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# A BILL FOR AN ACT

RELATING TO WILDFIRES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that as the risk of  
2 catastrophic wildfires in Hawaii has increased, so has the  
3 threat of property damage from these fires. Although most  
4 property owners have insurance, some do not, and others have  
5 insurance that may not fully cover their losses.

6           The legislature further finds that when the cause of a  
7 wildfire is uncertain or contested, costly and protracted  
8 litigation ensues. Litigation regarding wildfire damages can  
9 impose massive costs, including on the State, counties,  
10 utilities, landowners, and other defendants that may be alleged  
11 to have contributed to catastrophic wildfires. Those costs can  
12 overwhelm major institutions in the community, undermining their  
13 ability to make investments that the State needs. Indeed, even  
14 the possibility of litigation regarding a future catastrophic  
15 wildfire can create a cloud of uncertainty that can impair an  
16 entity's ability to attract capital on reasonable terms--capital  
17 that is vital for making investments in wildfire prevention,



1 among other priorities that may affect the health and safety of  
2 the State's residents.

3 The legislature also finds that the risk of property damage  
4 stemming from catastrophic wildfires may lead property insurers  
5 to raise rates or refuse to provide coverage for certain losses  
6 or certain high-risk areas of Hawaii--as occurred in the wake of  
7 hurricane Iniki with respect to hurricane insurance.

8 The legislature additionally finds that it is in the public  
9 interest to take steps to ensure that property insurance remains  
10 available to cover losses associated with wildfires by providing  
11 benefits to property insurers. Furthermore, the legislature  
12 finds that it is in the public interest to ensure that the  
13 threat of wildfires does not make investment in Hawaii's public  
14 utilities so financially risky that it becomes too costly or  
15 impossible for them to raise capital to implement vital plans,  
16 including plans to mitigate wildfire risk, and to provide safe,  
17 reliable, and affordable service to the people of the State.

18 Moreover, the legislature finds that it is in the public  
19 interest to avoid the costs of litigation arising out of  
20 catastrophic wildfires in order to protect Hawaii's economy and  
21 encourage investment in the State. Therefore, the purpose of



1 this Act is to serve the public interest in the event of a  
2 devastating wildfire by establishing a means to provide  
3 compensation for property damage resulting from wildfires.

4 SECTION 2. The Hawaii Revised Statutes is amended by  
5 adding a new chapter to be appropriately designated and to read  
6 as follows:

7 "CHAPTER

8 WILDFIRE RELIEF FUND

9 § -1 Definitions. As used in this chapter:

10 "Administrator" means the wildfire relief fund  
11 administrator appointed pursuant to section -5.

12 "Board" means the wildfire relief fund corporation board of  
13 directors created pursuant to section -4.

14 "Catastrophic wildfire" means a wildfire occurring on or  
15 after the effective date of this Act that damages or destroys  
16 more than five hundred residential or commercial structures.

17 "Contributor" means any person who contributes to the  
18 wildfire relief fund as provided in section -3.

19 "Cooperative utility" means a public utility owned by  
20 customers and overseen by a board of directors elected by  
21 customers.



1 "Corporation" means the wildfire relief fund corporation  
2 established pursuant to section -3.

3 "Electric utility" means a public utility that exists for  
4 the furnishing of electrical power.

5 "Eligible claim" means a claim made by a property owner, or  
6 the property owner's designated representative, for real  
7 property lost or damaged due to a catastrophic wildfire.

8 "Investor-owned utility" means a public utility that is  
9 owned by shareholders and overseen by a board of directors  
10 elected by shareholders.

11 "Other governmental entities" refers to governmental  
12 entities, including county government agencies, other than state  
13 government agencies.

14 "Public utility" has the same meaning as defined in section  
15 269-1.

16 "Wildfire relief fund" means the wildfire relief fund  
17 established pursuant to section -2.

18 "Wildfire risk mitigation plan" means a plan approved by  
19 the public utilities commission pursuant to section -9.

20 **§ -2 Wildfire relief fund; establishment.** (a) There is  
21 established outside the state treasury a wildfire relief fund



1 and any accounts thereunder to carry out the purposes of this  
2 chapter.

3 (b) The wildfire relief fund shall be placed within the  
4 department of commerce and consumer affairs for administrative  
5 purposes. The fund shall be a public body corporate and  
6 politic.

7 (c) Moneys deposited in the wildfire relief fund and any  
8 accounts thereunder shall be held by the fund, as trustee, in a  
9 depository, as defined in section 38-1, or according to a  
10 similar arrangement at the discretion of the board.

11 (d) All moneys received by the wildfire relief fund  
12 corporation under this chapter shall be paid immediately to the  
13 director of finance and shall become a part of the wildfire  
14 relief fund.

15 (e) All payments authorized to be made by the corporation  
16 by this chapter, including all payments for claims for  
17 catastrophic wildfire damages, all salaries, and all other  
18 expenses, shall be made from the wildfire relief fund.

19 (f) The moneys in the wildfire relief fund shall be  
20 invested according to the same investment plans developed for  
21 the Hawaii retirement savings special fund pursuant to chapter



1 389, and the earnings from investments shall be credited to the  
2 wildfire relief fund.

3 (g) All moneys in the wildfire relief fund shall be  
4 appropriated and expended exclusively for the uses and purposes  
5 set forth in this chapter; provided that this section shall not  
6 be deemed to amend or impair the force or effect of any law of  
7 this State specifically authorizing the investment of moneys  
8 from the wildfire relief fund.

9 **§ -3 Wildfire relief fund corporation; establishment;**  
10 **purposes; duties.** (a) The wildfire relief fund corporation is  
11 hereby established as an independent public body corporate and  
12 politic.

13 (b) The corporation shall be established within the  
14 department of commerce and consumer affairs for administrative  
15 purposes.

