

JAN 19 2024

A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

1 SECTION 1. The legislature finds that in the wake of the
2 2023 Lahaina fire, public utilities must raise the capital to
3 fund near-term costs and expenses to develop and implement
4 effective plans for wildfire risk mitigation, contribute to
5 disaster relief funds, and, as necessary, fund litigation and
6 settlements. Moreover, present uncertainty as to the financial
7 costs that Hawaii's largest electric utility may bear as a
8 result of the 2023 Lahaina wildfire has led credit ratings
9 agencies to downgrade the credit rating of that utility to non-
10 investment-grade status. The legislature finds that the credit
11 rating downgrade will have severe negative impacts on
12 ratepayers. As the utility borrows money in the future to
13 finance critical investments to improve safety and reliability,
14 it will have to pay much higher interest rates as non-investment
15 grade issuers, and those higher interest costs will be passed on
16 to customers in the form of higher rates. In addition, a
17 financially weak utility is less able to make the investments



1 and commitments the State needs to meet its renewable energy and
2 other goals.

3 Accordingly, the purpose of this Act is to establish and
4 implement the Catastrophic Wildfire Securitization Act, to allow
5 public utilities to securitize rates in order to raise capital
6 that can be used to pay for costs and expenses arising out of
7 catastrophic wildfires, providing a vital source of liquidity
8 and preserving the public utilities' financial viability.

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

12 **"CHAPTER**

13 **CATASTROPHIC WILDFIRE SECURITIZATION ACT**

14 § -1 **Short title.** This chapter shall be known and may
15 be cited as the "Catastrophic Wildfire Securitization Act".

16 § -2 **Definitions.** As used in this chapter:

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



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

3 "Catastrophic wildfire" means any wildfire in the State
4 that damaged or destroyed more than five hundred dwellings or
5 commercial buildings.

6 "Commission" means the public utilities commission.

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

- 13 (1) Principal, interest, and redemption premiums that are
14 payable on recovery bonds;
- 15 (2) A payment required under an ancillary agreement;
- 16 (3) An amount required to fund or replenish reserve
17 accounts or other accounts established under an
18 indenture, ancillary agreement, or other financing
19 document relating to the recovery bonds;
- 20 (4) Taxes, franchise fees, or license fees imposed on
21 fixed recovery charges;



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

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

12 "Financing entity" means the public utility that is
13 authorized by the commission to issue recovery bonds or acquire
14 recovery property, or both.

15 "Financing order" means an order of the commission adopted
16 in accordance with this chapter, which shall include without
17 limitation a procedure to require the expeditious approval by
18 the commission of periodic adjustments to fixed recovery charges
19 and to any associated fixed recovery tax amounts included in
20 that financing order to ensure recovery of all recovery costs
21 and the costs associated with the proposed recovery, financing,



1 or refinancing thereof, including the costs of servicing and
2 retiring the recovery bonds contemplated by the financing order.

3 "Fixed recovery charges" means those nonbypassable rates
4 and other charges, including but not limited to distribution,
5 connection, disconnection, and termination rates and charges,
6 that are authorized by the commission in a financing order to
7 recover both of the following:

8 (1) Recovery costs specified in the financing order; and

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

13 "Fixed recovery tax amounts" means those nonbypassable
14 rates and other charges, including but not limited to
15 distribution, connection, disconnection, and termination rates
16 and charges, that are needed to recover federal and state taxes
17 associated with fixed recovery charges authorized by the
18 commission in a financing order, but are not approved as
19 financing costs financed from proceeds of recovery bonds.

20 "Public utility" has the same meaning as defined in section
21 269-1.



1 "Recovery bonds" means bonds, notes, certificates of
2 participation or beneficial interest, or other evidences of
3 indebtedness or ownership, issued pursuant to an executed
4 indenture or other agreement of a financing entity, the proceeds
5 of which are used, directly or indirectly, to recover, finance,
6 or refinance recovery costs, and that are directly or indirectly
7 secured by, or payable from, recovery property.

