
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 securitization may
2 be the most efficient, least costly way to finance wildfire risk
3 mitigation costs and expenses. Utility rate securitization
4 transactions have an extensive track record of success. Bonds
5 securitized by rates receive investment grade credit ratings
6 from credit rating agencies and thus provide a means of securing
7 capital at a lower interest rate than those currently available
8 to utilities, in particular utilities without an investment
9 grade credit rating.

10 The purpose of this Act is to create a process whereby
11 electric utilities are able to timely recover the prudently
12 incurred costs and expenses of developing, implementing, and
13 administering wildfire protection plans and ensure those costs
14 and expenses are not borne disproportionately by any particular
15 ratepayer or county.



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

4 "PART . WILDFIRE PROTECTION AND MITIGATION

5 §269-A Definitions. As used in this part:

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

13 "Assignee" means a legally recognized entity:

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

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



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

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

14 "Catastrophic wildfire" means any wildfire in the State
15 that damaged or destroyed more than five hundred residential or
16 commercial structures.

17 "Commission" means the public utilities commission.

18 "Consumer" means any individual, governmental body, trust,
19 business entity, or nonprofit organization that consumes
20 electricity that has been transmitted or distributed by means of
21 electric transmission or distribution facilities, whether those



1 electric transmission or distribution facilities are owned by
2 the consumer, the electric utility, or any other party.

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

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

- 10 (1) Principal, interest, and redemption premiums that are
11 payable on bonds;
- 12 (2) A payment required under an ancillary agreement;
- 13 (3) An amount required to fund or replenish reserve
14 accounts or other accounts established under an
15 indenture, ancillary agreement, or other financing
16 document related to the bonds;
- 17 (4) Taxes, franchise fees, or license fees imposed on the
18 wildfire protection fee, or otherwise resulting from
19 the collection of the charges, in any such case
20 whether paid, payable, or accrued;



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

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

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

18 "Financing order" means an order of the commission under
19 this part that has become final as provided by law, and that
20 authorizes the issuance of bonds and the imposition and
21 collection of wildfire protection fees. "Financing order"



1 includes without limitation a procedure to require the
2 expeditious approval by the commission of periodic adjustments
3 to wildfire protection fees and to any associated fixed recovery
4 tax amounts included in that financing order to ensure recovery
5 of all wildfire protection costs and the costs associated with
6 the proposed recovery, financing, or refinancing thereof,
7 including the costs of servicing and retiring the bonds
8 contemplated by the financing order.

9 "Financing party" means any holder of bonds, any party to
10 or beneficiary of an ancillary agreement, and any trustee,
11 collateral agent, or other person acting for the benefit of any
12 of the foregoing.

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 wildfire protection fees authorized by the
18 commission in a financing order, but are not approved as
19 financing costs financed from proceeds of bonds.

20 "Governmental financing entity" means the State or a
21 political subdivision thereof or any department, agency, or



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

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

19 "Wildfire protection costs" means any capital costs and
20 operation and maintenance expenses related to the development,
21 implementation, and administration of a wildfire protection plan



1 prepared pursuant to section . "Wildfire protection costs"
2 does not include any penalties levied against an electric
3 utility pursuant to section . "Wildfire protection costs"
4 may also include any of the following:

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

16 "Wildfire protection fee" means the nonbypassable fees and
17 charges, including but not limited to distribution, connection,
18 disconnection, and termination rates and charges, that are
19 authorized by section 269-B and in a financing order authorized
20 under this part to be imposed on and collected from all existing



1 and future consumers of a financing entity or any successor to
2 recover both of the 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 servicing and retiring bonds.

9 "Wildfire protection plan" means the risk-based wildfire
10 protection plan mandated by section and approved by the
11 commission.

