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SENATE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

William P. Soules

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE RATEPAYER RELIEF  
ACT; PROVIDING FOR THE USE OF SECURITIZATION FINANCING UPON THE  
ABANDONMENT OF GENERATION FACILITIES OPERATED OR LEASED BY AN  
ELECTRICAL UTILITY; AUTHORIZING A CHARGE TO PAY INTEREST AND  
PRINCIPAL ON SECURITIZATION BONDS; PROVIDING A PLEDGE THAT THE  
STATE WILL NOT IMPAIR CHARGES OR THE RIGHTS OF BONDHOLDERS;  
PROVIDING DUTIES AND POWERS OF THE PUBLIC REGULATION COMMISSION  
REGARDING SECURITIZATION FINANCING; REPEALING THE ENERGY  
TRANSITION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Ratepayer Relief Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Ratepayer Relief Act:

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1           A. "ancillary agreement" means a bond, insurance  
2 policy, letter of credit, reserve account, surety bond,  
3 interest rate lock or swap arrangement, hedging arrangement,  
4 liquidity or credit support arrangement or other financial  
5 arrangement entered into in connection with securitization  
6 bonds that is designed to promote the credit quality and  
7 marketability of the securitization bonds or to mitigate the  
8 risk of an increase in interest rates;

9           B. "assignee" means a person who receives an  
10 interest in property when the property is sold, assigned,  
11 transferred or conveyed, other than as security, and any  
12 successor to the person;

13           C. "bondholder" means the holder or owner of  
14 securitization bonds;

15           D. "charge" means a non-bypassable charge, separate  
16 and apart from a qualifying utility's base rates, that is paid  
17 by all customers of the qualifying utility for the recovery of  
18 securitization costs;

19           E. "commission" means the public regulation  
20 commission;

21           F. "customer" means a person that takes electric  
22 distribution or electric transmission service from a qualifying  
23 utility, or its successor, for consumption of electricity in  
24 the state;

25           G. "financing costs" means the reasonable and

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1 prudent costs incurred to issue and administer securitization  
2 bonds as approved by the commission in a financing order;

3 H. "financing order" means an order of the  
4 commission that authorizes the issuance of securitization  
5 bonds, authorizes the charge and creates property;

6 I. "financing party" means a holder of  
7 securitization bonds and a trustee, a collateral agent, a party  
8 under an ancillary agreement or any other person acting for the  
9 benefit of holders of securitization bonds;

10 J. "non-bypassable" means that the payment of  
11 charges by any existing or future customer located within a  
12 qualifying utility's certificated service territory may not be  
13 avoided;

14 K. "property" means the rights and interests of an  
15 assignee under a financing order:

16 (1) for full payment and recovery of all  
17 securitization costs identified in the financing order,  
18 including all revenue or other proceeds arising from those  
19 rights and interests; and

20 (2) to impose, bill, collect and receive  
21 revenue;

22 L. "qualifying generating facility" means an  
23 electric generating facility composed of one or more generating  
24 units that:

25 (1) has been granted a certificate of public

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1 convenience and for which abandonment authority is granted by  
2 the commission after December 31, 2019; and

3 (2) is owned or leased, in whole or in part,  
4 by a qualifying utility;

5 M. "qualifying utility" means a public utility, as  
6 defined in Section 62-3-3 NMSA 1978, that owns, operates,  
7 leases or controls any plant, property or facility for the  
8 generation, transmission or distribution of electricity to or  
9 for the public in the state;

10 N. "securitization bonds" means corporate  
11 securities, including senior secured bonds, debentures, notes,  
12 certificates of participation, certificates of beneficial  
13 interest, certificates of ownership or other evidences of  
14 indebtedness or ownership, that are issued by a qualifying  
15 utility or an assignee under a financing order, the proceeds of  
16 which are used to recover, finance or refinance commission-  
17 approved securitization costs and financing costs;

18 O. "securitization costs":

19 (1) include:

