

# **WEST VIRGINIA LEGISLATURE**

**SECOND REGULAR SESSION, 2012**



# **ENROLLED**

## **COMMITTEE SUBSTITUTE FOR House Bill No. 4530**

(By Delegates White, Varner, Boggs, R. Phillips,  
Andes, Morgan, Stowers and Poore)



Passed March 7, 2012

To Take Effect From Passage

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 4530**

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(BY DELEGATES WHITE, VARNER, BOGGS, R. PHILLIPS,  
ANDES, MORGAN, STOWERS AND POORE)

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[Passed March 7, 2012; to take effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-4f, relating to authorizing the Public Service Commission of West Virginia to consider and authorize the recovery of certain expanded net energy costs by certain electric utilities through the issuance of consumer rate relief bonds; providing definitions; providing application process for financing order authorizing the recovery of certain costs; requiring certain information in application for financing order; providing for issuance of financing order and information contained therein; allowing for disposition of consumer rate relief property; providing for term of financing order; providing for subsequent Public Service Commission proceedings and limits on commission authority; providing for duties of certain electric utilities; providing for application of adjustment mechanism and filing of schedules with commission; providing for nonbypassability of consumer rate relief changes; providing for utility default and successors to certain utilities; providing for security interest in consumer rate relief property and transfer and sale of same; providing for

limitation on taxation of consumer rate relief charges and exemption thereto; providing that consumer rate relief bonds are not debt of governmental entities or a pledge of taxing power; providing consumer rate relief bonds as legal investment; providing for certain pledge of state; providing for governing law; and providing for severability and non-utility status.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-4f, to read as follows:

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

**§24-2-4f. Consumer rate relief bonds.**

1       (a) *Legislative findings.* - The Legislature hereby finds  
2       and declares as follows:

3       (1) That some electric utilities in the state have  
4       experienced expanded net energy costs of a magnitude  
5       problematic to recover from their customers through the  
6       commission's traditional cost recovery mechanisms, which  
7       have resulted in unusually large under-recoveries;

8       (2) That the financing costs of carrying such under-  
9       recovery balances and projected costs can be considerable;

10      (3) That the use of traditional utility financing  
11      mechanisms to finance or refinance the recovery of such  
12      under-recovery balances and projected costs may result in  
13      considerable additional costs to be reflected in the approved  
14      rates of electric utility customers;

15 (4) That customers of electric utilities in the state have an  
16 interest in the electric utilities financing the costs of such  
17 under-recovery balances and projected costs at a lower cost  
18 than would be afforded by traditional utility financing  
19 mechanisms;

20 (5) That alternative financing mechanisms exist which  
21 can result in lower costs and mitigate rate impacts to  
22 customers and the use of these mechanisms can prove highly  
23 beneficial to such customers; and

24 (6) That in order to use such alternative financing  
25 mechanisms, the commission must be empowered to adopt a  
26 financing order that advances these goals. The Legislature,  
27 therefore, determines that it is in the interest of the state and  
28 its citizens to encourage and facilitate the use of alternative  
29 financing mechanisms that will enable electric utilities to  
30 finance or refinance expanded net energy costs at the lowest  
31 reasonably practical cost under certain conditions and to  
32 empower the commission to review and approve alternative  
33 financing mechanisms when it determines that such approval  
34 is in the public interest, as set forth in this section.

35 (b) *Definitions.* - As used in this section:

36 (1) "Adjustment mechanism" means a formula-based  
37 mechanism for making adjustments to consumer rate relief  
38 charges to correct for over-collection or under-collection of  
39 such charges or otherwise to ensure the timely and complete  
40 payment and recovery of such charges and financing costs.  
41 The adjustment mechanism shall accommodate: (i) Standard  
42 adjustments to consumer rate relief charges that are limited to  
43 relatively stable conditions of operations; and (ii)  
44 nonstandard adjustments to consumer rate relief charges that  
45 are necessary to reflect significant changes from historical  
46 conditions of operations, such as the loss of significant

47 electrical load. The adjustment mechanism is not to be used  
48 as a means to authorize the issuance of consumer rate relief  
49 bonds in a principal amount greater, or the payment or  
50 recovery of expanded net energy costs in an amount greater,  
51 than that which was authorized in the financing order which  
52 established the adjustment mechanism.

53 (2) “Ancillary agreement” means a bond insurance policy  
54 letter of credit, reserve account, surety bond, swap  
55 arrangement, hedging arrangement, liquidity or credit support  
56 arrangement or other similar agreement or arrangement  
57 entered into in connection with the issuance of consumer rate  
58 relief bonds that is designed to promote the credit quality and  
59 marketability of the bonds or to mitigate the risk of an  
60 increase in interest rates.

61 (3) “Assignee” means a person, corporation, limited  
62 liability company, trust, partnership or other entity to which  
63 an interest in consumer rate relief property is assigned, sold  
64 or transferred, other than as security. The term also includes  
65 any entity to which an assignee assigns, sells or transfers,  
66 other than as security, the assignee’s interest in or right to  
67 consumer rate relief property.

68 (4) “Bond” includes debentures, notes, certificates of  
69 participation, certificates of beneficial interest, certificates of  
70 ownership or other evidences of indebtedness or ownership  
71 that are issued by an electric utility or an assignee under a  
72 final financing order, the proceeds of which are used directly  
73 or indirectly to recover, finance, or refinance expanded net  
74 energy costs and that are secured by or payable from  
75 revenues from consumer rate relief charges.

76 (5) “Bondholder” means any holder or owner of a  
77 consumer rate relief bond.

78 (6) “Commission” means the Public Service Commission  
79 of West Virginia, as it may be constituted from time to time,  
80 and any successor agency exercising functions similar in  
81 purpose thereto.

