

Regular Session, 2010

HOUSE BILL NO. 1207

BY REPRESENTATIVE ARNOLD

UTILITIES: Creates the Louisiana Electric Investment Recovery Securitization Act

1 AN ACT

2 To amend and reenact R.S. 10:9-109(c)(4), (5), and 6(C) and to enact R.S. 10:9-109(c)(7)

3 and Part VII of Chapter 9 of Title 45 of the Louisiana Revised Statutes of 1950, to

4 be comprised of R.S. 45:1251 through 1261, relative to utilities; to provide for

5 security interests in investment recovery property; to provide for legislative intent

6 and definitions; to provide with respect to issuance of financing orders; to provide

7 for appeals of financing orders; to provide for a utility’s interest in a financing order;

8 to provide for investment recovery property; to provide for the sale of investment

9 recovery property; to provide for the perfection and true sale status of a sale of

10 investment recovery property; to provide for subsidiaries of electric utilities; to

11 provide for conflicts of laws; to provide for the creation, perfection, and priority of

12 security interests in investment recovery property; to provide a state pledge of non-

13 impairment of investment recovery bonds; to exempt investment recovery bonds

14 from being public debt; to provide an exclusion from secured transaction provisions

15 of the uniform commercial laws; to provide for non-impairment of the jurisdiction

16 of the commission; and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. R.S. 10:9-109(c)(4), (5), and 6(C) are hereby amended and reenacted and

19 R.S. 10:9-109(c)(7) is hereby enacted to read as follows:

20 §9-109. Scope

1 \* \* \*

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

4 \* \* \*

5 (4) the rights of a transferee beneficiary or nominated person under a letter  
6 of credit are independent and superior under R.S. 10:5-114; ~~or~~

7 (5) the rights of a successor in an estate are interests in real property;

8 (6) R.S. 45:1226 through 1236, the Louisiana Electric Utility Storm  
9 Recovery Securitization Act, expressly governs the creation, perfection, priority, or  
10 enforcement of a security interest in storm recovery property as defined therein or  
11 any interest or right in any storm recovery property, but except to the extent contrary  
12 to express provisions in said Act:

13 \* \* \*

14 (C) This Chapter applies to the enforcement of security interests in storm  
15 recovery property; or

16 (7) R.S. 45:1241 through 1251, the Louisiana Electric Utility Investment  
17 Recovery Securitization Act, expressly governs the creation, perfection, priority, or  
18 enforcement of a security interest in investment recovery property as defined therein  
19 or any interest or right in any investment recovery property, but, except to the extent  
20 contrary to express provisions in said Act, the following provisions of this Chapter  
21 nonetheless do apply:

22 (A) Part 5 of this Chapter applies with respect to financing statements  
23 pertaining to investment recovery property.

24 (B) This Chapter applies to perfection, the effect of perfection or  
25 nonperfection, and the priority of a security interest held by a secured party having  
26 control of a deposit account or securities account as original collateral.

27 (C) This Chapter applies to the enforcement of security interests in  
28 investment recovery property.

29 \* \* \*

1 Section 2. Part VII of Chapter 9 of Title 45 of the Louisiana Revised Statutes of  
2 1950, comprised of R.S. 45:1251 through 1261, is hereby enacted to read as follows:

3 PART VII. LOUISIANA ELECTRIC INVESTMENT

4 RECOVERY SECURITIZATION ACT

5 §1251. Short title; purpose

6 A. This Part shall be known and may be cited as the "Louisiana Electric  
7 Utility Investment Recovery Securitization Act".

8 B. The purpose of this Part is to enable Louisiana electric utilities, if  
9 authorized by a financing order issued by the commission, to use securitization  
10 financing for certain investment recovery costs, because this type of debt may lower  
11 the financing costs or mitigate the impact on rates in comparison with conventional  
12 utility financing methods or alternative methods of recovery, thereby benefiting  
13 ratepayers. The investment recovery bonds will not be public debt. The proceeds  
14 of the investment recovery bonds shall be used for the purpose of recovering certain  
15 investment recovery costs, solely as allowed by the commission. Securitization  
16 financing for investment recovery costs are hereby recognized to be a valid public  
17 purpose. Federal tax laws and revenue procedures expressly require that special state  
18 legislation be enacted in order for such transactions to receive certain tax benefits.  
19 The legislature finds a need to promote such securitization financing, if authorized  
20 by the commission, by providing clear and exclusive methods to create, transfer, and  
21 encumber interests in investment recovery property as defined in this Part. This need  
22 can be met by providing in this Part for such methods and by establishing that any  
23 conflict between the rules governing sales, assignments, or transfers of, or security  
24 interests, privileges, or other encumbrances of any nature upon incorporeal movable  
25 property under other Louisiana laws and the methods provided in this Part, including  
26 without limitation with regard to creation, perfection, priority, or enforcement, shall  
27 be resolved in favor of the rules and methods established in this Part with regard to  
28 investment recovery property.

1           C. The intent of this Part is to provide benefits to Louisiana ratepayers by  
2           allowing a Louisiana electric utility, if authorized by a financing order, to achieve  
3           certain tax and credit benefits of financing investment recovery costs. This Part does  
4           not in any way limit, impair, or impact the commission's plenary jurisdiction over the  
5           rates charged and services rendered by public utilities in this state. Instead, this Part  
6           addresses certain property, security interest, and other matters to ensure that the  
7           financial and federal income tax benefits of financing investment recovery costs  
8           through securitization are available in Louisiana. The beneficial income tax and  
9           credit characteristics that may be achieved include the following:

10           (1) Treating the investment recovery bonds as debt of the electric utility for  
11           income tax purposes.

12           (2) Treating the investment recovery charges as gross income to the electric  
13           utility recognized under the utility's usual method of accounting for federal and state  
14           income tax purposes, rather than recognizing gross income upon the receipt of the  
15           financing order or of cash in exchange for the sale of the investment recovery  
16           property or the issuance of the investment recovery bonds.

17           (3) Avoiding the recognition of debt on the electric utility's balance sheet for  
18           certain credit and regulatory purposes by reason of the investment recovery bonds.

19           (4) Treating the sale, assignment, or transfer of the investment recovery  
20           property by the electric utility as a true sale for state law and bankruptcy purposes.

21           (5) Avoiding any adverse impact of the financing on the electric utility's  
22           credit rating.

23           §1252. Definitions

24           As used in this Part:

25           (1) "Ancillary agreement" means any bond, insurance policy, letter of credit,  
26           reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or  
27           credit support arrangement, or other financial arrangement entered into in connection  
28           with the issuance or payment of investment recovery bonds.

1           (2) "Assignee" means any legal or commercial entity, including but not  
2           limited to a corporation, limited liability company, partnership, limited partnership,  
3           or other legally recognized entity to which an electric utility sells, assigns, or  
4           transfers, other than as security, all or a portion of its interest in or right to  
5           investment recovery property. The term also includes any legal or commercial entity  
6           to which an assignee sells, assigns, or transfers, other than as security, all or a portion  
7           of its interest in or right to investment recovery property.

8           (3) "Commission" means the Louisiana Public Service Commission or,  
9           solely with respect to an electric utility furnishing electric service within the city of  
10           New Orleans, the council of the city of New Orleans. Each such commission will  
11           issue orders under this Part pertaining to those electric utilities subject to that  
12           commission's powers of regulation and supervision.

13           (4) "Electric utility" or "utility" means an "electric public utility" as defined  
14           in R.S. 45:121 and in addition includes any person furnishing electric service within  
15           the city of New Orleans.

16           (5) "Financing costs" means any of the following:

17           (a) Interest and acquisition, defeasance, or redemption premiums that are  
18           payable on investment recovery bonds.

19           (b) Any payment required under an ancillary agreement and any amount  
20           required to fund or replenish reserve or other accounts established under the terms  
21           of any indenture, ancillary agreement, or other financing documents pertaining to  
22           investment recovery bonds.

