

1 §9-109. Scope

2 * * *

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

5 * * *

6 (6) R.S. 45:1226 through 1240, the Louisiana Electric Utility Storm Recovery
7 Securitization Act, expressly governs the creation, perfection, priority, or
8 enforcement of a security interest in storm recovery property as defined therein or
9 any interest or right in any storm recovery property, but except to the extent contrary
10 to express provisions in the Act, **the following provisions of this Chapter**
11 **nonetheless do apply:**

12 * * *

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

15 (7) R.S. 45:1251 through 1261, the Louisiana Electric Utility Investment
16 Recovery Securitization Act, expressly governs the creation, perfection, priority, or
17 enforcement of a security interest in investment recovery property as defined therein
18 or any interest or right in any investment recovery property, but, except to the extent
19 contrary to express provisions in ~~said~~ **the** Act, the following provisions of this
20 Chapter nonetheless do apply:

21 * * *

22 (C) This Chapter applies to the enforcement of security interests in
23 investment recovery property; ~~;~~ **or**

24 **(8) R.S. 45:1271 through 1281, the Louisiana Electric Utility Energy**
25 **Transition Securitization Act, expressly governs the creation, perfection,**
26 **priority, or enforcement of a security interest in energy transition property as**
27 **defined therein or any interest or right in any energy transition property, but,**
28 **except to the extent contrary to express provisions in the Act, the following**
29 **provisions of this Chapter nonetheless do apply:**

1 benefits. The legislature finds a need to promote securitization financing, if
2 authorized by the commission, by providing clear and exclusive methods to
3 create, transfer, and encumber interests in energy transition property as
4 defined in this Part. This need is met by providing in this Part for such methods
5 and by establishing that any conflict between the rules governing sales,
6 assignments, or transfers of, or security interests, privileges, or other
7 encumbrances of any nature upon incorporeal movable property pursuant to
8 other laws of this state and the methods provided in this Part, including without
9 limitation with regard to creation, perfection, priority, or enforcement, shall be
10 resolved in favor of the rules and methods established in this Part with regard
11 to energy transition property.

12 C. The intent of this Part is to provide benefits to Louisiana ratepayers
13 by allowing a Louisiana electric utility, if authorized by a financing order, to
14 achieve certain tax and credit benefits of financing energy transition costs. This
15 Part does not in any way limit, impair, or impact the commission's plenary
16 jurisdiction over the rates charged and services rendered by public utilities in
17 this state. Instead, this Part addresses certain property, security interest, and
18 other matters to ensure that the financial and federal income tax benefits of
19 financing energy transition costs through securitization are available in this
20 state. The beneficial income tax and credit characteristics that may be achieved
21 include the following:

22 (1) Treating the energy transition bonds as debt of the electric utility for
23 income tax purposes.

24 (2) Treating the energy transition charges as gross income to the electric
25 utility recognized under the utility's usual method of accounting for federal and
26 state income tax purposes, rather than recognizing gross income upon the
27 receipt of the financing order or of cash in exchange for the sale of the energy
28 transition property or the issuance of the energy transition bonds.

29 (3) Avoiding the recognition of debt on the electric utility's balance sheet

1 for certain credit and regulatory purposes by reason of the energy transition
2 bonds.

3 (4) Treating the sale, assignment, or transfer of the energy transition
4 property by the electric utility as a true sale for state law and bankruptcy
5 purposes.

6 (5) Mitigating any adverse impact of the financing on the electric utility's
7 credit rating.

8 D. This Part does not impose fees or energy transition charges, but
9 instead only authorizes the commission to approve energy transition charges in
10 its discretion.

11 §1272. Definitions

12 As used in this Part:

13 (1) "Ancillary agreement" means any bond, insurance policy, letter of
14 credit, reserve account, surety bond, swap arrangement, hedging arrangement,
15 liquidity or credit support arrangement, or other financial arrangement entered
16 into in connection with the issuance or payment of energy transition bonds.

17 (2) "Assignee" means any legal or commercial entity, including but not
18 limited to a corporation, limited liability company, partnership, limited
19 partnership, or other legally recognized entity to which an electric utility sells,
20 assigns, or transfers, other than as security, all or a portion of its interest in or
21 right to energy transition property. The assignee may be a new subsidiary
22 created by the electric utility for this purpose. The term also includes any legal
23 or commercial entity to which an assignee sells, assigns, or transfers, other than
24 as security, all or a portion of its interest in or right to energy transition
25 property.

26 (3) "Commission" means the Louisiana Public Service Commission.

27 (4) "Electric utility" or "utility" means an "electric public utility" as
28 defined in R.S. 45:121.

29 (5) "Eligible electric generating facility" means a coal-fired or

1 lignite-fired electric generating facility owned entirely or in indivision by an
2 electric utility furnishing electric service to customers within the state.

3 (6) "Eligible mine" means a coal or lignite mine located in this state that
4 services a mine-mouth eligible electric generating facility.

5 (7) "Energy transition bonds" means bonds, notes, certificates of
6 participation, or other evidences of indebtedness that are issued pursuant to an
7 indenture or other contract of an electric utility or an issuer pursuant to a
8 financing order, the proceeds of which are used directly or indirectly to provide,
9 recover, finance, or refinance commission-approved energy transition costs and
10 financing costs, and costs to fund energy transition reserves to such levels as the
11 commission may authorize in a financing order, and that are secured by or
12 payable from energy transition property. If certificates of participation are
13 issued, references in this Part to principal, interest, or premium shall refer to
14 comparable amounts under those certificates. Energy transition bonds shall be
15 nonrecourse to the credit or any assets of the electric utility other than the
16 energy transition property as specified in the financing order and any rights
17 under any ancillary agreement. Energy transition bonds shall be legal
18 investments for all governmental units, financial institutions, insurance
19 companies, fiduciaries, and other persons that require statutory authority
20 regarding legal investment.

21 (8) "Energy transition charge" means the amounts authorized by the
22 commission to recover, finance, or refinance energy transition costs and
23 financing costs, and to fund any energy transition reserves to such levels as the
24 commission may authorize in a financing order. To the extent determined
25 appropriate by the commission and provided for in a financing order, such
26 amounts are to be imposed on, and be a part of, all customer bills, be
27 periodically adjusted, and be collected by an electric utility or its successors or
28 assignees, or a collection agent, through a nonbypassable charge collected as
29 part of the electric utility's retail rates, whether in base rates, fuel adjustment

1 clauses, or in any other manner considered appropriate by the commission, for
2 the time period specified in the financing order, paid by all existing and future
3 customers receiving retail electric service from the electric utility or its
4 successors under rate schedules or special contracts authorized or approved by
5 the commission.

