

PROGRAM BILL # 6

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

PUBSERLA

(Relates to the powers and duties of
the department of public service and
the Long Island power authority;
repealer)

Pub Serv. dept pub serv/LIPA

AN ACT

to amend the public service law, the
public authorities law and the execu-
tive law, in relation to the powers
and duties of the department of
public service and the Long Island
power authority, and to repeal
subdivision (u) of section 1020-f of
the public authorities law relating
to general powers of the authority
(Part A); and in relation to the
issuance of securitized restructur-
ing bonds to refinance the outstand-

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

- | | | | | |
|-----------------|---------------|----------------|-----------------|--------------|
| s20 Adams | s17 Felder | s63 Kennedy | s25 Montgomery | s23 Savino |
| s15 Addabbo | s02 Flanagan | s34 Klein | s54 Nozzolio | s29 Serrano |
| s11 Avella | s08 Fuschillo | s28 Krueger | s55 O'Brien | s51 Seward |
| s40 Ball | s59 Gallivan | s24 Lanza | s58 O'Mara | s09 Skelos |
| s42 Bonacic | s12 Gianaris | s39 Larkin | s21 Parker | s14 Smith |
| s04 Boyle | s41 Gipson | s37 Latimer | s13 Peralta | s26 Squadron |
| s44 Breslin | s22 Golden | s01 LaValle | s30 Perkins | s16 Stavisky |
| s38 Carlucci | s47 Griffo | s52 Libous | s61 Ranzenhofer | s35 Stewart- |
| s50 DeFrancisco | s60 Grisanti | s45 Little | s48 Ritchie | Cousins |
| s32 Diaz | s06 Hannon | s05 Marcellino | s33 Rivera | s46 Tkaczyk |
| s18 Dilan | s36 Hassell- | s43 Marchione | s56 Robach | s53 Vaiesky |
| s31 Espaillat | Thompson | s07 Martins | s19 Sampson | s57 Young |
| s49 Farley | s27 Hoylman | s62 Maziarz | s10 Sanders | s03 Zeldin |

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

- | | | | | |
|-------------------|------------------|------------------|-------------------|------------------|
| a049 Abbate | a081 Dinowitz | a135 Johns | a039 Moya | a016 Schimel |
| a092 Abinanti | a147 DiPietro | a113 Jordan | a133 Nojay | a140 Schimminger |
| a084 Arroyo | a115 Duprey | a094 Katz | a037 Nolan | a087 Sepulveda |
| a035 Aubry | a004 Englebright | a074 Kavanagh | a130 Oaks | a065 Silver |
| a120 Barclay | a054 Espinal | a142 Kearns | a069 O'Donnell | a027 Simanowitz |
| a106 Barrett | a109 Fahy | a076 Kellner | a051 Ortiz | a036 Simotas |
| a060 Barron | a071 Farrell | a040 Kim | a091 Otis | a104 Skartados |
| a082 Benedetto | a126 Finch | a131 Kolb | a132 Palmesano | a099 Skoufis |
| a117 Blankenbush | a008 Fitzpatrick | a105 Lalor | a088 Paulin | a022 Solages |
| a062 Borelli | a124 Friend | a013 Lavine | a141 Peoples- | a114 Stec |
| a055 Boyland | a143 Gabryszak | a050 Lentol | Stokes | a110 Steck |
| a026 Braunstein | a095 Galef | a125 Lifton | a058 Perry | a079 Stevenson |
| a044 Brennan | a137 Gantt | a102 Lopez, P. | a089 Fretlow | a127 Stirpe |
| a119 Brindisi | a007 Garbarino | a053 Lopez, V. | a073 Quart | a011 Sweeney |
| a138 Eronson | a077 Gibson | a123 Lupardo | a019 Ra | a112 Tedisco |
| a046 Brook-Krasny | a148 Giglio | a010 Lupinacci | a098 Rabbitt | a101 Tenney |
| a093 Buchwald | a080 Gjonaj | a121 Magee | a012 Raia | a001 Thiele |
| a118 Butler | a066 Glick | a129 Magnarelli | a006 Ramos | a061 Titone |
| a103 Cahill | a023 Goldfeder | a059 Maisel | a134 Rellich | a031 Titus |
| a043 Camara | a150 Goodell | a064 Malliotakis | a078 Rivera | a146 Walter |
| a145 Ceretto | a075 Gottfried | a030 Markey | a128 Roberts | a041 Weinstein |
| a033 Clark | a005 Graf | a090 Mayer | a056 Robinson | a020 Weisenberg |
| a047 Colton | a100 Gunther | a108 McDonald | a068 Rodriguez | a024 Weprin |
| a032 Cook | a139 Hawley | a014 McDonough | a072 Rosa | a070 Wright |
| a144 Corwin | a083 Heastie | a017 McEveitt | a067 Rosenthal | a096 Zebrowski |
| a085 Crespo | a003 Hennessey | a107 McLaughlin | a025 Rozic | a002 |
| a122 Crouch | a028 Hevesi | a038 Miller | a116 Russell | a086 |
| a021 Curran | a048 Hkind | a052 Millman | a149 Ryan | |
| a063 Cusick | a018 Hooper | a015 Montesano | a009 Saladino | |
| a045 Cymbrowitz | a042 Jacobs | a136 Morelle | a111 Santabarbara | |
| a034 DenDekker | a097 Jaffee | a057 Mosley | a029 Scarborough | |

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill). Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

ing debt of the Long Island power
authority (Part B)

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

1 Section 1. This act enacts into law major components of legislation
2 relating to issues deemed necessary by the state. Each component is
3 wholly contained within a Part identified as Parts A through B. The
4 effective date for each particular provision contained within such Part
5 is set forth in the last section of such Part. Any provision in any
6 section contained within a Part, including the effective date of the
7 Part, which makes reference to a section "of this act", when used in
8 connection with a particular component, shall be deemed to mean and
9 refer to the corresponding section of the Part in which it is found.
10 Section three of this act sets forth the general effective date of this
11 act.

12

PART A

13 Section 1. Section 3 of the public service law, as amended by chapter
14 8 of the laws of 2012, is amended and a new section 3-b is added to read
15 as follows:

16 § 3. Department of public service. [1.] There shall be in the state
17 government a department of public service. The chairman of the public
18 service commission shall be the chief executive officer of the depart-
19 ment. He or she shall appoint and shall have the power to remove,
20 subject to the provisions of the civil service law, all officers,
21 clerks, inspectors, experts and employees of the department, and to
22 approve all contracts for special service. The chairman shall designate
23 one of the commissioners in the department or an officer of the depart-
24 ment to act as deputy chairman during the absence or disability of the
25 chairman and during such times such deputy chairman shall possess all
26 the powers of the chairman as chief executive officer of the department.

1 [2. The department shall, upon notification to the Long Island power
2 authority, undertake a comprehensive and regular management and oper-
3 ations audit of said authority pursuant to subdivision (bb) of section
4 one thousand twenty-f of the public authorities law. The department
5 shall have discretion to have such an audit performed by its staff, or
6 by an independent contractor. In every case in which an audit is
7 required pursuant to subdivision (bb) of section one thousand twenty-f
8 of the public authorities law performed by an independent auditor, the
9 department shall have the authority to select the auditor, and to
10 require the Long Island power authority to enter into a contract with
11 the auditor that is consistent with the contracting-related requirements
12 specified in subdivision nineteen of section sixty-six of this chapter
13 and the requirements of subdivision (bb) of section one thousand twen-
14 ty-f of the public authorities law. Such contract shall provide further
15 that the auditor shall work for and under the direction of the depart-
16 ment according to such terms as the department may determine are neces-
17 sary and reasonable.]

18 § 3-b. Long Island office of the department. 1. There is hereby estab-
19 lished in the department an office to review and make recommendations
20 with respect to the operations and terms and conditions of service of,
21 and rates and budgets established by, the Long Island power authority
22 and/or its service provider.

23 2. Definitions. As used or referred to in this section:

24 (a) "Authority" means the Long Island power authority.

25 (b) "Service provider" means the entity under contract with the
26 authority to, among other things, manage and operate the authority's
27 electric transmission and distribution system. The service provider,

1 however, shall not be considered an electric corporation under this
2 chapter.

3 3. General powers. In undertaking the requirements of this section,
4 the department shall be empowered and authorized to:

5 (a) Review and make recommendations to the board of the Long Island
6 power authority with respect to the rates and charges to be established
7 by the authority and become applicable on or after January first, two
8 thousand sixteen pursuant to subdivision (u) of section one thousand
9 twenty-f of the public authorities law.

10 (i) The purpose of such review is to make recommendations designed to
11 ensure that the authority and the service provider provide safe and
12 adequate transmission and distribution service at rates set at the
13 lowest level consistent with sound fiscal operating practices.

14 (ii) The department's recommendations shall be designed to be consist-
15 ent with ensuring that the revenue requirements related to such rate
16 review are sufficient to satisfy the authority's obligations with
17 respect to its bonds, notes and all other contracts.

18 (iii) In the context of such review, the department may not make any
19 recommendation that would modify the compensation or fee structure
20 included within the agreement between the authority and the service
21 provider.

22 (iv) In undertaking such review and in making recommendations related
23 to the proposed rates and charges, the department shall establish stand-
24 ards, policies and procedures that, at a minimum, provide for public
25 statement and evidentiary hearings and participation of intervenors and
26 other parties, and ensure that any final recommendations related to the
27 proposed rates and charges are provided to the authority within two
28 hundred forty days of the filing with the department of such plan.

1 (v) The parties to any such rate review proceeding shall include, but
2 not be limited to, department staff, the authority, the service provider
3 and, to the extent it deems necessary or appropriate, the utility inter-
4 vention unit.

5 (b) Review the annual capital expenditures proposed by the service
6 provider and recommend such improvement in the manufacture, conveying,
7 transportation, distribution or supply of electricity, or in the methods
8 employed by the the service provider as in the department's judgment
9 allows for safe and adequate service.

10 (c) Annually review the emergency response plan of the service provid-
11 er in accordance with the following requirements:

12 (i) Examine and determine whether the emergency response plan is
13 consistent with the requirements of paragraph (a) of subdivision twen-
14 ty-one of section sixty-six of this chapter and any regulations or
15 orders promulgated thereto, and to recommend amendments of same; and

16 (ii) Review and make recommendations with respect to the performance
17 of the service provider in restoring service or otherwise meeting the
18 requirements of the emergency response plan during an emergency event,
19 defined for purposes of this section as an event where widespread
20 outages have occurred in the authority's service territory due to a
21 storm or other causes beyond the control of the authority and its
22 service provider, including making determinations with respect to wheth-
23 er the service provider is reasonably able to implement the emergency
24 response plan, whether the length of any outages related to such emer-
25 gency were materially longer than they would otherwise have been because
26 the service provider failed to reasonably implement the emergency
27 response plan, and the reasonableness of costs associated with such
28 emergency response.

1 (d) Upon notification to the Long Island power authority, undertake a
2 comprehensive and regular management and operations audit of the author-
3 ity and service provider pursuant to subdivision (bb) of section one
4 thousand twenty-f of the public authorities law. The department shall
5 have discretion to have such an audit performed by its staff, or by an
6 independent contractor. In every case in which an audit is required
7 pursuant to subdivision (bb) of section one thousand twenty-f of the
8 public authorities law performed by an independent auditor, the depart-
9 ment shall have the authority to select the auditor, and to require the
10 authority to enter into a contract with the auditor that is consistent
11 with the contracting-related requirements specified in subdivision nine-
12 teen of section sixty-six of this chapter and the requirements of subdi-
13 vision (bb) of section one thousand twenty-f of the public authorities
14 law. Such contract shall provide further that the auditor shall work for
15 and under the direction of the department according to such terms as the
16 department may determine are necessary and reasonable.

17 (e) Accept, investigate, mediate to resolve and make recommendations
18 to the Long Island power authority and/or the service provider regarding
19 the resolution of complaints from consumers in the authority's service
20 territory relating to, among other things, the provision of electric
21 service provided by the service provider.

22 (f) Review the net metering program implemented under subdivision (h)
23 of section one thousand twenty-g of the public authorities law and make
24 recommendations designed to ensure consistency with the requirements of
25 sections sixty-six-j and sixty-six-l of this chapter, and any regu-
26 lations and orders adopted thereto.

27 (g) Review and make recommendations with respect to any proposed plan
28 submitted by the Long Island power authority and/or the service provider

1 related to implementation of energy efficiency measures, distributed
2 generation or advanced grid technology programs having the purpose of
3 providing customers with tools to more efficiently and effectively
4 manage their energy usage and utility bills, and improving system reli-
5 ability and power quality.

6 4. Review and inspection. To undertake the requirements of subdivision
7 two of this section, the department shall be authorized to inspect all
8 premises and facilities owned or operated by the authority and the
9 service provider, review all books and records of the authority and the
10 service provider, interview all appropriate personnel, and require annu-
11 al reporting consistent with the requirements of subdivision six of
12 section sixty-six of this chapter and any regulations and orders adopted
13 thereto; provided, however, that this authority shall not extend to
14 affiliates of the service provider.

15 § 2. Subdivision 2 and paragraph (b) of subdivision 6 of section 18-a
16 of the public service law, subdivision 2 as amended by section 2 of part
17 NN of chapter 59 of the laws of 2009 and paragraph (b) of subdivision 6
18 as amended by section 1 of part BB of chapter 59 of the laws of 2013,
19 are amended and a new subdivision 1-a is added to read as follows:

20 1-a. All costs and expenses of the department related to the depart-
21 ment's responsibilities under section three-b of this chapter shall be
22 paid pursuant to appropriation on the certification of the chairman of
23 the department and upon the audit and warrant of the comptroller. For
24 the state fiscal year beginning on April first, two thousand fourteen
25 and each state fiscal year thereafter, payments are to be made from all
26 moneys collected from the Long Island power authority pursuant to this
27 section. The total of such costs and expenses shall be assessed on such

1 authority in the manner provided in subdivisions two, three and four of
2 this section.

