

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 559  
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/18/19  
House Committee Substitute Favorable 6/19/19

Short Title: Storm Securitization/Alt. Rates.

(Public)

Sponsors:

Referred to:

April 3, 2019

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

6 The General Assembly of North Carolina enacts:

7  
8 **PART I. STORM SECURITIZATION**

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

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

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

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

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

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

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

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

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

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

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

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



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

1           (13) Storm recovery charge. – The amounts authorized by the Commission to  
2 repay, finance, or refinance storm recovery costs and financing costs and that  
3 are nonbypassable charges (i) imposed on and part of all retail customer bills,  
4 (ii) collected by a public utility or its successors or assignees, or a collection  
5 agent, in full, separate and apart from the public utility's base rates, and (iii)  
6 paid by all existing or future retail customers receiving transmission or  
7 distribution service, or both, from the public utility or its successors or  
8 assignees under Commission-approved rate schedules or under special  
9 contracts, even if a customer elects to purchase electricity from an alternative  
10 electricity supplier following a fundamental change in regulation of public  
11 utilities in this State.

12           (14) Storm recovery costs. – All of the following:

13           a. All incremental costs, including capital costs, appropriate for recovery  
14 from existing and future retail customers receiving transmission or  
15 distribution service from the public utility that a public utility has  
16 incurred or expects to incur as a result of the applicable storm that are  
17 caused by, associated with, or remain as a result of undertaking storm  
18 recovery activity. Such costs include the public utility's cost of capital  
19 from the date of the applicable storm to the date the storm recovery  
20 bonds are issued calculated using the public utility's weighted average  
21 cost of capital as defined in its most recent base rate case proceeding  
22 before the Commission net of applicable income tax savings related to  
23 the interest component.

24           b. Storm recovery costs shall be net of applicable insurance proceeds, tax  
25 benefits and any other amounts intended to reimburse the public utility  
26 for storm recovery activities such as government grants, or aid of any  
27 kind and where determined appropriate by the Commission, and may  
28 include adjustments for capital replacement and operating costs  
29 previously considered in determining normal amounts in the public  
30 utility's most recent general rate proceeding. Storm recovery costs  
31 includes the cost to replenish and fund any storm reserves and costs of  
32 repurchasing equity or retiring any existing indebtedness relating to  
33 storm recovery activities.

34           c. With respect to storm recovery costs that the public utility expects to  
35 incur, any difference between costs expected to be incurred and actual,  
36 reasonable and prudent costs incurred, or any other rate-making  
37 adjustments appropriate to fairly and reasonably assign or allocate  
38 storm cost recovery to customers over time, shall be addressed in a  
39 future general rate proceeding, as may be facilitated by other orders of  
40 the Commission issued at the time or prior to such proceeding;  
41 provided, however, that the Commission's adoption of a financing  
42 order and approval of the issuance of storm recovery bonds may not  
43 be revoked or otherwise modified.

44           (15) Storm recovery property. – All of the following:

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

50           b. All revenues, collections, claims, rights to payments, payments,  
51 money, or proceeds arising from the rights and interests specified in

1                   the financing order, regardless of whether such revenues, collections,  
2                   claims, rights to payment, payments, money, or proceeds are imposed,  
3                   billed, received, collected, or maintained together with or commingled  
4                   with other revenues, collections, rights to payment, payments, money,  
5                   or proceeds.

6           **(b)    Financing Orders. –**

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

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

14                   b.        The storm recovery costs and estimate of the costs of any storm  
15                   recovery activities that are being undertaken but are not completed.

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

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

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

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

34                   g.        A comparison between the net present value of the costs to customers  
35                   that are estimated to result from the issuance of storm recovery bonds  
36                   and the costs that would result from the application of the traditional  
37                   method of financing and recovering storm recovery costs from  
38                   customers. The comparison should demonstrate that the issuance of  
39                   storm recovery bonds and the imposition of storm recovery charges  
40                   are expected to provide quantifiable benefits to customers.

41                   h.        Direct testimony and exhibits supporting the petition.

42                   **(2)    If a public utility is subject to a settlement agreement that governs the type**  
43                   and amount of principal costs that could be included in storm recovery costs  
44                   and the public utility proposes to finance all or a portion of the principal costs  
45                   using storm recovery bonds, then the public utility must file a petition with  
46                   the Commission for review and approval of those costs no later than 90 days  
47                   before filing a petition for a financing order pursuant to this section.

48                   **(3)    Petition and order. –**

49                   a.        Proceedings on a petition submitted pursuant to this subdivision begin  
50                   with the petition by a public utility, filed subject to the time frame  
51                   specified in subdivision (2) of this subsection, if applicable, and shall

1 be disposed of in accordance with the requirements of this Chapter and  
2 the rules of the Commission, except as follows:

3 1. Within 14 days after the date the petition is filed, the  
4 Commission shall establish a procedural schedule that permits  
5 a Commission decision no later than 135 days after the date the  
6 petition is filed.

