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# 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; electric  
2 utilities. (a) The aggregate liability of an electric utility  
3 for qualifying damages arising from a covered catastrophic  
4 wildfire shall not exceed 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) Notwithstanding any law to the contrary, joint and  
19 several liability shall not apply to any qualifying damages;  
20 provided that in any action to recover from a person or an  
21 entity in connection with a covered catastrophic wildfire, the



1 person or entity may claim, in defense, apportionment of fault  
2 to any other person or entity regardless of whether that person  
3 or entity is a party to the action. The exceptions to the  
4 abolition of joint and several liability set forth in section  
5 663-10.9 shall not apply to any suit, claim, arbitration, or  
6 other civil action arising out of a covered catastrophic  
7 wildfire.

8 (c) The director of Hawaii emergency management shall  
9 determine whether a wildfire is a covered catastrophic wildfire.

10 (d) All civil actions arising out of a catastrophic  
11 wildfire shall be brought in the circuit in which the  
12 catastrophic wildfire occurred. The court shall adopt  
13 procedures to equitably apply the limit set forth in subsection  
14 (a) to all filed civil claims. All settlements or judgments for  
15 claims for qualifying damages shall be subject to approval by  
16 the court. The court shall not approve any settlement or  
17 judgment that would cause the aggregate liability of electric  
18 utilities to exceed the aggregate liability limit.

19 (e) A court may consolidate cases arising from a covered  
20 catastrophic wildfire. Any circuit court that is not the



1 consolidating court shall transfer any civil case to facilitate  
2 the consolidation.

3 (f) For the purposes of this section:

4 "Catastrophic wildfire" means a wildfire occurring in the  
5 State on or after the effective date of this Act that destroys  
6 more than five hundred commercial structures or residential  
7 structures designed for habitation.

8 "Covered catastrophic wildfire" means a catastrophic  
9 wildfire that may have been caused, or whose severity may have  
10 been increased, by a electric utility's facilities or actions.

11 "Electric utility" means a public utility that exists for  
12 the furnishing of electrical power.

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

14 "Qualifying damages" means economic damages arising out of  
15 the loss of or damage to real or personal property from a  
16 covered catastrophic wildfire. "Qualifying damages" does not  
17 include claims for physical bodily harm or emotional harm."

18 PART II

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



1 "CHAPTER

2 SECURITIZATION

3 § -1 Definitions. As used in this chapter, unless the  
4 context otherwise requires:

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

12 "Assignee" means a legally recognized entity to which an  
13 electric utility assigns, sells, or transfers, other than as  
14 security, all or a portion of the electric utility's interest in  
15 or right to infrastructure resilience property. "Assignee"  
16 includes a corporation, limited liability company, general  
17 partnership or limited partnership, public authority, trust,  
18 financing entity, or any other legal entity to which an assignee  
19 assigns, sells, or transfers, other than as security, its  
20 interest in or right to infrastructure resilience property.



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

9 "Commission" means the public utilities commission.

10 "Consumer" means any individual, governmental body, trust,  
11 business entity, or nonprofit organization that consumes  
12 electricity that has been transmitted or distributed by means of  
13 electric transmission or distribution facilities, whether those  
14 electric transmission or distribution facilities are owned by  
15 the consumer, the electric utility, or any other party.

16 "Electric utility" means a public utility that exists for  
17 the furnishing of electrical power.

18 "Executive officer" means any person who performs policy  
19 making functions and is employed by an electric utility subject  
20 to the approval of the board of directors, and includes the  
21 president, secretary, treasurer, and any vice president in



1 charge of a principal business unit, division, or function of  
2 the electric utility.

3 "Financing costs" means the costs to issue, service, repay,  
4 or refinance bonds, whether incurred or paid upon issuance of  
5 the bonds or over the life of the bonds, if they are approved  
6 for recovery by the commission in a financing order. "Financing  
7 costs" may include any of the following:

- 8 (1) Principal, interest, and redemption premiums that are  
9 payable on bonds;
- 10 (2) A payment required under an ancillary agreement;
- 11 (3) An amount required to fund or replenish reserve  
12 accounts or other accounts established under an  
13 indenture, ancillary agreement, or other financing  
14 document related to the bonds;
- 15 (4) Taxes, franchise fees, or license fees imposed on a  
16 financing entity as a result of the issuance of the  
17 financing order; the assignment, sale, or transfer of  
18 any infrastructure resilience property; or the sale of  
19 the bonds, or imposed on the infrastructure resilience  
20 charges, or otherwise resulting from the collection of



1 the infrastructure resilience charge, in any such case  
2 whether paid, payable, or accrued;

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

12 (6) Other costs as specifically authorized by a financing  
13 order.

