

---

---

# A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 PART I

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

5 "PART . WILDFIRE LIABILITY TRUST FUND

6 §269-A Definitions. As used in this part:

7 "Catastrophic wildfire" means a wildfire occurring in the  
8 State on or after the operation date that destroys more than  
9 five hundred commercial structures or residential structures  
10 designed for habitation.

11 "Commission" means the public utilities commission.

12 "Contributor" means a public utility that satisfies all  
13 requirements to participate in the wildfire liability trust  
14 fund.

15 "Covered catastrophic wildfire" means a catastrophic  
16 wildfire that may have been caused, or whose severity may have  
17 been increased, by a contributor's facilities or actions.



1 "Electric utility" means a public utility that exists for  
2 the furnishing of electrical power.

3 "Executive director" means the executive director of the  
4 wildfire liability trust fund.

5 "Fund" means the wildfire liability trust fund established  
6 pursuant to section 269-B.

7 "Government entity" means any government agency,  
8 department, division, subdivision, unit, component, bureau,  
9 commission, office, board, or instrumentality of any kind,  
10 including federal, state, and municipal entities.

11 "Investor-owned utility" means a public utility that is  
12 owned by shareholders and overseen by a board of directors  
13 elected by shareholders.

14 "Operation date" means the first date for contributors to  
15 elect to participate in the wildfire liability trust fund  
16 pursuant to section 269-C(a) and any rules adopted pursuant to  
17 this part.

18 "Property insurer" means a person or entity that  
19 indemnifies another by a contract of insurance for loss of or  
20 damage to real or personal property in the State.



1 "Property owner" means an owner of real property in the  
2 State.

3 "Qualified claimant" means any property owner, property  
4 insurer, or tenant who alleges any qualifying damages.

5 "Qualifying action" means a civil action by a qualifying  
6 claimant to recover qualifying damages.

7 "Qualifying damages" means damages arising out of the loss  
8 of or damage to real or personal property from a covered  
9 catastrophic wildfire.

10 "Tenant" means a person or entity lawfully entitled to  
11 occupy real property in the State that the person or entity does  
12 not own.

13 "Wildfire risk mitigation plan" means a plan, which may  
14 include a natural hazard mitigation report, in which a public  
15 utility addresses how the public utility will mitigate the risk  
16 to its equipment in the event of a wildfire.

17 **§269-B Wildfire liability trust fund; establishment;**  
18 **executive director.** (a) There is established outside the state  
19 treasury a wildfire liability trust fund and any accounts  
20 thereunder that are necessary to carry out the purposes of this  
21 part. All moneys in the fund shall be administered by the



1 executive director and expended exclusively for the uses and  
2 purposes set forth in this section. The fund shall not be  
3 subject to chapter 431. Any moneys in the fund not required for  
4 immediate use shall be invested by the executive director for  
5 the benefit of the fund; provided that no assets of the fund  
6 shall be transferred to the general fund of the State or to any  
7 other fund of the State or otherwise encumbered or used for any  
8 purpose other than those specified for the fund; provided  
9 further that the fund shall not be considered the property or  
10 asset of any of its contributors for purposes of a bankruptcy  
11 reorganization or other insolvency proceeding.

12 (b) The wildfire liability trust fund shall be placed  
13 within the department of commerce and consumer affairs for  
14 administrative purposes.

15 (c) The governor shall appoint, subject to confirmation by  
16 the senate, an executive director of the wildfire liability  
17 trust fund, who shall be exempt from chapter 76. The governor  
18 shall fix the executive director's compensation. The executive  
19 director shall serve for a four-year term and may only be  
20 removed by the governor.



1 (d) The executive director shall be responsible for the  
2 day-to-day operations and management of the fund and shall  
3 perform all functions necessary to implement this part,  
4 including entering into contracts and other obligations related  
5 to the operation, management, and administration of the fund.

6 **§269-C Eligibility for participation as a contributor;**

7 **contributions.** (a) To be eligible to participate as a  
8 contributor, a public utility shall:

- 9 (1) Have a wildfire risk mitigation plan that has been  
10 approved by the commission and adhered to by the  
11 utility;
- 12 (2) Notify the executive director, in the year before  
13 becoming a contributor, that the utility intends to  
14 participate in the fund; and
- 15 (3) Agree to make an initial contribution, the payment of  
16 which shall be a binding commitment enforceable by the  
17 executive director.
- 18 (b) The initial contributions from investor-owned electric  
19 utilities shall be \$1,000,000,000 collectively, including:



1 (1) \$ plus interest as provided in subsection (c)  
2 for amounts not securitized, which shall be recovered  
3 from its customers in nonbypassable rates; and

4 (2) \$ , which shall be funded by shareholders of  
5 the investor-owned electric utilities and used  
6 exclusively for the payment of salaries of the  
7 executive director and of all other persons retained  
8 by the executive director to implement this part, with  
9 any funds remaining as of 2035 to be transferred to  
10 the fund.

11 (c) An investor-owned electric utility may elect to make  
12 the initial contribution set forth in subsection (b)(1), to the  
13 degree not paid for through securitization pursuant to chapter  
14 A, over a period not to exceed five years; provided that  
15 interest shall be added to any amounts paid after the first  
16 year, at an interest rate equal to the investor-owned electric  
17 utility's incremental cost of long-term debt, with the interest  
18 recovered from customers in rates.

19 (d) The executive director shall determine the initial  
20 contributions from other public utilities based on an actuarial  
21 assessment of the risk of potential payments by the fund



1 resulting from covered catastrophic wildfires created by a  
2 public utility.

3 (e) The executive director may propose that participating  
4 public utilities or other entities involved in transmitting or  
5 distributing electric energy for sale to the public make  
6 supplemental contributions to the fund.

7 (f) If a contributor fails to pay any part of an initial  
8 contribution or a supplemental contribution that the contributor  
9 agreed to make, or elects not to agree to make a supplemental  
10 contribution, that contributor shall no longer be a contributor  
11 as of the date on which the payment was due, and the contributor  
12 shall not receive any refund of payments previously made;  
13 provided that a contributor that elects not to make a  
14 supplemental contribution shall be a contributor as to any  
15 catastrophic wildfire that occurs before the election date.  
16 After failing to, or electing not to, make a payment, a public  
17 utility may rejoin the fund as a contributor on a prospective  
18 basis if the public utility makes all owed payments with  
19 interest.

20 (g) The executive director shall adopt rules pursuant to  
21 chapter 91 regarding the timing of initial and supplemental



1 contributions, which may include upfront, annual, and  
2 retrospective payments, including payments made after a wildfire  
3 occurs.

4 (h) Initial and supplemental contributions made by  
5 investor-owned electric utilities shall constitute wildfire  
6 recovery costs.

