

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

COMMITTEE SUBSTITUTE

FOR

**H. B. 2858**

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(BY DELEGATE(S) WHITE, COWLES, ANDES, BOGGS, R. PHILLIPS,  
MARCUM, SKAFF, CRAIG AND STORCH)

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[Passed April 9, 2013; in effect from passage.]

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AN ACT to amend and reenact §24-2-4f of the Code of West Virginia, 1931, as amended, relating generally to consumer rate relief bonds; providing that the rate adjustment mechanism is the exception to the state's pledge not to reduce, alter or impair consumer rate relief charges until all amounts to be paid to an assignee or financing party are paid or performed in full.

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

That §24-2-4f of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 and  
2 declares as follows:

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

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

10          (3) That the use of traditional utility financing mechanisms  
11 to finance or refinance the recovery of such under-recovery  
12 balances and projected costs may result in considerable  
13 additional costs to be reflected in the approved rates of electric  
14 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 under-  
17 recovery balances and projected costs at a lower cost than would  
18 be afforded by traditional utility financing mechanisms;

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

23          (6) That in order to use such alternative financing  
24 mechanisms, the commission must be empowered to adopt a  
25 financing order that advances these goals. The Legislature,  
26 therefore, determines that it is in the interest of the state and its  
27 citizens to encourage and facilitate the use of alternative  
28 financing mechanisms that will enable electric utilities to finance

29 or refinance expanded net energy costs at the lowest reasonably  
30 practical cost under certain conditions and to empower the  
31 commission to review and approve alternative financing  
32 mechanisms when it determines that such approval is in the  
33 public interest, as set forth in this section.

34 (b) *Definitions.* — As used in this section:

35 (1) “Adjustment mechanism” means a formula-based  
36 mechanism for making adjustments to consumer rate relief  
37 charges to correct for over-collection or under-collection of such  
38 charges or otherwise to ensure the timely and complete payment  
39 and recovery of such charges and financing costs. The  
40 adjustment mechanism shall accommodate: (i) Standard  
41 adjustments to consumer rate relief charges that are limited to  
42 relatively stable conditions of operations; and (ii) nonstandard  
43 adjustments to consumer rate relief charges that are necessary to  
44 reflect significant changes from historical conditions of  
45 operations, such as the loss of significant electrical load. The  
46 adjustment mechanism is not to be used as a means to authorize  
47 the issuance of consumer rate relief bonds in a principal amount  
48 greater, or the payment or recovery of expanded net energy costs  
49 in an amount greater, than that which was authorized in the  
50 financing order which established the adjustment mechanism.

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

58 (3) “Assignee” means a person, corporation, limited liability  
59 company, trust, partnership or other entity to which an interest  
60 in consumer rate relief property is assigned, sold or transferred,  
61 other than as security. The term also includes any entity to which

62 an assignee assigns, sells or transfers, other than as security, the  
63 assignee's interest in or right to consumer rate relief property.

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

72 (5) "Bondholder" means any holder or owner of a consumer  
73 rate relief bond.

74 (6) "Commission" means the Public Service Commission of  
75 West Virginia, as it may be constituted from time to time, and  
76 any successor agency exercising functions similar in purpose  
77 thereto.

78 (7) "Consumer rate relief charges" means the amounts which  
79 are authorized by the commission in a financing order to be  
80 collected from a qualifying utility's customers in order to pay  
81 and secure the debt service payments of consumer rate relief  
82 bonds and associated financing costs.

83 (8) "Consumer rate relief costs" means those costs, including  
84 financing costs, which are to be defrayed through consumer rate  
85 relief charges.

86 (9) "Consumer rate relief property" means the property,  
87 rights, and interests of a qualifying utility or an assignee under  
88 a final financing order, including the right to impose, charge, and  
89 collect the consumer rate relief charges that shall be used to pay  
90 and secure the payment of consumer rate relief bonds and  
91 financing costs, and including the right to obtain adjustments to  
92 those charges, and any revenues, receipts, collections, rights to  
93 payment, payments, moneys, claims, or other proceeds arising

94 from the rights and interests created under the final financing  
95 order.

