
A BILL FOR AN ACT

RELATING TO WILDFIRES.

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

1 PART I

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

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



1 that is vital for making investments in wildfire prevention,
2 among other priorities that may affect the health and safety of
3 the State's residents.

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

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

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



1 encourage investment in the State. The legislature further
2 finds that a fund of this nature would suit the public interest
3 as an element of sound wildfire mitigation planning. Therefore,
4 the purpose of this part is to serve the public interest in the
5 event of a devastating wildfire by establishing a means to
6 provide compensation for property damage resulting from
7 wildfires.

8 SECTION 2. The Hawaii Revised Statutes is amended by
9 adding a new chapter to be appropriately designated and to read
10 as follows:

11 **"CHAPTER**

12 **WILDFIRE RELIEF FUND**

13 **§ -1 Definitions.** As used in this chapter, unless the
14 context otherwise requires:

15 "Administrator" means the wildfire relief fund
16 administrator appointed under section -5.

17 "Board" means the wildfire relief fund corporation board of
18 directors created under section -4.

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



1 "Contributor" means any person who contributes to the
2 wildfire relief fund as provided in section -7.

3 "Corporation" means the wildfire relief fund corporation
4 established under section -3.

5 "Electric utility" means a public utility that exists for
6 the furnishing of electrical power.

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

10 "Operation date" means the date by which all of the
11 following have occurred prior to the initial date of operation
12 of the wildfire relief fund:

- 13 (1) The deadline for property owners to submit a request
14 to opt-out under section -13(b);
 - 15 (2) The deadline for property insurers to submit elections
16 under section -14(a); and
 - 17 (3) The date for contributors to elect to participate in
18 the wildfire relief fund under section -7(b);
- 19 provided that the administrator shall take all reasonable steps
20 necessary to ensure that the operation date is no later than
21 February 14, 2025.



1 "Other governmental entities" refers to governmental
2 entities, including county government agencies, other than state
3 government agencies.

4 "Public utility" has the same meaning as defined in section
5 269-1.

6 "Wildfire relief fund" means the wildfire relief fund
7 established under section -2.

8 **§ -2 Wildfire relief fund; establishment.** (a) There is
9 established outside the state treasury a wildfire relief fund
10 and any accounts thereunder to carry out the purposes of this
11 chapter.

12 (b) The wildfire relief fund shall be placed within the
13 department of commerce and consumer affairs for administrative
14 purposes. The wildfire relief fund shall be a public body
15 corporate and politic.

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



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

4 (e) All payments authorized to be made by the corporation
5 by this chapter, including all payments for claims for
6 catastrophic wildfire damages, all salaries, and all other
7 expenses, shall be made from the wildfire relief fund.

8 (f) The moneys in the wildfire relief fund shall be
9 invested according to the same investment plans developed for
10 the Hawaii retirement savings special fund under chapter 389,
11 and the earnings from the investments shall be credited to the
12 wildfire relief fund.

13 (g) All moneys in the wildfire relief fund shall be
14 appropriated and expended exclusively for the uses and purposes
15 set forth in this chapter; provided that this section shall not
16 be deemed to amend or impair the force or effect of any law of
17 this State specifically authorizing the investment of moneys
18 from the wildfire relief fund.

19 (h) The wildfire relief fund shall not be subject to
20 chapter 431.



- 1 **§ -3 Wildfire relief fund corporation; establishment;**
2 **purposes; duties.** (a) There is established the wildfire relief
3 fund corporation, which shall be an independent public body
4 corporate and politic.
- 5 (b) The corporation shall be established within the
6 department of commerce and consumer affairs for administrative
7 purposes.
- 8 (c) The purpose of the corporation shall be to administer
9 the payment of:
- 10 (1) Eligible claims arising from catastrophic wildfires
11 from the wildfire relief fund; and
- 12 (2) Contributions of contributors to the wildfire relief
13 fund.
- 14 (d) The corporation shall:
- 15 (1) Receive, process, and determine payments for eligible
16 claims for property damage arising from catastrophic
17 wildfires from the wildfire relief fund;
- 18 (2) Determine and enforce the collection of contributions
19 from contributors to the wildfire relief fund;
- 20 (3) Retain, employ, or contract with officers; experts;
21 employees; accountants; actuaries; financial



1 professionals; and other advisers, consultants,
2 attorneys, and professionals, as may be necessary in
3 the administrator's judgment, for the efficient
4 operation, management, and administration of the
5 corporation;

6 (4) Enter into contracts and other obligations related to
7 the operation, management, and administration of the
8 corporation;

9 (5) Purchase insurance or take other actions to maximize
10 the claims-paying resources of the wildfire relief
11 fund;

12 (6) Pay costs, expenses, and other obligations of the
13 corporation from the wildfire relief fund's assets;

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

16 (8) Undertake other activities related to the operation,
17 management, and administration of the wildfire relief
18 fund, as approved by the board.

19 **§ -4 Wildfire relief fund corporation; board of**
20 **directors.** (a) There is established a wildfire relief fund
21 corporation board of directors, which shall consist



1 of members appointed by the governor in accordance with
2 section 26-34. The board shall be the policy-making body of the
3 corporation. The board shall be responsible for adopting
4 policies for the administration and operation of the wildfire
5 relief fund and the performance of other duties and functions
6 assigned to the wildfire relief fund, to the degree not
7 specified in this chapter.

8 (b) The members of the board shall serve staggered terms,
9 with one-half of the members' initial terms ending four years
10 after the initial appointment, and one-half of the members'
11 initial terms ending six years after the initial appointment.
12 Thereafter, each member shall serve four-year terms. Vacancies
13 shall be filled for the remainder of any unexpired term in the
14 same manner as the original appointments.

15 (c) The chairperson of the board shall be elected from
16 among the appointed members of the board. A majority of all
17 members currently appointed to the board shall constitute a
18 quorum to conduct business, and the concurrence of a majority of
19 all members currently appointed to the board shall be necessary
20 to make any action valid, unless otherwise specified in this
21 chapter.



- 1 (d) Members of the board shall be appointed to ensure:
2 (1) A broad and balanced representation, with proper
3 judgment, character, expertise, skills, and knowledge
4 useful to the oversight of the corporation; and
5 (2) Diversity with regard to viewpoints, background, work
6 experience, and demographics.

7 The members of the board shall serve without compensation
8 but shall be reimbursed for actual and necessary expenses,
9 including travel expenses, incurred in the discharge of their
10 duties.

11 (e) The board shall meet at least once every three months
12 at a time and place determined by the board. The board shall
13 meet at other times and places as determined by the call of the
14 chairperson or by a majority of the members of the board.

15 (f) No later than twenty days before the convening of each
16 regular session of the legislature, the board shall submit to
17 the legislature and governor a report regarding the activities
18 and operations of the corporation during the preceding year.
19 The report shall include, at a minimum, a description of:

- 20 (1) The effectiveness of the wildfire relief fund's
21 claims-payment process; and



1 (2) The level of participation in the wildfire relief fund
2 by all eligible participants, including property
3 owners, property insurers, and contributors.

4 (g) Each member of the board shall retain all immunities
5 and rights provided to a member under section 26-35.5.

6 **§ -5 Wildfire relief fund corporation; administrator.**

7 (a) The board shall appoint an administrator and oversee the
8 administrator's management and administration of the
9 corporation.

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

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

15 (d) The administrator may employ, terminate, and supervise
16 employees, including assistants, experts, field personnel, and
17 clerks, as may be necessary for the administration of the
18 corporation.

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



1 (f) At the direction of the board, the administrator shall
2 prepare and present for approval a plan of operations related to
3 the operations, management, and administration of the wildfire
4 relief fund on an annual basis. At least annually and at the
5 direction of the board, the administrator shall submit the plan
6 of operations to the appropriate policy committees of the
7 legislature. The plan shall include but not be limited to
8 reporting on the wildfire relief fund's assets and projections
9 for the duration of the wildfire relief fund.

10 (g) At the direction of the board, the administrator shall
11 at least annually prepare and publish on the corporation's
12 website a public-facing report that describes the operations and
13 activities of the corporation and the wildfire relief fund
14 during the preceding year, including a description of the
15 financial condition of the wildfire relief fund.

16 **§ -6 Wildfire relief fund corporation; audit.** (a) The
17 auditor shall conduct an annual financial audit of the
18 corporation and fund under chapter 23. As part of this audit,
19 the auditor may contract with a firm qualified to perform an
20 independent actuarial review.



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

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

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

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

10 (4) An assessment of the future financial viability of the
11 wildfire relief fund.

12 (c) The corporation shall cooperate with the actuarial
13 firm in all respects and shall permit the firm full access to
14 all information the firm deems necessary for a true and complete
15 review. Information provided to the actuarial firm conducting
16 the annual review shall be subject to the same limitations on
17 public inspections as required for the records of the
18 corporation.

19 (d) The audit required by this section shall be conducted
20 using both generally accepted accounting principles and the
21 generally accepted government auditing standards.



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

3 (f) The auditor shall issue an annual report to the
4 legislature and governor on the results of the audit and review.
5 The audit and report of the review performed by the independent
6 actuarial firm shall be available for public inspection, in
7 accordance with the auditor's established rules and procedures
8 governing public disclosure of audit documents.

9 **§ -7 Wildfire relief fund; participation.** (a) The
10 following entities may participate in the wildfire relief fund
11 as contributors:

- 12 (1) The State;
- 13 (2) Electric utilities;
- 14 (3) Public utilities that are not electric utilities that
15 contribute to the risk of occurrence or severity of a
16 catastrophic wildfire, including but not limited to
17 public utilities for the production, conveyance,
18 transmission, delivery, or furnishing of gas;
- 19 (4) Other governmental entities; and



1 (5) Private property owners who own, or whose affiliated
2 persons or entities own in the aggregate, at
3 least acres of land in Hawaii.

4 (b) To participate in the wildfire relief fund, an entity
5 shall:

6 (1) Notify the administrator that it intends to
7 participate in the wildfire relief fund
8 by in the year preceding the year in which
9 the entity seeks to participate in the wildfire relief
10 fund; and

11 (2) Have made required contributions to the wildfire
12 relief fund under section -8.

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

17 (1) Shall retain all of the rights, privileges, and
18 obligations of a contributor; and

19 (2) Notwithstanding any other provisions of this chapter
20 and regardless of the existence of a depletion event



1 under section -16(c), shall be bound by the
2 limitation on claims under section -18.

3 (d) Any person or entity that poses a risk of causing or
4 exacerbating the severity of a catastrophic wildfire that is not
5 eligible under subsection (a) to participate as a contributor in
6 the wildfire relief fund may submit an application to the board
7 for participation.

8 (e) The board shall adopt rules under chapter 91 and issue
9 criteria for applications submitted under subsection (d).

10 (f) The board shall include in its annual report to the
11 legislature and governor under section -4 all applications
12 submitted under subsection (d) and shall recommend to the
13 legislature whether participation criteria for contributors
14 should be broadened.

