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# A BILL FOR AN ACT

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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."



## PART II

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

**"CHAPTER****SECURITIZATION**

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

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

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



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

- (1) Alter the provisions of this chapter, which authorize the commission to create an irrevocable contract right or choice in action by the issuance of a financing order, to create infrastructure resilience property and make the infrastructure resilience charges imposed 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.*