23           (c) Any other cost related to issuing, supporting, repaying, servicing, and  
24           refunding investment recovery bonds, including but not limited to servicing fees,  
25           accounting and auditing fees, trustee fees, legal fees, consulting fees, administrative  
26           fees, printing and edgarizing fees, financial advisor fees, placement and underwriting  
27           fees, capitalized interest, rating agency fees, government registration fees, stock  
28           exchange listing and compliance fees, and filing fees, including costs related to  
29           obtaining the financing order.

1           (d) Any income taxes and license fees imposed on the revenues generated  
2           from the collection of investment recovery charges or otherwise resulting from the  
3           collection of investment recovery charges, in any such case whether paid, payable,  
4           or accrued.

5           (e) Any state and local taxes, franchise, gross receipts, and other taxes or  
6           similar charges, including but not limited to regulatory assessment fees, in any such  
7           case whether paid, payable, or accrued.

8           (f) Any other costs and charges approved by the commission for inclusion  
9           in investment recovery charges.

10           (6) "Financing order" means an order of the commission, if granted by the  
11           commission in its sole discretion, which allows for all of the following:

12           (a) The issuance of investment recovery bonds.

13           (b) The imposition, collection, and periodic adjustments of investment  
14           recovery charges.

15           (c) The creation of investment recovery property.

16           (d) The sale, assignment, or transfer of investment recovery property to an  
17           assignee.

18           (7) "Financing party" means any holder of investment recovery bonds, any  
19           party to or beneficiary of an ancillary agreement, and any trustee, collateral agent,  
20           or other person acting for the benefit of any of the foregoing.

21           (8) "Financing statement" has the same meaning as that provided in the  
22           Uniform Commercial Code—Secured Transactions. All financing statements  
23           referenced in this Part shall be filed in accordance with Part 5 of Chapter 9 of Title  
24           10 of the Louisiana Revised Statutes and shall be filed in this state.

25           (9) "Investment recovery bonds" means bonds, debentures, notes, certificates  
26           of participation, certificates of ownership, or other evidences of indebtedness or  
27           ownership that are issued pursuant to an indenture, contract, or other agreement of  
28           an electric utility or an assignee pursuant to a financing order, the proceeds of which  
29           are used directly or indirectly to provide, recover, finance, or refinance commission-

1 approved investment recovery costs and financing costs, and which are secured by  
2 or payable from investment recovery property. If certificates of participation or  
3 ownership are issued, references in this Part to principal, interest, or premium shall  
4 be construed to refer to comparable amounts under those certificates. Investment  
5 recovery bonds shall be nonrecourse to the credit or any assets of the electric utility  
6 other than the investment recovery property as specified in the financing order and  
7 any rights under any ancillary agreement. Investment recovery bonds shall be legal  
8 investments for all governmental units, financial institutions, insurance companies,  
9 fiduciaries, and other persons that require statutory authority regarding legal  
10 investment.

11 (10) "Investment recovery charge" means the amounts authorized by the  
12 commission to recover, finance, or refinance investment recovery costs and financing  
13 costs. If determined appropriate by the commission and provided for in a financing  
14 order, such amounts are to be imposed on customer bills and collected by an electric  
15 utility or its successors or assignees, or a collection agent, in full through a charge  
16 which may be collected as part of the electric utility's base rates, fuel adjustment  
17 clauses, or in any other manner deemed appropriate by the commission, for the time  
18 period specified in the financing order, paid by existing and future customers  
19 receiving transmission or distribution service, or both, from the electric utility or its  
20 successors or assignees under rate schedules or special contracts approved by the  
21 commission. The commission may provide for payment of such charges even if the  
22 customer elects to purchase electricity from an alternative electricity supplier  
23 including as the result of a fundamental change in the manner of regulation of public  
24 utilities in this state.

25 (11) "Investment recovery costs" means, if requested by the electric utility,  
26 and as may be approved by the commission, costs incurred or to be incurred by an  
27 electric utility consisting of any of the following:

28 (a) Costs associated with the following:

1           (I) The cancelled construction of electric generating or transmission  
2           facilities.

3           (ii) Any other type of capital investment in excess of three hundred fifty  
4           million dollars determined by the commission to be suitable for securitization  
5           financing under this Part.

6           (b) Costs associated with purchasing or otherwise acquiring long-term  
7           supplies of fuel of any type or facilities of any type for the production, delivery, or  
8           storage of such supplies before or after use or of waste or other by-products of such  
9           use, including without limitation acquisitions of rights in immovables or movables,  
10          whether corporeal and incorporeal, wherever situated, acquisitions of ownership  
11          interests in juridical persons that own mineral rights or other rights to fuel supplies,  
12          prepaid forward purchases of fuel, and storage of spent nuclear fuel or any waste  
13          from the generation of electricity.

14          (c) Costs of repurchasing equity or retiring any existing indebtedness relating  
15          to any of the foregoing.

16          (12) "Investment recovery property" means the contract right constituting  
17          incorporeal movable property newly created pursuant to this Part which consists of  
18          any of the following:

19           (a) The rights and interests of an electric utility or successor or assignee of  
20           the electric utility specified under a financing order, including the right to impose,  
21           bill, charge, collect, and receive investment recovery charges authorized in the  
22           financing order and to obtain periodic adjustments to such charges as may be  
23           provided in the financing order.

24           (b) All revenues, collections, claims, rights to payment, payments, money,  
25           or proceeds arising from the rights and interests specified in Subparagraph (a) of this  
26           Paragraph, regardless of whether such revenues, collections, claims, rights to  
27           payment, payments, money, or proceeds are imposed, billed, received, collected, or  
28           maintained together with or commingled with other revenues, collections, rights to  
29           payment, payments, money, or proceeds.



1           (13) "Lien creditor" means any of the following:

2           (a) A creditor that has acquired a lien on the property involved by  
3           attachment, sequestration, seizure, levy, or by similar means.

4           (b) An assignee for benefit of creditors from the time of assignment.

5           (c) A trustee in bankruptcy from the date of the filing of the petition.

6           (d) A receiver in equity from the time of appointment.

7           (14) "Secured party" means a financing party in favor of which an electric  
8           utility or its successors or assignees creates a security interest in any or all portions  
9           of its interest in or right to investment recovery property. A secured party may be  
10          granted a security interest in investment recovery property under this Part and a  
11          security interest in other collateral subject to the Uniform Commercial Code--  
12          Secured Transactions in one security agreement.

13          (15) "Security interest" means a pledge, hypothecation, or other  
14          encumbrance of or other right over any portion of investment recovery property  
15          created by contract to secure the payment or performance of an obligation.

16          (16) "Uniform Commercial Code--Secured Transactions" means Chapter 9  
17          of Title 10 of the Louisiana Revised Statutes of 1950.

18          §1253. Financing orders

19          A. An electric utility may petition the commission for a financing order.  
20          Application by an electric utility for authority for the electric utility or its affiliate or  
21          other assignee to issue investment recovery bonds shall be made in such form as the  
22          commission prescribes. Every application shall be made under oath and shall be  
23          signed and filed on behalf of the electric utility by its president or by a vice-  
24          president, treasurer, or other executive officer having knowledge of the matters set  
25          forth. No electric utility or affiliate or other assignee shall issue any investment  
26          recovery bonds until it has been specifically authorized to do so by order of the  
27          commission. No electric utility shall, without the consent of the commission granted  
28          in a commission order, apply any proceeds of investment recovery bonds to any  
29          purpose not specified in the commission's order or supplemental order, or to any

1 purpose in excess of the amount allowed for such purpose in the order or  
2 supplemental order, or to any purpose in contravention of the order or supplemental  
3 order.

4 B. The commission may grant an application under Subsection A of this  
5 Section in whole or in part by a financing order, and with such modifications thereto  
6 and upon such terms and conditions as the commission prescribes, and may from  
7 time to time, after opportunity for hearing and for good cause shown, make such  
8 supplemental orders in the premises as it finds necessary or appropriate, subject, if  
9 the commission so provides, to Paragraph (C)(5) of this Section. If the commission  
10 issues a financing order approving any issue of investment recovery bonds under this  
11 Part, the commission may consider whether the proposed structuring, expected  
12 pricing, and financing costs of the investment recovery bonds are reasonably  
13 expected to result in lower overall costs or would avoid or mitigate rate impacts to  
14 customers as compared with traditional methods of financing or recovering  
15 investment recovery costs. The commission may determine what degree of  
16 flexibility to afford to the electric utility in establishing the terms and conditions of  
17 the investment recovery bonds, including but not limited to repayment schedules,  
18 interest rates, and other financing costs. A copy of any financing order made and  
19 entered by the commission under this Part duly certified by the secretary or clerk, as  
20 applicable, of the commission shall be sufficient evidence for all purposes of whole  
21 and complete compliance by the electric utility with all procedural and other matters  
22 required precedent to the entry of the order.