82 (7) “Consumer rate relief charges” means the amounts  
83 which are authorized by the commission in a financing order  
84 to be collected from a qualifying utility’s customers in order  
85 to pay and secure the debt service payments of consumer rate  
86 relief bonds and associated financing costs.

87 (8) “Consumer rate relief costs” means those costs,  
88 including financing costs, which are to be defrayed through  
89 consumer rate relief charges.

90 (9) “Consumer rate relief property” means the property,  
91 rights, and interests of a qualifying utility or an assignee  
92 under a final financing order, including the right to impose,  
93 charge, and collect the consumer rate relief charges that shall  
94 be used to pay and secure the payment of consumer rate relief  
95 bonds and financing costs, and including the right to obtain  
96 adjustments to those charges, and any revenues, receipts,  
97 collections, rights to payment, payments, moneys, claims, or  
98 other proceeds arising from the rights and interests created  
99 under the final financing order.

100 (10) “Expanded net energy costs” means historical and,  
101 if deemed appropriate by the commission, projected costs,  
102 inclusive of carrying charges on under-recovery balances  
103 authorized by the commission, including costs incurred prior  
104 to the effective date of this statute, adjudicated pursuant to  
105 the commission’s expanded net energy cost proceedings,  
106 which have been authorized for recovery by an order of the  
107 commission, whether or not subject to judicial appeal.

108 (11) “Financing costs” means any of the following:

109 (A) Principal, interest and redemption premiums that are  
110 payable on consumer rate relief bonds;

111 (B) A payment required under an ancillary agreement;

112 (C) An amount required to fund or replenish a reserve  
113 account or another account established under an indenture,  
114 ancillary agreement or other financing document relating to  
115 consumer rate relief bonds or the payment of any return on  
116 the capital contribution approved by the commission to be  
117 made by a qualifying utility to an assignee;

118 (D) Costs of retiring or refunding an existing debt and  
119 equity securities of a qualifying utility in connection with the  
120 issuance of consumer rate relief bonds but only to the extent  
121 the securities were issued for the purpose of financing  
122 expanded net energy costs;

123 (E) Costs incurred by a qualifying utility to obtain  
124 modifications of or amendments to an indenture, financing  
125 agreement, security agreement, or similar agreement or  
126 instrument relating to an existing secured or unsecured  
127 obligation of the utility in connection with the issuance of  
128 consumer rate relief bonds;

129 (F) Costs incurred by a qualifying utility to obtain a  
130 consent, release, waiver, or approval from a holder of an  
131 obligation described in subparagraph (E) of this subdivision  
132 that are necessary to be incurred for the utility to issue or  
133 cause the issuance of consumer rate relief bonds;

134 (G) Taxes, franchise fees or license fees imposed on  
135 consumer rate relief charges;

136 (H) Costs related to issuing or servicing consumer rate  
137 relief bonds or related to obtaining a financing order,

138 including servicing fees and expenses, trustee fees and  
139 expenses, legal fees and expenses, administrative fees,  
140 placement fees, underwriting fees, capitalized interest and  
141 equity, rating-agency fees and other related costs authorized  
142 by the commission in a financing order; and

143 (I) Costs that are incurred by the commission for a  
144 financial adviser with respect to consumer rate relief bonds.

145 (12) “Financing order” means an order issued by the  
146 commission under subsection (e) of this section that  
147 authorizes a qualifying utility to issue consumer rate relief  
148 bonds and recover consumer rate relief charges. A financing  
149 order may set forth conditions or contingencies on the  
150 effectiveness of the relief authorized therein and may grant  
151 relief that is different from that which was requested in the  
152 application.

153 (13) “Final financing order” means a financing order that  
154 has become final and has taken effect as provided in  
155 subdivision (10) of subsection (e) of this section.

156 (14) “Financing party” means either of the following:

157 (A) A trustee, collateral agent or other person acting for  
158 the benefit of any bondholder; or

159 (B) A party to an ancillary agreement, the rights and  
160 obligations of which relate to or depend upon the existence  
161 of consumer rate relief property, the enforcement and priority  
162 of a security interest in consumer rate relief property, the  
163 timely collection and payment of consumer rate relief charges  
164 or a combination of these factors.

165 (15) “Financing statement” has the same meaning as in  
166 section one-hundred-two, article nine, chapter forty-six of  
167 this Code.



168 (16) “Investment grade” means, with respect to the  
169 unsecured debt obligations of a utility at any given time of  
170 determination, a rating that is within the top four investment  
171 rating categories as published by at least one nationally  
172 recognized statistical rating organization as recognized by the  
173 United States Securities and Exchange Commission.

174 (17) “Nonbypassable” means that the payment of  
175 consumer rate relief charges may not be avoided by any West  
176 Virginia retail customer of a qualifying utility or its  
177 successors and must be paid by any such customer that  
178 receives electric delivery service from such utility or its  
179 successors for as long as the consumer rate relief bonds are  
180 outstanding.

181 (18) “Nonutility affiliate” means, with respect to any  
182 utility, a person that: (i) Is an affiliate of the utility as defined  
183 in 42.S.C.§16451(1); and (ii) is not a public utility that  
184 provides retail utility service to customers in the state within  
185 the meaning of section two, article one of this chapter.

186 (19) “Parent” means, with respect to a utility, a registered  
187 holding company or other person that holds a majority  
188 ownership or membership interest in the utility.

189 (20) “Qualifying utility” means a public utility engaged  
190 in the sale of electric service to retail customers in West  
191 Virginia which has applied for and received from the  
192 commission a final financing order under this section,  
193 including an affiliated electric public utility which has  
194 applied jointly for and received such an order.

195 (21) “Registered holding company” means, with respect  
196 to a utility, a person that is: (i) A registered holding company  
197 as defined in 42 U.S.C.§16451(8); and (ii) an affiliate of the  
198 utility as defined in 42 U.S.C.§16451(1).