7 **§269-D Determination of a covered catastrophic wildfire.**

8 The executive director shall adopt rules pursuant to chapter 91  
9 regarding how to determine whether a wildfire is a covered  
10 catastrophic wildfire. The rules shall include a requirement  
11 that a wildfire shall be determined to be a covered catastrophic  
12 wildfire if a party makes non-frivolous allegations in a legal  
13 action that a contributor's facilities caused or contributed to  
14 the severity of a catastrophic wildfire.

15 **§269-E Replenishment of the wildfire liability trust fund.**

16 (a) If the fund has made payments with respect to a covered  
17 catastrophic wildfire, and after resolution of substantially all  
18 third-party liability claims that were brought or could be  
19 brought against contributors arising from that covered  
20 catastrophic wildfire, each contributor whose facilities were  
21 implicated in the covered catastrophic wildfire shall initiate a



1 proceeding before the commission to review the prudence of the  
2 public utility's conduct leading to the catastrophic wildfire.

3 (b) The commission shall determine whether the contributor  
4 acted prudently by:

5 (1) Considering only acts that may have caused the  
6 occurrence or contributed to the severity of the  
7 covered catastrophic wildfire;

8 (2) Evaluating the contributor's actions in the context of  
9 its overall systems, processes, and programs;

10 (3) Considering the recommendations of the executive  
11 director concerning the priority of wildfire risk  
12 mitigation capital expenditures, and the timeliness of  
13 contributor response; and

14 (4) Finding that any contributor's action was not prudent  
15 if the action meets the standard of gross negligence.

16 (c) If the commission determines that imprudent conduct by  
17 the contributor caused the occurrence or contributed to the  
18 severity of a covered catastrophic wildfire, the commission  
19 shall determine whether to order the contributor to replenish  
20 the fund in whole or in part for payments from the fund in  
21 connection with the catastrophic wildfire. In determining the



1 amount of replenishment, if any, the commission shall consider  
2 the extent and severity of the contributor's imprudence and  
3 factors within and beyond the contributor's control that may  
4 have led to or exacerbated the costs from the covered  
5 catastrophic wildfire, including but not limited to humidity,  
6 temperature, winds, fuel, merged wildfires with independent  
7 ignitions, third-party actions that affected the spread of the  
8 wildfire, and fire suppression activities.

9 (d) Over any three-year period, the commission shall not  
10 order the contributor to reimburse the fund in an amount that  
11 exceeds twenty per cent of the contributor's transmission and  
12 distribution equity rate base.

13 (e) A contributor shall not recover in regulated rates any  
14 amount that the commission orders the contributor to pay to the  
15 fund as a replenishment under this section.

16 **§269-F Claims for payment by qualified claimants;**  
17 **presentment requirement.** (a) The executive director shall  
18 adopt rules pursuant to chapter 91 to create a process by which  
19 a qualified claimant that is not a government entity may submit  
20 to the fund a claim for payment of economic damages arising out



1 of property damage resulting from a covered catastrophic  
2 wildfire, including a deadline to submit claims.

3 (b) A qualified claimant shall file a claim for payment  
4 for economic damages arising out of the loss of or damage to  
5 real or personal property from a covered catastrophic wildfire  
6 pursuant to this section. The claim of a qualified claimant  
7 that is not a property insurer shall be limited to uninsured  
8 economic damages. A qualified claimant shall not file or  
9 maintain a civil action against a contributor unless the  
10 qualified claimant rejects an offer of settlement from the fund.  
11 A qualified claimant who fails to file a claim by the deadline  
12 established by the executive director pursuant to rule shall be  
13 ineligible to receive payment from the fund.

14 (c) The executive director shall make an offer to settle  
15 each claim submitted, which the claimant may accept or reject.  
16 In determining the amount of each offer, the executive director  
17 shall consider, at a minimum:

- 18 (1) The economic damages sought by all qualified claimants  
19 in the aggregate;
- 20 (2) The amount available to the fund relative to the  
21 amount under paragraph (1);



1 (3) The weight of any evidence of contributor liability;  
2 and

3 (4) The weight of any evidence of the involvement of  
4 non-contributor third-parties.

5 (d) If the amount available to the fund, including assets  
6 held by the fund and all payments contributors are obligated to  
7 make to the fund, is less than fifty per cent of the aggregate  
8 liability limit as calculated in section 269-H, the fund shall  
9 make payment only to contributors pursuant to section 269-G.

10 **§269-G Claims for payment by contributors; rules.** The  
11 executive director shall adopt rules pursuant to chapter 91 to  
12 create a process by which a contributor may obtain payment from  
13 the fund to satisfy settled or finally adjudicated claims for  
14 recovery of qualifying damages after exhausting the  
15 contributor's available insurance. The rules shall establish  
16 the standard for approving any settlement. To the extent that  
17 the fund lacks sufficient funds to make a payment to a  
18 participating utility when sought, the fund shall make the  
19 payment upon receipt of contributions that contributors are  
20 obligated to make to the fund under payment schedules.



1           **§269-H Limitation on aggregate liability.** (a) The  
2 aggregate liability of all contributors for qualifying damages  
3 arising from a covered catastrophic wildfire, including economic  
4 and non-economic damages, shall not exceed the lesser of:

5           (1) \$500,000,000; or

6           (2) The average assessed value of commercial structures  
7 and residential structures designed for habitation in  
8 the county in which the covered catastrophic wildfire  
9 occurred, multiplied by the number of commercial  
10 structures or residential structures designed for  
11 habitation that were destroyed, plus the value of  
12 personal property lost; or

13           (3) The aggregate assessed replacement value of commercial  
14 structures and residential structures designed for  
15 habitation in the county in which the covered  
16 catastrophic wildfire occurred, plus the value of  
17 personal property lost.

18           (b) The following amounts shall be added to determine  
19 whether the aggregate liability limit has been reached:

20           (1) Payments from the fund pursuant to section 269-F; and



1           (2) Payments by a contributor in connection with any  
2           settlement or judgment on a claim for qualifying  
3           damages.

4           (c) All civil actions arising out of a catastrophic  
5 wildfire shall be brought in the circuit in which the  
6 catastrophic wildfire occurred. The court shall adopt  
7 procedures to equitably apply the limit set forth in  
8 subsection (a) to all filed civil claims. All settlements or  
9 judgments for claims for qualifying damages shall be subject to  
10 approval by the court. The court shall not approve any  
11 settlement or judgment that would cause the aggregate liability  
12 of contributors to exceed the aggregate liability limit.

13           (d) A court may consolidate cases arising from a covered  
14 catastrophic wildfire. Any circuit court that is not the  
15 consolidating court shall transfer any civil case to facilitate  
16 the consolidation.

17           **§269-I Limitations on claims.** (a) No qualifying action  
18 may be instituted or maintained by a qualified claimant against  
19 contributors or their affiliates, employees, agents, or insurers  
20 if the qualified claimant accepts an offer under section 269-F;  
21 provided that the rights of a property insurer to bring an



1 action as a subrogee of its policyholder shall not be affected  
2 by a property owner's or tenant's acceptance of an offer under  
3 section 269-F and the subrogation rights shall be affected only  
4 if the property insurer elects to accept an offer under  
5 section 269-F.

