
A BILL FOR AN ACT

RELATING TO ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Chapter 269, Hawaii Revised Statutes, is
3 amended by adding a new section to part I to be appropriately
4 designated and to read as follows:

5 "§269- Electric cooperative cost recovery for wildfire
6 mitigation, repair, and restoration costs. (a) An electric
7 cooperative may recover commission-approved wildfire mitigation,
8 repair, and restoration costs through an automatic rate
9 adjustment clause or other tariff recovery mechanism to be
10 established by the commission.

11 (b) For purposes of this section, "electric cooperative"
12 means a public utility that satisfies the requirements under
13 section 269-31(c)."

14 SECTION 2. Chapter 663, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:



1 "§663- Limitation on aggregate liability. (a) The
2 aggregate liability of a public utility for qualifying damages
3 arising from a covered catastrophic wildfire shall not exceed
4 the lesser of:

5 (1) \$1,000,000,000;

6 (2) The average assessed value of commercial structures
7 and residential structures designed for habitation in
8 the county in which the covered catastrophic wildfire
9 occurred, multiplied by the number of commercial
10 structures or residential structures designed for
11 habitation that were destroyed, plus the value of
12 personal property lost; or

13 (3) The aggregate assessed replacement value of commercial
14 structures and residential structures designed for
15 habitation in the county in which the covered
16 catastrophic wildfire occurred, plus the value of
17 personal property lost.

18 (b) All civil actions arising out of a catastrophic
19 wildfire shall be brought in the circuit in which the
20 catastrophic wildfire occurred. The court shall adopt
21 procedures to equitably apply the limit set forth in subsection



1 (a) to all filed civil claims. All settlements or judgments for
2 claims for qualifying damages shall be subject to approval by
3 the court. The court shall not approve any settlement or
4 judgment that would cause the aggregate liability of public
5 utilities to exceed the aggregate liability limit.

6 (c) A court may consolidate cases arising from a covered
7 catastrophic wildfire. Any circuit court that is not the
8 consolidating court shall transfer any civil case to facilitate
9 the consolidation.

10 (d) For the purposes of this section:

11 "Catastrophic wildfire" means a wildfire occurring in the
12 State on or after the effective date of this Act that destroys
13 more than five hundred commercial structures or residential
14 structures designed for habitation.

15 "Covered catastrophic wildfire" means a catastrophic
16 wildfire that may have been caused, or whose severity may have
17 been increased, by a public utility's facilities or actions.

18 "Public utility" has the same meaning as in section 269-1.

19 "Qualifying damages" means economic damages arising out of
20 the loss of or damage to real or personal property from a
21 covered catastrophic wildfire."



1 PART II

2 SECTION 3. The Hawaii Revised Statutes is amended by
3 adding a new chapter to be appropriately designated and to read
4 as follows:

5 "CHAPTER

6 SECURITIZATION

7 § -1 Definitions. As used in this chapter, unless the
8 context otherwise requires:

9 "Ancillary agreement" means a bond insurance policy, letter
10 of credit, reserve account, surety bond, swap arrangement,
11 hedging arrangement, liquidity or credit support arrangement, or
12 other similar agreement or arrangement entered into in
13 connection with the issuance of bonds that is designed to
14 promote the credit quality and marketability of the bonds or to
15 mitigate the risk of an increase in interest rates.

16 "Assignee" means a legally recognized entity to which a
17 public utility assigns, sells, or transfers, other than as
18 security, all or a portion of the public utility's interest in
19 or right to infrastructure resilience property. "Assignee"
20 includes a corporation, limited liability company, general
21 partnership or limited partnership, public authority, trust,



1 financing entity, or any other legal entity to which an assignee
2 assigns, sells, or transfers, other than as security, its
3 interest in or right to infrastructure resilience property.

4 "Bond" means any bond, note, certificate of participation
5 or beneficial interest, or other evidence of indebtedness or
6 ownership that is issued by the financing entity under a
7 financing order, the proceeds of which are used directly or
8 indirectly to recover, finance, or refinance financing costs of
9 any infrastructure resilience costs, and that are directly or
10 indirectly secured by or payable from infrastructure resilience
11 property.

12 "Commission" means the public utilities commission.

13 "Consumer" means any individual, governmental body, trust,
14 business entity, or nonprofit organization that consumes public
15 utility services.

16 "Electric cooperative" means a public utility that
17 satisfies the requirements under section 269-31(c).

18 "Electric cooperative wildfire claims costs" means costs
19 incurred by an electric cooperative to resolve third-party
20 liability claims arising from any wildfire occurring in the
21 State that are not covered by insurance and that the commission



1 finds to be just and reasonable. "Electric cooperative wildfire
2 claims costs" do not include costs incurred by an investor-owned
3 public utility.

