

SENATE BILL NO. 223

BY SENATOR JOHNS AND REPRESENTATIVE DAVIS

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

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

3 §9-109. Scope

4 * * *

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

7 * * *

8 (6) R.S. 45:1226 through ~~1236~~ **1240**, 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~~ **the** Act:

13 * * *

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

15 **§1237. Additional assignee; powers and duties of the corporation; expenditures;**
16 **perfection of security interest on storm recovery property;**
17 **limitations on bankruptcy**

18 **A. In addition to the purpose and powers granted pursuant to the**
19 **Louisiana Utilities Restoration Corporation Act, R.S. 45:1311 through 1328, the**
20 **Louisiana Utilities Restoration Corporation, hereinafter referred to as**
21 **"corporation" in this Section and in R.S. 45:1238 through 1240, shall have the**
22 **power and authority to participate as an assignee in the financial transactions**
23 **provided by this Part. Prior to the corporation participating as an assignee, the**
24 **corporation, in each instance, shall receive prior authorization from the**
25 **commission. Supplemental to the powers and duties provided in R.S. 45:1313**
26 **and R.S. 45:1316, the corporation may perform the functions and activities that**
27 **assignees are authorized to do by this Part in financing storm recovery costs**
28 **through storm recovery bonds, except the corporation shall not be an issuer of**
29 **storm recovery bonds. The corporation's exercise of powers provided in this**
30 **Part is the performance of an essential governmental function of the**

1 corporation.

2 B. Financing of storm recovery costs pursuant to this Part is hereby
3 recognized to be a valid public purpose for the corporation. The corporation
4 may negotiate and become a party to such contracts as are necessary,
5 convenient, or desirable to carry out the purposes of this Part. The corporation
6 may perform such other acts as are necessary, convenient, or desirable to
7 effectuate the purposes of this Part.

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

20 D. In addition to the restrictions required by R.S. 45:1324, the governing
21 board of the corporation shall be prohibited from authorizing any
22 rehabilitation, liquidation, or dissolution of the corporation, and no such
23 rehabilitation, liquidation, or dissolution of the corporation shall take effect, as
24 long as any storm recovery bonds issued in a transaction involving the
25 corporation are outstanding, unless adequate protection and provision has been
26 made for the payment of the bonds pursuant to the documents authorizing the
27 issuance of the bonds. Prior to the date that is two years and one day after
28 which the corporation no longer has any payment obligation outstanding to any
29 issuer of storm recovery bonds, the corporation shall be prohibited from filing
30 and shall have no authority to file a voluntary petition under the Federal

1 Bankruptcy Code, as it may, from time to time, be in effect, and neither any
2 public official nor any organization, entity, or other person shall authorize the
3 corporation to be or to become a debtor under the Federal Bankruptcy Code
4 during such period. The provisions of this Subsection shall be part of any
5 contractual obligation owed to the holders of storm recovery bonds issued under
6 this Part involving the corporation. Any such contractual obligation shall not
7 subsequently be modified by state law during the period of the contractual
8 obligation, and the state of Louisiana and the Louisiana Legislature hereby
9 covenant with the holders that the state and any public instrumentality thereof
10 and the Louisiana Legislature shall not limit or alter the denial of authority
11 pursuant to this Subsection during the period referred to in this Subsection.

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

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

18 (b) Except as allowed pursuant to this Paragraph and except for
19 adjustments under any true-up mechanism established by the commission,
20 reduce, alter, or impair storm recovery charges that are to be imposed,
21 collected, and remitted for the benefit of the financing parties, until all
22 principal, interest, premium, financing costs and other fees, expenses, or
23 charges incurred, and any contracts to be performed, in connection with the
24 related storm recovery bonds have been paid and performed in full. Nothing in
25 this Paragraph shall preclude limitation or alteration if and when full
26 compensation is made by law for the full protection of the storm recovery
27 charges collected pursuant to a financing order and full protection of the
28 holders of storm recovery bonds and any assignee or financing party.

