
A BILL FOR AN ACT

RELATING TO WILDFIRE RISK MITIGATION.

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

1 SECTION 1. The legislature finds that the risk of
2 catastrophic wildfires has increased, making it imperative that
3 electric utilities develop, implement, and administer effective
4 plans for wildfire risk mitigation. Electric utilities should
5 develop, implement, and administer wildfire protection plans,
6 and, through a public process, the public utilities commission
7 should review and approve such plans and the recovery of any
8 related costs to implement the plans.

9 The legislature also finds that a resilience working group,
10 convened throughout 2019 and 2020, sought to: (1) identify and
11 prioritize resilience threat scenarios and potential grid
12 impacts; (2) identify key customer and infrastructure sector
13 capabilities and needs following a severe event and loss of
14 power; (3) identify gaps and priorities in grid and customer
15 capabilities following a severe event and loss of power; (4)
16 provide recommendations and inputs for investor-owned utility
17 grid planning to address resilience needs; and (5) recommend



1 additional grid and customer actions to close gaps and
2 capabilities following severe events. The resilience working
3 group identified wildfires as one of five types of severe events
4 of utmost importance to consider for achieving a resilient grid
5 and provided resilience options for utilities to consider.

6 The legislature further finds that securitization may be
7 the most efficient, least-cost way to finance wildfire risk
8 mitigation costs and expenses. Utility rate securitization
9 transactions have an extensive track record of success. Bonds
10 securitized by rates receive investment grade credit ratings
11 from credit rating agencies and thus provide a means of securing
12 capital at a lower interest rate than those currently available
13 to utilities, in particular utilities without an investment
14 grade credit rating.

15 The purpose of this Act is to create a process whereby
16 electric utilities develop and submit effective risk-based
17 wildfire protection plans to the public utilities commission for
18 approval; the public utilities commission evaluates those plans
19 and either approves them or does so with modifications; the
20 electric utilities are able to timely recover the prudently
21 incurred costs and expenses of developing, implementing, and



1 administrating those plans; and those costs and expenses are not
2 borne disproportionately by any particular ratepayer or county.

3 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . WILDFIRE PROTECTION AND MITIGATION

7 §269-A Definitions. As used in this part:

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

15 "Assignee" means a legally recognized entity:

16 (1) To which an electric utility company assigns, sells,
17 or transfers, other than as security, all or a portion
18 of its interest in or right to wildfire protection
19 property; or



1 (2) Who acquires, by way of assignment or otherwise, all
2 or a portion of the wildfire protection property
3 following the exercise of remedies upon a default.

4 "Assignee" includes a corporation, limited liability company,
5 general partnership or limited partnership, public authority,
6 trust, financing entity, or any entity to which an assignee
7 assigns, sells, or transfers, other than as security, its
8 interest in or right to wildfire protection property.

9 "Bond" means any bond, note, certificate of participation
10 or beneficial interest, or other evidence of indebtedness or
11 ownership that is issued by the financing entity under a
12 financing order, the proceeds of which are used directly or
13 indirectly to recover, finance, or refinance financing costs of
14 any wildfire protection costs, and that are directly or
15 indirectly secured by or payable from wildfire protection
16 property.

17 "Catastrophic wildfire" means any wildfire in the State
18 that damaged or destroyed more than five hundred residential or
19 commercial structures.

20 "Commission" means the public utilities commission.



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

7 "Electric utility" means a public utility that is engaged
8 in the production, transmission, or distribution of electricity.

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

- 14 (1) Principal, interest, and redemption premiums that are
15 payable on bonds;
- 16 (2) A payment required under an ancillary agreement;
- 17 (3) An amount required to fund or replenish reserve
18 accounts or other accounts established under an
19 indenture, ancillary agreement, or other financing
20 document related to the bonds;



1 (4) Taxes, franchise fees, or license fees imposed on the
2 wildfire protection fee, or otherwise resulting from
3 the collection of the charges, in any such case
4 whether paid, payable, or accrued;

5 (5) Costs related to issuing and servicing bonds or the
6 application for a financing order, including without
7 limitation servicing fees and expenses, trustee fees
8 and expenses, legal fees and expenses, accounting
9 fees, administrative fees, underwriting and placement
10 fees, financial advisory fees, original issue
11 discount, capitalized interest, rating agency fees,
12 and any other related costs that are approved for
13 recovery in the financing order; and

14 (6) Other costs as specifically authorized by a financing
15 order.

16 "Financing entity" means the electric utility; an affiliate
17 of the electric utility; a special purpose vehicle, regardless
18 of whether the special purpose vehicle is affiliated with an
19 electric utility; or a governmental financing entity that is
20 authorized by the commission to issue bonds or acquire wildfire
21 protection property, or both, pursuant to a financing order.



1 "Financing order" means an order of the commission under
2 this part that has become final as provided by law, and that
3 authorizes the issuance of bonds and the imposition and
4 collection of wildfire protection fees. "Financing order"
5 includes without limitation a procedure to require the
6 expeditious approval by the commission of periodic adjustments
7 to wildfire protection fees and to any associated fixed recovery
8 tax amounts included in that financing order to ensure recovery
9 of all wildfire protection costs and the costs associated with
10 the proposed recovery, financing, or refinancing thereof,
11 including the costs of servicing and retiring the bonds
12 contemplated by the financing order.

13 "Financing party" means any holder of bonds, any party to
14 or beneficiary of an ancillary agreement, and any trustee,
15 collateral agent, or other person acting for the benefit of any
16 of the foregoing.

17 "Fixed recovery tax amounts" means those nonbypassable
18 rates and other charges, including but not limited to
19 distribution, connection, disconnection, and termination rates
20 and charges, that are needed to recover federal and state taxes
21 associated with wildfire protection fees authorized by the



1 commission in a financing order, but are not approved as
2 financing costs financed from proceeds of bonds.

