



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Consumer Protection & Commerce
And
House Committee on Judiciary & Hawaiian Affairs
Thursday, February 15, 2024
2:00 p.m.
Conference Room 325

On the following measure:
H.B. 2407, H.D. 1, RELATING TO WILDFIRE RISK MITIGATION

Chair Nakashima, Chair Tarnas, and Members of the Committees:

My name is Michael Angelo, and I am the Executive Director of the Department of Commerce and Consumer Affairs (Department) Division of Consumer Advocacy. The Department supports this administration bill.

The purpose of this bill is to create a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission (Commission) for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county.

The tragedy and devastation of the wildfires that arose on Maui during the August 8, 2023 windstorm must be prevented from reoccurring. The Department supports this bill, which requires that electric utilities implement wildfire protection plans. The Department appreciates that the bill focuses on creating pathways to prevent

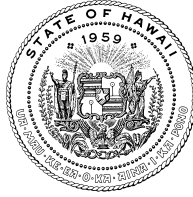
wildfires and protects at-risk infrastructure while also seeking to minimize the financial impact on ratepayers.

The Department strongly supports encouraging electric utilities to proactively manage their wildfire risk by requiring that they develop and regularly update their wildfire protection plans. The Department appreciates that the bill incentivizes electric utilities to continuously act prudently to mitigate their wildfire risk by not including language in the bill that establishes an assumption of prudence simply because the electric utility has an approved wildfire risk protection plan in place. The Department strongly supports the consideration for equity that is included in the bill by requiring that the surcharge for the wildfire protection fee be non-bypassable. The Department also appreciates that the bill requires that the impacts of financing the wildfire protection costs be minimized.

Furthermore, the Department appreciates the inclusion of our recommended amendments to the proposed § 269-B and § 269-C of this bill by the prior House Committees. These recommended amendments would require decision-making during a docketed as opposed to a non-docketed proceeding which provides the opportunity for the public to participate and assist the Commission in the decision-making phase and also ensures that the general powers and duties conferred to the Division of Consumer Advocacy under Hawaii Revised Statutes § 269-51 and § 269-54 are maintained.

The Department also emphasize that it is important to develop plans and take actions to prevent wildfires together with mitigating the risks from other hazards like high winds and flooding.

Thank you for the opportunity to testify on this administration bill.



EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

House Committees on Consumer Protection & Commerce and Judiciary & Hawaiian Affairs

Thursday, February 15, 2024
2:00 p.m.

State Capitol, Conference Room 325 and Videoconference

**In Support
House Bill No. 2407, HD1, Relating to Wildfire Risk Mitigation**

Chairs Nakashima and Tarnas, Vice Chairs Sayama and Takayama, and Members of the House Committees on Consumer Protection & Commerce and Judiciary & Hawaiian Affairs:

The Office of the Governor supports H.B. No. 2407, HD1, Relating to Wildfire Risk Mitigation.

The Maui wildfire resulted in unbearable loss of lives, homes, infrastructure, and businesses. This tragic event is a wake-up call that due to climate changes, the risk of catastrophic wildfires, along with other natural disasters in Hawaii has increased.

H.B. No. 2407, HD1 would create a process for electric utilities to develop and submit effective wildfire risk protection plans to the public utilities commission (PUC) for approval and would allow for the recovery of related costs and expenses through the securitization process, while also avoiding a disproportionate impact on a specific ratepayer or county.

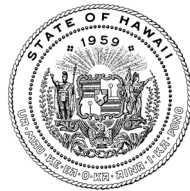
We need to ensure wildfire mitigation and prevention policies and plans are adopted by the State, but we need to also find reasonable ways to finance these improvements and investments. Through the securitization model that is proposed in H.B. No. 2407, HD1, resources will be available to address wildfire risk mitigation in a manner that should have a minimal impact on utility customers' electricity bills.

The Governor is keenly aware of our state's high electrical rates and the impact that it has on all of our residents. But, the wildfires were a stark and harsh signal to our state that we need to do more to protect against disasters like wildfires. The Office of the Governor supports this bill to create a process for wildfire plan protection and mitigation that must be approved by the PUC. Once approved, the PUC would also then have the ability to review a request for securitization financing. Utility rate securitization transactions have an extensive track record of success. Bonds securitized by rates receive AAA credit ratings from credit rating agencies

Testimony of Office of the Governor
H.B. No. 2407, HD1
February 15, 2024
Page 2

and thus provide a means of securing capital at a lower interest rate than those currently available to utilities, in particular utilities without an investment grade credit rating.

Thank you very much for the opportunity to provide testimony on this measure.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND JUDICIARY & HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 2407, H.D. 1

February 15, 2024
2:00 P.M.
Room 325 and Videoconference

RELATING TO WILDFIRE RISK MITIGATION.

The Department of Budget and Finance (B&F) offers the following comments on House Bill (H.B.) No. 2407, H.D. 1 which creates a process whereby electric utilities develop and submit effective wildfire risk protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county. Included in HB No. 2407, H.D. 1 is: 1) the ability for an electric utility or department (defined as any State Department or Agency in the bill) to apply to the public utilities commission for one or more financing orders to issue bonds; and 2) authorizes the issuance of Special Purpose Revenue Bonds (SPRB) for wildfire risk mitigation purposes.

B&F is working with the Department of the Attorney General (Department) and defers to the Department on comments to help clarify provisions of this bill.

Thank you for your consideration of our comments.

TESTIMONY OF
LEODOLOFF R. ASUNCION, JR.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
HOUSE COMMITTEES ON
CONSUMER PROTECTION AND COMMERCE
and
JUDICIARY AND HAWAIIAN AFFAIRS

February 15, 2024
2:00 p.m.

Chairs Nakashima and Tarnas, Vice Chairs Sayama and Takayama, and Members of the Committees:

MEASURE: H.B. No. 2407 HD1

TITLE: RELATING TO WILDFIRE RISK MITIGATION.

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

POSITION:

The Public Utilities Commission (“Commission”) supports this measure and offers the following comments for consideration.

COMMENTS:

The Commission supports the intent of this measure to require that electric utilities operate in accordance with a wildfire protection plan and to enable the recovery of related costs through securitization while minimizing impacts on specific ratepayers or counties. The Commission understands the importance of reducing the likelihood and impact of wildfires across the State and is committed to supporting such efforts.

On February 6, the Commission testified in support of this measure before the Joint Committee on Water & Land and Energy & Environmental Protection. The Joint Committee adopted the Commission’s recommended amendments, except for paragraphs (1) and (2) in §269-C(f), in addition to amendments proposed by others to

ensure that the best practices discussed in the electric utility workshops are incorporated into the wildfire protection plans. The Commission agrees with all the Joint Committee's adopted amendments reflected in HD1.

The Commission also observes that the Committees noted that the measure needs further provisions to ensure that ratepayers are protected, and the public interest is prioritized. For that reason, the Commission proposes to slightly modify the definition of wildfire protection costs to include only costs associated with catastrophic wildfires that the commission finds were prudently incurred.

§ 269-A – definition of “Wildfire protection costs” (Page 6 Lines 1 – 9)

“Wildfire protection costs” means any capital costs and operation and maintenance expenses related to the development, implementation, and administration of a wildfire protection plan but shall not include any penalties levied against an electric utility pursuant to section 269–D. Wildfire protection costs may also include any of the following:

(1) Catastrophic wildfire costs or expenses ~~authorized by the public utilities commission in a financing order for recovery~~ that the public utilities commission has determined were prudently incurred;

The Commission further recommends the following amendment, which recognizes the importance of timely filings by Parties to a proceeding. This, in turn and in conjunction with complete and thorough wildfire protection plan filings, will allow the Commission to make decisions in a timely manner.

§ 269-C(e) – Commission review time (Page 15, Lines 4-21)

(e) No more than ninety days after the last party filing, ~~and no more than a total of one hundred eighty days after the initial application for approval of the submitted wildfire protection plan or update in the~~ wildfire protection plan or update docketed proceeding, the public utilities commission shall approve, approve with conditions, or reject the plan

or update based on whether the public utilities commission finds that the plan or update is based on reasonable and prudent practices and designed to meet all applicable rules and standards adopted by the public utilities commission. The public utilities commission may, in approving the plan or update with conditions, direct the electric utility to make modifications to the plan or updates that the public utilities commission believes represent a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk based on the evidentiary record in the proceeding. The public utilities commission shall issue a decision explaining its determinations, including findings of fact and conclusions of law, in accordance with chapter 91.

Thank you for the opportunity to testify on this measure.



HAWAII STATE ENERGY OFFICE STATE OF HAWAII

235 South Beretania Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone:
Web:

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARK B. GLICK
CHIEF ENERGY OFFICER

(808) 451-6648
energy.hawaii.gov

Testimony of
MARK B. GLICK, Chief Energy Officer

before the
**HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND
JUDICIARY & HAWAIIAN AFFAIRS**

Thursday, February 15, 2024
2:00 PM
State Capitol, Conference Room 325 and Videoconference

In Support of
HB 2407, HD1

RELATING TO WILDFIRE RISK MITIGATION.

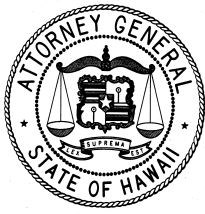
Chairs Nakashima and Tarnas, Vice Chairs Sayama and Takayama, and members of the Committees, the Hawai'i State Energy Office (HSEO) supports HB 2407, HD1, that creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission (PUC) for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county.

This measure appropriately presents an essential set of wildfire mitigation and prevention policies and plans along with a securitization model that is proven to be a highly effective and efficient way to finance investments to make such improvements. With the oversight of the PUC, rate reduction bonds, similar to those used in the Green Energy Market Securitization (GEMS) program, would be authorized only when the Commission had ensured the financing order was aligned with an effective process for wildfire plan protection and mitigation. The approach presented in HB 2407, HD1, should result in greater protections to the public and critical energy infrastructure while having minimal impact on utility customers' electricity bills.

The need for this measure is urgent. HSEO conducted a comprehensive energy system risk assessment for O'ahu on the interdependencies within the energy sector supply chain and the interdependencies of the energy sector with FEMA Community Lifeline services that are essential to the response and recovery from all hazard events. The results were clear: wildfire is one of the top two most significant threats to our critical energy infrastructure and the emergency response sectors that depend on it. At the same time, power infrastructure in red flag conditions can also be the cause of wildfire. This is why proactive action is imperative. To strengthen the state's defenses against wildfire, developing robust wildfire protection plans statewide is critical.

Your adoption of HB 2407, HD1, can better safeguard our communities, reduce the likelihood of another Maui-like catastrophe, and ensure a reliable and resilient energy future.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2407, H.D. 1, RELATING TO WILDFIRE RISK MITIGATION.

BEFORE THE:

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE AND ON
JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, February 15, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chairs Nakashima and Tarnas and Members of the Committees:

The Department of the Attorney General provides the following comments.

This bill creates a process whereby electric utilities develop and submit risk-based wildfire protection plans to the Public Utilities Commission for approval and can recover the costs of developing, implementing, and administering the risk-based wildfire protection plans through the securitization of such costs by issuing bonds, which would be repaid by the electric utilities' customers.

