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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Ways and Means
And
Senate Committee on Judiciary
Friday, March 1, 2024
10:31 a.m.
Conference Room 211

On the following measure:
S.B. 2922, S.D. 1, RELATING TO PUBLIC UTILITIES

WRITTEN TESTIMONY ONLY

Chair Dela Cruz, Chair Rhoads, and Members of the Committees:

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

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

The SD 1 version of this bill includes amendments to authorize recovery of costs and expenses, both mitigation efforts and liabilities consistent with an approved settlement plan, to require net savings to ratepayers, to add a reorganization plan to any

approved financing order, and to blank out the Hawaii Public Utilities Commission's (Commission) time limit to issue a financing order.

The tragedy and devastation of the wildfires that arose on Maui during the August 8, 2023 windstorm must be prevented from reoccurring. The State needs viable financing options to pay for the damages suffered in catastrophic wildfires, while maintaining operating utilities to provide essential services. Securitized bond financing, if bounded by adequate ratepayer protections and used with discipline, could offer a relatively low-interest source of funds. This bill proposes a possible framework for securitized bonds, along with related debenture terms and conditions. However, the Department has concerns that this proposal may offer too many concessions to the electric utility, potentially at the expense of ratepayers. For example, related to ratepayer protection, this bill would impose a "prudently incurred costs" standard for approval (proposed Section -3(c)(1)(A)) and implicitly supplants (see proposed Section -3(b)) the current "used and useful" standard under Hawaii Revised Statutes § 269-16(b)(3). This bill would also authorize the use of securitized bond financing for not just wildfire mitigation efforts, but also wildfire liabilities (proposed Section -3(c)(1)(B)); and the Department does not support recovering from ratepayers any funds used to pay wildfire liabilities.

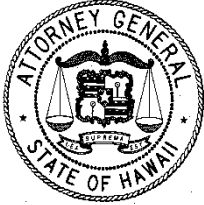
The Department notes a more limited form of securitized bond financing is proposed in SB 3096, SD 1, particularly Sections §§ 269-E and -F. SB 3096, SD 1 would authorize securitized bond financing in a structure that appears to have fewer ratepayer risks, especially since the SB 3096, SD 1 incorporated recommended amendments to require any Commission proceeding on a financing order to be in a docketed proceeding, thus protecting due process for stakeholders and the Department's advocacy for ratepayers, and recommended amendments from the Office of the Attorney General's public financing counsel on debenture terms.

The Department appreciates how SB 3096, SD 1 incentivizes electric utilities to continuously act prudently to mitigate their wildfire risk by not including language in the bill that establishes an assumption of prudence simply because the electric utility has an approved wildfire risk protection plan in place. The Department strongly supports the

consideration for equity that is included in SB 3096, SD 1 that requires the surcharge for the wildfire protection fee be non-bypassable. The Department also appreciates that SB 3096, SD 1 requires that the impacts of financing the wildfire protection costs be minimized.

While SB 3096, SD 1 could still benefit from some further amendments for ratepayer protections (for example, 'prudently incurred cost' standard in definition of "wildfire protection costs"), the Department views it overall as a vehicle for securitized bond financing with better ratepayer protections than the provisions in this measure.

Thank you for the opportunity to testify on this bill.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2922, S.D. 1, RELATING TO PUBLIC UTILITIES.

BEFORE THE:

SENATE COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

DATE: Friday, March 1, 2024

TIME: 10:31 a.m.

LOCATION: State Capitol, Room 211 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Randall S. Nishiyama,
Deputy Attorney General, at 808-586-0618)

Chairs Dela Cruz and Rhoads and Members of the Committees:

The Department of the Attorney General provides the following comments.

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

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

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

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

Thank you for the opportunity to testify.

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
3 that electric utilities develop, implement, and administer
4 effective plans for wildfire risk mitigation. Electric
5 utilities should develop, implement, and administer wildfire
6 protection plans, and, through a public process, the public
7 utilities commission should review and approve the plans and
8 the recovery of any related costs to implement the plans.

9 The legislature also finds that a resilience working
10 group, convened throughout 2019 and 2020, sought to:

- 11 (1) Identify and prioritize resilience threat scenarios
12 and potential grid impacts;
- 13 (2) Identify key customer and infrastructure sector
14 capabilities and needs following a severe event and
15 loss of power;

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- 1 (3) Identify gaps and priorities in grid and customer
2 capabilities following a severe event and loss of
3 power;
- 4 (4) Provide recommendations and inputs for investor-owned
5 utility grid planning to address resilience needs; and
- 6 (5) Recommend additional grid and customer actions to
7 close gaps and capabilities following severe events.
8 The resilience working group identified wildfires as
9 one of five types of severe events of utmost
10 importance to consider for achieving a resilient grid
11 and provided resilience options for utilities to
12 consider.

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

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

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

13 **"PART WILDFIRE PROTECTION AND MITIGATION**

14 **§269-A Definitions.** As used in this part:

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

22 "Assignee" means a legally recognized entity:

1 (1) To which an electric utility company or an affiliate
2 of an electric utility assigns, sells, or transfers,
3 other than as security, all or a portion of its
4 interest in or right to wildfire protection property,
5 or

6 (2) Who acquires by way of assignment or otherwise all or
7 a portion of the wildfire protection property
8 following the exercise of remedies upon a default
9 under the terms of the bonds.

10 The term includes a corporation, limited liability company,
11 general partnership or limited partnership, public authority,
12 trust, financing entity, or any entity to which an assignee
13 assigns, sells, or transfers, other than as security, its
14 interest in or right to wildfire protection property.

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

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

4 "Commission" means the public utilities commission.

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

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

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

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

21 (2) A payment required under an ancillary agreement;

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- 1 (3) An amount required to fund or replenish reserve
2 accounts or other accounts established under an
3 indenture, ancillary agreement, or other financing
4 document related to the bonds;
- 5 (4) Taxes, franchise fees, or license fees imposed on the
6 wildfire protection charges, or otherwise resulting
7 from the collection of the charges, in any such case
8 whether paid, payable, or accrued;
- 9 (5) Costs related to issuing and servicing bonds or the
10 application for a financing order, including, without
11 limitation, servicing fees and expenses, trustee fees
12 and expenses, legal fees and expenses, accounting
13 fees, administrative fees, underwriting and placement
14 fees, financial advisory fees, original issue
15 discount, capitalized interest, rating agency fees,
16 and any other related costs that are approved for
17 recovery in the financing order; and
- 18 (6) Other costs as specifically authorized by a financing
19 order.

20 "Financing entity" means an electric utility and an entity
21 to which an electric utility or an affiliate of an electric
22 utility sells, assigns or pledges all or a portion of the

1 electric utility's or its affiliate's interest in wildfire
2 protection property, including an affiliate of the electric
3 utility or any unaffiliated entity, in each case as approved by
4 the commission in a financing order.