6 (b) No suit, claim, arbitration, or other civil legal  
7 action for indemnity or contribution for amounts paid, or that  
8 may be paid, as a result of a covered catastrophic wildfire,  
9 shall be instituted or maintained by any persons or entities  
10 against contributors or their affiliates, employees, agents, or  
11 insurers for damages arising out of the loss of or damage to  
12 real or personal property from a covered catastrophic wildfire.

13 **§269-J Several liability.** Notwithstanding any law to the  
14 contrary, joint and several liability shall not apply to any  
15 qualifying damages; provided that, in any action to recover  
16 qualifying damages from a person or entity, the person or entity  
17 may claim, in defense, apportionment of fault to any other  
18 person or entity regardless of whether that person or entity is  
19 a party to the action.

20 **§269-K Reporting; refunds authorized by legislature.** (a)  
21 The executive director shall submit a report on the activities



1 of the fund to the legislature no later than ninety days prior  
2 to the convening of each regular session through the regular  
3 session of 2034.

4 (b) No later than ninety days prior to the convening of  
5 the regular session of 2035, the executive director shall submit  
6 a comprehensive report to the legislature regarding the  
7 financial status and resources of the fund relative to the  
8 then-current assessment of actuarial risk of a catastrophic  
9 wildfire.

10 (c) Based on the report submitted under subsection (b),  
11 the legislature may determine, based on recommendation by the  
12 executive director, that the fund is overfunded and direct the  
13 executive director to refund contributions, in whole or in part.  
14 Any payments made to the fund that were recovered in regulated  
15 rates from customers, and any investment earnings associated  
16 with those payments, shall be refunded first.

17 **§269-L Admissibility of evidence.** Any findings made or  
18 evidence submitted for purposes of proceedings under sections  
19 269-D, 269-F, and 269-G shall be subject to the limits of  
20 admissibility under rule 408, Hawaii Rules of Evidence."



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

4 **"§269- Electric cooperative cost recovery for wildfire**  
5 **mitigation, repair, and restoration costs.** (a) An electric  
6 cooperative may recover commission-approved wildfire mitigation,  
7 repair, and restoration costs through an automatic rate  
8 adjustment clause or other tariff recovery mechanism to be  
9 established by the commission.

10 (b) For purposes of this section, "electric cooperative"  
11 means an electric utility that satisfies the requirements under  
12 section 269-31(c)."

13 PART II

14 SECTION 3. The Hawaii Revised Statutes is amended by  
15 adding a new chapter to be appropriately designated and to read  
16 as follows:

17 "CHAPTER A

18 SECURITIZATION

19 **§A-1 Definitions.** As used in this chapter, unless the  
20 context otherwise requires:



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

8 "Assignee" means a legally recognized entity to which an  
9 electric utility assigns, sells, or transfers, other than as  
10 security, all or a portion of the electric utility's interest in  
11 or right to wildfire recovery property. "Assignee" includes a  
12 corporation, limited liability company, general partnership or  
13 limited partnership, public authority, trust, financing entity,  
14 or any other legal entity to which an assignee assigns, sells,  
15 or transfers, other than as security, its interest in or right  
16 to wildfire recovery 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 directly or  
21 indirectly to recover, finance, or refinance financing costs of



1 any wildfire recovery costs, and that are directly or indirectly  
2 secured by or payable from wildfire recovery property.

3 "Commission" means the public utilities commission.

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

10 "Electric cooperative" means an electric utility that  
11 satisfies the requirements under section 269-31(c).

12 "Electric cooperative wildfire claims costs" means costs  
13 incurred by an electric cooperative to resolve third-party  
14 liability claims arising from any wildfire occurring in the  
15 State that are not covered by insurance and that the commission  
16 finds to be just and reasonable. "Electric cooperative wildfire  
17 claims costs" do not include costs incurred by an investor-owned  
18 electric utility.

19 "Electric utility" means a public utility that exists for  
20 the furnishing of electrical power.



1 "Executive officer" means any person who performs policy  
2 making functions and is employed by an electric utility subject  
3 to the approval of the board of directors, and includes the  
4 president, secretary, treasurer, and any vice president in  
5 charge of a principal business unit, division, or function of  
6 the electric utility.

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

- 12 (1) Principal, interest, and redemption premiums that are  
13 payable on bonds;
- 14 (2) A payment required under an ancillary agreement;
- 15 (3) An amount required to fund or replenish reserve  
16 accounts or other accounts established under an  
17 indenture, ancillary agreement, or other financing  
18 document related to the bonds;
- 19 (4) Taxes, franchise fees, or license fees imposed on a  
20 financing entity as a result of the issuance of the  
21 financing order; the assignment, sale, or transfer of



1 any wildfire recovery property; or the sale of the  
2 bonds, or imposed on the wildfire recovery charges, or  
3 otherwise resulting from the collection of the  
4 wildfire recovery charge, in any such case whether  
5 paid, payable, or accrued;

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

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

17 "Financing entity" means an electric utility or an entity  
18 to which an electric utility or an affiliate of an electric  
19 utility sells, assigns, or pledges all or a portion of the  
20 electric utility's interest in wildfire recovery property,  
21 including an affiliate of the electric utility or any



1 unaffiliated entity, in each case as approved by the commission  
2 in a financing order.

3       Subject to section A-6(c), an entity to which an electric  
4 utility sells, assigns, or pledges all or a portion of the  
5 electric utility's interest in wildfire recovery property may  
6 include any governmental entity that is able to issue bonds that  
7 are exempt from federal tax pursuant to section 103 of the  
8 Internal Revenue Code of 1986, as amended, including the State  
9 or a political subdivision thereof or any department, agency, or  
10 instrumentality of the State or political subdivision; provided  
11 that the bonds issued shall not constitute a general obligation  
12 of the State or any political subdivision thereof or any  
13 department, agency, or instrumentality of the State or political  
14 subdivision and shall not constitute a pledge of the full faith  
15 and credit of the entity or of the State or any political  
16 subdivision thereof, but shall be payable solely from the funds  
17 provided under this chapter.

18       "Financing order" means an order of the commission under  
19 this chapter that has become final and no longer subject to  
20 appeal as provided by law and that authorizes the issuance of  
21 bonds and the imposition, adjustment from time to time, and



1 collection of wildfire recovery charges, and that shall include  
2 a procedure to require the expeditious approval by the  
3 commission of periodic adjustments to wildfire recovery charges  
4 and to any associated fixed recovery tax amounts included in  
5 that financing order to ensure recovery of all wildfire recovery  
6 costs and the costs associated with the proposed recovery,  
7 financing, or refinancing thereof, including the costs of  
8 servicing and retiring the bonds contemplated by the financing  
9 order.

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

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



1 "Investor-owned utility" means a public utility that is  
2 owned by shareholders and overseen by a board of directors  
3 elected by shareholders.