199 (22) “Regulatory sanctions” means, under the  
200 circumstances presented, a regulatory or ratemaking sanction  
201 or penalty that the commission is authorized to impose  
202 pursuant to this chapter or any proceeding for the  
203 enforcement of any provision of this chapter or any order of  
204 the commission that the commission is authorized to pursue  
205 or conduct pursuant to this chapter, including without  
206 limitation: (i) The initiation of any proceeding in which the  
207 utility is required to show cause why it should not be required  
208 to comply with the terms and conditions of a financing order  
209 or the requirements of this section; (ii) the imposition of  
210 penalties pursuant to article four of this chapter; and (iii) a  
211 proceeding by mandamus, injunction or other appropriate  
212 proceeding as provided in section two of this article.

213 (23) “Successor” means, with respect to an entity, another  
214 entity that succeeds by operation of law to the rights and  
215 obligations of the first legal entity pursuant to any  
216 bankruptcy, reorganization, restructuring, or other insolvency  
217 proceeding, any merger, acquisition, or consolidation, or any  
218 sale or transfer of assets, regardless of whether any of these  
219 occur as a result of a restructuring of the electric power  
220 industry or otherwise.

221 (c) *Application for financing order.*

222 (1) If an electric utility or affiliate obtains from the  
223 commission an authorization or waiver required by any other  
224 provision of this chapter or by commission order with respect  
225 to the underlying expanded net energy costs proposed to be  
226 financed through the mechanism of consumer rate relief  
227 bonds, an electric utility, or two or more affiliated electric  
228 utilities engaged in the delivery of electric service to  
229 customers in this state, may apply to the commission for a  
230 financing order that authorizes the following:

231 (A) The issuance of consumer rate relief bonds, in one or  
232 more series, to recover only those expanded net energy costs  
233 that could result in an under-recovery;

234 (B) The imposition, charging, and collection of consumer  
235 rate relief charges, in accordance with the adjustment  
236 mechanism approved by the commission under subparagraph  
237 (E), subdivision (6), subsection (e) of this section to recover  
238 sufficient amounts to pay and secure the debt service  
239 payments of consumer rate relief bonds and associated  
240 financing costs; and

241 (C) The creation of consumer rate relief property under  
242 the financing order.

243 (2) The commission may only consider applications made  
244 pursuant to this subsection for the recovery of underlying  
245 expanded net energy costs that would be reflected in  
246 schedules of rates filed in calendar year 2012.

247 (d) *Information required in application for financing*  
248 *order.*

249 The application shall include all of the following:

250 (1) A description and quantification of the uncollected  
251 expanded net energy costs that the electric utility seeks to  
252 recover through the issuance of consumer rate relief bonds;

253 (2) An estimate of the date each series of consumer rate  
254 relief bonds is expected to be issued;

255 (3) The expected term during which the consumer rate  
256 relief costs for each series of consumer rate relief bonds are  
257 expected to be recovered;

258 (4) An estimate of the financing costs associated with the  
259 issuance of each series of consumer rate relief bonds;

260 (5) An estimate of the amount of consumer rate relief  
261 charges necessary to recover the consumer rate relief costs set  
262 forth in the application and the calculation for that estimate,  
263 which calculation shall take into account the estimated date  
264 or dates of issuance and the estimated principal amount of  
265 each series of consumer rate relief bonds;

266 (6) A proposed methodology for allocating consumer rate  
267 relief charges between and within tariff schedules and to  
268 special contract customers;

269 (7) A description of a proposed adjustment mechanism,  
270 reflecting the allocation methodology in subdivision (6) of  
271 this subsection;

272 (8) A description of the benefits to the qualifying utility's  
273 customers that are expected to result from the issuance of the  
274 consumer rate relief bonds, including a demonstration that the  
275 bonds and their financing costs are just and reasonable and  
276 are reasonably expected to achieve the lowest reasonably  
277 attainable cost in order to produce cost savings to customers  
278 and to mitigate rate impacts on customers, as compared to  
279 traditional financing mechanisms or traditional cost-recovery  
280 methods available to the electric utility; and

281 (9) Other information required by commission rules.

282 (e) *Issuance of financing order.*

283 (1) Except as otherwise provided in this section,  
284 proceedings on an application submitted by an electric utility  
285 under subsection (c) of this section are governed by the  
286 commission's standard procedural rules. Any party that

287 participated in a proceeding in which the subject expanded  
288 net energy costs were authorized or approved automatically  
289 has standing to participate in the financing order proceedings  
290 and the commission shall determine the standing or lack of  
291 standing of any other petitioner for party status.

292 (2) Within thirty days after the filing of an application  
293 under subsection (c) of this section, the commission shall  
294 issue a scheduling order for the proceeding.

295 (3) At the conclusion of proceedings on an application  
296 submitted by an electric utility under subsection (c) of this  
297 section, the commission shall issue either a financing order,  
298 granting the application, in whole or with modifications, or  
299 an order denying the application.

300 (4) The commission may issue a financing order under  
301 this subsection if the commission finds that the issuance of  
302 the consumer rate relief bonds and the consumer rate relief  
303 charges authorized by the order are just and reasonable and  
304 are reasonably expected to achieve the lowest reasonably  
305 attainable cost in order to produce cost savings to customers  
306 and to mitigate rate impacts on customers, as compared to  
307 traditional financing mechanisms or traditional cost-recovery  
308 methods available to the electric utility.