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

20 "Financing order" means an order of the public utilities
21 commission under this part that has become final as provided by
22 law, and that authorizes the issuance of bonds and the

1 imposition, adjustment from time to time, and collection of
2 wildfire protection charges, and which shall include without
3 limitation a procedure to require the expeditious approval by
4 the commission of periodic adjustments to wildfire protection
5 charges and any associated fixed recovery tax amounts included
6 in that financing order to ensure recovery of all wildfire
7 protection costs and the costs associated with the proposed
8 recovery, financing, or refinancing thereof, including the costs
9 of servicing and retiring the bonds contemplated by the
10 financing order.

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

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

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

8 "Wildfire protection charges" means the nonbypassable
9 charges authorized by section 269-F and in a financing order
10 authorized under this part to be imposed on and collected from
11 all existing and future consumers to recover both of the
12 following:

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

19 "Wildfire protection costs" means any capital costs and
20 operation and maintenance expenses related to the development,
21 implementation, and administration of a wildfire protection plan
22 prepared pursuant to section 269-C(a) but, for the avoidance of

1 doubt, shall not include any amounts, including, without
2 limitation, fees, costs, and awards, payable in connection with
3 any legal claims made in any way related to any wildfire.

4 Wildfire protection costs may also include any of the following:

- 5 (1) Catastrophic wildfire costs or expenses, other than
6 amounts, for the avoidance of doubt, payable in
7 connection with any legal claims made in any way
8 related to any wildfire, that the commission has
9 determined were prudently incurred, including but not
10 limited to costs or expenses that have been paid that
11 the electric utility has a legal obligation to pay or
12 that the electric utility would be otherwise obligated
13 to pay;
- 14 (2) Federal and state taxes associated with recovery of
15 the amounts pursuant to paragraph (1)
- 16 (3) Professional fees, consultant fees, redemption
17 premiums, tender premiums, and other costs incurred by
18 the electric utility in using proceeds of bonds to
19 acquire outstanding securities of the electric utility
20 company, as authorized by the commission in a
21 financing order; and
- 22 (4) Financing costs.

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

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

8 (1) In and to the wildfire protection charge established
9 pursuant to a financing order, including the right to
10 impose, bill, collect and receive such fixed recovery
11 charges under the financing order and all rights to
12 obtain adjustments to the wildfire protection charge
13 in accordance with section 269-F and the financing
14 order; and

15 (2) To be paid the amount that is determined in a
16 financing order to be the amount that the electric
17 utility or its assignee is lawfully entitled to
18 receive pursuant to this part and the proceeds
19 thereof, and in and to all revenues, collections,
20 claims, payments, moneys, or proceeds of, or arising
21 from, the wildfire protection charge that is the
22 subject of a financing order.

1 "Wildfire protection property" shall constitute a current
2 property right, notwithstanding the fact that the value of the
3 property right will depend on consumers using electricity or, in
4 those instances where consumers are customers of the electric
5 utility, the electric utility performing certain services.

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

8 **§269-B Electric utility workshops.** The public utilities
9 commission may periodically convene workshops to help electric
10 utilities develop and share information for the identification,
11 adoption, and implementation of best practices regarding
12 wildfires, including but not limited to risk-based wildfire
13 protection and risk-based wildfire mitigation procedures and
14 standards. The best practices discussed in these workshops may
15 be incorporated into the proposed wildfire protection plans and
16 updates submitted for the approval of the public utilities
17 commission pursuant to section 269-C.

18 **§269-C Wildfire protection plans.** (a) Each electric
19 utility shall have and operate in compliance with a risk-based
20 wildfire protection plan, which shall be submitted to the public
21 utilities commission for approval. The risk-based wildfire
22 protection plan shall be based on reasonable and prudent

1 practices that may be determined by public utilities commission
2 standards adopted by decision or rule. The electric utility
3 shall design the risk-based wildfire protection plan to protect
4 public safety, reduce risk to utility customers, and promote
5 resilience of the Hawaii electric system to wildfire damage.

6 Each electric utility's plan shall, at a minimum:

7 (1) Account for responsibilities of persons responsible
8 for executing the plan;

9 (2) Describe the objectives of the plan;

10 (3) Identify areas that are subject to a heightened risk
11 of wildfire and are:

12 (A) Within the right of way or legal control or
13 ownership of the electric utility; and

14 (B) Outside the right of way or legal control or
15 ownership of the electric utility but within a
16 reasonable distance, as determined by the public
17 utilities commission, of the electric utility's
18 generation or transmission assets;

19 (4) Identify a means for mitigating wildfire risk that
20 reflects a reasonable balancing of mitigation costs
21 with the resulting reduction of wildfire risk;

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- 1 (5) Identify preventive actions and programs that the
2 electric utility shall carry out to minimize the risk
3 of utility facilities causing wildfire;
- 4 (6) Identify the metrics the electric utility plans to use
5 to evaluate the plan's performance and the assumptions
6 that underlie the use of those metrics;
- 7 (7) Describe how the application of previously identified
8 metrics to previous plan performances has informed the
9 plan;
- 10 (8) After seeking information from state and local
11 entities, identify a protocol for the deenergizing of
12 power lines and adjusting of power system operations
13 to mitigate wildfires, promote the safety of the
14 public and first responders, and preserve health and
15 communication infrastructure;
- 16 (9) Describe appropriate and feasible procedures for
17 notifying a customer who may be impacted by the
18 deenergizing of electrical lines. The procedures
19 shall consider the need to notify, as a priority,
20 critical first responders, health care facilities,
21 operators of wastewater and water delivery

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- 1 infrastructure and operators of telecommunications
2 infrastructure;
- 3 (10) Describe the procedures, standards, and timeframes
4 that the electric utility shall use to inspect utility
5 infrastructure in areas that the electric utility
6 identifies under paragraph (1), including whether
7 those procedures, standards, and timeframes are
8 already set forth in the electric utility's existing
9 plans or protocols and in coordination with any
10 relevant entities;
- 11 (11) Describe the procedures, standards, and timeframes
12 that the electric utility shall use to carry out
13 vegetation management in areas that the electric
14 utility identifies under paragraph (1), including
15 whether those procedures, standards, and timeframes
16 are already set forth in the electric utility's
17 existing plans or protocols and in coordination with
18 any relevant entities;
- 19 (12) Include a list that identifies, describes, and
20 prioritizes all wildfire risks, and drivers for those
21 risks, throughout the electric utility's service

1 territory. The list shall include but not be limited

2 to:

3 (A) Risks and risk drivers associated with design,
4 construction, operation, and maintenance of the
5 electric utility's equipment and facilities; and

6 (B) Particular risks and risk drivers associated with
7 topographic and climatological risk factors
8 throughout the different parts of the electric
9 utility's service territory;

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

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

21 (15) Demonstrate that the electric utility has an
22 adequately sized and trained workforce to promptly