15 **§ -8 Wildfire relief fund; funding.** (a) Total
16 capitalization. The total capitalization amount of the wildfire
17 relief fund shall be \$. Neither the board nor the
18 administrator may modify the total capitalization amount, except
19 as otherwise expressly provided in this chapter.

20 (b) Actuarial study. The board shall commission an
21 actuarial study to be completed in 2024 to assess whether the



1 total capitalization amount should be increased or decreased
2 based on a holistic assessment of the risk of catastrophic
3 wildfires in Hawaii and the potential exposure of the wildfire
4 relief fund to claims arising out of catastrophic wildfires.
5 The board shall include this assessment in the annual report
6 that it submits to the legislature and governor under
7 section -4.

8 (c) Time to total capitalization. The administrator shall
9 recommend to the board, and the board shall, by majority vote,
10 approve initial contribution amounts under \$ for
11 potential contributors, other than the State and electric
12 utilities, based on the actuarial factors identified in
13 subsection (b) and with the goal of, to the extent reasonably
14 possible, having the wildfire relief fund reach the total
15 capitalization amount within five years of the effective date of
16 this Act, taking into consideration reasonably expected
17 investment returns and assuming no payments will be made by the
18 wildfire relief fund during that time period.

19 (d) Capitalization amounts. With the exception of the
20 contribution made by the State in paragraph (4), contribution
21 amounts shall be divided by the administrator into an initial



1 contribution amount to be made by _____, and annual
2 contribution amounts to be made over a five-year period, subject
3 to the administrator's ability to increase payments under the
4 insufficient funding provision in subsection (g).

5 The wildfire relief fund shall be capitalized by the
6 following contributions:

- 7 (1) From other governmental entities that are eligible to
8 participate in the wildfire relief fund, an amount
9 determined by the administrator based on an actuarial
10 assessment of the risk of payments to these entities
11 by the wildfire relief fund resulting from
12 catastrophic wildfires created by these entities, as
13 well as the risk of potential payments made by the
14 wildfire relief fund resulting from catastrophic
15 wildfires created by these entities;
- 16 (2) From public utilities, other than electric utilities,
17 and private property owners that are in all cases
18 eligible to participate in the wildfire relief fund,
19 an amount determined by the administrator based on an
20 actuarial assessment of the risk of potential payments



1 by the wildfire relief fund resulting from
2 catastrophic wildfires created by these entities;

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

4 (4) From the State, \$.

5 (e) The board shall determine the contribution amounts of
6 eligible contributors by ; provided that this date is
7 thirty days before the date by which participants are required
8 to notify the administrator of their intention to participate in
9 the wildfire relief fund. If an eligible contributor declines
10 to notify the administrator that the eligible contributor wishes
11 to participate in the wildfire relief fund and become a
12 contributor, the board shall reduce the total capitalization
13 amount by subtracting the amount the board allocated to that
14 eligible contributor.

15 (f) If an electric utility, public utility other than an
16 electric utility, other governmental entity, or private property
17 owner elects to become a contributor after the initial
18 capitalization of the wildfire relief fund, the electric
19 utility, public utility other than an electric utility, other
20 governmental entity, or private property owner shall provide,
21 by in the year before the year in which the electric



1 utility, public utility other than an electric utility, other
2 governmental entity, or private property owner seeks to become a
3 contributor, an initial contribution in an amount determined by
4 the board by a majority vote upon the administrator's
5 recommendation, based on an up-to-date consideration of the
6 factors identified in subsection (b), such that the previous and
7 present initial contributions by all contributors reflect their
8 relative contributions to the risk of future payments from the
9 wildfire relief fund.

10 If necessary to achieve an allocation of initial
11 contributions, and if the election is made before the fifth year
12 of the wildfire relief fund operation, the administrator shall
13 reduce the amount of annual contributions by one or more
14 contributors who previously made initial contributions until an
15 allocation is reached. The administrator shall increase the
16 total capitalization amount of the wildfire relief fund by the
17 amount of the initial contribution of the new wildfire relief
18 fund contributor. The administrator may, in the administrator's
19 discretion, permit a new contributor under this subsection to
20 make payments over a five-year period.



1 (g) If the administrator determines that payments made by
2 the wildfire relief fund, and expected future contributions by
3 contributors and investment returns, will result in the wildfire
4 relief fund: failing to reach the total capitalization amount,
5 as adjusted, as applicable, under subsection (a), by the fifth
6 year of operation after the operation date; or falling below the
7 total capitalization amount after the fifth year of operation
8 after the operation date, including, in either case, as a result
9 of the legislature increasing the total capitalization amount,
10 the administrator shall recommend that the board establish a
11 supplemental contribution to be contributed to the wildfire
12 relief fund. Responsibility among contributors for the
13 supplemental contribution shall be allocated as follows:

14 (1) The administrator shall recommend to the board, and
15 the board shall determine by majority vote, the
16 respective portions of the supplemental contribution
17 amount to be paid by each contributing electric
18 utility, public utility other than an electric
19 utility, other governmental entity, and private
20 property owner contributor, based on an up-to-date
21 assessment of any actuarial factors; and



1 (2) The remaining amount of the supplemental contribution,
2 but not more than the largest contribution by other
3 contributors, shall be paid by the State, subject to
4 legislative appropriation.

5 (h) The administrator may allow contributors to pay
6 supplemental contributions via annual contributions, or in part
7 via an upfront contribution followed by annual contributions
8 unless the administrator determines that a contribution schedule
9 will create a material risk that the wildfire relief fund will
10 not reach or return to its total capitalization amount within a
11 reasonable period of time to perform the functions identified in
12 this chapter.

13 The administrator may permit annual supplemental
14 contributions, instead of a single upfront contribution, subject
15 to the payment of interest at the rate set under subsection (m).

16 (i) If the board establishes a supplemental contribution
17 under subsection (g), before the wildfire relief fund receives
18 the supplemental contribution, the wildfire relief fund may
19 issue revenue bonds up to the amount of the supplemental
20 contribution, which shall be backed by future contributions to
21 the wildfire relief fund.



1 (j) The board may order supplemental contributions under
2 this chapter even if an investigation under the replenishment
3 process under section -9 is ongoing. If payments are later
4 made under that replenishment process, the board may refund
5 supplemental contributions in whole or in part if the other
6 conditions of the refunds section are met under section -11.

7 (k) The public utilities commission, if authorized by law,
8 may authorize recovery of an investor-owned utility's initial
9 and supplemental contributions, to the wildfire relief fund via
10 a securitization transaction; provided that the commission
11 ensures that the securitization transaction, considered in
12 conjunction with any other securitization transaction the
13 commission has authorized, prevents an undue burden on consumers
14 of the electric utility by capping the total bill impact of such
15 securitization transactions. If the commission does not
16 authorize a securitization to recover the investor-owned
17 utility's initial and supplemental contributions to the wildfire
18 relief fund, the commission shall authorize recovery from its
19 customers in rates, subject to a cap determined by the
20 commission.



1 (1) If the total amount of payments that the administrator
2 determines should be paid in connection with a catastrophic
3 wildfire under sections -13, -14, and -15 exceeds the
4 current balance of the wildfire relief fund, the State may
5 provide a loan to the wildfire relief fund in an amount up to
6 the depletion percentage, as determined by section -16(d).
7 The loan shall be repaid over time through annual contributions
8 by contributors.

9 (m) A contributor may request that the administrator
10 permit the contributor to pay the contributor's initial
11 contribution over five years via upfront and annual payments;
12 provided that the contributor shall pay interest on all amounts
13 deferred beyond the upfront payment date at a rate equal to the
14 State's average incremental borrowing rate plus two hundred
15 basis points.

16 (n) The upfront payment date shall be the date upon which
17 the upfront portion of all contributors' initial contributions
18 shall be paid to the wildfire relief fund. The administrator
19 shall determine the upfront payment date and announce it at
20 least ninety days in advance. The upfront payment date shall be
21 at least thirty days after the operation date and in no event



1 earlier than April 15, 2025; provided that if a catastrophic
2 wildfire occurs before March 15, 2025, the administrator may
3 accelerate the upfront payment date to thirty days after the
4 administrator provides notice of the acceleration to all
5 contributors.

6 **§ -9 Replenishment of the wildfire relief fund;**
7 **determination of prudence.** (a) If the administrator, or an
8 agency of the State with responsibility for determining the
9 causes of wildfires or catastrophic wildfires informs the public
10 utilities commission that a catastrophic wildfire may have been
11 ignited by the facilities of a public utility that is a
12 contributor, the public utilities commission shall initiate a
13 proceeding to review the public utility's conduct leading to the
14 catastrophic wildfire and make findings. The public utilities
15 commission, even without formal notice from the administrator or
16 the agency, may initiate this proceeding of its own accord.

17 (b) The public utilities commission shall evaluate the
18 prudence of the conduct of the public utility in connection with
19 a catastrophic wildfire. The public utilities commission shall
20 determine whether the public utility acted prudently,
21 considering only acts that may have caused the ignition and



1 evaluating the public utility's actions in the context of the
2 public utility's overall systems, processes, and programs, such
3 that an error by a public utility employee would not be a basis
4 for a finding of imprudence, unless that error resulted from any
5 imprudent system, process, or program.

6 (c) In evaluating prudence under this section, the public
7 utilities commission shall determine whether the actions of the
8 public utility were consistent with actions that a reasonable
9 public utility would have undertaken in good faith under similar
10 circumstances, at the relevant point in time, and based on the
11 information available to the public utility at the relevant
12 point in time.

13 Reasonable conduct shall not be limited to the optimum
14 practice, method, or act to the exclusion of others, but rather
15 shall encompass a spectrum of possible practices, methods, or
16 acts consistent with utility system needs, the interest of
17 ratepayers, and the requirements of governmental agencies of
18 competent jurisdiction.

19 (d) If the public utilities commission determines that
20 imprudent conduct by the public utility caused the catastrophic
21 wildfire, the public utilities commission shall determine



1 whether to order the public utility to reimburse the wildfire
2 relief fund in whole or in part for payments from the wildfire
3 relief fund made in connection with the catastrophic wildfire.
4 In determining the amount of reimbursement, if any, the public
5 utilities commission shall consider the extent and severity of
6 the public utility's imprudence and factors within and beyond
7 the public utility's control that may have led to or exacerbated
8 the costs from the catastrophic wildfire, including but not
9 limited to humidity, temperature, winds, fuel, merged wildfires
10 with independent ignitions, third-party actions that affected
11 the spread of the wildfire, and fire suppression activities.

12 (e) The public utilities commission shall not order the
13 public utility to reimburse the wildfire relief fund in an
14 amount that exceeds the lesser of:

- 15 (1) The costs that the public utilities commission
16 determines were due to the public utility's
17 imprudence; or
- 18 (2) Twenty per cent of the public utility's transmission
19 and distribution equity rate base minus the amounts
20 the public utility has reimbursed, or is required to
21 reimburse, the wildfire relief fund during the period



1 of three consecutive calendar years ending on
2 December 31 of the year in which the calculation is
3 being performed.

