

# STATE OF NEW YORK

8082

2021-2022 Regular Sessions

## IN ASSEMBLY

June 11, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to enacting the "New York electric corporation storm recovery securitization act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York electric corporation storm recovery securitization act".

3 § 2. The public service law is amended by adding a new article 12 to  
4 read as follows:

### ARTICLE 12

#### NEW YORK ELECTRIC CORPORATION STORM RECOVERY SECURITIZATION ACT

##### Section 300. Short title.

8 301. Definitions.

9 302. Financing orders.

10 303. Storm recovery property.

11 304. Sale, assignment, or transfer of storm recovery property.

12 305. Security interests.

13 306. Choice of law; conflicts.

14 307. Storm recovery bonds not public debt.

15 308. State pledge.

16 309. Assignee not an electric corporation.

17 310. Effect of invalidity.

18 311. Effect of a financing order.

19 § 300. Short title. This article shall be known and may be cited as  
20 the "New York electric corporation storm recovery securitization act".

21 § 301. Definitions. As used in this article, the following terms shall  
22 have the following meanings:

23 1. "Ancillary agreement" means any bond, insurance policy, letter of  
24 credit, reserve account, surety bond, swap arrangement, hedging arrange-  
25 ment, liquidity or credit support arrangement or other similar agreement

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 or arrangement entered into in connection with the issuance of storm  
2 recovery bonds under this article.

3 2. "Assignee" means any individual, corporation, limited liability  
4 company, partnership or limited partnership, trust or other legally  
5 recognized entity to which an interest in storm recovery property is  
6 created, recognized, assigned, sold or transferred, other than as secu-  
7 rity, including any assignee of such property.

8 3. "Consumer" means any individual, governmental body, trust, business  
9 entity, nonprofit organization or other legally recognized entity that  
10 takes electric delivery service within the service area by means of  
11 electric transmission or distribution facilities, whether those electric  
12 transmission or distribution facilities are owned by an electric corpo-  
13 ration or other entity.

14 4. "Financing costs" means: (a) interest and acquisition, defeasance,  
15 or redemption premiums that are payable on storm recovery bonds;

16 (b) any payment required under an ancillary agreement and any amount  
17 required to fund or replenish reserve or other accounts established  
18 under the terms of any indenture, ancillary agreement, or other financ-  
19 ing documents pertaining to storm recovery bonds;

20 (c) any other cost related to issuing, supporting, repaying, and  
21 servicing storm recovery bonds, including but not limited to servicing  
22 fees, accounting and auditing fees, trustee fees, legal fees, consulting  
23 fees, administrative fees, placement and underwriting fees, capitalized  
24 interest, rating agency fees, stock exchange listing and compliance  
25 fees, and filing fees, including costs related to obtaining a financing  
26 order; or

27 (d) any federal, state or local taxes, payments in lieu of taxes,  
28 franchise fees or license fees imposed on storm recovery charge reven-  
29 ues.

30 5. "Financing order" means an order of the commission which author-  
31 izes:

32 (a) the issuance of storm recovery bonds;

33 (b) the imposition, collection, and periodic adjustments of storm  
34 recovery charges;

35 (c) the creation or recognition of storm recovery property; and/or

36 (d) the sale, assignment, or transfer of storm recovery property to an  
37 assignee.

38 6. "Financing party" means any holder of storm recovery bonds and any  
39 trustee, collateral agent, or other person acting for the benefit of  
40 holders of storm recovery bonds.

41 7. "Financing statement" shall have the same meaning as that provided  
42 in paragraph (39) of subsection (a) of section 9-102 the uniform commer-  
43 cial code. All financing statements under this article shall be filed  
44 in accordance with section 9-501 of the uniform commercial code.

45 8. "Lien creditor" shall have the same meaning as that provided in  
46 paragraph (52) of subsection (a) of section 9-102 of the uniform commer-  
47 cial code.

48 9. "Secured party" means a financing party in favor of which an elec-  
49 tric corporation or its successors or assignees creates a security  
50 interest in all or any portion of its interest in or right to storm  
51 recovery property. A secured party may be granted a security interest  
52 in storm recovery property under this article and a security interest in  
53 other collateral subject to the uniform commercial code in a single  
54 security agreement.

55 10. "Security interest" means a pledge, hypothecation, or other encum-  
56 brance of or other right over any portion of storm recovery property

1 created by contract to secure the payment or performance of an obli-  
2 gation.

3 11. "Service area" means the geographical area within which an elec-  
4 tric corporation provides electric distribution services as of the date  
5 of a financing order.

6 12. "Storm" means, individually or collectively, a named tropical  
7 storm or hurricane, a tornado, ice or snow storm, flood, an earthquake,  
8 or other significant weather or natural disaster.

9 13. "Storm recovery activity" means any activity or activities by or  
10 on behalf of an electric corporation in connection with the restoration  
11 of service and infrastructure associated with electric power outages  
12 affecting consumers of an electric corporation as the result of a storm  
13 or storms, including but not limited to mobilization, staging, and  
14 construction, reconstruction, replacement, or repair of electric gener-  
15 ation, transmission, or distribution facilities.

16 14. "Storm recovery bonds" means bonds, debentures, notes, certif-  
17 icates of participation, certificates of ownership, or other evidences  
18 of indebtedness or ownership that are issued pursuant to an indenture,  
19 contract, or other agreement of an electric corporation or an assignee  
20 pursuant to a financing order, the proceeds of which are used directly  
21 or indirectly to provide, recover, finance, or refinance commission-ap-  
22 proved storm recovery costs, financing costs, and costs to replenish or  
23 fund a storm recovery reserve to such level as the commission may  
24 authorize in a financing order, and which are secured by or payable from  
25 storm recovery property. If certificates of participation or ownership  
26 are issued, references in this article to principal, interest, or premi-  
27 um shall be construed to refer to comparable amounts under those certif-  
28 icates. Storm recovery bonds shall be nonrecourse to the credit or any  
29 assets of the electric corporation other than the storm recovery proper-  
30 ty as specified in the financing order and any rights under any ancil-  
31 lary agreement. Storm recovery bonds shall be legal investments for all  
32 governmental units, financial institutions, insurance companies, fiduci-  
33 aries, and other persons that require statutory authority regarding  
34 legal investment.

