

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

House Committees on Water & Land and Energy & Environmental Protection

Thursday, March 14, 2024

8:32 a.m.

State Capitol, Conference Room 325 and Videoconference

With Comments

Senate Bill No. 2922, SD2, Relating to Public Utilities

Chairs Ichiyama and Lowen, Vice Chairs Poepoe and Cochran, and Members of the House Committees on Water & Land and Energy & Environmental Protection:

The Office of the Governor offers the following comments on S.B. No. 2922, SD2, Relating to Public Utilities.

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.

S.B. No. 2922, SD2, would establish and implement the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires and sunset on June 30, 2030. While the Office of the Governor supports the general intent of this measure, we have concerns with this approach that would allow “catastrophic wildfire costs” to be included as “recovery costs.” We would respectfully ask that the Legislature considers the securitization model as outlined in H.B. No. 2407, HD2, Relating to Wildfire Risk Mitigation. This bill has been more thoroughly vetted through our administration, although we are still receiving comments from bond counsel. But, we feel that the approach in that bill which limits securitization to wildfire protection plan costs for planning, implementation and execution approved by the public utilities commission, is a more prudent approach to this financing model which is borne by the rater-payers.

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, HD2, 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

Testimony of Office of the Governor
S.B. No. 2922, SD2
March 14, 2024
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need to do more to protect against disasters like wildfires. The Office of the Governor supports H.B. No. 2407, HD2, 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 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.



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Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Water & Land
And
House Committee on Energy & Environmental Protection
Thursday, March 14, 2024
8:32 a.m.
Conference Room 325

On the following measure:
S.B. 2922, S.D. 2, RELATING TO PUBLIC UTILITIES

Chair Ichiyama, Chair Lowen, 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 offer comments on this bill.

The purpose of this bill is to establish and implement the Catastrophic Wildfire Securitization Act to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

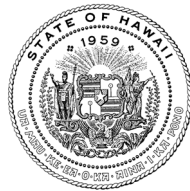
The tragedy and devastation of the wildfires that arose on Maui during the August 8, 2023 windstorm must be prevented from reoccurring. The State needs viable financing options to pay for the damages suffered in catastrophic wildfires, while maintaining operating utilities to provide essential services. Securitized bond financing, if bounded by adequate ratepayer protections and used with discipline, could offer a relatively low-interest source of funds. This bill proposes a possible framework for

securitized bonds, along with related debenture terms and conditions. However, the Department has concerns that this proposal may offer too many concessions to the electric utility, potentially at the expense of ratepayers. For example, related to ratepayer protection, this bill would impose a “prudently incurred costs” standard for approval (proposed Section -3(c)(1)(A)) and implicitly supplants (see proposed Section -3(b)) the current “used and useful” standard under Hawaii Revised Statutes § 269-16(b)(3). This bill would also authorize the use of securitized bond financing for not just wildfire mitigation efforts, but also wildfire liabilities (proposed Section -3(c)(1)(B)); and the Department does not support recovering from ratepayers any funds used to pay wildfire liabilities.

The Department notes a more limited form of securitized bond financing is proposed in HB 2407, HD 2, particularly Sections §§ 269-E and -F. In addition, the Department appreciates how HB 2407, HD 2 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 HB 2407, HD 2 that requires the surcharge for the wildfire protection fee be non-bypassable. The Department also appreciates that HB 2407, HD 2 requires that the impacts of financing the wildfire protection costs be minimized.

While HB 2407, HD 2 should still incorporate the Department’s proposed amendments – in recent testimony to the House Finance Committee – for appropriate process and procedures to achieve durable due process and stakeholder engagement, and while it could also still benefit from some further amendments for ratepayer protections (for example, the additional of ‘prudently incurred cost’ standard in definition of “wildfire protection costs”, and requiring a docketed proceeding for decision-making by the Public Utilities Commission), the Department views it overall as a vehicle for securitized bond financing with better ratepayer protections than the provisions in this measure.

Thank you for the opportunity to testify on this bill.



JOSH GREEN, M.D.
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EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEES ON WATER & LAND AND ENERGY &
ENVIRONMENTAL PROTECTION
ON
SENATE BILL NO. 2922, S.D. 2

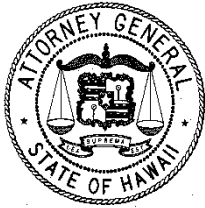
March 14, 2024
8:32 A.M.
Room 325 and Videoconference

RELATING TO PUBLIC UTILITIES.

The Department of Budget and Finance (B&F) offers the following comments on Senate Bill (S.B.) No. 2922, S.D. 2, which establishes and implements the Catastrophic Wildfire Securitization Act to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

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

Thank you for your consideration of our comments.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2922, S.D. 2, RELATING TO PUBLIC UTILITIES.

BEFORE THE:

HOUSE COMMITTEES ON WATER AND LAND AND ON
ENERGY AND ENVIRONMENTAL PROTECTION

DATE: Thursday, March 14, 2024 **TIME:** 8:32 a.m.

LOCATION: State Capitol, Room 325 and Videoconference

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

Chairs Ichiyama and Lowen and Members of the Committees:

The Department of the Attorney General provides the following comments.

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

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 this bill, and he prepared suggested amendments to this bill in bill form. We recommend that the contents of Mr. Scully's attached proposal be inserted into this bill and passed as an H.D. 1. The attached proposal shows Mr. Scully's and his staff's redlines as compared to the S.D. 2.

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.

A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

1 SECTION 1. The legislature finds that in the wake of the
2 2023 Lahaina wildfire, public utilities must raise the capital
3 to fund near-term costs and expenses to develop and implement
4 effective plans for wildfire risk mitigation, and contribute to
5 disaster relief funds. Moreover, present uncertainty as to the
6 financial costs that Hawaii's largest electric utility may bear
7 as a result of the 2023 Lahaina wildfire has led credit ratings
8 agencies to downgrade the credit rating of that utility to non-
9 investment-grade status. The legislature finds that the credit
10 rating downgrade will have severe negative impacts on
11 consumers. As the utility borrows money in the future to
12 finance critical investments to improve safety and reliability,
13 the utility will need to pay much higher interest rates as non-
14 investment grade issuers, and those higher interest costs will
15 be passed on to customers in the form of higher rates. In
16 addition, a financially weak utility is less capable of making
17 the investments and commitments the State needs to meet its
18 renewable energy and other goals. The State also recognizes
19 that consumers cannot bear the full burden of mitigation efforts

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1 through securitization and that shareholder contributions must
2 be a part of utility capitalization moving forward.

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

9 SECTION 2. The Hawaii Revised Statutes is amended by
10 adding a new chapter to title 15 to be appropriately designated
11 and to read as follows:

12 **"CHAPTER**

13 **CATASTROPHIC WILDFIRE SECURITIZATION ACT**

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

16 § -2 **Definitions.** As used in this chapter, unless the
17 context otherwise requires:

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

1 "Assignee" means a legally recognized entity (i) to which a
2 public utility or an affiliate of a public utility assigns,
3 sells, or transfers, other than as security, all or a portion of
4 its interest in or right to recovery property or (ii) who
5 acquires by way of assignment or otherwise all or a portion of
6 the recovery property following the exercise of remedies upon a
7 default under the terms of the recovery bonds. The term
8 includes a corporation, limited liability company, general
9 partnership or limited partnership, public authority, trust,
10 financing entity, or any entity to which an assignee assigns,
11 sells, or transfers, other than as security, its interest in or
12 right to recovery property.

13 "Catastrophic wildfire" means any wildfire in the State
14 that damaged or destroyed more than five hundred dwellings or
15 commercial buildings in the State.

16 "Commission" means the public utilities commission, or any
17 successor entity.

18 "Consumer" means any individual, governmental body, trust,
19 business entity, or nonprofit organization that consumes
20 electricity that has been transmitted or distributed by means of
21 electric transmission or distribution facilities, whether those
22 electric transmission or distribution facilities are owned by
23 the consumer, the public utility, or any other party.

24 "Financing costs" means the costs to issue, service, repay,
25 or refinance recovery bonds, whether incurred or paid upon

1 issuance of the recovery bonds or over the life of the recovery
2 bonds, if they are approved for recovery by the commission in a
3 financing order. "Financing costs" include:

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

6 (2) Any payment required under an ancillary agreement;

7 (3) Any amount required to fund or replenish reserve
8 accounts or other accounts established under an
9 indenture, ancillary agreement, or other financing
10 document relating to the recovery bonds;

11 (4) Taxes, franchise fees, or license fees imposed on
12 fixed recovery charges, or otherwise resulting from
13 the collection of recovery charges, in any such case
14 whether paid, payable, or accrued;

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

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

1 "Financing entity" means a public utility or an entity to
 2 which a public utility or an affiliate of a public utility
 3 sells, assigns or pledges all or a portion of the public
 4 utility's interest in recovery property, including an affiliate
 5 of the public utility or any unaffiliated entity, in each case
 6 as approved by the commission in a financing order.

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7 For this purpose, and subject to section 269-D(c), an
 8 entity to which a public utility sells, assigns or pledges all
 9 or a portion of the public utility's interest in recovery
 10 property may include any governmental entity that is able to
 11 issue recovery bonds that are exempt from federal tax pursuant
 12 to section 103 of the Internal Revenue Code of 1986, including
 13 the State or a political subdivision thereof or any department,
 14 agency or instrumentality of the foregoing; provided that the
 15 recovery bonds issued thereby shall not constitute a debt or
 16 liability of the State or any political subdivision thereof or
 17 any department, agency or instrumentality thereof and shall not
 18 constitute a pledge of the full faith and credit of the entity
 19 or of the State or any political subdivision thereof, but shall
 20 be payable solely from the funds provided under this chapter.

21 "Financing order" means an order of the commission under
 22 this part that has become final as provided by law and that
 23 authorizes the issuance of recovery bonds and the imposition,
 24 adjustment from time to time, and collection of recovery
 25 charges, and which shall include, a procedure to require the

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

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

12 "Fixed recovery charges" means those nonbypassable rates
13 and other charges, including distribution, connection,
14 disconnection, and termination rates and charges, that are
15 authorized by the commission in a financing order to recover:

- 16 (1) Recovery costs specified in the financing order; and
17 (2) The costs of recovering, financing, or refinancing
18 those recovery costs through a plan approved by the
19 commission in the financing order, including the costs
20 of issuing, servicing and retiring recovery bonds.

21 "Fixed recovery tax amounts" means those nonbypassable
22 rates and other charges, including but not limited to
23 distribution, connection, disconnection, and termination rates
24 and charges, that are needed to recover federal and state taxes
25 associated with fixed recovery charges authorized by the

1 commission in a financing order, but are not approved as
2 financing costs financed from proceeds of recovery bonds.

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

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

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13 "Recovery costs" means:

14 (1) Catastrophic wildfire costs or expenses authorized by
15 the commission in a financing order for recovery
16 related to transmission and distribution or disaster
17 relief fund payments; provided that, any
18 payments into the wildfire relief fund shall not
19 be used for replenishment due to imprudent
20 conduct.

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

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23 (3) Financing costs; and

24 (4) Professional fees, consultant fees,
25 redemption premiums, tender premiums, and other costs

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1 incurred by the public utility in using proceeds of
2 recovery bonds to acquire outstanding securities of
3 the public utility, as authorized by the commission in
4 a financing order.

5 "Recovery property" means the property right, created
6 pursuant to this chapter, that:

7 (1) Includes the right, title, and interest of the public
8 utility, the financing entity or its
9 assignee:

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10 (A) In and to the fixed recovery charges established
11 pursuant to a financing order, including the
12 right to impose, bill, collect and receive such
13 fixed recovery charges under the financing order
14 and all rights to obtain adjustments to the fixed
15 recovery charges pursuant to section -3(k) and
16 the financing order; and

17 (B) To be paid the amount that is determined in a
18 financing order to be the amount that the public
19 utility or its assignee is lawfully entitled to
20 receive pursuant to the provisions of this
21 chapter and the proceeds thereof, and in and to
22 all revenues, collections, claims, payments,
23 moneys, or proceeds of or arising from the fixed
24 recovery charges that are the subject of a
25 financing order; and

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1 (2) Constitutes a current property right, notwithstanding
2 the fact that the value of the property right will
3 depend on consumers using electricity or, in those
4 instances where consumers are customers of the public
5 utility, the public utility performing certain
6 services.

7 "Recovery property" does not include a right to be paid
8 fixed recovery tax amounts.

9 "True-up adjustment" means a formulaic adjustment that is
10 necessary to correct the fixed recovery charges as they appear
11 on customer bills to correct for any overcollection or
12 undercollection and to otherwise ensure the timely and complete
13 payment and recovery of recovery costs over the authorized
14 repayment term.

15 § -3 **Financing orders; authorization.** (a) A public
16 utility that applies to the commission for recovery of costs and
17 expenses related to the mitigation of the risk of wildfires, may
18 request the commission to issue a financing order to authorize
19 the costs and expenses that the commission finds to be just and
20 reasonable to be recovered through fixed recovery charges
21 pursuant to this chapter, and order that any portion of the
22 public utility's federal and state taxes associated with those
23 fixed recovery charges and not financed from proceeds of
24 recovery bonds may be recovered through fixed recovery tax
25 amounts.

