

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 564

By Senators Tarr and Phillips

[Introduced February 06, 2023; referred
to the Committee on the Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §24-2-4h, relating to authorizing the Public Service Commission of West
3 Virginia to consider and authorize the recovery of certain costs by certain utilities through
4 the issuance of consumer rate relief bonds; providing legislative findings; providing
5 definitions; providing application process for financing order authorizing the recovery of
6 certain costs; requiring certain information in application for financing order; providing for
7 issuance of financing order and information contained therein; allowing for disposition of
8 consumer rate relief property; providing for the effect and term of financing order; providing
9 for subsequent Public Service Commission proceedings and limits on commission
10 authority; providing for duties of certain utilities; providing for application of adjustment
11 mechanism and filing of schedules with commission; providing for nonbypassability of
12 consumer rate relief changes; providing consequences and procedures for utility default;
13 providing for requirements and obligations of successors to certain utilities; providing for
14 security interest in consumer rate relief property and transfer and sale of same; providing
15 for limitation on taxation of consumer rate relief charges and exemption thereto; providing
16 that consumer rate relief bonds are not debt of governmental entities or a pledge of taxing
17 power; providing utility consumer rate relief bonds as legal investment; providing for
18 certain pledge of state; providing for governing law; providing for severability and non-
19 utility status; requiring that utilities must obtain consent and approval from the Public
20 Service Commission prior to retiring, abandoning, closing, or otherwise permanently
21 rendering incapable of operating certain plants or units; and providing for continued
22 viability of certain bonds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4h. Utility consumer rate relief bonds.

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

2 (1) That alternative financing mechanisms, as authorized in §24-2-4e and §22-2-4f of this
3 code have heretofore been narrow exceptions to the general rate-making mechanisms available
4 to the commission in carrying out the regulation of public utilities subject to its jurisdiction.

5 (2) That in 2005, the Legislature authorized an exception applicable to environmental
6 control bonds, which was strictly limited to financing the construction and installation of emission
7 control equipment at electric-generating facilities in the state under certain specific conditions.

8 (3) That in 2012, the Legislature authorized an exception applicable to consumer rate relief
9 bonds, which was strictly limited to financing or refinancing expanded net energy costs of electric
10 utilities under certain specific conditions.

11 (4) That the alternative financing arrangements approved by the commission and
12 implemented pursuant to §24-2-4e and §24-2-4f of this code have proven to be highly effective in
13 mitigating the rate impacts upon affected utility customers in the limited situations previously
14 authorized.

15 (5) That, since the value of alternative financing mechanisms and the benefits which they
16 can provide to the consumers of public utility services in the state have been demonstrated, the
17 commission should be empowered to employ alternative financing mechanisms for an expanded
18 set of eligible costs to be securitized, subject to the procedural protections provided herein.

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

20 (1) "Adjustment mechanism" means a formula-based mechanism for making adjustments
21 to consumer rate relief charges to correct for over-collection or under-collection of such charges or
22 otherwise to ensure the timely and complete payment and recovery of such charges and financing
23 costs. The adjustment mechanism shall accommodate: (i) Standard adjustments to consumer rate
24 relief charges that are limited to relatively stable conditions of operations; and (ii) nonstandard
25 adjustments to consumer rate relief charges that are necessary to reflect significant changes from

26 historical conditions of operations, such as the loss of significant electrical load. The adjustment
27 mechanism is not to be used as a means to authorize the issuance of consumer rate relief bonds in
28 a principal amount greater, or the payment or recovery of eligible costs to be securitized in an
29 amount greater, than that which was authorized in the financing order which established the
30 adjustment mechanism.

31 (2) "Ancillary agreement" means a bond insurance policy letter of credit, reserve account,
32 surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement or
33 other similar agreement or arrangement entered into in connection with the issuance of consumer
34 rate relief bonds that is designed to promote the credit quality and marketability of the bonds or to
35 mitigate the risk of an increase in interest rates.

36 (3) "Assignee" means a person, corporation, limited liability company, trust, partnership or
37 other entity to which an interest in consumer rate relief property is assigned, sold, or transferred,
38 other than as security. The term also includes any entity to which an assignee assigns, sells, or
39 transfers, other than as security, the assignee's interest in or right to consumer rate relief property.

40 (4) "Bond" includes debentures, notes, certificates of participation, certificates of beneficial
41 interest, certificates of ownership, or other evidences of indebtedness or ownership that are
42 issued by an electric utility or an assignee under a final financing order, the proceeds of which are
43 used directly or indirectly to recover, finance, or refinance eligible costs to be securitized and that
44 are secured by or payable from revenues from consumer rate relief charges.

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

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

49 (7) "Consumer rate relief charges" means the amounts which are authorized by the
50 commission in a financing order to be collected from a qualifying utility's customers in order to pay

51 and secure the debt service payments of consumer rate relief bonds and associated financing
52 costs.