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

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

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

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

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

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

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

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

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

132 (H) Costs related to issuing or servicing consumer rate relief  
133 bonds or related to obtaining a financing order, including  
134 servicing fees and expenses, trustee fees and expenses, legal fees  
135 and expenses, administrative fees, placement fees, underwriting  
136 fees, capitalized interest and equity, rating-agency fees and other  
137 related costs authorized by the commission in a financing order;  
138 and

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

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

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

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

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

154 (B) A party to an ancillary agreement, the rights and  
155 obligations of which relate to or depend upon the existence of

156 consumer rate relief property, the enforcement and priority of a  
157 security interest in consumer rate relief property, the timely  
158 collection and payment of consumer rate relief charges or a  
159 combination of these factors.

160 (15) “Financing statement” has the same meaning as in  
161 section one-hundred-two, article nine, chapter forty-six of this  
162 code.

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

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

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

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

183 (20) “Qualifying utility” means a public utility engaged in  
184 the sale of electric service to retail customers in West Virginia  
185 which has applied for and received from the commission a final  
186 financing order under this section, including an affiliated electric

187 public utility which has applied jointly for and received such an  
188 order.

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

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

206 (23) “Successor” means, with respect to an entity, another  
207 entity that succeeds by operation of law to the rights and  
208 obligations of the first legal entity pursuant to any bankruptcy,  
209 reorganization, restructuring, or other insolvency proceeding,  
210 any merger, acquisition, or consolidation, or any sale or transfer  
211 of assets, regardless of whether any of these occur as a result of  
212 a restructuring of the electric power industry or otherwise.

213 (c) *Application for financing order.*

214 (1) If an electric utility or affiliate obtains from the  
215 commission an authorization or waiver required by any other  
216 provision of this chapter or by commission order with respect to  
217 the underlying expanded net energy costs proposed to be  
218 financed through the mechanism of consumer rate relief bonds,

219 an electric utility, or two or more affiliated electric utilities  
220 engaged in the delivery of electric service to customers in this  
221 state, may apply to the commission for a financing order that  
222 authorizes the following:

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

226 (B) The imposition, charging, and collection of consumer  
227 rate relief charges, in accordance with the adjustment mechanism  
228 approved by the commission under subparagraph (E),  
229 subdivision (6), subsection (e) of this section to recover  
230 sufficient amounts to pay and secure the debt service payments  
231 of consumer rate relief bonds and associated financing costs; and

232 (C) The creation of consumer rate relief property under the  
233 financing order.

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

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

239 The application shall include all of the following:

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

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

245 (3) The expected term during which the consumer rate relief  
246 costs for each series of consumer rate relief bonds are expected  
247 to be recovered;

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

250 (5) An estimate of the amount of consumer rate relief  
251 charges necessary to recover the consumer rate relief costs set  
252 forth in the application and the calculation for that estimate,  
253 which calculation shall take into account the estimated date or  
254 dates of issuance and the estimated principal amount of each  
255 series of consumer rate relief bonds;

256 (6) A proposed methodology for allocating consumer rate  
257 relief charges between and within tariff schedules and to special  
258 contract customers;

259 (7) A description of a proposed adjustment mechanism,  
260 reflecting the allocation methodology in subdivision (6) of this  
261 subsection;

262 (8) A description of the benefits to the qualifying utility's  
263 customers that are expected to result from the issuance of the  
264 consumer rate relief bonds, including a demonstration that the  
265 bonds and their financing costs are just and reasonable and are  
266 reasonably expected to achieve the lowest reasonably attainable  
267 cost in order to produce cost savings to customers and to  
268 mitigate rate impacts on customers, as compared to traditional  
269 financing mechanisms or traditional cost-recovery methods  
270 available to the electric utility; and

271 (9) Other information required by commission rules.

272 (e) *Issuance of financing order.*

273 (1) Except as otherwise provided in this section, proceedings  
274 on an application submitted by an electric utility under  
275 subsection (c) of this section are governed by the commission's  
276 standard procedural rules. Any party that participated in a  
277 proceeding in which the subject expanded net energy costs were  
278 authorized or approved automatically has standing to participate

279 in the financing order proceedings and the commission shall  
280 determine the standing or lack of standing of any other petitioner  
281 for party status.

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

285 (3) At the conclusion of proceedings on an application  
286 submitted by an electric utility under subsection (c) of this  
287 section, the commission shall issue either a financing order,  
288 granting the application, in whole or with modifications, or an  
289 order denying the application.