14 "Financing entity" means an electric utility or an entity  
15 to which an electric utility or an affiliate of an electric  
16 utility sells, assigns, or pledges all or a portion of the  
17 electric utility's interest in infrastructure resilience  
18 property, including an affiliate of the electric utility or any  
19 unaffiliated entity, in each case as approved by the commission  
20 in a financing order.



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

16           "Financing order" means an order of the commission under  
17 this chapter that has become final and no longer subject to  
18 appeal as provided by law and that authorizes the issuance of  
19 bonds and the imposition, adjustment from time to time, and  
20 collection of infrastructure resilience charges, and that shall  
21 include a procedure to require the expeditious approval by the



1 commission of periodic adjustments to infrastructure resilience  
2 charges and to any associated fixed recovery tax amounts  
3 included in that financing order to ensure recovery of all  
4 infrastructure resilience costs and the costs associated with  
5 the proposed recovery, financing, or refinancing thereof,  
6 including the costs of servicing and retiring the bonds  
7 contemplated by the financing order.

8 "Financing party" means any holder of the bonds; any party  
9 to or beneficiary of an ancillary agreement; and any trustee,  
10 collateral agent, or other person acting for the benefit of any  
11 of the foregoing.

12 "Fixed recovery tax amounts" means those nonbypassable  
13 rates and other charges, including but not limited to  
14 distribution, connection, disconnection, and termination rates  
15 and charges, that are needed to recover federal and state taxes  
16 associated with infrastructure resilience charges authorized by  
17 the commission in a financing order, but are not approved as  
18 financing costs financed from proceeds of bonds.

19 "Infrastructure resilience charges" means the nonbypassable  
20 charges, including but not limited to distribution, connection,  
21 disconnection, and termination rates and charges, that are



1 authorized in a financing order authorized under this chapter to  
2 be imposed on and collected from all existing and future  
3 consumers of a financing entity or any successor to recover  
4 principal, interest, and other financing costs relating to the  
5 bonds.

6 "Infrastructure resilience costs" means an electric  
7 utility's costs to implement its wildfire risk mitigation plan  
8 and other investments in infrastructure improvements,  
9 modernization, and replacement needed to reduce wildfire risks  
10 and increase reliability and resilience to natural disasters and  
11 weather-related events, as approved by the commission.

12 "Infrastructure resilience property" means the property  
13 right created pursuant to this chapter, including but not  
14 limited to the right, title, and interest of an electric  
15 utility, financing entity, or its assignee:

16 (1) In and to the infrastructure resilience charge  
17 established pursuant to a financing order, including  
18 the right to impose, bill, collect, and receive such  
19 infrastructure resilience charges under the financing  
20 order and all rights to obtain adjustments to the



1 infrastructure resilience charge in accordance with  
2 section -3 and the financing order; and

3 (2) To be paid the amount that is determined in a  
4 financing order to be the amount that the electric  
5 utility or its assignee is lawfully entitled to  
6 receive pursuant to this chapter and the proceeds  
7 thereof, and in and to all revenues, collections,  
8 claims, payments, moneys, or proceeds of, or arising  
9 from, the infrastructure resilience charge that is the  
10 subject of a financing order.

11 "Infrastructure resilience property" does not include a right to  
12 be paid fixed recovery tax amounts. "Infrastructure resilience  
13 property" shall constitute a current property right,  
14 notwithstanding the fact that the value of the property right  
15 will depend on consumers using electricity or, in those  
16 instances where consumers are customers of the electric utility,  
17 the electric utility performing certain services.

18 "Investor-owned electric utility" means an electric utility  
19 that is owned by shareholders and overseen by a board of  
20 directors elected by shareholders.

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



1 "True-up adjustment" means a formulaic adjustment to the  
 2 infrastructure resilience charges as they appear on consumer  
 3 bills that is necessary to correct for any overcollection or  
 4 undercollection of the infrastructure resilience charges  
 5 authorized by a financing order and to otherwise ensure the  
 6 timely and complete payment and recovery of infrastructure  
 7 resilience costs over the authorized repayment term.

