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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

—●—
ENROLLED

Committee Substitute for

SENATE BILL NO. 455

(By Senator Helmick, et al)

—●—
PASSED April 9, 2005

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 455

(SENATORS HELMICK, HUNTER, BOWMAN, FACEMYER,
SHARPE, SPROUSE, KESSLER, MCCABE, EDGELL,
PLYMALE, LOVE, PREZIOSO, DEMPSEY, BARNES
AND JENKINS, *original sponsors*)

[Passed April 9, 2005; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-4e; and to amend and reenact §46-9-109 of said code, all relating generally to the financing of environmental control activities by certain qualified electric utilities through the issuance of environmental control bonds.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-4e; and that §46-9-109 of said code be amended and reenacted, all to read as follows:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4e. Environmental control bonds.

1 (a) *Legislative findings.* – The Legislature hereby finds
2 and declares: (i) That electric utilities in the state face the
3 need to install and construct emission control equipment
4 at existing generating facilities in the state in order to
5 meet the requirements of existing and anticipated environ-
6 mental laws and regulations and otherwise to reduce
7 emissions from those electric generating facilities; (ii) that
8 the capital costs associated with the installation and
9 construction of emission control equipment are consider-
10 able; (iii) that the financial condition of some electric
11 utilities may make the use of traditional utility financing
12 mechanisms to finance the construction and installation of
13 emission control equipment difficult or impossible and
14 that this situation may cause such utilities to defer the
15 installation of emission control equipment, to incur higher
16 financing costs, to minimize or eliminate their use of high-
17 sulfur coal mined in the State or to use other financing
18 alternatives that are less favorable to the state and its
19 citizens; (iv) that the construction and installation of
20 emission control equipment by utilities will create public
21 health and economic benefits to the state and its citizens,
22 including, without limitation, emissions reductions,
23 economic development, job growth and retention and the
24 increased use of high-sulfur coal mined in the State; (v)
25 that customers of electric utilities in the state have an
26 interest in the construction and installation of emission
27 control equipment at electric-generating facilities in the
28 state at a lower cost than would be afforded by traditional
29 utility financing mechanisms; (vi) that alternative financ-
30 ing mechanisms exist which can result in lower costs to
31 customers and the use of these mechanisms can ensure that
32 only those costs associated with the construction and
33 installation of emission control equipment at electric-
34 generating facilities located in the state that generate

35 electric energy for their ultimate use will be included in
36 customer rates; and (vii) that in order to use such alterna-
37 tive financing mechanisms, the Commission must be
38 empowered to adopt a financing order that advances these
39 goals. The Legislature, therefore, finds that it is in the
40 interest of the state and its citizens to encourage and
41 facilitate the use of alternative financing mechanisms that
42 will enable certain utilities to finance the construction and
43 installation of emission control equipment at electric-
44 generating facilities in the state under certain conditions
45 and to empower the Commission to review and approve
46 alternative financing mechanisms as being consistent with
47 the public interest, as set forth in this section.

48 (b) *Definitions.* —

49 As used in this section:

50 (1) “Adjustment mechanism” means a formula-based
51 mechanism for making any adjustments to the amount of
52 the environmental control charges that are necessary to
53 correct for any over-collection or under-collection of the
54 environmental control charges or otherwise to ensure the
55 timely and complete payment and recovery of environmen-
56 tal control costs and financing costs. The adjustment
57 mechanism is not to be used as a means to authorize the
58 issuance of environmental control bonds in a principal
59 amount greater, or the payment or recovery of environ-
60 mental control costs in an amount greater, than that which
61 was authorized in the financing order which established
62 the adjustment mechanism.

63 (2) “Ancillary agreement” means any bond insurance
64 policy, letter of credit, reserve account, surety bond, swap
65 arrangement, hedging arrangement, liquidity or credit
66 support arrangement or other similar agreement or
67 arrangement entered into in connection with the issuance
68 of environmental control bonds that is designed to pro-
69 mote the credit quality and marketability of the bonds or
70 to mitigate the risk of an increase in interest rates.

71 (3) "Assignee" means any person or legal entity to which
72 an interest in environmental control property is sold,
73 assigned, transferred or conveyed (other than as security)
74 and any successor to or subsequent assignee of such a
75 person or legal entity.

76 (4) "Bondholder" means any holder or owner of an
77 environmental control bond.

78 (5) "Environmental control activity" means any of the
79 following:

80 (A) The construction, installation and placing in opera-
81 tion of environmental control equipment at a qualifying
82 generating facility.

83 (B) The shutdown or retirement of any existing plant,
84 facility, unit or other property at a qualifying generating
85 facility to reduce, control or eliminate environmental
86 emissions.

87 (6) "Environmental control bonds" means bonds,
88 debentures, notes, certificates of participation, certificates
89 of beneficial interest, certificates of ownership or other
90 evidences of indebtedness or ownership that are issued by
91 a qualifying utility or an assignee, the proceeds of which
92 are used directly or indirectly to recover, finance, or
93 refinance environmental control costs and financing costs,
94 and that are secured by or payable from environmental
95 control revenues.

96 (7) "Environmental control charge" means a non-
97 bypassable charge paid by a customer of a qualifying
98 utility for the recovery of environmental control costs and
99 financing costs.

100 (8) "Environmental control cost" means any cost,
101 including capitalized cost relating to regulatory assets and
102 capitalized cost associated with design and engineering
103 work, incurred or expected to be incurred by a qualifying
104 utility in undertaking an environmental control activity

105 and, with respect to an environmental control activity,
106 includes the unrecovered value of property that is retired,
107 together with any demolition or similar cost that exceeds
108 the salvage value of the property. “Environmental control
109 cost” includes preliminary expenses and investments
110 associated with environmental control activity that are
111 incurred prior to the issuance of a financing order and that
112 are to be reimbursed from the proceeds of environmental
113 control bonds. “Environmental control cost” does not
114 include any monetary penalty, fine or forfeiture assessed
115 against a qualifying utility by a government agency or
116 court under a federal or state environmental statute, rule
117 or regulation.

118 (9) “Environmental control equipment” means any
119 device, equipment, structure, process, facility or technol-
120 ogy that is designed for the primary purpose of preventing,
121 reducing or remediating environmental emissions and that
122 has been or is to be constructed or installed at a qualifying
123 generating facility.