4 "Executive officer" means any person who performs policy
5 making functions and is employed by a public utility subject to
6 the approval of the board of directors, and includes the
7 president, secretary, treasurer, and any vice president in
8 charge of a principal business unit, division, or function of
9 the public utility.

10 "Financing costs" means the costs to issue, service, repay,
11 or refinance bonds, whether incurred or paid upon issuance of
12 the bonds or over the life of the bonds, if they are approved
13 for recovery by the commission in a financing order. "Financing
14 costs" may include any of the following:

- 15 (1) Principal, interest, and redemption premiums that are
16 payable on bonds;
- 17 (2) A payment required under an ancillary agreement;
- 18 (3) An amount required to fund or replenish reserve
19 accounts or other accounts established under an
20 indenture, ancillary agreement, or other financing
21 document related to the bonds;



1 (4) Taxes, franchise fees, or license fees imposed on a
2 financing entity as a result of the issuance of the
3 financing order; the assignment, sale, or transfer of
4 any infrastructure resilience property; or the sale of
5 the bonds, or imposed on the infrastructure resilience
6 charges, or otherwise resulting from the collection of
7 the infrastructure resilience charge, in any such case
8 whether paid, payable, or accrued;

9 (5) Costs related to issuing and servicing bonds or the
10 application for a financing order, including without
11 limitation servicing fees and expenses, trustee fees
12 and expenses, legal fees and expenses, accounting
13 fees, administrative fees, underwriting and placement
14 fees, financial advisory fees, original issue
15 discount, capitalized interest, rating agency fees,
16 and any other related costs that are approved for
17 recovery in the financing order; and

18 (6) Other costs as specifically authorized by a financing
19 order.

20 "Financing entity" means a public utility or an entity to
21 which a public utility or an affiliate of a public utility



1 sells, assigns, or pledges all or a portion of the public
2 utility's interest in infrastructure resilience property,
3 including an affiliate of the public utility or any unaffiliated
4 entity, in each case as approved by the commission in a
5 financing order.

6 Subject to section -6(c), an entity to which a public
7 utility sells, assigns, or pledges all or a portion of the
8 public utility's interest in infrastructure resilience property
9 may include any governmental entity that is able to issue bonds
10 that are exempt from federal tax pursuant to section 103 of the
11 Internal Revenue Code of 1986, as amended, including the State
12 or a political subdivision thereof or any department, agency, or
13 instrumentality of the State or political subdivision; provided
14 that the bonds issued shall not constitute a general obligation
15 of the State or any political subdivision thereof or any
16 department, agency, or instrumentality of the State or political
17 subdivision and shall not constitute a pledge of the full faith
18 and credit of the entity or of the State or any political
19 subdivision thereof, but shall be payable solely from the funds
20 provided under this chapter.



1 "Financing order" means an order of the commission under
2 this chapter that has become final and no longer subject to
3 appeal as provided by law and that authorizes the issuance of
4 bonds and the imposition, adjustment from time to time, and
5 collection of infrastructure resilience charges, and that shall
6 include a procedure to require the expeditious approval by the
7 commission of periodic adjustments to infrastructure resilience
8 charges and to any associated fixed recovery tax amounts
9 included in that financing order to ensure recovery of all
10 infrastructure resilience costs and the costs associated with
11 the proposed recovery, financing, or refinancing thereof,
12 including the costs of servicing and retiring the bonds
13 contemplated by the financing order.

14 "Financing party" means any holder of the bonds; any party
15 to or beneficiary of an ancillary agreement; and any trustee,
16 collateral agent, or other person acting for the benefit of any
17 of the foregoing.

18 "Fixed recovery tax amounts" means those nonbypassable
19 rates and other charges, including but not limited to
20 distribution, connection, disconnection, and termination rates
21 and charges, that are needed to recover federal and state taxes



1 associated with infrastructure resilience charges authorized by
2 the commission in a financing order, but are not approved as
3 financing costs financed from proceeds of bonds.

4 "Infrastructure resilience charges" means the nonbypassable
5 charges, including but not limited to distribution, connection,
6 disconnection, and termination rates and charges, that are
7 authorized in a financing order authorized under this chapter to
8 be imposed on and collected from all existing and future
9 consumers of a financing entity or any successor to recover
10 principal, interest, and other financing costs relating to the
11 bonds.

12 "Infrastructure resilience costs" means a public utility's
13 costs to implement its wildfire risk mitigation plan and other
14 investments in infrastructure improvements, modernization, and
15 replacement needed to reduce wildfire risks and increase
16 reliability and resilience to natural disasters and weather-
17 related events, as approved by the commission.