16 (c) The purpose of the corporation shall be to administer  
17 the payment of:

18 (1) Eligible claims arising from catastrophic wildfires  
19 from the wildfire relief fund; and

20 (2) Contributions of contributors to the wildfire relief  
21 fund.



- 1 (d) The corporation shall:
  - 2 (1) Receive, process, and determine payments for eligible
  - 3 claims for property damage arising from catastrophic
  - 4 wildfires from the wildfire relief fund;
  - 5 (2) Determine and enforce the collection of contributions
  - 6 from contributors to the wildfire relief fund;
  - 7 (3) Retain, employ, or contract with officers; experts;
  - 8 employees; accountants; actuaries; financial
  - 9 professionals; and other advisers, consultants,
  - 10 attorneys, and professionals, as may be necessary in
  - 11 the administrator's judgment, for the efficient
  - 12 operation, management, and administration of the
  - 13 corporation;
  - 14 (4) Enter into contracts and other obligations related to
  - 15 the operation, management, and administration of the
  - 16 corporation;
  - 17 (5) Purchase insurance or take other actions to maximize
  - 18 the claims-paying resources of the wildfire relief
  - 19 fund;
  - 20 (6) Pay costs, expenses, and other obligations of the
  - 21 corporation from the wildfire relief fund's assets;



1 (7) Take any actions necessary to collect any amounts owed  
2 to the wildfire relief fund; and

3 (8) Undertake other activities as are related to the  
4 operation, management, and administration of the  
5 wildfire relief fund, as approved by the board.

6 **§ -4 Wildfire relief fund corporation; board of**  
7 **directors.** (a) There is established a wildfire relief fund  
8 board of directors, which shall consist of members  
9 appointed by the governor in accordance with section 26-34. The  
10 board shall be the policy-making body of the corporation. The  
11 board shall be responsible for adopting policies for the  
12 administration and operation of the wildfire relief fund and the  
13 performance of other duties and functions assigned to the fund,  
14 to the degree not specified in this chapter.

15 (b) The members of the board shall serve staggered terms,  
16 with one-half of the members' initial terms ending four years  
17 after the initial appointment, and one-half of the members'  
18 initial terms ending six years after the initial appointment.  
19 Thereafter, each member shall serve four-year terms. Vacancies  
20 shall be filled for the remainder of any unexpired term in the  
21 same manner as the original appointments.



1 (c) The chairperson of the board shall be elected from  
2 among the appointed members of the board. A majority of all  
3 members currently appointed to the board shall constitute a  
4 quorum to conduct business, and the concurrence of a majority of  
5 all members currently appointed to the board shall be necessary  
6 to make any action valid, if not otherwise specified in this  
7 chapter.

8 (d) Members of the board shall be appointed to ensure:

- 9 (1) A broad and balanced representation, with proper  
10 judgment, character, expertise, skills, and knowledge  
11 useful to the oversight of the corporation; and  
12 (2) Diversity with regard to viewpoints, background, work  
13 experience, and demographics.

14 The members of the board shall serve without compensation  
15 but shall be reimbursed for actual and necessary expenses,  
16 including travel expenses, incurred in the discharge of their  
17 duties.

18 (e) The board shall meet at least once every three months  
19 at a time and place determined by the board. The board shall  
20 meet at other times and places as determined by the call of the  
21 chairperson or by a majority of the members of the board.



1 (f) No later than twenty days before the convening of each  
2 regular session of the legislature, the board shall submit to  
3 the legislature and governor a report regarding the activities  
4 and operations of the corporation during the preceding year.

5 The report shall include, at a minimum, a description of:

- 6 (1) The effectiveness of the wildfire relief fund's  
7 claims-payment process; and  
8 (2) The level of participation in the wildfire relief fund  
9 by all eligible participants, including property  
10 owners, property insurers, and contributors.

11 The legislature shall consider the report in determining  
12 whether any adjustments to the wildfire relief fund are  
13 necessary.

14 (g) Each member of the board shall retain all immunities  
15 and rights provided to a member pursuant to section 26-35.5.

16 **§ -5 Administrator; wildfire relief fund corporation.**

17 (a) The board shall appoint an administrator and oversee the  
18 administrator's management and administration of the  
19 corporation.

20 (b) The administrator shall serve at the pleasure of the  
21 board and shall be exempt from chapter 76.



1 (c) The administrator shall have powers as are necessary  
2 to carry out the functions of the corporation, subject to the  
3 policy direction of the board.

4 (d) The administrator may employ, terminate, and supervise  
5 employees, including assistants, experts, field personnel, and  
6 clerks, as may be necessary for the administration of the  
7 corporation.

8 (e) The board may overturn any decision of the  
9 administrator through a majority vote.

10 (f) At the direction of the board, the administrator shall  
11 prepare and present for approval a plan of operations related to  
12 the operations, management, and administration of the wildfire  
13 relief fund on an annual basis. At least annually and at the  
14 direction of the board, the administrator shall submit the plan  
15 of operations to the appropriate policy committees of the  
16 legislature. The plan shall include but not be limited to  
17 reporting on the wildfire relief fund's assets and projections  
18 for the duration of the fund.

19 (g) At the direction of the board, the administrator shall  
20 at least annually prepare and publish on the corporation's  
21 website a public-facing report that describes the operations and



1 activities of the corporation and wildfire relief fund during  
2 the preceding year, including a description of the financial  
3 condition of the wildfire relief fund.

4       **§ -6 Wildfire relief fund corporation; audit.** (a) The  
5 auditor shall conduct an annual audit of the corporation and  
6 wildfire relief fund pursuant to chapter 23. As part of this  
7 audit, the auditor may contract with a firm qualified to perform  
8 an independent actuarial review.