290 (4) The commission may issue a financing order under this  
291 subsection if the commission finds that the issuance of the  
292 consumer rate relief bonds and the consumer rate relief charges  
293 authorized by the order are just and reasonable and are  
294 reasonably expected to achieve the lowest reasonably attainable  
295 cost in order to produce cost savings to customers and to  
296 mitigate rate impacts on customers, as compared to traditional  
297 financing mechanisms or traditional cost-recovery methods  
298 available to the electric utility.

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

301 (A) A determination of the maximum amount and a  
302 description of the expanded net energy costs that may be  
303 recovered through consumer rate relief bonds issued under the  
304 financing order;

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

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

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

313 (E) A description and approval of the adjustment mechanism  
314 for use in the imposition, charging, and collection of the  
315 consumer rate relief charges, including: (i) The allocation  
316 referred to in paragraph (D) of this subdivision and (ii) any  
317 specific requirements for adjusting and reconciling consumer  
318 rate relief charges for standard adjustments that are limited to  
319 relatively stable conditions of operations and nonstandard  
320 adjustments that are necessary to reflect significant changes from  
321 historical conditions of operations, such as the loss of substantial  
322 electrical load, so long as each and every application of the  
323 adjustment mechanism is designed to assure the full and timely  
324 payment of consumer rate relief bonds and associated financing  
325 costs;

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

327 (G) A finding that the issuance of the consumer rate relief  
328 bonds, including financing costs, is just and reasonable and are  
329 reasonably expected to achieve the lowest reasonably attainable  
330 cost in order to produce cost savings to customers and to  
331 mitigate rate impacts on customers, as compared to traditional  
332 financing mechanisms or traditional cost-recovery methods  
333 available to the electric utility; and

334 (H) Any other provision the commission considers  
335 appropriate to ensure the full and timely imposition, charging,  
336 collection and adjustment, pursuant to an approved adjustment  
337 mechanism, of the consumer rate relief charges.

338 (6) To the extent the commission deems appropriate and  
339 compatible with the issuance advice letter procedure under  
340 subdivision (9) of this subsection, the commission, in a financing  
341 order, shall afford the electric utility flexibility in establishing

342 the terms and conditions for the consumer rate relief bonds to  
343 accommodate changes in market conditions, including  
344 repayment schedules, interest rates, financing costs, collateral  
345 requirements, required debt service and other reserves, and the  
346 ability of the qualifying utility, at its option, to effect a series of  
347 issuances of consumer rate relief bonds and correlated  
348 assignments, sales, pledges, or other transfers of consumer rate  
349 relief property. Any changes made under this subdivision to  
350 terms and conditions for the consumer rate relief bonds shall be  
351 in conformance with the financing order.

352 (7) A financing order shall provide that the creation of  
353 consumer rate relief property shall be simultaneous with the sale  
354 of that property to an assignee as provided in the application and  
355 the pledge of the property to secure consumer rate relief bonds.

356 (8) The commission, in a financing order, shall require that,  
357 after the final terms of each issuance of consumer rate relief  
358 bonds have been established, and prior to the issuance of those  
359 bonds, the qualifying utility shall determine the resulting initial  
360 consumer rate relief charges in accordance with the adjustment  
361 mechanism described in the financing order. These consumer  
362 rate relief charges shall be final and effective upon the issuance  
363 of the consumer rate relief bonds, without further commission  
364 action.

365 (9) Because the actual structure and pricing of the consumer  
366 rate relief bonds will not be known at the time the financing  
367 order is issued, in the case of every securitization approved by  
368 the commission, the qualifying utility which intends to cause the  
369 issuance of such bonds will provide to the commission and the  
370 commission's financial adviser, if any, prior to the issuance of  
371 the bonds, an issuance advice letter following the determination  
372 of the final terms of the bonds. The issuance advice letter shall  
373 indicate the final structure of the consumer rate relief bonds and  
374 provide the best available estimate of total ongoing costs. The  
375 issuance advice letter should report the initial consumer rate

376 relief charges and other information specific to the consumer  
377 rate relief bonds to be issued, as the financing order may require.  
378 The qualifying utility may proceed with the issuance of the  
379 consumer rate relief bonds unless, prior to noon on the fourth  
380 business day after the commission receives the issuance advice  
381 letter, the commission issues a disapproval letter directing that  
382 the bonds as proposed shall not be issued and the basis for that  
383 disapproval. The financing order may provide such additional  
384 provisions relating to the issuance advice letter process as the  
385 commission deems appropriate.