8 "Wildfire risk mitigation plan" means a plan, which may  
 9 include a natural hazard mitigation report, in which an electric  
 10 utility addresses how the electric utility will mitigate the  
 11 risk to its equipment in the event of a wildfire.

12 **§ -2 Applications to issue bonds and authorize**  
 13 **infrastructure resilience charges.** (a) An electric utility may  
 14 apply to the commission for one or more financing orders to  
 15 issue bonds to recover any infrastructure resilience costs, each  
 16 of which authorizes the following:

- 17 (1) The imposition, charging, and collection of an  
 18 infrastructure resilience charge, to become effective  
 19 upon the issuance of the bonds, and an adjustment of  
 20 any such infrastructure resilience charge in  
 21 accordance with a true-up adjustment mechanism under



- 1           this chapter in amounts sufficient to pay the  
2           principal and interest on the bonds and all other  
3           associated financing costs on a timely basis;
- 4           (2) The creation of infrastructure resilience property  
5           under the financing order; and
- 6           (3) The imposition, charging, and collection of fixed  
7           recovery tax amounts to recover any portion of the  
8           electric utility's federal and state taxes associated  
9           with those infrastructure resilience charges and not  
10          financed from the proceeds of bonds;
- 11         provided that the electric utility shall, in good faith, seek  
12         the maximum federal funding to offset the costs of  
13         infrastructure.
- 14          (b) The application shall include all of the following:
- 15          (1) The infrastructure resilience costs to be financed  
16               through the issuance of bonds;
- 17          (2) The principal amount of the bonds proposed to be  
18               issued and the selection of a financing entity;
- 19          (3) An estimate of the date on which each series of bonds  
20               is expected to be issued;



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



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



1 of infrastructure resilience charges allocated to  
2 consumers of affiliate electric utilities.

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

19 (d) The commission shall issue an approval or denial of  
20 any application for a financing order filed pursuant to this  
21 section within ninety days of the last filing in the applicable



1 docket but no later than one year after the application is  
2 filed.

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

5 (1) Whether the recovery of costs is consistent with the  
6 public interest;

7 (2) Whether the structuring, marketing, and pricing of the  
8 bonds are expected to result in the lowest  
9 infrastructure resilience charges consistent with  
10 market conditions at the time at which the bonds are  
11 priced and the terms of the financing order;

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

14 (4) With respect to an application by an investor-owned  
15 electric utility, whether the recovery of  
16 infrastructure resilience costs through the  
17 designation of the infrastructure resilience charges  
18 and any associated fixed recovery tax amounts, and the  
19 issuance of bonds in connection with the  
20 infrastructure resilience charges, would result in net



1 savings or mitigate rate impacts to consumers, as  
2 compared to rate recovery without securitization; and  
3 (5) Any other factors that the commission deems reasonable  
4 and in the public interest.

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

12 An electric utility may include in its application for a  
13 financing order a request for authorization to sell, transfer,  
14 assign, or pledge infrastructure resilience property to a  
15 governmental entity if the electric utility expects bonds issued  
16 by a governmental entity to result in a more cost-efficient  
17 means, taking into account all financing costs related to the  
18 bonds, than using another financing entity to issue bonds to  
19 finance the same infrastructure resilience costs, taking into  
20 account the costs of issuing the other financing entity's bonds.



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

9 § -3 **Infrastructure resilience financing order.** (a) A  
10 financing order shall remain in effect until the bonds issued  
11 under the financing order and all financing costs related to the  
12 bonds have been paid in full or defeased by their terms. The  
13 financing order shall be for no greater than \$500,000,000 of the  
14 infrastructure resilience costs for a corporate family of the  
15 electric utility.

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

20 (b) Notwithstanding any other law to the contrary, with  
21 respect to infrastructure resilience property that has been made



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

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



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

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

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

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

19          (c) Under a financing order, the electric utility shall  
20          retain sole discretion to select the financing entity and to  
21          cause bonds to be issued, including the right to defer or



1 postpone the issuance, assignment, sale, or transfer of  
2 infrastructure resilience property.