12 "Wildfire protection property" means the property right
13 created pursuant to this part, including without limitation the
14 right, title, and interest of the public utility, financing
15 entity, or its assignee:

16 (1) In and to the wildfire protection fee established
17 pursuant to a financing order, including the right to
18 impose, bill, collect, and receive fixed recovery
19 charges under the financing order and all rights to
20 obtain adjustments to the wildfire protection fee in



1 accordance with section 269-B and the financing order;
2 and
3 (2) To be paid the amount that is determined in a
4 financing order to be the amount that the public
5 utility or its assignee is lawfully entitled to
6 receive pursuant to this part and the proceeds
7 thereof, and in and to all revenues, collections,
8 claims, payments, moneys, or proceeds of, or arising
9 from, the wildfire protection fee that is the subject
10 of a financing order.

11 "Wildfire protection property" does not include a right to be
12 paid fixed recovery tax amounts. "Wildfire protection property"
13 shall constitute a current property right, notwithstanding the
14 fact that the value of the property right will depend on
15 consumers using electricity or, in those instances where
16 consumers are customers of the public utility, the public
17 utility performing certain services.

18 **§269-B Applications to issue bonds and authorize wildfire**
19 **protection fees.** (a) An electric utility may apply to the
20 commission for one or more financing orders to issue bonds to



1 recover any wildfire protection costs, each of which authorizes
2 the following:

3 (1) The imposition, charging, and collection of a wildfire
4 protection fee, to become effective upon the issuance
5 of the bonds, and an adjustment of any such wildfire
6 protection fee in accordance with a true-up adjustment
7 mechanism under this part in amounts sufficient to pay
8 the principal of and interest on bonds and all related
9 financing costs on a timely basis;

10 (2) The creation of wildfire protection property under the
11 financing order; and

12 (3) The imposition, charging, and collection of fixed
13 recovery tax amounts to recover any portion of the
14 public utility's federal and state taxes associated
15 with those wildfire protection fees and not financed
16 from the proceeds of bonds.

17 (b) The application shall include all of the following:

18 (1) The principal amount of the bonds proposed to be
19 issued;

20 (2) An estimate of the date each series of bonds is
21 expected to be issued;



- 1 (3) The expected term, which shall include a scheduled
2 final payment date not to exceed thirty years, and a
3 legal final maturity that may be longer, subject to
4 rating agency and market conditions, during which the
5 wildfire protection fee associated with the issuance
6 of each series of bonds is expected to be imposed and
7 collected;
- 8 (4) An estimate of the financing costs associated with the
9 issuance of each series of bonds;
- 10 (5) An estimate of the amount of the wildfire protection
11 fee revenues necessary to pay principal and interest
12 on the bonds and related financing costs as set forth
13 in the application and the calculation for that
14 estimate;
- 15 (6) A proposed methodology for allocating the wildfire
16 protection fee among customer classes;
- 17 (7) A description of the true-up adjustment for the
18 adjustment of the wildfire protection fee to correct
19 for any overcollection or undercollection of the
20 wildfire protection fee, and to otherwise ensure the



1 timely payment of principal and interest on the bonds
2 and related financing costs; and

3 (8) Any other information required by the commission.

4 (c) The commission shall issue an approval or denial of
5 any application for a financing order filed pursuant to this
6 section within ninety days of the last filing in the applicable
7 docket.

8 (d) In exercising its duties under this section, the
9 commission shall consider:

10 (1) Whether the wildfire protection costs to be financed
11 by any bonds to be issued are just and reasonable;

12 (2) Whether the recovery of such costs is consistent with
13 the public interest;

14 (3) Whether the terms and conditions of any bonds to be
15 issued, including without limitation interest rates,
16 rating, amortization redemption, and maturity, and the
17 imposition and collection of fixed recovery charges as
18 set forth in an application, are just and reasonable;

19 (4) Whether the immediate ratepayer bill impact of any
20 financing order is minimized to the furthest extent
21 practicable; and



1 (5) Any other factors that the commission deems reasonable
2 and in the public interest.