35 15. "Storm recovery charge" means the amounts authorized by the  
36 commission to recover, finance, or refinance storm recovery costs and  
37 financing costs. If provided for in a financing order, such amounts  
38 shall be imposed on consumer bills and collected by an electric corpo-  
39 ration or its successors or assignees, or a collection agent, in full  
40 through a charge paid by existing and future consumers receiving trans-  
41 mission or distribution service, or both, from the electric corporation  
42 or its successors or assignees under rate schedules or special contracts  
43 approved by the commission. The storm recovery charge shall be non-by-  
44 passable and imposed on all consumers in the service area and collected  
45 by the electric corporation or any successor, its agent, subcontractor,  
46 assignee, collection agent or any other entity designated under the  
47 financing order.

48 16. "Storm recovery costs" means, if requested by an electric corpo-  
49 ration and approved by the commission, costs incurred or to be incurred  
50 by an electric corporation in undertaking a storm recovery activity.  
51 Such costs shall include the electric corporation's cost of capital from  
52 the date of the applicable storm to the date the storm recovery bonds  
53 are issued calculated using the electric corporation's weighted average  
54 cost of capital as defined in its most recent base rate case proceeding  
55 before the commission net of all applicable income tax savings related  
56 to the interest component. Such costs may be net of applicable insur-

1 ance proceeds, tax benefits, and any other amounts intended to reimburse  
2 the electric corporation for storm recovery activities such as govern-  
3 mental grants or aid of any kind and may include adjustments for normal  
4 capital replacement and operating costs, or other potential offsetting  
5 adjustments. Storm recovery costs may include the costs to fund and  
6 finance any storm recovery reserves and costs of repurchasing equity or  
7 retiring any existing indebtedness relating to storm recovery activ-  
8 ities.

9 17. "Storm recovery property" means the property rights and interests  
10 created pursuant to this article, including, but not limited to, any and  
11 all right, title and interest:

12 (a) in and to storm recovery charges established pursuant to a financ-  
13 ing order, as adjusted from time to time in accordance with such financ-  
14 ing order;

15 (b) in and to all revenues, collections, claims, payments, money, or  
16 proceeds of or arising from the storm recovery charges or constituting  
17 storm recovery charges that are the subject of a financing order,  
18 regardless of whether such revenues, collections, claims, payments,  
19 money or proceeds are imposed, billed, received, collected or maintained  
20 together with or commingled with other revenues, collections, claims,  
21 payments, money or proceeds; and

22 (c) in and to all rights to obtain periodic adjustments to the storm  
23 recovery charges pursuant to the terms of the financing order. Storm  
24 recovery property shall constitute a vested, presently existing property  
25 right.

26 18. "Storm recovery reserve" means an electric corporation's storm  
27 reserve or such other similar reserve established pursuant to order or  
28 rule of the commission.

29 § 302. Financing orders. 1. No electric corporation or its affiliate  
30 or other assignee shall issue any storm recovery bonds unless it has  
31 been specifically authorized to do so by a financing order issued pursu-  
32 ant to this section. An electric corporation may petition the commission  
33 for a financing order granting such authority. Such petition shall be  
34 made under oath and shall be signed and filed on behalf of the electric  
35 corporation or its affiliate or other assignee by the president or by a  
36 vice president, treasurer, or other executive officer having knowledge  
37 of the matters set forth therein and shall be submitted in such form as  
38 the commission shall prescribe.

39 2. Each petition filed under this section shall include all of the  
40 following: (a) A description of the storm recovery activities that the  
41 electric corporation has undertaken or proposes to undertake and the  
42 reasons for undertaking the activities.

43 (b) The storm recovery costs and an estimate of the costs of any storm  
44 recovery activities that are being undertaken but not completed.

45 (c) The level of the storm recovery reserve that the electric corpo-  
46 ration proposes to establish or replenish and has determined would be  
47 appropriate to recovery through storm recovery bonds and is seeking to  
48 so recover and the level that the electric corporation is funding or  
49 will seek to fund through other means, together with a description of  
50 the factors and calculations used in determining such amounts and meth-  
51 ods of recovery.

52 (d) An indication of whether the electric corporation proposes to  
53 finance all or a portion of the storm recovery costs using storm recov-  
54 ery bonds. If the electric corporation proposes to finance a portion of  
55 such costs, the electric corporation must identify the specific portion  
56 in the petition. An election not to finance a portion of the storm

1 recovery costs using storm recovery bonds by an electric corporation  
2 shall not be deemed to waive its right to recover such costs pursuant to  
3 a separate proceeding with the commission.

4 (e) An estimate of the financing costs related to the storm recovery  
5 bonds.

6 (f) An estimate of the storm recovery charges necessary to recover the  
7 storm recovery costs and financing costs and the period for recovery of  
8 such costs.

9 (g) A comparison between the net present value of the costs to consum-  
10 ers that are estimated to result from the issuance of storm recovery  
11 bonds and the result from the application of the traditional method of  
12 financing and recovering storm recovery costs from consumers. The  
13 comparison should demonstrate that the issuance of storm recovery bonds  
14 and the imposition of storm recovery charges are expected to provide  
15 quantifiable benefits to consumers.