1 (b) Any application submitted pursuant to subsection (a)
2 shall be governed by this chapter. Any application that fully
3 complies with this chapter shall also be deemed to comply with
4 any requirements imposed by any applicable provision of chapter
5 269.

6 (c) Upon receiving an application from a public utility
7 pursuant to this section, the commission shall issue a financing
8 order if the commission determines that the following conditions
9 are satisfied:

10 (1) The costs and expenses are eligible for recovery,
11 which shall be limited to the following categories:
12 (A) Prudently incurred costs that are consistent with
13 a commission-approved plan to mitigate wildfire
14 risk and impacts; and
15 (B) Costs consistent with a commission-approved plan
16 for wildfire mitigation that limits the burdens
17 on consumers and requires shareholder- backed
18 contributions;

19 (2) The issuance of the recovery bonds, including all
20 material terms and conditions of the recovery bonds,
21 including interest rates, rating, amortization
22 redemption, and maturity, and the imposition and
23 collection of fixed recovery charges as set forth in
24 the application satisfy all of the following
25 conditions, as applicable:

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S.B. NO. 2922
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- 1 (A) They are just and reasonable;
- 2 (B) They are consistent with the public interest;
- 3 (C) The recovery of recovery costs through the
- 4 designation of the fixed recovery charges and any
- 5 associated fixed recovery tax amounts, and the
- 6 issuance of recovery bonds in connection with the
- 7 fixed recovery charges, would result in net
- 8 savings to consumers and reduce, to the maximum
- 9 extent possible, the rates on a present value
- 10 basis that consumers would pay as compared to the
- 11 use of traditional utility financing mechanisms,
- 12 which shall be calculated using the public
- 13 utility's corporate debt and equity in the ratio
- 14 approved by the commission at the time of the
- 15 financing order; provided that the commission may
- 16 hire, and rely upon, a financial advisor in
- 17 connection with such determination; and
- 18 (D) The use of securitized funds represents the most
- 19 cost-effective method to consumers based on
- 20 available financing methods; and
- 21 (3) The public utility provides a plan that satisfies the
- 22 following conditions:
- 23 (A) The plan provides for a review of the
- 24 organizational structure and the separation of

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- 1 energy generation, and transmission and
2 distribution;
- 3 (B) The plan provides for a review of local
4 governance and accountability;
- 5 (C) The plan includes a framework for addressing
6 wildfire safety and risk management, including
7 monitoring and enforcement, independent review
8 and oversight by the commission, and performance-
9 based regulations established by the commission
10 pursuant to section 269-16.1; provided that
11 executive compensation shall exclude any
12 incentives associated with this chapter as
13 determined by the commission;
- 14 (D) The plan provides for periodic performance-based
15 management audits of the public utility; and
- 16 (E) The plan provides for a method for the utility to
17 notify the commission of an asset, including real
18 property, that it may sell or lease;
- 19 (F) The plan is consistent with meeting the public
20 utility's and the State's renewable portfolio
21 standards and obligations; and
- 22 (G) The commission shall monitor the reliability and
23 operation of the utilities system and the
24 compliance and audit of the finance order as it
25 applies to the reliability, operation,

1 interconnection, and wildfire orders of the
2 commission. The commission shall also implement
3 part IX of chapter 269 and determine an
4 appropriate schedule for reporting.

5 The public utility may request the determination specified in
6 this section by the commission in a separate proceeding, in an
7 existing proceeding, or both. If the commission issues a
8 financing order, the commission shall establish, as part of the
9 financing order, a procedure for the public utility to submit
10 applications from time to time to request the issuance of
11 additional financing orders designating fixed recovery charges
12 and any associated fixed recovery tax amounts as recoverable.

13 The public utility may submit an application with respect
14 to recovery costs that a public utility has paid, has an
15 existing legal obligation to pay, or would be obligated to pay
16 pursuant to an executed settlement agreement. The commission,
17 within one hundred twenty days of the filing of the foregoing
18 application that is deemed complete by the commission, shall
19 issue a financing order, if the commission determines that the
20 amounts identified in the application are recovery costs.

21 At the option of the public utility, the public utility may
22 include in its application for a financing order a request for
23 authorization to sell, transfer, assign or pledge recovery
24 property to a governmental financing entity if it expects
25 recovery bonds issued by a governmental financing entity would

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1 result in a more cost efficient means, taking into account all
2 financing costs related to such recovery bonds, than using
3 another financing entity to issue recovery bonds to finance the
4 same recovery costs, taking into account the costs of issuing
5 such other financing entity's bonds. If a public utility
6 exercises such option, the commission may hire a financial
7 advisor in connection with its review, upon which it may rely.

8 (d) Fixed recovery charges and any associated fixed
9 recovery tax amounts shall be imposed only on existing and
10 future consumers in the utility service territory of the public
11 utility that is subject to such financing order. Consumers
12 within the utility service territory of the public utility that
13 is subject to such financing order shall continue to pay fixed
14 recovery charges and any associated fixed recovery tax amounts
15 until the recovery bonds and associated financing costs are paid
16 in full by the financing entity or, in the event the recovery
17 property has been assigned to an assignee in connection with the
18 exercise of remedies upon a default under the terms of the
19 recovery bonds, until the receipt of proceeds by such assignee
20 in an amount sufficient to repay principal and interest on the
21 recovery bonds that would have accrued had they remained
22 outstanding.

23 (e) A public utility may exercise the same rights and
24 remedies under its tariff and applicable law and regulation
25 based upon a consumer's nonpayment of fixed recovery charges and

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1 any associated fixed recovery tax as it may for a consumer's
2 failure to pay any other charge payable to that public utility.

3 (f) The commission may establish in a financing order an
4 effective mechanism that ensures recovery of recovery costs
5 through nonbypassable fixed recovery charges and any associated
6 fixed recovery tax amounts from existing and future consumers in
7 the utility service territory, and those consumers shall be
8 required to pay those charges until (i) the recovery bonds and
9 all associated financing costs are paid in full by the financing
10 entity or (ii) in the event the recovery property has been
11 assigned to an assignee in connection with the exercise of
12 remedies upon a default under the terms of the recovery bonds,
13 the receipt of proceeds by such assignee in an amount sufficient
14 to repay principal and interest on the recovery bonds that would
15 have accrued had they remained outstanding, at which time those
16 charges shall be terminated. Fixed recovery charges shall be
17 irrevocable, notwithstanding any true-up adjustment made
18 pursuant to subsection (k).

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

21 (h) The commission shall issue financing orders pursuant
22 to this chapter to facilitate the recovery, financing, or
23 refinancing of recovery costs. A financing order may be adopted
24 only upon the application of the public utility and shall become
25 effective pursuant to its terms only after the public utility

1 files with the commission the public utility's written consent
2 to all terms and conditions of the financing order. A financing
3 order may specify how amounts collected from a consumer shall be
4 allocated between fixed recovery charges, any associated fixed
5 recovery tax amounts, and other charges.

6 (i) Notwithstanding any other law, and except as otherwise
7 provided in subsection (k), with respect to recovery property
8 that has been made the basis for the issuance of recovery bonds
9 and with respect to any associated fixed recovery tax amounts,
10 the financing order, the fixed recovery charges, and any
11 associated fixed recovery tax amounts shall be irrevocable. The
12 state and its agencies, including the commission, pledge and
13 agree with bondholders, the owners and assignees of the recovery
14 property, and other financing parties that the state and its
15 agencies will not take any action listed below in this
16 subsection (i). The prohibited actions are as follows:

17 (1) Alter the provisions of this chapter, which authorize
18 the commission to create an irrevocable contract right
19 or chose in action by the issuance of a financing
20 order, to create recovery property, and make the
21 recovery charges imposed by a financing order
22 irrevocable, binding, nonbypassable charges for all
23 existing and future consumers;

24 (2) Take or permit any action that impairs or would impair
25 the value of recovery property or the security for the

1 recovery bonds or revises the recovery costs for which
2 recovery is authorized;

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

5 (4) Except for changes made pursuant to the formula-based
6 true-up mechanism authorized pursuant to subsection
7 (k), reduce, alter, or impair recovery charges that
8 are to be imposed, billed, charged, collected, and
9 remitted for the benefit of the bondholders, any
10 assignee, and any other financing parties until any
11 and all principal, interest, premium, financing costs
12 and other fees, expenses, or charges incurred, and any
13 contracts to be performed, in connection with the
14 related bonds have been paid and performed in full or,
15 in the event the recovery property has been assigned
16 to an assignee in connection with the exercise of
17 remedies upon a default under the terms of the bonds,
18 until the receipt of proceeds by such assignee in an
19 amount sufficient to repay principal and interest on
20 the bonds that would have accrued had they remained
21 outstanding;

22 ; provided that nothing in this section shall preclude a
23 limitation or an alteration if such limitation or alteration
24 would not adversely impact the interests of the public utility,
25 of owners and holders of the recovery bonds, and of assignees of

Deleted: The commission shall not, either by rescinding, altering, or amending the financing order or otherwise, revalue or revise for ratemaking purposes the recovery costs or the costs of recovering, financing, or refinancing the recovery costs, or in any way reduce or impair the value of recovery property or of the right to receive any associated fixed recovery tax amounts either directly or indirectly by taking fixed recovery charges or any associated fixed recovery tax amounts 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 shall neither limit nor alter, except as otherwise provided with respect to the true-up adjustment of the fixed recovery charges pursuant to subsection (k), the fixed recovery charges, any associated fixed recovery tax amounts, recovery property, financing orders, or any rights under a financing order until the applicable recovery bonds, together with the interest on the recovery bonds and associated financing costs, are fully paid and discharged, and any associated fixed recovery tax amounts have been satisfied or, in the alternative, have been refinanced through an additional issue of recovery bonds

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1 the recovery property. The financing entity may refer to this
2 subsection in the recovery bonds. When setting other rates for
3 the public utility, nothing in this subsection shall be
4 construed to prohibit the commission from taking into account:

5 (1) Any collection of fixed recovery charges in excess of
6 amounts actually required to pay recovery costs
7 financed or refinanced by recovery bonds or, in the
8 event the recovery property has been assigned to an
9 assignee in connection with the exercise of remedies
10 upon a default under the terms of the recovery bonds,
11 acquired by such assignee; or

12 (2) Any collection of fixed recovery tax amounts in excess
13 of amounts actually required to pay federal and state
14 taxes associated with fixed recovery charges; provided
15 that this collection shall not result in a
16 recharacterization of the tax, accounting, and other
17 intended characteristics of the financing, including
18 the following:

19 (A) Treating the recovery bonds as debt of the public
20 utility or its affiliates for federal income tax
21 purposes; or

22 (B) Treating the transfer of the recovery property by
23 the public utility as a true sale for bankruptcy
24 purposes.

1 (j) Neither financing orders, catastrophic wildfire
2 authorizations of costs, or expenses authorized by the
3 commission; nor recovery bonds issued pursuant to this chapter,
4 shall constitute a debt or liability of the State or of any
5 political subdivision thereof, nor shall they constitute a
6 pledge of the full faith and credit of the State or any of its
7 political subdivisions, but shall be payable solely from the
8 funds provided under this chapter. All recovery bonds shall
9 contain on the face thereof a statement to the following
10 effect:

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

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

18 (k) The commission shall establish procedures for the
19 expeditious processing of an application for a financing order,
20 which shall provide for the approval or disapproval of the
21 application within one hundred twenty days of the application
22 deemed complete by the commission. Any fixed recovery charge
23 authorized by a financing order shall appear on consumer
24 bills. Any financing order issued by the commission shall
25 provide for a procedure for periodic true-up adjustments to

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1 fixed recovery charges, which shall be made at least annually
2 and may be made more frequently. The public utility shall file
3 an application with the commission to implement any true-up
4 adjustment. Within thirty days after receiving a public
5 utility's filing of a true-up adjustment, the commission's review
6 of the filing shall be limited to mathematical or clerical
7 errors as determined in accordance with any true-up adjustment
8 formulas set forth in the applicable financing order. The
9 commission shall either approve the filing or inform the public
10 utility of any mathematical or clerical errors in its
11 calculation. If the commission informs the public utility of
12 mathematical or clerical errors in its calculation, the public
13 utility shall correct its error and refile its true-up
14 adjustment. The timeframes previously described in this
15 subsection shall apply to a refiled true-up adjustment.

16 (1) Fixed recovery charges are recovery property when, and
17 to the extent that, a financing order authorizing the fixed
18 recovery charges has become effective pursuant to this chapter,
19 and the recovery property shall thereafter continuously exist as
20 property for all purposes, and all of the rights and privileges
21 relating to that property shall continuously exist for the
22 period and to the extent provided in the financing order, but in
23 any event until the recovery bonds are paid in full, including
24 all principal, premiums, if any, and interest with respect to
25 the recovery bonds, and all other financing costs are paid in

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1 full or, in the event the recovery property has been assigned to
2 an assignee in connection with the exercise of remedies upon a
3 default under the terms of the recovery bonds, until the receipt
4 of proceeds by such assignee in an amount sufficient to repay
5 principal and interest on the recovery bonds that would have
6 accrued had they remained outstanding. A financing order may
7 provide that the creation of recovery property shall be
8 simultaneous with the sale of the recovery property to an
9 assignee as provided in the application of the pledge of the
10 recovery property to secure the recovery bonds.