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

19 (e) Wildfire protection fees shall be imposed only on
20 existing and future ratepayers in the utility service territory.
21 Ratepayers within the utility service territory shall continue



1 to pay wildfire protection fees until the bonds and associated
2 financing costs are paid in full by the financing entity or, in
3 the event the wildfire protection property has been assigned to
4 an assignee in connection with the exercise of remedies upon a
5 default, until the receipt of proceeds by such assignee in an
6 amount sufficient to repay the principal amount of, and interest
7 that would have accrued on, the bonds had they remained
8 outstanding.

9 (f) The wildfire protection plan fee and any associated
10 fixes recovery tax amounts shall be collected by a financing
11 entity or its successors, in accordance with subsection (h), in
12 full through a surcharge, fee, or charge that is separate and
13 apart from the financing entity's rates.

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

19 (h) The commission may establish in a financing order an
20 effective mechanism that ensures recovery of wildfire protection
21 costs through nonbypassable wildfire protection fees from



1 existing and future consumers in the utility service territory.
2 The wildfire protection fee and any associated fixed recovery
3 tax amounts may be a usage-based surcharge, a flat user fee, or
4 a charge based upon customer revenues as determined by the
5 commission for each customer class in any financing order.

6 Consumers shall be required to pay those charges until:

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

9 (2) In the event the wildfire protection property has been
10 assigned to an assignee in connection with the
11 exercise of remedies upon a default, until the receipt
12 of proceeds by such assignee in an amount sufficient
13 to repay the principal amount of, and interest that
14 would have accrued on, the bonds had they remained
15 outstanding, at which time those charges shall be
16 terminated.

17 A financing order shall remain in effect and unabated
18 notwithstanding the bankruptcy, reorganization, or insolvency of
19 the electric utility or the commencement of any judicial or
20 nonjudicial proceeding on the financing order. Wildfire



1 protection fees shall be irrevocable, notwithstanding the true-
2 up adjustment pursuant to subsection (m).

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

14 (j) Notwithstanding any other law, and except as otherwise
15 provided in section 269-D(e), with respect to wildfire
16 protection property that has been made the basis for the
17 issuance of bonds and with respect to any associated fixed
18 recovery tax amounts, the financing order, the wildfire
19 protection fees, and any associated fixed recovery tax amounts
20 shall be irrevocable. The commission shall not, either by
21 rescinding, altering, or amending the financing order or



1 otherwise, revalue or revise for ratemaking purposes the
 2 wildfire protection costs or the costs of recovering, financing,
 3 or refinancing the wildfire protection costs, in any way to
 4 reduce or impair the value of wildfire protection property or of
 5 the right to receive any associated wildfire protection fees
 6 either directly or indirectly by taking wildfire protection fees
 7 into account when setting other rates for the public utility.

8 The amount of revenues shall not be subject to reduction,
 9 impairment, postponement, or termination. The State does hereby
 10 pledge and agree with the public utility, owners and assignees
 11 of wildfire protection property, financing entities, and holders
 12 of bonds that the State shall neither limit nor alter, except as
 13 otherwise provided with respect to the true-up adjustment of the
 14 wildfire protection fees pursuant to subsection (m), wildfire
 15 protection fees, wildfire protection property, financing orders,
 16 or any rights under a financing order until:

17 (1) The bonds, together with the interest on the bonds and
 18 associated financing costs, are fully paid and
 19 discharged;

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



1 (3) In the event the wildfire protection property has been
2 assigned to an assignee in connection with the
3 exercise of remedies upon a default, until the receipt
4 of proceeds by such assignee in an amount sufficient
5 to repay the principal amount of, and interest that
6 would have accrued on, the bonds had they remained
7 outstanding;
8 provided that nothing contained in this section shall preclude
9 the limitation or alteration if and when adequate provision
10 shall be made by law for the full protection of the public
11 utility and of owners and holders of the bonds and the wildfire
12 protection property. Any financing entity may include this
13 pledge and undertaking for the State in these bonds. When
14 setting other rates for the public utility, nothing in this
15 subsection shall prevent the commission from taking into account
16 any collection of wildfire protection fees in excess of amounts
17 actually required, or would have been required had the bonds
18 remained outstanding following a default, to pay wildfire
19 protection costs financed or refinanced by bonds; provided that
20 this shall not result in a recharacterization of the tax,
21 accounting, and other intended characteristics of the financing,



