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HOUSE BILL NO. 2621

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on January 30, 2025)

(Patrons Prior to Substitute—Delegates Ballard and Williams [HB 1588])

A *BILL to amend and reenact § 56-585.8 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-249.8, relating to Phase I Utilities; annual rate reviews; recovery of certain costs.*

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.8 of the Code of Virginia is amended and reenacted and 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 beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued

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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*
76 *January 1, 2024, arising from or related to any major storm, extraordinary weather event, or natural*
77 *disaster, including costs of the mobilization, staging, construction, reconstruction, repair, or*
78 *replacement of 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, and the authority to establish the terms and
 136 conditions of the ancillary documents related to the securitized asset cost bonds, including servicing
 137 arrangement for the securitized asset cost charges;

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

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

146 (10) A requirement that the electric utility's base rates, exclusive of the cost of securitized asset cost
 147 bonds, reflect the reduction of rate base associated with the securitization of utility plant balances effective
 148 on the date proceeds from the issuance of the securitized asset cost bonds are received by the utility. This can
 149 be accomplished through the use of a temporary tracker to credit customers until the electric utility's next
 150 base rate case, at which point the reduction in rate base shall be reflected in base rates;

151 (11) A method of tracing funds collected as securitized asset cost charges, or other proceeds of securitized
 152 asset cost property, and a requirement that such method be the method of tracing such funds and determining
 153 the identifiable cash proceeds of any securitized asset cost property subject to the financing order under
 154 applicable law; and

155 (12) Any other conditions not otherwise inconsistent with this section that the Commission determines are
 156 appropriate.

157 b. Neither a financing order issued pursuant to this section nor the Commission's approval of a petition
 158 for a financing order shall require that securitized asset cost bonds be marketed as a specified type of
 159 security or that the assignee be formed as a specified type of entity. The electric utility shall maintain
 160 discretion to determine the type of security that securitized asset cost bonds shall be.

161 c. A financing order issued to an electric utility may provide that creation of the electric utility's
 162 securitized asset cost property is conditioned upon, and simultaneous with, the sale or other transfer for the
 163 securitized asset cost property to an assignee and the pledge of the securitized asset cost property to secure
 164 securitized asset cost bonds.

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

179 e. Subsequent to the transfer of securitized asset cost property to an assignee or the issuance of
 180 securitized asset cost bonds authorized thereby, whichever is earlier, a financing order shall be irrevocable
 181 and, except for changes made pursuant to the formula-based mechanism authorized in this section, the
 182 Commission shall not amend, modify, or terminate the financing order by any subsequent action or reduce,

183 *impair, postpone, terminate, or otherwise adjust securitized asset cost charges approved in the financing*
184 *order. After the issuance of a financing order, the electric utility shall retain sole discretion regarding*
185 *whether to assign, sell, or otherwise transfer securitized asset cost property or to cause securitized asset cost*
186 *bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.*

187 3. *At the request of an electric utility, the Commission may commence a proceeding and issue a*
188 *subsequent financing order that provides for refinancing, retiring, or refunding securitized asset cost bonds*
189 *issued pursuant to the original financing order if the Commission finds that the subsequent financing order*
190 *satisfies all of the criteria specified in this section for a financing order. Effective upon retirement of the*
191 *refunded securitized asset bonds and the issuance of new securitized asset cost bonds, the Commission shall*
192 *adjust the related securitized asset cost charges accordingly.*

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

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

200 C. 1. *The Commission shall not, in exercising its powers and carrying out its duties regarding any matter*
201 *within its authority pursuant to this chapter, and notwithstanding any other provision of law, (i) consider the*
202 *securitized asset cost bonds issued pursuant to a financing order to be the debt of the electric utility other*
203 *than for federal income tax purposes, including for any purpose under § 56-585.8; (ii) consider the*
204 *securitized asset cost charges paid under the financing order to be the revenue of the electric utility for any*
205 *purpose, including for any purpose under § 56-585.8; (iii) consider the securitized asset costs or financing*
206 *costs specified in the financing order to be the costs of the electric utility, including for any purpose under §*
207 *56-585.8; or (iv) determine any action taken by an electric utility that is consistent with the financing order to*
208 *be unjust or unreasonable.*

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

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

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

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

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

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

242 b. *Securitized asset cost property specified in a financing order shall exist until securitized asset cost*
243 *bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such*

244 securitized asset cost bonds have been recovered in full;

