

By: Representative Beckett

To: Public Utilities

HOUSE BILL NO. 1134  
(As Passed the House)

1 AN ACT TO CREATE THE MISSISSIPPI PUBLIC UTILITY RATE  
2 MITIGATION AND REDUCTION ACT; TO DEFINE CERTAIN TERMS AS USED IN  
3 THE ACT; TO PROVIDE A MECHANISM WHEREBY THE PUBLIC SERVICE  
4 COMMISSION SHALL ENTER A FINANCING ORDER AUTHORIZING THE ISSUANCE  
5 OF RATE REDUCTION BONDS, THE PROCEEDS OF WHICH ARE USED TO  
6 RECOVER, FINANCE OR REFINANCE GENERATION FACILITY COSTS AND  
7 FINANCING COSTS FOR CERTAIN NEWLY CONSTRUCTED BASE LOAD ELECTRIC  
8 GENERATING FACILITIES THAT USE COAL GASIFICATION OR CLEAN COAL  
9 TECHNOLOGY; TO PROVIDE FOR THE IMPLEMENTATION OR ADJUSTMENT OF A  
10 RATE REDUCTION BOND CHARGE; TO PROVIDE THAT THE RATE REDUCTION  
11 BONDS SHALL NOT CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND  
12 CREDIT OR TAXING POWER OF THE STATE OF MISSISSIPPI; AND FOR  
13 RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1.** This act shall be known and may be cited as the  
16 "Mississippi Public Utility Rate Mitigation and Reduction Act."

17 **SECTION 2.** The Legislature finds, determines and declares  
18 the following to be in the public interest and the policy of the  
19 State of Mississippi:

20 (1) It is the policy of the State of Mississippi to regulate  
21 the business of electric public utilities in such a manner that  
22 allows the recovery of prudently incurred costs.



23 (2) Consistent with the policy of the State of Mississippi  
24 to seek out and implement measures designed to provide the lowest  
25 reasonable electric public utility rates, public utility  
26 securitization financing arrangements provides lower customer  
27 rates for newly constructed base load electric generating  
28 facilities, as compared to traditional utility ratemaking options  
29 available to the Public Service Commission, and ensures the  
30 continued financial strength of Mississippi electric public  
31 utilities.

32 (3) Public utility securitization financing arrangements  
33 provides lower customer rates for newly constructed base load  
34 electric generating facilities and ensures the continued financial  
35 strength of Mississippi electric public utilities.

36 (4) The reduction of customer rate impacts for base load  
37 electric generating facilities through securitization is in the  
38 public interest.

39 **SECTION 3.** The following shall be codified as Section  
40 77-3-111, Mississippi Code of 1972 :

41 77-3-111. As used in Sections 77-3-111 through 77-3-127:

42 (a) "Assignee" means any person or legal entity to  
43 which an interest in security property is sold, assigned,  
44 transferred or conveyed (other than as security) and any successor  
45 to or subsequent assignee of such a person or legal entity.

46 (b) "Bondholder" means any holder or owner of a rate  
47 reduction bond.



48 (c) "Commission" means the Mississippi Public Service  
49 Commission.

50 (d) "Financing costs" means:

51 (i) Any payment made on or before issuance of rate  
52 reduction bonds and any amount required to fund any reserves or  
53 other accounts established pursuant to the terms of any financing  
54 order, indenture or other financing documents pertaining to rate  
55 reduction bonds;

56 (ii) Principal, interest and acquisition,  
57 defeasance or redemption premiums and all other amounts that are  
58 payable on rate reduction bonds;

59 (iii) Any amount required to be paid under any  
60 financing document;

61 (iv) Any amount required to fund or replenish any  
62 reserves or other accounts established pursuant to the terms of  
63 any financing order, indenture, financing document or other  
64 financing document pertaining to rate reduction bonds;

65 (v) Any taxes, fees, franchise, transfer, profits,  
66 license, excise, severance, customs, duties, assessments or other  
67 charges imposed by any governmental or taxing authority on the  
68 rate reduction bond charge revenue whether paid, payable or  
69 accrued;

70 (vi) Any other cost related to issuing,  
71 supporting, repaying, servicing, retiring, refinancing or  
72 refunding rate reduction bonds and all other required amounts



73 payable in connection therewith, including, but not limited to,  
74 servicing fees and expenses, accounting and auditing fees and  
75 expenses, legal fees and expenses, consulting fees and expenses,  
76 security registration fees, trustee fees and expenses, insurance  
77 premiums, administrative fees, placement and underwriting fees,  
78 rating agency fees, stock exchange listing fees, compliance fees,  
79 costs to create or amend financing documents, and costs to obtain  
80 waivers, consents or approvals;

81 (vii) Any costs and expenses associated with the  
82 creation, operation, management and winding up of any special  
83 purpose entity created by the electric public utility in  
84 connection with the issuance of rate reduction bonds; and

85 (viii) Any other costs deemed appropriate by the  
86 commission.