386 (10) An order of the commission issued pursuant to this  
387 subsection is a final order of the commission. Any party  
388 aggrieved by the issuance of any such order may petition for  
389 suspension and review thereof by the Supreme Court of Appeals  
390 pursuant to section one, article five of this chapter. In the case of  
391 a petition for suspension and review, the Supreme Court of  
392 Appeals shall proceed to hear and determine the action as  
393 expeditiously as practicable and give the action precedence over  
394 other matters not accorded similar precedence by law.

395 (11) The financing order shall also provide for a procedure  
396 requiring the qualifying utility to adjust its rates or provide  
397 credits in a manner that would return to customers any  
398 overpayments resulting from the securitization for the expanded  
399 net energy costs in excess of actual prudently incurred costs as  
400 subsequently determined by the commission. The adjustment  
401 mechanism may not affect or impair the consumer rate relief  
402 property or the right to impose, collect, or adjust the consumer  
403 rate relief charges under this section.

404 (12) The commission may require, as a condition to the  
405 effectiveness of the financing order but in every circumstance  
406 subject to the limitations set forth in subdivision (3), subsection  
407 (g) of this section, that the qualifying utility give appropriate  
408 assurances to the commission that the qualifying utility and its  
409 parent will abide by the following conditions during any period

410 in which any consumer rate relief bonds issued pursuant to the  
411 financing order are outstanding, in addition to any other  
412 obligation either may have under this code or federal law.  
413 Without first obtaining the prior consent and approval of the  
414 commission, the qualifying utility will not:

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

417 (B) Guarantee the obligations of a registered holding  
418 company or a nonutility affiliate.

419 (13) A financing order may require the qualifying utility to  
420 file with the commission a periodic report showing the receipt  
421 and disbursement of proceeds of consumer rate relief bonds and  
422 consumer rate relief charges. A financing order may authorize  
423 the staff of the commission to review and audit the books and  
424 records of the qualifying utility relating to the receipt and  
425 disbursement of such proceeds. The provisions of this  
426 subdivision do not limit the authority of the commission under  
427 this chapter to investigate the practices of the qualifying utility  
428 or to audit the books and records of the qualifying utility.

429 (14) In the case of two or more affiliated utilities that have  
430 jointly applied for a financing order as provided in subdivision  
431 (1), subsection (c) of this section, a financing order may  
432 authorize each affiliated utility to impose consumer rate relief  
433 charges on its customers and to cause to be issued consumer rate  
434 relief bonds and to receive and use the proceeds which it  
435 receives with respect thereto as provided in subdivision (1),  
436 subsection (j) of this section.

437 (15) The commission, in its discretion, may engage the  
438 services of a financial adviser for the purpose of assisting the  
439 commission in its consideration of an application for a financing  
440 order and a subsequent issuance of consumer rate relief bonds  
441 pursuant to a financing order.

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

443 (1) The consumer rate relief property created in a final  
444 financing order may be transferred, sold, conveyed or assigned  
445 to any affiliate of the qualifying utility created for the limited  
446 purpose of acquiring, owning or administering that property,  
447 issuing consumer rate relief bonds under the final financing  
448 order or a combination of these purposes.

449 (2) All or any portion of the consumer rate relief property  
450 may be pledged to secure the payment of consumer rate relief  
451 bonds, amounts payable to financing parties and bondholders,  
452 amounts payable under any ancillary agreement and other  
453 financing costs.

454 (3) A transfer, sale, conveyance, assignment, grant of a  
455 security interest in or pledge of consumer rate relief property by  
456 a qualifying utility to an affiliate of the utility, to the extent  
457 previously authorized in a financing order, does not require the  
458 prior consent and approval of the commission under section  
459 twelve of this article.

460 (4) The consumer rate relief property constitutes an existing,  
461 present property right, notwithstanding any requirement that the  
462 imposition, charging, and collection of consumer rate relief  
463 charges depend on the qualifying utility continuing to deliver  
464 retail electric service or continuing to perform its servicing  
465 functions relating to the billing and collection of consumer rate  
466 relief charges or on the level of future energy consumption. That  
467 property exists regardless of whether the consumer rate relief  
468 charges have been billed, have accrued or have been collected  
469 and notwithstanding any requirement that the value or amount of  
470 the property is dependent on the future provision of service to  
471 customers by the qualifying utility.

472 (5) All such consumer rate relief property continues to exist  
473 until the consumer rate relief bonds issued under the final

474 financing order are paid in full and all financing costs relating to  
475 the bonds have been paid in full.