3 "Governmental financing entity" means the State or a
4 political subdivision thereof or any department, agency, or
5 instrumentality of the State or a political subdivision to which
6 a public utility has assigned or pledged its interest in
7 wildfire protection property as security for the payment of debt
8 service on bonds, and related administrative costs and funding
9 of reserves, issued by the governmental financing entity;
10 provided that the bonds issued by the entity shall not
11 constitute a debt or liability of the entity or of the State or
12 any political subdivision of the State and shall not constitute
13 a pledge of the full faith and credit of the entity or of the
14 State or any political subdivision of the State, but shall be
15 payable solely from the funds provided under this chapter.

16 "True-up adjustment" means a formulaic adjustment to the
17 wildfire protection fees as they appear on customer bills that
18 is necessary to correct for any overcollection or
19 undercollection of the wildfire protection fees authorized by a
20 financing order and to otherwise ensure the timely and complete



1 payment and recovery of wildfire protection costs over the
2 authorized repayment term.

3 "Wildfire protection costs" means any capital costs and
4 operation and maintenance expenses related to the development,
5 implementation, and administration of a wildfire protection plan
6 prepared pursuant to section 269-C(a). "Wildfire protection
7 costs" does not include any penalties levied against an electric
8 utility pursuant to section 269-D. "Wildfire protection costs"
9 may also include any of the following:

- 10 (1) Catastrophic wildfire costs or expenses authorized by
11 the commission in a financing order for recovery;
- 12 (2) Federal and state taxes associated with recovery of
13 the amounts pursuant to paragraph (1);
- 14 (3) Financing costs; and
- 15 (4) Professional fees, consultant fees, redemption
16 premiums, tender premiums, and other costs incurred by
17 the electric utility in using proceeds of bonds to
18 acquire outstanding securities of the electric
19 utility, as authorized by the commission in a
20 financing order.



1 "Wildfire protection fee" means the nonbypassable fees and
2 charges, including but not limited to distribution, connection,
3 disconnection, and termination rates and charges, that are
4 authorized by section 269-E and in a financing order authorized
5 under this part to be imposed on and collected from all existing
6 and future consumers of a financing entity or any successor to
7 recover both of the following:

8 (1) Wildfire protection costs specified in the financing
9 order; and

10 (2) The costs of recovering, financing, or refinancing
11 wildfire protection costs through a plan approved by
12 the commission in the financing order, including the
13 costs of servicing and retiring bonds.

14 "Wildfire protection plan" means the risk-based wildfire
15 protection plan mandated by section 269-C(a) and approved by the
16 commission.

17 "Wildfire protection property" means the property right
18 created pursuant to this part, including without limitation the
19 right, title, and interest of the public utility, financing
20 entity, or its assignee:



- 1 (1) In and to the wildfire protection fee established
2 pursuant to a financing order, including the right to
3 impose, bill, collect, and receive fixed recovery
4 charges under the financing order and all rights to
5 obtain adjustments to the wildfire protection fee in
6 accordance with section 269-E and the financing order;
7 and
- 8 (2) To be paid the amount that is determined in a
9 financing order to be the amount that the public
10 utility or its assignee is lawfully entitled to
11 receive pursuant to this part and the proceeds
12 thereof, and in and to all revenues, collections,
13 claims, payments, moneys, or proceeds of, or arising
14 from, the wildfire protection fee that is the subject
15 of a financing order.
- 16 "Wildfire protection property" does not include a right to be
17 paid fixed recovery tax amounts. "Wildfire protection property"
18 shall constitute a current property right, notwithstanding the
19 fact that the value of the property right will depend on
20 consumers using electricity or, in those instances where



1 consumers are customers of the public utility, the public
2 utility performing certain services.

3 **§269-B Electric utility workshops.** The commission may
4 periodically convene workshops to help electric utilities
5 develop and share information for the identification, adoption,
6 and implementation of best practices regarding wildfires,
7 including but not limited to risk-based wildfire protection and
8 risk-based wildfire mitigation procedures and standards.

9 **§269-C Wildfire protection plans.** (a) Each electric
10 utility shall have and operate in compliance with a risk-based
11 wildfire protection plan, which shall be filed with and
12 evaluated by the commission. The risk-based wildfire protection
13 plan shall be based on reasonable and prudent practices, which
14 may be identified through workshops and regulatory proceedings
15 conducted by the commission pursuant to section 269-B, and
16 commission standards adopted by rule or order. The electric
17 utility shall design the risk-based wildfire protection plan to
18 protect public safety, reduce risk to electric utility
19 customers, and promote resilience of the Hawaii electric system
20 to wildfire damage. Each electric utility's wildfire protection
21 plan shall, at a minimum:



- 1 (1) Account for the responsibilities of persons
2 responsible for executing the plan;
- 3 (2) Describe the objectives of the plan;
- 4 (3) Identify areas that are subject to a heightened risk
5 of wildfire and are:
 - 6 (A) Within the right of way or legal control or
7 ownership of the electric utility; and
 - 8 (B) Outside the right of way or legal control or
9 ownership of the electric utility but within a
10 reasonable distance, as determined by the
11 commission, of the electric utility's generation
12 or transmission assets;
- 13 (4) Identify a means for mitigating wildfire risk that
14 reflects a reasonable balancing of mitigation costs
15 continuity of reliable service and reduction of
16 wildfire risk;
- 17 (5) Identify preventive actions and programs that the
18 electric utility shall carry out to minimize the risk
19 of electric utility facilities causing wildfire;



- 1 (6) Identify the metrics the electric utility plans to use
2 to evaluate the plan's performance and the assumptions
3 that underlie the use of those metrics;
- 4 (7) Describe how the application of previously identified
5 metrics to previous plan performances has informed the
6 plan;
- 7 (8) After seeking information from state and local
8 entities, identify a protocol for the deenergizing of
9 power lines and adjusting of power system operations
10 to mitigate wildfires, promote the safety of the
11 public and first responders, and preserve health and
12 communication infrastructure;
- 13 (9) Describe appropriate and feasible procedures for
14 notifying a customer who may be impacted by the
15 deenergizing of electrical lines. The procedures
16 shall consider the need to notify, as a priority,
17 critical first responders, health care facilities,
18 operators of wastewater and water delivery
19 infrastructure, and operators of telecommunications
20 infrastructure;