20 (a) the undepreciated investment in a  
21 qualifying generating facility that is being abandoned, as of  
22 the date of abandonment, deemed by the commission to be the  
23 financial obligation of the utility's ratepayers;

24 (b) other costs associated with the  
25 abandonment of a qualifying generating facility that are deemed

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1 reasonable and prudent by the commission;

2 (c) reasonable and prudent preliminary  
3 and continuing costs associated with and required for the  
4 issuance of a financing order and subsequent financing; and

5 (d) financing costs; and

6 (2) do not include any monetary penalty, fine  
7 or forfeiture assessed against a qualifying utility by a  
8 government agency or court under a federal or state  
9 environmental statute, rule or regulation;

10 P. "securitization revenue" means all revenue  
11 collected by a qualifying utility through a charge;

12 Q. "stranded asset" means the portion of the  
13 undepreciated investment in a qualifying generating facility  
14 that is being abandoned, deemed by the commission to be the  
15 financial obligation of the utility's ratepayers who will not  
16 be provided electricity for that obligation; and

17 R. "successor" means a legal entity that succeeds  
18 by operation of law to the rights and obligations of another  
19 legal entity under a bankruptcy, reorganization, restructuring,  
20 other insolvency proceeding, merger, acquisition, consolidation  
21 or sale or transfer of assets.

22 SECTION 3. [NEW MATERIAL] ABANDONMENT.--

23 A. A qualifying utility may apply to the commission  
24 to abandon a generating facility in accordance with the  
25 provisions of Section 62-9-5 NMSA 1978. In its application,

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1 the utility may also apply for a financing order under the  
2 Ratepayer Relief Act to recover securitization costs.

3 B. Regardless of whether the utility applies for a  
4 financing order upon application for abandonment, the  
5 commission, on its own motion, may require the use of  
6 securitization bonds and thereby issue a financing order.

7 C. The commission may issue a financing order if it  
8 determines that the:

- 9 (1) abandonment should be granted;  
10 (2) abandonment creates a stranded asset; and  
11 (3) use of securitization bonds results in  
12 lower costs for ratepayers while allowing the qualifying  
13 utility to recover approved securitization costs.

14 D. If an application for approval to abandon a  
15 qualifying generating facility is pending before the commission  
16 on the effective date of the Ratepayer Relief Act, the  
17 qualifying utility may file a separate application for a  
18 financing order and the commission shall consolidate the  
19 application for a financing order with the pending application  
20 for abandonment. The commission may also, on its own motion,  
21 consolidate the requirement for a financing order with the  
22 pending application for abandonment. If consolidation as  
23 described in this subsection occurs, the time periods  
24 prescribed by the Ratepayer Relief Act shall apply to the  
25 consolidated case as of the date of the consolidation.

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1           SECTION 4.   [NEW MATERIAL] FINANCING ORDER--APPLICATION--

2 CONTENTS.--

3           A. A qualifying utility may apply to the commission  
4 for a financing order. In its application, the qualifying  
5 utility shall seek commission approval to issue securitization  
6 bonds in one or more series; to impose, charge and collect  
7 charges; and to create property related to the abandonment of a  
8 qualifying generating facility that was previously approved by  
9 the commission. The commission shall take final action to  
10 approve, deny or modify an application for a financing order  
11 within one hundred twenty days from the date the application  
12 was submitted or within one hundred twenty days from the date  
13 of final approval of the related abandonment application,  
14 whichever is later.

15           B. In addition to any other information required by  
16 the commission, an application for a financing order shall  
17 include the following:

18                   (1) an estimated schedule for the abandonment  
19 of any facility for which the costs are to be financed by the  
20 securitization bond financing;

21                   (2) an estimate of the net present value of  
22 the qualifying utility's customer savings expected to result if  
23 the financing order is issued as determined by a net present  
24 value comparison between the costs to customers that are  
25 expected to result from the financing with securitization bonds

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1 and the costs that would result from the application of  
2 traditional utility rate financing mechanisms for the same  
3 purposes;

4 (3) one or more alternative financing  
5 scenarios in addition to the preferred scenario contained in  
6 the application;

7 (4) a description of the non-bypassable  
8 charges required to be paid by customers within the qualifying  
9 utility's certificated service territory for recovery of  
10 securitization costs; and

11 (5) a proposed methodology for allocating the  
12 revenue requirement for the charges among customer classes.