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

6 "True-up adjustment" means a formulaic adjustment to the  
7 wildfire recovery charges as they appear on consumer bills that  
8 is necessary to correct for any overcollection or  
9 undercollection of the wildfire recovery charges authorized by a  
10 financing order and to otherwise ensure the timely and complete  
11 payment and recovery of wildfire recovery costs over the  
12 authorized repayment term.

13 "Wildfire recovery charges" means the nonbypassable  
14 charges, including but not limited to distribution, connection,  
15 disconnection, and termination rates and charges, that are  
16 authorized by section A-2 and in a financing order authorized  
17 under this chapter to be imposed on and collected from all  
18 existing and future consumers of a financing entity or any  
19 successor to recover principal, interest, and other financing  
20 costs relating to the bonds.



1 "Wildfire recovery costs" means an investor-owned electric  
2 utility's contributions to the wildfire liability trust fund, as  
3 set forth in part of chapter 269, and electric cooperative  
4 wildfire claims costs.

5 "Wildfire liability trust fund" means the wildfire recovery  
6 fund established by part of chapter 269.

7 "Wildfire recovery property" means the property right  
8 created pursuant to this chapter, including without limitation  
9 the right, title, and interest of the electric utility,  
10 financing entity, or its assignee:

11 (1) In and to the wildfire recovery charge established  
12 pursuant to a financing order, including the right to  
13 impose, bill, collect, and receive such wildfire  
14 recovery charges under the financing order and all  
15 rights to obtain adjustments to the wildfire recovery  
16 charge in accordance with section B-3 and the  
17 financing order; and

18 (2) To be paid the amount that is determined in a  
19 financing order to be the amount that the electric  
20 utility or its assignee is lawfully entitled to  
21 receive pursuant to this chapter and the proceeds



1           thereof, and in and to all revenues, collections,  
2           claims, payments, moneys, or proceeds of, or arising  
3           from, the wildfire recovery charge that is the subject  
4           of a financing order.

5 "Wildfire recovery property" does not include a right to be paid  
6 fixed recovery tax amounts. "Wildfire recovery property" shall  
7 constitute a current property right, notwithstanding the fact  
8 that the value of the property right will depend on consumers  
9 using electricity or, in those instances where consumers are  
10 customers of the electric utility, the electric utility  
11 performing certain services.

12           **§A-2 Applications to issue bonds and authorize wildfire**  
13 **recovery charges.** (a) An electric utility may apply to the  
14 commission for one or more financing orders to issue bonds to  
15 recover any wildfire recovery costs, each of which authorizes  
16 the following:

17           (1) The imposition, charging, and collection of a wildfire  
18           recovery charge, to become effective upon the issuance  
19           of the bonds, and an adjustment of any such wildfire  
20           recovery charge in accordance with a true-up  
21           adjustment mechanism under this chapter in amounts



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



- 1 recovery charge associated with the issuance of each  
2 series of bonds is expected to be imposed and  
3 collected;
- 4 (5) An estimate of the financing costs associated with the  
5 issuance of each series of bonds;
- 6 (6) An estimate of the amount of the wildfire recovery  
7 charge revenues necessary to pay principal and  
8 interest on the bonds and all other associated  
9 financing costs as set forth in the application and  
10 the calculation for that estimate;
- 11 (7) A proposed design of the wildfire recovery charge and  
12 a proposed methodology for allocating the wildfire  
13 recovery charge among customer classes within the  
14 electric utility's service territory;
- 15 (8) A description of the financing entity selected by the  
16 electric utility;
- 17 (9) A description of a proposed true-up adjustment  
18 mechanism for the adjustment of the wildfire recovery  
19 charge to correct for any overcollection or  
20 undercollection of the wildfire recovery charge, and  
21 to otherwise ensure the timely payment of principal



1           and interest on the bonds and all other associated  
2           financing costs; and

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

4           (c) An electric utility may file an application for a  
5           financing order, or as a joint applicant with one or more  
6           affiliate electric utilities, to issue bonds to recover wildfire  
7           recovery costs. The application shall include a description of:

8           (1) How the wildfire recovery charges will be allocated  
9           among the applicant electric utilities in a manner  
10          that is equitable and that need not correspond to the  
11          incurrence of wildfire recovery costs by each electric  
12          utility; and

13          (2) Whether and how the consumers of any of the applicant  
14          electric utilities will be responsible for the payment  
15          of wildfire recovery charges allocated to consumers of  
16          affiliate electric utilities.

17          In the alternative, an electric utility may apply for a  
18          financing order to issue bonds to recover wildfire recovery  
19          costs, including wildfire recovery costs incurred, or to be  
20          incurred, by the applicant and one or more of its affiliate  
21          electric utilities. In connection with the issuance of a



1 financing order pursuant to this subsection, the commission  
2 shall issue a concurrent order to the affiliate electric utility  
3 or electric utilities directing the affiliate electric utility  
4 or electric utilities to impose rates on its or their consumers  
5 designed to generate revenue sufficient to pay credits over the  
6 life of the bonds to the applicant electric utility in the  
7 amount as the commission determines is equitable, just, and  
8 reasonable. The application shall describe the allocation  
9 method and adjustment mechanism for the affiliate electric  
10 utility credit payments proposed to be subject to the concurrent  
11 commission order.

12 (d) The commission shall issue an approval or denial of  
13 any application for a financing order filed pursuant to this  
14 section within ninety days of the last filing in the applicable  
15 docket but no later than one year after the application is  
16 filed.

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

19 (1) Whether the recovery of costs is consistent with the  
20 public interest;



- 1           (2) Whether the structuring, marketing, and pricing of the  
2           bonds are expected to result in the lowest wildfire  
3           recovery charges consistent with market conditions at  
4           the time at which the bonds are priced and the terms  
5           of the financing order;
- 6           (3) Whether the terms and conditions of any bonds to be  
7           issued are just and reasonable;
- 8           (4) With respect to an application by an investor-owned  
9           utility, whether the recovery of wildfire recovery  
10          costs through the designation of the wildfire recovery  
11          charges and any associated fixed recovery tax amounts,  
12          and the issuance of bonds in connection with the  
13          wildfire recovery charges, would result in net savings  
14          or mitigate rate impacts to consumers, as compared to  
15          rate recovery without securitization; and
- 16          (5) Any other factors that the commission deems reasonable  
17          and in the public interest.
- 18 If the commission makes the determination specified in this  
19 section, the commission shall establish, as part of the  
20 financing order, a procedure for the electric utility to submit  
21 applications from time to time to request the issuance of



1 additional financing orders designating wildfire recovery  
2 charges and any associated fixed recovery tax amounts as  
3 recoverable.

4 At the option of the electric utility, the electric utility  
5 may include in its application for a financing order a request  
6 for authorization to sell, transfer, assign, or pledge wildfire  
7 recovery property to a governmental entity if the electric  
8 utility expects bonds issued by a governmental entity would  
9 result in a more cost-efficient means, taking into account all  
10 financing costs related to the bonds, than using another  
11 financing entity to issue bonds to finance the same wildfire  
12 recovery costs, taking into account the costs of issuing the  
13 other financing entity's bonds.

