

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL DRS45240-MCf-161

Short Title: Storm Securitization/Alt. Rates. (Public)

Sponsors: Senators Rabon, Hise, and Blue (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT FINANCING FOR CERTAIN STORM RECOVERY COSTS AND TO
3 AUTHORIZE THE UTILITIES COMMISSION TO FIX RATES FOR ELECTRIC PUBLIC
4 UTILITIES USING "MULTIYEAR RATE PLAN" AND "BANDING OF AUTHORIZED
5 RETURN" MECHANISMS.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. STORM SECURITIZATION.**

9 **SECTION 1.(a)** Article 8 of Chapter 62 of the General Statutes is amended by adding
10 a new section to read:

11 **"§ 62-172. Financing for certain storm recovery costs.**

12 (a) Definitions. – The following definitions apply in this section:

13 (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve
14 account, surety bond, interest rate lock or swap arrangement, hedging
15 arrangement, liquidity or credit support arrangement, or other financial
16 arrangement entered into in connection with storm recovery bonds.

17 (2) Assignee. – A legally recognized entity to which a public utility assigns, sells,
18 or transfers, other than as security, all or a portion of its interest in or right to
19 storm recovery property. The term includes a corporation, limited liability
20 company, general partnership or limited partnership, public authority, trust,
21 financing entity, or any entity to which an assignee assigns, sells, or transfers,
22 other than as security, its interest in or right to storm recovery property.

23 (2a) Bondholder. – A person who holds a storm recovery bond.

24 (2b) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.

25 (3) Commission. – The North Carolina Utilities Commission.

26 (4) Financing costs. – The term includes all of the following:

27 a. Interest and acquisition, defeasance, or redemption premiums payable
28 on storm recovery bonds.

29 b. Any payment required under an ancillary agreement and any amount
30 required to fund or replenish a reserve account or other accounts
31 established under the terms of any indenture, ancillary agreement, or
32 other financing documents pertaining to storm recovery bonds.

33 c. Any other cost related to issuing, supporting, repaying, refunding, and
34 servicing storm recovery bonds, including, servicing fees, accounting
35 and auditing fees, trustee fees, legal fees, consulting fees, structuring
36 adviser fees, administrative fees, placement and underwriting fees,



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- 1 independent director and manager fees, capitalized interest, rating
2 agency fees, stock exchange listing and compliance fees, security
3 registration fees, filing fees, information technology programming
4 costs, and any other costs necessary to otherwise ensure the timely
5 payment of storm recovery bonds or other amounts or charges payable
6 in connection with the bonds, including costs related to obtaining the
7 financing order.
- 8 d. Any taxes and license fees or other fees imposed on the revenues
9 generated from the collection of the storm recovery charge or
10 otherwise resulting from the collection of storm recovery charges, in
11 any such case whether paid, payable, or accrued.
- 12 e. Any State and local taxes, franchise, gross receipts, and other taxes or
13 similar charges, including regulatory assessment fees, whether paid,
14 payable, or accrued.
- 15 f. Any costs incurred by the Commission or public staff for any outside
16 consultants or counsel pursuant to sub-subdivision b. of subdivision
17 (3) of subsection (b) of this section.
- 18 (5) Financing order. – An order that authorizes the issuance of storm recovery
19 bonds; the imposition, collection, and periodic adjustments of a storm
20 recovery charge; the creation of storm recovery property; and the sale,
21 assignment, or transfer of storm recovery property to an assignee.
- 22 (6) Financing party. – Bondholders and trustees, collateral agents, any party under
23 an ancillary agreement, or any other person acting for the benefit of
24 bondholders.
- 25 (7) Financing statement. – Defined in Article 9 of the Code.
- 26 (8) Pledgee. – A financing party to which a public utility or its successors or
27 assignees mortgages, negotiates, pledges, or creates a security interest or lien
28 on all or any portion of its interest in or right to storm recovery property.
- 29 (9) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric
30 power to retail electric customers in the State.
- 31 (10) Storm. – Individually or collectively, a named tropical storm or hurricane, a
32 tornado, ice storm or snow storm, flood, an earthquake, or other significant
33 weather or natural disaster.
- 34 (11) Storm recovery activity. – An activity or activities by or on behalf of a public
35 utility in connection with the restoration of service and infrastructure
36 associated with electric power outages affecting customers of a public utility
37 as the result of a storm or storms, including incremental internal and external
38 labor costs in excess of labor costs that would have been paid even in the
39 absence of the storm, incremental corporate overhead, and all incremental
40 costs related to mobilization, staging, and construction, reconstruction,
41 replacement, or repair of electric generation, transmission, distribution, or
42 general plant facilities.
- 43 (12) Storm recovery bonds. – Bonds, debentures, notes, certificates of
44 participation, certificates of beneficial interest, certificates of ownership, or
45 other evidences of indebtedness or ownership that are issued by a public utility
46 or an assignee pursuant to a financing order, the proceeds of which are used
47 directly or indirectly to recover, finance, or refinance Commission-approved
48 storm recovery costs and financing costs, and that are secured by or payable
49 from storm recovery property. If certificates of participation or ownership are
50 issued, references in this section to principal, interest, or premium shall be
51 construed to refer to comparable amounts under those certificates.