3 2. (a) The chairman of the department shall estimate prior to the
4 start of each state fiscal year the total costs and expenses, including
5 the compensation and expenses of the commission and the department,
6 their officers, agents and employees, and including the cost of retire-
7 ment contributions, social security, health and dental insurance, survi-
8 vor's benefits, workers' compensation, unemployment insurance and other
9 fringe benefits required to be paid by the state for the personnel of
10 the commission and the department, and including all other items of
11 maintenance and operation expenses, and all other direct and indirect
12 costs. Based on such estimates, the chairman shall determine the amount
13 to be paid by each assessed public utility company and the Long Island
14 power authority and a bill shall be rendered to each such public utility
15 company and authority.

16 (b) The bill for each public utility company and the Long Island power
17 authority shall be rendered on or before February first preceding each
18 fiscal year, and shall be for the amount equal to the product of the
19 aforesaid estimated costs and expenses of conducting the department's
20 and commission's total operations during the fiscal year for which bill-
21 ing is being made multiplied by the proportion which compares:

22 (1) the gross operating revenues, over and above five hundred thousand
23 dollars, for that utility company or the authority derived from intra-
24 state utility operations in the last preceding calendar year, or other
25 twelve month period as determined by the chairman, to:

26 (2) the total of the gross operating revenues, derived from intrastate
27 utility operations for all utility companies and the authority in the

1 state which revenues are included under subparagraph one of this para-
2 graph.

3 For the purposes of calculating the commodity cost component of its
4 gross operating revenue, where the utility delivers to end-use customers
5 electricity and/or natural gas commodities that are sold to such custom-
6 ers by a third party, such utility shall include in its revenues an
7 estimate of the sales revenue for the electric and/or natural gas
8 commodities that it delivers, including all such commodities sold to
9 end-use customers by third parties, in such manner as to assure that all
10 end-use delivery customers, regardless of the entity from which they
11 purchase their electric and/or natural gas commodities, bear a fair and
12 proportionate share of the assessment imposed herein, as the commission
13 may determine.

14 (c) The minimum assessment for any utility company, as well as the
15 Long Island power authority, whose gross revenues from intrastate utili-
16 ty operations are in excess of five hundred thousand dollars in the
17 preceding calendar year shall be two hundred dollars.

18 (d) The amount of such bill for fiscal years beginning on or after
19 April first, nineteen hundred eighty-three so rendered shall be paid by
20 such public utility company and such authority to the department on or
21 before April first; provided, however, that [a] any such utility company
22 or such authority may elect to make partial payments for such costs and
23 expenses on March tenth of the preceding fiscal year and on September
24 tenth of such fiscal year. Each such partial payment shall be a sum
25 equal to fifty percentum of the estimate of costs and expenses to be
26 assessed against such utility company or authority under the provisions
27 of this subdivision and shall not be less than two hundred dollars.

1 (e) During the course of any state fiscal year, the chairman may
2 increase or decrease the estimate of costs and expenses. In such case,
3 revised bills shall be sent to each public utility company and such
4 authority, and such increase or decrease shall be equally apportioned
5 against the remaining payments for such fiscal year.

6 (f) On or before October tenth of each year, the chairman shall
7 compute the actual costs and expenses of the department and the commis-
8 sion and adjustments or other corrections as needed for the preceding
9 state fiscal year and, after deducting the amounts recovered pursuant to
10 subdivisions three and four of this section, shall, on or before October
11 twentieth, send to each public utility company and/or the authority
12 affected thereby a statement setting forth the amount due and payable
13 by, or the amount standing to the credit of, such public utility company
14 and/or the authority. Any amount owing by any public utility company
15 and/or the authority shall be paid not later than thirty days following
16 the date such statement is received. Any such amount standing to the
17 credit of any public utility company shall be refunded by the commission
18 or, at the option of such utility company, shall be applied as a credit
19 against any succeeding payment due.

20 (g) The total amount which may be charged to any public utility compa-
21 ny and the Long Island power authority under authority of this subdivi-
22 sion for any state fiscal year shall not exceed one per centum of such
23 public utility company's or authority's gross operating revenues derived
24 from intrastate utility operations in the last preceding calendar year,
25 or other twelve month period as determined by the chairman; provided,
26 however, that no corporation or person that is subject to the jurisdic-
27 tion of the commission only with respect to safety, or the power author-

1 ity of the state of New York, shall be subject to the general assessment
2 provided for under this subdivision.

3 Notwithstanding the provisions of subdivision one of this section, for
4 telephone corporations as defined in subdivision seventeen of section
5 two of this article, the total amount which may be charged such corpo-
6 rations for department expenses under the authority of subdivision one
7 of this section for any state fiscal year shall not exceed one-third of
8 one percentum of such corporation's gross operating revenue, over and
9 above five hundred thousand dollars, derived from intrastate utility
10 operations in the last preceding calendar year, or other twelve month
11 period as determined by the chairman.

12 (h) On-bill recovery charges billed pursuant to section sixty-six-m of
13 this chapter shall be excluded from any determination of an entity's
14 gross operating revenues derived from intrastate utility operations for
15 purposes of this section.

16 (b) The temporary state energy and utility service conservation
17 assessment shall be based upon the following percentum of the utility
18 entity's gross operating revenues derived from intrastate utility oper-
19 ations in the last preceding calendar year, minus the amount, if any,
20 that such utility entity is assessed pursuant to subdivisions one and
21 two of this section for the corresponding state fiscal year period: (1)
22 two percentum for the state fiscal year beginning April first, two thou-
23 sand thirteen and the state fiscal year beginning April first, two thou-
24 sand fourteen; (2) one and three-quarters percentum for the state fiscal
25 year beginning April first, two thousand fifteen; and (3) one and one-
26 half percentum for the state fiscal year beginning April first, two
27 thousand sixteen. With respect to the temporary state energy and utility
28 service conservation assessment to be paid for the state fiscal year

1 beginning April first, two thousand seventeen and notwithstanding clause
2 (i) of paragraph (d) of this subdivision, on or before March tenth, two
3 thousand seventeen, utility entities shall make a payment equal to one-
4 half of the assessment paid by such entities pursuant to this paragraph
5 for the state fiscal year beginning on April first, two thousand
6 sixteen. With respect to the Long Island power authority, the temporary
7 state energy and utility service conservation assessment shall be based
8 upon the following percentum of such authority's gross operating reven-
9 ues derived from intrastate utility operations in the last preceding
10 calendar year, minus the amount, if any, that such authority is assessed
11 pursuant to subdivisions one-a and two of this section for the corre-
12 sponding state fiscal year period: (1) one percentum for the state
13 fiscal year beginning April first, two thousand thirteen and the state
14 fiscal year beginning April first, two thousand fourteen; (2) three-
15 quarters of one percentum for the state fiscal year beginning April
16 first, two thousand fifteen; and (3) one-half percentum for the state
17 fiscal year beginning April first, two thousand sixteen; provided,
18 however, that should the amount assessed by the department for costs and
19 expenses pursuant to such subdivisions equal or exceed such authority's
20 temporary state energy and utility service conservation assessment for a
21 particular fiscal year, the amount to be paid under this subdivision by
22 such authority shall be zero. With respect to the temporary state ener-
23 gy and utility service conservation assessment to be paid for the state
24 fiscal year beginning April first, two thousand seventeen and notwith-
25 standing clause (i) of paragraph (d) of this subdivision, on or before
26 March tenth, two thousand seventeen, the Long Island power authority
27 shall make a payment equal to one-half of the assessment it paid for the
28 state fiscal year beginning on April first, two thousand sixteen. No

1 corporation or person subject to the jurisdiction of the commission only
2 with respect to safety, or the power authority of the state of New York,
3 shall be subject to the temporary state energy and utility service
4 conservation assessment provided for under this subdivision. Utility
5 entities whose gross operating revenues from intrastate utility oper-
6 ations are five hundred thousand dollars or less in the preceding calen-
7 dar year shall not be subject to the temporary state energy and utility
8 service conservation assessment. The minimum temporary state energy and
9 utility service conservation assessment to be billed to any utility
10 entity whose gross revenues from intrastate utility operations are in
11 excess of five hundred thousand dollars in the preceding calendar year
12 shall be two hundred dollars.

13 § 3. Section 1020-b of the public authorities law is amended by adding
14 a new subdivision 23 to read as follows:

15 23. "Service provider" means the entity under contract with the
16 authority to, among other things, manage and operate the authority's
17 electric transmission and distribution system.

18 § 4. Section 1020-d of the public authorities law, as added by chapter
19 506 of the laws of 1995, is amended to read as follows:

20 § 1020-d. [Trustees] Board of trustees. 1. [The] Starting on January
21 first, two thousand fourteen, the board of the authority shall be
22 constituted and consist of [fifteen] five trustees all of whom shall be
23 residents of the service area, [nine] three of whom shall be appointed
24 by the governor, one of whom the governor shall designate as chairman,
25 and serve at his or her pleasure, [three] one of whom shall be appointed
26 by the temporary president of the senate, and [three] one of whom shall
27 be appointed by the speaker of the assembly. [Two] One of the gover-
28 nor's appointees shall serve an initial term of one year; [two] one of

1 the governor's appointees shall serve an initial term of two years;
2 [two] and one of the governor's appointees shall serve an initial term
3 of three years[; and three of the governor's appointees shall serve an
4 initial term of four years]. [Two of the appointees] The appointee of
5 the temporary president of the senate and [two of the appointees] the
6 appointee of the speaker of the assembly shall serve initial terms of
7 [one year; and one appointee of the temporary president of the senate
8 and one appointee of the speaker of the assembly shall serve initial
9 terms of two] four years. Thereafter, all terms shall be for a period of
10 four years. In the event of a vacancy occurring in the office of trustee
11 by death, resignation or otherwise, the respective appointing officer
12 shall appoint a successor who shall hold office for the unexpired
13 portion of the term.

14 2. No trustee shall receive a salary, but each shall be entitled to
15 reimbursement for reasonable expenses in the performance of duties
16 assigned hereunder.

17 3. Notwithstanding the provisions of any other law, no trustee, offi-
18 cer or employee of the state, any state agency or municipality appointed
19 a trustee shall be deemed to have forfeited or shall forfeit his or her
20 office or employment by reason of his or her acceptance of a trusteeship
21 on the authority, his or her service thereon or his or her employment
22 therewith.

23 4. All trustees appointed under this section shall have relevant util-
24 ity, corporate board or financial experience.

25 § 5. On or before December 1, 2013 the governor, the temporary presi-
26 dent of the senate and the speaker of the assembly shall choose and
27 announce their appointments to the board of the Long Island power
28 authority to be made pursuant to section 1020-d of the public authori-

1 ties law, as amended by section four of this act, giving due consider-
2 ation to continuity of business. The board of trustees of the Long
3 Island power authority in existence on December 31, 2013, shall be abol-
4 ished on such date and be constituted on January 1, 2014 pursuant to
5 section 1020-d of the public authorities law, as amended by section four
6 of this act.

7 § 6. Subdivision (u) of section 1020-f of the public authorities law
8 is REPEALED.

9 § 7. Subdivisions (c) and (bb) of section 1020-f of the public author-
10 ities law, subdivision (c) as amended by chapter 506 of the laws of 2009
11 and subdivision (bb), as added by chapter 8 of the laws of 2012, are
12 amended and five new subdivisions (u), (cc), (dd), (ee) and (ff) are
13 added to read as follows:

14 (c) To appoint officers, agents and employees, without regard to any
15 personnel or civil service law, rule or regulation of the state and in
16 accordance with guidelines adopted by the authority, prescribe their
17 duties and qualifications and fix and pay their compensation[, provided,
18 however, that the appointment of the chief executive officer shall be
19 subject to confirmation by the senate in accordance with section twen-
20 ty-eight hundred fifty-two of this chapter;]. By January first, two
21 thousand fourteen, the authority, through its governance committee,
22 shall amend such guidelines to require that staffing at the authority is
23 kept at minimum levels, consistent with ensuring that the authority is
24 able to meet obligations with respect to its bonds and notes and all
25 applicable statutes and contracts, and oversee the activities of the
26 service provider;

27 (u) Rate plans. Subject to subdivision six of section one thousand
28 twenty-k of this title to fix rates and charges for the furnishing or

1 rendition of gas or electric power or of any related service at the
2 lowest level consistent with sound fiscal and operating practices of the
3 authority and which provide for safe and adequate service. In implement-
4 ing this power:

5 1. The authority and the service provider shall, on or before February
6 first, two thousand fifteen, submit for review to the department of
7 public service a three-year rate proposal for rates and charges to take
8 effect on or after January first, two thousand sixteen.

9 2. The authority and the service provider shall thereafter submit for
10 review to the department of public service any rate proposal that would
11 increase the rates and charges and thus increase the aggregate revenues
12 of the authority by two and one-half percent or greater; provided,
13 however, that the authority may place such rates and charges into effect
14 on an interim basis, subject to prospective change; provided, further,
15 that a final rate plan issued by the authority that would not so
16 increase such rates and charges shall not be subject to the requirements
17 of paragraph four of this subdivision and shall be considered final for
18 the purposes of review under article seventy-eight of the civil practice
19 law and rules. The authority and/or the service provider may otherwise
20 submit for review to such department any rate proposal irrespective of
21 its effect on revenues.