245 c. All or any portion of securitized asset cost property specified in a financing order issued to an electric
 246 utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned,
 247 directly or indirectly, by the electric utility and created for the limited purpose of acquiring, owning, or
 248 administering securitized asset cost property or issuing securitized asset cost bonds under the financing
 249 order. All or any portion of securitized asset cost property may be pledged to secure securitized asset cost
 250 bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties
 251 under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant
 252 of a security interest in or pledge of securitized asset cost property by an electric utility, or an affiliate of the
 253 electric utility, to an assignee, to the extent previously authorized in a financing order, shall not require the
 254 prior consent and approval of the Commission;

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

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

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

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

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

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

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

290 c. A security interest shall attach without any physical delivery of collateral or other act and, upon the
 291 filing of a financing statement with the Commission, the lien of the security interest shall be valid, binding,
 292 and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person
 293 granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a
 294 transfer of an interest in the securitized asset cost property shall be perfected against all parties having
 295 claims of any kind, including any judicial lien or other lien creditors or any claims of the transferor or
 296 creditors of the transferor, and shall have priority over all competing claims other than any prior security
 297 interest, ownership interest, or assignment in the property previously perfected in accordance with this
 298 section;

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

303 e. The priority of a security interest in securitized asset cost property shall not be affected by the
 304 commingling of securitized asset cost charges with other amounts. Any pledgee or secured party shall have a

305 perfected security interest in the amount of all securitized asset cost charges that are deposited in any cash or
306 deposit account of the qualifying utility in which securitized asset cost charges have been commingled with
307 other funds and any other security interest that may apply to those funds shall be terminated when they are
308 transferred to a segregated account for the assignee or a financing party;

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

311 g. If a default or termination occurs under the securitized asset cost bonds, the financing parties or their
312 representatives may foreclose on or otherwise enforce their lien and security interest in any securitized asset
313 cost property as if they were secured parties with a perfected and prior lien under the Uniform Commercial
314 Code, and the Commission may order that amounts arising from securitized asset cost charges be transferred
315 to a separate account for the financing parties' benefit, to which their lien and security interest shall apply.
316 On application by or on behalf of the financing parties, the Commission shall order the sequestration and
317 payment to them of revenues arising from the securitized asset cost charges.

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

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

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

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

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

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

343 (5) Any indemnification obligations of the seller;

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

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

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

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

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

356 c. Any right that an electric utility has in the securitized asset cost property before its pledge, sale, or
357 transfer or any other right created under this section or created in the financing order and assignable under
358 this section or assignable pursuant to a financing order shall be property in the form of a contract right or a
359 chose in action. Transfer of an interest in securitized asset cost property to an assignee shall be enforceable
360 only when all of the following have occurred: (i) a financing order is issued, (ii) value is received by the
361 transferor for such securitized asset cost property, (iii) the transferor has rights in such securitized asset cost
362 property or the power to transfer rights in such securitized asset cost property, and (iv) transfer documents in
363 connection with the issuance of securitized asset cost bonds are executed and delivered by the transferor. An
364 enforceable transfer of an interest in securitized asset cost property to an assignee shall be perfected against
365 all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been

366 given by the filing of a financing statement in accordance with subdivision 2 c. The transfer shall be perfected
367 against third parties as of the date of filing.

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

374 e. The priority of a transfer perfected under this section shall not be impaired by any later modification of
375 the financing order or securitized asset cost property or by the commingling of funds arising from securitized
376 asset cost property with other funds. Any other security interest that may apply to those funds, other than a
377 security interest perfected under subdivision 2, shall be terminated when they are transferred to a segregated
378 account for the assignee or a financing party. If securitized asset cost property has been transferred to an
379 assignee or financing party, any proceeds of that property shall be held in trust for the assignee or financing
380 party.

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

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

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

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

390 F. The description of securitized asset cost property being transferred to an assignee in any sale
391 agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security
392 agreement, pledge agreement, or other security document, or indicated in any financing statement, shall only
393 be sufficient if such description or indication refers to the financing order that created the securitized asset
394 cost property and states that the agreement or financing statement covers all or part of the property
395 described in the financing order. This section shall apply to all purported transfers of, and all purported
396 grants or liens or security interests in, securitized asset cost property, regardless of whether the related sale
397 agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other
398 security document was entered into, or any financing statement was filed.