Due to the specialized nature of securitization financing, we asked Craig Scully, Esq., of Katten Muchin Rosenman LLP, the State's Public Finance General Advice Counsel, to review the bill. Mr. Scully reviewed Senate Bill No. 3096, which is the companion bill to House Bill No. 2407, and he prepared suggested amendments to that bill in a bill form. We recommend that the contents of Mr. Scully's proposed S.D. 1 to Senate Bill No. 3096 (attached to this testimony) be placed into this bill.

Because of the complexity of the securitization process, additional information is required to safeguard ratepayers and prioritize the public interest. Our comments are still being refined and developed.

We respectfully ask the Committees to consider Mr. Scully's suggested amendments.

Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2024
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO WILDFIRE RISK MITIGATION.

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

SECTION 1. The legislature finds that the risk of catastrophic wildfires has increased, making it imperative that electric utilities develop, implement, and administer effective plans for wildfire risk mitigation. Electric utilities should develop, implement, and administer wildfire protection plans, and, through a public process, the public utilities commission should review and approve such plans and the recovery of any related costs to implement the plans.

The legislature also finds that a resilience working group, convened throughout 2019 and 2020, sought to: (1) identify and prioritize resilience threat scenarios and potential grid impacts; (2) identify key customer and infrastructure sector capabilities and needs following a severe event and loss of power; (3) identify gaps and priorities in grid and customer capabilities following a severe event and loss of power; (4) provide recommendations and inputs for investor-owned utility grid planning to address resilience needs; and (5) recommend

additional grid and customer actions to close gaps and capabilities following severe events. The resilience working group identified wildfires as one of five types of severe events of utmost importance to consider for achieving a resilient grid and provided resilience options for utilities to consider.

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

The purpose of this Act is to create a process whereby electric utilities develop and submit effective wildfire risk protection plans to the public utilities commission for approval; the public utilities commission evaluates those plans and either approves them or does so with modifications; the electric utilities are able to timely recover the prudently incurred costs and expenses of developing, implementing, and administering those plans; and those costs and expenses are not borne disproportionately by any particular ratepayer or county.

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

"PART . WILDFIRE PROTECTION AND MITIGATION

§269-A Definitions. As used in this part: "Ancillary agreement" means a bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other similar agreement or arrangement entered into in connection with the issuance of bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

"Assignee" means a legally recognized entity (i) to which an electric utility company assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to wildfire protection property or (ii) who acquires by way of assignment or otherwise all or a portion of the wildfire protection property following the exercise of remedies upon a default. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to wildfire protection property.

"Bond" means any bond, note, certificate of participation or beneficial interest, or other evidence of indebtedness or ownership that is issued by the financing entity under a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance financing costs of any wildfire protection costs, and that are directly or

indirectly secured by or payable from wildfire protection property.

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

"Commission" means the public utilities commission.

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

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

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

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

(2) A payment required under an ancillary agreement;

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

(4) Taxes, franchise fees, or license fees imposed on the wildfire protection plan fee, or otherwise resulting from the collection of the charges, in any such case whether paid, payable, or accrued;

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

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

"Financing entity" means the electric utility company, an affiliate of an electric utility company, a special purpose vehicle, whether or not affiliated with an electric utility company, or a Governmental Financing Entity that is authorized by the commission to issue bonds or acquire wildfire protection property, or both, pursuant to a financing order.

"Financing order" means an order of the public utilities commission under this part that has become final as provided by law, and that authorizes the issuance of bonds and the imposition and collection of wildfire protection fees, and which shall include without limitation a procedure to require the expeditious approval by the commission of periodic adjustments to wildfire protection fees and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all wildfire protection costs and the costs associated with the proposed recovery, financing, or refinancing thereof,

including the costs of servicing and retiring the bonds contemplated by the financing order.

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

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

"Governmental Financing Entity" means the State or a political subdivision thereof or any department, agency or instrumentality of the foregoing to which a public utility has assigned or pledged its interest in wildfire protection property as security for the payment of debt service on bonds (and related administrative costs and funding of reserves) issued by such Governmental Financing Entity, provided that the bonds issued by such entity shall not constitute a debt or liability of such entity or of the State or any political subdivision thereof and shall not constitute a pledge of the full faith and credit of such entity or of the State or any political subdivision thereof, but shall be payable solely from the funds provided under this chapter.

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

"Wildfire protection costs" means any capital costs and operation and maintenance expenses related to the development, implementation, and administration of a wildfire protection plan prepared pursuant to section 269-C(a) but shall not include any penalties levied against an electric utility pursuant to section 269-D. Wildfire protection costs may also include any of the following:

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

"Wildfire protection fee" means the nonbypassable fees and

charges, including but not limited to distribution, connection, disconnection, and termination rates and charges, that are authorized by section 269-E and in a financing order authorized under this part to be imposed on and collected from all existing and future consumers of a financing entity or any successor to recover both of the following:

- (1) wildfire protection costs specified in the financing order; and
- (2) the costs of recovering, financing, or refinancing wildfire protection costs through a plan approved by the commission in the financing order, including the costs of servicing and retiring bonds.

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

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

- (1) In and to the wildfire protection fee established pursuant to a financing order, including the right to impose, bill, collect and receive such fixed recovery charges under the financing order and all rights to obtain adjustments to the wildfire protection fee in accordance with section 269-E and the financing order; and

- (2) To be paid the amount that is determined in a financing order to be the amount that the public utility or its assignee is lawfully entitled to receive pursuant to this part and the proceeds thereof, and in and to all revenues, collections, claims, payments, moneys, or proceeds of, or

arising from, the wildfire protection fee that is the subject of a financing order.

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

§269-B Electric utility workshops. The public utilities commission may periodically convene workshops to help electric utilities develop and share information for the identification, adoption, and implementation of best practices regarding wildfires, including but not limited to risk-based wildfire protection and risk-based wildfire mitigation procedures and standards.

§269-C Wildfire protection plans. (a) Each electric utility shall have and operate in compliance with a risk-based wildfire protection plan, which shall be filed with and evaluated by the public utilities commission. The risk-based wildfire protection plan shall be based on reasonable and prudent practices, which may be identified through workshops and regulatory proceedings conducted by the public utilities commission pursuant to section 269-B, and public utilities commission standards adopted by decision or rule. The electric utility shall design the risk-based wildfire protection plan to

protect public safety, reduce risk to utility customers, and promote resilience of the Hawaii electric system to wildfire damage. Each electric utility's plan shall, at a minimum:

- (1) Account for the responsibilities of persons responsible for executing the plan;
- (2) Describe the objectives of the plan;
- (3) Identify areas that are subject to a heightened risk of wildfire and are:
 - (A) Within the right of way or legal control or ownership of the electric utility; and
 - (B) Outside the right of way or legal control or ownership of the electric utility but within a reasonable distance, as determined by the public utilities commission, of the electric utility's generation or transmission assets;
- (4) Identify a means for mitigating wildfire risk that reflects a reasonable balancing of mitigation costs, continuity of reliable service and reduction of wildfire risk;
- (5) Identify preventive actions and programs that the electric utility shall carry out to minimize the risk of utility facilities causing wildfire;
- (6) Identify the metrics the electric utility plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics;
- (7) Describe how the application of previously

identified metrics to previous plan performances has informed the plan;

- (8) After seeking information from state and local entities, identify a protocol for the deenergizing of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the public and first responders, and preserve health and communication infrastructure;
- (9) Describe appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines. The procedures shall consider the need to notify, as a priority, critical first responders, health care facilities, operators of wastewater and water delivery infrastructure and operators of telecommunications infrastructure.
- (10) Describe the procedures, standards, and timeframes that the electric utility shall use to inspect utility infrastructure in areas that the electric utility identifies under paragraph (1), including whether those procedures, standards, and timeframes are already set forth in the electric utility's existing plans or protocols and in coordination with any relevant entities;
- (11) Describe the procedures, standards, and timeframes that the electric utility will use to carry out vegetation management in areas that the electric utility identifies under paragraph (1), including whether those procedures, standards, and timeframes are already set forth in the electric utility's existing plans or protocols and in coordination with any relevant entities;

- (12) Include a list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electric utility's service territory. The list shall include, but not be limited to, both of the following:
 - (A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electric utility's equipment and facilities; and
 - (B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electric utility's service territory;
- (13) Describe how the plan accounts for the wildfire risk identified in the electric utility's risk assessment;
- (14) Describe the actions the electric utility will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a wildfire, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, including but not limited to, undergrounding lines, insulation of distribution wires, and pole replacement;
- (15) Demonstrate that the electric utility has an adequately sized and trained workforce to promptly restore service after a wildfire, taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with the electric utility;

- (16) Identify the estimated development, implementation, and administration costs for the risk-based wildfire protection plan;
- (17) Identify the timelines, as applicable, for development, implementation, and administration of any aspects of the risk-based wildfire protection plan;
- (18) Describe how the plan is consistent with the electric utility's other hazard mitigation and grid hardening plans, including plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and prepositioning equipment and employees;
- (19) Identify community outreach and public awareness efforts that the electric utility will use before, during, and after a wildfire;
- (20) Describe the processes and procedures the electric utility will use to do all of the following:
 - (A) Monitor and audit the implementation of the plan;
 - (B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies; and
 - (C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules;
- (21) Demonstrate elements of data governance,

including enterprise systems;

(b) [Any modifications to the above, or other information as required by the commission.][SOMETHING APPEARS TO BE MISSING] Each electric utility shall regularly update its risk-based wildfire protection plan on a schedule determined by the public utilities commission.

(c) To develop the risk-based wildfire protection plan, the electric utility may consult with and consider information from federal, state, local, and other expert entities.

(d) The public utilities commission, in consultation with the department of land and natural resources and local emergency services agencies, shall evaluate each electric utility's risk-based wildfire protection plan and plan updates through a public process.

(e) No more than ninety days after the last party filing, and no more than a total of one hundred eighty days after the initial filing in the docket or non-docketed case related to the public utilities commission's evaluation of a risk-based wildfire protection plan or plan update from an electric utility, the public utilities commission shall approve or approve with conditions the plan or update if the public utilities commission finds that the plan or update is based on reasonable and prudent practices and designed to meet all applicable rules and standards adopted by the public utilities commission. The public utilities commission may, in approving the plan or update with conditions, direct the electric utility

to make modifications to the plan or updates that the public utilities commission believes represent a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk based on the information provided by the electric utility and based on best practices. The public utilities commission shall issue a decision explaining any such directed modifications at the time it approves the plan.

(f) The electric utility shall track the costs it actually incurs to develop, implement, and administer the risk-based wildfire protection plan. In the electric utility's risk-based wildfire protection plan update, the electric utility shall report on the costs as actually incurred for the most recent past period for which the information is available. [If the actual costs are less than the amounts the public utilities commission determined were reasonable in its decision under subsection (e), the commission shall direct the electric utility to refund or credit the costs to ratepayers.][ANY SUCH REFUND CANNOT IMPACT PAYMENT ON THE OUTSTANDING BONDS. TO BE DISCUSSED] If the actual costs are equal to or greater than the amounts the commission determined were reasonable in its decision under subsection (e), then the commission shall not direct the electric utility to refund to ratepayers the amount the commission previously determined was reasonable, but may disallow the recovery from ratepayers of any additional costs the commission finds unreasonable. For purposes of evaluating additional costs, the following shall apply:

(1) Actual costs that are no more than fifteen per cent greater than the costs the commission previously determined were reasonable shall be presumed prudent and authorized for recovery from ratepayers absent proof by clear and convincing evidence that the costs were unreasonable; and

(2) The electric utility shall have the burden of proving the reasonableness of actual costs that are more than fifteen per cent greater than the costs the commission previously determined were reasonable.