13 SECTION 5. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--  
14 TERMS OF BONDS--NOTICE AND HEARING--STANDARD OF REVIEW--  
15 MANDATORY FINDINGS--RATE REDUCTION--IRREVOCABILITY--  
16 REFINANCING--NONIMPAIRMENT.--

17 A. After a hearing on an application for a  
18 financing order and upon notice, if the hearing and notice are  
19 required by the commission, the commission may issue a  
20 financing order if the commission finds that:

21 (1) the securitization costs described in the  
22 application are reasonable;

23 (2) the proposed issuance of securitization  
24 bonds and the imposition and collection of charges:

25 (a) are just and reasonable;

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1 (b) are consistent with the public  
2 interest; and

3 (c) constitute a reasonable and prudent  
4 mechanism for the financing of the securitization costs  
5 described in the application; and

6 (3) the proposed structuring, marketing and  
7 pricing of the securitization bonds are reasonably expected to  
8 lower net present value costs to customers and mitigate rate  
9 impacts to customers relative to traditional utility rate  
10 financing mechanisms.

11 B. The financing order shall:

12 (1) determine the maximum amount of  
13 securitization costs that may be financed from proceeds of  
14 securitization bonds authorized by the financing order;

15 (2) describe the proposed customer billing  
16 mechanism for charges and include a finding that the mechanism  
17 is just and reasonable;

18 (3) describe the financing costs that may be  
19 recovered through charges and the period over which the costs  
20 may be recovered, which period shall end no earlier than the  
21 date of final legal maturity of the securitization bonds;

22 (4) describe the property that is created and  
23 that may be used to pay, and secure the payment of, the  
24 securitization bonds and financing costs authorized in the  
25 financing order;

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1 (5) authorize the qualifying utility to  
2 finance securitization costs through the issuance of one or  
3 more series of securitization bonds; provided that a qualifying  
4 utility shall not be required to secure a separate financing  
5 order for each issuance of securitization bonds or for each  
6 scheduled phase of the previously approved abandonment of  
7 qualifying generating facility approved in the financing order;

8 (6) include a mechanism for making expeditious  
9 periodic adjustments in the charges that customers are required  
10 to pay under the financing order and for making any adjustments  
11 that are necessary to correct for any over- or under-collection  
12 of the charges in past periods, or to otherwise guarantee the  
13 timely payment of securitization bonds and financing costs and  
14 other required amounts and charges payable in connection with  
15 securitization bonds;

16 (7) specify the degree of flexibility afforded  
17 to the qualifying utility in establishing the terms and  
18 conditions of the securitization bonds, including repayment  
19 schedules, expected interest rates and other financing costs;  
20 provided that the scheduled final maturity of the  
21 securitization bonds shall be no longer than thirty years from  
22 the first issue date of the securitization bonds;

23 (8) specify the timing of actions required by  
24 the order so that:

25 (a) the securitization bonds are issued

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1 as soon as feasible following the issuance of the financing  
2 order, independent of the schedule of closing and  
3 decommissioning of any qualifying generating facility; and

4 (b) the qualifying utility files to  
5 adjust its rates as required in Subsection D of this section  
6 simultaneously with the inception of the charges and  
7 independently of the schedule of closing and decommissioning of  
8 any qualifying generating facility;

9 (9) specify a future ratemaking process to  
10 reconcile any difference between the projected costs included  
11 in the amount financed by securitization bonds and the final  
12 actual securitization costs approved by the financing order.  
13 The reconciliation may affect the qualifying utility's base  
14 rates or any rider but shall not affect the amount of the  
15 securitization bonds or the associated charges to be paid by  
16 customers;

17 (10) ensure that the structuring and pricing  
18 of the securitization bonds result in the lowest securitization  
19 bond charges consistent with market conditions and the terms of  
20 the financing order;

21 (11) specify the purposes related to providing  
22 utility service to customers for which the proceeds from the  
23 issuance of securitization bonds may be used, including any  
24 specific directions for the use of the proceeds; and

25 (12) include any additional findings or

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1 conclusions deemed appropriate by the commission.

