

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4305**

BY DELEGATES HANSEN, STEELE, AND YOUNG

[Introduced January 20, 2022; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

1 A BILL to repeal §16-27A-1 and §16-27A-2 of the Code of West Virginia, 1931, as amended; to  
 2 amend said code by adding thereto a new section, designated §24-2-1r; and to amend  
 3 and reenact §24-2-4f of said code, all relating to power generating plant sites; repealing  
 4 the ban on construction of nuclear power plants; revising consumer rate relief bonds; and  
 5 enabling the use of securitization to refinance the unamortized investment in prematurely  
 6 retired coal-fired generating plants.

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

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 27A. BAN ON CONSTRUCTION OF NUCLEAR POWER PLANTS.**

**§16-27A-1. Legislative findings and purposes.**

1 [Repealed]

**§16-27A-2. Limited ban on construction of nuclear power plants; application to the Public Service Commission for construction or initiation.**

1 [Repealed]

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

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

**§24-2-1r. Redeployment of Existing Generating Plant Sites.**

1 (a) The Legislature finds and declares that:

2 (1) Due to technological advances and increasing concerns nationally about reducing  
 3 greenhouse gas emissions to address climate change, a major transition is underway in the  
 4 electric utility industry;

5 (2) This transition potentially threatens the continued operation of coal-fired generating  
 6 plants, which could result in the closure of such facilities, the loss of jobs for power plant workers,  
 7 and adverse impacts on the communities in which such plants are located;

8 (3) Existing power plant sites may need to be redeployed using other technologies to

9 maintain the use of the site and retain the jobs and economic benefits associated with continued  
10 generation of electricity at such sites.

11 (4) West Virginia must act to stabilize its electricity rates to remain competitive in order to  
12 attract industrial and manufacturing facilities that will provide good-paying jobs.

13 (5) In evaluating the possible redeployment of existing power plant sites, the public service  
14 commission must engage in a rigorous analysis that takes into account the economic and  
15 environmental impacts of the competing proposals;

16 (6) All available energy technologies, including nuclear energy, should be considered for  
17 inclusion within the scope of such economic and environmental analyses; and

18 (7) In the event coal-fired generating plants are retired prior to the end of their useful lives,  
19 creative financing strategies should be used to minimize the impact of such closures on electric  
20 ratepayers and to provide funding to assist in the transition of power plant workers and the  
21 communities in which power plants are located.

22 (b) The holder of a certificate of public convenience and necessity previously issued by  
23 the commission pursuant to §24-2-11 of this code authorizing the construction of a generating  
24 plant may apply to the commission for approval to redeploy the site upon which such plant is  
25 located, or adjacent sites, through construction of a new generating plant.

26 (c) In deciding whether to grant approval of such application, the commission shall  
27 consider:

28 (1) The projected long-term energy costs (exclusive of any applicable state incentives) of  
29 other resource options for electricity generation proposed for the site including nuclear, natural  
30 gas, solar, wind, geothermal, other renewables, energy storage, and any combination thereof. In  
31 the case of nuclear facilities, long-term energy costs shall include the recovery in rates of  
32 decommissioning costs for such nuclear facility from ratepayers receiving power from such facility.

33 (2) The environmental impacts of such other resource options including, where applicable,  
34 estimates of a future price on carbon, whether determined as the social cost of carbon or derived

35 from operating carbon markets.

36 (d) The commission shall promulgate rules setting forth the requirements for any additional  
37 information to be included in an application for redeployment of an existing generating plant site,  
38 or adjacent sites.

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

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

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

5 (2) That the financing costs of carrying such under-recovery balances and projected costs  
6 can be considerable.

7 (3) That the use of traditional utility financing mechanisms to finance or refinance the  
8 recovery of such under-recovery balances and projected costs may result in considerable  
9 additional costs to be reflected in the approved rates of electric utility customers.

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

13 (5) That the premature retirement of a coal-fired generating plant for economic reasons  
14 may result in an electric utility having an unrecovered capital investment in such plant on its  
15 financial statement for ratemaking purposes.

