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SENATE BILL NO. 1076

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend the Code of Virginia by adding a section numbered 56-249.8, relating to Phase I Utilities; securitized asset costs.

Patrons—Peake, Pillion, Hackworth and Stanley

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-249.8 as follows:

§ 56-249.8. Financing for certain securitized asset costs; Phase I Utility.

A. As used in this section:

"Ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with securitized asset cost bonds.

"Assignee" means a legally recognized entity to which an electric utility assigns, sells, or transfers, other than as a security, all or a portion of its interest in or right to securitized asset cost property. "Assignee" includes a corporation, limited liability company, general partnership or limited partnership, public authority trust, financing entity, or other entity to which an assignee assigns, sells, or transfers, other than as a security, all or a portion of its interest in or right to securitized asset cost property.

"Bondholder" means a person who holds a securitized asset cost bond.

"Electric utility" means a Phase I Utility, as that term is defined in subdivision A 1 of § 56-585.1.

"Financing costs" means:

1. Interest and any premium, including any acquisition, defeasance, or redemption premium, payable on securitized asset cost bonds;

2. Any payment required under any indenture, ancillary agreement, or other financing documents pertaining to securitized asset cost bonds and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized asset bonds;

3. Any other costs related to structuring, offering, issuing, supporting, repaying, refunding, servicing, and complying with securitized asset cost bonds, including service fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized asset cost bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

4. Any taxes and license fees or other fees imposed on the revenues generated from the collection of securitized asset cost charges or otherwise resulting from the collection of securitized asset cost charges, in any such case whether paid, payable, or accrued;

5. Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued;

6. Any costs incurred by the Commission for any outside consultants or counsel retained in connection with the securitization of securitized asset costs; and

7. Any financing costs on the utility's securitized asset cost balance prior to issuance of any securitized asset cost bonds, calculated at the utility's approved weighted average cost of capital.

"Financing order" means an order that authorizes the issuance of securitized asset cost bonds; the imposition, collection, and periodic adjustments of a securitized asset cost charge; the creation of securitized asset cost property; the sale, assignment, or transfer of securitized asset cost property to an assignee; and any other actions necessary or advisable to take actions described in the financing order.

"Financing party" means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.

"Financing statement" has the same meaning as provided in § 8.9A-102 of the Uniform Commercial Code.

"Pledgee" means a financing party to which an electric utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to securitized asset cost property.

"Securitized asset cost bonds" means bonds, debentures, notes, certificates of participation, certificates of

59 *beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued*  
60 *in one or more series or tranches by an electric utility or its assignee pursuant to a financing order, the*  
61 *proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved*  
62 *securitized asset costs and financing costs, and that are secured by or payable from securitized asset cost*  
63 *property. If certificates of participation or ownership are issued, references in this section to principal,*  
64 *interest, or premium shall be construed to refer to comparable amounts under those certificates.*

65 *"Securitized asset cost charge" means the non-bypassable charges authorized by the Commission to*  
66 *repay, finance, or securitized asset costs and financing costs (i) imposed on and part of all retail customer*  
67 *bills, except those of exempt retail access customers; (ii) collected by an electric utility or its successor or*  
68 *assignees, or a collection agent, in full, separate and apart from the electric utility's base rates; and (iii) paid*  
69 *by all retail customers of the electric utility, irrespective of the generation supplier of such customer, except*  
70 *for an exempt retail access customer.*

71 *"Securitized asset costs" means (i) storm recovery costs incurred by an electric utility due to severe*  
72 *weather events, as recognized by nationally recognized standards including standards published by the*  
73 *Institute of Electrical and Electronics Engineers, and natural disasters and (ii) undepreciated generation*  
74 *utility plant balances.*

75 *"Storm recovery costs" means investments and expenses incurred by an electric utility on or after January*  
76 *1, 2024, arising from or related to any major storm, extraordinary weather event, or natural disaster,*  
77 *including costs of the mobilization, staging, construction, reconstruction, repair, or replacement of*  
78 *production, generation, transport, transmission, general, or distribution facilities.*

