

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 559  
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/18/19  
House Committee Substitute Favorable 6/19/19  
House Committee Substitute #2 Favorable 7/8/19  
Fifth Edition Engrossed 8/20/19

Short Title: Storm Securitization/Alt. Rates.

(Public)

Sponsors:

Referred to:

April 3, 2019

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

6 The General Assembly of North Carolina enacts:

7  
8 **PART I. STORM SECURITIZATION**

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

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

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

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

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

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

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

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

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

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

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



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

1 issued, references in this section to principal, interest, or premium shall be  
2 construed to refer to comparable amounts under those certificates.

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

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

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

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

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

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

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

- 1                    b. All revenues, collections, claims, rights to payments, payments,  
2                    money, or proceeds arising from the rights and interests specified in  
3                    the financing order, regardless of whether such revenues, collections,  
4                    claims, rights to payment, payments, money, or proceeds are imposed,  
5                    billed, received, collected, or maintained together with or commingled  
6                    with other revenues, collections, rights to payment, payments, money,  
7                    or proceeds.
- 8                    (b) Financing Orders. –
- 9                    (1) A public utility may petition the Commission for a financing order. The  
10                    petition shall include all of the following:
- 11                    a. A description of the storm recovery activities that the public utility has  
12                    undertaken or proposes to undertake and the reasons for undertaking  
13                    the activities, or if the public utility is subject to a settlement agreement  
14                    as contemplated by subdivision (2) of this subsection, a description of  
15                    the settlement agreement.
- 16                    b. The storm recovery costs and estimate of the costs of any storm  
17                    recovery activities that are being undertaken but are not completed.
- 18                    c. The level of the storm recovery reserve that the public utility proposes  
19                    to establish or replenish and has determined would be appropriate to  
20                    recover through storm recovery bonds and is seeking to so recover and  
21                    such level that the public utility is funding or will seek to fund through  
22                    other means, together with a description of the factors and calculations  
23                    used in determining the amounts and methods of recovery.
- 24                    d. An indicator of whether the public utility proposes to finance all or a  
25                    portion of the storm recovery costs using storm recovery bonds. If the  
26                    public utility proposes to finance a portion of the costs, the public  
27                    utility must identify the specific portion in the petition. By electing not  
28                    to finance a portion of such storm recovery costs using storm recovery  
29                    bonds, a public utility shall not be deemed to waive its right to recover  
30                    such costs pursuant to a separate proceeding with the Commission.
- 31                    e. An estimate of the financing costs related to the storm recovery bonds.
- 32                    f. An estimate of the storm recovery charges necessary to recover the  
33                    storm recovery costs, including the storm recovery reserve amount  
34                    determined appropriate by the Commission, and financing costs and  
35                    the period for recovery of such costs.
- 36                    g. A comparison between the net present value of the costs to customers  
37                    that are estimated to result from the issuance of storm recovery bonds  
38                    and the costs that would result from the application of the traditional  
39                    method of financing and recovering storm recovery costs from  
40                    customers. The comparison should demonstrate that the issuance of  
41                    storm recovery bonds and the imposition of storm recovery charges  
42                    are expected to provide quantifiable benefits to customers.
- 43                    h. Direct testimony and exhibits supporting the petition.
- 44                    (2) If a public utility is subject to a settlement agreement that governs the type  
45                    and amount of principal costs that could be included in storm recovery costs  
46                    and the public utility proposes to finance all or a portion of the principal costs  
47                    using storm recovery bonds, then the public utility must file a petition with  
48                    the Commission for review and approval of those costs no later than 90 days  
49                    before filing a petition for a financing order pursuant to this section.
- 50                    (3) Petition and order. –