16 ~~(5)~~ (6) That alternative financing mechanisms exist which can result in lower costs and  
17 mitigate rate impacts to customers and the use of these mechanisms can prove highly beneficial  
18 to such customers; and

19 ~~(6)~~ (7) That in order to use such alternative financing mechanisms, the commission must  
20 be empowered to adopt a financing order that advances these goals. The Legislature, therefore,  
21 determines that it is in the interest of the state and its citizens to encourage and facilitate the use

22 of alternative financing mechanisms that will enable electric utilities to finance or refinance  
23 expanded net energy costs and unrecovered plant investment or unrecovered plant investment  
24 at the lowest reasonably practical cost under certain conditions and to empower the commission  
25 to review and approve alternative financing mechanisms when it determines that such approval  
26 is in the public interest, as set forth in this section.

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

28 (1) "Adjustment mechanism" means a formula-based mechanism for making adjustments  
29 to consumer rate relief charges to correct for over-collection or under-collection of such charges  
30 or otherwise to ensure the timely and complete payment and recovery of such charges and  
31 financing costs. The adjustment mechanism shall accommodate: (i) Standard adjustments to  
32 consumer rate relief charges that are limited to relatively stable conditions of operations; and (ii)  
33 nonstandard adjustments to consumer rate relief charges that are necessary to reflect significant  
34 changes from historical conditions of operations, such as the loss of significant electrical load.  
35 The adjustment mechanism is not to be used as a means to authorize the issuance of consumer  
36 rate relief bonds in a principal amount greater, or the payment or recovery of expanded net energy  
37 costs or unrecovered plant investment in an amount greater, than that which was authorized in  
38 the financing order which established the adjustment mechanism.

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

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

48 (4) "Bond" includes debentures, notes, certificates of participation, certificates of beneficial  
49 interest, certificates of ownership or other evidences of indebtedness or ownership that are issued  
50 by an electric utility or an assignee under a final financing order, the proceeds of which are used  
51 directly or indirectly to recover, finance, or refinance expanded net energy costs or unrecovered  
52 plant investment and that are secured by or payable from revenues from consumer rate relief  
53 charges.

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

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

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

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

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

71 (10) "Expanded net energy costs" means historical and, if deemed appropriate by the  
72 commission, projected costs, inclusive of carrying charges on under-recovery balances  
73 authorized by the commission, including costs incurred prior to the effective date of this statute,

74 adjudicated pursuant to the commission's expanded net energy cost proceedings, which have  
75 been authorized for recovery by an order of the commission, whether or not subject to judicial  
76 appeal.

77 (11) "Financing costs" means any of the following:

78 (A) Principal, interest and redemption premiums that are payable on consumer rate relief  
79 bonds.

80 (B) A payment required under an ancillary agreement.

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

85 (D) Costs of retiring or refunding an existing debt and equity securities of a qualifying utility  
86 in connection with the issuance of consumer rate relief bonds but only to the extent the securities  
87 were issued for the purpose of financing expanded net energy costs, or unrecovered plant  
88 investment.

89 (E) Costs incurred by a qualifying utility to obtain modifications of or amendments to an  
90 indenture, financing agreement, security agreement, or similar agreement or instrument relating  
91 to an existing secured or unsecured obligation of the utility in connection with the issuance of  
92 consumer rate relief bonds.

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

96 (G) Taxes, franchise fees or license fees imposed on consumer rate relief charges.

97 (H) Costs related to issuing or servicing consumer rate relief bonds or related to obtaining  
98 a financing order, including servicing fees and expenses, trustee fees and expenses, legal fees  
99 and expenses, administrative fees, placement fees, underwriting fees, capitalized interest and

100 equity, rating-agency fees and other related costs authorized by the commission in a financing  
101 order; and

102 (l) Costs that are incurred by the commission for a financial adviser with respect to  
103 consumer rate relief bonds.

104 (12) "Financing order" means an order issued by the commission under subsection (e) of  
105 this section that authorizes a qualifying utility to issue consumer rate relief bonds and recover  
106 consumer rate relief charges. A financing order may set forth conditions or contingencies on the  
107 effectiveness of the relief authorized therein and may grant relief that is different from that which  
108 was requested in the application.

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

111 (14) "Financing party" means either of the following:

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

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

117 (15) "Financing statement" has the same meaning as in §46-9-102 of this code.