4 (f) If the public utilities commission orders the public
5 utility to reimburse the wildfire relief fund, the public
6 utility shall not recover the amount of the reimbursement in
7 rates charged to ratepayers.

8 (g) If the administrator, or an agency of the State with
9 responsibility for determining the causes of wildfires or
10 catastrophic wildfires, concludes that the conduct of another
11 governmental entity or private property owner that is a
12 contributor may have caused the occurrence or contributed to the
13 severity of a catastrophic wildfire, the administrator shall
14 assess the prudence of the contributor's conduct, applying the
15 same standard of prudence applied to public utilities under
16 subsection (c).

17 (h) If the administrator determines that the contributor
18 acted imprudently and that the imprudence caused or contributed
19 to the severity of the catastrophic wildfire, the administrator
20 shall recommend that the board require the contributor to
21 reimburse the wildfire relief fund in whole or in part for



1 payments that the wildfire relief fund made in connection with
2 the catastrophic wildfire, considering the factors set forth in
3 subsection (d), subject to a cap of ten per cent of the
4 contributor's assets within Hawaii, measured over a rolling
5 three-year period.

6 **§ -10 Failure to make contributions to wildfire relief**
7 **fund.** (a) Contributors shall notify the administrator if they
8 will make, or fail to make, a required contribution, whether
9 initial, annual, or supplemental, to the wildfire relief fund at
10 least days before the contribution is due.

11 (b) If a contributor fails to make a required contribution
12 to the wildfire relief fund, that contributor will no longer be
13 a contributor as of the date that the contribution was due.
14 That entity may rejoin the wildfire relief fund under the
15 process for joining the wildfire relief fund after initial
16 capitalization set forth in section -8.

17 (c) The administrator shall not refund to an entity that
18 fails to make a contribution any previous payments made to the
19 wildfire relief fund. However, the administrator shall credit
20 all previous contributions when determining the amount of



1 payment to be made if a participant rejoins the wildfire relief
2 fund under subsection (b).

3 **§ -11 Refunds.** (a) If the total amount in the wildfire
4 relief fund exceeds one hundred twenty per cent of the total
5 capitalization amount, the administrator may recommend that the
6 board authorize refunds to be made to the contributors; provided
7 that the refunds do not deplete the wildfire relief fund below
8 one hundred twenty per cent of the total capitalization amount.

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

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

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



1 (e) If the board elects to issue a refund or elects not to
2 do so after receiving a request under subsection (d), the
3 administrator shall issue an order explaining the board's
4 decision.

5 **§ -12 Processing of claims.** (a) With the approval of
6 the board, the administrator shall establish and approve
7 procedures for the review, approval, and timely payment of
8 claims for reimbursement from the wildfire relief fund. The
9 procedures may be revised from time to time by the administrator
10 with the approval of the board.

11 (b) If a catastrophic wildfire occurs within the State,
12 the administrator shall process claims made for compensation
13 against the wildfire relief fund related to the catastrophic
14 wildfire, consistent with the requirements of this chapter.

15 **§ -13 Claims by property owners.** (a) To be eligible
16 for compensation from the wildfire relief fund for damage to
17 property from a catastrophic wildfire, a property owner shall
18 not have opted out from participation in the wildfire relief
19 fund before the occurrence of the catastrophic wildfire.

20 (b) County tax assessors shall include, with each real
21 property tax assessment sent to a property owner in the State, a



1 prominent notice regarding participation in the wildfire relief
2 fund. The notice shall be in a form prescribed by the
3 administrator and shall clearly explain the property owner's
4 right to opt out of participation in the wildfire relief fund by
5 submitting a request to opt out to the administrator within a
6 specific time. A property owner who does not submit a timely
7 request to opt out shall be deemed to participate in the
8 wildfire relief fund as of the deadline for submitting a request
9 to opt out.

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

12 (d) To opt out of participation in the wildfire relief
13 fund with regard to property either in areas within the State
14 that have been assigned extreme, high, and moderate wildfire
15 risk classes by _____, a property owner shall submit
16 documentation of insurance coverage for the property along with
17 the property owner's request to opt out of the wildfire relief
18 fund, and the administrator shall approve the documentation as
19 adequate evidence of insurance for the applicable property.

20 (e) Following a catastrophic wildfire, to make a claim for
21 compensation from the wildfire relief fund for damage to



1 property from the wildfire, a property owner shall submit to the
2 administrator documentation establishing:

3 (1) That the catastrophic wildfire damaged the owner's
4 property;

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

7 (3) Any insurance policy providing coverage for those
8 losses.

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

20 (g) If no insurance policy provides coverage for the
21 losses for which a property owner seeks compensation from the



1 wildfire relief fund, the property owner shall be eligible to
2 receive as compensation from the wildfire relief fund a maximum
3 of \$.

4 (h) If an insurance policy provides coverage for the
5 losses for property damage incurred by an eligible property
6 owner who seeks compensation from the wildfire relief fund, the
7 property owner shall be eligible to receive, as compensation
8 from the wildfire relief fund, only compensation for uninsured
9 real or personal property damage, in an amount up to the lesser
10 of:

11 (1) per cent of the amount by which the property
12 owner's losses exceed the amount of insurance coverage
13 for the losses; or

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

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

18 **§ -14 Claims by property insurers.** (a) To be eligible
19 for compensation from the wildfire relief fund, a property
20 insurer shall have elected to participate in the wildfire relief
21 fund before the annual policy period in which the catastrophic



1 wildfire occurred. The administrator shall establish a process
2 for property insurers to annually submit an election to
3 participate in the wildfire relief fund to the administrator
4 within a specified time.

5 (b) All property insurers who elect to participate in the
6 wildfire relief fund shall be eligible to receive as
7 compensation from the wildfire relief fund per cent of
8 their total payments for property damage claims in Hawaii as a
9 result of a catastrophic wildfire.

10 (c) Following a catastrophic wildfire, to make a claim for
11 compensation from the wildfire relief fund based on claims
12 resulting from the wildfire, an eligible property insurer shall
13 submit to the administrator documentation establishing the
14 number, nature, and total value of the insurance claims that the
15 property insurer paid under its policies for damage resulting
16 from the catastrophic wildfire as well as documentation
17 sufficient to assess the reasonableness of the property
18 insurer's payment of the claims.

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



- 1 (1) Review via an expedited procedure the property
2 insurer's claim for compensation from the wildfire
3 relief fund; and
- 4 (2) Determine:
- 5 (A) Whether the documentation provided is adequate;
6 and
7 (B) The appropriate amount of the payment to the
8 property insurer from the wildfire relief fund.

9 **§ -15 Claims by the State and other governmental**
10 **entities.** (a) The State may submit claims for compensation
11 from the wildfire relief fund for damages it incurred resulting
12 from a catastrophic wildfire, including damage to infrastructure
13 or other property, costs of fire suppression, and natural
14 resource damages, to the extent recovery of the losses is
15 authorized by law.

16 (b) Other governmental entities may submit claims for
17 compensation from the wildfire relief fund for damages they
18 incurred resulting from a catastrophic wildfire, including
19 damage to infrastructure or other property and other losses, to
20 the extent recovery of the losses is authorized by law; provided
21 that to be eligible for compensation from the wildfire relief



1 fund related to a catastrophic wildfire, the other governmental
2 entity shall elect to be a contributor and shall have satisfied
3 contribution obligations under section -8 before the
4 occurrence of the catastrophic wildfire.

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

- 8 (1) That the catastrophic wildfire caused the damages;
- 9 (2) The extent of the damages caused by the catastrophic
10 wildfire; and
- 11 (3) Any other documentation necessary to establish the
12 State's or other governmental entity's right to
13 recover the losses under law.

14 (d) After receipt of a claim for compensation from the
15 wildfire relief fund under this section, the administrator shall
16 determine whether the State or other governmental entity may
17 recover damages under applicable law and, if so, the appropriate
18 amount of the payment.

19 **§ -16 Fund depletion.** (a) Within thirty days of a
20 catastrophic wildfire, the administrator shall assess whether
21 the total payments that the wildfire relief fund is projected to



1 make to eligible property owners, property insurers, the State
2 and other governmental entities under sections -13, -14,
3 and -15, respectively, are expected to exceed seventy-five
4 per cent of the total available money in the wildfire relief
5 fund. The board shall adopt rules under chapter 91 regarding
6 the performance of this assessment.

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

16 (c) If the administrator is unable, despite taking the
17 steps under subsection (b), to secure sufficient additional
18 financial capacity for the wildfire relief fund, including
19 credible pledges for future funding, to reverse the
20 administrator's assessment under subsection (b) within forty-
21 five days, the administrator shall declare the existence of a



1 depletion event. The administrator, for good cause, may extend
2 the period for an additional period not to exceed thirty days.

3 (d) If the administrator declares the existence of a
4 depletion event, the administrator shall determine what
5 percentage of total eligible payments the wildfire relief fund
6 can make without the likelihood that the payments will exceed
7 seventy-five per cent of the total financial capacity in the
8 wildfire relief fund. This percentage shall be deemed the
9 depletion percentage.

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

17 (f) All claimants that are offered the depletion payment
18 may choose to accept or decline the payment. Any property owner
19 or property insurer, other than a contributor, that declines to
20 accept the depletion payment shall:



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

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

7 The limitation period for any cause of action arising out of the
8 catastrophic wildfire that could be asserted by the property
9 owner or property insurer that declines to accept the depletion
10 payment shall be tolled for the period from the date of the
11 catastrophic wildfire to the date the administrator offers
12 claimants the depletion payment.

13 (g) (1) Any property owner or property insurer, other than a
14 contributor, that accepts the depletion payment shall
15 be entitled to an additional payment from the wildfire
16 relief fund, within three years of receipt of the
17 depletion payment, equal to the difference between the
18 depletion payment and what the property owner or
19 property insurer would have been entitled to from the
20 wildfire relief fund in the absence of a depletion
21 event. This shall be called the true-up payment.



- 1 (2) If, after the expiration of that three-year period,
2 the wildfire relief fund has failed to make the
3 true-up payment to a particular property owner or
4 property insurer, that property owner or property
5 insurer shall not be bound by the limitation on claims
6 under section -18 with respect to only that
7 catastrophic wildfire. In any suit brought by or on
8 behalf of that property owner or property insurer
9 that, but for the failure of the wildfire relief fund
10 to make the true-up payment, would have been barred by
11 the limitation on claims under section -18, the
12 following provision will apply: total recovery,
13 inclusive of damages, attorney's fees, and interest,
14 shall be limited to three times the true-up payment.
- 15 (3) The limitation period for any cause of action arising
16 out of the catastrophic wildfire that could be
17 asserted by the property owner or property insurer
18 that accepted the depletion payment shall be tolled
19 for the period from the date of the catastrophic
20 wildfire to the date the true-up payment under
21 paragraph (1) is made or is due, whichever is earlier.



