
A BILL FOR AN ACT

RELATING TO WILDFIRES.

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

1 SECTION 1. The legislature finds that as the risk of
2 catastrophic wildfires in Hawaii has increased, so has the
3 threat of property damage from these fires. The legislature
4 further finds that the public interest is served by providing a
5 rapid, efficient, and low-cost process for property owners,
6 renters, businesses, and their insurers to obtain compensation
7 if a regulated utility is alleged to have caused or contributed
8 to the damage resulting from a catastrophic wildfire. The
9 legislature also finds that under existing law, individuals and
10 businesses must pursue civil litigation, which is a lengthy,
11 costly, and contentious process.

12 This Act would help individuals and businesses recover by
13 giving them the option to obtain payment quickly through an
14 administrative claims process similar to the One Ohana Fund,
15 also known as the Maui Wildfires Compensation Fund. The
16 administrative claims process will begin based on a preliminary
17 determination that a utility was involved, without waiting for



1 the conclusion of a comprehensive investigation of the origin
2 and cause of a catastrophic wildfire. Claimants are not
3 required to prove that the regulated utility was negligent in
4 order to receive payment through the administrative claims
5 process.

6 This Act:

- 7 (1) Preserves claimants' right to pursue litigation if
8 they choose to reject the amount offered through the
9 administrative claims process;
- 10 (2) Limits the total amount that can be paid for property
11 damage through both the administrative claims process
12 and litigation, balancing the interests of those
13 affected by a catastrophic fire in obtaining
14 compensation and the interests of the public utilities
15 in mitigating the risk of financial instability that
16 can result from unlimited liability;
- 17 (3) Requires the public utilities commission to review the
18 conduct of the public utility and to order the utility
19 to replenish the fund, up to a cap, if it finds that
20 the utility acted imprudently; and



1 (4) Provides for the legislature to re-evaluate the risk
2 of catastrophic wildfires in 2035 and to refund to
3 customers the amounts they contributed, plus earnings
4 on those funds, to the extent the legislature
5 concludes that the size of the fund can be reduced
6 based on actions taken to reduce risk.

7 The legislature also finds that the public interest is
8 served by establishing a compensation mechanism that does not
9 expose regulated utilities to the financial instability that can
10 result from the existing litigation process. Regulated
11 utilities alleged to have caused a catastrophic wildfire face
12 massive costs from litigation. Those costs can overwhelm those
13 utilities, undermining their ability to make investments that
14 the State needs. Indeed, even the possibility of litigation
15 regarding a future catastrophic wildfire can create a cloud of
16 uncertainty that can impair a utility's ability to attract
17 capital on reasonable terms. These costs and uncertainties
18 result in increased rates paid by customers and may reduce
19 utilities' ability to make investments in wildfire prevention
20 and resilience initiatives, among other priorities that may
21 affect the health and safety of the State's residents.



1 The legislature additionally finds that securitization may
2 be the most efficient, least costly way for a utility to finance
3 the contributions to the wildfire recovery fund. Utility
4 securitization transactions have an extensive track record of
5 success.

6 Therefore, the purpose of this Act is to serve the public
7 interest by establishing a mechanism to provide efficient
8 compensation for property damage resulting from a future
9 catastrophic wildfire allegedly caused by a regulated utility,
10 while also protecting the financial integrity of Hawaii's
11 regulated utilities.

12 SECTION 2. The Hawaii Revised Statutes is amended by
13 adding two new chapters to be appropriately designated and to
14 read as follows:

15 **"CHAPTER A**

16 **WILDFIRE RECOVERY FUND**

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

19 "Catastrophic wildfire" means a wildfire occurring in the
20 State on or after the operation date that destroys more than
21 five hundred commercial structures or residential structures



1 designed for habitation, or, for an electric cooperative with
2 less than fifty thousand residential members, meets a threshold
3 dollar amount of potential claims to be determined by the
4 executive director.

5 "Commission" means the public utilities commission.

6 "Contributor" means a public utility that satisfies all
7 requirements to participate in the wildfire recovery fund.

8 "Covered catastrophic wildfire" means a catastrophic
9 wildfire that may have been caused, or whose severity may have
10 been increased, by a contributor's facilities or actions.

11 "Electric utility" means a public utility that exists for
12 the furnishing of electrical power.