14 (f) Wildfire recovery charges and any associated fixed  
15 recovery tax amounts shall be imposed only on existing and  
16 future consumers in the utility service territory. Consumers  
17 within the utility service territory of the electric utility  
18 that are subject to the financing order shall continue to pay  
19 wildfire recovery charges and any associated fixed recovery tax  
20 amounts until the bonds and associated financing costs are paid  
21 in full by the financing entity.



1           **SA-3 Wildfire recovery financing order.** (a) A financing  
2 order shall remain in effect until the bonds issued under the  
3 financing order and all financing costs related to the bonds  
4 have been paid in full or defeased by their terms.

5           A financing order shall remain in effect and unabated  
6 notwithstanding the bankruptcy, reorganization, or insolvency of  
7 the electric utility or the commencement of any judicial or  
8 nonjudicial proceeding on the financing order.

9           (b) Notwithstanding any other law to the contrary, with  
10 respect to wildfire recovery property that has been made the  
11 basis for the issuance of bonds and with respect to any  
12 associated fixed recovery tax amounts, the financing order, the  
13 wildfire recovery charges, and any associated fixed recovery tax  
14 amounts shall be irrevocable. The State and its agencies,  
15 including the commission, pledge and agree with bondholders, the  
16 owners and assignees of the wildfire recovery property, and  
17 other financing parties that the State and its agencies shall  
18 not take any action listed in this subsection. This subsection  
19 shall not preclude an action if the action would not adversely  
20 affect the interests of the electric utility and of assignees of



1 the wildfire recovery property. The prohibited actions shall be  
2 the following:

- 3 (1) Alter the provisions of this chapter, which authorize  
4 the commission to create an irrevocable contract right  
5 or choice in action by the issuance of a financing  
6 order, to create wildfire recovery property and make  
7 the wildfire recovery charges imposed by a financing  
8 order irrevocable, binding, nonbypassable charges for  
9 all existing and future consumers;
- 10 (2) Take or permit any action that impairs or would impair  
11 the value of wildfire recovery property or the  
12 security for the bonds or revise the wildfire recovery  
13 costs for which recovery is authorized;
- 14 (3) In any way impair the rights and remedies of the  
15 bondholders, assignees, and other financing parties;
- 16 (4) Except for changes made pursuant to the formula-based  
17 true-up mechanism authorized under subsection (d),  
18 reduce, alter, or impair wildfire recovery charges  
19 that are to be imposed, billed, charged, collected,  
20 and remitted for the benefit of the bondholders, any  
21 assignee, and any other financing parties until any



1           and all principal, interest, premium, financing costs,  
2           and other fees, expenses, or charges incurred, and any  
3           contracts to be performed, in connection with the  
4           related bonds have been paid and performed in full.

5           The financing entity may include this pledge in the bonds.

6           (c) Under a financing order, the electric utility shall  
7           retain sole discretion to select the financing entity and to  
8           cause bonds to be issued, including the right to defer or  
9           postpone the issuance, assignment, sale, or transfer of wildfire  
10          recovery property.

11          (d) The commission may create, pursuant to an application  
12          from an electric utility, a nonbypassable charge referred to as  
13          a wildfire recovery charge, which shall be applied to recover  
14          principal, interest, and other financing costs relating to the  
15          bonds. The wildfire recovery charge shall be a dedicated,  
16          discrete tariff rider.

17          The commission, in any financing order, shall establish a  
18          procedure for periodic true-up adjustments to wildfire recovery  
19          charges, which shall be made at least annually and may be made  
20          more frequently. Within thirty days after receiving an electric  
21          utility's filing of a true-up adjustment, the commission's



1 review of the filing shall be limited to mathematical or  
2 clerical errors as determined in accordance with any true-up  
3 adjustment formulas set forth in the applicable financing order.

4 The commission shall either approve the filing or inform  
5 the electric utility of any mathematical or clerical errors in  
6 its calculation. If the commission informs the electric utility  
7 of mathematical or clerical errors in its calculation, the  
8 electric utility shall correct its error and refile its true-up  
9 adjustment. The timeframes previously described in this  
10 subsection shall apply to a refiled true-up adjustment.

11 (e) Neither financing orders nor bonds issued under this  
12 chapter shall constitute a general obligation of the State or  
13 any of its political subdivisions, 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 wildfire recovery property provided under this chapter.

17 All bonds shall contain on the face thereof a statement to  
18 the following effect: "Neither the full faith and credit nor  
19 the taxing power of the State of Hawaii is pledged to the  
20 payment of the principal of, or interest and premium on, this  
21 bond."



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

5           (f) Wildfire recovery charges are wildfire recovery  
6 property when, and to the extent that, a financing order  
7 authorizing the wildfire recovery charges has become effective  
8 in accordance with this chapter, and the wildfire recovery  
9 property shall thereafter continuously exist as property for all  
10 purposes, and all of the rights and privileges relating to that  
11 property shall continuously exist for the period and to the  
12 extent provided in the financing order, but in any event until  
13 the bonds, including all principal; premiums, if any; interest  
14 with respect to the bonds; and all other financing costs are  
15 paid in full. A financing order may provide that the creation  
16 of wildfire recovery property shall be simultaneous with the  
17 sale of the wildfire recovery property to an assignee as  
18 provided in the application of the pledge of the wildfire  
19 recovery property to secure the bonds.

20           (g) 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 (h) No electric utility approved for a financing order  
4 shall increase compensation for its executive officers unless  
5 the utility's wildfire mitigation plan compliance reports have  
6 been approved by the commission for five consecutive years;  
7 provided that the commission may consider an alternative  
8 symmetric performance incentive mechanism, if the commission  
9 deems appropriate. For the purposes of this subsection,  
10 "wildfire mitigation plan compliance report" has the same  
11 meaning as defined in section A-1.

12 **SA-4 Bonds; issuance; wildfire recovery property**  
13 **interests.** (a) The electric utility may sell and assign all or  
14 portions of its interest in wildfire recovery property to one or  
15 more financing entities that make that wildfire recovery  
16 property the basis for issuance of bonds, to the extent approved  
17 in a financing order. The electric utility or financing entity  
18 may pledge wildfire recovery property as collateral, directly or  
19 indirectly, for bonds to the extent approved in the pertinent  
20 financing orders providing for a security interest in the  
21 wildfire recovery property, in the manner set forth in this



1 section. In addition, wildfire recovery property may be sold or  
2 assigned by either of the following:

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

7 (2) Any person acquiring the wildfire recovery property  
8 after a sale or assignment pursuant to this chapter.

9 (b) To the extent that any interest in wildfire recovery  
10 property is sold, assigned, or is pledged as collateral pursuant  
11 to subsection (a), the commission may authorize the electric  
12 utility to contract with the financing entity or its assignees  
13 that the electric utility will:

14 (1) Continue to operate its system to provide service to  
15 consumers within its service territory;

16 (2) Collect amounts in respect of the wildfire recovery  
17 charges for the benefit and account of the financing  
18 entity or its assignees; and

19 (3) Account for and remit these amounts to or for the  
20 account of the financing entity or its assignees.