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

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- 1 (B) Identify any deficiencies in the plan or the
2 plan's implementation and correct those
3 deficiencies; and
- 4 (C) Monitor and audit the effectiveness of electrical
5 line and equipment inspections, including
6 inspections performed by contractors, carried out
7 under the plan and other applicable statutes and
8 commission rules;
- 9 (21) Demonstrate elements of data governance, including
10 enterprise systems; and
- 11 (22) Any modifications to the above, or other information
12 as required by the commission.
- 13 (b) Each electric utility shall regularly submit updates
14 to its risk-based wildfire protection plan for approval on a
15 schedule determined by the public utilities commission.
- 16 (c) To develop the risk-based wildfire protection plan,
17 the electric utility may consult with and consider information
18 from federal, state, local, and other expert entities.
- 19 (d) The public utilities commission shall evaluate each
20 electric utility's risk-based wildfire protection plan and plan
21 updates according to the public utilities commission's rules of
22 practice and procedure in chapter 16-601, Hawaii Administrative

1 Rules. The public utilities commission shall authorize the
2 department of land and natural resources and local emergency
3 services agencies to participate in proceedings evaluating risk-
4 based wildfire protection plans.

5 (e) Not more than ninety days after the last party filing,
6 and not more than a total of one hundred twenty days after the
7 initial application for approval of the submitted wildfire
8 protection plan or update in the docketed proceeding, the public
9 utilities commission shall approve, approve with conditions, or
10 reject the plan or update based on whether the public utilities
11 commission finds that the plan or update is based on reasonable
12 and prudent practices and designed to meet all applicable rules
13 and standards adopted by the public utilities commission. The
14 public utilities commission may, in approving the plan or update
15 with conditions, direct the electric utility to make
16 modifications to the plan or updates that the public utilities
17 commission believes represent a reasonable balancing of
18 mitigation costs with the resulting reduction of wildfire risk
19 based on the evidentiary record in the proceeding. The public
20 utilities commission shall issue a decision explaining its
21 determinations, including findings of fact and conclusions of
22 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 consumers, provided, however, that any such refund or credit
12 to consumers shall not affect, alter or impair the value of the
13 wildfire protection property, wildfire protection charges, or
14 any bonds secured by wildfire protection property.

15 If the actual costs are equal to or greater than the
16 amounts that the public utilities commission determined were
17 reasonable in its decision under subsection (e), the commission
18 shall not direct the electric utility to refund to ratepayers
19 the amount the commission previously determined was reasonable
20 and shall limit its review to any additional costs, which it
21 shall allow the electric utility to recover from ratepayers if
22 the commission finds such costs reasonable.

1 (g) The public utilities commission's approval of a risk-
2 based wildfire protection plan does not by itself establish a
3 defense to any enforcement action for violation of a public
4 utilities commission decision, order, or rule.

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

12 (i) In its decision pursuant to section 269-C(e), the
13 public utilities commission shall determine the reasonable costs
14 to develop, implement, and administer the plan and shall
15 authorize the electric utility to recover the costs in rates.
16 The commission shall establish a method to authorize timely and
17 prompt recovery of the wildfire protection costs. The
18 commission shall establish rules for the electric utility to
19 track actual wildfire protection costs and for the commission to
20 authorize, as applicable, refunds or credits to ratepayers where
21 actual wildfire protection costs are ultimately less than those
22 the commission determined reasonable and authorized for rate

1 recovery, provided, however, that any such refund or credit to
2 consumers shall not affect, alter or impair the value of the
3 wildfire protection property, wildfire protection charges, or
4 any bonds secured by wildfire protection property. To the
5 degree actual wildfire protection costs exceed those the
6 commission determined were reasonable and authorized for rate
7 recovery, the commission shall authorize cost recovery in the
8 event that it determines those additional wildfire protection
9 costs are just and reasonable. The method established hereunder
10 may include the issuance of bonds under section 269-D.

11 (j) So long as such electric utility has not acted in a
12 manner that constitutes willful misconduct, bad faith, or
13 reckless disregard of its obligations, in each case, in
14 compliance with its obligations under a financing order and any
15 applicable wildfire protection plan, no electric utility shall
16 be civilly liable for the death of or injury to persons, or
17 property damage, as a result of:

18 (1) Any act taken in accordance with a plan or updated
19 plan approved by the public utilities commission under
20 this chapter; or

21 (2) Any failure to take an action proposed by an electric
22 utility in a plan or updated plan and thereafter

1 removed from the plan by modification of the public
2 utilities commission.

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

10 (l) Any determination by the public utilities commission
11 that the electric utility materially failed to comply with an
12 approved plan or part of an approved plan, and any imposition of
13 a civil penalty, shall be inadmissible in any lawsuit or other
14 action against the electric utility seeking compensation for the
15 alleged death of or injury to persons, or property damage. In
16 any action seeking to hold an electric utility civilly liable
17 for the death of or injury to persons, or property damage, no
18 inference of liability may be drawn solely based on a failure by
19 the electric utility to adhere to the requirements of an
20 approved plan.

21 **§269-D Applications to issue bonds and authorize wildfire**
22 **protection charges.** (a) An electric utility may apply to the

1 public utilities commission for one or more financing orders to
2 issue bonds to recover any wildfire protection costs, each of
3 which authorizes the following:

- 4 (1) The imposition, charging, and collection of a wildfire
5 protection charge, to become effective upon the
6 issuance of the bonds, and an adjustment of any
7 wildfire protection charge in accordance with a true-
8 up mechanism under this part in amounts sufficient to
9 pay principal and interest on the bonds and all other
10 associated financing costs on a timely basis;
- 11 (2) The creation of wildfire protection property under the
12 financing order; and
- 13 (3) The imposition, charging, and collection of fixed
14 recovery tax amounts to recover any portion of the
15 electric utility's federal and state taxes associated
16 with those wildfire protection charges and not financed
17 from the proceeds of bonds.
- 18 (b) The application shall include all of the following:
- 19 (1) The wildfire protection costs to be financed through
20 the issuance of bonds;
- 21 (2) The principal amount of the bonds proposed to be
22 issued;

-
- 1 (3) An estimate of the date each series of bonds is
2 expected to be issued;
- 3 (4) The scheduled final payment date, which may not exceed
4 thirty years, and a legal final maturity date, which
5 may be longer, subject to rating agency and market
6 considerations, during which term the wildfire
7 protection charge associated with the issuance of each
8 series of bonds is expected to be imposed and
9 collected;
- 10 (5) An estimate of the financing costs associated with the
11 issuance of each series of bonds;
- 12 (6) An estimate of the amount of the wildfire protection
13 charge revenues necessary to pay principal and
14 interest on the bonds and all other associated
15 financing costs as set forth in the application and
16 the calculation for that estimate;
- 17 (7) A proposed design of the wildfire protection charge
18 and the methodology for allocating the wildfire
19 protection charge among consumer classes within the
20 electric utility's service territory;
- 21 (8) A description of the financing entity selected by the
22 electric utility;

1 (9) A description of a proposed true-up mechanism for the
2 adjustment of the wildfire protection charge to
3 correct for any overcollection or undercollection of
4 the wildfire protection charge, and to otherwise
5 ensure the timely payment of principal and interest on
6 the bonds and all other associated financing costs;
7 and

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

10 (c) At the option of the electric utility, the electric
11 utility may include in its application for a financing order a
12 request for authorization to sell, transfer, assign or pledge
13 wildfire protection property to a governmental financing entity
14 if it expects bonds issued by a governmental financing entity
15 would result in a more cost efficient means, taking into account
16 all financing costs related to such bonds, than using another
17 financing entity to issue bonds to finance the same wildfire
18 protection costs, taking into account the costs of issuing such
19 other financing entity's bonds.