13 "Executive director" means the executive director of the
14 wildfire recovery fund.

15 "Government entity" means any government agency, board,
16 bureau, commission, component, department, division, office,
17 subdivision, unit, or instrumentality of any kind, including
18 federal, state, and municipal entities.

19 "Investor-owned electric utility" means an electric utility
20 that is owned by shareholders and overseen by a board of
21 directors elected by shareholders.



1 "Operation date" means the first date for contributors to
2 elect to participate in the wildfire recovery fund under section
3 A-3(a) and the rules adopted to implement the wildfire recovery
4 fund.

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

8 "Property owner" means an owner of real property in the
9 State.

10 "Public utility" has the same meaning as in section 269-1.

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

13 "Qualifying action" means a civil action by a qualified
14 claimant to recover qualifying damages.

15 "Qualifying damages" means economic damages arising out of
16 the loss of or damage to real or personal property from a
17 covered catastrophic wildfire.

18 "Tenant" means a person or entity lawfully entitled to
19 occupy real property that the person or entity does not own in
20 the State.



1 "Wildfire recovery fund" means the wildfire recovery fund
2 established by section A-2.

3 "Wildfire risk mitigation plan" means a plan, which may
4 include a natural hazard mitigation report, in which a public
5 utility addresses how it will mitigate the risk of its equipment
6 in causing or exacerbating a wildfire.

7 **§A-2 Wildfire recovery fund; establishment; executive**
8 **director.** (a) There is established outside the state treasury
9 a trust fund to be known as the wildfire recovery fund and any
10 accounts thereunder to carry out the purposes of this chapter.
11 All moneys in the wildfire recovery fund shall be expended
12 exclusively for the uses and purposes set forth in this chapter.
13 The wildfire recovery fund shall not be subject to chapter 431.
14 The moneys in the wildfire recovery fund not required for
15 immediate use shall be invested by the executive director for
16 the benefit of the wildfire recovery fund; provided that no
17 assets of the wildfire recovery fund shall be transferred to the
18 general fund of the State or to any other fund of the State or
19 otherwise encumbered or used for any purpose other than those
20 specified for the wildfire recovery fund.



1 (b) The wildfire recovery fund shall be placed within the
2 department of commerce and consumer affairs for administrative
3 purposes. The fund shall be a public body corporate and
4 politic.

5 (c) The governor shall appoint an executive director of
6 the wildfire recovery fund, who shall be exempt from chapter 76,
7 and shall fix the executive director's compensation. The
8 executive director may be removed only by the governor.

9 (d) The executive director shall be responsible for the
10 day-to-day operations and management of the wildfire recovery
11 fund and shall perform all functions necessary to implement this
12 chapter, including entering into contracts and other obligations
13 related to the operation, management, and administration of the
14 wildfire recovery fund.

15 (e) The executive director may retain, employ, or contract
16 with officers; experts; employees; accountants; actuaries;
17 financial professionals; and other advisers, consultants,
18 attorneys, and professionals, as may be necessary in the
19 executive director's judgment, for the efficient operation,
20 management, and administration of the wildfire recovery fund.



1 (f) The executive director shall have the power to issue
2 revenue bonds, from time to time, in such principal amounts as
3 the executive director may deem advisable for the purpose of
4 this chapter, backed by future payments to the wildfire recovery
5 fund that contributors have committed to make. These bonds
6 shall be issued pursuant to part III of chapter 39, except as
7 provided in this chapter.

8 (g) The executive director may establish the investment
9 policies of the wildfire recovery fund.

10 (h) The executive director shall adopt rules pursuant to
11 chapter 91 to implement this chapter.

12 **§A-3 Wildfire recovery fund; eligibility for participation**
13 **as a contributor; contributions.** (a) To be eligible to
14 participate as a contributor, a public utility shall:

15 (1) Have a wildfire risk mitigation plan that has been
16 approved or accepted by the commission;

17 (2) Notify the executive director, in the year before the
18 public utility becomes a contributor, that it intends
19 to participate in the wildfire recovery fund;



1 (3) Agree to make an initial contribution, the payment of
2 which is thereafter a binding commitment enforceable
3 by the executive director; and

4 (4) Provide a comparison of costs for current commercial
5 insurance coverage compared to wildfire property
6 damage and loss.