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

55 (9) "Consumer rate relief property" means the property, rights, and interests of a qualifying
56 utility or an assignee under a final financing order, including the right to impose, charge, and collect
57 the consumer rate relief charges that shall be used to pay and secure the payment of consumer
58 rate relief bonds and financing costs, and including the right to obtain adjustments to those
59 charges, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or
60 other proceeds arising from the rights and interests created under the final financing order.

61 (10) "Eligible costs to be securitized" means historical and, if deemed appropriate by the
62 commission, projected costs and investments, including financing costs, carrying charges on
63 under-recovery balances, and costs incurred prior to the effective date of this section, which have
64 been authorized for recovery by an order of the commission, whether or not subject to judicial
65 appeal, relating to: (i) environmental control costs; (ii) expanded net energy costs; (iii) storm
66 recovery costs; and (iv) undepreciated generation utility plant balances, as such terms are defined
67 in this section.

68 (11) "Environmental control costs" means costs and investments incurred or expected to
69 be incurred by a qualifying utility to comply with the Coal Combustion Rule and the Electric Effluent
70 Limitation Guidelines established by the Federal Environmental Protection Agency.

71 (12) "Expanded net energy costs" means costs and investments incurred or expected to be
72 incurred by a qualifying utility and adjudicated pursuant to the commission's expanded net energy
73 cost proceedings.

74 (13) "Financing costs" means any of the following:

75 (A) Principal, interest, and redemption premiums that are payable on consumer rate relief

76 bonds:

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

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

82 (D) Costs of retiring or refunding an existing debt and equity securities of a qualifying utility
83 in connection with the issuance of consumer rate relief bonds but only to the extent the securities
84 were issued for the purpose of financing eligible costs to be securitized;

85 (E) Costs incurred by a qualifying utility to obtain modifications of or amendments to an
86 indenture, financing agreement, security agreement, or similar agreement or instrument relating to
87 an existing secured or unsecured obligation of the utility in connection with the issuance of
88 consumer rate relief bonds;

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

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

93 (H) Costs related to issuing or servicing consumer rate relief bonds or related to obtaining a
94 financing order, including servicing fees and expenses, trustee fees and expenses, legal fees and
95 expenses, administrative fees, placement fees, underwriting fees, capitalized interest and equity,
96 rating-agency fees, and other related costs authorized by the commission in a financing order; and

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

99 (14) "Financing order" means an order issued by the commission under subsection (e) of
100 this section that authorizes a qualifying utility to issue consumer rate relief bonds and recover

101 consumer rate relief charges. A financing order may set forth conditions or contingencies on the
102 effectiveness of the relief authorized therein and may grant relief that is different from that which
103 was requested in the application.

104 (15) "Final financing order" means a financing order that has become final and has taken
105 effect as provided in subdivision (10) of subsection (e) of this section.

106 (16) "Financing party" means either of the following:

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

108 (B) A party to an ancillary agreement, the rights and obligations of which relate to or
109 depend upon the existence of consumer rate relief property, the enforcement and priority of a
110 security interest in consumer rate relief property, the timely collection and payment of consumer
111 rate relief charges or a combination of these factors.

112 (17) "Financing statement" has the same meaning as in §46-9-102.

113 (18) "Nonbypassable" means that the payment of consumer rate relief charges as
114 authorized by the commission for each customer, customer class, and special contract customer
115 may not be avoided by any West Virginia retail customer of a qualifying utility or its successors and
116 must be paid by any such customer that receives service from such utility or its successors for as
117 long as the consumer rate relief bonds are outstanding.

118 (19) "Nonutility affiliate" means, with respect to any utility, a person that: (i) Is an affiliate of
119 the utility as defined in 42 U.S.C. §16451(1); and (ii) is not a public utility that provides retail utility
120 service to customers in the state within the meaning of §24-2-1, et seq.

121 (20) "Parent" means, with respect to a utility, a registered holding company or other person
122 that holds a majority ownership or membership interest in the utility.

123 (21) "Qualifying utility" means a public utility engaged in the sale of electric service to retail
124 customers in West Virginia which has applied for and received from the commission a final
125 financing order under this section, including an affiliated electric utility which has applied jointly for

126 and received such an order.

127 (22) "Registered holding company" means, with respect to a utility, a person that is: (i) A
128 registered holding company as defined in 42 U.S.C.§16451(8); and (ii) an affiliate of the utility as
129 defined in 42 U.S.C.§16451(1).