9       (b) The auditor shall determine the scope of the review  
10 required by this section, which shall include but shall not be  
11 limited to:

12       (1) A review of the sources and uses of the moneys in the  
13 wildfire relief fund;

14       (2) A reconciliation of changes in actuarial assumptions  
15 and reserve values from the preceding year;

16       (3) An examination of the development of claim reserve  
17 inadequacies or redundancies over time; and

18       (4) An assessment of the future financial viability of the  
19 wildfire relief fund.

20       (c) The corporation shall cooperate with the actuarial  
21 firm in all respects and shall permit the firm full access to



1 all information the firm deems necessary for a true and complete  
2 review. Information provided to the actuarial firm conducting  
3 the annual review is subject to the same limitations on public  
4 inspections as required for the records of the corporation.

5 (d) The audit required by this section shall be conducted  
6 using both generally accepted accounting principles and the  
7 statutory accounting principles published by the National  
8 Association of Insurance Commissioners.

9 (e) The cost of the audit required by this section shall  
10 be paid by the corporation.

11 (f) The auditor shall issue an annual report to the  
12 governor, president of the senate, and speaker of the house of  
13 representatives on the results of the audit and review. The  
14 audit and report of the review performed by the independent  
15 actuarial firm shall be available for public inspection, in  
16 accordance with the auditor's established rules and procedures  
17 governing public disclosure of audit documents.

18 (g) The legislature shall consider, after reviewing the  
19 annual report required by subsection (f), whether any  
20 adjustments to the wildfire relief fund should be implemented.



1           **§ -7 Wildfire relief fund; participation.** (a) The  
2 following entities may participate in the wildfire relief fund  
3 as contributors:

- 4           (1) The State;
- 5           (2) Electric utilities;
- 6           (3) Public utilities that are not electric utilities that  
7           contribute to the risk of occurrence or severity of a  
8           catastrophic wildfire, including public utilities for  
9           the production, conveyance, transmission, delivery, or  
10          furnishing of gas and for the conveyance of  
11          telecommunications messages;
- 12          (4) Other governmental entities; and
- 13          (5) Private property owners who own, or whose affiliated  
14          persons or entities own in the aggregate, at least one  
15          thousand acres of land in Hawaii.

16          (b) To participate in the wildfire relief fund, an entity  
17 shall:

- 18          (1) Notify the administrator that it intends to  
19          participate in the wildfire relief fund  
20          by                            in the year preceding the year in which

1 the entity seeks to participate in the wildfire relief  
2 fund; and

3 (2) Have made required contributions to the wildfire  
4 relief fund pursuant to section -8.

5 (c) A contributor that is also a property owner in Hawaii  
6 may make a claim to the wildfire relief fund for compensation in  
7 the same manner provided for in section -13 as other property  
8 owners; provided that the contributor:

9 (1) Retains all of the rights, privileges, and obligations  
10 of a contributor; and

11 (2) Notwithstanding any other provisions of this chapter  
12 and regardless of the existence of a depletion event  
13 under section -16(c), is bound by the limitation on  
14 claims under section -18.

15 (d) Any person or entity that poses a risk of causing or  
16 exacerbating the severity of a catastrophic wildfire that is not  
17 eligible to participate as a contributor in the wildfire relief  
18 fund may submit an application to the board for participation.

19 (e) The board shall adopt rules pursuant to chapter 91 and  
20 issue criteria for applications submitted under subsection (d).



1 (f) The board shall include in its annual report to the  
2 legislature and governor under section -4 all applications  
3 submitted under subsection (d) and shall recommend to the  
4 legislature whether participation criteria for contributors  
5 should be broadened.

6 (g) Notwithstanding any provision to the contrary, an  
7 electric utility that is subject to proceedings for liability or  
8 insolvency claims related to a catastrophic wildfire as of the  
9 effective date of this chapter may participate in the fund only  
10 if the utility provides, and the commission approves, a plan  
11 that satisfies the following conditions:

12 (1) The plan limits the burden to the rate payers of the  
13 electric utility;

14 (2) The plan provides for a review of organizational  
15 structure of the electric utility and the separation  
16 of energy generation and energy transmission and  
17 distribution;

18 (3) The plan provides for a review of local governance and  
19 accountability, including a modification of the  
20 governance structure and re-orientation of the  
21 management and board of directors of the electric



- 1 utility, to create further safety accountability and  
2 better representation of its customers, including  
3 enhanced oversight and enforcement processes;
- 4 (4) The plan includes a framework for addressing wildfire  
5 safety and risk management, including monitoring and  
6 enforcement, independent review and oversight by the  
7 public utilities commission, and performance-based  
8 utility regulation, as defined by the public utilities  
9 commission; provided that executive compensation shall  
10 exclude any incentives associated with this chapter;
- 11 (5) The plan provides for periodic performance-based  
12 management audits of the public utility;
- 13 (6) The plan is consistent with meeting the public  
14 utility's and the State's renewable portfolio  
15 standards, mandates, and obligations; and
- 16 (7) The utility has an approved risk-based wildfire  
17 protection plan approved by the public utilities  
18 commission; provided that the public utilities  
19 commission shall determine the timeline for the plan  
20 and when utility participation may begin within the  
21 timeline.



1           **§ -8 Wildfire relief fund; funding.** (a) Total  
2 capitalization. The total capitalization amount of the wildfire  
3 relief fund shall be \$           . Neither the board nor the  
4 administrator may modify the total capitalization amount, except  
5 as otherwise expressly provided in this chapter.

6           (b) Actuarial study. The board shall commission an  
7 actuarial study to be completed in 2024 to assess whether the  
8 total capitalization amount should be increased or decreased  
9 based on a holistic assessment of the risk of catastrophic  
10 wildfires in Hawaii, and the potential exposure of the fund to  
11 claims arising out of wildfires. The board shall include this  
12 assessment in the annual report that it submits to the  
13 legislature and governor under section -4. The legislature  
14 shall consider that assessment, as well as other information  
15 submitted in the annual report, to determine whether adjustments  
16 to the wildfire relief fund, including to its total  
17 capitalization amount, should be implemented.