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11 (m) Any successor to a financing entity shall be bound by
12 the requirements of this chapter and shall perform and satisfy
13 all obligations of, and have the same rights under a financing
14 order as, and to the same extent as, the initial financing
15 entity.

16 (n) The commission shall not issue a financing order if
17 the plan described in subsection (c) (3) precludes a subsequent
18 restructuring of the public utility that contemplates:

- 19 (1) The separation of energy generation and delivery
20 functions; and
- 21 (2) A system of enhanced local governance and
22 accountability, which may include alternate models of
23 public ownership.

24 § -4 **Recovery bonds; issuance; recovery property**
25 **interests.** (a) The financing entity may issue recovery bonds

1 upon approval by the commission in a financing order. Recovery
2 bonds shall be nonrecourse to the credit or any assets of the
3 public utility, other than the recovery property as specified in
4 that financing order.

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

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

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

23 (c) To the extent that any interest in recovery property
24 is sold, assigned, or is pledged as collateral pursuant to
25 subsection (b), the commission shall require the public utility

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1 to contract with the financing entity and its assignee that it
2 will continue to operate the system to provide service to
3 consumers within its service territory, will collect amounts in
4 respect of the fixed recovery charges for the benefit and
5 account of the financing entity and its assignees, and will
6 account for and remit these amounts to or for the account of the
7 financing entity or its assignees. Contracting with the
8 financing entity and its assignees pursuant to that
9 authorization shall not impair or negate the characterization of
10 the sale, assignment, or pledge as an absolute transfer, a true
11 sale, or a security interest, as applicable. To the extent that
12 billing, collection, and other related services with respect to
13 the provision of the public utility's services are provided to a
14 consumer by any person or entity other than the public utility
15 in whose service territory the consumer is located, that person
16 or entity shall collect the fixed recovery charges and any
17 associated fixed recovery tax amounts from the consumer for the
18 benefit and account of the public utility, financing entity or
19 assignees with the associated revenues remitted solely for such
20 person's benefit as a condition to the provision of service to
21 that consumer. Each financing order shall impose terms and
22 conditions, consistent with the purposes and objectives of this
23 chapter, on any person or entity responsible for billing,
24 collection, and other related services, including without
25 limitation collection of the fixed recovery charges and any

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

3 (d) Recovery property that is specified in a financing
4 order shall constitute an existing, present property right,
5 notwithstanding the fact that the imposition and collection of
6 fixed recovery charges depend on the public utility continuing
7 to provide services or continuing to perform its servicing
8 functions relating to the collection of fixed recovery charges
9 or on the level of future service consumption, including
10 electricity consumption. Recovery property shall exist whether
11 or not the fixed recovery charges have been billed, have
12 accrued, or have been collected and notwithstanding the fact
13 that the value for a security interest in the recovery property,
14 or amount of the recovery property, is dependent on the future
15 provision of service to consumers. All recovery property
16 specified in a financing order shall continue to exist until the
17 recovery bonds issued pursuant to a financing order and all
18 associated financing costs are paid in full or, in the event the
19 recovery property has been assigned to an assignee in connection
20 with the exercise of remedies upon a default under the terms of
21 the recovery bonds, until the receipt by such assignee of
22 proceeds in an amount sufficient to repay principal and interest
23 on the recovery bonds that would have accrued had they remained
24 outstanding.

1 (e) Recovery property, fixed recovery charges, and the
2 interests of an assignee, bondholder or financing entity, or any
3 pledgee in recovery property and fixed recovery charges shall
4 not be subject to setoff, counterclaim, surcharge, recoupment,
5 or defense by the public utility or any other person or in
6 connection with the bankruptcy, reorganization, or other
7 insolvency proceeding of the public utility, any affiliate of
8 the public utility, or any other entity.

9 (f) Notwithstanding any other law to the contrary, any
10 requirement under this chapter or a financing order that the
11 commission takes action with respect to the subject matter of a
12 financing order shall be binding upon the commission, as it may
13 be constituted from time to time, and the commission shall have
14 no authority to rescind, alter, or amend that requirement in a
15 financing order.

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

23 (1) The commission has issued a financing order
24 authorizing the fixed recovery charges included in the
25 recovery property;

1 (2) Value has been given by the pledgees of the recovery
2 property; and
3 (3) The pledgor has signed a security agreement covering
4 the recovery property.
5 (b) A valid and enforceable security interest in recovery
6 property is perfected when it has attached and when a financing
7 statement has been filed with the bureau of conveyances of the
8 State of Hawaii naming the pledgor of the recovery property as
9 debtor and identifying the recovery property. Any description
10 of the recovery property shall be sufficient if it refers to the
11 financing order creating the recovery property. A copy of the
12 financing statement shall be filed with the commission by the
13 public utility that is the pledgor or transferor of the recovery
14 property, and the commission may require the public utility to
15 make other filings with respect to the security interest
16 pursuant to procedures it may establish; provided that the
17 filings shall not affect the perfection of the security
18 interest.
19 (c) A perfected security interest in recovery property
20 shall be a continuously perfected security interest in all
21 recovery property revenues and proceeds arising with respect
22 thereto, whether or not the revenues or proceeds have
23 accrued. Conflicting security interests shall rank according to
24 priority in time of perfection. Recovery property shall
25 constitute property for all purposes, including for contracts

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

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

20 (e) If default occurs under the security agreement
21 covering the recovery property, the pledgees of the recovery
22 property, subject to the terms of the security agreement, shall
23 have all rights and remedies of a secured party upon default
24 under article 9 of chapter 490, and shall be entitled to
25 foreclose or otherwise enforce their security interest in the

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1 recovery property, subject to the rights of any third parties
2 holding prior security interests in the recovery property
3 perfected in the manner provided in this section. Further, the
4 commission may require in the financing order creating the
5 recovery property that, in the event of default by the public
6 utility in payment of recovery property revenues, the
7 commission, upon the application by the pledgees or transferees,
8 including assignees under section -6 of the recovery
9 property, and without limiting any other remedies available to
10 the pledgees or assignees by reason of the default, shall order
11 the sequestration and payment to the pledgees or assignees of
12 recovery property revenues. Any order shall remain in full
13 force and effect notwithstanding any bankruptcy, reorganization,
14 or other insolvency proceedings with respect to the debtor,
15 pledgor, or transferor of the recovery property. Any surplus in
16 excess of (1) amounts necessary to pay principal, premiums, if
17 any, interest, costs, and arrearages on the recovery bonds, and
18 associated financing costs arising under the security agreement,
19 or (2) in the event the recovery property has been assigned to
20 an assignee in connection with the exercise of remedies upon a
21 default under the terms of the recovery bonds, an amount
22 sufficient to repay principal and interest on the recovery bonds
23 that would have accrued had they remained outstanding, shall be
24 remitted to the debtor or to the pledgor or transferor.

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

§ -6 Transfers of recovery

(a) A transfer or assignment of recovery property by the public utility to an assignee, or by an assignee to another assignee, 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 recovery 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 events:

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

(2) The retention by the seller of either:

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

Deleted: (g) This section sets forth the terms by which a consensual security interest shall be created and perfected in the recovery property. Unless otherwise ordered by the commission with respect to any series of recovery 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 recovery 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 recovery 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 article 9 of chapter 490, and are entitled to foreclose or otherwise enforce this statutory lien in the recovery property. This lien shall attach to the recovery property ... [1]

Deleted: A perfected statutory lien in recovery property is a continuously perfected lien in all recovery property ... [2]

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

4 (3) Any recourse that an assignee may have
5 against the seller;

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

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

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

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

14 (c) A transfer of recovery property shall be deemed
15 perfected against third persons when both of the following
16 occur:

17 (1) The commission issues the financing order authorizing
18 the fixed recovery charges included in the recovery
19 property; and

20 (2) An assignment of the recovery property in writing has
21 been executed and delivered to the assignee.

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22 (d) As between bona fide assignees of the same right for
23 value without notice, the assignee first filing a financing
24 statement pursuant to part 5 of article 9 of chapter 490, naming
25 the assignor of the recovery property as debtor and identifying

1 the recovery property shall have priority. Any description of
2 the recovery property shall be sufficient if it refers to the
3 financing order creating the recovery property. A copy of the
4 financing statement shall be filed by the assignee with the
5 commission, and the commission may require the assignor or the
6 assignee to make other filings with respect to the transfer
7 pursuant to procedures it may establish, but these filings shall
8 not affect the perfection of the transfer.

9 § -7 **Successors to public utilities; obligations.** Any
10 successor to the public utility subject to a financing order,
11 whether pursuant to any bankruptcy, reorganization, or other
12 insolvency proceeding, or pursuant to any merger, sale, or
13 transfer, by operation of law, or otherwise, shall be bound by
14 the requirements of this part. The successor of the public
15 utility shall perform and satisfy all obligations of the public
16 utility pursuant to this chapter in the same manner and to the
17 same extent as the public utility, including collecting and
18 paying to the holders of recovery bonds, their representatives,
19 the applicable financing entity or the applicable assignee,
20 revenues arising with respect to the recovery property sold to
21 the applicable financing entity or assignee or pledged to secure
22 recovery bonds. Any successor to the public utility shall be
23 entitled to receive any fixed recovery tax amounts otherwise
24 payable to the public utility.

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

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

23 § **-9 Findings; report.** The commission shall
24 incorporate its findings relating to the administration of this
25 chapter into the commission's annual report to the legislature.

Deleted: Utilities; bond ratings. Access to securitized funds shall be limited to a public utility whose bond rating is below investment grade.†
§ -10

1 § -10 **Limitations.** This chapter shall not affect any
2 civil action or proceeding."

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3 Section 3. Notwithstanding the provisions of section 39A-
4 191, and the provisions of Act 182, Sessions Laws of Hawaii, as
5 amended by Act 262, Session Laws of Hawaii, the legislature
6 authorizes the issuance of special purpose revenue bonds for
7 recovery costs that require an allocation of the annual state
8 ceiling under section 39B-2, Hawaii Revised Statutes, for the
9 period July 1, 2024, through December 31, 2028 and further
10 authorizes project agreements with an affiliate of a public
11 utility or a special purpose vehicle in connection with the
12 issuance of special purpose revenue bonds for recovery costs.

13 Section 4. The legislature authorizes the allocation of
14 the annual state ceiling under section 39B-2, to the issuance of
15 recovery bonds issued pursuant to section 2 of this Act which
16 require such allocation in order for interest on the recovery
17 bonds to be tax-exempt for federal income tax purposes.

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

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21 SECTION 6. If any provision of this Act, or the
22 application thereof to any person or circumstance, is held
23 invalid, the invalidity does not affect other provisions or
24 applications of the Act that can be given effect without the

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S.B. NO. 2922
S.D. 2

1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 7. This Act shall take effect on ~~[.]~~, 20~~[.]~~.

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

TO THE
HOUSE COMMITTEES ON
WATER AND LAND
and
ENERGY AND ENVIRONMENTAL PROTECTION

March 14, 2024
8:32 a.m.

Chairs Ichiyama and Lowen, Vice Chairs Poepoe and Cochran, and Members of the Committees:

MEASURE: S.B. No. 2922 SD2
TITLE: RELATING TO PUBLIC UTILITIES.

DESCRIPTION: Establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires. Effective 7/1/2040. Sunsets on 6/30/2030. (SD2)

POSITION:

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

COMMENTS:

The Commission appreciates the intent of this measure to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires. The Commission understands the importance of reducing the impact of wildfires across the State and is committed to supporting such efforts.

On March 1, 2024, the Commission offered testimony on this measure before the Senate Committees on Ways and Means and Judiciary and appreciates the work done by those Committees to advance this measure. The Commission notes, however, that H.B. 2407, HD2, previously heard by your Committees on February 6, 2024 contains provisions that allow electric utilities to utilize securitization to recover certain costs related to wildfire protection and mitigation and recommends that the Committees incorporate the language

from H.B. 2407, HD 2 into this measure. The Commission notes in particular that H.B. 2407, HD 2 allows securitized rates to finance forward-looking costs associated with wildfire protection plans, which the Commission believes would be beneficial.

Nevertheless, should the Committees intend to not incorporate the language from H.B. 2407, HD2 into this measure, the Commission urges the Committees to keep the following items in mind:

- Securitization opportunities related to wildfires should be limited to electric utilities given the specific items related to electric systems in this measure;
- Costs that may be recovered via securitization should include costs related to a catastrophic wildfire that the Commission has determined to be prudently incurred by the electric utility and recommends an additional reference to prudence as part of the financing order authorization process;
- The Commission should have the discretion to determine whether recoverable costs include professional, consulting, and other similar costs given the totality of the situation and only if prudently incurred;
- The Commission does not believe it is beneficial to presume that applications under this measure are automatically compliant with the rest of chapter 269;
- Items securitized (including potential offsets), securitization term and ratepayer benefits should be analyzed, including evaluating the impact on customers that will be responsible for such charges. An appropriate review process should be in place to achieve the lowest cost issuance, and the Commission suggests that a review timeline of 90 days after the final filing in a docket would ensure timely and thorough review by all Parties;
- As currently written, there is no specific baseline for comparison to evaluate net savings. Therefore, given that any fixed recovery charges that might be authorized would be separate from existing rates, conditioning the issuance of a financing order upon net savings to ratepayers means that such a financing order cannot be issued without also disturbing rates that the Commission has previously determined to be just and reasonable; and
- Conditioning the issuance of a financing order upon the submission of a reorganization plan that includes restructuring the electric utility or different ownership models may significantly disincentivize an electric utility from utilizing any securitization enabled by this bill, and the Commission suggests that a utility's structure may be best considered holistically as part of a utility's wildfire protection plan.
- The Commission also notes that it already monitors the reliability of the electric system and that such a requirement is not well-suited for inclusion in a wildfire protection plan. Additionally, it is unclear what the reference to section 269-9 would require of the Commission in this context, as nothing in this measure relates to any specific accidents.