22 3. The authority shall not fix any final rates and charges proposed
23 that would not be subject to review by the department of public service
24 pursuant to paragraphs one and two of this subdivision until after hold-
25 ing public hearings thereon upon reasonable public notice, with at least
26 one such hearing to be held each in the county of Suffolk and the county
27 of Nassau.

1 4. Any recommendations associated with a rate proposal submitted
2 pursuant to paragraphs one and two of this subdivision shall be provided
3 by the department of public service to the board of the authority imme-
4 diately upon their finalization by the department. Unless the board of
5 the authority makes a preliminary determination in its discretion that
6 any particular recommendation is inconsistent with the authority's sound
7 fiscal operating practices, any existing contractual or operating obli-
8 gations, or the provision of safe and adequate service, the board shall
9 implement such recommendations as part of the final rate plan and such
10 final rate plan shall be deemed to satisfy the requirements of this
11 subdivision and be considered final for the purposes of review under
12 article seventy-eight of the civil practice law and rules. The board
13 shall make any such preliminary determination of inconsistency within
14 thirty days of receipt of such recommendations, with notice and the
15 basis of such determination being provided to the department of public
16 service, and contemporaneously posted on the websites of the authority
17 and its service provider. The board shall thereafter, within thirty days
18 of such posting and with due advance notice to the public, hold a public
19 hearing with respect to its preliminary determination of inconsistency.
20 At such hearing, the department of public service shall present the
21 basis for its recommendations, and the board shall present the basis for
22 its determination of inconsistency. The authority and the service
23 provider may, during the time period before such public hearing reach
24 agreement with the department on disputed issues. Within thirty days
25 after such public hearing, the board of the authority shall announce its
26 final determination and planned implementation with respect to any such
27 recommendations. The board's final determination of inconsistency shall
28 be subject to any applicable judicial review proceeding, including

1 review available under article seventy-eight of the civil practice law
2 and rules.

3 (bb) Comprehensive and regular management and operations audits. 1.
4 The authority and the service provider shall cooperate in the undertak-
5 ing and completion of a regular and comprehensive management and oper-
6 ations audit conducted pursuant to the requirements of this subdivision
7 and [subdivision two of section three] paragraph (d) of subdivision
8 three of section three-b of the public service law. Such audit shall
9 review and evaluate the [authority's] overall operations and management
10 of the authority and service provider, including [the authority's] such
11 operations and management in the context of [its] the authority's duty
12 to set rates at the lowest level consistent with standards and proce-
13 dures provided in subdivision (u) of this section, and include, but not
14 be limited to: (i) the [authority's] service provider's construction and
15 capital program planning in relation to the needs of its customers for
16 reliable service; (ii) the overall efficiency of the authority's and
17 service provider's operations; (iii) the manner in which the authority
18 is meeting its debt service obligations; (iv) the [authority's] Fuel and
19 Purchased Power Cost Adjustment clause and recovery of costs associated
20 with such clause; (v) the authority's and service provider's annual
21 budgeting procedures and process; and (vi) the authority's compliance
22 with debt covenants.

23 2. The department of public service shall notify the authority that
24 said department is in the process of initiating a comprehensive manage-
25 ment and operations audit as described in paragraph one of this subdivi-
26 sion in a manner that ensures the timeliness of such audit, and in
27 accordance with the following timeframe: the first comprehensive manage-
28 ment and operations audit shall be initiated as of the effective date of

1 [this subdivision] chapter eight of the laws of two thousand twelve and
2 undertaken in a manner and to an extent that is practicable in the
3 context of the authority's transition to a new management service struc-
4 ture; the second comprehensive management and operations audit shall be
5 initiated no later than December fifteenth, two thousand [fifteen]
6 sixteen; and all additional comprehensive management and operations
7 audits shall be initiated at least once every five years thereafter.
8 Within a reasonable time after such notification to the authority, said
9 department or the independent auditor retained by the authority to
10 undertake such audit shall hold public statement hearings, with proper
11 notice, in both Nassau and Suffolk counties for the purpose of receiving
12 both oral and written comments from the public on matters related to
13 such audit as described in paragraph one of this subdivision.

14 3. Each such audit shall be completed within eighteen months of initi-
15 ation absent an extension for good cause shown by the department of
16 public service or the independent auditor under contract with the
17 authority with notice of such extension to the governor, the temporary
18 president of the senate, the speaker of the assembly, and the chairs of
19 the authority and the department of public service. Such audit shall be
20 provided to the board of the authority immediately upon its completion.
21 The department of public service shall provide notice of completion of
22 such audit to the governor, the temporary president of the senate, the
23 speaker of the assembly, and the minority leaders of the senate and
24 assembly, and the authority, upon receipt of such audit, shall post a
25 copy of such audit, including findings and recommendations, on its
26 website and the website of the service provider. Unless the board of the
27 authority makes a preliminary determination that any particular finding
28 or recommendation contained in such audit is inconsistent with the

1 authority's sound fiscal operating practices, any existing contractual
2 or operating obligation, or the provision for safe and adequate service,
3 the board shall implement or cause its service provider to implement
4 such findings and recommendations in accordance with the timeframe spec-
5 ified under such audit.

6 4. The board of the authority shall make any preliminary determination
7 of inconsistency with respect to any such finding or recommendation
8 within thirty days of receipt of the audit, with notice and the basis of
9 such determination being provided to the department of public service.
10 Such notice and basis shall be posted contemporaneously on the authori-
11 ty's website and the website of the service provider and the board
12 shall, within thirty days of such posting and with due advance notice to
13 the public, hold a public hearing with respect to its preliminary deter-
14 mination of inconsistency. At such hearing the department of public
15 service or the independent auditor responsible for undertaking such
16 audit shall present the basis for its findings and recommendations and
17 the board shall present the basis for its determination of inconsisten-
18 cy. The authority and auditor may during the time period prior to such
19 public hearing reach agreement on disputed issues. Within thirty days
20 after such public hearing, the board of the authority shall announce its
21 final determination and planned implementations with respect to any such
22 findings and/or recommendations. The board's final determination of
23 inconsistency shall be subject to any applicable judicial review
24 proceeding, including review available under article seventy-eight of
25 the civil practice law and rules.

26 (cc) To prepare an emergency response plan pursuant to this subdivi-
27 sion. 1. The service provider shall, in consultation with the authority,
28 prepare and maintain an emergency response plan (i) to assure the

1 reasonably prompt restoration of service in the case of an emergency
2 event, defined for purposes of this subdivision as an event where wide-
3 spread outages have occurred in the authority's service territory due to
4 a storm or other causes beyond the control of the authority and the
5 service provider, (ii) consistent with the requirements of paragraph (a)
6 of subdivision twenty-one of section sixty-six of the public service law
7 and any regulations and orders adopted thereto, and (iii) establishing
8 the separate responsibilities of the authority and service provider.

9 2. On or before February third, two thousand fourteen, the authority
10 and service provider shall submit an emergency response plan to the
11 department of public service for review. Contemporaneously with such
12 submission, the authority shall provide notice of such proposed plan to
13 the secretary of state for publication in the state register, the
14 authority and service provider each shall post such plan on their
15 websites and otherwise make such plan available for review in-person,
16 and afford members of the public an opportunity to submit written
17 comments and oral comments pursuant to at least one hearing to be held
18 each in the county of Suffolk and the county of Nassau. Such written
19 comments must be submitted by March fourteenth, two thousand fourteen.
20 The authority and service provider shall provide a copy of all written
21 comments they receive and a transcript of such public hearings to the
22 department of public service for its consideration in reviewing the
23 emergency response plan. The department shall provide any recommenda-
24 tions to the service provider with respect to such plan on or before
25 April fifteenth, two thousand fourteen. Such plan must be made final by
26 June second, two thousand fourteen. For each year thereafter, the
27 service provider shall submit an emergency response plan to the depart-
28 ment of public service, and such department shall provide its recommen-

1 dations, in accordance with a schedule to be established by such depart-
2 ment and that is consistent with the schedule associated with such
3 department's review of similar such plans provided by electric corpo-
4 rations pursuant to subdivision twenty-one of section sixty-six of the
5 public service law.

6 3. By June second, two thousand fourteen, and by June first annually
7 thereafter, the authority and service provider shall jointly certify to
8 the department of homeland security and emergency services that the
9 emergency response plan ensures to the greatest extent feasible the
10 timely and safe restoration of energy services after an emergency
11 consistent with the requirements of paragraph (a) of subdivision twen-
12 ty-one of the public service law and the department's recommendations.
13 The filing of such emergency response plan shall also include a copy of
14 all written mutual assistance agreements among utilities. The service
15 provider shall file with the county executives of Nassau and Suffolk
16 county and the mayor of the city of New York the most recent version of
17 the emergency response plan, and make sure that such amended versions
18 are timely filed.

19 4. Starting in calendar year two thousand fourteen, the service
20 provider annually shall undertake at least one drill to implement proce-
21 dures to practice its emergency response plan. The service provider
22 shall notify and allow participation in such drill of all appropriate
23 municipal emergency responders and officials.

24 5. If, during an emergency event, electric service is not restored in
25 three days, the service provider shall within sixty days from the date
26 of full restoration file with the department a report constituting a
27 review of all aspects of the preparation and system restoration perform-

1 ance during the event, and shall thereafter take into consideration any
2 recommendations made by the department associated with such review.

3 (dd) On or before January first, two thousand fifteen, and by January
4 first of each calendar year thereafter, to submit for review to the
5 department of public service a report detailing the service provider's
6 planned capital expenditures.

7 (ee) To submit for review to the department of public service any
8 proposed plan related to implementing energy efficiency measures,
9 distributed generation or advanced grid technology programs for the
10 purpose provided pursuant to paragraph (g) of subdivision three of
11 section three-b of the public service law.

12 (ff) To assist and cooperate with the department of public service
13 with respect to any review undertaken pursuant to section three-b of the
14 public service law, including providing the department with reasonable
15 access to all facilities and premises owned or operated by the authority
16 or its service provider, allowing review of all books and records of the
17 authority and its service provider, providing copies of requested docu-
18 ments, allowing interviews of all appropriate personnel, and responding
19 in a reasonable and timely manner to any inquiries or reporting requests
20 made by the department.

21 § 8. Section 1020-q of the public authorities law, as added by chapter
22 517 of the laws of 1986 and subdivision 2 as amended by section 19 of
23 part Y of chapter 63 of the laws of 2000, is amended to read as follows:

24 § 1020-q. Payments in lieu of taxes. 1. Each year after property ther-
25 etofore owned by LILCO is acquired by the authority by any means author-
26 ized by this title and, as a consequence, is removed from the tax rolls,
27 the authority shall make payments in lieu of taxes to municipalities and
28 school districts equal to the taxes and assessments which would have

1 been received from year to year by each such jurisdiction if such acqui-
2 sition had not occurred, [except for such taxing jurisdictions which tax
3 the Shoreham plant, in which case the in lieu of tax payments shall in
4 the first year after the acquisition be equal to one hundred percent of
5 the taxes and assessments which would have been received by such taxing
6 jurisdictions. In each succeeding year such in lieu of tax payments
7 shall be decreased by ten percent until such time as such payments equal
8 taxes and assessments which would have been levied on such plant in a
9 nonoperative state] provided, however, that for the calendar year start-
10 ing on January first, two thousand fifteen, and for each calendar year
11 thereafter, such payments in lieu of taxes shall not exceed the in lieu
12 of tax payments made to such municipalities and school districts in the
13 immediately preceding year by more than two percent.

14 2. The authority shall also make payments in lieu of taxes for those
15 taxes which would otherwise be imposed [upon LILCO, if LILCO were to
16 continue in operation,] pursuant to sections one hundred eighty-six-a
17 and one hundred eighty-six-c of the tax law, [and to former sections one
18 hundred eighty-six and one hundred eighty-six-b of the tax law as such
19 sections one hundred eighty-six and one hundred eighty-six-b were in
20 effect on December thirty-first, nineteen hundred ninety-nine, paragraph
21 (b) of subdivision four of section one hundred seventy-four of the navi-
22 gation law,] and any taxes imposed by a city pursuant to the authori-
23 zation granted by section twenty-b of the general city law.

24 3. No municipality or governmental subdivision, including a school
25 district or special district, shall be liable to the authority or any
26 other entity for a refund of property taxes originally assessed against
27 the Shoreham plant. Any judicial determination that the Shoreham plant
28 assessment was excessive, unequal or unlawful for any of the years from

1 nineteen. hundred seventy-six to the effective date of this title shall
2 not result in a refund by any taxing jurisdiction of taxes previously
3 paid by LILCO pursuant to such Shoreham plant assessment. The authority
4 shall discontinue and abandon all proceedings, brought by its predeces-
5 sor in interest, which seek the repayment of all or part of the taxes
6 assessed against the Shoreham plant.

7 § 9. Subdivision 1 of section 1020-s of the public authorities law, as
8 amended by chapter 388 of the laws of 2011, is amended to read as
9 follows:

10 1. The rates, services and practices relating to the electricity
11 generated by facilities owned or operated by the authority shall not be
12 subject to the provisions of the public service law or to regulation by,
13 or the jurisdiction of, the public service commission, except to the
14 extent (a) article seven of the public service law applies to the siting
15 and operation of a major utility transmission facility as defined there-
16 in, (b) article ten of such law applies to the siting of a generating
17 facility as defined therein, [and] (c) section eighteen-a of such law
18 provides for assessment for certain costs, property or operations, and
19 (d) to the extent that the department of public service reviews and
20 makes recommendations with respect to the operations and provision of
21 services of, and rates and budgets established by, the authority pursu-
22 ant to section three-b of such law.