- 1 (10) Describe the procedures, standards, and time frames
2 that the electric utility shall use to inspect
3 electric utility infrastructure in areas that the
4 electric utility identifies under paragraph (3),
5 including whether those procedures, standards, and
6 time frames are already set forth in the electric
7 utility's existing plans or protocols and in
8 coordination with any relevant entities;
- 9 (11) Describe the procedures, standards, and time frames
10 that the electric utility will use to carry out
11 vegetation management in areas that the electric
12 utility identifies under paragraph (3), including
13 whether those procedures, standards, and time frames
14 are already set forth in the electric utility's
15 existing plans or protocols and in coordination with
16 any relevant entities;
- 17 (12) Include a list that identifies, describes, and
18 prioritizes all wildfire risks, and drivers for those
19 risks, throughout the electric utility's service
20 territory. The list shall include but not be limited
21 to the following:



- 1 (A) Risks and risk drivers associated with design,
2 construction, operations, and maintenance of the
3 electric utility's equipment and facilities; and
4 (B) Particular risks and risk drivers associated with
5 topographic and climatological risk factors
6 throughout the different parts of the electric
7 utility's service territory;
- 8 (13) Describe how the plan accounts for the wildfire risk
9 identified in the electric utility's risk assessment;
- 10 (14) Describe the actions the electric utility will take to
11 ensure its system will achieve the highest level of
12 safety, reliability, and resiliency, and to ensure
13 that its system is prepared for a wildfire, including
14 hardening and modernizing its infrastructure with
15 improved engineering, system design, standards,
16 equipment, and facilities, including but not limited
17 to undergrounding lines, insulation of distribution
18 wires, and pole replacement;
- 19 (15) Demonstrate that the electric utility has an
20 adequately sized and trained workforce to promptly
21 restore service after a wildfire, taking into account



- 1 employees of other utilities pursuant to mutual aid
2 agreements and employees of entities that have entered
3 into contracts with the electric utility;
- 4 (16) Identify the estimated development, implementation,
5 and administration costs for the plan;
- 6 (17) Identify the timelines, as applicable, for
7 development, implementation, and administration of any
8 aspects of the plan;
- 9 (18) Describe how the plan is consistent with the electric
10 utility's other hazard mitigation and grid hardening
11 plans, including plans to prepare for, and to restore
12 service after, a wildfire, including workforce
13 mobilization and prepositioning equipment and
14 employees;
- 15 (19) Identify community outreach and public awareness
16 efforts that the electric utility will use before,
17 during, and after a wildfire;
- 18 (20) Describe the processes and procedures the electric
19 utility will use to do all of the following:
- 20 (A) Monitor and audit the implementation of the plan;



- 1 (B) Identify any deficiencies in the plan or the
2 plan's implementation and correct those
3 deficiencies; and
- 4 (C) Monitor and audit the effectiveness of electrical
5 line and equipment inspections, including
6 inspections performed by contractors, carried out
7 under the plan and other applicable statutes and
8 rules of the commission;
- 9 (21) Demonstrate elements of data governance, including
10 enterprise systems; and
- 11 (22) Any modifications to paragraphs (1) to (21), or other
12 information as required by the commission.
- 13 (b) Each electric utility shall regularly update its risk-
14 based wildfire protection plan on a schedule determined by the
15 commission.
- 16 (c) To develop the risk-based wildfire protection plan,
17 the electric utility may consult with and consider information
18 from federal, state, local, and other expert entities.
- 19 (d) The commission, in consultation with the department of
20 land and natural resources, Hawaii emergency management agency,
21 and local emergency services agencies, shall evaluate each



1 electric utility's risk-based wildfire protection plan and plan
2 updates through a public process.

3 (e) No more than ninety days after the last party filing,
4 and no more than a total of one hundred eighty days after the
5 initial filing in the docket or non-docketed case related to the
6 commission's evaluation of a risk-based wildfire protection plan
7 or plan update from an electric utility, the commission shall
8 approve or approve with conditions the plan or update if the
9 commission finds that the plan or update is based on reasonable
10 and prudent practices and designed to meet all applicable rules
11 and standards adopted by the commission. The commission may, in
12 approving the plan or update with conditions, direct the
13 electric utility to make modifications to the plan or updates
14 that the commission believes represent a reasonable balancing of
15 mitigation costs with the resulting reduction of wildfire risk
16 based on the information provided by the electric utility and
17 based on best practices. The commission shall issue a decision
18 explaining any such directed modifications at the time it
19 approves the plan.

20 (f) The electric utility shall track the costs that it
21 actually incurs to develop, implement, and administer the risk-



1 based wildfire protection plan. In the electric utility's risk-
2 based wildfire protection plan update, the electric utility
3 shall report on the costs as actually incurred for the most
4 recent past period for which the information is available.

5 If the actual costs are less than the amounts that the
6 commission determined were reasonable in its decision under
7 subsection (e), the commission shall direct the electric utility
8 to refund or credit the costs to ratepayers.

9 If the actual costs are equal to or greater than the
10 amounts that the commission determined were reasonable in its
11 decision under subsection (e), the commission shall not direct
12 the electric utility to refund to ratepayers the amount the
13 commission previously determined was reasonable but may disallow
14 the recovery from ratepayers of any additional costs the
15 commission finds unreasonable. For purposes of evaluating
16 additional costs, the following shall apply:

17 (1) Actual costs that are no more than fifteen per cent
18 greater than the costs the commission previously
19 determined were reasonable shall be presumed prudent
20 and authorized for recovery from ratepayers absent



1 proof by clear and convincing evidence that the costs
2 were unreasonable; and

3 (2) The electric utility shall have the burden of proving
4 the reasonableness of actual costs that are more than
5 fifteen per cent greater than the costs the commission
6 previously determined were reasonable.