7 (b) The initial contributions from investor-owned electric
8 utilities collectively shall be:

9 (1) \$, which amount shall be recovered from its
10 customers in nonbypassable rates; and

11 (2) \$, which amount shall be funded by
12 shareholders of those investor-owned electric
13 utilities, and of which \$ shall be used
14 exclusively for the payment of salaries of the
15 executive director and of all other persons retained
16 by the executive director to implement this chapter
17 and the contracting of consultants to assist the
18 public utilities commission in determining whether a
19 contributor acted prudently under section A-5, with
20 any funds remaining of the \$ in 2035 to be
21 transferred to the wildfire recovery fund.



1 (c) The investor-owned electric utilities may elect to
2 make the initial contributions set forth in subsection (b) (1),
3 to the degree not paid for through securitization pursuant to
4 chapter B, over a period not to exceed five years; provided that
5 interest shall be added to any amounts paid after the first
6 year, at an interest rate equal to the investor-owned electric
7 utilities' incremental cost of long-term debt, with such
8 interest recovered from customers in rates.

9 (d) The executive director shall determine the initial
10 contributions from other public utilities based on an actuarial
11 assessment of the risk of potential payments by the wildfire
12 recovery fund resulting from covered catastrophic wildfires
13 created by such public utility.

14 (e) The executive director may propose supplemental
15 contributions to the wildfire recovery fund by participating
16 public utilities.

17 (f) Investment earnings associated with payments made to
18 the wildfire recovery fund that were recovered in regulated
19 rates from customers shall be refunded annually to the paying
20 public utility to be refunded to those customers in the form of
21 a credit on their ratepayer accounts.



(g) If a contributor fails to pay any part of an initial contribution or a supplemental contribution that it agreed to make, or elects not to agree to make a supplemental contribution, that contributor shall no longer be a contributor as of the date on which the payment was due, and the contributor shall not receive any refund of payments previously made; provided that a contributor that elects not to make a supplemental contribution shall be a contributor as to any catastrophic wildfire that occurs before the election date.

After failing to, or electing not to, make a payment, a public utility may rejoin the wildfire recovery fund as a contributor on a prospective basis if it makes owed payments with interest.

(h) The executive director shall adopt rules pursuant to chapter 91 regarding the timing of initial and supplemental contributions, which may include upfront, annual, and retrospective payments, specifically payments made after a wildfire occurs.

SA-4 Determination of a covered catastrophic wildfire.

The executive director shall adopt rules pursuant to chapter 91 regarding how to determine whether a wildfire is a covered catastrophic wildfire. These rules shall include a requirement



1 that a wildfire shall be determined to be a covered catastrophic
2 wildfire if a party makes non-frivolous allegations in a legal
3 action that a contributor's facilities caused or contributed to
4 the severity of a catastrophic wildfire.

5 **§A-5 Replenishment of the wildfire recovery fund.** (a) If
6 the wildfire recovery fund has made payments with respect to a
7 covered catastrophic wildfire and after resolution of
8 substantially all third-party liability claims that were brought
9 or could be brought against contributors arising from that
10 covered catastrophic wildfire, each contributor whose facilities
11 were implicated in the covered catastrophic wildfire shall
12 initiate a proceeding before the commission to review the
13 prudence of the contributor's conduct leading to the
14 catastrophic wildfire.

15 (b) The commission shall determine whether the contributor
16 acted prudently:

17 (1) Considering only acts that may have caused the
18 occurrence or contributed to the severity of the
19 covered catastrophic wildfire; and

20 (2) Evaluating the contributor's actions in the context of
21 its overall systems, processes, and programs, such



1 that an error by a contributor's employee would not be
2 a basis for a finding of imprudence, unless that error
3 resulted from the failure of a system, process, or
4 program to prevent the error.

5 (c) If the commission determines that imprudent conduct by
6 the contributor caused the occurrence or contributed to the
7 severity of a covered catastrophic wildfire, the commission
8 shall determine whether to order the contributor to replenish
9 the wildfire recovery fund in whole or in part for payments from
10 the wildfire recovery fund in connection with the covered
11 catastrophic wildfire. In determining the amount of
12 replenishment, if any, the commission shall consider the extent
13 and severity of the contributor's imprudence and factors within
14 and beyond the contributor's control that may have led to or
15 exacerbated the costs from the covered catastrophic wildfire,
16 including but not limited to humidity, temperature, winds, fuel,
17 merged wildfires with independent ignitions, third-party actions
18 that affected the spread of the wildfire, and fire suppression
19 activities.