8 "Recovery costs" means any of the following:

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

20 "Recovery property" means the property right created
21 pursuant to this chapter, including without limitation the



1 right, title, and interest of the public utility or its
2 transferee:

3 (1) In and to the fixed recovery charges established
4 pursuant to a financing order, including all rights to
5 obtain adjustments to the fixed recovery charges in
6 accordance with section -3(k) and the financing
7 order; and

8 (2) To be paid the amount that is determined in a
9 financing order to be the amount that the public
10 utility or its transferee is lawfully entitled to
11 receive pursuant to the provisions of this chapter and
12 the proceeds thereof, and in and to all revenues,
13 collections, claims, payments, moneys, or proceeds of
14 or arising from the fixed recovery charges that are
15 the subject of a financing order.

16 "Recovery property" shall not include a right to be paid fixed
17 recovery tax amounts. "Recovery property" shall constitute a
18 current property right, notwithstanding the fact that the value
19 of the property right will depend on consumers using electricity
20 or, in those instances where consumers are customers of the
21 public utility, the public utility performing certain services.



1 "True-up adjustment" means a formulaic adjustment to the
2 fixed recovery charges as they appear on customer bills that is
3 necessary to correct for any overcollection or undercollection
4 of the fixed recovery charges authorized by a financing order
5 and to otherwise ensure the timely and complete payment and
6 recovery of recovery costs over the authorized repayment term.

7 § -3 **Financing orders; authorization.** (a) A public
8 utility that applies to the commission for recovery of costs and
9 expenses related to a catastrophic wildfire or the mitigation of
10 the risk of wildfires, may request the commission to issue a
11 financing order to authorize the costs and expenses that the
12 commission finds to be just and reasonable to be recovered
13 through fixed recovery charges pursuant to this chapter, and
14 order that any portion of the public utility's federal and state
15 taxes associated with those fixed recovery charges and not
16 financed from proceeds of recovery bonds may be recovered
17 through fixed recovery tax amounts.

18 (b) Any application pursuant to subsection (a) shall be
19 governed by this chapter, and shall be deemed to comply with any
20 requirements imposed by section 269-17 or any other provision of
21 chapter 269.



1 (c) Upon receiving an application from a public utility
2 pursuant to this section, the commission shall issue a financing
3 order if the commission determines that the following conditions
4 are satisfied:

5 (1) The costs and expenses are authorized for recovery;
6 and

7 (2) The issuance of the recovery bonds, including all
8 material terms and conditions of the recovery bonds,
9 including without limitation interest rates, rating,
10 amortization redemption, and maturity, and the
11 imposition and collection of fixed recovery charges as
12 set forth in an application satisfy all of the
13 following conditions, as applicable:

14 (A) They are just and reasonable;

15 (B) They are consistent with the public interest; and

16 (C) The recovery of recovery costs through the
17 designation of the fixed recovery charges and any
18 associated fixed recovery tax amounts, and the
19 issuance of recovery bonds in connection with the
20 fixed recovery charges, would reduce, to the
21 maximum extent possible, the rates on a present



1 value basis that ratepayers would pay as compared
2 to the use of traditional utility financing
3 mechanisms, which shall be calculated using the
4 public utility's corporate debt and equity in the
5 ratio approved by the commission at the time of
6 the financing order.

7 The public utility may request the determination specified in
8 this section by the commission in a separate proceeding, in an
9 existing proceeding, or both. If the commission makes the
10 determination specified in this section, the commission shall
11 establish, as part of the financing order, a procedure for the
12 public utility to submit applications from time to time to
13 request the issuance of additional financing orders designating
14 fixed recovery charges and any associated fixed recovery tax
15 amounts as recoverable. The public utility may submit an
16 application with respect to recovery costs that a public utility
17 has paid, has an existing legal obligation to pay, or would be
18 obligated to pay pursuant to an executed settlement agreement.
19 The commission shall, within one hundred eighty days of the
20 filing of that application, issue a financing order, which may



1 take the form of a resolution, if the commission determines that
2 the amounts identified in the application are recovery costs.

3 (d) Fixed recovery charges and any associated fixed
4 recovery tax amounts shall be imposed only on existing and
5 future ratepayers in the utility service territory. Ratepayers
6 within the utility service territory shall continue to pay fixed
7 recovery charges and any associated fixed recovery tax amounts
8 until the recovery bonds and associated financing costs are paid
9 in full by the financing entity.