87 (e) "Financing document" or "financing documents" means  
88 any bond, insurance policy, letter of credit, reserve account,  
89 surety bond, swap agreement, hedging arrangement, liquidity or  
90 credit support arrangement, trust indenture, security agreement,  
91 pledge agreement, financing agreement, transfer or assignment  
92 document, or other document or financial arrangement entered into  
93 in connection with the issuance of rate reduction bonds.

94 (f) "Financing party" shall include any and all of the  
95 following:



96 (i) Any trustee, collateral agent, or other person  
97 acting on behalf or for the benefit of any bondholder under any  
98 financing document; or

99 (ii) Any party to a financing document, the rights  
100 and obligations of which relate to or depend upon the existence of  
101 security property, the enforcement and priority of a security  
102 interest in security property, the timely collection and payment  
103 of rate reduction bond charge revenues, or a combination of any of  
104 the foregoing.

105 (g) "Financing statement" shall have the same meaning  
106 as that provided in Article 9 of the Uniform Commercial Code, as  
107 same may be amended from time to time.

108 (h) "Issuing entity" means any person or legal entity,  
109 including, but not limited to, any corporation, limited liability  
110 company, partnership, limited partnership, public authority or  
111 trust, that issues rate reduction bonds pursuant to a financing  
112 order issued pursuant to this article.

113 (i) "Non-bypassable" means, with respect to rate  
114 reduction bond charges, that, so long as rate reduction bonds are  
115 outstanding and the related financing costs have not been  
116 recovered in full, such charges cannot be avoided by any retail  
117 customer of the electric public utility, including special  
118 contract customers, or any other person located within the  
119 electric public utility's certificated area that is directly or  
120 indirectly connected to electric facilities of the electric public



121 utility or its successors or assignees and receiving retail  
122 electric service pursuant to a commission approved rate, even if  
123 such retail customer or other person elects to purchase  
124 electricity from an alternative electricity supplier following a  
125 fundamental change in regulation of electric public utilities in  
126 this state.

127 (j) "Qualifying facility" shall mean a generating  
128 facility as the term is defined in Section 77-3-103:

129 (i) That uses coal gasification or clean coal  
130 technology with a coal fuel stock derived, in whole or in part,  
131 from the State of Mississippi; and

132 (ii) That is placed into commercial operation on  
133 or before December 31, 2020.

134 (k) "Qualifying facility cost" means any cost incurred  
135 or expected to be incurred by an electric public utility related  
136 to a qualifying facility, including, but not limited to,  
137 pre-construction costs, construction costs, capitalized cost  
138 relating to a regulatory asset, any amounts accrued as allowance  
139 for funds used during construction and construction work in  
140 progress.

141 (l) "Rate reduction bonds" or "bonds" means those  
142 debentures, notes, certificates of participation, certificates of  
143 beneficial interest, certificates of ownership or other evidences  
144 of indebtedness or ownership that are issued by an issuing entity  
145 under a financing order, the proceeds of which are used directly



146 or indirectly to recover, finance or refinance generation facility  
147 costs and financing costs, and that are secured by or payable from  
148 security property and which shall have a maturity date of no more  
149 than twenty (20) years after the date of issuance.

150 (m) "Rate reduction bond charge" means the  
151 nonbypassable tariff, rate, charge, formula or mechanism  
152 established in a financing order to fully recover financing costs,  
153 which is to be imposed on, and as a part of, all retail customer  
154 bills, including special contract customer bills, and collected by  
155 an electric public utility or its successors or assignees, or a  
156 collection agent, separate and apart from the base rates of the  
157 electric public utility.

158 (n) "Rate reduction bond charge revenue" means any and  
159 all revenues, receipts, collections, claims, rights to payments,  
160 payments, monies or other proceeds arising from the security  
161 property and collected by an electric public utility or other  
162 collection agent that is attributable to a rate reduction bond  
163 charge.

164 (o) "Secured party" means a financing party to which an  
165 electric public utility, issuing entity or their respective  
166 successors or assignees mortgages, negotiates, hypothecates,  
167 grants, pledges, or creates a security interest or lien on all or  
168 any portion of the rights in or to the security property.