20 (d) Over any three-year period, the commission shall not
21 order the contributor to reimburse the wildfire recovery fund in



1 an amount that exceeds twenty per cent of the contributor's
2 transmission and distribution equity rate base.

3 (e) A contributor shall not recover in regulated rates any
4 amount that the commission orders it to pay to the wildfire
5 recovery fund as a replenishment under this section.

6 **§A-6 Claims for payment by qualified claimants;**

7 **presentment requirement.** (a) The executive director shall
8 adopt rules pursuant to chapter 91 to create a process through
9 which a qualified claimant that is not a government entity may
10 submit to the wildfire recovery fund a claim for payment of
11 economic damages arising out of property damage resulting from a
12 covered catastrophic wildfire.

13 (b) A qualified claimant shall file a claim for payment
14 for economic damages arising out of the loss of or damage to
15 real or personal property from a covered catastrophic wildfire
16 pursuant to this section. The claim of a qualified claimant
17 that is not a property insurer shall be limited to uninsured
18 economic damages. A qualified claimant shall not file or
19 maintain a civil action against a contributor unless and until
20 the qualified claimant rejects an offer of settlement from the
21 wildfire recovery fund. A qualified claimant who fails to file



1 a claim within four years of the covered catastrophic wildfire
2 shall be ineligible to receive payment from the wildfire
3 recovery fund and shall be barred from instituting or
4 maintaining any qualifying action against a contributor;
5 provided that the executive director may establish a deadline
6 beyond the four-year period by rule and until which time the
7 claimant shall still be eligible to receive payment and shall
8 not be barred from instituting or maintaining any qualifying
9 action.

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

- 14 (1) The economic damages sought by all qualified claimants
15 in the aggregate;
- 16 (2) The amount available to the wildfire recovery fund
17 relative to the amount under paragraph (1);
- 18 (3) The strength of any evidence of contributor liability;
19 and
- 20 (4) The strength of any evidence of involvement of non-
21 contributor third-parties.



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

8 **§A-7 Claims for payment by contributors.** The executive
9 director shall adopt rules pursuant to chapter 91 to create a
10 process through which a contributor may obtain payment from the
11 wildfire recovery fund to satisfy settled or finally adjudicated
12 claims for recovery of qualifying damages after exhausting the
13 contributor's available insurance. The rules shall establish
14 the standard for approving any settlement. To the extent that
15 the wildfire recovery fund lacks sufficient funds to make a
16 payment to a contributor when sought, the wildfire recovery fund
17 shall make such payment upon receipt of contributions that
18 contributors are obligated to make to the wildfire recovery fund
19 under payment schedules.

20 **§A-8 Limitation on aggregate liability.** (a) The
21 aggregate liability of all contributors for qualifying damages



1 arising from a covered catastrophic wildfire, including economic
2 and non-economic damages, shall not exceed the greater of:

3 (1) Fifty per cent of the amount available to the wildfire
4 recovery fund at the time of the covered catastrophic
5 wildfire, including amounts in and obligated to the
6 wildfire recovery fund; or

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

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

15 (1) Payments from the wildfire recovery fund under section
16 A-6; and

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

20 (c) All civil actions arising out of a catastrophic
21 wildfire shall be brought in the judicial circuit in which the



1 catastrophic wildfire occurred. The court shall adopt
2 procedures to equitably apply the limit set forth in subsection
3 (a) to all civil claims for qualifying damages that are filed.
4 All settlements or judgments for claims for qualifying damages
5 shall be subject to approval by the court. The court shall not
6 approve any settlement or judgment that would cause the
7 aggregate liability of contributors to exceed the aggregate
8 liability limit.

9 (d) A court shall consolidate cases arising from a covered
10 catastrophic wildfire. Any circuit court that is not the
11 consolidating court shall transfer any civil case to facilitate
12 such consolidation.