18 "Infrastructure resilience property" means the property
19 right created pursuant to this chapter, including but not
20 limited to the right, title, and interest of a public utility,
21 financing entity, or its assignee:



- 1 (1) In and to the infrastructure resilience charge
2 established pursuant to a financing order, including
3 the right to impose, bill, collect, and receive such
4 infrastructure resilience charges under the financing
5 order and all rights to obtain adjustments to the
6 infrastructure resilience charge in accordance with
7 section -3 and the financing order; and
- 8 (2) To be paid the amount that is determined in a
9 financing order to be the amount that the public
10 utility or its assignee is lawfully entitled to
11 receive pursuant to this chapter and the proceeds
12 thereof, and in and to all revenues, collections,
13 claims, payments, moneys, or proceeds of, or arising
14 from, the infrastructure resilience charge that is the
15 subject of a financing order.
- 16 "Infrastructure resilience property" does not include a right to
17 be paid fixed recovery tax amounts. "Infrastructure resilience
18 property" shall constitute a current property right,
19 notwithstanding the fact that the value of the property right
20 will depend on consumers using public utility services or, in



1 those instances where consumers are customers of the public
2 utility, the public utility performing certain services.

3 "Investor-owned public utility" means a public utility that
4 is owned by shareholders and overseen by a board of directors
5 elected by shareholders.

6 "Public utility" has the same meaning as in section 269-1.

7 "True-up adjustment" means a formulaic adjustment to the
8 infrastructure resilience charges as they appear on consumer
9 bills that is necessary to correct for any overcollection or
10 undercollection of the infrastructure resilience charges
11 authorized by a financing order and to otherwise ensure the
12 timely and complete payment and recovery of infrastructure
13 resilience costs over the authorized repayment term.

14 "Wildfire risk mitigation plan" means a plan, which may
15 include a natural hazard mitigation report, in which a public
16 utility addresses how the public utility will mitigate the risk
17 to its equipment in the event of a wildfire.

18 **§ -2 Applications to issue bonds and authorize**
19 **infrastructure resilience charges.** (a) A public utility may
20 apply to the commission for one or more financing orders to



1 issue bonds to recover any infrastructure resilience costs, each
2 of which authorizes the following:

3 (1) The imposition, charging, and collection of an
4 infrastructure resilience charge, to become effective
5 upon the issuance of the bonds, and an adjustment of
6 any such infrastructure resilience charge in
7 accordance with a true-up adjustment mechanism under
8 this chapter in amounts sufficient to pay the
9 principal and interest on the bonds and all other
10 associated financing costs on a timely basis;

11 (2) The creation of infrastructure resilience property
12 under the financing order; and

13 (3) The imposition, charging, and collection of fixed
14 recovery tax amounts to recover any portion of the
15 public utility's federal and state taxes associated
16 with those infrastructure resilience charges and not
17 financed from the proceeds of bonds.

18 (b) The application shall include all of the following:

19 (1) The infrastructure resilience costs to be financed
20 through the issuance of bonds;



- 1 (2) The principal amount of the bonds proposed to be
2 issued and the selection of a financing entity;
- 3 (3) An estimate of the date on which each series of bonds
4 is expected to be issued;
- 5 (4) The scheduled final payment date, which shall not
6 exceed thirty years, and a legal final maturity date,
7 which may be longer, subject to rating agency and
8 market considerations, during which term the
9 infrastructure resilience charge associated with the
10 issuance of each series of bonds is expected to be
11 imposed and collected;
- 12 (5) An estimate of the financing costs associated with the
13 issuance of each series of bonds;
- 14 (6) An estimate of the amount of the infrastructure
15 resilience charge revenues necessary to pay principal
16 and interest on the bonds and all other associated
17 financing costs as set forth in the application and
18 calculation for that estimate;
- 19 (7) A proposed design of the infrastructure resilience
20 charge and a proposed methodology for allocating the



- 1 infrastructure resilience charge among customer
2 classes within the public utility's service territory;
- 3 (8) A description of the financing entity selected by the
4 public utility;
- 5 (9) A description of a proposed true-up adjustment
6 mechanism for the adjustment of the infrastructure
7 resilience charge to correct for any overcollection or
8 undercollection of the infrastructure resilience
9 charge, and to otherwise ensure the timely payment of
10 principal and interest on the bonds and all other
11 associated financing costs; and
- 12 (10) Any other information required by the commission.
- 13 (c) A public utility may file an application for a
14 financing order, or as a joint applicant with one or more
15 affiliate public utilities, to issue bonds to recover
16 infrastructure resilience costs. The application shall include
17 a description of:
- 18 (1) How the infrastructure resilience charges will be
19 allocated among the applicant public utilities in a
20 manner that is equitable and that need not correspond



1 to the incurrence of infrastructure resilience costs
2 by each public utility; and

3 (2) Whether and how the consumers of any of the applicant
4 public utilities will be responsible for the payment
5 of infrastructure resilience charges allocated to
6 consumers of affiliate public utilities.