18           (c) Time to total capitalization. The administrator shall  
19 recommend to the board, and the board shall, by majority vote,  
20 approve initial contribution amounts under \$           for  
21 potential contributors, other than the State and electric



1 utilities, based on the actuarial factors identified in  
2 subsection (b) and with the goal of, to the extent reasonably  
3 possible, having the wildfire relief fund reach the total  
4 capitalization amount within five years of the effective date of  
5 this Act, taking into consideration reasonably expected  
6 investment returns and assuming no payments will be made by the  
7 wildfire relief fund during that time period.

8 (d) Capitalization amounts. With the exception of the  
9 contribution made by the State in paragraph (4), contribution  
10 amounts shall be divided by the administrator into an initial  
11 contribution amount to be made by , and annual  
12 contribution amounts to be made over a five-year period, subject  
13 to the administrator's ability to increase payments under the  
14 insufficient funding provision in subsection (g).

15 The wildfire relief fund shall be capitalized by the  
16 following contributions:

17 (1) From other governmental entities that are eligible to  
18 elect to participate in the wildfire relief fund, an  
19 amount determined by the administrator based on an  
20 actuarial assessment of the risk of payments to these  
21 entities by the fund resulting from catastrophic



1 wildfires created by these entities, as well as the  
2 risk of potential payments made by the fund resulting  
3 from catastrophic wildfires created by these entities;

4 (2) From public utilities other than electric utilities  
5 and private landowners that are in all cases eligible  
6 to participate in the wildfire relief fund, an amount  
7 determined by the administrator based on an actuarial  
8 assessment of the risk of potential payments by the  
9 wildfire relief fund resulting from catastrophic  
10 wildfires created by these entities;

11 (3) From electric utilities, \$ ; and

12 (4) From the State, \$ .

13 (e) The board shall determine the contribution amounts of  
14 eligible contributors by ; provided that this date is  
15 thirty days before the date by which participants are required  
16 to notify the administrator of their intention to participate in  
17 the wildfire relief fund. If an eligible contributor declines  
18 to notify the administrator that the eligible contributor wishes  
19 to participate in the wildfire relief fund and become a  
20 contributor, the board shall reduce the total capitalization



1 amount by subtracting the amount the board allocated to that  
2 eligible contributor.

3 (f) If an electric utility, public utility other than an  
4 electric utility, other governmental entity, or private  
5 landowner elects to become a contributor after the initial  
6 capitalization of the wildfire relief fund, the electric  
7 utility, public utility other than an electric utility, other  
8 governmental entity, or private landowner shall provide,  
9 by \_\_\_\_\_ in the year before the year in which the electric  
10 utility, public utility other than an electric utility, other  
11 governmental entity, or private landowner seeks to become a  
12 contributor, an initial contribution in an amount determined by  
13 the board by a majority vote upon the administrator's  
14 recommendation, based on an up-to-date consideration of the  
15 factors identified in subsection (b), such that the previous and  
16 present initial contributions by all contributors reflect their  
17 relative contributions to the risk of future payments from the  
18 wildfire relief fund.

19 If necessary to achieve an allocation of initial  
20 contributions, and if the election is made prior to the fifth  
21 year of fund operation, the administrator shall reduce the



1 amount of annual contributions by one or more contributors who  
2 previously made initial contributions until an allocation is  
3 reached. The administrator shall increase the total  
4 capitalization amount of the fund by the amount of the initial  
5 contribution of the new fund contributor. The administrator  
6 may, in the administrator's discretion, permit a new contributor  
7 under this subsection to make payments over a five-year period.

8 (g) Insufficient funding. If the administrator determines  
9 that payments made by the wildfire relief fund, and expected  
10 future contributions by contributors and investment returns,  
11 will result in the fund's: failing to reach the total  
12 capitalization amount, as adjusted, as applicable, under  
13 subsection (a), by the fifth year; or falling below the total  
14 capitalization amount after the fifth year, including, in either  
15 case, as a result of the legislature increasing the total  
16 capitalization amount, the administrator shall recommend that  
17 the board establish a supplemental contribution to be  
18 contributed to the wildfire relief fund. Responsibility among  
19 contributors for the supplemental contribution shall be  
20 allocated as follows:



- 1           (1) The administrator shall recommend to the board, and  
2           the board shall determine by majority vote, the  
3           respective portions of the supplemental contribution  
4           amount to be paid by each electric utility, other  
5           public utility, other governmental entity, and private  
6           landowner contributor, based on an up-to-date  
7           assessment of the factors identified in subsection  
8           (b); and
- 9           (2) The remaining amount of the supplemental amount, but  
10          not more than the largest contribution by other  
11          contributors, shall be paid by the State, subject to  
12          legislative appropriation.
- 13          (h) The administrator may allow contributors to pay  
14          supplemental contributions via annual contributions, or in part  
15          via an initial contribution followed by annual contributions,  
16          unless the administrator determines that a contribution schedule  
17          will create a material risk that the wildfire relief fund will  
18          not reach or return to its total capitalization amount within a  
19          reasonable period of time to perform the functions identified in  
20          this chapter.



1 (i) If the board establishes a supplemental contribution  
2 pursuant to subsection (g), before the wildfire relief fund  
3 receives the supplemental contribution, the wildfire relief fund  
4 may issue revenue bonds up to the amount of the supplemental  
5 contribution, which shall be backed by future contributions to  
6 the wildfire relief fund.

7 (j) The board may order supplemental contributions under  
8 this chapter even if an investigation under the replenishment  
9 process under section -9 is ongoing. In the event that  
10 payments are later made under that replenishment process, the  
11 board, provided that other conditions of the refunds section are  
12 met pursuant to section -11, may refund supplemental  
13 contributions in whole or in part.