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

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

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

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

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

420 2. Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and
421 institutions, investment companies, insurance companies, insurance associations, and other persons carrying
422 on a banking or insurance business;

423 3. Personal representatives, guardians, trustees, and other fiduciaries; and

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

425 K. 1. The Commonwealth and its agencies, including the Commission, pledge and agree with
426 bondholders, the owners of the securitized asset cost property, and other financing parties that the

427 *Commonwealth and its agencies shall not take any action listed in this subdivision. This subsection does not*
 428 *preclude limitation or alteration if full compensation is made by law for the full protection of the securitized*
 429 *asset cost charges collected pursuant to a financing order and of the bondholders and any assignee or*
 430 *financing party entering into a contract with the electric utility. The Commonwealth and its agencies,*
 431 *including the Commission, shall not:*

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

436 *b. Take or permit any action that impairs or would impair the value of securitized asset cost property or*
 437 *the security for the securitized asset cost bonds or revises the securitized asset costs for which recovery is*
 438 *authorized;*

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

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

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

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

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

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

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

458 **§ 56-585.8. Annual rate reviews.**

459 *A. For the purposes of this section:*

460 *"Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.*

461 *"Storm recovery costs" means expenses and investments incurred by a Phase I Utility since January 1,*
 462 *2024, arising from or related to any major storm, severe or extraordinary weather-related event, consistent*
 463 *with nationally recognized standards including those published by the Institute of Electrical and Electronics*
 464 *Engineers, or national disaster, including costs of mobilization, staging, construction, reconstruction, repair,*
 465 *or replacement of production, generation, transport, transmission, distribution, or general facilities.*

466 *"Utility" means a Phase I Utility.*

467 *B. ~~With~~ Notwithstanding the provisions of § 56-585.1, with the first review commencing on ~~March~~ or*
 468 *before May 31, 2024 2026, and ~~biennially~~ annually thereafter, the Commission shall conduct rate reviews of*
 469 *the rates, terms, and conditions for the provision of generation and distribution services by a Phase I Utility*
 470 *that participated in triennial review proceedings in 2020 and 2023, and such Phase I Utility shall no longer be*
 471 *subject to triennial review proceedings pursuant to § 56-585.1.*

472 *C. In each ~~biennial~~ annual review, the Commission shall conduct a proceeding to review all rates, terms,*
 473 *and conditions for generation and distribution services ~~with such proceeding utilizing the two successive~~*
 474 *12-month test periods ending December 31 immediately preceding the year in which, and such proceeding is*
 475 *conducted. Such ~~biennial~~ review shall be conducted in a single, combined proceeding, except for review of*
 476 *the following costs, which the utility shall continue to recover and the Commission shall continue to review*
 477 *separately, pursuant to the applicable statutory provisions: costs that are recovered pursuant to (i) § 56-249.6,*
 478 *(ii) ~~subdivisions~~ subdivision A 4, 5, and 6 of § 56-585.1, and (iii) § 56-585.5, and (iv) § ~~56-585.6~~ 56-585.1:15*
 479 *. In each annual review, the Commission shall include all costs the utility has previously recovered pursuant*
 480 *to rate adjustment clauses established pursuant to subdivisions A 5 and 6 of § 56-585.1. After the conclusion*
 481 *of the first annual review, all rate adjustment clauses that were in effect in 2025, except those listed in*
 482 *clauses (i) through (iv), shall be combined with all the rates, terms, and conditions for generation and*
 483 *distribution services.*

484 *D. Each ~~biennial~~ annual rate review proceeding shall commence on or before ~~March~~ May 31 of the*
 485 *~~biennial~~ review year with the filing of a petition by each Phase I Utility subject to the provisions of this*
 486 *section. The Commission, after providing notice and an opportunity for hearing, shall grant a final order on*
 487 *such petition no later than ~~November 20.~~ Any January 15 of the subsequent year, with any revisions in rates*

488 ordered by the Commission pursuant to the rate review ~~shall take~~ taking effect no later than ~~January~~ March 1
489 of the subsequent year.

490 E. In the first annual rate review, (i) the utility may recover storm recovery costs incurred after
491 January 1, 2024, that are not currently included in rates or otherwise recovered through a securitization order;
492 (ii) the utility shall propose and the Commission shall consider the implementation of residential seasonal rates;
493 and (iii) the utility shall propose and the Commission shall consider alternatives to budget billing.

