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

The General Assembly of North Carolina enacts:

PART I. STORM SECURITIZATION.

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

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

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

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

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

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


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

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

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

c. Any other cost related to issuing, supporting, repaying, refunding, and servicing storm recovery bonds, including, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees,
independent director and manager fees, capitalized interest, rating
agency fees, stock exchange listing and compliance fees, security
registration fees, filing fees, information technology programming
costs, and any other costs necessary to otherwise ensure the timely
payment of storm recovery bonds or other amounts or charges payable
in connection with the bonds, including costs related to obtaining the
financing order.
d. Any taxes and license fees or other fees imposed on the revenues
generated from the collection of the storm recovery charge or
otherwise resulting from the collection of storm recovery charges, in
any such case whether paid, payable, or accrued.
e. Any State and local taxes, franchise, gross receipts, and other taxes or
similar charges, including regulatory assessment fees, whether paid,
payable, or accrued.
f. Any costs incurred by the Commission or public staff for any outside
consultants or counsel pursuant to sub-subdivision b. of subdivision
(3) of subsection (b) of this section.

(5) Financing order. – An order that authorizes the issuance of storm recovery
bonds; the imposition, collection, and periodic adjustments of a storm
recovery charge; the creation of storm recovery property; and the sale,
assignment, or transfer of storm recovery property to an assignee.

(6) Financing party. – Bondholders and trustees, collateral agents, any party under
an ancillary agreement, or any other person acting for the benefit of
bondholders.

(7) Financing statement. – Defined in Article 9 of the Code.

(8) Pledgee. – A financing party to which a public utility or its successors or
assignees mortgages, negotiates, pledges, or creates a security interest or lien
on all or any portion of its interest in or right to storm recovery property.

(9) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric
power to retail electric customers in the State.

(10) Storm. – Individually or collectively, a named tropical storm or hurricane, a
tornado, ice storm or snow storm, flood, an earthquake, or other significant
weather or natural disaster.

(11) Storm recovery activity. – An activity or activities by or on behalf of a public
utility in connection with the restoration of service and infrastructure
associated with electric power outages affecting customers of a public utility
as the result of a storm or storms, including incremental internal and external
labor costs in excess of labor costs that would have been paid even in the
absence of the storm, incremental corporate overhead, and all incremental
costs related to mobilization, staging, and construction, reconstruction,
replacement, or repair of electric generation, transmission, distribution, or
general plant facilities.

(12) Storm recovery bonds. – Bonds, debentures, notes, certificates of
participation, certificates of beneficial interest, certificates of ownership, or
other evidences of indebtedness or ownership that are issued by a public utility
or an assignee pursuant to a financing order, the proceeds of which are used
directly or indirectly to recover, finance, or refinance Commission-approved
storm recovery costs and financing costs, and that are secured by or payable
from storm recovery property. If certificates of participation or ownership are
issued, references in this section to principal, interest, or premium shall be
construed to refer to comparable amounts under those certificates.
Storm recovery charge. – The amounts authorized by the Commission to repay, finance, or refinance storm recovery costs and financing costs and that are nonbypassable charges (i) imposed on and part of all customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this State.

Storm recovery costs. – All of the following:

a. At the option of and upon petition by the public utility, and as approved by the Commission pursuant to sub-subdivision 2. of sub-subdivision a. of subdivision 3 of subsection (b) of this section, all incremental costs that a public utility has incurred or expects to incur as a result of, or in anticipation of, the applicable storm which are caused by, associated with, or remain as a result of undertaking storm recovery activity. Such costs include the public utility's cost of capital from the date of the applicable storm to the date the storm recovery bonds are issued calculated using the public utility's weighted average cost of capital as defined in its most recent base rate case proceeding before the Commission net of applicable income tax savings related to the interest component thereof.

b. Costs in sub-subdivision a. of this subdivision (14) may be net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the public utility for storm recovery activities such as government grants, or aid of any kind and where determined appropriate by the Commission, and may include adjustments for normal capital replacement and operating costs. Storm recovery costs includes the cost to replenish and fund any storm reserves and costs of repurchasing equity or retiring any existing indebtedness relating to storm recovery activities.