7 In the alternative, a public utility may apply for a
8 financing order to issue bonds to recover infrastructure
9 resilience costs, including infrastructure resilience costs
10 incurred, or to be incurred, by the applicant and one or more of
11 its affiliate public utilities. In connection with the issuance
12 of a financing order pursuant to this subsection, the commission
13 shall issue a concurrent order to the affiliate public utility
14 or public utilities directing the affiliate public utility or
15 public utilities to impose rates on its or their consumers
16 designed to generate revenue sufficient to pay credits over the
17 life of the bonds to the applicant public utility in the amount
18 as the commission determines is equitable, just, and reasonable.
19 The application shall describe the allocation method and
20 adjustment mechanism for the affiliate public utility credit



1 payments proposed to be subject to the concurrent commission
2 order.

3 (d) The commission shall issue an approval or denial of
4 any application for a financing order filed pursuant to this
5 section within ninety days of the last filing in the applicable
6 docket but no later than one year after the application is
7 filed.

8 (e) In exercising its duties under this section, the
9 commission shall consider:

10 (1) Whether the recovery of costs is consistent with the
11 public interest;

12 (2) Whether the structuring, marketing, and pricing of the
13 bonds are expected to result in the lowest
14 infrastructure resilience charges consistent with
15 market conditions at the time at which the bonds are
16 priced and the terms of the financing order;

17 (3) Whether the terms and conditions of any bonds to be
18 issued are just and reasonable;

19 (4) With respect to an application by an investor-owned
20 public utility, whether the recovery of infrastructure
21 resilience costs through the designation of the



1 infrastructure resilience charges and any associated
2 fixed recovery tax amounts, and the issuance of bonds
3 in connection with the infrastructure resilience
4 charges, would result in net savings or mitigate rate
5 impacts to consumers, as compared to rate recovery
6 without securitization; and

7 (5) Any other factors that the commission deems reasonable
8 and in the public interest.

9 If the commission makes the determination specified in this
10 section, the commission shall establish, as part of the
11 financing order, a procedure for the public utility to submit
12 applications from time to time to request the issuance of
13 additional financing orders designating infrastructure
14 resilience charges and any associated fixed recovery tax amounts
15 as recoverable.

16 A public utility may include in its application for a
17 financing order a request for authorization to sell, transfer,
18 assign, or pledge infrastructure resilience property to a
19 governmental entity if the public utility expects bonds issued
20 by a governmental entity to result in a more cost-efficient
21 means, taking into account all financing costs related to the



1 bonds, than using another financing entity to issue bonds to
2 finance the same infrastructure resilience costs, taking into
3 account the costs of issuing the other financing entity's bonds.

4 (f) Infrastructure resilience charges and any associated
5 fixed recovery tax amounts shall be imposed only on existing and
6 future consumers in the utility service territory. Consumers
7 within the utility service territory of the public utility that
8 are subject to the financing order shall continue to pay
9 infrastructure resilience charges and any associated fixed
10 recovery tax amounts until the bonds and associated financing
11 costs are paid in full by the financing entity.

12 § -3 **Infrastructure resilience financing order.** (a) A
13 financing order shall remain in effect until the bonds issued
14 under the financing order and all financing costs related to the
15 bonds have been paid in full or defeased by their terms. The
16 financing order shall be for no greater than \$500,000,000 of the
17 infrastructure resilience costs.

18 A financing order shall remain in effect and unabated
19 notwithstanding the bankruptcy, reorganization, or insolvency of
20 the public utility or the commencement of any judicial or
21 nonjudicial proceeding on the financing order.



1 (b) Notwithstanding any other law to the contrary, with
2 respect to infrastructure resilience property that has been made
3 the basis for the issuance of bonds and with respect to any
4 associated fixed recovery tax amounts, the financing order, the
5 infrastructure resilience charges, and any associated fixed
6 recovery tax amounts shall be irrevocable. The State and its
7 agencies, including the commission, pledge and agree with
8 bondholders, the owners and assignees of the infrastructure
9 resilience property, and other financing parties that the State
10 and its agencies shall not take any action listed in this
11 subsection. This subsection shall not preclude an action if the
12 action would not adversely affect the interests of the public
13 utility and of assignees of the infrastructure resilience
14 property. The prohibited actions shall be the following:

15 (1) Alter the provisions of this chapter, which authorize
16 the commission to create an irrevocable contract right
17 or choice in action by the issuance of a financing
18 order, to create infrastructure resilience property
19 and make the infrastructure resilience charges imposed
20 by a financing order irrevocable, binding,



1 nonbypassable charges for all existing and future
2 consumers;

3 (2) Take or permit any action that impairs or would impair
4 the value of infrastructure resilience property or the
5 security for the bonds or revise the infrastructure
6 resilience costs for which recovery is authorized;

7 (3) In any way impair the rights and remedies of the
8 bondholders, assignees, and other financing parties;
9 and

10 (4) Except for changes made pursuant to the true-up
11 adjustment authorized under subsection (d), reduce,
12 alter, or impair infrastructure resilience charges
13 that are to be imposed, billed, charged, collected,
14 and remitted for the benefit of the bondholders, any
15 assignee, and any other financing parties until any
16 and all principal, interest, premium, financing costs,
17 and other fees, expenses, or charges incurred, and any
18 contracts to be performed, in connection with the
19 related bonds have been paid and performed in full.