23 C. For a financing order issued to an electric utility by the commission to  
24 create investment recovery property, the financing order shall:

25 (1) Specify the amount of investment recovery costs, taking into  
26 consideration, to the extent the commission deems appropriate, any other methods  
27 used to recover these costs and any offsets or credits to those costs, and provide with  
28 respect to the amount of financing costs which may be recovered through investment  
29 recovery charges; and specify the time period over which all such costs may be

1        recovered. This time period may be until the investment recovery bonds and  
2        financing costs are paid in full.

3                (2) Specify and create the investment recovery property of an electric utility  
4        or its successors or assignees that shall be used to pay or secure investment recovery  
5        bonds and financing costs.

6                (3) Provide that such investment recovery property shall be sold, assigned,  
7        or transferred by the electric utility to a subsidiary which is wholly owned, directly  
8        or indirectly, by the electric utility and which will be the issuer of the investment  
9        recovery bonds.

10               (4) Provide that the investment recovery charges shall be sufficient at all  
11        times to pay the scheduled principal of and interest on the investment recovery bonds  
12        as the same shall become due and payable and all other financing costs, and, if  
13        determined appropriate by the commission, establish a formulaic true-up mechanism  
14        requiring that the investment recovery charges be reviewed and adjusted at least  
15        annually, in order to correct any over-collection or under-collection during the period  
16        after the issuance or preceding adjustment and to ensure the projected recovery of  
17        amounts sufficient to provide timely payment of the scheduled principal of and  
18        interest on the pertinent investment recovery bonds and all other financing costs.

19               (5) Provide and pledge that after the earlier of the transfer of investment  
20        recovery property to an assignee or the issuance of authorized investment recovery  
21        bonds, a financing order shall be irrevocable until the indefeasible payment in full  
22        of the investment recovery bonds and the financing costs and, provide that, except  
23        as provided in Subsection F of this Section or to implement any true-up mechanism  
24        adopted by the commission as described in Paragraph (4) of this Subsection, the  
25        commission shall not amend, modify, or terminate the financing order by any  
26        subsequent action or reduce, impair, postpone, terminate, or otherwise adjust  
27        investment recovery charges approved in the financing order, provided nothing shall  
28        preclude limitation or alteration if and when full compensation is made for the full  
29        protection of the investment recovery charges imposed, charged, and collected

1 pursuant to a financing order and the full protection of the holders of investment  
2 recovery bonds and any assignee or financing party.

3 (6) Specify how amounts collected from a customer shall be allocated  
4 between investment recovery charges and other charges.

5 (7) Provide that a financing order remains in effect until the investment  
6 recovery bonds issued pursuant to the order have been indefeasibly paid in full and  
7 the financing costs of such bonds have been recovered in full.

8 (8) Provide that a financing order shall remain in effect and unabated,  
9 notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, or  
10 merger or sale, of the applicable electric utility or its successors or assignees.

11 (9) Authorize and require the electric utility, to the extent that any interest  
12 in investment recovery property is sold or assigned, to contract with the assignee or  
13 any financing party that it will continue to operate its system to provide service to  
14 its customers, will collect amounts in respect of the investment recovery charges for  
15 the benefit and account of such assignee or financing party, and will account for and  
16 remit such amounts to or for the account of such assignee or financing party,  
17 including pursuant to a sequestration order authorized by this Part.

18 D. In a financing order issued to an electric utility, the commission may:

19 (1) Prescribe any limitations on potential assignees of investment recovery  
20 property.

21 (2) Authorize an assignee organized pursuant to the laws of this state which  
22 is a subsidiary of an electric utility and which issues investment recovery bonds to  
23 provide and establish in its articles of incorporation, partnership agreement, or  
24 operating agreement, as applicable, that in order for a person to file a voluntary  
25 bankruptcy petition on behalf of that assignee, the prior unanimous consent of the  
26 directors, partners, or managers, as applicable, shall be required. If authorized in a  
27 financing order, the following apply:

28 (a) Any such provision set forth in the articles of incorporation, partnership  
29 agreement, or operating agreement of such an assignee shall constitute a legal, valid

1 and binding agreement of the shareholders, partners, or members, as applicable, of  
2 such assignee and is enforceable against such shareholders, partners, or members.

3 (b) A person shall have authority under the laws of this state to file a  
4 voluntary bankruptcy petition on behalf of such assignee only after compliance with  
5 any such provision and prerequisite.

6 (3) Provide that the creation of the electric utility's investment recovery  
7 property pursuant to Paragraph (C)(2) of this Section is conditioned upon, and shall  
8 be simultaneous with, the sale, assignment, or other transfer of the investment  
9 recovery property to an assignee and the security interest created in the investment  
10 recovery property to secure investment recovery bonds.

11 (4) Otherwise provide with respect to any matters pertaining to and within  
12 the Public Service Commission's constitutional jurisdiction over electric utilities and  
13 plenary power to regulate electric utilities or such other jurisdiction as may be  
14 conferred on the commission by law, or in the case of the council of the city of New  
15 Orleans, otherwise provide with respect to any matters pertaining to and within its  
16 home rule charter jurisdiction and authority over electric utilities providing service  
17 within the city of New Orleans.

18 E. After the issuance of a financing order, and within such time and subject  
19 to any other limitations set forth in the financing order, the electric utility retains  
20 discretion regarding whether to sell, assign, or otherwise transfer investment  
21 recovery property or to cause the investment recovery bonds to be issued, including  
22 the right to defer or postpone such sale, assignment, transfer, or issuance, provided  
23 that nothing shall limit in any manner the commission's authority to review any such  
24 decision for rate-making purposes.

25 F. At the request of an electric utility or on its own motion or the motion of  
26 any party affected by the financing order, the commission may commence a  
27 proceeding and issue a subsequent financing order that provides for the refinancing,  
28 retiring, or refunding of investment recovery bonds issued pursuant to the original  
29 financing order if the commission finds that the subsequent financing order satisfies

1 all of the criteria specified in Subsection B of this Section or provides for an  
2 accounting, refunding, or crediting to ratepayers of the proceeds of any true-up  
3 mechanism adopted by the commission consistent with Paragraph (C)(4) of this  
4 Section. Effective on retirement of the refunded investment recovery bonds and the  
5 issuance of new investment recovery bonds, the commission may adjust the related  
6 investment recovery charges accordingly or establish substitute investment recovery  
7 charges.

8 G. All financing orders by the commission shall be operative and in full  
9 force and effect from the time fixed for them to become effective by the commission.

10 H. An aggrieved party or intervenor may as its sole remedy, within fifteen  
11 days after the financing order or a supplemental order made by the commission  
12 becomes effective, file in the district court of the domicile of the commission, a  
13 petition setting forth the particular cause of objection to the order. When a timely  
14 application for a rehearing has been made at the commission, the fifteen-day time for  
15 such appeal shall not commence until the effective date of the commission order  
16 disposing of the rehearing application. Inasmuch as delay in the determination of the  
17 appeal of a financing order may delay the issuance of investment recovery bonds,  
18 thereby diminishing savings to customers which might be achieved if such bonds  
19 were issued as contemplated by a financing order, all such cases shall be given  
20 precedence over all other civil cases in the court, and shall be heard and determined  
21 as speedily as possible. No appeal to the Louisiana Supreme Court shall be allowed  
22 unless the petition is filed within fifteen days from the date on which the judgment  
23 of the district court is entered and only if the party taking the appeal has the record  
24 certified to the Louisiana Supreme Court and his brief filed therein within twenty  
25 days from the date on which the judgment of the district court is entered. Review on  
26 appeal from the Public Service Commission shall be in accordance with R.S.  
27 45:1193 through 1195. However, the immediately preceding two sentences of this  
28 Subsection shall have no application to appeals of any order of the council of the city  
29 of New Orleans, which shall proceed in the manner provided by applicable law.