- 1                   a.     Proceedings on a petition submitted pursuant to this subdivision begin  
2                   with the petition by a public utility, filed subject to the time frame  
3                   specified in subdivision (2) of this subsection, if applicable, and shall  
4                   be disposed of in accordance with the requirements of this Chapter and  
5                   the rules of the Commission, except as follows:
- 6                   1.     Within 14 days after the date the petition is filed, the  
7                   Commission shall establish a procedural schedule that permits  
8                   a Commission decision no later than 135 days after the date the  
9                   petition is filed.
- 10                  2.     No later than 135 days after the date the petition is filed, the  
11                  Commission shall issue a financing order or an order rejecting  
12                  the petition. A party to the Commission proceeding may  
13                  petition the Commission for reconsideration of the financing  
14                  order within five days after the date of its issuance.
- 15                  b.     A financing order issued by the Commission to a public utility shall  
16                  include all of the following elements:
- 17                  1.     Except for changes made pursuant to the formula-based  
18                  mechanism authorized under this section, the amount of storm  
19                  recovery costs, including the level of storm recovery reserves,  
20                  to be financed using storm recovery bonds. The Commission  
21                  shall describe and estimate the amount of financing costs that  
22                  may be recovered through storm recovery charges and specify  
23                  the period over which storm recovery costs and financing costs  
24                  may be recovered.
- 25                  2.     A finding that the proposed issuance of storm recovery bonds  
26                  and the imposition and collection of a storm recovery charge  
27                  are expected to provide quantifiable benefits to customers as  
28                  compared to the costs that would have been incurred absent the  
29                  issuance of storm recovery bonds.
- 30                  3.     A finding that the structuring and pricing of the storm recovery  
31                  bonds are reasonably expected to result in the lowest storm  
32                  recovery charges consistent with market conditions at the time  
33                  the storm recovery bonds are priced and the terms set forth in  
34                  such financing order.
- 35                  4.     A requirement that, for so long as the storm recovery bonds are  
36                  outstanding and until all financing costs have been paid in full,  
37                  the imposition and collection of storm recovery charges  
38                  authorized under a financing order shall be nonbypassable and  
39                  paid by all existing and future retail customers receiving  
40                  transmission or distribution service, or both, from the public  
41                  utility or its successors or assignees under  
42                  Commission-approved rate schedules or under special  
43                  contracts, even if a customer elects to purchase electricity from  
44                  an alternative electric supplier following a fundamental change  
45                  in regulation of public utilities in this State.
- 46                  5.     A determination of what portion, if any, of the storm recovery  
47                  reserves must be held in a funded reserve and any limitations  
48                  on how the reserve may be held, accessed, or used.
- 49                  6.     A formula-based true-up mechanism for making, at least  
50                  annually, expeditious periodic adjustments in the storm  
51                  recovery charges that customers are required to pay pursuant

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

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

1 public utility for any purpose, or consider the storm recovery costs or  
2 financing costs specified in the financing order to be the costs of the public  
3 utility, nor may the Commission determine any action taken by a public utility  
4 which is consistent with the financing order to be unjust or unreasonable.

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

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

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

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

34 (e) Storm Recovery Property. –

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

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

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



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

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

1                   of Wake County shall order the sequestration and payment to them of  
2                   revenues arising from the storm recovery charges.

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

5           a.   Any sale, assignment, or other transfer of storm recovery property  
6           shall be an absolute transfer and true sale of, and not a pledge of or  
7           secured transaction relating to, the seller's right, title, and interest in,  
8           to, and under the storm recovery property if the documents governing  
9           the transaction expressly state that the transaction is a sale or other  
10           absolute transfer other than for federal and State income tax purposes.  
11           For all purposes other than federal and State income tax purposes, the  
12           parties' characterization of a transaction as a sale of an interest in storm  
13           recovery property shall be conclusive that the transaction is a true sale  
14           and that ownership has passed to the party characterized as the  
15           purchaser, regardless of whether the purchaser has possession of any  
16           documents evidencing or pertaining to the interest. A transfer of an  
17           interest in storm recovery property may be created only when all of  
18           the following have occurred: (i) the financing order creating the storm  
19           recovery property has become effective, (ii) the documents evidencing  
20           the transfer of storm recovery property have been executed by the  
21           assignor and delivered to the assignee, and (iii) value is received for  
22           the storm recovery property. After such a transaction, the storm  
23           recovery property is not subject to any claims of the transferor or the  
24           transferor's creditors, other than creditors holding a prior security  
25           interest in the storm recovery property perfected in accordance with  
26           subdivision (2) of subsection (e) of this section.