16 3. The commission may grant a petition under subdivision one of this  
17 section in whole or in part by issuing a financing order, with such  
18 modifications thereto and upon such terms and conditions as the commis-  
19 sion prescribes and that are consistent with this article. If the  
20 commission issues a financing order approving the issue of storm recov-  
21 ery bonds under this article, the commission shall consider whether (a)  
22 the proposed issuance of storm recovery bonds and the imposition and  
23 collection of a storm recovery charge are expected to provide quantifi-  
24 able benefits to consumers as compared to the costs that would have been  
25 incurred absent the issuance of storm recovery bonds and (b) the  
26 proposed structuring, expected pricing, and financing costs of the storm  
27 recovery bonds are reasonably expected to result in the lowest storm  
28 recovery charges consistent with market conditions at the time the storm  
29 recovery bonds are priced and the terms of the financing order or would  
30 avoid or mitigate rate impacts to consumers as compared with traditional  
31 methods of financing or recovering storm recovery costs. The commission  
32 may determine what degree of flexibility to afford to the electric  
33 corporation or assignees in establishing the terms and conditions of the  
34 storm recovery bonds, including but not limited to repayment schedules,  
35 interest rates, and other financing costs. A copy of any financing  
36 order issued under this article duly certified by a commissioner or  
37 other person authorized to act on behalf of the commission shall be  
38 sufficient evidence for all purposes of whole and complete compliance by  
39 the electric corporation with all procedural and other matters required  
40 precedent to the issuance of the order.

41 4. Proceedings on a petition submitted pursuant to this section begin  
42 with the petition for a financing order filed by an electric corporation  
43 with the commission for review and approval within one hundred thirty-  
44 five days of the filing of the petition and shall be disposed of in  
45 accordance with the requirements of this article and the rules of the  
46 commission. A party to such proceeding may petition the commission for  
47 rehearing of this financing order within five days after the date of its  
48 issuance.

49 5. A financing order issued by the commission to an electric corpo-  
50 ration shall:

51 (a) Specify the amount of storm recovery costs including any level of  
52 storm recovery reserves, taking into consideration, to the extent the  
53 commission deems appropriate, any other methods used to recover these  
54 costs and any offsets or credits to those costs, and provide with  
55 respect to the amount of financing costs which may be recovered through  
56 storm recovery charges;



1 (b) Provide that the proposed issuance of storm recovery bonds and the  
2 imposition and collection of storm recovery charges are expected to  
3 provide quantifiable benefits to consumers as compared to the costs that  
4 would have been incurred absent the issuance of the storm recovery  
5 bonds;

6 (c) Provide that the structuring and pricing of the storm recovery  
7 bonds are expected to result in the lowest storm recovery charges  
8 consistent with market conditions at the time the storm recovery bonds  
9 are priced and the terms set forth in such financing order;

10 (d) Specify and create the storm recovery property of an electric  
11 corporation or its successors or assignees that may be used to pay or  
12 secure storm recovery bonds and financing costs;

13 (e) Provide that such storm recovery property may be: (i) sold,  
14 assigned, or transferred by the electric corporation to (A) a subsidiary  
15 which is wholly owned, directly or indirectly, by the electric corpo-  
16 ration and which will be the issuer of the storm recovery bonds or (B)  
17 another assignee which will be the issuer of the storm recovery bonds;  
18 or

19 (ii) created or recognized as property of an assignee which will be  
20 the issuer of the storm recovery bonds;

21 (f) Provide that the storm recovery charges shall be sufficient at all  
22 times to pay the principal of and interest on the storm recovery bonds  
23 as the same shall become due and payable and all other financing costs  
24 and establish a true-up mechanism requiring that the storm recovery  
25 charges be reviewed and adjusted at least annually to correct any over-  
26 collection or undercollection during the period since the issuance or  
27 preceding adjustment and to ensure the projected recovery of amounts  
28 sufficient to provide timely payment of all principal, interest and  
29 other financing costs. Each adjustment to the storm recovery charge, in  
30 amounts as calculated by or on behalf of the owner of storm recovery  
31 property, shall automatically become effective sixty days following the  
32 date on which the periodic adjustment is filed with the commission  
33 unless the commission approves an earlier effective date requested by  
34 the issuer of storm recovery bonds;

35 (g) Provide and pledge that after the earlier of the transfer of storm  
36 recovery property to an assignee or the issuance of storm recovery bonds  
37 authorized thereby, a financing order is irrevocable until the indefeas-  
38 ible payment in full of the storm recovery bonds and the financing costs  
39 and, provided that, except as provided in subdivision eight of this  
40 section or to implement any true-up mechanism adopted by the commission  
41 as described in paragraph (f) of this subdivision, the commission may  
42 not amend, modify, or terminate the financing order by any subsequent  
43 action or reduce, impair, postpone, terminate, or otherwise adjust storm  
44 recovery charges approved in the financing order, provided nothing shall  
45 preclude limitation or alteration if and when full compensation, includ-  
46 ing full cost recovery, is made for the full protection of the storm  
47 recovery charges collected pursuant to a financing order and the full  
48 protection of the holders of storm recovery bonds and any assignee or  
49 financing party;

50 (h) Specify how amounts collected from consumers shall be allocated  
51 between storm recovery charges and other charges;

52 (i) Provide that a financing order remains in effect until the storm  
53 recovery bonds issued pursuant to the order have been indefeasibly paid  
54 in full and the financing costs of such bonds have been recovered in  
55 full;

1 (j) Provide that a financing order shall remain in effect and unabated  
2 notwithstanding the reorganization, bankruptcy, or other insolvency  
3 proceedings, or merger or sale, of the applicable electric corporation  
4 or its successors or assignees; and

5 (k) Authorize and require the electric corporation, to the extent that  
6 any interest in storm recovery property is sold or assigned, shall  
7 contract with the assignee or any financing party to continue to operate  
8 its system to provide service to its consumers, collect amounts in  
9 respect of the storm recovery charges for the benefit and account of  
10 such assignee or financing party, and account for and remit such amounts  
11 to or for the account of such assignee or financing party, including  
12 pursuant to a sequestration order authorized by subdivision six of  
13 section three hundred three or subdivision seven of section three  
14 hundred five of this article.