1        §1254. Investment recovery property

2            A. All investment recovery property that is specified in a financing order  
3        shall constitute an existing, present contract right constituting an individualized,  
4        separate incorporeal movable susceptible of ownership, sale, assignment, transfer,  
5        and security interest, including, without limitation, for purposes of contracts  
6        concerning the sale of property and security interests in property, notwithstanding  
7        that the value of the property and the imposition and collection of investment  
8        recovery charges depends on future acts such as the electric utility to which the order  
9        is issued performing its servicing functions relating to the collection of investment  
10       recovery charges and on future electricity consumption. Such property shall exist  
11       whether or not the revenues or proceeds arising from the property have been billed,  
12       have accrued, or have been collected, notwithstanding the fact that the value or  
13       amount of the property is or may be dependent on the future provision of service to  
14       customers by the electric utility or its successors or assignees and the future  
15       consumption by customers of electricity. Investment recovery property created by  
16       a financing order shall be a vested contract right, and such financing order shall  
17       create a contractual obligation of irrevocability by the commission in favor of the  
18       electric utility and its assignees and financing parties.

19           B. Investment recovery property specified in a financing order shall continue  
20       to exist until the investment recovery bonds issued pursuant to the financing order  
21       are paid in full and all financing costs of the bonds have been recovered in full.

22           C. All or any portion of investment recovery property specified in a  
23       financing order issued to an electric utility may be sold, assigned, or transferred to  
24       a successor or an assignee, including an affiliate or affiliates of the electric utility  
25       created for the limited purpose of acquiring, owning, or administering investment  
26       recovery property or issuing investment recovery bonds under the financing order.  
27       All or any portion of investment recovery property may be encumbered by a security  
28       interest to secure investment recovery bonds issued pursuant to the order and other  
29       financing costs. Each such sale, assignment, transfer, or security interest granted by

1        an electric utility or affiliate of an electric utility or assignee shall be considered to  
2        be a transaction in the ordinary course of business.

3                D. The description of investment recovery property being sold, assigned, or  
4        transferred to an assignee in any sale agreement, purchase agreement, or other  
5        transfer agreement, being encumbered to a secured party in any security agreement,  
6        pledge agreement, or other security document, or indicated in any financing  
7        statement shall be sufficient only if such description or indication refers to the  
8        specific financing order that created the investment recovery property and states that  
9        such agreement or financing statement covers all or part of such investment recovery  
10       property described in such financing order. A description of investment recovery  
11       property in a financing statement shall be sufficient if it refers to the financing order  
12       creating the investment recovery property. This Subsection applies to all purported  
13       sales, assignments, or transfers of, and all purported liens or security interests in,  
14       investment recovery property, regardless of whether the related sale agreement,  
15       purchase agreement, other transfer agreement, security agreement, pledge agreement,  
16       or other security document was entered into, or any financing statement was filed,  
17       before or after the effective date of this Part.

18                E.(1) Investment recovery property shall be an individualized, separate  
19        incorporeal movable susceptible of ownership, sale, assignment, transfer, and  
20        security interest encumbrance, notwithstanding any of the following:

21                (a) That the investment recovery charges may be authorized by the  
22        commission and included as part of the electric utility's base rate and are not shown  
23        as a separate line item on individual electric bills.

24                (b) That notice is not given to customers that the investment recovery  
25        property has been transferred to an assignee and that such assignee is the owner of  
26        the rights to the investment recovery charges.

27                (c) That notice is not given to customers that the electric utility or another  
28        entity, if applicable, is acting as a collection agent or servicer or in a similar capacity  
29        for an assignee.



1           (d) That funds arising from the collection of investment recovery property  
2           by the electric utility as collection agent are commingled with other monies of the  
3           electric utility prior to the electric utility's transfer as collection agent of such funds  
4           to the assignee or financing party.

5           (2) A description of investment recovery property, and a sale, assignment,  
6           or transfer or grant of security interest, shall not be denied legal effect or  
7           enforceability due to the factors provided for in Paragraph (1) of this Subsection  
8           apply in whole or in part to such investment recovery property.

9           F. If an electric utility defaults on any required payment of charges arising  
10          from investment recovery property specified in a financing order, the district court  
11          of the domicile of the commission, upon application by an interested party, and  
12          without limiting any other remedies available to the applying party, shall order the  
13          sequestration and payment of the revenues arising from the investment recovery  
14          property to the financing parties or their representatives. Any such order shall  
15          remain in full force and effect, notwithstanding any reorganization, bankruptcy, or  
16          other insolvency proceedings with respect to the electric utility or its successors or  
17          assignees.

18          G. To the extent provided in a financing order, the interest of an assignee or  
19          secured party in investment recovery property specified in a financing order shall not  
20          be subject to setoff, counterclaim, surcharge, or defense by the electric utility or by  
21          any customer of the electric utility or other person, or in connection with the  
22          reorganization, bankruptcy, or other insolvency of the electric utility or any other  
23          person.

24          H. To the extent provided in a financing order, any successor to an electric  
25          utility, whether pursuant to any reorganization, bankruptcy, or other insolvency  
26          proceeding or whether pursuant to any merger or acquisition, sale, or other business  
27          combination, or transfer by operation of law, as a result of electric utility  
28          restructuring or otherwise, shall perform and satisfy all obligations of, and have the  
29          same rights under a financing order as, the electric utility under the financing order

1 in the same manner and to the same extent as the electric utility, including collecting  
2 and paying to the persons entitled to receive them, the revenues, collections,  
3 payments, or proceeds of the investment recovery property. Nothing in this Section  
4 shall be intended to limit or impair any authority of the commission concerning the  
5 transfer or succession of interests of electric utilities.

6 §1255. Sale

7 The sale, assignment, or transfer of investment recovery property shall be  
8 governed by this Section. All of the following apply to a sale, assignment, or  
9 transfer under this Section:

10 (1) The sale, assignment, or other transfer of investment recovery property  
11 by an electric utility to an assignee that the parties have in the governing contract  
12 expressly stated to be a sale shall be an absolute transfer and true sale of, and not a  
13 security interest in, the transferor's right, title, and interest in, to, and under the  
14 investment recovery property, other than for federal and state income tax purposes.  
15 For all purposes other than federal and state income tax and state franchise tax  
16 purposes, the parties' characterization of a transaction as a sale of an interest in  
17 investment recovery property shall be conclusive that the transaction is a true sale  
18 and that ownership has passed to the party characterized as the purchaser, regardless  
19 of whether the purchaser has possession of any documents evidencing or pertaining  
20 to the interest. After such a transaction, the investment recovery property shall not  
21 be subject to any claims of the transferor or the transferor's creditors, other than  
22 creditors holding a prior security interest in the investment recovery property  
23 perfected under R.S. 45:1256.

24 (2) The characterization of the sale, assignment, or other transfer as a true  
25 sale or other absolute transfer pursuant to Paragraph (1) of this Section and the  
26 corresponding characterization of the assignee's property interest shall be  
27 determinative and conclusive irrespective of, and is not affected or impaired by, the  
28 existence of any of the following circumstances:

1           (a) Commingling of funds arising with respect to the investment recovery  
2           property with other monies of the electric utility prior to the electric utility's transfer  
3           as collection agent of such funds to the assignee or financing party.

4           (b) The retention by the transferor of a partial or residual interest, including  
5           an equity interest or entitlement to any surplus, in the investment recovery property,  
6           whether direct or indirect, or whether subordinate or otherwise.

7           (c) Any recourse that the assignee may have against the transferor, except  
8           that any such recourse shall not be created, contingent upon, or otherwise occurring  
9           or resulting from the inability or failure of one or more of the transferor's customers  
10          to timely pay all or a portion of the investment recovery charge.

11          (d) Any indemnifications, obligations, or repurchase rights made or provided  
12          by the transferor, except that such indemnity or repurchase rights shall not be based  
13          solely upon the inability or failure of a transferor's customers to timely pay all or a  
14          portion of the investment recovery charge.