7 (g) The commission's approval of a risk-based wildfire
8 protection plan does not by itself establish a defense to any
9 enforcement action for violation of a commission rule or order,
10 or relieve an electric utility from proactively managing
11 wildfire risk, including by monitoring emerging practices and
12 technologies. Electric utilities are expected to continuously
13 improve and take reasonable actions outside of approved plans to
14 mitigate wildfire risk.

15 (h) The commission shall, as appropriate, adopt rules or
16 issue orders for the implementation of this section. The rules
17 or orders may include but need not be limited to procedures and
18 standards regarding data governance, risk-based decision-making,
19 vegetation management, public power safety shutoffs and
20 restorations, pole materials, circuitry, and monitoring systems.



1 **§269-D Penalties.** In addition to any other penalties
2 provided by law, a failure by an electric utility to comply with
3 an approved plan or part of an approved plan shall be subject to
4 a civil penalty, as determined by the commission. Imposition of
5 penalties pursuant to this section shall otherwise be in
6 accordance with section 269-28 and all applicable administrative
7 rules. All moneys collected under this section shall be
8 deposited into the public utilities commission special fund.

9 **§269-E Applications to issue bonds and authorize wildfire**
10 **protection fees.** (a) An electric utility may apply to the
11 commission for one or more financing orders to issue bonds to
12 recover any wildfire protection costs, each of which authorizes
13 the following:

14 (1) The imposition, charging, and collection of a wildfire
15 protection fee, to become effective upon the issuance
16 of the bonds, and an adjustment of any such wildfire
17 protection fee in accordance with a true-up adjustment
18 mechanism under this part in amounts sufficient to pay
19 the principal of and interest on bonds and all related
20 financing costs on a timely basis;



- 1 (2) The creation of wildfire protection property under the
- 2 financing order; and
- 3 (3) The imposition, charging, and collection of fixed
- 4 recovery tax amounts to recover any portion of the
- 5 public utility's federal and state taxes associated
- 6 with those wildfire protection fees and not financed
- 7 from the proceeds of bonds.
- 8 (b) The application shall include all of the following:
- 9 (1) The principal amount of the bonds proposed to be
- 10 issued;
- 11 (2) An estimate of the date each series of bonds is
- 12 expected to be issued;
- 13 (3) The expected term, which shall include a scheduled
- 14 final payment date not to exceed thirty years, and a
- 15 legal final maturity that may be longer, subject to
- 16 rating agency and market conditions, during which the
- 17 wildfire protection fee associated with the issuance
- 18 of each series of bonds is expected to be imposed and
- 19 collected;
- 20 (4) An estimate of the financing costs associated with the
- 21 issuance of each series of bonds;



- 1 (5) An estimate of the amount of the wildfire protection
2 fee revenues necessary to pay principal and interest
3 on the bonds and related financing costs as set forth
4 in the application and the calculation for that
5 estimate;
- 6 (6) A proposed methodology for allocating the wildfire
7 protection fee among customer classes;
- 8 (7) A description of the true-up adjustment for the
9 adjustment of the wildfire protection fee to correct
10 for any overcollection or undercollection of the
11 wildfire protection fee, and to otherwise ensure the
12 timely payment of principal and interest on the bonds
13 and related financing costs; and
- 14 (8) Any other information required by the commission.
- 15 (c) The commission shall issue an approval or denial of
16 any application for a financing order filed pursuant to this
17 section within ninety days of the last filing in the applicable
18 docket.
- 19 (d) In exercising its duties under this section, the
20 commission shall consider:



- 1 (1) Whether the wildfire protection costs to be financed
- 2 by any bonds to be issued are just and reasonable;
- 3 (2) Whether the recovery of such costs is consistent with
- 4 the public interest;
- 5 (3) Whether the terms and conditions of any bonds to be
- 6 issued, including without limitation interest rates,
- 7 rating, amortization redemption, and maturity, and the
- 8 imposition and collection of fixed recovery charges as
- 9 set forth in an application, are just and reasonable;
- 10 (4) Whether the immediate ratepayer bill impact of any
- 11 financing order is minimized to the furthest extent
- 12 practicable; and
- 13 (5) Any other factors that the commission deems reasonable
- 14 and in the public interest.

15 The public utility may request the determination specified in
16 this section by the commission in a separate proceeding, in an
17 existing proceeding, or both. If the commission makes the
18 determination specified in this section, the commission shall
19 establish, as part of the financing order, a procedure for the
20 public utility to submit applications from time to time to
21 request the issuance of additional financing orders designating



1 wildfire protection fees and any associated fixed recovery tax
2 amounts as recoverable. The public utility may submit an
3 application with respect to wildfire protection costs that a
4 public utility has paid, has an existing legal obligation to
5 pay, or would be obligated to pay pursuant to an agreement. The
6 commission shall, within ninety days of the filing of that
7 application, issue a financing order, if the commission
8 determines that the amounts identified in the application are
9 wildfire protection costs.

10 (e) Wildfire protection fees shall be imposed only on
11 existing and future ratepayers in the utility service territory.
12 Ratepayers within the utility service territory shall continue
13 to pay wildfire protection fees until the bonds and associated
14 financing costs are paid in full by the financing entity or, in
15 the event the wildfire protection property has been assigned to
16 an assignee in connection with the exercise of remedies upon a
17 default, until the receipt of proceeds by such assignee in an
18 amount sufficient to repay the principal amount of, and interest
19 that would have accrued on, the bonds had they remained
20 outstanding.



1 (f) The wildfire protection plan fee and any associated
2 fixed recovery tax amounts shall be collected by a financing
3 entity or its successors, in accordance with subsection (h), in
4 full through a surcharge, fee, or charge that is separate and
5 apart from the financing entity's rates.