13 **SA-9 Limitations on claims.** (a) No qualifying action
14 shall be instituted or maintained by a qualified claimant
15 against contributors or their affiliates, employees, agents, or
16 insurers if the qualified claimant accepts an offer under
17 section A-6; provided that the rights of a property insurer to
18 sue as a subrogee of its policyholder shall not be affected by a
19 property owner's or tenant's acceptance of an offer under
20 section A-6 and the subrogation rights shall be affected only if



1 the property insurer elects to accept an offer under section A-
2 6.

3 (b) No suit, claim, arbitration, or other civil legal
4 action for indemnity or contribution for amounts paid, or that
5 may be paid, as a result of a covered catastrophic wildfire, may
6 be instituted or maintained by any persons or entities against
7 contributors or their affiliates, employees, agents, or insurers
8 for qualifying damages; provided that this subsection shall not
9 apply to any agreements entered into before the operation date.

10 **§A-10 Several liability.** Any law to the contrary
11 notwithstanding, joint and several liability is abolished for
12 any qualifying damages. Any person or entity that is sued for
13 qualifying damages may argue for apportionment of fault to any
14 other person or entity regardless of whether that person or
15 entity is a party to the action.

16 **§A-11 Reporting; refunds authorized by the legislature.**

17 (a) The executive director shall submit to the legislature and
18 commission an annual report regarding the wildfire recovery fund
19 no later than ninety days prior to the beginning of each regular
20 session until 2034. The annual report submitted by the



1 executive director shall include an update on the activities of
2 the wildfire recovery fund.

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

8 (c) Based on the report in subsection (b), the legislature
9 may determine that the wildfire recovery fund is overfunded and
10 direct the executive director to return contributions, in whole
11 or in part, with associated investment earnings, to
12 contributors. Any payments made to the wildfire recovery fund
13 that were recovered in regulated rates from customers, and any
14 investment earnings associated with those payments, shall, in
15 the event that the legislature orders a refund, be returned to
16 those customers.

17 **§A-12 Inadmissible evidence.** Any findings made or
18 evidence submitted for purposes of proceedings under sections A-
19 4, A-6, and A-7 shall be subject to the limits on admissibility
20 under rule 408, Hawaii rules of evidence, as set forth in
21 section 626-1.



1 CHAPTER B

2 SECURITIZATION

3 §B-1 Definitions. As used in this chapter, unless the
4 context otherwise requires:

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

12 "Assignee" means a legally recognized entity to which an
13 electric utility assigns, sells, or transfers, other than as
14 security, all or a portion of the electric utility's interest in
15 or right to wildfire recovery property. "Assignee" includes a
16 corporation, limited liability company, general partnership or
17 limited partnership, public authority, trust, financing entity,
18 or any other legal entity to which an assignee assigns, sells,
19 or transfers, other than as security, its interest in or right
20 to wildfire recovery property.



1 "Bond" means any bond, note, certificate of participation
2 or beneficial interest, or other evidence of indebtedness or
3 ownership that is issued by the financing entity under a
4 financing order, the proceeds of which are used directly or
5 indirectly to recover, finance, or refinance financing costs of
6 any wildfire recovery costs, and that are directly or indirectly
7 secured by or payable from wildfire recovery property.

8 "Commission" means the public utilities commission.

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

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

17 "Electric cooperative wildfire claims costs" means costs
18 incurred by an electric cooperative to resolve third-party
19 liability claims arising from any wildfire occurring in the
20 State that are not covered by insurance and that the commission
21 finds to be just and reasonable. "Electric cooperative wildfire



1 claims costs" does not include costs incurred by an investor-
2 owned electric utility.

3 "Electric utility" means a public utility that exists for
4 the furnishing of electrical power.

5 "Financing costs" means the reasonable costs to issue,
6 service, repay, or refinance bonds, whether incurred or paid
7 upon issuance of the bonds or over the life of the bonds, if
8 they are approved for recovery by the commission in a financing
9 order. "Financing costs" includes 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 a
18 financing entity as a result of the issuance of the
19 financing order; the assignment, sale, or transfer of
20 any wildfire recovery property; or the sale of the
21 bonds, or imposed on the wildfire recovery charges, or



1 otherwise resulting from the collection of the
2 wildfire recovery charge, in any such case whether
3 paid, payable, or accrued;

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

13 (6) Costs related to the engagement of services of a
14 financial advisor by the commission pursuant to
15 section B-3(h); and

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

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



1 including an affiliate of the electric utility or any
2 unaffiliated entity, in each case as approved by the commission
3 in a financing order.

