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# 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 fire, public utilities must raise the capital to  
3 fund near-term costs and expenses to develop and implement  
4 effective plans for wildfire risk mitigation, contribute to  
5 disaster relief funds, and, as necessary, fund litigation and  
6 settlements. Moreover, present uncertainty as to the financial  
7 costs that Hawaii's largest electric utility may bear as a  
8 result of the 2023 Lahaina wildfire has led credit ratings  
9 agencies to downgrade the credit rating of that utility to non-  
10 investment-grade status. The legislature finds that the credit  
11 rating downgrade will have severe negative impacts on  
12 ratepayers. As the utility borrows money in the future to  
13 finance critical investments to improve safety and reliability,  
14 it will have to pay much higher interest rates as non-investment  
15 grade issuers, and those higher interest costs will be passed on  
16 to customers in the form of higher rates. In addition, a  
17 financially weak utility is less able to make the investments



1 and commitments the State needs to meet its renewable energy and  
2 other goals.

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 be appropriately designated and to read  
11 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:

17 "Ancillary agreement" means a bond insurance policy, letter  
18 of credit, reserve account, surety bond, swap arrangement,  
19 hedging arrangement, liquidity or credit support arrangement, or  
20 other similar agreement or arrangement entered into in  
21 connection with the issuance of recovery bonds that is designed



1 to promote the credit quality and marketability of the bonds or  
2 to mitigate the risk of an increase in interest rates.

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

6 "Commission" means the public utilities commission.

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

- 13 (1) Principal, interest, and redemption premiums that are  
14 payable on recovery 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 relating to the recovery bonds;
- 20 (4) Taxes, franchise fees, or license fees imposed on  
21 fixed recovery charges;



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

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

12 "Financing entity" means the public utility that is  
13 authorized by the commission to issue recovery bonds or acquire  
14 recovery property, or both.

15 "Financing order" means an order of the commission adopted  
16 in accordance with this chapter, which shall include without  
17 limitation a procedure to require the expeditious approval by  
18 the commission of periodic adjustments to fixed recovery charges  
19 and to any associated fixed recovery tax amounts included in  
20 that financing order to ensure recovery of all recovery costs  
21 and the costs associated with the proposed recovery, financing,



1 or refinancing thereof, including the costs of servicing and  
2 retiring the recovery bonds contemplated by the financing order.

3 "Fixed recovery charges" means those nonbypassable rates  
4 and other charges, including but not limited to distribution,  
5 connection, disconnection, and termination rates and charges,  
6 that are authorized by the commission in a financing order to  
7 recover both of the following:

8 (1) Recovery costs specified in the financing order; and

9 (2) The costs of recovering, financing, or refinancing  
10 those recovery costs through a plan approved by the  
11 commission in the financing order, including the costs  
12 of servicing and retiring recovery bonds.

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

20 "Public utility" has the same meaning as defined in section  
21 269-1.



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

8 "Recovery costs" means any of the following:

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

20 "Recovery property" means the property right created  
 21 pursuant to this chapter, including without limitation the



1 right, title, and interest of the public utility or its  
2 transferee:

3 (1) In and to the fixed recovery charges established  
4 pursuant to a financing order, including all rights to  
5 obtain adjustments to the fixed recovery charges in  
6 accordance with section -3(k) and the financing  
7 order; and

8 (2) To be paid the amount that is determined in a  
9 financing order to be the amount that the public  
10 utility or its transferee is lawfully entitled to  
11 receive pursuant to the provisions of this chapter and  
12 the proceeds thereof, and in and to all revenues,  
13 collections, claims, payments, moneys, or proceeds of  
14 or arising from the fixed recovery charges that are  
15 the subject of a financing order.

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



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

7 § -3 **Financing orders; authorization.** (a) A public  
8 utility that applies to the commission for recovery of costs and  
9 expenses related to a catastrophic wildfire or the mitigation of  
10 the risk of wildfires, may request the commission to issue a  
11 financing order to authorize the costs and expenses that the  
12 commission finds to be just and reasonable to be recovered  
13 through fixed recovery charges pursuant to this chapter, and  
14 order that any portion of the public utility's federal and state  
15 taxes associated with those fixed recovery charges and not  
16 financed from proceeds of recovery bonds may be recovered  
17 through fixed recovery tax amounts.

18 (b) Any application pursuant to subsection (a) shall be  
19 governed by this chapter, and shall be deemed to comply with any  
20 requirements imposed by section 269-17 or any other provision of  
21 chapter 269.