6 (9) "Energy transition costs" means, if requested by the electric utility,
7 and as may be approved by the commission, costs incurred or to be incurred by
8 an electric utility consisting of any of the following:

9 (a) Costs caused by or associated with the following:

10 (i) The retirement of an eligible electric generating facility.

11 (ii) The decommissioning, demolition, remediation, and cleanup of a
12 retired eligible electric generating facility and related improvements and
13 waterworks and restoring its site.

14 (iii) The unrecovered capitalized costs of or undepreciated investments
15 in a retired eligible electric generating facility that were being recovered in rates
16 as of the date of retirement.

17 (iv) Obsolete or unnecessary stores inventory previously serving the
18 eligible electric generating facility.

19 (b) Costs not previously collected from the electric utility's customers for
20 previously mined coal or lignite or for the closure and reclamation of an eligible
21 mine, including land remediation and liabilities. Energy transition costs shall
22 not include any monetary penalty, fine, or forfeiture assessed against an electric
23 utility or its affiliate by a government agency or a court under a federal or state
24 environmental statute, rule, or regulation.

25 (c) Costs of repurchasing equity or retiring any existing indebtedness
26 relating to any costs as provided in Subparagraphs (a) and (b) of this
27 Paragraph.

28 (d) Costs to fund and finance one or more energy transition reserves if
29 the commission determines appropriate.

1 (e) Carrying costs pertaining to any costs included in this Paragraph not
2 otherwise being recovered in rates, from the respective dates on which such
3 costs were incurred until the date that energy transition bonds are issued.

4 (f) Costs for severance, retention payments, or early retirement
5 payments and job retraining and education for employees whose existing jobs
6 are eliminated due to the retirement of the eligible electric generating facility
7 or the eligible mine, or to fund and finance a reserve therefor.

8 (g) Any other costs determined by the commission to be reasonably
9 associated with the retirement of an eligible mine or an eligible energy electric
10 generating facility.

11 (10) "Energy transition property" means the contract right constituting
12 incorporeal movable property newly created pursuant to this Part which
13 consists of all of the following:

14 (a) The rights and interests of an electric utility or successors or
15 assignees of the electric utility specified as being energy transition property in
16 a financing order, including the right to impose, bill, charge, collect, and receive
17 energy transition charges authorized in the financing order, the right to enforce
18 the obligations of the utility to collect and service the energy transition charges,
19 and the right to obtain periodic adjustments to such charges as may be provided
20 in the financing order and this Part.

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

27 (11) "Energy transition reserve" means a reserve established pursuant
28 to an order of the commission for energy transition costs. An energy transition
29 reserve shall be a restricted segregated fund, the use of which may be limited

1 by the commission to specific types of incurred or future energy transition costs,
2 such as future employee payments or future closure or remediation costs for an
3 eligible mine or an eligible electric generating facility.

4 (12) "Financing costs" means, if approved by the commission, whether
5 incurred or paid on issuance of the energy transition bonds or ongoing over the
6 life of the energy transition bonds, any of the following:

7 (a) Interest and acquisition, defeasance, or redemption premiums that
8 are payable on energy transition bonds and any other amounts owing in respect
9 of energy transition bonds.

10 (b) Any payment required under an ancillary agreement and any
11 amount required to fund initially or replenish from time to time any sinking
12 fund, overcollateralization fund, reserve, or other accounts established under
13 the terms of any indenture, ancillary agreement, or other financing documents
14 pertaining to energy transition bonds.

15 (c) Any other cost related to issuing, supporting, repaying, servicing, and
16 refunding energy transition bonds, including but not limited to servicing fees,
17 accounting and auditing fees, fees and other amounts payable to a trustee, legal
18 fees, consulting fees, administrative fees, printing and edgarizing fees, financial
19 advisor fees, placement and underwriting fees, capitalized interest, rating
20 agency fees, government registration fees, stock exchange listing and
21 compliance fees, and filing fees, including costs related to obtaining the
22 financing order. Financing costs may be, without limitation, costs of the issuer,
23 the electric utility, or the commission.

24 (d) Any income taxes and license fees imposed on the revenues generated
25 from the collection of energy transition charges or otherwise resulting from the
26 collection of energy transition charges, in any such case whether paid, payable,
27 or accrued.

28 (e) Any state and local taxes, franchise, gross receipts, and other taxes
29 or similar charges, including but not limited to regulatory assessment fees, in

1 any such case whether paid, payable, or accrued.

2 (f) The fees, costs, and related expenses to obtain any waiver, consent,
3 release, or approval from any lender related to any existing debt agreement
4 pertaining to an eligible mine or its operation.

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

7 (a) The issuance of energy transition bonds.

8 (b) The imposition, collection, and periodic adjustments of energy
9 transition charges.

10 (c) The creation of energy transition property.

11 (d) The sale, assignment, or transfer of energy transition property to an
12 assignee.

13 (e) The disposition of the proceeds of the energy transition bonds.

14 (14) "Financing party" means any holder of energy transition bonds, any
15 party to or beneficiary of an ancillary agreement, and any trustee, collateral
16 agent, or other person acting for the benefit of any of the foregoing.

17 (15) "Financing statement" has the same meaning as that provided in the
18 Uniform Commercial Code-Secured Transactions. All financing statements
19 referenced in this Part shall be filed in accordance with Part 5 of Chapter 9 of
20 Title 10 of the Louisiana Revised Statutes of 1950 and shall be filed in this state.

21 (16) "Issuer" means any assignee that is a wholly owned subsidiary of an
22 electric utility and that issues energy transition bonds approved by a financing
23 order.

24 (17) "Lien creditor" means any of the following:

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

27 (b) A person receiving an assignment for benefit of creditors from the
28 time of assignment.

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

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

2 (18) "Secured party" means a financing party in favor of which an
3 electric utility or an issuer creates a security interest in any or all portions of its
4 interest in or right to energy transition property. A secured party may be
5 granted a security interest in energy transition property under this Part and a
6 security interest in other collateral subject to the Uniform Commercial
7 Code-Secured Transactions in one security agreement.

8 (19) "Security interest" means an encumbrance of and a right of
9 preference over any portion of energy transition property created by contract
10 to secure the payment or performance of an obligation.

11 (20) "Uniform Commercial Code-Secured Transactions" means Chapter
12 9 of Title 10 of the Louisiana Revised Statutes of 1950.

