# 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:**

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

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

**ARTICLE 12**

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


**Section 300. Short title.**
**301. Definitions.**
**302. Financing orders.**
**303. Storm recovery property.**
**304. Sale, assignment, or transfer of storm recovery property.**
**305. Security interests.**
**306. Choice of law; conflicts.**
**307. Storm recovery bonds not public debt.**
**308. State pledge.**
**309. Assignee not an electric corporation.**
**310. Effect of invalidity.**
**311. Effect of a financing order.**


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

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

**1. "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, 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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or arrangement entered into in connection with the issuance of storm recovery bonds under this article.

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

3. "Consumer" means any individual, governmental body, trust, business entity, nonprofit organization or other legally recognized entity that takes electric delivery service within the service area by means of electric transmission or distribution facilities, whether those electric transmission or distribution facilities are owned by an electric corporation or other entity.

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

(b) any payment required under an ancillary agreement and any amount required to fund or replenish reserve or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to storm recovery bonds;

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

(d) any federal, state or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on storm recovery charge revenues.

5. "Financing order" means an order of the commission which authorizes:

(a) the issuance of storm recovery bonds;

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

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

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

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

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

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

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

10. "Security interest" means a pledge, hypothecation, or other encumbrance of or other right over any portion of storm recovery property

created by contract to secure the payment or performance of an obligation.

11. "Service area" means the geographical area within which an electric corporation provides electric distribution services as of the date of a financing order.

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

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

14. "Storm recovery bonds" means bonds, debentures, notes, certificates of participation, certificates of ownership, or other evidences of indebtedness or ownership that are issued pursuant to an indenture, contract, or other agreement of an electric corporation or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to provide, recover, finance, or refinance commission-approved storm recovery costs, financing costs, and costs to replenish or fund a storm recovery reserve to such level as the commission may authorize in a financing order, and which are secured by or payable from storm recovery property. If certificates of participation or ownership are issued, references in this article to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates. Storm recovery bonds shall be nonrecourse to the credit or any assets of the electric corporation other than the storm recovery property as specified in the financing order and any rights under any ancillary agreement. Storm recovery bonds shall be legal investments for all governmental units, financial institutions, insurance companies, fiduciaries, and other persons that require statutory authority regarding legal investment.

15. "Storm recovery charge" means the amounts authorized by the commission to recover, finance, or refinance storm recovery costs and financing costs. If provided for in a financing order, such amounts shall be imposed on consumer bills and collected by an electric corporation or its successors or assignees, or a collection agent, in full through a charge paid by existing and future consumers receiving transmission or distribution service, or both, from the electric corporation or its successors or assignees under rate schedules or special contracts approved by the commission. The storm recovery charge shall be non-bypassable and imposed on all consumers in the service area and collected by the electric corporation or any successor, its agent, subcontractor, assignee, collection agent or any other entity designated under the financing order.

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

ance proceeds, tax benefits, and any other amounts intended to reimburse the electric corporation for storm recovery activities such as governmental grants or aid of any kind and may include adjustments for normal capital replacement and operating costs, or other potential offsetting adjustments. Storm recovery costs may include the costs to fund and finance any storm recovery reserves and costs of repurchasing equity or retiring any existing indebtedness relating to storm recovery activities.

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

(a) in and to storm recovery charges established pursuant to a financing order, as adjusted from time to time in accordance with such financing order;

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

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

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

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

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

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

(c) The level of the storm recovery reserve that the electric corporation proposes to establish or replenish and has determined would be appropriate to recovery through storm recovery bonds and is seeking to so recover and the level that the electric corporation is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining such amounts and methods of recovery.

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

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

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

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

(g) A comparison between the net present value of the costs to consumers that are estimated to result from the issuance of storm recovery bonds and the result from the application of the traditional method of financing and recovering storm recovery costs from consumers. The comparison should demonstrate that the issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to consumers.

3. The commission may grant a petition under subdivision one of this section in whole or in part by issuing a financing order, with such modifications thereto and upon such terms and conditions as the commission prescribes and that are consistent with this article. If the commission issues a financing order approving the issue of storm recovery bonds under this article, the commission shall consider whether (a) the proposed issuance of storm recovery bonds and the imposition and collection of a storm recovery charge are expected to provide quantifiable benefits to consumers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds and (b) the proposed structuring, expected pricing, and financing costs of the storm recovery bonds are reasonably expected to result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms of the financing order or would avoid or mitigate rate impacts to consumers as compared with traditional methods of financing or recovering storm recovery costs. The commission may determine what degree of flexibility to afford to the electric corporation or assignees in establishing the terms and conditions of the storm recovery bonds, including but not limited to repayment schedules, interest rates, and other financing costs. A copy of any financing order issued under this article duly certified by a commissioner or other person authorized to act on behalf of the commission shall be sufficient evidence for all purposes of whole and complete compliance by the electric corporation with all procedural and other matters required precedent to the issuance of the order.