14 (k) Utility contribution. Fifty per cent of an investor  
15 owned utility's contributions to the wildfire relief fund,  
16 including initial and supplemental contributions, may be  
17 recovered from its customers in rates, unless the public  
18 utilities commission directs otherwise pursuant to  
19 section -9.

20 (l) If the total amount of payments that the administrator  
21 determines should be paid in connection with a catastrophic



1 wildfire pursuant to sections -13, -14, and -15 exceeds  
2 the current balance of the wildfire relief fund, the State may  
3 provide a loan to the wildfire relief fund in an amount up to  
4 the depletion percentage, as determined by section -16(d).  
5 The loan shall be repaid over time through annual contributions  
6 by contributors.

7       **§ -9 Replenishment of the wildfire relief fund;**  
8 **determination of prudence.** (a) If the administrator, or an  
9 agency of the State with responsibility for determining the  
10 causes of wildfires, informs the public utilities commission  
11 that a catastrophic wildfire may have been ignited by the  
12 facilities of an investor-owned utility that is a contributor,  
13 the public utilities commission shall initiate a proceeding to  
14 review the investor-owned utility's conduct leading to the  
15 catastrophic wildfire and make findings. The public utilities  
16 commission may, even without formal notice from the  
17 administrator or the agency, initiate this proceeding of its own  
18 accord.

19       (b) The public utilities commission shall evaluate the  
20 prudence of the conduct of the investor-owned utility in  
21 connection with a catastrophic wildfire as follows:



- 1 (1) If the investor-utility has a wildfire risk mitigation  
2 plan that was approved by the public utilities  
3 commission, the investor-utility's conduct will be  
4 deemed to have been prudent, unless a party to the  
5 proceeding creates a serious doubt as to the prudence  
6 of the investor-owned utility's conduct; or
- 7 (2) If the investor-utility does not have a wildfire risk  
8 mitigation plan that was approved by the public  
9 utilities commission, or if the public utilities  
10 commission determines that the presumption is  
11 overcome, the public utilities commission shall  
12 determine whether the investor-owned utility acted  
13 prudently, considering only acts that may have caused  
14 the ignition and evaluating the utility's actions in  
15 the context of the utility's overall systems,  
16 processes and programs, such that an error by a  
17 utility employee would not be a basis for a finding of  
18 imprudence, unless that error was the result of an  
19 imprudent system, process, or program.
- 20 (c) In evaluating prudence under this section, the public  
21 utilities commission shall determine whether the actions of the



1 investor-owned utility were consistent with actions that a  
2 reasonable utility would have undertaken in good faith under  
3 similar circumstances, at the relevant point in time, and based  
4 on the information available to the investor-owned utility at  
5 the relevant point in time.

6 Reasonable conduct shall not be limited to the optimum  
7 practice, method, or act to the exclusion of others, but rather  
8 shall encompass a spectrum of possible practices, methods, or  
9 acts consistent with utility system needs, the interest of  
10 ratepayers, and the requirements of governmental agencies of  
11 competent jurisdiction.

12 (d) If the public utilities commission determines that  
13 imprudent conduct by the investor-owned utility caused the  
14 catastrophic wildfire, the public utilities commission shall  
15 determine whether to order the utility to reimburse the wildfire  
16 relief fund in whole or in part for payments from the fund made  
17 in connection with the catastrophic wildfire. In determining  
18 the amount of reimbursement, if any, the public utilities  
19 commission shall consider the extent and severity of the  
20 utility's imprudence and factors within and beyond the utility's  
21 control that may have led to or exacerbated the costs from the



1 catastrophic wildfire, including but not limited to humidity,  
2 temperature, winds, fuel, merged wildfires with independent  
3 ignitions, third-party actions that affected the spread of the  
4 wildfire, and fire suppression activities.

5 (e) The public utilities commission shall not order the  
6 investor-owned utility to reimburse the wildfire relief fund in  
7 an amount that exceeds the lesser of:

8 (1) The costs that the public utilities commission  
9 determines were due to the investor-owned utility's  
10 imprudence; or

11 (2) Twenty per cent of the investor-owned utility's  
12 transmission and distribution equity rate base minus  
13 the amounts the utility has reimbursed, or is required  
14 to reimburse, the wildfire relief fund during the  
15 period of three consecutive calendar years ending on  
16 December 31 of the year in which the calculation is  
17 being performed.

18 (f) If the public utilities commission orders the  
19 investor-owned utility to reimburse the wildfire relief fund,  
20 the utility shall not recover the amount of the reimbursement in  
21 rates charged to ratepayers.



1 (g) If the administrator, or an agency of the State with  
2 responsibility for determining the causes of wildfires or other  
3 catastrophic wildfires concludes that the conduct of a  
4 cooperative utility, other governmental entity, or private  
5 landowner that is a contributor may have caused the occurrence  
6 or contributed to the severity of a catastrophic wildfire, the  
7 administrator shall assess the prudence of the contributor's  
8 conduct, applying the same standard of prudence applied to  
9 investor-owned utilities pursuant to subsection (c).

10 (h) If the administrator determines that the contributor  
11 acted imprudently and that the imprudence caused or contributed  
12 to the severity of the catastrophic wildfire, the administrator  
13 shall recommend that the board require such contributor to  
14 reimburse the wildfire relief fund in whole or in part for  
15 payments that the fund made in connection with the catastrophic  
16 wildfire, considering the factors set forth in subsection (d),  
17 subject to a cap of ten per cent of the contributor's assets  
18 within Hawaii, measured over a rolling three-year period.