13 §1273. Financing orders

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

27 B. The commission may grant an application under Subsection A of this
28 Section in whole or in part by a financing order, and with such modifications
29 thereto and upon such terms and conditions as the commission prescribes, and

1 may from time to time, after opportunity for hearing and for good cause shown,
2 make such supplemental orders in the premises as it finds necessary or
3 appropriate, subject, if the commission so provides, to Paragraph (C)(5) of this
4 Section. If the commission issues a financing order approving any issuance of
5 energy transition bonds under this Part, the commission may consider whether
6 the proposed structuring, expected pricing, and financing costs of the energy
7 transition bonds are reasonably expected to result in lower overall costs to
8 customers as compared with conventional methods of financing or recovering
9 energy transition costs. The commission may determine what degree of
10 flexibility to afford to the electric utility in establishing the terms and conditions
11 of the energy transition bonds, including but not limited to repayment
12 schedules, interest rates, and other financing costs. A copy of any financing
13 order made and entered by the commission under this Part duly certified by the
14 executive secretary or director of the records division, as applicable, of the
15 commission shall be sufficient evidence for all purposes of whole and complete
16 compliance by the electric utility with all procedural and other matters required
17 precedent to the entry of the order.

18 C. For a financing order issued to an electric utility by the commission
19 to create energy transition property, the financing order shall:

20 (1) Specify the amount of energy transition costs and any levels of energy
21 transition reserves determined appropriate by the commission, and provide
22 with respect to the amount of principal of the energy transition bonds and of
23 financing costs that may be recovered through energy transition charges, and
24 specify the time period over which all such amounts may be recovered. This
25 time period may be until the energy transition bonds and financing costs are
26 paid in full. To the extent the commission considers appropriate, the
27 commission may take into consideration any other methods used to recover
28 these amounts and any offsets or credits to those amounts including salvage
29 proceeds and tax benefits.

1 **(2) Specify and create the energy transition property of an electric utility**
2 **and its assignees that shall be used to pay or secure energy transition bonds and**
3 **financing costs as they become due, and authorize the electric utility to impose**
4 **the energy transition charges on its customers.**

5 **(3) Provide that such energy transition property shall be sold, assigned,**
6 **or transferred by the electric utility to a subsidiary assignee that is wholly**
7 **owned, directly or indirectly, by the electric utility and that will be the issuer of**
8 **the energy transition bonds.**

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

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

1 the full protection of the energy transition charges imposed, charged, and
2 collected pursuant to a financing order and the full protection of the holders of
3 energy transition bonds and any assignee or financing party.

4 (6) Specify how amounts collected from a customer shall be allocated
5 between energy transition charges and other charges.

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

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

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

20 (10) Include terms and conditions satisfactory to the commission in its
21 discretion ensuring that the imposition and collection of energy transition
22 charges authorized in the financing order shall be nonbypassable to the fullest
23 extent consistent with the Constitution of Louisiana and the commission's
24 jurisdiction. To the extent determined appropriate by the commission and
25 provided for in the financing order, such nonbypassable charges shall be
26 imposed by the electric utility on, and be a part of, all retail customer bills, be
27 periodically adjusted as described in Paragraph (4) of this Subsection, and be
28 collected by the electric utility or its successors or assignees, or other collection
29 agent, as part of the utility's retail rates, whether in base rates, fuel adjustment

1 clauses, or in any other manner considered appropriate by the commission, paid
2 by all existing and future customer receiving retail electric service from the
3 electric utility or its successors under rate schedules or special contracts
4 authorized or approved by the commission. The commission may provide for
5 payment of such nonbypassable charges even if the customer elects to purchase
6 electricity from an alternative supplier, including as a result of a fundamental
7 change in the manner of regulation of public utilities in this state, or even if the
8 customer elects to self-generate either individually or collectively with other
9 customers. Such terms and conditions may include whether the energy
10 transition charges are to be shown as a separate line item on individual
11 customer bills.

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

13 (1) Prescribe any limitations on potential assignees of energy transition
14 property.

15 (2) Authorize an issuer that is organized pursuant to the laws of this state
16 to provide and establish in its articles of incorporation, partnership agreement,
17 or operating agreement, as applicable, that in order for a person to file a
18 voluntary bankruptcy petition on behalf of that issuer, the prior unanimous
19 consent of the directors, partners, or managers, as applicable, shall be required.

20 If authorized in a financing order, the following apply:

21 (a) Any such provision set forth in the articles of incorporation,
22 partnership agreement, or operating agreement of such an issuer shall
23 constitute a legal, valid, and binding agreement of the shareholders and
24 directors, partners, or members and managers, as applicable, of such issuer and
25 is enforceable against such shareholders and directors, partners, or members
26 and managers.

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

1 (3) Provide that the creation of the electric utility's energy transition
2 property pursuant to Paragraph (C)(2) of this Section is conditioned upon, and
3 shall be simultaneous with, the sale, assignment, or other transfer of the energy
4 transition property to an issuer and the security interest created in the energy
5 transition property to secure energy transition bonds and financing costs.

6 (4) Establish the portion of energy transition costs allocated to this state
7 of an electric utility that has an eligible electric generating facility and eligible
8 mine used to furnish electric service to customers within the state.

9 (5) Additionally provide with respect to any matters pertaining to and
10 within the commission's constitutional jurisdiction over electric utilities and
11 plenary power to regulate electric utilities or such other jurisdiction as may be
12 conferred on the commission by law.

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

20 F. At the request of an electric utility or on the commission's own motion
21 or the motion of any party affected by the financing order, the commission may
22 commence a proceeding and issue a subsequent financing order that provides
23 for the refinancing, retiring, or refunding of energy transition bonds issued
24 pursuant to the original financing order if the commission finds that the
25 subsequent financing order satisfies all of the criteria specified in Subsection B
26 of this Section, or provides for an accounting, refunding, or crediting to
27 customers of any excess collections of any true-up mechanism adopted by the
28 commission consistent with Paragraph (C)(4) of this Section. Effective on
29 retirement of the refunded energy transition bonds and the issuance of new

1 energy transition bonds, the commission may adjust the related energy
2 transition charges accordingly or establish substitute energy transition charges.