Storm recovery property. – All of the following:

a. All rights and interests of a public utility or successor or assignee of the public utility under a financing order, including the right to impose, bill, charge, collect, and receive storm recovery charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.

b. All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in sub-subdivision a. of this subdivision, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

Financing Orders. –

(1) A public utility may petition the Commission for a financing order. The petition shall include all of the following:

a. A description of the storm recovery activities that the public utility has undertaken or proposes to undertake and the reasons for undertaking the activities, or if the public utility is subject to a settlement agreement
as contemplated by subdivision (2) of this subsection, a description of
the settlement agreement.

b. The storm recovery costs and estimate of the costs of any storm
recovery activities that are not completed, or for which the costs are
not yet known as identified and requested by the public utility.

c. The level of the storm recovery reserve that the public utility proposes
to establish or replenish and has determined would be appropriate to
recover through storm recovery bonds and is seeking to so recover and
such level that the public utility is funding or will seek to fund through
other means, together with a description of the factors and calculations
used in determining the amounts and methods of recovery.

d. An indicator of whether the public utility proposes to finance all or a
portion of the storm recovery costs using storm recovery bonds. If the
public utility proposes to finance a portion of such costs, the public
utility must identify the specific portion in the petition. By electing not
to finance a portion of such storm recovery costs using storm recovery
bonds, a public utility shall not be deemed to waive its right to recover
such costs pursuant to a separate proceeding with the Commission.

e. An estimate of the financing costs related to the storm recovery bonds.

f. An estimate of the storm recovery charges necessary to recover the
storm recovery costs, including the storm recovery reserve amount
determined appropriate by the Commission, and financing costs and
the period for recovery of such costs.

g. An estimate of any projected cost savings, based on current market
conditions, or demonstration of how the issuance of storm recovery
bonds and the imposition of storm recovery charges would reasonably
be expected to avoid or mitigate rate impacts to customers as compared
with the traditional method of financing and recovering storm
recovery costs from customers.

h. Direct testimony supporting the petition.

(2) If a public utility is subject to a settlement agreement that governs the type
and amount of principal costs that could be included in storm recovery costs
and the public utility proposes to finance all or a portion of the principal costs
using storm recovery bonds, then the public utility must file a petition with
the Commission for review and approval of those costs no later than 90 days
before filing a petition for a financing order pursuant to this section. The
Commission may not authorize the principal costs to be included or excluded
as storm recovery costs if such inclusion or exclusion is precluded by the
public utility’s settlement agreement.

(3) Petition and order. –

a. Proceedings on a petition submitted pursuant to this subdivision begin
with the petition by a public utility, filed subject to the time frame
specified in subdivision (2) of this subsection, if applicable, and shall
be disposed of in accordance with the requirements of this Chapter and
the rules and regulations of the Commission, except as follows.

1. Within 14 days after the date the petition is filed, the
Commission shall publish a case schedule, which must place
the matter before the Commission on an agenda that permits a
Commission decision no later than 120 days after the date the
petition is filed.
2. No later than 120 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance. Upon finding that the issuance of the storm recovery bonds and the imposition of storm recovery charges authorized by a financing order is reasonably expected to result in lower overall costs or would avoid or mitigate rate impacts to customers as compared with the traditional method of financing and recovering storm recovery costs, the Commission may issue a financing order authorizing the financing of reasonable and prudently incurred storm recovery costs, including the storm recovery reserve amount determined appropriate by the Commission, and financing costs.

b. A financing order issued by the Commission to a public utility shall include all of the elements listed in this sub-subdivision. The elements required for inclusion in the financing order are as follows:

1. Except as provided in sub-sub-subdivision 5. of this sub-subdivision, the amount of storm recovery costs, including the level of storm recovery reserves, to be financed using storm recovery bonds. The Commission shall describe and estimate the amount of financing costs which may be recovered through storm recovery charges and specify the period over which such costs may be recovered.

2. A determination of whether the proposed issuance of storm recovery bonds would reasonably be expected to result in lower overall costs or would avoid or mitigate rate impacts to customers as compared with the traditional method of financing and recovering storm recovery costs.

3. A requirement that, for the period specified pursuant to sub-sub-subdivision 1. of sub-subdivision (a) of this subdivision, the imposition and collection of storm recovery charges authorized under a financing order be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.