(g) The public utilities commission's approval of a risk-based wildfire protection plan does not by itself establish a defense to any enforcement action for violation of a public utilities commission decision, order, or rule, or relieve an electric utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies. Electric utilities are expected to continuously improve and take reasonable actions outside of approved plans to mitigate wildfire risk.

(h) The public utilities commission shall, as appropriate, adopt rules or issue orders for the implementation of this section. The rules or orders may include but need not be limited to procedures and standards regarding data governance, risk-based decision making, vegetation management, public power safety shutoffs and restorations, pole materials, circuitry, and monitoring systems.

§269-D Penalties. In addition to any other penalties provided by law, a failure by an electric utility to comply with an approved plan or part of an approved plan shall be subject to a civil penalty, as determined by the public utilities commission. Imposition of penalties pursuant to this section shall otherwise be in accordance with section 269-28 and all applicable administrative rules. All moneys collected under this section shall be deposited into the public utilities commission special fund.

§269-E Applications to issue bonds and authorize wildfire protection fees. (a) An electric utility may apply to the public utilities commission for one or more financing orders to issue bonds to recover any wildfire protection costs, each of which authorizes the following:

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

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

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

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

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

(c) The public utilities commission shall issue an approval or denial of any application for a financing order

filed pursuant to this section within ninety days of the last filing in the applicable docket.

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

- (1) Whether the wildfire protection costs to be financed by any bonds to be issued are just and reasonable;
- (2) Whether the recovery of such costs is consistent with the public interest;
- (3) Whether the terms and conditions of any bonds to be issued, including without limitation interest rates, rating, amortization redemption, and maturity, and the imposition and collection of fixed recovery charges as set forth in an application, are just and reasonable;
- (4) Whether the immediate ratepayer bill impact of any financing order is minimized to the furthest extent practicable; and
- (5) Any other factors that the public utilities commission deems reasonable and in the public interest.

The public utility may request the determination specified in this section by the commission in a separate proceeding, in an existing proceeding, or both. If the commission makes the determination specified in this section, the commission shall establish, as part of the financing order, a procedure for the public utility to submit applications from time to time to request the issuance of additional financing orders designating wildfire protection fees and any associated fixed recovery tax amounts as recoverable. The

public utility may submit an application with respect to wildfire protection costs that a public utility has paid, has an existing legal obligation to pay, or would be obligated to pay pursuant to an agreement. The commission shall, within ninety days of the filing of that application, issue a financing order, if the commission determines that the amounts identified in the application are wildfire protection costs.

(e) Wildfire protection fees shall be imposed only on existing and future ratepayers in the utility service territory. Ratepayers within the utility service territory shall continue to pay wildfire protection fees until the bonds and associated financing costs are paid in full by the financing entity or, in the event the wildfire protection property has been assigned to an assignee in connection with the exercise of remedies upon a default, until the receipt of proceeds by such assignee in an amount sufficient to repay the principal amount of, and interest that would have accrued on, the bonds had they remained outstanding.

(f) The wildfire protection plan fee and any associated fixes recovery tax amounts shall be collected by a financing entity or its successors, in accordance with section 269-E(h), in full through a surcharge, fee, or charge that is separate and apart from the financing entity's rates.

(g) A public utility may exercise the same rights and remedies under its tariff and applicable law and regulation based

on a consumer's nonpayment of the wildfire protection plan fee as it could for a consumer's failure to pay any other charge payable to that public utility.

(h) The commission may establish in a financing order an effective mechanism that ensures recovery of wildfire protection costs through nonbypassable wildfire protection fees from existing and future consumers in the utility service territory. The wildfire protection fee and any associated fixed recovery tax amounts may be a usage-based surcharge, a flat user fee, or a charge based upon customer revenues as determined by the public utilities commission for each customer class in any financing order. Consumers shall be required to pay those charges until (i) the bonds and all associated financing costs are paid in full by the financing entity or (ii) in the event the wildfire protection property has been assigned to an assignee in connection with the exercise of remedies upon a default, until the receipt of proceeds by such assignee in an amount sufficient to repay the principal amount of, and interest that would have accrued on, the bonds had they remained outstanding, at which time those charges shall be terminated. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of the electric utility or the commencement of any judicial or nonjudicial proceeding on the financing order. Wildfire protection fees shall be irrevocable, notwithstanding [the true-up adjustment pursuant to subsection \[\(k\)\].](#)

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

(b) Notwithstanding any other law, and except as otherwise provided in § [269-G(e)], with respect to wildfire protection property that has been made the basis for the issuance of bonds and with respect to any associated fixed recovery tax amounts, the financing order, the wildfire protection fees, and any associated fixed recovery tax amounts shall be irrevocable. The commission shall not, either by rescinding, altering, or amending the financing order or otherwise, revalue or revise for ratemaking purposes the wildfire protection costs or the costs of recovering, financing, or refinancing the wildfire protection costs, in any way to reduce or impair the value of wildfire protection property or of the right to receive any associated wildfire protection fees either directly or indirectly by taking wildfire protection fees into account when setting other rates for the public utility. The amount of revenues shall not be subject to reduction, impairment,

postponement, or termination. The State does hereby pledge and agree with the public utility, owners and assignees of wildfire protection property, financing entities, and holders of bonds that the State shall neither limit nor alter, except as otherwise provided with respect to the true-up adjustment of the wildfire protection fees pursuant to subsection [(k)], wildfire protection fees, wildfire protection property, financing orders, or any rights under a financing order until (i) the bonds, together with the interest on the bonds and associated financing costs, are fully paid and discharged, or (ii) in the alternative, the bonds have been refinanced through an additional issue of bonds or (iii) in the event the wildfire protection property has been assigned to an assignee in connection with the exercise of remedies upon a default, until the receipt of proceeds by such assignee in an amount sufficient to repay the principal amount of, and interest that would have accrued on, the bonds had they remained outstanding; provided that nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the full protection of the public utility and of owners and holders of the bonds and the wildfire protection property. Any financing entity may include this pledge and undertaking for the State in these bonds. When setting other rates for the public utility, nothing in this subsection shall prevent the public utilities commission from taking into account any collection of wildfire protection fees in excess of amounts actually required, or would have been required

had the bonds remained outstanding following a default, to pay wildfire protection costs financed or refinanced by bonds; provided that this shall not result in a recharacterization of the tax, accounting, and other intended characteristics of the financing, including but not limited to either of the following:

- (1) Treating the bonds as debt of the applicable financing entity for federal income tax purposes; or

Treating the transfer of the wildfire protection property by the public utility as a true sale for bankruptcy purposes.

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

(d) Neither financing orders nor bonds issued under this chapter shall constitute a debt or liability of the State or of any political subdivision thereof, nor shall they constitute a pledge of the full faith and credit of the State or any of its political subdivisions, but shall be payable solely from the funds provided under this chapter. All bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of Hawaii is pledged to the payment of the principal of, or interest and premium on, this bond." The issuance of bonds under this chapter shall not directly, indirectly, or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation or to make any appropriation for their payment.

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

(f) Wildfire protection fees are wildfire protection property when, and to the extent that, a financing order authorizing the wildfire protection fees has become effective in accordance with this chapter, and the wildfire protection property shall thereafter continuously exist as property for all purposes, and all of the rights and privileges relating to that property shall continuously exist for the period and to the extent provided in the financing order, but in any event until the bonds are paid in full, including all principal, premiums, if any, and interest with respect to the bonds, and all associated financing costs are paid in full or, in the event the wildfire protection property has been assigned to an assignee in connection with the exercise of remedies upon a default,

until the receipt by such assignee of proceeds in an amount sufficient to repay the principal amount of, and interest that would have accrued on, the bonds had they remained outstanding. A financing order may provide that the creation of wildfire protection property shall be simultaneous with the sale of the wildfire protection property to an assignee as provided in the application of the pledge of the wildfire protection property to secure the bonds.

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

§269-F Bonds; issuance; wildfire protection property interests. (a) The public utility may sell and assign all or portions of its interest in wildfire protection property to one or more financing entities that make that wildfire protection property the basis for issuance of bonds, to the extent approved in a financing order. The public utility or financing entity may pledge wildfire protection property as collateral, directly or indirectly, for bonds to the extent approved in the pertinent financing orders providing for a security interest in the wildfire protection property, in the manner set forth herein. In addition, wildfire protection property may be sold or assigned by either of the following:

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

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

(c) To the extent that any interest in wildfire protection property is sold, assigned, or is pledged as collateral pursuant to subsection (a), the commission shall

authorize the public utility to contract with the financing entity and its assignees that it will continue to operate its system to provide service to consumers within its service territory, will collect amounts in respect of the wildfire protection fees for the benefit and account of the financing entity and its assignees, and will account for and remit these amounts to or for the account of the financing entity or its assignees. Contracting with the financing entity and its assignees in accordance with that authorization shall not impair or negate the characterization of the sale, assignment, or pledge as an absolute transfer, a true sale, or a security interest, as applicable. To the extent that billing, collection, and other related services with respect to the provision of the public utility's services are provided to a consumer by any person or entity other than the public utility in whose service territory the consumer is located, that person or entity shall collect the wildfire protection fees and any associated fixed recovery tax amounts from the consumer for the benefit and account of the public utility, financing entity or assignees with the associated revenues remitted solely for such person's benefit as a condition to the provision of electric service to that consumer. Each financing order shall impose terms and conditions, consistent with the purposes and objectives of this chapter, on any person or entity responsible for billing, collection, and other related services, including without limitation collection of the wildfire protection fees and any associated fixed recovery tax amounts, that are the subject of the financing order.

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

other than the wildfire protection property as specified in that financing order.

- (b) Wildfire protection property that is specified in a financing order shall constitute an existing, present property right, notwithstanding the fact that the imposition and collection of wildfire protection fees depend on the electric utility continuing to provide services or continuing to perform its servicing functions relating to the collection of wildfire protection fees or on the level of future service consumption, e.g., electricity consumption. Wildfire protection property shall exist whether or not the wildfire protection fees have been billed, have accrued, or have been collected and notwithstanding the fact that the value for a security interest in the wildfire protection property, or amount of the wildfire protection property, is dependent on the future provision of service to consumers. All wildfire protection property specified in a financing order shall continue to exist until the bonds issued pursuant to a financing order and all associated financing costs are paid in full or, in the event the wildfire protection property has been assigned to an assignee in connection with the exercise of remedies upon a default, until the receipt by such assignee of proceeds in an amount sufficient to repay the principal amount of, and interest that would have accrued on, the bonds had they remained outstanding.

(c) Wildfire protection property, wildfire protection fees, and the interests of an assignee, bondholder or financing entity, or any pledgee in wildfire protection property and wildfire protection fees shall not be subject to setoff, counterclaim, surcharge, recoupment, or defense by the electric utility or any other person or in connection with the

bankruptcy, reorganization, or other insolvency proceeding of the electric utility, any affiliate of the electric utility, or any other entity.

