

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 559
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House Committee Substitute Favorable 6/19/19
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Proposed Conference Committee Substitute S559-PCCS45367-RI-7

Short Title: Storm Securitization.

(Public)

Sponsors:

Referred to:

April 3, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT FINANCING FOR CERTAIN STORM RECOVERY COSTS.
3 The General Assembly of North Carolina enacts:

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

6 "**§ 62-172. Financing for certain storm recovery costs.**

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

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

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

18 (2a) Bondholder. – A person who holds a storm recovery bond.

19 (2b) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.

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

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

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

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

28 c. Any other cost related to issuing, supporting, repaying, refunding, and
29 servicing storm recovery bonds, including, servicing fees, accounting
30 and auditing fees, trustee fees, legal fees, consulting fees, structuring
31 adviser fees, administrative fees, placement and underwriting fees,
32 independent director and manager fees, capitalized interest, rating



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

1 (ii) collected by a public utility or its successors or assignees, or a collection
2 agent, in full, separate and apart from the public utility's base rates, and (iii)
3 paid by all existing or future retail customers receiving transmission or
4 distribution service, or both, from the public utility or its successors or
5 assignees under Commission-approved rate schedules or under special
6 contracts, even if a customer elects to purchase electricity from an alternative
7 electricity supplier following a fundamental change in regulation of public
8 utilities in this State.

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

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

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

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

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

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

47 b. All revenues, collections, claims, rights to payments, payments,
48 money, or proceeds arising from the rights and interests specified in
49 the financing order, regardless of whether such revenues, collections,
50 claims, rights to payment, payments, money, or proceeds are imposed,
51 billed, received, collected, or maintained together with or commingled

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

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

- 1 the utility may correct its error and refile its request. The time frames
2 previously described in this paragraph shall apply to a refiled request.
3 e. Subsequent to the transfer of storm recovery property to an assignee
4 or the issuance of storm recovery bonds authorized thereby, whichever
5 is earlier, a financing order is irrevocable and, except for changes made
6 pursuant to the formula-based mechanism authorized in this section,
7 the Commission may not amend, modify, or terminate the financing
8 order by any subsequent action or reduce, impair, postpone, terminate,
9 or otherwise adjust storm recovery charges approved in the financing
10 order. After the issuance of a financing order, the public utility retains
11 sole discretion regarding whether to assign, sell, or otherwise transfer
12 storm recovery property or to cause storm recovery bonds to be issued,
13 including the right to defer or postpone such assignment, sale, transfer,
14 or issuance.
- 15 (4) At the request of a public utility, the Commission may commence a
16 proceeding and issue a subsequent financing order that provides for
17 refinancing, retiring, or refunding storm recovery bonds issued pursuant to the
18 original financing order if the Commission finds that the subsequent financing
19 order satisfies all of the criteria specified in this section for a financing order.
20 Effective upon retirement of the refunded storm recovery bonds and the
21 issuance of new storm recovery bonds, the Commission shall adjust the related
22 storm recovery charges accordingly.
- 23 (5) Within 60 days after the Commission issues a financing order or a decision
24 denying a request for reconsideration or, if the request for reconsideration is
25 granted, within 30 days after the Commission issues its decision on
26 reconsideration, an adversely affected party may petition for judicial review
27 in the Supreme Court of North Carolina. Review on appeal shall be based
28 solely on the record before the Commission and briefs to the court and is
29 limited to determining whether the financing order, or the order on
30 reconsideration, conforms to the State Constitution and State and federal law
31 and is within the authority of the Commission under this section.
- 32 (6) Duration of financing order. –
33 a. A financing order remains in effect and storm recovery property under
34 the financing order continues to exist until storm recovery bonds
35 issued pursuant to the financing order have been paid in full or
36 defeased and, in each case, all Commission-approved financing costs
37 of such storm recovery bonds have been recovered in full.
38 b. A financing order issued to a public utility remains in effect and
39 unabated notwithstanding the reorganization, bankruptcy or other
40 insolvency proceedings, merger, or sale of the public utility or its
41 successors or assignees.
- 42 (c) Exceptions to Commission Jurisdiction. –
43 (1) The Commission may not, in exercising its powers and carrying out its duties
44 regarding any matter within its authority pursuant to this Chapter, consider the
45 storm recovery bonds issued pursuant to a financing order to be the debt of
46 the public utility other than for federal income tax purposes, consider the
47 storm recovery charges paid under the financing order to be the revenue of the
48 public utility for any purpose, or consider the storm recovery costs or
49 financing costs specified in the financing order to be the costs of the public
50 utility, nor may the Commission determine any action taken by a public utility
51 which is consistent with the financing order to be unjust or unreasonable.

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

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

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

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

30 (e) Storm Recovery Property. –

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

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

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

48 c. All or any portion of storm recovery property specified in a financing
49 order issued to a public utility may be transferred, sold, conveyed, or
50 assigned to a successor or assignee that is wholly owned, directly or
51 indirectly, by the public utility and created for the limited purpose of

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

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

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

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

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

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

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

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

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

36 **SECTION 2.** G.S. 25-9-109(d) reads as rewritten:

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

- 38 ...
- 39 (13) An assignment of a deposit account in a consumer transaction, but
- 40 G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities
- 41 in proceeds; ~~or~~
- 42 (14) The creation, perfection, priority, or enforcement of any lien on, assignment
- 43 of, pledge of, or security in, any revenues, rights, funds, or other tangible or
- 44 intangible assets created, made, or granted by this State or a governmental unit
- 45 in this State, including the assignment of rights as secured party in security
- 46 interests granted by any party subject to the provisions of this Article to this
- 47 State or a governmental unit in this State, to secure, directly or indirectly, any
- 48 bond, note, other evidence of indebtedness, or other payment obligations for
- 49 borrowed money issued by, or in connection with, installment or lease
- 50 purchase financings by, this State or a governmental unit in this State.
- 51 However, notwithstanding this subdivision, this Article does apply to the

1 creation, perfection, priority, and enforcement of security interests created by
2 this State or a governmental unit in this State in equipment or ~~fixtures~~.fixtures;
3 or
4 (15) The creation, perfection, priority, or enforcement of any sale, assignment of,
5 pledge of, security interest in, or other transfer of, any interest or right or
6 portion of any interest or right in any storm recovery property as defined
7 G.S. 62-172."

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