7 2. No later than 135 days after the date the petition is filed, the  
8 Commission shall issue a financing order or an order rejecting  
9 the petition. A party to the Commission proceeding may  
10 petition the Commission for reconsideration of the financing  
11 order within five days after the date of its issuance.

12 b. A financing order issued by the Commission to a public utility shall  
13 include all of the following elements:

14 1. Except for changes made pursuant to the formula-based  
15 mechanism authorized under this section, the amount of storm  
16 recovery costs, including the level of storm recovery reserves,  
17 to be financed using storm recovery bonds. The Commission  
18 shall describe and estimate the amount of financing costs that  
19 may be recovered through storm recovery charges and specify  
20 the period over which storm recovery costs and financing costs  
21 may be recovered.

22 2. A finding that the proposed issuance of storm recovery bonds  
23 and the imposition and collection of a storm recovery charge  
24 are expected to provide quantifiable benefits to customers as  
25 compared to the costs that would have been incurred absent the  
26 issuance of storm recovery bonds.

27 3. A finding that the structuring and pricing of the storm recovery  
28 bonds are reasonably expected to result in the lowest storm  
29 recovery charges consistent with market conditions at the time  
30 the storm recovery bonds are priced and the terms set forth in  
31 such financing order.

32 4. A requirement that, for so long as the storm recovery bonds are  
33 outstanding and until all financing costs have been paid in full,  
34 the imposition and collection of storm recovery charges  
35 authorized under a financing order shall be nonbypassable and  
36 paid by all existing and future retail customers receiving  
37 transmission or distribution service, or both, from the public  
38 utility or its successors or assignees under  
39 Commission-approved rate schedules or under special  
40 contracts, even if a customer elects to purchase electricity from  
41 an alternative electric supplier following a fundamental change  
42 in regulation of public utilities in this State.

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

46 6. A formula-based true-up mechanism for making, at least  
47 annually, expeditious periodic adjustments in the storm  
48 recovery charges that customers are required to pay pursuant  
49 to the financing order and for making any adjustments that are  
50 necessary to correct for any overcollection or undercollection  
51 of the charges or to otherwise ensure the timely payment of

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

- 1 informs the utility of mathematical or clerical errors in its calculation,  
2 the utility may correct its error and refile its request. The time frames  
3 previously described in this paragraph shall apply to a refiled request.  
4 e. Subsequent to the transfer of storm recovery property to an assignee  
5 or the issuance of storm recovery bonds authorized thereby, whichever  
6 is earlier, a financing order is irrevocable and, except for changes made  
7 pursuant to the formula-based mechanism authorized in this section,  
8 the Commission may not amend, modify, or terminate the financing  
9 order by any subsequent action or reduce, impair, postpone, terminate,  
10 or otherwise adjust storm recovery charges approved in the financing  
11 order. After the issuance of a financing order, the public utility retains  
12 sole discretion regarding whether to assign, sell, or otherwise transfer  
13 storm recovery property or to cause storm recovery bonds to be issued,  
14 including the right to defer or postpone such assignment, sale, transfer,  
15 or issuance.
- 16 (4) At the request of a public utility, the Commission may commence a  
17 proceeding and issue a subsequent financing order that provides for  
18 refinancing, retiring, or refunding storm recovery bonds issued pursuant to the  
19 original financing order if the Commission finds that the subsequent financing  
20 order satisfies all of the criteria specified in this section for a financing order.  
21 Effective upon retirement of the refunded storm recovery bonds and the  
22 issuance of new storm recovery bonds, the Commission shall adjust the related  
23 storm recovery charges accordingly.
- 24 (5) Within 60 days after the Commission issues a financing order or a decision  
25 denying a request for reconsideration or, if the request for reconsideration is  
26 granted, within 30 days after the Commission issues its decision on  
27 reconsideration, an adversely affected party may petition for judicial review  
28 in the Supreme Court of North Carolina. Review on appeal shall be based  
29 solely on the record before the Commission and briefs to the court and is  
30 limited to determining whether the financing order, or the order on  
31 reconsideration, conforms to the State Constitution and State and federal law  
32 and is within the authority of the Commission under this section.
- 33 (6) Duration of financing order. –  
34 a. A financing order remains in effect and storm recovery property under  
35 the financing order continues to exist until storm recovery bonds  
36 issued pursuant to the financing order have been paid in full or  
37 deceased and, in each case, all Commission-approved financing costs  
38 of such storm recovery bonds have been recovered in full.  
39 b. A financing order issued to a public utility remains in effect and  
40 unabated notwithstanding the reorganization, bankruptcy or other  
41 insolvency proceedings, merger, or sale of the public utility or its  
42 successors or assignees.
- 43 (c) Exceptions to Commission Jurisdiction. –  
44 (1) The Commission may not, in exercising its powers and carrying out its duties  
45 regarding any matter within its authority pursuant to this Chapter, consider the  
46 storm recovery bonds issued pursuant to a financing order to be the debt of  
47 the public utility other than for federal income tax purposes, consider the  
48 storm recovery charges paid under the financing order to be the revenue of the  
49 public utility for any purpose, or consider the storm recovery costs or  
50 financing costs specified in the financing order to be the costs of the public

1 utility, nor may the Commission determine any action taken by a public utility  
2 which is consistent with the financing order to be unjust or unreasonable.