10 (e) A public utility may exercise the same rights and
11 remedies under its tariff and applicable law and regulation
12 based upon a consumer's nonpayment of fixed recovery charges and
13 any associated fixed recovery tax as it may for a consumer's
14 failure to pay any other charge payable to that public utility.

15 (f) The commission may establish in a financing order an
16 effective mechanism that ensures recovery of recovery costs
17 through nonbypassable fixed recovery charges and any associated
18 fixed recovery tax amounts from existing and future consumers in
19 the utility service territory, and those consumers shall be
20 required to pay those charges until the recovery bonds and all
21 associated financing costs are paid in full by the financing



1 entity, at which time those charges shall be terminated. Fixed
2 recovery charges shall be irrevocable, notwithstanding the true-
3 up adjustment pursuant to subsection (k).

4 (g) Recovery bonds authorized by the commission's
5 financing orders may be issued in one or more series.

6 (h) The commission shall issue financing orders in
7 accordance with this chapter to facilitate the recovery,
8 financing, or refinancing of recovery costs. A financing order
9 may be adopted only upon the application of the public utility
10 and shall become effective in accordance with its terms only
11 after the public utility files with the commission the public
12 utility's written consent to all terms and conditions of the
13 financing order. A financing order may specify how amounts
14 collected from a consumer shall be allocated between fixed
15 recovery charges, any associated fixed recovery tax amounts, and
16 other charges.

17 (i) Notwithstanding any other law, and except as otherwise
18 provided in subsection (k), with respect to recovery property
19 that has been made the basis for the issuance of recovery bonds
20 and with respect to any associated fixed recovery tax amounts,
21 the financing order, the fixed recovery charges, and any



1 associated fixed recovery tax amounts shall be irrevocable. The
2 commission shall not, either by rescinding, altering, or
3 amending the financing order or otherwise, revalue or revise for
4 ratemaking purposes the recovery costs or the costs of
5 recovering, financing, or refinancing the recovery costs, in any
6 way reduce or impair the value of recovery property or of the
7 right to receive any associated fixed recovery tax amounts
8 either directly or indirectly by taking fixed recovery charges
9 or any associated fixed recovery tax amounts into account when
10 setting other rates for the public utility. The amount of
11 revenues shall not be subject to reduction, impairment,
12 postponement, or termination. The State does hereby pledge and
13 agree with the public utility, owners of recovery property,
14 financing entities, and holders of recovery bonds that the State
15 shall neither limit nor alter, except as otherwise provided with
16 respect to the true-up adjustment of the fixed recovery charges
17 pursuant to subsection (k), the fixed recovery charges, any
18 associated fixed recovery tax amounts, recovery property,
19 financing orders, or any rights under a financing order until
20 the recovery bonds, together with the interest on the recovery
21 bonds and associated financing costs, are fully paid and



1 discharged, and any associated fixed recovery tax amounts have
2 been satisfied or, in the alternative, have been refinanced
3 through an additional issue of recovery bonds; provided that
4 nothing contained in this section shall preclude the limitation
5 or alteration if and when adequate provision shall be made by
6 law for the protection of the public utility and of owners and
7 holders of the recovery bonds. The financing entity may include
8 this pledge and undertaking for the State in these recovery
9 bonds. When setting other rates for the public utility, nothing
10 in this subsection shall prevent the commission from taking into
11 account either of the following:

- 12 (1) Any collection of fixed recovery charges in excess of
13 amounts actually required to pay recovery costs
14 financed or refinanced by recovery bonds; or
- 15 (2) Any collection of fixed recovery tax amounts in excess
16 of amounts actually required to pay federal and state
17 taxes associated with fixed recovery charges; provided
18 that this shall not result in a recharacterization of
19 the tax, accounting, and other intended
20 characteristics of the financing, including but not
21 limited to either of the following:



1 (A) Treating the recovery bonds as debt of the public
2 utility or its affiliates for federal income tax
3 purposes; or

4 (B) Treating the transfer of the recovery property by
5 the public utility as a true sale for bankruptcy
6 purposes.