79 *"Undepreciated generation utility plant balances" means any unrecovered capitalized costs of or*  
80 *undepreciated investments in one or more fossil-fired electric generating plants having nameplate capacity in*  
81 *excess of 1,000 megawatts each, and related supply, transmission, equipment, and fixtures. Undepreciated*  
82 *generation utility plant balances shall include (i) the net book value of assets on the electric utility's balance*  
83 *sheet related to such generating plants and related infrastructure and (ii) carrying costs authorized by the*  
84 *Commission. "Undepreciated generation utility plant balances" does not include (a) any costs of removing*  
85 *retired generating plant assets; (b) any capitalized costs and investments in fossil-fired electric generating*  
86 *plants and related supply, transmission, equipment, and fixtures incurred or made by an electric utility on or*  
87 *after December 31, 2023; and (c) any non-cash asset retirement obligation assets and related accumulated*  
88 *depreciation.*

89 *"Uniform Commercial Code" means Titles 8.1A through 8.13 (§ 8.1A-101 et seq.).*

90 *B. Notwithstanding the provisions of Chapter 3 (§ 56-55 et seq.), an electric utility may petition the*  
91 *Commission for a financing order pursuant to this section. No more than four months after the date such*  
92 *petition is filed, the Commission shall either issue (i) such financing order in accordance with the*  
93 *requirements of subdivision 2 or (ii) an order rejecting the petition.*

94 *1. The petition shall include (i) an estimate of the total amount of any securitized asset costs that the*  
95 *electric utility has incurred over the time period noted in the petition; (ii) an indication of whether the*  
96 *electric utility proposes to finance all or a portion of the securitized asset costs using one or more series or*  
97 *tranches of securitized asset cost bonds; (iii) an estimate and details of the financing costs related to the*  
98 *securitized asset costs to be financed through the securitized asset cost bonds; (iv) an estimate of the*  
99 *securitized asset cost charges necessary to recover the securitized asset costs and all financing costs and the*  
100 *proposed period for recovery of such costs; (v) a description of any benefits expected to result from the*  
101 *issuance of securitized asset cost bonds, including the avoidance of or significant mitigation of abrupt and*  
102 *significant increases in rates to the electric utility's customers for the applicable time period; and (vi) direct*  
103 *testimony and exhibits supporting the petition. If the electric utility proposes to finance a portion of the*  
104 *securitized asset costs, the electric utility shall identify in the petition the specific amount of securitized asset*  
105 *costs for the applicable time period to be financed using securitized asset cost bonds. By electing not to*  
106 *finance a portion of the securitized asset costs for an applicable time period using securitized asset cost*  
107 *bonds, an electric utility shall not be deemed to waive its right to recover such costs pursuant to a separate*  
108 *proceeding with the Commission.*

109 *2. a. A financing order issued by the Commission pursuant to this section shall include:*

110 *(1) The amount of securitized asset costs to be financed using securitized asset cost bonds. The*  
111 *Commission shall describe and estimate the amount of financing costs that may be recovered through*  
112 *securitized asset cost charges. The financing order shall also specify the period over which securitized asset*  
113 *costs and financing costs may be recovered and whether the securitized asset cost bonds may be offered and*  
114 *issued in one or more series or tranches during a fixed period not to exceed one year after the date of the*  
115 *financing order;*

116 *(2) A finding that the proposed issuance of securitized asset cost bonds is in the public interest and the*  
117 *associated securitized asset cost charges are just and reasonable;*

118 *(3) A finding that the structuring and pricing of the securitized asset cost bonds are reasonably expected*  
119 *to result in reasonable securitized asset charges consistent with market conditions at the time the securitized*

120 *asset cost bonds are priced and the terms set forth in such financing order;*

121 *(4) A requirement that, for so long as the securitized asset cost bonds are outstanding and until all*  
122 *financing costs have been paid in full, the imposition and collection of securitized asset cost charges*  
123 *authorized under a financing order shall be non-bypassable and paid by all retail customers of the electric*  
124 *utility, irrespective of the generation supplier of such customer, except for an exempt retail access customer;*