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

1 **F. For purposes of this Part, including without limitation all financing**
 2 **statements referenced in this Part, the corporation is considered to be a public**
 3 **entity under R.S. 39:1421(2) and a governmental unit under R.S.**
 4 **10:9-102(a)(45). Notwithstanding any provision of law to the contrary, including**
 5 **without limitation R.S. 33:4548.7 and R.S. 39:1430.1, the filing of a financing**
 6 **statement pursuant to this Part is the exclusive method of perfecting a sale,**
 7 **assignment, transfer, or pledge of or security interest or lien on storm recovery**
 8 **property or any right, title, or interest of an assignee or secured party including**
 9 **an issuer of storm recovery bonds therein, including without limitation to**
 10 **perfect a security interest granted by the corporation or by a governmental unit**
 11 **issuer. The provisions of this Section and R.S. 45:1239 shall not be interpreted**
 12 **to conflict with or modify the provisions of R.S. 10:9-109(c)(6) and R.S. 45:1230**
 13 **through 1232. Financing statements referenced in this Part where the debtor,**
 14 **buyer, or secured party is a public entity and a governmental unit nevertheless**
 15 **shall be filed as provided in this Part.**

16 **§1238. Financing orders including the Louisiana Utilities Restoration**
 17 **Corporation**

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

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

25 **§1239. Alternative issuers; additional powers and duties for the corporation;**
 26 **limitations; approval of storm recovery bonds by the State Bond Commission;**
 27 **financing order requirements**

28 **A. Notwithstanding any provisions to the contrary in R.S. 45:1228 and**
 29 **R.S. 45:1233, when the corporation is participating in a securitization financing**
 30 **transaction pursuant to this Part, the financing order may authorize any**

1 Louisiana public entity that has a separate corporate existence and that is
2 eligible to issue debt on which interest is exempt from income taxation under
3 the laws of the United States to be the issuer of the storm recovery bonds. After
4 the issuance of such financing order, the corporation shall arrange for the
5 issuance of the storm recovery bonds as specified in the financing order by an
6 issuer selected by the corporation and approved by the commission. The
7 corporation shall enter into a loan transaction with the issuer and then transfer
8 the net proceeds of such storm recovery bonds received by the corporation to
9 the pertinent utility as the purchase price of the storm recovery property.

10 B. The corporation shall not itself have the authority to issue storm
11 recovery bonds. The corporation may issue promissory notes to issuers
12 pursuant to this Part.

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

15 §1240. Additional authority

16 A. The provisions of R.S. 45:1237 through 1239 shall be additional and
17 alternative authority and shall provide the full method together with the other
18 provisions of this Part for the exercise of the powers herein granted and
19 accomplishment of the things authorized hereby and shall be regarded as
20 supplemental and additional to powers conferred by other laws. All rights and
21 powers herein granted by this Part to the corporation and the issuers of storm
22 recovery bonds shall be cumulative with those derived from other sources and
23 shall not, except as expressly stated herein, be construed in limitation thereof.

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

30 Section 3. Subparts B and C of Part VIII of Chapter 9 of Title 45 of the Louisiana

1 Revised Statutes of 1950, comprised of R.S. 45:1331 through 1343, are hereby enacted to
2 read as follows:

3 SUBPART B. SPECIAL PUBLIC TRUSTS

4 §1331. Legislative findings and purpose

5 A. The Louisiana Legislature declares in Subpart A of this Part that the
6 restoration and rebuilding of utility systems after natural disasters using
7 low-cost capital, thereby minimizing the cost to ratepayers, is a valid public
8 purpose. Supporting the financial strength and stability of utility companies
9 that already have restored and rebuilt, partially or completely, their utility
10 systems after natural disasters is a valid public purpose in the best interests of
11 the citizens of the state.

