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Summary: Storm Damage Recovery

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/14/2025 Senate Introduced and read first time

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**VERSIONS OF THIS BILL**

[01/14/2025](https://www.scstatehouse.gov/sess126_2025-2026/prever/157_20250114.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 58-27-1105, RELATING TO DEFINITIONS, SO AS TO DEFINE QUALIFIED INDEPENDENT THIRD PARTY AND TO ALLOW AN ELECTRIC UTILITY TO INCLUDE STORM RECOVERY COSTS FOR HURRICANE HELENE ITS COST OF CAPITAL FROM THE DATE OF THE STROM THROUGH THE ISSUANCE OF STORM RECOVERY BONDS; AND BY AMENDING SECTION 58-27-1110, RELATING TO THE PETITION FOR FINANCING ORDER AND REQUIREMENTS, SO AS TO ALLOW AN ELECTRIC UTILITY TO DEFER THE REVIEW AND APPROVAL OF A FINANCING ORDER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 58-27-1105 of the S.C. Code is amended to read:

 Section 58-27-1105. When used in this article:

 (1) The term “ancillary agreement” means a bond, insurance policy, letter of credit, reserve account, surety bond, liquidity or credit support arrangement, or other financial arrangement entered into in connection with recovery bonds.

 (2) The term “assignee” means a legally recognized entity to which an electrical utility assigns, sells, or transfers, other than as a security, all or a portion of its interest in or right to storm recovery property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property.

 (3) The term “bondholder” means a person who holds a storm recovery bond.

 (4) The term “code” means The Uniform Commercial Code, Title 36 of the South Carolina Code of Laws.

 (5) The term “commission” means the Public Service Commission of South Carolina.

 (6) The term “electrical utility” is as defined in Section 58-27-10(7).

 (7) The term “financing costs” includes all of the following:

 (a) interest and acquisition, defeasance, or redemption premiums payable on recovery bonds;

 (b) any payment required under an ancillary agreement and any amount required to fund or replenish a storm reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to recovery bonds;

 (c) any other cost related to issuing, supporting, repaying, refunding, and servicing storm recovery bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of recovery or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

 (d) any taxes and license fees or other fees imposed on the revenues generated from the collection of a storm recovery charge or otherwise resulting from the collection of storm recovery charges, in any such case whether paid, payable, or accrued;

 (e) any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued;

 (f) any costs incurred by the commission or the Office of Regulatory Staff for any outside consultants, including counsel and advisors, retained in connection with the securitization of storm recovery costs.

 (8) The term “financing order” means an order that authorizes the issuance of storm recovery bonds; the imposition, collection, and periodic adjustments of a storm recovery charge; the creation of storm recovery property; and the sale, assignment, or transfer of storm recovery property to an assignee.

 (9) The term “financing party” means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.

 (10) The term “financing statement” is as defined in Section 36-9-102.

 (11) The term “pledgee” means a financing party to which an electrical utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to storm recovery property.

 (12) The term “qualified independent third party” means a person or entity with relevant expertise in accounting, finance, or utility regulation, sufficient to make the professional judgements necessary to certify compliance as required by Section 58-27-1110(C)(6)(a). The qualified independent third party shall be designated and retained by the commission.

 (12) (13) The term “storm” means, individually or collectively, a named tropical storm or hurricane, a tornado, ice storm or snowstorm, flood, an earthquake, or other significant weather or natural disaster.

 (13)(14)(a) The term “storm recovery activity” means an activity or activities by an electrical utility, its affiliates, or its contractors directly and specifically in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of an electrical utility as the result of a storm or storms, including activities related to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities.

 (b) No electrical utility is required to securitize nor is it prohibited from securitizing those capital improvements or infrastructure upgrades that have a quantifiable net benefit to consumers and that improve the resiliency of the transmission and distribution system.

 (14)(15) The term “storm recovery bonds” means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by an electrical utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance commission-approved storm recovery costs and financing costs, and that are secured by or payable from storm recovery property. If certificates of participation or ownership are issued, references in this article to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

 (15)(16) The term “storm recovery charge” means the amounts authorized by the commission to repay, finance, or refinance storm recovery costs and financing costs and that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by an electrical utility or its successors or assignees, or a collection agent, in full, separate and apart from the electrical utility's base rates, and (iii) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the electrical utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of electrical utilities in this State.