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

477 (1) A final financing order remains in effect until the  
478 consumer rate relief bonds issued under the final financing order  
479 and all financing costs related to the bonds have been paid in  
480 full.

481 (2) A final financing order remains in effect and unabated,  
482 notwithstanding the bankruptcy, reorganization or insolvency of  
483 the qualifying utility, or any affiliate of the qualifying utility, or  
484 the commencement of any judicial or nonjudicial proceeding on  
485 the final financing order.

486 (3) A final financing order is irrevocable and the  
487 commission may not reduce, impair, postpone or terminate the  
488 consumer rate relief charges authorized in the final financing  
489 order or impair the property or the collection or recovery of  
490 consumer rate relief costs.

491 (h) *Subsequent commission proceeding.*

492 Upon petition, or upon its own motion, the commission may  
493 commence a proceeding and issue a subsequent financing order  
494 that provides for retiring and refunding consumer rate relief  
495 bonds issued under the final financing order if the commission  
496 finds that the subsequent financing order satisfies all of the  
497 requirements of subsection (e) of this section. Effective on  
498 retirement of the refunded consumer rate relief bonds and the  
499 issuance of new consumer rate relief bonds, the commission  
500 shall adjust the related consumer rate relief charges accordingly.

501 (i) *Limits on commission authority.*

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

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

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

510 (C) Consider the consumer rate relief costs or financing  
511 costs authorized under a final financing order to be costs of the  
512 qualifying utility.

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

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

522 (4) If a qualifying utility elects not to finance such costs  
523 through the issuance of consumer rate relief bonds as authorized  
524 in a final financing order, those costs shall be recovered as  
525 authorized by the commission previously or in subsequent  
526 proceedings.

527 (j) *Duties of qualifying utility.*

528 (1) A qualifying utility shall cause the proceeds which it  
529 receives with respect to consumer rate relief bonds issued  
530 pursuant to a financing order to be used for the recovery of the  
531 expanded net energy costs which occasioned the issuance of the  
532 bonds, including the retirement of debt and/or equity of the  
533 qualifying utility which was incurred to finance or refinance  
534 such costs and for no other purpose.

535 (2) A qualifying utility shall annually provide a plain-  
536 English explanation of the consumer rate relief charges approved  
537 in the financing order, as modified by subsequent issuances of  
538 consumer rate relief bonds authorized under the financing order,  
539 if any, and by application of the adjustment mechanism as  
540 provided in subsection (k) of this section. These explanations  
541 may be made by bill inserts, website information or other  
542 appropriate means as required, or approved if proposed by the  
543 qualifying utility, by the commission.

544 (3) Collected consumer rate relief charges shall be applied  
545 solely to the repayment of consumer rate relief bonds and other  
546 financing costs.

547 (4) The failure of a qualifying utility to apply the proceeds  
548 which it receives with respect to an issuance of consumer rate  
549 relief bonds in a reasonable, prudent and appropriate manner or  
550 otherwise comply with any provision of this section does not  
551 invalidate, impair or affect any financing order, consumer rate  
552 relief property, consumer rate relief charges or consumer rate  
553 relief bonds. Subject to the limitations set forth in subsection (g)  
554 of this section, nothing in this subdivision prevents or precludes  
555 the commission from imposing regulatory sanctions against a  
556 qualifying utility for failure to comply with the terms and  
557 conditions of a financing order or the requirements of this  
558 section.

559 (k) *Application of adjustment mechanism; filing of schedules*  
560 *with commission.*

561 (1) A qualifying utility shall file with the commission, and  
562 the commission shall approve, with or without such modification  
563 as is allowed under this subsection, at least annually, or more  
564 frequently as provided in the final financing order, a schedule  
565 applying the approved adjustment mechanism to the consumer  
566 rate relief charges authorized under the final financing order,  
567 based on estimates of demand and consumption for each tariff

568 schedule and special contract customer and other mathematical  
569 factors. The qualifying utility shall submit with the schedule a  
570 request for approval to make the adjustments to the consumer  
571 rate relief charges in accordance with the schedule.