2 C. A financing order shall allow, and may require,  
3 the creation of a qualifying utility's property to be  
4 conditioned upon, and simultaneous with, the sale or other  
5 transfer of the property to an assignee and the pledge of the  
6 property to secure securitization bonds.

7 D. A financing order shall require the qualifying  
8 utility, simultaneously with the imposition of charges, to  
9 reduce its rates through a reduction in base rates or by a  
10 negative rider on customer bills in an amount equal to the  
11 revenue requirement associated with the qualifying utility's  
12 assets being financed by securitization bonds.

13 E. The commission shall ensure that securitization  
14 bonds receive the broadest possible distribution, and that the  
15 securitization bonds are offered to New Mexico residents and  
16 investment funds for the benefit of New Mexico residents.

17 F. A financing order shall remain in effect until  
18 the securitization bonds issued, as authorized by the financing  
19 order, have been paid in full and all financing costs relating  
20 to the securitization bonds have been paid in full. A  
21 financing order shall also remain in effect and unabated  
22 notwithstanding the bankruptcy, reorganization or insolvency of  
23 the qualifying utility to which the financing order applies, or  
24 of any affiliate, successor or assignee of the qualifying  
25 utility. A financing order shall be irrevocable, and the

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1 commission shall not reduce, impair, postpone or terminate  
2 charges approved in a financing order or impair property or the  
3 collection or recovery of securitization revenue.

4 G. Notwithstanding the provisions of Subsection A  
5 of this section, upon its own motion or at the request of a  
6 qualifying utility or any other person, the commission may  
7 commence a proceeding and issue a subsequent financing order  
8 that provides for refinancing, retiring or refunding  
9 securitization bonds issued under the original financing order  
10 if:

11 (1) the commission determines that the  
12 subsequent financing order meets the same criteria as specified  
13 in the original financing order; and

14 (2) the modification provided for in the  
15 subsequent financing order does not impair in any way the  
16 covenants and terms of the securitization bonds to be  
17 refinanced, retired or refunded.

18 SECTION 6. [NEW MATERIAL] POWERS AND DUTIES OF THE  
19 COMMISSION.--

20 A. Except as otherwise provided in Subsection B of  
21 this section, if the commission issues a financing order to a  
22 qualifying utility, the commission shall not, in exercising its  
23 powers and carrying out its duties:

24 (1) consider the securitization bonds issued  
25 under the financing order to be debt of the qualifying utility;

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1 (2) consider the charges paid under the  
2 financing order to be revenue of the qualifying utility;

3 (3) consider the securitization costs or  
4 financing costs specified in the financing order to be the  
5 regulated costs or to give rise to assets of the qualifying  
6 utility; or

7 (4) determine any prudent action taken by a  
8 qualifying utility that is consistent with the financing order  
9 to be unjust or unreasonable.

10 B. Nothing in Subsection A of this section shall:

11 (1) affect the authority of the commission to  
12 apply or modify any billing mechanism designed to recover  
13 charges;

14 (2) prevent or preclude the commission from  
15 investigating the compliance of a qualifying utility with the  
16 terms and conditions of a financing order and requiring  
17 compliance with the financing order; or

18 (3) prevent or preclude the commission from  
19 imposing regulatory sanctions against a qualifying utility for  
20 failure to comply with the terms and conditions of a financing  
21 order or the requirements of the Ratepayer Relief Act.