23 § 10. Section 1020-w of the public authorities law, as added by chap-
24 ter 517 of the laws of 1986, is amended to read as follows:

25 § 1020-w. Audit and annual reports. The accounts of the authority
26 shall be subject to the supervision of the state comptroller and an
27 annual audit shall be performed by an independent certified accountant
28 selected by the [state division of the budget] authority, upon recommen-

1 lation of its finance and audit committee. The authority shall submit
2 annually to the governor, the state comptroller, the temporary president
3 of the senate, the speaker of the assembly and the county executives and
4 governing bodies of the counties of Suffolk and Nassau, a detailed
5 report pursuant to the provisions of section two thousand eight hundred
6 of [title one of article nine of] this chapter, which report shall be
7 verified by the chairman of the authority. The authority shall comply
8 with the provisions of sections two thousand eight hundred one, two
9 thousand eight hundred two and two thousand eight hundred three of
10 [title one of article nine of] this chapter.

11 § 11. Section 1020-cc of the public authorities law, as amended by
12 chapter 413 of the laws of 2011, is amended to read as follows:

13 § 1020-cc. Authority subject to certain provisions contained in the
14 [state finance law,] the public service law[,] and the social services
15 law [and the general municipal law]. [All contracts of the authority
16 shall be subject to the provisions of the state finance law relating to
17 contracts made by the state.] The authority shall also establish rules
18 and regulations with respect to providing to its residential gas, elec-
19 tric and steam utility customers those rights and protections provided
20 in article two and sections one hundred seventeen and one hundred eigh-
21 teen of the public service law and section one hundred thirty-one-s of
22 the social services law. The authority shall conform to any safety stan-
23 dards regarding manual lockable disconnect switches for solar electric
24 generating equipment established by the public service commission pursu-
25 ant to subparagraph (ii) of paragraph (a) of subdivision five and
26 subparagraph (ii) of paragraph (a) of subdivision five-a of section
27 sixty-six-j of the public service law. [The authority shall let
28 contracts for construction or purchase of supplies, materials, or equip-

1 ment pursuant to section one hundred three and paragraph (e) of subdivi-
2 sion four of section one hundred twenty-w of the general municipal law.]

3 § 12. Paragraph (b) of subdivision 4 of section 94-a of the executive
4 law, as amended by chapter 8 of the laws of 2012, is amended to read as
5 follows:

6 (b) The utility intervention unit shall have the power and duty to:

7 (i) on behalf of the secretary, initiate, intervene in, or participate
8 in any proceedings before the public service commission or the depart-
9 ment of public service, to the extent authorized by sections three-b,
10 twenty-four-a, seventy-one, eighty-four or ninety-six of the public
11 service law or any other applicable provision of law, where he or she
12 deems such initiation, intervention or participation to be necessary or
13 appropriate;

14 (ii) represent the interests of consumers of the state before federal,
15 state and local administrative and regulatory agencies engaged in the
16 regulation of energy services; and

17 (iii) [accept and investigate complaints of any kind from Long Island
18 power authority consumers, attempt to mediate such complaints where
19 appropriate directly with such authority and refer complaints to the
20 appropriate state or local agency authorized by law to take action with
21 respect to such complaints.] hold regular forums in each of the service
22 territories of the combination gas and electric corporations, as defined
23 under section two of the public service law, and the Long Island power
24 authority to educate consumers about utility-related matters and the
25 regulatory process, opportunities to lower energy costs, including
26 through energy efficiency and distributed generation, and other matters
27 affecting consumers.

1 § 13. Notwithstanding any other provision of law to the contrary,
2 including but not limited to any provision of law related to rebidding,
3 letting or amending contracts of any amount, the Long Island power
4 authority is authorized to amend the operating service agreement, dated
5 December 28, 2011, entered between such authority and PSEG, Long Island,
6 LLC, including Amendment No. 1 thereto, approved on June 27, 2012, sole-
7 ly by adoption of a resolution by a majority of the authority's board of
8 trustees.

9 § 14. This act shall supersede the fifth project condition established
10 in Resolution No. 97-LI-1 of the public authorities control board, dated
11 July 16, 1997, related to the implementation of certain rate increases.

12 § 15. This act shall take effect on January 1, 2014; provided, howev-
13 er, that section twelve of this act shall take effect on April 1, 2014,
14 and sections five, ten, eleven, thirteen and fourteen of this act shall
15 take effect immediately; provided, however, that the amendments to
16 subdivision 6 of section 18-a of the public service law made by section
17 two of this act shall not affect the repeal of such subdivision and
18 shall be deemed repealed therewith.

19

PART B

20 Section 1. Legislative findings. The legislature hereby finds and
21 determines:

22 1. On May 28, 1998, Long Island Power Authority (the authority)
23 acquired all the capital stock and associated assets, including trans-
24 mission and distribution (T&D) system assets of Long Island Lighting
25 Company (LILCO) which does business as the retail electric utility on
26 Long Island, New York under the name of LIPA. In connection with that

1 acquisition, the authority took over ultimate responsibility for provid-
2 ing electric utility service to residential, commercial, industrial,
3 nonprofit and governmental customers in the counties of Suffolk and
4 Nassau and a portion of the county of Queens (hereinafter referred to as
5 the "service area"). Such acquisition effectively converted LILCO from
6 an investor-owned utility that was comprehensively regulated by the New
7 York Public Service Commission (PSC) and the United States Federal Ener-
8 gy Regulatory Commission (FERC), to a municipal utility that is not
9 comprehensively regulated either by the PSC or FERC.

10 2. Since May 28, 1998, neither the Authority nor LIPA has directly
11 operated or maintained the T&D system assets, provided electric service
12 or billed and collected T&D rates from LIPA's customers; instead, the
13 authority and LIPA have contracted out virtually all of these activities
14 to other companies. Most of these operations and service responsibil-
15 ities have been contracted out to affiliates of a company now known as
16 National Grid plc (National Grid), a multi-national electric and gas
17 utility company organized under the laws of England and Wales pursuant
18 to a management services agreement. Thus, while the LIPA name appears on
19 customer bills as well as on service trucks and other equipment used in
20 the service area, affiliates of National Grid have been principally in
21 charge of management and operation of the T&D system assets and provid-
22 ing electricity to consumers in the service area. The authority and
23 LIPA have now contracted with affiliates of Public Service Enterprise
24 Group and Lockheed Martin Services Inc. (PSEG-Lockheed) to provide oper-
25 ation and maintenance services for the T&D system assets for ten years
26 starting January 1, 2014, when the National Grid contract expires.

27 3. High costs of electric utility service poses a serious threat to
28 the economic well-being, health and safety of the residents of and the

1 commerce and industry in the service area. High costs of electric util-
2 ity service deter commerce and industry from locating in the service
3 area and have caused existing commerce and industry to consider serious-
4 ly moving out of the service area.

5 4. High debt and associated debt service contribute to the authority's
6 high electric rates. The authority has approximately seven billion
7 dollars in outstanding debt, a substantial portion of which was issued
8 to refinance debt associated with construction of the now abandoned
9 Shoreham nuclear power plant. The annual debt service associated with
10 such bonds puts pressure on the authority's customer rates.

11 5. As of December 31, 2012, the three major rating agencies generally
12 rated the authority's debt in the single-A range, though Moody's Inves-
13 tors Services assigns approximately seven hundred million dollars of the
14 authority's debt slightly lower ratings of Baal and Baa2.

15 6. If securitized restructuring bonds were issued by a bankruptcy-re-
16 mote entity with a AAA or equivalent rating in current market conditions
17 to finance a portion of the costs of purchasing, redeeming or defeasing
18 outstanding debt of the authority, and other associated costs, the debt
19 service on the authority's debt could be reduced and the costs of elec-
20 tric utility service could be lowered.

21 7. Securitized restructuring bonds are likely to be most attractive to
22 the investing public and result in the lowest possible yields if they
23 are issued by a newly organized, special purpose public benefit corpo-
24 ration or other corporate municipal instrumentality of the state.

25 8. The purpose of this act is to provide a legislative foundation for
26 the issuance of securitized restructuring bonds to refinance outstanding
27 debt of the authority, a significant portion of which relates to LILCO's
28 costs of constructing and financing the now abandoned Shoreham nuclear

1 power plant, including the creation of restructuring property by the
2 authority to provide for the redemption or defeasance of a portion of
3 the outstanding debt of the authority. It is the intent of the legisla-
4 ture to authorize, for the purpose of reducing electric utility costs to
5 consumers in the service area, the following: (a) the organization of a
6 restructuring bond issuer as a special purpose corporate municipal
7 instrumentality of the state, created for the limited purpose of issuing
8 securitized restructuring bonds to purchase restructuring property to
9 finance the cost of purchasing, redeeming or defeasing a portion of the
10 outstanding debt of the authority and associated costs, which securi-
11 tized restructuring bonds create no new financial obligations or liabil-
12 ities for the authority or for the state; and (b) implementation of
13 contracts with owners of the securitized restructuring bonds through a
14 statutory pledge and agreement that the state will not in any way take
15 or permit any action to revoke, modify, impair, postpone, terminate or
16 amend this act in any manner that is materially adverse to the owners of
17 the restructuring bonds until those bonds are no longer outstanding and
18 all amounts due and owing under the related transaction documents have
19 been paid in full.

20 9. Accordingly, the issuance of securitized restructuring bonds is
21 expected to result in lower aggregate distribution and transmission
22 charges and transition charges, compared to other available alterna-
23 tives.

24 § 2. Definitions. As used or referred to in this act, unless a differ-
25 ing meaning clearly appears from the context:

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

1 or arrangement entered into in connection with the issuance of restruc-
2 turing bonds that is designed to promote the credit quality and marketa-
3 bility of such restructuring bonds or to mitigate the risk of an
4 increase in interest rates.

5 2. "Approved restructuring costs" means, to the extent approved as
6 such under a restructuring cost financing order, (a) costs of purchas-
7 ing, redeeming or defeasing a portion of outstanding debt of the author-
8 ity, including bonds and notes issued by the authority, debt issued by
9 the New York state energy research and development authority for the
10 benefit of the LILCO; (b) costs of terminating interest rate swap
11 contracts and other financial contracts entered into by or for the bene-
12 fit of the authority and related to debt obligations of the authority;
13 (c) rebate, yield reduction payments and any other amounts payable to
14 the United States Treasury or to the Internal Revenue Service to
15 preserve or protect the federal tax-exempt status of outstanding debt
16 obligations of the authority; and (d) upfront financing costs associated
17 with restructuring bonds.

18 3. "Assignee" means any individual, corporation, limited liability
19 company, partnership or limited partnership, trust or other legally-re-
20 cognized entity to which an interest in restructuring property is
21 assigned, sold or transferred, other than as security, including any
22 assignee of that party.

23 4. "Authority" means Long Island Power Authority, a corporate munic-
24 ipal instrumentality and political subdivision of the state.

25 5. "Consumer" means any individual, governmental body, trust, business
26 entity, nonprofit organization or other legally-recognized entity that
27 takes electric delivery service within the service area by means of
28 electric transmission or distribution facilities, whether those electric

1 transmission or distribution facilities are owned by LIPA or any other
2 entity.

3 6. "Financing cost" means the costs to issue, service, repay, or refi-
4 nance restructuring bonds, whether incurred upon issuance of such
5 restructuring bonds or over the life of the restructuring bonds, and
6 approved for recovery in a restructuring cost financing order. Without
7 limitation, "financing cost" may include, as applicable, any of the
8 following:

9 (a) principal, interest and redemption premiums payable on restructur-
10 ing bonds;

11 (b) any payment required under an ancillary agreement and any amount
12 required to fund or replenish a debt service reserve account or other
13 account established under any indenture, ancillary agreement or other
14 financing document relating to the restructuring bonds;

15 (c) any federal, state or local taxes, payments in lieu of taxes,
16 franchise fees or license fees imposed on transition charge revenues;
17 and

18 (d) any cost related to issuing restructuring bonds, administering the
19 restructuring bond issuer and servicing restructuring property and
20 restructuring bonds, or related to the efforts to prepare or obtain
21 approval of a restructuring cost financing order, including, without
22 limitation, costs of calculating adjustments of transition charges,
23 servicing fees and expenses, trustee fees and expenses, legal fees and
24 expenses, accounting fees and expenses, administrative fees and
25 expenses, placement fees, underwriting fees, fees and expenses of the
26 authority's advisors and outside counsel, if any, rating agency fees and
27 any other related cost that is approved for recovery in the restructur-
28 ing cost financing order.

1 7. "Financing entity" means the restructuring bond issuer, the author-
2 ity or any servicer, trustee, collateral agent, and other person or
3 entity acting for the benefit of owners of the restructuring bonds, the
4 restructuring bond issuer or the authority that may own restructuring
5 property or have rights to receive proceeds of restructuring bonds or to
6 receive proceeds from the sale of restructuring property.

7 8. "LIPA" means Long Island Lighting Company, currently doing business
8 under the name of LIPA.

