

ACT 258

S.B. NO. 897

A Bill for an Act Relating to Energy.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

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

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

§269-B Determination of limitation on liability. (a) The commission shall initiate a proceeding for the adoption of rules pursuant to chapter 91 to

establish the maximum amount each electric utility may pay to resolve claims arising from any covered catastrophic wildfires, as defined in section 663- , for set periods of time established by rules in accordance with this section. The commission shall have sole discretion to establish the maximum payable amounts and applicable periods of time. The rules adopted by the commission under this section shall have the force and effect of law.

(b) The commission shall adopt rules as soon as is practicable. The rules shall authorize the maximum payable amount each electric utility may pay to resolve qualifying damages arising from any covered catastrophic wildfires, as those terms are defined in section 663- , that occur within a set period of time, or per event, as determined by the commission, without harming ratepayers or materially impacting each electric utility's ability to provide adequate and safe service consistent with the public interest. In adopting rules to establish the maximum payable amount, the commission shall consider, at a minimum:

- (1) Whether the maximum payable amount shall be delineated by the qualifying damages arising from covered catastrophic wildfires that occur:
 - (A) Within a set period of time that is determined by the commission; or
 - (B) Per event;
- (2) Different approaches to establishing the maximum payable amount, such as a flat dollar limit for the set period of time, or per event; one based upon a percentage of the electric utility's market capitalization or rate base; or hybrid approaches, including examining frameworks adopted or considered in other wildfire-prone states and their effectiveness;
- (3) Impacts on the electric utility's credit ratings, borrowing costs, and customer's electricity rates, and how the establishment of the maximum payable amount will help to achieve intended outcomes of improving the utility's credit rating and lowering costs passed on to customers;
- (4) Impacts of the maximum payable amount upon the insurance market in the State;
- (5) Impacts of the maximum payable amount on the indemnity, contribution, and subrogation rights of any person or entity;
- (6) Impacts on the liability exposure of other hypothetical future co-defendants with respect to claims arising from a catastrophic wildfire;
- (7) Impacts on potential future plaintiffs who could be negatively impacted by the establishment of the maximum payable amount;
- (8) The affordability of electric utility service and the potential impacts on customer's electricity rates by the establishment of the maximum payable amount;
- (9) Requirements to maintain or improve the quality of service to the electric utility's customers;
- (10) Requirements to improve the management of the electric utility doing business in the State;
- (11) Requirements to meet state policy goals for clean energy and climate;
- (12) Requirements to implement wildfire mitigation plans and improve safety;
- (13) Requirements to improve interconnection costs and timeliness; and
- (14) The restriction or reduction of compensation packages and bonuses to officers and employees of the electric utility.

- (c) The rules adopted pursuant to this section shall also include:
- (1) Conditions to ensure that the establishment of the maximum payable amount is consistent with the public interest;
- (2) Annual reporting requirements for compliance with any conditions established; and
- (3) Procedures for corrective actions if the electric utility is not in compliance.

Rules required to be adopted under this section shall be adopted in a single rulemaking proceeding. Upon request by the commission, the electric utility or any state or county agency shall provide any information that is relevant to the rulemaking proceedings under this section.

(d) Notwithstanding any other law to the contrary, the rules adopted under this section shall be presented to, and subject to the approval of, the governor. If the governor approves the rules, the governor shall sign the rules, and the rules shall be adopted as provided in section 91-3. If the governor does not approve the rules, the governor may return the rules to the commission with the governor's reasons for disapproval. The governor shall have twenty-one days to consider the rules after the rules are presented to the governor, and if the rules are neither signed nor returned by the governor within that time, the rules shall be adopted as if the governor had signed them.

If the rules are returned to the commission, the commission may start anew the rule-making process set forth in subsection (b).

(e) On or before the last day of the preceding set period of time established by the commission with respect to each electric utility, the commission shall adopt rules pursuant to subsection (b) and (c) for the next subsequent proposed period of time.

(f) Notwithstanding any other law to the contrary, the supreme court shall have original jurisdiction over any petition to obtain a judicial determination as to the validity of the rules adopted under this section. The petition shall be filed with the clerk of the supreme court within thirty days of the filing of the rules with the lieutenant governor pursuant to section 91-4(b). After an action is filed pursuant to this paragraph, the supreme court shall give priority to the action over all other civil or administrative appeals or matters and shall render a final judgment and opinion as expeditiously as possible. No action challenging the validity of the rules may be brought except as provided in this subsection.