22 C. In addition to any other power and duties of the  
23 commission:

24 (1) the commission shall perform comprehensive  
25 due diligence in its evaluation of an application for a

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1 financing order and shall oversee the process used to  
2 structure, market and price securitization bonds;

3 (2) the commission may attach such conditions  
4 to the approval of a financing order as the commission deems  
5 appropriate to optimize the financial benefits or minimize the  
6 financial risks of the transaction to customers;

7 (3) the commission may specify details of the  
8 process used to structure, market and price securitization  
9 bonds, including the selection of the underwriter or  
10 underwriters;

11 (4) the commission shall review and determine  
12 the reasonableness of all proposed up-front and ongoing  
13 financing costs; and

14 (5) the commission shall ensure that the  
15 structuring, marketing and pricing of securitization bonds  
16 optimizes net present value customer savings, consistent with  
17 market conditions and the terms of the financing order.

18 D. Within one hundred twenty days after the  
19 issuance of securitization bonds, the applicant qualifying  
20 utility shall file with the commission information regarding  
21 the actual up-front and ongoing financing costs of the  
22 securitization bonds. The commission shall review the prudence  
23 of the qualifying utility's action to determine whether the  
24 financing costs resulted in the lowest overall costs that were  
25 reasonably consistent with both market conditions at the time

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1 of the sale of the securitization bonds and the terms of the  
2 financing order. If the commission determines that the  
3 utility's actions were not prudent, were not designed to result  
4 in the lowest overall costs that were reasonably consistent  
5 with both market conditions at the time of the sale of the  
6 securitization bonds and the terms of the financing order or  
7 were inconsistent with the financing order, the commission may  
8 apply any remedies that the commission determines are necessary  
9 to achieve the intent of this section and the intent of the  
10 terms of the financing order, except that the commission shall  
11 not apply any remedy that has the effect, directly or  
12 indirectly, of impairing the security for the securitization  
13 bonds.

14 E. In performing its responsibilities under the  
15 Ratepayer Relief Act, the commission may engage outside  
16 financial advisors and other consultants and counsel with  
17 substantial experience representing regulatory bodies in  
18 securitized investor-owned electric utility ratepayer-backed  
19 bond financing similar to securitization bonds. The expenses  
20 associated with such engagement shall be included as financing  
21 costs and included in charges, shall not be an obligation of  
22 the state and shall be assigned solely to the financing  
23 transaction.

24 F. If a qualifying utility's application for a  
25 financing order is denied or withdrawn, or if for any reason

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1 securitization bonds are not issued, the commission's costs of  
2 retaining expert consultants and counsel, as authorized in  
3 Subsection E of this section, shall be paid by the qualifying  
4 utility and shall be considered by the commission as a prudent  
5 deferred expense for recovery in the qualifying utility's next  
6 general rate case.

7 SECTION 7. [NEW MATERIAL] AGGRIEVED PARTIES--REHEARING--  
8 JUDICIAL REVIEW.--

9 A. A financing order is a final order of the  
10 commission. A party aggrieved by the issuance of a financing  
11 order may apply to the commission for a rehearing in accordance  
12 with Section 62-10-16 NMSA 1978; provided that the party shall  
13 apply no later than ten calendar days after issuance of the  
14 financing order. An application for rehearing shall be deemed  
15 denied if not acted upon by the commission within ten calendar  
16 days after the filing of the application.

17 B. Following a rehearing as provided for in  
18 Subsection A of this section, an aggrieved party may file a  
19 notice of appeal with the supreme court in accordance with  
20 Section 62-11-1 NMSA 1978.

21 SECTION 8. [NEW MATERIAL] PROPERTY.--

22 A. Property that is described in a financing order  
23 shall constitute an existing present property right or interest  
24 even though the imposition and collection of charges depend on  
25 whether the qualifying utility to which the financing order is

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1 issued, or its successor, is performing its servicing functions  
2 relating to the collection of the charges and on future  
3 electricity consumption. The property right or interest exists  
4 regardless of whether the revenues or proceeds arising from the  
5 property have been billed, have accrued or have been collected  
6 and notwithstanding the fact that the value or amount of the  
7 property right or interest is dependent on the future provision  
8 of service to customers by the qualifying utility or its  
9 successor or assignee.