169 (p) "Security property" means all rights and interests  
170 of an electric public utility established upon the issuance of a  
171 financing order under this article, including, but not limited to:

172 (i) The right to bill and to obtain periodic  
173 true-up adjustments to the rate reduction bond charge as provided  
174 in the financing order and this article;

175 (ii) The right to receive rate reduction bond  
176 charge revenue, as periodically adjusted, imposed, billed,  
177 collected and transferred; and

178 (iii) All revenues, receipts, collections, claims,  
179 rights to payments, payments, money or other proceeds arising from  
180 the rights and interests described in subparagraphs (i) and (ii)  
181 of this subsection, regardless of whether such collections,  
182 claims, rights to payment, payments, money or proceeds are  
183 imposed, billed, received, collected, or maintained together with  
184 or commingled with other revenues, receipts, collections, rights  
185 to payment, payments, money or other proceeds of an electric  
186 public utility or collection agent.

187 (q) "Uniform Commercial Code" shall have the same  
188 meaning as provided in Title 75 of the Mississippi Code of 1972.

189 **SECTION 4.** The following shall be codified as Section  
190 77-3-113, Mississippi Code of 1972:

191 77-3-113. (1) Subject to the agreement by the affected  
192 electric public utility, the commission shall cause to be  
193 financed, consistent with the procedures set forth in this





194 article, all qualifying facility costs found to be prudent by the  
195 commission that are incurred over the estimate of such costs  
196 presented by the electric public utility in the certificate  
197 proceeding for the qualifying facility, up to a maximum of One  
198 Billion Dollars (\$1,000,000,000.00). To accomplish the goals  
199 contained herein, the commission shall enter a financing order  
200 authorizing the issuance of rate reduction bonds by an electric  
201 public utility and to make such other findings and determinations  
202 as are provided for in this article. The commission shall utilize  
203 a competitive Requests for Proposals process to select any bond  
204 attorney or counsel and may not accept any proposal in excess of  
205 Five Hundred Thousand Dollars (\$500,000.00).

206 (2) Upon request by the commission in accordance with the  
207 requirements of subsection (1) of this section, the electric  
208 public utility owning a qualifying facility, in whole or in part,  
209 and whose rates are subject to the jurisdiction of the commission,  
210 shall submit a petition presenting the following information:

211 (a) Describe the qualifying facility and related  
212 qualifying facility costs in rate base or to be included in rate  
213 base;

214 (b) Indicate the total amount of qualifying facility  
215 cost required to be financed by the electric public utility using  
216 proceeds from rate reduction bonds;

217 (c) Estimate the financing costs related to the rate  
218 reduction bonds;



219 (d) Describe and estimate the rate reduction bond  
220 charge necessary to recover the financing costs as they become due  
221 and the proposed period for recovery of such costs;

222 (e) Estimate the projected cost savings to customers  
223 based upon then current market conditions resulting from financing  
224 the qualifying facility cost with rate reduction bonds as opposed  
225 to including the amount of such cost in rate base and recovering  
226 the revenue requirements associated with such cost over the  
227 depreciable life of the qualifying facility;

228 (f) File with the commission direct testimony  
229 supporting the application; and

230 (g) Timely provide the commission or the public  
231 utilities staff, as applicable, such additional information and  
232 documentation as either may reasonably request.

233 **SECTION 5.** The following shall be codified as Section  
234 77-3-115, Mississippi Code of 1972:

235 77-3-115. (1) Proceedings on a petition submitted pursuant  
236 to Section 77-3-113 shall be disposed of in accordance with the  
237 provisions of Section 77-3-47 and applicable commission procedural  
238 rules, except that the provisions of this Section 77-3-115, to the  
239 extent applicable, shall control.

240 (2) Within seven (7) days after the filing of a petition,  
241 the commission shall issue a scheduling order, which sets a  
242 hearing date and provides for a decision on the issuance of a



243 financing order not more than one hundred twenty (120) days after  
244 the date the petition is filed.

245 (3) When deemed necessary by the Executive Director of the  
246 Public Utilities Staff, the staff shall conduct an independent  
247 investigation as to the electric public utility's petition for a  
248 financing order subject to and within the time limitations  
249 prescribed in this article.

250 (4) Not more than one hundred twenty (120) days after the  
251 date the petition is filed, the commission shall issue a financing  
252 order or an order denying the petition.