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

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

18 The commission shall either approve the filing or inform  
19 the electric utility of any mathematical or clerical errors in  
20 its calculation. If the commission informs the electric utility  
21 of mathematical or clerical errors in its calculation, the



1 electric utility shall correct its error and refile its true-up  
2 adjustment. The timeframes previously described in this  
3 subsection shall apply to a refiled true-up adjustment.

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

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

15 The issuance of bonds under this chapter shall not  
16 directly, indirectly, or contingently obligate the State or any  
17 of its political subdivisions to levy or pledge any form of  
18 taxation or make any appropriation for their payment.

19 (f) Infrastructure resilience charges are infrastructure  
20 resilience property when, and to the extent that, a financing  
21 order authorizing the infrastructure resilience charges has



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

14 (g) Any successor to a financing entity shall be bound by  
15 the requirements of this chapter and shall perform and satisfy  
16 all obligations of and have the same rights under a financing  
17 order as, and to the same extent as, the financing entity.

18 (h) No electric utility approved for a financing order  
19 shall increase compensation for its executive officers unless  
20 the utility's wildfire risk mitigation plan compliance reports  
21 have been approved by the commission for five consecutive years;



1 provided that the commission may consider an alternative  
2 symmetric performance incentive mechanism, if the commission  
3 deems appropriate. For the purposes of this subsection,  
4 "wildfire risk mitigation plan" has the same meaning as in  
5 section -1.

6 (i) As used in this section, "corporate family" means a  
7 group of corporations consisting of a parent corporation and all  
8 subsidiaries in which the parent corporation owns directly or  
9 indirectly a controlling interest.

10 § -4 **Bonds; issuance; infrastructure resilience property**  
11 **interests.** (a) The electric utility may sell and assign all or  
12 portions of its interest in infrastructure resilience property  
13 to one or more financing entities that make that infrastructure  
14 resilience property the basis for issuance of bonds, to the  
15 extent approved in a financing order. The electric utility or  
16 financing entity may pledge infrastructure resilience property  
17 as collateral, directly or indirectly, for bonds to the extent  
18 approved in the pertinent financing orders providing for a  
19 security interest in the infrastructure resilience property, in  
20 the manner set forth in this section. In addition,



1 infrastructure resilience property may be sold or assigned by  
2 either of the following:

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

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

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

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

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

20 (3) Account for and remit these amounts to or for the  
21 account of the financing entity or its assignees.



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

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



1 fixed recovery tax amounts, that are the subject of the  
2 financing order.

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

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



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

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

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



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

3 (d) An electric 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 electric 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 electric  
13 utility that is the pledgor or transferor of the infrastructure  
14 resilience property. The commission may require the electric  
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 electric 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 electric 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 electric 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 electric 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 electric utility.

16 (f) Sections 490:9-204 and 490:9-205 shall apply to a  
17 pledge of infrastructure resilience property by the electric  
18 utility, an affiliate of the electric 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 electric utility to an assignee or to a  
2 financing entity, or by an assignee of the electric utility or a  
3 financing entity to another financing entity, which the parties  
4 in the governing documentation have expressly stated to be a  
5 sale or 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 an electric 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 electric utility shall perform  
4 and satisfy all obligations of the electric utility under the  
5 financing order in the same manner and to the same extent as the  
6 electric utility, including the obligation to collect and pay  
7 the infrastructure resilience charge to any financing party as  
8 required by a financing order or any assignee. Any successor to  
9 the electric utility shall be entitled to receive any fixed  
10 recovery tax amounts otherwise payable to the electric utility.

11 (b) The commission may require in a financing order that,  
12 if a default by the electric 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 electric 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 SECTION 4. Section 269-17, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§269-17 Issuance of securities. A public utility  
16 corporation may, on securing the prior approval of the public  
17 utilities commission, and not otherwise, except as provided in  
18 section -4, issue stocks and stock certificates, bonds,  
19 notes, and other evidences of indebtedness, payable at periods  
20 of more than twelve months after the date thereof, for the  
21 following purposes and no other, namely: for the acquisition of