124 (10) “Environmental control property” means all of the
125 following:

126 (A) The rights and interests of a qualifying utility or an
127 assignee under a financing order, including the right to
128 impose, charge, collect and receive environmental control
129 charges in the amount necessary to provide for the full
130 payment and recovery of all environmental control costs
131 and financing costs determined to be recoverable in the
132 financing order and to obtain adjustments to the charges
133 as provided in this section and any interest in the rights
134 and interests.

135 (B) All revenues, receipts, collections, rights to payment,
136 payments, moneys, claims or other proceeds arising from
137 the rights and interests specified in paragraph (A) of this
138 subdivision.

139 (11) “Environmental control revenues” means all
140 revenues, receipts, collections, payments, moneys, claims

141 or other proceeds arising from environmental control
142 property.

143 (12) "Environmental emissions" means the discharge or
144 release of emissions from electric generating facilities into
145 the air, land or waters of the state.

146 (13) "Equity ratio" means, as of any given time of
147 determination, the common equity of a qualifying utility
148 as calculated pursuant to the uniform system of accounts
149 required to be used in the filings of the qualifying utility
150 with the federal Energy Regulatory Commission. "Equity
151 ratio" shall be calculated excluding the effect of the
152 issuance of environmental control bonds or the writedown
153 of discontinued operations.

154 (14) "Financing cost" means the costs to issue, service,
155 repay, or refinance environmental control bonds, whether
156 incurred or paid upon issuance of the bonds or over the life
157 of the bonds, and approved for recovery by the Commis-
158 sion in a financing order. "Financing cost" may include
159 any of the following:

160 (A) Principal, interest and redemption premiums that are
161 payable on environmental control bonds.

162 (B) Any payment required under an ancillary agreement
163 and any amount required to fund or replenish a reserve
164 account or other account established under any indenture,
165 ancillary agreement or other financing document relating
166 to the environmental control bonds.

167 (C) The cost of retiring or refunding any existing debt
168 and equity securities of a qualifying utility in connection
169 with the issuance of environmental control bonds, but only
170 to the extent the securities were issued for the purpose of
171 financing environmental control costs.

172 (D) Any costs incurred by or on behalf of or allocated to
173 a qualifying utility to obtain modifications of or amend-
174 ments to any indenture, financing agreement, security

175 agreement or similar agreement or instrument relating to
176 any existing secured or unsecured obligation of a qualify-
177 ing utility or an affiliate of a qualifying utility, or any
178 costs incurred by or allocated to a qualifying utility to
179 obtain any consent, release, waiver or approval from any
180 holder of such an obligation, that are necessary to be
181 incurred to permit a qualifying utility to issue or cause the
182 issuance of environmental control bonds.

183 (E) Any taxes, franchise fees or license fees imposed on
184 environmental control revenues.

185 (F) Any cost related to issuing and servicing environmen-
186 tal control bonds or the application for a financing order,
187 including, without limitation, servicing fees and expenses,
188 trustee fees and expenses, legal fees and expenses, admin-
189 istrative fees, placement fees, capitalized interest, rating
190 agency fees and any other related cost that is approved for
191 recovery in the financing order.

192 (15) "Financing order" means an order of the Commis-
193 sion pursuant to subsection (d) of this section that grants,
194 in whole or in part, an application filed pursuant to
195 subsection (c) of this section and that authorizes the
196 construction and installation of environmental control
197 equipment, the issuance of environmental control bonds in
198 one or more series, the imposition, charging and collection
199 of environmental control charges, and the creation of
200 environmental control property. A financing order may
201 set forth conditions or contingencies on the effectiveness
202 of the relief authorized therein and may grant relief that
203 is different from that which was requested in the applica-
204 tion.

205 (16) "Financing parties" means:

206 (A) Any trustee, collateral agent or other person acting
207 for the benefit of any bondholder.

208 (B) Any party to an ancillary agreement the rights and
209 obligations of which relate to or depend upon the existence

210 of environmental control property, the enforcement and
211 priority of a security interest in environmental control
212 property, the timely collection and payment of environ-
213 mental control revenues or a combination of these factors.

214 (17) "Financing statement" means a financing statement
215 as defined in subdivision (39), subsection (a), section one
216 hundred two, article nine, chapter forty-six of this code.

217 (18) "Investment grade" means, with respect to the
218 unsecured debt obligations of a qualifying utility at any
219 given time of determination, a rating that is within the top
220 four investment rating categories as published by at least
221 one nationally recognized statistical rating organization as
222 recognized by the United States Securities and Exchange
223 Commission.

224 (19) "Nonbypassable" means that the payment of an
225 environmental control charge may not be avoided by any
226 electric service customer located within a utility service
227 area, and must be paid by any such customer that receives
228 electric delivery service from the qualifying utility for as
229 long as the environmental control bonds are outstanding.

230 (20) "Nonutility affiliate" means, with respect to any
231 qualifying utility, a person that: (i) Is an affiliate of the
232 qualifying utility as defined in 15 U. S. C. §79b(a)(11); and
233 (ii) is not a public utility that provides retail utility service
234 to customers in the state within the meaning of section
235 two, article one of this chapter.

236 (21) "Parent" means, with respect to any qualifying
237 utility, any registered holding company or other person
238 that holds a majority ownership or membership interest in
239 the qualifying utility.

240 (22) "Qualifying generating facility" means any electric
241 generating facility that: (i) Has generated electric energy
242 for ultimate sale to customers in the state before the
243 effective date of this section; and (ii) is owned by a quali-
244 fying utility or, on the expected date of issuance of the

245 environmental control bonds authorized in a financing
246 order, will be owned by a qualifying utility.

247 (23) “Qualifying utility” means:

248 (A) Any public utility that is: (i) Engaged in the delivery
249 of electric energy to customers in this state; and (ii) at any
250 time between the date which is two years immediately
251 preceding the effective date of this section and the date on
252 which an application for a financing order is made, has or
253 had a credit rating on its unsecured debt obligations that
254 is below investment grade.

255 (B) For so long as environmental control bonds issued
256 pursuant to a financing order are outstanding and the
257 related environmental control costs and financing costs
258 have not been paid in full, the public utility to which the
259 financing order was issued and its successors.

260 (24) “Registered holding company” means, with respect
261 to a qualifying utility, a person that is: (i) A registered
262 holding company as defined in 15 U. S. C. §79b(a)(12); and
263 (ii) an affiliate of the qualifying utility as defined in 15 U.
264 S. C. §79b(a)(11).