19 **§ -10 Failure to make contributions to wildfire relief**  
20 **fund.** (a) Contributors shall notify the administrator if they  
21 will make, or fail to make, a required contribution, whether



1 initial, annual, or supplemental, to the wildfire relief fund at  
2 least            days before the contribution is due.

3            (b) If a contributor fails to make a required contribution  
4 to the wildfire relief fund, that contributor will no longer be  
5 a contributor as of the date that the contribution was due.  
6 That entity may, however, rejoin the fund under the process for  
7 joining the fund after initial capitalization set forth in  
8 section        -8.

9            (c) The administrator shall not refund to an entity that  
10 fails to make a contribution any previous payments made to the  
11 wildfire relief fund. However, the administrator shall credit  
12 all previous contributions when determining the amount of  
13 payment to be made if a participant rejoins the fund under  
14 subsection (b).

15            **§ -11 Refunds.** (a) In the event that the total amount  
16 in the wildfire relief fund exceeds one hundred twenty per cent  
17 of the total capitalization amount, the administrator may  
18 recommend that the board authorize refunds to be made to the  
19 contributors; provided that the refunds do not deplete the  
20 wildfire relief fund below one hundred twenty per cent of the  
21 total capitalization amount.



1 (b) Refunds shall be made in proportion to the total  
2 amount contributed by the contributors to the wildfire relief  
3 fund as of the date of the refund, excluding any payments made  
4 under the replenishment provisions under section -9.

5 (c) The administrator has no obligation to recommend, and  
6 the board has no obligation to authorize, a refund. The board  
7 shall make a refund only if it takes into consideration all  
8 relevant factors and circumstances and determines that making a  
9 refund will be unlikely to result in the wildfire relief fund's  
10 falling below one hundred twenty per cent of total  
11 capitalization within three years after the refund.

12 (d) Any contributor may request that the board make a  
13 refund whenever the conditions under this section are met.

14 (e) If the board elects to issue a refund or elects not to  
15 do so after receiving a request under subsection (d), the  
16 administrator shall issue an order explaining the board's  
17 decision.

18 **§ -12 Processing of claims.** (a) With the approval of  
19 the board, the administrator shall establish and approve  
20 procedures for the review, approval, and timely payment of  
21 claims for reimbursement from the wildfire relief fund. The



1 procedures may be revised from time to time by the administrator  
2 with the approval of the board.

3 (b) In the event of a catastrophic wildfire within the  
4 State, the administrator shall process claims made for  
5 compensation against the wildfire relief fund related to the  
6 catastrophic wildfire, consistent with the requirements of this  
7 chapter.

8 § -13 **Claims by property owners.** (a) To be eligible  
9 for compensation from the wildfire relief fund for damage to  
10 property from a catastrophic wildfire, a property owner shall  
11 not have opted out from participation in the wildfire relief  
12 fund before the occurrence of the catastrophic wildfire.

13 (b) County tax assessors shall include, with each real  
14 property tax assessment sent to an eligible property owner in  
15 the State, a prominent notice regarding participation in the  
16 wildfire relief fund. The notice shall be in a form prescribed  
17 by the administrator and shall clearly explain the property  
18 owner's right to opt out of participation in the wildfire relief  
19 fund by submitting a request to opt out to the administrator  
20 within a specific time. An eligible property owner who does not  
21 submit a timely request to opt out shall be deemed to



1 participate in the wildfire relief fund as of the deadline for  
2 submitting a request to opt out.

3 (c) Any costs of administering the process described in  
4 subsection (b) shall be reimbursed by the wildfire relief fund.

5 (d) To opt out of participation in the wildfire relief  
6 fund with regard to property either in areas within the State  
7 that have been assigned extreme, high, and moderate wildfire  
8 risk classes by \_\_\_\_\_, a property owner shall submit  
9 documentation of insurance coverage for the property along with  
10 the property owner's request to opt out of the wildfire relief  
11 fund, and the administrator shall approve the documentation as  
12 adequate evidence of insurance for the applicable property.

13 (e) Following a catastrophic wildfire, to make a claim for  
14 compensation from the wildfire relief fund for damage to  
15 property from the wildfire, a property owner shall submit to the  
16 administrator documentation establishing:

17 (1) That the catastrophic wildfire damaged the owner's  
18 property;

19 (2) The extent of the losses to the owner's property  
20 caused by that catastrophic wildfire; and



1           (3) Any insurance policy providing coverage for those  
2           losses.

3           (f) Within ninety days after a property owner submits a  
4 claim for compensation from the wildfire relief fund, including  
5 the documentation required in this section, the administrator  
6 shall determine whether the documentation is adequate and, if  
7 so, the appropriate amount of the payment to the property owner  
8 from the wildfire relief fund. If the administrator determines  
9 that the property owner has not submitted sufficient  
10 documentation for the administrator to evaluate the claim, the  
11 administrator may request additional documentation from the  
12 property owner and may set a date by which the additional  
13 information shall be provided.

14           (g) If no insurance policy provides coverage for the  
15 losses for which a property owner seeks compensation from the  
16 wildfire relief fund, the property owner shall be eligible to  
17 receive as compensation from the wildfire relief fund a maximum  
18 of \$ .

19           (h) If an insurance policy provides coverage for the  
20 losses for which a property owner seeks compensation from the  
21 wildfire relief fund, the property owner shall be eligible to



1 receive as compensation from the wildfire relief fund an amount  
2 up to the lesser of:

3 (1) per cent of the amount by which the property  
4 owner's losses exceed the amount of insurance coverage  
5 for the losses; or

6 (2) per cent of the property owner's insurance  
7 coverage applicable to the losses;

8 provided that the property owner submits adequate documentation  
9 of those losses, as required by this section.

10 § -14 Claims by property insurers. (a) To be eligible  
11 for compensation from the wildfire relief fund, a property  
12 insurer shall have elected to participate in the fund before the  
13 annual policy period in which the catastrophic wildfire  
14 occurred. The administrator shall establish a process for  
15 property insurers to annually submit an election to participate  
16 in the fund to the administrator within a specified time.

