
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 ratepayers. 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



1 renewable energy and other goals. The State also recognizes
 2 that ratepayers cannot bear the full burden of mitigation
 3 efforts through securitization and that shareholder
 4 contributions must be a part of utility capitalization moving
 5 forward.

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

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

15 **"CHAPTER**

16 **CATASTROPHIC WILDFIRE SECURITIZATION ACT**

17 § -1 **Short title.** This chapter shall be known and may
 18 be cited as the "Catastrophic Wildfire Securitization Act".

19 § -2 **Definitions.** As used in this chapter, unless the
 20 context otherwise requires:



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

8 "Catastrophic wildfire" means any wildfire that damaged or
9 destroyed more than five hundred dwellings or commercial
10 buildings in the State.

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

13 "Financing costs" means the costs to issue, service, repay,
14 or refinance recovery bonds, whether incurred or paid upon
15 issuance of the recovery bonds or over the life of the recovery
16 bonds, if they are approved for recovery by the commission in a
17 financing order. "Financing costs" include:

- 18 (1) Principal, interest, and redemption premiums that are
19 payable on recovery bonds;
20 (2) Any payment required under an ancillary agreement;



- 1 (3) Any amount required to fund or replenish reserve
- 2 accounts or other accounts established under an
- 3 indenture, ancillary agreement, or other financing
- 4 document relating to the recovery bonds;
- 5 (4) Taxes, franchise fees, or license fees imposed on
- 6 fixed recovery charges;
- 7 (5) Costs related to issuing and servicing recovery bonds
- 8 or the application for a financing order, including
- 9 servicing fees and expenses, trustee fees and
- 10 expenses, legal fees and expenses, accounting fees,
- 11 administrative fees, underwriting and placement fees,
- 12 financial advisory fees, original issue discounts,
- 13 capitalized interest, rating agency fees, and any
- 14 other related costs that are approved for recovery in
- 15 the financing order; or
- 16 (6) Other costs as specifically authorized by a financing
- 17 order.

18 "Financing entity" means the public utility that is
19 authorized by the commission to issue recovery bonds or acquire
20 recovery property, or both.

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

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

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

19 "Fixed recovery tax amounts" means those nonbypassable
20 rates and other charges, including distribution, connection,
21 disconnection, and termination rates and charges, that are



1 needed to recover federal and state taxes associated with fixed
2 recovery charges authorized by the commission in a financing
3 order, but are not approved as financing costs financed from
4 proceeds of recovery bonds.

5 "Public utility" has the same meaning as defined in section
6 269-1.

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

14 "Recovery costs" means:

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

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



1 (B) The commission may consider allowing litigation
2 and settlements or related expenses to be paid
3 for by securitized capital if the capital is the
4 lowest cost for ratepayers and shareholder
5 contributions are considered first.

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

8 (3) Financing costs; or

9 (4) Redemption premiums, tender premiums, and other costs
10 incurred by the public utility in using proceeds of
11 recovery bonds to acquire outstanding securities of
12 the public utility, as authorized by the commission in
13 a financing order.

14 "Recovery property" means the property right, created
15 pursuant to this chapter, that:

16 (1) Includes the right, title, and interest of the public
17 utility or its transferee:

18 (A) In and to the fixed recovery charges established
19 pursuant to a financing order, including all
20 rights to obtain adjustments to the fixed



1 recovery charges pursuant to section -3(k) and
2 the financing order; and

3 (B) To be paid the amount that is determined in a
4 financing order to be the amount that the public
5 utility or its transferee is lawfully entitled to
6 receive pursuant to the provisions of this
7 chapter and the proceeds thereof, and in and to
8 all revenues, collections, claims, payments,
9 moneys, or proceeds of or arising from the fixed
10 recovery charges that are the subject of a
11 financing order; and

12 (2) Constitutes a current property right, notwithstanding
13 the fact that the value of the property right will
14 depend on consumers using electricity or, in those
15 instances where consumers are customers of the public
16 utility, the public utility performing certain
17 services.

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

20 "True-up adjustment" means a formulaic adjustment that is
21 necessary to correct the fixed recovery charges as they appear



1 on customer bills to correct for any overcollection or
2 undercollection and to otherwise ensure the timely and complete
3 payment and recovery of recovery costs over the authorized
4 repayment term.