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

6 H.(1) An aggrieved party or intervenor may as its sole remedy, within
7 fifteen days after the financing order or a supplemental order made by the
8 commission becomes effective, file in the district court of the domicile of the
9 commission, a petition setting forth the particular cause of objection to the
10 order. When a timely application for a rehearing has been made at the
11 commission, the fifteen-day time period for such appeal shall not commence
12 until the effective date of the commission order disposing of the rehearing
13 application. Inasmuch as delay in the determination of the appeal of a financing
14 order may delay the issuance of energy transition bonds, thereby diminishing
15 savings to customers which might be achieved if such bonds were issued as
16 contemplated by a financing order, all such cases shall be given precedence over
17 all other civil cases in the court and shall be heard and determined as speedily
18 as possible. The court may affirm the commission's order or set it aside.

19 (2) A right of direct appeal from any judgment of the district court shall
20 be allowed to the Louisiana Supreme Court as provided in Article IV, Section
21 21 of the Constitution of Louisiana on the terms set out in this Paragraph. No
22 appeal to the Louisiana Supreme Court shall be allowed unless the petition is
23 filed within fifteen days from the date on which the judgment of the district
24 court is entered and only if the party taking the appeal has the record certified
25 to the Louisiana Supreme Court and such party's brief filed therein within
26 twenty days from the date on which the judgment of the district court is
27 entered. Review on appeal from the commission shall be in accordance with R.S.
28 45:1193 through 1195.

29 §1274. Energy transition property

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

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

23 C. All or any portion of energy transition property specified in a
24 financing order issued to an electric utility may be sold, assigned, or transferred
25 to an assignee, including an issuer that is an affiliate of the electric utility and
26 that is created for the limited purpose of acquiring, owning, or administering
27 energy transition property or issuing energy transition bonds under the
28 financing order. All or any portion of energy transition property may be
29 encumbered by a security interest to secure energy transition bonds issued

1 pursuant to the order and other financing costs. Each such sale, assignment,
2 transfer, or security interest granted by an electric utility or assignee shall be
3 considered to be a transaction in the ordinary course of business.

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

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

22 (a) That the energy transition charges may be authorized by the
23 commission and included as part of the electric utility's base rates or fuel
24 adjustment clause and are not shown as a separate line item on individual
25 electric bills.

26 (b) That notice is not given to customers that the energy transition
27 property has been transferred to an assignee and that such assignee is the owner
28 of the rights to the energy transition charges.

29 (c) That notice is not given to customers that the electric utility or

1 another entity, if applicable, is acting as a collection agent or servicer or in a
2 similar capacity for an assignee.

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

7 (e) That the energy transition charges are subject to a true-up
8 mechanism authorized by the commission pursuant to R.S. 45:1273(C)(4).

9 (2) A description of energy transition property, and a sale, assignment,
10 or transfer or grant of security interest, shall not be denied legal effect,
11 enforceability, perfection, or priority due to the factors provided for in
12 Paragraph (1) of this Subsection applying in whole or in part to such energy
13 transition property.

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

23 G. To the extent provided in a financing order, the interest of an assignee
24 or secured party in energy transition property specified in a financing order
25 shall not be subject to setoff, counterclaim, surcharge, or defense by the electric
26 utility or by any customer of the electric utility or other person, or in connection
27 with the reorganization, bankruptcy, or other insolvency of the electric utility
28 or any other person.

29 H. To the extent provided in a financing order, any successors to an

1 electric utility, whether pursuant to any reorganization, bankruptcy, or other
2 insolvency proceeding, or whether pursuant to any merger or acquisition, sale,
3 or other business combination, or transfer by operation of law, as a result of
4 electric utility restructuring or otherwise, shall perform and satisfy all
5 obligations of, and have the same rights under a financing order as, the electric
6 utility under the financing order in the same manner and to the same extent as
7 the electric utility, including collecting and paying to the persons entitled to
8 receive them, the revenues, collections, payments, or proceeds of the energy
9 transition property. Nothing in this Section shall be intended to limit or impair
10 any authority of the commission concerning the transfer or succession of
11 interests of electric utilities.

12 §1275. Sale

13 The sale, assignment, or other transfer of energy transition property
14 shall be governed by this Section. All of the following apply to a sale,
15 assignment, or other transfer:

16 (1) The sale, assignment, or other transfer of energy transition property
17 by an electric utility to an assignee that the parties have in the governing
18 contract expressly stated to be a sale shall be an absolute transfer and true sale
19 of, and not a security interest in, the transferor's right, title, and interest in, to,
20 and under the energy transition property, other than for federal and state
21 income tax and state franchise tax purposes. For all purposes other than federal
22 and state income tax and state franchise tax purposes, the parties'
23 characterization of a transaction as a sale of an interest in energy transition
24 property shall be conclusive that the transaction is a true sale and that
25 ownership has passed to the party characterized as the purchaser, regardless
26 of whether the purchaser has possession of any documents evidencing or
27 pertaining to the interest. After such a transaction, the energy transition
28 property shall not be subject to any claims of the transferor or the transferor's
29 creditors, other than creditors holding a prior security interest in the energy

1 transition property perfected under R.S. 45:1276.

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

7 (a) Commingling of funds arising with respect to the energy transition
8 property with other monies of the electric utility prior to the electric utility's
9 transfer as collection agent of such funds to the assignee or financing party.

10 (b) The retention by the transferor of a partial or residual interest,
11 including an equity interest or entitlement to any surplus, in the energy
12 transition property, whether direct or indirect, or whether subordinate or
13 otherwise.

14 (c) Any recourse that the assignee may have against the transferor,
15 except that any such recourse shall not be created, contingent upon, or
16 otherwise occurring or resulting from the inability or failure of one or more of
17 the transferor's customers to timely pay all or a portion of the energy transition
18 charge.

19 (d) Any indemnifications, obligations, or repurchase rights made or
20 provided by the transferor, except that such indemnity or repurchase rights
21 shall not be based solely upon the inability or failure of a transferor's customers
22 to timely pay all or a portion of the energy transition charge.

23 (e) The transferor acting as the collector of the energy transition charges
24 or the existence of any contract described in R.S. 45:1273(C)(9).

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

27 (g) The granting or providing to holders of the energy transition bonds
28 of a preferred right to the energy transition property, or credit enhancement by
29 the electric utility or its affiliates with respect to the energy transition bonds.