9 9. "Ongoing financing costs" means financing costs that are not
10 upfront financing costs. Ongoing financing costs include: (a) principal,
11 interest and redemption premiums payable on restructuring bonds; (b) any
12 payment required under an ancillary agreement and any amount required to
13 replenish a debt service reserve account or other account established
14 under any indenture, ancillary agreement or other financing document
15 relating to restructuring bonds; (c) any federal, state or local taxes,
16 payments in lieu of taxes, franchise fees or license fees imposed on
17 transition charge revenues; and (d) any cost related to administering
18 the restructuring bond issuer and servicing restructuring property or
19 restructuring bonds, including, without limitation, costs of calculating
20 adjustments of transition charges, servicing fees and expenses, adminis-
21 trative fees and expenses, trustee fees and expenses, and legal fees and
22 expenses, accounting fees and expenses, and rating agency fees, approved
23 for recovery in the restructuring cost financing order. Ongoing financ-
24 ing costs shall include any excess of actual upfront financing costs
25 over the estimate of upfront financing costs included in the principal
26 amount of the restructuring bonds.

27 10. "Restructuring bond issuer" means the corporate municipal instru-
28 mentality of the state created under section four of this act.

1 11. "Restructuring bonds" means bonds or other evidences of indebt-
2 edness that are issued pursuant to an indenture or other agreement of
3 the restructuring bond issuer under a restructuring cost financing order
4 (a) the proceeds of which are used, directly or indirectly, to recover,
5 finance, or refinance approved restructuring costs, (b) that are direct-
6 ly or indirectly secured by, or payable from, restructuring property,
7 and (c) that have a term no longer than thirty years.

8 12. "Restructuring cost financing order" means an order by the author-
9 ity, adopted in accordance with this act, which approves the imposition
10 and collection of transition charges, and the financing of approved
11 restructuring costs and upfront financing costs through the sale of
12 restructuring property and the issuance of restructuring bonds, and
13 which includes a procedure to require periodic adjustments to transition
14 charges to ensure the collection of transition charges sufficient to
15 provide for the timely payment of scheduled debt service on the restruc-
16 turing bonds and all other ongoing financing costs contemplated by the
17 restructuring cost financing order.

18 13. "Restructuring property" means the property rights and interests
19 created pursuant to this act, including, without limitation, the right,
20 title, and interest: (a) in and to the transition charges established
21 pursuant to a restructuring cost financing order, as adjusted from time
22 to time in accordance with the restructuring cost financing order; (b)
23 in and to all revenues, collections, claims, payments, money, or
24 proceeds of or arising from the transition charges or constituting tran-
25 sition charges that are the subject of a restructuring cost financing
26 order, regardless of whether such revenues, collections, claims,
27 payments, money, or proceeds are imposed, billed, received, collected or
28 maintained together with or commingled with other revenues, collections,

1 claims, payments, money or proceeds; and (c) in and to all rights to
2 obtain adjustments to the transition charges pursuant to the terms of
3 the restructuring cost financing order. Restructuring property shall
4 constitute a vested, presently existing property right notwithstanding
5 the fact that the value of the property right will depend on further
6 acts that have not yet occurred, including but not limited to, consumers
7 remaining or becoming connected to the T&D system assets and taking
8 electric delivery service, the imposition and billing of transition
9 charges, or, in those instances where consumers are customers of LIPA or
10 any successor owner of the T&D system assets, such owner performing
11 certain services.

12 14. "Service area" means the geographical area within which LIPA
13 provided electric distribution services as of the implementation date of
14 this act.

15 15. "Servicer" means an entity authorized and required, by contract or
16 otherwise, to impose, bill and collect transition charges, to prepare
17 periodic reports regarding billings and collections of transition charg-
18 es, to remit collections to the appropriate financing entity, and to
19 provide other services contemplated by the restructuring cost financing
20 order, which may include calculation of periodic adjustments to the
21 transition charges or providing other services related to the restruc-
22 turing property. Without limitation, LIPA or any successor owner of the
23 T&D system assets, their agents or subcontractors, or any entity author-
24 ized to bill and collect T&D rates may be a servicer.

25 16. "Servicing fee" means, except to the extent otherwise specified in
26 a restructuring cost financing order, the periodic amount paid pursuant
27 to a servicing agreement, indenture or other such document to a servicer
28 of restructuring property which amount shall approximate the estimated

1 incremental cost of imposing, billing and collecting transition charges,
2 preparing servicing reports and performing other customary servicing
3 services required in connection with securitized bonds. A restructuring
4 cost financing order may authorize a smaller fee payable to a successor
5 servicer that is affiliated with a successor owner of the T&D system
6 assets if the incremental cost of providing servicing services is less
7 than LIPA's incremental costs. A restructuring cost financing order may
8 authorize a larger fee payable to a successor servicer that is not
9 affiliated with the owner of the T&D system assets or is not performing
10 similar services with respect to the base rates of the owner of the T&D
11 system assets if such larger fee is reasonably necessary to employ a
12 reliable successor servicer.

13 17. "Successor regulator" means a regulatory department, commission or
14 other instrumentality or subdivision of the state with jurisdiction to
15 regulate the T&D rates of LIPA or its successor as owner of the T&D
16 system assets.

17 18. "Third-party biller" means any person or entity authorized,
18 required or entitled to bill or collect transition charges or T&D rates
19 other than the authority, LIPA or a successor owner of the T&D system
20 assets, or a servicer.

21 19. "T&D rates" means rates and charges for electric transmission and
22 distribution services in the service area. "T&D rates" shall not include
23 charges for the generation or resale of electricity or any charges
24 imposed to fund public purpose programs.

25 20. "T&D system assets" means the physically integrated system of
26 electric transmission and distribution facilities (and other general
27 property and equipment used in connection therewith) owned by LIPA as of
28 the effective date of this act or thereafter acquired for use by LIPA or

1 its successors in providing retail electric utility service to consumers
2 in the service area.

3 21. "Transition charges" means those rates and charges relating to the
4 T&D system assets that are separate and apart from base rates of LIPA or
5 any successor owner of the T&D system assets and that are authorized in
6 a restructuring cost financing order to recover from consumers the prin-
7 cipal, interest and premium payable on restructuring bonds and the other
8 ongoing financing costs associated with the restructuring bonds. As
9 provided in paragraph (c) of subdivision 5 of section five of this act,
10 transition charges shall be imposed on all consumers in the service area
11 and collected by LIPA or any successor owner of the T&D system assets,
12 their agents, subcontractors, assignees, collection agents or any other
13 entity designated under the restructuring cost financing order.

14 22. "Upfront financing costs" means the fees and expenses, including,
15 without limitation, expenses associated with the efforts to prepare or
16 obtain approval of a restructuring cost financing order, as well as the
17 fees and expenses associated with the structuring, marketing, and issu-
18 ance of restructuring bonds, including, without limitation, counsel
19 fees, structural advisory fees, underwriting fees and original issue
20 discount, rating agency and trustee fees (including fees of trustee's
21 counsel), accounting and auditing fees, printing and marketing expenses,
22 stock exchange listing fees and compliance fees, filing fees, any appli-
23 cable taxes, payments in lieu of taxes, the amount required to fund a
24 debt service reserve account or other account established under any
25 indenture, ancillary agreement or other financing document relating to
26 the restructuring bonds, and fees and expenses of the authority's advi-
27 sors and outside counsel, if any. Upfront financing costs include
28 reimbursement to any person of amounts advanced for payment of such

1 costs. Upfront financing costs do not include scheduled debt service or
2 other ongoing financing costs, to the extent such ongoing financing
3 costs are payable from transition charge revenues. If any upfront
4 financing costs cannot be reasonably determined before the principal
5 amount of restructuring bonds is fixed, such financing costs shall be
6 estimated and the aggregate of such estimates shall be included as an
7 upfront financing cost for purposes of determining the principal amount
8 of restructuring bonds to be issued. If the actual upfront financing
9 costs are greater than the estimated upfront financing costs, the
10 difference shall be deemed to be an ongoing financing cost; if the actu-
11 al upfront financing costs are less than the estimated upfront financing
12 costs, the proceeds corresponding to such difference shall be used to
13 pay ongoing financing costs.

14 § 3. Procedure; judicial review. 1. Standard. The authority may
15 prepare a restructuring cost financing order for the purpose of issuing
16 restructuring bonds to refinance outstanding debt of the authority based
17 on a finding that such bond issuance is expected to result in savings to
18 consumers of electric transmission and distribution services in the
19 service area on a net present value basis.

20 2. Public hearings. Notwithstanding any other provision of law to the
21 contrary, at any time after the effective date of this act, after making
22 such finding, the authority shall schedule and hold one or more expe-
23 dited public statement hearings on the proposed restructuring cost
24 financing order. After the conclusion of such hearings and its review
25 of any comments received, the authority shall finalize the restructuring
26 cost financing order for submission to the board of trustees of the
27 authority. If the board of trustees of the authority approves such

1 restructuring cost financing order, the restructuring cost financing
2 order shall become a final rate order by the authority.

3 3. Appeals. Because delay in the final determination of the petition
4 will delay the issuance of restructuring bonds, thereby diminishing
5 savings to consumers that might be achieved if the restructuring bonds
6 were issued promptly after the issuance of the restructuring cost
7 financing order, notwithstanding any other law to the contrary, any
8 action, suit or proceeding to which the authority or the restructuring
9 bond issuer may be a party, in which any question arises as to the
10 validity of this act or any restructuring cost financing order, shall be
11 preferred over all other civil causes in all courts of the state, except
12 election matters, and shall be heard and determined in preference to all
13 other civil business pending therein, except election matters, irrespec-
14 tive of position on the calendar. Such preference shall also be granted
15 upon application of counsel to the authority in any action or proceeding
16 questioning the validity of this act or any restructuring cost financing
17 order in which such counsel may be allowed to intervene. Notwithstanding
18 any other provision of law to the contrary, the validity of this act may
19 only be challenged by an aggrieved party pursuant to an action, suit or
20 proceeding filed within thirty days of the effective date of this act,
21 and the validity of any restructuring cost financing order may only be
22 challenged by an aggrieved party pursuant to an action, suit or proceed-
23 ing filed within thirty days after such restructuring cost financing
24 order becomes a final rate order by the authority; provided, however,
25 that any such action, suit or proceeding and all supporting papers shall
26 be filed directly to the Supreme Court, Appellate Division, Second Judi-
27 cial Department.

1 4. Expiration of appeals. The authority shall provide written notifi-
2 cation to the restructuring bond issuer upon the authority's determi-
3 nation that any and all actions, suits and proceedings challenging this
4 act and the final restructuring cost financing order have been denied or
5 dismissed or the timing associated with the filing of such actions,
6 suits and proceedings has lapsed or expired, and any related appeals
7 have been exhausted or the timing related to such appeals has lapsed or
8 expired.

9 5. Agreement to sell restructuring bonds. Within the time specified in
10 the restructuring cost financing order, after receiving notice from the
11 authority that the time for petitions and appeals has lapsed or expired,
12 the restructuring bond issuer shall enter into an agreement with one or
13 more underwriters or purchasers satisfactory to the authority to sell
14 the restructuring bonds in compliance with the restructuring cost
15 financing order. No later than the third business day after the pricing
16 of the restructuring bonds in accordance with such agreement, the
17 initial servicer shall determine the initial transition charges and the
18 expected savings to consumers in accordance with the restructuring cost
19 financing order and shall file an issuance advice letter with the
20 authority and the restructuring bond issuer setting forth the principal
21 amount of restructuring bonds to be issued, the pricing, the net
22 proceeds, the initial transition charges, the expected savings to
23 consumers and any other information required by the restructuring cost
24 financing order. No later than the end of the third business day after
25 the filing of such issuance advice letter, the authority shall confirm
26 in a notice to the restructuring bond issuer that such pricing complies
27 with the restructuring cost financing order.

1 6. Issuance of restructuring bonds. Within ninety days after receiving
2 notice of confirmation from the authority, the restructuring bond issuer
3 shall issue the restructuring bonds, in one or more series or tranches
4 and at one or more times, pursuant to the agreement to sell the restruc-
5 turing bonds. The restructuring bond issuer shall purchase the restruc-
6 turing property from the authority for a purchase price equal to the net
7 proceeds from the sale of the restructuring bonds less any amounts of
8 such proceeds required to fund or pay upfront financing costs.

9 7. Irrevocability. Upon the issuance of the restructuring bonds, the
10 transition charges, including any adjustments thereof as provided in the
11 restructuring cost financing order, shall be deemed established by the
12 authority as irrevocable, final and effective without further action by
13 the authority, or any other entity. The state, including the authority
14 or any successor regulator, thereafter may not in any way take or permit
15 any action to reduce, impair, postpone or terminate the transition
16 charges approved in the restructuring cost financing order, as the same
17 may be adjusted from time to time pursuant to subdivision 3 of section
18 five of this act, or impair the restructuring property or the collection
19 or recovery of transition charge revenues, including, but not limited
20 to, either directly or indirectly by taking transition charges into
21 account when setting other rates for any owner of the T&D system assets;
22 nor shall the amount of revenues arising with respect to restructuring
23 property be subject in any way to reduction, impairment, postponement,
24 or termination.

25 8. Application of proceeds. The restructuring bond issuer shall cause
26 the proceeds from its issuance of the restructuring bonds to be placed
27 in one or more separate accounts and used only to pay or fund upfront
28 financing costs and to purchase the restructuring property from the

1 authority. The authority shall cause the proceeds from its sale of
2 restructuring property to be placed in one or more separate accounts and
3 used only to pay approved restructuring costs, and if funds remain in
4 those accounts after the payment of all approved restructuring costs, to
5 make a refund or credit to consumers on the same basis that transition
6 charges are then being imposed, to the extent such a refund or credit is
7 practical.