125 *(5) A formula-based true-up mechanism for making annual adjustments to the securitized asset cost*  
126 *charges that customers are required to pay pursuant to the financing order and for making any adjustments*  
127 *that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure*  
128 *the timely payment of securitized asset cost bonds and financing costs and other required amounts and*  
129 *charges payable in connection with the securitized asset cost bonds;*

130 *(6) The securitized asset cost property that is, or shall be, created in favor of an electric utility or its*  
131 *successors or assignees and that shall be used to pay or secure securitized asset cost bonds and all financing*  
132 *costs;*

133 *(7) The authority of the electric utility to establish the terms and conditions of the securitized asset cost*  
134 *bonds, including repayment schedules, expected interest rates, the issuance in one or more series or tranches*  
135 *with different maturity dates, and other financing costs;*

136 *(8) A finding that the securitized asset cost charges shall be allocated among customer classes in*  
137 *accordance with the methodology approved in the electric utility's most recent base rate case;*

138 *(9) A requirement that after the final terms of an issuance of securitized asset cost bonds have been*  
139 *established and before the issuance of securitized asset cost bonds, the electric utility determines the*  
140 *resulting initial securitized asset cost charge in accordance with the financing order and that such initial*  
141 *securitized asset cost charge be final and effective upon the issuance of such securitized asset cost bonds*  
142 *without further Commission action so long as such initial securitized asset cost charge is consistent with the*  
143 *financing order;*

144 *(10) A method of tracing funds collected as securitized asset cost charges, or other proceeds of securitized*  
145 *asset cost property, and a requirement that such method be the method of tracing such funds and determining*  
146 *the identifiable cash proceeds of any securitized asset cost property subject to the financing order under*  
147 *applicable law; and*

148 *(11) Any other conditions not otherwise inconsistent with this section that the Commission determines are*  
149 *appropriate.*

150 *b. A financing order issued to an electric utility may provide that creation of the electric utility's*  
151 *securitized asset cost property is conditioned upon, and simultaneous with, the sale or other transfer for the*  
152 *securitized asset cost property to an assignee and the pledge of the securitized asset cost property to secure*  
153 *securitized asset cost bonds.*

154 *c. If the Commission issues a financing order, the Commission shall establish a protocol for the electric*  
155 *utility to annually file a petition or, in the Commission's discretion, a letter setting out application of the*  
156 *formula-based mechanism and, based on estimates of consumption for each rate class and other*  
157 *mathematical factors, requesting administrative approval to make applicable adjustments. The review of the*  
158 *filing shall be limited to determining whether there are any mathematical or clerical errors in the application*  
159 *of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection*  
160 *of securitized asset cost charges and the amount of an adjustment. The adjustments shall ensure the recovery*  
161 *of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing*  
162 *costs, or redemption premium and other fees, costs, and charges in respect of securitized asset cost bonds*  
163 *approved under the financing order. Within 30 days after receiving an electric utility's request pursuant to*  
164 *this subdivision c, the Commission shall either approve the request or inform the electric utility of any*  
165 *mathematical or clerical errors in its calculation. If the Commission informs the electric utility of any*  
166 *mathematical or clerical errors in its calculation, the electric utility may correct such errors and refile its*  
167 *request. The 30-day time frame previously described in this subdivision c shall apply to a refiled request.*

168 *d. Subsequent to the transfer of securitized asset cost property to an assignee or the issuance of*  
169 *securitized asset cost bonds authorized thereby, whichever is earlier, a financing order shall be irrevocable*  
170 *and, except for changes made pursuant to the formula-based mechanism authorized in this section, the*  
171 *Commission shall not amend, modify, or terminate the financing order by any subsequent action or reduce,*  
172 *impair, postpone, terminate, or otherwise adjust securitized asset cost charges approved in the financing*  
173 *order. After the issuance of a financing order, the electric utility shall retain sole discretion regarding*  
174 *whether to assign, sell, or otherwise transfer securitized asset cost property or to cause securitized asset cost*  
175 *bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.*