572 (2) On the same day a qualifying utility files with the  
573 commission its calculation of the adjustment, it shall cause  
574 notice of the filing to be given, in the form specified in the  
575 financing order, as a Class I legal advertisement in compliance  
576 with the provisions of article three, chapter fifty-nine of this  
577 code in a newspaper of general circulation published each  
578 weekday in Kanawha County. This publication is only required  
579 if the calculation of the adjustment filed by the utility with the  
580 commission would result in an increase in the amount of the  
581 consumer rate relief charges.

582 (3) The commission's review of a request for a standard  
583 adjustment is limited to a determination of whether there is a  
584 mathematical error in the application of the adjustment  
585 mechanism to the consumer rate relief charges. No hearing is  
586 required for such an adjustment. Each standard adjustment to the  
587 consumer rate relief charges, in an amount as calculated by the  
588 qualifying utility but incorporating any correction for a  
589 mathematical error as determined by the commission,  
590 automatically becomes effective fifteen days following the date  
591 on which the qualifying utility files with the commission its  
592 calculation of the standard adjustment.

593 (4) If the commission authorizes a nonstandard adjustment  
594 procedure in the financing order, and the qualifying utility files  
595 for such an adjustment, the commission shall allow interested  
596 parties thirty days from the date the qualifying utility filed the  
597 calculation of a nonstandard adjustment to make comments. The  
598 commission's review of the total amount required for a  
599 nonstandard adjustment shall be limited to the mathematical  
600 accuracy of the total adjustment needed to assure the full and  
601 timely payment of all debt service costs and related financing

602 costs of the consumer rate relief bonds. The commission may  
603 also determine the proper allocation of those costs within and  
604 between classes of customers and to special contract customers,  
605 the proper design of the consumer rate relief charges and the  
606 appropriate application of those charges under the methodology  
607 set forth in the formula-based adjustment mechanism approved  
608 in the financing order. If the commission determines that a  
609 hearing is necessary, the commission shall hold a hearing on the  
610 comments within forty days of the date the qualifying utility  
611 filed the calculation of the nonstandard adjustment. The  
612 nonstandard adjustment, as modified by the commission, if  
613 necessary, shall be approved by the commission within sixty  
614 days and the commission may shorten the filing and hearing  
615 periods above in the financing order to ensure this result. Any  
616 procedure for a nonstandard adjustment must be consistent with  
617 assuring the full and timely payment of debt service of the  
618 consumer rate relief bonds and associated financing costs.

619 (5) No adjustment approved or deemed approved under this  
620 section affects the irrevocability of the final financing order as  
621 specified in subdivision (3) of subsection (g) of this section.

622 *(1) Nonbypassability of consumer rate relief charges.*

623 (1) As long as consumer rate relief bonds issued under a  
624 final financing order are outstanding, the consumer rate relief  
625 charges authorized under the final financing order are  
626 nonbypassable and apply to all existing or future West Virginia  
627 retail customers of a qualifying utility or its successors and must  
628 be paid by any customer that receives electric delivery service  
629 from the utility or its successors.

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

634 (m) *Utility default.*

635 (1) If a qualifying utility defaults on a required payment of  
636 consumer rate relief charges collected, a court, upon application  
637 by an interested party, or the commission, upon application to  
638 the commission or upon its own motion, and without limiting  
639 any other remedies available to the applying party, shall order  
640 the sequestration and payment of the consumer rate relief  
641 charges collected for the benefit of bondholders, assignees and  
642 financing parties. The order remains in full force and effect  
643 notwithstanding a bankruptcy, reorganization or other insolvency  
644 proceedings with respect to the qualifying utility or any affiliate  
645 thereof.

646 (2) Customers of a qualifying utility shall be held harmless  
647 by the qualifying utility for its failure to remit any required  
648 payment of consumer rate relief charges collected but such  
649 failure does not affect the consumer rate relief property or the  
650 rights to impose, collect and adjust the consumer rate relief  
651 charges under this section.

652 (3) Consumer rate relief property under a final financing  
653 order and the interests of an assignee, bondholder or financing  
654 party in that property under a financing agreement are not  
655 subject to set off, counterclaim, surcharge or defense by the  
656 qualifying utility or other person, including as a result of the  
657 qualifying utility's failure to provide past, present, or future  
658 services, or in connection with the bankruptcy, reorganization,  
659 or other insolvency proceeding of the qualifying utility, any  
660 affiliate, or any other entity.