15 6. In each financing order issued to or on behalf of an electric  
16 corporation, the commission shall:

17 (a) Prescribe any limitations on potential assignees of storm recovery  
18 property;

19 (b) Authorize an assignee which is a subsidiary of an electric corpo-  
20 ration and which issues storm recovery bonds or another assignee which  
21 issues storm recovery bonds to provide and establish in its organiza-  
22 tional documents, partnership agreement, or operating agreement, as  
23 applicable, that in order for a person to file a voluntary bankruptcy  
24 petition on behalf of such assignee, the prior unanimous consent of the  
25 directors, partners, or managers, as applicable, shall be required. If  
26 so authorized in a financing order, any such provision set forth in the  
27 organizational documents, partnership agreement, or operating agreement  
28 of such an assignee shall constitute a legal, valid, and binding agree-  
29 ment of the shareholders, partners, or members, as applicable, of such  
30 assignee and shall be enforceable against such shareholders, partners,  
31 or members; and

32 (c) Provide that the creation of the storm recovery property pursuant  
33 to paragraph (d) of subdivision five of this section shall be condi-  
34 tioned upon, and shall be simultaneous with either: (i) the sale,  
35 assignment, or other transfer of the storm recovery property to an  
36 assignee; or (ii) the issuance of the storm recovery bonds and the secu-  
37 rity interest created in the storm recovery property to secure storm  
38 recovery bonds.

39 7. After the issuance of a financing order, and within such time and  
40 subject to any other limitations set forth in the financing order, the  
41 electric corporation retains discretion regarding whether to sell,  
42 assign, or otherwise transfer storm recovery property or to cause the  
43 storm recovery bonds to be issued, including the right to defer or post-  
44 pone such sale, assignment, transfer, or issuance.

45 8. At the request of an electric corporation, the commission may  
46 commence a proceeding and issue a subsequent financing order that  
47 provides for the refinancing, retiring, or refunding of storm recovery  
48 bonds issued by an affiliate of the electrical corporation pursuant to  
49 the original financing order if the commission finds that the subsequent  
50 financing order satisfies all of the criteria specified in subdivision  
51 three of this section or that provides for an accounting, refunding, or  
52 crediting to consumers of the proceeds of any true-up mechanism adopted  
53 by the commission in accordance with paragraph (f) of subdivision five  
54 of this section. Effective on retirement of the refunded storm recovery  
55 bonds and the issuance of new storm recovery bonds, the commission may

1 adjust the related storm recovery charges accordingly or establish  
2 substitute storm recovery charges.

3 9. (a) The commission shall not, in exercising its powers and carrying  
4 out its duties regarding any matter within its authority pursuant to  
5 this article, consider the storm recovery bonds issued pursuant to a  
6 financing order to be the debt of the electric corporation other than  
7 for federal income tax purposes, consider the storm recovery charges  
8 paid under the financing order to be the revenue of the electric corpo-  
9 ration for any purpose, or consider the storm recovery costs or financ-  
10 ing costs specified in the financing order to be the costs of the elec-  
11 tric corporation, nor may the commission determine any action taken by  
12 an electric corporation which is not consistent with the financing order  
13 to be unjust or unreasonable.

14 (b) The commission may not order or otherwise directly or indirectly  
15 require an electric corporation to use storm recovery bonds to finance  
16 any project, addition, plant, facility, extension, capital improvement,  
17 equipment, or any other expenditure. After the issuance of a financing  
18 order, the electric corporation retains sole discretion whether to cause  
19 the storm recovery bonds to be issued, including the right to defer or  
20 postpone such sale, assignment, transfer or issuance. Nothing shall  
21 prevent the electric corporation from abandoning the issuance of storm  
22 recovery bonds under the financing order by filing with the commission a  
23 statement of abandonment and the reasons therefor. The commission shall  
24 not refuse to allow an electric corporation to recover storm recovery  
25 costs in an otherwise permissible fashion or refuse or condition author-  
26 ization or approval of the issuance and sale by an electric corporation  
27 of securities or the assumption by the electric corporation of liabil-  
28 ities or obligations, solely because of the potential availability of  
29 storm recovery bond financing.

30 10. All financing orders issued by the commission shall be operative  
31 and in full force and effect on the date of the issuance of such order.

32 11. Notwithstanding any other law to the contrary, any action, suit or  
33 proceeding to which the commission or the storm recovery bond issuer may  
34 be a party, in which any question arises as to the validity of this  
35 article or any financing order, shall be preferred over all other civil  
36 causes in all courts of the state, except election matters, and shall be  
37 heard and determined in preference to all other civil business pending  
38 therein, except election matters, irrespective of position on the calen-  
39 dar. Such preference shall also be granted upon petition of counsel to  
40 the commission in any action or proceeding questioning the validity of  
41 any financing order or other decision made by the commission under this  
42 article in which such counsel may be allowed to intervene. Notwith-  
43 standing any other provision of law to the contrary, the validity of any  
44 financing order or other decision may only be challenged by an aggrieved  
45 party pursuant to an action, suit or proceeding filed within thirty days  
46 after such financing order becomes final; provided, however, that any  
47 such action, suit or proceeding and all supporting papers shall be  
48 commenced directly in the supreme court, appellate division, third judi-  
49 cial department.