 (16)(17) The term “storm recovery costs” means:

 (a) all incremental costs, including capital costs, appropriate for recovery from existing and future retail customers receiving transmission or distribution service from an electrical utility that an electrical utility has incurred or expects to incur as a result of the applicable storm that are caused by, associated with, or remain as a result of undertaking storm recovery activity;

 (b) storm recovery costs shall be net of applicable insurance proceeds, tax benefits, income tax savings, and any other amounts intended to reimburse the electrical utility for storm recovery activities such as government grants, or aid of any kind and where determined appropriate by the commission, and may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the electrical utility's most recent general rate proceeding. Storm recovery costs may include, to the extent determined appropriate by the commission, the cost to replenish and fund any storm reserves, the costs of retiring any existing indebtedness relating to storm recovery activities, and carrying costs;

 (c) with respect to storm recovery costs that the electrical utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other rate-making adjustments appropriate to fairly and reasonably assign or allocate storm cost recovery to customers over time, shall be addressed in a future general rate proceeding, regardless of whether the electrical utility elects to seek review an approval of principal costs prior to or after filing a petition for a financing order and issuing storm recovery bonds pursuant to Section 58-27-1110(B), as may be facilitated by other orders of the commission issued at the time or prior to such proceeding; provided, however, that the commission's adoption of a financing order and approval of the issuance of storm recovery bonds may not be revoked or otherwise modified.

 (d) due to the significant and unprecedented damage caused by the 2024 hurricane referred to as Hurricane Helene to public and private property in South Carolina, including widespread destruction of utility infrastructure and the extraordinary expenses incurred by electrical utilities to repair, restore, and rebuild that infrastructure, the electrical utility is authorized to include as storm recovery costs, for Hurricane Helene only, its cost of capital from the date of the storm through the issuance of storm recovery bonds. This cost of capital shall be determined by the actual interest rate paid by the utility to borrow funds necessary to cover the restoration and recovery efforts after Hurricane Helene, provided that the interest rate percentage does not exceed the utility’s total weighted average cost of capital percentage as established in its most recent base rate case proceeding, adjusted for income tax savings associated with the interest rate component.

 (17)(18) The term “storm recovery property” means:

 (a) All rights and interests of an electrical utility or successor or assignee of the electrical utility under a financing order, including the right to impose, bill, charge, collect, and receive storm recovery charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.

 (b) All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

SECTION 2. Section 58-27-1110 of the S.C. Code is amended to read:

 Section 58-27-1110. (A) An electrical utility may petition the commission for a financing order. The petition shall include all of the following:

 (1) a description of the storm recovery activities that the electrical utility has undertaken or proposes to undertake and the reasons for undertaking the activities, or if the electrical utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in storm recovery costs, a description of the settlement agreement;

 (2) the storm recovery costs and an estimate of the costs of any storm recovery activities that are being undertaken but are not completed;

 (3) the level of the storm recovery reserve, if any, that the electrical utility proposes to establish or replenish and has determined would be appropriate to recover through storm recovery bonds and is seeking to so recover, and such level that the electrical utility is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining the amounts and methods of recovery;

 (4) an indicator of whether the electrical utility proposes to finance all or a portion of the storm recovery costs using storm recovery bonds. If the utility proposes to finance a portion of such costs, the electrical utility must identify the specific portion in the petition. By requesting not to finance a portion of such storm recovery costs using storm recovery bonds, an electrical utility shall not be deemed to waive its right to seek to recover such costs pursuant to a separate proceeding with the commission;

 (5) an estimate of the financing costs related to the storm recovery bonds;

 (6) an estimate of the storm recovery charges necessary to recover the storm recovery costs, including the storm recovery reserve amount, if any, determined appropriate by the commission, and financing costs and the period for recovery of such costs;

 (7) a comparison between the net present value of the costs to customers that are estimated to result from the issuance of storm recovery bonds based on current market conditions and the costs that would result from the application of the traditional method of financing and recovering storm recovery costs from customers. The comparison should demonstrate that the issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable net benefits to customers on a present value basis as compared to the costs that would have been incurred absent the issuance of storm recovery bonds; and

 (8) direct testimony, exhibits, and supporting workpapers supporting the petition, testimony, and exhibits. Such workpapers may be filed under seal to the extent necessary to protect confidential, proprietary, or sensitive information. The electrical utility shall provide functional exhibits and workpapers to the Office of Regulatory Staff and to the commission, subject to any appropriate confidentiality designations.