5 **§ -3 Financing orders; authorization.** (a) A public
6 utility that applies to the commission for recovery of costs and
7 expenses related to the mitigation of the risk of wildfires, may
8 request the commission to issue a financing order to authorize
9 the costs and expenses that the commission finds to be just and
10 reasonable to be recovered through fixed recovery charges
11 pursuant to this chapter, and order that any portion of the
12 public utility's federal and state taxes associated with those
13 fixed recovery charges and not financed from proceeds of
14 recovery bonds may be recovered through fixed recovery tax
15 amounts.

16 (b) Any application submitted pursuant to subsection (a)
17 shall be governed by this chapter. Any application that fully
18 complies with this chapter shall also be deemed to comply with
19 any requirements imposed by any applicable provision of chapter
20 269.

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 eligible for recovery,
6 which shall be limited to the following categories:

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

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

14 (2) The issuance of the recovery bonds, including all
15 material terms and conditions of the recovery bonds,
16 including interest rates, rating, amortization
17 redemption, and maturity, and the imposition and
18 collection of fixed recovery charges as set forth in
19 the application satisfy all of the following
20 conditions, as applicable:

21 (A) They are just and reasonable;



- 1 (B) They are consistent with the public interest;
- 2 (C) The recovery of recovery costs through the
- 3 designation of the fixed recovery charges and any
- 4 associated fixed recovery tax amounts, and the
- 5 issuance of recovery bonds in connection with the
- 6 fixed recovery charges, would result in net
- 7 savings to ratepayers and reduce, to the maximum
- 8 extent possible, the rates on a present value
- 9 basis that ratepayers would pay as compared to
- 10 the use of traditional utility financing
- 11 mechanisms, which shall be calculated using the
- 12 public utility's corporate debt and equity in the
- 13 ratio approved by the commission at the time of
- 14 the financing order; and
- 15 (D) The use of securitized funds represents the most
- 16 cost-effective method to ratepayers based on
- 17 available financing methods; and
- 18 (3) The public utility provides a plan that satisfies the
- 19 following conditions:
- 20 (A) The plan provides for a review of the
- 21 organizational structure and the separation of



- 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



1 (G) The commission shall monitor the reliability and
2 operation of the utilities system and the
3 compliance and audit of the finance order as it
4 applies to the reliability, operation,
5 interconnection, and wildfire orders of the
6 commission. The commission shall also implement
7 part IX of chapter 269 and determine an
8 appropriate schedule for reporting.

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

17 The public utility may submit an application with respect
18 to recovery costs that a public utility has paid, has an
19 existing legal obligation to pay, or would be obligated to pay
20 pursuant to an executed settlement agreement. The commission,
21 within one hundred eighty days of the filing of the foregoing



1 application that is deemed complete by the commission, shall
2 issue a financing order, if the commission determines that the
3 amounts identified in the application are recovery costs.

4 (d) Fixed recovery charges and any associated fixed
5 recovery tax amounts shall be imposed only on existing and
6 future ratepayers in the utility service territory. Ratepayers
7 within the utility service territory shall continue to pay fixed
8 recovery charges and any associated fixed recovery tax amounts
9 until the recovery bonds and associated financing costs are paid
10 in full by the financing entity.

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

16 (f) The commission may establish in a financing order an
17 effective mechanism that ensures recovery of recovery costs
18 through nonbypassable fixed recovery charges and any associated
19 fixed recovery tax amounts from existing and future consumers in
20 the utility service territory, and those consumers shall be
21 required to pay those charges until the recovery bonds and all



1 associated financing costs are paid in full by the financing
2 entity, at which time those charges shall be terminated. Fixed
3 recovery charges shall be irrevocable, notwithstanding any
4 true-up adjustment made pursuant to subsection (k).

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

7 (h) The commission shall issue financing orders pursuant
8 to this chapter to facilitate the recovery, financing, or
9 refinancing of recovery costs. A financing order may be adopted
10 only upon the application of the public utility and shall become
11 effective pursuant to its terms only after the public utility
12 files with the commission the public utility's written consent
13 to all terms and conditions of the financing order. A financing
14 order may specify how amounts collected from a consumer shall be
15 allocated between fixed recovery charges, any associated fixed
16 recovery tax amounts, and other charges.