50 § 303. Storm recovery property. 1. All storm recovery property speci-  
51 fied in a financing order shall constitute an existing, present property  
52 right. Such property shall exist whether or not the revenues or proceeds  
53 arising from the property have been billed, have accrued, or have been  
54 collected.

55 2. Storm recovery property specified in a financing order shall  
56 continue to exist until the storm recovery bonds issued pursuant to such



1 order are paid in full and all financing costs of the bonds have been  
2 recovered in full.

3 3. All or any portion of storm recovery property specified in a  
4 financing order issued to an electric corporation may be sold, assigned,  
5 or transferred to a successor or an assignee, including an affiliate or  
6 affiliates of the electric corporation or any other assignee created for  
7 the limited purpose of acquiring, owning, or administering storm recov-  
8 ery property or issuing storm recovery bonds under the financing order.  
9 All or any portion of storm recovery property may be encumbered by a  
10 security interest to secure storm recovery bonds issued pursuant to the  
11 order and other financing costs. Each such sale, assignment, transfer,  
12 or security interest granted by an electric corporation or affiliate of  
13 an electric corporation or assignee shall be considered to be a trans-  
14 action in the ordinary course of business.

15 4. The description of storm recovery property being sold, assigned, or  
16 transferred to an assignee in any sale agreement, purchase agreement, or  
17 other transfer agreement or created and recognized as property of an  
18 assignee in accordance with subdivision nine of this section, being  
19 encumbered to a secured party in any security agreement, pledge agree-  
20 ment, or other security document, or indicated in any financing state-  
21 ment is only sufficient if such description or indication refers to the  
22 specific financing order that created the storm recovery property and  
23 states that such agreement or financing statement covers all or part of  
24 such storm recovery property described in such financing order. A  
25 description of storm recovery property in a financing statement shall be  
26 sufficient if it refers to the financing order creating the storm recov-  
27 ery property. This subdivision shall apply to all purported sales,  
28 assignments, or transfers of, and all purported liens or security inter-  
29 ests in, storm recovery property, regardless of whether the related sale  
30 agreement, purchase agreement, other transfer agreement, security agree-  
31 ment, pledge agreement, or other security document was entered into, or  
32 any financing statement was filed, before or after the effective date of  
33 this article.

34 5. Every electric bill issued by an electric corporation that has  
35 obtained a financing order and caused storm recovery bonds to be issued  
36 shall comply with the provisions of this subdivision; provided, however,  
37 that the failure of an electric corporation to comply with this subdivi-  
38 sion shall not invalidate, impair, or affect any financing order, storm  
39 recovery property, storm recovery charge, or storm recovery bonds.  
40 Every such bill shall:

41 (a) Explicitly reflect that a portion of the charges on such bill  
42 represents storm recovery charges approved in a financing order issued  
43 to the electric corporation and, if the storm recovery property has been  
44 transferred to, or created at, an assignee, must include a statement to  
45 the effect that the assignee is the owner of the rights to storm recov-  
46 ery charges and that the electric corporation or other entity, if appli-  
47 cable, is acting as a collection agent or servicer for that assignee.  
48 The tariff applicable to consumers must indicate the storm recovery  
49 charge and the ownership of the charge.

50 (b) Include the storm recovery charge on each consumer's bill as a  
51 separate line item and include either the rate or the amount of the  
52 charge on each bill.

53 6. If an electric corporation defaults on any required payment of  
54 charges arising from storm recovery property specified in a financing  
55 order, the supreme court, Albany county, upon petition by an interest-  
56 ed party, and without limiting any other remedies available to the applying

1 party, shall order the sequestration and payment of the revenues arising  
2 from the storm recovery property to the financing parties or their  
3 representatives. Any such order shall remain in full force and effect  
4 notwithstanding any reorganization, bankruptcy, or other insolvency  
5 proceedings with respect to the electric corporation or its successors  
6 or assignees.

7 7. The interest of an assignee or secured party in storm recovery  
8 property specified in a financing order shall not be subject to setoff,  
9 counterclaim, surcharge, or defense by the electric corporation or any  
10 other person, or in connection with the reorganization, bankruptcy, or  
11 other insolvency of the electric corporation or any other entity.

12 8. Any successor to an electric corporation, whether pursuant to any  
13 reorganization, bankruptcy, or other insolvency proceeding or whether  
14 pursuant to any merger or acquisition, sale, or other business combina-  
15 tion, or transfer by operation of law, as a result of electric corpo-  
16 ration restructuring or otherwise, shall perform and satisfy all obli-  
17 gations of, and have the same rights under a financing order as the  
18 electric corporation under the financing order in the same manner and to  
19 the same extent as the electric corporation, including collection and  
20 payment of any revenues and proceeds of the storm recovery property to  
21 any person entitled thereto.

22 9. Upon petition by the electric corporation, storm recovery property  
23 may be immediately created by operation of law on the latter of the  
24 issuance of a financing order, or the issuance of the storm recovery  
25 bonds by an assignee. Storm recovery property created in accordance  
26 with this subdivision shall, upon creation, belong to the assignee and  
27 such assignee will have the same rights to and benefits arising from the  
28 storm recovery property as it would have if it acquired such storm  
29 recovery property as a result of a purchase, acquisition or other trans-  
30 fer from the electrical corporation.

