

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2258

FISCAL  
NOTE

By Delegate Hansen

[Introduced January 11, 2023; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

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

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

**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 the  
23 commission pursuant to §24-2-11 of this code authorizing the construction of a generating plant  
24 may apply to the commission for approval to redeploy the site upon which such plant is located, or  
25 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, or  
38 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 of  
3 a magnitude problematic to recover from their customers through the commission’s traditional cost  
4 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 to  
18 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 of  
22 alternative financing mechanisms that will enable electric utilities to finance or refinance expanded  
23 net energy costs or unrecovered plant investment at the lowest reasonably practical cost under  
24 certain conditions and to empower the commission to review and approve alternative financing  
25 mechanisms when it determines that such approval is in the public interest, as set forth in this  
26 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 or  
30 otherwise to ensure the timely and complete payment and recovery of such charges and financing  
31 costs. The adjustment mechanism shall accommodate: (i) Standard adjustments to consumer rate

32 relief charges that are limited to relatively stable conditions of operations; and (ii) nonstandard  
33 adjustments to consumer rate relief charges that are necessary to reflect significant changes from  
34 historical conditions of operations, such as the loss of significant electrical load. The adjustment  
35 mechanism is not to be used as a means to authorize the issuance of consumer rate relief bonds in  
36 a principal amount greater, or the payment or recovery of expanded net energy costs or  
37 unrecovered plant investment in an amount greater, than that which was authorized in the  
38 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 to  
43 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 pay  
60 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 to  
63 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 collect  
66 the consumer rate relief charges that shall be used to pay and secure the payment of consumer  
67 rate relief bonds and financing costs, and including the right to obtain adjustments to those  
68 charges, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or  
69 other proceeds arising from the rights and interests created under the final financing order.

70 (10) "Expanded net energy costs" means historical and, if deemed appropriate by the  
71 commission, projected costs, inclusive of carrying charges on under-recovery balances  
72 authorized by the commission, including costs incurred prior to the effective date of this statute,  
73 adjudicated pursuant to the commission's expanded net energy cost proceedings, which have  
74 been authorized for recovery by an order of the commission, whether or not subject to judicial  
75 appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

158 (c) *Application for financing order.*

159 (4) If an electric utility determines that an existing coal-fired generating plant with a  
160 remaining net book value ceases to be economically feasible for West Virginia ratepayers as  
161 compared with other supply- and demand-side resources available to such utility, or if an electric

162 utility or affiliate obtains from the commission an authorization or waiver required by any other  
163 provision of this chapter or by commission order with respect to the underlying expanded net  
164 energy costs proposed to be financed through the mechanism of consumer rate relief bonds, an  
165 electric utility, or two or more affiliated electric utilities engaged in the delivery of electric service to  
166 customers in this state, may apply to the commission for a financing order that authorizes the  
167 following:

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

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

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

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

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

180 The application shall include all of the following:

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

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

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

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

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

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

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

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

204 (9) Other information required by commission rules.

205 (e) *Issuance of financing order.*

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

213 (2) Within 30 days after the filing of an application under subsection (c) of this section, the

214 commission shall issue a scheduling order for the proceeding.

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

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

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

226 (A) A determination of the maximum amount and a description of the expanded net energy  
227 costs or unrecovered plant investment that may be recovered through consumer rate relief bonds  
228 issued under the financing order;

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

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

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

235 (E) A description and approval of the adjustment mechanism for use in the imposition,  
236 charging, and collection of the consumer rate relief charges, including: (i) The allocation referred to  
237 in paragraph (D) of this subdivision and (ii) any specific requirements for adjusting and reconciling  
238 consumer rate relief charges for standard adjustments that are limited to relatively stable  
239 conditions of operations and nonstandard adjustments that are necessary to reflect significant

240 changes from historical conditions of operations, such as the loss of substantial electrical load, so  
241 long as each and every application of the adjustment mechanism is designed to assure the full and  
242 timely payment of consumer rate relief bonds and associated financing costs;

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

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

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

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

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

264 (8) The commission, in a financing order, shall require that, after the final terms of each  
265 issuance of consumer rate relief bonds have been established, and prior to the issuance of those

266 bonds, the qualifying utility shall determine the resulting initial consumer rate relief charges in  
267 accordance with the adjustment mechanism described in the financing order. These consumer  
268 rate relief charges shall be final and effective upon the issuance of the consumer rate relief bonds,  
269 without further commission action.

270 (9) Because the actual structure and pricing of the consumer rate relief bonds will not be  
271 known at the time the financing order is issued, in the case of every securitization approved by the  
272 commission, the qualifying utility which intends to cause the issuance of such bonds will provide to  
273 the commission and the commission's financial adviser, if any, prior to the issuance of the bonds,  
274 an issuance advice letter following the determination of the final terms of the bonds. The issuance  
275 advice letter shall indicate the final structure of the consumer rate relief bonds and provide the best  
276 available estimate of total ongoing costs. The issuance advice letter should report the initial  
277 consumer rate relief charges and other information specific to the consumer rate relief bonds to be  
278 issued, as the financing order may require. The qualifying utility may proceed with the issuance of  
279 the consumer rate relief bonds unless, prior to noon on the fourth business day after the  
280 commission receives the issuance advice letter, the commission issues a disapproval letter  
281 directing that the bonds as proposed shall not be issued and the basis for that disapproval. The  
282 financing order may provide such additional provisions relating to the issuance advice letter  
283 process as the commission deems appropriate.