- 1 (13) Storm recovery charge. – The amounts authorized by the Commission to
2 repay, finance, or refinance storm recovery costs and financing costs and that
3 are nonbypassable charges (i) imposed on and part of all customer bills, (ii)
4 collected by a public utility or its successors or assignees, or a collection agent,
5 in full, separate and apart from the public utility's base rates, and (iii) paid by
6 all existing or future retail customers receiving transmission or distribution
7 service, or both, from the public utility or its successors or assignees under
8 Commission-approved rate schedules or under special contracts, even if a
9 customer elects to purchase electricity from an alternative electricity supplier
10 following a fundamental change in regulation of public utilities in this State.
- 11 (14) Storm recovery costs. – All of the following:
12 a. At the option of and upon petition by the public utility, and as
13 approved by the Commission pursuant to sub-sub-subdivision 2. of
14 sub-subdivision a. of subdivision 3 of subsection (b) of this section, all
15 incremental costs that a public utility has incurred or expects to incur
16 as a result of, or in anticipation of, the applicable storm which are
17 caused by, associated with, or remain as a result of undertaking storm
18 recovery activity. Such costs include the public utility's cost of capital
19 from the date of the applicable storm to the date the storm recovery
20 bonds are issued calculated using the public utility's weighted average
21 cost of capital as defined in its most recent base rate case proceeding
22 before the Commission net of applicable income tax savings related to
23 the interest component thereof.
24 b. Costs in sub-subdivision a. of this subdivision (14) may be net of
25 applicable insurance proceeds, tax benefits and any other amounts
26 intended to reimburse the public utility for storm recovery activities
27 such as government grants, or aid of any kind and where determined
28 appropriate by the Commission, and may include adjustments for
29 normal capital replacement and operating costs. Storm recovery costs
30 includes the cost to replenish and fund any storm reserves and costs of
31 repurchasing equity or retiring any existing indebtedness relating to
32 storm recovery activities.
- 33 (15) Storm recovery property. – All of the following:
34 a. All rights and interests of a public utility or successor or assignee of
35 the public utility under a financing order, including the right to impose,
36 bill, charge, collect, and receive storm recovery charges authorized
37 under the financing order and to obtain periodic adjustments to such
38 charges as provided in the financing order.
39 b. All revenues, collections, claims, rights to payments, payments,
40 money, or proceeds arising from the rights and interests specified in
41 sub-subdivision a. of this subdivision, regardless of whether such
42 revenues, collections, claims, rights to payment, payments, money, or
43 proceeds are imposed, billed, received, collected, or maintained
44 together with or commingled with other revenues, collections, rights
45 to payment, payments, money, or proceeds.
- 46 (b) Financing Orders. –
47 (1) A public utility may petition the Commission for a financing order. The
48 petition shall include all of the following:
49 a. A description of the storm recovery activities that the public utility has
50 undertaken or proposes to undertake and the reasons for undertaking
51 the activities, or if the public utility is subject to a settlement agreement

- 1 as contemplated by subdivision (2) of this subsection, a description of
2 the settlement agreement.
- 3 b. The storm recovery costs and estimate of the costs of any storm
4 recovery activities that are not completed, or for which the costs are
5 not yet known as identified and requested by the public utility.
- 6 c. The level of the storm recovery reserve that the public utility proposes
7 to establish or replenish and has determined would be appropriate to
8 recover through storm recovery bonds and is seeking to so recover and
9 such level that the public utility is funding or will seek to fund through
10 other means, together with a description of the factors and calculations
11 used in determining the amounts and methods of recovery.
- 12 d. An indicator of whether the public utility proposes to finance all or a
13 portion of the storm recovery costs using storm recovery bonds. If the
14 public utility proposes to finance a portion of such costs, the public
15 utility must identify the specific portion in the petition. By electing not
16 to finance a portion of such storm recovery costs using storm recovery
17 bonds, a public utility shall not be deemed to waive its right to recover
18 such costs pursuant to a separate proceeding with the Commission.
- 19 e. An estimate of the financing costs related to the storm recovery bonds.
- 20 f. An estimate of the storm recovery charges necessary to recover the
21 storm recovery costs, including the storm recovery reserve amount
22 determined appropriate by the Commission, and financing costs and
23 the period for recovery of such costs.
- 24 g. An estimate of any projected cost savings, based on current market
25 conditions, or demonstration of how the issuance of storm recovery
26 bonds and the imposition of storm recovery charges would reasonably
27 be expected to avoid or mitigate rate impacts to customers as compared
28 with the traditional method of financing and recovering storm
29 recovery costs from customers.
- 30 h. Direct testimony supporting the petition.
- 31 (2) If a public utility is subject to a settlement agreement that governs the type
32 and amount of principal costs that could be included in storm recovery costs
33 and the public utility proposes to finance all or a portion of the principal costs
34 using storm recovery bonds, then the public utility must file a petition with
35 the Commission for review and approval of those costs no later than 90 days
36 before filing a petition for a financing order pursuant to this section. The
37 Commission may not authorize the principal costs to be included or excluded
38 as storm recovery costs if such inclusion or exclusion is precluded by the
39 public utility's settlement agreement.
- 40 (3) Petition and order. –
- 41 a. Proceedings on a petition submitted pursuant to this subdivision begin
42 with the petition by a public utility, filed subject to the time frame
43 specified in subdivision (2) of this subsection, if applicable, and shall
44 be disposed of in accordance with the requirements of this Chapter and
45 the rules and regulations of the Commission, except as follows.
- 46 1. Within 14 days after the date the petition is filed, the
47 Commission shall publish a case schedule, which must place
48 the matter before the Commission on an agenda that permits a
49 Commission decision no later than 120 days after the date the
50 petition is filed.