In all collateral proceedings, including any civil action to recover damages for a covered catastrophic wildfire, the maximum payable amounts established by the rules shall be conclusive and not subject to judicial review. Nothing in this section or rules adopted under this section shall be construed to create any property interest or entitlement of any kind in the electric utility, and no claim by any party, whether sounding in law or equity, or under article I, section 20, of the Hawaii State Constitution, may be brought against the commission, its commissioners, officials, and employees, or the State relating to rulemaking under this section.

(g) For purposes of this section:

"Electric utility" includes an electric cooperative, as defined in section 269-A(b).

“Wildfire mitigation plan” means the plan that each electric utility shall file with the commission, and which shall be periodically updated at a frequency determined by the commission, that sets forth the utility’s practices to protect public safety and reduce risk to customers from wildfires and to promote the resilience of the electric system to wildfire damage, pursuant to requirements established by the commission.”

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

“§663- Limitation on aggregate liability; electric utilities. (a) The aggregate liability of an electric utility, including its affiliates, collectively, for qualifying damages arising from a covered catastrophic wildfire shall not exceed the least of the maximum payable amount authorized by the rules, adopted pursuant to section 269-B, for either the set period of time in which the covered catastrophic wildfire began or per event, as determined by the commission, or for the remainder of the maximum payable amount to the extent that the electric utility has already paid qualifying damages for the same time period or event.

(b) An electric utility that seeks to assert the limitation on aggregate liability set forth in subsection (a) shall:

- (1) Have a wildfire mitigation plan, as defined in section 269-B, that is approved by the commission and shall have sought and received a determination from the commission that the plan is being implemented on the timeline approved by the commission; and
- (2) Be in full compliance with any conditions and reporting requirements established by rule pursuant to subsection 269-B(c).

(c) All civil actions arising out of a catastrophic wildfire shall be brought in the circuit in which the catastrophic wildfire occurred. The court shall adopt procedures to equitably apply the limit set forth in subsection (a) to all filed civil claims, and notwithstanding any law to the contrary, joint and several liability shall not apply to qualifying damages, even as to any amount of qualifying damages in excess of the aggregate liability of an electric utility; provided that in any action to recover from a person or an entity in connection with a covered catastrophic wildfire, the person or entity may claim, in defense, apportionment of fault to any other person, entity, electric utility, or electric cooperative, even as to those who are not a party to the action. The exceptions to the abolition of joint and several liability set forth in section 663-10.9 shall not apply to any suit, claim, arbitration, or other civil action arising out of a covered catastrophic wildfire. All settlements or judgments for claims for qualifying damages shall be subject to approval by the court. The court shall not approve any settlement or judgment that would cause the aggregate liability of electric utilities to exceed the aggregate liability limit prescribed by the commission if the utility is entitled to invoke the limitation under subsection (a). No liability allocable to the electric utility that is not payable because of the aggregate liability limit shall be shifted, in any manner, to any other alleged tortfeasor or obligor.

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

(e) No later than twenty days prior to the convening of each regular session, the commission shall study and submit a report to the legislature that includes:

- (1) An assessment of whether the factors considered pursuant to section 269-B(b) adequately balance the solvency interests of electric utilities with the compensation owed in the previous year to catastrophic wildfire victims, or whether additional factors should be considered; and
- (2) Any other findings and recommendations, including any necessary proposed legislation.
- (f) For the purposes of this section:

“Catastrophic wildfire” means a wildfire occurring in the State on or after the effective date of this Act that substantially damages or destroys more than five hundred commercial structures or residential structures designed for habitation or, for an electric cooperative, a wildfire that substantially damages or destroys more than fifty commercial structures or residential structures designed for habitation.

“Covered catastrophic wildfire” means a catastrophic wildfire that may have been caused, or whose severity may have been increased, by an electric utility’s facilities or actions.

“Electric utility” means a public utility that exists for the furnishing of electrical power, including an electric cooperative.

“Electric cooperative” is an electric utility that has the same meaning as in section 269-31(c).