15          (e) The transferor acting as the collector of the investment recovery charges,  
16          or the existence of any contract described in R.S. 45:1253(C)(9).

17          (f) The contrary or other treatment of the sale, assignment, or other transfer  
18          for tax, financial reporting, or other purposes.

19          (g) The granting or providing to holders of the investment recovery bonds  
20          of a preferred right to the investment recovery property, or credit enhancement by  
21          the electric utility or its affiliates with respect to the investment recovery bonds.

22          (h) The status of the assignee as a direct or indirect wholly owned subsidiary  
23          or other affiliate of the electric utility. The separate juridical personality of any  
24          assignee of investment recovery property which is a subsidiary or affiliate of the  
25          electric utility shall not be disregarded due to the fact that the assignee and the  
26          electric utility share any one or more incidents of control, including common  
27          managers, officers, directors, members, accounting or administrative systems,  
28          consolidated tax returns, or office space, that the assignee may be a disregarded  
29          entity for tax purposes, that the utility caused the formation of the assignee, that a

1 contract by the utility and the assignee described in R.S. 45:1253(C)(9) exists, that  
2 the assignee has no other business other than pertaining to the investment recovery  
3 property, that the capitalization of the assignee is limited to amounts required for  
4 compliance with certain applicable federal income tax laws and revenue procedures,  
5 or that other factors used in applying a single business enterprise test to juridical  
6 persons are present.

7 (I) The matters described in R.S. 45:1254(E).

8 (j) Any other term of the contract under Paragraph (1) of this Section.

9 (3) Any right that an electric utility has in the investment recovery property  
10 prior to its sale, assignment, or transfer shall be incorporeal movable property in the  
11 form of a vested contract right, notwithstanding any contrary treatment for  
12 accounting or tax purposes. The ownership of an interest in investment recovery  
13 property shall be voluntarily transferred by a contract between the owner and the  
14 assignee that purports to transfer the ownership of that interest. Unless otherwise  
15 provided, the transfer of ownership shall take place as between the parties as soon  
16 as there is written agreement on the interest, the purchase price is fixed, and the  
17 financing order has been issued. Such transfer shall be perfected and take effect  
18 against all third parties including without limitation subsequent lien creditors when  
19 the transfer has become effective between the parties and when a financing statement  
20 giving notice of the sale, assignment, or transfer is filed in accordance with  
21 Paragraph (4) of this Section. Delivery of such an interest in investment recovery  
22 property shall take place by operation of law upon the transfer becoming effective  
23 against third parties.

24 (4) Financing statements required to be filed pursuant to this Section shall  
25 be filed, indexed, maintained, and continued in the same manner and in the same  
26 system of records maintained for the filing of financing statements under the  
27 Uniform Commercial Code--Secured Transactions. The filing of such a financing  
28 statement shall be the only method of perfecting a sale, assignment, or transfer of  
29 investment recovery property. The sale, assignment, or transfer of an interest in

1 investment recovery property perfected by filing a financing statement shall be  
2 effective against the customers owing payment of the investment recovery charges,  
3 creditors of the transferor, subsequent transferees, and all other third persons,  
4 notwithstanding the absence of actual knowledge of or notice to the customers of the  
5 sale, assignment, or transfer.

6 (5) The priority of the conflicting ownership interests of assignees in the  
7 same interest or rights in any investment recovery property is determined as follows:

8 (a) Conflicting perfected interests or rights of assignees rank according to  
9 priority in time of perfection.

10 (b) A perfected interest or right of an assignee has priority over a conflicting  
11 unperfected interest or right of an assignee.

12 (c) A perfected interest or right of an assignee shall have priority over a  
13 person who becomes a lien creditor after the perfection of such assignee's interest or  
14 right.

15 (6) The priority of a sale, assignment, or transfer perfected pursuant to this  
16 Section shall not be impaired by any later modification of the financing order or  
17 investment recovery property or by the commingling of funds arising from  
18 investment recovery property with other funds. Any other security interest that may  
19 apply to those funds, other than a security interest perfected under R.S. 45:1246,  
20 shall be terminated when those funds are transferred to a segregated account for the  
21 assignee or a financing party. If investment recovery property has been transferred  
22 to an assignee or financing party, any proceeds of that property shall be held for and  
23 delivered to the assignee or financing party by any collector under any contract  
24 described in R.S. 45:1253(C)(9) as a mandatary and fiduciary.

25 (7) No customer of a electric utility owing payment of an investment  
26 recovery charge may, by agreement with the electric utility or otherwise, prohibit,  
27 restrict, or require the consent of such customer to the assignment, pledge, or transfer  
28 of the investment recovery charge.

29 §1256. Security interests

1           A. The Uniform Commercial Code--Secured Transactions shall not apply to  
2           investment recovery property or any right, title, or interest of a utility or assignee,  
3           whether before or after the issuance of the financing order, except to the extent  
4           specified in R.S. 45:1257(A). In addition, such right, title, or interest pertaining to  
5           a financing order, including, but not limited to, the associated investment recovery  
6           property including any revenues, collections, claims, rights to payment, payments,  
7           money, or proceeds of or arising from investment recovery charges pursuant to such  
8           order, shall not be deemed proceeds of any right or interest other than of the  
9           financing order and the investment recovery property arising from the financing  
10           order. All revenues and collections resulting from investment recovery property  
11           shall constitute proceeds only of the investment recovery property arising from the  
12           financing order.

13           B. Except to the extent provided in this Part with respect to filings of  
14           financing statements or control of deposit accounts or investment property as original  
15           collateral, the creation, attachment, granting, perfection, and priority of security  
16           interests in investment recovery property to secure investment recovery bonds shall  
17           be governed solely by this Part and not by the Uniform Commercial Code--Secured  
18           Transactions.

19           C.(1) A security interest in investment recovery property shall be valid and  
20           enforceable against the electric utility and its successor or an assignee and third  
21           parties and attaches to investment recovery property only after all of the following  
22           conditions are met:

23           (a) The issuance of a financing order.

24           (b) The execution and delivery of a security agreement with a financing  
25           party in connection with the issuance of investment recovery bonds.

26           (c) The receipt of value for the investment recovery bonds.

27           (2) A security interest attaches to investment recovery property when all of  
28           the conditions of Paragraph (1) of this Subsection have been met, unless the security  
29           agreement expressly postpones the time of attachment.

1           D. A security interest in investment recovery property shall be perfected only  
2           if it has attached and a financing statement indicating the investment recovery  
3           property collateral covered has been filed. A financing statement shall be filed to  
4           perfect all security interests and liens in investment recovery property. A security  
5           interest in investment recovery property shall be perfected when it has attached and  
6           when the applicable financing statement has been filed. The interest of a secured  
7           party shall not be perfected unless a financing statement sufficient pursuant to this  
8           Part and otherwise in accordance with the Uniform Commercial Code--Secured  
9           Transactions is filed, and after perfection, the secured party's interest continues in the  
10           investment recovery property and all proceeds of such investment recovery property,  
11           whether or not billed, accrued, or collected, and whether or not deposited into a  
12           deposit account and however evidenced. A security interest in proceeds of  
13           investment recovery property shall be a perfected security interest if the security  
14           interest in the investment recovery property was perfected pursuant to this Part.  
15           Financing statements required to be filed pursuant to this Section shall be filed,  
16           indexed, maintained, and continued in the same manner and in the same system of  
17           records maintained for the filing of financing statements pursuant to the Uniform  
18           Commercial Code – Secured Transactions. The filing of such a financing statement  
19           shall be the only method of perfecting a lien or security interest on investment  
20           recovery property. The financing statement shall be filed as if the debtor named  
21           therein were located in this state.

22           E. The priority of the conflicting security interests of secured parties in the  
23           same interest or rights in any investment recovery property shall be determined as  
24           follows:

25           (1) Conflicting perfected security interests of secured parties rank according  
26           to priority in time of perfection.

27           (2) A perfected security interest of a secured party shall have priority over  
28           a conflicting unperfected security interest of a secured party.