1 including but not limited to either treating the bonds as debt
2 of the applicable financing entity for federal income tax
3 purposes or treating the transfer of the wildfire protection
4 property by the public utility as a true sale for bankruptcy
5 purposes.

6 (k) Under a final financing order, the bonds may be issued
7 in one or more series, and the electric utility shall retain
8 sole discretion to cause bonds to be issued, including the right
9 to defer or postpone such issuance, assignment, sale, or
10 transfer.

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



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

5 (m) The commission shall establish procedures for the
6 expeditious processing of an application for a financing order,
7 which shall provide for the approval or disapproval of the
8 application within ninety days of the application. Any wildfire
9 protection fees authorized by a financing order shall appear on
10 ratepayer bills. The commission shall, in any financing order,
11 provide for a procedure for periodic true-up adjustments to
12 wildfire protection fees, which shall be made at least annually
13 and may be made more frequently; provided that no true-up
14 adjustment may be made if such adjustment could reasonably be
15 expected to negatively impact the rights, including the economic
16 rights, of the owners and holders of the bonds or the wildfire
17 protection property. The public utility shall file an
18 application with the commission to implement any true-up
19 adjustment.

20 (n) Wildfire protection fees are wildfire protection
21 property when, and to the extent that, a financing order



1 authorizing the wildfire protection fees has become effective in
2 accordance with this chapter, and the wildfire protection
3 property shall thereafter continuously exist as property for all
4 purposes, and all of the rights and privileges relating to that
5 property shall continuously exist for the period and to the
6 extent provided in the financing order, but in any event until
7 the bonds are paid in full, including all principal, premiums,
8 if any, and interest with respect to the bonds, and all
9 associated financing costs are paid in full or, in the event the
10 wildfire protection property has been assigned to an assignee in
11 connection with the exercise of remedies upon a default, until
12 the receipt by such assignee of proceeds in an amount sufficient
13 to repay the principal amount of, and interest that would have
14 accrued on, the bonds had they remained outstanding. A
15 financing order may provide that the creation of wildfire
16 protection property shall be simultaneous with the sale of the
17 wildfire protection property to an assignee as provided in the
18 application of the pledge of the wildfire protection property to
19 secure the bonds.

20 (o) Any successor to a financing entity shall be bound by
21 the requirements of this chapter and shall perform and satisfy



1 all obligations of, and have the same rights under a financing
2 order as, and to the same extent as, the financing entity.

3 **§269-C Bonds; issuance; wildfire protection property**

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

15 (1) The financing entity or a trustee for the holders of
16 bonds or the holders of an ancillary agreement in
17 connection with the exercise of remedies upon a
18 default; or

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



1 (b) To the extent that any interest in wildfire protection
2 property is sold, assigned, or is pledged as collateral pursuant
3 to subsection (a), the commission shall authorize the public
4 utility to contract with the financing entity and its assignees
5 that it will continue to operate its system to provide service
6 to consumers within its service territory, will collect amounts
7 in respect of the wildfire protection fees for the benefit and
8 account of the financing entity and its assignees, and will
9 account for and remit these amounts to or for the account of the
10 financing entity or its assignees. Contracting with the
11 financing entity and its assignees in accordance with that
12 authorization shall not impair or negate the characterization of
13 the sale, assignment, or pledge as an absolute transfer, a true
14 sale, or a security interest, as applicable. To the extent that
15 billing, collection, and other related services with respect to
16 the provision of the public utility's services are provided to a
17 consumer by any person or entity other than the public utility
18 in whose service territory the consumer is located, that person
19 or entity shall collect the wildfire protection fees and any
20 associated fixed recovery tax amounts from the consumer for the
21 benefit and account of the public utility, financing entity, or