8 § 4. Creation of restructuring bond issuer. 1. Creation of restruc-
9 turing bond issuer. For the purpose of effectuating the purposes
10 declared in section one of this act, there is hereby created a special
11 purpose corporate municipal instrumentality of the state to be known as
12 "LI power refinancing authority", which shall be a body corporate and
13 politic, a political subdivision of the state, and a public benefit
14 corporation, exercising essential governmental and public powers for the
15 good of the public. The restructuring bond issuer shall not be created
16 or organized, and its operations shall not be conducted, for the purpose
17 of making a profit. No part of the revenues or assets of the restructur-
18 ing bond issuer shall inure to the benefit of or be distributable to its
19 trustees or officers or any other private persons, except as herein
20 provided for actual services rendered.

21 2. Activities limited to issuing restructuring bonds and related
22 activities.

23 (a) The restructuring bond issuer is hereby authorized to:

24 (i) issue the restructuring bonds contemplated by a restructuring cost
25 financing order, and use the proceeds thereof to purchase or acquire,
26 and to own, hold and use restructuring property or to pay or fund
27 upfront financing costs;

1 (ii) contract for servicing of restructuring property and restructur-
2 ing bonds and for administrative services; and

3 (iii) pledge the restructuring property to secure the restructuring
4 bonds and the payment of ongoing financing costs, all pursuant to
5 section seven of this act.

6 (b) So long as any restructuring bonds remain outstanding, the
7 restructuring bond issuer shall not be authorized to merge or consol-
8 idate, directly or indirectly, with any person or entity. Additionally,
9 the restructuring bond issuer shall not have the power or authority to
10 incur, guarantee or otherwise become obligated to pay any debt or other
11 obligations other than the restructuring bonds and financing costs
12 unless otherwise permitted by the restructuring cost financing order.
13 The restructuring bond issuer shall keep its assets and liabilities
14 separate and distinct from those of any other entity.

15 (c) The restructuring bond issuer shall have no additional authority
16 to engage in other business activities; provided, however, that in
17 connection with the powers specified in paragraph (a) of subdivision 2
18 of this section, as a financing entity, the restructuring bond issuer
19 shall have the power to:

20 (i) sue and be sued;

21 (ii) have a seal and alter the same at pleasure;

22 (iii) make and alter by-laws for its organization and internal manage-
23 ment and make rules and regulations governing the use of its property;

24 (iv) make and execute contracts and all other instruments necessary or
25 convenient for the exercise of its powers and functions under this act
26 and to commence any action to protect or enforce any right conferred
27 upon it by any law, contract or other agreement, including, without
28 limitation, make and execute contracts with the authority, LIPA or any

1 successor owner of the T&D system assets, any servicers, any financing
2 entity or any other public or private entities to service restructuring
3 property owned by restructuring bond issuer, to service restructuring
4 bonds issued by restructuring bond issuer, and to provide services in
5 administering the restructuring bond issuer, and to pay compensation for
6 such services;

7 (v) appoint officers, agents and employees, prescribe their duties and
8 qualifications, fix their compensation and engage the services of
9 private consultants, accountants, counsel and others on a contract basis
10 for rendering professional and technical assistance and advice;

11 (vi) pay its operating expenses, scheduled debt service on the
12 restructuring bonds and other ongoing financing costs;

13 (vii) issue restructuring bonds and provide for the rights of the
14 holders thereof;

15 (viii) procure insurance against any loss in connection with its
16 activities, properties and assets in such amount and from such insurers
17 as it deems desirable;

18 (ix) invest any funds or other moneys under its custody and control in
19 investment securities or under any ancillary agreement;

20 (x) establish and maintain such reserves, special funds and accounts,
21 to be held in trust or otherwise, as may be required by agreements made
22 in connection with the restructuring bonds, or any agreement between
23 itself and third parties;

24 (xi) as security for the payment of the principal of and interest on
25 any restructuring bonds issued by it pursuant to this act, and any
26 agreement made in connection therewith, pledge all or any part of its
27 revenues or assets, including, without limitation, restructuring proper-
28 ty, unspent proceeds of its restructuring bonds, transition charge

1 revenues, and earnings from the investment and reinvestment of unspent
2 proceeds of its restructuring bonds and transition charge revenues; and
3 (xii) do any and all things necessary or convenient to carry out its
4 purposes and exercise the powers expressly given and granted in this
5 section.

6 3. No authority to file for bankruptcy protection. The restructuring
7 bond issuer shall not be authorized to be a debtor under chapter 9 of
8 the United States Bankruptcy Code or any other provision of the United
9 States Bankruptcy Code. No governmental officer or organization is
10 empowered to authorize, whether by executive order or otherwise,
11 restructuring bond issuer to be a debtor under chapter 9 of the United
12 States Bankruptcy Code or any other provision of the United States Bank-
13 ruptcy Code. Until at least one year and one day after all restructuring
14 bonds issued by restructuring bond issuer have ceased to be outstanding
15 and all unpaid financing costs have been paid, the state hereby pledges,
16 contracts and agrees with owners of restructuring bonds issued by
17 restructuring bond issuer that the state will not limit or alter the
18 denial of authority to the restructuring bond issuer to be a debtor
19 under chapter 9 of the United States Bankruptcy Code or any other
20 provision of the United States Bankruptcy Code.

21 4. Governance. The restructuring bond issuer shall be governed by a
22 board consisting of three trustees appointed by the governor. The trus-
23 tees shall not be trustees, directors, officers, or employees of the
24 authority, LIPA or any successor owner of the T&D system assets.

25 (a) One of the trustees first appointed shall serve for a term ending
26 four years from January first next succeeding his appointment; one of
27 such trustees shall serve for a term ending five years from such date;
28 and one of such trustees shall serve for a term ending six years from

1 such date. Their successors shall serve for terms of six years each.
2 Trustees shall continue in office until their successors have been
3 appointed and qualified and the provisions of section 39 of the public
4 officers law shall apply. In the event of a vacancy occurring in the
5 office of a trustee by death, removal, resignation or otherwise, the
6 Governor shall appoint a successor to serve for the balance of the unex-
7 pired term.

8 (b) Trustees shall serve without salary or other compensation, but
9 each trustee shall be entitled to reimbursement for actual and necessary
10 expenses incurred in the performance of his or her official duties.
11 Anything to the contrary contained in this act notwithstanding, any
12 trustee who also serves as an employee of restructuring bond issuer
13 shall be entitled to receive such salary as the trustees may determine
14 for services as such employee.

15 (c) A majority of the trustees shall constitute a quorum for the tran-
16 saction of any business or the exercise of any power or function of
17 restructuring bond issuer. Any one or more trustees may participate in a
18 meeting of the board by means of a conference telephone or similar
19 communications equipment allowing all persons participating in the meet-
20 ing to hear each other at the same time. Participation by such means
21 shall constitute presence in person at a meeting. The board may delegate
22 to one or more of its trustees, or officers, agents and employees, such
23 powers and duties as the board may deem proper.

24 (d) Such trustees other than those serving as employees of restructur-
25 ing bond issuer may engage in private employment, or in a profession or
26 business. Restructuring bond issuer, its trustees, officers and employ-
27 ees shall be subject to the provisions of sections 73 and 74 of the
28 public officers law.

1 (e) Notwithstanding any inconsistent provision of law to the contrary,
2 general, special or local, no officer of the state or of any civil divi-
3 sion thereof shall be deemed to have forfeited or shall forfeit his or
4 her office or employment by reason of his or her acceptance of an
5 appointment as trustee of restructuring bond issuer.

6 (f) The governor may remove any trustee for inefficiency, neglect of
7 duty or misconduct in office after giving him or her a copy of the
8 charges against him or her and an opportunity to be heard, in person or
9 by counsel, in his or her defense, upon not less than ten days notice.
10 If any trustee shall be so removed, the governor shall file in the
11 office of the department of state a complete statement of the charges
12 made against such trustee and his or her findings thereon, together with
13 a complete record of the proceedings.

14 (g) Each trustee shall have a fiduciary duty to act in the best inter-
15 ests of the restructuring bond issuer, including its creditors, the
16 owners of the restructuring bonds, and such other duties as may be spec-
17 ified in the organizational documents or other agreements of the
18 restructuring bond issuer.

19 (h) The restructuring bond issuer and its corporate existence shall
20 continue until one year and one day after all restructuring bonds and
21 ongoing financing costs and other indebtedness of restructuring bond
22 issuer have been actually paid and all its other liabilities and obli-
23 gations have been paid, met or otherwise discharged. Upon termination of
24 the existence of restructuring bond issuer, all of its rights and prop-
25 erty shall pass to and be vested in the state.

26 § 5. Restructuring cost financing orders. 1. Content of restructuring
27 cost financing orders. The restructuring cost financing order shall
28 include the following: (i) a description of the approved restructuring

1 costs; (ii) the amount of approved restructuring costs that the authori-
2 ty proposes to pay through the sale of the restructuring property and
3 the issuance of the restructuring bonds; (iii) designation of the
4 authority as the entity in which initial ownership of restructuring
5 property will vest; (iv) an estimate of the date on which restructuring
6 bonds will be issued and the expected scheduled term to maturity of the
7 restructuring bonds; (v) a description of the estimated debt service on
8 the restructuring bonds and other ongoing financing costs that may be
9 recovered through transition charges; as part of this description, the
10 restructuring cost financing order may include qualitative or quantita-
11 tive limitations on financing costs approved to be recovered provided
12 that no such limitation on financing costs shall impair the ability of
13 the restructuring bond issuer to pay and service the restructuring bonds
14 in accordance with their terms; (vi) a proposed methodology for allocat-
15 ing transition charges on an equal percentage basis among customer
16 service classifications and among volumetric (kWh) and demand (kW)
17 charges within those customer service classifications, along with an
18 associated bill impact analysis of the proposed methodology; (vii) a
19 description of the proposed adjustment mechanism to reconcile actual
20 collections with forecasted collection on at least an annual basis and a
21 finding that the adjustment mechanism is just and reasonable; (viii) a
22 description of the benefits to consumers in the service area that are
23 expected to result from the sale of the restructuring property and the
24 issuance of restructuring bonds as opposed to traditional alternative
25 financing mechanisms; (ix) specifying the entity that will contract to
26 act as servicer with respect to the restructuring property and the
27 restructuring bonds on terms and conditions mutually acceptable to such
28 servicer and the restructuring bond issuer; (x) specifying the entity or

1 entities that will contract to provide administrative or other services
2 to the restructuring bond issuer; (xi) specifying when the restructuring
3 property will be created and vest and addressing such other matters as
4 may be necessary or desirable for the marketing or servicing of the
5 restructuring bonds or the servicing of the restructuring property;
6 (xii) authorizing the imposition, billing and collection of transition
7 charges to pay debt service on the restructuring bonds and other ongoing
8 financing costs; (xiii) a description of the restructuring property that
9 will be created and that may be used to pay and secure the payment of
10 the restructuring bonds approved to be issued in the restructuring cost
11 financing order; (xiv) a requirement that the amounts in the debt
12 service reserve accounts or other accounts funded with the proceeds of
13 restructuring bonds or transition charges be fully used, to the extent
14 practical, to make the final payments of principal and interest on the
15 restructuring bonds and other ongoing financing costs or to make refunds
16 to consumers on the same basis as such consumers would have then been
17 obligated to pay transition costs; and (xv) the finding required by
18 subdivision 1 of section 3 of this act.

19 2. Periodic reports. A restructuring cost financing order shall
20 require the restructuring bond issuer or the servicer to file at least
21 annually with the authority and the appropriate financing entity a peri-
22 odic report showing the billing and collection of transition charges,
23 the application of transition charge revenues to debt service on the
24 restructuring bonds and other ongoing financing costs, and the balances
25 in any debt service reserve accounts or other accounts required by the
26 restructuring cost financing order.

27 3. Adjustment mechanism.

1 (a) Each restructuring cost financing order shall include a mathemat-
2 ical formula for making periodic adjustments to the transition charges.

3 The mathematical formula shall apply the following principles:

4 (i) The transition charges will be adjusted at least annually to
5 ensure that the collections of transition charges are adequate to pay
6 principal and interest on the associated restructuring bonds when due
7 pursuant to the expected amortization schedule, to fund all debt service
8 reserve accounts to the required levels and to pay when due all other
9 expected ongoing financing costs.

10 (ii) The adjustments of transition charges will take into account
11 historical and reasonably foreseeable differences between amounts billed
12 and amounts collected due to applicable taxes, consumer defaults and
13 delays, billing lags, write-offs and other factors.

14 (iii) The adjustments of transition charges will take into account
15 historical and reasonably foreseeable variations in billings due to
16 variations in electricity consumption associated with the seasons,
17 storms and other weather conditions, outages, gain or loss of consumers,
18 efficiencies, electric vehicles, economic conditions or other factors.

19 (iv) The adjustments of transition charges will take into account any
20 over-collection or under-collection of transition charges so that, to
21 the extent practical, the outstanding balance of restructuring bonds is
22 equal to the scheduled balance on the expected amortization schedule,
23 the amounts in the debt service reserve accounts are equal to the
24 required reserve level, and all ongoing financing costs are paid when
25 due.

26 (v) The adjustments of transition charges will be applied ratably to
27 the transition charges for each customer service classification.

