

DIGEST

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SB 110 Reengrossed

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.

Senate Floor Amendments to engrossed bill

1. Makes a technical change.

Summary of Amendments Adopted by House

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

1. Change the definition of "eligible mine".