7 (j) Neither financing orders nor recovery bonds issued
8 under this chapter shall constitute a debt or liability of the
9 State or of any political subdivision thereof, nor shall they
10 constitute a pledge of the full faith and credit of the State or
11 any of its political subdivisions, but shall be payable solely
12 from the funds provided under this chapter. All recovery bonds
13 shall contain on the face thereof a statement to the following
14 effect:

15 "Neither the full faith and credit nor the taxing power of the
16 State of Hawaii is pledged to the payment of the principal of,
17 or interest on, this bond."

18 The issuance of recovery bonds under this chapter shall not
19 directly, indirectly, or contingently obligate the State or any
20 political subdivision thereof to levy or to pledge any form of
21 taxation or to make any appropriation for their payment.



1 (k) The commission shall establish procedures for the
2 expeditious processing of an application for a financing order,
3 which shall provide for the approval or disapproval of the
4 application within one hundred twenty days of the application.
5 Any fixed recovery charge authorized by a financing order shall
6 appear on ratepayer bills. The commission shall, in any
7 financing order, provide for a procedure for periodic true-up
8 adjustments to fixed recovery charges, which shall be made at
9 least annually and may be made more frequently. The public
10 utility shall file an application with the commission to
11 implement any true-up adjustment.

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



1 costs are paid in full. A financing order may provide that the
2 creation of recovery property shall be simultaneous with the
3 sale of the recovery property to a transferee or assignee as
4 provided in the application of the pledge of the recovery
5 property to secure the recovery bonds.

6 (m) Any successor to a financing entity shall be bound by
7 the requirements of this chapter and shall perform and satisfy
8 all obligations of, and have the same rights under a financing
9 order as, and to the same extent as, the financing entity.

10 § -4 **Recovery bonds; issuance; recovery property**

11 **interests.** (a) The financing entity may issue recovery bonds
12 upon approval by the commission in a financing order. Recovery
13 bonds shall be nonrecourse to the credit or any assets of the
14 public utility, other than the recovery property as specified in
15 that financing order.

16 (b) The public utility may sell and assign all or portions
17 of its interest in recovery property to one or more financing
18 entities that make that recovery property the basis for issuance
19 of recovery bonds, to the extent approved in a financing order.
20 The public utility or financing entity may pledge recovery
21 property as collateral, directly or indirectly, for recovery



1 bonds to the extent approved in the pertinent financing orders
2 providing for a security interest in the recovery property, in
3 the manner set forth in section -5. In addition, recovery
4 property may be sold or assigned by either of the following:

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

9 (2) Any person acquiring the recovery property after a
10 sale or assignment pursuant to this chapter.

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



1 assignment, or pledge as an absolute transfer, a true sale, or a
2 security interest, as applicable. To the extent that billing,
3 collection, and other related services with respect to the
4 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 fixed recovery charges and any
8 associated fixed recovery tax amounts from the consumer for the
9 benefit and account of the public utility or financing entity
10 with the associated revenues remitted solely for the benefit and
11 repayment of the recovery bonds and associated financing costs
12 as a condition to the provision of electric service to that
13 consumer. Each financing order shall impose terms and
14 conditions, consistent with the purposes and objectives of this
15 chapter, on any person or entity responsible for billing,
16 collection, and other related services, including without
17 limitation collection of the fixed recovery charges and any
18 associated fixed recovery tax amounts, that are the subject of
19 the financing order.

20 (d) Recovery property that is specified in a financing
21 order shall constitute an existing, present property right,



1 notwithstanding the fact that the imposition and collection of
2 fixed recovery charges depend on the public utility continuing
3 to provide services or continuing to perform its servicing
4 functions relating to the collection of fixed recovery charges
5 or on the level of future service consumption, e.g., electricity
6 consumption. Recovery property shall exist whether or not the
7 fixed recovery charges have been billed, have accrued, or have
8 been collected and notwithstanding the fact that the value for a
9 security interest in the recovery property, or amount of the
10 recovery property, is dependent on the future provision of
11 service to consumers. All recovery property specified in a
12 financing order shall continue to exist until the recovery bonds
13 issued pursuant to a financing order and all associated
14 financing costs are paid in full.