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

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

- (1) The commission has issued a financing order authorizing the wildfire protection fee included in the wildfire protection property;
- (2) Value has been given by the pledgees of the wildfire protection property; and
- (3) The pledgor has signed a security agreement covering the wildfire protection property.

(b) A valid and enforceable security interest in wildfire

protection property is perfected when it has attached and when a financing statement has been filed naming the pledgor of the wildfire protection property as "debtor" and identifying the wildfire protection property. Any description of the wildfire protection property shall be sufficient if it refers to the financing order creating the wildfire protection property. A copy of the financing statement shall be filed with the commission by the public utility that is the pledgor or transferor of the wildfire protection property, and the commission may require the public utility to make other filings with respect to the security interest in accordance with procedures it may establish; provided that the filings shall not affect the perfection of the security interest.

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

(d) Subject to the terms of the security agreement covering the wildfire protection property and the rights of any third parties holding security interests in the wildfire protection

property, the validity and relative priority of a security interest created under this section shall not be defeated or adversely affected by the commingling of revenues arising with respect to the wildfire protection property with other funds of the public utility, or by any security interest in a deposit account of that public utility perfected under article 9 of chapter 490, into which the revenues are deposited. Subject to the terms of the security agreement, upon compliance with the requirements of section 490:9-312(b)(1), the pledgees of the wildfire protection property shall have a perfected security interest in all cash and deposit accounts of the electrical corporation in which wildfire protection property revenues have been commingled with other funds[; provided that the perfected security interest shall be limited to an amount not greater than the amount of the wildfire protection property revenues received by the public utility within twelve months before (1) any default under the security agreement, or (2) the institution of insolvency proceedings by or against the public utility, less payments from the revenues to the pledgees during that twelve-month period][TO BE DISCUSSED].

(e) If default occurs under the security agreement covering the wildfire protection property, the pledgees of the wildfire protection property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under article 9 of chapter 490, and shall be entitled to foreclose or otherwise enforce their

security interest in the wildfire protection property, subject to the rights of any third parties holding prior security interests in the wildfire protection property perfected in the manner provided in this section. In addition, the commission may require in the financing order creating the wildfire protection property that, in the event of default by the electrical corporation in payment of wildfire protection property revenues, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under section 269-H of the wildfire protection property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of wildfire protection property revenues. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the wildfire protection property. Any surplus in excess of (i) amounts necessary to pay principal, premiums, if any, interest, costs, and arrearages on the bonds, and associated financing costs arising under the security agreement or (ii) in the event the wildfire protection property has been assigned to an assignee in connection with the exercise of remedies upon a default, an amount sufficient to repay the principal amount of, and interest that would have accrued on, the bonds had they remained outstanding, shall be remitted to the debtor or to the

pledgor or transferor.

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

§ 269-H Transfers of wildfire protection property.

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

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

- (1) Commingling of wildfire protection fee revenues with other amounts;
- (2) The retention by the seller of either of the following:

(A) A partial or residual interest, including an

equity interest, in the financing entity or the wildfire protection property, whether direct or indirect, subordinate or otherwise; or

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

- (3) Any recourse that the assignee may have against the seller;
- (4) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;
- (5) The obligation of the seller to collect wildfire protection fee on behalf of an assignee;
- (6) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purpose; or
- (7) Any true-up adjustment of the wildfire protection fee as provided in the financing order.

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

- (1) The commission issues the financing order authorizing the wildfire protection fee included

in the wildfire protection property; and

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

(d) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with part 5 of article 9 of chapter 490, naming the assignor of the wildfire protection property as debtor and identifying the wildfire protection property shall have priority. Any description of the wildfire protection property shall be sufficient if it refers to the financing order creating the wildfire protection property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

§269-I Successor requirements; default. (a) Any successor to an electric utility that has received a financing order, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall be bound by the requirements of this part. The successor of the electric utility shall perform and satisfy all obligations of the electric utility under the financing order, in the same manner

and to the same extent as the electric utility, including the obligation to collect and pay the wildfire protection fee to any financing party as required by a financing order or any assignee. Any successor to the electric utility company shall be entitled to receive any fixed recovery tax amounts otherwise payable to the electric utility company. (b) The public utilities commission may require in a financing order that, if a default by the electric utility in remittance of the wildfire protection fee collected arising with respect to wildfire protection property occurs, the public utilities commission, without limiting any other remedies available to any financing party by reason of the default, shall order the sequestration and payment to the beneficiaries of the wildfire protection fee collected arising with respect to the wildfire protection plan property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

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

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

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

SECTION 3. Chapter 269-17, Hawaii Revised Statutes, is

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Note: Green Font are proposed amendments by PUC to HB 2407 (Companion to SB 3096) and **Blue Font** reflects Hawaiian Electric's proposed changes to SB 3096 and the PUC's proposed amendments to HB 2407.

amended to read as follows:

"§269-17 Issuance of securities. A public utility corporation or a financing entity may, on securing the prior approval of the public utilities commission, and not otherwise, except as provided in section 269-E, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely: for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures. As used herein, "property" and "facilities", mean property and facilities used in all operations of a public utility corporation whether or not included in its public utility operations or rate base. A public utility corporation may not issue securities to acquire

property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations.

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

SECTION 4. Each electric utility shall file its first risk-based wildfire protection plan with the public utilities commission required under section 269-B, Hawaii Revised Statutes, established by section 2 of this Act, no later than December 31, 2024.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date. SECTION 6.

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

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

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

SECTION 8. In codifying the new part added to chapter 269, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

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

SECTION 10. This Act shall take effect upon its approval.

INTRODUCED BY: _____

BY REQUEST

Report Title:

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

Description:

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

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KENNETH S. HARA
DIRECTOR OF EMERGENCY
MANAGEMENT

JAMES DS. BARROS
ADMINISTRATOR OF
EMERGENCY MANAGEMENT

LATE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF DEFENSE
KA 'OIHANA PILI KAUA
HAWAI'I EMERGENCY MANAGEMENT AGENCY
4204 DIAMOND HEAD ROAD
HONOLULU, HAWAI'I 96816-4420

STATE OF HAWAI'I
DEPARTMENT OF DEFENSE
HAWAI'I EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON HOUSE BILL 2407 HD1,
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEES ON
CONSUMER PROTECTION AND COMMERCE
JUDICIARY AND HAWAIIAN AFFAIRS

BY

JAMES DS. BARROS
ADMINISTRATOR
HAWAI'I EMERGENCY MANAGEMENT AGENCY

FEBRUARY 15, 2024

Aloha Chairs Nakashima and Tarnas, Vice-Chairs Sayama and Takayama, and Members of the Committee:

Thank you for the opportunity to submit testimony to **SUPPORT** HB 2407 HD1.

The Hawai'i Emergency Management Agency is expressing its support for House Bill 2407 HD1.

Among the many lessons learned from the August wildfires on Maui has been that catastrophic wildfire can strike without notice and have devastating affects to any community in Hawai'i. Enhanced emergency planning plays an important role at the Hawai'i Emergency Management Agency (HI-EMA).

HI-EMA **SUPPORTS HB 2407 HD1** because it helps agencies, including the Public Utility Commission (PUC) and Department of Land and Natural Resources (DLNR) as well as the state's electric utilities identify, develop, implement, and administer protection plans with public input and understanding. HI-EMA supports the purpose of this Bill is to create a process whereby electric utilities develop and submit effective wildfire risk protection plans to the PUC for approval; the PUC will then evaluate those plans and either approve them or do so with modifications.

HI-EMA also points out that PUC's approval of a risk-based wildfire protection plan does not by itself, establish a defense to any enforcement action for violation of a PUC decision, order, or rule, or relieve an electric utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies. Electric utilities are expected to continuously improve and take reasonable actions outside of approved plans to mitigate wildfire risk.

Given the amendments that have been made, HI-EMA fully endorses House Bill 2407 HD1 and strongly urges its passage in committee to facilitate the ongoing discussion.

Thank you for the opportunity to provide testimony **SUPPORTING** House Bill 2407 HD1.

James Barros: james.barros@hawaii.gov; 808-733-4300



Email: communications@ulupono.com

HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE AND JUDICIARY &
HAWAIIAN AFFAIRS

Thursday, February 15, 2024 — 2:00 p.m.

Ulupono Initiative supports the intent of HB 2407 HD1, Relating to Wildfire Risk Mitigation.

Dear Chair Nakashima, Chair Tarnas, and Members of the Committees:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy, clean transportation choices, and better management of freshwater resources.

Ulupono supports the intent of HB 2407 HD1, which creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission (PUC) for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county.

Hawai'i's unique communities and ecosystems are increasingly threatened by the devastating impacts of wildfires. In recent years, we have witnessed a rise in the frequency and intensity of wildfires, exacerbated by climate change, land and water management practices, and urban encroachment into fire-prone areas. The culmination of these forces resulted in the devastating and heartbreaking destruction seen on Maui last year.

Ulupono supports this bill's requirement that the utility wildfire protection planning process be one that is open to community and stakeholder engagement. Ulupono considers community engagement a crucial component of the decision-making process, particularly when it comes to investments that support community health and safety. To further enhance the decision-making process, Ulupono recommends that greater visibility and optionality be presented by developing a set of investment and price-based scenarios for the PUC to decide upon. Ulupono recommends the bill require the utility, when developing its wildfire protection plan, to develop a series of sensitivities at a low, base, and high set of investment and cost scenarios. Providing pricing scenarios would enable deeper discussion and improve decision-making discussions between the regulator, consumer advocate, stakeholders, community, and utilities.

Investing in a Sustainable Hawai'i



Additionally, Ulupono applauds the Legislature's efforts to utilize unique methods to finance much-needed investments that will mitigate customer impacts to the extent possible.

Undisputed are the importance of preparing for increased risks from wildfires and ensuring that loss and damage caused by wildfires are addressed. Developing utility wildfire protection plans is a sound policy to address future wildfire risks across our state. We support the PUC's review and approval of said plans as it creates a transparent public process.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEES ON
JUDICIARY & HAWAIIAN AFFAIRS
AND
CONSUMER PROTECTION & COMMERCE**

**HB 2407, HD1
Relating to Wildfire Risk Mitigation**

Thursday, February 15, 2024
2:00 PM
State Capitol, Conference Room 325

Jimmy D. Alberts
Senior Vice President & Chief Operations Officer
Hawaiian Electric

Dear Chair Nakashima and Chair Tarnas, Vice Chair Sayama and Vice Chair Takayama,
and Members of the Committees,

My name is Jimmy D. Alberts, Senior Vice President & Chief Operations Officer for Hawaiian Electric and I am testifying in **support and requesting amendments to HB2407, HD1, Relating to Wildfire Risk Mitigation** and appreciate that this bill is a part of the Governor's package.

Our proposed amendments are included in the attachment. Hawaiian Electric supports the objectives of HB 2407, HD1, Relating to Wildfire Risk Mitigation but would like to propose amendments that will ensure that the mitigation plan provisions give utilities the tools and resources that are necessary to make our grids safe and resilient. Additionally, the amendments propose to ensure the securitization provision enables a successful, low-cost securitization transaction consistent with standard practices and market and ratings agencies' expectations. We agree that utilities should develop and implement plans to mitigate wildfire risks with regulatory oversight and cost recovery,

and that the Public Utilities Commission (“PUC” or “Commission”) is best positioned to decide what details should and shouldn’t be included in a given plan.