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

1 filed pursuant to this section within one hundred twenty days of
2 the filing of the application.

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

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

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

9 (3) Whether the structuring, marketing and pricing of the
10 bonds are expected to result in the lowest wildfire
11 protection charges consistent with market conditions
12 at the time the bonds are priced and the terms of the
13 financing order;

14 (4) Whether the terms and conditions of any bonds to be
15 issued are just and reasonable; and(4) Whether the
16 issuance of the bonds would be beneficial, including
17 by avoiding or significantly mitigating abrupt and
18 significant increases in rates to consumers for the
19 applicable time period in the absence of the bonds.

20 (f) Wildfire protection charges shall be imposed only on
21 existing and future consumers who shall continue to pay wildfire
22 protection charges until the bonds and associated financing

1 costs are paid in full by the financing entity or, in the event
2 the wildfire protection property has been assigned to an
3 assignee in connection with the exercise of remedies upon a
4 default under the terms of the bonds, until the receipt of
5 proceeds by such assignee in an amount sufficient to repay
6 principal and interest on the bonds that would have accrued had
7 they remained outstanding.

8 **§269-E Wildfire protection plan financing order.** (a) A
9 financing order shall remain in effect until the bonds issued
10 under the financing order and all financing costs related to the
11 bonds have been paid in full or defeased by their terms or, in
12 the event the wildfire protection property has been assigned to
13 an assignee in connection with the exercise of remedies upon a
14 default under the terms of the bonds, until the receipt of
15 proceeds by such assignee in an amount sufficient to repay
16 principal and interest on the bonds that would have accrued had
17 they remained outstanding. A financing order shall remain in
18 effect and unabated notwithstanding the bankruptcy,
19 reorganization, or insolvency of the electric utility or the
20 commencement of any judicial or nonjudicial proceeding on the
21 financing order.

1 (b) Notwithstanding any other law, and except as otherwise
2 provided in § 269-F(e), with respect to wildfire protection
3 property that has been made the basis for the issuance of bonds
4 and with respect to any associated fixed recovery tax amounts,
5 the financing order, the wildfire protection charges, and any
6 associated fixed recovery tax amounts shall be irrevocable. The
7 state and its agencies, including the commission, pledge and
8 agree with bondholders, the owners and assignees of the wildfire
9 protection property, and other financing parties that the state
10 and its agencies will not take any action listed in this
11 subdivision. This subdivision does not preclude limitation or
12 alteration if full compensation is made by law for the full
13 protection of the wildfire protection property collected
14 pursuant to a financing order and of the bondholders and any
15 assignee or financing party entering into a contract with the
16 electric utility. The prohibited actions are as follows:

17 (1) Alter the provisions of this chapter, which authorize
18 the commission to create an irrevocable contract right
19 or chose in action by the issuance of a financing
20 order, to create wildfire protection property, and
21 make the wildfire protection charges imposed by a

1 financing order irrevocable, binding, nonbypassable
2 charges for all existing and future consumers;

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

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

9 (4) Except for changes made pursuant to the formula-based
10 true-up mechanism authorized under § 269-E(a)(1),
11 reduce, alter, or impair wildfire protection charges
12 that are to be imposed, billed, charged, collected,
13 and remitted for the benefit of the bondholders, any
14 assignee, and any other financing parties until any
15 and all principal, interest, premium, financing costs
16 and other fees, expenses, or charges incurred, and any
17 contracts to be performed, in connection with the
18 related bonds have been paid and performed in full or,
19 in the event the wildfire protection property has been
20 assigned to an assignee in connection with the
21 exercise of remedies upon a default under the terms of
22 the bonds, until the receipt of proceeds by such

1 assignee in an amount sufficient to repay principal
2 and interest on the bonds that would have accrued had
3 they remained outstanding.

4 The financing entity is authorized to include this pledge in the
5 bonds.

6 (c) Under a final financing order, the electric utility
7 shall retain sole discretion to select the financing entity and
8 to cause bonds to be issued, including the right to defer or
9 postpone the issuance, assignment, sale, or transfer of wildfire
10 protection property. The commission shall not impose any
11 penalty, disallowance, or other negative consequence on the
12 electric utility in respect of its exercise of such discretion.

13 (d) The public utilities commission may create, pursuant
14 to an application from an electric utility, a nonbypassable
15 surcharge referred to as a wildfire protection charge, which
16 shall be applied to recover financing costs and wildfire
17 protection costs. The wildfire protection charge shall be a
18 dedicated, discrete tariff rider. The commission shall, in any
19 financing order, establish a procedure for periodic true-up
20 adjustments to wildfire protection charges, which shall be made
21 at least annually and may be made more frequently. Within
22 thirty days after receiving an electric utility's filing of a

1 true-up adjustment, the public utilities commission's review of
2 the filing shall be limited to mathematical or clerical errors
3 as determined in accordance with any true-up adjustment formulas
4 set forth in the applicable financing order. The public
5 utilities commission shall either approve the filing or inform
6 the electric utility of any mathematical or clerical errors in
7 its calculation. If the commission informs the electric utility
8 of mathematical or clerical errors in its calculation, the
9 electric utility shall correct its error and refile its true-up
10 adjustment. The timeframes previously described in this
11 subsection shall apply to a refiled true-up adjustment. If,
12 after thirty days after receiving the electric utility's true-up
13 adjustment filing pursuant to this subsection (e), the
14 commission does not inform the electric utility of a
15 mathematical or clerical error in its calculation, the true-up
16 adjustment set forth in the electric utility's filing will go
17 into effect by operation of law and without further action of
18 the electric utility or the commission.

19 (e) Wildfire protection charges are wildfire protection
20 property when, and to the extent that, a financing order
21 authorizing the wildfire protection charges has become effective
22 in accordance with this chapter, and the wildfire protection

1 property shall thereafter continuously exist as property for all
2 purposes, and all of the rights and privileges relating to that
3 property shall continuously exist for the period and to the
4 extent provided in the financing order, but in any event until
5 the bonds are paid in full, including all principal, premiums,
6 if any, interest with respect to the bonds, and all other
7 financing costs are paid in full or, in the event the wildfire
8 protection property has been assigned to an assignee in
9 connection with the exercise of remedies upon a default under
10 the terms of the bonds, until the receipt of proceeds by such
11 assignee in an amount sufficient to repay principal and interest
12 on the bonds that would have accrued had they remained
13 outstanding. A financing order may provide that the creation of
14 wildfire protection property shall be simultaneous with the sale
15 of the wildfire protection property to an assignee as provided
16 in the application of the pledge of the wildfire protection
17 property to secure the bonds.