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

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

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

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

32 (e) Storm Recovery Property. –

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

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

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

50 c. All or any portion of storm recovery property specified in a financing  
51 order issued to a public utility may be transferred, sold, conveyed, or



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

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

- 1           (3) Provisions applicable to the sale, assignment, or transfer of storm recovery  
2 property. –  
3           a. Any sale, assignment, or other transfer of storm recovery property  
4 shall be an absolute transfer and true sale of, and not a pledge of or  
5 secured transaction relating to, the seller's right, title, and interest in,  
6 to, and under the storm recovery property if the documents governing  
7 the transaction expressly state that the transaction is a sale or other  
8 absolute transfer other than for federal and State income tax purposes.  
9 For all purposes other than federal and State income tax purposes, the  
10 parties' characterization of a transaction as a sale of an interest in storm  
11 recovery property shall be conclusive that the transaction is a true sale  
12 and that ownership has passed to the party characterized as the  
13 purchaser, regardless of whether the purchaser has possession of any  
14 documents evidencing or pertaining to the interest. A transfer of an  
15 interest in storm recovery property may be created only when all of  
16 the following have occurred: (i) the financing order creating the storm  
17 recovery property has become effective, (ii) the documents evidencing  
18 the transfer of storm recovery property have been executed by the  
19 assignor and delivered to the assignee, and (iii) value is received for  
20 the storm recovery property. After such a transaction, the storm  
21 recovery property is not subject to any claims of the transferor or the  
22 transferor's creditors, other than creditors holding a prior security  
23 interest in the storm recovery property perfected in accordance with  
24 subdivision (2) of subsection (e) of this section.  
25           b. The characterization of the sale, assignment, or other transfer as an  
26 absolute transfer and true sale and the corresponding characterization  
27 of the property interest of the purchaser, shall not be affected or  
28 impaired by the occurrence of any of the following factors:  
29           1. Commingling of storm recovery charges with other amounts.  
30           2. The retention by the seller of (i) a partial or residual interest,  
31 including an equity interest, in the storm recovery property,  
32 whether direct or indirect, or whether subordinate or otherwise,  
33 or (ii) the right to recover costs associated with taxes, franchise  
34 fees, or license fees imposed on the collection of storm  
35 recovery charges.  
36           3. Any recourse that the purchaser may have against the seller.  
37           4. Any indemnification rights, obligations, or repurchase rights  
38 made or provided by the seller.  
39           5. The obligation of the seller to collect storm recovery charges  
40 on behalf of an assignee.  
41           6. The transferor acting as the servicer of the storm recovery  
42 charges or the existence of any contract that authorizes or  
43 requires the public utility, to the extent that any interest in  
44 storm recovery property is sold or assigned, to contract with  
45 the assignee or any financing party that it will continue to  
46 operate its system to provide service to its customers, will  
47 collect amounts in respect of the storm recovery charges for  
48 the benefit and account of such assignee or financing party, and  
49 will account for and remit such amounts to or for the account  
50 of such assignee or financing party.

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



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 for changes made pursuant to the formula-based adjustment mechanism authorized under this section, reduce, alter, or impair storm recovery charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related storm recovery bonds have been paid and performed in full.

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

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

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

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

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

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

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

...

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

(14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this 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

1 purchase financings by, this State or a governmental unit in this State.  
2 However, notwithstanding this subdivision, this Article does apply to the  
3 creation, perfection, priority, and enforcement of security interests created by  
4 this State or a governmental unit in this State in equipment or ~~fixtures~~-fixtures;  
5 or

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

## 11 PART II. AUTHORIZE RATES USING ALTERNATIVE MECHANISMS

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

### 14 "§ 62-133A. Alternate rate methodology authorized.

15 (a) Notwithstanding the methods for fixing rates established under G.S. 62-133, the  
16 Commission, upon application by an electric public utility, is authorized to approve multiyear  
17 rate plans, banding of authorized returns, or a combination thereof, filed in and along with a  
18 general rate case proceeding initiated pursuant to G.S. 62-133. For purposes of this section, the  
19 following definitions apply:

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

25 (2) "Multiyear rate plan" means a rate mechanism under which the Commission  
26 sets base rates and revenue requirements for a multiyear plan period based on  
27 a known and measurable set of capital investments and all the expenses  
28 associated with those capital investments and authorizes periodic changes in  
29 base rates during the approved plan period without the need for a base rate  
30 proceeding during the plan period.