10 B. Property described in a financing order shall  
11 exist until all securitization bonds issued under the financing  
12 order are paid in full and all financing costs and other  
13 authorized costs of the securitization bonds have been  
14 recovered in full.

15 C. All or any portion of property described in a  
16 financing order issued to a qualifying utility may be  
17 transferred, sold, conveyed or assigned to a successor or  
18 assignee that is wholly owned, directly or indirectly, by the  
19 qualifying utility and that is created for the limited purpose  
20 of acquiring, owning or administering property or issuing  
21 securitization bonds as authorized by the financing order. All  
22 or any portion of property may be pledged to secure  
23 securitization bonds issued under a financing order, amounts  
24 payable to financing parties and to counterparties under any  
25 ancillary agreements and other financing costs. Each transfer,

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1 sale, conveyance, assignment or pledge by a qualifying utility,  
2 or an affiliate of a qualifying utility, is a transaction in  
3 the ordinary course of business.

4 D. If a qualifying utility defaults on any required  
5 remittance of charges arising from property described in a  
6 financing order, a court, upon application by an interested  
7 party and without limiting any other remedies available to the  
8 applying party, shall order the sequestration and payment of  
9 the revenues arising from the property to the financing  
10 parties. Any such financing order remains in full force and  
11 effect notwithstanding any reorganization, bankruptcy or other  
12 insolvency proceedings with respect to the qualifying utility  
13 or its successors or assignees.

14 E. The interest of a transferee, purchaser,  
15 acquirer, assignee or pledgee in property specified in a  
16 financing order issued to a qualifying utility, and in the  
17 revenue and collections arising from that property, is not  
18 subject to setoff, counterclaim, surcharge or defense by the  
19 qualifying utility or any other person or in connection with  
20 the reorganization, bankruptcy or other insolvency of the  
21 qualifying utility or any other entity.

22 F. A successor to a qualifying utility, whether  
23 pursuant to a reorganization, bankruptcy or other insolvency  
24 proceeding or to a merger or acquisition, sale, other business  
25 combination or transfer by operation of law, as a result of

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1 electric utility restructuring or otherwise, shall perform and  
2 satisfy all obligations of, and have the same duties and rights  
3 under a financing order as, the qualifying utility to which the  
4 financing order applies, and shall perform the duties and  
5 exercise the rights in the same manner and to the same extent  
6 as the qualifying utility, including collecting and paying to  
7 any person entitled to receive them the revenues, collections,  
8 payments or proceeds of property described in the financing  
9 order.

10 SECTION 9. [NEW MATERIAL] SECURITIZATION BONDS--LEGAL  
11 INVESTMENTS.--

12 A. Banks, trust companies, savings and loan  
13 associations, insurance companies, executors, administrators,  
14 guardians, trustees and other fiduciaries may legally invest  
15 any money within their control in securitization bonds.

16 Political subdivisions may invest public funds in  
17 securitization bonds.

18 B. Securitization bonds issued under a financing  
19 order are not debt of, or a pledge of, the faith and credit or  
20 taxing power of the state, any agency of the state or any  
21 political subdivision of the state. Holders of securitization  
22 bonds have no right to have taxes levied by the state or by any  
23 political subdivision of the state for the payment of the  
24 principal or interest on securitization bonds. The issuance of  
25 securitization bonds shall not directly, indirectly or

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1 contingently obligate the state or a political subdivision of  
2 the state to levy any tax or make any appropriation for payment  
3 of principal or interest on the securitization bonds.

4 SECTION 10. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--

5 A. The state pledges that it shall not take or  
6 allow any action that impairs the value of property or, except  
7 as allowed pursuant to the Ratepayer Relief Act, reduce, alter  
8 or impair charges that are imposed, collected and remitted for  
9 the benefit of the bondholders until the entire principal of  
10 and interest on securitization bonds is paid in full.