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

1 (g) Neither financing orders nor bonds issued under this
2 part shall constitute a debt or liability of the State or of any
3 political subdivision thereof, nor shall they constitute a
4 pledge of the full faith and credit of the State or any of its
5 political subdivisions, but are payable solely from the funds
6 provided therefor under this part. All bonds shall contain on
7 the face thereof a statement to the following effect: "Neither
8 the full faith and credit nor the taxing power of the State of
9 Hawaii is pledged to the payment of the principal of, or
10 interest on, this bond."¹

11 (h) The issuance of bonds under this part shall not
12 directly, indirectly, or contingently obligate the State or any
13 political subdivision thereof to levy or pledge any form of
14 taxation or to make any appropriation for their payment.

15 (i) To the extent that any interest in wildfire protection
16 property is sold, assigned, or is pledged as collateral pursuant
17 to subsection (b), the public utilities commission shall
18 authorize the electric utility to contract with the financing
19 entity and its assignees that it shall continue to operate its
20 system to provide service to consumers within its service
21 territory, shall collect amounts in respect of the wildfire

¹ [NTD: See footnote 1]

1 protection charges for the benefit and account of the financing
2 entity and its assignees, and shall account for and remit these
3 amounts to or for the account of the financing entity or its
4 assignees.

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

1 limitation collection of the wildfire protection charges and any
2 associated fixed recovery tax amounts, that are the subject of
3 the financing order.

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

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

1 property specified in a financing order shall continue to exist
2 until the bonds issued pursuant to a financing order and all
3 associated financing costs are paid in full or, in the event the
4 wildfire protection property has been assigned to an assignee in
5 connection with the exercise of remedies upon a default under
6 the terms of the bonds, until the receipt by such assignee of
7 proceeds in an amount sufficient to repay principal and interest
8 on the bonds that would have accrued had they remained
9 outstanding.

10 (l) Wildfire protection property, wildfire protection
11 charges, and the interests of an assignee, bondholder or
12 financing entity, or any pledgee in wildfire protection property
13 and wildfire protection charges shall not be subject to setoff,
14 counterclaim, surcharge, recoupment, or defense by the electric
15 utility or any other person or in connection with the
16 bankruptcy, reorganization, or other insolvency proceeding of
17 the electric utility, any affiliate of the electric utility, or
18 any other entity.

19 (m) Notwithstanding any other law to the contrary, any
20 requirement under this chapter or a financing order that the
21 public utilities commission takes action with respect to the
22 subject matter of a financing order shall be binding upon the

1 commission, as it may be constituted from time to time, and any
2 successor agency exercising functions similar to the commission,
3 and the commission shall have no authority to rescind, alter, or
4 amend that requirement in a financing order.

5 (n) The electric utility may sell and assign all or
6 portions of its interest in wildfire protection property to one
7 or more financing entities that make that wildfire protection
8 property the basis for issuance of bonds, to the extent approved
9 in a financing order. The electric utility or financing entity
10 may pledge wildfire protection property as collateral, directly
11 or indirectly, for bonds to the extent approved in the pertinent
12 financing orders providing for a security interest in the
13 wildfire protection property, in the manner set forth in section
14 269-G. In addition, wildfire protection property may be sold or
15 assigned by either of the following:

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

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

1 **§269-F Wildfire protection charge.** (a) The public
2 utilities commission may create, pursuant to a financing order
3 approved pursuant to section 269-E, a nonbypassable charge for a
4 financing entity, referred to as a wildfire protection charge
5 that shall be applied to the repayment of bonds and related
6 financing costs as described in this part. The wildfire
7 protection charge and any associated fixed recovery tax amounts
8 may be a usage-based charge, a flat user charge, or a charge
9 based upon customer revenues as determined by the public
10 utilities commission for each consumer class in any financing
11 order.

12 (b) As long as any bonds are outstanding and any financing
13 costs have not been paid in full or, in the event the wildfire
14 protection property has been assigned to an assignee in
15 connection with the exercise of remedies upon a default under
16 the terms of the bonds, proceeds in an amount sufficient to
17 repay principal and interest on the bonds that would have
18 accrued had they remained outstanding have not been received,
19 any wildfire protection charge and any associated fixed recovery
20 tax amounts authorized under a financing order shall be
21 nonbypassable. Subject to any exceptions provided in a
22 financing order, a wildfire protection charge and any associated

1 fixed recovery tax amounts shall be paid by all existing and
2 future consumers.

3 (c) The wildfire protection charge shall be collected by
4 an electric utility or its successors, in accordance with
5 section 269-F(a), in full through a charge that is separate and
6 apart from the electric utility's rates.

7 (d) An electric utility may exercise the same rights and
8 remedies under its tariff and applicable law and regulation
9 based on a consumer's nonpayment of the wildfire protection
10 charge as it could for a consumer's failure to pay any other
11 charge payable to that electric utility.

12 **§269-G Security interests in wildfire protection property;**
13 **financing statements.** (a) A security interest in wildfire
14 protection property is valid and enforceable against the pledgor
15 and third parties, subject to the rights of any third parties
16 holding security interests in the wildfire protection property
17 perfected in the manner described in this section, and attaches
18 when all of the following have taken place:

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

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

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

5 (b) A valid and enforceable security interest in wildfire
6 protection property is perfected when it has attached and when a
7 financing statement has been filed with the Bureau of
8 Conveyances of the State of Hawaii naming the pledgor of the
9 wildfire protection property as "debtor" and identifying the
10 wildfire protection property.

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

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

10 (d) Subject to the terms of the security agreement
11 covering the wildfire protection property and the rights of any
12 third parties holding security interests in the wildfire
13 protection property perfected in the manner described in this
14 section, the validity and relative priority of a security
15 interest created under this section shall not be defeated or
16 adversely affected by the commingling of revenues arising with
17 respect to the wildfire protection property with other funds of
18 the electric utility that is the pledgor or transferor of the
19 wildfire protection property, or by any security interest in a
20 deposit account of that electric utility perfected under article
21 490:9, into which the revenues are deposited.

1 Subject to the terms of the security agreement, upon
2 compliance with the requirements of section 490:9-312(b)(1), the
3 pledgees of the wildfire protection property shall have a
4 perfected security interest in all cash and deposit accounts of
5 the electric utility in which wildfire protection property
6 revenues have been commingled with other funds.