1 **(h) The status of the issuer as a direct or indirect wholly owned**
2 **subsidiary or other affiliate of the electric utility. The separate juridical**
3 **personality of any issuer that is an assignee of energy transition property shall**
4 **not be disregarded due to the fact that the issuer and the electric utility share**
5 **any one or more incidents of control, including common managers, officers,**
6 **directors, members, accounting or administrative systems, consolidated tax**
7 **returns, or office space, that the issuer may be a disregarded entity for tax**
8 **purposes, that the utility caused the formation of the issuer, that a contract by**
9 **the utility and the issuer described in R.S. 45:1273(C)(9) exists, that the issuer**
10 **has no other business other than pertaining to the energy transition property,**
11 **that the capitalization of the issuer is limited to amounts required for**
12 **compliance with certain applicable federal income tax laws and revenue**
13 **procedures, or that other factors used in applying a single business enterprise**
14 **test to juridical persons are present.**

15 **(i) The matters described in R.S. 45:1274(E).**

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

17 **(3) Any right that an electric utility has in the energy transition property**
18 **prior to its sale, assignment, or transfer shall be incorporeal movable property**
19 **in the form of a present vested contract right, notwithstanding any contrary**
20 **treatment for accounting or tax purposes. The ownership of an interest in**
21 **energy transition property is voluntarily transferred by a contract between the**
22 **owner and the assignee that purports to transfer the ownership of that interest.**
23 **Unless otherwise provided, the transfer of ownership takes place as between the**
24 **parties as soon as there is written agreement on the interest, the purchase price**
25 **is fixed, and the financing order has been issued. Such transfer is perfected and**
26 **takes effect against all third parties including without limitation subsequent lien**
27 **creditors when the transfer has become effective between the parties and when**
28 **a financing statement giving notice of the sale, assignment, or transfer is filed**
29 **in accordance with Paragraph (4) of this Section. Delivery of such an interest**

1 in energy transition property takes place by operation of law upon the transfer
2 becoming effective against third parties.

3 (4) Financing statements required to be filed pursuant to this Section
4 shall be filed, indexed, maintained, amended, assigned, continued, and
5 terminated in the same manner and in the same system of records maintained
6 for the filing of financing statements under the Uniform Commercial
7 Code-Secured Transactions. The filing of such a financing statement shall be the
8 only method of perfecting a sale, assignment, or transfer of energy transition
9 property. The sale, assignment, or transfer of an interest in energy transition
10 property perfected by filing a financing statement shall be effective against the
11 customers owing payment of the energy transition charges, creditors of the
12 transferor, subsequent transferees, and all other third persons, notwithstanding
13 the absence of actual knowledge of or notice to the customers of the sale,
14 assignment, or transfer.

15 (5) The priority of the conflicting ownership interests of assignees in the
16 same interest or rights in any energy transition property is determined as
17 follows:

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

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

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

25 (6) The priority of a sale, assignment, or transfer perfected pursuant to
26 this Section shall not be impaired by any later modification of the financing
27 order or energy transition property or by the commingling of funds arising
28 from energy transition property with other funds. Any other security interest
29 that may apply to those funds, other than a security interest perfected under

1 R.S. 45:1276, shall be terminated when those funds are transferred to a
2 segregated account for the assignee or a financing party. If energy transition
3 property has been transferred to an assignee or financing party, the utility or
4 other person serving as collection agent under any contract described in R.S.
5 45:1273(C)(9) shall hold any proceeds of that property as a mandatory and
6 fiduciary and deliver such proceeds to the assignee or financing party.

7 (7) No customer of an electric utility owing payment of an energy
8 transition charge may, by agreement with the electric utility or otherwise,
9 prohibit, restrict, or require the consent of such customer to the sale,
10 assignment, or transfer of or security interest in the energy transition charge.

11 §1276. Security interests

12 A. The Uniform Commercial Code-Secured Transactions shall not apply
13 to energy transition property or any right, title, or interest of a utility or
14 assignee, whether before or after the issuance of the financing order, except to
15 the extent specified in R. S. 45:1277(A). In addition, such right, title, or interest
16 pertaining to a financing order, including but not limited to the associated
17 energy transition property including any revenues, collections, claims, rights to
18 payment, payments, money, or proceeds of or arising from energy transition
19 charges pursuant to such order, shall not be treated as proceeds of any right or
20 interest other than of the financing order and the energy transition property
21 arising from the financing order. All revenues and collections resulting from
22 energy transition property shall constitute proceeds only of the energy
23 transition property arising from the financing order.

24 B. Except to the extent provided in this Part with respect to filings of
25 financing statements or control of deposit accounts or investment property as
26 original collateral, the creation, attachment, granting, perfection, and priority
27 of security interests in energy transition property to secure energy transition
28 bonds and financing costs shall be governed solely by this Part and not by the
29 Uniform Commercial Code-Secured Transactions. Energy transition property

1 shall not be susceptible of pledge under Title XX-A of Book III of the Civil
2 Code.

3 C.(1) A security interest in energy transition property shall be valid and
4 enforceable against the electric utility and its successors, any assignee, and any
5 third parties and attaches to energy transition property only after all of the
6 following conditions are met:

7 (a) The issuance of a financing order.

8 (b) The execution and delivery of a security agreement with a financing
9 party in connection with the issuance of energy transition bonds.

10 (c) The receipt of value for the energy transition bonds.

11 (2) A security interest attaches to energy transition property when all of
12 the conditions of Paragraph (1) of this Subsection have been met, unless the
13 security agreement expressly postpones the time of attachment.

14 D. A security interest in energy transition property shall be perfected
15 only if it has attached and a financing statement indicating the energy transition
16 property collateral covered has been filed. A financing statement shall be filed
17 to perfect all security interests and liens in energy transition property. A
18 security interest in energy transition property shall be perfected when it has
19 attached and when the applicable financing statement has been filed. The
20 interest of a secured party shall not be perfected unless a financing statement
21 sufficient pursuant to this Part and otherwise in accordance with the Uniform
22 Commercial Code-Secured Transactions is filed, and after perfection, the
23 secured party's interest continues in the energy transition property and all
24 proceeds of such energy transition property, whether or not billed, accrued, or
25 collected, and whether or not deposited into a deposit account and however
26 evidenced. A security interest in proceeds of energy transition property shall be
27 a perfected security interest if the security interest in the energy transition
28 property was perfected pursuant to this Part. Financing statements required to
29 be filed pursuant to this Section shall be filed, indexed, maintained, amended,

1 assigned, continued, and terminated in the same manner and in the same system
2 of records maintained for the filing of financing statements pursuant to the
3 Uniform Commercial Code-Secured Transactions. The filing of the financing
4 statement shall be the only method of perfecting a lien or security interest on
5 energy transition property. The financing statement shall be filed as if the
6 debtor named therein were located in this state.