494 F. In each final order, the Commission shall determine:

495 1. The costs, including the allowed return as determined in its most recent rate of return equity
496 determination, that the utility has incurred in the previous calendar year to provide generation and
497 distribution services to its customers;

498 2. The revenues that the utility has received in exchange for its services;

499 3. The difference, if any, between the values determined pursuant to subdivisions 1 and 2;

500 4. The resulting amount of deficiency, if costs exceed revenues, or excess, if revenues exceed costs, to be
501 factored into the next calendar year's revenue requirement;

502 5. The projected costs, including the allowed return, that the utility expects to incur in the subsequent
503 calendar year to provide generation and distribution services to its customers; and

504 6. The revenue requirement that the utility will implement in the subsequent calendar year, which
505 requirement shall comprise the prior year's deficiency or excess, as determined pursuant to subdivision 4,
506 and the subsequent year's projected revenue requirement.

507 G. For the first annual rate review, the Commission shall use the return authorized for the utility in 2024
508 for the purposes of this section. In each ~~biennial~~ subsequent annual rate review proceeding, the Commission
509 shall set the fair rate of return on common equity applicable to the generation and distribution services of the
510 utility for the two such services combined and for any rate adjustment clauses approved under subdivision A
511 5 or 6 of § 56-585.1. The Commission may use any methodology it finds consistent with the public interest to
512 determine the Phase I Utility's fair rate of return on common equity. The Commission may increase or
513 decrease the combined rate of return for generation and distribution services by up to 50 basis points based on
514 factors that may include reliability, generating plant performance, customer service, and operating efficiency
515 of a utility. Any such adjustment to the combined rate of return for generation and distribution services shall
516 include consideration of nationally recognized standards determined by the Commission to be appropriate for
517 such purposes. Commencing in 2027, the Commission shall determine the rate of return pursuant to this
518 subsection once every two years.

519 F. In any biennial review for a Phase I Utility, if the Commission determines in its sole discretion that the
520 utility's existing rates for generation and distribution services will, on a going forward basis, either produce
521 (i) revenues in excess of the utility's authorized rate of return or (ii) revenues below the utility's authorized
522 rate of return, then the Commission shall order any reductions or increases, as applicable and necessary, to
523 such rates for generation and distribution services that it deems appropriate to ensure the resulting rates for
524 generation and distribution services (a) are just and reasonable and (b) provide the utility an opportunity to
525 recover its costs of providing services over the rate period ending on December 31 of the year of the utility's
526 succeeding review and earn a fair rate of return authorized pursuant to this section. Such determination shall
527 be limited to the Phase I Utility's rates for generation and distribution services and shall not consider the costs
528 or revenues recovered in any rate adjustment clause authorized pursuant to this chapter.

529 G. In any biennial review of rates for generation and distribution services, if the combined rate of return
530 on common equity earned is no more than 100 basis points above or below the fair combined rate of return,
531 as determined by the Commission, for the test period under review, then such combined return shall not be
532 considered either excessive or insufficient, respectively.

533 1. If in any biennial review, the Commission finds that, during the test period under review, considered as
534 a whole, the utility has earned more than 100 basis points above the authorized fair combined rate of return
535 on its generation or distribution services, the Commission shall direct that 100 percent of the amount of such
536 earnings that were more than 100 basis points above such fair combined rate of return for the test period
537 under review, considered as a whole, be credited to customers' bills. Any such credits shall be applied to
538 customers' bills, as determined at the discretion of the Commission, following the effective date of the
539 Commission's order, and shall be allocated among customer classes such that the relationship between the
540 specific customer class rates of return to the overall target rate of return will have the same relationship as the
541 last approved allocation of revenues used to design base rates; or

542 2. The Commission shall authorize deferred recovery for reasonable (i) actual costs associated with severe
543 weather events and (ii) actual costs associated with natural disasters, not currently in rates, and the
544 Commission shall allow the utility to amortize and recover such deferred costs over future periods as
545 determined by the Commission. The amount of any such deferral shall not exceed an amount that would,
546 together with the utility's other costs, revenues, and investments recovered through rates for generation and
547 distribution services for the test period under review, cause the utility's earned return on its generation and
548 distribution services to exceed 100 basis points above the fair combined rate of return applicable to the test

549 period under review. For the purposes of determining any amount of costs that are associated with severe
 550 weather events, the Commission shall consider nationally recognized standards such as those published by
 551 the Institute of Electrical and Electronics Engineers (IEEE).