20 The financing entity may include this pledge in the bonds.



1 (c) Under a financing order, the public utility shall
2 retain sole discretion to select the financing entity and to
3 cause bonds to be issued, including the right to defer or
4 postpone the issuance, assignment, sale, or transfer of
5 infrastructure resilience property.

6 (d) The commission may create, pursuant to an application
7 from a public utility, a nonbypassable charge referred to as a
8 infrastructure resilience charge, which shall be applied to
9 recover principal, interest, and other financing costs relating
10 to the bonds. The infrastructure resilience charge shall be a
11 dedicated, discrete tariff rider.

12 The commission, in any financing order, shall establish a
13 procedure for periodic true-up adjustments to infrastructure
14 resilience charges, which shall be made at least annually and
15 may be made more frequently. Within thirty days after receiving
16 a public utility's filing of a true-up adjustment, the
17 commission's review of the filing shall be limited to
18 mathematical or clerical errors as determined in accordance with
19 any true-up adjustment formulas set forth in the applicable
20 financing order.



1 The commission shall either approve the filing or inform
2 the public utility of any mathematical or clerical errors in its
3 calculation. If the commission informs the public utility of
4 mathematical or clerical errors in its calculation, the public
5 utility shall correct its error and refile its true-up
6 adjustment. The timeframes previously described in this
7 subsection shall apply to a refiled true-up adjustment.

8 (e) Neither financing orders nor bonds issued under this
9 chapter shall constitute a general obligation of the State or
10 any of its political subdivisions, nor shall they constitute a
11 pledge of the full faith and credit of the State or any of its
12 political subdivisions, but shall be payable solely from the
13 infrastructure resilience property provided under this chapter.

14 All bonds shall contain on the face thereof a statement to
15 the following effect: "Neither the full faith and credit nor
16 the taxing power of the State of Hawaii is pledged to the
17 payment of the principal of, or interest and premium on, this
18 bond."

19 The issuance of bonds under this chapter shall not
20 directly, indirectly, or contingently obligate the State or any



1 of its political subdivisions to levy or pledge any form of
2 taxation or make any appropriation for their payment.

3 (f) Infrastructure resilience charges are infrastructure
4 resilience property when, and to the extent that, a financing
5 order authorizing the infrastructure resilience charges has
6 become effective in accordance with this chapter, and the
7 infrastructure resilience property shall thereafter continuously
8 exist as property for all purposes, and all of the rights and
9 privileges relating to that property shall continuously exist
10 for the period and to the extent provided in the financing
11 order, but in any event until the bonds, including all
12 principal; premiums, if any; interest with respect to the bonds;
13 and all other financing costs are paid in full. A financing
14 order may provide that the creation of infrastructure resilience
15 property shall be simultaneous with the sale of the
16 infrastructure resilience property to an assignee as provided in
17 the application of the pledge of the infrastructure resilience
18 property to secure the bonds.

19 (g) Any successor to a financing entity shall be bound by
20 the requirements of this chapter and shall perform and satisfy



1 all obligations of and have the same rights under a financing
2 order as, and to the same extent as, the financing entity.

3 (h) No public utility approved for a financing order shall
4 increase compensation for its executive officers unless the
5 utility's wildfire risk mitigation plan compliance reports have
6 been approved by the commission for five consecutive years;
7 provided that the commission may consider an alternative
8 symmetric performance incentive mechanism, if the commission
9 deems appropriate. For the purposes of this subsection,
10 "wildfire risk mitigation plan" has the same meaning as in
11 section -1.

12 § -4 **Bonds; issuance; infrastructure resilience property**
13 **interests.** (a) The public utility may sell and assign all or
14 portions of its interest in infrastructure resilience property
15 to one or more financing entities that make that infrastructure
16 resilience property the basis for issuance of bonds, to the
17 extent approved in a financing order. The public utility or
18 financing entity may pledge infrastructure resilience property
19 as collateral, directly or indirectly, for bonds to the extent
20 approved in the pertinent financing orders providing for a
21 security interest in the infrastructure resilience property, in



1 the manner set forth in this section. In addition,
2 infrastructure resilience property may be sold or assigned by
3 either of the following:

4 (1) The financing entity or a trustee for the holders of
5 bonds or the holders of an ancillary agreement in
6 connection with the exercise of remedies upon a
7 default under the terms of the bonds; or

8 (2) Any person acquiring the infrastructure resilience
9 property after a sale or assignment pursuant to this
10 chapter.