309 (5) The commission shall include all of the following in  
310 a financing order issued under this subsection:

311 (A) A determination of the maximum amount and a  
312 description of the expanded net energy costs that may be  
313 recovered through consumer rate relief bonds issued under  
314 the financing order;

315 (B) A description of consumer rate relief property, the  
316 creation of which is authorized by the financing order;

317 (C) A description of the financing costs that may be  
318 recovered through consumer rate relief charges and the  
319 period over which those costs may be recovered;

320 (D) A description of the methodology and calculation for  
321 allocating consumer rate relief charges between and within  
322 tariff schedules and to special contract customers;

323 (E) A description and approval of the adjustment  
324 mechanism for use in the imposition, charging, and collection  
325 of the consumer rate relief charges, including: (i) The  
326 allocation referred to in paragraph (D) of this subdivision and  
327 (ii) any specific requirements for adjusting and reconciling  
328 consumer rate relief charges for standard adjustments that are  
329 limited to relatively stable conditions of operations and  
330 nonstandard adjustments that are necessary to reflect  
331 significant changes from historical conditions of operations,  
332 such as the loss of substantial electrical load, so long as each  
333 and every application of the adjustment mechanism is  
334 designed to assure the full and timely payment of consumer  
335 rate relief bonds and associated financing costs.

336 (F) The maximum term of the consumer rate relief bonds;

337 (G) A finding that the issuance of the consumer rate relief  
338 bonds, including financing costs, is just and reasonable and  
339 are reasonably expected to achieve the lowest reasonably  
340 attainable cost in order to produce cost savings to customers  
341 and to mitigate rate impacts on customers, as compared to  
342 traditional financing mechanisms or traditional cost-recovery  
343 methods available to the electric utility; and

344 (H) Any other provision the commission considers  
345 appropriate to ensure the full and timely imposition, charging,  
346 collection and adjustment, pursuant to an approved  
347 adjustment mechanism, of the consumer rate relief charges.

348 (6) To the extent the commission deems appropriate and  
349 compatible with the issuance advice letter procedure under  
350 subdivision (9) of this subsection, the commission, in a  
351 financing order, shall afford the electric utility flexibility in  
352 establishing the terms and conditions for the consumer rate  
353 relief bonds to accommodate changes in market conditions,  
354 including repayment schedules, interest rates, financing costs,  
355 collateral requirements, required debt service and other  
356 reserves, and the ability of the qualifying utility, at its option,  
357 to effect a series of issuances of consumer rate relief bonds  
358 and correlated assignments, sales, pledges, or other transfers  
359 of consumer rate relief property. Any changes made under  
360 this subdivision to terms and conditions for the consumer rate  
361 relief bonds shall be in conformance with the financing order.

362 (7) A financing order shall provide that the creation of  
363 consumer rate relief property shall be simultaneous with the  
364 sale of that property to an assignee as provided in the  
365 application and the pledge of the property to secure consumer  
366 rate relief bonds.

367 (8) The commission, in a financing order, shall require  
368 that, after the final terms of each issuance of consumer rate  
369 relief bonds have been established, and prior to the issuance  
370 of those bonds, the qualifying utility shall determine the  
371 resulting initial consumer rate relief charges in accordance  
372 with the adjustment mechanism described in the financing  
373 order. These consumer rate relief charges shall be final and  
374 effective upon the issuance of the consumer rate relief bonds,  
375 without further commission action.

376 (9) Because the actual structure and pricing of the  
377 consumer rate relief bonds will not be known at the time the  
378 financing order is issued, in the case of every securitization  
379 approved by the commission, the qualifying utility which  
380 intends to cause the issuance of such bonds will provide to

381 the commission and the commission's financial adviser, if  
382 any, prior to the issuance of the bonds, an issuance advice  
383 letter following the determination of the final terms of the  
384 bonds. The issuance advice letter shall indicate the final  
385 structure of the consumer rate relief bonds and provide the  
386 best available estimate of total ongoing costs. The issuance  
387 advice letter should report the initial consumer rate relief  
388 charges and other information specific to the consumer rate  
389 relief bonds to be issued, as the financing order may require.  
390 The qualifying utility may proceed with the issuance of the  
391 consumer rate relief bonds unless, prior to noon on the fourth  
392 business day after the commission receives the issuance  
393 advice letter, the commission issues a disapproval letter  
394 directing that the bonds as proposed shall not be issued and  
395 the basis for that disapproval. The financing order may  
396 provide such additional provisions relating to the issuance  
397 advice letter process as the commission deems appropriate.

398 (10) An order of the commission issued pursuant to this  
399 subsection is a final order of the commission. Any party  
400 aggrieved by the issuance of any such order may petition for  
401 suspension and review thereof by the Supreme Court of  
402 Appeals pursuant to section one, article five of this chapter.  
403 In the case of a petition for suspension and review, the  
404 Supreme Court of Appeals shall proceed to hear and  
405 determine the action as expeditiously as practicable and give  
406 the action precedence over other matters not accorded similar  
407 precedence by law.

408 (11) The financing order shall also provide for a procedure  
409 requiring the qualifying utility to adjust its rates or provide  
410 credits in a manner that would return to customers any  
411 overpayments resulting from the securitization for the expanded  
412 net energy costs in excess of actual prudently incurred costs as  
413 subsequently determined by the commission. The adjustment  
414 mechanism may not affect or impair the consumer rate relief



415 property or the right to impose, collect, or adjust the consumer  
416 rate relief charges under this section.

417 (12) The commission may require, as a condition to the  
418 effectiveness of the financing order but in every circumstance  
419 subject to the limitations set forth in subdivision (3),  
420 subsection (g) of this section, that the qualifying utility give  
421 appropriate assurances to the commission that the qualifying  
422 utility and its parent will abide by the following conditions  
423 during any period in which any consumer rate relief bonds  
424 issued pursuant to the financing order are outstanding, in  
425 addition to any other obligation either may have under this  
426 code or federal law. Without first obtaining the prior consent  
427 and approval of the Commission, the qualifying utility will  
428 not:

429 (A) Lend money, directly or indirectly, to a registered  
430 holding company or a nonutility affiliate; or

431 (B) Guarantee the obligations of a registered holding  
432 company or a nonutility affiliate.