15 (e) Recovery property, fixed recovery charges, and the
16 interests of an assignee, bondholder or financing entity, or any
17 pledgee in recovery property and fixed recovery charges shall
18 not be subject to setoff, counterclaim, surcharge, recoupment,
19 or defense by the public utility or any other person or in
20 connection with the bankruptcy, reorganization, or other



1 insolvency proceeding of the public utility, any affiliate of
2 the public utility, or any other entity.

3 (f) Notwithstanding any other law to the contrary, any
4 requirement under this chapter or a financing order that the
5 commission takes action with respect to the subject matter of a
6 financing order shall be binding upon the commission, as it may
7 be constituted from time to time, and any successor agency
8 exercising functions similar to the commission, and the
9 commission shall have no authority to rescind, alter, or amend
10 that requirement in a financing order.

11 § -5 **Security interests in recovery property; financing**
12 **statements.** (a) A security interest in recovery property is
13 valid, enforceable against the pledgor and third parties,
14 subject to the rights of any third parties holding security
15 interests in the recovery property perfected in the manner
16 described in this section, and attaches when all of the
17 following have taken place:

18 (1) The commission has issued a financing order
19 authorizing the fixed recovery charges included in the
20 recovery property;



1 (2) Value has been given by the pledgees of the recovery
2 property; and

3 (3) The pledgor has signed a security agreement covering
4 the recovery property.

5 (b) A valid and enforceable security interest in recovery
6 property is perfected when it has attached and when a financing
7 statement has been filed naming the pledgor of the recovery
8 property as "debtor" and identifying the recovery property. Any
9 description of the recovery property shall be sufficient if it
10 refers to the financing order creating the recovery property. A
11 copy of the financing statement shall be filed with the
12 commission by the public utility that is the pledgor or
13 transferor of the recovery property, and the commission may
14 require the public utility to make other filings with respect to
15 the security interest in accordance with procedures it may
16 establish; provided that the filings shall not affect the
17 perfection of the security interest.

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



1 Conflicting security interests shall rank according to priority
2 in time of perfection. Recovery property shall constitute
3 property for all purposes, including for contracts securing
4 recovery bonds, whether or not the recovery property revenues
5 and proceeds have accrued.

6 (d) Subject to the terms of the security agreement
7 covering the recovery property and the rights of any third
8 parties holding security interests in the recovery property
9 perfected in the manner described in this section, the validity
10 and relative priority of a security interest created under this
11 section shall not be defeated or adversely affected by the
12 commingling of revenues arising with respect to the recovery
13 property with other funds of the public utility that is the
14 pledgor or transferor of the recovery property, or by any
15 security interest in a deposit account of that public utility
16 perfected under article 9 of chapter 490, into which the
17 revenues are deposited. Subject to the terms of the security
18 agreement, upon compliance with the requirements of section
19 490:9-312(b)(1), the pledgees of the recovery property shall
20 have a perfected security interest in all cash and deposit
21 accounts of the electrical corporation in which recovery



1 property revenues have been commingled with other funds;
2 provided that the perfected security interest shall be limited
3 to an amount not greater than the amount of the recovery
4 property revenues received by the public utility within twelve
5 months before (1) any default under the security agreement, or
6 (2) the institution of insolvency proceedings by or against the
7 public utility, less payments from the revenues to the pledgees
8 during that twelve-month period.

9 (e) If default occurs under the security agreement
10 covering the recovery property, the pledgees of the recovery
11 property, subject to the terms of the security agreement, shall
12 have all rights and remedies of a secured party upon default
13 under article 9 of chapter 490, and shall be entitled to
14 foreclose or otherwise enforce their security interest in the
15 recovery property, subject to the rights of any third parties
16 holding prior security interests in the recovery property
17 perfected in the manner provided in this section. In addition,
18 the commission may require in the financing order creating the
19 recovery property that, in the event of default by the
20 electrical corporation in payment of recovery property revenues,
21 the commission and any successor thereto, upon the application



1 by the pledgees or transferees, including transferees under
2 section -6 of the recovery property, and without limiting any
3 other remedies available to the pledgees or transferees by
4 reason of the default, shall order the sequestration and payment
5 to the pledgees or transferees of recovery property revenues.
6 Any order shall remain in full force and effect notwithstanding
7 any bankruptcy, reorganization, or other insolvency proceedings
8 with respect to the debtor, pledgor, or transferor of the
9 recovery property. Any surplus in excess of amounts necessary
10 to pay principal, premiums, if any, interest, costs, and
11 arrearages on the recovery bonds, and associated financing costs
12 arising under the security agreement, shall be remitted to the
13 debtor or to the pledgor or transferor.