1 (h) The board shall adopt rules under chapter 91 regarding
2 how to pay claims if one or more catastrophic wildfires occur
3 while the corporation is in the process of assessing, receiving,
4 determining, or paying claims from an earlier catastrophic
5 wildfire.

6 **§ -17 Hearings and appeals of determinations. (a)**

7 Within thirty days after the administrator's determination of
8 the amount of payment due to any claimant from the wildfire
9 relief fund under sections -13, -14, and -15,
10 respectively, or the board's determination of a contributor's
11 allocation for any contribution, the affected person or entity
12 may request a contested case hearing on that determination
13 before the department of commerce and consumer affairs under
14 chapter 91.

15 (b) Upon receipt of a request for a hearing on the
16 administrator or board's determination, the office of
17 administrative hearings shall schedule a hearing date no later
18 than days after its receipt of the request for a hearing.

19 (c) Following the conclusion of any hearing or before the
20 conclusion of the hearing, with the concurrence of the parties,
21 the office of administrative hearings shall decide the matter



1 within days after the conclusion of the hearing and issue
2 findings of fact, conclusions of law, and a decision in
3 accordance with the hearings officer's determination.

4 (d) Within days after the date upon which a copy of
5 the office of administrative hearings' order is mailed to the
6 parties, a party may seek judicial review of the order by filing
7 a petition for review in the applicable circuit court, with a
8 right of appeal as allowed by law. If no petition is timely
9 filed, the order of the office of administrative hearings shall
10 be final.

11 **§ -18 Limitations on claims.** (a) No suit, claim, or
12 other civil legal action may be instituted or maintained against
13 contributors or their affiliates, employees, agents, or
14 insurers:

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

18 (2) By persons or entities:

19 (A) Who are contributors, property owners who do not
20 opt out of the wildfire relief fund, or property



1 insurers who elect to participate in the wildfire
2 relief fund; or

3 (B) Who seek indemnity or contribution for amounts
4 paid, or that may be paid, to contributors,
5 property owners who do not opt out of the
6 wildfire relief fund, or property insurers who
7 elect to participate in the wildfire relief fund;
8 provided that the rights of a property insurer to sue
9 as a subrogee of its policyholder shall not be
10 affected by a property owner's participation in the
11 wildfire relief fund and eligibility to seek uninsured
12 property damages from the wildfire relief fund;
13 provided further that the subrogation rights shall be
14 affected only if the property insurer elects to
15 participate in the wildfire relief fund.

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



1 damage may exceed the amount of payment by the wildfire relief
2 fund for the damage.

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

11 **§ -19 Non-applicability.** This chapter shall not apply
12 to any electric utility cooperative association, as defined by
13 section 421C-1."

14 SECTION 3. Section 76-16, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) The civil service to which this chapter applies shall
17 comprise all positions in the State now existing or hereafter
18 established and embrace all personal services performed for the
19 State, except the following:

20 (1) Commissioned and enlisted personnel of the Hawaii
21 National Guard as such, and positions in the Hawaii



1 National Guard that are required by state or federal
2 laws or regulations or orders of the National Guard to
3 be filled from those commissioned or enlisted
4 personnel;

5 (2) Positions filled by persons employed by contract where
6 the director of human resources development has
7 certified that the service is special or unique or is
8 essential to the public interest and that, because of
9 circumstances surrounding its fulfillment, personnel
10 to perform the service cannot be obtained through
11 normal civil service recruitment procedures. Any such
12 contract may be for any period not exceeding one year;

13 (3) Positions that must be filled without delay to comply
14 with a court order or decree if the director
15 determines that recruitment through normal recruitment
16 civil service procedures would result in delay or
17 noncompliance, such as the Felix-Cayetano consent
18 decree;

19 (4) Positions filled by the legislature or by either house
20 or any committee thereof;



- 1 (5) Employees in the office of the governor and office of
2 the lieutenant governor, and household employees at
3 Washington Place;
- 4 (6) Positions filled by popular vote;
- 5 (7) Department heads, officers, and members of any board,
6 commission, or other state agency whose appointments
7 are made by the governor or are required by law to be
8 confirmed by the senate;
- 9 (8) Judges, referees, receivers, masters, jurors, notaries
10 public, land court examiners, court commissioners, and
11 attorneys appointed by a state court for a special
12 temporary service;
- 13 (9) One bailiff for the chief justice of the supreme court
14 who shall have the powers and duties of a court
15 officer and bailiff under section 606-14; one
16 secretary or clerk for each justice of the supreme
17 court, each judge of the intermediate appellate court,
18 and each judge of the circuit court; one secretary for
19 the judicial council; one deputy administrative
20 director of the courts; three law clerks for the chief
21 justice of the supreme court, two law clerks for each



1 associate justice of the supreme court and each judge
2 of the intermediate appellate court, one law clerk for
3 each judge of the circuit court, two additional law
4 clerks for the civil administrative judge of the
5 circuit court of the first circuit, two additional law
6 clerks for the criminal administrative judge of the
7 circuit court of the first circuit, one additional law
8 clerk for the senior judge of the family court of the
9 first circuit, two additional law clerks for the civil
10 motions judge of the circuit court of the first
11 circuit, two additional law clerks for the criminal
12 motions judge of the circuit court of the first
13 circuit, and two law clerks for the administrative
14 judge of the district court of the first circuit; and
15 one private secretary for the administrative director
16 of the courts, the deputy administrative director of
17 the courts, each department head, each deputy or first
18 assistant, and each additional deputy, or assistant
19 deputy, or assistant defined in paragraph (16);
20 (10) First deputy and deputy attorneys general, the
21 administrative services manager of the department of



1 the attorney general, one secretary for the
2 administrative services manager, an administrator and
3 any support staff for the criminal and juvenile
4 justice resources coordination functions, and law
5 clerks;

6 (11) (A) Teachers, principals, vice-principals, complex
7 area superintendents, deputy and assistant
8 superintendents, other certificated personnel,
9 and no more than twenty noncertificated
10 administrative, professional, and technical
11 personnel not engaged in instructional work;

12 (B) Effective July 1, 2003, teaching assistants,
13 educational assistants, bilingual/bicultural
14 school-home assistants, school psychologists,
15 psychological examiners, speech pathologists,
16 athletic health care trainers, alternative school
17 work study assistants, alternative school
18 educational/supportive services specialists,
19 alternative school project coordinators, and
20 communications aides in the department of
21 education;



- 1 (C) The special assistant to the state librarian and
2 one secretary for the special assistant to the
3 state librarian; and
- 4 (D) Members of the faculty of the University of
5 Hawaii, including research workers, extension
6 agents, personnel engaged in instructional work,
7 and administrative, professional, and technical
8 personnel of the university;
- 9 (12) Employees engaged in special, research, or
10 demonstration projects approved by the governor;
- 11 (13) (A) Positions filled by inmates, patients of state
12 institutions, and persons with severe physical or
13 mental disabilities participating in the work
14 experience training programs;
- 15 (B) Positions filled with students in accordance with
16 guidelines for established state employment
17 programs; and
- 18 (C) Positions that provide work experience training
19 or temporary public service employment that are
20 filled by persons entering the workforce or
21 persons transitioning into other careers under



1 programs such as the federal Workforce Investment
2 Act of 1998, as amended, or the Senior Community
3 Service Employment Program of the Employment and
4 Training Administration of the United States
5 Department of Labor, or under other similar state
6 programs;

7 (14) A custodian or guide at Iolani Palace, the Royal
8 Mausoleum, and Hulihee Palace;

9 (15) Positions filled by persons employed on a fee,
10 contract, or piecework basis, who may lawfully perform
11 their duties concurrently with their private business
12 or profession or other private employment and whose
13 duties require only a portion of their time, if it is
14 impracticable to ascertain or anticipate the portion
15 of time to be devoted to the service of the State;

16 (16) Positions of first deputies or first assistants of
17 each department head appointed under or in the manner
18 provided in section 6, article V, of the Hawaii State
19 Constitution; three additional deputies or assistants
20 either in charge of the highways, harbors, and
21 airports divisions or other functions within the



1 department of transportation as may be assigned by the
2 director of transportation, with the approval of the
3 governor; one additional deputy in the department of
4 human services either in charge of welfare or other
5 functions within the department as may be assigned by
6 the director of human services; four additional
7 deputies in the department of health, each in charge
8 of one of the following: behavioral health,
9 environmental health, hospitals, and health resources
10 administration, including other functions within the
11 department as may be assigned by the director of
12 health, with the approval of the governor; two
13 additional deputies in charge of the law enforcement
14 programs, administration, or other functions within
15 the department of law enforcement as may be assigned
16 by the director of law enforcement, with the approval
17 of the governor; three additional deputies each in
18 charge of the correctional institutions,
19 rehabilitation services and programs, and
20 administration or other functions within the
21 department of corrections and rehabilitation as may be



1 assigned by the director [~~or~~] of corrections and
2 rehabilitation, with the approval of the governor; an
3 administrative assistant to the state librarian; and
4 an administrative assistant to the superintendent of
5 education;

6 (17) Positions specifically exempted from this part by any
7 other law; provided that: .

8 (A) Any exemption created after July 1, 2014, shall
9 expire three years after its enactment unless
10 affirmatively extended by an act of the
11 legislature; and

12 (B) All of the positions defined by paragraph (9)
13 shall be included in the position classification
14 plan;

15 (18) Positions in the state foster grandparent program and
16 positions for temporary employment of senior citizens
17 in occupations in which there is a severe personnel
18 shortage or in special projects;

19 (19) Household employees at the official residence of the
20 president of the University of Hawaii;



- 1 (20) Employees in the department of education engaged in
2 the supervision of students during meal periods in the
3 distribution, collection, and counting of meal
4 tickets, and in the cleaning of classrooms after
5 school hours on a less than half-time basis;
- 6 (21) Employees hired under the tenant hire program of the
7 Hawaii public housing authority; provided that ~~not~~
8 no more than twenty-six per cent of the authority's
9 workforce in any housing project maintained or
10 operated by the authority shall be hired under the
11 tenant hire program;
- 12 (22) Positions of the federally funded expanded food and
13 nutrition program of the University of Hawaii that
14 require the hiring of nutrition program assistants who
15 live in the areas they serve;
- 16 (23) Positions filled by persons with severe disabilities
17 who are certified by the state vocational
18 rehabilitation office that they are able to perform
19 safely the duties of the positions;
- 20 (24) The sheriff;



- 1 (25) A gender and other fairness coordinator hired by the
2 judiciary;
- 3 (26) Positions in the Hawaii National Guard youth and adult
4 education programs;
- 5 (27) In the Hawaii state energy office in the department of
6 business, economic development, and tourism, all
7 energy program managers, energy program specialists,
8 energy program assistants, and energy analysts;
- 9 (28) Administrative appeals hearing officers in the
10 department of human services;
- 11 (29) In the Med-QUEST division of the department of human
12 services, the division administrator, finance officer,
13 health care services branch administrator, medical
14 director, and clinical standards administrator;
- 15 (30) In the director's office of the department of human
16 services, the enterprise officer, information security
17 and privacy compliance officer, security and privacy
18 compliance engineer, security and privacy compliance
19 analyst, information technology implementation
20 manager, assistant information technology
21 implementation manager, resource manager,



1 community/project development director, policy
2 director, special assistant to the director, and
3 limited English proficiency project
4 manager/coordinator;

5 (31) The Alzheimer's disease and related dementia services
6 coordinator in the executive office on aging;

7 (32) In the Hawaii emergency management agency, the
8 executive officer, public information officer, civil
9 defense administrative officer, branch chiefs, and
10 emergency operations center state warning point
11 personnel; provided that for state warning point
12 personnel, the director shall determine that
13 recruitment through normal civil service recruitment
14 procedures would result in delay or noncompliance;

15 (33) The executive director and seven full-time
16 administrative positions of the school facilities
17 authority;

18 (34) Positions in the Mauna Kea stewardship and oversight
19 authority;

1 (35) In the office of homeland security of the department
2 of law enforcement, the statewide interoperable
3 communications coordinator; [~~and~~]

4 (36) In the social services division of the department of
5 human services, the business technology analyst[-];
6 and

7 (37) The administrator of the wildfire relief fund
8 corporation.