176 *3. At the request of an electric utility, the Commission may commence a proceeding and issue a*  
177 *subsequent financing order that provides for refinancing, retiring, or refunding securitized asset cost bonds*  
178 *issued pursuant to the original financing order if the Commission finds that the subsequent financing order*  
179 *satisfies all of the criteria specified in this section for a financing order. Effective upon retirement of the*  
180 *refunded securitized asset bonds and the issuance of new securitized asset cost bonds, the Commission shall*

181 *adjust the related securitized asset cost charges accordingly.*

182 *4. a. A financing order shall remain in effect and securitized asset cost property under the financing order*  
183 *shall continue to exist until securitized asset cost bonds issued pursuant to the financing order have been paid*  
184 *in full or defeased and, in each case, all Commission-approved financing costs of such securitized asset cost*  
185 *bonds have been recovered in full.*

186 *b. A financing order issued to an electric utility shall remain in effect and unabated notwithstanding the*  
187 *reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the electric utility or its*  
188 *successors or assignees.*

189 *C. 1. The Commission shall not, in exercising its powers and carrying out its duties regarding any matter*  
190 *within its authority pursuant to this chapter, and notwithstanding any other provision of law, (i) consider the*  
191 *securitized asset cost bonds issued pursuant to a financing order to be the debt of the electric utility other*  
192 *than for federal income tax purposes, including for any purpose under § 56-585.8; (ii) consider the*  
193 *securitized asset cost charges paid under the financing order to be the revenue of the electric utility for any*  
194 *purpose, including for any purpose under § 56-585.8; (iii) consider the securitized asset costs or financing*  
195 *costs specified in the financing order to be the costs of the electric utility, including for any purpose under §*  
196 *56-585.8; or (iv) determine any action taken by an electric utility that is consistent with the financing order to*  
197 *be unjust or unreasonable.*

198 *2. The Commission shall not order or otherwise directly or indirectly require an electric utility to use*  
199 *securitized asset cost bonds to finance any project, addition, plant, facility, extension, capital improvement,*  
200 *equipment, or any other expenditure. After the issuance of a financing order, the electric utility shall retain*  
201 *sole discretion regarding whether to cause the securitized asset cost bonds to be issued, including the right to*  
202 *defer or postpone such sale, assignment, transfer, or issuance. Nothing shall prevent the electric utility from*  
203 *abandoning the issuance of securitized asset cost bonds under the financing order by filing with the*  
204 *Commission a statement of abandonment and the reasons therefor. The Commission shall not deny an*  
205 *electric utility its right to recover securitized asset costs as otherwise provided in this section, or refuse or*  
206 *condition authorization or approval of the issuance and sale by an electric utility of securities or the*  
207 *assumption by the electric utility of liabilities or obligations, solely because of the potential availability of*  
208 *securitized asset cost bond financing.*

209 *D. The electric bills of an electric utility that has obtained a financing order and caused securitized asset*  
210 *cost bonds to be issued shall comply with the provisions of this subsection; however, the failure of an electric*  
211 *utility to comply with this subsection shall not invalidate, impair, or affect any financing order, securitized*  
212 *asset cost property, securitized asset cost charge, or securitized asset cost bonds. The electric utility shall:*

213 *1. Explicitly reflect that a portion of the charges on any electric bill represents securitized asset cost*  
214 *charges approved in a financing order issued to the electric utility and, if the securitized asset cost property*  
215 *has been transferred to an assignee, such bill shall include a statement to the effect that the assignee is the*  
216 *owner of the rights to securitized asset cost charges and that the electric utility or another entity, if*  
217 *applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers*  
218 *must indicate the securitized asset cost charge and the ownership of the charge; and*

219 *2. Include the securitized asset cost charge on each customer's bill as a separate line item and include*  
220 *both the rate and the amount of the charge on each bill.*