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

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

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

1 the time a filing covering the transfer is made in accordance  
2 with sub-subdivision c. of subdivision (2) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

47 (k) Obligation of Nonimpairment. –

48 (1) The State and its agencies, including the Commission, pledge and agree with  
49 bondholders, the owners of the storm recovery property, and other financing  
50 parties that the State and its agencies will not take any action listed in this  
51 subdivision. This paragraph does not preclude limitation or alteration if full

1 compensation is made by law for the full protection of the storm recovery  
 2 charges collected pursuant to a financing order and of the bondholders and  
 3 any assignee or financing party entering into a contract with the public utility.  
 4 The prohibited actions are as follows:

- 5 a. Alter the provisions of this section, which authorize the Commission  
 6 to create an irrevocable contract right or chose in action by the  
 7 issuance of a financing order, to create storm recovery property, and  
 8 make the storm recovery charges imposed by a financing order  
 9 irrevocable, binding, or nonbypassable charges.
- 10 b. Take or permit any action that impairs or would impair the value of  
 11 storm recovery property or the security for the storm recovery bonds  
 12 or revises the storm recovery costs for which recovery is authorized.
- 13 c. In any way impair the rights and remedies of the bondholders,  
 14 assignees, and other financing parties.
- 15 d. Except for changes made pursuant to the formula-based adjustment  
 16 mechanism authorized under this section, reduce, alter, or impair  
 17 storm recovery charges that are to be imposed, billed, charged,  
 18 collected, and remitted for the benefit of the bondholders, any  
 19 assignee, and any other financing parties until any and all principal,  
 20 interest, premium, financing costs and other fees, expenses, or charges  
 21 incurred, and any contracts to be performed, in connection with the  
 22 related storm recovery bonds have been paid and performed in full.

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

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

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

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

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

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

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

42 ...

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

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

1 bond, note, other evidence of indebtedness, or other payment obligations for  
 2 borrowed money issued by, or in connection with, installment or lease  
 3 purchase financings by, this State or a governmental unit in this State.  
 4 However, notwithstanding this subdivision, this Article does apply to the  
 5 creation, perfection, priority, and enforcement of security interests created by  
 6 this State or a governmental unit in this State in equipment or ~~fixtures~~-fixtures;  
 7 or

8 (15) The creation, perfection, priority, or enforcement of any sale, assignment of,  
 9 pledge of, security interest in, or other transfer of, any interest or right or  
 10 portion of any interest or right in any storm recovery property as defined  
 11 G.S. 62-172."  
 12

## 13 **PART II. UTILITIES COMMISSION TO STUDY ALTERNATIVE RATE-SETTING** 14 **MECHANISMS.**

15 **SECTION 2.(a)** The North Carolina Utilities Commission (Commission), in  
 16 coordination with the Public Staff, shall conduct a study on the advisability of authorizing the  
 17 following alternatives to the methods for fixing rates established under G.S. 62-133: multiyear  
 18 rate plans (MRPs), banding of authorized returns, performance-based ratemaking, revenue  
 19 decoupling, or a combination thereof, for general rate case proceedings for electric public  
 20 utilities. In conducting the study, the Commission shall examine other states' experiences  
 21 allowing these alternative rate-setting mechanisms, identify advantages and disadvantages  
 22 associated with these mechanisms, and their impact on consumer rates and bills, service quality,  
 23 reliability of the electric system, integration of distributed energy resources, modernization of  
 24 the electric grid, emissions of air and water pollutants, and any other factors the Commission  
 25 deems relevant.

26 **SECTION 2.(b)** The Commission shall, within 60 days following the effective date  
 27 of this act, establish a stakeholder process to support and provide comment on the study required  
 28 by Section 2(a) of this act. The stakeholder process shall, to the extent feasible, include:

- 29 (1) The State Energy Director of the Department of Environment Quality;
- 30 (2) A representative of the North Carolina Energy Policy Council;
- 31 (3) The North Carolina President of Duke Energy or the President's designee;
- 32 (4) A designee from Dominion North Carolina Power;
- 33 (5) Representatives of commercial consumers of electricity in investor-owned  
 34 utility (IOU) service territory in North Carolina;
- 35 (6) Representatives of residential consumers of electricity in IOU service territory  
 36 in North Carolina;
- 37 (7) Representatives of industrial consumers of electricity in IOU service territory  
 38 in North Carolina;
- 39 (8) Representatives of the environmental community;
- 40 (9) Representatives of the NC Clean Energy Technology Center;
- 41 (10) Representatives of institutions of higher learning in IOU service territory in  
 42 North Carolina;
- 43 (11) Representatives of the North Carolina Electric Cooperatives and ElectriCities  
 44 of North Carolina; and
- 45 (12) Representatives of North Carolina's renewable energy industry.

46 **SECTION 2.(c)** The Commission shall submit a report of the study's findings and  
 47 recommendations, including stakeholder input, to the Joint Legislative Commission on Energy  
 48 Policy no later than March 1, 2020.  
 49

## 50 **PART III. EFFECTIVE DATE.**

51 **SECTION 3.** This act is effective when it becomes law.