31 § 304. Sale, assignment, or transfer of storm recovery property. 1.  
32 The sale, assignment, or other transfer of storm recovery property by an  
33 electric corporation to an assignee that the parties have in the govern-  
34 ing contract expressly stated to be a sale or other absolute transfer  
35 shall constitute an absolute transfer and true sale of, and not a secu-  
36 rity interest in, the transferor's right, title, and interest in, to,  
37 and under such storm recovery property, other than for federal and state  
38 income tax purposes. The parties' characterization of such transaction  
39 as a sale of an interest in storm recovery property shall be conclusive  
40 that the transaction is a true sale and that ownership has passed to the  
41 party characterized as the purchaser, regardless of whether the purcha-  
42 ser has possession of any documents evidencing or pertaining to the  
43 interest. After any such transaction, the storm recovery property shall  
44 not be subject to any claims of the transferor or the transferor's cred-  
45 itors, other than creditors holding a prior security interest in the  
46 storm recovery property perfected under section three hundred seven of  
47 this article.

48 2. Notwithstanding any provision of law to the contrary, the charac-  
49 terization of any sale, assignment, or other transfer as a true sale or  
50 other absolute transfer pursuant to subdivision one of this section and  
51 the corresponding characterization of the assignee's property interest  
52 shall be determinative and conclusive irrespective of, and not affected  
53 or impaired by, the existence of any or all of the following circum-  
54 stances:

55 (a) Commingling of amounts arising with respect to the storm recovery  
56 property with other amounts;

1 (b) The retention by the transferor of a partial or residual interest,  
2 including an equity interest or entitlement to any surplus, in the storm  
3 recovery property, whether direct or indirect, or whether subordinate or  
4 otherwise;

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

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

15 (e) The transferor acting as the collector of the storm recovery  
16 charges or the existence of any contract described in paragraph (k) of  
17 subdivision five of section three hundred two of this article;

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

20 (g) The granting or providing to holders of the storm recovery bonds  
21 of a preferred right to the storm recovery property or credit enhance-  
22 ment by the electric corporation or its affiliates with respect to the  
23 storm recovery bonds; or

24 (h) The status of the assignee as a direct or indirect wholly owned  
25 subsidiary or other affiliate of the electric corporation. The separate  
26 juridical personality of any assignee of storm recovery property which  
27 is a subsidiary or affiliate of the electric corporation shall not be  
28 disregarded due to the fact that the assignee and the electric corpo-  
29 ration share any one or more incidents of control, including common  
30 managers, officers, directors, members, accounting or administrative  
31 systems, consolidated tax returns, or office space, that the assignee  
32 may be a disregarded entity for tax purposes, that the electric corpo-  
33 ration caused the formation of the assignee, that a contract by the  
34 electric corporation and the assignee described in paragraph (k) of  
35 subdivision five of section three hundred two of this article exists,  
36 that the assignee has no other business other than pertaining to the  
37 storm recovery property, that the capitalization of the assignee is  
38 limited to amounts required for compliance with certain applicable  
39 federal income tax laws and revenue procedures, or that other factors  
40 used in applying a single business enterprise test to juridical persons  
41 are present.

42 3. Any right that an electric corporation has in the storm recovery  
43 property prior to its sale, assignment, or transfer shall be in the form  
44 of a contractual right or chose in action notwithstanding any contrary  
45 treatment thereof for accounting or tax purposes. The ownership of an  
46 interest in storm recovery property is voluntarily transferred by a  
47 contract between the owner and the assignee that purports to transfer  
48 the ownership of that interest. Unless otherwise provided, the transfer  
49 of ownership between the parties shall be effective as soon as there is  
50 written agreement on the interest, the purchase price is fixed, and the  
51 financing order has been issued. Such transfer shall be perfected and  
52 take effect against all third parties including, but not limited to,  
53 subsequent lien creditors when the transfer has become effective between  
54 the parties and when a financing statement giving notice of the sale,  
55 assignment, or transfer is filed in accordance with subdivision four of  
56 this section. Delivery of such an interest in storm recovery property

1 shall take place by operation of law upon the filing of the financing  
2 statement.

3 4. Financing statements required to be filed under this section shall  
4 be filed, indexed, maintained, and continued in the same manner and in  
5 the same system of records maintained for the filing of financing state-  
6 ments under article nine of the uniform commercial code. The filing of  
7 such financing statement shall be the only method of perfecting a sale,  
8 assignment, or transfer of storm recovery property. The sale, assign-  
9 ment, or transfer of an interest in storm recovery property perfected by  
10 filing a financing statement shall be effective against any consumers  
11 owing payment of the storm recovery charges, creditors of the transfe-  
12 ror, subsequent transferees, and all other third persons notwithstanding  
13 the absence of actual knowledge of or notice to such consumers of such  
14 sale, assignment, or transfer.

15 5. The priority of the conflicting ownership interests of assignees in  
16 the same interest or rights in any storm recovery property shall be  
17 determined as follows:

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

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

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

25 6. The priority of a sale, assignment, or transfer perfected under  
26 this section shall not be impaired by any later modification of the  
27 financing order or storm recovery property or by the commingling of  
28 funds arising from storm recovery property with other funds. Any other  
29 security interest that may apply to such funds, other than a security  
30 interest perfected under section three hundred five of this article,  
31 shall be terminated when those funds are transferred to a segregated  
32 account for the assignee or a financing party. If storm recovery prop-  
33 erty has been transferred to an assignee or financing party, any  
34 proceeds of such property shall be held for and delivered to the assign-  
35 ee or financing party by any collector under any contract described in  
36 paragraph (k) of subdivision five of section three hundred two of this  
37 article as a mandatary and fiduciary.