221 *E. 1. The following provisions shall be applicable to securitized asset cost property:*

222 *a. All securitized asset cost property that is specified in a financing order shall constitute an existing,*  
223 *present intangible property right or interest therein, notwithstanding that the imposition and collection of*  
224 *securitized asset cost charges depends on the electric utility, to which the financing order is issued,*  
225 *performing its servicing functions relating to the collection of securitized asset cost charges and on future*  
226 *electricity consumption. The securitized asset cost property shall exist (i) regardless of whether or not the*  
227 *revenues or proceeds arising from the securitized asset cost property have been billed, have accrued, or have*  
228 *been collected and (ii) notwithstanding the fact that the value or amount of the securitized asset cost property*  
229 *is dependent on the future provision of service to customers by the electric utility or its successors or*  
230 *assignees and the future consumption of electricity by customers;*

231 *b. Securitized asset cost property specified in a financing order shall exist until securitized asset cost*  
232 *bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such*  
233 *securitized asset cost bonds have been recovered in full;*

234 *c. All or any portion of securitized asset cost property specified in a financing order issued to an electric*  
235 *utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned,*  
236 *directly or indirectly, by the electric utility and created for the limited purpose of acquiring, owning, or*  
237 *administering securitized asset cost property or issuing securitized asset cost bonds under the financing*  
238 *order. All or any portion of securitized asset cost property may be pledged to secure securitized asset cost*  
239 *bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties*  
240 *under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant*  
241 *of a security interest in or pledge of securitized asset cost property by an electric utility, or an affiliate of the*

242 electric utility, to an assignee, to the extent previously authorized in a financing order, shall not require the  
 243 prior consent and approval of the Commission;

244 d. If an electric utility defaults on any required payment of charges arising from securitized asset cost  
 245 property specified in a financing order, a court, upon application by an interested party, and without limiting  
 246 any other remedies available to the applying party, shall order the sequestration and payment of the revenues  
 247 arising from the securitized asset cost property to the financing parties or their assignees. Any such financing  
 248 order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other  
 249 insolvency proceedings with respect to the electric utility or its successors or assignees;

250 e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in securitized asset cost property  
 251 specified in a financing order issued to an electric utility, and in the revenue and collections arising from that  
 252 property, shall not be subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other  
 253 person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any  
 254 other entity;

255 f. Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other  
 256 insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business  
 257 combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, shall  
 258 perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility  
 259 under the financing order in the same manner and to the same extent as the electric utility, including  
 260 collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the  
 261 securitized asset cost property. Nothing in this subdivision f is intended to limit or impair any authority of the  
 262 Commission concerning the transfer or succession of interests of public utilities; and

263 g. Securitized asset cost bonds shall be nonrecourse to the credit or any assets of the electric utility other  
 264 than the securitized asset cost property as specified in the financing order and any rights under any ancillary  
 265 agreement.

266 2. The following provisions shall be applicable to security interests:

267 a. The creation, perfection, and enforcement of any security interest in securitized asset cost property to  
 268 secure the repayment of the principal and interest and other amounts payable in respect of securitized asset  
 269 cost bonds; amounts payable under any indenture, ancillary agreement, or other financing documents in  
 270 respect of the securitized asset costs; and other financing costs shall be governed by this subsection and not  
 271 by the provisions of the Uniform Commercial Code;

272 b. A security interest in securitized asset cost property shall be created and enforceable when all of the  
 273 following have occurred: (i) a financing order is issued, (ii) value is received by the debtor or seller for such  
 274 securitized asset cost property, (iii) the debtor or seller has rights in such securitized asset cost property or  
 275 the power to transfer rights in such securitized asset cost property, and (iv) a security agreement granting  
 276 such security interest is executed and delivered by the debtor or seller. The description of securitized asset  
 277 cost property in a security agreement shall be sufficient if the description refers to this section and the  
 278 financing order creating the securitized asset cost property;