12 B. The Louisiana Legislature finds and declares it to be prudent and in
13 the best interests of the state of Louisiana to consider and make available an
14 additional alternate financing technique to support the financial strength and
15 stability of utility companies that have undertaken past, and will undertake
16 future, utility system restoration. Therefore, the Louisiana Utilities Restoration
17 Corporation may create special public trusts for the purpose of providing an
18 alternate financing mechanism available to the Public Service Commission and
19 the council of the city of New Orleans, as applicable, to attract low-cost capital
20 to finance utility system restoration and capital investments and contributions
21 to financially strengthen and stabilize utilities. Special public trusts are
22 nonbusiness entities authorized by this Subpart as a special type of public
23 corporation.

24 C. The purpose of this Subpart is to minimize costs charged to
25 ratepayers for system restoration costs by providing the corporation with a
26 beneficial interest in a trust that the corporation shall pledge as further security
27 for its obligations to the issuer of the system restoration bonds. The alternate
28 financing technique contemplated by this Subpart used in conjunction with
29 Subpart A of this Part enables the corporation to finance, directly or indirectly,
30 system restoration costs with low-cost capital. Financing of system restoration

1 costs using this alternate financing technique pursuant to this Subpart will
2 additionally safeguard the system restoration bonds so issued and reduce costs
3 to ratepayers. The Louisiana Legislature further finds that this alternate
4 financing technique is a valid public purpose.

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

10 §1332. Definitions

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

14 (1) "Affiliate" means, when used with reference to a specified person, an
15 entity that directly or indirectly through one or more intermediaries controls
16 or is controlled by or is under common control with the entity specified. For the
17 purpose of this term, "control", "controlled by", and "under common control
18 with", means the possession, direct or indirect, of the power to direct or cause
19 the direction of the management and policies of an entity whether through the
20 ownership of voting securities, by contract, or otherwise.

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

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

27 (4) "Preferred interests" means preferred equity interests in a utility
28 affiliate that pay preferred dividends to the trust that purchased those
29 preferred equity interests.

30 (5) "Purchase proceeds" means the proceeds received by a utility

1 affiliate from the sale of its preferred interests to a trust.

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

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

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

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

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

17 §1333. Additional powers of the corporation and the commission

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

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

27 (2) Notwithstanding any provisions to the contrary in Subpart A of this
28 Part, R.S. 45:1318(C)(5)(a) and 45:1321(K) shall not apply to securitization
29 financing pursuant to this Subpart and a utility affiliate that sells its preferred
30 interests to a trust shall use those purchase proceeds for corporate purposes

1 supporting the related utility's financial strength and stability and thereby
2 promote the economic welfare of the citizens of the state.

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

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

15 (1) Set aside in a restricted escrow account, in an amount and manner
16 required by the commission, any monies or investments used to fund the related
17 utility's storm damage reserve.

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

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

26 D. A financing order that is issued pursuant to this Subpart shall require
27 that, upon receipt of the purchase proceeds by a utility affiliate, the related
28 utility fully release any claims or rights that the related utility has to recover,
29 in any manner, from its commission-jurisdictional customers any of the system
30 restoration costs covered by the financing order, to the extent of the amount of

1 the related bonds' proceeds.

2 §1334. Special public trusts authorized; powers and duties for the special public
3 trust; expenditures; limitations of the special public trust; public
4 records law; domicile; subject to legislative audit; liability
5 protection for beneficiaries

6 A. The corporation may create trusts in movable property, with the
7 corporation and a utility as the two beneficiaries thereof, by and with the
8 express approval of the commission, including authorization in a financing
9 order. A trust shall own, administer, and distribute the trust property
10 contributed and earned for the benefit of its beneficiaries and, when applicable,
11 a pledgee. The operations and activities of a trust shall be managed by an
12 independent trustee pursuant to R.S. 45:1338. A trust is a separate juridical
13 person and only the trust owns the trust property.