We also agree that allowing the Commission to authorize the issuance of bonds securitized by rates is the most efficient, least-cost way to finance expenses associated with catastrophic wildfires.

At this time, we are requesting your consideration of four sets of amendments that we believe will better protect against the risk of another catastrophic wildfire and minimize the burden on ratepayers.

First, our amendments clarify that the Commission, in its decision on the wildfire mitigation plan, would determine the reasonable costs to develop, implement, and administer the plan. That is implied by section 269-B(f) in the current HD1 draft, which authorizes recovery of actual costs if they are within the amount the PUC determined in advance would be reasonable.

Second, our amendments strike the penalties section (See pages 11 -12) of the bill as the Commission already has existing discretion to decide whether and at what level to impose a penalty. For your reference, Hawaii Revised Statutes, Section 269-28 provides how the Commission can administer penalties on a utility. The amendment also would avoid a scenario in which the Commission feels it must impose penalties even for minor infractions.

Third, our amendments seek to protect the jurisdiction of the Commission by adding limitations on the ability of private plaintiffs to sue electric utilities or the Commission based on alleged inadequacies in plans. These provisions do not provide blanket immunity to electric utilities. Instead, these provisions narrowly bar arguments that would ask judges and juries to contradict the Commission’s express judgments. As

part of approving a plan, the Commission must decide *both* what measures are necessary for safety *and* what measures would be too costly to be reasonable. For example, the Commission might decide that a power shutoff in high wind conditions is needed to protect public safety. If a plaintiff could sue the utility for damages resulting from the power outage, the Commission's decision would be undermined. On the other hand, if a plan requires a utility to inspect certain poles every year, and the utility fails to do so, a plaintiff would not be barred from alleging the utility was negligent.

Fourth, we are proposing a number of technical amendments to the securitization sections of the bill – See talking points and amendments attached. These reflect standard best practices for utility securitizations that are designed to achieve the best possible ratings and meet market expectations. These are designed to ensure that the bill includes the features needed for a successful securitization transaction. These amendments bring HB 2407, HD1 in line with numerous securitization statutes adopted in recent years in other states. Those other state statutes have resulted in many successful securitization transactions, and we recommend these amendments to meet market and rating agency expectations, thus leading to the lowest possible cost. Our amendments do not address which costs can be recovered via securitization. That will be up to the Commission to decide. Only after the Commission decides that certain costs should be recovered from customers would the Commission authorize a securitization transaction as the lowest-cost means of recovering those costs.

Hawaiian Electric supports HB 2407, HD1 with amendments and requests the Committee's favorable consideration.

Talking Points to Securitization Sections Only
HB 2407, HD1 Proposed Amendments

Overall:

We propose edits to HB 2407, HD1 on top of those already proposed by the PUC previously. These amendments are technical in nature to reflect current market expectations for securitization laws. These changes benefit customers because they are designed to achieve the highest rating and lowest price from rating agencies and investors, which will lower the charges paid by customers. We are concerned that, without these amendments, HB 2407, HD1 will fail to create a successful securitization structure.

At present we have made purely technical changes and have not modified the provisions addressing what costs are eligible to be securitized.

1. Definitions (§ 269-A).

a. “Assignee” definition added.

This is a market expectation that the wildfire recovery property (the right to collect the charges) will be transferred by the utility to a separate legal entity that will issue the bonds and that will be rated separately from the utility, thus lowering the financing cost to the benefit of customers.

b. “Catastrophic wildfire” definition modified.

This modification to the PUC’s definition clarifies the intent to apply to structures, whereas “dwellings” and “buildings” was ambiguous.

c. “Commission” defined.

For clarity.

d. “Consumer” definition added.

This is a market expectation that defines those responsible for paying the charges for the bonds broadly. This is used in place of customer or ratepayer.

e. “Department” definition deleted.

This is no longer an operative definition.

f. “Financing costs” definition revised regarding taxes.

This is a market expectation that clarifies that taxes, whether paid, payable, or accrued, as a result of issuing the bonds will be included as financing costs and paid from the bond issuance.

g. “Financing entity” definition broadened to include separate entity that issues the bonds.

This is a market expectation and an essential feature of securitization. There must be an entity separate from the utility that issues the bonds in order to achieve a higher rating and lower financing costs. The revision adds this concept.

h. “Financing Order” definition revised.

These are market expectations that add mechanisms for true-up adjustments to fixed recovery charges (e.g., rate surcharges) and associated fixed recovery tax amounts (rates that cover taxes), which ensure that wildfire protection property is protected against variance.

i. “Financing party” definition added.

This is a market expectation that encompasses the bondholders as well as various other entities that administer the bonds or provide credit protection for the bonds as parties that benefit from the provisions of the securitization law that ensure payment of the bonds, including provisions on irrevocability, the state pledge, successor liability, nonbypassable charges, and true-up adjustments of the charges.

j. “Fixed recovery tax amount” definition added.

This is to ensure recovery of any federal or state income taxes the utility has to pay when it recognizes income from the bond charges. This is a standard, necessary provision that avoids a scenario in which the utility fails to recover revenue to pay taxes.

k. “True-up adjustment” definition added.

This is to provide a precise definition of the concept of a true-up adjustment to ensure full collection of the amounts necessary to pay the bonds. The concept of a true-up adjustment appears in the bill, and this definition simply clarifies what that process entails. This is a standard definition from other statutes.

l. “Wildfire Protection Costs” definition amended.

We revised the definition of wildfire protection costs to include professional fees and other type costs from issuance and administration of bonds. This is a necessary provision, consistent with market expectations, that ensures that all costs associated with issuing and managing the bond are paid as part of bond charges.

m. “Wildfire protection fee” definition amended.

We clarified that the financing entity or successor would collect the fee. This was implicit in the prior definition, so we made it more explicit.

n. “Wildfire protection property” definition amended.

This definition reflects the market expectations that the financing order creates a property right for the bondholder in the imposition and collection of charges that cover the bond, but does not create a property right in the imposition of charges to recover the federal and state income taxes the utility must pay. The latter provision also protects the utility by ensuring it is made whole when it pays those taxes.

2. Procedure for financing application (§ 269-E(b).)

We clarified that the financing order will address the recovery of fixed recovery tax amounts. This is a standard provision to ensure that the utility recovers the amounts needed to pay taxes.

We modified the requirement for the application to describe the term of the bonds. The scheduled maturity is limited to 30 years, but it is important to permit a “legal” maturity that may exceed 30 years. This provides some “cushion” to address the possibility that the bonds are not fully repaid within 30 years. However, the total amount of the charges on bills will exactly equal (and not exceed) the amount required to retire the bonds. This provision has become a market expectation and is important to obtain a AAA rating.

In describing the factors the PUC will consider, we clarified the terms and conditions of the bonds the PUC would examine.

We added a provision enabling a procedure for follow-on applications to securitize additional amounts.

We added language specifying that the proceeding would be initiated by a utility application, and giving the PUC discretion to allocate the fees.

3. Financing Order (§269-F).

We replaced the language on irrevocability with more modern and comprehensive language from other statutes. The intent and effect is similar, but the language is more specific and thorough, thus giving the market comfort.

We added language allowing the bonds to be issued in one or more series, depending on market conditions.

We added a provision authorizing an agreement whereby the utility will collect the charges on behalf of the financing entity, which issues the bonds. This is a standard provision in other statutes and has become a market expectation.

We added a provision that the bonds will be nonrecourse to the utility. This is important to ensure the bonds aren’t linked to the credit of the utility, which is key to obtaining a AAA rating.

We added a provision that the right to collect revenues to pay the bonds is a present property right. This is important to ensure that the transfer of that right to collect to the financing entity is regarded as a “true sale,” which in turn ensures that the utility cannot recapture that revenue stream (e.g., in a bankruptcy). We added a related provision that the right to collect the charges isn’t subject to offsetting claims by the utility or its creditors. These provisions are standard in other modern securitization statutes.

We added a provision making the requirements of the law applicable to future PUCs. This is related to the State’s pledge not to interfere with the bonds, as discussed below.

4. Wildfire protection fee (§269-G).

This section of the bill describes the wildfire protection fee, or charge that will be collected to pay the bondholders. We edited to make clear that the fees also include fixed recovery tax amounts, as described above.

We edited the language to clarify that the charges are nonbypassable for existing consumers as of the date of the financing order, as well as future consumers. This is important to the rating agencies who need assurance that existing consumers as of the time of rating continue to be responsible for payment of the charges until the bonds are paid in full.

We added a provision requiring the fees to appear on the bill, and for periodic true-up adjustments to ensure that the bonds are fully paid. The periodic true-up concept is essential to rating agencies and will be defined more fully in the financing order.

We added a provision stating that the right to collect the fees is a property right. As mentioned above, this is important to the legal structure that enables the financing entity to own that property right, which removes it from the utility’s assets and hence supports the AAA credit rating for the bonds.

A BILL FOR AN ACT

RELATING TO WILDFIRE RISK MITIGATION.

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

SECTION 1. The legislature finds that the risk of catastrophic wildfires has increased, making it imperative that electric utilities develop, implement, and administer effective plans for wildfire risk mitigation. Electric utilities should develop, implement, and administer wildfire protection plans, and, through a public process, the public utilities commission should review and approve such plans and the recovery of any related costs to implement the plans.

The legislature also finds that a resilience working group, convened throughout 2019 and 2020, sought to: (1) identify and prioritize resilience threat scenarios and potential grid impacts; (2) identify key customer and infrastructure sector capabilities and needs following a severe event and loss of power; (3) identify gaps and priorities in grid and customer capabilities following a severe event and loss of power; (4) provide recommendations and inputs for investor-owned utility grid planning to address resilience needs; and (5) recommend additional grid and customer actions to close gaps and

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

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

The purpose of this Act is to create a process whereby electric utilities develop and submit effective wildfire risk protection plans to the public utilities commission for approval; the public utilities commission evaluates those plans and either approves them or does so with modifications; the electric utilities are able to timely recover the prudently incurred costs and expenses of developing, implementing, and administering those plans; and those costs and expenses are not borne disproportionately by any particular ratepayer or county.

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

"PART . WILDFIRE PROTECTION AND MITIGATION

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

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

"Assignee" means a legally recognized entity to which an electric utility company assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to wildfire protection property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to wildfire protection property.

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

"Catastrophic wildfire" means any wildfire in the State that damaged or destroyed more than five hundred ~~dwelling~~ residential or commercial ~~buildings~~ structures.

~~"Department" means any state department or agency.~~

"Commission" means the public utilities commission.

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

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

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

- (1) Principal, interest, and redemption premiums that are payable on bonds;
- (2) A payment required under an ancillary agreement;
- (3) An amount required to fund or replenish reserve accounts or other accounts established under an indenture, ancillary agreement, or other financing document related to the bonds;
- (4) Taxes, franchise fees, or license fees imposed on the wildfire protection fee or otherwise resulting from the collection of the charges, in any such case whether paid, payable, or accrued;
- (5) Costs related to issuing and servicing bonds or the application for a financing order, including without limitation servicing fees and expenses, trustee fees and expenses, legal fees and expenses, accounting fees, administrative fees, underwriting and placement fees, financial advisory fees, original issue discount, capitalized interest, rating agency fees, and any other related costs that are approved for recovery in the financing order; and

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

"Financing entity" means a public utility or any subsidiary, affiliate, or assignee of the public utility that is authorized by the public utilities commission to issue bonds or acquire wildfire protection property, or both, pursuant to a financing order.