279 c. A security interest shall attach without any physical delivery of collateral or other act and, upon the  
 280 filing of a financing statement with the Commission, the lien of the security interest shall be valid, binding,  
 281 and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person  
 282 granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a  
 283 transfer of an interest in the securitized asset cost property shall be perfected against all parties having  
 284 claims of any kind, including any judicial lien or other lien creditors or any claims of the transferor or  
 285 creditors of the transferor, and shall have priority over all competing claims other than any prior security  
 286 interest, ownership interest, or assignment in the property previously perfected in accordance with this  
 287 section;

288 d. The Commission shall maintain any financing statement filed to perfect any security interest under this  
 289 section in the same manner that the Commission maintains financing statements filed by transmitting utilities  
 290 under the Uniform Commercial Code. The filing of a financing statement under this section shall be governed  
 291 by the provisions regarding the filing of financing statements in the Uniform Commercial Code;

292 e. The priority of a security interest in securitized asset cost property shall not be affected by the  
 293 commingling of securitized asset cost charges with other amounts. Any pledgee or secured party shall have a  
 294 perfected security interest in the amount of all securitized asset cost charges that are deposited in any cash or  
 295 deposit account of the qualifying utility in which securitized asset cost charges have been commingled with  
 296 other funds and any other security interest that may apply to those funds shall be terminated when they are  
 297 transferred to a segregated account for the assignee or a financing party;

298 f. No application of the formula-based adjustment mechanism as provided in this section shall affect the  
 299 validity, perfection, or priority of a security interest in or transfer of securitized asset cost property; and

300 g. If a default or termination occurs under the securitized asset cost bonds, the financing parties or their  
 301 representatives may foreclose on or otherwise enforce their lien and security interest in any securitized asset  
 302 cost property as if they were secured parties with a perfected and prior lien under the Uniform Commercial

303 Code, and the Commission may order that amounts arising from securitized asset cost charges be transferred  
304 to a separate account for the financing parties' benefit, to which their lien and security interest shall apply.  
305 On application by or on behalf of the financing parties, the Commission shall order the sequestration and  
306 payment to them of revenues arising from the securitized asset cost charges.

307 3. a. Any sale, assignment, or other transfer of securitized asset cost property shall be an absolute  
308 transfer and true sale of and not a pledge of, or secured transaction relating to, the transferor's right, title,  
309 and interest in, to, and under the securitized asset cost property if the documents governing the transaction  
310 expressly state that the transaction is a sale or other absolute transfer other than for federal and state income  
311 tax purposes. For all purposes other than federal and state income tax purposes, the parties' characterization  
312 of a transaction as a sale of an interest in securitized asset cost property shall be conclusive that the  
313 transaction is a true sale and that ownership has passed to the party characterized as the purchaser,  
314 regardless of any fact or circumstance that might support characterization of the transfer as a secured  
315 transaction. A transfer of an interest in securitized asset cost property shall occur only when all of the  
316 following have occurred: (i) the financing order creating the securitized asset cost property has become  
317 effective, (ii) the documents evidencing the transfer of securitized asset cost property have been executed by  
318 the transferor and delivered to the assignee, and (iii) value is received by the transferor for the securitized  
319 asset cost property. After such a transaction, the securitized asset cost property shall not be subject to any  
320 claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in  
321 the securitized asset cost property perfected in accordance with subdivision 2.

322 b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale,  
323 and the corresponding characterization of the interest of the assignee as an ownership interest, shall not be  
324 affected or impaired by the occurrence of any of the following factors:

325 (1) Commingling of securitized asset cost charges with other amounts;

326 (2) The retention by the seller of (i) a partial or residual interest, including an equity interest, in the  
327 securitized asset cost property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the  
328 right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of  
329 securitized asset cost charges;

330 (3) Any recourse that the assignee may have against the seller;

331 (4) Any right or obligation that the seller may have to repurchase the securitized asset cost charges;

332 (5) Any indemnification obligations of the seller;

333 (6) The obligation of the seller to collect securitized asset cost charges on behalf of the assignee;