130 (23) "Regulatory sanctions" means, under the circumstances presented, a regulatory or
131 ratemaking sanction or penalty that the commission is authorized to impose pursuant to this
132 chapter or any proceeding for the enforcement of any provision of this chapter or any order of the
133 commission that the commission is authorized to pursue or conduct pursuant to this chapter,
134 including without limitation: (i) The initiation of any proceeding in which the utility is required to
135 show cause why it should not be required to comply with the terms and conditions of a financing
136 order or the requirements of this section; (ii) the imposition of penalties pursuant to §24-4-1, et
137 seq.; and (iii) a proceeding by mandamus, injunction, or other appropriate proceeding as provided
138 in §24-2-1, et seq.

139 (24) "Storm recovery costs" means expenses and investments incurred by a qualifying
140 utility arising from or related to any major storm, extraordinary weather-related event or natural
141 disaster, including costs of mobilization, staging, construction, reconstruction, repair, or
142 replacement of production, generation, transport, transmission, distribution, or general facilities.

143 (25) "Successor" means, with respect to an entity, another entity that succeeds by
144 operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy,
145 reorganization, restructuring, or other insolvency proceeding, any merger, acquisition, or
146 consolidation, or any sale or transfer of assets, regardless of whether any of these occur as a
147 result of a restructuring of the electric power industry or otherwise.

148 (26) "Undepreciated generation utility plant balances" means any unrecovered capitalized
149 costs of or undepreciated investments in one or more fossil-fired electric generating plants having
150 nameplate capacity in excess of 2,500 megawatts each, and related supply, transmission,

151 equipment, and fixtures. Undepreciated generation utility plant balances shall include (i) the net
152 book value of assets on the qualifying utility's balance sheet related to such generating plants and
153 related infrastructure, and (ii) carrying costs authorized by the commission: *Provided*, That (A) all
154 costs of removing retired generating plant assets; (B) all capitalized costs and investments in
155 fossil-fired electric generating plants and related supply, transmission, equipment, and fixtures
156 incurred or made by a qualifying utility on or after December 31, 2022; and (C) all non-cash asset
157 retirement obligation assets and related accumulated depreciation, shall each be specifically
158 excluded from the calculation of undepreciated generation utility plant balances.

159 (c) Application for financing order.

160 (1) If a public utility or affiliate obtains from the commission an authorization or waiver
161 required by any other provision of this chapter or by commission order with respect to eligible costs
162 to be securitized, a utility, or two or more affiliated utilities engaged in the delivery of utility service
163 to customers in this state, may apply to the commission for a financing order that authorizes the
164 following:

165 (A) The issuance of consumer rate relief bonds, in one or more series, to recover only
166 those eligible costs to be securitized;

167 (B) The imposition, charging, and collection of consumer rate relief charges, in accordance
168 with the adjustment mechanism approved by the commission under §24-2-4h(e)(5)(E) of this
169 code, to recover sufficient amounts to pay and secure the debt service payments of consumer rate
170 relief bonds and associated financing costs; and

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

172 (2) No utility shall be required to file an application for a financing order under this section
173 or otherwise utilize the alternative financing mechanisms authorized by this section.

174 (d) Information required in application for financing order.

175 The application shall include all of the following:

176 (1) A description and quantification of the eligible costs to be securitized that the utility
177 seeks to recover through the issuance of consumer rate relief bonds;

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

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

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

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

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

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

192 (8) A description of the benefits to the qualifying utility's customers that are expected to
193 result from the issuance of the consumer rate relief bonds, including a demonstration that the
194 bonds and their financing costs are just and reasonable and are reasonably expected to achieve
195 the lowest reasonably attainable cost in order to produce cost savings to customers and to
196 mitigate rate impacts on customers, as compared to traditional financing mechanisms or
197 traditional cost-recovery methods available to the qualifying utility; and

198 (9) Other information required by commission rules.

199 (e) Issuance of financing order.

200 (1) Except as otherwise provided in this section, proceedings on an application submitted

201 by a utility under subsection (c) of this section are governed by the commission's standard
202 procedural rules. Any party that participated in a proceeding in which the subject eligible costs to
203 be securitized were authorized or approved automatically has standing to participate in the
204 financing order proceedings and the commission shall determine the standing or lack of standing
205 of any other petitioner for party status.

206 (2) Within 30 days after the filing of an application under subsection (c) of this section, the
207 commission shall issue a scheduling order for the proceeding.

208 (3) At the conclusion of proceedings on an application submitted by a utility under
209 subsection (c) of this section, the commission shall issue either a financing order granting the
210 application, in whole or with modifications, or an order denying the application.

211 (4) The commission may issue a financing order under this subsection if the commission
212 finds that the issuance of the consumer rate relief bonds and the consumer rate relief charges
213 authorized by the order are just and reasonable and are reasonably expected to achieve the
214 lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate
215 rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-
216 recovery methods available to the qualifying utility.