9 The director shall determine the applicability of this
10 section to specific positions.

11 Nothing in this section shall be deemed to affect the civil
12 service status of any incumbent as it existed on July 1, 1955."

13 SECTION 4. 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 SECTION 5. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2024-2025 for
20 the establishment of full-time equivalent (FTE)
21 administrator position, who shall be exempt from chapter 76,



1 Hawaii Revised Statutes, to support the Hawaii wildfire relief
2 fund corporation; provided that in all subsequent fiscal years,
3 all funding for the administrator position shall be paid from
4 the wildfire relief fund.

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

7 SECTION 6. In accordance with section 9 of article VII of
8 the Hawaii State Constitution and sections 37-91 and 37-93,
9 Hawaii Revised Statutes, the legislature has determined that the
10 appropriations contained in H.B. No. , will cause the state
11 general fund expenditure ceiling for fiscal year 2024-2025 to be
12 exceeded by \$ or per cent. In addition, the
13 appropriation contained in this Act will cause the general fund
14 expenditure ceiling for fiscal year 2024-2025 to be further
15 exceeded by \$ or per cent. The combined total
16 amount of general fund appropriations contained in only these
17 two Acts will cause the state general fund expenditure ceiling
18 for fiscal year 2024-2025 to be exceeded by
19 \$ or per cent. The reasons for exceeding the
20 general fund expenditure ceiling are that:



- 1 (1) The appropriation made in this Act is necessary to
2 serve the public interest; and
- 3 (2) The appropriation made in this Act meets the needs
4 addressed by this Act.

PART II

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

14 The legislature also finds that a resilience working group,
15 convened throughout 2019 and 2020, sought to:

- 16 (1) Identify and prioritize resilience threat scenarios
17 and potential grid impacts;
- 18 (2) Identify key customer and infrastructure sector
19 capabilities and needs following a severe event and
20 loss of power;



- 1 (3) Identify gaps and priorities in grid and customer
2 capabilities following a severe event and loss of
3 power;
- 4 (4) Provide recommendations and inputs for investor-owned
5 utility grid planning to address resilience needs; and
- 6 (5) Recommend additional grid and customer actions to
7 close gaps and capabilities following severe events.

8 The resilience working group identified wildfires as one of
9 five types of severe events of utmost importance to consider for
10 achieving a resilient grid and provided resilience options for
11 utilities to consider.

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



1 The purpose of this part is to create a process whereby
2 electric utilities develop and submit effective risk-based
3 wildfire risk protection plans to the public utilities
4 commission for approval; the public utilities commission
5 evaluates those plans and either approves them or does so with
6 modifications; the electric utilities are able to timely recover
7 the prudently incurred costs and expenses of developing,
8 implementing, and administrating those plans; and those costs
9 and expenses are not borne disproportionately by any particular
10 ratepayer or county.

11 SECTION 8. Chapter 269, Hawaii Revised Statutes, is
12 amended by adding a new part to be appropriately designated and
13 to read as follows:

14 **"PART . WILDFIRE PROTECTION AND MITIGATION**

15 **§269-A Definitions.** As used in this part:

16 "Ancillary agreement" means a bond insurance policy, letter
17 of credit, reserve account, surety bond, swap arrangement,
18 hedging arrangement, liquidity or credit support arrangement, or
19 other similar agreement or arrangement entered into in
20 connection with the issuance of bonds that is designed to

1 promote the credit quality and marketability of the bonds or to
2 mitigate the risk of an increase in interest rates.

3 "Assignee" means a legally recognized entity:

4 (1) To which an electric utility company assigns, sells,
5 or transfers, other than as security, all or a portion
6 of its interest in or right to wildfire protection
7 property; or

8 (2) Who acquires, by way of assignment or otherwise, all
9 or a portion of the wildfire protection property
10 following the exercise of remedies upon a default
11 under the terms of the bonds.

12 "Assignee" includes a corporation, limited liability company,
13 general partnership or limited partnership, public authority,
14 trust, financing entity, or any entity to which an assignee
15 assigns, sells, or transfers, other than as security, its
16 interest in or right to wildfire protection property.

17 "Bond" means any bond, note, certificate of participation
18 or beneficial interest, or other evidence of indebtedness or
19 ownership that is issued by the financing entity under a
20 financing order, the proceeds of which are used to recover,



1 finance, or refinance any wildfire protection costs, and that
2 are secured by or payable from wildfire protection property.

3 "Catastrophic wildfire" means any wildfire in the State
4 that damaged or destroyed more than five hundred commercial
5 buildings or residential structures designed for habitation.

6 "Commission" means the public utilities commission.

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

13 "Electric utility" means a public utility as defined in
14 section 269-1 that is engaged in the production, transmission,
15 or distribution of electricity.

16 "Electric utility cooperative association" shall have the
17 same meaning as in section 421C-1.

18 "Financing costs" means the costs to issue, service, repay,
19 or refinance bonds, whether incurred or paid upon issuance of
20 the bonds or over the life of the bonds, if they are approved



1 for recovery by the commission in a financing order. "Financing
2 costs" may include any of the following:

3 (1) Principal, interest, and redemption premiums that are
4 payable on bonds;

5 (2) A payment required under an ancillary agreement;

6 (3) An amount required to fund or replenish reserve
7 accounts or other accounts established under an
8 indenture, ancillary agreement, or other financing
9 document related to the bonds;

10 (4) Taxes, franchise fees, or license fees imposed on a
11 financing entity as a result of the issuance of the
12 financing order, the assignment, sale or transfer of
13 any wildfire property or the sale of the bonds or
14 imposed on the wildfire protection charges, or
15 otherwise resulting from the collection of the
16 charges, in any such case whether paid, payable, or
17 accrued;

18 (5) Costs related to issuing and servicing bonds or the
19 application for a financing order, including without
20 limitation servicing fees and expenses, trustee fees
21 and expenses, legal fees and expenses, accounting



1 fees, administrative fees, underwriting and placement
2 fees, financial advisory fees, original issue
3 discount, capitalized interest, rating agency fees,
4 and any other related costs that are approved for
5 recovery in the financing order; and

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

8 "Financing entity" means an electric utility and an entity
9 to which an electric utility or an affiliate of an electric
10 utility sells, assigns or pledges all or a portion of the
11 electric utility's or its affiliate's interest in wildfire
12 protection property, including an affiliate of the electric
13 utility or any unaffiliated entity, in each case as approved by
14 the commission in a financing order.

15 For this purpose, and subject to section 269-E(c), an
16 entity to which an electric utility or its affiliate sells,
17 assigns, or pledges all or a portion of the electric utility's
18 interest in wildfire protection property may include any
19 governmental entity that is able to issue bonds that are exempt
20 from federal tax under section 103 of the Internal Revenue Code
21 of 1986, including the State or a political subdivision thereof



1 or any department, agency or instrumentality of the foregoing;
2 provided that the bonds issued thereby shall not constitute a
3 debt or liability of the State or any political subdivision
4 thereof or any department, agency or instrumentality thereof and
5 shall not constitute a pledge of the full faith and credit of
6 the entity or of the State or any political subdivision thereof,
7 but shall be payable solely from the wildfire relief funds
8 provided under this chapter.

9 "Financing order" means an order of the commission under
10 this part that has become final as provided by law, and that
11 authorizes the issuance of bonds and the imposition, adjustment
12 from time to time, and collection of wildfire protection
13 charges. "Financing order" includes without limitation a
14 procedure to require the expeditious approval by the commission
15 of periodic adjustments to wildfire protection charges and any
16 associated fixed recovery tax amounts included in that financing
17 order to ensure recovery of all wildfire protection costs and
18 the costs associated with the proposed recovery, financing, or
19 refinancing thereof, including the costs of servicing and
20 retiring the bonds contemplated by the financing order.



1 "Financing party" means any holder of bonds, any party to
2 or beneficiary of an ancillary agreement, and any trustee,
3 collateral agent, or other person acting for the benefit of any
4 of the foregoing.

5 "Fixed recovery tax amounts" means those non-bypassable
6 rates and other charges, including but not limited to
7 distribution, connection, disconnection, and termination rates
8 and charges, that are needed to recover federal and state taxes
9 associated with wildfire protection charges authorized by the
10 commission in a financing order, but are not approved as
11 financing costs financed from proceeds of bonds.

12 "True-up adjustment" means a formulaic adjustment to the
13 wildfire protection charges as they appear on consumer bills
14 that is necessary to correct for any overcollection or
15 undercollection of the wildfire protection charges authorized by
16 a financing order and to otherwise ensure the timely and
17 complete payment and recovery of wildfire protection costs over
18 the authorized repayment term.

19 "Wildfire protection charges" means the non-bypassable
20 charges authorized by section 269-G and in a financing order
21 authorized under this part to be imposed on and collected from



1 all existing and future consumers to recover both of the
2 following:

3 (1) Wildfire protection costs specified in the financing
4 order; and

5 (2) The costs of recovering, financing, or refinancing
6 wildfire protection costs through a plan approved by
7 the commission in the financing order, including the
8 costs of issuing, servicing and retiring bonds.

9 "Wildfire protection costs" means any capital costs and
10 operation and maintenance expenses related to the development,
11 implementation, and administration of a wildfire protection plan
12 prepared under section 269-C(a), but, for the avoidance of
13 doubt, shall not include any amounts, including, without
14 limitation, fees, costs, and awards, payable in connection with
15 any legal claims made in any way related to any wildfire.

16 "Wildfire protection costs" does not include any penalties
17 levied against an electric utility under section 269-D.