Consistent with these comments, the Commission recommends the following definitional amendments.

The Commission recommends removing the term "Public utility" from the list of defined terms (page 6, lines 5-6) and replacing it with the term "electric utility", as defined below.

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

The Commission further recommends replacing any instances of the term "public utility" with the term "electric utility".

Additionally, the Commission notes that the definition of "Recovery costs" was amended in SB2922, SD 2 to include the terms "transmission and distribution or disaster relief fund payments" and "wildfire relief fund". These amendments appear to relate to the Wildfire Relief Fund being contemplated in SB 3344, SD 2, and if so, the Commission recommends adding definitions for these two terms in this measure to clarify that these two terms are, in fact, related to the Wildfire Relief Fund being contemplated in SB 3344, SD 2. Additional clarification around the inclusion of "transmission and distribution" in this definition would also be useful, as it's currently not clear what that refers to.

The Commission also recommends the following specific amendments aligned with the positions stated above.

On page 7, Line 1-:

(B) The commission may consider allowing litigation and settlements or related expenses to be paid for by securitized capital if the capital is the lowest cost for ratepayers, the Commission deems they were prudently incurred, and shareholder contributions are considered first.

On page 9, Line 5-20:

§ -3 **Financing orders; authorization.** (a) A public utility that applies to the commission for recovery of costs and

expenses that the Commission has determined were prudently incurred and related to the mitigation of the risk of wildfires, may request the commission to issue a financing order to authorize the costs and expenses that the commission finds to be just and reasonable to be recovered through fixed recovery charges pursuant to this chapter, and order that any portion of the public utility's federal and state taxes associated with those fixed recovery charges and not financed from proceeds of recovery bonds may be recovered through fixed recovery tax amounts.

(b) Any application submitted pursuant to subsection (a) shall be governed by this chapter. ~~Any application that fully complies with this chapter shall also be deemed to comply with any requirements imposed by any applicable provision of chapter 269.~~

On page 11, Line 2-14:

(c) The recovery of recovery costs through the designation of the fixed recovery charges and any associated fixed tax amounts, and the issuance of recovery bonds in connection with the fixed recovery charges, would ~~result in net savings to ratepayers and~~ reduce, to the maximum extent ~~possible~~ practicable, the rates on a present value basis that ratepayers would pay as compared to the use of traditional utility financing mechanisms, which shall be calculated using the public utility's corporate debt and equity in the ratio

approved by the commission at the time of the financing order;
and

On page 11, Line 18 through page 13, Line 8:

(3) The ~~public~~ electric utility provides a wildfire protection plan that satisfies the following conditions:

~~(A) The plan provides for a review of the organizational structure and the separation of energy generation, and transmission and distribution;~~

~~(B) The plan provides for a review of local governance and accountability;~~

~~(C)~~ (A) The wildfire protection plan includes a framework for addressing wildfire safety and risk management, including monitoring and enforcement, independent review and oversight by the commission, and performance-based regulations established by the commission pursuant to section 269-16.1; provided that executive compensation shall exclude any incentives associated with this chapter as determined by the commission; and

~~(D) The plan provides for periodic performance-based management audits of the public electric utility; and~~

~~(E) The plan provides for a method for the utility to notify the commission of an asset, including real property, that it may sell or lease;~~

~~(F)~~ (B) The wildfire protection plan is consistent with meeting the ~~public~~ electric utility's and the State's ~~renewable~~

~~portfolio standards~~ clean energy and climate mandates and
obligations; and

(C) The wildfire protection plan demonstrates how the utility's corporate organization, structure, governance, and accountability mechanisms best allow the utility to meet the plan objectives.

~~(C) The commission shall monitor the reliability and operation of the utilities system and the compliance and audit of the finance order as it applies to the reliability, operation, interconnection, and wildfire orders of the commission. The commission shall also implement part IX of chapter 269 and determine an appropriate schedule for reporting.~~

On page 13, Line 17 through page 14, Line 3:

~~The public utility may submit an application with respect to recovery costs that a public utility has paid, has an existing legal obligation to pay, or would be obligated to pay pursuant to an executed settlement agreement. The commission, within one hundred eighty days of the filing of the foregoing application that is deemed complete by the commission~~ ninety days of the last filing in the applicable docket, shall issue a financing order, if the commission determines that the amounts identified in the application are recovery costs.

On page 18, Line 20 through page 19, Line 3:

(k) 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 ~~one hundred twenty~~ ninety days of the ~~application deemed complete by the commission~~ last filing in the applicable docket.

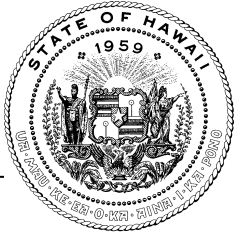
On page 20, Line 8-15:

~~(n) The commission shall not issue a financing order if the plan described in subsection (c) (3) precludes a subsequent restructuring of the public utility that contemplates:~~

~~(1) The separation of energy generation and delivery functions; and~~

~~(2) a system of enhanced local governance and accountability, which may include alternate models of public ownership.~~

Thank you for the opportunity to testify on this measure.



HAWAII STATE ENERGY OFFICE STATE OF HAWAII

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Testimony of **MARK B. GLICK, Chief Energy Officer**

before the **HOUSE COMMITTEES ON WATER & LAND AND ENERGY & ENVIRONMENTAL PROTECTION**

Thursday, March 14, 2024
8:32 AM
State Capitol, Conference Room 325 and Videoconference

Providing Comments on
SB 2922, SD2

RELATING TO PUBLIC UTILITIES.

Chairs Ichiyama and Lowen, Vice Chairs Poepoe and Cochran, and members of the Committees, the Hawai'i State Energy Office (HSEO) offers comments on SB 2922, SD2, that would establish and implement the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

HSEO appreciates the intent of the measure to use securitized recovery bonds to protect an electric utility from future potential financial impacts from catastrophic wildfires but has several concerns about this measure. While costs and expenses eligible for recovery are limited to prudently incurred costs that are consistent with a public utilities commission-approved plan to mitigate wildfire risk and impacts, there are no guidelines for what such a plan should entail nor are there limits or caps to the total amount of bonds that could be issued for such a purpose.

HSEO continues to prefer securitization with specified language on wildfire mitigation plans and cost recovery mechanisms for these activities as found in HB 2407, HD2.

Thank you for the opportunity to testify.



Email: communications@ulupono.com

HOUSE COMMITTEES ON WATER & LAND AND ENERGY & ENVIRONMENTAL PROTECTION
Thursday, March 14, 2024 — 8:32 a.m.

Ulupono Initiative supports the intent of SB 2922 SD2, Relating to Public Utilities.

Dear Chair Ichiyama, Chair Lowen, 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 SB 2922 SD2 and offers comments. This bill establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

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.

Undisputed are the importance and urgency of preparing for increased risks from wildfires and ensuring that loss and damage caused by wildfires are addressed. This bill also rightly identifies the critical need for public utilities to have access to capital in order to invest in wildfire risk mitigation and disaster relief. By enabling the securitization of rates, this bill offers a potential path to raise the necessary funds, thereby protecting both the utilities' financial stability and the interests of ratepayers from escalating costs due to higher interest rates on borrowing.

This bill reflects an uncomfortable set of circumstances and a difficult decision for lawmakers. The pressing need (and community expectation) is that significant investments be made towards wildfire mitigation and recovery, at a moment when the largest electric utility is facing unprecedented financial constraints. These unfortunate circumstances have led to the need for creative financing alternatives to accelerate priority investments.

While many may view such a bill as a benefit to existing electric utilities, it is important to note that any business would struggle to make significant investments while facing limited access to the capital markets. Higher interest rates and other unfavorable lending terms would otherwise only end up increasing energy rates for customers.¹ In addition, due to the financing structure of

¹ As stated by the Hawaiian Electric Companies in its Jan. 31, 2024, filing with the Public Utilities Commission, "Maui Electric is aware of 100 complaints related to the August 2023 Maui wildfires that assert claims against Maui Electric. One complaint is pending in the First Circuit Court in O'ahu, 19 complaints are pending in the Second Circuit Court in Maui County, and 80 complaints are pending in the U.S. District Court for the District of Hawai'i." (See Non-Docketed Case No. 2023-04643 Maui Electric Monthly Wildfire-Related Litigation Report January 2024. <https://shareus11.springcm.com/Public/DownloadNative/25256/e52ef351-84c0-ee11-b83e-48df377ef808/0b5fa85f-a9c0-ee11-b83e-48df377ef808>) The potential liability associated with these lawsuits are the main driver of Hawaiian Electric's credit downgrade.



renewable energy projects, an electric utility that suffers from a lower credit rating may also be less likely to leverage their balance sheet to support important utility-scale renewable energy projects, undermining Hawai'i's ongoing shift towards achieving a completely renewable energy future.

Ulupono recognizes the multifaceted challenges facing the electric utilities, including the need to address ongoing potential wildfire liability while aggressively pursuing the state's policy goals of increasing clean energy, improving grid reliability and resiliency, and reducing costs for customers. As such, a measure such as this can help establish a financial instrument to enable much needed wildfire mitigation investments that the community demands be made. This is not a perfect solution—there are tradeoffs to be sure—but, on the whole, Ulupono considers this a net positive for the state.

While this bill's objectives are clear and necessary, it is essential to ensure that the mechanisms for rate securitization are transparent and include robust safeguards to prevent undue financial burdens on ratepayers. Ulupono applauds the amended provisions requiring regular audits and reporting to maintain accountability and transparency in how the raised funds are utilized towards wildfire mitigation and recovery efforts, and we recommend that such reporting be open and available to the public, as applicable. Ulupono also applauds the provision requiring that, in order to seek approval for recovery of costs using securitized rates, the utility develop and seek approval from the Public Utilities Commission for a wildfire protection plan, but we reiterate that such a wildfire mitigation plan should be developed in a docketed process 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—even more so when the investments will ultimately be at the ratepayer's/community's expense.

Ulupono questions the feasibility or effectiveness of the conditions set forth in Section 3 (c) 3 (A) and (B), which requires that the public utility submitting for recovery of costs associated with securitization of specified costs, provide a plan that reviews the organizational structure and the separation of energy generation, and transmission and distribution; as well as provide for a review of local governance and accountability. While Ulupono does not object to the discussion and evaluation of various ownership and organizational structures for public utilities, requiring such an analysis as a condition of securitization funding may not be the appropriate venue.

SB 2922 represents a small step towards managing the financial implications of natural disasters on public utilities and their customers. Ulupono supports the bill's intent and encourages the inclusion of additional safeguards to ensure transparency, accountability, and the protection of ratepayers' interests.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs



Representative Linda Ichiyama, Chair
Representative Mahina Poepoe, Vice Chair
Committee on Water & Land

Representative Nicole Lowen, Chair
Representative Elle Cochran, Vice Chair
Committee on Energy & Environmental Protection

Thursday, March 14, 2024; 8:32 a.m.
Conference room 325 & Videoconference

RE: SB 2922 SD2 – Relating to Public Utilities – In Support

Aloha Chairs Ichiyama and Lowen, Vice Chairs Poepoe and Cochran, and members of the Committees,

My name is Wren Wescoatt, Vice President of Development for Longroad Energy (Longroad), and I am testifying in support for SB 2922 SD2. This bill is an important step toward restoring Hawaiian Electric Company's (HECO's) credit rating which will reduce the financial costs to ratepayers and allow the utility to continue progress on meeting the state's clean energy goals.

I have worked in renewable energy project development in Hawai'i for the past 15 years for Longroad and First Wind. Together, our team has developed about half of the utility-scale wind and solar capacity operating in Hawaii today, and we financed more than \$500 million for construction of Hawaii projects – all of which have power contracts with HECO. Nationwide, Longroad has developed and acquired 5,400 megawatts of renewable energy projects and has successfully raised over \$14.6 billion in capital via permanent project debt, project construction debt, corporate debt, tax equity, sale leasebacks, portfolio subordinated debt, partnership/JV equity, project equity and corporate-level equity.

In order for any grid-scale clean energy projects to be constructed, HECO must have a credit rating of sufficient quality for lenders to provide financing. Since the Maui wildfires, HECO's credit was downgraded, and until that credit rating improves, it is very unlikely that Longroad – or any other independent power producer – will be able to finance future energy projects in Hawaii. Utility-scale renewable projects will need to be put on hold indefinitely. All the progress that Hawaii has been making in transitioning toward 100% renewable energy will come to a full stop.