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

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



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

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

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



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

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

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

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

20 "Wildfire recovery costs" means an investor-owned electric
21 utility's initial and supplemental contributions to the wildfire



1 recovery fund, as set forth in section A-3, and electric
2 cooperative wildfire claims costs.

3 "Wildfire recovery fund" means the wildfire recovery fund
4 established by section A-2.

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

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

16 (2) To be paid the amount that is determined in a
17 financing order to be the amount that the electric
18 utility or its assignee is lawfully entitled to
19 receive pursuant to this chapter and the proceeds
20 thereof, and in and to all revenues, collections,
21 claims, payments, moneys, or proceeds of, or arising



1 from, the wildfire recovery charge that is the subject
2 of a financing order.

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

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

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



1 bonds and all other associated financing costs on a
2 timely basis;

3 (2) The creation of wildfire recovery property under the
4 financing order; and

5 (3) The imposition, charging, and collection of fixed
6 recovery tax amounts to recover any portion of the
7 electric utility's federal and state taxes associated
8 with those wildfire recovery charges and not financed
9 from the proceeds of bonds.

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

11 (1) The wildfire recovery costs to be financed through the
12 issuance of bonds;

13 (2) The principal amount of the bonds proposed to be
14 issued and the selection of a financing entity;

15 (3) An estimate of the date on which each series of bonds
16 is expected to be issued;

17 (4) The scheduled final payment date, which shall not
18 exceed thirty years, and a legal final maturity date,
19 which may be longer, subject to rating agency and
20 market considerations, during which term the wildfire
21 recovery charge associated with the issuance of each



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

10 In the alternative, an electric utility may apply for a
11 financing order to issue bonds to recover wildfire recovery
12 costs, including wildfire recovery costs incurred, or to be
13 incurred, by the applicant and one or more of its affiliate
14 electric utilities. In connection with the issuance of a
15 financing order pursuant to this subsection, the commission
16 shall issue a concurrent order to the affiliate electric utility
17 or electric utilities directing such affiliate electric utility
18 or electric utilities to impose rates on its or their consumers
19 designed to generate revenue sufficient to pay credits over the
20 life of the bonds to the applicant electric utility in such
21 amount as the commission determines is equitable, just, and



1 reasonable. Such an application shall describe the allocation
2 method and true-up adjustment mechanism for the affiliate
3 electric utility credit payments proposed to be subject to the
4 concurrent commission order.

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

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

11 (1) Whether the issuance of the bonds, and the imposition
12 and collection of wildfire recovery charges are
13 consistent with the public interest;

14 (2) Whether the structuring, marketing, and pricing of the
15 bonds are expected to result in the lowest wildfire
16 recovery charges consistent with market conditions at
17 the time at which the bonds are priced and the terms
18 of the financing order;

19 (3) Whether the terms and conditions of any bonds to be
20 issued are just and reasonable;



- 1 (4) With respect to an application by an investor-owned
2 electric utility, whether the recovery of wildfire
3 recovery costs through the designation of the wildfire
4 recovery charges and any associated fixed recovery tax
5 amounts, and the issuance of bonds in connection with
6 the wildfire recovery charges, would result in net
7 savings or mitigate rate impacts to consumers, as
8 compared to rate recovery without securitization; and
9 (5) Any other factors that the commission deems reasonable
10 and in the public interest.

11 If the commission makes the determination specified in this
12 section, the commission shall establish, as part of the
13 financing order, a procedure for the electric utility to submit
14 applications from time to time to request the issuance of
15 additional financing orders designating wildfire recovery
16 charges and any associated fixed recovery tax amounts as
17 recoverable. The commission, as a condition of the financing
18 order, may prohibit any increase in compensation, including any
19 bonuses, for the electric utility's officers for a period of
20 time determined by the commission; provided that any increase of



1 an officer's compensation that is in violation of such condition
2 shall be seized and deposited into the wildfire recovery fund.