6 (g) A public utility may exercise the same rights and
7 remedies under its tariff and applicable law and regulation
8 based on a consumer's nonpayment of the wildfire protection plan
9 fee as it could for a consumer's failure to pay any other charge
10 payable to that public utility.

11 (h) The commission may establish in a financing order an
12 effective mechanism that ensures recovery of wildfire protection
13 costs through nonbypassable wildfire protection fees from
14 existing and future consumers in the utility service territory.
15 The wildfire protection fee and any associated fixed recovery
16 tax amounts may be a usage-based surcharge, a flat user fee, or
17 a charge based upon customer revenues as determined by the
18 commission for each customer class in any financing order.
19 Consumers shall be required to pay those charges until:

20 (1) The bonds and all associated financing costs are paid
21 in full by the financing entity; or



1 (2) In the event the wildfire protection property has been
2 assigned to an assignee in connection with the
3 exercise of remedies upon a default, until the receipt
4 of proceeds by such assignee in an amount sufficient
5 to repay the principal amount of, and interest that
6 would have accrued on, the bonds had they remained
7 outstanding, at which time those charges shall be
8 terminated.

9 A financing order shall remain in effect and unabated
10 notwithstanding the bankruptcy, reorganization, or insolvency of
11 the electric utility or the commencement of any judicial or
12 nonjudicial proceeding on the financing order. Wildfire
13 protection fees shall be irrevocable, notwithstanding the true-
14 up adjustment pursuant to subsection (m).

15 (i) The commission shall issue financing orders in
16 accordance with this chapter to facilitate the recovery,
17 financing, or refinancing of wildfire protection costs. A
18 financing order may be adopted only upon the application of the
19 public utility and shall become effective in accordance with its
20 terms only after the public utility files with the commission
21 the public utility's written consent to all terms and conditions



1 of the financing order. A financing order may specify how
2 amounts collected from a consumer shall be allocated between
3 wildfire protection fees, any associated fixed recovery tax
4 amounts, and other charges.

5 (j) Notwithstanding any other law, and except as otherwise
6 provided in section 269-G(e), with respect to wildfire
7 protection property that has been made the basis for the
8 issuance of bonds and with respect to any associated fixed
9 recovery tax amounts, the financing order, the wildfire
10 protection fees, and any associated fixed recovery tax amounts
11 shall be irrevocable. The commission shall not, either by
12 rescinding, altering, or amending the financing order or
13 otherwise, revalue or revise for ratemaking purposes the
14 wildfire protection costs or the costs of recovering, financing,
15 or refinancing the wildfire protection costs, in any way to
16 reduce or impair the value of wildfire protection property or of
17 the right to receive any associated wildfire protection fees
18 either directly or indirectly by taking wildfire protection fees
19 into account when setting other rates for the public utility.
20 The amount of revenues shall not be subject to reduction,
21 impairment, postponement, or termination. The State does hereby



1 pledge and agree with the public utility, owners and assignees
2 of wildfire protection property, financing entities, and holders
3 of bonds that the State shall neither limit nor alter, except as
4 otherwise provided with respect to the true-up adjustment of the
5 wildfire protection fees pursuant to subsection (m), wildfire
6 protection fees, wildfire protection property, financing orders,
7 or any rights under a financing order until:

8 (1) The bonds, together with the interest on the bonds and
9 associated financing costs, are fully paid and
10 discharged;

11 (2) In the alternative, the bonds have been refinanced
12 through an additional issue of bonds; or

13 (3) In the event the wildfire protection property has been
14 assigned to an assignee in connection with the
15 exercise of remedies upon a default, until the receipt
16 of proceeds by such assignee in an amount sufficient
17 to repay the principal amount of, and interest that
18 would have accrued on, the bonds had they remained
19 outstanding;

20 provided that nothing contained in this section shall preclude
21 the limitation or alteration if and when adequate provision



1 shall be made by law for the full protection of the public
2 utility and of owners and holders of the bonds and the wildfire
3 protection property. Any financing entity may include this
4 pledge and undertaking for the State in these bonds. When
5 setting other rates for the public utility, nothing in this
6 subsection shall prevent the commission from taking into account
7 any collection of wildfire protection fees in excess of amounts
8 actually required, or would have been required had the bonds
9 remained outstanding following a default, to pay wildfire
10 protection costs financed or refinanced by bonds; provided that
11 this shall not result in a recharacterization of the tax,
12 accounting, and other intended characteristics of the financing,
13 including but not limited to either treating the bonds as debt
14 of the applicable financing entity for federal income tax
15 purposes or treating the transfer of the wildfire protection
16 property by the public utility as a true sale for bankruptcy
17 purposes.

18 (k) Under a final financing order, the bonds may be issued
19 in one or more series, and the electric utility shall retain
20 sole discretion to cause bonds to be issued, including the right



1 to defer or postpone such issuance, assignment, sale, or
2 transfer.

3 (l) Neither financing orders nor bonds issued under this
4 chapter shall constitute a debt or liability of the State or of
5 any political subdivision thereof, nor shall they constitute a
6 pledge of the full faith and credit of the State or any of its
7 political subdivisions, but shall be payable solely from the
8 funds provided under this chapter. All bonds shall contain on
9 the face thereof a statement to the following effect: "Neither
10 the full faith and credit nor the taxing power of the State of
11 Hawaii is pledged to the payment of the principal of, or
12 interest and premium on, this bond."

13 The issuance of bonds under this chapter shall not
14 directly, indirectly, or contingently obligate the State or any
15 political subdivision thereof to levy or to pledge any form of
16 taxation or to make any appropriation for their payment.

17 (m) The commission shall establish procedures for the
18 expeditious processing of an application for a financing order,
19 which shall provide for the approval or disapproval of the
20 application within ninety days of the application. Any wildfire
21 protection fees authorized by a financing order shall appear on



1 ratepayer bills. The commission shall, in any financing order,
2 provide for a procedure for periodic true-up adjustments to
3 wildfire protection fees, which shall be made at least annually
4 and may be made more frequently; provided that no true-up
5 adjustment may be made if such adjustment could reasonably be
6 expected to negatively impact the rights, including the economic
7 rights, of the owners and holders of the bonds or the wildfire
8 protection property. The public utility shall file an
9 application with the commission to implement any true-up
10 adjustment.