14 (f) Sections 490:9-204 and 490:9-205 shall apply to a
15 pledge of recovery property by the public utility, an affiliate
16 of the public utility, or a financing entity.

17 (g) This section sets forth the terms by which a
18 consensual security interest shall be created and perfected in
19 the recovery property. Unless otherwise ordered by the
20 commission with respect to any series of recovery bonds on or
21 prior to the issuance of the series, there shall exist a



1 statutory lien as provided in this subsection. Upon the
2 effective date of the financing order, there shall exist a first
3 priority lien on all recovery property then existing or
4 thereafter arising pursuant to the terms of the financing order.
5 This lien shall arise by operation of this section automatically
6 without any action on the part of the public utility, any
7 affiliate thereof, the financing entity, or any other person.
8 This lien shall secure all obligations, then existing or
9 subsequently arising, to the holders of the recovery bonds
10 issued pursuant to the financing order, the trustee or
11 representative for the holders, and any other entity specified
12 in the financing order. The persons for whose benefit this lien
13 is established shall, upon the occurrence of any defaults
14 specified in the financing order, have all rights and remedies
15 of a secured party upon default under article 9 of chapter 490,
16 and are entitled to foreclose or otherwise enforce this
17 statutory lien in the recovery property. This lien shall attach
18 to the recovery property regardless of who owns, or is
19 subsequently determined to own, the recovery property, including
20 the public utility, any affiliate thereof, the financing entity,
21 or any other person. This lien shall be valid, perfected, and



1 enforceable against the owner of the recovery property and all
2 third parties upon the effectiveness of the financing order
3 without any further public notice; provided that any person may
4 file a financing statement in accordance with this section.
5 Financing statements so filed may be "protective filings" and
6 shall not be evidence of the ownership of the recovery property.

7 A perfected statutory lien in recovery property is a
8 continuously perfected lien in all recovery property revenues
9 and proceeds, whether or not the revenues or proceeds have
10 accrued.

11 Conflicting liens shall rank according to priority in time
12 of perfection. Recovery property shall constitute property for
13 all purposes, including for contracts securing recovery bonds,
14 whether or not the recovery property revenues and proceeds have
15 accrued.

16 In addition, the commission may require, in the financing
17 order creating the recovery property, that, in the event of
18 default by the public utility in the payment of recovery
19 property revenues, the commission and any successor thereto,
20 upon the application by the beneficiaries of the statutory lien,
21 and without limiting any other remedies available to the



1 beneficiaries by reason of the default, shall order the
2 sequestration and payment to the beneficiaries of recovery
3 property revenues. Any order shall remain in full force and
4 effect notwithstanding any bankruptcy, reorganization, or other
5 insolvency proceedings with respect to the debtor. Any surplus
6 in excess of amounts necessary to pay principal, premiums, if
7 any, interest, costs, and arrearages on the recovery bonds, and
8 other costs arising in connection with the documents governing
9 the recovery bonds, shall be remitted to the debtor.

10 § -6 **Transfers of recovery property.** (a) A transfer of
11 recovery property by the public utility to an affiliate or to a
12 financing entity, or by an affiliate of the public utility or a
13 financing entity to another financing entity, which the parties
14 in the governing documentation have expressly stated to be a
15 sale or other absolute transfer, in a transaction approved in a
16 financing order, shall be treated as an absolute transfer of all
17 of the transferor's right, title, and interest, as in a true
18 sale, and not as a pledge or other financing, of the recovery
19 property, other than for federal and state income and franchise
20 tax purposes.