433 (13) A financing order may require the qualifying utility  
434 to file with the commission a periodic report showing the  
435 receipt and disbursement of proceeds of consumer rate relief  
436 bonds and consumer rate relief charges. A financing order  
437 may authorize the staff of the commission to review and audit  
438 the books and records of the qualifying utility relating to the  
439 receipt and disbursement of such proceeds. The provisions of  
440 this subdivision do not limit the authority of the commission  
441 under this chapter to investigate the practices of the  
442 qualifying utility or to audit the books and records of the  
443 qualifying utility.

444 (14) In the case of two or more affiliated utilities that  
445 have jointly applied for a financing order as provided in

446 subdivision (1), subsection (c) of this section, a financing  
 447 order may authorize each affiliated utility to impose  
 448 consumer rate relief charges on its customers and to cause to  
 449 be issued consumer rate relief bonds and to receive and use  
 450 the proceeds which it receives with respect thereto as  
 451 provided in subdivision (1), subsection (j) of this section.

452 (15) The commission, in its discretion, may engage the  
 453 services of a financial adviser for the purpose of assisting the  
 454 commission in its consideration of an application for a  
 455 financing order and a subsequent issuance of consumer rate  
 456 relief bonds pursuant to a financing order.

457 (f) *Allowed disposition of consumer rate relief property.*

458 (1) The consumer rate relief property created in a final  
 459 financing order may be transferred, sold, conveyed or  
 460 assigned to any affiliate of the qualifying utility created for  
 461 the limited purpose of acquiring, owning or administering  
 462 that property, issuing consumer rate relief bonds under the  
 463 final financing order or a combination of these purposes.

464 (2) All or any portion of the consumer rate relief property  
 465 may be pledged to secure the payment of consumer rate relief  
 466 bonds, amounts payable to financing parties and bondholders,  
 467 amounts payable under any ancillary agreement and other  
 468 financing costs.

469 (3) A transfer, sale, conveyance, assignment, grant of a  
 470 security interest in or pledge of consumer rate relief property  
 471 by a qualifying utility to an affiliate of the utility, to the  
 472 extent previously authorized in a financing order, does not  
 473 require the prior consent and approval of the commission  
 474 under section twelve of this article.

475 (4) The consumer rate relief property constitutes an  
476 existing, present property right, notwithstanding any  
477 requirement that the imposition, charging, and collection of  
478 consumer rate relief charges depend on the qualifying utility  
479 continuing to deliver retail electric service or continuing to  
480 perform its servicing functions relating to the billing and  
481 collection of consumer rate relief charges or on the level of  
482 future energy consumption. That property exists regardless of  
483 whether the consumer rate relief charges have been billed,  
484 have accrued or have been collected and notwithstanding any  
485 requirement that the value or amount of the property is  
486 dependent on the future provision of service to customers by  
487 the qualifying utility.

488 (5) All such consumer rate relief property continues to  
489 exist until the consumer rate relief bonds issued under the  
490 final financing order are paid in full and all financing costs  
491 relating to the bonds have been paid in full.

492 (g) *Final financing order to remain in effect.*

493 (1) A final financing order remains in effect until the  
494 consumer rate relief bonds issued under the final financing  
495 order and all financing costs related to the bonds have been  
496 paid in full.

497 (2) A final financing order remains in effect and  
498 unabated, notwithstanding the bankruptcy, reorganization or  
499 insolvency of the qualifying utility, or any affiliate of the  
500 qualifying utility, or the commencement of any judicial or  
501 nonjudicial proceeding on the final financing order.

502 (3) A final financing order is irrevocable and the  
503 commission may not reduce, impair, postpone or terminate  
504 the consumer rate relief charges authorized in the final

505 financing order or impair the property or the collection or  
506 recovery of consumer rate relief costs.

507 (h) *Subsequent commission proceeding.*

508 Upon petition, or upon its own motion, the commission  
509 may commence a proceeding and issue a subsequent  
510 financing order that provides for retiring and refunding  
511 consumer rate relief bonds issued under the final financing  
512 order if the commission finds that the subsequent financing  
513 order satisfies all of the requirements of subsection (e) of this  
514 section. Effective on retirement of the refunded consumer  
515 rate relief bonds and the issuance of new consumer rate relief  
516 bonds, the commission shall adjust the related consumer rate  
517 relief charges accordingly.

518 (i) *Limits on commission authority.*

519 (1) The commission, in exercising its powers and  
520 carrying out its duties regarding regulation and ratemaking,  
521 may not do any of the following:

522 (A) Consider consumer rate relief bonds issued under a  
523 final financing order to be the debt of the qualifying utility;

524 (B) Consider the consumer rate relief charges imposed,  
525 charged or collected under a final financing order to be  
526 revenue of the qualifying utility; or

527 (C) Consider the consumer rate relief costs or financing  
528 costs authorized under a final financing order to be costs of  
529 the qualifying utility.

530 (2) The commission may not order or otherwise require,  
531 directly or indirectly, an electric utility to use consumer rate  
532 relief bonds to finance the recovery of expanded net energy  
533 costs.

534 (3) The commission may not refuse to allow the recovery  
535 of expanded net energy costs solely because an electric utility  
536 has elected or may elect to finance those costs through a  
537 financing mechanism other than the issuance of consumer  
538 rate relief bonds.

539 (4) If a qualifying utility elects not to finance such costs  
540 through the issuance of consumer rate relief bonds as  
541 authorized in a final financing order, those costs shall be  
542 recovered as authorized by the commission previously or in  
543 subsequent proceedings.

544 (j) *Duties of qualifying utility.*

545 (1) A qualifying utility shall cause the proceeds which it  
546 receives with respect to consumer rate relief bonds issued  
547 pursuant to a financing order to be used for the recovery of  
548 the expanded net energy costs which occasioned the issuance  
549 of the bonds, including the retirement of debt and/or equity  
550 of the qualifying utility which was incurred to finance or  
551 refinance such costs and for no other purpose.

