

RCW 80.28.306 Conservation bonds—Conservation investment assets as collateral—Priority of security interests—Transfers. (1)

Electrical, gas, and water companies, or finance subsidiaries, may issue conservation bonds upon approval by the commission.

(2) Electrical, gas, and water companies, or finance subsidiaries may pledge conservation investment assets as collateral for conservation bonds by obtaining an order of the commission approving an issue of conservation bonds and providing for a security interest in conservation investment assets. A security interest in conservation investment assets is created and perfected only upon entry of an order by the commission approving a contract governing the granting of the security interest and the filing with the department of licensing of a UCC-1 financing statement, showing such pledgor as "debtor" and identifying such conservation investment assets and the bondable conservation investment associated therewith. The security interest is enforceable against the debtor and all third parties, subject to the rights of any third parties holding security interests in the conservation investment assets perfected in the manner described in this section, if value has been given by the purchasers of conservation bonds. An approved security interest in conservation investment assets is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated bondable conservation investment, whether or not such revenues have accrued. Upon such approval, the priority of such security interest shall be as set forth in the contract governing the conservation bonds. Conservation investment assets constitute property for the purposes of contracts securing conservation bonds whether or not the related revenues have accrued.

(3) The relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to conservation investment assets with other funds of the debtor. The holders of conservation bonds shall have a perfected security interest in all cash and deposit accounts of the debtor in which revenues arising with respect to conservation investment assets pledged to such holders have been commingled with other funds, but such perfected security interest is limited to an amount not greater than the amount of such revenues received by the debtor within twelve months before (a) any default under the conservation bonds held by the holders or (b) the institution of insolvency proceedings by or against the debtor, less payments from such revenues to the holders during such twelve-month period. If an event of default occurs under an approved contract governing conservation bonds, the holders of conservation bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the security interest in the conservation investment assets securing the conservation bonds, subject to the rights of any third parties holding prior security interests in the conservation investment assets perfected in the manner provided in this section. Upon application by the holders of [or] their representatives, without limiting their other remedies, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the conservation investment assets pledged to such holders. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any,

interest, and expenses arising under the contract governing the conservation bonds shall be remitted to the debtor electrical, gas, or water company or the debtor finance subsidiary.

(4) The granting, perfection, and enforcement of security interests in conservation investment assets to secure conservation bonds is governed by this chapter rather than by *chapter 62A.9 RCW.

(5) A transfer of conservation investment assets by an electrical, gas, or water company to a finance subsidiary, which such parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in an order issued by the commission and in connection with the issuance by such finance subsidiary of conservation bonds, shall be treated as a true sale, and not as a pledge or other financing, of such conservation investment assets. According the holders of conservation bonds a preferred right to revenues of the electrical, gas, or water company, or the provision by such company of other credit enhancement with respect to conservation bonds, does not impair or negate the characterization of any such transfer as a true sale.

(6) Any successor to an electrical, gas, or water company pursuant to any bankruptcy, reorganization, or other insolvency proceeding shall perform and satisfy all obligations of the company under an approved contract governing conservation bonds, in the same manner and to the same extent as such company before any such proceeding, including, without limitation, collecting and paying to the bondholders or their representatives revenues arising with respect to the conservation investment assets pledged to secure the conservation bonds. [1994 c 268 s 3.]

***Reviser's note:** Chapter 62A.9 RCW was repealed in its entirety by 2000 c 250 s 9A-901, effective July 1, 2001. For later enactment, see chapter 62A.9A RCW.