17 (b) All property insurers who elect to participate in the  
18 wildfire relief fund shall be eligible to receive as  
19 compensation from the wildfire relief fund per cent of  
20 their total payments for property damage claims in Hawaii as a  
21 result of a catastrophic wildfire.



1 (c) Following a catastrophic wildfire, to make a claim for  
2 compensation from the wildfire relief fund based on claims  
3 resulting from the catastrophic wildfire, an eligible property  
4 insurer shall submit to the administrator documentation  
5 establishing the number, nature, and total value of the  
6 insurance claims that the property insurer paid pursuant to its  
7 policies for damage resulting from the catastrophic wildfire as  
8 well as documentation sufficient to assess the reasonableness of  
9 the property insurer's payment of claims.

10 (d) After receipt of a property insurer's claim for  
11 compensation from the wildfire relief fund, including the  
12 documentation required in this section, the administrator shall:

- 13 (1) Review via an expedited procedure the property  
14 insurer's claim for compensation from the wildfire  
15 relief fund; and
- 16 (2) Determine:
- 17 (A) Whether the documentation provided is adequate;  
18 and  
19 (B) The appropriate amount of the payment to the  
20 property insurer from the fund.



1           §   -15   **Claims by the State and other governmental**  
2 **entities.** (a) The State may submit claims for compensation  
3 from the wildfire relief fund for damages it incurred resulting  
4 from a catastrophic wildfire, including damage to infrastructure  
5 or other property, costs of fire suppression, and natural  
6 resource damages, to the extent recovery of the losses is  
7 authorized by law.

8           (b) Other governmental entities may submit claims for  
9 compensation from the wildfire relief fund for damages they  
10 incurred resulting from a catastrophic wildfire, including  
11 damage to infrastructure or other property and other losses, to  
12 the extent recovery of the losses is authorized by law; provided  
13 that to be eligible for compensation from the wildfire relief  
14 fund related to a catastrophic wildfire, another governmental  
15 entity shall elect to be a contributor and shall have satisfied  
16 contribution obligations pursuant to section   -8 before the  
17 occurrence of the catastrophic wildfire.

18           (c) To make a claim under this section, the State or other  
19 governmental entity shall submit to the administrator  
20 documentation establishing:

21           (1) That the catastrophic wildfire caused the damages;



1           (2) The extent of the damages caused by the catastrophic  
2           wildfire; and

3           (3) Any other documentation necessary to establish the  
4           State's or other governmental entity's right to  
5           recover the losses pursuant to law.

6           (d) After receipt of a claim for compensation from the  
7           wildfire relief fund pursuant to this section, the administrator  
8           shall determine whether the State or other governmental entity  
9           is authorized to recover damages under applicable law and, if  
10          so, the appropriate amount of the payment.

11          §   -16   **Fund depletion.** (a) Within thirty days of a  
12          catastrophic wildfire, the administrator shall assess whether  
13          the total payments that the wildfire relief fund is projected to  
14          make to eligible property owners, property insurers, and the  
15          State and other governmental entities under  
16          sections    -13,    -14, and    -15, respectively, are expected  
17          to exceed seventy-five per cent of the total available money  
18          remaining in the wildfire relief fund. The board shall adopt  
19          rules pursuant to chapter 91 regarding the performance of this  
20          assessment.



1 (b) If the administrator assesses pursuant to subsection  
2 (a) that the total payments that the wildfire relief fund is  
3 projected to make to eligible property owners, property  
4 insurers, and the State and other governmental entities under  
5 sections -13, -14, and -15, respectively, are expected  
6 to exceed seventy-five per cent of the total available money  
7 remaining in the wildfire relief fund, the administrator shall  
8 seek to increase the total amount of money in the fund using all  
9 available methods under this chapter.

10 (c) Depletion event. If the administrator is unable,  
11 despite taking the steps under subsection (b), to secure  
12 sufficient additional funding for the wildfire relief fund,  
13 including credible pledges for future funding, to reverse the  
14 administrator's assessment under subsection (b) within  
15 forty-five days, the administrator shall declare the existence  
16 of a depletion event.

17 (d) Depletion percentage. If the administrator declares  
18 the existence of a depletion event, the administrator shall  
19 determine what percentage of total eligible payments the  
20 wildfire relief fund can make without the likelihood that the  
21 payments will exceed seventy-five per cent of the total



1 available money in the wildfire relief fund. This percentage  
2 shall be deemed the depletion percentage.

3 (e) Depletion payment. The administrator shall thereafter  
4 offer all property owners, property insurers, the State, and  
5 other governmental entities that submit claims for compensation  
6 from the wildfire relief fund and would otherwise, under  
7 sections -13, -14, and -15, respectively, be entitled  
8 to a particular payment amount, that amount multiplied by the  
9 depletion percentage. This amount shall be deemed the depletion  
10 payment.

11 (f) All claimants that are offered the depletion payment  
12 may choose to accept or decline the payment. Any property owner  
13 or property insurer, other than a contributor, that declines to  
14 accept the depletion payment shall:

15 (1) Be ineligible for any payments by the wildfire relief  
16 fund with respect to the catastrophic wildfire for  
17 which the claim was made; and

18 (2) Not be bound by the limitation on claims under  
19 section -18 with respect to only that catastrophic  
20 wildfire.



1 (g) After the payments to all claimants who accepted the  
2 depletion payment have been made, the administrator may  
3 recommend to the board, and the board may decide, in its  
4 discretion, to make a further payment to all claimants who  
5 accepted the depletion payment. The board shall adopt rules  
6 pursuant to chapter 91 for the making of this decision.