 (B) If the principal costs the electrical utility proposes to finance using storm recovery bonds were not already subject to review by the commission in a general rate proceeding, then the electrical utility must, at its discretion, either file a petition with the commission for review and approval of those costs no later than one hundred eighty days before filing a petition for a financing order pursuant to this section, or, alternatively, defer the review and approval of such costs to either a future base rate proceeding or a separate proceeding established by the commission at the request of the electrical utility. In either case, reconciliation of estimated costs to actual costs shall by subject to review pursuant to Section 58-27-1105(17)(c).

 (1) Any petition for review and approval of the principal costs shall be accompanied by direct testimony, exhibits, and supporting workpapers supporting the petition, testimony, and exhibits. Such workpapers may be filed under seal to the extent necessary to protect confidential, proprietary, or sensitive information. The electrical utility shall provide functional exhibits and workpapers to the Office of Regulatory Staff and to the commission, subject to any appropriate confidentiality designations.

 (2) If the electrical utility must file a petition for review and approval of the principal costs, the electrical utility shall not be required to provide additional notice prior to filing a petition for a financing order pursuant to this section; otherwise, the utility shall file a notice of its intent to file a petition for a financing order not less than thirty days prior to filing any such petition.

 (C)(1) Proceedings on a petition for a financing order submitted pursuant to this section begin with the petition by an electrical utility, filed subject to the time frame specified in subsection (B), as applicable, and shall be disposed of in accordance with the requirements of this chapter and the rules of the commission, except as follows:

 (a) within fourteen days after the date the petition is filed, the commission shall establish a procedural schedule that permits a commission decision no later than one hundred thirty-five days after the date the petition is filed; and

 (b) no later than one hundred thirty-five days after the date the petition is filed, the commission shall issue a financing order or an order rejecting the petition. A party to the commission proceeding may petition the commission for reconsideration of the financing order within the time prescribed in Section 58-27-2150.

 (2) A financing order issued by the commission to an electrical utility shall include all of the following elements and shall not issue unless each of the following elements is met:

 (a) except for changes made pursuant to the formula-based mechanism authorized under this section, the amount of storm recovery costs, including the level of storm recovery reserves, if any, to be financed using storm recovery bonds. The commission shall describe and estimate the amount of financing costs that may be recovered through storm recovery charges and specify the period over which storm recovery costs and financing costs may be recovered;

 (b) a finding that the proposed issuance of recovery bonds and the imposition and collection of a storm recovery charge will provide quantifiable net benefits to customers on a present value basis as compared to the costs that would have been incurred absent the issuance of storm recovery bonds;

 (c) a finding that the structuring, marketing, and pricing of the storm recovery bonds will result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in such financing order. The financing order must provide detailed findings of fact addressing cost effectiveness and associated rate impacts upon retail customers and retail customer classes;

 (d) a requirement that, for so long as the storm recovery bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of storm recovery charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the electrical utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of electrical utilities in this State;

 (e) a determination of what portion, if any, of the storm recovery reserves, if any, must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used;

 (f) a formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the storm recovery charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of storm recovery bonds, financing costs, and other required amounts and charges payable in connection with the storm recovery bonds;

 (g) the storm recovery property that is or shall be created in favor of an electrical utility or its successors or assignees, and that shall be used to pay or secure storm recovery bonds and all financing costs;

 (h) the degree of flexibility to be afforded to the electrical utility in establishing the terms and conditions of the storm recovery bonds including, but not limited to, repayment schedules, expected interest rates, and other financing costs, and subject to any conditions in the financing order, including the pre-bond issuance review process which the commission shall establish;