334 (7) The transferor acting as the servicer of the securitized asset cost charges or the existence of any  
335 contract that authorizes or requires the electric utility, to the extent that any interest in securitized asset cost  
336 property is sold or assigned, to agree with the assignee or any financing party that it will continue to operate  
337 its system to provide service to its customers, will collect amounts in respect of the securitized asset cost  
338 charges for the benefit and account of such assignee or financing party, and will account for and remit such  
339 amounts to or for the account of such assignee or financing party;

340 (8) The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or  
341 other purposes;

342 (9) The granting or providing to bondholders of a preferred right to the securitized asset cost property or  
343 credit enhancement by the electric utility or its affiliates with respect to the securitized asset cost bonds; or

344 (10) Any application of the formula-based adjustment mechanism as provided in this section.

345 c. Any right that an electric utility has in the securitized asset cost property before its pledge, sale, or  
346 transfer or any other right created under this section or created in the financing order and assignable under  
347 this section or assignable pursuant to a financing order shall be property in the form of a contract right or a  
348 chose in action. Transfer of an interest in securitized asset cost property to an assignee shall be enforceable  
349 only when all of the following have occurred: (i) a financing order is issued, (ii) value is received by the  
350 transferor for such securitized asset cost property, (iii) the transferor has rights in such securitized asset cost  
351 property or the power to transfer rights in such securitized asset cost property, and (iv) transfer documents in  
352 connection with the issuance of securitized asset cost bonds are executed and delivered by the transferor. An  
353 enforceable transfer of an interest in securitized asset cost property to an assignee shall be perfected against  
354 all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been  
355 given by the filing of a financing statement in accordance with subdivision 2 c. The transfer shall be perfected  
356 against third parties as of the date of filing.

357 d. The Commission shall maintain any financing statement filed to perfect any sale, assignment, or  
358 transfer of securitized asset cost property under this section in the same manner that the Commission  
359 maintains financing statements filed by transmitting utilities under the Uniform Commercial Code. The filing  
360 of any financing statement under this section shall be governed by the provisions regarding the filing of  
361 financing statements in the Uniform Commercial Code. The filing of such a financing statement shall be the  
362 only method of perfecting a transfer of securitized asset cost property.

363 e. The priority of a transfer perfected under this section shall not be impaired by any later modification of

364 *the financing order or securitized asset cost property or by the commingling of funds arising from securitized*  
 365 *asset cost property with other funds. Any other security interest that may apply to those funds, other than a*  
 366 *security interest perfected under subdivision 2, shall be terminated when they are transferred to a segregated*  
 367 *account for the assignee or a financing party. If securitized asset cost property has been transferred to an*  
 368 *assignee or financing party, any proceeds of that property shall be held in trust for the assignee or financing*  
 369 *party.*

370 *f. The priority of the conflicting interests of assignees in the same interest or rights in any securitized*  
 371 *asset cost property shall be determined as follows:*

372 *(1) Conflicting perfected interests or rights of assignees shall rank according to priority in time of*  
 373 *perfection. Priority shall date from the time a filing covering the transfer is made in accordance with*  
 374 *subdivision 2 c;*

375 *(2) A perfected interest or right of an assignee shall have priority over a conflicting unperfected interest*  
 376 *or right of an assignee; and*

377 *(3) A perfected interest or right of an assignee shall have priority over a person who becomes a lien*  
 378 *creditor after the perfection of such assignee's interest or right.*

379 *F. The description of securitized asset cost property being transferred to an assignee in any sale*  
 380 *agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security*  
 381 *agreement, pledge agreement, or other security document, or indicated in any financing statement, shall only*  
 382 *be sufficient if such description or indication refers to the financing order that created the securitized asset*  
 383 *cost property and states that the agreement or financing statement covers all or part of the property*  
 384 *described in the financing order. This section shall apply to all purported transfers of, and all purported*  
 385 *grants or liens or security interests in, securitized asset cost property, regardless of whether the related sale*  
 386 *agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other*  
 387 *security document was entered into, or any financing statement was filed.*