- 1 amounts and charges payable in connection with the storm
2 recovery bonds.
- 3 6. The storm recovery property that is, or shall be, created in favor
4 of a public utility or its successors or assignees and that shall
5 be used to pay or secure storm recovery bonds and all financing
6 costs.
- 7 7. The degree of flexibility to be afforded to the public utility in
8 establishing the terms and conditions of the storm recovery
9 bonds, including, but not limited to, repayment schedules,
10 expected interest rates, and other financing costs consistent
11 with sub-sub-subdivisions 1. through 6. of this
12 sub-subdivision.
- 13 8. How storm recovery charges will be allocated among
14 customers classes.
- 15 9. A requirement that, after the final terms of an issuance of storm
16 recovery bonds have been established and before the issuance
17 of storm recovery bonds, the public utility determine the
18 resulting initial storm recovery charge in accordance with the
19 financing order and that such initial storm recovery charge be
20 final and effective upon the issuance of such storm recovery
21 bonds without further Commission action so long as the storm
22 recovery charge is consistent with the financing order.
- 23 10. A method of tracing funds collected as storm recovery charges,
24 or other proceeds of storm recovery property, and determine
25 that such method shall be deemed the method of tracing such
26 funds and determining the identifiable cash proceeds of any
27 storm recovery property subject to a financing order under
28 applicable law.
- 29 11. Any other conditions that the Commission considers
30 appropriate that are authorized by this section.
- 31 c. A financing order issued to a public utility may provide that creation
32 of the public utility's storm recovery property pursuant to
33 sub-sub-subdivision 6. of sub-subdivision b. of this subdivision is
34 conditioned upon, and simultaneous with, the sale or other transfer of
35 the storm recovery property to an assignee and the pledge of the storm
36 recovery property to secure storm recovery bonds.
- 37 d. If the Commission issues a financing order, the public utility shall file
38 with the Commission at least annually a petition or a letter applying
39 the formula-based mechanism pursuant to sub-sub-subdivision 5. of
40 sub-subdivision b. of this subdivision and, based on estimates of
41 consumption for each rate class and other mathematical factors,
42 requesting administrative approval to make the adjustments described
43 in that sub-sub-subdivision. The review of the filing shall be limited
44 to determining whether there is any mathematical error in the
45 application of the formula-based mechanism relating to the
46 appropriate amount of any overcollection or undercollection of storm
47 recovery charges and the amount of an adjustment. The adjustments
48 shall ensure the recovery of revenues sufficient to provide for the
49 payment of principal, interest, acquisition, defeasance, financing costs,
50 or redemption premium and other fees, costs, and charges in respect
51 of storm recovery bonds approved under the financing order. Within