1           (3) A perfected security interest of a secured party shall have priority over  
2           a person who becomes a lien creditor after the perfection of such secured party's  
3           security interest.

4           F. A perfected security interest in investment recovery property and all  
5           proceeds of such investment recovery property, whether or not billed, accrued, or  
6           collected, and whether or not deposited into a deposit account and however  
7           evidenced, shall have priority over a conflicting lien or privilege of any nature in the  
8           same collateral property, except a security interest shall be subordinate to the rights  
9           of a person that becomes a lien creditor before the perfection of such security  
10           interest. A security interest in investment recovery property which qualifies for  
11           priority over a conflicting security interest, lien, or privilege also has priority over  
12           the conflicting security interest, lien, or privilege in proceeds of the investment  
13           recovery property. The relative priority of a perfected security interest of a secured  
14           party shall not be adversely affected by any security interest, lien, or privilege in a  
15           deposit account of the electric utility that is a collector as described in R.S.  
16           45:1253(C)(9) and into which the revenues are deposited. The priority of a security  
17           interest perfected pursuant to this Section shall not be defeated or impaired by any  
18           later modification of the financing order or investment recovery property or by the  
19           commingling of funds arising from investment recovery property with other funds.  
20           Any other security interest that may apply to those funds shall be terminated as to all  
21           funds transferred to a segregated account for the benefit of an assignee or a financing  
22           party or to an assignee or financing party directly. The perfection by control, the  
23           effect of perfection by control, and the priority of a security interest granted by the  
24           issuer of and securing investment recovery bonds held by a secured party having  
25           control of a segregated deposit account or securities account as original collateral  
26           into which revenues, collections, or proceeds of investment recovery property are  
27           deposited or credited shall be governed by the Uniform Commercial Code--Secured  
28           Transactions, including the choice of law rules in Part III thereof.



1           G. If a default occurs under the terms of the investment recovery bonds, the  
2           secured party may foreclose on or otherwise enforce the security interest in any  
3           investment recovery property as if it was a secured party under the Uniform  
4           Commercial Code--Secured Transactions. A secured party holding a security  
5           interest in investment recovery property shall be entitled to exercise all of the same  
6           rights and remedies as are available to a secured party pursuant to the Uniform  
7           Commercial Code--Secured Transactions, to the same extent as if those rights and  
8           remedies were set forth in this Part. A court of competent jurisdiction may order that  
9           amounts arising from investment recovery property be transferred to a separate  
10           account of the secured party for the financing parties' benefit, to which their security  
11           interest shall apply. On application by or on behalf of a secured party to the district  
12           court of the domicile of the commission, the court shall order the sequestration and  
13           payment to the financing parties of revenues arising from the investment recovery  
14           property.

15           H. A security interest created under this Part may provide for a security  
16           interest in after-acquired collateral. A security interest granted pursuant to this Part  
17           shall not be invalid or fraudulent against creditors solely because the grantor or the  
18           electric utility as collector or servicer has the right or ability to commingle the  
19           collateral or proceeds, or collect, compromise, enforce, and otherwise deal with  
20           collateral.

21           I. Any action arising under the provisions of this Part to enforce a security  
22           interest in any investment recovery property, or which otherwise asserts an interest  
23           in, or a right in, to, or against any investment recovery property, wherever located  
24           or deemed located, or any security interest governed by this Part, shall be brought in  
25           the district court of the domicile of the commission. The suits shall be governed by  
26           the provisions of the Code of Civil Procedure and other law applicable to executory  
27           proceedings, including provisional remedies, but only to the extent such laws are  
28           consistent with the language and purposes of this Part. Nothing in this Subsection  
29           shall be construed to deny to the Public Service Commission any jurisdiction

1 conferred upon it by law or the Constitution of Louisiana or to the council of the city  
2 of New Orleans any jurisdiction conferred upon it by its home rule charter or the  
3 Constitution of Louisiana.

4 §1257. Choice of law; conflicts

5 A. The law governing the validity, enforceability, attachment, perfection,  
6 priority, exercise of remedies, and venue with respect to the sale, assignment, or  
7 transfer of an interest or right or the creation of a security interest in any investment  
8 recovery property shall be exclusively the laws of this state, without applying this  
9 state's laws of conflicts of laws and notwithstanding any contrary contractual  
10 provision, except as provided in the last sentence of R.S. 45:1256(F). The validity,  
11 enforceability, attachment, perfection, priority, and exercise of remedies with respect  
12 to the sale, assignment, or transfer of an interest or right or the creation of a security  
13 interest in any investment recovery property shall be governed by this Part, and  
14 solely to the extent not addressed by this Part, by the Uniform Commercial Code--  
15 Secured Transactions and other laws of this state. Notwithstanding any other law to  
16 the contrary, this Part provides that the Uniform Commercial Code--Secured  
17 Transactions applies to the filings of financing statements referenced in this Part, to  
18 perfection, the effect of perfection or nonperfection, and the priority of security  
19 interests held by a secured party having control of deposit accounts or securities  
20 accounts as original collateral securing investment recovery bonds, notwithstanding  
21 that proceeds of investment recovery charges are deposited therein, and to the  
22 enforcement of security interests in investment recovery property, in each case  
23 subject to Subsection B of this Section.

24 B. In the event of conflict between this Part and any other law regarding the  
25 attachment, creation, perfection, the effect of perfection, or priority of, a sale,  
26 assignment, or transfer of, or security interest in, investment recovery property, or  
27 the exercise of remedies with respect thereto, this Part shall govern to the extent of  
28 the conflict.

1           C. This Section shall not be interpreted to conflict with or modify R.S.  
2           45:1256(B).

3           §1258. Investment recovery bonds

4           Investment recovery bonds shall not be a debt or a general obligation of the  
5           state or any of its political subdivisions, agencies, or instrumentalities and shall not  
6           be a charge on their full faith and credit. An issue of investment recovery bonds  
7           shall not, directly, indirectly, or contingently, obligate the state or any agency,  
8           political subdivision, or instrumentality of the state to levy any tax or make any  
9           appropriation for payment of the bonds, other than for paying investment recovery  
10           charges in their capacity as consumers of electricity. All investment recovery bonds  
11           authorized by a financing order by the Public Service Commission shall contain on  
12           the face of a statement the following: "Neither the full faith and credit nor the taxing  
13           power of the state of Louisiana is pledged to the payment of the principal of, or  
14           interest on, this bond". All investment recovery bonds authorized by a financing  
15           order by the council of the city of New Orleans shall contain on the face of a  
16           statement the following: "Neither the full faith and credit nor the taxing power of the  
17           state of Louisiana or the city of New Orleans is pledged to the payment of the  
18           principal of, or interest on, this bond".

19           §1259. State pledge

20           A. For purposes of this Section, the term "bondholder" means a person who  
21           holds a investment recovery bond, including in book entry form.

22           B.(1) The state and the Louisiana Legislature each pledge to and agree with  
23           bondholders, the owners of the investment recovery property, and other financing  
24           parties that the state and the Louisiana Legislature shall not do any of the following:

25           (a) Alter the provisions of this Part which authorize the commission to create  
26           an irrevocable contract right by the issuance of a financing order, to create  
27           investment recovery property, and to make the investment recovery charges imposed  
28           by a financing order irrevocable, binding, and non-bypassable charges.