14 B. A trust shall not itself have the power to be an issuer of system
15 restoration bonds. Furthermore, a trust shall not have the power to issue other
16 bonds, notes, obligations, or other evidences of indebtedness. System restoration
17 bonds shall not be the debt of a trust.

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

25 D. A public trust created pursuant to this Subpart shall have a legal
26 existence separate and distinct from the state and the trust's settlor and
27 beneficiaries, and from other public trusts. A trust is not and shall not be a
28 political subdivision, nor a department, unit, agency, board, or commission of
29 the state. Assets of a trust shall not be considered part of the general fund of the
30 state or any other fund in the state treasury. The state, the commission, and the

1 corporation shall not budget for or provide appropriations to a trust. The
2 monies of each trust created under this Subpart shall be maintained by that
3 trust as a separate and special fund, separate and apart from the funds of the
4 corporation or other trusts. A trust shall perform only those functions
5 consistent with this Subpart and shall exercise its powers through its trustee
6 established under its trust agreement in accordance with R.S. 45:1338. A trust
7 shall have the power only to engage in activities necessary to accomplish its
8 purposes as expressed in this Subpart, and in its trust agreement, or which may
9 be incidental thereto, including the authority to sue and be sued, and to make
10 contracts. A trust shall not apply any contributed proceeds of system
11 restoration bonds or proceeds from distributions in respect of preferred
12 interests to any purpose not specified in its approved trust agreement, or to any
13 purpose in excess of the amount allowed for such purpose in its approved trust
14 agreement, or to any purpose in contravention of a commission order. A trust
15 created pursuant to this Subpart shall be a special purpose public corporation
16 of the Louisiana Utilities Restoration Corporation. This special purpose status
17 does not affect or diminish the rights, powers, duties, and remedies of the
18 trustee and the beneficiaries, as determined by the provisions of the trust
19 agreement and as expressly provided in this Subpart. The special purpose status
20 does not apply for purposes of applicable federal and state taxation laws. A
21 trust created pursuant to this Subpart functions as a trust with respect to its
22 beneficiaries and is not a corporation or business entity formed under the
23 Business Corporation Act. A trust's primary purpose is to preserve the trust
24 property as provided for in this Subpart. A trust is intended to be a trust for
25 federal income tax purposes and shall not be a partnership or corporation for
26 federal or state tax purposes. A trust shall not be subject to the state franchise
27 tax.

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

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

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

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

7 §1335. Mode of creation; acceptance of beneficial interests; amendments

8 A. A trust shall be created, organized, structured, and empowered by a
9 written instrument, which shall be in accordance with this Subpart. A trust
10 agreement shall be subscribed by the corporation as settlor by authentic act or
11 by act under private signature executed in the presence of two witnesses and
12 duly acknowledged by the settlor or by the affidavit of one of the attesting
13 witnesses. A trust agreement shall become effective upon acceptance by the
14 trustee and the beneficiaries as provided in this Section. A trust's existence as
15 a juridical person begins, and the trust is duly organized, when its trust
16 agreement becomes effective, even if no property is contributed to that trust
17 until a later time. Upon effectiveness, a trust agreement shall be and constitute
18 a binding contract among the corporation as settlor, the beneficiaries and the
19 trustee, for the acceptance of the beneficial interests in the trust by the
20 designated beneficiaries, and the application of the proceeds of the trust
21 property and its operation for the purposes and in accordance with the
22 stipulations of the approved trust agreement. A trust agreement shall not be an
23 ancillary agreement as defined in R.S. 45:1312(1).

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

27 C. Before a trust agreement and a trust become effective, the trust
28 agreement shall be accepted by the trustees and the beneficiaries. The trustee
29 may accept the trust in the trust agreement, or in a separate written instrument
30 within a reasonable amount of time after the trust agreement's execution. Each

1 beneficiary may accept the trust in the trust agreement or by written acceptance
2 of the beneficial interest endorsed thereon. The corporation settlor and the
3 related utility shall be the trust's only beneficiaries.