- 1 30 days after receiving a public utility's request pursuant to this
2 paragraph, the Commission shall either approve the request or inform
3 the public utility of any mathematical errors in its calculation. If the
4 Commission informs the utility of mathematical errors in its
5 calculation, the utility may correct its error and refile its request. The
6 time frames previously described in this paragraph shall apply to a
7 refiled request.
- 8 e. Subsequent to the transfer of storm recovery property to an assignee
9 or the issuance of storm recovery bonds authorized thereby, whichever
10 is earlier, a financing order is irrevocable and, except as provided in
11 sub-sub-subdivision 5. of sub-subdivision b. of this subdivision, the
12 Commission may not amend, modify, or terminate the financing order
13 by any subsequent action or reduce, impair, postpone, terminate, or
14 otherwise adjust storm recovery charges approved in the financing
15 order. After the issuance of a financing order, the public utility retains
16 sole discretion regarding whether to assign, sell, or otherwise transfer
17 storm recovery property or to cause storm recovery bonds to be issued,
18 including the right to defer or postpone such assignment, sale, transfer,
19 or issuance.
- 20 (4) At the request of a public utility, the Commission may commence a
21 proceeding and issue a subsequent financing order that provides for
22 refinancing, retiring, or refunding storm recovery bonds issued pursuant to the
23 original financing order if the Commission finds that the subsequent financing
24 order satisfies all of the criteria specified in sub-subdivision b. of subdivision
25 (3) of this subsection. Effective upon retirement of the refunded storm
26 recovery bonds and the issuance of new storm recovery bonds, the
27 Commission shall adjust the related storm recovery charges accordingly.
- 28 (5) Within 30 days after the Commission issues a financing order or a decision
29 denying a request for reconsideration or, if the request for reconsideration is
30 granted, within 30 days after the Commission issues its decision on
31 reconsideration, an adversely affected party may petition for judicial review
32 in the Supreme Court of North Carolina. Review on appeal shall be based
33 solely on the record before the Commission and briefs to the court and is
34 limited to determining whether the financing order, or the order on
35 reconsideration, conforms to the State Constitution and State and federal law
36 and is within the authority of the Commission under this section.
- 37 (6) Duration of financing order. –
- 38 a. A financing order remains in effect and storm recovery property under
39 the financing order continues to exist until storm recovery bonds
40 issued pursuant to the financing order have been paid in full and all
41 Commission-approved financing costs of such storm recovery bonds
42 have been recovered in full.
- 43 b. A financing order issued to a public utility remains in effect and
44 unabated notwithstanding the reorganization, bankruptcy or other
45 insolvency proceedings, merger, or sale of the public utility or its
46 successors or assignees.
- 47 (c) Exceptions to Commission Jurisdiction. –
- 48 (1) The Commission may not, in exercising its powers and carrying out its duties
49 regarding any matter within its authority pursuant to this Chapter, consider the
50 storm recovery bonds issued pursuant to a financing order to be the debt of
51 the public utility other than for federal income tax purposes, consider the

1 storm recovery charges paid under the financing order to be the revenue of the
2 public utility for any purpose, or consider the storm recovery costs or
3 financing costs specified in the financing order to be the costs of the public
4 utility, nor may the Commission determine any action taken by a public utility
5 which is consistent with the financing order to be unjust or unreasonable.

6 (2) The Commission may not order or otherwise directly or indirectly require a
7 public utility to use storm recovery bonds to finance any project, addition,
8 plant, facility, extension, capital improvement, equipment, or any other
9 expenditure. After the issuance of a financing order, the public utility retains
10 sole discretion regarding whether to cause the storm recovery bonds to be
11 issued, including the right to defer or postpone such sale, assignment, transfer,
12 or issuance. Nothing shall prevent the public utility from abandoning the
13 issuance of storm recovery bonds under the financing order by filing with the
14 Commission a statement of abandonment and the reasons therefore. The
15 Commission may not refuse to allow a public utility to recover storm recovery
16 costs in an otherwise permissible fashion, or refuse or condition authorization
17 or approval of the issuance and sale by a public utility of securities or the
18 assumption by the public utility of liabilities or obligations, solely because of
19 the potential availability of storm recovery bond financing.

20 (d) Public Utility Duties. – The electric bills of a public utility that has obtained a
21 financing order and caused storm recovery bonds to be issued must comply with the provisions
22 of this subsection; however, the failure of a public utility to comply with this subsection does not
23 invalidate, impair, or affect any financing order, storm recovery property, storm recovery charge,
24 or storm recovery bonds. The public utility must do the following:

25 (1) Explicitly reflect that a portion of the charges on such bill represents storm
26 recovery charges approved in a financing order issued to the public utility and,
27 if the storm recovery property has been transferred to an assignee, must
28 include a statement to the effect that the assignee is the owner of the rights to
29 storm recovery charges and that the public utility or other entity, if applicable,
30 is acting as a collection agent or servicer for the assignee. The tariff applicable
31 to customers must indicate the storm recovery charge and the ownership of
32 the charge.

33 (2) Include the storm recovery charge on each customer's bill as a separate line
34 item and include both the rate and the amount of the charge on each bill.

35 (e) Storm Recovery Property. –

36 (1) Provisions applicable to storm recovery property. –

37 a. All storm recovery property that is specified in a financing order
38 constitutes an existing, present intangible property right or interest
39 therein, notwithstanding that the imposition and collection of storm
40 recovery charges depends on the public utility, to which the financing
41 order is issued, performing its servicing functions relating to the
42 collection of storm recovery charges and on future electricity
43 consumption. The property exists (i) regardless of whether or not the
44 revenues or proceeds arising from the property have been billed, have
45 accrued, or have been collected and (ii) notwithstanding the fact that
46 the value or amount of the property is dependent on the future
47 provision of service to customers by the public utility or its successors
48 or assignees and the future consumption of electricity by customers.