265 (25) “Regulatory sanctions” means, under the circum-
266 stances presented, any regulatory or ratemaking sanction
267 or penalty that the Commission is authorized to impose
268 pursuant to this chapter or any proceeding for the enforce-
269 ment of any provision of this chapter or any order of the
270 Commission that the Commission is authorized to pursue
271 or conduct pursuant to this chapter, including without
272 limitation: (i) The initiation of any proceeding in which the
273 qualifying utility is required to show cause why it should
274 not be required to comply with the terms and conditions of
275 a financing order or the requirements of this section; (ii)
276 the imposition of civil penalties pursuant to section three,
277 article four of this chapter and the imposition of criminal
278 penalties pursuant to section four of said article, in either
279 case with reference to the provisions of section eight of

280 said article; and (iii) a proceeding by mandamus or injunc-
281 tion as provided in section two of this article.

282 (26) "Successor" means, with respect to any legal entity,
283 another legal entity that succeeds by operation of law to
284 the rights and obligations of the first legal entity pursuant
285 to any bankruptcy, reorganization, restructuring or other
286 insolvency proceeding, any merger, acquisition, or consoli-
287 dation, or any sale or transfer of assets, whether any of
288 these occur as a result of a restructuring of the electric
289 power industry or otherwise.

290 (27) "Utility service area" means: (i) The geographic area
291 of the state in which a qualifying utility provides electric
292 delivery service to customers at the time of issuance of a
293 financing order; and (ii) for as long as environmental
294 control bonds issued pursuant to a financing order are
295 outstanding, any additions to or enlargements of said
296 geographic area, whether or not approved by the Commis-
297 sion in a formal proceeding.

298 (c) *Application for financing order.* —

299 (1) A qualifying utility, or two or more affiliated qualify-
300 ing utilities, may apply to the Commission for a financing
301 order under this section.

302 (2) An application for a financing order under this
303 section shall be filed only as provided in this subdivision.

304 (A) An application for a financing order under this
305 section shall be filed as part of the application of the
306 qualifying utility or qualifying utilities under section
307 eleven of this article for a certificate of public convenience
308 and necessity to engage in environmental control activi-
309 ties.

310 (B) If a qualifying utility or qualifying utilities have an
311 application for a certificate of public convenience and
312 necessity to engage in environmental control activities
313 pending before the Commission on the effective date of

314 this section, the qualifying utility or qualifying utilities
315 may file a separate application for a financing order and
316 the Commission shall join or consolidate the application
317 for a financing order with the pending application for a
318 certificate of public convenience and necessity. Notwith-
319 standing any provision of section eleven of this article to
320 the contrary or the total project cost of the proposed
321 environmental control activities, the Commission shall
322 render its final decision on any joined or consolidated
323 proceeding for a certificate of public convenience and
324 necessity and a financing order as described in this
325 paragraph within two hundred seventy days of the filing
326 of the application for the financing order and within
327 ninety days after final submission of the joined or consoli-
328 dated application for decision following a hearing.

329 (3) In addition to any other information required by the
330 Commission, an application for a financing order shall
331 include the following information:

332 (A) Evidence that the applicant is a qualifying utility;

333 (B) A description of the environmental control activities
334 that the qualifying utility proposes to undertake, including
335 a detailed description of the environmental control
336 equipment to be constructed or installed at one or more
337 qualifying generation facilities;

338 (C) An explanation why the environmental control
339 activities described in the application are necessary in the
340 context of the qualifying utility's operations, current and
341 anticipated environmental regulations, the prospect of
342 enforcement proceedings or litigation against the qualify-
343 ing utility if the environmental control activities are not
344 undertaken and the utility's long-range environmental
345 compliance plans;

346 (D) A description of any alternatives to the environmen-
347 tal control activities described in the application that the

348 qualifying utility considered and an explanation of why
349 each alternative either is not feasible or was not selected;

350 (E) An estimate of the environmental control costs
351 associated with the environmental control activities
352 described in the application, including the estimated cost
353 of the environmental control equipment proposed to be
354 installed;

355 (F) An estimated schedule for the construction or
356 installation of the environmental control equipment;

357 (G) An estimate of the date on which the environmental
358 control bonds are expected to be issued and the expected
359 term over which the financing costs associated with the
360 issuance are expected to be recovered, or if the bonds are
361 expected to be issued in more than one series, the esti-
362 mated issuance date and expected term for each bond
363 issuance;

364 (H) The portion of the environmental control costs the
365 qualifying utility proposes to finance through the issuance
366 of one or more series of environmental control bonds;

367 (I) An estimate of the financing costs associated with
368 each series of environmental control bonds proposed to be
369 issued;

370 (J) An estimate of the amount of the environmental
371 control charges necessary to recover the environmental
372 control costs and financing costs estimated in the applica-
373 tion and the proposed calculation thereof, which estimate
374 and calculation should take into account the estimated
375 date of issuance and estimated principal amount of each
376 series of environmental control bonds proposed to be
377 issued;

378 (K) A proposed methodology for allocating financing
379 costs among customer classes;

380 (L) A description of the proposed adjustment mecha-
381 nism; and

382 (M) A description of the benefits to the customers of the
383 qualifying utility and the state that are expected to result
384 from the financing of the environmental control costs with
385 environmental control bonds as opposed to the use of
386 traditional utility financing mechanisms.

387 (4) An application for a financing order may restate or
388 incorporate by reference any information required pursu-
389 ant to subdivision (3) of this subsection that the qualifying
390 utility previously filed with the Commission in connection
391 with an application for a certificate of public convenience
392 and necessity under section eleven of this article as
393 described in paragraph (B), subdivision (2) of this subsec-
394 tion.

395 (d) *Issuance of financing order.* —

396 (1) Notice of an application for a financing order shall be
397 given as a Class I legal advertisement in compliance with
398 the provisions of article three, chapter fifty-nine of this
399 code, with the publication area being each county in which
400 the environmental control activities are to be undertaken
401 and each county in the state in which the qualifying utility
402 provides service to customers. If no substantial protest is
403 received within thirty days after the publication of notice,
404 the Commission may waive formal hearing on the applica-
405 tion.

406 (2) The Commission shall issue a financing order, or an
407 order rejecting the application for a financing order, as
408 part of its final order on the application of the qualifying
409 utility or qualifying utilities for a certificate of public
410 convenience and necessity to engage in environmental
411 control activities as described in subdivision (2), subsec-
412 tion (c) of this section.