SB 2922 SD2 offers an important solution to help restore HECO's credit rating. Securitization would allow the utility a critical path to access low-interest capital to fund its normal operations and system improvements. It also would allow HECO to enter into new Power Purchase Agreements that are currently being negotiated with Longroad and other clean power producers. Most importantly, this bill could go a long way toward improving the utility's credit rating, which would ultimately lower costs for ratepayers and enable Hawaii's clean energy transition to continue.

I would encourage you to please pass SB 2922 SD2.

Mahalo,

A handwritten signature in black ink, appearing to read "Wren W. Wescoatt", is written over a light blue horizontal line.

Wren W. Wescoatt
Vice President of Development
wren.wescoatt@longroadenergy.com
808-780-1000



Testimony Before the House Committees on Water & Land and
Energy & Environmental Protection

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, March 14, 2024; 8:32 am
Conference Room #325 & Videoconference

Senate Bill No. 2922 SD 2 - RELATING TO PUBLIC UTILITIES

To the Honorable Linda Ichiyama and Nicole E. Lowen, Chairs; Honorable Mahina Poepoe and Elle Cochran, Vice Chairs,, 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 legislation with modifications.

KIUC recognizes that it is in the best interest of the state to minimize negative impacts to electric utility ratepayers for wildfire risk mitigation, disaster relief, and litigation. Providing vehicles such as the Catastrophic Wildfire Securitization Act to allow utilities to establish securitized charges in order to raise capital can have a positive impact on the utilities' financial viability.

KIUC further agrees that financially stable utilities with the ability to access capital for critical investments necessary to improve safety and reliability is extremely important for Hawaii. Securitization can be a cost-effective method for accessing capital for utilities and may be critically important for utilities that have non-investment grade credit ratings or other capital access difficulties.

KIUC does not anticipate the need to seek a financing order for wildfire mitigation efforts, or for utility system rebuilding cost as proposed in the bill because KIUC would have access to funding assistance from the Federal Emergency Management Agency (FEMA). It is reasonable to expect FEMA would cover 75% of KIUC's rebuilding costs following a major catastrophic event, which would include a wildfire. Additionally, as a cooperative, KIUC 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.

KIUC appreciates the flexibility to potentially utilize the provisions of a financing order in the event Kauai suffered from a catastrophic wildfire event which could result in responsibility for damages and claims outside of utility property covered under FEMA provisions or typically available for RUS financing. Due to the significant costs of issuing and servicing a securitized debt offering, securitization would likely only be applicable to wildfire recovery 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.

With or without securitization and related financing order, recovery of prudently incurred wildfire mitigation costs is critically important for an electric utility. As currently drafted, outside of a high dollar level securitized debt offering, which electric cooperative likely will not have enough eligible costs to participate in, there is no other provision for cost recovery. KIUC does not have the ability to adjust utility rates for wildfire plan related costs without going through a expensive and time consuming general rate case process with the Hawaii PUC. **Because of this, as currently drafted, this bill does not give parity to cooperative utilities in the ability to recover costs for wildfire mitigation efforts and potential claims**

KIUC recommends the bill be amended to include a provision for electric cooperatives to recover allowable costs 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.

KIUC offers the following addition to § -3 Financing orders; authorization:

(o) Absent a financing order, the public utilities commission may create, pursuant to an application from a cooperative electric utility, a non-bypassable surcharge referred to as a fixed recovery charge, which shall be applied to recovery costs as described in § -2 Definitions. The fixed recovery charge will be a dedicated, discrete tariff rider and 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 such yearly filing.

Finally, **KIUC supports the language in § -3, (d); Page 14, lines 4-6:** "Fixed recovery charges and any associated fixed recovery tax amounts shall be imposed only on existing and future ratepayers in the utility service territory." KIUC supports the intent to specifically avoid statewide cost recovery mechanisms tied to securitization provisions alone.

Mahalo for your consideration.



P.O. Box 37158, Honolulu, Hawai'i 96837-0158
Phone: 927-0709 henry.lifeoftheland@gmail.com

COMMITTEE ON WATER & LAND

Rep. Linda Ichiyama, Chair

Rep. Mahina Poepoe, Vice Chair

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair

Rep. Elle Cochran, Vice Chair

NOTICE OF HEARING

DATE: Thursday, March 14, 2024

TIME: 8:30am

PLACE: Conference Room 325

SB 2922, SD2 RELATING TO PUBLIC UTILITIES.

Please Hold or Fix

Aloha Chairs Ichiyama and Lowen, Vice Chairs Poepoe and Cochran, and Committee Members

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 54 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The proposed bill reminds us of Gut-and-Replace. The section of the bill that requires HECO to submit a reorganization plan was inserted in the policy committee after testimony was taken in the policy committee. The subsequent WAM/JDC hearing stated that they would not revisit policy issues. Thus, the public has had no meaningful opportunity to discuss the proposed reorganization plan in Senate hearings.

Thus, the bill may have constitutional problems. Furthermore, there appears to be at least two different topics covered by the bill: securitization and corporate restructuring.

The bill contains no mechanism for public input into any aspect of the bill.

The Public Utilities Commission testimony filed for the WAM hearing, stated, *“Conditioning the issuance of a financing order upon Commission approval of a reorganization plan that includes restructuring the electric utility or different ownership models may jeopardize the electric utility’s ability to utilize any securitization enabled by this bill.”*

Life of the Land joins PUC, HECO, the IBEW, and Ulupono, in requesting that the reorganization requirement be deleted from the bill.

Mahalo

Henry Curtis
Executive Director



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEES ON
WATER & LAND
AND
ENERGY & ENVIRONMENTAL PROTECTION
SB 2922, SD2
Relating to Public Utilities**

Thursday, March 14, 2024 at 8:32 a.m.
State Capitol, Conference Room 325

Kevin Katsura
Director, Regulatory Non-Rate Proceedings
Hawaiian Electric

Dear Chair Ichiyama, Chair Lowen, Vice Chair Poepoe, Vice Chair Cochran, and
Members of the Committees,

My name is Kevin Katsura and I am testifying on behalf of Hawaiian Electric in
**support of SB 2922, SD2, Relating to Public Utilities and requesting amendments
(attached) that largely improve the technical functioning of the bill without
altering its substance.** We would like to work with the current committees to improve
the language of SB 2922. The increasing risk of catastrophic wildfires has placed an
unprecedented financial strain on electric utilities, necessitating new solutions to ensure
continued safe and affordable electric service. This bill presents a strategic approach to
this complex problem by introducing a securitization mechanism specifically tailored to
wildfire-related costs. This bill provides a utility access to capital in response to a
climate related event and has been adopted in some form in more than twenty-five
states.

SB 2922, SD2 also known as the Catastrophic Wildfire Securitization Act, would
allow the Public Utilities Commission (“Commission”) to authorize the issuance of bonds

to pay for electric utilities' costs and expenses related to catastrophic wildfires. The bonds would be backed—that is, securitized—by a guaranteed revenue stream of future rate payments.

Under SB 2922, SD2, the commission may authorize the issuance of these bonds only under certain circumstances. The commission must determine that the wildfire costs and expenses the bonds are covering are just and reasonable. It must determine that the payment of interest rates and other bond-related fees is itself just and reasonable. It must determine that issuance of the bonds is consistent with the public interest.

SB 2922, SD2 would also codify a series of specific requirements designed to protect the integrity of these bonds. These detailed requirements parallel similar requirements in securitization statutes in other states, including California. They are necessary for the bonds to satisfy the expectations of the market for utility bonds; the requirements of rating agencies; and the rules of the IRS for favorable tax treatment.

We proposed edits to the provisions of SB 2922 SD2, in several respects. These edits are reflected on an attached black-line document.

First, we have proposed a number of technical amendments to the bill that bring the SD2 draft in line with the expectations of the market and rating agencies as to how utility securitizations work. These amendments do not change the substance of the bill—they ensure, instead, that its purpose to permit effective securitization of wildfire costs is successful. These amendments 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 SD2 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.

Second, we have made edits to clarify, but not alter, what costs can be securitized. We understand that SD2 was intended to give the Commission discretion to allow securitization of wildfire mitigation plan costs, payments to the wildfire relief fund not associated with replenishment due to imprudent conduct, and costs and expenses of litigation and settlements arising out of the August 8, 2023 fires. We suggested edits to eliminate any ambiguities in these provisions. Our edits expressly require that the Commission, in authorizing costs and expenses of litigation and settlements, limit the burden on ratepayers and require shareholder-backed contributions.

In the wake of the Maui fires, electric utilities will need to raise substantial amounts of capital to cover expenses associated with catastrophic wildfires. Securitization is the most efficient, least-cost way to finance those expenses. Bonds securitized by rates receive AAA credit ratings from credit ratings agencies and thus provide a means of securing capital at a lower interest rate than those currently available to utilities. For Hawaiian Electric, the potential savings are even greater, because rating agencies have rated us below investment-grade in the wake of the Maui fires, even before any determination of cause or fault has been reached. That rating means our ability to raise capital at this time is constrained and costly, which could harm

customers through higher rates and reduced investment. A financially weak utility is less able to make the investments and commitments Hawaii needs to meet its renewable energy and other goals.

Securitization is also well-established. Since the 1990s, at least twenty states have allowed investor-owned utilities to finance costs and expenses using securitized bonds. In 2022 alone, utilities in California raised over \$8 billion through securitization to cover costs associated with wildfires.

In summary, SB 2922, SD2, with our proposed amendments, will enable the expenses due to catastrophic wildfires – that the commission determines customers should pay – to be financed at a lower cost and with less impact on customer bills. It will support the financial strength of electric utilities, which will enable them to make investments to reduce the risk of future wildfires at the lowest possible cost. And it will result in the adoption of a mechanism for funding wildfire costs that is well-established and well-tested, providing an added assurance of efficacy.

Thank you for the opportunity to testify in support of SB 2922, SD2. Please pass SB 2922, SD2 with amendments.

A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

SECTION 1. The legislature finds that in the wake of the 2023 Lahaina wildfire, ~~public utilities~~ electric utility companies must raise the capital to fund ~~near-term~~ costs and expenses related to develop catastrophic wildfires, including developing and ~~implement~~ implementing effective plans for wildfire risk mitigation, and ~~contribute to disaster relief funds~~ contributing to the Hawaii Disaster Relief Fund. Moreover, present uncertainty as to the financial costs that Hawaii's largest electric utility may bear as a result of the 2023 Lahaina wildfire has led credit ratings agencies to downgrade the credit rating of that utility to non-investment-grade status. The legislature finds that the credit rating downgrade will have severe negative impacts on ~~ratepayers~~ consumers. As the utility borrows money in the future to finance critical investments to improve

safety and reliability, the utility will need to pay much higher interest rates as a non-investment grade issuers~~issuers~~issuer, and those higher interest costs will be passed on to ~~customers~~consumers in the form of higher rates. In addition, a financially weak utility is less capable of making the investments and commitments the State needs to meet its renewable energy and other goals. The State also recognizes that ratepayers cannot bear the full burden of mitigation efforts only through securitization and that shareholder contributions must also be a part of utility capitalization moving forward.

Accordingly, the purpose of this Act is to establish and implement the Catastrophic Wildfire Securitization Act, to allow ~~public utilities to securitize rates~~electric utility companies to use a securitization structure in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires, providing a vital source of liquidity and preserving the ~~public utilities'~~'electric utility companies' financial viability.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 15 to be appropriately designated and to read as follows:

"CHAPTER

CATASTROPHIC WILDFIRE SECURITIZATION ACT

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

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

"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 ~~recovery~~wildfire bonds that is designed to promote the credit quality and marketability of the wildfire 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.

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

"Commission" means the public utilities commission, or any successor entity.

"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 company" has the same meaning as defined in section 269-1.

"Financing costs" means the costs to issue, service, repay, or refinance ~~recovery~~wildfire bonds, whether incurred or paid upon

issuance of the ~~recovery~~wildfire bonds or over the life of the ~~recovery~~wildfire bonds, if they are approved for recovery by the commission in a financing order. "Financing costs" include:

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

(2) Any payment required under an ancillary agreement;

(3) Any amount required to fund or replenish reserve accounts or other accounts established under an indenture, ancillary agreement, or other financing document relating to the ~~recovery~~wildfire bonds;

(4) Taxes, franchise fees, or license fees imposed on fixed recovery charges or otherwise resulting from the collection of the charges, the issuance of the financing order, the assignment the sale, or transfer of wildfire protection property, or the sale of the wildfire bonds, in any such case whether paid, payable, or accrued;

(5) Costs related to issuing and servicing ~~recovery~~wildfire bonds or the application for a financing order, including 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 discounts, capitalized interest, rating agency fees, and any other related costs that are approved for recovery in the financing order; or

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

"Financing entity" means the ~~public~~electric utility company or any subsidiary, affiliate, or assignee of the electric utility company that is authorized by the commission to issue ~~recovery~~wildfire bonds or acquire ~~recovery~~wildfire protection property, or both.

"Financing order" means an order of the commission, adopted pursuant to this chapter, that includes a procedure to require the expeditious approval by the commission of periodic adjustments to fixed recovery charges and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all recovery costs and the costs associated with the proposed recovery, financing, or refinancing thereof, including the costs of servicing and retiring the ~~recovery~~wildfire bonds contemplated by the financing order.