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

290 (11) The financing order shall also provide for a procedure requiring the qualifying utility to  
291 adjust its rates or provide credits in a manner that would return to customers any overpayments

292 resulting from the securitization for the expanded net energy costs or unrecovered plant  
293 investment in excess of actual prudently incurred costs as subsequently determined by the  
294 commission. The adjustment mechanism may not affect or impair the consumer rate relief  
295 property or the right to impose, collect, or adjust the consumer rate relief charges under this  
296 section.

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

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

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

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

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

318 respect thereto as provided in subdivision (1), subsection (j) of this section.

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

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

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

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

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

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

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



344 bonds have been paid in full.

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

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

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

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

354 (h) *Subsequent commission proceeding.*

355 Upon petition, or upon its own motion, the commission may commence a proceeding and  
356 issue a subsequent financing order that provides for retiring and refunding consumer rate relief  
357 bonds issued under the final financing order if the commission finds that the subsequent financing  
358 order satisfies all of the requirements of subsection (e) of this section. Effective on retirement of  
359 the refunded consumer rate relief bonds and the issuance of new consumer rate relief bonds, the  
360 commission shall adjust the related consumer rate relief charges accordingly.

361 (i) *Limits on commission authority.*

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

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

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

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

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

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

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

378 (j) *Duties of qualifying utility.*

379 (1) A qualifying utility shall cause the proceeds which it receives with respect to consumer  
380 rate relief bonds issued pursuant to a financing order to be used for the recovery of the expanded  
381 net energy costs or recovered plant investment which occasioned the issuance of the bonds,  
382 including the retirement of debt and/or equity of the qualifying utility which was incurred to finance  
383 or refinance such costs and for no other purpose.

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

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

392 (4) The failure of a qualifying utility to apply the proceeds which it receives with respect to  
393 an issuance of consumer rate relief bonds in a reasonable, prudent and appropriate manner or  
394 otherwise comply with any provision of this section does not invalidate, impair or affect any  
395 financing order, consumer rate relief property, consumer rate relief charges or consumer rate relief

396 bonds. Subject to the limitations set forth in subsection (g) of this section, nothing in this  
397 subdivision prevents or precludes the commission from imposing regulatory sanctions against a  
398 qualifying utility for failure to comply with the terms and conditions of a financing order or the  
399 requirements of this section.

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

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

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

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

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

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

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

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

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

451 (m) *Utility default.*

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

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

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

469 (n) *Successors to qualifying utility.*

470 A successor to a qualifying utility is bound by the requirements of this section. The  
471 successor shall perform and satisfy all obligations of the electric utility under the final financing  
472 order in the same manner and to the same extent as the qualifying utility including the obligation to  
473 collect and pay consumer rate relief charges to the person(s) entitled to receive them. The

474 successor has the same rights as the qualifying utility under the final financing order in the same  
475 manner and to the same extent as the qualifying utility.

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

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

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

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

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

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

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

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

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

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

522 (1) A sale, assignment or transfer of consumer rate relief property under a final financing  
523 order is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to,  
524 the seller's right, title and interest in, to and under the property, if the documents governing the  
525 transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an

526 interest in that property may be created only when all of the following have occurred:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

551 (1) The imposition, billing, collection and receipt of consumer rate relief charges under this



552 section are exempt from state income, sales, franchise, gross receipts, business and occupation  
553 and other taxes or similar charges: *Provided*, That neither this exemption nor any other provision  
554 of this subsection shall preclude any municipality from taxing consumer rate relief charges under  
555 the authority granted to municipalities pursuant to §8-13-5 and §8-13-5a of this code.

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

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

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

570 (2) Banks and bankers, savings and loan associations, credit unions, trust companies,  
571 building and loan associations, savings banks and institutions, deposit guarantee associations,  
572 investment companies, insurance companies and associations and other persons carrying on a  
573 banking or insurance business, including domestic for life and domestic not for life insurance  
574 companies; and

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

576 (s) *Pledge of state.*

577 (1) The state pledges to and agrees with the bondholders, assignees and financing parties

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

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

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

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

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

598 (u) *Severability.*

599 If any provision of this section or the application thereof to any person, circumstance or  
600 transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the  
601 unconstitutionality or invalidity does not affect the constitutionality or validity of any other provision  
602 of this section or its application or validity to any person, circumstance or transaction, including,  
603 without limitation, the irrevocability of a financing order issued pursuant to this section, the validity

604 of the issuance of consumer rate relief bonds, the imposition of consumer rate relief charges, the  
605 transfer or assignment of consumer rate relief property or the collection and recovery of consumer  
606 rate relief charges. To these ends, the Legislature hereby declares that the provisions of this  
607 section are intended to be severable and that the Legislature would have enacted this section  
608 even if any provision of this section held to be unconstitutional or invalid had not been included in  
609 this section.

610 (v) *Non-utility status.*

611 An assignee or financing party is not an electric public utility or person providing electric  
612 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; 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.