"Financing order" means an order of the public utilities commission under this part that has become final as provided by law, and that authorizes the issuance of bonds and the imposition, ~~adjustment from time to time,~~ and collection of wildfire protection fees and which shall include without limitation a procedure to require the expeditious approval by the commission of periodic adjustments to wildfire protection fees and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all wildfire protection costs and the costs associated with the proposed recovery, financing, or refinancing thereof, including the costs of servicing and retiring the bonds contemplated by the financing order.

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

"Fixed recovery tax amounts" means those nonbypassable rates and other charges, including but not limited to distribution, connection, disconnection, and termination rates

and charges, that are needed to recover federal and state taxes associated with wildfire protection fees authorized by the commission in a financing order, but are not approved as financing costs financed from proceeds of bonds.

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

"Wildfire protection costs" means any capital costs and operation and maintenance expenses related to the development, implementation, and administration of a wildfire protection plan but shall not include any penalties levied against an electric utility pursuant to section 269-D. Wildfire protection costs may also include any of the following:

(1) Catastrophic wildfire costs or expenses authorized by the public utilities commission in a financing order for recovery;

(2) Federal and state taxes associated with recovery of the amounts pursuant to paragraph (1); ~~or~~

(3) Financing costs; or

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

"Wildfire protection fee" means the nonbypassable fees and charges including but not limited to distribution, connection, disconnection, and termination rates and charges, that are authorized by section 269-G and in a financing order authorized under this part to be imposed on and collected from all existing and future ~~customers~~ consumers of a financing entity or any successor to recover the costs of recovering, financing, or refinancing wildfire protection costs through a plan approved by the commission in the financing order, including the costs of servicing and retiring bonds.

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

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

(1) In and to the wildfire protection fee established pursuant to a financing order, including the right to impose, bill, collect and receive such fixed recovery charges under the financing order and all rights to obtain adjustments to the wildfire protection fee in accordance with section 269-G and the financing order; and

(2) To be paid in the amount that is determined in a financing order to be the amount that the public utility or its ~~transferee~~ assignee is lawfully entitled to receive pursuant to this part and the proceeds thereof, and in and to all revenues, collections, claims, payments, moneys, or proceeds of, or arising from, the wildfire protection fee that is the subject of a financing order.

"Wildfire protection property" shall not include a right to be paid fixed recovery tax amounts. "Wildfire protection property"

shall constitute a current property right, notwithstanding the fact that the value of the property right will depend on consumers using electricity or, in those instances where consumers are customers of the public utility, the public utility performing certain services.

§269-B Electric utility workshops. The public utilities commission may periodically convene workshops to help electric utilities develop and share information for the identification, adoption, and implementation of best practices regarding wildfires, including but not limited to risk-based wildfire protection and risk-based wildfire mitigation procedures and standards. The best practices discussed in these workshops may be incorporated into the proposed wildfire protection plans and updates submitted for the approval of the public utilities commission pursuant to section 269-C.

§269-C Wildfire protection plans. (a) Each electric utility shall have and operate in compliance with a risk-based wildfire protection plan, which shall be submitted to the public utilities commission for approval. The risk-based wildfire protection plan shall be based on reasonable and prudent practices, which may be determined by public utilities commission standards adopted by decision or rule. The electric utility shall design the risk-based wildfire protection plan to protect public safety, reduce risk to utility customers, and promote resilience of the Hawaii electric system to wildfire damage. Each electric utility's plan shall, at a minimum:

- (1) Account for the duties of persons responsible for executing the plan;
- (2) Describe the objectives of the plan;
- (3) Identify areas that are subject to a heightened risk of wildfire and are:
 - (A) Within the right of way or legal control or ownership of the electric utility; and
 - (B) Outside the right of way or legal control or ownership of the electric utility but within a reasonable distance, as determined by the public utilities commission, of the electric utility's generation or transmission assets;
- (4) Identify a means for mitigating wildfire risk that reflects a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk;
- (5) Identify preventive actions and programs that the electric utility shall carry out to minimize the risk of utility facilities causing wildfire;
- (6) Identify the metrics the electric utility plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics;
- (7) Describe how the application of previously identified metrics to previous plan performances has informed the plan;
- (8) After seeking information from state and local entities, identify a protocol for the deenergizing of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the public and first responders, and preserve health and communication infrastructure;
- (9) Describe appropriate and feasible procedures for notifying a customer who may be affected by the deenergizing of electrical lines. The procedures shall consider the need to notify, as a priority, critical first responders, health care facilities, operators of wastewater and water delivery infrastructure, and operators of telecommunications infrastructure;

(10) Describe the procedures, standards, and time frames that the electric utility shall use to inspect utility infrastructure in areas that the electric utility identifies under paragraph (1), including whether those procedures, standards, and time frames are already set forth in the electric utility's existing plans or protocols and in coordination with any relevant entities;

(11) Describe the procedures, standards, and time frames that the electric utility will use to carry out vegetation management in areas that the electric utility identifies under paragraph (1), including whether those procedures, standards, and time frames are already set forth in the electric utility's existing plans or protocols and in coordination with any relevant entities;

(12) Include a list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electric utility's service territory. The list shall include but not be limited to the following:

- (A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electric utility's equipment and facilities; and
- (B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electric utility's service territory;

(13) Describe how the plan accounts for the wildfire risk identified in the electric utility's risk assessment;

(14) Describe the actions that the electric utility will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a wildfire, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, including but not limited to undergrounding lines, insulation of distribution wires, and pole replacement;

(15) Demonstrate that the electric utility has an adequately sized and trained workforce to promptly restore service after a wildfire, taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with the electric utility;

(16) Identify the estimated development, implementation, and administration costs for the risk-based wildfire protection plan;

(17) Identify the timelines, as applicable, for development, implementation, and administration of any aspects of the risk-based wildfire protection plan;

(18) Describe how the plan is consistent with the electric utility's other hazard mitigation and grid hardening plans, including plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and repositioning equipment and employees;

(19) Identify community outreach and public awareness efforts that the electric utility will use before, during, and after a wildfire;

(20) Describe the processes and procedures that the electric utility will use to do all of the following:

(A) Monitor and audit the implementation of the plan;

(B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies; and

(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and rules of the public utilities commission;

(21) Demonstrate elements of data governance, including enterprise systems; and

(22) Any modifications to paragraphs (1) to (21), or other information as required by the public utilities commission.

(b) Each electric utility shall regularly submit updates to its risk-based wildfire protection plan for approval on a schedule determined by the public utilities commission.

(c) To develop the risk-based wildfire protection plan, the electric utility may consult with and consider information from federal, state, local, and other expert entities.

(d) The public utilities commission shall evaluate each electric utility's risk-based wildfire protection plan and plan updates according to the public utilities commission's rules of practice and procedure in chapter 16-601 of the Hawaii administrative rules. The public utilities commission shall allow the department of land and natural resources and local emergency services agencies to participate in proceedings evaluating risk-based wildfire protection plans.

(e) No more than ninety days after the last party filing, and no more than a total of one hundred eighty days after the initial application for approval of the submitted wildfire protection plan or update in the docketed proceeding, the public utilities commission shall approve, approve with conditions, or reject the plan or update based on whether the public utilities commission finds that the plan or update is based on reasonable and prudent practices and designed to meet all applicable rules and standards adopted by the public utilities commission. The public utilities commission may, in approving the plan or update with conditions, direct the electric utility to make modifications to the plan or updates that the public utilities commission believes represent a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk based on the evidentiary record in the proceeding. The public utilities commission shall issue a decision explaining its

determinations, including findings of fact and conclusions of law, in accordance with chapter 91. Such decision shall include a determination of the reasonable costs to develop, implement and administer the plan. The commission shall establish a mechanism to allow timely and prompt recovery of such costs in rates, which shall be incremental to the rates the utility is otherwise authorized to charge.

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

If the actual costs are less than the amounts that the public utilities commission determined were reasonable in its decision under subsection (e), the public utilities commission shall direct the electric utility to refund or credit the costs to ratepayers.

If the actual costs are equal to or greater than the amounts that the public utilities commission determined were reasonable in its decision under subsection (e), the commission shall not direct the electric utility to refund to ratepayers the amount the commission previously determined was reasonable but may disallow the recovery from ratepayers of any additional costs the commission finds unreasonable.

(g) (1) The public utilities commission's approval of a risk-based wildfire protection plan does not by itself establish

a defense to any enforcement action for violation of a public utilities commission decision, order, or rule, or relieve an electric utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies. Electric utilities are expected to continuously improve and take reasonable actions outside of approved plans to mitigate wildfire risk. This paragraph does not create or support a duty in a civil action or give rise to civil liability that would not exist in the absence of this paragraph.

(2) No electric utility shall be civilly liable for the death of or injury to persons, or property damage, as a result of (1) any act taken in accordance with a plan or updated plan approved by the public utilities commission under this Chapter; or (2) any failure to take an action proposed by an electric utility in a plan or updated plan and thereafter removed from the plan by modification of the public utilities commission.

(3) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the public utilities commission or its agents and employees; the State; the public utilities commission commissioners; or the commissioners' representatives for the death of or injury to persons, or property damage, for any action taken by them in the performance of their powers and duties under this chapter.

(h) The public utilities commission shall, as appropriate, adopt rules or issue orders for the implementation of this section. The rules or orders may include but need not be limited to procedures and standards regarding data governance,

risk-based decision making, vegetation management, public power safety shutoffs and restorations, pole materials, circuitry, and monitoring systems.

~~§269-D Penalties. (a) In addition to any other penalties provided by law, a failure by an electric utility to comply with a wildfire protection plan or part of a wildfire protection plan shall be subject to a civil penalty, as determined by the public utilities commission. Imposition of penalties pursuant to this section shall otherwise be in accordance with section 269-28 and all applicable administrative rules. All moneys collected under this section shall be deposited into the public utilities commission special fund.~~

§269-E Applications to issue bonds and authorize wildfire protection fees. (a) An electric utility may apply to the public utilities commission for one or more financing orders to issue bonds to recover any wildfire protection costs, each of which authorizes the following:

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

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

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

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

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

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

(3) The expected term, which shall include a scheduled final payment date not to exceed thirty years, and a legal final maturity, which may be longer, subject to rating agency and market conditions, during which term the wildfire protection fee associated with the issuance of each series of bonds is expected to be imposed and collected;

(4) An estimate of the financing costs associated with the issuance of each series of bonds;

(5) An estimate of the amount of the wildfire protection fee revenues necessary to pay principal and interest on the bonds and related financing costs as set forth in the application and the calculation for that estimate;

(6) A proposed methodology for allocating the wildfire protection fee among customer classes within the financing entity;

(7) A description of ~~a proposed formula~~ the true-up adjustment ~~mechanism~~ for the adjustment of the wildfire protection fee to correct for any overcollection or undercollection of the wildfire protection fee, and to otherwise ensure the timely payment of principal and interest on the bonds and related financing costs; and

(8) Any other information required by the public utilities commission.