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

5. A financing order issued by the commission to an electric corporation shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Authorize an assignee which is a subsidiary of an electric corporation and which issues storm recovery bonds or another assignee which issues storm recovery bonds to provide and establish in its organizational documents, partnership agreement, or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition on behalf of such assignee, the prior unanimous consent of the directors, partners, or managers, as applicable, shall be required. If so authorized in a financing order, any such provision set forth in the organizational documents, partnership agreement, or operating agreement of such an assignee shall constitute a legal, valid, and binding agreement of the shareholders, partners, or members, as applicable, of such assignee and shall be enforceable against such shareholders, partners, or members; and

(c) Provide that the creation of the storm recovery property pursuant to paragraph (d) of subdivision five of this section shall be conditioned upon, and shall be simultaneous with either: (i) the sale, assignment, or other transfer of the storm recovery property to an assignee; or (ii) the issuance of the storm recovery bonds and the security interest created in the storm recovery property to secure storm recovery bonds.

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

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

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

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

(b) The commission may not order or otherwise directly or indirectly require an electric corporation to use storm recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. After the issuance of a financing order, the electric corporation retains sole discretion whether to cause the storm recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer or issuance. Nothing shall prevent the electric corporation from abandoning the issuance of storm recovery bonds under the financing order by filing with the commission a statement of abandonment and the reasons therefor. The commission shall not refuse to allow an electric corporation to recover storm recovery costs in an otherwise permissible fashion or refuse or condition authorization or approval of the issuance and sale by an electric corporation of securities or the assumption by the electric corporation of liabilities or obligations, solely because of the potential availability of storm recovery bond financing.

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

11. Notwithstanding any other law to the contrary, any action, suit or proceeding to which the commission or the storm recovery bond issuer may be a party, in which any question arises as to the validity of this article or any financing order, shall be preferred over all other civil causes in all courts of the state, except election matters, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Such preference shall also be granted upon petition of counsel to the commission in any action or proceeding questioning the validity of any financing order or other decision made by the commission under this article in which such counsel may be allowed to intervene. Notwithstanding any other provision of law to the contrary, the validity of any financing order or other decision may only be challenged by an aggrieved party pursuant to an action, suit or proceeding filed within thirty days after such financing order becomes final; provided, however, that any such action, suit or proceeding and all supporting papers shall be commenced directly in the supreme court, appellate division, third judicial department.

§ 303. Storm recovery property. 1. All storm recovery property specified in a financing order shall constitute an existing, present property right. Such property shall exist whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected.

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

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

3. All or any portion of storm recovery property specified in a financing order issued to an electric corporation may be sold, assigned, or transferred to a successor or an assignee, including an affiliate or affiliates of the electric corporation or any other assignee created for the limited purpose of acquiring, owning, or administering storm recovery property or issuing storm recovery bonds under the financing order. All or any portion of storm recovery property may be encumbered by a security interest to secure storm recovery bonds issued pursuant to the order and other financing costs. Each such sale, assignment, transfer, or security interest granted by an electric corporation or affiliate of an electric corporation or assignee shall be considered to be a transaction in the ordinary course of business.

4. The description of storm recovery property being sold, assigned, or transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement or created and recognized as property of an assignee in accordance with subdivision nine of this section, being encumbered to a secured party in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the specific financing order that created the storm recovery property and states that such agreement or financing statement covers all or part of such storm recovery property described in such financing order. A description of storm recovery property in a financing statement shall be sufficient if it refers to the financing order creating the storm recovery property. This subdivision shall apply to all purported sales, assignments, or transfers of, and all purported liens or security interests in, storm recovery property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed, before or after the effective date of this article.

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

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

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

6. If an electric corporation defaults on any required payment of charges arising from storm recovery property specified in a financing order, the supreme court, Albany county, upon petition by 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 storm recovery property to the financing parties or their representatives. Any such order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric corporation or its successors or assignees.