7 (e) If default occurs under the security agreement
8 covering the wildfire protection property, the pledgees of the
9 wildfire protection property, subject to the terms of the
10 security agreement, shall have all rights and remedies of a
11 secured party upon default under chapter 490, article 9, and
12 shall be entitled to foreclose or otherwise enforce their
13 security interest in the wildfire protection property, subject
14 to the rights of any third parties holding prior security
15 interests in the wildfire protection property perfected in the
16 manner provided in this section. In addition, the public
17 utilities commission may require in the financing order creating
18 the wildfire protection property that, in the event of default
19 by the electric utility in payment of wildfire protection
20 property revenues, the commission and any successor thereto,
21 upon the application by the pledgees or transferees, including
22 assignees of the wildfire protection property, under section

1 269-H, and without limiting any other remedies available to the
2 pledgees or assignees by reason of the default, shall order the
3 sequestration and payment to the pledgees or assignees of
4 wildfire protection property revenues. Any order shall remain
5 in full force and effect notwithstanding any bankruptcy,
6 reorganization, or other insolvency proceedings with respect to
7 the debtor, pledgor, or transferor of the wildfire protection
8 property. Any surplus in excess of: (1) amounts necessary to
9 pay principal, premiums, if any, interest, costs, and arrearages
10 on the bonds, and associated financing costs arising under the
11 security agreement, or (2) in the event the wildfire protection
12 property has been assigned to an assignee in connection with the
13 exercise of remedies upon a default under the terms of the
14 bonds, an amount sufficient, to repay principal and interest on
15 the bonds that would have accrued had they remained outstanding,
16 shall be remitted to the debtor or to the pledgor or transferor.

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

20 **§269-H Transfers of wildfire protection property.** (a) A
21 transfer or assignment of wildfire protection property by the
22 electric utility to an assignee or to a financing entity, or by

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

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

15 (1) Commingling of wildfire protection charge revenues
16 with other amounts;

17 (2) The retention by the seller of either of the
18 following:

19 (A) A partial or residual interest, including an
20 equity interest, in the financing entity or the
21 wildfire protection property, whether direct or
22 indirect, 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 wildfire protection charge;

4 (3) Any recourse that an assignee 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 wildfire
9 protection charge 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 wildfire protection
13 charge as provided in the financing order.

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

17 (1) The public utilities commission issues the financing
18 order authorizing the wildfire protection charge
19 included in the wildfire protection property; and

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

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 chapter 409, article 9, part 5,
4 naming the assignor of the wildfire protection property as
5 debtor and identifying the wildfire protection property shall
6 have priority. Any description of the wildfire protection
7 property shall be sufficient if it refers to the financing order
8 creating the wildfire protection property. A copy of the
9 financing statement shall be filed by the assignee with the
10 public utilities commission, and the commission may require the
11 assignor or the assignee to make other filings with respect to
12 the transfer in accordance with procedures that the commission
13 may establish, but these filings shall not affect the perfection
14 of the transfer.

15 **§269-I Financing entity successor requirements; default of**
16 **financing entity.** (a) Any successor to an electric utility
17 subject to a financing order, whether pursuant to any
18 bankruptcy, reorganization, or other insolvency proceeding, or
19 pursuant to any merger, sale, or transfer, by operation of law,
20 or otherwise, shall be bound by the requirements of this part.
21 The successor of the electric utility shall perform and satisfy
22 all obligations of the electric utility under the financing

1 order, in the same manner and to the same extent as the electric
2 utility, including the obligation to collect and pay the
3 wildfire protection charge to any financing party as required by
4 a financing order or any assignee. Any successor to the
5 electric utility shall be entitled to receive any fixed recovery
6 tax amounts otherwise payable to the electric utility.

7 (b) The public utilities commission may require in a
8 financing order that, if a default by the electric utility in
9 remittance of the wildfire protection charge collected arising
10 with respect to wildfire protection property occurs, the public
11 utilities commission, without limiting any other remedies
12 available to any financing party by reason of the default, shall
13 order the sequestration and payment to the beneficiaries of the
14 wildfire protection charge collected arising with respect to the
15 wildfire protection plan property. Any order shall remain in
16 full force and effect notwithstanding any bankruptcy,
17 reorganization, or other insolvency proceedings with respect to
18 the electric utility.

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

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- 1 (1) That occurrence shall not affect any action allowed
2 under this part that is taken before that occurrence
3 by the public utilities commission, a financing
4 entity, a bondholder, or any financing party, and any
5 the 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-D, 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
22 the issue of its stocks or stock certificates, [~~or~~] bonds,

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

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

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

6 SECTION 5. Notwithstanding the provisions of section 39A-
7 191, Hawaii Revised Statutes, and the provisions of Act 182,
8 Session Laws of Hawaii 2022, as amended by Act 262, Session Laws
9 of Hawaii 2023, the legislature authorizes the issuance of
10 special purpose revenue bonds for wildfire protection costs that
11 require an allocation of the annual state ceiling under section
12 39B-2, Hawaii Revised Statutes, for the period July 1, 2024,
13 through December 31, 2028. Notwithstanding Section 39A-195 of
14 Hawaii Revised Statutes, a project agreement entered into in
15 connection with the issuance of special purpose revenue bonds to
16 finance wildfire protection costs may include a project
17 agreement with an affiliate of an electric or gas utility and
18 may contain provisions limiting the obligation to pay, and the
19 security for the payment of, debt service and related deposits
20 and costs in respect of such bonds or loans funded by such bonds
21 to wildfire protection charges and wildfire protection property.

1 SECTION 6. The legislature authorizes the allocation of
2 the annual state ceiling under section 39B-2, Hawaii Revised
3 Statutes, to the issuance of bonds issued pursuant to section 2
4 of this Act that require such allocation in order for interest
5 on the bonds to be tax-exempt for federal income tax purposes.

6 SECTION 7. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

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

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

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

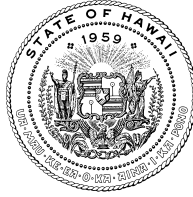
Report Title:

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. (SD1)

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



EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

Senate Committees on Ways and Means and Judiciary

March 1, 2024

10:31 a.m.

State Capitol, Conference Room 211 and Videoconference

With Comments

Senate Bill No. 2922, SD1, Relating to Public Utilities

Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Senate Committees on Ways and Means and Judiciary:

The Office of the Governor offers the following comments on S.B. No. 2922, SD1, Relating to Public Utilities.

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

S.B. No. 2922, SD1, would establish and implement the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires. While the Office of the Governor supports the general intent of this measure, we have concerns with this approach that would allow “catastrophic wildfire costs” to be included as “recovery costs.” We would respectfully ask that the Legislature considers the securitization model as outlined in S.B. No. 3096, SD1, Relating to Wildfire Risk Mitigation. This bill has been more thoroughly vetted through our administration, although we are still receiving comments from bond counsel. But, we feel that the approach in that bill which limits securitization to wildfire protection plan costs for planning, implementation and execution approved by the public utilities commission, is a more prudent approach to this financing model which is borne by the rater-payers.