1 property or for the construction, completion, extension, or  
2 improvement of or addition to its facilities or service, or for  
3 the discharge or lawful refunding of its obligations or for the  
4 reimbursement of moneys actually expended from income or from  
5 any other moneys in its treasury not secured by or obtained from  
6 the issue of its stocks or stock certificates, or bonds, notes,  
7 or other evidences of indebtedness, for any of the [~~aforsaid~~]  
8 purposes stated in this section except maintenance of service,  
9 replacements, and substitutions not constituting capital  
10 expenditure in cases where the corporation has kept its accounts  
11 for [~~such~~] those expenditures in [~~such~~] a manner [~~as to enable~~]  
12 that enables the commission to ascertain the amount of moneys so  
13 expended and the purposes for which the expenditures were made,  
14 and the sources of the funds in its treasury applied to the  
15 expenditures. As used [~~herein~~] in this section, "property" and  
16 "facilities" [~~]~~ mean property and facilities used in all  
17 operations of a public utility corporation regardless of whether  
18 [~~or not~~] included in its public utility operations or rate base.  
19 A public utility corporation may not issue securities to acquire  
20 property or to construct, complete, extend or improve or add to  
21 its facilities or service if the commission determines that the



1 proposed purpose will have a material adverse effect on its  
2 public utility operations.

3 All stock and every stock certificate, and every bond,  
4 note, or other evidence of indebtedness of a public utility  
5 corporation not payable within twelve months, issued without an  
6 order of the commission authorizing the same, then in effect,  
7 shall be void."

8 PART III

9 SECTION 5. (a) There shall be established a working group  
10 within the department of commerce and consumer affairs to  
11 examine the establishment and implementation of a wildfire  
12 recovery fund to provide efficient compensation for damage  
13 resulting from a future wildfire allegedly caused or exacerbated  
14 by an electric utility, while also helping to protect the  
15 financial integrity of Hawaii's regulated utilities.

16 (b) The working group shall review, examine, and analyze  
17 the provisions related to a wildfire recovery fund as proposed  
18 in the final version of House Bill No. 982 and Senate Bill No.  
19 897 passing the legislature during the Regular Session of 2025,  
20 for the following:



- 1 (1) Determining the size of the wildfire recovery fund,  
2 which may include commissioning of an actuarial study;
- 3 (2) Studying the proper governance of the public  
4 corporation that would oversee the wildfire recovery  
5 fund;
- 6 (3) Considering the benefits of an administrative process  
7 to provide efficient and low-cost recovery for  
8 claimants, considering the proper mechanism for the  
9 fund to provide such an administrative process; and
- 10 (4) Comparing how similar funds in other state have  
11 affected the credit ratings of other electric  
12 utilities.
- 13 (c) The working group shall consist of:
  - 14 (1) The director of commerce and consumer affairs, or the  
15 director's designee, who shall serve as the  
16 chairperson of the working group;
  - 17 (2) A representative of the department of the attorney  
18 general, to be selected by the attorney general;
  - 19 (3) A representative of the public utilities commission,  
20 to be selected by the chairperson of the commission;



1 (4) A representative of the division of consumer advocacy  
2 of the department of commerce and consumer affairs, to  
3 be selected by the consumer advocate; and

4 (5) A representative of the insurance division of the  
5 department of commerce and consumer affairs, to be  
6 selected by the insurance commissioner.

7 (d) The chairperson of the working group shall invite  
8 representatives of the following to be members of the working  
9 group:

10 (1) Hawaiian Electric;

11 (2) Kauai Island Utility Cooperative;

12 (3) Property insurers that conduct business in the State;  
13 and

14 (4) Any other individuals deemed necessary by the  
15 chairperson of the working group.

16 (e) The members of the working group shall serve without  
17 compensation.

18 (f) The working group shall submit a report of its  
19 findings and recommendations, including any proposed  
20 legislation, to the legislature no later than twenty days prior  
21 to the convening of the regular session of 2026.



1 (g) The working group shall cease on July 1, 2026.

2 PART IV

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 3000.



**Report Title:**

DCCA; PUC; Energy; Electric Utilities; Aggregate Liability Limit; Securitization; Electric Utility Infrastructure Resilience; Working Group; Report

**Description:**

Allows electric cooperatives to recover wildfire mitigation, repaid, and restoration costs through an automatic rate adjustment or other mechanism. Establishes an aggregate limit for liability for economic damages from covered catastrophic wildfires. Authorizes securitization of certain costs for electric utilities. Establishes a working group to examine the establishment and implementation of a wildfire recovery fund and report its findings and recommendations to the Legislature. Effective 7/1/3000. (HD2)

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

