
A BILL FOR AN ACT

RELATING TO WILDFIRE RISK MITIGATION.

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

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

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



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

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

15 The purpose of this Act is to create a process whereby
16 electric utilities develop and submit effective wildfire risk
17 protection plans to the public utilities commission for
18 approval; the public utilities commission evaluates those plans
19 and either approves them or does so with modifications; the
20 electric utilities are able to timely recover the prudently
21 incurred costs and expenses of developing, implementing, and



1 administering those plans; and those costs and expenses are not
2 borne disproportionately by any particular ratepayer or county.

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

6 **"PART . WILDFIRE PROTECTION AND MITIGATION**

7 **§269-A Definitions.** As used in this part:

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

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



1 "Catastrophic wildfire" means any wildfire in the State
2 that damaged or destroyed more than five hundred dwellings or
3 commercial buildings.

4 "Department" means any state department or agency.

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

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

- 13 (1) Principal, interest, and redemption premiums that are
14 payable on bonds;
- 15 (2) A payment required under an ancillary agreement;
- 16 (3) An amount required to fund or replenish reserve
17 accounts or other accounts established under an
18 indenture, ancillary agreement, or other financing
19 document related to the bonds;
- 20 (4) Taxes, franchise fees, or license fees imposed on the
21 wildfire protection fee;



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

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

12 "Financing entity" means a public utility that is
13 authorized by the public utilities commission to issue bonds or
14 acquire wildfire protection property, or both, pursuant to a
15 financing order.

16 "Financing order" means an order of the public utilities
17 commission under this part that has become final as provided by
18 law, and that authorizes the issuance of bonds and the
19 imposition, adjustment from time to time, and collection of
20 wildfire protection fees.



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

- 7 (1) Catastrophic wildfire costs or expenses authorized by
8 the public utilities commission in a financing order
9 for recovery;
- 10 (2) Federal and state taxes associated with recovery of
11 the amounts pursuant to paragraph (1); or
- 12 (3) Financing costs.

13 "Wildfire protection fee" means the nonbypassable fees and
14 charges authorized by section 269-G and in a financing order
15 authorized under this part to be imposed on and collected from
16 all existing and future customers of a financing entity or any
17 successor.

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



1 "Wildfire protection property" means the property right
2 created pursuant to this part, including without limitation the
3 right, title, and interest of the financing entity or its
4 transferee:

5 (1) In and to the wildfire protection fee established
6 pursuant to a financing order, including all rights to
7 obtain adjustments to the wildfire protection fee in
8 accordance with section 269-G and the financing order;
9 and

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

18 **§269-B Electric utility workshops.** The public utilities
19 commission may periodically convene workshops to help electric
20 utilities develop and share information for the identification,
21 adoption, and implementation of best practices regarding



1 wildfires, including but not limited to risk-based wildfire
2 protection and risk-based wildfire mitigation procedures and
3 standards. The best practices discussed in these workshops may
4 be incorporated into the proposed wildfire protection plans and
5 updates submitted for the approval of the public utilities
6 commission pursuant to section 269-C.

7 **§269-C Wildfire protection plans.** (a) Each electric
8 utility shall have and operate in compliance with a risk-based
9 wildfire protection plan, which shall be submitted to the public
10 utilities commission for approval. The risk-based wildfire
11 protection plan shall be based on reasonable and prudent
12 practices, which may be determined by public utilities
13 commission standards adopted by decision or rule. The electric
14 utility shall design the risk-based wildfire protection plan to
15 protect public safety, reduce risk to utility customers, and
16 promote resilience of the Hawaii electric system to wildfire
17 damage. Each electric utility's plan shall, at a minimum:

- 18 (1) Account for the duties of persons responsible for
19 executing the plan;
- 20 (2) Describe the objectives of the plan;