1           **(b) Take or permit any action that impairs or would impair the value of**  
2           **investment recovery property.**

3           **(c) Except as provided for in Section and except for adjustments under any**  
4           **true-up mechanism established by the commission, reduce, alter, or impair**  
5           **investment recovery charges that are to be imposed, collected, and remitted for the**  
6           **benefit of the bondholders and other financing parties until any and all principal,**  
7           **interest, premium, financing costs, and other fees, expenses, or charges incurred, and**  
8           **any contracts to be performed, in connection with the related investment recovery**  
9           **bonds have been paid and performed in full.**

10           **(2) Nothing in this Subsection shall preclude limitation or alteration if and**  
11           **when full compensation is made by law for the full protection of the investment**  
12           **recovery charges imposed, charged, and collected pursuant to a financing order and**  
13           **full protection of the holders of investment recovery bonds and any assignee or**  
14           **financing party.**

15           **C. Any person or entity that issues investment recovery bonds may include**  
16           **the pledge specified in Subsection B of this Section and in R.S. 45:1253(C)(5) in the**  
17           **bonds and related documentation.**

18           **§1260. Electric utility applicability**

19           **An assignee or financing party shall not be considered an electric utility or**  
20           **person providing electric service by virtue of engaging in the transactions described**  
21           **in this Part.**

22           **§1261. No impairment of commission jurisdiction**

23           **Nothing in this Part is intended to be nor shall be construed to constitute any**  
24           **limitation, derogation, or diminution of the jurisdiction or authority of the**  
25           **commission provided by law, including that provided in or exercised by the Public**  
26           **Service Commission pursuant to the Constitution of Louisiana or the council of the**  
27           **city of New Orleans pursuant to its home rule charter.**

28           Section 3. This Act shall become effective upon signature by the governor or, if not  
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 3 effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Arnold

HB No. 1207

**Abstract:** Creates the Louisiana Electric Investment Recovery Securitization Act.

Present law provides that the La. Electric Utility Storm Recovery Securitization Act shall be exempt from the provisions of the Uniform Commercial Code - Secured Transactions (Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950), except for the provisions relating 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 retains present law but includes the La. Electric Investment Recovery Securitization Act in the exemption.

Proposed law provides for the definitions of "ancillary agreement", "assignee", "commission", "electric utility", "financing costs", "financing order", "financing party", "financing statement", "investment recovery bonds", "investment recovery charge", "investment recovery costs", "investment recovery property", "lien creditor", "secured party", "security interest", and "Uniform Commercial Code–Secured Transactions".

Proposed law allows an electric utility to petition the commission for a financing order. Requires that application by an electric utility shall be made under oath and shall be signed and filed on behalf of the electric utility by its president or by a vice-president, treasurer, or other executive officer.

Proposed law prohibits an electric utility or affiliate or other assignee from issuing any investment recovery bonds until it has been specifically authorized to do so by order of the commission.

Proposed law allows the commission to grant an application in whole or in part by a financing order, and with such modifications thereto and upon such terms and conditions as the commission prescribes, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it finds necessary or appropriate. Provides that if the commission issues a financing order approving any issue of investment recovery bonds, the commission may consider whether the proposed structuring, expected pricing, and financing costs of the investment recovery bonds are reasonably expected to result in lower overall costs or would avoid or mitigate rate impacts to customers as compared with traditional methods of financing or recovering investment recovery costs. Authorizes the commission to determine what degree of flexibility to afford to the electric utility in establishing the terms and conditions of the investment recovery bonds, including but not limited to repayment schedules, interest rates, and other financing costs.

Proposed law provides that a copy of any financing order made and entered by the commission duly certified by the secretary or clerk of the commission shall be sufficient

evidence for all purposes of whole and complete compliance by the electric utility with all procedural and other matters required precedent to the entry of the order.

Proposed law provides that for a financing order issued to an electric utility by the commission to create investment recovery property, the financing order shall:

- (1) Specify the amount of investment recovery costs, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs and any offsets or credits to those costs, and provide with respect to the amount of financing costs which may be recovered through investment recovery charges; and specify the time period over which all such costs may be recovered.
- (2) Specify and create the investment recovery property of an electric utility that shall be used to pay or secure investment recovery bonds and financing costs.
- (3) Provide that such investment recovery property shall be sold, assigned, or transferred by the electric utility to a subsidiary which is wholly owned, directly or indirectly, by the electric utility and which will be the issuer of the investment recovery bonds.
- (4) Provide that the investment recovery charges shall be sufficient at all times to pay the scheduled principal of and interest on the investment recovery bonds as the same shall become due and payable and all other financing costs, and, if determined appropriate by the commission, establish a formulaic true-up mechanism requiring that the investment recovery charges be reviewed and adjusted at least annually, in order to correct any overcollection or undercollection during the period after the issuance or preceding adjustment and to ensure the projected recovery of amounts sufficient to provide timely payment of the scheduled principal of and interest on the pertinent investment recovery bonds and all other financing costs.
- (5) Provide that after the earlier of the transfer of investment recovery property to an assignee or the issuance of investment recovery bonds authorized thereby, a financing order is irrevocable until the indefeasible payment in full of the investment recovery bonds and the financing costs and, provide that the commission may not amend, modify, or terminate the financing order by any subsequent action provided nothing shall preclude limitation or alteration if and when full compensation is made for the full protection of the investment recovery charges imposed, charged, and collected pursuant to a financing order.
- (6) Specify how amounts collected from a customer shall be allocated between investment recovery charges and other charges.
- (7) Provide that a financing order remains in effect until the investment recovery bonds issued pursuant to the order have been indefeasibly paid in full and the financing costs of such bonds have been recovered in full.
- (8) Provide that a financing order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, or merger or sale, of the applicable electric utility or its successors or assignees.
- (9) Authorize and require the electric utility, to the extent that any interest in investment recovery property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the investment recovery charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.

Proposed law provides that in a financing order issued to an electric utility, the commission may:

- (1) Prescribe any limitations on potential assignees of investment recovery property.
- (2) Authorize an assignee which is a subsidiary of an electric utility and which issues investment recovery bonds to provide and establish in its articles of incorporation, partnership agreement, or operating agreement that in order for a person to file a voluntary bankruptcy petition on behalf of that assignee, the prior unanimous consent of the directors, partners, or managers shall be required.
- (3) Provide that the creation of the electric utility's investment recovery property is conditioned upon, and shall be simultaneous with, the sale, assignment, or other transfer of the investment recovery property to an assignee and the security interest created in the investment recovery property to secure investment recovery bonds.
- (4) Provide with respect to any matters pertaining to and within the Public Service Commission's (PSC's) constitutional jurisdiction over electric utilities and plenary power to regulate electric utilities or such other jurisdiction as may be conferred on the commission by law, or in the case of the council of the city of New Orleans (NO) otherwise provide with respect to any matters pertaining to and within its home rule charter jurisdiction and authority over electric utilities providing service within the city of NO.

Proposed law provides that after the issuance of a financing order, the electric utility retains discretion regarding whether to sell, assign, or otherwise transfer investment recovery property or to cause the investment recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance.

Proposed law allows the commission to commence a proceeding and issue a subsequent financing order that provides for the refinancing, retiring, or refunding of investment recovery bonds if the commission finds that the subsequent financing order satisfies certain criteria or that provides for an accounting, refunding, or crediting to ratepayers of the proceeds of any true-up mechanism. Authorizes the commission to adjust the related investment recovery charges accordingly or establish substitute investment recovery charges.

Proposed law provides that all financing orders by the commission shall be operative and in full force and effect from the time fixed for them to become effective by the commission.

Proposed law provides that an aggrieved party, within fifteen days after the financing order or a supplemental order made by the commission becomes effective, file in the district court of the domicile of the commission, a petition setting forth the particular cause of objection to the order.

Proposed law provides that all investment recovery property that is specified in a financing order shall constitute an existing contract right constituting an individualized, separate incorporeal movable susceptible of ownership, sale, assignment, transfer, and security interest, including without limitation for purposes of contracts concerning the sale of property and security interests in property. Provides that investment recovery property created by a financing order shall be a vested contract right, and such financing order shall create a contractual obligation of irrevocability by the commission in favor of the electric utility and its assignees and financing parties.

Proposed law provides that investment recovery property specified in a financing order shall continue to exist until the investment recovery bonds issued pursuant to the financing order are paid in full and all financing costs of the bonds have been recovered in full.

Proposed law provides that all or any portion of investment recovery property specified in a financing order issued to an electric utility may be sold, assigned, or transferred to a successor or an assignee. Provides that all or any portion of investment recovery property may be encumbered by a security interest to secure investment recovery bonds issued

pursuant to the order and other financing costs. Further provides that each such sale, assignment, transfer, or security interest granted by an electric utility or affiliate of an electric utility or assignee is considered to be a transaction in the ordinary course of business.