11 (n) Wildfire protection fees are wildfire protection
12 property when, and to the extent that, a financing order
13 authorizing the wildfire protection fees has become effective in
14 accordance with this chapter, and the wildfire protection
15 property shall thereafter continuously exist as property for all
16 purposes, and all of the rights and privileges relating to that
17 property shall continuously exist for the period and to the
18 extent provided in the financing order, but in any event until
19 the bonds are paid in full, including all principal, premiums,
20 if any, and interest with respect to the bonds, and all
21 associated financing costs are paid in full or, in the event the



1 wildfire protection property has been assigned to an assignee in
2 connection with the exercise of remedies upon a default, until
3 the receipt by such assignee of proceeds in an amount sufficient
4 to repay the principal amount of, and interest that would have
5 accrued on, the bonds had they remained outstanding. A
6 financing order may provide that the creation of wildfire
7 protection property shall be simultaneous with the sale of the
8 wildfire protection property to an assignee as provided in the
9 application of the pledge of the wildfire protection property to
10 secure the bonds.

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

15 **§269-F Bonds; issuance; wildfire protection property**
16 **interests.** (a) The public utility may sell and assign all or
17 portions of its interest in wildfire protection property to one
18 or more financing entities that make that wildfire protection
19 property the basis for issuance of bonds, to the extent approved
20 in a financing order. The public utility or financing entity
21 may pledge wildfire protection property as collateral, directly



1 or indirectly, for bonds to the extent approved in the pertinent
2 financing orders providing for a security interest in the
3 wildfire protection property, in the manner set forth herein.

4 In addition, wildfire protection property may be sold or
5 assigned by either of the following:

6 (1) The financing entity or a trustee for the holders of
7 bonds or the holders of an ancillary agreement in
8 connection with the exercise of remedies upon a
9 default; or

10 (2) Any person acquiring the wildfire protection property
11 after a sale or assignment pursuant to this chapter.

12 (b) To the extent that any interest in wildfire protection
13 property is sold, assigned, or is pledged as collateral pursuant
14 to subsection (a), the commission shall authorize the public
15 utility to contract with the financing entity and its assignees
16 that it will continue to operate its system to provide service
17 to consumers within its service territory, will collect amounts
18 in respect of the wildfire protection fees for the benefit and
19 account of the financing entity and its assignees, and will
20 account for and remit these amounts to or for the account of the
21 financing entity or its assignees. Contracting with the



1 financing entity and its assignees in accordance with that
2 authorization shall not impair or negate the characterization of
3 the sale, assignment, or pledge as an absolute transfer, a true
4 sale, or a security interest, as applicable. To the extent that
5 billing, collection, and other related services with respect to
6 the provision of the public utility's services are provided to a
7 consumer by any person or entity other than the public utility
8 in whose service territory the consumer is located, that person
9 or entity shall collect the wildfire protection fees and any
10 associated fixed recovery tax amounts from the consumer for the
11 benefit and account of the public utility, financing entity, or
12 assignees with the associated revenues remitted solely for such
13 person's benefit as a condition to the provision of electric
14 service to that consumer. Each financing order shall impose
15 terms and conditions, consistent with the purposes and
16 objectives of this chapter, on any person or entity responsible
17 for billing, collection, and other related services, including
18 without limitation collection of the wildfire protection fees
19 and any associated fixed recovery tax amounts, that are the
20 subject of the financing order.



1 (c) The financing entity may issue bonds upon approval by
2 the commission in a financing order. Bonds shall be nonrecourse
3 to the credit or any assets of the public utility, other than
4 the wildfire protection property as specified in that financing
5 order.

6 (d) Wildfire protection property that is specified in a
7 financing order shall constitute an existing, present property
8 right, notwithstanding the fact that the imposition and
9 collection of wildfire protection fees depend on the electric
10 utility continuing to provide services or continuing to perform
11 its servicing functions relating to the collection of wildfire
12 protection fees or on the level of future service consumption.
13 Wildfire protection property shall exist whether or not the
14 wildfire protection fees have been billed, have accrued, or have
15 been collected and notwithstanding the fact that the value for a
16 security interest in the wildfire protection property, or amount
17 of the wildfire protection property, is dependent on the future
18 provision of service to consumers. All wildfire protection
19 property specified in a financing order shall continue to exist
20 until the bonds issued pursuant to a financing order and all
21 associated financing costs are paid in full or, in the event the



1 wildfire protection property has been assigned to an assignee in
2 connection with the exercise of remedies upon a default, until
3 the receipt by such assignee of proceeds in an amount sufficient
4 to repay the principal amount of, and interest that would have
5 accrued on, the bonds had they remained outstanding.

6 (e) Wildfire protection property, wildfire protection
7 fees, and the interests of an assignee, bondholder, or financing
8 entity, or any pledgee in wildfire protection property and
9 wildfire protection fees shall not be subject to setoff,
10 counterclaim, surcharge, recoupment, or defense by the electric
11 utility or any other person or in connection with the
12 bankruptcy, reorganization, or other insolvency proceeding of
13 the electric utility, any affiliate of the electric utility, or
14 any other entity.

15 (f) Notwithstanding any other law to the contrary, any
16 requirement under this part or a financing order that the public
17 utilities commission takes action with respect to the subject
18 matter of a financing order shall be binding upon the
19 commission, as it may be constituted from time to time, and any
20 successor agency exercising functions similar to the commission,



1 and the commission shall have no authority to rescind, alter, or
2 amend that requirement in a financing order.