1 assignees with the associated revenues remitted solely for such
2 person's benefit as a condition to the provision of electric
3 service to that consumer. Each financing order shall impose
4 terms and conditions, consistent with the purposes and
5 objectives of this chapter, on any person or entity responsible
6 for billing, collection, and other related services, including
7 without limitation collection of the wildfire protection fees
8 and any associated fixed recovery tax amounts, that are the
9 subject of the financing order.

10 (c) The financing entity may issue bonds upon approval by
11 the commission in a financing order. Bonds shall be nonrecourse
12 to the credit or any assets of the public utility, other than
13 the wildfire protection property as specified in that financing
14 order.

15 (d) Wildfire protection property that is specified in a
16 financing order shall constitute an existing, present property
17 right, notwithstanding the fact that the imposition and
18 collection of wildfire protection fees depend on the electric
19 utility continuing to provide services or continuing to perform
20 its servicing functions relating to the collection of wildfire
21 protection fees or on the level of future service consumption.



1 Wildfire protection property shall exist whether or not the
2 wildfire protection fees have been billed, have accrued, or have
3 been collected and notwithstanding the fact that the value for a
4 security interest in the wildfire protection property, or amount
5 of the wildfire protection property, is dependent on the future
6 provision of service to consumers. All wildfire protection
7 property specified in a financing order shall continue to exist
8 until the bonds issued pursuant to a financing order and all
9 associated financing costs are paid in full or, in the event the
10 wildfire protection property has been assigned to an assignee in
11 connection with the exercise of remedies upon a default, until
12 the receipt by such assignee of proceeds in an amount sufficient
13 to repay the principal amount of, and interest that would have
14 accrued on, the bonds had they remained outstanding.

15 (e) Wildfire protection property, wildfire protection
16 fees, and the interests of an assignee, bondholder, or financing
17 entity, or any pledgee in wildfire protection property and
18 wildfire protection fees shall not be subject to setoff,
19 counterclaim, surcharge, recoupment, or defense by the electric
20 utility or any other person or in connection with the
21 bankruptcy, reorganization, or other insolvency proceeding of



1 the electric utility, any affiliate of the electric utility, or
2 any other entity.

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

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

18 (1) The commission has issued a financing order
19 authorizing the wildfire protection fee included in
20 the wildfire protection property;



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

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

5 (b) A valid and enforceable security interest in wildfire
6 protection property is perfected when it has attached and when a
7 financing statement has been filed naming the pledgor of the
8 wildfire protection property as "debtor" and identifying the
9 wildfire protection property.

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

20 (c) A perfected security interest in wildfire protection
21 property shall be a continuously perfected security interest in



1 all wildfire protection property revenues and proceeds arising
2 with respect thereto, whether or not the revenues or proceeds
3 have accrued. Conflicting security interests shall rank
4 according to priority in time of perfection. Wildfire
5 protection property shall constitute property for all purposes,
6 including for contracts securing bonds, whether or not the
7 wildfire protection property revenues and proceeds have accrued.

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

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



1 the electrical corporation in which wildfire protection property
2 revenues have been commingled with other funds; provided that
3 the perfected security interest shall be limited to an amount no
4 greater than the amount of the wildfire protection property
5 revenues received by the public utility within twelve months
6 before:

7 (1) Any default under the security agreement; or

8 (2) The institution of insolvency proceedings by or
9 against the public utility, less payments from the
10 revenues to the pledgees during that twelve-month
11 period.