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

219 (A) A determination of the maximum amount and a description of the eligible costs to be
220 securitized that may be recovered through consumer rate relief bonds issued under the financing
221 order;

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

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

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

228 (E) A description and approval of the adjustment mechanism for use in the imposition,
229 charging, and collection of the consumer rate relief charges, including: (i) The allocation referred to
230 in paragraph (D) of this subdivision; and (ii) any specific requirements for adjusting and reconciling
231 consumer rate relief charges for standard adjustments that are limited to relatively stable
232 conditions of operations and nonstandard adjustments that are necessary to reflect significant
233 changes from historical conditions of operations, such as the loss of substantial utility load, so long
234 as each and every application of the adjustment mechanism is designed to assure the full and
235 timely payment of consumer rate relief bonds and associated financing costs;

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

237 (G) A finding that the issuance of the consumer rate relief bonds, including financing costs,
238 is just and reasonable and are reasonably expected to achieve the lowest reasonably attainable
239 cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as
240 compared to traditional financing mechanisms or traditional cost-recovery methods available to
241 the qualifying utility; and

242 (H) Any other provision the commission considers appropriate to ensure the full and timely
243 imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism,
244 of the consumer rate relief charges, including, if applicable, rate adjustments or sur-credits,
245 effective with the implementation of consumer rate relief charges, to reduce tariff rates by the
246 amounts of revenue requirements related to securitized costs that are recovered in current tariff
247 rates but which will be recovered through the securitization approved by the commission.

248 (6) To the extent the commission deems appropriate and compatible with the issuance
249 advice letter procedure under subdivision (9) of this subsection, the commission, in a financing
250 order, shall afford the qualifying utility flexibility in establishing the terms and conditions for the

251 consumer rate relief bonds to accommodate changes in market conditions, including repayment
252 schedules, interest rates, financing costs, collateral requirements, required debt service and other
253 reserves, and the ability of the qualifying utility, at its option, to effect a series of issuances of
254 consumer rate relief bonds and correlated assignments, sales, pledges, or other transfers of
255 consumer rate relief property. Any changes made under this subdivision to terms and conditions
256 for the consumer rate relief bonds shall be in conformance with the financing order.

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

260 (8) The commission, in a financing order, shall require that, after the final terms of each
261 issuance of consumer rate relief bonds have been established, and prior to the issuance of those
262 bonds, the qualifying utility shall determine the resulting initial consumer rate relief charges in
263 accordance with the adjustment mechanism described in the financing order. These consumer
264 rate relief charges shall be final and effective upon the issuance of the consumer rate relief bonds,
265 without further commission action.

266 (9) Because the actual structure and pricing of the consumer rate relief bonds will not be
267 known at the time the financing order is issued, in the case of every securitization approved by the
268 commission, the qualifying utility which intends to cause the issuance of such bonds will provide to
269 the commission and the commission's financial adviser, if any, prior to the issuance of the bonds,
270 an issuance advice letter following the determination of the final terms of the bonds. The issuance
271 advice letter shall indicate the final structure of the consumer rate relief bonds and provide the best
272 available estimate of total ongoing costs. The issuance advice letter should report the initial
273 consumer rate relief charges and other information specific to the consumer rate relief bonds to be
274 issued, as the financing order may require. The qualifying utility may proceed with the issuance of
275 the consumer rate relief bonds unless, prior to noon on the fourth business day after the

276 commission receives the issuance advice letter, the commission issues a disapproval letter
277 directing that the bonds as proposed shall not be issued and the basis for that disapproval. The
278 financing order may provide such additional provisions relating to the issuance advice letter
279 process as the commission deems appropriate.

280 (10) If a qualified utility issues consumer rate relief bonds pursuant to a financing order
281 from the commission, any determination of the commission made in connection with such
282 financing order issued pursuant to this subsection, including a determination that certain costs
283 constitute eligible costs to be securitized, is binding and a final order of the commission. Any party
284 aggrieved by the issuance of any such order may petition for suspension and review thereof by the
285 Supreme Court of Appeals, but only pursuant to §24-5-1, et seq. of this code. In the case of a
286 petition for suspension and review, the Supreme Court of Appeals shall proceed to hear and
287 determine the action as expeditiously as practicable and give the action precedence over other
288 matters not accorded similar precedence by law.

289 (11) The financing order shall also provide for a procedure requiring the qualifying utility to
290 adjust its rates or provide credits in a manner that would return to customers any overpayments
291 resulting from the securitization for the eligible costs to be securitized in excess of actual prudently
292 incurred costs as subsequently determined by the commission. However, the adjustment
293 mechanism may not affect or impair the consumer rate relief property or the right to impose,
294 collect, or adjust the consumer rate relief charges under this section.