1 (c) Upon receiving an application from a public utility  
2 pursuant to this section, the commission shall issue a financing  
3 order if the commission determines that the following conditions  
4 are satisfied:

5 (1) The costs and expenses are authorized by the  
6 commission for recovery, which shall be limited to the  
7 following eligible categories:

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

11 (B) Costs consistent with a commission-approved  
12 settlement plan for wildfire liabilities that  
13 limits the burdens on ratepayers and requires  
14 shareholder-backed offsets;

15 (2) The issuance of the recovery bonds, including all  
16 material terms and conditions of the recovery bonds,  
17 including without limitation interest rates, rating,  
18 amortization redemption, and maturity, and the  
19 imposition and collection of fixed recovery charges as  
20 set forth in an application satisfy all of the  
21 following conditions, as applicable:



- 1 (A) They are just and reasonable;
- 2 (B) They are consistent with the public interest; and
- 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 ratepayers and reduce, to the maximum
- 9 extent possible, the rates on a present value
- 10 basis that ratepayers would pay as compared to
- 11 the use of traditional utility financing
- 12 mechanisms, which shall be calculated using the
- 13 public utility's corporate debt and equity in the
- 14 ratio approved by the commission at the time of
- 15 the financing order; and
- 16 (3) The public utility provides, and the commission
- 17 approves, a reorganization plan that satisfies the
- 18 following conditions:
- 19 (A) The plan provides for a restructuring of the
- 20 public utility that includes the separation of
- 21 energy generation and delivery functions;



1 (B) The plan provides for a system of enhanced local  
2 governance and accountability, which may include  
3 alternate models of public ownership;

4 (C) The plan includes a framework for addressing  
5 wildfire safety and risk management, including  
6 monitoring and enforcement, independent review  
7 and oversight, and performance-based utility  
8 incentive and executive compensation mechanisms;

9 (D) The plan provides for periodic performance-based  
10 management audits of the public utility and  
11 reviews of the public utility's franchise; and

12 (E) The plan is consistent with meeting the public  
13 utility's and the State's clean energy and  
14 climate mandates and obligations.

15 The public utility may request the determination specified in  
16 this section by the commission in a separate proceeding, in an  
17 existing proceeding, or both. If the commission makes the  
18 determination specified in this section, the commission shall  
19 establish, as part of the financing order, a procedure for the  
20 public utility to submit applications from time to time to  
21 request the issuance of additional financing orders designating



1 fixed recovery charges and any associated fixed recovery tax  
2 amounts as recoverable. The public utility may submit an  
3 application with respect to recovery costs that a public utility  
4 has paid, has an existing legal obligation to pay, or would be  
5 obligated to pay pursuant to an executed settlement agreement.  
6 The commission shall, within            days of the filing of that  
7 application, issue a financing order, which may take the form of  
8 a resolution, if the commission determines that the amounts  
9 identified in the application are recovery costs.

10        (d) Fixed recovery charges and any associated fixed  
11 recovery tax amounts shall be imposed only on existing and  
12 future ratepayers in the utility service territory. Ratepayers  
13 within the utility service territory 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.

17        (e) A public utility may exercise the same rights and  
18 remedies under its tariff and applicable law and regulation  
19 based upon a consumer's nonpayment of fixed recovery charges and  
20 any associated fixed recovery tax as it may for a consumer's  
21 failure to pay any other charge payable to that public utility.



1 (f) The commission may establish in a financing order an  
2 effective mechanism that ensures recovery of recovery costs  
3 through nonbypassable fixed recovery charges and any associated  
4 fixed recovery tax amounts from existing and future consumers in  
5 the utility service territory, and those consumers shall be  
6 required to pay those charges until the recovery bonds and all  
7 associated financing costs are paid in full by the financing  
8 entity, at which time those charges shall be terminated. Fixed  
9 recovery charges shall be irrevocable, notwithstanding the true-  
10 up adjustment pursuant to subsection (k).

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

13 (h) The commission shall issue financing orders in  
14 accordance with this chapter to facilitate the recovery,  
15 financing, or refinancing of recovery costs. A financing order  
16 may be adopted only upon the application of the public utility  
17 and shall become effective in accordance with its terms only  
18 after the public utility files with the commission the public  
19 utility's written consent to all terms and conditions of the  
20 financing order. A financing order may specify how amounts  
21 collected from a consumer shall be allocated between fixed



1 recovery charges, any associated fixed recovery tax amounts, and  
2 other charges.