 (i) how storm recovery charges will be allocated among customer classes;

 (j) a requirement that, after the final terms of an issuance of storm recovery bonds have been established and before the issuance of storm recovery bonds, the electrical utility determines the resulting initial storm recovery charge in accordance with the financing order and that such initial storm recovery charge be final and effective upon the issuance of such storm recovery bonds without further commission action so long as the recovery charge is consistent with the financing order and the pre-bond issuance review process established by the commission in the financing order is complete;

 (k) a method of tracing funds collected as storm recovery charges, or other proceeds of storm recovery property, and the determination that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any storm recovery property subject to a financing order under applicable law; and

 (l) any other conditions not otherwise inconsistent with this section that the commission determines are appropriate.

 (3) A financing order issued to an electrical utility may provide that creation of the electrical utility's storm recovery property is conditioned upon, and simultaneous with, the sale or other transfer of the storm recovery property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.

 (4) If the commission issues a financing order and the storm recovery bonds are issued, the electrical utility shall file with the commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of storm recovery charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges with respect to storm recovery bonds approved under the financing order. Within sixty days after receiving an electrical utility's request pursuant to this paragraph, the commission shall either approve the request or inform the electrical utility of any mathematical or clerical errors in its calculation. If the commission informs the electrical utility of mathematical or clerical errors in its calculation, the electrical utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.

 (5) Subsequent to the transfer of storm recovery property to an assignee or the issuance of storm recovery bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this article, the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust recovery charges approved in the financing order. After the issuance of a financing order, the electrical utility retains sole discretion regarding whether to assign, sell, or otherwise transfer storm recovery property or to cause storm recovery bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance, unless otherwise provided in the financing order.

 (6) If required by the commission in a financing order, within one business day after the final terms of the storm recovery bonds are determined, the electrical utility shall provide an issuance advice letter to the commission.

 (a) Such issuance advice letter shall be in the form approved in a financing order and include the final terms of the storm recovery bond issuance, up-front financing costs and on-going financing costs. Such issuance advice letter shall include a certification from the electrical utility, the primary underwriter(s), and a qualified independent third-party designated by the commission, as a condition to closing, certifying whether the sale of storm recovery bonds complies with the requirements of this article and the financing order. The certifications of the electrical utility and independent third-party shall certify whether the issuance of recovery bonds and the imposition and collection of a storm recovery charge will in fact provide quantifiable net benefits to customers on a present-value basis as compared to the costs that would have been incurred absent the issuance of storm recovery bonds. The certifications of the electrical utility, primary underwriter(s), and independent third-party shall certify whether the structuring, marketing, and pricing of the storm recovery bonds will in fact result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds were priced and the terms set forth in the financing order. The independent third-party designated by the commission shall review the issuance advice letter and deliver its independent certification to the commission along with any other information it believes the commission should consider as to the commission's decision in subitem (b) no later than one business day after the filing of the issuance advice letter by the electric utility which will contain the aforementioned certifications.

 (b) Unless otherwise provided in the financing order, by no later than noon on the fourth business day after the final terms of the storm recovery bonds are determined, the commission shall either accept the issuance advice letter or deliver an order to the electrical utility to prevent the issuance of the storm recovery bonds.

 (D) At the request of an electrical utility, the commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding storm recovery bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in this article for a financing order. Effective upon retirement of the refunded storm recovery bonds and the issuance of new storm recovery bonds, the commission shall adjust the related storm recovery charges accordingly.

 (E) Within thirty days after the commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within thirty days after the commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of South Carolina. Review on appeal shall be based solely on the record before the commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and to state and federal law, and is within the authority of the commission under this article. The Supreme Court of South Carolina shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

 (F)(1) A financing order remains in effect and storm recovery property under the financing order continues to exist until storm recovery bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all commission-approved financing costs of such storm recovery bonds have been recovered in full.

 (2) A financing order issued to an electrical utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the electrical utility or its successors or assignees.

SECTION 3. This act takes effect upon approval by the Governor.

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