12 (e) If default occurs under the security agreement
13 covering the wildfire protection property, the pledgees of the
14 wildfire protection property, subject to the terms of the
15 security agreement, shall have all rights and remedies of a
16 secured party upon default under chapter 490, article 9, and
17 shall be entitled to foreclose or otherwise enforce their
18 security interest in the wildfire protection property, subject
19 to the rights of any third parties holding prior security
20 interests in the wildfire protection property perfected in the
21 manner provided in this section. In addition, the commission



1 may require in the financing order creating the wildfire
2 protection property that, in the event of default by the
3 electrical corporation in payment of wildfire protection
4 property revenues, the commission and any successor thereto,
5 upon the application by the pledgees or transferees, including
6 transferees under section 269-E of the wildfire protection
7 property, and without limiting any other remedies available to
8 the pledgees or transferees by reason of the default, shall
9 order the sequestration and payment to the pledgees or
10 transferees of wildfire protection property revenues. Any order
11 shall remain in full force and effect notwithstanding any
12 bankruptcy, reorganization, or other insolvency proceedings with
13 respect to the debtor, pledgor, or transferor of the wildfire
14 protection property. Any surplus in excess of:

15 (1) Amounts necessary to pay principal, premiums, if any,
16 interest, costs, and arrearages on the bonds, and
17 associated financing costs arising under the security
18 agreement; or

19 (2) In the event the wildfire protection property has been
20 assigned to an assignee in connection with the
21 exercise of remedies upon a default, an amount



1 sufficient to repay the principal amount of, and
2 interest that would have accrued on, the bonds had
3 they remained outstanding,
4 shall be remitted to the debtor or to the pledgor or transferor.

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

8 **§269-E Transfers of wildfire protection property.** (a) A
9 transfer of wildfire protection property by the public utility
10 to an assignee or to a financing entity, or by an assignee of
11 the public utility or a financing entity to another financing
12 entity, which the parties in the governing documents have
13 expressly stated to be a sale or other absolute transfer, in a
14 transaction approved in a financing order, shall be treated as
15 an absolute transfer of all of the transferor's right, title,
16 and interest, as in a true sale, and not as a pledge or other
17 financing, of the wildfire protection property, other than for
18 federal and state income and franchise tax purposes.

19 (b) The characterization of the sale, assignment, or
20 transfer as an absolute transfer and true sale and the
21 corresponding characterization of the property interest of the



1 assignee shall not be affected or impaired by, among other
2 things, the occurrence of any of the following:

3 (1) Commingling of wildfire protection fee revenues with
4 other amounts;

5 (2) The retention by the seller of either of the
6 following:

7 (A) A partial or residual interest, including an
8 equity interest, in the financing entity or the
9 wildfire protection property, whether direct or
10 indirect, subordinate or otherwise; or

11 (B) The right to recover costs associated with taxes,
12 franchise fees, or license fees imposed on the
13 collection of wildfire protection fee;

14 (3) Any recourse that the assignee may have against the
15 seller;

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

18 (5) The obligation of the seller to collect wildfire
19 protection fees on behalf of an assignee;

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



1 (7) Any true-up adjustment of the wildfire protection fee
2 as provided in the financing order.

3 (c) A transfer of wildfire protection property shall be
4 deemed perfected against third persons when both of the
5 following occur:

6 (1) The commission issues the financing order authorizing
7 the wildfire protection fee included in the wildfire
8 protection property; and

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

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



1 assignee to make other filings with respect to the transfer in
2 accordance with procedures the commission may establish, but
3 these filings shall not affect the perfection of the transfer.

4 **§269-F Successor requirements; default.** (a) Any
5 successor to an electric utility that has received a financing
6 order, whether pursuant to any bankruptcy, reorganization, or
7 other insolvency proceeding, or pursuant to any merger, sale, or
8 transfer, by operation of law, or otherwise, shall be bound by
9 the requirements of this part. The successor of the electric
10 utility shall perform and satisfy all obligations of the
11 electric utility under the financing order, in the same manner
12 and to the same extent as the electric utility, including the
13 obligation to collect and pay the wildfire protection fee to any
14 financing party as required by a financing order or any
15 assignee. Any successor to the electric utility shall be
16 entitled to receive any fixed recovery tax amounts otherwise
17 payable to the electric utility company.