Proposed law provides that the description of investment recovery property being sold, assigned, or transferred to an assignee is sufficient only if such description or indication refers to the specific financing order that created the investment recovery property and states that such agreement or financing statement covers all or part of such investment recovery property described in such financing order.

Proposed law provides that investment recovery property shall be an individualized, separate incorporeal movable susceptible of ownership, sale, assignment, transfer, and security interest encumbrance notwithstanding certain provisions. Provides that a description of investment recovery property, and a sale, assignment, or transfer thereof or grant of security interest therein, shall not be denied legal effect or enforceability because of these provisions.

Proposed law provides that if an electric utility defaults on any required payment of charges arising from investment recovery property specified in a financing order, a court shall order the sequestration and payment of the revenues arising from the investment recovery property to the financing parties or their representatives.

Proposed law provides that the interest of an assignee or secured party in investment recovery property specified in a financing order is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or by any customer of the electric utility or other person, or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any other person.

Proposed law provides that any successor to an electric utility shall perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility under the financing order in the same manner and to the same extent as the electric utility, including collecting and paying to the person entitled to receive them, the revenues, collections, payments, or proceeds of the investment recovery property.

Proposed law provides that the following applies to a sale, assignment, or transfer:

- (1) The sale, assignment, or other transfer of investment recovery property by an electric utility to an assignee that the parties have in the governing contract expressly stated to be a sale is an absolute transfer and true sale of, and not a security interest in, the transferor's right, title, and interest in, to, and under the investment recovery property, other than for federal and state income tax purposes.
- (2) The characterization of the sale, assignment, or other transfer as a true sale or other absolute transfer and the corresponding characterization of the assignee's property interest shall be determinative and conclusive irrespective of, and is not affected or impaired by, the existence of various monetary factors.
- (3) Any right that an electric utility has in the investment recovery property prior to its sale, assignment, or transfer is incorporeal movable property in the form of a vested contract right notwithstanding any contrary treatment thereof for accounting or tax purposes.
- (4) Financing statements shall be filed, indexed, maintained, and continued in the same manner and in the same system of records maintained for the filing of financing statements under the UCC--Secured Transactions. The filing of such a financing statement shall be the only method of perfecting a sale, assignment, or transfer of investment recovery property.



- (5) The priority of the conflicting ownership interests of assignees in the same interest or rights in any investment recovery property is determined by conflicting perfected interests or rights of assignees being ranked according to priority in time of perfection, a perfected interest or right of an assignee having priority over a conflicting unperfected interest or right of an assignee, and a perfected interest or right of an assignee having priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.
- (6) The priority of a sale, assignment, or transfer is not impaired by any later modification of the financing order or investment recovery property or by the commingling of funds arising from investment recovery property with other funds.
- (7) No customer of a electric utility owing payment of an investment recovery charge may, by agreement with the electric utility, prohibit, restrict, or require the consent of such customer to the assignment, pledge or transfer of the investment recovery charge.

Proposed law provides that the UCC–Secured Transactions does not apply to investment recovery property or any right, title, or interest of a utility or assignee therein, whether before or after the issuance of the financing order. Provides that such right, title, or interest pertaining to a financing order, including the associated investment recovery property including any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from investment recovery charges pursuant to such order, shall not be deemed proceeds of any right or interest other than of the financing order and the investment recovery property arising from the financing order. Provides that all revenues and collections resulting from investment recovery property shall constitute proceeds only of the investment recovery property arising from the financing order.

Proposed law provides that the creation, attachment, granting, perfection, and priority of security interests in investment recovery property to secure investment recovery bonds is governed solely by proposed law and not by the UCC–Secured Transactions.

Proposed law provides that a security interest in investment recovery property is valid and enforceable against the electric utility and its successor or an assignee and third parties and attaches to investment recovery property only after certain conditions are met.

Proposed law provides that a security interest in investment recovery property is perfected only if it has attached and a financing statement indicating the investment recovery property collateral covered thereby has been filed. Requires a financing statement be filed to perfect all security interests and liens in investment recovery property. Provides that a security interest in investment recovery property is perfected when it has attached and when the applicable financing statement has been filed. Further provides that the filing of such a financing statement shall be the only method of perfecting a lien or security interest on investment recovery property. Requires that the financing statement be filed as if the debtor named therein were located in this state.

Proposed law provides that the priority of the conflicting security interests of secured parties in the same interest or rights in any investment recovery property is determined as follows:

- (1) Conflicting perfected security interests of secured parties rank according to priority in time of perfection.
- (2) A perfected security interest of a secured party has priority over a conflicting unperfected security interest of a secured party.
- (3) A perfected security interest of a secured party has priority over a person who becomes a lien creditor after the perfection of such secured party's security interest.

Proposed law provides that a perfected security interest in investment recovery property and all proceeds of such investment recovery property shall have priority over a conflicting lien or privilege of any nature in the same collateral property, except a security interest is subordinate to the rights of a person that becomes a lien creditor before the perfection of such security interest. Further provides that a security interest in investment recovery property which qualifies for priority over a conflicting security interest, lien, or privilege also has priority over the conflicting security interest, lien, or privilege in proceeds of the investment recovery property.

Proposed law provides that if a default occurs under the terms of the investment recovery bonds, the secured party may foreclose on or enforce the security interest in any investment recovery property as if it was a secured party under the UCC–Secured Transactions. Further provide that a secured party holding a security interest in investment recovery property shall be entitled to exercise all of the same rights and remedies as are available to a secured party under the UCC–Secured Transactions.

Proposed law provides that a security interest is not invalid or fraudulent against creditors solely because the grantor or the electric utility as collector or servicer has the right or ability to commingle the collateral or proceeds, or collect, compromise, enforce, and otherwise deal with collateral.

Proposed law provides that any action arising under proposed law shall be brought in the district court of the domicile of the commission.

Proposed law requires the law governing the validity, enforceability, attachment, perfection, priority, exercise of remedies, and venue with respect to the sale, assignment, or transfer of an interest or right or the creation of a security interest in any investment recovery property to be exclusively the laws of this state, without applying this state's laws of conflicts of laws and notwithstanding any contrary contractual provision.

Proposed law provides that if a conflict between proposed law and any other law regarding the attachment, creation, perfection, the effect of perfection, or priority of, a sale, assignment, or transfer of, or security interest in, investment recovery property, or the exercise of remedies with respect thereto, proposed law shall govern to the extent of the conflict.

Proposed law provides that investment recovery bonds are not a debt or a general obligation of the state or any of its political subdivisions, agencies, or instrumentalities and are not a charge on their full faith and credit.

Proposed law provides for a definition of "bondholder".

Proposed law provides that the state and the La. Legislature each pledge to and agree with bondholders, the owners of the investment recovery property, and other financing parties that the state and the La. Legislature shall not do any of the following:

- (1) Alter the provisions of proposed law which authorize the commission to create an irrevocable contract right by the issuance of a financing order, to create investment recovery property, and to make the investment recovery charges imposed by a financing order irrevocable, binding, and nonbypassable charges.
- (2) Take or permit any action that impairs or would impair the value of investment recovery property.
- (3) Reduce, alter, or impair investment recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other financing parties until any and all principal, interest, premium, financing costs and other fees,

expenses, or charges incurred, and any contracts to be performed, in connection with the related investment recovery bonds have been paid and performed in full.

Proposed law provides that nothing in proposed law shall preclude limitation or alteration if and when full compensation is made by law for the full protection of the investment recovery charges imposed, charged, and collected pursuant to a financing order and full protection of the holders of investment recovery bonds and any assignee or financing party.

Proposed law allows any person or entity that issues investment recovery bonds to include the pledge in the bonds and related documentation.

Proposed law provides that an assignee or financing party shall not be considered an electric utility or person providing electric service by virtue of engaging in the transactions described in proposed law.

Proposed law provides that nothing in proposed law is intended to be nor shall be construed to constitute any limitation, derogation, or diminution of the jurisdiction or authority of the commission provided by law, including that provided in or exercised by the PSC pursuant to the La. Constitution or the city council of NO pursuant to its home rule charter.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 10:9-109(c)(4), (5), and 6(C); Adds R.S. 45:1251-1261 and R.S. 10:9-109(c)(7))