38 § 305. Security interests. 1. The provisions of article nine of the  
39 uniform commercial code relating to secured transactions shall not apply  
40 to storm recovery property or any right, title, or interest of a corpo-  
41 ration or assignee therein, whether before or after the issuance of a  
42 financing order, except as provided in subdivision one of section three  
43 hundred six of this article. In addition, such right, title, or inter-  
44 est pertaining to a financing order, including but not limited to, the  
45 associated storm recovery property, and any revenues, collections,  
46 claims, rights to payment, payments, money, or proceeds of or arising  
47 from storm recovery charges pursuant to such order, shall not be deemed  
48 proceeds of any right or interest other than of the financing order and  
49 the storm recovery property arising from the financing order. All  
50 revenues and collections resulting from storm recovery property shall  
51 constitute proceeds only of the storm recovery property arising from the  
52 financing order.

53 2. Except to the extent provided in this article with respect to  
54 filings of financing statements or control of deposit accounts or  
55 investment property as original collateral, the creation, attachment,  
56 granting, perfection, and priority of security interests in storm recov-

1 ery property to secure storm recovery bonds shall be governed solely by  
2 this article and not by the uniform commercial code.

3 3. (a) A security interest in storm recovery property is valid and  
4 enforceable against the electric corporation and its successor or an  
5 assignee and third parties and attaches to storm recovery property only  
6 after all of the following conditions are met:

7 (i) The issuance of a financing order;

8 (ii) The execution and delivery of a security agreement with a financ-  
9 ing party in connection with the issuance of storm recovery bonds; and

10 (iii) The receipt of value for the storm recovery bonds.

11 (b) A security interest attaches to storm recovery property without  
12 physical delivery of collateral or other act when all of the foregoing  
13 conditions have been met, unless the security agreement expressly post-  
14 pones the time of attachment.

15 4. A security interest in storm recovery property is perfected only if  
16 it has attached and a financing statement indicating the storm recovery  
17 property collateral covered thereby has been filed. A financing state-  
18 ment must be filed to perfect all security interests and liens in storm  
19 recovery property under this article. A security interest in storm  
20 recovery property is perfected when it has attached and when the appli-  
21 cable financing statement has been filed. The interest of a secured  
22 party is not perfected unless a financing statement sufficient under  
23 this article and otherwise in accordance with the uniform commercial  
24 code is filed, and after perfection the secured party's interest contin-  
25 ues in the storm recovery property and all proceeds of such storm recov-  
26 ery property, whether or not billed, accrued, or collected, and whether  
27 or not deposited into a deposit account and however evidenced. A secu-  
28 rity interest in proceeds of storm recovery property is a perfected  
29 security interest if the security interest in the storm recovery proper-  
30 ty was perfected under this article. Financing statements required to  
31 be filed pursuant to this article shall be filed, indexed, maintained,  
32 and continued in the same manner and in the same system of records main-  
33 tained for the filing of financing statements under the uniform commer-  
34 cial code, except that the requirement as to continuation statements  
35 does not apply. The filing of such a financing statement shall be the  
36 only method of perfecting a lien or security interest on storm recovery  
37 property. The financing statement shall be filed as if the debtor named  
38 therein were located in this state.

39 5. The priority of the conflicting security interests of secured  
40 parties in the same interest or rights in any storm recovery property is  
41 determined as follows:

42 (a) Conflicting perfected security interests of secured parties rank  
43 according to priority in time of perfection;

44 (b) A perfected security interest of a secured party has priority over  
45 a conflicting unperfected security interest of a secured party; and

46 (c) A perfected security interest of a secured party has priority over  
47 a person who becomes a lien creditor after the perfection of such  
48 secured party's security interest.

49 6. A perfected security interest in storm recovery property and all  
50 proceeds of such storm recovery property, whether or not billed,  
51 accrued, or collected, and whether or not deposited into a deposit  
52 account and however evidenced, shall have priority over a conflicting  
53 lien or privilege of any nature in the same collateral property, except  
54 a security interest is subordinate to the rights of a person that  
55 becomes a lien creditor before the perfection of such security interest.  
56 A security interest in storm recovery property which qualifies for



1 priority over a conflicting security interest, lien, or privilege also  
2 has priority over the conflicting security interest, lien, or privilege  
3 in proceeds of the storm recovery property. The relative priority of a  
4 perfected security interest of a secured party is not adversely affected  
5 by any lien, privilege, or security interest in a deposit account of the  
6 electric corporation that is a collector as described in paragraph (k)  
7 of subdivision five of section three hundred two of this article and  
8 into which the revenues are deposited. The priority of a security inter-  
9 est perfected under this section shall not be defeated or impaired by  
10 any later modification of the financing order or storm recovery property  
11 or by the commingling of funds arising from storm recovery property with  
12 other funds. Any other security interest that may apply to those funds  
13 shall be terminated as to all funds transferred to a segregated account  
14 for the benefit of an assignee or a financing party or to an assignee or  
15 financing party directly. The perfection by control, the effect of  
16 perfection by control, and the priority of a security interest granted  
17 by the issuer of and securing storm recovery bonds held by a secured  
18 party having control of a segregated deposit account or securities  
19 account as original collateral into which revenues, collections, or  
20 proceeds of storm recovery property are deposited or credited shall be  
21 governed by section 1-301 of uniform commercial code.

22 7. If a default occurs under the terms of any storm recovery bond, the  
23 secured party may foreclose on or otherwise enforce the security inter-  
24 est in any storm recovery property as if it was a secured party under  
25 the uniform commercial code. A secured party holding a security interest  
26 in storm recovery property shall be entitled to exercise all of the same  
27 rights and remedies available to a secured party under the uniform  
28 commercial code, to the same extent as if those rights and remedies were  
29 set forth in this article. The court may order that amounts arising  
30 from storm recovery property be transferred to a separate account of the  
31 secured party for the financing parties' benefit, to which their securi-  
32 ty interest shall apply. On petition by or on behalf of a secured  
33 party, the court shall order the sequestration and payment to the  
34 financing parties of revenues arising from the storm recovery property.