18 "Wildfire protection costs" may also include any of the
19 following:

20 (1) Catastrophic wildfire costs or expenses, other than
21 amounts, for the avoidance of doubt, payable in



1 connection with any legal claims made in any way
2 related to any wildfire, that the commission has
3 determined were prudently incurred, including but not
4 limited to costs or expenses that have been paid that
5 the electric utility has a legal obligation to pay or
6 that the electric utility would be otherwise obligated
7 to pay;

8 (2) Federal and state taxes associated with recovery of
9 the amounts under paragraph (1);

10 (3) Financing costs; and

11 (4) Professional fees, consultant fees, redemption
12 premiums, tender premiums, and other costs incurred by
13 the electric utility in using proceeds of bonds to
14 acquire outstanding securities of the electric
15 utility, as authorized by the commission in a
16 financing order.

17 "Wildfire protection plan" means the risk-based wildfire
18 protection plan mandated by section 269-C(a) and approved by the
19 commission.

20 "Wildfire protection property" means the property right
21 created under this part, including without limitation the right,



1 title, and interest of the public utility, financing entity, or
2 its assignee:

3 (1) In and to the wildfire protection charge established
4 under a financing order, including the right to
5 impose, bill, collect, and receive fixed recovery
6 charges under the financing order and all rights to
7 obtain adjustments to the wildfire protection charge
8 under section 269-G and the financing order; and

9 (2) To be paid the amount that is determined in a
10 financing order to be the amount that the public
11 utility or its assignee is lawfully entitled to
12 receive under this part and the proceeds thereof, and
13 in and to all revenues, collections, claims, payments,
14 moneys, or proceeds of, or arising from, the wildfire
15 protection charge that is the subject of a financing
16 order.

17 "Wildfire protection property" does not include a right to be
18 paid fixed recovery tax amounts. "Wildfire protection property"
19 shall constitute a current property right, notwithstanding the
20 fact that the value of the property right will depend on
21 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. The
9 best practices discussed in these workshops may be incorporated
10 into the proposed wildfire protection plans and updates
11 submitted for the approval of the commission under section
12 269-C.

13 **§269-C Wildfire protection plans.** (a) Each electric
14 utility shall have and operate in compliance with a risk-based
15 wildfire protection plan, which shall be submitted to the
16 commission for approval. The risk-based wildfire protection
17 plan shall be based on reasonable and prudent practices that may
18 be determined by commission standards adopted by decision or
19 rule. The electric utility shall design the risk-based wildfire
20 protection plan to protect public safety, reduce risk to
21 electric utility customers, and promote resilience of the Hawaii



1 electric system to wildfire damage. Each electric utility's
2 wildfire protection plan shall, at a minimum:

- 3 (1) Account for the responsibilities of persons
4 responsible for executing the plan;
- 5 (2) Describe the objectives of the plan;
- 6 (3) Identify areas that are subject to a heightened risk
7 of wildfire and are:
 - 8 (A) Within the right of way or legal control or
9 ownership of the electric utility; and
 - 10 (B) Outside the right of way or legal control or
11 ownership of the electric utility but within a
12 reasonable distance, as determined by the
13 commission, of the electric utility's generation
14 or transmission assets;
- 15 (4) Identify a means for mitigating wildfire risk that
16 reflects a reasonable balancing of mitigation costs
17 with the resulting reduction of wildfire risk;
- 18 (5) Identify preventive actions and programs that the
19 electric utility shall carry out to minimize the risk
20 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, operation, 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 under 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 risk-based wildfire
6 protection plan;
- 7 (17) Identify the timelines, as applicable, for
8 development, implementation, and administration of any
9 aspects of the risk-based wildfire protection plan;
- 10 (18) Describe how the plan is consistent with the electric
11 utility's other hazard mitigation and grid hardening
12 plans, including plans to prepare for, and to restore
13 service after, a wildfire, including workforce
14 mobilization and repositioning equipment and
15 employees;
- 16 (19) Identify community outreach and public awareness
17 efforts that the electric utility will use before,
18 during, and after a wildfire;
- 19 (20) Describe the processes and procedures the electric
20 utility will use to do all of the following:
- 21 (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) through (21), or
12 other information as required by the commission.

13 (b) Each electric utility shall regularly submit updates
14 to its risk-based wildfire protection plan for approval on a
15 schedule determined by the 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 shall evaluate each electric utility's
20 risk-based wildfire protection plan and plan updates according
21 to the commission's rules of practice and procedure in chapter



1 16-601, Hawaii Administrative Rules. The commission shall
2 authorize the department of land and natural resources and local
3 emergency services agencies to participate in proceedings
4 evaluating risk-based wildfire protection plans.

5 (e) Not more than ninety days after the last party filing,
6 and not more than a total of one hundred twenty days after the
7 initial application for approval of the submitted risk-based
8 wildfire protection plan or update in the docketed proceeding,
9 the commission shall approve, approve with conditions, or reject
10 the plan or update based on whether the commission finds that
11 the plan or update is based on reasonable and prudent practices
12 and designed to meet all applicable rules and standards adopted
13 by the commission. The commission, in approving the plan or
14 update with conditions, may direct the electric utility to make
15 modifications to the plan or updates that the commission
16 believes represent a reasonable balancing of mitigation costs
17 with the resulting reduction of wildfire risk based on the
18 information provided by the electric utility and based on best
19 practices. The commission shall issue a decision explaining any
20 directed modifications at the time the commission approves the
21 wildfire protection plan or plan update. The decision shall



1 include a determination of the reasonable costs to develop,
2 implement, and administer the wildfire protection plan or plan
3 update. The commission shall establish a mechanism to allow
4 timely and prompt recovery of the costs in rates that shall be
5 incremental to the rates the electric utility is otherwise
6 authorized to charge.

7 (f) The electric utility shall track the costs that it
8 incurs to develop, implement, and administer the risk-based
9 wildfire protection plan. In the electric utility's risk-based
10 wildfire protection plan update, the electric utility shall
11 report on the costs as incurred for the most recent past period
12 for which the information is available.

13 If the actual costs are less than the amounts that the
14 commission determined were reasonable in its decision under
15 subsection (e), the commission shall direct the electric utility
16 to refund or credit the costs to consumers; provided that any
17 refund or credit to consumers shall not affect, alter, or impair
18 the value of the wildfire protection property, wildfire
19 protection charges, or any bonds secured by wildfire protection
20 property.



1 If the actual costs are equal to or greater than the
2 amounts that the commission determined were reasonable in its
3 decision under subsection (e), the commission shall not direct
4 the electric utility to refund to ratepayers the amount the
5 commission previously determined was reasonable and shall limit
6 its review to any additional costs, which it shall allow the
7 electric utility to recover from ratepayers if the commission
8 finds the costs unreasonable.

9 (g) The commission's approval of a risk-based wildfire
10 protection plan does not by itself establish a defense to any
11 enforcement action for violation of a commission decision,
12 order, or rule.

13 (h) The commission, as appropriate, shall adopt rules or
14 issue orders for the implementation of this section. The rules
15 or orders may include procedures and standards regarding data
16 governance, risk-based decision-making, vegetation management,
17 public power safety shutoffs and restorations, pole materials,
18 circuitry, and monitoring systems.

19 (i) In its decision under subsection (e), the commission
20 shall determine the reasonable costs to develop, implement, and
21 administer the plan and shall authorize the electric utility to



1 recover the costs in rates. The commission shall establish a
2 method to authorize timely and prompt recovery of the wildfire
3 protection costs. For an electric utility cooperative
4 association, recovery shall be through a dedicated, discrete
5 tariff rider. The commission shall establish rules for the
6 electric utility to track actual wildfire protection costs and
7 for the commission to authorize, as applicable, refunds or
8 credits to ratepayers where actual wildfire protection costs are
9 ultimately less than those the commission determined reasonable
10 and authorized for rate recovery; provided that any such refund
11 or credit to consumers shall not affect, alter, or impair the
12 value of the wildfire protection property, wildfire protection
13 charges, or any bonds secured by wildfire protection property.
14 To the degree actual wildfire protection costs exceed those the
15 commission determined were reasonable and authorized for rate
16 recovery, the commission shall authorize cost recovery if it
17 determines those additional wildfire protection costs are just
18 and reasonable. The method established may include the issuance
19 of bonds under section 269-E.

20 (j) Unless an electric utility acts in a manner that
21 constitutes wilful misconduct, bad faith, or reckless disregard



1 of its obligations, in each case, in compliance with its
2 obligations under a financing order and any applicable wildfire
3 protection plan, no electric utility shall be civilly liable for
4 the death of or injury to persons, or property damage, as a
5 result of:

6 (1) Any act taken in accordance with a plan or updated
7 plan approved by the commission under this part; or

8 (2) Any failure to take an action proposed by an electric
9 utility in a plan or updated plan and thereafter
10 removed from the plan by modification of the
11 commission.

12 (k) There shall be no liability on the part of, and no
13 cause of action of any nature shall arise against, the
14 commission or its agents and employees, the State, the
15 commission commissioners, or the commissioners' representatives
16 for the death of or injury to persons, or property damage, for
17 any action taken by any of the foregoing in the performance of
18 their powers and duties under this part.

19 (1) Any determination by the commission that the electric
20 utility materially failed to comply with an approved plan or
21 part of an approved plan, and any imposition of a civil penalty,



1 shall be inadmissible in any lawsuit or other action against the
2 electric utility seeking compensation for the alleged death of
3 or injury to persons, or property damage. In any action seeking
4 to hold an electric utility civilly liable for the death of or
5 injury to persons, or property damage, no inference of liability
6 may be drawn solely based on a failure by the electric utility
7 to adhere to the requirements of an approved plan.

8 **§269-D Penalties.** In addition to any other penalties
9 provided by law, a failure by an electric utility to comply with
10 an approved wildfire protection plan or part of an approved
11 wildfire protection plan shall be subject to a civil penalty, as
12 determined by the commission. Imposition of penalties under
13 this section shall otherwise be in accordance with section
14 269-28 and all applicable administrative rules. All moneys
15 collected under this section shall be deposited into the public
16 utilities commission special fund. The commission shall utilize
17 performance-based regulation to develop financial penalties and
18 incentives tied to compliance with and performance under an
19 approved wildfire protection plan.