11 (b) To the extent that any interest in infrastructure
12 resilience property is sold, assigned, or is pledged as
13 collateral pursuant to subsection (a), the commission may
14 authorize the public utility to contract with the financing
15 entity or its assignees that the public utility will:

16 (1) Continue to operate its system to provide service to
17 consumers within its service territory;

18 (2) Collect amounts in respect of the infrastructure
19 resilience charges for the benefit and account of the
20 financing entity or its assignees; and



1 (3) Account for and remit these amounts to or for the
2 account of the financing entity or its assignees.
3 Contracting with the financing entity or its assignees in
4 accordance with that authorization shall not impair or negate
5 the characterization of the sale, assignment, or pledge as an
6 absolute transfer, a true sale, or a security interest, as
7 applicable. To the extent that billing, collection, and other
8 related services with respect to the provision of the public
9 utility's services are provided to a consumer by any person or
10 entity other than the public utility in whose service territory
11 the consumer is located, that person or entity shall collect the
12 infrastructure resilience charges and any associated fixed
13 recovery tax amounts from the consumer for the benefit and
14 account of the public utility, financing entity, or assignees
15 with the associated revenues remitted solely for the person's
16 benefit as a condition to the provision of public utility
17 service to that consumer.

18 Each financing order shall impose terms and conditions,
19 consistent with the purposes and objectives of this chapter, on
20 any person or entity responsible for billing, collection, and
21 other related services, including but not limited to collection



1 of the infrastructure resilience charges and any associated
2 fixed recovery tax amounts, that are the subject of the
3 financing order.

4 (c) The financing entity may issue bonds upon approval by
5 the commission in a financing order. Bonds shall be nonrecourse
6 to the credit or any assets of the public utility, other than
7 the infrastructure resilience property as specified in that
8 financing order.

9 (d) Infrastructure resilience property that is specified
10 in a financing order shall constitute an existing, present
11 property right, notwithstanding the fact that the imposition and
12 collection of infrastructure resilience charges depend on the
13 public utility's continuing to provide services or continuing to
14 perform its servicing functions relating to the collection of
15 infrastructure resilience charges or on the level of future
16 service consumption, such as consumption of a public utility
17 service. Infrastructure resilience property shall exist whether
18 or not the infrastructure resilience charges have been billed,
19 have accrued, or have been collected, and notwithstanding the
20 fact that the value for a security interest in the
21 infrastructure resilience property, or amount of the



1 infrastructure resilience property, is dependent on the future
2 provision of service to consumers. All infrastructure
3 resilience property specified in a financing order shall
4 continue to exist until the bonds issued pursuant to a financing
5 order and all associated financing costs are paid in full.

6 (e) Infrastructure resilience property; infrastructure
7 resilience charges; and the interests of an assignee,
8 bondholder, or financing entity, or any pledgee in
9 infrastructure resilience property and infrastructure resilience
10 charges shall not be subject to setoff, counterclaim, surcharge,
11 recoupment, or defense by the public utility or any other person
12 or in connection with the bankruptcy, reorganization, or other
13 insolvency proceeding of the public utility, any affiliate of
14 the public utility, or any other entity.

15 (f) Notwithstanding any law to the contrary, any
16 requirement under this chapter or a financing order that the
17 commission acts upon shall be binding upon the commission, as it
18 may be constituted from time to time, and any successor agency
19 exercising functions similar to the commission, and the
20 commission shall have no authority to rescind, alter, or amend
21 that requirement in a financing order.



1 **§ -5 Infrastructure resilience charge.** (a) The
2 infrastructure resilience charge created pursuant to a financing
3 order approved pursuant to section -2 shall be a
4 nonbypassable charge of a financing entity that shall be applied
5 to the repayment of bonds and related financing costs as
6 described in this chapter. The infrastructure resilience charge
7 and any associated fixed recovery tax amounts may be a usage-
8 based charge, a flat user charge, or a charge based upon
9 customer revenues as determined by the commission for each
10 consumer class in any financing order.

11 (b) As long as any bonds are outstanding and any financing
12 costs have not been paid in full, any infrastructure resilience
13 charge and any associated fixed recovery tax amounts authorized
14 under a financing order shall be nonbypassable. Subject to any
15 exceptions provided in a financing order, a infrastructure
16 resilience charge and any associated fixed recovery tax amounts
17 shall be paid by all existing and future consumers within the
18 utility service territory.

19 (c) The infrastructure resilience charge shall be
20 collected by a public utility or its successors, in accordance



1 with section -8(a), in full through a charge that is separate
2 and apart from the public utility's rates.