17 (i) Notwithstanding any other law, and except as otherwise
18 provided in subsection (k), with respect to recovery property
19 that has been made the basis for the issuance of recovery bonds
20 and with respect to any associated fixed recovery tax amounts,
21 the financing order, the fixed recovery charges, and any



1 associated fixed recovery tax amounts shall be irrevocable. The
2 commission shall not, either by rescinding, altering, or
3 amending the financing order or otherwise, revalue or revise for
4 ratemaking purposes the recovery costs or the costs of
5 recovering, financing, or refinancing the recovery costs, or in
6 any way reduce or impair the value of recovery property or of
7 the right to receive any associated fixed recovery tax amounts
8 either directly or indirectly by taking fixed recovery charges
9 or any associated fixed recovery tax amounts into account when
10 setting other rates for the public utility. The amount of
11 revenues shall not be subject to reduction, impairment,
12 postponement, or termination. The State shall neither limit nor
13 alter, except as otherwise provided with respect to the true-up
14 adjustment of the fixed recovery charges pursuant to subsection
15 (k), the fixed recovery charges, any associated fixed recovery
16 tax amounts, recovery property, financing orders, or any rights
17 under a financing order until the applicable recovery bonds,
18 together with the interest on the recovery bonds and associated
19 financing costs, are fully paid and discharged, and any
20 associated fixed recovery tax amounts have been satisfied or, in
21 the alternative, have been refinanced through an additional



1 issue of recovery bonds; provided that nothing in this section
2 shall preclude a limitation or an alteration if and when
3 adequate provision shall be made by law for the protection of
4 the public utility and of owners and holders of the recovery
5 bonds. The financing entity may refer to this subsection in the
6 recovery bonds. When setting other rates for the public
7 utility, nothing in this subsection shall be construed to
8 prohibit the commission from taking into account:

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



1 (B) Treating the transfer of the recovery property by
2 the public utility as a true sale for bankruptcy
3 purposes.

4 (j) Neither financing orders, catastrophic wildfire
5 authorizations of costs, or expenses authorized by the
6 commission; nor recovery bonds issued pursuant to this chapter,
7 shall constitute a debt or liability of the State or of any
8 political subdivision thereof, nor shall they constitute a
9 pledge of the full faith and credit of the State or any of its
10 political subdivisions, but shall be payable solely from the
11 funds provided under this chapter. All recovery bonds shall
12 contain on the face thereof a statement to the following effect:
13 "Neither the full faith and credit nor the taxing power of the
14 State of Hawaii is pledged to the payment of the principal of,
15 or interest on, this bond."

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

20 (k) The commission shall establish procedures for the
21 expeditious processing of an application for a financing order,



1 which shall provide for the approval or disapproval of the
2 application within one hundred twenty days of the application
3 deemed complete by the commission. Any fixed recovery charge
4 authorized by a financing order shall appear on ratepayer bills.
5 Any financing order issued by the commission shall provide for a
6 procedure for periodic true-up adjustments to fixed recovery
7 charges, which shall be made at least annually and may be made
8 more frequently. The public utility shall file an application
9 with the commission to implement any true-up adjustment.

10 (1) Fixed recovery charges are recovery property when, and
11 to the extent that, a financing order authorizing the fixed
12 recovery charges has become effective pursuant to this chapter,
13 and the recovery property shall thereafter continuously exist as
14 property for all purposes, and all of the rights and privileges
15 relating to that property shall continuously exist for the
16 period and to the extent provided in the financing order, but in
17 any event until the recovery bonds are paid in full, including
18 all principal, premiums, if any, and interest with respect to
19 the recovery bonds, and all associated financing costs are paid
20 in full. A financing order may provide that the creation of
21 recovery property shall be simultaneous with the sale of the



1 recovery property to a transferee or assignee as provided in the
2 application of the pledge of the recovery property to secure the
3 recovery bonds.

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

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

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

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

16 **§ -4 Recovery bonds; issuance; recovery property**

17 **interests.** (a) The financing entity may issue recovery bonds
18 upon approval by the commission in a financing order. Recovery
19 bonds shall be nonrecourse to the credit or any assets of the
20 public utility, other than the recovery property as specified in
21 that financing order.