295 (12) The commission may require, as a condition to the effectiveness of the financing order
296 but in every circumstance subject to the limitations set forth in §24-2-4h(g)(3) of this code, that the
297 qualifying utility give appropriate assurances to the commission that the qualifying utility and its
298 parent will abide by the following conditions during any period in which any consumer rate relief
299 bonds issued pursuant to a financing order are outstanding, in addition to any other obligation
300 either may have under this code or federal law. Without first obtaining the prior consent and

301 approval of the commission, the qualifying utility will not:

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

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

305 (13) A financing order may require the qualifying utility to file with the commission a
306 periodic report showing the receipt and disbursement of proceeds of consumer rate relief bonds
307 and consumer rate relief charges. A financing order may authorize the staff of the commission to
308 review and audit the books and records of the qualifying utility relating to the receipt and
309 disbursement of such proceeds. The provisions of this subdivision do not limit the authority of the
310 commission under this chapter to investigate the practices of the qualifying utility or to audit the
311 books and records of the qualifying utility.

312 (14) In the case of two or more affiliated utilities that have jointly applied for a financing
313 order as provided in §24-2-4h(c)(1) of this code, a financing order may authorize each affiliated
314 utility to impose consumer rate relief charges on its customers and to cause to be issued
315 consumer rate relief bonds and to receive and use the proceeds which it receives with respect
316 thereto as provided in §24-2-4h(j)(1) of this code.

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

320 (f) Allowed disposition of consumer rate relief property.

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

325 (2) All or any portion of the consumer rate relief property may be pledged to secure the

326 payment of consumer rate relief bonds, amounts payable to financing parties and bondholders,
327 amounts payable under any ancillary agreement and other financing costs.

328 (3) A transfer, sale, conveyance, assignment, grant of a security interest in or pledge of
329 consumer rate relief property by a qualifying utility to an affiliate of the utility, to the extent
330 previously authorized in a financing order, does not require the prior consent and approval of the
331 commission under §24-2-12 of this code.

332 (4) The consumer rate relief property constitutes an existing, present property right,
333 notwithstanding that the imposition, charging, and collection of consumer rate relief charges
334 occurs in the future or depends on the qualifying utility or successors continuing to deliver retail
335 electric service or continuing to perform servicing functions relating to the billing and collection of
336 consumer rate relief charges or that the level of future energy consumption may change. That
337 property exists regardless of whether the consumer rate relief charges have been billed, have
338 accrued or have been collected and notwithstanding any requirement that the value or amount of
339 the property is dependent on the future provision of service to customers by the qualifying utility.

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

343 (g) Final financing order to remain in effect.

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

346 (2) A final financing order remains in effect and unabated, notwithstanding the bankruptcy,
347 reorganization or insolvency of the qualifying utility, or any affiliate of the qualifying utility, or the
348 commencement of any judicial or nonjudicial proceeding on the final financing order.

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

351 property or the collection or recovery of consumer rate relief costs.

352 (h) Subsequent commission proceeding.

353 Upon petition, or upon its own motion, the commission may commence a proceeding and
354 issue a subsequent financing order that provides for retiring and refunding consumer rate relief
355 bonds issued under the final financing order if the commission finds that the subsequent financing
356 order satisfies all of the requirements of subsection (e) of this section and does not violate the
357 terms of the consumer rate relief bonds issued under the prior financing order. Effective on
358 retirement of the refunded consumer rate relief bonds and the issuance of new consumer rate
359 relief bonds, the commission shall adjust the related consumer rate relief charges accordingly.

360 (i) Limits on commission authority.

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

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

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

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

369 (2) The commission may not order or otherwise require, directly or indirectly, a qualifying
370 utility to use consumer rate relief bonds to finance the recovery of eligible costs to be securitized.

371 (3) The commission may not refuse to allow the recovery of eligible costs to be securitized
372 solely because a utility has elected or may elect to finance those costs through a financing
373 mechanism other than the issuance of consumer rate relief bonds.

374 (4) If a qualifying utility elects not to finance such costs through the issuance of consumer
375 rate relief bonds as authorized in a final financing order, those costs may be recovered as

376 authorized by the commission previously or in subsequent proceedings: *Provided*, That previous
377 findings and determinations made by the commission in a financing order related to those costs
378 are not binding on the commission in such subsequent proceeding.

379 (5) Notwithstanding the foregoing, but without limiting the final and binding nature of any
380 financing order of the commission issued pursuant to this subsection, nothing herein restricts the
381 authority of the commission to limit cost recovery to just and reasonable costs that are prudently
382 incurred, to require deferral of regulatory assets, and/or to determine capital structure and costs as
383 the commission determines are prudent, just, and reasonable.

384 (j) Duties of qualifying utility.

385 (1) A qualifying utility shall cause the proceeds which it receives with respect to consumer
386 rate relief bonds issued pursuant to a financing order to be used for the recovery of the eligible
387 costs to be securitized which occasioned the issuance of the bonds, including the retirement of
388 debt and/or equity of the qualifying utility which was incurred to finance or refinance such costs
389 and for no other purpose.