“Public utility” has the same meaning as in section 269-1.

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

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 an electric utility assigns, sells, or transfers, other than as security, all or a portion of the electric 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, financing entity, or any other legal entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to infrastructure resilience property.

“Bond” means any bond, note, certificate of participation or beneficial interest, or other evidence of indebtedness or ownership that is issued by the financing entity under a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance financing costs of any infrastruc-

ture resilience costs, and that are directly or indirectly secured by or payable from infrastructure resilience property.

“Commission” means the public utilities commission.

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

“Electric utility” means a public utility that exists for the furnishing of electrical power.

“Executive officer” means any person who performs policy making functions and is employed by an electric utility subject to the approval of the board of directors, and includes the president, secretary, treasurer, and any vice president in charge of a principal business unit, division, or function of the electric utility.

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

- (1) Principal, interest, and redemption premiums that are payable on bonds;
- (2) A payment required under an ancillary agreement;
- (3) An amount required to fund or replenish reserve accounts or other accounts established under an indenture, ancillary agreement, or other financing document related to the bonds;
- (4) Taxes, franchise fees, or license fees imposed on a financing entity as a result of the issuance of the financing order; the assignment, sale, or transfer of any infrastructure resilience property; or the sale of the bonds, or imposed on the infrastructure resilience charges, or otherwise resulting from the collection of the infrastructure resilience charge, in any such case whether paid, payable, or accrued;
- (5) Costs related to issuing and servicing bonds or the application for a financing order, including without limitation servicing fees and expenses, trustee fees and expenses, legal fees and expenses, accounting fees, administrative fees, underwriting and placement fees, financial advisory fees, original issue discount, capitalized interest, rating agency fees, and any other related costs that are approved for recovery in the financing order;
- (6) Costs related to the engagement of services of a financial advisor by the commission; and
- (7) Other costs as specifically authorized by a financing order.

“Financing entity” means an electric utility or an entity to which an electric utility or an affiliate of an electric utility sells, assigns, or pledges all or a portion of the electric utility’s interest in infrastructure resilience property, including an affiliate of the electric utility or any unaffiliated entity, in each case as approved by the commission in a financing order.

Subject to section -6(c), an entity to which an electric utility sells, assigns, or pledges all or a portion of the electric utility’s interest in infrastructure resilience property may include any governmental entity that is able to issue bonds that are exempt from federal tax pursuant to section 103 of the Internal Revenue Code of 1986, as amended, including the State or a political subdivision thereof or any department, agency, or instrumentality of the State or po-

litical subdivision; provided that the bonds issued shall not constitute a general obligation of the State or any political subdivision thereof or any department, agency, or instrumentality of the State or political subdivision and shall not constitute a pledge of the full faith and credit of the entity or of the State or any political subdivision thereof, but shall be payable solely from the funds provided under this chapter.

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

“Financing party” means any holder of the bonds; any party to or beneficiary of an ancillary agreement; and any trustee, collateral agent, or other person acting for the benefit of any of the foregoing.

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

“Infrastructure resilience charges” means the nonbypassable charges, including but not limited to distribution, connection, disconnection, and termination rates and charges, that are authorized in a financing order authorized under this chapter to be imposed on and collected from all existing and future consumers of an electric utility or any successor to recover principal, interest, and other financing costs relating to the bonds issued by its financing entity.

“Infrastructure resilience costs” means an electric utility’s costs to implement its wildfire risk mitigation plan and other investments in infrastructure improvements, modernization, and replacement needed to reduce wildfire risks and increase reliability and resilience to natural disasters and weather-related events, as approved by the commission.

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

- (1) In and to the infrastructure resilience charge established pursuant to a financing order, including the right to impose, bill, collect, and receive the infrastructure resilience charges under the financing order and all rights to obtain adjustments to the infrastructure resilience charge in accordance with section 3 and the financing order; and
- (2) To be paid the amount that is determined in a financing order to be the amount that the electric utility or its assignee is lawfully entitled to receive pursuant to this chapter and the proceeds thereof, and in and to all revenues, collections, claims, payments, moneys, or proceeds of, or arising from, the infrastructure resilience charge that is the subject of a financing order.

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

“Investor-owned electric utility” means an electric utility that is owned by shareholders and overseen by a board of directors elected by shareholders.