We need to ensure wildfire mitigation and prevention policies and plans are adopted by the State, but we need to also find reasonable ways to finance these improvements and investments. Through the securitization model that is proposed in S.B. No. 3096, SD1, resources will be available to address wildfire risk mitigation in a manner that should have a minimal impact on utility customers' electricity bills.

The Governor is keenly aware of our state's high electrical rates and the impact that it has on all of our residents. But, the wildfires were a stark and harsh signal to our state that we need to do more to protect against disasters like wildfires. The Office of the Governor supports

Testimony of Office of the Governor

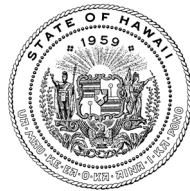
S.B. No. 2922, SD1

March 1, 2024

Page 2

S.B. No. 3096, SD1, to create a process for wildfire plan protection and mitigation that must be approved by the PUC. Once approved, the PUC would also then have the ability to review a request for securitization financing. Utility rate securitization transactions have an extensive track record of success. Bonds securitized by rates receive AAA credit ratings from credit rating agencies and thus provide a means of securing capital at a lower interest rate than those currently available to utilities, in particular utilities without an investment grade credit rating.

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



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

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

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

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

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

WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON WAYS AND MEANS AND JUDICIARY
ON
SENATE BILL NO. 2922, S.D. 1

March 1, 2024
10:31 A.M.
Room 211 and Videoconference

RELATING TO PUBLIC UTILITIES.

The Department of Budget and Finance (B&F) offers the following comments on Senate Bill (S.B.) No. 2922, S.D. 1, which establishes and implements the Catastrophic Wildfire Securitization Act to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

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

Thank you for your consideration of our comments.

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

TO THE
SENATE COMMITTEES ON
WAYS AND MEANS
and
JUDICIARY

March 1, 2024
10:31 a.m.

Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Committees:

MEASURE: S.B. No. 2922 SD1

TITLE: RELATING TO PUBLIC UTILITIES.

DESCRIPTION: Establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

POSITION:

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

COMMENTS:

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

On February 9, the Commission offered testimony on this measure before the Committee on Commerce and Consumer Protection and appreciates the work done by that Committee to advance this measure. The Commission notes, however, that S.B. 3096

SD1 (Administration bill) contain provisions that allow electric utilities to utilize securitization to recover certain costs related to wildfire mitigation and recommends that the Legislature move that bill forward rather than the present bill.

Nevertheless, should the Legislature intend to move this bill forward, the Commission urges the Legislature to keep the following items in mind:

- Costs that may be recovered via securitization should include costs related to a catastrophic wildfire that the Commission has determined to be prudently incurred by the electric utility;
- The Commission should have the discretion to determine whether recoverable costs include professional, consulting, and other similar costs given the totality of the situation;
- Items securitized (including potential offsets), securitization term and ratepayer benefits should be analyzed, including evaluating the impact on customers which will be responsible for such charges. An appropriate review process should be in place to achieve the lowest cost issuance;
- Securitization opportunities related to wildfires should be limited to electric utilities;
- Given that any fixed recovery charges that might be authorized would be separate from existing rates, conditioning the issuance of a financing order upon net savings to ratepayers means that such a financing order cannot be issued without also disturbing rates that the Commission has previously determined to be just and reasonable; and
- Conditioning the issuance of a financing order upon Commission approval of a reorganization plan that includes restructuring the electric utility or different ownership models may jeopardize the electric utility's ability to utilize any securitization enabled by this bill.

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

The Commission recommends removing the term "Public utility" from the list of defined terms (page 5, lines 20-21) and replacing it with the term "electric utility", as defined below.

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

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

The Commission also recommends the following specific amendments.

On page 6, Line 8-19:

"Recovery costs" means any of the following:

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

On page 8, Line 7-17:

§ -3 Financing orders; authorization. (a) A public utility that applies to the commission for recovery of costs and expenses that the Commission has determined to be prudently incurred and related to a catastrophic wildfire or the mitigation of the risk of wildfires, may request the commission to issue a financing order to authorize the costs and expenses that the commission finds to be just and reasonable to be recovered through fixed recovery charges pursuant to this chapter, and order that any

portion of the public utility's federal and state taxes associated with those fixed recovery charges and not financed from proceeds of recovery bonds may be recovered through fixed recovery tax amounts.

On page 10, Line 3-15:

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

On page 10, Line 16 through page 11, Line 14:

(3) The ~~public~~ electric utility provides, and the commission approves, a ~~reorganization~~ wildfire protection plan that satisfies the following conditions:

~~(A) The plan provides for a restructuring of the public utility that includes the separation of energy generation and delivery functions;~~

~~(B) The plan provides for a system of enhanced local governance and accountability, which may include alternate~~

~~models of public ownership;~~

(~~CA~~) The plan includes a framework for addressing wildfire safety and risk management, including monitoring and enforcement, independent review and oversight, and performance-based utility incentive and executive compensation mechanisms; and

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

(~~EB~~) The plan is consistent with meeting the public electric utility's and the State's clean energy and climate mandates and obligations.

On page 12, Line 2-9:

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

On page 17, Line 8-11:

(k) The commission shall establish procedures for the expeditious processing of an application for a financing order, which shall provide for the approval or disapproval of the application within ~~one hundred twenty~~ ninety days of the ~~application~~ last filing in the applicable docket.

Thank you for the opportunity to testify on this measure.



INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1260 EMPOWERING THE PACIFIC

JOINT SENATE COMMITTEE ON FINANCE and JUDICIARY

HEARING DATE: Friday, March 1, 2024
TIME: 10:31 a.m.
PLACE: State Capitol
Conference Room 211

RE: In Support of Senate Bill 2922 SD1 with Amendments

Aloha Honorable Chair(s) Dela Cruz and Rhoads, Vice Chair(s) Moriwaki and Gabbard, and Members of the Joint-Committee.

The International Brotherhood of Electrical Workers Local 1260 (IBEW 1260) would like to respectfully offer the following testimony on Senate Bill 2922 SD1.

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

IBEW 1260 supports Senate Bill 2922 SD1 which establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires, however ***IBEW 1260 respectfully requests that the provisions on page 10, line(s) 19 to 21 referencing the restructuring of the public utility to include the separation of generation and delivery, as well as the provisions on page 11, line(s) 1 to 3 referencing alternate models of public ownership, be deleted from the measure.***

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

This bill and a utility's ability to remain economically viable under circumstances that may or may not have been under their control, by having access to low-cost financing for capital costs resulting from catastrophic events is imperative to the utilities continued viability. We humbly ask that you pass SB2922 SD1, but respectfully request that you delete the provisions identified above, as they will impose undue hardship upon our union and adversely impact our membership.

Mahalo for the opportunity to testify on this important matter.