- 1 (3) Identify areas that are subject to a heightened risk
2 of wildfire and are:
- 3 (A) Within the right of way or legal control or
4 ownership of the electric utility; and
- 5 (B) Outside the right of way or legal control or
6 ownership of the electric utility but within a
7 reasonable distance, as determined by the public
8 utilities commission, of the electric utility's
9 generation or transmission assets;
- 10 (4) Identify a means for mitigating wildfire risk that
11 reflects a reasonable balancing of mitigation costs
12 with the resulting reduction of wildfire risk;
- 13 (5) Identify preventive actions and programs that the
14 electric utility shall carry out to minimize the risk
15 of utility facilities causing wildfire;
- 16 (6) Identify the metrics the electric utility plans to use
17 to evaluate the plan's performance and the assumptions
18 that underlie the use of those metrics;
- 19 (7) Describe how the application of previously identified
20 metrics to previous plan performances has informed the
21 plan;



- 1 (8) After seeking information from state and local
2 entities, identify a protocol for the deenergizing of
3 power lines and adjusting of power system operations
4 to mitigate wildfires, promote the safety of the
5 public and first responders, and preserve health and
6 communication infrastructure;
- 7 (9) Describe appropriate and feasible procedures for
8 notifying a customer who may be affected by the
9 deenergizing of electrical lines. The procedures
10 shall consider the need to notify, as a priority,
11 critical first responders, health care facilities,
12 operators of wastewater and water delivery
13 infrastructure, and operators of telecommunications
14 infrastructure;
- 15 (10) Describe the procedures, standards, and time frames
16 that the electric utility shall use to inspect utility
17 infrastructure in areas that the electric utility
18 identifies under paragraph (1), including whether
19 those procedures, standards, and time frames are
20 already set forth in the electric utility's existing



1 plans or protocols and in coordination with any
2 relevant entities;

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

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

16 (A) Risks and risk drivers associated with design,
17 construction, operations, and maintenance of the
18 electric utility's equipment and facilities; and

19 (B) Particular risks and risk drivers associated with
20 topographic and climatological risk factors



1 throughout the different parts of the electric
2 utility's service territory;

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

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

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



- 1 (16) Identify the estimated development, implementation,
2 and administration costs for the risk-based wildfire
3 protection plan;
- 4 (17) Identify the timelines, as applicable, for
5 development, implementation, and administration of any
6 aspects of the risk-based wildfire protection plan;
- 7 (18) Describe how the plan is consistent with the electric
8 utility's other hazard mitigation and grid hardening
9 plans, including plans to prepare for, and to restore
10 service after, a wildfire, including workforce
11 mobilization and prepositioning equipment and
12 employees;
- 13 (19) Identify community outreach and public awareness
14 efforts that the electric utility will use before,
15 during, and after a wildfire;
- 16 (20) Describe the processes and procedures that the
17 electric utility will use to do all of the following:
18 (A) Monitor and audit the implementation of the plan;
19 (B) Identify any deficiencies in the plan or the
20 plan's implementation and correct those
21 deficiencies; and



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

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

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

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

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

17 (d) The public utilities commission shall evaluate each
18 electric utility's risk-based wildfire protection plan and plan
19 updates according to the public utilities commission's rules of
20 practice and procedure in chapter 16-601 of the Hawaii
21 administrative rules. The public utilities commission shall



1 allow the department of land and natural resources and local
2 emergency services agencies to participate in proceedings
3 evaluating risk-based wildfire protection plans.

4 (e) No more than ninety days after the last party filing,
5 and no more than a total of one hundred eighty days after the
6 initial application for approval of the submitted wildfire
7 protection plan or update in the docketed proceeding, the public
8 utilities commission shall approve, approve with conditions, or
9 reject the plan or update based on whether the public utilities
10 commission finds that the plan or update is based on reasonable
11 and prudent practices and designed to meet all applicable rules
12 and standards adopted by the public utilities commission. The
13 public utilities commission may, in approving the plan or update
14 with conditions, direct the electric utility to make
15 modifications to the plan or updates that the public utilities
16 commission believes represent a reasonable balancing of
17 mitigation costs with the resulting reduction of wildfire risk
18 based on the evidentiary record in the proceeding. The public
19 utilities commission shall issue a decision explaining its
20 determinations, including findings of fact and conclusions of
21 law, in accordance with chapter 91.