35 8. A security interest created under this section may provide for a  
36 security interest in after-acquired collateral. Such security interest  
37 shall not be invalid or fraudulent against creditors solely because the  
38 grantor or the electric corporation as collector or servicer has the  
39 right or ability to commingle the collateral or proceeds, or collect,  
40 compromise, enforce, and otherwise deal with collateral.

41 9. Any action arising under the provisions of this article to enforce  
42 a security interest in storm recovery property, or which otherwise  
43 asserts an interest in, or a right in, to or against any storm recovery  
44 property, wherever located or deemed located, or any security interest  
45 governed by this article, shall be brought in the supreme court, Albany  
46 county. Such actions shall be governed by the applicable provisions of  
47 the civil practice law and rules and other law applicable to executory  
48 proceedings, including provisional remedies, but only to the extent such  
49 laws are consistent with the language and purposes of this article.

50 § 306. Choice of law; conflicts. 1. The law governing the validity,  
51 enforceability, attachment, perfection, priority, exercise of remedies,  
52 and venue with respect to the creation, recognition, sale, assignment,  
53 or transfer of an interest or right or the creation of a security inter-  
54 est in any storm recovery property shall be exclusively the laws of this  
55 state, without applying this state's law on conflict of laws and  
56 notwithstanding any contrary contractual provision, except as provided

1 in subdivision six of section three hundred five of this article. The  
2 validity, enforceability, attachment, perfection, priority, and exercise  
3 of remedies with respect to the creation, recognition, sale, assignment,  
4 or transfer of an interest or right or the creation of a security inter-  
5 est in any storm recovery property shall be governed by this article,  
6 and solely to the extent not addressed by this article, by the uniform  
7 commercial code and other laws of this state. Notwithstanding the  
8 preceding sentence, this article provides that the uniform commercial  
9 code applies to the filings of financing statements referenced in this  
10 article, to perfection, the effect of perfection or nonperfection, and  
11 the priority of security interests held by a secured party having  
12 control of deposit accounts or securities accounts as original collat-  
13 eral securing storm recovery bonds, notwithstanding that proceeds of  
14 storm recovery charges are deposited therein, and to the enforcement of  
15 security interests in storm recovery property, in each case subject to  
16 subdivision two of this section.

17 2. Insofar as the provisions of this article are inconsistent with the  
18 provisions of any other law or part thereof regarding the attachment,  
19 creation, perfection, the effect of perfection, or priority of, and  
20 sale, assignment, or transfer of, or security interest in, storm recov-  
21 ery property, or the exercise of remedies with respect thereto, the  
22 provisions of this article shall be controlling.

23 3. Nothing in this section shall be construed so as to conflict with  
24 the provisions of subdivision six of section three hundred five of this  
25 article.

26 § 307. Storm recovery bonds not public debt. Storm recovery bonds are  
27 not a debt or a general obligation of the state or any of its political  
28 subdivisions, agencies, or instrumentalities and are not a charge on  
29 their full faith and credit. An issue of storm recovery bonds shall  
30 not, directly or indirectly or contingently, obligate the state or any  
31 agency, political subdivision, or instrumentality of the state to levy  
32 any tax or make any appropriation for payment of the bonds, other than  
33 for paying storm recovery charges in their capacity as consumers of  
34 electricity. All storm recovery bonds authorized by a financing order  
35 by the commission must contain on the face thereof a statement to the  
36 following effect: "Neither the full faith and credit nor the taxing  
37 power of the State of New York is pledged to the payment of the princi-  
38 pal of, or interest on, this bond."

39 § 308. State pledge. 1. The state pledges to and agrees with the hold-  
40 ers of storm recovery bonds, any assignee and all financing parties that  
41 the state will not in any way take or permit any action that limits,  
42 alters or impairs the value of storm recovery property or, except as  
43 required by a true-up mechanism described in the financing order,  
44 reduce, alter or impair storm recovery charges that are imposed,  
45 collected and remitted for the benefit of the owners of storm recovery  
46 bonds, any assignee, and all financing parties, until all principal,  
47 interest and redemption premium in respect of storm recovery bonds, all  
48 other financing costs and all amounts to be paid to an assignee or  
49 financing party under an ancillary agreement are paid or performed in  
50 full.

51 2. Any person that issues storm recovery bonds shall be permitted to  
52 include the pledge specified in subdivision one of this section on the  
53 face of such bonds and in any ancillary agreements or other documenta-  
54 tion related to the issuance and marketing of such bonds.

55 § 309. Assignee not an electric corporation. An assignee or financing  
56 party shall not be considered an electric corporation as defined in

1 subdivision thirteen of section two of this chapter solely by virtue of  
2 engaging in any of the transactions described in this article.

3 § 310. Effect of invalidity. If any provision of this article is held  
4 invalid or is invalidated, superseded, replaced repealed, or expires for  
5 any reason, such occurrence shall not affect the validity of any action  
6 allowed under this article taken by an electric corporation, or an  
7 assignee, a financing party, a collection agent, or a party to an ancil-  
8 lary agreement. Any such action shall remain in full force and effect  
9 with respect to all storm recovery bonds issued or authorized in a  
10 financing order issued pursuant to this article on or before the date  
11 that such provision is held invalid or is invalidated, superseded,  
12 replaced, or repealed, or expires for any reason.

13 § 311. Effect of a financing order. Section seventy of this chapter  
14 shall not apply to: 1. Any sale, assignment or transfer of storm recov-  
15 ery property or any equity position held by the electrical corporation  
16 in an assignee; or

17 2. Any other transaction contemplated by or approved in a financing  
18 order issued by the commission pursuant to this article.

19 § 3. This act shall take effect immediately.