118 (16) "Investment grade" means, with respect to the unsecured debt obligations of a utility  
119 at any given time of determination, a rating that is within the top four investment rating categories  
120 as published by at least one nationally recognized statistical rating organization as recognized by  
121 the United States Securities and Exchange Commission.

122 (17) "Nonbypassable" means that the payment of consumer rate relief charges may not  
123 be avoided by any West Virginia retail customer of a qualifying utility or its successors and must  
124 be paid by any such customer that receives electric delivery service from such utility or its  
125 successors for as long as the consumer rate relief bonds are outstanding.

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

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

132 (20) "Qualifying utility" means a public utility engaged in the sale of electric service to retail  
133 customers in West Virginia which has applied for and received from the commission a final  
134 financing order under this section, including an affiliated electric public utility which has applied  
135 jointly for and received such an order.

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

139 (22) "Regulatory sanctions" means, under the circumstances presented, a regulatory or  
140 ratemaking sanction or penalty that the commission is authorized to impose pursuant to this  
141 chapter or any proceeding for the enforcement of any provision of this chapter or any order of the  
142 commission that the commission is authorized to pursue or conduct pursuant to this chapter,  
143 including without limitation: (i) The initiation of any proceeding in which the utility is required to  
144 show cause why it should not be required to comply with the terms and conditions of a financing  
145 order or the requirements of this section; (ii) the imposition of penalties pursuant to article four of  
146 this chapter; and (iii) a proceeding by mandamus, injunction or other appropriate proceeding as  
147 provided in section two of this article.

148 (23) "Successor" means, with respect to an entity, another entity that succeeds by  
149 operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy,  
150 reorganization, restructuring, or other insolvency proceeding, any merger, acquisition, or  
151 consolidation, or any sale or transfer of assets, regardless of whether any of these occur as a

152 result of a restructuring of the electric power industry or otherwise.

153 (24) “Unrecovered plant investment” means: (A) The net book value of a coal-fired  
154 generating plant which remains on the balance sheet of an electric utility for ratemaking purposes  
155 upon a determination by such electric utility that such plant ceases to be economically feasible  
156 for West Virginia ratepayers as compared with other supply- and demand-side resources  
157 available to such utility; and (B) related transition costs, as determined by the commission in  
158 approving an application for consumer rate relief bonds. Such transition costs may include costs  
159 for programs to retrain workers at such plant, economic development funds for communities in  
160 which such plant is located, and payments in lieu of taxes formerly paid with respect to such plant.

161 *(c) Application for financing order.*

162 ~~(4)~~ If an electric utility determines that an existing coal-fired generating plant with a  
163 remaining net book value ceases to be economically feasible for West Virginia ratepayers as  
164 compared with other supply- and demand-side resources available to such utility, or if an electric  
165 utility or affiliate obtains from the commission an authorization or waiver required by any other  
166 provision of this chapter or by commission order with respect to the underlying expanded net  
167 energy costs proposed to be financed through the mechanism of consumer rate relief bonds, an  
168 electric utility, or two or more affiliated electric utilities engaged in the delivery of electric service  
169 to customers in this state, may apply to the commission for a financing order that authorizes the  
170 following:

171 (A) The issuance of consumer rate relief bonds, in one or more series, to recover the  
172 unrecovered plant investment in such plant or only those expanded net energy costs that could  
173 result in an under-recovery;

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

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

179 ~~(2) The commission may only consider applications made pursuant to this subsection for~~  
180 ~~the recovery of underlying expanded net energy costs that would be reflected in schedules of~~  
181 ~~rates filed in calendar year 2012~~

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

183 The application shall include all of the following:

184 (1) A description and quantification of the unrecovered plant investment or uncollected  
185 expanded net energy costs that the electric utility seeks to recover through the issuance of  
186 consumer rate relief bonds;

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

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

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

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

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

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

201 (8) A description of the benefits to the qualifying utility's customers that are expected to  
202 result from the issuance of the consumer rate relief bonds, including a demonstration that the  
203 bonds and their financing costs are just and reasonable and are reasonably expected to achieve

204 the lowest reasonably attainable cost in order to produce cost savings to customers and to  
205 mitigate rate impacts on customers, as compared to traditional financing mechanisms or  
206 traditional cost-recovery methods available to the electric utility; and

207 (9) Other information required by commission rules.