7 E. The priority of the conflicting security interests of secured parties in
8 the same interest or rights in any energy transition property shall be
9 determined as follows:

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

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

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

17 F. A perfected security interest in energy transition property and all
18 proceeds of such energy transition property, whether or not billed, accrued, or
19 collected, and whether or not deposited into a deposit account and however
20 evidenced, shall have priority over a conflicting lien or privilege of any nature
21 in the same collateral property, except a security interest shall be subordinate
22 to the rights of a person that becomes a lien creditor before the perfection of
23 such security interest. A security interest in energy transition property which
24 qualifies for priority over a conflicting security interest, lien, or privilege also
25 has priority over the conflicting security interest, lien, or privilege in proceeds
26 of the investment recovery property. The relative priority of a perfected
27 security interest of a secured party shall not be adversely affected by any
28 security interest, lien, or privilege in a deposit account of the electric utility that
29 is a collector as described in R.S. 45:1273(C)(9) and into which the revenues are

1 deposited. The priority of a security interest perfected pursuant to this Section
2 shall not be defeated or impaired by any later modification of the financing
3 order or energy transition property or by the commingling of funds arising
4 from energy transition property with other funds. Any other security interest
5 that may apply to those funds shall be terminated as to all funds transferred to
6 a segregated account for the benefit of an assignee or a financing party or to an
7 assignee or financing party directly. The perfection by control, the effect of
8 perfection by control, and the priority of a security interest granted by the
9 issuer of and securing energy transition bonds held by a secured party having
10 control of a segregated deposit account or securities account as original
11 collateral into which revenues, collections, or proceeds of energy transition
12 property are deposited or credited shall be governed by the Uniform
13 Commercial Code-Secured Transactions, including the choice of law rules in
14 Part III thereof.

15 G. If a default occurs under the terms of the energy transition bonds, the
16 secured party may foreclose on or otherwise enforce the security interest in any
17 energy transition property as if it was a secured party under the Uniform
18 Commercial Code-Secured Transactions. A secured party holding a security
19 interest in energy transition property shall be entitled to exercise all of the same
20 rights and remedies as are available to a secured party pursuant to the Uniform
21 Commercial Code-Secured Transactions, to the same extent as if those rights
22 and remedies were set forth in this Part. A court of competent jurisdiction may
23 order that amounts arising from energy transition property be transferred to
24 a separate account of the secured party for the financing parties' benefit, to
25 which their security interest shall apply. On application by or on behalf of a
26 secured party to the district court of the domicile of the commission, the court
27 shall order the sequestration and payment to the financing parties of revenues
28 arising from the energy transition property.

29 H. A security interest created under this Part may provide for a security

1 interest in after-acquired collateral. A security interest granted pursuant to this
2 Part shall not be invalid or fraudulent against creditors solely because the
3 grantor or the electric utility as collector or servicer has the right or ability to
4 commingle the collateral or proceeds, or collect, compromise, enforce, and
5 otherwise deal with collateral.

6 I. Any action arising under the provisions of this Part to enforce a
7 security interest in any energy transition property, or which otherwise asserts
8 an interest in, or a right in, to, or against any energy transition property,
9 wherever located or deemed located, or any security interest governed by this
10 Part, shall be brought in the district court of the domicile of the commission.
11 The suits shall be governed by the provisions of the Code of Civil Procedure and
12 other law applicable to executory proceedings, including provisional remedies,
13 but only to the extent such laws are consistent with the language and purposes
14 of this Part. Nothing in this Subsection shall be construed to deny to the
15 commission any jurisdiction conferred upon it by law or the Constitution of
16 Louisiana.

17 §1277. Choice of law; conflicts

18 A. The law governing the validity, enforceability, attachment, creation,
19 perfection, the effect of perfection or nonperfection, priority, exercise of
20 remedies, and venue with respect to the sale, assignment, or transfer of an
21 interest or right or the creation of a security interest in any energy transition
22 property shall be exclusively the laws of this state, without applying this state's
23 laws of conflicts of laws and notwithstanding any contrary contractual
24 provision, except as provided in the last sentence of R.S. 45:1276(F). The
25 validity, enforceability, attachment, creation, perfection, the effect of perfection
26 or nonperfection, priority, exercise of remedies, and venue with respect to the
27 sale, assignment, or transfer of an interest or right or the creation of a security
28 interest in any energy transition property shall be governed by this Part, and
29 solely to the extent not addressed by this Part, by the Uniform Commercial

1 Code-Secured Transactions and other laws of this state. The contents and
2 sufficiency of financing statements referenced in this Part shall be governed by
3 this Part and to the extent not addressed by this Part by the Uniform
4 Commercial Code-Secured Transactions. Notwithstanding any other law to the
5 contrary, this Part provides that the Uniform Commercial Code-Secured
6 Transactions applies to the filings of financing statements referenced in this
7 Part, to perfection, the effect of perfection or nonperfection, and the priority of
8 security interests held by a secured party having control of deposit accounts or
9 securities accounts as original collateral securing energy transition bonds,
10 notwithstanding that proceeds of energy transition charges are deposited
11 therein, and to the enforcement of security interests in energy transition
12 property, in each case subject to Subsection B of this Section.

13 B. In the event of conflict between this Part and any other law regarding
14 the validity, enforceability, attachment, creation, perfection, the effect of
15 perfection or nonperfection, or priority of, a sale, assignment, or transfer of, or
16 security interest in, energy transition property, or the exercise of remedies or
17 venue with respect thereto, this Part shall govern to the extent of the conflict.

18 C. This Section shall not be interpreted to conflict with or modify R.S.
19 45:1276(B).

20 §1278. Energy transition bonds

21 Energy transition bonds shall not be a debt or a general obligation of the
22 state or any of its political subdivisions, agencies, or instrumentalities and shall
23 not be a charge on their full faith and credit. An issue of energy transition bonds
24 shall not, directly, indirectly, or contingently, obligate the state or any agency,
25 political subdivision, or instrumentality of the state to levy any tax or make any
26 appropriation for payment of the bonds, other than for paying energy transition
27 charges in their capacity as consumers of electricity. All energy transition bonds
28 authorized by a financing order by the commission shall contain on the face of
29 a statement the following: "Neither the full faith and credit nor the taxing

1 power of the state of Louisiana is pledged to the payment of the principal of, or
2 interest on, this bond".

3 §1279. State pledge

4 A. For purposes of this Section, the term "bondholder" means a person
5 who holds an energy transition bond, including in book entry form.