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

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

12 F. A trust shall have duration for the term specified in the trust
13 agreement. Notwithstanding any provisions of the trust agreement or the
14 provisions of Subsection E of this Section, no termination, rescission,
15 rehabilitation, liquidation, or dissolution of a trust shall take effect as long as
16 any of the related bonds are outstanding. Upon termination, the trustee shall file
17 a certificate of termination of the trust agreement in the conveyance records of
18 the clerk of court of the parish of East Baton Rouge.

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

24 §1336. Regulation by the commission

25 A. The commission shall regulate each trust concomitant with the
26 commission's regulation of the related utility. Notwithstanding such regulation,
27 a trust shall not be considered a public utility and shall not be considered an
28 agent of any utility.

29 B. Any expenses of examination by the commission shall be charged only
30 to the trust being examined and recovered only from the related utility's share

1 of the distributions or redemptions in respect of the preferred interests held by
2 that trust as provided in R.S. 45:1338.

3 §1337. Permitted use of funds

4 A. A trust shall perform only those functions consistent with and
5 effectuate only the purposes set forth in this Subpart. A trust shall acquire and
6 subscribe for preferred interests of a utility affiliate using all of the contributed
7 proceeds of system restoration bonds received from the corporation as settlor.
8 Notwithstanding the provisions of R.S. 45:1318(C)(5)(a), a financing order
9 issued under this Subpart shall require the corporation to transfer the net
10 proceeds of the system restoration bonds it receives, pursuant to R.S.
11 45:1318(C)(3), to a trust whose beneficiary is the related utility that is collecting
12 the applicable system restoration charges. A financing order shall require that
13 trust to use those contributed proceeds as provided in this Subsection, shall
14 require that trust to use the distributions in respect of the purchased preferred
15 interests as provided in Subsection C of this Section, and shall require that the
16 trust be subject to the express conditions and requirements set forth in the
17 financing order described in Subsection B of this Section.

18 B. A financing order issued under this Subpart shall include the related
19 utility's commitment that, upon receipt of the purchase proceeds by the utility
20 affiliate, the related utility shall fully release any claims or rights to recover the
21 system restoration costs approved by that financing order, to the extent of such
22 related bonds' proceeds, from any of its commission-jurisdictional customers,
23 and shall set aside in a restricted reserve account, in an amount and manner
24 required by the commission, any monies or investments used to fund the
25 utility's storm damage reserve. The primary purpose of this Subpart is to serve
26 the public good and to benefit the public as a whole as part of a regulatory
27 program that is intended to minimize the rates charged by utilities and to
28 strengthen the financial position of utilities that have restored and rebuilt their
29 systems after storms. The purchase proceeds are not payments for any electric
30 or gas service provided by the related utility to any person and are not

1 payments in the nature of insurance, or otherwise as direct compensation for
2 losses by the related utility from storms. Instead, the purchase proceeds are
3 made in exchange for the preferred interests, the dividend income, and
4 redemption payments attributable thereto and for the related utility's
5 obligations set forth in the financing order.

6 C. A trust shall pay distributions, whether dividend income, redemption
7 payments, or otherwise, in respect of the preferred interests only to the
8 beneficiaries of the trust, shared between the beneficiaries, as specified in the
9 approved trust agreement, or when applicable, to a permitted pledgee, and for
10 expenses permitted by R.S. 45:1338(D). A trust may cause the periodic
11 redemption of the preferred interests only as provided in the approved trust
12 agreement. The terms and attributes of the preferred interests purchased by a
13 trust shall be approved by the commission in a financing order or by the use of
14 an approval method provided in a financing order.