3 **§269-G Security interests in wildfire protection property;**
4 **financing statements.** (a) A security interest in wildfire
5 protection property is valid and enforceable against the pledgor
6 and third parties, subject to the rights of any third parties
7 holding security interests in the wildfire protection property
8 perfected in the manner described in this section, and attaches
9 when all of the following have taken place:

10 (1) The commission has issued a financing order
11 authorizing the wildfire protection fee included in
12 the wildfire protection property;

13 (2) Value has been given by the pledgees of the wildfire
14 protection property; and

15 (3) The pledgor has signed a security agreement covering
16 the wildfire protection property.

17 (b) A valid and enforceable security interest in wildfire
18 protection property is perfected when it has attached and when a
19 financing statement has been filed naming the pledgor of the
20 wildfire protection property as "debtor" and identifying the
21 wildfire protection property.



1 Any description of the wildfire protection property shall
2 be sufficient if it refers to the financing order creating the
3 wildfire protection property. A copy of the financing statement
4 shall be filed with the commission by the public utility that is
5 the pledgor or transferor of the wildfire protection property,
6 and the commission may require the public utility to make other
7 filings with respect to the security interest in accordance with
8 procedures that the commission may establish; provided that the
9 filings shall not affect the perfection of the security
10 interest.

11 (c) A perfected security interest in wildfire protection
12 property shall be a continuously perfected security interest in
13 all wildfire protection property revenues and proceeds arising
14 with respect thereto, whether or not the revenues or proceeds
15 have accrued. Conflicting security interests shall rank
16 according to priority in time of perfection. Wildfire
17 protection property shall constitute property for all purposes,
18 including for contracts securing bonds, whether or not the
19 wildfire protection property revenues and proceeds have accrued.

20 (d) Subject to the terms of the security agreement
21 covering the wildfire protection property and the rights of any



1 third parties holding security interests in the wildfire
2 protection property, the validity and relative priority of a
3 security interest created under this section shall not be
4 defeated or adversely affected by the commingling of revenues
5 arising with respect to the wildfire protection property with
6 other funds of the public utility, or by any security interest
7 in a deposit account of that public utility perfected under
8 chapter 490, article 9, into which the revenues are deposited.

9 Subject to the terms of the security agreement, upon
10 compliance with the requirements of section 490:9-312(b)(1), the
11 pledgees of the wildfire protection property shall have a
12 perfected security interest in all cash and deposit accounts of
13 the electrical corporation in which wildfire protection property
14 revenues have been commingled with other funds; provided that
15 the perfected security interest shall be limited to an amount no
16 greater than the amount of the wildfire protection property
17 revenues received by the public utility within twelve months
18 before:

- 19 (1) Any default under the security agreement; or
20 (2) The institution of insolvency proceedings by or
21 against the public utility, less payments from the



1 revenues to the pledgees during that twelve-month
2 period.

3 (e) If default occurs under the security agreement
4 covering the wildfire protection property, the pledgees of the
5 wildfire protection property, subject to the terms of the
6 security agreement, shall have all rights and remedies of a
7 secured party upon default under chapter 490, article 9, and
8 shall be entitled to foreclose or otherwise enforce their
9 security interest in the wildfire protection property, subject
10 to the rights of any third parties holding prior security
11 interests in the wildfire protection property perfected in the
12 manner provided in this section. In addition, the commission
13 may require in the financing order creating the wildfire
14 protection property that, in the event of default by the
15 electrical corporation in payment of wildfire protection
16 property revenues, the commission and any successor thereto,
17 upon the application by the pledgees or transferees, including
18 transferees under section 269-H of the wildfire protection
19 property, and without limiting any other remedies available to
20 the pledgees or transferees by reason of the default, shall
21 order the sequestration and payment to the pledgees or



1 transferees of wildfire protection property revenues. Any order
2 shall remain in full force and effect notwithstanding any
3 bankruptcy, reorganization, or other insolvency proceedings with
4 respect to the debtor, pledgor, or transferor of the wildfire
5 protection property. Any surplus in excess of:

6 (1) Amounts necessary to pay principal, premiums, if any,
7 interest, costs, and arrearages on the bonds, and
8 associated financing costs arising under the security
9 agreement; or

10 (2) In the event the wildfire protection property has been
11 assigned to an assignee in connection with the
12 exercise of remedies upon a default, an amount
13 sufficient to repay the principal amount of, and
14 interest that would have accrued on, the bonds had
15 they remained outstanding,

16 shall be remitted to the debtor or to the pledgor or transferor.

17 (f) Sections 490:9-204 and 490:9-205 shall apply to a
18 pledge of wildfire protection property by the public utility, an
19 affiliate of the public utility, or a financing entity.

20 **§269-H Transfers of wildfire protection property.** (a) A
21 transfer of wildfire protection property by the public utility



1 to an assignee or to a financing entity, or by an assignee of
2 the public utility or a financing entity to another financing
3 entity, which the parties in the governing documents have
4 expressly stated to be a sale or other absolute transfer, in a
5 transaction approved in a financing order, shall be treated as
6 an absolute transfer of all of the transferor's right, title,
7 and interest, as in a true sale, and not as a pledge or other
8 financing, of the wildfire protection property, other than for
9 federal and state income and franchise tax purposes.

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

15 (1) Commingling of wildfire protection fee revenues with
16 other amounts;

17 (2) The retention by the seller of either of the
18 following:

19 (A) A partial or residual interest, including an
20 equity interest, in the financing entity or the



- 1 wildfire protection property, whether direct or
2 indirect, subordinate or otherwise; or
3 (B) The right to recover costs associated with taxes,
4 franchise fees, or license fees imposed on the
5 collection of wildfire protection fee;
6 (3) Any recourse that the assignee may have against the
7 seller;
8 (4) Any indemnification rights, obligations, or repurchase
9 rights made or provided by the seller;
10 (5) The obligation of the seller to collect wildfire
11 protection fees on behalf of an assignee;
12 (6) The treatment of the sale, assignment, or transfer for
13 tax, financial reporting, or other purpose; or
14 (7) Any true-up adjustment of the wildfire protection fee
15 as provided in the financing order.
16 (c) A transfer of wildfire protection property shall be
17 deemed perfected against third persons when both of the
18 following occur:
19 (1) The commission issues the financing order authorizing
20 the wildfire protection fee included in the wildfire
21 protection property; and



1 (2) An assignment of the wildfire protection property in
2 writing has been executed and delivered to the
3 transferee.