253 (5) Any party to the commission proceeding may petition the  
254 commission for reconsideration of an order granting or denying a  
255 petition for the issuance of a financing order not more than seven  
256 (7) days after the date the order is issued. The commission shall  
257 rule on the petition for reconsideration not more than fourteen  
258 (14) days after the filing of such petition. A failure by the  
259 commission to act upon such petition for reconsideration within  
260 the specified time period shall be deemed a denial of the petition  
261 for reconsideration, and the order of the commission granting or  
262 denying a petition for the issuance of a financing order shall be  
263 deemed final.

264 (6) Any judicial review shall be as provided in Section  
265 77-3-72; provided, however, that any person, other than the  
266 electric public utility that is the subject of the financing  
267 order, seeking to appeal a financing order issued pursuant to this



268 article, or any prudence determination related thereto, shall not  
269 perfect its appeal unless and until a bond of sufficient amount to  
270 protect the customer savings projected to be realized through the  
271 issuance of rate reduction bonds as determined by the commission  
272 in the financing order pursuant to Section 77-3-117(b) is filed  
273 with the commission prior to expiration of time provided under  
274 Section 77-3-72 for the filing of a notice of appeal. If an  
275 appeal of an order granting or denying a petition for the issuance  
276 of a financing order is perfected pursuant to the procedure  
277 provided above, the electric public utility shall be authorized to  
278 establish a regulatory asset for the purpose of deferring a return  
279 on the qualifying facility cost intended to be financed by the rate  
280 reduction bond proceeds equal to the utility's weighted average  
281 cost of capital until such time as there is a final financing  
282 order for which the time for all appeals has expired. A financing  
283 order shall provide that any and all deferred return of the  
284 electric public utility during the pendency of an appeal may be  
285 financed as qualifying costs pursuant to the provisions of this  
286 article.

287 (7) The filing of a petition by an electric public utility,  
288 the issuance of a financing order, the issuance of rate reduction  
289 bonds and the implementation or adjustment of a rate reduction  
290 bond charge under this article shall not constitute a change in  
291 rates pursuant to Section 77-3-37 or 77-3-39.



292           **SECTION 6.** The following shall be codified as Section  
293 77-3-117, Mississippi Code of 1972:

294           77-3-117. (1) In a financing order issued on behalf of an  
295 electric public utility, the commission shall:

296                   (a) Specify the maximum amount of qualifying facility  
297 cost to be financed through the issuance of rate reduction bonds.

298                   (b) Determine that the financing method proposed  
299 pursuant to this article is reasonably expected to result in lower  
300 overall costs to customers associated with the qualifying facility  
301 compared to including the qualifying facility cost amount  
302 specified in paragraph (a) of this subsection (1) in rate base and  
303 recovering the revenue requirements over the depreciable life of  
304 the qualifying facility.

305                   (c) Provide that, until the rate reduction bonds are  
306 paid in full and all related financing costs are fully recovered,  
307 the imposition and collection of the rate reduction bond charge  
308 shall be nonbypassable as such term is defined in this article.

309                   (d) Establish and employ a formula-based true-up  
310 mechanism for making expeditious periodic adjustments in the rate  
311 reduction bond charge that customers are required to pay under the  
312 financing order and for making any adjustments to the rate  
313 reduction bond charge that are necessary to correct for any  
314 overcollection or undercollection of the rate reduction bond  
315 charge or to otherwise ensure the timely payment of financing  
316 costs.



317 (e) Specify the security property to be created in  
318 favor of the electric public utility upon the issuance of a  
319 financing order to secure prompt payment of the rate reduction  
320 bonds and all associated financing costs.

321 (f) Specify, to the extent reasonably practicable, the  
322 terms and conditions of the rate reduction bonds, including, but  
323 not limited to, repayment schedules, expected interest rates and  
324 financing costs; provided, however, the commission shall afford  
325 the issuing entity flexibility in establishing the terms and  
326 conditions for the rate reduction bonds to accommodate changes in  
327 market conditions, including, but not limited to, repayment  
328 schedules, interest rates, financing costs, collateral  
329 requirements, required debt service and other reserves, and the  
330 ability of the issuing entity, at its option, to effect a series  
331 of issuances of rate reduction bonds and correlated assignments,  
332 sales, pledges or other transfers of security property.

333 (g) Provide that the rate reduction bond charge be  
334 allocated to the customer rate classes or rate schedules in the  
335 same manner that each such class or rate schedule is allocated its  
336 portion of the revenue requirements associated with the qualifying  
337 facility included in the electric public utilities rate base and  
338 rates.