413 (3) The Commission shall issue a financing order if the
414 Commission finds all of the following:

415 (A) That the applicant is a qualifying utility;

416 (B) That the environmental control activities, including
417 the environmental control equipment to be constructed or
418 installed at one or more qualifying generation facilities,
419 are necessary and prudent under the circumstances and
420 are preferable to any alternatives available to the qualify-
421 ing utility;

422 (C) That the cost of the environmental control activities,
423 including the environmental control equipment to be
424 constructed or installed at one or more qualifying genera-
425 tion facilities, is reasonable;

426 (D) That the proposed issuance of environmental control
427 bonds will result in overall costs to customers of the
428 qualifying utility that: (1) Are lower than would result
429 from the use of traditional utility financing mechanisms;
430 and (2) are just and reasonable;

431 (E) That the financing of the environmental control costs
432 with environmental control bonds will result in benefits to
433 the customers of the qualifying utility and the state; and

434 (F) That the proposed issuance of environmental control
435 bonds, together with the imposition and collection of the
436 environmental control charges on customers of the quali-
437 fying utility, are just and reasonable and are otherwise
438 consistent with the public interest and constitute a pru-
439 dent, reasonable and appropriate mechanism for the
440 financing of the environmental control activities described
441 in the application.

442 (4) The Commission shall include the following findings
443 and requirements in a financing order:

444 (A) A determination of the maximum amount of environ-
445 mental control costs that may be financed from proceeds
446 of environmental control bonds authorized to be issued in
447 the financing order;

448 (B) A description of the financing costs that may be
449 recovered through environmental control charges and the

450 period over which the costs may be recovered, subject to
451 the application of the adjustment mechanism as provided
452 in subsection (e) of this section. As part of this description,
453 the Commission may include qualitative or quantitative
454 limitations on the financing costs authorized in the
455 financing order;

456 (C) A description of the adjustment mechanism and a
457 finding that it is just and reasonable; and

458 (D) A description of the environmental control property
459 that is created and that may be used to pay, and secure the
460 payment of, the environmental control bonds and financ-
461 ing costs authorized to be issued in the financing order.

462 (5) A financing order may provide that the creation of
463 environmental control property shall be simultaneous with
464 the sale of the environmental control property to an
465 assignee as provided in the application and the pledge of
466 the environmental control property to secure environmen-
467 tal control bonds.

468 (6) A financing order may authorize the qualifying
469 utility to conduct environmental control activities, includ-
470 ing the construction or installation of environmental
471 control equipment, on an estimated schedule approved in
472 the financing order and through the issuance of more than
473 one series of environmental control bonds. In this case, the
474 qualifying utility will not subsequently be required to
475 secure a separate financing order for each issuance of
476 environmental control bonds or for each scheduled phase
477 of the construction or installation of environmental
478 control equipment approved in the financing order.

479 (7) The Commission may require, as a condition to the
480 effectiveness of the financing order but in every circum-
481 stance subject to the limitations set forth in subdivision
482 (1), subsection (f) of this section, that the qualifying utility
483 give appropriate assurances to the Commission that the
484 qualifying utility and its parent will abide by the following

485 conditions during any period in which any environmental
486 control bonds issued pursuant to the financing order are
487 outstanding, in addition to any other obligation either may
488 have under this code or federal law:

489 (A) Without first obtaining the prior consent and ap-
490 proval of the Commission, the qualifying utility will not:

491 (1) Lend money, directly or indirectly, to a registered
492 holding company or a nonutility affiliate; or

493 (2) Guarantee the obligations of a registered holding
494 company or a nonutility affiliate.

495 (B) If: (i) For a period of twelve consecutive months
496 immediately preceding the date of determination, the
497 qualifying utility has had an equity ratio of below thirty
498 percent and neither the qualifying utility nor its parent
499 has had a credit rating on its unsecured debt obligations
500 that is investment grade; and (ii) the Commission deter-
501 mines that the present ability of the qualifying utility to
502 meet its public service obligations would be impaired by
503 the payment of dividends, the Commission may order the
504 qualifying utility to limit or cease the payment of divi-
505 dends for a period not exceeding one hundred eighty days
506 from the date of determination, which order may be
507 extended for one or more additional periods not to exceed
508 one hundred eighty days each if the Commission deter-
509 mines that the conditions set forth in this paragraph
510 continue to exist as of the date of each such determination.

511 (C) Neither the parent nor a nonutility affiliate will
512 direct or require the qualifying utility to file a voluntary
513 petition in bankruptcy: *Provided*, That nothing in this
514 paragraph shall preclude the qualifying utility from filing
515 a voluntary petition in bankruptcy if in the determination
516 of the board of directors of the qualifying utility in the
517 exercise of its fiduciary duty, the filing of its own volun-
518 tary petition in bankruptcy would be proper under appli-
519 cable federal statutory and common law.

520 (8) A financing order may require the qualifying utility
521 to file with the Commission a periodic report showing the
522 receipt and disbursement of proceeds of environmental
523 control bonds. A financing order may authorize the staff
524 of the Commission to review and audit the books and
525 records of the qualifying utility relating to the receipt and
526 disbursement of proceeds of environmental control bonds.
527 The provisions of this subdivision shall not be construed to
528 limit the authority of the Commission under this chapter
529 to investigate the practices of the qualifying utility or to
530 audit the books and records of the qualifying utility.

531 (9) In the case of two or more affiliated qualifying
532 utilities that have jointly applied for a financing order as
533 provided in subdivision (1), subsection (c) of this section,
534 a financing order may authorize each affiliated qualifying
535 utility:

536 (A) To impose environmental control charges on its
537 customers, notwithstanding the fact that the qualifying
538 generating facility at which the environmental control
539 activities are to be conducted is owned, or on the expected
540 date of issuance of the environmental control bonds
541 authorized in the financing order will be owned, by fewer
542 than all of the affiliated qualifying utilities; and

543 (B) To issue environmental control bonds and to receive
544 and use the proceeds thereof as provided in subdivision (1),
545 subsection (j) of this section, notwithstanding the fact that
546 all or a portion of the proceeds are expected to be used for
547 environmental control activities to be conducted at a
548 qualifying generating facility the ownership of which is as
549 specified in paragraph (A) of this subdivision.