552 (2) A qualifying utility shall annually provide a plain-  
553 English explanation of the consumer rate relief charges  
554 approved in the financing order, as modified by subsequent  
555 issuances of consumer rate relief bonds authorized under the  
556 financing order, if any, and by application of the adjustment  
557 mechanism as provided in subsection (k) of this section.  
558 These explanations may be made by bill inserts, website  
559 information or other appropriate means as required, or  
560 approved if proposed by the qualifying utility, by the  
561 commission.

562 (3) Collected consumer rate relief charges shall be  
563 applied solely to the repayment of consumer rate relief bonds  
564 and other financing costs.

565 (4) The failure of a qualifying utility to apply the  
566 proceeds which it receives with respect to an issuance of  
567 consumer rate relief bonds in a reasonable, prudent and  
568 appropriate manner or otherwise comply with any provision  
569 of this section does not invalidate, impair or affect any  
570 financing order, consumer rate relief property, consumer rate  
571 relief charges or consumer rate relief bonds. Subject to the  
572 limitations set forth in subsection (g) of this section, nothing  
573 in this subdivision prevents or precludes the commission  
574 from imposing regulatory sanctions against a qualifying  
575 utility for failure to comply with the terms and conditions of  
576 a financing order or the requirements of this section.

577 (k) *Application of adjustment mechanism; filing of*  
578 *schedules with commission.*

579 (1) A qualifying utility shall file with the commission,  
580 and the commission shall approve, with or without such  
581 modification as is allowed under this subsection, at least  
582 annually, or more frequently as provided in the final  
583 financing order, a schedule applying the approved adjustment  
584 mechanism to the consumer rate relief charges authorized  
585 under the final financing order, based on estimates of demand  
586 and consumption for each tariff schedule and special contract  
587 customer and other mathematical factors. The qualifying  
588 utility shall submit with the schedule a request for approval  
589 to make the adjustments to the consumer rate relief charges  
590 in accordance with the schedule.

591 (2) On the same day a qualifying utility files with the  
592 commission its calculation of the adjustment, it shall cause  
593 notice of the filing to be given, in the form specified in the  
594 financing order, as a Class I legal advertisement in  
595 compliance with the provisions of article three, chapter fifty-  
596 nine of this code in a newspaper of general circulation  
597 published each weekday in Kanawha County. This

598 publication is only required if the calculation of the  
599 adjustment filed by the utility with the commission would  
600 result in an increase in the amount of the consumer rate relief  
601 charges.

602 (3) The commission's review of a request for a standard  
603 adjustment is limited to a determination of whether there is a  
604 mathematical error in the application of the adjustment  
605 mechanism to the consumer rate relief charges. No hearing is  
606 required for such an adjustment. Each standard adjustment  
607 to the consumer rate relief charges, in an amount as  
608 calculated by the qualifying utility but incorporating any  
609 correction for a mathematical error as determined by the  
610 commission, automatically becomes effective fifteen days  
611 following the date on which the qualifying utility files with  
612 the commission its calculation of the standard adjustment.

613 (4) If the commission authorizes a nonstandard  
614 adjustment procedure in the financing order, and the  
615 qualifying utility files for such an adjustment, the commission  
616 shall allow interested parties thirty days from the date the  
617 qualifying utility filed the calculation of a nonstandard  
618 adjustment to make comments. The commission's review of  
619 the total amount required for a nonstandard adjustment shall  
620 be limited to the mathematical accuracy of the total  
621 adjustment needed to assure the full and timely payment of  
622 all debt service costs and related financing costs of the  
623 consumer rate relief bonds. The commission may also  
624 determine the proper allocation of those costs within and  
625 between classes of customers and to special contract  
626 customers, the proper design of the consumer rate relief  
627 charges and the appropriate application of those charges  
628 under the methodology set forth in the formula-based  
629 adjustment mechanism approved in the financing order. If the  
630 commission determines that a hearing is necessary, the  
631 commission shall hold a hearing on the comments within

632 forty days of the date the qualifying utility filed the  
633 calculation of the nonstandard adjustment. The nonstandard  
634 adjustment, as modified by the commission, if necessary,  
635 shall be approved by the commission within sixty days and  
636 the commission may shorten the filing and hearing periods  
637 above in the financing order to ensure this result. Any  
638 procedure for a nonstandard adjustment must be consistent  
639 with assuring the full and timely payment of debt service of  
640 the consumer rate relief bonds and associated financing costs.

641 (5) No adjustment approved or deemed approved under  
642 this section affects the irrevocability of the final financing  
643 order as specified in subdivision (3) of subsection (g) of this  
644 section.

645 (l) *Nonbypassability of consumer rate relief charges.*

646 (1) As long as consumer rate relief bonds issued under a  
647 final financing order are outstanding, the consumer rate relief  
648 charges authorized under the final financing order are  
649 nonbypassable and apply to all existing or future West  
650 Virginia retail customers of a qualifying utility or its  
651 successors and must be paid by any customer that receives  
652 electric delivery service from the utility or its successors.

653 (2) The consumer rate relief charges shall be collected by  
654 the qualifying utility or the qualifying utility's successors or  
655 assignees, or a collection agent, in full through a charge that  
656 is separate and apart from the qualifying utility's base rates.

657 (m) *Utility default.*

658 (1) If a qualifying utility defaults on a required payment  
659 of consumer rate relief charges collected, a court, upon  
660 application by an interested party, or the commission, upon  
661 application to the commission or upon its own motion, and



662 without limiting any other remedies available to the applying  
663 party, shall order the sequestration and payment of the  
664 consumer rate relief charges collected for the benefit of  
665 bondholders, assignees and financing parties. The order  
666 remains in full force and effect notwithstanding a bankruptcy,  
667 reorganization or other insolvency proceedings with respect  
668 to the qualifying utility or any affiliate thereof.