20 **§269-E Applications to issue bonds and authorize wildfire**
21 **protection charges.** (a) An electric utility may apply to the



1 commission for one or more financing orders to issue bonds to
2 recover any wildfire protection costs, each of which authorizes
3 the following:

- 4 (1) The imposition, charging, and collection of a wildfire
5 protection charge, to become effective upon the
6 issuance of the bonds, and an adjustment of any such
7 wildfire protection charge in accordance with a
8 true-up adjustment mechanism under this part in
9 amounts sufficient to pay the principal of and
10 interest on the bonds and all other associated
11 financing costs on a timely basis;
- 12 (2) The creation of wildfire protection property under the
13 financing order; and
- 14 (3) The imposition, charging, and collection of fixed
15 recovery tax amounts to recover any portion of the
16 public utility's federal and state taxes associated
17 with those wildfire protection charges and not
18 financed from the proceeds of bonds.
- 19 (b) The application shall include all of the following:
- 20 (1) The wildfire protection costs to be financed through
21 the issuance of bonds;



- 1 (2) The principal amount of the bonds proposed to be
2 issued;
- 3 (3) An estimate of the date each series of bonds is
4 expected to be issued;
- 5 (4) The scheduled final payment date, not to exceed thirty
6 years, and a legal final maturity date, which may be
7 longer, subject to rating agency and market
8 considerations, during which term the wildfire
9 protection charge associated with the issuance of each
10 series of bonds is expected to be imposed and
11 collected;
- 12 (5) An estimate of the financing costs associated with the
13 issuance of each series of bonds;
- 14 (6) An estimate of the amount of the wildfire protection
15 charge revenues necessary to pay principal and
16 interest on the bonds and all other associated
17 financing costs as set forth in the application and
18 the calculation for that estimate;
- 19 (7) A proposed design of the wildfire protection charge
20 and the methodology for allocating the wildfire



1 protection charge among consumer classes within the
2 electric utility's service territory;

3 (8) A description of the financing entity selected by the
4 electric utility;

5 (9) A description of a proposed true-up mechanism for the
6 adjustment of the wildfire protection charge to
7 correct for any overcollection or undercollection of
8 the wildfire protection charge, and to otherwise
9 ensure the timely payment of principal and interest on
10 the bonds and all associated financing costs; and

11 (10) Any other information required by the commission.

12 (c) At the option of the electric utility, the electric
13 utility may include in its application for a financing order a
14 request for authorization to sell, transfer, assign, or pledge
15 wildfire protection property to a governmental financing entity
16 if it expects bonds issued by a governmental financing entity
17 would result in a more cost efficient means, taking into account
18 all financing costs related to the bonds, than using another
19 financing entity to issue bonds to finance the same wildfire
20 protection costs, taking into account the costs of issuing the
21 other financing entity's bonds. If a public utility exercises



1 such option, the commission may hire a financial advisor in
2 connection with its review, upon which it may rely.

3 (d) The commission shall issue an approval or denial of
4 any application for a financing order filed under this section
5 within one hundred twenty days of the filing of the application.

6 (e) In exercising its duties under this section, the
7 commission shall consider:

- 8 (1) Whether the wildfire protection costs to be financed
9 by any bonds to be issued are just and reasonable;
- 10 (2) Whether the costs are consistent with the public
11 interest;
- 12 (3) Whether the structuring, marketing, and pricing of the
13 bonds are expected to result in the lowest wildfire
14 protection charges consistent with market conditions
15 at the time the bonds are priced and the terms of the
16 financing order;
- 17 (4) Whether the terms and conditions of any bonds to be
18 issued are just and reasonable;
- 19 (5) Whether the issuance of the bonds would be beneficial,
20 including by avoiding or significantly mitigating
21 abrupt and significant increases in rates to consumers



1 for the applicable time period in the absence of the
2 bonds;

3 (6) Whether the recovery of recovery costs through the
4 designation of the fixed recovery charges and any
5 associated fixed recovery tax amounts, and the
6 issuance of recovery bonds in connection with the
7 fixed recovery charges, would result in net savings to
8 consumers and reduce, to the maximum extent possible,
9 the rates on a present value basis that consumers
10 would pay as compared to the use of traditional
11 utility financing mechanisms, which shall be
12 calculated using the electric utility's updated
13 overall corporate debt and equity costs in the ratio
14 approved by the commission at the time of the
15 financing order; provided that the commission may hire
16 and rely upon a financial advisor in connection with
17 this determination; provided further that the
18 financial advisor shall not direct how the recovery
19 bonds are placed to market; and

20 (7) Any other factors that the commission deems reasonable
21 and in the public interest.



1 (f) The electric utility may request the determination
2 specified in this section by the commission in a separate
3 proceeding, in an existing proceeding, or both. If the
4 commission makes the determination specified in this section,
5 the commission shall establish, as part of the financing order,
6 a procedure for the electric utility to submit applications from
7 time to time to request the issuance of additional financing
8 orders designating wildfire protection charges and any
9 associated fixed recovery tax amounts as recoverable. The
10 electric utility may submit an application with respect to
11 wildfire protection costs that an electric utility has paid, has
12 an existing legal obligation to pay, or would be obligated to
13 pay under an agreement. Within one hundred twenty days of the
14 filing of that application, the commission shall issue a
15 financing order if the commission determines that the amounts
16 identified in the application are wildfire protection costs.

17 At the option of the electric utility, the electric utility
18 may include in its application for a financing order a request
19 for authorization to sell, transfer, assign, or pledge recovery
20 property to a governmental entity if the electric utility
21 expects recovery bonds issued by a governmental entity would



1 result in a more cost-efficient means, taking into account all
2 financing costs related to the recovery bonds, than using
3 another financing entity to issue recovery bonds to finance the
4 same recovery costs, taking into account the costs of issuing
5 the other financing entity's bonds. If an electric utility
6 exercises this option, the commission may hire and rely upon a
7 financial advisor in connection with the commission's review;
8 provided that the financial advisor shall not direct how the
9 recovery bonds are placed to market.

10 (g) The commission shall not issue a financing order to
11 the extent that the aggregate amount of all wildfire protection
12 charges under all financing orders previously issued under this
13 part, combined with any new wildfire protection charges to be
14 authorized pursuant the requested new financing order,
15 constitute more than five per cent of the average residential
16 customer bill, including the aggregate wildfire protection
17 charges across affiliated utilities and taking account of any
18 credits from affiliate utilities, calculated at the time of an
19 application for new financing order under this part. This
20 provision shall not affect any financing order previously issued
21 under this part.



1 (h) Wildfire protection charges shall be imposed only on
2 existing and future consumers within the utility service
3 territory who shall continue to pay wildfire protection charges
4 until the bonds and associated financing costs are paid in full
5 by the financing entity or, if the wildfire protection property
6 has been assigned to an assignee in connection with the exercise
7 of remedies upon a default under the terms of the bonds, until
8 the receipt of proceeds by the assignee in an amount sufficient
9 to repay the principal amount of, and interest that would have
10 accrued on, the bonds had they remained outstanding.

11 **§269-F Wildfire protection plan financing order.** (a) A
12 financing order shall remain in effect until the bonds issued
13 under the financing order and all financing costs related to the
14 bonds have been paid in full or defeased by their terms or, if
15 the wildfire protection property has been assigned to an
16 assignee in connection with the exercise of remedies upon a
17 default under the terms of the bonds, until the receipt of
18 proceeds by the assignee in an amount sufficient to repay
19 principal and interest on the bonds that would have accrued had
20 they remained outstanding. A financing order shall remain in
21 effect and unabated notwithstanding the bankruptcy,



1 reorganization, or insolvency of the electric utility or the
2 commencement of any judicial or nonjudicial proceeding on the
3 financing order.

4 (b) Notwithstanding any other law, and except as otherwise
5 provided in section 269-C(e), with respect to wildfire
6 protection property that has been made the basis for the
7 issuance of bonds and with respect to any associated fixed
8 recovery tax amounts, the financing order, the wildfire
9 protection charges, and any associated fixed recovery tax
10 amounts shall be irrevocable. The State and its agencies,
11 including the commission, pledge and agree with bondholders, the
12 owners and assignees of the wildfire protection property, and
13 other financing parties that the State and its agencies will not
14 take any action listed in this subsection. This subsection does
15 not preclude limitation or alteration if full compensation is
16 made by law for the full protection of the wildfire protection
17 property collected under a financing order and of the
18 bondholders and any assignee or financing party entering into a
19 contract with the electric utility. The following actions shall
20 be prohibited:



- 1 (1) Altering the provisions of this part that authorize
2 the commission to create an irrevocable contract right
3 or choosing in action by the issuance of a financing
4 order, to create wildfire protection property, and
5 make the wildfire protection charges imposed by a
6 financing order irrevocable, binding, non-bypassable
7 charges for all existing and future consumers;
- 8 (2) Taking or permitting any action that impairs or would
9 impair the value of wildfire protection property or
10 the security for the bonds or revises the wildfire
11 protection costs for which recovery is authorized;
- 12 (3) In any way impairing the rights and remedies of the
13 bondholders, assignees, and other financing parties;
- 14 (4) Except for changes made under the formula-based
15 true-up mechanism authorized under subsection (d),
16 reducing, altering, or impairing wildfire protection
17 charges that are to be imposed, billed, charged,
18 collected, and remitted for the benefit of the
19 bondholders, any assignee, and any other financing
20 parties until any and all principal, interest,
21 premium, financing costs and other fees, expenses, or



1 charges incurred, and any contracts to be performed,
2 in connection with the related bonds have been paid
3 and performed in full or, if the wildfire protection
4 property has been assigned to an assignee in
5 connection with the exercise of remedies upon a
6 default under the terms of the bonds, until the
7 receipt of proceeds by the assignee in an amount
8 sufficient to repay principal and interest on the
9 bonds that would have accrued had they remained
10 outstanding.

11 The financing entity is authorized to include this pledge
12 in the bonds.

13 (c) Under a final financing order, the electric utility
14 shall retain sole discretion to select the financing entity and
15 to cause bonds to be issued, including the right to defer or
16 postpone the issuance, assignment, sale, or transfer of wildfire
17 protection property. The commission shall not impose any
18 penalty, disallowance, or other negative consequence on the
19 electric utility in respect of its exercise of its discretion.

20 (d) The commission may create, under an application from
21 an electric utility, a non-bypassable surcharge referred to as a



1 wildfire protection charge, which shall be applied to recover
2 financing costs and wildfire protection costs. The wildfire
3 protection charge shall be a dedicated, discrete tariff rider.
4 The commission, in any financing order, shall establish a
5 procedure for periodic true-up adjustments to wildfire
6 protection charges, which shall be made at least annually and
7 may be made more frequently. Within thirty days after receiving
8 an electric utility's filing of a true-up adjustment, the
9 commission's review of the filing shall be limited to
10 mathematical or clerical errors as determined in accordance with
11 any true-up adjustment formulas set forth in the applicable
12 financing order. The commission shall either approve the filing
13 or inform the electric utility of any mathematical or clerical
14 errors in its calculation. If the commission informs the
15 electric utility of mathematical or clerical errors in its
16 calculation, the electric utility shall correct its error and
17 refile its true-up adjustment. The time frames previously
18 described in this subsection shall apply to a refiled true-up
19 adjustment.

20 (e) Financing orders or bonds issued under this part shall
21 be payable solely from the wildfire protection property provided



1 under this part and shall not constitute a general obligation of
2 the State or any political subdivision thereof or constitute a
3 pledge of the full faith and credit of the State or any of its
4 political subdivisions. All bonds shall contain on the face
5 thereof a statement to the following effect: "Neither the full
6 faith and credit nor the taxing power of the State of Hawaii is
7 pledged to the payment of the principal of, or interest and
8 premium on, this bond." The issuance of bonds under this part
9 shall not directly, indirectly, or contingently obligate the
10 State or any political subdivision thereof to levy or to pledge
11 any form of taxation or to make any appropriation for their
12 payment.