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

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

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

(2) Whether such costs are consistent with the public interest;

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

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

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

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

(e) The commission shall issue financing orders in accordance with this chapter to facilitate the recovery,

financing, or refinancing of wildfire protection costs. A financing order may be adopted only upon the application of the public utility. A financing order may specify how amounts collected from a consumer shall be allocated between wildfire protection fees, any associated fixed recovery tax amounts, and other charges.

§269-F Wildfire protection plan financing order. (a) A financing order shall remain in effect until the bonds issued under the financing order and all financing costs related to the bonds have been paid in full or defeased by their terms. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of the electric utility or the commencement of any judicial or nonjudicial proceeding on the financing order.

(b) ~~Once a financing order has become final as provided by law, the financing order shall become irrevocable. The public utilities commission may not directly or indirectly, except as provided in the adjustment mechanism approved in the financing order, reduce, impair, postpone, rescind, alter, or terminate the wildfire protection fee authorized in the financing order or impair the wildfire protection property or the collection of the wildfire protection plan fee so long as any bonds are outstanding or any financing costs remain unpaid.~~ Notwithstanding any other law, and except as otherwise provided in § 269-G(e), with respect to wildfire protection property that has been made the basis for the issuance of bonds and with respect to any associated fixed recovery tax amounts, the financing order, the

wildfire protection fees, and any associated fixed recovery tax amounts shall be irrevocable. The state and its agencies, including the commission, pledge and agree with bondholders, the owners and assignees of the wildfire protection property, and other financing parties that the state and its agencies will not take any action listed in this subdivision. This subdivision does not preclude limitation or alteration if full compensation is made by law for the full protection of the wildfire protection property collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the electric utility company. The prohibited actions are as follows:

(1) Alter the provisions of this section, which authorize the commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create wildfire protection property, and make the wildfire protection fees imposed by a financing order irrevocable, binding, or nonbypassable charges for all existing and future consumers;

(2) Take or permit any action that impairs or would impair the value of wildfire protection property or the security for the bonds or revises the wildfire protection costs for which recovery is authorized;

(3) In any way impair the rights and remedies of the bondholders, assignees, and other financing parties;

(4) Except for changes made pursuant to the formula-based true-up mechanism authorized under § 269-E(a)(1), reduce, alter, or impair wildfire protection fees that are to be imposed,

billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related bonds have been paid and performed in full.

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

(d) The public utility may sell and assign all or portions of its interest in wildfire protection property to one or more financing entities that make that wildfire protection property the basis for the issuance of bonds, to the extent approved in a financing order. The public utility or financing entity may pledge wildfire protection property as collateral, directly or indirectly, for bonds to the extent approved in the pertinent financing orders providing for a security interest in the wildfire protection property, in the manner set forth in section 269-H. In addition, wildfire protection property may be sold or assigned by either of the following:

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

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

(e) To the extent that any interest in wildfire protection property is sold, assigned, or is pledged as collateral pursuant to subsection (d), the commission shall authorize the public utility to contract with the financing entity that it will continue to operate its system to provide service to consumers within its service territory, will collect amounts in respect of the wildfire protection fees for the benefit and account of the financing entity, and will account for and remit these amounts to or for the account of the financing entity. Contracting with the financing entity in accordance with that authorization shall not impair or negate the characterization of the sale, assignment, or pledge as an absolute transfer, a true sale, or a security interest, as applicable. To the extent that billing, collection, and other related services with respect to the provision of the public utility's services are provided to a consumer by any person or entity other than the public utility in whose service territory the consumer is located, that person or entity shall collect the wildfire protection fees and any associated fixed recovery tax amounts from the consumer for the benefit and account of the public utility or financing entity with the associated revenues remitted solely for the benefit and repayment of the bonds and associated financing costs as a condition to the provision of electric service to that consumer. Each financing order shall impose terms and conditions, consistent with the purposes and objectives of this chapter, on any person or entity responsible for billing, collection, and other related services, including without limitation collection

of the wildfire protection fees and any associated fixed recovery tax amounts, that are the subject of the financing order.

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

(g) Wildfire protection property that is specified in a financing order shall constitute an existing, present property right, notwithstanding the fact that the imposition and collection of wildfire protection fees depend on the electric utility continuing to provide services or continuing to perform its servicing functions relating to the collection of wildfire protection fees or on the level of future service consumption, e.g., electricity consumption. Wildfire protection property shall exist whether or not the wildfire protection fees have been billed, have accrued, or have been collected and notwithstanding the fact that the value for a security interest in the wildfire protection property, or amount of the wildfire protection property, is dependent on the future provision of service to consumers. All wildfire protection property specified in a financing order shall continue to exist until the bonds issued pursuant to a financing order and all associated financing costs are paid in full.

(h) Wildfire protection property, wildfire protection fees, and the interests of an assignee, bondholder or financing

entity, or any pledgee in wildfire protection property and wildfire protection fees shall not be subject to setoff, counterclaim, surcharge, recoupment, or defense by the electric utility or any other person or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the electric utility, any affiliate of the electric utility, or any other entity.

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

§269-G Wildfire protection fee. (a) The public utilities commission may create, pursuant to a financing order approved pursuant to section 269-F, a nonbypassable surcharge for a financing entity, referred to as a wildfire protection fee, which shall be applied to the repayment of bonds and related financing costs as described in this part. The wildfire protection fee and any associated fixed recovery tax amounts may be a usage-based surcharge, a flat user fee, or a charge based upon customer revenues as determined by the public utilities commission for each customer class in any financing order.

(b) As long as any bonds are outstanding and any financing costs have not been paid in full, any wildfire protection fee and any associated fixed recovery tax amounts authorized under a financing order shall be nonbypassable. Subject to any exceptions provided in a financing order, a wildfire protection fee shall be paid by all existing and future ~~customers~~ consumers of a financing entity or any successors. Consumers within the utility service territory as of the date of the financing order and future consumers shall continue to pay fixed recovery charges and any associated fixed recovery tax amounts until the bonds and associated financing costs, including financing costs of the financing entity, are paid in full, even if such consumers cease to be consumers after the date of the financing order.

(c) The wildfire protection fee and any associated fixed recovery tax amounts shall be collected by a financing entity or its successors, in accordance with section 269-J(a), in full through a surcharge, fee, or charge that is separate and apart from the financing entity's rates.

(d) A ~~financing entity~~ public utility may exercise the same rights and remedies under its tariff and applicable law and regulation based on a ~~customer's~~ consumer's nonpayment of the wildfire protection fee as it could for a ~~customer's~~ consumer's failure to pay any other charge payable to that public utility.

(e) Any wildfire protection fees authorized by a financing order shall appear on consumer bills. The commission shall, in any financing order, provide for a procedure for periodic true-

up adjustments to wildfire protection fees, which shall be made at least annually and may be made more frequently. The public utility shall file an application with the commission to implement any true-up adjustment.

(f) Wildfire protection fees are wildfire protection property when, and to the extent that, a financing order authorizing the wildfire protection fees has become effective in accordance with this chapter, and the wildfire protection property shall thereafter continuously exist as property for all purposes, and all of the rights and privileges relating to that property shall continuously exist for the period and to the extent provided in the financing order, but in any event until the bonds are paid in full, including all principal, premiums, if any, and interest with respect to the bonds, and all associated financing costs are paid in full. A financing order may provide that the creation of wildfire protection property shall be simultaneous with the sale of the wildfire protection property to an assignee as provided in the application of the pledge of the wildfire protection property to secure the bonds.

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

§269-H Security interests in wildfire protection property; financing statements. (a) A security interest in wildfire protection property is valid, enforceable against the pledgor and third parties, subject to the rights of any third parties

holding security interests in the wildfire protection property perfected in the manner described in this section, and attaches when all of the following have taken place:

(1) The public utilities commission has issued a financing order authorizing the wildfire protection fee included in the wildfire protection property;

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

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

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

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

(c) A perfected security interest in wildfire protection property shall be a continuously perfected security interest in all wildfire protection property revenues and proceeds arising

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

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

Subject to the terms of the security agreement, upon compliance with the requirements of section 490:9-312(b)(1), the pledgees of the wildfire protection property shall have a perfected security interest in all cash and deposit accounts of the electrical corporation in which wildfire protection property revenues have been commingled with other funds; provided that the perfected security interest shall be limited to an amount no greater than the amount of the wildfire protection property

revenues received by the public utility within twelve months before:

- (1) Any default under the security agreement; or
- (2) The institution of insolvency proceedings by or against the public utility, less payments from the revenues to the pledgees during that twelve-month period.

(e) If default occurs under the security agreement covering the wildfire protection property, the pledgees of the wildfire protection property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under chapter 490, article 9, and shall be entitled to foreclose or otherwise enforce their security interest in the wildfire protection property, subject to the rights of any third parties holding prior security interests in the wildfire protection property perfected in the manner provided in this section. In addition, the public utilities commission may require in the financing order creating the wildfire protection property that, in the event of default by the electrical corporation in payment of wildfire protection property revenues, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under section 269-I of the wildfire protection property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of wildfire protection property revenues. Any order shall remain in full force and effect notwithstanding any

bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the wildfire protection property. Any surplus in excess of amounts necessary to pay principal, premiums, if any, interest, costs, and arrearages on the bonds, and associated financing costs arising under the security agreement, shall be remitted to the debtor or to the pledgor or transferor.

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

(g) This section sets forth the terms by which a consensual security interest shall be created and perfected in the wildfire protection property. Unless otherwise ordered by the public utilities commission with respect to any series of bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subsection. Upon the effective date of the financing order, there shall exist a first priority lien on all wildfire protection property then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this section automatically without any action on the part of the public utility, any affiliate thereof, the financing entity, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the bonds issued pursuant to the financing order, the trustee or representative for the holders, and any other entity specified in the financing order. The persons for whose benefit this lien

is established shall, upon the occurrence of any defaults specified in the financing order, have all rights and remedies of a secured party upon default under chapter 409, article 9, and are entitled to foreclose or otherwise enforce this statutory lien in the wildfire protection property. This lien shall attach to the wildfire protection property regardless of who owns, or is subsequently determined to own, the wildfire protection property, including the public utility, any affiliate thereof, the financing entity, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the wildfire protection property and all third parties upon the effectiveness of the financing order without any further public notice; provided that any person may file a financing statement in accordance with this section. Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the wildfire protection property.

A perfected statutory lien in wildfire protection property is a continuously perfected lien in all wildfire protection property revenues and proceeds, whether or not the revenues or proceeds have accrued.

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

In addition, the public utilities commission may require, in the financing order creating the wildfire protection

property, that, in the event of default by the public utility in the payment of wildfire protection property revenues, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of wildfire protection property revenues. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premiums, if any, interest, costs, and arrearages on the bonds, and other costs arising in connection with the documents governing the bonds, shall be remitted to the debtor.

§269-I Transfers of wildfire protection property. (a) A transfer of wildfire protection property by the public utility to an ~~affiliate-assignee~~ or to a financing entity, or by an ~~affiliate-assignee~~ of the public utility or a financing entity to another financing entity, which the parties in the governing documentation have expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other financing, of the wildfire protection property, other than for federal and state income and franchise tax purposes.