208 (e) *Issuance of financing order.*

209 (1) Except as otherwise provided in this section, proceedings on an application submitted  
210 by an electric utility under subsection (c) of this section are governed by the commission's  
211 standard procedural rules. In the case of an application for recovery or expanded net energy  
212 costs, Any any party that participated in a proceeding in which the subject expanded net energy  
213 costs were authorized or approved automatically has standing to participate in the financing order  
214 proceedings. In the case of an application for recovery of unrecovered plant investment, and the  
215 commission shall determine the standing or lack of standing of any other petitioner for party status.

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

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

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

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

229 (A) A determination of the maximum amount and a description of the expanded net energy

230 costs or unrecovered plant investment that may be recovered through consumer rate relief bonds  
231 issued under the financing order;

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

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

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

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

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

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

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

256 (6) To the extent the commission deems appropriate and compatible with the issuance  
257 advice letter procedure under subdivision (9) of this subsection, the commission, in a financing  
258 order, shall afford the electric utility flexibility in establishing the terms and conditions for the  
259 consumer rate relief bonds to accommodate changes in market conditions, including repayment  
260 schedules, interest rates, financing costs, collateral requirements, required debt service and other  
261 reserves, and the ability of the qualifying utility, at its option, to effect a series of issuances of  
262 consumer rate relief bonds and correlated assignments, sales, pledges, or other transfers of  
263 consumer rate relief property. Any changes made under this subdivision to terms and conditions  
264 for the consumer rate relief bonds shall be in conformance with the financing order.

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

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

274 (9) Because the actual structure and pricing of the consumer rate relief bonds will not be  
275 known at the time the financing order is issued, in the case of every securitization approved by  
276 the commission, the qualifying utility which intends to cause the issuance of such bonds will  
277 provide to the commission and the commission's financial adviser, if any, prior to the issuance of  
278 the bonds, an issuance advice letter following the determination of the final terms of the bonds.  
279 The issuance advice letter shall indicate the final structure of the consumer rate relief bonds and  
280 provide the best available estimate of total ongoing costs. The issuance advice letter should report  
281 the initial consumer rate relief charges and other information specific to the consumer rate relief

282 bonds to be issued, as the financing order may require. The qualifying utility may proceed with  
283 the issuance of the consumer rate relief bonds unless, prior to noon on the fourth business day  
284 after the commission receives the issuance advice letter, the commission issues a disapproval  
285 letter directing that the bonds as proposed shall not be issued and the basis for that disapproval.  
286 The financing order may provide such additional provisions relating to the issuance advice letter  
287 process as the commission deems appropriate.

288 (10) An order of the commission issued pursuant to this subsection is a final order of the  
289 commission. Any party aggrieved by the issuance of any such order may petition for suspension  
290 and review thereof by the Supreme Court of Appeals pursuant to section one, article five of this  
291 chapter. In the case of a petition for suspension and review, the Supreme Court of Appeals shall  
292 proceed to hear and determine the action as expeditiously as practicable and give the action  
293 precedence over other matters not accorded similar precedence by law.

294 (11) The financing order shall also provide for a procedure requiring the qualifying utility  
295 to adjust its rates or provide credits in a manner that would return to customers any overpayments  
296 resulting from the securitization for the expanded net energy costs or unrecovered plant  
297 investment in excess of actual prudently incurred costs as subsequently determined by the  
298 commission. The adjustment mechanism may not affect or impair the consumer rate relief  
299 property or the right to impose, collect, or adjust the consumer rate relief charges under this  
300 section.