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

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

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

19 (g) The public utilities commission's approval of a risk-
20 based wildfire protection plan does not by itself establish a
21 defense to any enforcement action for violation of a public



1 utilities commission decision, order, or rule, or relieve an
2 electric utility from proactively managing wildfire risk,
3 including by monitoring emerging practices and technologies.
4 Electric utilities are expected to continuously improve and take
5 reasonable actions outside of approved plans to mitigate
6 wildfire risk.

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

14 **§269-D Penalties.** In addition to any other penalties
15 provided by law, a failure by an electric utility to comply with
16 a wildfire protection plan or part of a wildfire protection plan
17 shall be subject to a civil penalty, as determined by the public
18 utilities commission. Imposition of penalties pursuant to this
19 section shall otherwise be in accordance with section 269-28 and
20 all applicable administrative rules. All moneys collected under



1 this section shall be deposited into the public utilities
2 commission special fund.

3 **§269-E Applications to issue bonds and authorize wildfire**
4 **protection fees.** (a) An electric utility may apply to the
5 public utilities commission for one or more financing orders to
6 issue bonds to recover any wildfire protection costs, each of
7 which authorizes the following:

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

15 (2) The creation of wildfire protection property under the
16 financing order.

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

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

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



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



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

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

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

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

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

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

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

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

20 **§269-F Wildfire protection plan financing order.** (a) A
21 financing order shall remain in effect until the bonds issued



1 under the financing order and all financing costs related to the
2 bonds have been paid in full or defeased by their terms. A
3 financing order shall remain in effect and unabated
4 notwithstanding the bankruptcy, reorganization, or insolvency of
5 the electric utility or the commencement of any judicial or
6 nonjudicial proceeding on the financing order.

7 (b) Once a financing order has become final as provided by
8 law, the financing order shall become irrevocable. The public
9 utilities commission may not directly or indirectly, except as
10 provided in the adjustment mechanism approved in the financing
11 order, reduce, impair, postpone, rescind, alter, or terminate
12 the wildfire protection fee authorized in the financing order or
13 impair the wildfire protection property or the collection of the
14 wildfire protection plan fee so long as any bonds are
15 outstanding or any financing costs remain unpaid.

16 (c) Under a final financing order, the electric utility
17 shall retain sole discretion to cause bonds to be issued,
18 including the right to defer or postpone such issuance,
19 assignment, sale, or transfer.

20 (d) The public utility may sell and assign all or portions
21 of its interest in wildfire protection property to one or more



1 financing entities that make that wildfire protection property
2 the basis for the issuance of bonds, to the extent approved in a
3 financing order. The public utility or financing entity may
4 pledge wildfire protection property as collateral, directly or
5 indirectly, for bonds to the extent approved in the pertinent
6 financing orders providing for a security interest in the
7 wildfire protection property, in the manner set forth in section
8 269-H. In addition, wildfire protection property may be sold or
9 assigned by either of the following:

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

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

16 **§269-G Wildfire protection fee.** (a) The public utilities
17 commission may create, pursuant to a financing order approved
18 pursuant to section 269-F, a nonbypassable surcharge for a
19 financing entity, referred to as a wildfire protection fee,
20 which shall be applied to the repayment of bonds and related
21 financing costs as described in this part. The wildfire



1 protection fee may be a usage-based surcharge, a flat user fee,
2 or a charge based upon customer revenues as determined by the
3 public utilities commission for each customer class in any
4 financing order.

5 (b) As long as any bonds are outstanding and any financing
6 costs have not been paid in full, any wildfire protection fee
7 authorized under a financing order shall be nonbypassable.
8 Subject to any exceptions provided in a financing order, a
9 wildfire protection fee shall be paid by all existing and future
10 customers of a financing entity or any successors.

11 (c) The wildfire protection fee shall be collected by a
12 financing entity or its successors, in accordance with section
13 269-J(a), in full through a surcharge, fee, or charge that is
14 separate and apart from the financing entity's rates.