49 b. Storm recovery property specified in a financing order exists until
50 storm recovery bonds issued pursuant to the financing order are paid

- 1 in full and all financing costs and other costs of such storm recovery
2 bonds have been recovered in full.
- 3 c. All or any portion of storm recovery property specified in a financing
4 order issued to a public utility may be transferred, sold, conveyed, or
5 assigned to a successor or assignee that is wholly owned, directly or
6 indirectly, by the public utility and created for the limited purpose of
7 acquiring, owning, or administering storm recovery property or
8 issuing storm recovery bonds under the financing order. All or any
9 portion of storm recovery property may be pledged to secure storm
10 recovery bonds issued pursuant to the financing order, amounts
11 payable to financing parties and to counterparties under any ancillary
12 agreements, and other financing costs. Any transfer, sale, conveyance,
13 assignment, grant of a security interest in or pledge of storm recovery
14 property by a public utility, or an affiliate of the public utility, to an
15 assignee, to the extent previously authorized in a financing order, does
16 not require the prior consent and approval of the Commission.
- 17 d. If a public utility defaults on any required payment of charges arising
18 from storm recovery property specified in a financing order, a court,
19 upon application by an interested party, and without limiting any other
20 remedies available to the applying party, shall order the sequestration
21 and payment of the revenues arising from the storm recovery property
22 to the financing parties or their assignees. Any such financing order
23 remains in full force and effect notwithstanding any reorganization,
24 bankruptcy, or other insolvency proceedings with respect to the public
25 utility or its successors or assignees.
- 26 e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee
27 in storm recovery property specified in a financing order issued to a
28 public utility, and in the revenue and collections arising from that
29 property, is not subject to setoff, counterclaim, surcharge, or defense
30 by the public utility or any other person or in connection with the
31 reorganization, bankruptcy, or other insolvency of the public utility or
32 any other entity.
- 33 f. Any successor to a public utility, whether pursuant to any
34 reorganization, bankruptcy, or other insolvency proceeding or whether
35 pursuant to any merger or acquisition, sale, or other business
36 combination, or transfer by operation of law, as a result of public
37 utility restructuring or otherwise, must perform and satisfy all
38 obligations of, and have the same rights under a financing order as, the
39 public utility under the financing order in the same manner and to the
40 same extent as the public utility, including collecting and paying to the
41 person entitled to receive the revenues, collections, payments, or
42 proceeds of the storm recovery property. Nothing in this
43 sub-subdivision is intended to limit or impair any authority of the
44 Commission concerning the transfer or succession of interests of
45 public utilities.
- 46 g. Storm recovery bonds shall be nonrecourse to the credit or any assets
47 of the public utility other than the storm recovery property as specified
48 in the financing order and any rights under any ancillary agreement.
- 49 (2) Provisions applicable to security interests. –
- 50 a. The creation, perfection, and enforcement of any security interest in
51 storm recovery property to secure the repayment of the principal and

- 1 interest and other amounts payable in respect of storm recovery bonds,
2 amounts payable under any ancillary agreement and other financing
3 costs are governed by this subsection and not by the provisions of the
4 Code.
- 5 b. A security interest in storm recovery property is created, valid, and
6 binding and perfected at the later of the time: (i) the financing order is
7 issued; (ii) a security agreement is executed and delivered by the
8 debtor granting such security interest; (iii) the debtor has rights in such
9 storm recovery property or the power to transfer rights in such storm
10 recovery property; or (iv) value is received for the storm recovery
11 property. The description of storm recovery property in a security
12 agreement is sufficient if the description refers to this section and the
13 financing order creating the storm recovery property.
- 14 c. A security interest shall attach without any physical delivery of
15 collateral or other act, and, upon the filing of a financing statement
16 with the office of the Secretary of State, the lien of the security interest
17 shall be valid, binding, and perfected against all parties having claims
18 of any kind in tort, contract, or otherwise against the person granting
19 the security interest, regardless of whether the parties have notice of
20 the lien. Also upon this filing, a transfer of an interest in the storm
21 recovery property shall be perfected against all parties having claims
22 of any kind, including any judicial lien or other lien creditors or any
23 claims of the seller or creditors of the seller, and shall have priority
24 over all competing claims other than any prior security interest,
25 ownership interest, or assignment in the property previously perfected
26 in accordance with this section.
- 27 d. The Secretary of State shall maintain any financing statement filed to
28 perfect any security interest under this section in the same manner that
29 the Secretary maintains financing statements filed by transmitting
30 utilities under the Code. The filing of a financing statement under this
31 section shall be governed by the provisions regarding the filing of
32 financing statements in the Code.
- 33 e. The priority of a security interest in storm recovery property is not
34 affected by the commingling of storm recovery charges with other
35 amounts. Any pledgee or secured party shall have a perfected security
36 interest in the amount of all storm recovery charges that are deposited
37 in any cash or deposit account of the qualifying utility in which storm
38 recovery charges have been commingled with other funds and any
39 other security interest that may apply to those funds shall be terminated
40 when they are transferred to a segregated account for the assignee or a
41 financing party.
- 42 f. No application of the adjustment mechanism as provided in
43 sub-sub-subdivision 5. of sub-subdivision b. of subdivision (3) of
44 subsection (b) of this section will affect the validity, perfection, or
45 priority of a security interest in or transfer of storm recovery property.
- 46 g. If a default or termination occurs under the storm recovery bonds, the
47 financing parties or their representatives may foreclose on or otherwise
48 enforce their lien and security interest in any storm recovery property
49 as if they were secured parties with a perfected and prior lien under the
50 Code, and the Commission may order amounts arising from storm
51 recovery charges be transferred to a separate account for the financing