550 (e) *Application of adjustment mechanism.* —

551 (1) If the Commission issues a financing order, the
552 Commission shall periodically approve the application of
553 the adjustment mechanism specified in the financing order
554 to correct for any over-collection or under-collection of

555 the environmental control charges and to provide for
556 timely payment of scheduled principal of and interest on
557 the environmental control bonds and the payment and
558 recovery of other financing costs in accordance with the
559 financing order. Application of the adjustment mechanism
560 shall occur at least annually or more frequently as pro-
561 vided in the financing order.

562 (2) On the same day the qualifying utility files with the
563 Commission its calculation of the adjustment, it shall
564 cause notice of the filing to be given, in the form specified
565 in the financing order, as a Class I legal advertisement in
566 compliance with the provisions of article three, chapter
567 fifty-nine of this code in a newspaper of statewide circula-
568 tion published each weekday in Kanawha County: *Pro-*
569 *vided*, That this publication shall be made only if the
570 calculation of the adjustment filed by the qualifying utility
571 with the Commission would result in an increase in the
572 amount of the environmental control charge.

573 (3) The Commission shall allow interested parties thirty
574 days from the date the qualifying utility filed the calcula-
575 tion of the adjustment within which to make comments,
576 which shall be limited to the mathematical accuracy of the
577 calculation and of the amount of the adjustment. If the
578 Commission determines that a hearing is necessary, the
579 Commission shall hold a hearing on the comments within
580 forty days of the date the qualifying utility filed the
581 calculation of the adjustment.

582 (4) Each adjustment to the environmental control charge,
583 in an amount as calculated by the qualifying utility but
584 incorporating any correction for mathematical inaccuracy
585 as determined by the Commission at or after the hearing,
586 shall automatically become effective: (i) Sixty days
587 following the date on which the qualifying utility files
588 with the Commission its calculation of the adjustment; or
589 (ii) on any earlier date specified in an order of the Com-
590 mission approving the application of the adjustment.

591 (5) No adjustment pursuant to this subsection, and no
592 proceeding held pursuant to this subsection, shall in any
593 way affect the irrevocability of the financing order as
594 specified in subsection (f) of this section.

595 (f) *Irrevocability of financing order.* —

596 (1) A financing order is irrevocable and the Commission
597 may not reduce, impair, postpone or terminate the envi-
598 ronmental control charges approved in the financing order
599 or impair the environmental control property or the
600 collection or recovery of environmental control revenues.

601 (2) A financing order may be subsequently amended on
602 or after the date of issuance of environmental control
603 bonds authorized thereunder only: (A) At the request of the
604 qualifying utility; (B) in accordance with any restrictions
605 and limitations on amendment set forth in the financing
606 order; and (C) subject to the limitations set forth in
607 subdivision (1) of this subsection.

608 (3) No change in the credit rating on the unsecured
609 obligations of a qualifying utility from the credit rating
610 that supported the determination by the Commission
611 required in paragraph (A), subdivision (3), subsection (d)
612 of this section shall impair the irrevocability of the
613 financing order specified in subdivision (1) of this subsec-
614 tion.

615 (g) *Judicial review.* — An order of the Commission
616 issued pursuant to subdivision (2), subsection (d) of this
617 section is a final order of the Commission. Any party
618 aggrieved by the issuance of any such order may petition
619 for suspension and review thereof by the Supreme Court
620 of Appeals pursuant to section one, article five of this
621 chapter. In the case of any petition for suspension and
622 review, the Supreme Court of Appeals shall proceed to
623 hear and determine the action as expeditiously as practi-
624 cable and give the action precedence over other matters
625 not accorded similar precedence by law.

626 (h) *Effect of financing order.* —

627 (1) A financing order shall remain in effect until the
628 environmental control bonds issued pursuant to the
629 financing order have been paid in full and all financing
630 costs relating to the environmental control bonds have
631 been paid in full.

632 (2) A financing order shall remain in effect and unabated
633 notwithstanding the bankruptcy, reorganization or
634 insolvency of the qualifying utility or any affiliate thereof
635 or the commencement of any judicial or nonjudicial
636 proceeding therefor.

637 (3) For so long as environmental control bonds issued
638 pursuant to a financing order are outstanding and the
639 related environmental control costs and financing costs
640 have not been paid in full, the environmental control
641 charges authorized to be imposed in the financing order
642 shall be nonbypassable and shall apply to:

643 (A) All customers of the qualifying utility located within
644 the utility service area, whether or not the customers may
645 become entitled by law to purchase electric generation
646 services from a provider of electric generation services
647 other than a qualifying utility; and

648 (B) Any person or legal entity located within the utility
649 service area that may subsequently receive electric deliv-
650 ery service from another public utility operating in the
651 same service area.

652 (i) *Limitations on jurisdiction of Commission.* —

653 (1) If the Commission issues a financing order, the
654 Commission may not, in exercising its powers and carrying
655 out its duties regarding regulation and ratemaking,
656 consider environmental control bonds issued pursuant to
657 the financing order to be the debt of the qualifying utility,
658 the environmental control charges paid under the financ-
659 ing order to be revenue of the qualifying utility, or the

660 environmental control costs or financing costs specified in
661 the financing order to be the costs of the qualifying utility,
662 nor may the Commission determine that any action taken
663 by a qualifying utility that is consistent with the financing
664 order is unjust or unreasonable from a regulatory or
665 ratemaking perspective: *Provided*, That subject to the
666 limitations set forth in subsection (f) of this section,
667 nothing in this subdivision shall: (i) Affect the authority of
668 the Commission to apply the adjustment mechanism as
669 provided in subsection (e) of this section; (ii) prevent or
670 preclude the Commission from investigating the compli-
671 ance of a qualifying utility with the terms and conditions
672 of a financing order and requiring compliance therewith;
673 or (iii) prevent or preclude the Commission from imposing
674 regulatory sanctions against a qualifying utility for failure
675 to comply with the terms and conditions of a financing
676 order or the requirements of this section.

677 (2) The Commission may not order or otherwise require,
678 directly or indirectly, any public utility to use environmen-
679 tal control bonds to finance any project, addition, plant,
680 facility, extension, capital improvement, environmental
681 control equipment or any other expenditure.

682 (3) The Commission may not refuse to allow the recovery
683 of any costs associated with the performance of environ-
684 mental control activities by a public utility solely because
685 the public utility has elected or may elect to finance the
686 performance of those activities through a financing
687 mechanism other than the issuance of environmental
688 control bonds.