301 (12) The commission may require, as a condition to the effectiveness of the financing order  
302 but in every circumstance subject to the limitations set forth in subdivision (3), subsection (g) of  
303 this section, that the qualifying utility give appropriate assurances to the commission that the  
304 qualifying utility and its parent will abide by the following conditions during any period in which  
305 any consumer rate relief bonds issued pursuant to the financing order are outstanding, in addition  
306 to any other obligation either may have under this code or federal law. Without first obtaining the  
307 prior consent and approval of the commission, the qualifying utility will not:

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

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

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

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

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

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

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

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

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

338 (4) The consumer rate relief property constitutes an existing, present property right,  
339 notwithstanding any requirement that the imposition, charging, and collection of consumer rate  
340 relief charges depend on the qualifying utility continuing to deliver retail electric service or  
341 continuing to perform its servicing functions relating to the billing and collection of consumer rate  
342 relief charges or on the level of future energy consumption. That property exists regardless of  
343 whether the consumer rate relief charges have been billed, have accrued or have been collected  
344 and notwithstanding any requirement that the value or amount of the property is dependent on  
345 the future provision of service to customers by the qualifying utility.

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

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

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

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

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

358 (h) *Subsequent commission proceeding.*

359 Upon petition, or upon its own motion, the commission may commence a proceeding and

360 issue a subsequent financing order that provides for retiring and refunding consumer rate relief  
361 bonds issued under the final financing order if the commission finds that the subsequent financing  
362 order satisfies all of the requirements of subsection (e) of this section. Effective on retirement of  
363 the refunded consumer rate relief bonds and the issuance of new consumer rate relief bonds, the  
364 commission shall adjust the related consumer rate relief charges accordingly.

365 (i) *Limits on commission authority.*

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

368 (A) Consider consumer rate relief bonds issued under a final financing order to be the debt  
369 of the qualifying utility.

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

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

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

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

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

382 (j) *Duties of qualifying utility.*

383 (1) A qualifying utility shall cause the proceeds which it receives with respect to consumer  
384 rate relief bonds issued pursuant to a financing order to be used for the recovery of the expanded  
385 net energy costs or recovered plant investment which occasioned the issuance of the bonds,

386 including the retirement of debt and/or equity of the qualifying utility which was incurred to finance  
387 or refinance such costs and for no other purpose.

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

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

396 (4) The failure of a qualifying utility to apply the proceeds which it receives with respect to  
397 an issuance of consumer rate relief bonds in a reasonable, prudent and appropriate manner or  
398 otherwise comply with any provision of this section does not invalidate, impair or affect any  
399 financing order, consumer rate relief property, consumer rate relief charges or consumer rate  
400 relief bonds. Subject to the limitations set forth in subsection (g) of this section, nothing in this  
401 subdivision prevents or precludes the commission from imposing regulatory sanctions against a  
402 qualifying utility for failure to comply with the terms and conditions of a financing order or the  
403 requirements of this section.

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

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

412 schedule.

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

420 (3) The commission's review of a request for a standard adjustment is limited to a  
421 determination of whether there is a mathematical error in the application of the adjustment  
422 mechanism to the consumer rate relief charges. No hearing is required for such an adjustment.  
423 Each standard adjustment to the consumer rate relief charges, in an amount as calculated by the  
424 qualifying utility but incorporating any correction for a mathematical error as determined by the  
425 commission, automatically becomes effective 15 days following the date on which the qualifying  
426 utility files with the commission its calculation of the standard adjustment.

427 (4) If the commission authorizes a nonstandard adjustment procedure in the financing  
428 order, and the qualifying utility files for such an adjustment, the commission shall allow interested  
429 parties 30 days from the date the qualifying utility filed the calculation of a nonstandard adjustment  
430 to make comments. The commission's review of the total amount required for a nonstandard  
431 adjustment shall be limited to the mathematical accuracy of the total adjustment needed to assure  
432 the full and timely payment of all debt service costs and related financing costs of the consumer  
433 rate relief bonds. The commission may also determine the proper allocation of those costs within  
434 and between classes of customers and to special contract customers, the proper design of the  
435 consumer rate relief charges and the appropriate application of those charges under the  
436 methodology set forth in the formula-based adjustment mechanism approved in the financing  
437 order. If the commission determines that a hearing is necessary, the commission shall hold a

438 hearing on the comments within 40 days of the date the qualifying utility filed the calculation of  
439 the nonstandard adjustment. The nonstandard adjustment, as modified by the commission, if  
440 necessary, shall be approved by the commission within 60 days and the commission may shorten  
441 the filing and hearing periods above in the financing order to ensure this result. Any procedure for  
442 a nonstandard adjustment must be consistent with assuring the full and timely payment of debt  
443 service of the consumer rate relief bonds and associated financing costs.