552 Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant
 553 to this subsection shall not be considered for the purpose of determining the utility's earnings in any
 554 subsequent biennial review.

555 H. In any proceeding under this title, including each ~~biennial~~ annual rate review, to determine the prior
 556 ~~two years'~~ year's excess or deficiency for the purposes of subsection F, the Commission shall use an average
 557 rate base using the actual starting and end-of-test period capital structure of the utility, excluding any debt
 558 associated with any securitized bonds *that are the obligation of non-jurisdictional customers* and without
 559 regard to the cost of capital, capital structure, or investments of any other entities with which the utility is
 560 affiliated. To determine a revenue requirement in any proceeding under this title, the Commission shall use
 561 the utility's actual end-of-test period capital structure and cost of capital without regard to the cost of capital,
 562 capital structure, or investments of any other entities with which the utility is affiliated, including debt
 563 associated with any securitized bonds, unless the Commission makes a finding, based on evidence in the
 564 record, that the debt to equity ratio of the actual end-of-test period capital structure of such utility is
 565 unreasonable, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable.

566 In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the Commission
 567 shall determine federal and state income tax costs as follows: (i) the utility's apportioned state income tax
 568 costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated
 569 return with its affiliates, and (ii) the utility's federal income tax costs shall be calculated according to the
 570 applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments
 571 originating from any taxable income or loss of its affiliates.

572 I. The Commission is authorized to determine during any ~~biennial~~ annual review the reasonableness or
 573 prudence of any cost subject to the rate review incurred or projected to be incurred by the utility, ~~and a Phase~~
 574 ~~I Utility shall recover such costs that the Commission finds to be reasonable and prudent subject to the~~
 575 ~~following:~~

576 1. *The projected and actual costs for the utility to design and operate fair and effective peak-shaving*
 577 *programs or pilot programs, if such programs are approved by the Commission, are reasonable and prudent*
 578 *and shall be recoverable by the utility.*

579 2. *If approved by the Commission, the projected and actual costs for the utility to design, implement, and*
 580 *operate energy efficiency programs or pilot programs are reasonable and prudent and shall be recoverable*
 581 *by the utility. The Commission's review of the utility's energy efficiency programs or pilot programs shall*
 582 *otherwise be governed by subdivision A 5 c of § 56-585.1.*

583 3. *The projected and actual costs of projects necessary to comply with state or federal environmental laws*
 584 *or regulations applicable to generation facilities used to serve the utility's native load obligations, including*
 585 *the costs of allowances purchased through a market-based trading program for carbon dioxide emissions,*
 586 *are reasonable and prudent and shall be recoverable by the utility.*

587 4. *The projected and actual costs, not currently in rates, for the utility to design, implement, and operate*
 588 *programs approved by the Commission that accelerate the vegetation management of distribution*
 589 *rights-of-way are reasonable and prudent and shall be recoverable by the utility. No such costs shall be*
 590 *allocated to or recovered from the utility's customers that are served at subtransmission or transmission*
 591 *voltage, or that take delivery at a substation served from subtransmission or transmission voltage.*

592 5. *The projected and actual costs, not currently in rates, for the utility to design, implement, and operate*
 593 *programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled*
 594 *individuals or (ii) organizations providing residential services to low-income, elderly, and disabled*
 595 *individuals for the installation of, or access to, equipment to generate electric energy derived from sunlight,*
 596 *provided the low-income, elderly, and disabled individuals, or organizations providing residential services to*
 597 *low-income, elderly, and disabled individuals, first participate in incentive programs for the installation of*
 598 *measures that reduce heating or cooling costs, are reasonable and prudent and shall be recoverable by the*
 599 *utility.*

600 *No cost described in subdivisions 1 through 5 shall be recovered through a rate adjustment clause*
 601 *established pursuant to subdivision A 5 of § 56-585.1.*

602 J. In any ~~biennial~~ annual rate review conducted pursuant to this section, a Phase I Utility or any other
 603 party may propose changes to its terms and conditions and the Commission may approve, reject, or amend
 604 any changes and may propose any special rates, contracts, or incentives pursuant to § 56-235.2.

605 K. ~~Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ 56-585.5 and 56-596.2.~~

606 L. To the extent that the provisions of this section are inconsistent with the provisions of § 56-585.1, the
 607 provisions of this section shall control.