689 (j) *Duties of qualifying utility.* —

690 (1) A qualifying utility for which a financing order has
691 been issued shall cause the proceeds of any environmental
692 control bonds issued pursuant to a financing order to be
693 placed in a separate account. A qualifying utility may use
694 the proceeds of the issuance of environmental control

695 bonds for paying environmental control costs and financ-
696 ing costs and for no other purpose.

697 (2) A qualifying utility for which a financing order has
698 been issued shall annually provide to its customers a
699 concise explanation of the environmental control charges
700 approved in a financing order, as modified by subsequent
701 issuances of environmental control bonds authorized
702 under a financing order, if any, and by application of the
703 adjustment mechanism as provided in subsection (e) of this
704 section. These explanations may be made by bill inserts,
705 website information or other appropriate means.

706 (3) Environmental control revenues shall be applied
707 solely to the repayment of environmental control bonds
708 and other financing costs.

709 (4) The failure of a qualifying utility to apply the pro-
710 ceeds of an issuance of environmental control bonds in a
711 reasonable, prudent and appropriate manner or otherwise
712 comply with any provision of this section shall not invali-
713 date, impair or affect any financing order, environmental
714 control property, environmental control charge or environ-
715 mental control bonds: *Provided*, That subject to the
716 limitations set forth in subsection (f) of this section,
717 nothing in this subdivision shall prevent or preclude the
718 Commission from imposing regulatory sanctions against a
719 qualifying utility for failure to comply with the terms and
720 conditions of a financing order or the requirements of this
721 section.

722 (k) *Environmental control property.* —

723 (1) Environmental control property that is specified in a
724 financing order shall constitute an existing, present
725 property right, notwithstanding the fact that the imposi-
726 tion and collection of environmental control charges
727 depend on the qualifying utility continuing to provide
728 electric energy or continuing to perform its servicing
729 functions relating to the collection of environmental

730 control charges or on the level of future energy consump-
731 tion. Environmental control property shall exist whether
732 or not the environmental control revenues have been
733 billed, have accrued or have been collected and notwith-
734 standing the fact that the value or amount of the environ-
735 mental control property is dependent on the future provi-
736 sion of service to customers by the qualifying utility.

737 (2) All environmental control property specified in a
738 financing order shall continue to exist until the environ-
739 mental control bonds issued pursuant to a financing order
740 are paid in full and all financing costs relating to the
741 bonds have been paid in full.

742 (3) All or any portion of environmental control property
743 may be transferred, sold, conveyed or assigned to any
744 person or entity not affiliated with the qualifying utility or
745 to any affiliate of the qualifying utility created for the
746 limited purposes of acquiring, owning or administering
747 environmental control property or issuing environmental
748 control bonds under the financing order or a combination
749 of these purposes. All or any portion of environmental
750 control property may be pledged to secure the payment of
751 environmental control bonds, amounts payable to financ-
752 ing parties and bondholders, amounts payable under any
753 ancillary agreement and other financing costs. Any
754 transfer, sale, conveyance, assignment, grant of a security
755 interest in or pledge of environmental control property by
756 a qualifying utility or affiliate of a qualifying utility to an
757 affiliate of the qualifying utility, to the extent previously
758 authorized in a financing order, does not require the prior
759 consent and approval of the Commission under section
760 twelve of this article.

761 (4) If a qualifying utility defaults on any required
762 payment of environmental control revenues, a court, upon
763 application by an interested party and without limiting
764 any other remedies available to the applying party, shall
765 order the sequestration and payment of the environmental
766 control revenues for the benefit of bondholders, any

767 assignee and any financing parties. The order shall remain
768 in full force and effect notwithstanding any bankruptcy,
769 reorganization or other insolvency proceedings with
770 respect to the qualifying utility or any affiliate thereof.

771 (5) Environmental control property and environmental
772 control revenues, and the interests of an assignee, bond-
773 holder or financing party in environmental control prop-
774 erty and environmental control revenues, are not subject
775 to setoff, counterclaim, surcharge or defense by the
776 qualifying utility or any other person or in connection with
777 the bankruptcy, reorganization or other insolvency
778 proceeding of the qualifying utility, any affiliate thereof or
779 any other entity.

780 (6) Any successor to a qualifying utility shall be bound
781 by the requirements of this section and shall perform and
782 satisfy all obligations of, and have the same rights under
783 a financing order as, the qualifying utility under the
784 financing order in the same manner and to the same extent
785 as the qualifying utility, including, without limitation, the
786 obligation to collect and pay to the person entitled to
787 receive them environmental control revenues.

788 (l) *Security interests.* — Except as otherwise provided in
789 this subsection, the creation, perfection and enforcement
790 of any security interest in environmental control property
791 to secure the repayment of the principal of and interest on
792 environmental control bonds, amounts payable under any
793 ancillary agreement and other financing costs are gov-
794 erned by this subsection and not the provisions of chapter
795 forty-six of this code. All of the following shall apply:

796 (1) The description or indication of environmental
797 control property in a transfer or security agreement and a
798 financing statement is sufficient only if the description or
799 indication refers to this section and the financing order
800 creating the environmental control property. This subdivi-
801 sion applies to all purported transfers of, and all purported
802 grants of liens on or security interests in, environmental

803 control property, regardless of whether the related transfer
804 or security agreement was entered into, or the related
805 financing statement was filed, before or after the effective
806 date of this section.

807 (2) A security interest in environmental control property
808 is created, valid, and binding at the later of the time: (i)
809 The financing order is issued; (ii) a security agreement is
810 executed and delivered; and (iii) value is received for the
811 environmental control bonds. The security interest
812 attaches without any physical delivery of collateral or
813 other act and the lien of the security interest shall be valid,
814 binding and perfected against all parties having claims of
815 any kind in tort, contract or otherwise against the person
816 granting the security interest, regardless of whether such
817 parties have notice of the lien, upon the filing of a financ-
818 ing statement with the office of the Secretary of State.
819 The office of the Secretary of State shall maintain any
820 such financing statement in the same manner and in the
821 same record-keeping system it maintains for financing
822 statements filed pursuant to article nine, chapter forty-six
823 of this code. The filing of any financing statement under
824 this subdivision shall be governed by the provisions
825 regarding the filing of financing statements in said article.