3 (d) A public utility may exercise the same rights and
4 remedies under its tariff and applicable law and regulation
5 based on a consumer's nonpayment of the infrastructure
6 resilience charge as it could for a consumer's failure to pay
7 any other charge payable to that public utility.

8 § -6 **Security interests in infrastructure resilience**
9 **property; financing statements.** (a) A security interest in
10 infrastructure resilience property is valid and enforceable
11 against the pledgor and third parties, subject to the rights of
12 any third parties holding security interests in the
13 infrastructure resilience property perfected in the manner
14 described in this section, and attaches when all of the
15 following have occurred:

16 (1) The commission has issued a financing order
17 authorizing the infrastructure resilience charge to be
18 included in the infrastructure resilience property;

19 (2) Value has been given by the pledgees of the
20 infrastructure resilience property; and



1 (3) The pledgor has signed a security agreement covering
2 the infrastructure resilience property.

3 (b) A valid and enforceable security interest in
4 infrastructure resilience property is perfected when it has
5 attached and when a financing statement has been filed with the
6 bureau of conveyances naming the pledgor of the infrastructure
7 resilience property as "debtor" and identifying the
8 infrastructure resilience property.

9 Any description of the infrastructure resilience property
10 shall be sufficient if it refers to the financing order creating
11 the infrastructure resilience property. A copy of the financing
12 statement shall be filed with the commission by the public
13 utility that is the pledgor or transferor of the infrastructure
14 resilience property. The commission may require the public
15 utility to make other filings with respect to the security
16 interest in accordance with procedures that the commission may
17 establish; provided that the filings shall not affect the
18 perfection of the security interest.

19 (c) A perfected security interest in infrastructure
20 resilience property shall be a continuously perfected security
21 interest in all infrastructure resilience property revenues and



1 proceeds arising with respect thereto, whether or not the
2 revenues or proceeds have accrued. Conflicting security
3 interests shall rank according to priority in time of
4 perfection. Infrastructure resilience property shall constitute
5 property for all purposes, including for contracts securing
6 bonds, whether or not the infrastructure resilience property
7 revenues and proceeds have accrued.

8 (d) Subject to the terms of the security agreement
9 covering the infrastructure resilience property and the rights
10 of any third parties holding security interests in the
11 infrastructure resilience property, perfected in the manner
12 described in this section, the validity and relative priority of
13 a security interest created under this section shall not be
14 defeated or adversely affected by the commingling of revenues
15 arising with respect to the infrastructure resilience property
16 with other funds of the public utility that is the pledgor or
17 transferor of the infrastructure resilience property, or by any
18 security interest in a deposit account of that public utility
19 perfected under article 9 of chapter 490, into which the
20 revenues are deposited.



1 Subject to the terms of the security agreement, upon
2 compliance with the requirements of section 490:9-312(b)(1), the
3 pledgees of the infrastructure resilience property shall have a
4 perfected security interest in all cash and deposit accounts of
5 the public utility in which infrastructure resilience property
6 revenues have been commingled with other funds.

7 (e) If default occurs under the security agreement
8 covering the infrastructure resilience property, the pledgees of
9 the infrastructure resilience property, subject to the terms of
10 the security agreement, shall have all rights and remedies of a
11 secured party upon default under article 9 of chapter 490 and
12 shall be entitled to foreclose or otherwise enforce their
13 security interest in the infrastructure resilience property,
14 subject to the rights of any third parties holding prior
15 security interests in the infrastructure resilience property
16 perfected in the manner provided in this section.

17 In addition, the commission may require in the financing
18 order creating the infrastructure resilience property that in
19 the event of default by the public utility in payment of
20 infrastructure resilience property revenues, the commission and
21 any successor thereto, upon the application by the pledgees or



1 assignees, including assignees under section -4 of the
2 infrastructure resilience property, and without limiting any
3 other remedies available to the pledgees or assignees by reason
4 of the default, shall order the sequestration and payment to the
5 pledgees or assignees of infrastructure resilience property
6 revenues. Any financing order shall remain in full force and
7 effect notwithstanding any bankruptcy, reorganization, or other
8 insolvency proceedings with respect to the debtor, pledgor, or
9 transferor of the infrastructure resilience property. Any
10 surplus in excess of amounts necessary to pay principal;
11 premiums, if any; interest, costs, and arrearages on the bonds;
12 and associated financing costs arising under the security
13 agreement, shall be remitted to the debtor, pledgor, or
14 transferor, for the purpose of remitting such amounts to
15 customers via the public utility.

16 (f) Sections 490:9-204 and 490:9-205 shall apply to a
17 pledge of infrastructure resilience property by the public
18 utility, an affiliate of the public utility, or a financing
19 entity.