18 (b) The commission may require in a financing order that
19 if a default by the electric utility in remittance of the
20 wildfire protection fee collected arising with respect to
21 wildfire protection property occurs, the commission, without



1 limiting any other remedies available to any financing party by
2 reason of the default, shall order the sequestration and payment
3 to the beneficiaries of the wildfire protection fee collected
4 arising with respect to the wildfire protection property. Any
5 order shall remain in full force and effect notwithstanding any
6 bankruptcy, reorganization, or other insolvency proceedings with
7 respect to the electric utility.

8 **§269-G Severability.** If any provision of this part is
9 held to be invalid or is superseded, replaced, repealed, or
10 expires for any reason:

11 (1) That occurrence shall not affect any action allowed
12 under this part that is taken prior to that occurrence
13 by the commission, a financing entity, a bondholder,
14 or any financing party, and any such action shall
15 remain in full force and effect; and

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

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

20 "**§269-17 Issuance of securities.** A public utility
21 corporation or a financing entity may, on securing the prior



1 approval of the public utilities commission, and not otherwise,
2 except as provided in section 269-B, issue stocks and stock
3 certificates, bonds, notes, and other evidences of indebtedness,
4 payable at periods of more than twelve months after the date
5 thereof, for the following purposes and no other, namely: for
6 the acquisition of property or for the construction, completion,
7 extension, or improvement of or addition to its facilities or
8 service, or for the discharge or lawful refunding of its
9 obligations or for the reimbursement of moneys actually expended
10 from income or from any other moneys in its treasury not secured
11 by or obtained from the issue of its stocks or stock
12 certificates, or bonds, notes, or other evidences of
13 indebtedness, for any of the aforesaid purposes except
14 maintenance of service, replacements, and substitutions not
15 constituting capital expenditure in cases where the corporation
16 has kept its accounts for such expenditures in such manner as to
17 enable the commission to ascertain the amount of moneys so
18 expended and the purposes for which the expenditures were made,
19 and the sources of the funds in its treasury applied to the
20 expenditures. As used [~~herein~~] in this section, "property" and
21 "facilities"[~~7~~] mean property and facilities used in all



1 operations of a public utility corporation whether or not
2 included in its public utility operations or rate base. A
3 public utility corporation may not issue securities to acquire
4 property or to construct, complete, extend or improve or add to
5 its facilities or service if the commission determines that the
6 proposed purpose will have a material adverse effect on its
7 public utility operations.

8 All stock and every stock certificate, and every bond,
9 note, or other evidence of indebtedness of a public utility
10 corporation not payable within twelve months, issued without an
11 order of the commission authorizing the same, then in effect,
12 shall be void."

13 SECTION 4. Notwithstanding the provisions of section 39A-
14 191, Hawaii Revised Statutes, and the provisions of Act 182,
15 Session Laws of Hawaii 2022, as amended by Act 262, Session Laws
16 of Hawaii 2023, the legislature authorizes the issuance of
17 special purpose revenue bonds for wildfire protection costs that
18 require an allocation of the annual state ceiling under section
19 39B-2, Hawaii Revised Statutes, for the period July 1, 2024,
20 through December 31, 2028, and further authorizes project
21 agreements with an affiliate of a public utility or a special



1 purpose vehicle in connection with the issuance of special
2 purpose revenue bonds for wildfire protection costs.

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

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

11 SECTION 7. In codifying the new part added to chapter 269,
12 Hawaii Revised Statutes, by section 2 of this Act, the revisor
13 of statutes shall substitute appropriate section numbers for the
14 letters used in designating and referring to the new sections in
15 this Act.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect on July 1, 3000.



Report Title:

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

Description:

Creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county. Effective 7/1/3000. (HD1)

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