6 B.(1) The state and the Legislature of Louisiana each pledge to and agree
7 with bondholders, the owners of the energy transition property, and other
8 financing parties that, until the financing costs and the energy transition bonds
9 and any ancillary agreements have been paid and performed in full, the state
10 and the Legislature of Louisiana shall not do any of the following:

11 (a) Alter the provisions of this Part that authorize the commission to
12 create an irrevocable contract right by the issuance of a financing order, to
13 create energy transition property, and to make the energy transition charges
14 imposed by a financing order irrevocable, binding, and nonbypassable charges.

15 (b) Take or permit any action that impairs or would impair the value of
16 energy transition property.

17 (c) Take or permit any action that impairs or would impair the rights
18 and remedies of the issuer, any other assignee, such bondholders or other
19 financing parties, or the security for the energy transition bonds or ancillary
20 agreements.

21 (d) Except as provided for in this Section and except for adjustments
22 under any true-up mechanism established by the commission, reduce, alter, or
23 impair energy transition charges that are to be imposed, collected, and remitted
24 for the benefit of the bondholders and other financing parties until any and all
25 principal, interest, premium, financing costs, and other fees, expenses, or
26 charges incurred, and any contracts to be performed, in connection with the
27 related energy transition bonds have been paid and performed in full.

28 (2) Nothing in this Subsection shall preclude limitation or alteration if
29 and when full compensation is made by law for the full protection of the energy

1 transition charges imposed, charged, and collected pursuant to a financing
2 order and full protection of the holders of energy transition bonds and any
3 assignee or financing party.

4 C. Any person or entity that issues energy transition bonds may include
5 the pledges specified in Subsection B of this Section and in R.S. 45:1273(C)(5)
6 in the bonds and related documentation.

7 §1280. Electric utility applicability

8 An assignee or financing party shall not be considered an electric utility
9 or person providing electric service by virtue of engaging in the transactions
10 described in this Part.

11 §1281. No impairment of commission jurisdiction

12 A. Nothing in this Part is intended to be nor shall be construed to
13 constitute any limitation, derogation, or diminution of the jurisdiction or
14 authority of the commission provided by law, including that provided in or
15 exercised by the commission pursuant to the Constitution of Louisiana.

16 B. A utility may finance energy transition costs that were incurred before
17 August 1, 2022. To the extent that a utility has made application for a
18 determination of energy transition costs before August 1, 2022, that application
19 may provide the basis in part for the commission's financing order pursuant to
20 this Part. Further, to the extent that the commission has made a determination
21 of prudent recoverable energy transition costs of a utility before August 1, 2022,
22 that determination may provide the basis for the utility's application for a
23 financing order under this Part.

24 Section 3. 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 by 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.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ridge.

DIGEST

SB 110 Engrossed

2022 Regular Session

Reese

Proposed law creates the La. Electric Utility Energy Transition Securitization Act for the purposes of enabling La. electric utilities, if authorized by the La. Public Service Commission (commission), to use securitization financing for certain energy transition costs.

Proposed law provides that it is the intent of the legislature that proposed law benefits La. ratepayers by allowing an electric utility, if authorized, to achieve certain tax and credit benefits of financing energy transition costs.

Proposed law defines terms, including "'eligible electric generating facility", "energy transition bonds", "energy transition charge", "energy transition costs", "energy transition property", and "energy transition reserve".

Proposed law provides that an electric utility may petition the commission for a financing order. Provides for an application process for an electric utility or its issuer to issue energy transition bonds as the commission prescribes. Prohibits an electric utility from applying any proceeds of energy transition bonds to any purpose not specified in the commission's order, or to any purpose in excess of the amount allowed for such purpose in the order, or to any purpose in contravention of the order or supplemental order.

Proposed law provides that subject to certain circumstances, the commission may grant an application by a financing order and may, after hearing and for good cause shown, make supplemental orders in the premises as it finds necessary or appropriate.

Proposed law requires certain provisions be in a financing order issued by the commission to an electric utility to create energy transition property.

Proposed law provides that the commission may include the following additional provisions in the order:

- (1) Prescribe any limitation on potential assignees of energy transition property.
- (2) Authorize an issuer that is organized pursuant to the laws of this state to provide and establish in its articles of incorporation, partnership agreement, or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition on behalf of that issuer, the prior unanimous consent of the directors, partners, or managers, as applicable, shall be required.
- (3) Provide that the creation of the electric utility's energy transition property is conditioned upon, and shall be simultaneous with, the sale, assignment, or other transfer of the energy transition property to an issuer and the security interest created in the energy transition property to secure energy transition bonds and financing costs.
- (4) Establish the portion of energy transition costs allocated to this state of an electric utility that has an eligible electric generating facility and eligible mine used to furnish electric service to customers within the state.
- (5) Additionally provide with respect to any matters pertaining to and within the commission'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.

Proposed law provides that after the order is issued, the electric utility retains discretion regarding whether to sell, assign, or transfer energy transition property or to cause the energy transition bonds to be issued.

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 or intervenor may file in district court, within 15 days of a financing order becoming effective, a petition setting forth the particular cause of objection to the order. Provides that if there is a timely application for rehearing made at the commission, the 15-day period for appeal shall not begin until the effective date of the commission order disposing of the rehearing. Provides that the district court may affirm the commission's order or set it aside. Provides for a direct appeal process to the La. Supreme Court from the district court.

Proposed law provides that all energy transition property that is listed in a financing order shall constitute an existing, present contract right constituting an individualized, separate incorporeal movable susceptible of ownership, sale, assignment, transfer, and security interest. Provides the property will exist whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected notwithstanding the fact that the value or amount of the property is or may be dependent on the future provision of service to customers by the electric utility and the future consumption by customers of electricity. The energy transition property created by a financing order shall be a vested contract right, and the 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 energy transition property listed in a financing order shall continue to exist until the energy transition bonds 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 energy transition property listed in the financing order issued to an electric utility may be sold, assigned, or transferred to an assignee or be encumbered by a security interest to secure energy transition bonds issued pursuant to the order and other financing costs. Provides that each sale, assignment, transfer, or security interest granted by an electric utility or assignee shall be considered to be a transaction in the ordinary course of business.

Proposed law provides that the description of energy transition property sold, assigned, or transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, encumbered to a secured party in any security agreement, or indicated in any financing statement shall be sufficient only if the description or indication refers to the specific financing order that created the energy transition property and states that such agreement or financing statement covers all or part of the property described in the financing order.

Proposed law provides that energy transition property is an individualized, separate incorporeal movable susceptible of ownership, sale, assignment, transfer, and security interest encumbrance.