“Public utility” has the same meaning as in section 269-1.

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

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

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

- (1) The imposition, charging, and collection of an infrastructure resilience charge, to become effective upon the issuance of the bonds, and an adjustment of any such infrastructure resilience charge in accordance with a true-up adjustment mechanism under this chapter in amounts sufficient to pay the principal and interest on the bonds and all other associated financing costs on a timely basis;
- (2) The creation of infrastructure resilience property under the financing order; and
- (3) The imposition, charging, and collection of fixed recovery tax amounts to recover any portion of the electric utility’s federal and state taxes associated with those infrastructure resilience charges and not financed from the proceeds of bonds.

(b) The commission may issue a financing order that authorizes the issuance of bonds under subsection (a) only if:

- (1) The electric utility, in good faith, has sought the maximum federal funding to offset the costs of infrastructure;
 - (2) After the effective date of this Act, the first \$500,000,000 in infrastructure resilience capital investments, in the aggregate, must be made under this Act; and
 - (3) Any assets that are to be financed under securitization should not already be included in the electric utility’s rate base.
- (c) The application shall include all of the following:
- (1) The infrastructure resilience costs to be financed through the issuance of bonds;
 - (2) The principal amount of the bonds proposed to be issued and the selection of a financing entity;
 - (3) An estimate of the date on which each series of bonds is expected to be issued;

- (4) The scheduled final payment date, which shall not exceed thirty years, and a legal final maturity date, which may be longer, subject to rating agency and market considerations, during which term the infrastructure resilience charge associated with the issuance of each series of bonds is expected to be imposed and collected;
- (5) An estimate of the financing costs associated with the issuance of each series of bonds;
- (6) An estimate of the amount of the infrastructure resilience charge revenues necessary to pay principal and interest on the bonds and all other associated financing costs as set forth in the application and calculation for that estimate;
- (7) A proposed design of the infrastructure resilience charge and a proposed methodology for allocating the infrastructure resilience charge among customer classes within the electric utility's service territory;
- (8) A description of the financing entity selected by the electric utility;
- (9) A description of a proposed true-up adjustment mechanism for the adjustment of the infrastructure resilience charge to correct for any overcollection or undercollection of the infrastructure resilience charge, and to otherwise ensure the timely payment of principal and interest on the bonds and all other associated financing costs; and
- (10) Any other information required by the commission.

(d) An electric utility may file an application for a financing order, or as a joint applicant with one or more affiliate electric utilities, to issue bonds to recover infrastructure resilience costs. The application shall include a description of:

- (1) How the infrastructure resilience charges will be allocated among the applicant electric utilities in a manner that is equitable and that need not correspond to the incurrence of infrastructure resilience costs by each electric utility; and
- (2) Whether and how the consumers of any of the applicant electric utilities will be responsible for the payment of infrastructure resilience charges allocated to consumers of affiliate electric utilities.

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

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

(f) In exercising its duties under this section, the commission shall consider:

- (1) Whether the issuance of the bonds, and the imposition and collection of infrastructure resilience charges, are consistent with the public interest;

- (2) Whether the structuring, marketing, and pricing of the bonds are expected to result in the lowest infrastructure resilience charges consistent with market conditions at the time at which the bonds are priced and the terms of the financing order;
- (3) Whether the terms and conditions of any bonds to be issued are just and reasonable;
- (4) With respect to an application by an investor-owned electric utility, whether the recovery of infrastructure resilience costs through the designation of the infrastructure resilience charges and any associated fixed recovery tax amounts, and the issuance of bonds in connection with the infrastructure resilience charges, would result in net savings or mitigate rate impacts to consumers, as compared to rate recovery without securitization; and
- (5) Any other factors that the commission deems reasonable and in the public interest.

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

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

(g) Infrastructure resilience charges and any associated fixed recovery tax amounts shall be imposed only on existing and future consumers in the utility service territory of the electric utility that is subject to such financing order. Consumers within the utility service territory of the electric utility that are subject to the financing order shall continue to pay infrastructure resilience charges and any associated fixed recovery tax amounts until the bonds and associated financing costs are paid in full by the financing entity.