661 (n) *Successors to qualifying utility.*

662 A successor to a qualifying utility is bound by the  
663 requirements of this section. The successor shall perform and  
664 satisfy all obligations of the electric utility under the final  
665 financing order in the same manner and to the same extent as the

666 qualifying utility including the obligation to collect and pay  
667 consumer rate relief charges to the person(s) entitled to receive  
668 them. The successor has the same rights as the qualifying utility  
669 under the final financing order in the same manner and to the  
670 same extent as the qualifying utility.

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

672       (1) Except as provided in subdivisions (3) through (5) of this  
673 subsection, the creation, perfection and enforcement of a security  
674 interest in consumer rate relief property under a final financing  
675 order to secure the repayment of the principal of and interest on  
676 consumer rate relief bonds, amounts payable under any ancillary  
677 agreement and other financing costs are governed by this section  
678 and not article nine of chapter forty-six of this code.

679       (2) The description of the consumer rate relief property in a  
680 transfer or security agreement and a financing statement is  
681 sufficient only if the description refers to this section and the  
682 final financing order creating the property. This section applies  
683 to all purported transfers of, and all purported grants of, liens on  
684 or security interests in that property, regardless of whether the  
685 related transfer or security agreement was entered into or the  
686 related financing statement was filed, before or after the  
687 effective date of this section.

688       (3) A security interest in consumer rate relief property under  
689 a final financing order is created, valid and binding at the latest  
690 of the date that the security agreement is executed and delivered  
691 or the date that value is received for the consumer rate relief  
692 bonds.

693       (4) The security interest attaches without any physical  
694 delivery of collateral or other act and upon the filing of the  
695 financing statement with the Office of the Secretary of State. The  
696 lien of the security interest is valid, binding and perfected  
697 against all parties having claims of any kind in tort, contract or

698 otherwise against the person granting the security interest,  
699 regardless of whether the parties have notice of the lien. Also  
700 upon this filing, a transfer of an interest in the consumer rate  
701 relief property is perfected against all parties having claims of  
702 any kind, including any judicial lien, or other lien creditors or  
703 any claims of the seller or creditors of the seller, other than  
704 creditors holding a prior security interest, ownership interest or  
705 assignment in the property previously perfected in accordance  
706 with this subsection.

707 (5) The Secretary of State shall maintain any financing  
708 statement filed under this subsection in the same manner that the  
709 secretary maintains financing statements filed by utilities under  
710 article nine of chapter forty-six of this code. The filing of a  
711 financing statement under this subsection is governed by the  
712 provisions regarding the filing of financing statements in article  
713 nine of chapter forty-six of this code. However, a person filing  
714 a financing statement under this subsection is not required to file  
715 any continuation statements to preserve the perfected status of its  
716 security interest.

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

723 (7) The priority of a security interest in consumer rate relief  
724 property is not affected by the commingling of collected  
725 consumer rate relief charges with other amounts. Any pledged or  
726 secured party has a perfected security interest in the amount of  
727 all consumer rate relief charges collected that are deposited in a  
728 cash or deposit account of the qualifying utility in which such  
729 collected charges have been commingled with other funds. Any  
730 other security interest that may apply to those funds shall be  
731 terminated when the funds are transferred to a segregated  
732 account for an assignee or a financing party.

733 (8) No application of the adjustment mechanism as described  
734 in subsection (k) of this section affects the validity, perfection or  
735 priority of a security interest in or the transfer of consumer rate  
736 relief property under the final financing order.

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

738 (1) A sale, assignment or transfer of consumer rate relief  
739 property under a final financing order is an absolute transfer and  
740 true sale of, and not a pledge of or secured transaction relating  
741 to, the seller's right, title and interest in, to and under the  
742 property, if the documents governing the transaction expressly  
743 state that the transaction is a sale or other absolute transfer. A  
744 transfer of an interest in that property may be created only when  
745 all of the following have occurred:

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

747 (B) The documents evidencing the transfer of the property  
748 have been executed and delivered to the assignee; and

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

750 (2) The characterization of the sale, assignment or transfer  
751 as an absolute transfer and true sale and the corresponding  
752 characterization of the property interest of the purchaser shall be  
753 effective and perfected against all third parties and is not  
754 affected or impaired by, among other things, the occurrence of  
755 any of the following:

756 (A) Commingling of collected consumer rate relief charges  
757 with other amounts;

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

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

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

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

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

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

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

773 (vii) Any application of the adjustment mechanism under the  
774 final financing order.