339 (h) Provide that upon the issuance of rate reduction  
340 bonds, the electric public utility shall institute the resulting  
341 initial rate reduction bond charge in accordance with the



342 financing order and such initial rate reduction bond charge shall  
343 be final and effective upon the issuance of such rate reduction  
344 bonds without further action of the commission.

345 (i) Include any other conditions that the commission  
346 considers appropriate and that are not otherwise inconsistent with  
347 this article.

348 (j) Unless otherwise specified in the financing order,  
349 any rate reduction bond charge revenue remaining after all  
350 financing costs have been paid in full shall be credited to the  
351 retail customers of the electric public utility in a manner to be  
352 determined by the commission.

353 (2) Following issuance of a financing order, the electric  
354 public utility may establish a special purpose entity for the  
355 purpose of acting as the issuing entity and such issuing entity  
356 may issue rate reduction bonds as provided in the financing order.  
357 The electric public utility retains sole discretion to establish a  
358 special purpose entity and cause it to issue rate reduction bonds.  
359 An issuing entity established by an electric public utility  
360 pursuant to this article shall not constitute a public utility  
361 pursuant to Section 77-3-3.

362 (3) If an electric public utility subject to a financing  
363 order creates a special purpose entity for the purpose of acting  
364 as the issuing entity, rate reduction bonds shall not be  
365 considered a debt of the electric public utility for regulatory or  
366 ratemaking purposes; but, the electric public utility shall have



367 only a duty to collect and remit to the issuing entity all rate  
368 reduction bond charge revenue with respect to the rate reduction  
369 bonds. Similarly, the special purpose entity or any other  
370 assignee of security property shall have no ownership interest in  
371 the qualifying facility or any related facilities, property and  
372 assets of the electric public utility whether fully or partially  
373 financed with proceeds from rate reduction bonds.

374 (4) A financing order shall remain in full effect and  
375 unabated notwithstanding the reorganization, bankruptcy, or other  
376 insolvency proceedings of the electric public utility or its  
377 successors or assigns. Subsequent to the issuance of rate  
378 reduction bonds authorized by a financing order, the financing  
379 order shall be irrevocable, and the commission may not:

380 (a) Amend, modify or terminate the financing order by  
381 any subsequent action; or

382 (b) Reduce, impair, postpone, terminate or otherwise  
383 adjust the rate reduction bond charge and security property  
384 approved and established in the financing order except as provided  
385 in Section 77-3-119.

386 (5) At the request of an electric public utility, the  
387 commission may commence a proceeding and issue a subsequent  
388 financing order that authorizes the refinancing or refunding of  
389 rate reduction bonds issued pursuant to the original financing  
390 order if the commission finds that the subsequent financing order  
391 satisfies all of the criteria specified in this article.





392 Effective on retirement of the rate reduction bonds and the  
393 issuance of new rate reduction bonds, the commission shall adjust  
394 the related rate reduction bond charge accordingly.

395 **SECTION 7.** The following shall be codified as Section  
396 77-3-119, Mississippi Code of 1972:

397 77-3-119. (1) If the commission issues a financing order  
398 and rate reduction bonds are issued, the issuing entity shall, as  
399 frequently as quarterly but no less frequently than annually, file  
400 with the commission a true-up report requesting the commission to  
401 review the rate reduction bond charge established in the financing  
402 order and authorize the true-up adjustments described herein. A  
403 copy of such report shall promptly be served upon the electric  
404 public utility collecting the rate reduction bond charge. The  
405 report shall present the amount of any overcollection or  
406 undercollection of the rate reduction bond charge and shall  
407 include a schedule applying the approved true-up adjustment  
408 mechanism authorized in the financing order and the resulting  
409 amount of any true-up adjustment required to ensure the recovery  
410 of revenues sufficient to provide for the timely payment of all  
411 financing costs when due.

412 (2) The commission's review of the true-up report shall be  
413 limited to a determination of the existence and amount of any  
414 mathematical errors in the report concerning the application of  
415 the approved true-up adjustment mechanism. Within thirty (30)  
416 days after receiving a true-up report pursuant to this section,



417 the commission shall, if necessary, revise the rate reduction bond  
418 charge and notify the electric public utility of such revision,  
419 or, if no revision to the rate reduction bond charge is required,  
420 the commission shall so notify the electric public utility. A  
421 true-up report requesting to revise the rate reduction bond charge  
422 shall be deemed approved if the requested revision is neither  
423 approved nor denied by the commission within thirty (30) days  
424 after the request is submitted.

425 (3) Any true-up report requesting a true-up adjustment of a  
426 rate reduction bond charge shall not constitute a change in rates  
427 and shall not be subject to the requirements of Section 77-3-37 or  
428 77-3-39.