1 parties' benefit, to which their lien and security interest shall apply. On
2 application by or on behalf of the financing parties, the Superior Court
3 of Wake County shall order the sequestration and payment to them of
4 revenues arising from the storm recovery charges.

5 (3) Provisions applicable to the sale, assignment, or transfer of storm recovery
6 property. –

7 a. Any sale, assignment, or other transfer of storm recovery property
8 shall be an absolute transfer and true sale of, and not a pledge of or
9 secured transaction relating to, the seller's right, title, and interest in,
10 to, and under the storm recovery property if the documents governing
11 the transaction expressly state that the transaction is a sale or other
12 absolute transfer other than for federal and State income tax purposes.
13 For all purposes other than federal and State income tax purposes, the
14 parties' characterization of a transaction as a sale of an interest in storm
15 recovery property shall be conclusive that the transaction is a true sale
16 and that ownership has passed to the party characterized as the
17 purchaser, regardless of whether the purchaser has possession of any
18 documents evidencing or pertaining to the interest. A transfer of an
19 interest in storm recovery property may be created only when all of
20 the following have occurred: (i) the financing order creating the storm
21 recovery property has become effective; (ii) the documents evidencing
22 the transfer of storm recovery property have been executed by the
23 assignor and delivered to the assignee; and (iii) value is received for
24 the storm recovery property. After such a transaction, the storm
25 recovery property is not subject to any claims of the transferor or the
26 transferor's creditors, other than creditors holding a prior security
27 interest in the storm recovery property perfected in accordance with
28 subdivision (2) of subsection (e) of this section.

29 b. The characterization of the sale, assignment, or other transfer as an
30 absolute transfer and true sale and the corresponding characterization
31 of the property interest of the purchaser, shall not be affected or
32 impaired by the occurrence of any of the following factors:

- 33 1. Commingling of storm recovery charges with other amounts.
- 34 2. The retention by the seller of (i) a partial or residual interest,
35 including an equity interest, in the storm recovery property,
36 whether direct or indirect, or whether subordinate or otherwise,
37 or (ii) the right to recover costs associated with taxes, franchise
38 fees, or license fees imposed on the collection of storm
39 recovery charges.
- 40 3. Any recourse that the purchaser may have against the seller.
- 41 4. Any indemnification rights, obligations, or repurchase rights
42 made or provided by the seller.
- 43 5. The obligation of the seller to collect storm recovery charges
44 on behalf of an assignee.
- 45 6. The transferor acting as the servicer of the storm recovery
46 charges or the existence of any contract that authorizes or
47 requires the public utility, to the extent that any interest in
48 storm recovery property is sold or assigned, to contract with
49 the assignee or any financing party that it will continue to
50 operate its system to provide service to its customers, will
51 collect amounts in respect of the storm recovery charges for