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

A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of the electric utility or the commencement of any judicial or 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 electric utility, of assignees of the infrastructure resilience property, and of bondholders. 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 choose 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, nonbypassable charges for all existing and future consumers;
- (2) Take or permit any action that impairs or would impair the value of infrastructure resilience property or the security for the bonds or revise the infrastructure resilience costs for which recovery is authorized;
- (3) In any way impair the rights and remedies of the bondholders, assignees, and other financing parties; and
- (4) Except for changes made pursuant to the true-up adjustment authorized under subsection (d), reduce, alter, or impair infrastructure resilience charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs, and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related bonds have been paid and performed in full.

The financing entity may include this pledge in the bonds.

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

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

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

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

(e) The commission may include in the financing order a requirement that, if the electric utility fails to transfer the wildfire recovery charges it has collected, the commission will order that those funds shall be withheld and paid directly to the applicable financing entity. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

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

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

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

(g) Infrastructure resilience charges are infrastructure resilience property when, and to the extent that, a financing order authorizing the infrastructure resilience charges has become effective in accordance with this chapter, and the infrastructure resilience property shall thereafter continuously exist as property for all purposes, and all of the rights and privileges relating to that property shall continuously exist for the period and to the extent provided in the financing order, but in any event until the bonds, including all principal; premiums, if any; interest with respect to the bonds; and all other financing costs are paid in full. A financing order may provide that the creation of infrastructure resilience property shall be simultaneous with the sale of the infrastructure resilience property to an assignee as provided in the application of the pledge of the infrastructure resilience property to secure the bonds.

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

(i) No electric utility approved for a financing order shall increase compensation for its executive officers unless the utility’s wildfire risk mitigation plan compliance reports have been approved by the commission for five consecutive years; provided that the commission may consider an alternative symmetric performance incentive mechanism, if the commission deems appropriate. For the purposes of this subsection, “wildfire risk mitigation plan” has the same meaning as in section -1.

(j) As used in this section, “corporate family” means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a controlling interest.

(k) The commission, in its discretion, may engage the services of a financial adviser for the purposes of assisting the commission in its consideration of an application for a financing order and a subsequent issuance of bonds pursuant to a financing order.

§ -4 Bonds; issuance; infrastructure resilience property interests. (a) The electric utility may sell and assign all or portions of its interest in infrastructure resilience property to one or more financing entities that make that infrastructure resilience property the basis for issuance of bonds, to the extent approved in a financing order. The electric utility or financing entity may pledge infrastructure resilience property as collateral, directly or indirectly, for bonds to the extent approved in the pertinent financing orders providing for a security interest in the infrastructure resilience property, in the manner set forth in this section. In addition, infrastructure resilience property may be sold or assigned by either of the following:

- (1) The financing entity or a trustee for the holders of bonds or the holders of an ancillary agreement in connection with the exercise of remedies upon a default under the terms of the bonds; or
- (2) Any person acquiring the infrastructure resilience property after a sale or assignment pursuant to this chapter.

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

- (1) Continue to operate its system to provide service to consumers within its service territory;
- (2) Collect amounts in respect of the infrastructure resilience charges for the benefit and account of the financing entity or its assignees; and
- (3) Account for and remit these amounts to or for the account of the financing entity or its assignees.

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

Each financing order shall impose terms and conditions, consistent with the purposes and objectives of this chapter, on any person or entity responsible for billing, collection, and other related services, including but not limited to collection of the infrastructure resilience charges and any associated fixed recovery tax amounts, that are the subject of the financing order.

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

(d) Infrastructure resilience property that is specified in a financing order shall constitute an existing, present property right, notwithstanding the fact that the imposition and collection of infrastructure resilience charges depend on the electric utility's continuing to provide services or continuing to perform its servicing functions relating to the collection of infrastructure resilience charges or on the level of future service consumption, such as consumption of an electric utility service. Infrastructure resilience property shall exist whether or not the infrastructure resilience charges have been billed, have accrued, or have been collected, and notwithstanding the fact that the value for a security interest in the infrastructure resilience property, or amount of the infrastructure resilience property, is dependent on the future provision of service to consumers. All infrastructure resilience property specified in a financing order shall continue to exist until the bonds issued pursuant to a financing order and all associated financing costs are paid in full.