"Financing party" means any holder of wildfire 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 charges" means those nonbypassable rates and other charges, including distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover:

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

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

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

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

~~"Recovery costs"~~ means any of the following:

(1) Catastrophic wildfire costs or expenses authorized by the commission in a financing order for recovery related to

(A) Capital investments in transmission and distribution ~~of disaster relief fund payments; provided that:~~infrastructure approved by the commission in connection with a wildfire mitigation plan;

~~(A) Any payments~~

(B) Payments into the a wildfire relief fund ~~shall not be used for replenishment due to imprudent conduct, if authorized by~~

statute, provided that any amounts the commission directs the electric utility company to pay to the fund as a replenishment due to the electric utility company's imprudence shall not constitute catastrophic wildfire costs and expenses and the commission shall not authorize the recovery of such amounts in a financing order; and

_____ (B)

_____ (C) ~~The commission may consider allowing~~costs and expenses of litigation and settlements or related expenses ~~to be paid for by securitized capital if the capital is~~arising out of a catastrophic wildfire in 2023 provided that the commission limits the lowest cost ~~for~~burden on ratepayers and requires shareholder-backed contributions ~~are considered first.~~

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

(3) Financing costs; or

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

_____ "Recovery
The electric utility company may submit an application with respect to recovery costs that an electric utility company or another financing

entity has paid, has an existing legal obligation to pay, or would be obligated to pay pursuant to an executed settlement agreement.

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

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

"Wildfire protection property" means the property right, created pursuant to this chapter, ~~that:~~

—(1) ~~Includes~~ including without limitation the right, title, and interest of the ~~public~~ electric utility company or its ~~transferee~~ assignee:

(A1) In and to the fixed recovery charges 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 fixed recovery charges pursuant to section ~~-3(k)~~ and the financing order; and

(B2) To be paid the amount that is determined in a financing order to be the amount that the ~~public~~electric utility company or its ~~transferee~~assignee is lawfully entitled to receive pursuant to the provisions of this chapter and the proceeds thereof, and in and to all revenues, collections, claims, payments, moneys, or proceeds of or arising from the fixed recovery charges that are the subject of a financing order; ~~and.~~

~~(2) Constitutes~~ "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~~electric utility company, the ~~public~~electric utility company performing certain services:

~~"Recovery property" does not include a right to be paid fixed recovery tax amounts.~~

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

§ -3 **Financing orders; authorization.** (a) A ~~public~~An electric utility company that applies to the commission for recovery of recovery costs and expenses ~~related to the mitigation of the~~

~~risk of wildfires,~~ may request the commission to issue a financing order to authorize the costs and expenses that the commission finds to be just and reasonable to be recovered through fixed recovery charges pursuant to this chapter, and order that any portion of the ~~public~~electric utility¹ company's federal and state taxes associated with those fixed recovery charges and not financed from proceeds of ~~recovery~~wildfire bonds may be recovered through fixed recovery tax amounts.

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

(1) The wildfire protection costs to be financed through the issuance of bonds;

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

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

(4) The expected term, which shall include a scheduled final payment date not to exceed 30 years, and a legal final maturity, which may be longer, subject to rating agency and market conditions, during which term the fixed recovery charges associated with the issuance of each series of wildfire bonds is expected to be imposed and collected;

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

(6) An estimate of the amount of the fixed recovery charges necessary to pay principal and interest on the wildfire bonds and other related financing costs as set forth in the application and the calculation for that estimate;

(7) The electric utility company's selection of the financing entity, a proposed design of the fixed recovery charge and fixed recovery tax amounts, and a proposed methodology for allocating the fixed recovery charges among consumer classes within the electric utility company's service territory; and

(8) A description of a true-up adjustment mechanism for the adjustment of the fixed recovery charges to correct for any overcollection or under collection of the fixed recovery charges, and to otherwise ensure the timely payment of principal and interest on the wildfire bonds and other related financing costs.

(c) Any application submitted pursuant to subsection (a) shall be governed by this chapter. Any application that fully complies with this chapter shall also be deemed to comply with any requirements imposed by any applicable provision of chapter 269.

(d) The commission, within one hundred ~~twenty~~ days of the filing of the foregoing application that is deemed complete by the commission, shall issue a financing order, if the commission determines that the amounts identified in the application are recovery costs.

(ee) Upon receiving an application from a ~~public~~ an electric utility company pursuant to this section, the commission shall issue a financing order if the commission determines that the following conditions are satisfied:

(1) The ~~costs and expenses are eligible for recovery, which shall be limited to the following categories:~~

~~(A) Prudently incurred costs that are consistent with a commission-approved plan to mitigate wildfire risk and impacts; and~~

~~(B) Costs consistent with a commission-approved plan for wildfire mitigation that limits the burdens on ratepayers and requires shareholder-backed contributions;~~

~~(2) The of recovery costs identified in the electric utility~~

company's application and the issuance of the ~~recovery~~wildfire bonds,

including all material terms and conditions of the ~~recovery~~wildfire

bonds, including interest rates, rating, amortization, redemption, and

maturity, and the imposition and collection of fixed recovery charges

as set forth in the application satisfy all of the following

conditions, as applicable:

(A) ~~They are~~Are just and reasonable;

(B) ~~They are~~Are consistent with the public interest;

(C) ~~The recovery of recovery costs through the designation of the~~ Are reasonably expected to result

in the lowest fixed recovery charges and any

associated fixed recovery tax amounts,

and consistent with market conditions at the time the

wildfire bonds are priced and the terms of the

financing order;

~~(D) Whether the issuance of recovery the bonds in connection with the fixed recovery charges, would result in net savings to ratepayers and reduce, to the maximum extent possible, the rates on a present value basis that ratepayers would pay as compared to the use of traditional utility financing mechanisms, which shall be calculated using the public utility's corporate debt and equity in the ratio approved by the commission at the time of the financing order; and~~

~~(D) The use of securitized funds represents the most cost-effective method to ratepayers based on available financing methods; and would be beneficial, including by avoiding significantly mitigating abrupt and significant increases in rates to consumers for the applicable time period in the absence of the bonds.~~

(32) The public electric utility company provides a plan that satisfies the following conditions:

(A) The plan provides for a review of the organizational structure and of the separation of energy generation, and transmission and distribution electric utility company and its lines of business;

- (B) The plan provides for a review of local governance and accountability;
- (C) The plan includes a framework for addressing wildfire safety and risk management, including monitoring ~~and enforcement, independent,~~ review ~~and,~~ oversight, and enforcement by the commission, and performance-based regulations established by the commission pursuant to section 269-16.1; provided that executive compensation shall exclude any incentives associated with this chapter as determined by the commission;
- (D) The plan ~~provides for~~ permits periodic performance-based management audits of the ~~public~~ electric utility company; and
- (E) The plan provides for a method for the electric utility company to notify the commission of an asset, including real property, that it may sell or lease;
- (F) The plan is consistent with meeting the ~~public~~ electric utility ~~'s~~ company's and the State's renewable portfolio standards and obligations; ~~and~~
- (G) The commission shall monitor the reliability and operation of the ~~utilities~~ utility's system, ~~and~~ shall audit the electric utility company's compliance ~~and audit of~~ with the ~~finance order as it applies~~ commission's orders relating to the reliability, operation, interconnection, and wildfire ~~orders of the commission~~ mitigation. The commission

~~shall~~may also implement part IX of chapter 269 and determine an appropriate schedule for reporting; and

(H) The plan does not preclude subsequent consideration of further changes to the electric utility company's organizational structure.

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

~~— The public utility may submit an application with respect to recovery costs that a public utility has paid, has an existing legal obligation to pay, or would be obligated to pay pursuant to an executed settlement agreement. The commission, within one hundred eighty days of the filing of the foregoing application that is deemed complete by the commission, shall issue a financing order, if the commission determines that the amounts identified in the application are recovery costs.~~

(df) Fixed recovery charges and any associated fixed recovery tax amounts shall be imposed only on existing and future ~~ratepayers~~consumers in the utility service territory.

~~Ratepayers~~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 ~~recovery~~wildfire bonds and associated financing costs, including financing costs of a financing entity, are paid in full ~~by~~, even if such consumers cease to be consumers after the date of the financing entity order.

(~~eg~~) A ~~public~~An electric utility company may exercise the same rights and remedies under its tariff and applicable law and regulation based upon a consumer's nonpayment of fixed recovery charges and any associated fixed recovery tax as it may for a consumer's failure to pay any other charge payable to that ~~public~~electric utility company.

(~~fh~~) The commission may establish in a financing order an effective mechanism that ensures recovery of recovery costs through nonbypassable fixed recovery charges and any associated fixed recovery tax amounts from existing and future consumers in the utility service territory, and those consumers shall be required to pay those charges until the ~~recovery~~wildfire bonds and all associated financing costs are paid in full by the financing entity, at which time those charges shall be terminated. Fixed recovery charges shall be irrevocable, notwithstanding any true-up adjustment made pursuant to subsection (~~kn~~).

(~~gi~~) ~~Recovery~~Wildfire bonds authorized by the commission's financing orders may be issued in one or more series.

(~~hj~~) The commission shall issue financing orders pursuant to this chapter to facilitate the recovery, financing, or refinancing of recovery costs. A financing order may be adopted only upon the application of the ~~public~~electric utility company and shall become effective pursuant to its terms only after the ~~public~~electric utility company files with the commission the ~~public~~electric utility company'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 fixed recovery charges, any associated fixed recovery tax amounts, and other charges.

(k) A financing order shall remain in effect until the bonds issued pursuant to the financing order and all financing costs related to the bonds have been paid in full or defeased by their terms or, in the event the wildfire protection property has been assigned to an assignee in connection with the exercise of remedies upon a default pursuant to the terms of the bonds, until the receipt of proceeds by such assignee in an amount sufficient to repay principal, interest and other financing costs related to the bonds that would have accrued had they remained outstanding. 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.

(±1) Notwithstanding any other law, and except as otherwise provided in subsection (kn), with respect to ~~recovery~~wildfire protection property that has been made the basis for the issuance of ~~recovery~~wildfire bonds and with respect to any associated fixed recovery tax amounts, the financing order, the fixed recovery charges, and any associated fixed recovery tax amounts shall be irrevocable. The state and its agencies, including the ~~commission shall not,~~ either by ~~rescinding, altering, or amending,~~ pledge and agree with bondholders, the ~~financing order or otherwise, revalue or revise~~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 ratemaking purposes ~~the recovery costs or the costs of~~
~~recovering, financing, or refinancing the recovery costs, or in~~
~~any way reduce or impair the value of recovery~~the full protection
of the wildfire protection property or of the right to receive any
associated fixed recovery tax amounts either directly or
indirectly by taking fixed recovery charges or any associated
fixed recovery tax amounts into account when setting other rates
~~for~~collected pursuant to a financing order and of the bondholders and
any assignee or financing party entering into a contract with the
publicelectric utility company. The amount of revenues shall not
be subject to reduction, impairment, postponement, or
termination. The State shall neither limit nor alter, except as
otherwise provided with respect to the true-up adjustment of the
fixed recovery charges pursuant to subsection (k),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 fixed recovery charges, ~~any associated fixed~~
~~recovery tax amounts, recovery property, financing orders,~~
imposed by a financing order irrevocable, binding, or nonbypassable
charges for all existing and future consumers within the electric
utility company's service territory;

(2) Take or permit any ~~rights under a financing order until~~
~~the applicable recovery bonds, together with the interest on the~~
~~recovery bonds and associated financing costs, are fully paid and~~

~~discharged, and any associated fixed recovery tax amounts have been satisfied or, in the alternative, have been refinanced through an additional issue of recovery bonds; provided that nothing in this section shall preclude a limitation or an alteration if and when adequate provision shall be made by law for the protection of the public utility and of owners and holders of the recovery bonds. The financing entity may refer to this subsection in the recovery bonds.~~ action that impairs or would impair the value of wildfire protection property or the security for the wildfire bonds or revises the recovery costs for which recovery is authorized;

(3) In any way impair the rights and remedies of the bondholders, assignees, and other financing parties, including by failing to take any action necessary to avoid an impairment of such rights and remedies;

(4) Except for changes made pursuant to the formula-based true-up mechanism authorized under subsection (n), reduce, alter, or impair fixed recovery charges 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, other financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related wildfire bonds have been paid and performed in full.

When setting other rates for the ~~public~~electric utility company, nothing in this subsection shall be construed to prohibit the commission from taking into account:

(1) Any collection of fixed recovery charges in excess of amounts actually required to pay recovery costs financed or refinanced by recoverywildfire bonds; or

(2) Any collection of fixed recovery tax amounts in excess of amounts actually required to pay federal and state taxes associated with fixed recovery charges; provided that this collection shall not result in a recharacterization of the tax, accounting, and other intended characteristics of the financing, including the following:

(A) Treating the recoverywildfire bonds as debt or obligation of the publicelectric utility company or its affiliates for federal income tax purposes; or

(B) Treating the transfer of the recoverywildfire protection property by the publicelectric utility company as a true sale for bankruptcy purposes.

~~(j)m~~ Neither financing orders, catastrophic wildfire authorizations of costs, or expenses authorized by the commission; nor recoverywildfire bonds issued pursuant to 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 recoverywildfire 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."

The issuance of ~~recovery~~wildfire 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.