3 (i) Notwithstanding any other law, and except as otherwise  
4 provided in subsection (k), with respect to recovery property  
5 that has been made the basis for the issuance of recovery bonds  
6 and with respect to any associated fixed recovery tax amounts,  
7 the financing order, the fixed recovery charges, and any  
8 associated fixed recovery tax amounts shall be irrevocable. The  
9 commission shall not, either by rescinding, altering, or  
10 amending the financing order or otherwise, revalue or revise for  
11 ratemaking purposes the recovery costs or the costs of  
12 recovering, financing, or refinancing the recovery costs, or in  
13 any way reduce or impair the value of recovery property or of  
14 the right to receive any associated fixed recovery tax amounts  
15 either directly or indirectly by taking fixed recovery charges  
16 or any associated fixed recovery tax amounts into account when  
17 setting other rates for the public utility. The amount of  
18 revenues shall not be subject to reduction, impairment,  
19 postponement, or termination. The State does hereby pledge and  
20 agree with the public utility, owners of recovery property,  
21 financing entities, and holders of recovery bonds that the State



1 shall neither limit nor alter, except as otherwise provided with  
2 respect to the true-up adjustment of the fixed recovery charges  
3 pursuant to subsection (k), the fixed recovery charges, any  
4 associated fixed recovery tax amounts, recovery property,  
5 financing orders, or any rights under a financing order until  
6 the recovery bonds, together with the interest on the recovery  
7 bonds and associated financing costs, are fully paid and  
8 discharged, and any associated fixed recovery tax amounts have  
9 been satisfied or, in the alternative, have been refinanced  
10 through an additional issue of recovery bonds; provided that  
11 nothing contained in this section shall preclude the limitation  
12 or alteration if and when adequate provision shall be made by  
13 law for the protection of the public utility and of owners and  
14 holders of the recovery bonds. The financing entity may include  
15 this pledge and undertaking for the State in these recovery  
16 bonds. When setting other rates for the public utility, nothing  
17 in this subsection shall prevent the commission from taking into  
18 account either of the following:

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



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

8           (A) Treating the recovery bonds as debt of the public  
9           utility or its affiliates for federal income tax  
10          purposes; or

11          (B) Treating the transfer of the recovery property by  
12          the public utility as a true sale for bankruptcy  
13          purposes.

14          (j) Neither financing orders nor recovery bonds issued  
15          under this chapter shall constitute a debt or liability of the  
16          State or of any political subdivision thereof, nor shall they  
17          constitute a pledge of the full faith and credit of the State or  
18          any of its political subdivisions, but shall be payable solely  
19          from the funds provided under this chapter. All recovery bonds  
20          shall contain on the face thereof a statement to the following  
21          effect:





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

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

8 (k) The commission shall establish procedures for the  
9 expeditious processing of an application for a financing order,  
10 which shall provide for the approval or disapproval of the  
11 application within one hundred twenty days of the application.  
12 Any fixed recovery charge authorized by a financing order shall  
13 appear on ratepayer bills. The commission shall, in any  
14 financing order, provide for a procedure for periodic true-up  
15 adjustments to fixed recovery charges, which shall be made at  
16 least annually and may be made more frequently. The public  
17 utility shall file an application with the commission to  
18 implement any true-up adjustment.

19 (l) Fixed recovery charges are recovery property when, and  
20 to the extent that, a financing order authorizing the fixed  
21 recovery charges has become effective in accordance with this



1 chapter, and the recovery property shall thereafter continuously  
2 exist as property for all purposes, and all of the rights and  
3 privileges relating to that property shall continuously exist  
4 for the period and to the extent provided in the financing  
5 order, but in any event until the recovery bonds are paid in  
6 full, including all principal, premiums, if any, and interest  
7 with respect to the recovery bonds, and all associated financing  
8 costs are paid in full. A financing order may provide that the  
9 creation of recovery property shall be simultaneous with the  
10 sale of the recovery property to a transferee or assignee as  
11 provided in the application of the pledge of the recovery  
12 property to secure the recovery bonds.

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

17 **§ -4 Recovery bonds; issuance; recovery property**  
18 **interests.** (a) The financing entity may issue recovery bonds  
19 upon approval by the commission in a financing order. Recovery  
20 bonds shall be nonrecourse to the credit or any assets of the



1 public utility, other than the recovery property as specified in  
2 that financing order.

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

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

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

20 (c) To the extent that any interest in recovery property  
21 is sold, assigned, or is pledged as collateral pursuant to



1 subsection (b), the commission shall authorize the public  
2 utility to contract with the financing entity that it will  
3 continue to operate its system to provide service to consumers  
4 within its service territory, will collect amounts in respect of  
5 the fixed recovery charges for the benefit and account of the  
6 financing entity, and will account for and remit these amounts  
7 to or for the account of the financing entity. Contracting with  
8 the financing entity in accordance with that authorization shall  
9 not impair or negate the characterization of the sale,  
10 assignment, or pledge as an absolute transfer, a true sale, or a  
11 security interest, as applicable. To the extent that billing,  
12 collection, and other related services with respect to the  
13 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 or financing entity  
19 with the associated revenues remitted solely for the benefit and  
20 repayment of the recovery bonds and associated financing costs  
21 as a condition to the provision of service to that consumer.