(e) Infrastructure resilience property; infrastructure resilience charges; and the interests of an assignee, bondholder, or financing entity, or any pledgee in infrastructure resilience property and infrastructure resilience charges shall not be subject to setoff, counterclaim, surcharge, recoupment, or defense by the

electric utility or any other person or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the electric utility, any affiliate of the electric utility, or any other entity.

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

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

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

(c) The infrastructure resilience charge shall be collected by an electric utility or its successors, in accordance with section -8(a), in full through a charge that is separate and apart from the electric utility's rates. The infrastructure resilience charge shall be collected by the public utilities or their successors as collection agents for the applicable financing entity, and such amounts shall be held in trust until transferred to the applicable financing entity.

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

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

- (1) The commission has issued a financing order authorizing the infrastructure resilience charge to be included in the infrastructure resilience property;
- (2) Value has been given by the pledgees of the infrastructure resilience property; and
- (3) The pledgor has signed a security agreement covering the infrastructure resilience property.

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

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

(c) A perfected security interest in infrastructure resilience property shall be a continuously perfected security interest in all infrastructure resilience property revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Infrastructure resilience property shall constitute property for all purposes, including for contracts securing bonds, whether or not the infrastructure resilience property revenues and proceeds have accrued.

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

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

(e) If default occurs under the security agreement covering the infrastructure resilience property, the pledgees of the infrastructure resilience property, subject to the terms of the security agreement, and upon receiving approval from the commission for a foreclosure request, shall be entitled to foreclose or otherwise enforce their security interest in the infrastructure resilience property, subject to the rights of any third parties holding prior security interests in the infrastructure resilience property perfected in the manner provided in this section.

In addition, the commission may require in the financing order creating the infrastructure resilience property that in the event of default by the electric utility in payment of infrastructure resilience property revenues, the commission and any successor thereto, upon the application by the pledgees or assignees, including assignees under section 4 of the infrastructure resilience property, and without limiting any other remedies available to the pledgees or assignees by reason of the default, shall order the sequestration and payment to the pledgees or assignees of infrastructure resilience property revenues. Any financing order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the infrastructure resilience property. Any surplus in excess of amounts necessary to pay principal; premiums, if any; interest, costs, and arrearages on the bonds; and associated financing costs arising under the security agreement, shall be remitted to the debtor, pledgor, or transferor, for the purpose of remitting such amounts to customers via the electric utility.

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

§ -7 Transfers of infrastructure resilience property. (a) A transfer or assignment of infrastructure resilience property by the electric utility to an assignee or to a financing entity, or by an assignee of the electric utility or a financing entity to another financing entity, which the parties in the governing documentation have expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other financing, of the infrastructure resilience property, other than for federal and state income and franchise tax purposes.

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

- (1) Commingling of infrastructure resilience charge revenues with other amounts;
 - (2) The retention by the seller of either of the following:
 - (A) A partial or residual interest, including an equity interest, in the financing entity or the infrastructure resilience property, whether direct or indirect, subordinate or otherwise; or
 - (B) The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of infrastructure resilience charge;
 - (3) Any recourse that an assignee may have against the seller;
 - (4) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;
 - (5) The obligation of the seller to collect infrastructure resilience charges on behalf of an assignee;
 - (6) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purpose; or
 - (7) Any true-up adjustment of the infrastructure resilience charge as provided in the financing order.
- (c) A transfer of infrastructure resilience property shall be deemed perfected against third parties when:
- (1) The commission issues the financing order authorizing the infrastructure resilience charge included in the infrastructure resilience property; and
 - (2) An assignment of the infrastructure resilience property in writing has been executed and delivered to the assignee.
- (d) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the bureau of conveyances in accordance with part 5 of article 9 of chapter 490, naming the assignor of the infrastructure resilience property as debtor and identifying the infrastructure resilience property, shall have priority. Any description of the infrastructure resilience property shall be sufficient if it refers to the financing order creating the infrastructure resilience property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures the commission may establish; provided that these filings shall not affect the perfection of the transfer.

§ -8 Financing entity successor requirements; default of financing entity. (a) Any successor to an electric utility subject to a financing order, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall be bound by the requirements of this chapter. The successor of the electric utility shall perform and satisfy all obligations of the electric utility under the financing order in the same manner and to the same extent as the electric utility, including the obligation to collect and pay the infrastructure resilience charge to any financing party as required by a financing order or any assignee. Any successor to the electric utility shall be entitled to receive any fixed recovery tax amounts otherwise payable to the electric utility.