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

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



1 **SB-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 such action would not adversely
20 affect the interests of the electric utility, of assignees of



1 the wildfire recovery property, and of bondholders. The
2 prohibited actions shall be 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 and

17 (4) Except for changes made pursuant to the formula-based
18 true-up adjustment mechanism authorized under
19 subsection (d), reduce, alter, or impair wildfire
20 recovery charges that are to be imposed, billed,
21 charged, collected, and remitted for the benefit of



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

7 The financing entity is authorized to include this pledge
8 in the bonds.

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

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

20 The commission shall, in any financing order, establish a
21 procedure for periodic true-up adjustments to wildfire recovery



1 charges, which shall be made at least annually and may be made
2 more frequently. The periodic true-up adjustment to wildfire
3 recovery charges shall also consider interest on ratepayer
4 investments into the fund. Within thirty days after receiving
5 an electric utility's filing of a true-up adjustment, the
6 commission's review of the filing shall be limited to
7 mathematical or clerical errors as determined in accordance with
8 any true-up adjustment formulas set forth in the applicable
9 financing order.

10 The commission shall either approve the filing or inform
11 the electric utility of any mathematical or clerical errors in
12 its calculation. If the commission informs the electric utility
13 of mathematical or clerical errors in its calculation, the
14 electric utility shall correct its error and refile its true-up
15 adjustment. The timeframes previously described in this
16 subsection shall apply to a refiled true-up adjustment.

17 (e) Neither financing orders nor bonds issued under this
18 chapter shall constitute a general obligation of the State or
19 any of its political subdivisions, nor shall they constitute a
20 pledge of the full faith and credit of the State or any of its



1 political subdivisions, but shall be payable solely from the
2 wildfire recovery property provided under this chapter.

3 All bonds shall contain on the face thereof a statement to
4 the following effect: "Neither the full faith and credit nor
5 the taxing power of the State of Hawaii is pledged to the
6 payment of the principal of, or interest and premium on, this
7 bond."

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

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



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

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

10 (h) The commission, in its discretion, may engage the
11 services of a financial adviser for the purposes of assisting
12 the commission in its consideration of an application for a
13 financing order and a subsequent issuance of bonds pursuant to a
14 financing order.

15 **§B-4 Bonds; issuance; wildfire recovery property**

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



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

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

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

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

17 (1) Continue to operate its system to provide service to
18 consumers within its service territory;

19 (2) Collect amounts in respect of the wildfire recovery
20 charges for the benefit and account of the financing
21 entity or its assignees; and



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

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



1 of the wildfire recovery charges and any associated fixed
2 recovery tax amounts, that are the subject of the financing
3 order.

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

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



1 of service to consumers. All wildfire recovery property
2 specified in a financing order shall continue to exist until the
3 bonds issued pursuant to a financing order and all associated
4 financing costs are paid in full.

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

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



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

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

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



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

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

13 (1) The commission has issued a financing order
14 authorizing the wildfire recovery charge to be
15 included in the wildfire recovery property;

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

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

20 (b) A valid and enforceable security interest in wildfire
21 recovery property is perfected when it has attached and when a



1 financing statement has been filed with the bureau of
2 conveyances of the State of Hawaii naming the pledgor of the
3 wildfire recovery property as "debtor" and identifying the
4 wildfire recovery property.

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

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



1 for contracts securing bonds, whether or not the wildfire
2 recovery property revenues and proceeds have accrued.

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

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



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

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



1 reorganization, or other insolvency proceedings with respect to
2 the debtor, pledgor, or transferor of the wildfire recovery
3 property. Any surplus in excess of amounts necessary to pay
4 principal; premiums, if any; interest, costs, and arrearages on
5 the bonds; and associated financing costs arising under the
6 security agreement, shall be remitted to the debtor, pledgor, or
7 transferor, for the purpose of remitting such amounts to
8 customers by means of the electric utility.

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

12 **§B-7 Transfers of wildfire recovery property.** (a) A
13 transfer or assignment of wildfire recovery property by the
14 electric utility to an assignee or to a financing entity, or by
15 an assignee of the electric utility or a financing entity to
16 another financing entity, which the parties in the governing
17 documentation have expressly stated to be a sale or other
18 absolute transfer, in a transaction approved in a financing
19 order, shall be treated as an absolute transfer of all of the
20 transferor's right, title, and interest, as in a true sale, and
21 not as a pledge or other financing, of the wildfire recovery



1 property, other than for federal and state income and franchise
2 tax purposes.

