pledge and security interest is a continuously perfected privilege and security interest in all movable property as described in proposed law, whether or not the interests, income, receipts, proceeds, or distributions have accrued. Provides conflicting pledges, if allowed, shall rank according to priority in time of perfection.

Proposed law provides as long as these requirements are not inconsistent with the provisions for discharging the debtor or restrictions on assignment, the provisions under proposed law are controlling.

Proposed law provides all powers granted are liberally construed to effectuate its purposes without implied limitations under proposed law. Provides all powers granted to the commission, the corporation, and a trust are cumulative with those derived from other sources and are not limited except as limited under the provisions of proposed law.

Proposed law provides a utility may finance system restoration costs under the provisions of proposed law if the utility incurred costs before the effective date. Provides if the utility has made an application to determine its eligibility on system restoration costs incurred before the effective date, the application may provide the basis for the commission's financing order under the provisions of proposed law, and is subject to the provisions of the additional powers for corporations.

Proposed law provides the failure of the utility, its utility affiliate, the trust, or the trustee or any beneficiary to perform their obligations under the provisions of proposed law, or under the trust agreement, or applicable financing order, does not affect or impair the system restoration property, or any rights of the corporation, the issuer or any financing party under the financing order, including the right to receive billed and collected system restoration charges. Provides that nothing is construed to deny, limit, or diminish the commission's jurisdiction and authority to enforce the provisions of any financing order.

Proposed law provides the corporation may participate in financing transactions by the La. Electric Utility Storm Recovery Securitization Act, after prior authorization from the commission and as provided by the provisions granting the corporation additional powers, financial orders, and issuers of storm recovery bonds under those provisions of proposed law.

(Amends R.S. 10:9-109(c)(6) (intro para); adds R.S. 45:1237-1240 and 1331-1343)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection and International Affairs to the original bill

1. Makes technical changes.
2. Provides that the corporation may perform the functions and activities that assignees are authorized to do in financing storm recovery costs through storm recovery bonds, except the corporation shall not be an issuer of storm recovery bonds.
3. Provides a financing order may require, rather than authorize, that the corporation shall contribute to a trust, all the net proceeds from the issuance of certain bonds.
4. Prohibits a beneficiary from alienating or encumbering its beneficial interest in a trust, except as solely permitted in the financing order.