20 **§ -7 Transfers of infrastructure resilience property.**

21 (a) A transfer or assignment of infrastructure resilience



1 property by the public utility to an assignee or to a financing
2 entity, or by an assignee of the public utility or a financing
3 entity to another financing entity, which the parties in the
4 governing documentation have expressly stated to be a sale or
5 other absolute transfer, in a transaction approved in a
6 financing order, shall be treated as an absolute transfer of all
7 of the transferor's right, title, and interest, as in a true
8 sale, and not as a pledge or other financing, of the
9 infrastructure resilience property, other than for federal and
10 state income and franchise tax purposes.

11 (b) The characterization of the sale, assignment, or
12 transfer as an absolute transfer and true sale and the
13 corresponding characterization of the property interest of the
14 assignee shall not be affected or impaired by, among other
15 things, the occurrence of any of the following:

16 (1) Commingling of infrastructure resilience charge
17 revenues with other amounts;

18 (2) The retention by the seller of either of the
19 following:

20 (A) A partial or residual interest, including an
21 equity interest, in the financing entity or the



- 1 infrastructure resilience property, whether
2 direct or indirect, subordinate or otherwise; or
3 (B) The right to recover costs associated with taxes,
4 franchise fees, or license fees imposed on the
5 collection of infrastructure resilience charge;
6 (3) Any recourse that an assignee may have against the
7 seller;
8 (4) Any indemnification rights, obligations, or repurchase
9 rights made or provided by the seller;
10 (5) The obligation of the seller to collect infrastructure
11 resilience charges on behalf of an assignee;
12 (6) The treatment of the sale, assignment, or transfer for
13 tax, financial reporting, or other purpose; or
14 (7) Any true-up adjustment of the infrastructure
15 resilience charge as provided in the financing order.
16 (c) A transfer of infrastructure resilience property shall
17 be deemed perfected against third parties when:
18 (1) The commission issues the financing order authorizing
19 the infrastructure resilience charge included in the
20 infrastructure resilience property; and



1 (2) An assignment of the infrastructure resilience
2 property in writing has been executed and delivered to
3 the assignee.

4 (d) As between bona fide assignees of the same right for
5 value without notice, the assignee first filing a financing
6 statement with the bureau of conveyances in accordance with part
7 5 of article 9 of chapter 490, naming the assignor of the
8 infrastructure resilience property as debtor and identifying the
9 infrastructure resilience property, shall have priority. Any
10 description of the infrastructure resilience property shall be
11 sufficient if it refers to the financing order creating the
12 infrastructure resilience property. A copy of the financing
13 statement shall be filed by the assignee with the commission,
14 and the commission may require the assignor or the assignee to
15 make other filings with respect to the transfer in accordance
16 with procedures the commission may establish; provided that
17 these filings shall not affect the perfection of the transfer.

18 § -8 **Financing entity successor requirements; default of**
19 **financing entity.** (a) Any successor to a public utility
20 subject to a financing order, whether pursuant to any
21 bankruptcy, reorganization, or other insolvency proceeding, or



1 pursuant to any merger, sale, or transfer, by operation of law,
2 or otherwise, shall be bound by the requirements of this
3 chapter. The successor of the public utility shall perform and
4 satisfy all obligations of the public utility under the
5 financing order in the same manner and to the same extent as the
6 public utility, including the obligation to collect and pay the
7 infrastructure resilience charge to any financing party as
8 required by a financing order or any assignee. Any successor to
9 the public utility shall be entitled to receive any fixed
10 recovery tax amounts otherwise payable to the public utility.

11 (b) The commission may require in a financing order that,
12 if a default by the public utility in remittance of the
13 infrastructure resilience charge collected arising with respect
14 to infrastructure resilience property occurs, the commission,
15 without limiting any other remedies available to any financing
16 party by reason of the default, shall order the sequestration
17 and payment to the beneficiaries of the infrastructure
18 resilience charge collected arising with respect to the
19 infrastructure resilience property. Any order shall remain in
20 full force and effect notwithstanding any bankruptcy,



1 reorganization, or other insolvency proceedings with respect to
2 the public utility.

3 § -9 **Severability.** If any provision of this chapter is
4 held to be invalid or is superseded, replaced, repealed, or
5 expires for any reason:

- 6 (1) That occurrence shall not affect any action allowed
7 under this chapter that is taken prior to that
8 occurrence by the commission, a financing entity, a
9 bondholder, or any financing party, and any such
10 action shall remain in full force and effect; and
11 (2) The validity and enforceability of the rest of this
12 chapter shall remain unaffected."

13 PART III

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

DCCA; PUC; Energy; Aggregate Liability Limit; Securitization;
Public Utility Infrastructure Resilience

Description:

Establishes an aggregate limit for liability for economic
damages from catastrophic wildfires. Authorizes securitization
of certain costs for public utilities. Effective 7/1/3000.
(HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is
not legislation or evidence of legislative intent.*