1 Contracting with the financing entity or its assignees in  
2 accordance with that authorization shall not impair or negate  
3 the characterization of the sale, assignment, or pledge as an  
4 absolute transfer, a true sale, or a security interest, as  
5 applicable. To the extent that billing, collection, and other  
6 related services with respect to the provision of the electric  
7 utility's services are provided to a consumer by any person or  
8 entity other than the electric utility in whose service  
9 territory the consumer is located, that person or entity shall  
10 collect the wildfire recovery charges and any associated fixed  
11 recovery tax amounts from the consumer for the benefit and  
12 account of the electric utility, financing entity, or assignees  
13 with the associated revenues remitted solely for the person's  
14 benefit as a condition to the provision of electric service to  
15 that consumer.

16 Each financing order shall impose terms and conditions,  
17 consistent with the purposes and objectives of this chapter, on  
18 any person or entity responsible for billing, collection, and  
19 other related services, including without limitation collection  
20 of the wildfire recovery charges and any associated fixed



1 recovery tax amounts, that are the subject of the financing  
2 order.

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

8 (d) Wildfire recovery property that is specified in a  
9 financing order shall constitute an existing, present property  
10 right, notwithstanding the fact that the imposition and  
11 collection of wildfire recovery charges depend on the electric  
12 utility's continuing to provide services or continuing to  
13 perform its servicing functions relating to the collection of  
14 wildfire recovery charges or on the level of future service  
15 consumption (e.g., electricity consumption). Wildfire recovery  
16 property shall exist whether or not the wildfire recovery  
17 charges have been billed, have accrued, or have been collected  
18 and notwithstanding the fact that the value for a security  
19 interest in the wildfire recovery property, or amount of the  
20 wildfire recovery property, is dependent on the future provision  
21 of service to consumers. All wildfire recovery property



1 specified in a financing order shall continue to exist until the  
2 bonds issued pursuant to a financing order and all associated  
3 financing costs are paid in full.

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

13 (f) Notwithstanding any law to the contrary, any  
14 requirement under this chapter or a financing order that the  
15 commission acts upon shall be binding upon the commission, as it  
16 may be constituted from time to time, and any successor agency  
17 exercising functions similar to the commission, and the  
18 commission shall have no authority to rescind, alter, or amend  
19 that requirement in a financing order.

20 **§A-5 Wildfire recovery charge.** (a) The wildfire recovery  
21 charge created pursuant to a financing order approved pursuant



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

8 (b) As long as any bonds are outstanding and any financing  
9 costs have not been paid in full, any wildfire recovery charge  
10 and any associated fixed recovery tax amounts authorized under a  
11 financing order shall be nonbypassable. Subject to any  
12 exceptions provided in a financing order, a wildfire recovery  
13 charge and any associated fixed recovery tax amounts shall be  
14 paid by all existing and future consumers within the utility  
15 service territory.

16 (c) The wildfire recovery charge shall be collected by an  
17 electric utility or its successors, in accordance with  
18 section A-8(a), in full through a charge that is separate and  
19 apart from the electric utility's rates.

20 (d) An electric utility may exercise the same rights and  
21 remedies under its tariff and applicable law and regulation



1 based on a consumer's nonpayment of the wildfire recovery charge  
2 as it could for a consumer's failure to pay any other charge  
3 payable to that electric utility.

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

- 11 (1) The commission has issued a financing order  
12 authorizing the wildfire recovery charge to be  
13 included in the wildfire recovery property;
- 14 (2) Value has been given by the pledgees of the wildfire  
15 recovery property; and
- 16 (3) The pledgor has signed a security agreement covering  
17 the wildfire recovery property.

18 (b) A valid and enforceable security interest in wildfire  
19 recovery property is perfected when it has attached and when a  
20 financing statement has been filed with the bureau of  
21 conveyances of the State of Hawaii naming the pledgor of the



1 wildfire recovery property as "debtor" and identifying the  
2 wildfire recovery property.

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

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



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

13 Subject to the terms of the security agreement, upon  
14 compliance with the requirements of section 490:9-312(b)(1), the  
15 pledgees of the wildfire recovery property shall have a  
16 perfected security interest in all cash and deposit accounts of  
17 the electric utility in which wildfire recovery property  
18 revenues have been commingled with other funds.

19 (e) If default occurs under the security agreement  
20 covering the wildfire recovery property, the pledgees of the  
21 wildfire recovery property, subject to the terms of the security



1 agreement, shall have all rights and remedies of a secured party  
2 upon default under article 9 of chapter 490 and shall be  
3 entitled to foreclose or otherwise enforce their security  
4 interest in the wildfire recovery property, subject to the  
5 rights of any third parties holding prior security interests in  
6 the wildfire recovery property perfected in the manner provided  
7 in this section.

8 In addition, the commission may require in the financing  
9 order creating the wildfire recovery property that in the event  
10 of default by the electric utility in payment of wildfire  
11 recovery property revenues, the commission and any successor  
12 thereto, upon the application by the pledgees or assignees,  
13 including assignees under section B-5 of the wildfire recovery  
14 property, and without limiting any other remedies available to  
15 the pledgees or assignees by reason of the default, shall order  
16 the sequestration and payment to the pledgees or assignees of  
17 wildfire recovery property revenues. Any financing order shall  
18 remain in full force and effect notwithstanding any bankruptcy,  
19 reorganization, or other insolvency proceedings with respect to  
20 the debtor, pledgor, or transferor of the wildfire recovery  
21 property. Any surplus in excess of amounts necessary to pay



1 principal; premiums, if any; interest, costs, and arrearages on  
2 the bonds; and associated financing costs arising under the  
3 security agreement, shall be remitted to the debtor, pledgor, or  
4 transferor, for the purpose of remitting such amounts to  
5 customers via the electric utility.