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

20 **§269-H Security interests in wildfire protection property;**
21 **financing statements.** (a) A security interest in wildfire



1 protection property is valid, enforceable against the pledgor
2 and third parties, subject to the rights of any third parties
3 holding security interests in the wildfire protection property
4 perfected in the manner described in this section, and attaches
5 when all of the following have taken place:

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

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

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

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

18 Any description of the wildfire protection property shall
19 be sufficient if it refers to the financing order creating the
20 wildfire protection property. A copy of the financing statement
21 shall be filed with the public utilities commission by the



1 public utility that is the pledgor or transferor of the wildfire
2 protection property, and the public utilities commission may
3 require the public utility to make other filings with respect to
4 the security interest in accordance with procedures that the
5 commission may establish; provided that the filings shall not
6 affect the perfection of the security interest.

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

16 (d) Subject to the terms of the security agreement
17 covering the wildfire protection property and the rights of any
18 third parties holding security interests in the wildfire
19 protection property perfected in the manner described in this
20 section, the validity and relative priority of a security
21 interest created under this section shall not be defeated or



1 adversely affected by the commingling of revenues arising with
2 respect to the wildfire protection property with other funds of
3 the public utility that is the pledgor or transferor of the
4 wildfire protection property, or by any security interest in a
5 deposit account of that public utility perfected under article
6 490:9, into which the revenues are deposited.

7 Subject to the terms of the security agreement, upon
8 compliance with the requirements of section 490:9-312(b)(1), the
9 pledgees of the wildfire protection property shall have a
10 perfected security interest in all cash and deposit accounts of
11 the electrical corporation in which wildfire protection property
12 revenues have been commingled with other funds; provided that
13 the perfected security interest shall be limited to an amount no
14 greater than the amount of the wildfire protection property
15 revenues received by the public utility within twelve months
16 before:

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



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



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

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

11 (g) This section sets forth the terms by which a
12 consensual security interest shall be created and perfected in
13 the wildfire protection property. Unless otherwise ordered by
14 the public utilities commission with respect to any series of
15 bonds on or prior to the issuance of the series, there shall
16 exist a statutory lien as provided in this subsection. Upon the
17 effective date of the financing order, there shall exist a first
18 priority lien on all wildfire protection property then existing
19 or thereafter arising pursuant to the terms of the financing
20 order. This lien shall arise by operation of this section
21 automatically without any action on the part of the public

1 utility, any affiliate thereof, the financing entity, or any
2 other person. This lien shall secure all obligations, then
3 existing or subsequently arising, to the holders of the bonds
4 issued pursuant to the financing order, the trustee or
5 representative for the holders, and any other entity specified
6 in the financing order. The persons for whose benefit this lien
7 is established shall, upon the occurrence of any defaults
8 specified in the financing order, have all rights and remedies
9 of a secured party upon default under chapter 409, article 9,
10 and are entitled to foreclose or otherwise enforce this
11 statutory lien in the wildfire protection property. This lien
12 shall attach to the wildfire protection property regardless of
13 who owns, or is subsequently determined to own, the wildfire
14 protection property, including the public utility, any affiliate
15 thereof, the financing entity, or any other person. This lien
16 shall be valid, perfected, and enforceable against the owner of
17 the wildfire protection property and all third parties upon the
18 effectiveness of the financing order without any further public
19 notice; provided that any person may file a financing statement
20 in accordance with this section. Financing statements so filed



1 may be "protective filings" and shall not be evidence of the
2 ownership of the wildfire protection property.

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

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

12 In addition, the public utilities commission may require,
13 in the financing order creating the wildfire protection
14 property, that, in the event of default by the public utility in
15 the payment of wildfire protection property revenues, the
16 commission and any successor thereto, upon the application by
17 the beneficiaries of the statutory lien, and without limiting
18 any other remedies available to the beneficiaries by reason of
19 the default, shall order the sequestration and payment to the
20 beneficiaries of wildfire protection property revenues. Any
21 order shall remain in full force and effect notwithstanding any



1 bankruptcy, reorganization, or other insolvency proceedings with
2 respect to the debtor. Any surplus in excess of amounts
3 necessary to pay principal, premiums, if any, interest, costs,
4 and arrearages on the bonds, and other costs arising in
5 connection with the documents governing the bonds, shall be
6 remitted to the debtor.