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

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

398 (4) The failure of a qualifying utility to apply the proceeds which it receives with respect to
399 an issuance of consumer rate relief bonds in a reasonable, prudent and appropriate manner or
400 otherwise comply with any provision of this section does not invalidate, impair, or affect any

401 financing order, consumer rate relief property, consumer rate relief charges, or consumer rate
402 relief bonds. Subject to the limitations set forth in subsection (g) of this section, nothing in this
403 subdivision prevents or precludes the commission from imposing regulatory sanctions against a
404 qualifying utility for failure to comply with the terms and conditions of a financing order or the
405 requirements of this section.

406 (k) Application of adjustment mechanism; filing of schedules with commission.

407 (1) A qualifying utility shall file with the commission, and the commission shall approve,
408 with or without such modification as is allowed under this subsection, at least annually, or more
409 frequently as provided in the final financing order, a schedule applying the approved adjustment
410 mechanism to the consumer rate relief charges authorized under the final financing order, based
411 on estimates of demand and consumption for each tariff schedule and special contract customer
412 and other mathematical factors. The qualifying utility shall submit with the schedule a request for
413 approval to make the adjustments to the consumer rate relief charges in accordance with the
414 schedule.

415 (2) On the same day a qualifying utility files with the commission its calculation of the
416 adjustment, it shall cause notice of the filing to be given, in the form specified in the financing order,
417 as a Class I legal advertisement in compliance with the provisions of §59-3-1, et seq. of this code
418 in a newspaper of general circulation published each weekday in Kanawha County. This
419 publication is only required if the calculation of the adjustment filed by the utility with the
420 commission would result in an increase in the amount of the consumer rate relief charges.

421 (3) The commission's review of a request for a standard adjustment is limited to a
422 determination of whether there is a mathematical error in the application of the adjustment
423 mechanism to the consumer rate relief charges. No hearing is required for such an adjustment.
424 Each standard adjustment to the consumer rate relief charges, in an amount as calculated by the
425 qualifying utility but incorporating any correction for a mathematical error as determined by the

426 commission, automatically becomes effective 15 days following the date on which the qualifying
427 utility files with the commission its calculation of the standard adjustment.

428 (4) If the commission authorizes a nonstandard adjustment procedure in the financing
429 order, and the qualifying utility files for such an adjustment, the commission shall allow interested
430 parties 30 days from the date the qualifying utility filed the calculation of a nonstandard adjustment
431 to make comments. The commission's review of the total amount required for a nonstandard
432 adjustment shall be limited to the mathematical accuracy of the total adjustment needed to assure
433 the full and timely payment of all debt service costs and related financing costs of the consumer
434 rate relief bonds. The commission may also determine the proper allocation of those costs within
435 and between classes of customers and to special contract customers, the proper design of the
436 consumer rate relief charges and the appropriate application of those charges under the
437 methodology set forth in the formula-based adjustment mechanism approved in the financing
438 order. If the commission determines that a hearing is necessary, the commission shall hold a
439 hearing on the comments within 40 days of the date the qualifying utility filed the calculation of the
440 nonstandard adjustment. The nonstandard adjustment, as modified by the commission, if
441 necessary, shall be approved by the commission within 60 days and the commission may shorten
442 the filing and hearing periods above in the financing order to ensure this result. Any procedure for
443 a nonstandard adjustment must be consistent with assuring the full and timely payment of debt
444 service of the consumer rate relief bonds and associated financing costs.

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

448 (l) Nonbypassability of consumer rate relief charges.

449 (1) As long as consumer rate relief bonds issued under a final financing order are
450 outstanding, the consumer rate relief charges authorized under the final financing order are

451 nonbypassable and apply to and must be paid by all existing and future customers that receive
452 electric service within the qualifying utility's geographic service territory notwithstanding any
453 change in West Virginia law regarding the ability of retail customers of an electric utility to choose a
454 provider of generation or transmission service from a party other than the qualifying utility in the
455 future.

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

459 (m) Utility default.

460 (1) If a qualifying utility defaults on a required payment of consumer rate relief charges
461 collected, a court, upon application by an interested party, or the commission, upon application to
462 the commission or upon its own motion, and without limiting any other remedies available to the
463 applying party, shall order the sequestration and payment of the consumer rate relief charges
464 collected for the benefit of bondholders, assignees and financing parties. The order remains in full
465 force and effect notwithstanding a bankruptcy, reorganization, or other insolvency proceedings
466 with respect to the qualifying utility or any affiliate thereof.

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

471 (3) Consumer rate relief property under a final financing order and the interests of an
472 assignee, bondholder, or financing party in that property under a financing agreement are not
473 subject to set off, counterclaim, surcharge, or defense by the qualifying utility or other person,
474 including as a result of the qualifying utility's failure to provide past, present, or future services, or
475 in connection with the bankruptcy, reorganization, or other insolvency proceeding of the qualifying

476 utility, any affiliate, or any other entity.

477 (n) Successors to qualifying utility.