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

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

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

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

456 (m) *Utility default.*

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

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

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

474           (n) *Successors to qualifying utility.*

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

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

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

487           (2) The description of the consumer rate relief property in a transfer or security agreement  
488 and a financing statement is sufficient only if the description refers to this section and the final  
489 financing order creating the property. This section applies to all purported transfers of, and all

490 purported grants of, liens on or security interests in that property, regardless of whether the related  
491 transfer or security agreement was entered into or the related financing statement was filed,  
492 before or after the effective date of this section.

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

496 (4) The security interest attaches without any physical delivery of collateral or other act  
497 and upon the filing of the financing statement with the Office of the Secretary of State. The lien of  
498 the security interest is valid, binding and perfected against all parties having claims of any kind in  
499 tort, contract or otherwise against the person granting the security interest, regardless of whether  
500 the parties have notice of the lien. Also upon this filing, a transfer of an interest in the consumer  
501 rate relief property is perfected against all parties having claims of any kind, including any judicial  
502 lien, or other lien creditors or any claims of the seller or creditors of the seller, other than creditors  
503 holding a prior security interest, ownership interest or assignment in the property previously  
504 perfected in accordance with this subsection.

505 (5) The Secretary of State shall maintain any financing statement filed under this  
506 subsection in the same manner that the secretary maintains financing statements filed by utilities  
507 under article nine of chapter forty-six of this code. The filing of a financing statement under this  
508 subsection is governed by the provisions regarding the filing of financing statements in article nine  
509 of chapter forty-six of this code. However, a person filing a financing statement under this  
510 subsection is not required to file any continuation statements to preserve the perfected status of  
511 its security interest.

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

516 (7) The priority of a security interest in consumer rate relief property is not affected by the  
517 commingling of collected consumer rate relief charges with other amounts. Any pledged or  
518 secured party has a perfected security interest in the amount of all consumer rate relief charges  
519 collected that are deposited in a cash or deposit account of the qualifying utility in which such  
520 collected charges have been commingled with other funds. Any other security interest that may  
521 apply to those funds shall be terminated when the funds are transferred to a segregated account  
522 for an assignee or a financing party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

556 (1) The imposition, billing, collection and receipt of consumer rate relief charges under this  
557 section are exempt from state income, sales, franchise, gross receipts, business and occupation  
558 and other taxes or similar charges: *Provided*, That neither this exemption nor any other provision  
559 of this subsection shall preclude any municipality from taxing consumer rate relief charges under  
560 the authority granted to municipalities pursuant to §8-13-5 and §8-13-5a of this code.

561 (2) Consumer rate relief bonds issued under a final financing order do not constitute a  
562 debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality  
563 or any other political subdivision of this state. Bondholders have no right to have taxes levied by  
564 this state or the taxing authority of any county, municipality or any other political subdivision of  
565 this state for the payment of the principal of or interest on the bonds. The issuance of consumer  
566 rate relief bonds does not, directly, indirectly or contingently, obligate this state or a county,  
567 municipality or political subdivision of this state to levy a tax or make an appropriation for payment

568 of the principal of or interest on the bonds.

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

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

575 (2) Banks and bankers, savings and loan associations, credit unions, trust companies,  
576 building and loan associations, savings banks and institutions, deposit guarantee associations,  
577 investment companies, insurance companies and associations and other persons carrying on a  
578 banking or insurance business, including domestic for life and domestic not for life insurance  
579 companies; and

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

581 (s) *Pledge of state.*

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

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

594 bonds.

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

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

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

603 (u) *Severability.*

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

615 (v) *Non-utility status.*

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

NOTE: The purpose of this bill is to provide greater opportunities for power generation and cost savings to electric utility consumers by creating flexibility and diversity in the construction and financing of electric utility generating facilities; repealing the ban on

construction of nuclear power plants; revising consumer rate relief bonds; and enabling the use of securitization to refinance the unamortized investment in prematurely retired coal-fired generating plants.

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