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

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

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

18 (c) To the extent that any interest in recovery property
19 is sold, assigned, or is pledged as collateral pursuant to
20 subsection (b), the commission shall authorize the public
21 utility to contract with the financing entity that the latter



1 will continue to operate the system to provide service to
2 consumers within its service territory, will collect amounts in
3 respect of the fixed recovery charges for the benefit and
4 account of the financing entity, and will account for and remit
5 these amounts to or for the account of the financing entity.
6 Contracting with the financing entity pursuant to that
7 authorization shall not impair or negate the characterization of
8 the sale, assignment, or pledge as an absolute transfer, a true
9 sale, or a security interest, as applicable. To the extent that
10 billing, collection, and other related services with respect to
11 the provision of the public utility's services are provided to a
12 consumer by any person or entity other than the public utility
13 in whose service territory the consumer is located, that person
14 or entity shall collect the fixed recovery charges and any
15 associated fixed recovery tax amounts from the consumer for the
16 benefit and account of the public utility or financing entity
17 with the associated revenues remitted solely for the benefit and
18 repayment of the recovery bonds and associated financing costs
19 as a condition to the provision of service to that consumer.
20 Each financing order shall impose terms and conditions,
21 consistent with the purposes and objectives of this chapter, on



1 any person or entity responsible for billing, collection, and
2 other related services, including without limitation collection
3 of the fixed recovery charges and any associated fixed recovery
4 tax amounts, that are the subject of the financing order.

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



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



1 described in this section, and attaches when all of the
2 following have taken place:

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

6 (2) Value has been given by the pledgees of the recovery
7 property; and

8 (3) The pledgor has signed a security agreement covering
9 the recovery property.

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



1 provided that the filings shall not affect the perfection of the
2 security interest.

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

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



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

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



1 holding prior security interests in the recovery property
2 perfected in the manner provided in this section. Further, the
3 commission may require in the financing order creating the
4 recovery property that, in the event of default by the public
5 utility in payment of recovery property revenues, the
6 commission, upon the application by the pledgees or transferees,
7 including transferees under section -6 of the recovery
8 property, and without limiting any other remedies available to
9 the pledgees or transferees by reason of the default, shall
10 order the sequestration and payment to the pledgees or
11 transferees of recovery property revenues. Any order shall
12 remain in full force and effect notwithstanding any bankruptcy,
13 reorganization, or other insolvency proceedings with respect to
14 the debtor, pledgor, or transferor of the recovery property.
15 Any surplus in excess of amounts necessary to pay principal,
16 premiums, if any, interest, costs, and arrearages on the
17 recovery bonds, and associated financing costs arising under the
18 security agreement, shall be remitted to the debtor or to the
19 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 pursuant to this section. Financing
13 statements so filed may be protective filings and shall not be
14 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, upon the application by the
7 beneficiaries of the statutory lien, and without limiting any
8 other remedies available to the beneficiaries by reason of the
9 default, shall order the sequestration and payment to the
10 beneficiaries of recovery property revenues. Any order shall
11 remain in full force and effect notwithstanding any bankruptcy,
12 reorganization, or other insolvency proceedings with respect to
13 the debtor. Any surplus in excess of amounts necessary to pay
14 principal, premiums, if any, interest, costs, and arrearages on
15 the recovery bonds, and other costs arising in connection with
16 the documents governing the recovery bonds, shall be remitted to
17 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 events:

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

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

16 (A) A partial or residual interest, including an
17 equity interest, in the financing entity or the
18 recovery property, whether direct or indirect,
19 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 pursuant to part 5 of article 9 of chapter 490, naming
4 the assignor of the recovery property as debtor and identifying
5 the recovery property shall have priority. Any description of
6 the recovery property shall be sufficient if it refers to the
7 financing order creating the recovery property. A copy of the
8 financing statement shall be filed by the assignee with the
9 commission, and the commission may require the assignor or the
10 assignee to make other filings with respect to the transfer
11 pursuant to procedures it may establish, but these filings shall
12 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 collecting
20 and paying to the holders of recovery bonds, their
21 representatives, or the applicable financing entity, revenues



1 arising with respect to the recovery property sold to the
2 applicable financing entity or pledged to secure recovery bonds.
3 Any successor to the public utility shall be entitled to receive
4 any fixed recovery tax amounts otherwise payable to the public
5 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 any catastrophic wildfire amounts
11 included in the recovery costs addressed in that financing
12 order, the public utility shall credit customers, in a manner to
13 be determined by the commission, with the net after tax amounts
14 of 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 Utilities; bond ratings.** Access to securitized
8 funds shall be limited to a public utility whose bond rating is
9 below investment grade.

10 **§ -10 Findings; report.** The commission shall
11 incorporate its findings relating to the administration of this
12 chapter into the commission's annual report to the legislature.

13 **§ -11 Limitations.** This chapter shall not affect any
14 civil action or proceeding."

15 SECTION 3. 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 4. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



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

3 SECTION 5. This Act shall take effect on July 1, 2040, and
4 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

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.*

