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DIGEST

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DIGEST

SB 223 Reengrossed

2021 Regular Session

Johns

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

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

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

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

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

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

Proposed law provides when a corporation is involved in the issuance of storm recovery bonds, the corporation shall pledge to and agree with the issuer that until the storm recovery

bonds and any ancillary agreements have been paid and performed in full, the corporation shall not do either of the following:

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

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

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

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

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

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

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

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

Proposed law provides a utility may finance storm recovery costs using additional alternatives for costs incurred before the effective date to the extent that the utility has made an application for a determination of eligibility for their storm recovery costs under these

additional alternatives may be the basis for the commission's financing order that relied on the proposed law.

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

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

Proposed law defines the following terms:

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

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

Proposed law provides that a financing order may authorize a corporation to contribute to a trust all of its net proceeds from the issuance of system restoration bonds and the trust is required to use all the proceeds to purchase preferred interest from the related utility.

Proposed law provides certain provisions of the La. Energy Emergency Relief Act do not apply to securitization financing under the provisions of proposed law. Requires the utility affiliate sell its preferred interests to the trust. Requires the related utility to purchase

proceeds for corporate purposes that supports the related utility's financial strength and stability and promotes the economic welfare of the citizens of the state.

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

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

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

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

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

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

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

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

Proposed law provides for powers and functions of the trust.

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

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

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

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

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

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

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

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

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

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

Proposed law provides for requirement in naming a trust.

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

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

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

financing order requires the trust to use those contributed proceeds as provided in proposed law, requires the trust use the distributions that are purchased preferred interests as provided in proposed law, and requires that they be subject to the requirements set forth in the proposed law.

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

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

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

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

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

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

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

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

Proposed law provides the trust agreement may provide indemnity to a trustee for expenses the trustee incurred for the administration of trust property, but the amounts are only paid

from the related utility's portion of the trust property or directly from the related utility, if the related utility agrees to such direct payment.

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

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

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

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

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

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

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

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

Proposed law provides if authorized in the financial order, a trust agreement must permit the corporation to encumber its interest as beneficiary in favor of the issuer of the related bonds as additional security for the repayment of the loan of the net proceeds of the related bonds made to a corporation by that issuer. Provides the trust agreement requires the trustee to pay the pledgee all or a portion of a distribution owing to the corporation after the trustee

receives notification, which is authenticated by the corporation or the pledgee, that the amount due or to become due has been assigned and payment is to be made to the pledgee. Provides the trustee may request the pledgee furnish proof of assignment, and unless the pledgee complies, the trustee may pay the corporation, even if the trustee has received a notification pursuant to proposed law. Provides the pledgee may seize only distributions of dividend income and redemption payments that the trustee authorized, but has not been paid to the corporation beneficiary as pledgor.

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

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

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

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

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

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

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

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

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



Summary of Amendments Adopted by Senate

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

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

Senate Floor Amendments to engrossed bill

1. Make technical changes.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill:

1. Make technical changes.