- 1 the benefit and account of such assignee or financing party, and
2 will account for and remit such amounts to or for the account
3 of such assignee or financing party.
- 4 7. The treatment of the sale, conveyance, assignment, or other
5 transfer for tax, financial reporting, or other purposes.
- 6 8. The granting or providing to bondholders a preferred right to
7 the storm recovery property or credit enhancement by the
8 public utility or its affiliates with respect to such storm
9 recovery bonds.
- 10 9. Any application of the adjustment mechanism as provided in
11 sub-sub-subdivision 5. of sub-subdivision b. of subdivision (3)
12 of subsection (b) of this section.
- 13 c. Any right that a public utility has in the storm recovery property before
14 its pledge, sale, or transfer or any other right created under this section
15 or created in the financing order and assignable under this section or
16 assignable pursuant to a financing order is property in the form of a
17 contract right or a chose in action. Transfer of an interest in storm
18 recovery property to an assignee is enforceable only upon the later of
19 (i) the issuance of a financing order, (ii) the assignor having rights in
20 such storm recovery property or the power to transfer rights in such
21 storm recovery property to an assignee, (iii) the execution and delivery
22 by the assignor of transfer documents in connection with the issuance
23 of storm recovery bonds, and (iv) the receipt of value for the storm
24 recovery property. An enforceable transfer of an interest in storm
25 recovery property to an assignee is perfected against all third parties,
26 including subsequent judicial or other lien creditors, when a notice of
27 that transfer has been given by the filing of a financing statement in
28 accordance with sub-subdivision c. of subdivision (2) of this
29 subsection. The transfer is perfected against third parties as of the date
30 of filing.
- 31 d. The Secretary of State shall maintain any financing statement filed to
32 perfect any sale, assignment, or transfer of storm recovery property
33 under this section in the same manner that the Secretary maintains
34 financing statements filed by transmitting utilities under the Code. The
35 filing of any financing statement under this section shall be governed
36 by the provisions regarding the filing of financing statements in the
37 Code. The filing of such a financing statement is the only method of
38 perfecting a transfer of storm recovery property.
- 39 e. The priority of a transfer perfected under this section is not impaired
40 by any later modification of the financing order or storm recovery
41 property or by the commingling of funds arising from storm recovery
42 property with other funds. Any other security interest that may apply
43 to those funds, other than a security interest perfected under
44 subdivision (2) of this subsection, is terminated when they are
45 transferred to a segregated account for the assignee or a financing
46 party. If storm recovery property has been transferred to an assignee
47 or financing party, any proceeds of that property must be held in trust
48 for the assignee or financing party.
- 49 f. The priority of the conflicting interests of assignees in the same
50 interest or rights in any storm recovery property is determined as
51 follows:

- 1 1. Conflicting perfected interests or rights of assignees rank
2 according to priority in time of perfection. Priority dates from
3 the time a filing covering the transfer is made in accordance
4 with sub-subdivision c. of subdivision (2) of this subsection.
- 5 2. A perfected interest or right of an assignee has priority over a
6 conflicting unperfected interest or right of an assignee.
- 7 3. A perfected interest or right of an assignee has priority over a
8 person who becomes a lien creditor after the perfection of such
9 assignee's interest or right.

10 (f) Description or Indication of Property. – The description of storm recovery property
11 being transferred to an assignee in any sale agreement, purchase agreement, or other transfer
12 agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other
13 security document, or indicated in any financing statement is only sufficient if such description
14 or indication refers to the financing order that created the storm recovery property and states that
15 the agreement or financing statement covers all or part of the property described in the financing
16 order. This section applies to all purported transfers of, and all purported grants or liens or
17 security interests in, storm recovery property, regardless of whether the related sale agreement,
18 purchase agreement, other transfer agreement, security agreement, pledge agreement, or other
19 security document was entered into, or any financing statement was filed.

20 (g) Financing Statements. – All financing statements referenced in this section are subject
21 to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does
22 not apply.

23 (h) Choice of Law. – The law governing the validity, enforceability, attachment,
24 perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or
25 the pledge or creation of a security interest in any storm recovery property shall be the laws of
26 this State.

27 (i) Storm Recovery Bonds Not Public Debt. – Neither the State nor its political
28 subdivisions are liable on any storm recovery bonds, and the bonds are not a debt or a general
29 obligation of the State or any of its political subdivisions, agencies, or instrumentalities. An issue
30 of storm recovery bonds does not, directly, indirectly, or contingently, obligate the State or any
31 agency, political subdivision, or instrumentality of the State to levy any tax or make any
32 appropriation for payment of the storm recovery bonds, other than in their capacity as consumers
33 of electricity. All storm recovery bonds must contain on the face thereof a statement to the
34 following effect: "Neither the full faith and credit nor the taxing power of the State of North
35 Carolina is pledged to the payment of the principal of, or interest on, this bond."

36 (j) Legal Investment. – All of the following entities may legally invest any sinking funds,
37 moneys, or other funds in storm recovery bonds:

- 38 (1) Subject to applicable statutory restrictions on State or local investment
39 authority, the State, units of local government, political subdivisions, public
40 bodies, and public officers, except for members of the Commission.
- 41 (2) Banks and bankers, savings and loan associations, credit unions, trust
42 companies, savings banks and institutions, investment companies, insurance
43 companies, insurance associations, and other persons carrying on a banking
44 or insurance business.
- 45 (3) Personal representatives, guardians, trustees, and other fiduciaries.
- 46 (4) All other persons authorized to invest in bonds or other obligations of a similar
47 nature.

48 (k) Obligation of Nonimpairment. –

- 49 (1) The State and its agencies, including the Commission, pledge and agree with
50 bondholders, the owners of the storm recovery property, and other financing
51 parties that the State and its agencies will not take any action listed in this

subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the storm recovery charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:

- a. Alter the provisions of this section, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create storm recovery property, and make the storm recovery charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
- b. Take or permit any action that impairs or would impair the value of storm recovery property or the security for the storm recovery bonds or revises the storm recovery costs for which recovery is authorized.
- c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
- d. Except as authorized under sub-sub-subdivision 5. of sub-subdivision b. of subdivision (3) of subsection (b) of this section, reduce, alter, or impair storm recovery charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related storm recovery bonds have been paid and performed in full.