4. A determination of what portion, if any, of the storm recovery reserves must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used.

5. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the storm recovery charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of storm recovery bonds and financing costs and other required...
amounts and charges payable in connection with the storm recovery bonds.

6. The storm recovery property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure storm recovery bonds and all financing costs.

7. The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the storm recovery bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs consistent with sub-sub-divisions 1. through 6. of this sub-subdivision.

8. How storm recovery charges will be allocated among customers classes.

9. A requirement that, after the final terms of an issuance of storm recovery bonds have been established and before the issuance of storm recovery bonds, the public utility determine the resulting initial storm recovery charge in accordance with the financing order and that such initial storm recovery charge be final and effective upon the issuance of such storm recovery bonds without further Commission action so long as the storm recovery charge is consistent with the financing order.

10. A method of tracing funds collected as storm recovery charges, or other proceeds of storm recovery property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any storm recovery property subject to a financing order under applicable law.

11. Any other conditions that the Commission considers appropriate that are authorized by this section.

c. A financing order issued to a public utility may provide that creation of the public utility's storm recovery property pursuant to sub-sub-subdivision 6. of sub-subdivision b. of this subdivision is conditioned upon, and simultaneous with, the sale or other transfer of the storm recovery property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.

d. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism pursuant to sub-sub-subdivision 5. of sub-subdivision b. of this subdivision and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the adjustments described in that sub-sub-subdivision. The review of the filing shall be limited to determining whether there is any mathematical error in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of storm recovery charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of storm recovery bonds approved under the financing order. Within
30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical errors in its calculation. If the Commission informs the utility of mathematical errors in its calculation, the utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.

e. Subsequent to the transfer of storm recovery property to an assignee or the issuance of storm recovery bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except as provided in sub-sub-subdivision 5. of sub-subdivision b. of this subdivision, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust storm recovery charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer storm recovery property or to cause storm recovery bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.

(4) At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding storm recovery bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in sub-subdivision b. of subdivision (3) of this subsection. Effective upon retirement of the refunded storm recovery bonds and the issuance of new storm recovery bonds, the Commission shall adjust the related storm recovery charges accordingly.

(5) Within 30 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina. Review on appeal shall be based solely on the record before the Commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and State and federal law and is within the authority of the Commission under this section.

(6) Duration of financing order. –

a. A financing order remains in effect and storm recovery property under the financing order continues to exist until storm recovery bonds issued pursuant to the financing order have been paid in full and all Commission-approved financing costs of such storm recovery bonds have been recovered in full.

b. A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its successors or assignees.

(c) Exceptions to Commission Jurisdiction. –

(1) The Commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this Chapter, consider the storm recovery bonds issued pursuant to a financing order to be the debt of the public utility other than for federal income tax purposes, consider the
storm recovery charges paid under the financing order to be the revenue of the public utility for any purpose, or consider the storm recovery costs or financing costs specified in the financing order to be the costs of the public utility, nor may the Commission determine any action taken by a public utility which is consistent with the financing order to be unjust or unreasonable.

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

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

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

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

(e) Storm Recovery Property. –

(1) Provisions applicable to storm recovery property. –

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

b. Storm recovery property specified in a financing order exists until storm recovery bonds issued pursuant to the financing order are paid
in full and all financing costs and other costs of such storm recovery
bonds have been recovered in full.

c. All or any portion of storm recovery property specified in a financing
order issued to a public utility may be transferred, sold, conveyed, or
assigned to a successor or assignee that is wholly owned, directly or
indirectly, by the public utility and created for the limited purpose of
acquiring, owning, or administering storm recovery property or
issuing storm recovery bonds under the financing order. All or any
portion of storm recovery property may be pledged to secure storm
recovery bonds issued pursuant to the financing order, amounts
payable to financing parties and to counterparties under any ancillary
agreements, and other financing costs. Any transfer, sale, conveyance,
assignment, grant of a security interest in or pledge of storm recovery
property by a public utility, or an affiliate of the public utility, to an
assignee, to the extent previously authorized in a financing order, does
not require the prior consent and approval of the Commission.