1 (b) The characterization of the sale, assignment, or
2 transfer as an absolute transfer and true sale and the
3 corresponding characterization of the property interest of the
4 purchaser shall not be affected or impaired by, among other
5 things, the occurrence of any of the following:

6 (1) Commingling of fixed recovery charge revenues with
7 other amounts;

8 (2) The retention by the seller of either of the
9 following:

10 (A) A partial or residual interest, including an
11 equity interest, in the financing entity or the
12 recovery property, whether direct or indirect,
13 subordinate or otherwise; or

14 (B) The right to recover costs associated with taxes,
15 franchise fees, or license fees imposed on the
16 collection of fixed recovery charges;

17 (3) Any recourse that the purchaser may have against the
18 seller;

19 (4) Any indemnification rights, obligations, or repurchase
20 rights made or provided by the seller;



1 (5) The obligation of the seller to collect fixed recovery
2 charges on behalf of an assignee;

3 (6) The treatment of the sale, assignment, or transfer for
4 tax, financial reporting, or other purpose; or

5 (7) Any true-up adjustment of the fixed recovery charges
6 as provided in the financing order.

7 (c) A transfer of recovery property shall be deemed
8 perfected against third persons when both of the following
9 occur:

10 (1) The commission issues the financing order authorizing
11 the fixed recovery charges included in the recovery
12 property; and

13 (2) An assignment of the recovery property in writing has
14 been executed and delivered to the transferee.

15 (d) As between bona fide assignees of the same right for
16 value without notice, the assignee first filing a financing
17 statement in accordance with part 5 of article 9 of chapter 490,
18 naming the assignor of the recovery property as debtor and
19 identifying the recovery property shall have priority. Any
20 description of the recovery property shall be sufficient if it
21 refers to the financing order creating the recovery property. A



1 copy of the financing statement shall be filed by the assignee
2 with the commission, and the commission may require the assignor
3 or the assignee to make other filings with respect to the
4 transfer in accordance with procedures it may establish, but
5 these filings shall not affect the perfection of the transfer.

6 § -7 **Successors to public utilities; obligations.** Any
7 successor to the public utility, whether pursuant to any
8 bankruptcy, reorganization, or other insolvency proceeding, or
9 pursuant to any merger, sale, or transfer, by operation of law,
10 or otherwise, shall perform and satisfy all obligations of the
11 public utility pursuant to this chapter in the same manner and
12 to the same extent as the public utility, including but not
13 limited to collecting and paying to the holders of recovery
14 bonds, their representatives, or the applicable financing
15 entity, revenues arising with respect to the recovery property
16 sold to the applicable financing entity or pledged to secure
17 recovery bonds. Any successor to the public utility shall be
18 entitled to receive any fixed recovery tax amounts otherwise
19 payable to the public utility.

20 § -8 **Credits to customers.** (a) Notwithstanding
21 section -3(i), if, subsequent to the issuance of a financing



1 order, a public utility receives additional insurance proceeds,
2 tax benefits, or other amounts that reimburse the public utility
3 for costs associated with catastrophic wildfire amounts included
4 in the recovery costs addressed in that financing order, the
5 public utility shall credit customers, in a manner to be
6 determined by the commission, with the net after tax amounts of
7 those reimbursements, but the commission shall not adjust,
8 amend, or modify the catastrophic wildfire amounts, fixed
9 recovery charges, the fixed recovery tax amounts, the financing
10 order, recovery costs, the recovery property, or the recovery
11 bonds.

12 (b) Nothing in this section shall be construed to permit
13 setoff, counterclaim, surcharge, recoupment, or defense by the
14 public utility or any other person, or in connection with the
15 bankruptcy, reorganization, or other insolvency proceeding of
16 the electrical corporation, any affiliate of the public utility,
17 or any other entity, against the recovery property, the fixed
18 recovery charges, or the interests of an assignee, bondholder,
19 or financing entity, or any pledgee in recovery property or
20 fixed recovery charges.



1 § -9 **Limitations.** This chapter shall not affect any
2 civil action or proceeding."

3 SECTION 3. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 4. If any provision of this Act, or the
7 application thereof to any person or circumstance, is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act that can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 5. This Act shall take effect upon its approval.

13

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "JBL", is written over a horizontal line.

S.B. NO. 2922

Report Title:

Public Utilities Commission; Public Utilities; Electrical Corporations; Rate Securitization; Catastrophic Wildfire Expenses; Financing Orders; Recovery Bonds; Recovery Property

Description:

Establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

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