388 *G. All financing statements referenced in this section shall be subject to Part 5 of Title 8.9A (§ 8.9A-501*  
 389 *et seq.) of the Uniform Commercial Code, except that the requirement as to continuation statements shall not*  
 390 *apply.*

391 *H. The laws of the Commonwealth shall govern the validity, enforceability, attachment, perfection,*  
 392 *priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation*  
 393 *of a security interest in any securitized asset cost property.*

394 *I. Neither the Commonwealth nor its political subdivisions shall be liable on any securitized asset cost*  
 395 *bonds, and the bonds shall not be a debt or a general obligation of the Commonwealth or any of its political*  
 396 *subdivisions, agencies, or instrumentalities, nor shall they be special obligations or indebtedness of the*  
 397 *Commonwealth or any of its agencies or political subdivisions. An issue of securitized asset cost bonds shall*  
 398 *not, directly, indirectly, or contingently, obligate the Commonwealth or any agency, political subdivision, or*  
 399 *instrumentality of the Commonwealth to levy any tax or make any appropriation for payment of the*  
 400 *securitized asset cost bonds, other than in their capacity as consumers of electricity. All securitized asset cost*  
 401 *bonds shall contain on the face thereof a statement to the following effect: "NEITHER THE FULL FAITH*  
 402 *AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH IS PLEDGED TO THE*  
 403 *PAYMENT OF THE PRINCIPAL OF, OR INTEREST ON, THIS BOND."*

404 *J. All of the following entities may legally invest any sinking funds, moneys, or other funds in securitized*  
 405 *asset cost bonds:*

406 *1. Subject to applicable statutory restrictions on state or local investment authority, the Commonwealth,*  
 407 *units of local government, political subdivisions, public bodies, and public officers, except for members of the*  
 408 *Commission;*

409 *2. Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and*  
 410 *institutions, investment companies, insurance companies, insurance associations, and other persons carrying*  
 411 *on a banking or insurance business;*

412 *3. Personal representatives, guardians, trustees, and other fiduciaries; and*

413 *4. All other persons authorized to invest in bonds or other obligations of a similar nature.*

414 *K. 1. The Commonwealth and its agencies, including the Commission, pledge and agree with*  
 415 *bondholders, the owners of the securitized asset cost property, and other financing parties that the*  
 416 *Commonwealth and its agencies shall not take any action listed in this subdivision. This subsection does not*  
 417 *preclude limitation or alteration if full compensation is made by law for the full protection of the securitized*  
 418 *asset cost charges collected pursuant to a financing order and of the bondholders and any assignee or*  
 419 *financing party entering into a contract with the electric utility. The Commonwealth and its agencies,*  
 420 *including the Commission, shall not:*

421 *a. Alter the provisions of this section that authorize the Commission to create an irrevocable contract*  
 422 *right or chose in action by the issuance of a financing order, to create securitized asset cost property, and to*  
 423 *make the securitized asset cost charges imposed by a financing order irrevocable, binding, or non-*  
 424 *bypassable charges;*

425 *b. Take or permit any action that impairs or would impair the value of securitized asset cost property or*

426 *the security for the securitized asset cost bonds or revises the securitized asset costs for which recovery is*  
427 *authorized;*

428 *c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties;*  
*or*

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

435 *2. Any person that issues securitized asset cost bonds may include the language specified in subdivision 1*  
436 *in the securitized asset cost bonds and related documentation.*

437 *L. An assignee or financing party shall not be considered an electric utility or person providing electric*  
438 *service by virtue of engaging in the transactions described in this section.*

439 *M. If there is a conflict between this section and any other law regarding the attachment, assignment, or*  
440 *perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in*  
441 *securitized asset cost property, this section shall govern.*

442 *N. In making determinations under this section, the Commission may engage an outside consultant and*  
443 *counsel.*

444 *O. Nothing in this section shall be construed to limit the ability of an electric utility to seek any available*  
445 *relief pursuant to any other provision of law, including § 56-585.8.*