429 (4) Upon the adjustment of a rate reduction bond charge  
430 pursuant to this section and notification to the electric public  
431 utility, the electric public utility shall promptly adjust the  
432 rate reduction bond charge to become effective the next  
433 practicable billing cycle.

434 **SECTION 8.** The following shall be codified as Section  
435 77-3-121, Mississippi Code of 1972:

436 77-3-121. (1) The rate reduction bond charge is a  
437 nonbypassable charge, and in the event an electric public utility  
438 subject to a financing order, as a result of insolvency, sale, a  
439 fundamental change in regulation of electric public utilities in  
440 this State, or other reason, ceases to serve customers within all  
441 or a portion of its certificated area, the commission shall have



442 the obligation to ensure that the rate reduction bond charge is  
443 collected and transmitted to the issuing entity by any subsequent  
444 electric public utility providing service in such certificated  
445 area, or portion thereof, no longer being served by the electric  
446 public utility that originally petitioned for the financing order.

447 (2) If an electric public utility fails to remit any  
448 required payment of rate reduction bond charge revenues to an  
449 assignee, issuing entity, financing party or bondholder, as  
450 applicable, such assignee, issuing entity, financing party or  
451 bondholder shall have no legal remedy either at law or equity  
452 against the electric public utility or its assets, except as  
453 specifically provided below:

454 (a) A court, upon application by an assignee, issuing  
455 entity, financing party or bondholder, shall order the  
456 sequestration and payment of the rate reduction bond charge  
457 revenues for the benefit of any bondholder, assignee, financing  
458 party and/or issuing entity.

459 (b) The court's order shall remain in full force and  
460 effect notwithstanding any bankruptcy, reorganization, or other  
461 insolvency proceedings with respect to the electric public utility  
462 or any affiliate thereof.

463 **SECTION 9.** The following shall be codified as Section  
464 77-3-123, Mississippi Code of 1972:

465 77-3-123. (1) The security property shall constitute an  
466 existing, present and legally protectable property right that



467 shall exist regardless of whether the rate reduction bond charges  
468 have been billed, have accrued, or have been collected, and  
469 notwithstanding any requirement that the value or amount of the  
470 property is dependent on the future provision of service to  
471 customers by the electric public utility.

472 (2) Security property authorized and established by a  
473 financing order shall continue to exist until the rate reduction  
474 bonds issued pursuant to such financing order are paid in full and  
475 all financing costs have been recovered in full.

476 (3) The security property authorized and established by a  
477 financing order and the interests of an assignee, bondholder,  
478 financing party or issuing entity in the security property are not  
479 subject to setoff, recoupment, counterclaim, surcharge, or defense  
480 by the electric public utility subject to the financing order or  
481 by any other person or entity, including as a result of the  
482 electric public utility's failure to provide past, present, or  
483 future services, or in connection with the bankruptcy,  
484 reorganization, or other insolvency proceeding of the electric  
485 public utility, any affiliate, or any other person or legal  
486 entity.

487 (4) All or any portion of security property created by a  
488 financing order may be sold, assigned, transferred or conveyed to  
489 an assignee for the purpose of acquiring, owning or administering  
490 the security property, issuing rate reduction bonds or a



491 combination of these purposes. Any sale, assignment, transfer or  
492 conveyance of security property shall be governed by this article.

493 (5) Any sale, assignment, transfer or conveyance of security  
494 property to an assignee shall constitute an absolute transfer and  
495 true sale of, and not a pledge of or secured transaction relating  
496 to, the seller's right, title and interest in, to and under the  
497 security property if the documents governing the transaction  
498 expressly state that the transaction is a sale or other absolute  
499 transfer. A sale, assignment, transfer or conveyance shall be  
500 effective only when all of the following have occurred:

501 (a) The financing order has been issued and has become  
502 final;

503 (b) The sale agreement, purchase agreement or other  
504 documents evidencing the sale, assignment, transfer or conveyance  
505 of the security property have been executed and delivered to the  
506 assignee; and

507 (c) Value has been given for the security property.