478 A successor to a qualifying utility is bound by the requirements of this section. The
479 successor shall perform and satisfy all obligations of the electric utility under the final financing
480 order in the same manner and to the same extent as the qualifying utility including the obligation to
481 collect and pay consumer rate relief charges to the person(s) entitled to receive them. The
482 successor has the same rights as the qualifying utility under the final financing order in the same
483 manner and to the same extent as the qualifying utility.

484 (o) Security interest in consumer rate relief property.

485 (1) Except as provided in subdivisions (3) through (5) of this subsection, the creation,
486 perfection, priority and, to the extent set forth herein, enforcement of a security interest or lien in
487 consumer rate relief property, including to secure the repayment of the principal of and interest on
488 consumer rate relief bonds, amounts payable under any ancillary agreement and other financing
489 costs, are governed by this section and not §46-9-1, et seq. of this code or other law.

490 (2) The description of the consumer rate relief property in a transfer or security agreement
491 and a financing statement is sufficient only if the description refers to this section and the final
492 financing order creating the property. This section applies to all purported transfers of, and all
493 purported grants of liens on or security interests in, that property, regardless of whether the related
494 transfer or security agreement was entered into, or the related financing statement was filed,
495 before or after the effective date of this section.

496 (3) A security interest in consumer rate relief property under a final financing order is
497 created, valid, and binding when the applicable security agreement is executed and delivered and
498 value is received for the consumer rate relief bonds.

499 (4) The security interest attaches without any physical delivery of collateral or other act and
500 upon the filing of the financing statement with the Office of the Secretary of State. The security

501 interest is valid, binding, and perfected against all parties, including those having claims of any
502 kind in tort, contract, or otherwise against the person granting the security interest, regardless of
503 whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the
504 consumer rate relief property is perfected against, absolute and free from the claims of all parties
505 having competing claims of any kind, including claims of other lien creditors or claims of the seller
506 or creditors of the seller, whether or not supported by any prior judicial or other lien, other than
507 creditors holding a prior security interest, ownership interest, or assignment in the property
508 previously perfected in accordance with this subsection.

509 (5) The Secretary of State shall maintain any financing statement filed under this
510 subsection in the same manner that the secretary maintains financing statements filed by utilities
511 under §49-6-1, et seq. of this code. The filing of a financing statement under this subsection is
512 governed by the provisions regarding the filing of financing statements in §46-9-1, et seq. of this
513 code. However, a person filing a financing statement under this subsection is not required to file
514 any continuation statements to preserve the perfected status of its security interest.

515 (6) A security interest in consumer rate relief property under a final financing order is a
516 continuously perfected security interest and has priority over any other security interest or lien,
517 created by operation of law, contract or otherwise, that may by agreement of the holder of such
518 security interest in consumer rate relief property or otherwise purportedly subsequently attach to
519 that property or those rights or interests, unless the holder of any such security interest has agreed
520 in writing otherwise.

521 (7) The priority of a security interest in consumer rate relief property is not affected by
522 commingling with other amounts, and continues when any consumer rate relief property is
523 collected and deposited in a cash or deposit account of the qualifying utility or other deposit
524 account that contains other funds. Any other security interest that may by agreement of the holder
525 of the security interest in consumer rate relief property apply to such consumer rate relief property

526 shall be terminated when the funds are transferred to a segregated account for an assignee or a
527 financing party with respect to such consumer rate relief property.

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

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

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

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

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

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

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

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

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

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

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

- 551 (iii) Any recourse that the purchaser or any assignee may have against the seller;
- 552 (iv) Any indemnification rights, obligations, or repurchase rights made or provided by the
553 seller;
- 554 (v) The obligation of the seller to collect consumer rate relief charges on behalf of an
555 assignee;
- 556 (vi) The treatment of the sale, assignment or transfer for tax, financial reporting, or other
557 purposes; or
- 558 (vii) Any application of the adjustment mechanism under the final financing order.
- 559 (q) Taxation of consumer rate relief charges; consumer rate relief bonds not debt of
560 governmental entities or a pledge of taxing powers.
- 561 (1) The imposition, billing, collection, and receipt of consumer rate relief charges under this
562 section are exempt from state income, sales, franchise, gross receipts, business and occupation,
563 and other taxes or similar charges: *Provided*, That neither this exemption nor any other provision
564 of this subsection shall preclude any municipality from taxing consumer rate relief charges under
565 the authority granted to municipalities pursuant to §8-13-5 and §8-13-5a of this code.
- 566 (2) Consumer rate relief bonds issued under a final financing order do not constitute a debt
567 or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any
568 other political subdivision of this state. Bondholders have no right to have taxes levied by this state
569 or the taxing authority of any county, municipality, or any other political subdivision of this state for
570 the payment of the principal of or interest on the bonds. The issuance of consumer rate relief
571 bonds does not, directly, indirectly, or contingently, obligate this state or a county, municipality, or
572 political subdivision of this state to levy a tax or make an appropriation for payment of the principal
573 of or interest on the bonds.
- 574 (r) Consumer rate relief bonds as legal investments. Any of the following may legally invest
575 any sinking funds, moneys, or other funds belonging to them or under their control in consumer