d. If a public utility defaults on any required payment of charges arising
from storm recovery property specified in a financing order, a court,
upon application by an interested party, and without limiting any other
remedies available to the applying party, shall order the sequestration
and payment of the revenues arising from the storm recovery property
to the financing parties or their assignees. Any such financing order
remains in full force and effect notwithstanding any reorganization,
bankruptcy, or other insolvency proceedings with respect to the public
utility or its successors or assignees.

e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee
in storm recovery property specified in a financing order issued to a
public utility, and in the revenue and collections arising from that
property, is not subject to setoff, counterclaim, surcharge, or defense
by the public utility or any other person or in connection with the
reorganization, bankruptcy, or other insolvency of the public utility or
any other entity.

f. Any successor to a public utility, whether pursuant to any
reorganization, bankruptcy, or other insolvency proceeding or whether
pursuant to any merger or acquisition, sale, or other business
combination, or transfer by operation of law, as a result of public
utility restructuring or otherwise, must perform and satisfy all
obligations of, and have the same rights under a financing order as, the
public utility under the financing order in the same manner and to the
same extent as the public utility, including collecting and paying to the
person entitled to receive the revenues, collections, payments, or
proceeds of the storm recovery property. Nothing in this
sub-subdivision is intended to limit or impair any authority of the
Commission concerning the transfer or succession of interests of
public utilities.

g. Storm recovery bonds shall be nonrecourse to the credit or any assets
of the public utility other than the storm recovery property as specified
in the financing order and any rights under any ancillary agreement.

(2) Provisions applicable to security interests. –

a. The creation, perfection, and enforcement of any security interest in
storm recovery property to secure the repayment of the principal and
interest and other amounts payable in respect of storm recovery bonds,
amounts payable under any ancillary agreement and other financing
costs are governed by this subsection and not by the provisions of the
Code.

b. A security interest in storm recovery property is created, valid, and
binding and perfected at the later of the time: (i) the financing order is
issued; (ii) a security agreement is executed and delivered by the
debtor granting such security interest; (iii) the debtor has rights in such
storm recovery property or the power to transfer rights in such storm
recovery property; or (iv) value is received for the storm recovery
property. The description of storm recovery property in a security
agreement is sufficient if the description refers to this section and the
financing order creating the storm recovery property.

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storm recovery property or the power to transfer rights in such storm
recovery property; or (iv) value is received for the storm recovery
property. The description of storm recovery property in a security
agreement is sufficient if the description refers to this section and the
financing order creating the storm recovery property.

c. A security interest shall attach without any physical delivery of
collateral or other act, and, upon the filing of a financing statement
with the office of the Secretary of State, the lien of the security interest
shall be valid, binding, and perfected against all parties having claims
of any kind in tort, contract, or otherwise against the person granting
the security interest, regardless of whether the parties have notice of
the lien. Also upon this filing, a transfer of an interest in the storm
recovery property shall be perfected against all parties having claims
of any kind, including any judicial lien or other lien creditors or any
claims of the seller or creditors of the seller, and shall have priority
over all competing claims other than any prior security interest,
ownership interest, or assignment in the property previously perfected
in accordance with this section.

d. The Secretary of State shall maintain any financing statement filed to
perfect any security interest under this section in the same manner that
the Secretary maintains financing statements filed by transmitting
utilities under the Code. The filing of a financing statement under this
section shall be governed by the provisions regarding the filing of
financing statements in the Code.

e. The priority of a security interest in storm recovery property is not
affected by the commingling of storm recovery charges with other
amounts. Any pledgee or secured party shall have a perfected security
interest in the amount of all storm recovery charges that are deposited
in any cash or deposit account of the qualifying utility in which storm
recovery charges have been commingled with other funds and any
other security interest that may apply to those funds shall be terminated
when they are transferred to a segregated account for the assignee or a
financing party.

f. No application of the adjustment mechanism as provided in
sub-sub-subdivision 5. of sub-subdivision b. of subdivision (3) of
subsection (b) of this section will affect the validity, perfection, or
priority of a security interest in or transfer of storm recovery property.

g. If a default or termination occurs under the storm recovery bonds, the
financing parties or their representatives may foreclose on or otherwise
enforce their lien and security interest in any storm recovery property
as if they were secured parties with a perfected and prior lien under the
Code, and the Commission may order amounts arising from storm
recovery charges be transferred to a separate account for the financing
parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the storm recovery charges.