4 (d) As between bona fide assignees of the same right for
5 value without notice, the assignee first filing a financing
6 statement in accordance with chapter 490, article 9, part 5,
7 naming the assignor of the wildfire protection property as
8 debtor and identifying the wildfire protection property shall
9 have priority. Any description of the wildfire protection
10 property shall be sufficient if it refers to the financing order
11 creating the wildfire protection property. A copy of the
12 financing statement shall be filed by the assignee with the
13 commission, and the commission may require the assignor or the
14 assignee to make other filings with respect to the transfer in
15 accordance with procedures the commission may establish, but
16 these filings shall not affect the perfection of the transfer.

17 **§269-I Successor requirements; default.** (a) Any
18 successor to an electric utility that has received a financing
19 order, whether pursuant to any bankruptcy, reorganization, or
20 other insolvency proceeding, or pursuant to any merger, sale, or
21 transfer, by operation of law, or otherwise, shall be bound by



1 the requirements of this part. The successor of the electric
2 utility shall perform and satisfy all obligations of the
3 electric utility under the financing order, in the same manner
4 and to the same extent as the electric utility, including the
5 obligation to collect and pay the wildfire protection fee to any
6 financing party as required by a financing order or any
7 assignee. Any successor to the electric utility shall be
8 entitled to receive any fixed recovery tax amounts otherwise
9 payable to the electric utility company.

10 (b) The commission may require in a financing order that
11 if a default by the electric utility in remittance of the
12 wildfire protection fee collected arising with respect to
13 wildfire protection property occurs, the commission, without
14 limiting any other remedies available to any financing party by
15 reason of the default, shall order the sequestration and payment
16 to the beneficiaries of the wildfire protection fee collected
17 arising with respect to the wildfire protection property. Any
18 order shall remain in full force and effect notwithstanding any
19 bankruptcy, reorganization, or other insolvency proceedings with
20 respect to the electric utility.



1 **§269-J Severability.** If any provision of this part is
2 held to be invalid or is superseded, replaced, repealed, or
3 expires for any reason:

4 (1) That occurrence shall not affect any action allowed
5 under this part that is taken prior to that occurrence
6 by the commission, a financing entity, a bondholder,
7 or any financing party, and any such action shall
8 remain in full force and effect; and

9 (2) The validity and enforceability of the rest of this
10 part shall remain unaffected."

11 SECTION 3. Chapter 269-17, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§269-17 Issuance of securities.** A public utility
14 corporation or a financing entity may, on securing the prior
15 approval of the public utilities commission, and not otherwise,
16 except as provided in section 269-E, issue stocks and stock
17 certificates, bonds, notes, and other evidences of indebtedness,
18 payable at periods of more than twelve months after the date
19 thereof, for the following purposes and no other, namely: for
20 the acquisition of property or for the construction, completion,
21 extension, or improvement of or addition to its facilities or



1 service, or for the discharge or lawful refunding of its
2 obligations or for the reimbursement of moneys actually expended
3 from income or from any other moneys in its treasury not secured
4 by or obtained from the issue of its stocks or stock
5 certificates, or bonds, notes, or other evidences of
6 indebtedness, for any of the aforesaid purposes except
7 maintenance of service, replacements, and substitutions not
8 constituting capital expenditure in cases where the corporation
9 has kept its accounts for such expenditures in such manner as to
10 enable the commission to ascertain the amount of moneys so
11 expended and the purposes for which the expenditures were made,
12 and the sources of the funds in its treasury applied to the
13 expenditures. As used [~~herein,~~] in this section, "property" and
14 "facilities" [~~]~~ mean property and facilities used in all
15 operations of a public utility corporation whether or not
16 included in its public utility operations or rate base. A
17 public utility corporation may not issue securities to acquire
18 property or to construct, complete, extend or improve or add to
19 its facilities or service if the commission determines that the
20 proposed purpose will have a material adverse effect on its
21 public utility operations.



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

6 SECTION 4. Each electric utility shall file its first
7 risk-based wildfire protection plan with the public utilities
8 commission required under section 269-C, Hawaii Revised
9 Statutes, established by section 2 of this Act, no later than
10 December 31, 2024.

11 SECTION 5. Notwithstanding the provisions of section 39A-
12 191, Hawaii Revised Statutes, and the provisions of Act 182,
13 Session Laws of Hawaii 2022, as amended by Act 262, Session Laws
14 of Hawaii 2023, the legislature authorizes the issuance of
15 special purpose revenue bonds for wildfire protection costs that
16 require an allocation of the annual state ceiling under section
17 39B-2, Hawaii Revised Statutes, for the period July 1, 2024,
18 through December 31, 2028, and further authorizes project
19 agreements with an affiliate of a public utility or a special
20 purpose vehicle in connection with the issuance of special
21 purpose revenue bonds for wildfire protection costs.



1 SECTION 6. The legislature authorizes the allocation of
2 the annual state ceiling under section 39B-2, Hawaii Revised
3 Statutes, to the issuance of bonds issued pursuant to section 2
4 of this Act that require such allocation in order for interest
5 on the bonds to be tax-exempt for federal income tax purposes.

6 SECTION 7. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 8. In codifying the new part added to chapter 269,
10 Hawaii Revised Statutes, by section 2 of this Act, the revisor
11 of statutes shall substitute appropriate section numbers for the
12 letters used in designating and referring to the new sections in
13 this Act.

14 SECTION 9. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect on July 1, 3000.



Report Title:

Wildfires; Mitigation; Protection; Public Utilities Commission;
Electric Utilities; Securitization; Risk Protection Plans

Description:

Creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county. Effective 7/1/3000. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