(2) Any person or entity that issues storm recovery bonds may include the language specified in this subsection in the storm recovery bonds and related documentation.

(l) Not a Public Utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this section.

(m) Conflicts. – If there is a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in storm recovery property, this section shall govern.

(n) Consultation. – In making determinations under this section, the Commission or public staff or both may engage an outside consultant and counsel.

(o) Effect of Invalidity. – If any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all storm recovery bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason."

SECTION 1.(b) G.S. 25-9-109(d) reads as rewritten:

"(d) Inapplicability of Article. – This Article does not apply to:

- ...
- (13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~
- (14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this

1 State or a governmental unit in this State, to secure, directly or indirectly, any
2 bond, note, other evidence of indebtedness, or other payment obligations for
3 borrowed money issued by, or in connection with, installment or lease
4 purchase financings by, this State or a governmental unit in this State.
5 However, notwithstanding this subdivision, this Article does apply to the
6 creation, perfection, priority, and enforcement of security interests created by
7 this State or a governmental unit in this State in equipment or ~~fixtures~~-fixtures;
8 or

9 (15) The creation, perfection, priority, or enforcement of any sale, assignment of,
10 pledge of, security interest in, or other transfer of, any interest or right or
11 portion of any interest or right in any storm recovery property as defined
12 G.S. 62-172."
13

14 PART II. AUTHORIZE RATES USING ALTERNATIVE MECHANISMS.

15 SECTION 2. Article 7 of Chapter 62 of the General Statutes is amended by adding
16 a new section to read:

17 "§ 62-133A. Alternate rate methodology authorized.

18 (a) Notwithstanding the methods for fixing rates established under G.S. 62-133, the
19 Commission is authorized to approve multiyear rate plans, banding of authorized returns, or a
20 combination thereof, in a general rate case proceeding initiated pursuant to G.S. 62-133 for
21 rate-making mechanisms, plans, or settlements proposed by an electric public utility. For
22 purposes of this section, the following definitions apply:

23 (1) "Banding of authorized returns" means a rate mechanism under which the
24 Commission sets an authorized return on equity for an electric utility that acts
25 as a midpoint and then applies a low- and high-end range of returns to that
26 midpoint under which an electric public utility will not over earn if within the
27 high-end range and will not under earn if within the low-end range.

28 (2) "Multiyear rate plan" means a rate mechanism under which the Commission
29 sets base rates and revenue requirements for a multiyear plan period and
30 authorizes periodic changes in base rates during the approved plan period
31 without the need for a base rate proceeding during the plan period.

32 (b) Upon application by an electric public utility, the Commission shall, after notice and
33 an opportunity for interested parties to be heard, issue an order rendering its decision on an
34 electric public utility's proposed rate-making mechanism, plan, or settlement that includes
35 multiyear rate plans, banding of authorized returns, or a combination thereof, filed pursuant to
36 this section within the time frames set forth in G.S. 62-134. The Commission may approve such
37 rate-making mechanisms, plans, or settlements proposed by an electric public utility only upon a
38 finding by the Commission that such mechanisms, plans, or settlements will establish rates that
39 are just and reasonable, and which are in the public interest. In reviewing any such application
40 under this section, the Commission shall consider whether the electric public utility's application,
41 as proposed: (i) establishes rates as shall be fair both to the electric public utility and to the
42 consumer; (ii) reasonably assures the continuation of safe and reliable electric service; (iii) will
43 not unreasonably prejudice any class of electric customers; and (iv) is otherwise consistent with
44 the public interest.

45 (c) Any rate-making mechanisms, plans, or settlements approved pursuant to this section
46 shall remain in effect for a period of no more than five years.

47 (d) For purposes of measuring an electric public utility's earnings under any mechanisms,
48 plans, or settlements approved under this section, the electric public utility shall make an annual
49 filing that sets forth the electric public utility's earned return on equity for the prior 12-month
50 period.

1 (e) Nothing in this section shall be construed to (i) limit or abrogate the existing
2 rate-making authority of the Commission or (ii) invalidate or void any rates approved by the
3 Commission prior to the effective date of this section. In all respects, the rate-making
4 mechanisms, plans, or settlements approved under this section, shall operate independently, and
5 be considered separately, from riders or other cost recovery mechanisms otherwise allowed by
6 law, unless otherwise incorporated into such mechanism, plan, or settlement."
7

8 **PART III. EFFECTIVE DATE.**

9 **SECTION 3.** Part I of this act is effective when it becomes law. Part II of this act is
10 effective when it becomes law and applies to any rate-making mechanisms, designs, plans, or
11 settlements filed by a public utility on or after that date. The remainder of this act is effective
12 when it becomes law.