826 (3) A security interest in environmental control property
827 is a continuously perfected security interest and has
828 priority over any other lien, created by operation of law or
829 otherwise, which may subsequently attach to the environ-
830 mental control property unless the holder of any such lien
831 has agreed in writing otherwise.

832 (4) The priority of a security interest in environmental
833 control property is not affected by the commingling of
834 environmental control revenues with other amounts. Any
835 pledgee or secured party shall have a perfected security
836 interest in the amount of all environmental control
837 revenues that are deposited in any cash or deposit account
838 of the qualifying utility in which environmental control
839 revenues have been commingled with other funds and any

840 other security interest that may apply to those funds shall
841 be terminated when they are transferred to a segregated
842 account for the assignee or a financing party.

843 (5) No subsequent order of the Commission amending a
844 financing order pursuant to subdivision (2), subsection (f)
845 of this section, and no application of the adjustment
846 mechanism as provided in subsection (e) of this section,
847 will affect the validity, perfection or priority of a security
848 interest in or transfer of environmental control property.

849 (m) *Sales of environmental control property.* —

850 (1) Any sale, assignment or transfer of environmental
851 control property shall be an absolute transfer and true sale
852 of, and not a pledge of or secured transaction relating to,
853 the seller's right, title and interest in, to and under the
854 environmental control property if the documents govern-
855 ing the transaction expressly state that the transaction is
856 a sale or other absolute transfer. A transfer of an interest
857 in environmental control property may be created only
858 when all of the following have occurred: (i) The financing
859 order creating the environmental control property has
860 become effective; (ii) the documents evidencing the
861 transfer of environmental control property have been
862 executed and delivered to the assignee; and (iii) value is
863 received. Upon the filing of a financing statement with the
864 office of the Secretary of State, a transfer of an interest in
865 environmental control property shall be perfected against
866 all third persons, including any judicial lien or other lien
867 creditors or any claims of the seller or creditors of the
868 seller, other than creditors holding a prior security inter-
869 est, ownership interest or assignment in the environmental
870 control property previously perfected in accordance with
871 this subdivision or subdivision (2), subsection (1) of this
872 section. The office of the Secretary of State shall maintain
873 any such financing statement in the same manner and in
874 the same record-keeping system it maintains for financing
875 statements filed pursuant to article nine, chapter forty-six
876 of this code.

877 (2) The characterization of the sale, assignment or
878 transfer as an absolute transfer and true sale and the
879 corresponding characterization of the property interest of
880 the purchaser, shall not be affected or impaired by, among
881 other things, the occurrence of any of the following
882 factors:

883 (A) Commingling of environmental control revenues with
884 other amounts;

885 (B) The retention by the seller of: (i) A partial or residual
886 interest, including an equity interest, in the environmental
887 control property, whether direct or indirect, or whether
888 subordinate or otherwise; or (ii) the right to recover costs
889 associated with taxes, franchise fees or license fees im-
890 posed on the collection of environmental control revenues;

891 (C) Any recourse that the purchaser may have against
892 the seller;

893 (D) Any indemnification rights, obligations or repur-
894 chase rights made or provided by the seller;

895 (E) The obligation of the seller to collect environmental
896 control revenues on behalf of an assignee;

897 (F) The treatment of the sale, assignment or transfer for
898 tax, financial reporting or other purposes;

899 (G) Any subsequent order of the Commission amending
900 a financing order pursuant to subdivision (2), subsection
901 (f) of this section; or

902 (H) Any application of the adjustment mechanism as
903 provided in subsection (e) of this section.

904 (n) *Exemption from municipal taxation.* — The imposi-
905 tion, collection and receipt of environmental control
906 revenues are not subject to taxation by any municipality
907 of the state under the authority granted to municipalities
908 in sections five and five-a, article thirteen, chapter eight of
909 this code.

910 (o) *Environmental control bonds not public debt.* —
911 Environmental control bonds issued pursuant to a financ-
912 ing order and the provisions of this section shall not
913 constitute a debt or a pledge of the faith and credit or
914 taxing power of this state or of any county, municipality
915 or any other political subdivision of this state. Bondhold-
916 ers shall have no right to have taxes levied by the Legisla-
917 ture or the taxing authority of any county, municipality or
918 any other political subdivision of this state for the pay-
919 ment of the principal thereof or interest thereon. The
920 issuance of environmental control bonds does not, directly
921 or indirectly or contingently, obligate the state or a
922 political subdivision of the state to levy any tax or make
923 any appropriation for payment of the principal of or
924 interest on the bonds.

925 (p) *Environmental control bonds as legal investments.* —
926 Any of the following may legally invest any sinking funds,
927 moneys or other funds belonging to them or under their
928 control in environmental control bonds:

929 (1) The state, the West Virginia Investment Management
930 Board, the West Virginia Housing Development Fund,
931 municipal corporations, political subdivisions, public
932 bodies and public officers except for members of the
933 Public Service Commission.

934 (2) Banks and bankers, savings and loan associations,
935 credit unions, trust companies, building and loan associa-
936 tions, savings banks and institutions, deposit guarantee
937 associations, investment companies, insurance companies
938 and associations and other persons carrying on a banking
939 or insurance business, including domestic for life and
940 domestic not for life insurance companies; and

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

943 (q) *State pledge.* —

944 (1) The state pledges to and agrees with the bondholders,
945 any assignee and any financing parties that the state will
946 not take or permit any action that impairs the value of
947 environmental control property or, except as allowed
948 under subsection (e) of this section, reduce, alter or impair
949 environmental control charges that are imposed, collected
950 and remitted for the benefit of the bondholders, any
951 assignee, and any financing parties, until any principal,
952 interest and redemption premium in respect of environ-
953 mental control bonds, all financing costs and all amounts
954 to be paid to an assignee or financing party under an
955 ancillary agreement are paid or performed in full.

956 (2) Any person who issues environmental control bonds
957 is permitted to include the pledge specified in subdivision
958 (1) of this subsection in the environmental control bonds,
959 ancillary agreements and documentation related to the
960 issuance and marketing of the environmental control
961 bonds.

962 (r) *Choice of law.* — The law governing the validity,
963 enforceability, attachment, perfection, priority and
964 exercise of remedies with respect to the transfer of an
965 interest or right or creation of a security interest in any
966 environmental control property, environmental control
967 charge or financing order shall be the laws of the State of
968 West Virginia as set forth in this section and article nine,
969 chapter forty-six of this code.