669 (2) Customers of a qualifying utility shall be held  
670 harmless by the qualifying utility for its failure to remit any  
671 required payment of consumer rate relief charges collected  
672 but such failure does not affect the consumer rate relief  
673 property or the rights to impose, collect and adjust the  
674 consumer rate relief charges under this section.

675 (3) Consumer rate relief property under a final financing  
676 order and the interests of an assignee, bondholder or  
677 financing party in that property under a financing agreement  
678 are not subject to set off, counterclaim, surcharge or defense  
679 by the qualifying utility or other person, including as a result  
680 of the qualifying utility's failure to provide past, present, or  
681 future services, or in connection with the bankruptcy,  
682 reorganization, or other insolvency proceeding of the  
683 qualifying utility, any affiliate, or any other entity.

684 (n) *Successors to qualifying utility.*

685 A successor to a qualifying utility is bound by the  
686 requirements of this section. The successor shall perform and  
687 satisfy all obligations of the electric utility under the final  
688 financing order in the same manner and to the same extent as  
689 the qualifying utility including the obligation to collect and  
690 pay consumer rate relief charges to the person(s) entitled to  
691 receive them. The successor has the same rights as the  
692 qualifying utility under the final financing order in the same  
693 manner and to the same extent as the qualifying utility.

694 (o) *Security interest in consumer rate relief property.*

695 (1) Except as provided in subdivisions (3) through (5) of  
 696 this subsection, the creation, perfection and enforcement of  
 697 a security interest in consumer rate relief property under a  
 698 final financing order to secure the repayment of the principal  
 699 of and interest on consumer rate relief bonds, amounts  
 700 payable under any ancillary agreement and other financing  
 701 costs are governed by this section and not article nine of  
 702 chapter forty-six of this code.

703 (2) The description of the consumer rate relief property  
 704 in a transfer or security agreement and a financing statement  
 705 is sufficient only if the description refers to this section and  
 706 the final financing order creating the property. This section  
 707 applies to all purported transfers of, and all purported grants  
 708 of, liens on or security interests in that property, regardless of  
 709 whether the related transfer or security agreement was  
 710 entered into or the related financing statement was filed,  
 711 before or after the effective date of this section.

712 (3) A security interest in consumer rate relief property  
 713 under a final financing order is created, valid and binding at  
 714 the latest of the date that the security agreement is executed  
 715 and delivered or the date that value is received for the  
 716 consumer rate relief bonds.

717 (4) The security interest attaches without any physical  
 718 delivery of collateral or other act and upon the filing of the  
 719 financing statement with the Office of the Secretary of State.  
 720 The lien of the security interest is valid, binding and  
 721 perfected against all parties having claims of any kind in tort,  
 722 contract or otherwise against the person granting the security  
 723 interest, regardless of whether the parties have notice of the  
 724 lien. Also upon this filing, a transfer of an interest in the  
 725 consumer rate relief property is perfected against all parties

726 having claims of any kind, including any judicial lien, or  
727 other lien creditors or any claims of the seller or creditors of  
728 the seller, other than creditors holding a prior security  
729 interest, ownership interest or assignment in the property  
730 previously perfected in accordance with this subsection.

731 (5) The Secretary of State shall maintain any financing  
732 statement filed under this subsection in the same manner that  
733 the secretary maintains financing statements filed by utilities  
734 under article nine of chapter forty-six of this code. The filing  
735 of a financing statement under this subsection is governed by  
736 the provisions regarding the filing of financing statements in  
737 article nine of chapter forty-six of this code. However, a  
738 person filing a financing statement under this subsection is  
739 not required to file any continuation statements to preserve  
740 the perfected status of its security interest.

741 (6) A security interest in consumer rate relief property  
742 under a final financing order is a continuously perfected  
743 security interest and has priority over any other lien, created  
744 by operation of law or otherwise, that may subsequently  
745 attach to that property or those rights or interests unless the  
746 holder of any such lien has agreed in writing otherwise.

747 (7) The priority of a security interest in consumer rate  
748 relief property is not affected by the commingling of  
749 collected consumer rate relief charges with other amounts.  
750 Any pledged or secured party has a perfected security interest  
751 in the amount of all consumer rate relief charges collected  
752 that are deposited in a cash or deposit account of the  
753 qualifying utility in which such collected charges have been  
754 commingled with other funds. Any other security interest  
755 that may apply to those funds shall be terminated when the  
756 funds are transferred to a segregated account for an assignee  
757 or a financing party.

758 (8) No application of the adjustment mechanism as  
759 described in subsection (j) of this section affects the validity,  
760 perfection or priority of a security interest in or the transfer  
761 of consumer rate relief property under the final financing  
762 order.

763 (p) *Transfer, sale, etc. of consumer rate relief property.*

764 (1) A sale, assignment or transfer of consumer rate relief  
765 property under a final financing order is an absolute transfer  
766 and true sale of, and not a pledge of or secured transaction  
767 relating to, the seller's right, title and interest in, to and under  
768 the property, if the documents governing the transaction  
769 expressly state that the transaction is a sale or other absolute  
770 transfer. A transfer of an interest in that property may be  
771 created only when all of the following have occurred:

772 (A) The financing order has become final and taken  
773 effect;

774 (B) The documents evidencing the transfer of the  
775 property have been executed and delivered to the assignee;  
776 and

777 (C) Value has been received for the property.