(b) The commission may require in a financing order that, if a default by the electric utility in remittance of the infrastructure resilience charge collected arising with respect to infrastructure resilience property occurs, the commission, without limiting any other remedies available to any financing party by reason of the default, shall order the sequestration and payment to the beneficiaries of the infrastructure resilience charge collected arising with respect to the infrastructure resilience property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

§ -9 Report to legislature. No later than twenty days prior to the convening of each regular session, the commission shall submit a report to the legislature that includes:

- (1) An update on its activities under this chapter, including how the securitization authorized under this chapter is being utilized; and
- (2) Any other findings and recommendations, including any necessary proposed legislation.

§ -10 Severability. If any provision of this chapter is held to be invalid or is superseded, replaced, repealed, or expires for any reason:

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

SECTION 4. Section 269-17, Hawaii Revised Statutes, is amended to read as follows:

“§269-17 Issuance of securities. A public utility corporation may, on securing the prior approval of the public utilities commission, and not otherwise, except as provided in section -4, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely: for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the [aforesaid] purposes stated in this section except maintenance of service, replacements, and substitu-

tions not constituting capital expenditure in cases where the corporation has kept its accounts for ~~[such]~~ those expenditures in ~~[such]~~ a manner ~~[as to enable]~~ that enables the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures. As used ~~[herein,]~~ in this section, “property” and “facilities”~~[.]~~ mean property and facilities used in all operations of a public utility corporation regardless of whether ~~[or not]~~ included in its public utility operations or rate base. A public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations.

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

PART III

SECTION 5. (a) The public utilities commission shall conduct a study to examine the establishment and implementation of a wildfire recovery fund to:

- (1) Provide efficient compensation for damage resulting from a future wildfire that was allegedly caused or exacerbated by an electric utility; and
 - (2) Help protect the financial integrity of Hawaii’s regulated utilities.
- (b) The public utilities commission shall review, examine, and consider the following:
- (1) How a fund would impact utility credit ratings and costs to customers, including comparing how funds in other states have performed;
 - (2) Whether the establishment of a fund is recommended;
 - (3) If a fund is recommended, a determination of the size of the wildfire recovery fund, which may include commissioning of an actuarial study;
 - (4) If a fund is recommended, a determination of the best approach to capitalizing the fund and whether moneys used to capitalize the fund should come from ratepayers or shareholders, or both;
 - (5) If a fund is recommended, a determination of the proper governance of the public corporation that would oversee the wildfire recovery fund;
 - (6) If a fund is recommended, a consideration of the benefits of an administrative process to provide efficient and low-cost recovery for claimants, and the proper mechanism for providing such an administrative process; and
 - (7) A consideration of who can participate in the fund and if parties other than an electric utility should be considered for participation.
- (c) The public utilities commission shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2026.

PART IV

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2025-2026 for consultant contracts.

The sum appropriated shall be expended by the public utilities commission for the purposes of this Act.

SECTION 7. There is appropriated out of the public utilities commission special fund established under section 269-33, Hawaii Revised Statutes, the sum of \$900,000 or so much thereof as may be necessary for fiscal year 2025-2026 for consultant contracts for utility dockets.

The sum appropriated shall be expended by the division of consumer advocacy for the purposes of this section.

SECTION 8. There is appropriated out of the public utilities commission special fund established under section 269-33, Hawaii Revised Statutes, the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2025-2026 for consultant contracts for utility dockets.

The sum appropriated shall be expended by the public utilities commission for the purposes of this section.

SECTION 9. There is appropriated out of the public utilities commission special fund established under section 269-33, Hawaii Revised Statutes, the sum of \$900,000 or so much thereof as may be necessary for fiscal year 2025-2026 for other current expenses related to the Maui wildfires.

The sum appropriated shall be expended by the public utilities commission for the purposes of this section.

PART V

SECTION 10. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 12. This Act shall take effect on July 1, 2025.

(Approved July 1, 2025.)

Note

1. Edited pursuant to HRS §23G-16.5.