775 (q) *Taxation of consumer rate relief charges; consumer rate*  
776 *relief bonds not debt of governmental entities or a pledge of*  
777 *taxing powers.*

778 (1) The imposition, billing, collection and receipt of  
779 consumer rate relief charges under this section are exempt from  
780 state income, sales, franchise, gross receipts, business and  
781 occupation and other taxes or similar charges: *Provided*, That  
782 neither this exemption nor any other provision of this subsection  
783 shall preclude any municipality from taxing consumer rate relief  
784 charges under the authority granted to municipalities pursuant to  
785 sections five and five-a of article thirteen in chapter eight of this  
786 code.

787 (2) Consumer rate relief bonds issued under a final financing  
788 order do not constitute a debt or a pledge of the faith and credit  
789 or taxing power of this state or of any county, municipality or  
790 any other political subdivision of this state. Bondholders have no  
791 right to have taxes levied by this state or the taxing authority of

792 any county, municipality or any other political subdivision of  
793 this state for the payment of the principal of or interest on the  
794 bonds. The issuance of consumer rate relief bonds does not,  
795 directly, indirectly or contingently, obligate this state or a  
796 county, municipality or political subdivision of this state to levy  
797 a tax or make an appropriation for payment of the principal of or  
798 interest on the bonds.

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

803 (1) The state, the West Virginia Investment Management  
804 Board, the West Virginia Housing Development Fund, municipal  
805 corporations, political subdivisions, public bodies and public  
806 officers except for members of the Public Service Commission;

807 (2) Banks and bankers, savings and loan associations, credit  
808 unions, trust companies, building and loan associations, savings  
809 banks and institutions, deposit guarantee associations,  
810 investment companies, insurance companies and associations  
811 and other persons carrying on a banking or insurance business,  
812 including domestic for life and domestic not for life insurance  
813 companies; and

814 (3) Personal representatives, guardians, trustees and other  
815 fiduciaries.

816 (s) *Pledge of state.*

817 (1) The state pledges to and agrees with the bondholders,  
818 assignees and financing parties under a final financing order that  
819 the state will not take or permit any action that impairs the value  
820 of consumer rate relief property under the final financing order  
821 or revises the consumer rate relief costs for which recovery is  
822 authorized under the final financing order or, except as allowed  
823 under subsection (k) of this section, reduce, alter or impair

824 consumer rate relief charges that are imposed, charged, collected  
825 or remitted for the benefit of the bondholders, assignees and  
826 financing parties, until any principal, interest and redemption  
827 premium in respect of consumer rate relief bonds, all financing  
828 costs and all amounts to be paid to an assignee or financing party  
829 under an ancillary agreement are paid or performed in full.

830 (2) A person who issues consumer rate relief bonds is  
831 permitted to include the pledge specified in subdivision (1) of  
832 this subsection in the consumer rate relief bonds, ancillary  
833 agreements and documentation related to the issuance and  
834 marketing of the consumer rate relief bonds.

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

836 (1) The law governing the validity, enforceability,  
837 attachment, perfection, priority and exercise of remedies with  
838 respect to the transfer of consumer rate relief property under a  
839 final financing order, the creation of a security interest in any  
840 such property, consumer rate relief charges or final financing  
841 order are the laws of this state as set forth in this section.

842 (2) This section controls in the event of a conflict between  
843 its provisions and any other law regarding the attachment,  
844 assignment, or perfection, the effect of perfection or priority of  
845 any security interest in or transfer of consumer rate relief  
846 property under a final financing order.

847 (u) *Severability.*

848 If any provision of this section or the application thereof to  
849 any person, circumstance or transaction is held by a court of  
850 competent jurisdiction to be unconstitutional or invalid, the  
851 unconstitutionality or invalidity does not affect the  
852 Constitutionality or validity of any other provision of this section  
853 or its application or validity to any person, circumstance or  
854 transaction, including, without limitation, the irrevocability of a  
855 financing order issued pursuant to this section, the validity of the

856 issuance of consumer rate relief bonds, the imposition of  
857 consumer rate relief charges, the transfer or assignment of  
858 consumer rate relief property or the collection and recovery of  
859 consumer rate relief charges. To these ends, the Legislature  
860 hereby declares that the provisions of this section are intended to  
861 be severable and that the Legislature would have enacted this  
862 section even if any provision of this section held to be  
863 unconstitutional or invalid had not been included in this section.

864       (v) *Non-utility status.*

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



That 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.

In 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*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*