11 B. A person who issues securitization bonds is  
12 permitted to include the pledge specified in Subsection A of  
13 this section in the securitization bonds, ancillary agreements  
14 and documentation related to the issuance and marketing of the  
15 securitization bonds.

16 SECTION 11. [NEW MATERIAL] FINANCING PARTIES NOT PUBLIC  
17 UTILITIES.--An assignee or financing party that is not  
18 regulated by the commission shall not become subject to  
19 commission regulation solely as a result of engaging in any  
20 transaction authorized by or described in the Ratepayer Relief  
21 Act.

22 SECTION 12. [NEW MATERIAL] CONFLICTS.--

23 A. If any provision of the Ratepayer Relief Act  
24 conflicts with any other law regarding the attachment,  
25 assignment, perfection, effect of perfection or priority of any

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1 security interest in or transfer of property, that act shall  
2 govern to the extent of the conflict.

3 B. Nothing in the Ratepayer Relief Act precludes a  
4 qualifying utility, to which the commission has initially  
5 issued a financing order, from applying to the commission for:

6 (1) a subsequent financing order amending an  
7 existing financing order; or

8 (2) an order approving the issuance of  
9 securitization bonds to refund all or a portion of an  
10 outstanding series of securitization bonds.

11 SECTION 13. [NEW MATERIAL] SECURITY INTERESTS--  
12 APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY  
13 INTEREST--ATTACHMENT ON FILING--PRIORITY OVER OTHER LIENS.--

14 A. Except as otherwise provided in this section,  
15 the creation, perfection and enforcement of a security interest  
16 in property to secure the repayment of the principal of and  
17 interest on securitization bonds, amounts payable pursuant to  
18 an ancillary agreement and other financing costs are governed  
19 by this section. This section shall be deemed to supersede the  
20 provisions of the Uniform Commercial Code and the Public  
21 Utility Act to the extent those provisions are inconsistent  
22 with this section.

23 B. The description or reference to property in a  
24 transfer or security agreement and a financing statement is  
25 sufficient only if the description or reference refers to the

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1 Ratepayer Relief Act and the financing order creating the  
2 property. This section applies to all purported transfers of,  
3 grants of liens on or security interests in property.

4 C. A security interest in property is created,  
5 valid and binding at the latest of when:

6 (1) the financing order is issued;

7 (2) a security agreement is executed and  
8 delivered; or

9 (3) value is received for the securitization  
10 bonds.

11 D. The security interest attaches without any  
12 physical delivery of collateral or other act, and the lien of  
13 the security interest shall be valid, binding and perfected  
14 against all parties having claims of any kind against the  
15 person granting the security interest, regardless of whether  
16 the parties have notice of the lien, on the filing of a  
17 financing statement with the secretary of state. The secretary  
18 of state shall maintain the financing statement in the same  
19 manner and in the same recordkeeping system maintained for  
20 financing statements filed pursuant to Chapter 55, Article 9  
21 NMSA 1978; provided that financing statements filed pursuant to  
22 this section shall be effective until a termination statement  
23 is filed.

24 E. A security interest in property is a  
25 continuously perfected security interest and has priority over

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1 any other lien that may subsequently attach to the property  
2 unless the holder of the security interest has agreed in  
3 writing otherwise.

4 F. The priority of a security interest in property  
5 is not affected by the commingling of securitization revenues  
6 with other money. Any pledgee or secured party shall have a  
7 perfected security interest in the amount of all securitization  
8 revenues that are deposited in any account of the qualifying  
9 utility and any other security interest that may apply to those  
10 funds shall be terminated when they are transferred to a  
11 segregated account for the assignee or a financing party.

12 G. No order of the commission and no application of  
13 the adjustment mechanism will affect the validity, perfection  
14 or priority of a security interest in or transfer of property.