Proposed law provides that if the electric utility defaults on any required payment of charges arising from the energy transition property listed in the financing order, the district court of the domicile of the commission, upon application of an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the energy transition property to the financing parties or their representatives. Provides the order shall remain in full force and effective, notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or the assignees.

Proposed law provides to the extent provided in a financing order, the following:

- (1) The interest of an assignee or secured party in energy transition property listed in a financing order shall not be 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.
- (2) Any successors 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 order in the same manner and to the same extent as the electric utility, including collecting and paying to the persons entitled to receive them, the revenues, collections, payments, or proceeds of the energy transition property.

Proposed law provides relative to the sale, assignment, or other transfer of energy transition property.

Proposed law provides that the Uniform Commercial Code-Secured Transactions shall not apply to energy transition property or any right, title, or interest of a utility or assignee, whether before or after the issuance of the financing order, except as otherwise provided in proposed law. Provides such right, title, or interest pertaining to a financing order shall not be treated as proceeds of any right or interest other than of the financing order and the energy transition property arising from the financing order. Provides that all revenues and collections resulting from energy transition property shall constitute proceeds only of the energy transition property arising from the financing order.

Proposed law, with respect to filings of financing statements or control of deposit accounts or investment property as original collateral, governs the creation, attachment, granting, perfection, and priority of security interests in energy transition property to secure energy transition bonds and financing costs. Provides that energy transition property shall not be susceptible of pledge under the provisions of the Civil Code.

Proposed law provides that a security interest in energy transition property shall be valid and enforceable against the electric utility and its successors, any assignee, and any third party and attaches to energy transition property only after certain conditions are met.

Proposed law provides that a security interest in energy transition property shall be perfected only if it has attached and a financing statement indicating the energy transition property collateral covered has been filed. Provides that a financing statement shall be filed to perfect all security interests and liens in energy transition property. Provides that a security interest in energy transition property shall be perfected when it has attached and when the applicable financing statement has been filed.

Proposed law provides that the interest of a secured party shall not be perfected unless a financing statement is filed, and after perfection, the secured party's interest continues in the energy transition property and all proceeds of such energy transition property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced. Provides that a security interest in proceeds of energy transition property shall be a perfected security interest if the security interest in the energy transition property was perfected in accordance with proposed law.

Proposed law provides that financing statements shall be filed, indexed, maintained, amended, assigned, continued, and terminated in the same manner and in the same system of records maintained for the filing of financing statements pursuant to the Uniform Commercial Code-Secured Transactions. Provides that the filing of the financing statement shall be the only method of perfecting a lien or security interest on energy transition property and the statement shall be filed as if the debtor named were located in the state.

Proposed law provides for the priority of conflicting security interests of secured parties in the same interest or rights in any energy transition property 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 shall have priority over a conflicting unperfected security interest of a secured party.
- (3) A perfected security interest of a secured party shall have 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 energy transition property and all proceeds of such property shall have priority over a conflicting lien or privilege of any nature in the same collateral property, except a security interest shall be subordinate to the rights of a person that becomes a lien creditor before the perfection of such interest.

Proposed law provides that the relative priority of a perfected security interest of a secured party shall not be adversely affected by any security interest, lien, or privilege in a deposit account of the electric utility that is a collector and into which the revenues are deposited.

Proposed law provides that the priority of a security interest shall not be defeated or impaired by any later modification of the financing order or energy transition property or by the commingling of funds arising from energy transition property with other funds. Any other security interest that may apply to those funds shall be terminated as to all funds transferred to a segregated account for the benefit of an assignee or financing party or to an assignee or financing party directly.

Proposed law provides that the Uniform Commercial Code-Secured Transactions, including choice of law rules, shall govern the perfection by control, the effect of perfection by control, and the priority of a security interest granted by the issuer of and securing energy transition bonds held by a secured party having control of a segregated deposit account or securities account as original collateral into which revenues, collections, or proceeds are deposited or credited.

Proposed law provides for the foreclosure on or enforcement of security interest in any energy transition property if a default occurs.

A security interest created in accordance with proposed law may provide for a security interest in after-acquired collateral. Proposed law provides that a security interest granted shall not be 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 to enforce a security interest in energy transition property shall be brought in the district court of the domicile of the commission. The suits shall be governed by the Code of Civil Procedure and other laws applicable to executory proceedings.

Proposed law provides relative to conflict of laws and provides that proposed law governs the validity, enforceability, attachment, creation, perfection, the effect of perfection or nonperfection, 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 energy transition property.

Proposed law provides that if there a conflict between proposed law and any other law, proposed law governs.

Proposed law provides that energy transition bonds are not a debt or general obligation of the state or any of its political subdivisions, agencies, or instrumentalities and shall not be a charge on their full faith and credit and the bonds issued shall contain on the face of a statement the following: "Neither the full faith and credit nor the taxing power of the state of Louisiana is pledged to the payment of the principal of, or interest on, this bond."

Proposed law provides that the state and the Legislature of Louisiana each pledge to and agree with bondholders, the owners of the energy transition property, and other financing parties that, until the financing costs and the energy transition bonds and any ancillary agreements have been paid and performed in full, the state shall not perform certain acts, including amending the provisions of proposed law that authorize the commission to create an irrevocable contract right by the issuance of a financing order, to create energy transition property, and to make the energy transition charges imposed by a financing order irrevocable, binding, and nonbypassable charges.

Proposed law shall not preclude limitation or alteration if and when full compensation is made by law for the full protection of the energy transition charges imposed, charged, and collected pursuant to a financing order and full protection of the holders of energy transition bonds and any assignee or financing party.

Proposed law authorizes any person or entity that issues energy transition bonds to include proposed law pledges in the bonds and related documents.

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 proposed law transactions.

Proposed law is not intended to be nor shall be construed to constitute any limitation, derogation, or diminution of the jurisdiction or authority of the commission.

Proposed law provides that a utility may finance energy transition costs that were incurred before August 1, 2022.

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

(Amends R.S. 10:9-109(c)(6)(intro para), (c)(6)(C), (c)(7)(intro para) and (c)(7)(C); adds R.S. 10:9-109(c)(8) and R.S. 45:1271-1281)

Summary of Amendments Adopted by Senate

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

1. Removes from the definition of "eligible electric generating facility" the requirement that the facility be located in the state and adds the requirement that the electric service be provided to customers within the state.
2. Authorizes the Public Service Commission, in the financing order, to establish the portion of energy transition costs allocated to this state of an electric utility that has an eligible facility and mine used to furnish electric service to customers in the state.
3. Makes technical changes.