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

8. Any successor to an electric corporation, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electric corporation restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as the electric corporation under the financing order in the same manner and to the same extent as the electric corporation, including collection and payment of any revenues and proceeds of the storm recovery property to any person entitled thereto.

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

§ 304. Sale, assignment, or transfer of storm recovery property. 1. The sale, assignment, or other transfer of storm recovery property by an electric corporation to an assignee that the parties have in the governing contract expressly stated to be a sale or other absolute transfer shall constitute an absolute transfer and true sale of, and not a security interest in, the transferor's right, title, and interest in, to, and under such storm recovery property, other than for federal and state income tax purposes. The parties' characterization of such transaction as a sale of an interest in storm recovery property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. After any such transaction, the storm recovery property shall not be subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the storm recovery property perfected under section three hundred seven of this article.

2. Notwithstanding any provision of law to the contrary, the characterization of any sale, assignment, or other transfer as a true sale or other absolute transfer pursuant to subdivision one of this section and the corresponding characterization of the assignee's property interest shall be determinative and conclusive irrespective of, and not affected or impaired by, the existence of any or all of the following circumstances:

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

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

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

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

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

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

(g) The granting or providing to holders of the storm recovery bonds of a preferred right to the storm recovery property or credit enhancement by the electric corporation or its affiliates with respect to the storm recovery bonds; or

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

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

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

4. Financing statements required to be filed under this section shall be filed, indexed, maintained, and continued in the same manner and in the same system of records maintained for the filing of financing statements under article nine of the uniform commercial code. The filing of such financing statement shall be the only method of perfecting a sale, assignment, or transfer of storm recovery property. The sale, assignment, or transfer of an interest in storm recovery property perfected by filing a financing statement shall be effective against any consumers owing payment of the storm recovery charges, creditors of the transferor, subsequent transferees, and all other third persons notwithstanding the absence of actual knowledge of or notice to such consumers of such sale, assignment, or transfer.

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

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

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

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

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

§ 305. Security interests. 1. The provisions of article nine of the uniform commercial code relating to secured transactions shall not apply to storm recovery property or any right, title, or interest of a corporation or assignee therein, whether before or after the issuance of a financing order, except as provided in subdivision one of section three hundred six of this article. In addition, such right, title, or interest pertaining to a financing order, including but not limited to, the associated storm recovery property, and any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from storm recovery charges pursuant to such order, shall not be deemed proceeds of any right or interest other than of the financing order and the storm recovery property arising from the financing order. All revenues and collections resulting from storm recovery property shall constitute proceeds only of the storm recovery property arising from the financing order.

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

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

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

(i) The issuance of a financing order;

(ii) The execution and delivery of a security agreement with a financing party in connection with the issuance of storm recovery bonds; and

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

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

4. A security interest in storm recovery property is perfected only if it has attached and a financing statement indicating the storm recovery property collateral covered thereby has been filed. A financing statement must be filed to perfect all security interests and liens in storm recovery property under this article. A security interest in storm recovery property is perfected when it has attached and when the applicable financing statement has been filed. The interest of a secured party is not perfected unless a financing statement sufficient under this article and otherwise in accordance with the uniform commercial code is filed, and after perfection the secured party's interest continues in the storm recovery property and all proceeds of such storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced. A security interest in proceeds of storm recovery property is a perfected security interest if the security interest in the storm recovery property was perfected under this article. Financing statements required to be filed pursuant to this article shall be filed, indexed, maintained, and continued in the same manner and in the same system of records maintained for the filing of financing statements under the uniform commercial code, except that the requirement as to continuation statements does not apply. The filing of such a financing statement shall be the only method of perfecting a lien or security interest on storm recovery property. The financing statement shall be filed as if the debtor named therein were located in this state.

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

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

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

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

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

priority over a conflicting security interest, lien, or privilege also has priority over the conflicting security interest, lien, or privilege in proceeds of the storm recovery property. The relative priority of a perfected security interest of a secured party is not adversely affected by any lien, privilege, or security interest in a deposit account of the electric corporation that is a collector as described in paragraph (k) of subdivision five of section three hundred two of this article and into which the revenues are deposited. The priority of a security interest perfected under this section shall not be defeated or impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery 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 a financing party or to an assignee or financing party directly. The perfection by control, the effect of perfection by control, and the priority of a security interest granted by the issuer of and securing storm recovery 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 of storm recovery property are deposited or credited shall be governed by section 1-301 of uniform commercial code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3. This act shall take effect immediately.