(~~n~~) 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 one hundred twenty days of the application deemed complete by the commission. Any fixed recovery charge authorized by a financing order shall appear on ~~ratepayer~~consumer bills. Any financing order issued by the commission shall provide for a procedure for periodic formulaic true-up adjustments to fixed recovery charges, which shall be made at least annually and may be made more frequently. The ~~public~~electric utility company shall ~~file an application~~make a filing with the commission to implement any true-up adjustment. The review of any true-up adjustment filing by the commission shall be limited to mathematical or clerical errors in accordance with any true-up adjustment formulas set forth in the applicable financing order. Within thirty days after receiving an electric utility's filing of a true-up adjustment filing, the public utilities commission shall either approve the filing or inform the electric utility of any mathematical or clerical errors in its calculation. If the commission informs the electric utility of mathematical or clerical errors in its calculation, the electric utility company shall correct its error and refile its true-up adjustment filing. The timeframes previously

described in this subsection shall apply to a refiled true-up adjustment. If, after thirty days after receiving the electric utility's true-up adjustment filing pursuant to this subsection (e), the commission does not inform the electric utility of a mathematical or clerical error in its calculation, the true-up adjustment set forth in the electric utility company's filing will go into effect by operation of law and without further action of the electric utility company or the commission.

(~~l~~o) Fixed recovery charges are ~~recovery~~wildfire protection property when, and to the extent that, a financing order authorizing the fixed recovery charges has become effective pursuant to this chapter, and the ~~recovery~~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 ~~recovery~~wildfire bonds are paid in full, including all principal, premiums, if any, and interest with respect to the ~~recovery~~wildfire bonds, and all associated financing costs are paid in full. ~~A financing order may provide that the~~The creation of ~~recovery~~wildfire protection property shall be simultaneous with the sale of the ~~recovery~~wildfire protection property to a ~~transferee~~ or an assignee as provided in the application of the pledge of the ~~recovery~~wildfire protection property to secure the ~~recovery~~wildfire bonds.

(~~m~~p) Any successor to a financing entity shall be bound by 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 initial financing entity.

~~— (n) The commission shall not issue a financing order if the plan described in subsection (c) (3) precludes a subsequent restructuring of the public utility that contemplates:~~

~~— (1) The separation of energy generation and delivery functions; and~~

~~— (2) A system of enhanced local governance and accountability, which may include alternate models of public ownership.~~

§ -4 RecoveryWildfire bonds; issuance; recoverywildfire protection property interests. (a) The financing entity may issue recoverywildfire bonds upon approval by the commission in a financing order. RecoveryWildfire bonds shall be nonrecourse to the credit or any assets of the publicelectric utility company, other than the recoverywildfire protection property as specified in that financing order.

(b) The publicelectric utility company may sell and assign all or portions of its interest in recoverywildfire protection property to one or more financing entities that make that recoverywildfire protection property the basis for the issuance of recoverywildfire bonds, to the extent approved in a financing order. The publicelectric utility company or financing entity may pledge recoverywildfire protection property as collateral, directly or indirectly, for recoverywildfire bonds to the extent approved in the pertinent financing orders providing for a security interest in the recoverywildfire protection property, in the manner set forth in

section -5. In addition, ~~recovery~~wildfire protection property may be sold or assigned by either of the following:

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

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

(c) To the extent that any interest in ~~recovery~~wildfire protection property is sold, assigned, or is pledged as collateral pursuant to subsection (b), the commission shall authorize the ~~public~~electric utility company to contract with the financing entity that the ~~latter~~electric utility company will continue to operate the system to provide service to consumers within its service territory, will collect amounts in respect of the fixed recovery charges 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 pursuant to 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~~electric utility company's services are provided to a consumer by any person or entity other than the ~~public~~electric utility company in whose service territory the consumer is located, that person or entity shall collect the fixed recovery charges and any

associated fixed recovery tax amounts from the consumer for the benefit and account of the ~~public~~electric utility company or financing entity with the associated revenues remitted solely for the benefit and repayment of the ~~recovery~~wildfire bonds and associated financing costs as a condition to the provision of 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 fixed recovery charges and any associated fixed recovery tax amounts, that are the subject of the financing order.

(d) ~~Recovery~~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 fixed recovery charges depend on the ~~public~~electric utility company continuing to provide services or continuing to perform its servicing functions relating to the collection of fixed recovery charges or on the level of future service consumption, including electricity consumption. ~~Recovery~~Wildfire protection property shall exist whether or not the fixed recovery charges have been billed, have accrued, or have been collected and notwithstanding the fact that the value for a security interest in the ~~recovery~~wildfire protection property, or amount of the ~~recovery~~wildfire protection property, is dependent on the future provision of service to consumers. All ~~recovery~~wildfire protection property specified in a financing order shall continue to exist until the ~~recovery~~wildfire bonds issued pursuant to a financing order and all associated financing costs are paid in full.

(e) ~~Recovery~~Wildfire protection property, fixed recovery charges, and the interests of an assignee, bondholder or financing entity, or any pledgee in ~~recovery~~wildfire protection property and fixed recovery charges shall not be subject to setoff, counterclaim, surcharge, recoupment, or defense by the ~~public~~electric utility company or any other person or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the ~~public~~electric utility company, any ~~affiliate~~assignee of the ~~public~~electric utility company, or any other entity.

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

§ -5 Security interests in ~~recovery~~wildfire protection property; financing statements. (a) A security interest in ~~recovery~~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 ~~recovery~~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 fixed recovery charges included in the ~~recovery~~wildfire protection property;

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

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

(b) A valid and enforceable security interest in ~~recovery~~wildfire protection property is perfected when it has attached and when a financing statement has been filed with the Bureau of Conveyances of the State of Hawaii naming the pledgor of the ~~recovery~~wildfire protection property as debtor and identifying the ~~recovery~~wildfire protection property. Any description of the ~~recovery~~wildfire protection property shall be sufficient if it refers to the financing order creating the ~~recovery~~wildfire protection property. A copy of the financing statement shall be filed with the commission by the ~~public~~electric utility company that is the pledgor or transferor of the ~~recovery~~wildfire protection property, and the commission may require the ~~public~~electric utility company to make other filings with respect to the security interest pursuant to procedures it may establish; provided that the filings shall not affect the perfection of the security interest.

(c) A perfected security interest in ~~recovery~~wildfire protection property shall be a continuously perfected security interest in all ~~recovery~~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. ~~Recovery~~Wildfire protection property

shall constitute property for all purposes, including for contracts securing recoverywildfire bonds, whether or not the recoverywildfire protection property revenues and proceeds have accrued.

(d) Subject to the terms of the security agreement covering the recoverywildfire protection property and the rights of any third parties holding security interests in the recoverywildfire 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 recoverywildfire protection property with other funds of the publicelectric utility company that is the pledgor or transferor of the recoverywildfire protection property, or by any security interest in a deposit account of that publicelectric utility company 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 recoverywildfire protection property shall have a perfected security interest in all cash and deposit accounts of the publicelectric utility company in which recoverywildfire 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 recovery 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 ~~recovery~~wildfire protection property, the pledgees of the ~~recovery~~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 ~~recovery~~wildfire protection property, subject to the rights of any third parties holding prior security interests in the ~~recovery~~wildfire protection property perfected in the manner provided in this section. Further, the commission may require in the financing order creating the ~~recovery~~wildfire protection property that, in the event of default by the ~~public~~electric utility company in payment of ~~recovery~~wildfire protection property revenues, the commission, upon the application by the pledgees or ~~transferees~~assignees, including ~~transferees~~assignees under section ~~6~~6, of the ~~recovery~~wildfire protection property, and without limiting any other remedies available to the pledgees or ~~transferees~~assignees by reason of the default, shall order the sequestration and payment to the pledgees or ~~transferees~~assignees 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 ~~recovery~~wildfire protection property. Any surplus in excess of amounts necessary to pay principal, premiums, if any, interest, costs, and arrearages on the ~~recovery~~wildfire 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 recovery wildfire protection property by the public electric utility company, an affiliate assignee of the public electric utility company, or a financing entity.

~~(g) This section sets forth the terms by which a consensual security interest shall be created and perfected in the recovery property. Unless otherwise ordered by the commission with respect to any series of recovery 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 recovery 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 recovery 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 article 9 of chapter 490, and are entitled to foreclose or otherwise enforce this statutory lien in the recovery property. This lien shall~~

~~attach to the recovery property regardless of who owns, or is subsequently determined to own, the recovery 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 recovery 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 pursuant to this section. Financing statements so filed may be protective filings and shall not be evidence of the ownership of the recovery property.~~

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

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

~~In addition, the commission may require, in the financing order creating the recovery property, that, in the event of default by the public utility in the payment of recovery property revenues, the commission, 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 recovery 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 recovery bonds, and other costs arising in connection with the documents governing the recovery bonds, shall be remitted to the debtor.~~

§ -6 **Transfers of recoverywildfire protection property.** (a) A transfer of recoverywildfire protection property by the publicelectric utility company to an affiliateassignee or to a financing entity, or by an affiliateassignee of the publicelectric utility company 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 recoverywildfire 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 purchaserassignee shall not be affected or impaired by, among other events:

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

(2) The retention by the seller of either:

- (A) A partial or residual interest, including an equity interest, in the financing entity or the ~~recovery~~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 fixed recovery charges;

(3) Any recourse that the ~~purchaser~~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 fixed recovery charges 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 fixed recovery charges as provided in the financing order.

(c) A transfer of ~~recovery~~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 fixed recovery charges included in the ~~recovery~~wildfire protection property; and

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

(d) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the Bureau of Conveyances of the State of Hawaii pursuant to part 5 of article 9 of chapter 490, naming the assignor of the ~~recoverywildfire protection~~ property as debtor and identifying the ~~recoverywildfire protection~~ property shall have priority. Any description of the ~~recoverywildfire protection~~ property shall be sufficient if it refers to the financing order creating the ~~recoverywildfire 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 pursuant to procedures it may establish, but these filings shall not affect the perfection of the transfer.

§ -7 ~~Successors to public utilities~~electric utility companies; obligations. (a) Any successor to the public~~an electric utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise,~~ company that has received a financing order shall be bound by the requirements of this part. The successor of the electric utility company shall perform and satisfy all obligations of the ~~public~~electric utility ~~pursuant to this chapter~~company under the financing order, in the same manner and to the same extent as the ~~public~~electric utility ~~company~~, including ~~collecting and paying to the holders of recovery bonds, their~~

representatives, or the applicable financing entity, revenues arising with respect to the the obligation to collect and pay the fixed recovery property sold charges to the applicable any financing entity or pledged to secure recovery bonds. Any successor to the public utility 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 public electric utility company.

(b) The commission may require in a financing order that, if a default by the electric utility company in remittance of the fixed recover charges collected arising with respect to wildfire protection property occurs, the commission, without limiting any other remedies available to any financing party by reason of the default, including under subsection 5-e and sub 5-g, shall order the sequestration and payment to the beneficiaries of the fixed recovery charges 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 company.

§ -8 Credits to ~~customers~~ consumers. (a) Notwithstanding section -3(i), if, subsequent to the issuance of a financing order, a public an electric utility company receives additional insurance proceeds, ~~tax benefits,~~ or other amounts that reimburse the public electric utility company for costs associated with any catastrophic wildfire amounts included in the recovery costs addressed in that financing order, the public electric utility company shall credit ~~customers~~ consumers, in a manner to be determined by the

commission, with the net after tax amounts of those reimbursements, but the commission shall not adjust, amend, or modify the catastrophic wildfire amounts, fixed recovery charges, the fixed recovery tax amounts, the financing order, recovery costs, the ~~recovery~~wildfire protection property, or the ~~recovery~~wildfire bonds.

(b) Nothing in this section shall be construed to permit setoff, counterclaim, surcharge, recoupment, or defense by the ~~public~~electric utility company or any other person, or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the ~~public~~electric utility company, any affiliate assignee of the ~~public~~electric utility company, or any other entity, against the ~~recovery~~wildfire protection property, the fixed recovery charges, or the interests of an assignee, bondholder, or financing entity, or any pledgee in ~~recovery~~wildfire protection property or fixed recovery charges.

~~§ -9~~
§ -9 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 before that occurrence by the commission, a financing entity, a bondholder, or any financing party, and any the action shall remain in full force and effect; and
- (2) The validity and enforceability of the rest of this part shall remain unaffected.

§ -10 **Utilities; bond ratings.** Access to securitized funds shall be limited to a ~~public~~electric utility company whose bond rating is below investment grade at the time of the financing order issuance.

§ -1011 **Findings; report.** The commission shall incorporate its findings relating to the administration of this chapter into the commission's annual report to the legislature.

§ -1112 **Limitations.** This chapter shall not affect any civil action or proceeding."

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

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

SECTION 5. This Act shall take effect on July 1, 2040, and shall be repealed on June 30, 2030.