1 (b) Once restructuring bonds have been issued, the adjustment mech-
2 anism specified in the restructuring cost financing order shall be
3 applied to correct for any over-collection or under-collection of tran-
4 sition charges and to provide for timely payment of scheduled principal
5 of and interest on the restructuring bonds and the payment and recovery
6 of other ongoing financing costs in accordance with the restructuring
7 cost financing order. Application of the adjustment mechanism shall
8 occur at least annually or more frequently as provided in the restruc-
9 turing cost financing order. A notice of such periodic adjustment of
10 transition charges shall be filed with the authority by or on behalf of
11 the owner of restructuring property and a copy shall be provided to the
12 owner of the T&D system assets at least sixty days before the adjustment
13 is to take effect, provided that the restructuring bond issuer may
14 request an earlier effective date.

15 (c) Each adjustment to the transition charge, in amounts as calculated
16 by or on behalf of the owner of restructuring property, shall automat-
17 ically become effective sixty days following the date on which the
18 notice of periodic adjustment is filed with the authority unless the
19 authority approves an earlier effective date requested by the restruc-
20 turing bond issuer.

21 (d) Notwithstanding any other provision of law to the contrary, the
22 authority shall allow interested parties thirty days from the date of
23 filing of the notice for adjustment within which to make comments. Such
24 comments shall be limited to the mathematical accuracy of the calcu-
25 lations of the amount of the adjustments. If the authority determines
26 that the calculation of the transition charge adjustment in the notice
27 was mathematically inaccurate, the transition charge adjustment shall be
28 changed as soon as it is reasonably practical to do so, but estimated

1 overcollections or undercollections resulting from the mathematical
2 error shall be taken into account in the next succeeding periodic
3 adjustment.

4 (e) No adjustment pursuant to this section shall in any way affect the
5 irrevocability of the restructuring cost financing order as specified in
6 subdivision 4 of section five of this act. No adjustment pursuant to
7 this section shall require any approvals or action under any other law
8 or shall be deemed to be the establishment of a new charge, fee or rate
9 under any law.

10 4. Irrevocability of restructuring cost financing orders.

11 (a) A restructuring cost financing order shall be an irrevocable final
12 rate order when the time for any actions, suits, proceedings and appeals
13 challenging such final restructuring cost financing order has lapsed or
14 expired as provided in subdivision 3 of section three of this act.

15 (b) A restructuring cost financing order may be amended on or after
16 the date of issuance of restructuring bonds approved thereunder only:

17 (i) at the request of the authority or the restructuring bond issuer;

18 (ii) in accordance with any restrictions and limitations on amendment

19 set forth in the restructuring cost financing order; and (iii) subject

20 to the limitations set forth in subdivision 7 of section three of this

21 act.

22 (c) This act, and any restructuring cost financing order made pursuant

23 to this act, shall not be interpreted to alter or limit the rights vest-

24 ed in the authority to establish sufficient T&D rates to pay and perform

25 all of its obligations and contracts with the authority's bondholders

26 and others when due.

27 5. Effect of restructuring cost financing order.

1 (a) A restructuring cost financing order shall remain in effect and
2 unabated until the restructuring bonds issued pursuant to the restruc-
3 turing cost financing order have been paid in full and all ongoing
4 financing and all amounts to be paid to an assignee or financing party
5 under an ancillary agreement are paid or performed in full.

6 (b) A restructuring cost financing order shall remain in effect and
7 unabated notwithstanding the bankruptcy, reorganization or insolvency of
8 the authority, the restructuring bond issuer, LIPA or any successor
9 owner of the T&D system assets, or any affiliate of the aforementioned,
10 or the commencement of any judicial or nonjudicial proceeding therefor.

11 (c) For so long as restructuring bonds issued pursuant to a restruc-
12 turing cost financing order are outstanding, and the related approved
13 restructuring costs have not been paid in full, the transition charges
14 authorized in the restructuring cost financing order shall be non-by-
15 passable and shall apply to all consumers connected to the T&D system
16 assets and taking electric delivery service located within the service
17 area, whether or not the consumers produce their own electricity or
18 purchase electric generation services from a provider of electric gener-
19 ation services other than the owner of the T&D system assets and whether
20 or not the T&D system assets continue to be owned by LIPA.

21 § 6. Restructuring bonds. 1. No recourse. Restructuring bonds shall
22 be without recourse to the credit or any assets of the authority, LIPA
23 and the restructuring bond issuer, other than the restructuring property
24 and other assets and revenues of restructuring bond issuer as specified
25 in the pertinent restructuring cost financing order.

26 2. Exemption from taxation.

27 (a) It is hereby found and declared that the activities of the
28 restructuring bond issuer are primarily for the benefit of the people of

1 the state of New York, for the improvement of their welfare and prosper-
2 ity, and is a public purpose, and the restructuring bond issuer shall be
3 regarded as performing an essential governmental function in carrying
4 out the provisions of this act.

5 (b) The restructuring bond issuer shall not be required to pay taxes
6 or assessments upon any of the property acquired or controlled by it or
7 upon its activities in the use thereof or upon income derived therefrom.

8 (c) Restructuring bonds, their transfer and the income therefrom
9 shall, at all times, be free from taxation by the state or any munici-
10 pality, except for estate and gift taxes.

11 3. Restructuring bonds not debt of the state. Restructuring bonds
12 issued pursuant to a restructuring cost financing order and the
13 provisions of this act shall not constitute a debt, general obligation
14 or a pledge of the faith and credit or taxing power of the state or of
15 any county, municipality or any other political subdivision, agency or
16 instrumentality of the state. Holders of restructuring bonds shall not
17 be taxed by the legislature or the taxing authority of any county, muni-
18 cipality or any other political subdivision, agency or instrumentality
19 of this state for the payment of the principal thereof or interest ther-
20 eon. The issuance of restructuring bonds does not obligate the state or
21 any county, municipality or any other political subdivision, agency or
22 instrumentality of the state to levy any tax or make any appropriation
23 for payment of the principal of or interest on the restructuring bonds.
24 All restructuring bonds must contain a statement to the following
25 effect: "Neither the full faith and credit nor the taxing power of the
26 state of New York is pledged to the payment of the principal of, or
27 interest on, this bond."

1 4. Restructuring bonds as legal investments. Any restructuring bonds
2 issued by the restructuring bond issuer are hereby made securities in
3 which all public officers and bodies of this state and all municipi-
4 palities, all insurance companies and associations and other persons
5 carrying on an insurance business, all banks, bankers, trust companies,
6 savings banks and savings associations, including savings and loan asso-
7 ciations, building and loan associations, investment companies and other
8 persons carrying on a banking business, all trusts, estates and guardi-
9 anships and all other persons whatsoever, who are now or may hereafter
10 be authorized to invest in bonds or other obligations of this state, may
11 properly and legally invest funds, including capital in their control or
12 belonging to them. The restructuring bonds are also hereby made securi-
13 ties which may be deposited with and shall be received by all public
14 officers and bodies of the state and all municipalities for any purpose
15 for which the deposit of bonds or other obligations of the state is now
16 or may hereafter be authorized.

17 § 7. Restructuring property. 1. (a) Restructuring property that is
18 created pursuant to a restructuring cost financing order shall consti-
19 tute an existing, present property right, notwithstanding the fact that
20 the imposition and collection of transition charges will depend on
21 further acts that have not yet occurred, including but not limited to:
22 (i) LIPA or any successor owner of the T&D system assets delivering
23 electric energy or related services, (ii) a servicer performing servic-
24 ing functions relating to the collection of transition charges, or (iii)
25 the level of future consumption of electric energy. Restructuring prop-
26 erty shall exist whether or not transition charges have been imposed,
27 billed, accrued or collected and notwithstanding the fact that the value
28 or amount of the restructuring property is dependent on the future

1 provision of service to customers by LIPA or any successor owner of the
2 T&D system assets.

3 (b) All restructuring property created pursuant to a restructuring
4 cost financing order shall continue to exist until the restructuring
5 bonds issued pursuant to such restructuring cost financing order are
6 paid in full and all ongoing financing costs relating to the restructur-
7 ing bonds have been paid in full.

8 (c) The restructuring property may be transferred, sold, conveyed or
9 assigned to the restructuring bond issuer. All or any portion of
10 restructuring property may be pledged to secure the payment of restructur-
11 ing bonds, amounts payable to financing parties, amounts payable to
12 holders of restructuring bonds, amounts payable under any ancillary
13 agreement and other ongoing financing costs. So long as the restructur-
14 ing property remains pledged to secure the restructuring bonds, revenues
15 from the collection of transition charges shall be applied solely to the
16 repayment of restructuring bonds and other ongoing financing costs.
17 After the occurrence of an event of default with respect to the restructur-
18 ing bonds, all or any portion of restructuring property may be trans-
19 ferred, sold, conveyed or assigned to any person or entity. Any trans-
20 fer, sale, conveyance, assignment, grant of a security interest in or
21 pledge of restructuring property by the authority, the restructuring
22 bond issuer, or other financing entity, to the extent previously
23 approved in a restructuring cost financing order, does not require the
24 prior consent and approval of any other person or entity under the
25 public service law or any other law.

26 (d) If the owner of the T&D system assets, servicer, third-party
27 biller, or any other person or entity authorized to collect transition
28 charges, defaults on any required remittance of transition charge reven-

1 ues, any court in the state, upon application by an interested party and
2 without limiting any other remedies available to the applying party,
3 shall order the sequestration and payment of the transition charge
4 revenues for the benefit of the owners or pledgees of restructuring
5 property. The order shall remain in full force and effect notwithstand-
6 ing any bankruptcy, reorganization, or other insolvency proceedings with
7 respect to a servicer, authority, LIPA or any successor owner of the T&D
8 system assets or any affiliate thereof or of any other person or entity.

9 (e) Restructuring property, transition charges, transition charge
10 revenues, and the interests of an assignee, bondholder, financing party
11 or any other person in restructuring property or in transition charge
12 revenues, are not subject to setoff, counterclaim, surcharge or defense
13 by a servicer, any consumer, the authority, LIPA or any successor owner
14 of the T&D system assets or any other person or in connection with any
15 default, bankruptcy, reorganization or other insolvency proceeding of
16 the authority, LIPA or any successor owner of the T&D system assets, any
17 affiliate thereof or any other entity or otherwise. To the extent that
18 any consumer makes a partial payment of a bill containing both transi-
19 tion charges and any other charges, such payment shall be allocated pro
20 rata between the transition charges and the other charges unless the
21 consumer specifies that a greater proportion of such payment is to be
22 allocated to the transition charges, except that the other charges shall
23 be reduced by the amount of any claims of setoff, counterclaim,
24 surcharge or defense for purposes of such allocation.

25 (f) Any successor owner of the T&D system assets and any successor
26 servicer shall be bound by the requirements of this act and shall
27 perform and satisfy all obligations of a servicer in the same manner and
28 to the same extent under a restructuring cost financing order as did

1 LIPA and the initial servicer, including, without limitation, the obli-
2 gation to impose, bill and collect the transition charges and to pay
3 such collections to the person entitled to receive the transition charge
4 revenues.

5 2. Security interests. Any pledge of restructuring property or
6 proceeds thereof, including any moneys, revenues or property or of a
7 revenue producing contract or contracts constituting part of the
8 restructuring property, made by the owner of restructuring property,
9 shall be perfected, valid and binding from the time when the pledge is
10 made. The proceeds, moneys, revenues or proceeds so pledged and there-
11 after received by the owner of restructuring property shall immediately
12 be subject to the lien of such pledge, and such lien shall be perfected,
13 without any physical delivery thereof or further act. The lien of any
14 such pledge shall be perfected, valid and binding as against all parties
15 having claims of any kind in tort, contract or otherwise against the
16 owner of restructuring property irrespective of whether such parties
17 have notice thereof and shall be superior to any judicial liens or other
18 liens obtained by such claimants or transferees. The description of the
19 restructuring property in a pledge or security agreement and any financ-
20 ing statement is sufficient if and only if the description refers to
21 this Act and the restructuring cost financing order creating such
22 restructuring property. No instrument by which a pledge or lien is
23 created pursuant to this subdivision need be recorded in order to
24 perfect such pledge or lien. However, the restructuring bond issuer
25 shall cause a financing statement describing the pledge and referring to
26 the restructuring cost financing order and the restructuring property
27 described therein to be filed for informational purposes only under
28 article 9 of the uniform commercial code. The secretary of state shall

1 maintain any financing statement filed under this section in the same
2 manner that the secretary maintains financing statements filed by trans-
3 mitting utilities under section 9-501 of the uniform commercial code
4 until a termination statement is filed. A pledge of restructuring prop-
5 erty is a continuously perfected security interest and has priority over
6 any other lien, created by operation of law or otherwise, that may
7 subsequently attach to that restructuring property or proceeds thereof
8 unless the holder of any such lien has agreed in writing otherwise. Any
9 pledgee of restructuring property shall have a perfected security inter-
10 est in the amount of all restructuring property revenues or other
11 proceeds that are deposited in any deposit account or other account of
12 the servicer or other entity in which restructuring property revenues or
13 other proceeds have been commingled with other funds. Any other security
14 interest that may apply to restructuring revenues or other proceeds
15 shall be terminated when such revenues or proceeds are transferred to a
16 segregated account for an assignee or a financing party. No application
17 of the adjustment mechanism as described in this act shall affect the
18 validity, perfection, or priority of a pledge of, security interest in
19 or the sale or transfer of restructuring property.

20 3. Sales of restructuring property.

21 (a) A transfer of all or any portion of restructuring property, which
22 the parties in the governing documentation have expressly stated to be a
23 sale or other absolute transfer, in a transaction approved in a restruc-
24 turing cost financing order, shall be treated as an absolute transfer of
25 all of the transferor's right, title, and interest (as in a true sale),
26 and not as a pledge or other financing, of the restructuring property,
27 other than for federal, state and local income and franchise tax
28 purposes.