970 (s) *Conflicts.* — In the event of conflict between this
971 section and any other law regarding the attachment,
972 assignment or perfection, or the effect of perfection, or
973 priority of any security interest in or transfer of environ-
974 mental control property, this section shall govern to the
975 extent of the conflict.

976 (t) *Effect of invalidity on actions.* — Effective on the
977 date that environmental control bonds are first issued
978 under this section, if any provision of this section is held to
979 be invalid or is invalidated, superseded, replaced, repealed

980 or expires for any reason, that occurrence shall not affect
981 any action allowed under this section that is taken by the
982 Commission, a qualifying utility, an assignee, a collection
983 agent, a financing party, a bondholder, or a party to an
984 ancillary agreement and any such action shall remain in
985 full force and effect.

986 (u) *Effectiveness of section.* — No qualifying utility may
987 make initial application for a financing order after the
988 date which is five years after the effective date of this
989 section. This subsection shall not be construed to preclude
990 any qualifying utility for which the Commission has
991 initially issued a financing order from applying to the
992 Commission: (i) For a subsequent order amending the
993 financing order pursuant to subdivision (2), subsection (f)
994 of this section; or (ii) for approval of the issuance of
995 environmental control bonds to refund all or a portion of
996 an outstanding series of environmental control bonds.

997 (v) *Severability.* — If any subsection, subdivision,
998 paragraph or subparagraph of this section or the applica-
999 tion thereof to any person, circumstance or transaction is
1000 held by a court of competent jurisdiction to be unconstitu-
1001 tional or invalid, the unconstitutionality or invalidity shall
1002 not affect the constitutionality or validity of any other
1003 subsection, subdivision, paragraph or subparagraph of this
1004 section or its application or validity to any person, circum-
1005 stance or transaction, including, without limitation, the
1006 irrevocability of a financing order issued pursuant to this
1007 section, the validity of the issuance of environmental
1008 control bonds, the imposition of environmental control
1009 charges, the transfer or assignment of environmental
1010 control property or the collection and recovery of environ-
1011 mental control revenues. To these ends, the Legislature
1012 hereby declares that the provisions of this section are
1013 intended to be severable and that the Legislature would
1014 have enacted this section even if any subsection, subdivi-
1015 sion, paragraph or subparagraph of this section held to be

1016 unconstitutional or invalid had not been included in this
1017 section.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND
CHATTEL PAPER.**

SUBPART 2. APPLICABILITY OF ARTICLE.

§46-9-109. Scope.

1 (a) *General scope of article.* — Except as otherwise
2 provided in subsections (c) and (d) of this section, this
3 article applies to:

4 (1) A transaction, regardless of its form, that creates a
5 security interest in personal property or fixtures by
6 contract;

7 (2) An agricultural lien;

8 (3) A sale of accounts, chattel paper, payment intangi-
9 bles or promissory notes;

10 (4) A consignment;

11 (5) A security interest arising under section 2-401, 2-505,
12 2-711(3) or 2A-508(5) as provided in section 9-110; and

13 (6) A security interest arising under section 4-210 or
14 5-118.

15 (b) *Security interest in secured obligation.* — The
16 application of this article to a security interest in a secured
17 obligation is not affected by the fact that the obligation is
18 itself secured by a transaction or interest to which this
19 article does not apply.

20 (c) *Extent to which article does not apply.* — This article
21 does not apply to the extent that:

22 (1) A statute, regulation or treaty of the United States
23 preempts this article; or

24 (2) The rights of a transferee beneficiary or nominated
25 person under a letter of credit are independent and
26 superior under section 5-114.

27 (d) *Inapplicability of article.* — This article does not
28 apply to:

29 (1) A landlord's lien, other than an agricultural lien;

30 (2) A lien, other than an agricultural lien, given by
31 statute or other rule of law for services or materials, but
32 section 9-333 applies with respect to priority of the lien;

33 (3) An assignment of a claim for wages, salary or other
34 compensation of an employee;

35 (4) A sale of accounts, chattel paper, payment intangi-
36 ble or promissory notes as part of a sale of the business
37 out of which they arose;

38 (5) An assignment of accounts, chattel paper, payment
39 intangibles or promissory notes which is for the purpose of
40 collection only;

41 (6) An assignment of a right to payment under a contract
42 to an assignee that is also obligated to perform under the
43 contract;

44 (7) An assignment of a single account, payment intangi-
45 ble or promissory note to an assignee in full or partial
46 satisfaction of a preexisting indebtedness;

47 (8) A transfer of an interest in or an assignment of a
48 claim under a policy of insurance, other than an assign-
49 ment by or to a health care provider of a health care-
50 insurance receivable and any subsequent assignment of the
51 right to payment, but sections 9-315 and 9-322 apply with
52 respect to proceeds and priorities in proceeds;

53 (9) An assignment of a right represented by a judgment,
54 other than a judgment taken on a right to payment that
55 was collateral;

56 (10) A right of recoupment or set-off, but:

57 (A) Section 9-340 applies with respect to the effective-
58 ness of rights of recoupment or set-off against deposit
59 accounts; and

60 (B) Section 9-404 applies with respect to defenses or
61 claims of an account debtor;

62 (11) The creation or transfer of an interest in or lien on
63 real property, including a lease or rents thereunder, except
64 to the extent that provision is made for:

65 (A) Liens on real property in sections 9-203 and 9-308;

66 (B) Fixtures in section 9-334;

67 (C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516,
68 and 9-519; and

69 (D) Security agreements covering personal and real
70 property in section 9-604;

71 (12) An assignment of a claim arising in tort, other than
72 a commercial tort claim, but sections 9-315 and 9-322
73 apply with respect to proceeds and priorities in proceeds;

74 (13) An assignment of a deposit account in a consumer
75 transaction, but sections 9-315 and 9-322 apply with
76 respect to proceeds and priorities in proceeds;

77 (14) A transfer by a government or a governmental unit;
78 or

79 (15) A transfer of security interest in any interest or
80 right, or any portion or any interest or right in any envi-
81 ronmental control property, environmental control charge
82 or financing order as each term is defined in section
83 four-e, article two, chapter twenty-four of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Stanley White
.....
Chairman Senate Committee

R. Luke Brown
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. White
.....
Clerk of the Senate

Gregory D. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert S. S.
.....
Speaker House of Delegates

The within *is approved* this the *4th*
May
Day of, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 2:10 pm