Report Title:

Public Utilities Commission; Public Utilities; Rate Securitization; Catastrophic Wildfire Expenses; Financing Orders; ~~Recovery Bonds;~~ ~~Recovery Property~~ Wildfire bonds; Wildfire protection property

Description:

Establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires. Effective 7/1/2040. Sunsets on 6/30/2030. (SD2)

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

Clearway Energy Group
100 California St, Suite 650
San Francisco, CA 94111



March 12, 2024

Via Electronic Submittal

Representative Linda Ichiyama, Chair
Representative Mahina Poepoe, Vice Chair
Committee on Water & Land

Representative Nicole Lowen, Chair
Representative Elle Cochran, Vice Chair
Committee on Energy & Environmental Protection

Thursday, March 14, 2024; 8:32 a.m.
Conference room 325 & Videoconference

RE: SB 2922 SD2 – Relating to Public Utilities – Support the Intent

Aloha Chairs Ichiyama and Lowen, Vice Chairs Poepoe and Cochran, and members of the Committees,

Clearway Energy Group (“Clearway”) supports the intent of SB 2922 SD2, which provides a mechanism for securitization of utility costs associated with wildfires.

Clearway is one of the largest suppliers of renewable energy to Hawaiian Electric and its customers. Clearway owns and operates four solar energy projects on Oahu, two of which are solar-only projects that came online in 2019 (5 years into 22-year Power Purchase Agreements (PPAs)), and two of which are solar plus battery storage projects, Mililani I Solar and Waiawa Solar, which came online in July 2022 and January 2023, respectively (one year into 20-year PPAs). Clearway has three additional projects under development that were recently awarded in Hawaiian Electric’s Stage 3 Renewable RFP. Our projects provide clean, reliable power to Hawaiian Electric’s customers at a fixed price and at a lower cost than electricity from fossil fuel sources.

In supporting the intent of SB 2922 SD2, Clearway wishes to underscore the importance of a financially stable utility in keeping Hawai’i on track to meet its clean energy and grid reliability goals. Independent power producers such as Clearway enter into PPAs with the

utility based on the strength of the utility's credit and confidence that it will honor its contractual obligations to pay for the power produced. These renewable power plants operate under supply contracts with Hawaiian Electric for decades, and the financial viability of the plants depends on the long-term financial viability of our customer. In the case of Clearway's operating plants, a stable long-term revenue stream goes to fund the long-term debt that financed the upfront capital costs on equipment and labor to construct the projects.

In this current environment of uncertainty, it is critically important to Clearway that our existing contracts are protected and that there is no interruption in Hawaiian Electric's purchases of power from our facilities. Additionally, for investors to have confidence investing in new renewable energy projects developed in Hawai'i, the utility will need to be viewed by the investment community as financially stable and capable of providing sufficient credit support. Until that point, it will be difficult for new, large-scale clean energy projects to move forward.

With respect to the "plan" described in Section -3(c)(3) of SB 2922 SD2, Clearway supports the proposed clause (F), requiring the utility's plan to be consistent with meeting the utility's and the State's renewable portfolio standards and obligations. Similar language was included in legislation in California¹ and helped ensure that Pacific Gas & Electric Company kept all power purchase agreements intact. However, Clearway has concerns with clause (A), regarding a potential separation of the utility's generation business from its transmission and distribution business, and recommends clarification or removal of this clause. For Clearway and others developing renewable energy projects in Hawai'i, it is very important to have alignment between the side of the utility's business that contracts for our renewable energy projects and the side of the business that builds the facilities required for the grid to connect and receive power from the project. When these two functions are part of the same utility, the utility's incentives are aligned to complete required grid upgrades in a timely manner to keep the project on schedule. The already complex process of project development could become more difficult if these two utility functions were separated from each other.

Hawai'i has an urgent need for new electric generation and storage resources to stabilize the grid and keep the State on track toward its clean energy goals. We encourage the Legislature to adopt measures that create a constructive path forward for Hawaiian Electric.

¹ Assembly Bill 1054 (2020): "The commission has determined that the reorganization plan and other documents resolving the insolvency proceeding are ... consistent with the state's climate goals as required pursuant to the California Renewables Portfolio Standard Program and related procurement requirements of the state."

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON WATER & LAND and
ENERGY & ENVIRONMENTAL PROTECTION
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
Thursday, March 14, 2024 AT 8:32 A.M.**

To The Honorable Linda Ichiyama, Chair
The Honorable Mahina Poepoe, Vice Chair
Members of the Committee on Water & Land
To The Honorable Nicole E. Lowen, Chair
The Honorable Elle Cochran, Vice Chair
Members of the Committee on Energy & Environmental Protection

COMMENTS ON SB2922 SD2 RELATING TO PUBLIC UTILITIES

The Maui Chamber of Commerce would like to **COMMENT on SB2922 SD2.**

The Chamber agrees that it is important for electric utilities to be able to fund their recovery costs after a catastrophic wildfire such as the August 8 wildfires on Maui. However, we note that there is not any financial analysis that determined that this is the most cost-effective way to fund the utility's costs and expenses arising out of catastrophic wildfires. 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.

We urge the legislature to have a serious analysis done by experts in the field of public utilities. The analysis should include all methods of possible funding for the utility's recovery efforts.

The Chamber notes that there are several proposals regarding funding for wildfire recovery. We feel it would be prudent to consolidate, whenever possible, these proposals into one comprehensive proposal.

Mahalo for the opportunity to **COMMENT on SB2922 SD2.**

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.

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII ASSOCIATION FOR
JUSTICE (HAJ) IN OPPOSITION OF
SB 2922 SD2**

Date: Thursday, March 14, 2024

Time: 8:32 a.m.

My name is Evan Oue and thank you for allowing me to submit testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION** to SB 2922 SD2 - RELATING TO PUBLIC UTILITIES. The measure seeks to implement the Catastrophic Wildfire Securitization Act (the "Securitization Act"), to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

Primarily, HAJ is concerned with the implications that the Securitization Act may have on victims and survivors of 2023 Maui Wildfire (the "Wildfire"). The victims and survivors of the Wildfire who lost loved ones, homes, businesses and jobs should be the main priority when considering the future proceeds for the entities that were responsible for the damage and destruction that devastated the community of Lahaina. Allowing the public utilities to securitize rates to raise capital that can be used to pay for *costs and expenses* arising out of catastrophic wildfires is overly broad and will diminish the utility's ability to remedy the damage and destruction that was caused during the Wildfire.

The current draft would revictimize the victims of the Wildfire by undercutting their ability seeking recourse for the negligence that led to the recent destruction of so many lives and livelihoods on Maui. Permitting the proceeds from the Securitization Act to be utilized for legal expenses and other costs prior to the payment of litigation awards or settlement to victims is unconscionable and removes any sense of accountability for those found liable for the Wildfire.

Furthermore, we are concerned with the use of "service territory" in Section -3(d). This may

unfairly limit the recovery of these costs to Maui ratepayers which have already experienced enough from the Wildfire. Limiting the fixed recovery charges and any associated fixed recovery tax amounts to the future ratepayers in the "utility service area" will directly place the burden of the costs on Maui residents and victims. This would be tremendously unreasonable to place on a community that is still recovering.

Ultimately, we fail to see why those who have caused so much damage and destruction should be rewarded for their callousness by granting the ability to use borrowed funds for the payment of other costs and expenses, including legal fees, prior to making the victims who lost everything whole in the Wildfire. Holding those accountable and responsible for the negligence that changed the lives of many Maui residents forever should be of the utmost importance. Permitting the use of the proceeds to be utilized for any other expenses prior to the payment of legitimate awards or settlements would be an affront to the victims of the Wildfire.

Accordingly, HAJ recommends the following amendments to: 1) direct the proceeds of the Securitization Act to be used for payment of litigation claims and settlements prior to any wildfire mitigation programs; and 2) prevent the charges from being solely imposed on existing and future ratepayers of a particular utility service territory.

1. Amend then last two paragraphs of the preamble:

"The legislature further finds that 2023 Maui wildfires imposed significant costs and hardships to the people of Maui. More specifically, those Maui citizens who lost loved ones, homes, businesses, and jobs in the 2023 wildfires have suffered the most and, therefore, securitization should benefit these wildfire victims and survivors before others in the State.

Accordingly, the purpose of this Act is to establish and implement the

Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires, including priority payments to those who have received civil litigation awards or who have reached settlements of litigation arising out of the wildfires, providing a vital source of liquidity and preserving the public utilities' financial viability."

2. Amend the definition of "recovery costs"

"Recovery costs" means:

"(1) Catastrophic wildfire costs or expenses authorized by the commission in a financing order for recovery related to transmission and distribution or disaster relief fund payments; provided that:

(A) Any payments into the wildfire relief fund shall not be used for replenishment due to imprudent conduct; and

(B) The commission may consider allowing litigation and settlements ~~or related~~ expenses to be paid for by securitized capital if the capital is the lowest cost for ratepayers and shareholder contributions are considered first and only if those victims and survivors of the 2023 Maui Wildfires are paid first before any victims and survivors of any other wildfires."

3. Add a definition for "2023 Maui Wildfires":

"2023 Maui Wildfires" means those fires that started on August 7 or 8, 2023 that destroyed portions of Upcountry and Lahaina, Maui.

4. Amend Section -3 (c)(1)(A) to read as follows:

"(A)Priority payments made to all those who have received jury verdicts or who have reached settlements with the public utility arising about of the 2023 Maui Wildfires, provided that these payments are made first before any other approved costs or expenses;"

5. Amend Section -3(c)(2)(D) to read as follows:

(D) No portion of the fixed recovery charges shall be imposed on existing and future ratepayers unless the commission, after hearing, expressly finds that the portion to be imposed is fair and just and that imposition is conditioned on the utility not issuing dividends for the duration of the imposition.

6. Amend Section -3(c)(3)(A) to read as follows:

"(A) If contemplating payment of litigation or settlement expenses, the plan provides for payment in full, as required by a jury verdict or settlement, to victims and survivors of the 2023 Maui wildfires before payment of any other expenses or costs;"

7. Amend the last paragraph of Section -3 (c)(3) to read as follows:

"The public utility may submit an application with respect to recovery costs that a public utility has paid, has an existing legal obligation to pay, or would be obligated to pay pursuant to an executed settlement agreement. In such instances when the application seeks to generate proceeds to cover legal obligations arising out of the 2023 Maui Wildfires and not yet paid, the public utility's application shall be required to commit the public utility to paying such obligations prior to any other recover costs being paid from the proceeds contemplated by the

application. The commission, within one hundred eighty days of the filing of the foregoing application that is deemed complete by the commission, shall issue a financing order, if the commission determines that the amounts identified in the application are recovery costs."

8. Amend Section -3(d) to read:

"(d) Fixed recovery charges and any associated fixed recovery tax amounts shall be imposed as provided by HRS 269-16.3 (a). The charges shall not be solely imposed on existing and future ratepayers in the utility service territory.

~~only on existing and future ratepayers in the utility service territory. Ratepayers within the utility service territory shall continue to pay fixed recovery charges and any associated fixed recovery tax amounts until the recovery bonds and associated financing costs are paid in full by the financing entity.~~

9. Amend Section -3(f) to delete "in the utility service territory":

"(f) The commission may establish in a financing order an effective mechanism that ensures recovery of recovery costs through nonbypassable fixed recovery charges and any associated fixed recovery tax amounts from existing and future consumers as provided by HRS 269-16.3(a), in the utility service territory and those consumers shall be required to pay those charges until the recovery bonds and all associated financing costs are paid in full by the financing entity, at which time those charges shall be terminated. Fixed recovery charges shall be irrevocable, notwithstanding any true-up adjustment made pursuant to subsection (k)."

SB2922 will further victimize the residents of Maui that have already been traumatized from the Wildfire by failing to prioritize litigation awards and settlements that attempt to make them whole and assist with their recovery from the worst natural disaster in our state's history.

Thank you very much for allowing me to testify in **OPPOSITION** of the current draft of SB2922. Please feel free to contact me should you have any questions or desire additional information.



INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1260 EMPOWERING THE PACIFIC

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

JOINT HOUSE COMMITTEE ON WATER & LAND and ENERGY & ENVIRONMENTAL PROTECTION

HEARING DATE: Thursday, March 14, 2024
TIME: 8:32 a.m.
PLACE: State Capitol
Conference Room 325

RE: In Support of Senate Bill 2922 SD2 with Amendments

Aloha Honorable Chair(s) Ichiyama and Lowen, Vice Chair(s) Poepoe and Cochran, and Members of the Joint-Committee.

The International Brotherhood of Electrical Workers Local 1260 (IBEW 1260) would like to respectfully offer the following testimony in support of Senate Bill 2922 SD2 with requested amendments.

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 Senate Bill 2922 SD2 which establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires, however ***IBEW 1260 respectfully requests that the provisions on page 11, proposed section (c)(3)(A), line(s) 18 to 21 and page 12, Line(s) 1 and 2 referencing the restructuring of the public utility to include the separation of generation and delivery be deleted from this measure.***

IBEW1260 also recognizes the complexity SB2922 SD2 and discussions between the legislature and Hawaiian Electric are ongoing. We strongly support these efforts. The positive partnership we've developed with Hawaiian Electric over many decades, have faithfully served our members, their families, and communities throughout the state. The future resiliency and reliability of our energy resources and infrastructure are critical to our state's overall well-being and reliant on a strong and stable electric utility.

This bill and a utility's ability to remain economically viable under extreme circumstances, by having access to low-cost financing for capital costs resulting from catastrophic events is imperative to the utilities continued viability. We humbly ask that you pass SB2922 SD2, but respectfully request that you delete the provisions identified above and consider additional amendments offered by Hawaiian Electric.

Mahalo for the opportunity to testify on this important matter.