508 (6) The characterization of the sale, assignment, transfer  
509 or conveyance of the security property as an absolute transfer and  
510 true sale and the corresponding characterization of the property  
511 interest of the assignee, shall not be affected or impaired by,  
512 among other things, the occurrence of any of the following  
513 factors:



514 (a) Commingling of rate reduction bond charge revenues  
515 with other revenues of the electric public utility or any  
516 assignor;

517 (b) The retention by the electric public utility or  
518 assignor of (i) a partial or residual interest, including an  
519 equity interest, in the security property, whether direct or  
520 indirect, or whether subordinate or otherwise, or (ii) the right  
521 to recover costs associated with taxes, franchise fees or other  
522 fees imposed on the collection of rate reduction bond charge  
523 revenue;

524 (c) Any recourse that the assignee may have against the  
525 electric public utility or any assignor;

526 (d) Any indemnification rights, obligations or  
527 repurchase rights made or provided by the electric public utility  
528 or any assignor;

529 (e) The obligation of the assignor to collect and remit  
530 rate reduction bond charge revenue to or on behalf of an assignee;

531 (f) The regulatory or accounting treatment of the sale,  
532 assignment or transfer for tax, financial reporting or other  
533 purposes;

534 (g) Any application of the true-up mechanism as  
535 provided in Section 77-3-119;

536 (h) Granting or providing the bondholders a preferred  
537 right to the security property or credit enhancement by the



538 electric public utility or its affiliates with respect to the rate  
539 reduction bonds; or

540 (i) Any rights or interests of the electric public  
541 utility in any remaining rate reduction bond charge revenue which  
542 may vest upon full payment of the rate reduction bonds as provided  
543 for in Section 77-3-117(1) (j).

544 (7) Once sold, transferred, assigned or conveyed to an  
545 assignee as provided in this article, security property shall not  
546 be an asset of the electric public utility; but, the electric  
547 public utility shall have only a duty to collect and remit to the  
548 issuing entity all rate reduction bond charge revenue with respect  
549 to the rate reduction bonds.

550 **SECTION 10.** The following shall be codified as Section  
551 77-3-125, Mississippi Code of 1972:

552 77-3-125. (1) All or any portion of the security property  
553 may be pledged or otherwise used by the issuing entity as  
554 collateral or other security to secure the payment of financing  
555 costs. Except as specifically provided in this article or in any  
556 of the financing documents, only this article and not the Uniform  
557 Commercial Code shall govern:

558 (a) Security property and any right, title or interest  
559 of an electric public utility, an assignee or an issuing entity,  
560 whether before or after the issuance of a financing order, in such  
561 security property;



562 (b) The validity, creation, attachment, grant,  
563 perfection, priority and enforcement of liens and security  
564 interests in security property to secure payment of financing  
565 costs;

566 (c) The validity, attachment, perfection and priority  
567 with respect to the transfer of an interest or right or the pledge  
568 or creation of a security interest in any security property.

569 In the event of any conflict between this article and any  
570 other law regarding the provisions of Section 77-3-125, this  
571 article shall govern to the extent of the conflict.

572 (2) A valid, enforceable and attached lien and security  
573 interest in security property shall be created upon the occurrence  
574 of all of the following and in no other manner:

575 (a) The issuance of a financing order contemplating a  
576 security interest in the security property;

577 (b) The execution and delivery of a security agreement  
578 by the issuing entity in connection with the issuance of rate  
579 reduction bonds which grants a security interest in the security  
580 property; and

581 (c) The giving of value for the rate reduction bonds.

582 (3) A valid, enforceable and attached security interest may  
583 be created in the security property without any physical delivery  
584 of collateral or other act, and shall be perfected against all  
585 parties upon the filing of a financing statement in the Office of  
586 the Secretary of State of Mississippi and shall thereafter be a





587 continuously perfected lien, and such security interest in  
588 security property shall have priority over any other lien, created  
589 by contract, operation of law or otherwise, which may subsequently  
590 be perfected in the security property unless the holder of any  
591 such prior lien has agreed in writing otherwise.

592 (4) Any sale, assignment, transfer or conveyance of an  
593 interest in security property shall not affect the priority of a  
594 security interest previously perfected in such security property  
595 against all parties having claims of any kind, including any  
596 judicial lien or other lien creditors or any claims of the  
597 assignor or creditors of the assignor, other than creditors  
598 holding a prior security interest, ownership interest or  
599 assignment in the security property previously perfected in  
600 accordance with this article.

601 (5) The filing of a financing statement with the Office of  
602 the Secretary of State of Mississippi in accordance with this  
603 section shall be the only method of perfecting a lien on or  
604 security interest in security property. The Office of the  
605 Secretary of State of Mississippi shall maintain any financing  
606 statement filed pursuant to this section in the same manner that  
607 the Office of the Secretary of State of Mississippi maintains  
608 financing statements filed against transmitting utilities under  
609 Section 75-9-501(b). The filing of any financing statement  
610 pursuant to this section shall be governed by the provisions  
611 regarding the filing of financing statements in Part 5 of Chapter



612 9, Title 75 of the Mississippi Code of 1972, codified at Miss.  
613 Code Ann. Section 75-9-501 et seq.; provided, however, no  
614 continuation statement need be filed to maintain a perfected,  
615 valid, enforceable and attached security interest in security  
616 property.