1 Each financing order shall impose terms and conditions,  
2 consistent with the purposes and objectives of this chapter, on  
3 any person or entity responsible for billing, collection, and  
4 other related services, including without limitation collection  
5 of the fixed recovery charges and any associated fixed recovery  
6 tax amounts, that are the subject of the financing order.

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



1 issued pursuant to a financing order and all associated  
2 financing costs are paid in full.

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

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

19 **§ -5 Security interests in recovery property; financing**  
20 **statements.** (a) A security interest in recovery property is  
21 valid, enforceable against the pledgor and third parties,



1 subject to the rights of any third parties holding security  
2 interests in the recovery property perfected in the manner  
3 described in this section, and attaches when all of the  
4 following have taken place:

5 (1) The commission has issued a financing order  
6 authorizing the fixed recovery charges included in the  
7 recovery property;

8 (2) Value has been given by the pledgees of the recovery  
9 property; and

10 (3) The pledgor has signed a security agreement covering  
11 the recovery property.

12 (b) A valid and enforceable security interest in recovery  
13 property is perfected when it has attached and when a financing  
14 statement has been filed naming the pledgor of the recovery  
15 property as "debtor" and identifying the recovery property. Any  
16 description of the recovery property shall be sufficient if it  
17 refers to the financing order creating the recovery property. A  
18 copy of the financing statement shall be filed with the  
19 commission by the public utility that is the pledgor or  
20 transferor of the recovery property, and the commission may  
21 require the public utility to make other filings with respect to



1 the security interest in accordance with procedures it may  
2 establish; provided that the filings shall not affect the  
3 perfection of the security interest.

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

13 (d) Subject to the terms of the security agreement  
14 covering the recovery property and the rights of any third  
15 parties holding security interests in the recovery property  
16 perfected in the manner described in this section, the validity  
17 and relative priority of a security interest created under this  
18 section shall not be defeated or adversely affected by the  
19 commingling of revenues arising with respect to the recovery  
20 property with other funds of the public utility that is the  
21 pledgor or transferor of the recovery property, or by any





1 security interest in a deposit account of that public utility  
2 perfected under article 9 of chapter 490, into which the  
3 revenues are deposited. Subject to the terms of the security  
4 agreement, upon compliance with the requirements of section  
5 490:9-312(b)(1), the pledgees of the recovery property shall  
6 have a perfected security interest in all cash and deposit  
7 accounts of the public utility in which recovery property  
8 revenues have been commingled with other funds; provided that  
9 the perfected security interest shall be limited to an amount  
10 not greater than the amount of the recovery property revenues  
11 received by the public utility within twelve months before (1)  
12 any default under the security agreement, or (2) the institution  
13 of insolvency proceedings by or against the public utility, less  
14 payments from the revenues to the pledgees during that twelve-  
15 month period.

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



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. In addition,  
4 the 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 commission  
7 and any successor thereto, upon the application by the pledgees  
8 or transferees, including transferees under section -6 of the  
9 recovery property, and without limiting any other remedies  
10 available to the pledgees or transferees by reason of the  
11 default, shall order the sequestration and payment to the  
12 pledgees or transferees of recovery property revenues. Any  
13 order shall remain in full force and effect notwithstanding any  
14 bankruptcy, reorganization, or other insolvency proceedings with  
15 respect to the debtor, pledgor, or transferor of the recovery  
16 property. Any surplus in excess of amounts necessary to pay  
17 principal, premiums, if any, interest, costs, and arrearages on  
18 the recovery bonds, and associated financing costs arising under  
19 the security agreement, shall be remitted to the debtor or to  
20 the pledgor or transferor.