1 (b) Any transfer of an interest in restructuring property shall be
2 perfected, vested, valid and binding from the time when the transfer is
3 made. Such transfer shall be perfected, vested, valid and binding as
4 against the transferor, all parties having claims of any kind in tort,
5 contract or otherwise against the transferor, and all other transferees
6 of the transferor, irrespective of whether such parties have notice
7 thereof and shall be superior to any judicial liens or other liens
8 obtained by such claimants or transferees. The description of the
9 restructuring property in a sale or transfer agreement and any financing
10 statement is sufficient if and only if the description refers to this
11 act and the restructuring cost financing order creating such restructur-
12 ing property. No instrument by which a transfer is created pursuant to
13 this section need be recorded in order to perfect such transfer. Howev-
14 er, the restructuring bond issuer shall cause a financing statement
15 describing the pledge and referring to the restructuring cost financing
16 order and the restructuring property described therein to be filed for
17 informational purposes only under article nine of the uniform commercial
18 code. The secretary of state shall maintain any financing statement
19 filed under this section in the same manner that such secretary main-
20 tains financing statements filed by transmitting utilities under section
21 9-501 of the uniform commercial code until a termination statement is
22 filed.

23 (c) The characterization of the sale, assignment or transfer as an
24 absolute transfer and true sale and the corresponding characterization
25 of the property interest of the purchaser, shall not adversely be
26 affected or impaired by, among other things, the occurrence of any of
27 the following factors: (i) commingling of revenues or other proceeds
28 from transition charges with other amounts; (ii) the retention by the

1 seller of: (A) a partial or residual interest, including an equity
2 interest, in the restructuring property, whether direct or indirect, or
3 whether subordinate or otherwise; or (B) the right to recover costs
4 associated with taxes, payments in lieu of taxes, franchise fees or
5 license fees imposed on the collection of transition charges; (iii) any
6 recourse that the purchaser may have against the seller; (iv) any indem-
7 nification rights, obligations or repurchase rights made or provided by
8 the seller; (v) the obligation of the seller to collect transition
9 charges on behalf of an assignee, including but not limited to, any
10 retention by the seller to bare legal title for the purpose of collect-
11 ing transition charges; (vi) the treatment of the sale, assignment or
12 transfer for tax, financial reporting or other purposes; (vii) any
13 subsequent order of the authority amending a restructuring cost financ-
14 ing order pursuant to paragraph (b) of subdivision 4 of section five of
15 this act; or (viii) any application of the adjustment mechanism as
16 provided in subdivision 3 of section five of this act.

17 (d) An assignee or financing party shall not be considered to be a
18 public utility or person providing electric service solely by virtue of
19 the transactions described in this act.

20 § 8. Rights and duties while restructuring bonds are outstanding. 1.
21 Responsibilities of the authority. (a) For the purpose of investigating
22 compliance with the provisions of this act and the applicable restruc-
23 turing cost financing order, the authority shall have the right, juris-
24 diction, power and authority to examine the books and records of LIPA or
25 any successor owner of the T&D system assets, the restructuring bond
26 issuer, any other financing entity, any servicer, any third-party biller
27 and any other person or entity that owns restructuring property or has
28 the right to impose, bill or collect transition charges until the

1 restructuring bonds issued pursuant to the restructuring cost financing
2 order have been paid in full and all financing costs relating to such
3 restructuring bonds have been paid in full.

4 (b) Neither the authority nor any successor regulator may, in exercis-
5 ing its powers and carrying out its duties regarding regulation and
6 ratemaking, consider restructuring bonds issued pursuant to the restruc-
7 turing cost financing order to be the debt of any owner of the T&D
8 system assets, consider transition charges paid under the restructuring
9 cost financing order to be revenue of any owner of the T&D system
10 assets, or consider the approved restructuring costs or ongoing financ-
11 ing costs specified in the restructuring cost financing order to be
12 costs of any owner of the T&D system assets or any affiliate, nor may
13 the authority or any successor regulator determine that any action taken
14 by any owner of the T&D system assets that is consistent with the
15 restructuring cost financing order is unjust or unreasonable from a
16 regulatory or ratemaking perspective; provided that, subject to the
17 limitations set forth in subdivision 4 of section five of this act and
18 the state pledge in section nine of this act, nothing in this subdivi-
19 sion shall (i) affect the authority to apply the adjustment mechanism as
20 provided in subdivision 3 of section five of this act; (ii) prevent or
21 preclude the authority from investigating the compliance of any owner of
22 the T&D system assets and of any financing entity with the terms and
23 conditions of a restructuring cost financing order and requiring compli-
24 ance therewith; or (iii) prevent or preclude the authority or any
25 successor regulator from imposing regulatory sanctions against any owner
26 of the T&D system assets for failure to comply with the terms and condi-
27 tions of a restructuring cost financing order or the requirements of
28 this act. When setting other rates for any owner of the T&D system

1 assets, nothing in this act shall prevent the authority or any successor
2 regulator from taking into account the collection by such owner of
3 servicing fees in excess of incremental costs of providing servicing
4 services, or the collection by such owner of administration fees in
5 excess of incremental costs of providing administration services;
6 provided that this would not result in a recharacterization of the tax,
7 accounting, and other intended characteristics of the financing, includ-
8 ing, but not limited to, either of the following: (i) treating restruc-
9 turing bonds as debt for federal income tax purposes; or (ii) treating
10 any transfer of the restructuring property to the restructuring bond
11 issuer or to any other financing entity as a true sale for bankruptcy
12 purposes.

13 2. Duties of financing entities and any owner of T&D system assets.

14 (a) Any failure of any financing entity to apply the proceeds of
15 restructuring bonds, or proceeds from the sale of restructuring proper-
16 ty, in a reasonable, prudent and appropriate manner or otherwise comply
17 with any provision of this act shall not invalidate, impair or affect
18 any restructuring cost financing order, restructuring property, transi-
19 tion charge, or restructuring bonds.

20 (b) Any owner of T&D system assets, any servicer, any third-party
21 biller and any other entity that bills or collects T&D rates shall
22 simultaneously impose, bill and collect any transition charges applica-
23 ble to consumers in the service area, including all consumers connected
24 to the T&D system assets and taking electric delivery service located
25 within the service area, shall allocate partial payments by consumers as
26 provided in this act, shall terminate service to non-paying consumers on
27 the same basis as termination of service is permitted for non-payment of
28 T&D rates, shall exercise all enforcement rights of the owner or pledgee

1 of the restructuring property for the benefit of such owner or pledgee,
2 and shall remit any transition charge revenue to the owner or pledgee of
3 the restructuring property.

4 § 9. State pledge. (a) The state pledges to and agrees with the hold-
5 ers of restructuring bonds, any assignee and all financing entities that
6 the state will not in any way take or permit any action that limits,
7 alters or impairs the value of restructuring property or, except as
8 required by the adjustment mechanism described in the restructuring cost
9 financing order, reduce, alter or impair transition charges that are
10 imposed, collected and remitted for the benefit of the owners of
11 restructuring bonds, any assignee, and all financing entities, until any
12 principal, interest and redemption premium in respect of restructuring
13 bonds, all ongoing financing costs and all amounts to be paid to an
14 assignee or financing party under an ancillary agreement are paid or
15 performed in full.

16 (b) Any person who issues restructuring bonds is permitted to include
17 the pledge specified in subdivision (a) of this section in the restruc-
18 turing bonds, ancillary agreements and documentation related to the
19 issuance and marketing of the restructuring bonds.

20 § 10. Choice of law. The law governing, as applicable, the validity,
21 enforceability, attachment, perfection, priority and exercise of reme-
22 dies with respect to the transfer of an interest or right or creation of
23 a security interest in any restructuring property, transition charge or
24 restructuring cost financing order, shall be the laws of the state of
25 New York.

26 § 11. Conflicts. In the event of conflict between this act and any
27 other law regarding the attachment, assignment or perfection, or the
28 effect of perfection, or priority of any pledge of, security interest in

1 or transfer of restructuring property, this act shall govern to the
2 extent of the conflict. In the event of conflict between this act and
3 the public service law, the Long Island power authority act or any other
4 law, this act shall govern to the extent of the conflict. Notwithstand-
5 ing any provisions of law to the contrary, no approvals, notices or
6 authorizations other than those specified in this act shall be required
7 with respect to any restructuring cost financing order, and the trans-
8 actions and contracts authorized in or contemplated by this act or any
9 restructuring cost financing order, including but not limited to the
10 incurrence and payment of any financing costs, the incurrence or payment
11 of any approved restructuring costs, the issuance of restructuring
12 bonds, the sale or other transfer of restructuring property, and any
13 contracts and expenses incurred to facilitate the preparation of any
14 restructuring cost financing order.

15 § 12. Effect of invalidity on actions. Effective on the date that
16 restructuring bonds are first issued under this act, if any provision of
17 this act is held to be invalid or is invalidated, superseded, replaced,
18 repealed or expires for any reason, that occurrence shall not affect any
19 action allowed under this act that is taken by the authority, LIPA, the
20 restructuring bond issuer, any owner of T&D system assets, an assignee,
21 a collection agent, a financing party, a holder of restructuring bonds
22 or a party to an ancillary agreement and any such action shall remain in
23 full force and effect.

24 § 13. Effectiveness of the act. The authority may not adopt its first
25 restructuring cost financing order after the five year period after the
26 effective date of this act. This section shall not be construed to
27 preclude the authority from adopting any subsequent restructuring cost
28 financing orders after such period.

1 § 14. Severability. If any section, subdivision, paragraph or subpara-
2 graph of this act or the application thereof to any person, circumstance
3 or transaction is held by a court of competent jurisdiction to be uncon-
4 stitutional or invalid, the unconstitutionality or invalidity shall not
5 affect the constitutionality or validity of any other section, subdivi-
6 sion, paragraph or subparagraph of this act or its application or valid-
7 ity to any person, circumstance or transaction, including, without limi-
8 tation, the irrevocability of a restructuring cost financing order
9 issued pursuant to this act, the validity of the issuance of restructur-
10 ing bonds, the imposition of transition charges, the transfer or assign-
11 ment of restructuring property or the collection and recovery of reven-
12 ues from transition charges. To these ends, the legislature hereby
13 declares that the provisions of this act are intended to be severable
14 and that the legislature would have enacted this act even if any
15 section, subdivision, paragraph or subparagraph of this act held to be
16 unconstitutional or invalid had not been included in this act.

17 § 15. Standing. (a) The owner of restructuring property, or the trus-
18 tee representing holders of restructuring bonds, shall be expressly
19 permitted hereby to bring actions against any owner of the T&D system
20 assets, any third-party biller, or any other entity authorized to bill
21 or collect T&D rates, any consumers in the service area or any other
22 person or entity for failure to impose, bill, pay or collect any transi-
23 tion charges constituting part of the restructuring property then held
24 pledged as security for such restructuring bonds or for enforcement of
25 any other provision of this act or the applicable restructuring cost
26 financing order.

27 (b) Except as provided in section three of this act, any court and the
28 authority shall have jurisdiction over any actions for failure to

1 impose, bill, pay or collect any transition charges or for enforcement
2 of other provision of this act or any restructuring cost financing
3 order.

4 § 16. Third-party billing. If and to the extent that third parties are
5 allowed to bill and/or collect any transition charges, the authority,
6 any successor regulator, and any owner of the T&D system assets will
7 take steps to ensure non-bypassability and minimize the likelihood of
8 default by third-party billers, which generally would include (i) opera-
9 tional standards and minimum credit requirements for any such third-par-
10 ty biller, or require a cash deposit, letter of credit or other credit
11 mitigant in lieu thereof, to minimize the likelihood that defaults by a
12 third-party biller would result in an increase in transition charges
13 thereafter billed to consumers, (ii) a finding that, regardless of who
14 is responsible for billing, consumers shall continue to be responsible
15 for transition charges, (iii) if a third party meters and bills for the
16 transition charges, that the owner of the T&D system assets and any
17 servicer must have access to information on billing and usage by consum-
18 ers to provide for proper reporting to the restructuring bond issuer and
19 to perform its obligations as servicer, (iv) in the case of a default by
20 a third-party biller, billing responsibilities must be promptly trans-
21 ferred to another party to minimize potential losses, and (v) the fail-
22 ure of consumers to pay transition charges shall allow service termi-
23 nation by the owner of the T&D system assets on behalf of the
24 restructuring bond issuer of the consumers failing to pay transition
25 charges in accordance with service termination rules and orders applica-
26 ble to T&D rates. Any costs associated with such third-party billing
27 and/or collection shall be included as part of the recoverable ongoing
28 financing costs or other rates or charges, as appropriate. Further, the

1 authority and any successor regulator shall not permit implementation of
2 any third-party billing or collection that would result in a reduction
3 or withdrawal of the then current ratings on any tranche or series of
4 the restructuring bonds by any nationally recognized statistical rating
5 organization designated by the restructuring bond issuer.

6 § 17. This act shall take effect immediately.

7 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
8 sion, section or part of this act shall be adjudged by any court of
9 competent jurisdiction to be invalid, such judgment shall not take
10 affect, impair, or invalidate the remainder thereof, but shall be
11 confined in its operation to the clause, sentence, paragraph, subdivi-
12 sion, section or part thereof directly involved in the controversy in
13 which such judgment shall have been rendered. It is hereby declared to
14 be the intent of the legislature that this act would have been enacted
15 even if such invalid provisions had not been included herein.

16 § 3. This act shall take effect immediately; provided, however, that
17 the applicable effective date of Parts A through B of this act shall be
18 as specifically set forth in the last section of such Parts.