7 (h) Multiple catastrophic events. The board shall adopt  
8 rules pursuant to chapter 91 regarding how to pay claims in the  
9 event that one or more catastrophic wildfires occur while the  
10 corporation is in the process of assessing, receiving,  
11 determining, or paying claims from an earlier catastrophic  
12 wildfire.

13 **§ -17 Hearings and appeals of determinations. (a)**  
14 Within thirty days after the administrator's determination of  
15 the amount of payment due to any claimant from the wildfire  
16 relief fund pursuant to sections -13, -14, and -15,  
17 respectively, or the board's determination of a contributor's  
18 allocation for any contribution, the affected person or entity  
19 may request a review and hearing on that determination before  
20 the department of commerce and consumer affairs.



1 (b) Upon receipt of a request for review of the  
2 administrator or board's determination, the department of  
3 commerce and consumer affairs shall refer the request for  
4 hearing to the office of administrative hearings for  
5 determination as expeditiously as possible. A hearing shall be  
6 scheduled for a date not more than days after receipt by  
7 the department of commerce and consumer affairs of the request  
8 for a hearing.

9 (c) Following the conclusion of any hearing or before the  
10 conclusion of the hearing, with the concurrence of the parties,  
11 the office of administrative hearings shall promptly, and not  
12 later than days after the hearing, decide the matter and  
13 make an order in accordance with the administrative judge's  
14 decision.

15 (d) Within days after the date on which a copy of the  
16 office of administrative hearings' order is mailed to the  
17 parties, a party may seek judicial review of the order by filing  
18 a petition for review in the applicable circuit court, with a  
19 right of appeal as allowed by law. If no such petition is  
20 timely filed, the order of the office of administrative hearings  
21 shall be final.



1           **§ -18 Limitations on claims.** (a) No suit, claim, or  
2 other civil legal action may be instituted or maintained against  
3 contributors or their affiliates, employees, agents, or  
4 insurers:

5           (1) For recovery of losses or damages of a type for which  
6           compensation may be sought from the wildfire relief  
7           fund; and

8           (2) By persons or entities:

9           (A) Who are contributors, property owners who do not  
10           opt out of the wildfire relief fund, or property  
11           insurers who elect to participate in the wildfire  
12           relief fund; or

13           (B) Who seek indemnity or contribution for amounts  
14           paid, or that may be paid, to contributors,  
15           property owners who do not opt out of the  
16           wildfire relief fund, or property insurers who  
17           elect to participate in the wildfire relief fund.

18           (b) Persons or entities who are eligible to seek  
19 compensation from the wildfire relief fund for property damage  
20 arising from a catastrophic wildfire may not seek to recover for  
21 damage from electric utilities, public utilities other than



1 electric utilities, the State, or private landowners who are  
2 contributors, notwithstanding that the claimed property damage  
3 may exceed the amount of payment by the wildfire relief fund for  
4 the damage.

5 (c) The wildfire relief fund shall be subrogated to the  
6 rights of the contributors, property owners who do not opt out  
7 of the wildfire relief fund, and property insurers who elect to  
8 participate in the wildfire relief fund, to the extent of any  
9 payment made by the wildfire relief fund to those persons or  
10 entities, and may pursue claims against a person or entity that  
11 is not a contributor for damages resulting from the catastrophic  
12 wildfire."

13 SECTION 3. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$ or so  
15 much thereof as may be necessary for fiscal year 2024-2025 for  
16 deposit into the wildfire relief fund.

17 The sum appropriated shall be expended by the department of  
18 commerce and consumer affairs for the purposes of this Act.

19 SECTION 4. There is appropriated out of the general  
20 revenues of the State of Hawaii the sum of \$ or so  
21 much thereof as may be necessary for fiscal year 2024-2025 for



1 the establishment of one full-time equivalent (1.0 FTE)  
 2 administrator position, who shall be exempt from chapter 76,  
 3 Hawaii Revised Statutes, to support the Hawaii wildfire relief  
 4 fund corporation; provided that in all subsequent fiscal years,  
 5 all funding for the administrator position shall be paid from  
 6 the wildfire relief fund.

7 The sum appropriated shall be expended by the department of  
 8 commerce and consumer affairs for the purposes of this Act.

9 SECTION 5. In accordance with section 9 of article VII of  
 10 the Hawaii State Constitution and sections 37-91 and 37-93,  
 11 Hawaii Revised Statutes, the legislature has determined that the  
 12 appropriations contained in H.B. No. , will cause the state  
 13 general fund expenditure ceiling for fiscal year 2024-2025 to be  
 14 exceeded by \$ or per cent. In addition, the  
 15 appropriation contained in this Act will cause the general fund  
 16 expenditure ceiling for fiscal year 2024-2025 to be further  
 17 exceeded by \$ or per cent. The combined total  
 18 amount of general fund appropriations contained in only these  
 19 two Acts will cause the state general fund expenditure ceiling  
 20 for fiscal year 2024-2025 to be exceeded by



1 \$            or            per cent. The reasons for exceeding the  
2 general fund expenditure ceiling are that:

3            (1) The appropriation made in this Act is necessary to  
4            serve the public interest; and

5            (2) The appropriation made in this Act meets the needs  
6            addressed by this Act.

7            SECTION 6. This Act shall take effect on July 1, 2040.



**Report Title:**

DCCA; Hawaii Wildfire Relief Fund; Hawaii Wildfire Relief Fund Corporation; Public Utilities Commission; Catastrophic Wildfire; Report; Appropriation; General Fund Expenditure Ceiling Exceeded

**Description:**

Establishes the Hawaii Wildfire Relief Fund and Hawaii Wildfire Relief Fund Corporation to provide compensation for property damage resulting from catastrophic wildfires in the State. Requires the Corporation's board to report to the Legislature. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025. Makes an appropriation. Effective 7/1/2040. (SD2)

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