778 (2) The characterization of the sale, assignment or  
779 transfer as an absolute transfer and true sale and the  
780 corresponding characterization of the property interest of the  
781 purchaser shall be effective and perfected against all third  
782 parties and is not affected or impaired by, among other  
783 things, the occurrence of any of the following:

784 (A) Commingling of collected consumer rate relief  
785 charges with other amounts;

786 (B) The retention by the seller of any of the following:

787 (i) A partial or residual interest, including an equity  
788 interest, in the consumer rate relief property, whether direct  
789 or indirect, or whether subordinate or otherwise;

790 (ii) The right to recover costs associated with taxes,  
791 franchise fees or license fees imposed on the collection of  
792 consumer rate relief charges;

793 (iii) Any recourse that the purchaser or any assignee may  
794 have against the seller;

795 (iv) Any indemnification rights, obligations or repurchase  
796 rights made or provided by the seller;

797 (v) The obligation of the seller to collect consumer rate  
798 relief charges on behalf of an assignee;

799 (vi) The treatment of the sale, assignment or transfer for  
800 tax, financial reporting or other purposes; or

801 (vii) Any application of the adjustment mechanism under  
802 the final financing order.

803 (q) *Taxation of consumer rate relief charges; consumer*  
804 *rate relief bonds not debt of governmental entities or a*  
805 *pledge of taxing powers.*

806 (1) The imposition, billing, collection and receipt of  
807 consumer rate relief charges under this section are exempt  
808 from state income, sales, franchise, gross receipts, business  
809 and occupation and other taxes or similar charges: *Provided,*  
810 *however,* That neither this exemption nor any other provision  
811 of this subsection shall preclude any municipality from taxing  
812 consumer rate relief charges under the authority granted to

813 municipalities pursuant to sections five and five-a of article  
814 thirteen in chapter eight of this code.

815 (2) Consumer rate relief bonds issued under a final  
816 financing order do not constitute a debt or a pledge of the  
817 faith and credit or taxing power of this state or of any county,  
818 municipality or any other political subdivision of this state.  
819 Bondholders have no right to have taxes levied by this state  
820 or the taxing authority of any county, municipality or any  
821 other political subdivision of this state for the payment of the  
822 principal of or interest on the bonds. The issuance of  
823 consumer rate relief bonds does not, directly, indirectly or  
824 contingently, obligate this state or a county, municipality or  
825 political subdivision of this state to levy a tax or make an  
826 appropriation for payment of the principal of or interest on  
827 the bonds.

828 (r) *Consumer rate relief bonds as legal investments.* Any  
829 of the following may legally invest any sinking funds,  
830 moneys or other funds belonging to them or under their  
831 control in consumer rate relief bonds:

832 (1) The state, the West Virginia Investment Management  
833 Board, the West Virginia Housing Development Fund,  
834 municipal corporations, political subdivisions, public bodies  
835 and public officers except for members of the Public Service  
836 Commission;

837 (2) Banks and bankers, savings and loan associations,  
838 credit unions, trust companies, building and loan  
839 associations, savings banks and institutions, deposit  
840 guarantee associations, investment companies, insurance  
841 companies and associations and other persons carrying on a  
842 banking or insurance business, including domestic for life  
843 and domestic not for life insurance companies; and

844 (3) Personal representatives, guardians, trustees and other  
845 fiduciaries.

846 (s) *Pledge of state.*

847 (1) The state pledges to and agrees with the bondholders,  
848 assignees and financing parties under a final financing order  
849 that the state will not take or permit any action that impairs  
850 the value of consumer rate relief property under the final  
851 financing order or revises the consumer rate relief costs for  
852 which recovery is authorized under the final financing order  
853 or, except as allowed under subsection (j) of this section,  
854 reduce, alter or impair consumer rate relief charges that are  
855 imposed, charged, collected or remitted for the benefit of the  
856 bondholders, assignees and financing parties, until any  
857 principal, interest and redemption premium in respect of  
858 consumer rate relief bonds, all financing costs and all  
859 amounts to be paid to an assignee or financing party under an  
860 ancillary agreement are paid or performed in full.

861 (2) A person who issues consumer rate relief bonds is  
862 permitted to include the pledge specified in subdivision (1) of  
863 this subsection in the consumer rate relief bonds, ancillary  
864 agreements and documentation related to the issuance and  
865 marketing of the consumer rate relief bonds.

866 (t) *West Virginia law governs; this section controls.*

867 (1) The law governing the validity, enforceability,  
868 attachment, perfection, priority and exercise of remedies with  
869 respect to the transfer of consumer rate relief property under  
870 a final financing order, the creation of a security interest in  
871 any such property, consumer rate relief charges or final  
872 financing order are the laws of this state as set forth in this  
873 section.

874 (2) This section controls in the event of a conflict  
 875 between its provisions and any other law regarding the  
 876 attachment, assignment, or perfection, the effect of perfection  
 877 or priority of any security interest in or transfer of consumer  
 878 rate relief property under a final financing order.

879 (u) *Severability.*

880 If any provision of this section or the application thereof  
 881 to any person, circumstance or transaction is held by a court  
 882 of competent jurisdiction to be unconstitutional or invalid, the  
 883 unconstitutionality or invalidity does not affect the  
 884 constitutionality or validity of any other provision of this  
 885 section or its application or validity to any person,  
 886 circumstance or transaction, including, without limitation, the  
 887 irrevocability of a financing order issued pursuant to this  
 888 section, the validity of the issuance of consumer rate relief  
 889 bonds, the imposition of consumer rate relief charges, the  
 890 transfer or assignment of consumer rate relief property or the  
 891 collection and recovery of consumer rate relief charges. To  
 892 these ends, the Legislature hereby declares that the provisions  
 893 of this section are intended to be severable and that the  
 894 Legislature would have enacted this section even if any  
 895 provision of this section held to be unconstitutional or invalid  
 896 had not been included in this section.

897 (v) *Non-utility status.*

898 An assignee or financing party is not an electric public  
 899 utility or person providing electric service by virtue of  
 900 engaging in the transactions with respect to consumer rate  
 901 relief bonds.





The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

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*Governor*