15 SECTION 14. [NEW MATERIAL] SALE OF PROPERTY--PERFECTING  
16 INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE REQUIREMENTS.--

17 A. A sale, assignment or transfer of property is an  
18 absolute transfer and true sale of, and not a pledge of or  
19 secured transaction relating to, the seller's right, title and  
20 interest in, to and under the property if the documents  
21 governing the transaction expressly state that the transaction  
22 is a sale or other absolute transfer. A transfer of an  
23 interest in property may be created only when all of the  
24 following have occurred:

25 (1) the financing order creating and



1 describing the property has become effective;

2 (2) the documents evidencing the transfer of  
3 the property have been executed and delivered to the assignee;  
4 and

5 (3) value has been received.

6 B. Upon the filing of a financing statement with  
7 the secretary of state, a transfer of an interest in property  
8 is perfected against all third persons, including any judicial  
9 lien or other lien creditors or any claims of the seller or  
10 creditors of the seller, other than creditors holding a prior  
11 security interest, ownership interest or assignment in the  
12 property previously perfected.

13 C. The characterization of a sale, assignment or  
14 transfer as an absolute transfer and true sale and the  
15 corresponding characterization of the property interest of the  
16 assignee shall not be affected or impaired by the existence or  
17 occurrence of any of the following:

18 (1) commingling of securitization revenue with  
19 other money;

20 (2) the retention by the seller of a partial  
21 or residual interest, including an equity interest, in the  
22 property, whether direct or indirect, or whether subordinate or  
23 otherwise; or the right to recover costs associated with taxes,  
24 franchise fees or license fees imposed on the collection of  
25 securitization revenue;

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1 (3) any recourse that the purchaser may have  
2 against the seller;

3 (4) any indemnification rights, obligations or  
4 repurchase rights made or provided by the seller;

5 (5) an obligation of the seller to collect  
6 securitization revenues on behalf of an assignee;

7 (6) the treatment of the sale, assignment or  
8 transfer for tax, financial reporting or other purposes;

9 (7) any subsequent financing order amending a  
10 financing order; or

11 (8) any application of an adjustment mechanism  
12 as authorized by the financing order.

13 SECTION 15. [NEW MATERIAL] EXPENDITURE OF SECURITIZATION  
14 BOND PROCEEDS.--A qualifying utility shall use the proceeds  
15 from the issuance of securitization bonds only for purposes  
16 related to providing utility service to customers.

17 SECTION 16. [NEW MATERIAL] COMMISSION AUTHORIZED TO  
18 PROMULGATE RULES.--The commission shall have the authority to  
19 promulgate rules to implement the provisions of the Ratepayer  
20 Relief Act. Any rule or portion of a rule promulgated under  
21 the authority delegated in this section shall become effective  
22 only if it complies with and is subject to all of the  
23 provisions of the Ratepayer Relief Act.

24 SECTION 17. [NEW MATERIAL] CHOICE OF LAW.--The laws of  
25 New Mexico as set forth in the Ratepayer Relief Act shall

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1 govern the validity, enforceability, attachment, perfection,  
2 priority and exercise of remedies with respect to a security  
3 interest in property, a charge or a financing order.

4 SECTION 18. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT  
5 HELD INVALID.--

6 A. Effective on the date that securitization bonds  
7 are first issued under the Ratepayer Relief Act, if any  
8 provision of that act is invalidated, superseded, replaced,  
9 repealed or expires for any reason, that occurrence shall not  
10 affect the validity of any prior action allowed pursuant to the  
11 Ratepayer Relief Act that is taken by the commission, a  
12 qualifying utility, an assignee or any other person, and any  
13 such action shall remain in full force and effect with respect  
14 to all securitization bonds issued or authorized in a financing  
15 order.

16 B. Except as otherwise expressly provided in the  
17 Ratepayer Relief Act, the provisions of that act are severable.  
18 If any provision of the Ratepayer Relief Act or its application  
19 is held invalid, that invalidity shall not affect other  
20 provisions or applications that can be given effect without the  
21 invalid provision or application.

22 SECTION 19. REPEAL.--Sections 62-18-1 through 62-18-23  
23 NMSA 1978 (being Laws 2019, Chapter 65, Sections 1 through 23)  
24 are repealed.