15 D. System restoration bonds issued pursuant to a financing order under
16 this Subpart shall not be debt of a trust. System restoration bonds shall be
17 nonrecourse to the credit or any assets of a trust, other than the trust's
18 obligation to distribute proceeds to the corporation or a pledgee as specified in
19 the trust agreement and pursuant to the pledge by the corporation to the issuer
20 of the related bonds as security for repayment of a loan to the corporation by
21 the issuer. The terms of the indenture, and other financing documents
22 pertaining to system restoration bonds issued pursuant to this Subpart shall be
23 consistent with this Section.

24 §1338. Trustee requirements; duties and powers; compensation; liability
25 protection

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

30 (1) A federally insured depository institution organized under the laws

1 of this state, another state, or the United States.

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

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

10 C. A trustee who accepts a trust established pursuant to this Subpart
11 submits to the jurisdiction of the courts of this state.

12 D. A trust acting through its trustee may employ or retain such
13 attorneys, accountants, and other professionals as it may consider necessary to
14 carry out its duties under this Subpart and the trust agreement, and may
15 determine their duties and compensation subject to regulation by the
16 commission in its discretion. The compensation of a trustee and such
17 professionals, and other costs to operate a trust, shall not be included within
18 financing costs as defined in R.S. 45:1312. All such compensation and other
19 costs shall first be paid from the related utility's share as beneficiary of the
20 dividend income that the trust receives from the preferred interests. If the
21 related utility's share of dividend income is insufficient to pay these expenses,
22 then the expenses shall be paid from the related utility's share as beneficiary of
23 redemption payments, in respect of the preferred interests.

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

29 F. A trustee shall administer a trust solely in the interest of the
30 beneficiaries, and if applicable, a pledgee, in accordance with the trust

1 agreement. A trust shall keep and render clear and accurate accounts of the
2 administration of the trusts at least annually to the beneficiaries as specified in
3 the trust agreement. Upon the request of the beneficiary, a trustee, within a
4 reasonable time, shall provide a beneficiary complete and accurate information
5 as to the nature and the amount of the trust property. The trustee shall permit
6 the beneficiary or its agents to inspect the subject matter of the trust, the
7 accounts, and any other documents relating to the trust.

8 G. A trustee shall administer the trust as a prudent person would
9 administer it. A trustee shall invest trust property only in preferred interests as
10 provided in this Subpart and the applicable trust agreement. A trustee shall
11 have no liability whatsoever by reason of investing within the limitations of the
12 foregoing requirement. The nature and extent of the duties and powers of a
13 trustee shall be determined by the provisions of the trust agreement, except as
14 otherwise expressly provided in this Subpart. A trust agreement may relieve the
15 trustee from liability, except a liability relief provision in a trust agreement shall
16 not be effective to relieve the trustee from liability for breach of the duty of
17 loyalty to a beneficiary, or for breach of trust committed in bad faith.

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

20 §1339. Corporation additional pledge to financing parties

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

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

29 (2) Approve or allow a modification or amendment pertaining to the
30 corporation's beneficial interest in the applicable trust, or a termination or

1 rescission of the applicable trust agreement or the applicable trust, or in any
2 other way impair the rights and remedies of the corporation as beneficiary
3 under the applicable trust, provided that nothing shall preclude the
4 distributions of dividend income and the redemption proceeds that are
5 contemplated in this Subpart and in the trust agreement.

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

9 §1340. Limitation on bankruptcy

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

22 B. A trust shall be subject to the provisions of R.S. 13:4741 and R.S.
23 39:619 through 622.

24 §1341. Transfers by beneficiaries

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

28 B. If authorized in the pertinent financing order, a trust agreement shall
29 permit the corporation to encumber the whole or any part of its interest as
30 beneficiary in favor of the issuer of the related bonds as additional security for

1 the corporation's repayment of the loan of the net proceeds of the related bonds
2 made to the corporation by that issuer. The issuer also may pledge that
3 collateral. In such instance, the trust agreement shall require the trustee to pay
4 a pledgee all or a portion of a distribution owing to the corporation after the
5 trustee receives a notification, authenticated by the corporation or the pledgee,
6 that the amount due or to become due has been assigned and that payment is to
7 be made to the pledgee, notwithstanding any provisions in R.S. 10:9-406. A
8 trustee may request the pledgee to seasonably furnish reasonable proof that the
9 assignment to the pledgee has been made, and unless the pledgee complies, the
10 trustee may pay the corporation, even if the trustee has received a notification
11 pursuant to this Subsection. As to trust property, the pledgee may seize only
12 distributions of dividend income and redemption payments that have been
13 authorized by the trustee and not yet paid to the corporation beneficiary as
14 pledgor.