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

4 (g) This section sets forth the terms by which a  
5 consensual security interest shall be created and perfected in  
6 the recovery property. Unless otherwise ordered by the  
7 commission with respect to any series of recovery bonds on or  
8 prior to the issuance of the series, there shall exist a  
9 statutory lien as provided in this subsection. Upon the  
10 effective date of the financing order, there shall exist a first  
11 priority lien on all recovery property then existing or  
12 thereafter arising pursuant to the terms of the financing order.  
13 This lien shall arise by operation of this section automatically  
14 without any action on the part of the public utility, any  
15 affiliate thereof, the financing entity, or any other person.  
16 This lien shall secure all obligations, then existing or  
17 subsequently arising, to the holders of the recovery bonds  
18 issued pursuant to the financing order, the trustee or  
19 representative for the holders, and any other entity specified  
20 in the financing order. The persons for whose benefit this lien  
21 is established shall, upon the occurrence of any defaults



1 specified in the financing order, have all rights and remedies  
2 of a secured party upon default under article 9 of chapter 490,  
3 and are entitled to foreclose or otherwise enforce this  
4 statutory lien in the recovery property. This lien shall attach  
5 to the recovery property regardless of who owns, or is  
6 subsequently determined to own, the recovery property, including  
7 the public utility, any affiliate thereof, the financing entity,  
8 or any other person. This lien shall be valid, perfected, and  
9 enforceable against the owner of the recovery property and all  
10 third parties upon the effectiveness of the financing order  
11 without any further public notice; provided that any person may  
12 file a financing statement in accordance with this section.  
13 Financing statements so filed may be "protective filings" and  
14 shall not be evidence of the ownership of the recovery property.

15 A perfected statutory lien in recovery property is a  
16 continuously perfected lien in all recovery property revenues  
17 and proceeds, whether or not the revenues or proceeds have  
18 accrued.

19 Conflicting liens shall rank according to priority in time  
20 of perfection. Recovery property shall constitute property for  
21 all purposes, including for contracts securing recovery bonds,



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

3 In addition, the commission may require, in the financing  
4 order creating the recovery property, that, in the event of  
5 default by the public utility in the payment of recovery  
6 property revenues, the commission and any successor thereto,  
7 upon the application by the beneficiaries of the statutory lien,  
8 and without limiting any other remedies available to the  
9 beneficiaries by reason of the default, shall order the  
10 sequestration and payment to the beneficiaries of recovery  
11 property revenues. Any order shall remain in full force and  
12 effect notwithstanding any bankruptcy, reorganization, or other  
13 insolvency proceedings with respect to the debtor. Any surplus  
14 in excess of amounts necessary to pay principal, premiums, if  
15 any, interest, costs, and arrearages on the recovery bonds, and  
16 other costs arising in connection with the documents governing  
17 the recovery bonds, shall be remitted to the debtor.

18 § -6 **Transfers of recovery property.** (a) A transfer of  
19 recovery property by the public utility to an affiliate or to a  
20 financing entity, or by an affiliate of the public utility or a  
21 financing entity to another financing entity, which the parties



1 in the governing documentation have expressly stated to be a  
2 sale or other absolute transfer, in a transaction approved in a  
3 financing order, shall be treated as an absolute transfer of all  
4 of the transferor's right, title, and interest, as in a true  
5 sale, and not as a pledge or other financing, of the recovery  
6 property, other than for federal and state income and franchise  
7 tax purposes.

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

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

15 (2) The retention by the seller of either of the  
16 following:

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



- 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 the purchaser may have against the  
5 seller;
- 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 transferee.



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

13 § -7 **Successors to public utilities; obligations.** Any  
14 successor to the public utility, whether pursuant to any  
15 bankruptcy, reorganization, or other insolvency proceeding, or  
16 pursuant to any merger, sale, or transfer, by operation of law,  
17 or otherwise, shall perform and satisfy all obligations of the  
18 public utility pursuant to this chapter in the same manner and  
19 to the same extent as the public utility, including but not  
20 limited to collecting and paying to the holders of recovery  
21 bonds, their representatives, or the applicable financing





1 entity, revenues arising with respect to the recovery property  
2 sold to the applicable financing entity or pledged to secure  
3 recovery bonds. Any successor to the public utility shall be  
4 entitled to receive any fixed recovery tax amounts otherwise  
5 payable to the public utility.

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

19       (b) Nothing in this section shall be construed to permit  
20 setoff, counterclaim, surcharge, recoupment, or defense by the  
21 public utility or any other person, or in connection with the



1 bankruptcy, reorganization, or other insolvency proceeding of  
2 the public utility, any affiliate of the public utility, or any  
3 other entity, against the recovery property, the fixed recovery  
4 charges, or the interests of an assignee, bondholder, or  
5 financing entity, or any pledgee in recovery property or fixed  
6 recovery charges.

7       § -9 Limitations. This chapter shall not affect any  
8 civil action or proceeding."

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

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

18       SECTION 5. This Act shall take effect on July 1, 2040.



**Report Title:**

Public Utilities Commission; Public Utilities; Rate  
Securitization; Catastrophic Wildfire Expenses; Financing  
Orders; Recovery Bonds; Recovery 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. Takes  
effect 7/1/2040. (SD1)

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not legislation or evidence of legislative intent.*