576 rate relief bonds:

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

580 (2) Banks and bankers, savings and loan associations, credit unions, trust companies,
581 building and loan associations, savings banks and institutions, deposit guarantee associations,
582 investment companies, insurance companies and associations, and other persons carrying on a
583 banking or insurance business, including domestic for life and domestic not for life insurance
584 companies; and

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

586 This subsection shall not limit other persons authorized to invest in consumer rate relief
587 bonds from making such investments.

588 (s) Pledge of state.

589 (1) The state pledges to and agrees with the bondholders, assignees, and financing parties
590 under a final financing order that the state will not take or permit any action that impairs the value of
591 consumer rate relief property under the final financing order or revises the consumer rate relief
592 costs for which recovery is authorized under the final financing order or, except as allowed under
593 subsection (k) of this section, reduce, alter, or impair consumer rate relief charges that are
594 imposed, charged, collected, or remitted for the benefit of the bondholders, assignees and
595 financing parties, until any principal, interest and redemption premium in respect of consumer rate
596 relief bonds, all financing costs and all amounts to be paid to an assignee or financing party under
597 an ancillary agreement are paid or performed in full.

598 (2) A person who issues consumer rate relief bonds is permitted to include the pledge
599 specified in subdivision (1) of this subsection in the consumer rate relief bonds, ancillary
600 agreements, and documentation related to the issuance and marketing of the consumer rate relief

601 bonds.

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

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

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

610 (u) Severability.

611 If any provision of this section or the application thereof to any person, circumstance or
612 transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the
613 unconstitutionality or invalidity does not affect the Constitutionality or validity of any other provision
614 of this section or its application or validity to any person, circumstance or transaction, including,
615 without limitation, the irrevocability of a financing order issued pursuant to this section, the validity
616 of the issuance of consumer rate relief bonds, the imposition of consumer rate relief charges, the
617 transfer or assignment of consumer rate relief property or the collection and recovery of consumer
618 rate relief charges. To these ends, the Legislature hereby declares that the provisions of this
619 section are intended to be severable and that the Legislature would have enacted this section
620 even if any provision of this section held to be unconstitutional or invalid had not been included in
621 this section.

622 (v) Non-utility status.

623 An assignee or financing party is not a public utility or person providing utility service by
624 virtue of engaging in the transactions with respect to consumer rate relief bonds.

625 (w) Notwithstanding the ability of a utility to seek and the authorization of the commission

626 to issue a financing order for recovery of undepreciated generation utility plant balances pursuant
627 to this section, a utility may not retire, abandon, close, or otherwise permanently render incapable
628 of operating, any electric generating plant or unit without the prior consent and approval of the
629 commission: *Provided*, That if an electric utility requests such approval and it is denied by the
630 West Virginia Commission, and the electric utility serves customers in more than one jurisdiction,
631 and a jurisdiction other than West Virginia orders that the utility cease operations of the generating
632 plant or unit, and the costs of the plant or unit had been shared through an allocation process for
633 rate making purposes, then the utility shall recover all of the capital, operating and maintenance
634 costs of the electric generation plant or unit from its West Virginia customers to the extent that such
635 costs are no longer allocable to the other jurisdiction, and all of the associated capacity, energy,
636 and environmental attributes shall be assigned to West Virginia.

637 (x) Continuing validity of consumer rate relief bonds issued pursuant to §24-2-4f of this
638 code and related matters.

639 Notwithstanding any provisions of this section, all consumer rate relief bonds issued
640 pursuant to §24-2-4f of this code shall remain in full force and effect according to their terms and in
641 accordance with the final financing order pursuant to which such bonds were issued and the laws
642 of this state in existence at the time such bonds were issued. Further, all consumer rate relief
643 charges and consumer rate relief property associated with any consumer rate relief bonds issued
644 pursuant to §24-2-4f of this code shall not be affected by any provision of this section and all such
645 consumer rate relief charges and consumer rate relief property shall be governed by the
646 applicable final financing order pursuant to which the corresponding consumer rate relief bonds
647 were issued and the law of this state in existence at the time such bonds were issued. No
648 provision of this section shall affect any interest in the consumer rate relief property or the
649 continuing validity of a security interest in consumer rate relief property associated with any
650 consumer rate relief bonds issued pursuant to §24-2-4f of this code.

NOTE: The purpose of this bill is to authorize the Public Service Commission of West Virginia to consider and issue financing orders to certain utilities to permit the recovery of certain costs through securitization via consumer rate relief bonds.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.