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

- (1) Commingling of wildfire protection fee revenues with other amounts;
- (2) The retention by the seller of either of the following:
 - (A) A partial or residual interest, including an equity interest, in the financing entity or the wildfire protection property, whether direct or indirect, subordinate or otherwise; or
 - (B) The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of wildfire protection fee;
- (3) Any recourse that the purchaser may have against the seller;
- (4) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;
- (5) The obligation of the seller to collect wildfire protection fee on behalf of an assignee;
- (6) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purpose; or
- (7) Any true-up adjustment of the wildfire protection fee as provided in the financing order.

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

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

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

(d) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with chapter 409, article 9, part 5, naming the assignor of the wildfire protection property as debtor and identifying the wildfire protection property shall have priority. Any description of the wildfire protection property shall be sufficient if it refers to the financing order creating the wildfire protection property. A copy of the financing statement shall be filed by the assignee with the public utilities commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings shall not affect the perfection of the transfer.

§269-J Successor requirements; default. (a) Any successor to an electric utility that has received a financing order shall be bound by the requirements of this part. The successor of the electric utility shall perform and satisfy all obligations of the electric utility under the financing order,

in the same manner and to the same extent as the electric utility, including the obligation to collect and pay the wildfire protection fee to any financing party as required by a financing order. Any successor to the electric utility company shall be entitled to receive any fixed recovery tax amounts otherwise payable to the electric utility company.

(b) The public utilities commission may require in a financing order that if the electric utility defaults in remittance of the wildfire protection fee collected arising with respect to wildfire protection property, the public utilities commission, without limiting any other remedies available to any financing party by reason of the default, shall order the sequestration and payment to the beneficiaries of the wildfire protection fee collected arising with respect to the wildfire protection property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

§269-K Treatment of bonds, fees, and property. (a) Neither financing orders nor bonds issued under this part shall constitute a debt or liability of the State or of any of its political subdivisions, nor shall they constitute a pledge of the full faith and credit of the State or any of its political subdivisions, but are payable solely from the funds provided therefor under this part. All bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of

Hawaii is pledged to the payment of the principal of, or interest on, this bond."

(b) The issuance of bonds under this part shall not directly, indirectly, or contingently obligate the State or any of its political subdivisions to levy or pledge any form of taxation or to make any appropriation for their payment.

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

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

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

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

"§269-17 Issuance of securities. A public utility corporation may, on securing the prior approval of the public utilities commission, and not otherwise, except as provided in section 269-E, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely: for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from

any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures. As used herein, "property" and "facilities"[7] mean property and facilities used in all operations of a public utility corporation whether or not included in its public utility operations or rate base. A public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations.

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

SECTION 4. Each electric utility shall file its first risk-based wildfire protection plan with the public utilities commission required under section 269-C, Hawaii Revised

Statutes, established by section 2 of this Act, no later than December 31, 2024.

SECTION 5. Notwithstanding the provisions of Act 182, Session Laws of Hawaii 2022, as amended by Act 262, Session Laws of Hawaii 2023, the legislature authorizes the issuance of special purpose revenue bonds for wildfire risk migration purposes that requires an allocation of the annual state ceiling under section 39B-2, Hawaii Revised Statutes, for the period July 1, 2024, through December 31, 2028.

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

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

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

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

Report Title:

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

Description:

Creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses

through securitization, while avoiding a disproportionate impact on a specific ratepayer or county. Effective 7/1/3000. (HD1)

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



Testimony Before the House Committees on Consumer Protection & Commerce
and Judiciary & Hawaiian Affairs

By David Bissell
President and Chief Executive Officer
Kaua'i Island Utility Cooperative
4463 Pahe'e Street, Suite 1, Līhu'e, Hawai'i, 96766-2000

Thursday, February 15, 2024; 2:00 pm
Conference Room #325 & Videoconference

House Bill No. 2407 HD1 - RELATING TO WILDFIRE RISK MITIGATION

To the Honorable Chairs Mark M. Nakashima and Davd A. Tarnas; Vice Chairs Jackson D. Sayama and Gregg Takayama; and Members of the Committees:

Kaua'i Island Utility Cooperative (KIUC) is a not-for-profit utility providing electrical service to more than 34,000 commercial and residential members.

KIUC supports this measure with amendments.

Wildfire protection plans: KIUC supports establishing a requirement for electric utilities to develop and maintain effective wildfire mitigation plans, to be reviewed and approved by the Hawai'i Public Utilities Commission (HPUC). In September, KIUC engaged a consulting firm and is in the process of developing a wildfire mitigation plan which is expected to be complete within the next two months. The draft wildfire mitigation plan being developed by KIUC is substantially aligned with the wildfire protection plan outlined in this measure.

In addition to requiring utilities to develop and maintain current wildfire protection plans, this bill provides a mechanism for public utility securitization to finance wildfire risk mitigation costs and expenses. Due to the significant costs of issuing and servicing a securitized debt offering, securitization would likely only be applicable to wildfire mitigation costs in excess of \$100 million dollars. KIUC does not anticipate our wildfire mitigation costs and expenses reaching this level, making securitization of limited applicability to financing the needs for Kaua'i.

KIUC, as a cooperative, has access to low-cost capital through the U.S.D.A. Rural Utilities Service (RUS), which would likely be a lower interest rate source of debt capital than even AAA-rated securitized bonds. If RUS debt is unavailable, KIUC would seek capital from one of our cooperative lenders, such as the National Rural Utilities Cooperative Finance Corporation or CoBank.

Rate recovery of prudently incurred wildfire mitigation costs without the time and expense of a filing of a general rate increase proceeding with the HPUC would enhance KIUC's ability to implement its wildfire protection plan in a financially efficient manner. KIUC recommends the bill be amended to include a provision for electric cooperatives to recover the wildfire protection fee as a surcharge or "rider" to member electric rates upon approval of costs by the HPUC in the event that issuing bonds under securitization provisions is not cost effective. **Our recommended amendment is provided below.**

§269-G (e) Electric cooperative's wildfire protection fees shall be recoverable as a surcharge to electric rates upon approval of the cooperative's wildfire protection plan and its inclusive costs of implementation. Such costs shall be reconciled and adjusted on a yearly basis via a yearly informational filing with the HPUC and shall go into effect 30 days after the yearly filing.

KIUC also encourages amending the "catastrophic wildfire" definition in §269-A Definitions to "...more than five hundred dwellings or commercial buildings or more than \$100 million dollars in reconstruction costs and property damage." The broader definition allows the financial scale of damages to be considered rather than purely number of structures impacted.

KIUC supports the other elements of the bill as long as the costs and fees of each financing order is borne exclusively by the financing entity and/or customers of the financing entity. In other words, should Hawaiian Electric seek a financing order, only HECO and/or their customers would be subject to recovery of the associated securitization costs and fees.

Mahalo for your consideration and efforts to enhance the safety of our community.



INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1260 EMPOWERING THE PACIFIC

JOINT HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE and JUDICIARY & HAWAIIAN AFFAIRS

HEARING DATE: Friday, February 15, 2024
TIME: 2:00 p.m.
PLACE: State Capitol
Conference Room 325

RE: Supports with Proposed Amendments- House Bill 2407, House Draft 1 Relating To Wildfire Risk Mitigation

Aloha Honorable Chair(s) Nakashima/Tarnas, Vice Chair(s) Sayama/Takayama, and Members of the Joint-Committee;

The International Brotherhood of Electrical Workers Local 1260 (IBEW 1260) would like to respectfully offer the following testimony on House Bill 2407 House Draft 1.

IBEW 1260 is comprised of approximately 3,000 members representing Hawaii's electric utility companies as well as government service contracts and media personnel throughout Hawaii, Guam, and Wake Island. Our members include a diverse local workforce of dedicated, highly skilled, and trained individuals working 24 hours a day, 7 days a week, to generate, transmit, and distribute electricity throughout Hawai'i and to ensure the reliability and resiliency of this precious resource.

IBEW 1260 **supports with proposed amendments**, HB 2407, HD1 which creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county, however respectfully requests that your committee(s) consider the amendments offered by Hawaiian Electric.

The economic strength and viability of Hawai'i's electric utilities have a direct impact on our members and their families. Recent reports indicate that over 40% of Hawai'i's residents are ALICE and living paycheck to paycheck. IBEW1260 has enjoyed decades of partnering with the utilities to provide its members with rewarding careers and quality of life.

Electric utilities and the infrastructure they provide are vital to our community. Having the tools necessary to effectively manage risk and implement policy with clear direction, expected outcomes, and the ability to access low-cost financing, and reasonably recover associated costs is imperative to the utilities continued viability. As such, we support and respectfully request your consideration of proposed amendments to HB2407, HD1 offered by utilities.

Mahalo for the opportunity to testify on this important matter.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE and JUDICIARY & HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
Thursday, February 15, 2024 AT 2:00 P.M.**

To The Honorable Mark M. Nakashima, Chair
The Honorable Jackson D. Sayama, Vice Chair
Members of the Committee on Consumer Protection & Commerce
To The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
Members of the Committee on Judiciary & Hawaiian Affairs

COMMENTS ON HB2407 RELATING TO WILDFIRE RISK MITIGATION

The Maui Chamber of Commerce would like to **COMMENT on HB2407** which creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county.

The Chamber agrees that it is important for electric utilities to develop wildfire protection plans and always encourage businesses to have disaster/emergency plans in place. We are concerned about the potential cost to consumers during this challenging time and when all costs are already increasing. Each of these incremental costs are what creates the widening gap between minimum wage and a true living wage.

Mahalo for the opportunity to **COMMENT on HB2407**.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

HB-2407-HD-1

Submitted on: 2/13/2024 2:49:06 PM

Testimony for CPC on 2/15/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sherry Pollack	Individual	Comments	Written Testimony Only

Comments:

It was clear during questioning at the WAL/EEP hearing that HECO has not done its due diligence to assess and tighten its own belt before coming up with a plan that ratepayers are going to have to suffer from. Despite rhetoric that HECO is concerned about low and moderate income ratepayers, their actions speak louder than their words. For one, the excessive salary of the CEO would be a good place to start when looking internally at what can be done first before expecting ratepayers to shoulder these costs. By failing to first look internally, like any other business would be expected to do, HECO demonstrates that they care more about shareholders than the community. I urge the legislature to ensure HECO is made to take appropriate “belt-tightening” measures *first*, before expecting ratepayers to cover all these expenses.

Mahalo for the opportunity to testify.

LATE

HB-2407-HD-1

Submitted on: 2/14/2024 9:43:01 PM

Testimony for CPC on 2/15/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kate Paine	Individual	Support	Written Testimony Only

Comments:

Tail is dog wagging but future still needs support

LATE

HB-2407-HD-1

Submitted on: 2/15/2024 9:14:28 AM

Testimony for CPC on 2/15/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Noah	Individual	Support	Written Testimony Only

Comments:

Hi, I'm Noah Brown, and I am a part of the Blue Planets Climate Crew, Cohort Five. I am submitting testimony in support of HB 2407. I have seen the destruction of the recent wildfires, and I think that we should be doing anything we can to stop them. I think it is a great idea to be having electric utilities create plans to protect wildlife. These companies have a responsibility to help prevent the problem, and by allowing them to create a process, hopefully we can protect Hawaii.

LATE

HB-2407-HD-1

Submitted on: 2/15/2024 11:18:52 AM

Testimony for CPC on 2/15/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Milica B.	Individual	Support	Written Testimony Only

Comments:

There is a LOT more needed here

we all know it was NOT electircal company