7 **§269-I Transfers of wildfire protection property.** (a) A
8 transfer of wildfire protection property by the public utility
9 to an affiliate or to a financing entity, or by an affiliate of
10 the public utility or a financing entity to another financing
11 entity, which the parties in the governing documentation have
12 expressly stated to be a sale or other absolute transfer, in a
13 transaction approved in a financing order, shall be treated as
14 an absolute transfer of all of the transferor's right, title,
15 and interest, as in a true sale, and not as a pledge or other
16 financing, of the wildfire protection property, other than for
17 federal and state income and franchise tax purposes.

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



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

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

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

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

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

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

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

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

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



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

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

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

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

12 (d) As between bona fide assignees of the same right for
13 value without notice, the assignee first filing a financing
14 statement in accordance with chapter 409, article 9, part 5,
15 naming the assignor of the wildfire protection property as
16 debtor and identifying the wildfire protection property shall
17 have priority. Any description of the wildfire protection
18 property shall be sufficient if it refers to the financing order
19 creating the wildfire protection property. A copy of the
20 financing statement shall be filed by the assignee with the
21 public utilities commission, and the commission may require the



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

5 **§269-J Successor requirements; default.** (a) Any
6 successor to an electric utility that has received a financing
7 order shall be bound by the requirements of this part. The
8 successor of the electric utility shall perform and satisfy all
9 obligations of the electric utility under the financing order,
10 in the same manner and to the same extent as the electric
11 utility, including the obligation to collect and pay the
12 wildfire protection fee to any financing party as required by a
13 financing order.

14 (b) The public utilities commission may require in a
15 financing order that if the electric utility defaults in
16 remittance of the wildfire protection fee collected arising with
17 respect to wildfire protection property, the public utilities
18 commission, without limiting any other remedies available to any
19 financing party by reason of the default, shall order the
20 sequestration and payment to the beneficiaries of the wildfire
21 protection fee collected arising with respect to the wildfire



1 protection property. Any order shall remain in full force and
2 effect notwithstanding any bankruptcy, reorganization, or other
3 insolvency proceedings with respect to the electric utility.

4 **§269-K Treatment of bonds, fees, and property.** (a)

5 Neither financing orders nor bonds issued under this part shall
6 constitute a debt or liability of the State or of any of its
7 political subdivisions, nor shall they constitute a pledge of
8 the full faith and credit of the State or any of its political
9 subdivisions, but are payable solely from the funds provided
10 therefor under this part. All bonds shall contain on the face
11 thereof a statement to the following effect: "Neither the full
12 faith and credit nor the taxing power of the State of Hawaii is
13 pledged to the payment of the principal of, or interest on, this
14 bond."

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

19 **§269-L Severability.** If any provision of this part is
20 held to be invalid or is superseded, replaced, repealed, or
21 expires for any reason:



- 1 (1) That occurrence shall not affect any action allowed
2 under this part that is taken prior to that occurrence
3 by the public utilities commission, a financing
4 entity, a bondholder, or any financing party, and any
5 such action shall remain in full force and effect; and
6 (2) The validity and enforceability of the rest of this
7 part shall remain unaffected."

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

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



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

18 All stock and every stock certificate, and every bond,
19 note, or other evidence of indebtedness of a public utility
20 corporation not payable within twelve months, issued without an



1 order of the commission authorizing the same, then in effect,
2 shall be void."

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

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

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

18 SECTION 7. In codifying the new part added to chapter 269,
19 Hawaii Revised Statutes, by section 2 of this Act, the revisor
20 of statutes shall substitute appropriate section numbers for the



1 letters used in designating and referring to the new sections in
2 this Act.

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

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



Report Title:

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

Description:

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

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