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

8 (1) Commingling of wildfire recovery charge revenues with
9 other amounts;

10 (2) The retention by the seller of either of the
11 following:

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

16 (B) The right to recover costs associated with taxes,
17 franchise fees, or license fees imposed on the
18 collection of wildfire recovery charge;

19 (3) Any recourse that an assignee may have against the
20 seller;



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

3 (5) The obligation of the seller to collect wildfire
4 recovery charges on behalf of an assignee;

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

7 (7) Any true-up adjustment of the wildfire recovery charge
8 as provided in the financing order.

9 (c) A transfer of wildfire recovery property shall be
10 deemed perfected against third parties when both of the
11 following occur:

12 (1) The commission issues the financing order authorizing
13 the wildfire recovery charge included in the wildfire
14 recovery property; and

15 (2) An assignment of the wildfire recovery property in
16 writing has been executed and delivered to the
17 assignee.

18 (d) As between bona fide assignees of the same right for
19 value without notice, the assignee first filing a financing
20 statement with the bureau of conveyances of the State of Hawaii
21 in accordance with part 5 of article 9 of chapter 490, naming



1 the assignor of the wildfire recovery property as debtor and
2 identifying the wildfire recovery property, shall have priority.
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 by the assignee with the commission, and the
7 commission may require the assignor or the assignee to make
8 other filings with respect to the transfer in accordance with
9 procedures the commission may establish, but these filings shall
10 not affect the perfection of the transfer.

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



1 required by a financing order or any assignee. Any successor to
2 the electric utility shall be entitled to receive any fixed
3 recovery tax amounts otherwise payable to the electric utility.

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

15 **§B-9 Severability.** If any provision of this chapter is
16 held to be invalid or is superseded, replaced, repealed, or
17 expires for any reason:

- 18 (1) That occurrence shall not affect any action allowed
19 under this chapter that is taken prior to that
20 occurrence by the commission, a financing entity, a



1 bondholder, or any financing party, and any such
2 action shall remain in full force and effect; and
3 (2) The validity and enforceability of the rest of this
4 chapter shall remain unaffected."

5 SECTION 3. Section 269-17, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§269-17 Issuance of securities.** A public utility
8 corporation may, on securing the prior approval of the public
9 utilities commission, and not otherwise, except as provided in
10 section B-4, issue stocks and stock certificates, bonds, notes,
11 and other evidences of indebtedness, payable at periods of more
12 than twelve months after the date thereof, for the following
13 purposes and no other, namely: for the acquisition of property
14 or for the construction, completion, extension, or improvement
15 of or addition to its facilities or service, or for the
16 discharge or lawful refunding of its obligations or for the
17 reimbursement of moneys actually expended from income or from
18 any other moneys in its treasury not secured by or obtained from
19 the issue of its stocks or stock certificates, or bonds, notes,
20 or other evidences of indebtedness, for any of the aforesaid
21 purposes except maintenance of service, replacements, and



1 substitutions not constituting capital expenditure in cases
2 where the corporation has kept its accounts for ~~[such]~~
3 expenditures in ~~[such]~~ a manner ~~[as to enable]~~ that enables the
4 commission to ascertain the amount of moneys so expended and the
5 purposes for which the expenditures were made, and the sources
6 of the funds in its treasury applied to the expenditures. As
7 used ~~[herein]~~ in this section, "property" and "facilities"~~[7]~~
8 mean property and facilities used in all operations of a public
9 utility corporation whether or not included in its public
10 utility operations or rate base. A public utility corporation
11 may not issue securities to acquire property or to construct,
12 complete, extend or improve or add to its facilities or service
13 if the commission determines that the proposed purpose will have
14 a material adverse effect on its public utility operations.

15 All stock and every stock certificate, and every bond,
16 note, or other evidence of indebtedness of a public utility
17 corporation not payable within twelve months, issued without an
18 order of the commission authorizing the same, then in effect,
19 shall be void."



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

4 SECTION 5. In codifying the new sections added by section
5 2 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on July 1, 3000.



Report Title:

Wildfire Recovery Fund; Securitization; Public Utilities
Commission

Description:

Establishes the Wildfire Recovery Fund. Allows securitization
for electric utilities. Effective 7/1/3000. (HD3)

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