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

9 **SA-7 Transfers of wildfire recovery property.** (a) A  
10 transfer or assignment of wildfire recovery property by the  
11 electric utility to an assignee or to a financing entity, or by  
12 an assignee of the electric utility or a financing entity to  
13 another financing entity, which the parties in the governing  
14 documentation have expressly stated to be a sale or other  
15 absolute transfer, in a transaction approved in a financing  
16 order, shall be treated as an absolute transfer of all of the  
17 transferor's right, title, and interest, as in a true sale, and  
18 not as a pledge or other financing, of the wildfire 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 assignee shall not be affected or impaired by, among other  
5 things, the occurrence of any of the following:

6 (1) Commingling of wildfire 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 wildfire recovery property, whether direct or  
13 indirect, 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 wildfire recovery charge;

17 (3) Any recourse that an assignee 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 wildfire  
2 recovery 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 wildfire recovery charge  
6 as provided in the financing order.
- 7 (c) A transfer of wildfire recovery property shall be  
8 deemed perfected against third parties when:
- 9 (1) The commission issues the financing order authorizing  
10 the wildfire recovery charge included in the wildfire  
11 recovery property; and
- 12 (2) An assignment of the wildfire recovery property in  
13 writing has been executed and delivered to the  
14 assignee.
- 15 (d) As between bona fide assignees of the same right for  
16 value without notice, the assignee first filing a financing  
17 statement with the bureau of conveyances of the State of Hawaii  
18 in accordance with part 5 of article 9 of chapter 490, naming  
19 the assignor of the wildfire recovery property as debtor and  
20 identifying the wildfire recovery property, shall have priority.  
21 Any description of the wildfire recovery property shall be



1 sufficient if it refers to the financing order creating the  
2 wildfire recovery property. A copy of the financing statement  
3 shall be filed by the assignee with the commission, and the  
4 commission may require the assignor or the assignee to make  
5 other filings with respect to the transfer in accordance with  
6 procedures the commission may establish; provided that these  
7 filings shall not affect the perfection of the transfer.

8 **SA-8 Financing entity successor requirements; default of**  
9 **financing entity.** (a) Any successor to an electric utility  
10 subject to a financing order, whether pursuant to any  
11 bankruptcy, reorganization, or other insolvency proceeding, or  
12 pursuant to any merger, sale, or transfer, by operation of law,  
13 or otherwise, shall be bound by the requirements of this  
14 chapter. The successor of the electric utility shall perform  
15 and satisfy all obligations of the electric utility under the  
16 financing order in the same manner and to the same extent as the  
17 electric utility, including the obligation to collect and pay  
18 the wildfire recovery charge to any financing party as required  
19 by a financing order or any assignee. Any successor to the  
20 electric utility shall be entitled to receive any fixed recovery  
21 tax amounts otherwise payable to the electric utility.



1 (b) The commission may require in a financing order that,  
2 if a default by the electric utility in remittance of the  
3 wildfire recovery charge collected arising with respect to  
4 wildfire recovery property occurs, the commission, without  
5 limiting any other remedies available to any financing party by  
6 reason of the default, shall order the sequestration and payment  
7 to the beneficiaries of the wildfire recovery charge collected  
8 arising with respect to the wildfire recovery property. Any  
9 order shall remain in full force and effect notwithstanding any  
10 bankruptcy, reorganization, or other insolvency proceedings with  
11 respect to the electric utility.

12 **§A-9 Severability.** If any provision of this chapter is  
13 held to be invalid or is superseded, replaced, repealed, or  
14 expires for any reason:

15 (1) That occurrence shall not affect any action allowed  
16 under this chapter that is taken prior to that  
17 occurrence by the commission, a financing entity, a  
18 bondholder, or any financing party, and any such  
19 action shall remain in full force and effect; and

20 (2) The validity and enforceability of the rest of this  
21 chapter shall remain unaffected."



## PART III

SECTION 4. Section 269-146, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

"~~§~~269-146~~§~~ **Hawaii electricity reliability surcharge; authorization; cost recovery.** (a) The commission ~~may~~ shall require, by rule or order, that all utilities, persons, businesses, or entities connecting to the Hawaii electric system, or any other user, owner, or operator of any electric element that is a part of an interconnection on the Hawaii electric system shall pay a surcharge that shall be collected by Hawaii's electric utilities~~[-]~~ on behalf of the Hawaii electricity reliability administrator. The commission shall not contract or otherwise delegate the ability to create the Hawaii electricity reliability surcharge under this section to any other entity. This surcharge amount shall be known as the Hawaii electricity reliability surcharge."

2. By amending subsections (d) and (e) to read:

"(d) The commission may allow an electric utility, on behalf of the Hawaii electricity reliability administrator, to recover appropriate and reasonable costs under the Hawaii



1 electricity reliability surcharge for any interconnection to the  
2 Hawaii electric system, including interconnection studies and  
3 other analysis associated with studying the impact or necessary  
4 infrastructure and operational requirements needed to reliably  
5 interconnect a generator, as well as from electric utility  
6 customers through a surcharge or assessment subject to review  
7 and approval by the commission under section 269-16.

8 (e) Nothing in this section shall create or be construed  
9 to cause amounts collected through the Hawaii electricity  
10 reliability surcharge to be considered state or public moneys  
11 subject to appropriation by the legislature or be required to be  
12 deposited into the state treasury~~[-]~~, nor shall any amounts  
13 collected be considered a utility's property available to  
14 satisfy an obligation of that utility."

15 SECTION 5. Section 269-147, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "[~~f~~]~~S~~269-147[~~f~~] **Hawaii electricity reliability**  
18 **administrator; contracting.** (a) The commission [~~may~~] shall  
19 contract for the performance of its functions under this part  
20 with a person, business, or organization, except for a public  
21 utility as defined under this chapter, that will serve as the



1 Hawaii electricity reliability administrator provided for under  
2 this part; provided that the commission shall not contract for  
3 the performance of its functions under sections 269-142(a) and  
4 (b) and 269-146.

5 (b) Any entity contracted by the commission to serve as  
6 the Hawaii electricity reliability administrator under this  
7 section shall be selected by the commission in accordance with  
8 state law, including chapter 103D. The Hawaii electricity  
9 reliability administrator, [~~if so~~] when enabled by the  
10 commission through mutual agreement under the laws of the State  
11 of Hawaii, shall hold the powers and rights delegated by the  
12 commission under this part for the term of the executed  
13 contract; provided that the commission shall retain full  
14 authority over the Hawaii electricity reliability administrator  
15 and the exclusive authority to carry out functions and  
16 responsibilities enumerated under sections 269-142(a) and (b)  
17 and 269-146."

18 PART IV

19 SECTION 6. Section 269-92, Hawaii Revised Statutes, is  
20 amended to read as follows:



- 1           "**§269-92 Renewable portfolio standards.** (a) Each  
2 electric utility company that sells electricity for consumption  
3 in the State shall establish a renewable portfolio standard of:
- 4           (1) Ten per cent of its net electricity sales by December  
5                 31, 2010;
  - 6           (2) Fifteen per cent of its net electricity sales by  
7                 December 31, 2015;
  - 8           (3) Thirty per cent of its net electricity sales by  
9                 December 31, 2020;
  - 10          (4) Forty per cent of its net electricity generation by  
11                 December 31, 2030;
  - 12          (5) Seventy per cent of its net electricity generation by  
13                 December 31, 2040; and
  - 14          (6) One hundred per cent of its net electricity generation  
15                 by December 31, 2045.
- 16          (b) The public utilities commission may establish  
17 standards for each electric utility company that prescribe the  
18 portion of the renewable portfolio standards that shall be met  
19 by specific types of renewable energy resources; provided that:
- 20          (1) Before January 1, 2015, at least fifty per cent of the  
21                 renewable portfolio standards shall be met by



1 electrical energy generated using renewable energy as  
2 the source, and after December 31, 2014, the entire  
3 renewable portfolio standard shall be met by  
4 electrical generation from renewable energy sources;

5 (2) Beginning January 1, 2015, electrical energy savings  
6 shall not count toward renewable energy portfolio  
7 standards;

8 (3) Where electrical energy is generated or displaced by a  
9 combination of renewable and nonrenewable means, the  
10 proportion attributable to the renewable means shall  
11 be credited as renewable energy; and

12 (4) Where fossil and renewable fuels are co-fired in the  
13 same generating unit, the unit shall be considered to  
14 generate renewable electrical energy (electricity) in  
15 direct proportion to the percentage of the total heat  
16 input value represented by the heat input value of the  
17 renewable fuels.