617 (6) The priority of a sale, assignment, transfer,  
618 conveyance, lien or security interest perfected in security  
619 property pursuant to this article is not impaired by any later  
620 modification of the financing order or security property, any  
621 application of the true-up adjustment mechanism, or by the  
622 commingling of funds arising from the security property with other  
623 funds of an electric public utility or collection agent, and any  
624 other right, title, lien or security interest that may apply to  
625 those funds shall be terminated as to all funds transferred to an  
626 issuing entity, assignee, or financing party directly or  
627 transferred to a segregated account for the benefit of an issuing  
628 entity, assignee, or financing party.

629 (7) The description of security property being sold,  
630 assigned, transferred or conveyed to an assignee in any sale  
631 agreement, purchase agreement, or other transfer agreement,  
632 granted or pledged to a secured party in any security agreement,  
633 pledge agreement, or other security document, or indicated in any  
634 financing statement, shall be sufficient if it describes the  
635 financing order that created the security property and states that  
636 such agreement or financing statement covers all or part of the



637 security property described in such financing order. This  
638 subsection applies to all purported sales, assignments, transfers  
639 or conveyances of, and all purported grants or liens or security  
640 interests in, security property, regardless of whether the related  
641 agreements were entered into or financing statements were filed,  
642 before or after the original effective date of this subsection.

643 (8) Any right, title or interest pertaining to a financing  
644 order, including, but not limited to, the associated security  
645 property and rate reduction bond charge revenues shall not be  
646 deemed proceeds of any right or interest other than in the  
647 financing order and the security property arising from the  
648 financing order.

649 **SECTION 11.** The following shall be codified as Section  
650 77-3-127, Mississippi Code of 1972:

651 77-3-127. (1) Rate reduction bonds issued under a financing  
652 order shall not constitute a debt or a pledge of the faith and  
653 credit or taxing power of the State of Mississippi or of any  
654 county, municipality, or any other political subdivision of this  
655 state. The issuing entity, assignee, bondholders and financing  
656 parties shall have no right to have taxes levied by this state or  
657 the taxing authority of any county, municipality, or any other  
658 political subdivision of this state for the payment of the  
659 principal of, interest on or other financing costs related to rate  
660 reduction bonds. The issuance of rate reduction bonds does not,  
661 directly, indirectly, or contingently, obligate this state or any



662 county, municipal corporation, or political subdivision of this  
663 state to levy any tax or make any appropriation for payment of the  
664 principal of, interest on or other financing costs related to the  
665 rate reduction bonds.

666 (2) The state pledges to and agrees with the bondholders,  
667 any issuing entity, and any other party under a financing order  
668 that the state will not take or permit any action that impairs the  
669 value of the security property under the financing order or,  
670 except as allowed under Section 77-3-119, reduce, alter or impair  
671 rate reduction bond charges that are imposed, charged, collected  
672 or remitted for the benefit of the bondholders, any assignee, and  
673 any issuing entity, until all principal, interest and redemption  
674 premium in respect of rate reduction bonds, all financing costs,  
675 all issuing costs and all amounts to be paid to an issuing entity  
676 are paid or performed in full. Any attempt by resolution, bill,  
677 motion, order, referendum, amendment, judgment, decision, opinion  
678 or other act made contrary to the above pledge by the legislative  
679 branch, executive branch, judicial branch, commission or citizenry  
680 which impairs or attempts to impair the security property shall  
681 require just compensation to the security property owner or owners  
682 prior to taking effect.

683 (3) An issuing entity may include the pledge specified in  
684 subsection (2) of this section in the rate reduction bonds,  
685 financing documents, and documentation related to the issuance and  
686 marketing of the rate reduction bonds.



687           **SECTION 12.** The provisions of this act shall be deemed to be  
688 full and complete authority for the exercise of the powers therein  
689 granted. It is the intent of the Legislature that the authority  
690 provided under this act be limited to the implementation of  
691 alternate financing arrangements that may be contemplated by any  
692 agreement entered into by the Public Service Commission and the  
693 affected electric public utility relating to any qualifying  
694 facility as defined in Section 3 of this act.

695           **SECTION 13.** This act shall take effect and be in force from  
696 and after its passage.