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

a. Any sale, assignment, or other transfer of storm recovery property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the storm recovery property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes.

For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in storm recovery property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in storm recovery property may be created only when all of the following have occurred: (i) the financing order creating the storm recovery property has become effective; (ii) the documents evidencing the transfer of storm recovery property have been executed by the assignor and delivered to the assignee; and (iii) value is received for the storm recovery property. After such a transaction, the storm recovery property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the storm recovery property perfected in accordance with subdivision (2) of subsection (e) of this section.

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

1. Commingling of storm recovery charges with other amounts.
2. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the storm recovery property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of storm recovery charges.
3. Any recourse that the purchaser may have against the seller.
4. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
5. The obligation of the seller to collect storm recovery charges on behalf of an assignee.
6. The transferor acting as the servicer of the storm recovery charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in storm recovery property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the storm recovery charges for
the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.

7. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.

8. The granting or providing to bondholders a preferred right to the storm recovery property or credit enhancement by the public utility or its affiliates with respect to such storm recovery bonds.

9. Any application of the adjustment mechanism as provided in sub-sub-subdivision 5. of sub-subdivision b. of subdivision (3) of subsection (b) of this section.

c. Any right that a public utility has in the storm recovery property before its pledge, sale, or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in storm recovery property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such storm recovery property or the power to transfer rights in such storm recovery property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of storm recovery bonds, and (iv) the receipt of value for the storm recovery property. An enforceable transfer of an interest in storm recovery property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with sub-subdivision c. of subdivision (2) of this subsection. The transfer is perfected against third parties as of the date of filing.

d. The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of storm recovery property under this section in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this section shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of storm recovery property.

e. The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under subdivision (2) of this subsection, is terminated when they are transferred to a segregated account for the assignee or a financing party. If storm recovery property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.

f. The priority of the conflicting interests of assignees in the same interest or rights in any storm recovery property is determined as follows:
1. Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with sub-subdivision c. of subdivision (2) of this subsection.

2. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.

3. A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

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

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

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

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

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

(1) Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.

(2) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.

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

(4) All other persons authorized to invest in bonds or other obligations of a similar nature.

(k) Obligation of Nonimpairment. —

(1) The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the storm recovery property, and other financing parties that the State and its agencies will not take any action listed in this
subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the storm recovery charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:

a. Alter the provisions of this section, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create storm recovery property, and make the storm recovery charges imposed by a financing order irrevocable, binding, or nonbypassable charges.

b. Take or permit any action that impairs or would impair the value of storm recovery property or the security for the storm recovery bonds or revises the storm recovery costs for which recovery is authorized.

c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.

d. Except as authorized under sub-sub-subdivision 5. of sub-subdivision b. of subdivision (3) of subsection (b) of this section, reduce, alter, or impair storm recovery charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related storm recovery bonds have been paid and performed in full.

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

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

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

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

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

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

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

..."

(13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; - of

(14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this
State or a governmental unit in this State, to secure, directly or indirectly, any
bond, note, other evidence of indebtedness, or other payment obligations for
borrowed money issued by, or in connection with, installment or lease
purchase financings by, this State or a governmental unit in this State.
However, notwithstanding this subdivision, this Article does apply to the
creation, perfection, priority, and enforcement of security interests created by
this State or a governmental unit in this State in equipment or fixtures; or

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

PART II. AUTHORIZE RATES USING ALTERNATIVE MECHANISMS.

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

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

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

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

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

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

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

(d) For purposes of measuring an electric public utility's earnings under any mechanisms,
plans, or settlements approved under this section, the electric public utility shall make an annual
filing that sets forth the electric public utility's earned return on equity for the prior 12-month
period.
(e) Nothing in this section shall be construed to (i) limit or abrogate the existing 
rate-making authority of the Commission or (ii) invalidate or void any rates approved by the 
Commission prior to the effective date of this section. In all respects, the rate-making 
mechanisms, plans, or settlements approved under this section, shall operate independently, and 
be considered separately, from riders or other cost recovery mechanisms otherwise allowed by 
law, unless otherwise incorporated into such mechanism, plan, or settlement."

PART III. EFFECTIVE DATE.

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