31 (b) Any banding of authorized returns approved pursuant to this section shall not exceed  
32 125 basis points above or 125 basis points below the authorized return on equity that is set by the  
33 Commission. If an electric public utility that is operating under a banding of authorized returns  
34 exceeds the high-end range of the band that is approved by the Commission, the electric public  
35 utility shall refund or credit earnings above that high-end range to customers in a manner to be  
36 prescribed by rules adopted by the Commission pursuant to subsection (g) of this section. If an  
37 electric public utility that is operating under a banding of authorized returns falls below the  
38 low-end range of the band that is approved by the Commission, the electric public utility may  
39 file a general rate case proceeding initiated pursuant to G.S. 62-133. In setting a midpoint  
40 authorized rate of return on equity for banding, the Commission shall consider any decreased or  
41 increased risk to an electric public utility that may result from having an approved multiyear rate  
42 plan, banding of authorized returns, or a combination thereof.

43 (c) The Commission shall, after notice and an opportunity for interested parties to be  
44 heard, issue an order, in addition to its order ruling on the electric public utility's request to adjust  
45 base rates under G.S. 62-133, denying or approving, with or without modifications, an electric  
46 public utility's proposed rate-making mechanism, plan, or settlement that includes multiyear rate  
47 plans, banding of authorized returns, or a combination thereof, filed pursuant to this section no  
48 later than 365 days after the date on which the electric public utility files a proposed rate-making  
49 mechanism, plan, or settlement that includes multiyear rate plans, banding of authorized returns,  
50 or a combination thereof. If the Commission denies an electric public utility's proposed  
51 rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of

1 authorized returns, or a combination thereof, filed pursuant to this section, the Commission's  
2 order ruling on the electric public utility's request to adjust base rates shall govern. The  
3 Commission may approve such rate-making mechanisms, plans, or settlements proposed by an  
4 electric public utility only upon a finding by the Commission that such mechanisms, plans, or  
5 settlements are just and reasonable, and are in the public interest. In reviewing any such  
6 application under this section, the Commission shall consider whether the electric public utility's  
7 application, as proposed: (i) establishes rates as shall be fair both to the electric public utility and  
8 to the consumer, (ii) reasonably assures the continuation of safe and reliable electric service, (iii)  
9 will not unreasonably prejudice any class of electric customers, (iv) will not result in sudden  
10 substantial rate increases, or "rate shock," to consumers, and (v) is otherwise consistent with the  
11 public interest. The Commission is granted explicit authority to impose any or all conditions for  
12 approval of an application submitted under this section that the Commission deems necessary to  
13 ensure that rates are just and reasonable, and are in the public interest, including periodic reviews  
14 to be held during the period that a multiyear rate plan may be in effect, with opportunities for  
15 public hearings during such periodic reviews so that interested parties may be heard. If the  
16 Commission approves the multiyear rate plan, banding of authorized returns, or a combination  
17 thereof, with modifications, the utility subject to such approval may, at its option, accept the  
18 modifications and implement the multiyear rate plan, banding of authorized returns, or a  
19 combination thereof, as modified or may, at its option, withdraw its application and be governed  
20 under the Commission's order ruling on the electric public utility's request to adjust base rates  
21 under G.S. 62-133.

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

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

28 (f) Nothing in this section shall be construed to (i) limit or abrogate the existing  
29 rate-making authority of the Commission or (ii) invalidate or void any rates approved by the  
30 Commission prior to the effective date of this section. In all respects, the rate-making  
31 mechanisms, plans, or settlements approved under this section shall operate independently, and  
32 be considered separately, from riders or other cost recovery mechanisms otherwise allowed by  
33 law, unless otherwise incorporated into such mechanism, plan, or settlement.

34 (g) The Commission shall adopt rules necessary to implement the provisions of this  
35 section."

36 **SECTION 2.(b)** The Commission shall adopt rules as required by G.S. 62-133A(g),  
37 as enacted by Section 2(a) of this act, no later than 120 days after the date this act becomes law.

### 38 **PART III. EFFECTIVE DATE**

39 **SECTION 3.** Part I of this act is effective when it becomes law. Part II of this act is  
40 effective when it becomes law and applies to any rate-making mechanisms, designs, plans, or  
41 settlements filed by a public utility on or after the date that rules adopted pursuant to  
42 G.S. 62-133A(g), as enacted by Section 2(a) of this act, become effective. The remainder of this  
43 act is effective when it becomes law.  
44