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



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

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

17 (h) Neither financing orders nor bonds issued under this
18 part shall constitute a debt or liability of the State or of any
19 political subdivision thereof, nor shall they constitute a
20 pledge of the full faith and credit of the State or any of its
21 political subdivisions, but are payable solely from the wildfire



1 relief funds provided therefor under this part. All bonds shall
2 contain on the face thereof a statement to the following effect:
3 "Neither the full faith and credit nor the taxing power of the
4 State of Hawaii is pledged to the payment of the principal of,
5 or interest on, this bond."

6 (i) The issuance of bonds under this part shall not
7 directly, indirectly, or contingently obligate the State or any
8 political subdivision thereof to levy or pledge any form of
9 taxation or to make any appropriation for their payment.

10 (j) To the extent that any interest in wildfire protection
11 property is sold, assigned, or pledged as collateral under
12 subsection (b), the commission shall require the public utility
13 to contract with the financing entity and its assignees that it
14 will continue to operate its system to provide service to
15 consumers within its service territory, will collect amounts in
16 respect of the wildfire protection charges for the benefit and
17 account of the financing entity and its assignees, and will
18 account for and remit these amounts to or for the account of the
19 financing entity or its assignees. Contracting with the
20 financing entity and its assignees in accordance with that
21 authorization shall not impair or negate the characterization of



1 the sale, assignment, or pledge as an absolute transfer, a true
2 sale, or a security interest, as applicable. To the extent that
3 billing, collection, and other related services with respect to
4 the provision of the public utility's services are provided to a
5 consumer by any person or entity other than the public utility
6 in whose service territory the consumer is located, that person
7 or entity shall collect the wildfire protection charges and any
8 associated fixed recovery tax amounts from the consumer for the
9 benefit and account of the public utility, financing entity, or
10 assignees with the associated revenues remitted solely for such
11 person's benefit as a condition to the provision of electric
12 service to that consumer. Each financing order shall impose
13 terms and conditions, consistent with the purposes and
14 objectives of this part, on any person or entity responsible for
15 billing, collection, and other related services, including
16 without limitation collection of the wildfire protection charges
17 and any associated fixed recovery tax amounts, that are the
18 subject of the financing order.

19 (k) The financing entity may issue bonds upon approval by
20 the commission in a financing order. Bonds shall be nonrecourse
21 to the credit or any assets of the public utility, other than



1 the wildfire protection property as specified in that financing
2 order.

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



1 the terms of the bonds, until the receipt by the assignee of
2 proceeds in an amount sufficient to repay the principal amount
3 of, and interest that would have accrued on, the bonds had they
4 remained outstanding.

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

14 (n) Notwithstanding any other law to the contrary, any
15 requirement under this part or a financing order that the
16 commission takes action with respect to the subject matter of a
17 financing order shall be binding upon the commission, as it may
18 be constituted from time to time, and any successor agency
19 exercising functions similar to the commission, and the
20 commission shall have no authority to rescind, alter, or amend
21 that requirement in a financing order.



1 (o) The electric utility may sell and assign all or
2 portions of its interest in wildfire protection property to one
3 or more financing entities that make that wildfire protection
4 property the basis for issuance of bonds, to the extent approved
5 in a financing order. The electric utility or financing entity
6 may pledge wildfire protection property as collateral, directly
7 or indirectly, for bonds to the extent approved in the pertinent
8 financing orders providing for a security interest in the
9 wildfire protection property, in the manner set forth in
10 section 269-I. In addition, wildfire protection property may be
11 sold or assigned by either of the following:

12 (1) The financing entity or a trustee for the holders of
13 bonds or the holders of an ancillary agreement in
14 connection with the exercise of remedies upon a
15 default under the terms of the bonds; or

16 (2) Any person acquiring the wildfire protection property
17 after a sale or assignment under this part.

18 **§269-G Wildfire protection charge.** (a) The commission
19 may create, under a financing order approved under section
20 269-E, a non-bypassable charge for a financing entity, referred
21 to as a wildfire protection charge that shall be applied to the



1 repayment of bonds and related financing costs as described in
2 this part. The wildfire protection charge and any associated
3 fixed recovery tax amounts may be a usage-based charge, a flat
4 user charge, or a charge based upon customer revenues as
5 determined by the commission for each consumer class in any
6 financing order.

7 (b) As long as any bonds are outstanding and any financing
8 costs have not been paid in full or, if the wildfire protection
9 property has been assigned to an assignee in connection with the
10 exercise of remedies upon a default under the terms of the
11 bonds, proceeds in an amount sufficient to repay principal and
12 interest on the bonds that would have accrued had they remained
13 outstanding have not been received, any wildfire protection
14 charge and any associated fixed recovery tax amounts authorized
15 under a financing order shall be non-bypassable. Subject to any
16 exceptions provided in a financing order, a wildfire protection
17 charge and any associated fixed recovery tax amounts shall be
18 paid by all existing and future consumers within the utility
19 service territory.

20 (c) The wildfire protection charge shall be collected by
21 an electric utility or its successors, in accordance with



1 subsection (a), in full through a charge that is separate and
2 apart from the electric utility's rates.

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

8 **§269-H Bonds; issuance; wildfire protection property**

9 **interests.** (a) An electric utility may sell and assign all or
10 portions of its interest in wildfire protection property to one
11 or more financing entities that make that wildfire protection
12 property the basis for issuance of bonds, to the extent approved
13 in a financing order.

14 (b) The electric utility or financing entity may pledge
15 wildfire protection property as collateral, directly or
16 indirectly, for bonds to the extent approved in the applicable
17 financing orders providing for a security interest in the
18 wildfire protection property, in the manner set forth in this
19 section.

20 (c) Wildfire protection property may be sold or assigned
21 by:



1 (1) The financing entity or a trustee for the holders of
2 bonds or the holders of an ancillary agreement in
3 connection with the exercise of remedies upon a
4 default under the terms of the recovery bonds; or

5 (2) Any person acquiring the wildfire protection property
6 after a sale or assignment under this part.

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

14 (1) The commission has issued a financing order
15 authorizing the wildfire protection charge included in
16 the wildfire protection property;

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

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



1 (b) A valid and enforceable security interest in wildfire
2 protection property is perfected when it has attached and when a
3 financing statement has been filed with the bureau of
4 conveyances of the State naming the pledgor of the wildfire
5 protection property as "debtor" and identifying the wildfire
6 protection property.

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

17 (c) A perfected security interest in wildfire protection
18 property shall be a continuously perfected security interest in
19 all wildfire protection property revenues and proceeds arising
20 with respect thereto, whether or not the revenues or proceeds
21 have accrued. Conflicting security interests shall rank



1 according to priority in time of perfection. Wildfire
2 protection property shall constitute property for all purposes,
3 including for contracts securing bonds, whether or not the
4 wildfire protection property revenues and proceeds have accrued.

5 (d) Subject to the terms of the security agreement
6 covering the wildfire protection property and the rights of any
7 third parties holding security interests in the wildfire
8 protection property perfected in the manner described in this
9 section, the validity and relative priority of a security
10 interest created under this section shall not be defeated or
11 adversely affected by the commingling of revenues arising with
12 respect to the wildfire protection property with other funds of
13 the public utility that is the pledgor or transferor of the
14 wildfire protection property, or by any security interest in a
15 deposit account of that public utility perfected under chapter
16 490, article 9, into which the revenues are deposited.

17 Subject to the terms of the security agreement, upon
18 compliance with the requirements of section 490:9-312(b)(1), the
19 pledgees of the wildfire protection property shall have a
20 perfected security interest in all cash and deposit accounts of



1 the electric utility in which wildfire protection property
2 revenues have been commingled with other funds.

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, if default by the electric utility in
15 payment of wildfire protection property revenues occurs, the
16 commission and any successor thereto, upon the application by
17 the pledgees or transferees, including assignees of the wildfire
18 protection property, under section 269-J, and without limiting
19 any other remedies available to the pledgees or assignees by
20 reason of the default, shall order the sequestration and payment
21 to the pledgees or assignees of wildfire protection property



1 revenues. Any order shall remain in full force and effect
2 notwithstanding any bankruptcy, reorganization, or other
3 insolvency proceedings with respect to the debtor, pledgor, or
4 transferor of the wildfire protection property. Any surplus in
5 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) An amount sufficient to repay the principal amount of,
11 and interest that would have accrued on, the bonds had
12 the bonds remained outstanding in instances where the
13 wildfire protection property has been assigned to an
14 assignee in connection with the exercise of remedies
15 upon a default under the terms of the bonds,
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-J Transfers of wildfire protection property.** (a) A
21 transfer or assignment of wildfire protection property by the



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

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

16 (1) Commingling of wildfire protection charge revenues
17 with other amounts;

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

20 (A) A partial or residual interest, including an
21 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 charge;
6 (3) Any recourse that an 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 charges 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
15 charge 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 charge included in the
21 wildfire protection property; and



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

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-K Financing entity successor requirements; default of**
18 **financing entity.** (a) Any successor to an electric utility
19 subject to a financing order, whether under any bankruptcy,
20 reorganization, or other insolvency proceeding, or under any
21 merger, sale, or transfer, by operation of law, or otherwise,



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

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 charge 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 charge 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-L 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 before 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 9. Chapter 269-17, Hawaii Revised Statutes, is
12 amended to read as follows:

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



1 the discharge or lawful refunding of its obligations or for the
2 reimbursement of moneys actually expended from income or from
3 any other moneys in its treasury not secured by or obtained from
4 the issue of its stocks or stock certificates, [~~or~~] bonds,
5 notes, or other evidences of indebtedness, for any of the
6 aforesaid purposes except maintenance of service, replacements,
7 and substitutions not constituting capital expenditure in cases
8 where the corporation has kept its accounts for [~~such~~]
9 expenditures in [~~such~~] a manner as to enable the commission to
10 ascertain the amount of moneys so expended and the purposes for
11 which the expenditures were made, and the sources of the
12 wildfire relief 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
19 to its facilities or service if the commission determines that
20 the 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 10. No later than December 31, 2024, each electric
7 utility shall file with the public utilities commission the
8 utility's initial risk-based wildfire protection plan as
9 required under section 269-C, Hawaii Revised Statutes,
10 established by section 8 of this Act.

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

16 PART III

17 SECTION 12. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun before its effective date.

20 SECTION 13. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 14. This Act shall take effect on July 1, 3000.



Report Title:

Hawaii Wildfire Relief Fund and Corporation; PUC; Catastrophic Wildfire; Wildfires; Mitigation; Protection; Electric Utilities; Securitization; Risk Protection Plans; Expenditure Ceiling; Appropriation

Description:

Establishes the Hawaii Wildfire Relief Fund and Corporation to provide compensation for property damage resulting from catastrophic wildfires in the State. 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. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025. Appropriates funds. Effective 7/1/3000. (SD2)

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