18 (c) The public utilities commission shall establish  
19 standards that require each electric utility company to remove  
20 from the rate base a commensurate amount of costs related to  
21 fossil fuel resources when adding new or converted firm



1 renewable electrical energy and renewable energy resources, as  
2 defined in section 269-91.

3       ~~(e)~~ (d) If the public utilities commission determines  
4 that an electric utility company failed to meet the renewable  
5 portfolio standard, after a hearing in accordance with chapter  
6 91, the utility shall be subject to penalties to be established  
7 by the public utilities commission; provided that if the  
8 commission determines that the electric utility company is  
9 unable to meet the renewable portfolio standards because of  
10 reasons beyond the reasonable control of the electric utility  
11 company, as set forth in subsection (d), the commission, in its  
12 discretion, may waive in whole or in part any otherwise  
13 applicable penalties.

14       ~~(d)~~ (e) Events or circumstances that are beyond an  
15 electric utility company's reasonable control may include, to  
16 the extent the event or circumstance could not be reasonably  
17 foreseen and ameliorated:

- 18           (1) Weather-related damage;  
19           (2) Natural disasters;  
20           (3) Mechanical or resource failure;



- 1 (4) Failure of renewable electrical energy producers to  
2 meet contractual obligations to the electric utility  
3 company;
- 4 (5) Labor strikes or lockouts;
- 5 (6) Actions of governmental authorities that adversely  
6 affect the generation, transmission, or distribution  
7 of renewable electrical energy under contract to an  
8 electric utility company;
- 9 (7) Inability to acquire sufficient renewable electrical  
10 energy due to lapsing of tax credits related to  
11 renewable energy development;
- 12 (8) Inability to obtain permits or land use approvals for  
13 renewable electrical energy projects;
- 14 (9) Inability to acquire sufficient cost-effective  
15 renewable electrical energy;
- 16 (10) Inability to acquire sufficient renewable electrical  
17 energy to meet the renewable portfolio standard goals  
18 beyond 2030 in a manner that is beneficial to Hawaii's  
19 economy in relation to comparable fossil fuel  
20 resources;



- 1 (11) Substantial limitations, restrictions, or prohibitions
- 2 on utility renewable electrical energy projects;
- 3 (12) Non-renewable energy generated by electric generation
- 4 facilities where the electric utility company
- 5 otherwise does not have direct control or ownership of
- 6 independent power producers, government and non-
- 7 government agencies, and any persons or entities,
- 8 including merchant or co-generation facilities; and
- 9 (13) Other events and circumstances of a similar nature.

10 (f). For purposes of this section, "firm renewable" means a  
 11 renewable energy resource available on a continuous or  
 12 relatively continuous basis as determined by the public  
 13 utilities commission."

14 SECTION 7. Section 269-95, Hawaii Revised Statutes, is  
 15 amended to read as follows:

16 "**§269-95 Renewable portfolio standards study.** The public  
 17 utilities commission shall:

- 18 (1) By December 31, 2007, develop and implement a utility
- 19 ratemaking structure, which may include
- 20 performance-based ratemaking, to provide incentives
- 21 that encourage Hawaii's electric utility companies to



1 use cost-effective renewable energy resources found in  
2 Hawaii to meet the renewable portfolio standards  
3 established in section 269-92, while allowing for  
4 deviation from the standards in the event that the  
5 standards cannot be met in a cost-effective manner or  
6 as a result of events or circumstances, such as  
7 described in section [~~269-92(d)~~], 269-92(e), beyond  
8 the control of the electric utility company that could  
9 not have been reasonably anticipated or ameliorated;

10 (2) Gather, review, and analyze empirical data to:

- 11 (A) Determine the extent to which any proposed  
12 utility ratemaking structure would impact  
13 electric utility companies' profit margins; and  
14 (B) Ensure that the electric utility companies'  
15 opportunity to earn a fair rate of return is not  
16 diminished;

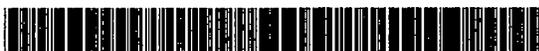
17 (3) Use funds from the public utilities special fund to  
18 contract with the Hawaii natural energy institute of  
19 the University of Hawaii to conduct independent  
20 studies to be reviewed by a panel of experts from  
21 entities such as the United States Department of



1 Energy, National Renewable Energy Laboratory, Electric  
2 Power Research Institute, Hawaii electric utility  
3 companies, environmental groups, and other similar  
4 institutions with the required expertise. These  
5 studies shall include findings and recommendations  
6 regarding:

7 (A) The capability of Hawaii's electric utility  
8 companies to achieve renewable portfolio  
9 standards in a cost-effective manner and shall  
10 assess factors such as:

- 11 (i) The impact on consumer rates;  
12 (ii) Utility system reliability and stability;  
13 (iii) Costs and availability of appropriate  
14 renewable energy resources and technologies,  
15 including the impact of renewable portfolio  
16 standards, if any, on the energy prices  
17 offered by renewable energy developers;  
18 (iv) Permitting approvals;  
19 (v) Effects on the economy;  
20 (vi) Balance of trade, culture, community,  
21 environment, land, and water;



- 1 (vii) Climate change policies;
- 2 (viii) Demographics;
- 3 (ix) Cost of fossil fuel volatility; and
- 4 (x) Other factors deemed appropriate by the
- 5 commission; and
- 6 (B) Projected renewable portfolio standards to be set
- 7 five and ten years beyond the then current
- 8 standards;
- 9 (4) Evaluate the renewable portfolio standards every five
- 10 years, beginning in 2013, and may revise the standards
- 11 based on the best information available at the time to
- 12 determine if the standards established by section
- 13 269-92 remain effective and achievable; and
- 14 (5) Report its findings and revisions to the renewable
- 15 portfolio standards, based on its own studies and
- 16 other information, to the legislature no later than
- 17 twenty days before the convening of the regular
- 18 session of 2014, and every five years thereafter."

PART V

20 SECTION 8. In codifying the new sections added by section

21 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 9. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect on May 13, 2040.



**Report Title:**

DCCA; PUC; Energy; Wildfire Liability Trust Fund; Firm Renewable Energy

**Description:**

Establishes the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes. Specifies that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate. Authorizes securitization for electric utilities. Requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard. Effective 5/13/2040. (SD3)

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