15 C. A trust agreement shall provide that the interest of the related utility
16 beneficiary shall not be subject to voluntary or involuntary alienation or
17 encumbrance. Such a restraint upon voluntary alienation or encumbrance is
18 valid. However, a restraint upon involuntary alienation, or encumbrance by a
19 beneficiary, is subject to the limitations in Subsection D of this Section.

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

23 E. For purposes of R.S. 39:1430.1, the corporation's beneficial interest
24 in a trust including, without limitation, the corporation's rights under a trust
25 agreement, interests in income and principal, and income, receipts and proceeds
26 from distributions from a trust, whether dividend income, redemption
27 payments or otherwise, shall be considered to be income, revenues, monies,
28 receipts, and contract rights pursuant to R.S. 39:1430.1, and shall be subject to
29 the provisions of R.S. 39:1430.1. A pledge and security interest granted by the
30 corporation in such rights, interests, income, receipts and proceeds pursuant to

1 this Subpart shall be effective as to the applicable trustee from the time a copy
2 of the pledge or security agreement is received by the trustee, and shall be valid,
3 perfected, and enforceable against the corporation and other third parties from
4 the time when the pledge and grant is made without any notice or filing of any
5 kind. Without limiting the foregoing, notwithstanding that the corporation's
6 interest in a trust is a general intangible pursuant to the Louisiana Uniform
7 Commercial Code - Secured Transaction R.S. 10:9-101 et seq., the filing of a
8 financing statement is not required to perfect a pledgee's security interest in the
9 corporation's movable property described in this Subsection. This pledge and
10 security interest pursuant to this Subsection shall secure all obligations, then
11 existing or thereafter arising, provided in the pledge or security agreement. A
12 perfected pledge and security interest pursuant to this Subsection shall be a
13 continuously perfected privilege and security interest in all movable property
14 described in this Subsection whether or not the interests, income, receipts,
15 proceeds, or distributions have accrued. Conflicting pledges, if allowed, shall
16 rank according to priority in time of perfection.

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

20 §1342. Construction and effect

21 A. This Subpart and all powers granted hereby, shall be liberally
22 construed to effectuate its and their purposes, without implied limitations
23 thereon. All rights and powers granted in this Subpart to the commission, the
24 corporation, and a trust, shall be cumulative with those derived from other
25 sources and shall not, except as expressly stated herein, be construed in
26 limitation thereof.

27 B. System restoration bonds may be issued pursuant to Subpart A of this
28 Part alone, or pursuant to this Subpart, together with Subpart A of this Part as
29 modified by this Subpart. References in this Subpart to a financing order issued
30 pursuant to this Subpart, mean that the financing order is issued pursuant to

1 this Subpart, and in conjunction with Subpart A of this Part, as modified by this
 2 Subpart.

3 C. A utility may finance system restoration costs pursuant to this
 4 Subpart that were incurred by a utility prior to the effective date of this
 5 Subpart. Further, to the extent that a utility has made application for a
 6 determination of eligible system restoration costs prior to the effective date of
 7 this Subpart, that application may provide the basis in part for the
 8 commission's financing order pursuant to this Subpart and subject to R.S.
 9 45:1333(B)(3).

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

19 SUBPART C. ADDITIONAL POWERS

20 §1343. Corporation participation

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

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

29 Section 5. This Act shall become effective upon signature by the governor, or, if not
 30 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided in 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.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____