Testimony Before the Senate Committees on
Ways and Means and Judiciary

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

Friday, March 1, 2024; 10:31 am
Conference Room #211 & Videoconference

Senate Bill No. 2922 SD 1 - RELATING TO PUBLIC UTILITIES

To the Honorable Donovan M. Dela Cruz and Karl Rhoads, Chairs, Honorable Sharon Y. Moriwaki and Mike Gabbard, Vice Chairs, and Members of the Committees:

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

KIUC supports this legislation with modifications.

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

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

KIUC does not anticipate the need to seek a financing order for wildfire mitigation efforts, or for utility system rebuilding cost as proposed in the bill because KIUC would have access to funding assistance from the Federal Emergency Management Agency (FEMA). It is reasonable to expect FEMA would cover 75% of KIUC's rebuilding costs following a major catastrophic event, which would include a wildfire. Additionally, as a cooperative, KIUC has access to low-cost capital through the U.S.D.A. Rural Utilities Service (RUS), which would likely be a lower interest rate source of debt capital than even AAA-rated securitized bonds. If RUS debt is unavailable, KIUC would seek capital from one of our cooperative lenders, such as the National Rural Utilities Cooperative Finance Corporation or CoBank.

KIUC appreciates the flexibility to potentially utilize the provisions of a financing order in the event Kauai suffered from a catastrophic wildfire event which could result in responsibility for damages and claims outside of utility property covered under FEMA provisions or typically available for RUS financing. Due to the significant costs of issuing and servicing a securitized debt offering, securitization would likely only be applicable to wildfire recovery costs in excess of \$100 million dollars. KIUC does not anticipate our wildfire mitigation costs and expenses reaching this level, making securitization of limited applicability to financing the needs for Kaua'i.

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

KIUC recommends the bill be amended to include a provision for electric cooperatives to recover allowable costs as a surcharge or "rider" to member electric rates upon approval of costs by the HPUC, in the event that issuing bonds under securitization provisions is not cost-effective.

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

(m) Absent a financing order, the public utilities commission may create, pursuant to an application from a cooperative electric utility, a non-bypassable surcharge referred to as a fixed recovery charge, which shall be applied to recover recovery costs as described in § -2 Definitions. The fixed recovery charge will be a dedicated, discrete tariff rider and shall be reconciled and adjusted on a yearly basis via a yearly informational filing with the HPUC and shall go into effect 30 days after such yearly filing.

Finally, **KIUC supports the language in § -3, (d); Page 12, lines 10-12:** "Fixed recovery charges and any associated fixed recovery tax amounts shall be imposed only on existing and future ratepayers in the utility service territory." KIUC supports the intent to specifically avoid statewide cost recovery mechanisms tied to securitization provisions alone.

Mahalo for your consideration.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEES ON
WAYS & MEANS
AND
JUDICIARY**

**SB 2922, SD1
Relating to Public Utilities**

Decision Making – Written Testimony Only

Friday, March 1, 2024

10:31 AM

State Capitol, Conference Room 211

Kevin Katsura
Director, Regulatory Non-Rate Proceedings
Hawaiian Electric

Dear Chair Dela Cruz, Chair Rhoads, Vice Chair Moriwaki, Vice Chair Gabbard, and Members of the Committees,

My name is Kevin Katsura and I am testifying on behalf of Hawaiian Electric in **support of SB 2922, SD1, Relating to Public Utilities and requesting amendments** as we have grave concerns regarding the language proposed in the SD1 draft, but would like to work with the current committees to improve the language. The increasing risk of catastrophic wildfires has placed an unprecedented financial strain on electric utilities, necessitating new solutions to ensure continued safe and affordable electric service. This bill presents a strategic approach to this complex problem by introducing a securitization mechanism specifically tailored to wildfire-related costs. This bill provides a utility access to capital in response to a climate related event and has been adopted in some form in more than twenty-five states.

SB 2922, SD1 also known as the Catastrophic Wildfire Securitization Act, would allow the Public Utilities Commission (“Commission”) to authorize the issuance of bonds to pay for electric utilities’ costs and expenses related to catastrophic wildfires. The bonds would be backed—that is, securitized—by a guaranteed revenue stream of future rate payments.

Additionally, while we strongly support the original version of the bill – the SD1 amendments present grave concerns that we request the committee consider striking part of those amendments. The SD1 amendments are proposing to require that certain conditions be met before a utility can apply for securitization of funds, however these conditions require further deliberations before the legislature considers requiring them. Hawaiian Electric respectfully requests that the committees strike the SD1 amendments starting on page 10, line 16 through page 11, line 14 for the following reasons:

- a. The provision which requires dismantling company operations by splitting the generation operation (power plants) from the utility’s delivery functions (pole & lines) as a condition on the utility’s use of securitization would work against ratepayer interest by increasing costs. Recent articles in the Wall Street Journal and New York times have detailed that similar measures on the mainland have resulted in vastly higher electricity costs for consumers.¹ Experimenting with separation could lead to negative unanticipated consequences and destabilization of the utility’s operations at a critical time, when the utility serves 95% of Hawaii residents, including critical defense facilities of the U.S. military.
- b. The provision suggesting an alternate model of ownership was studied by DBEDT who hired London Economics as recently as 2019². The study concluded that changing the ownership model of the utility would not be the way to improve electric services or lower rates. Instead, the

¹ <https://www.wsj.com/articles/texas-electric-bills-were-28-billion-higher-under-deregulation-11614162780>; <https://www.nytimes.com/2023/01/04/business/energy-environment/electricity-deregulation-energy-markets.html>

² https://energy.hawaii.gov/wp-content/uploads/2019/06/HL_DBEDT_UTILITYMODELSTUDY.PDF

State could achieve its goals through regulatory reform rather than a change in the utility ownership model.

Aside from these specific problems with these amendments, more broadly, these ideas require further deliberations before the Legislature considers adopting them.

These amendments propose large shifts in Hawaii energy policy that were proposed with minimal discussion and process and could create disruption and uncertainty in our ability to secure the capital we need to continue to serve Hawaii cost effectively, not just now, but for decades. And the amendments put at risk the success of important legislation that is necessary to protect Hawaii and lower electricity costs for consumers.

Under the original version of SB 2922, SD1 the commission may authorize the issuance of these bonds only under certain circumstances. The commission must determine that the wildfire costs and expenses the bonds are covering are just and reasonable. It must determine that the payment of interest rates and other bond-related fees is itself just and reasonable. It must determine that issuance of the bonds is consistent with the public interest.

SB 2922, SD1 would also codify a series of specific requirements designed to protect the integrity of these bonds. These detailed requirements parallel similar requirements in securitization statutes in other states, including California. They are necessary for the bonds to satisfy the expectations of the market for utility bonds; the requirements of rating agencies; and the rules of the IRS for favorable tax treatment.

In the wake of the Maui fires, electric utilities will need to raise substantial amounts of capital to cover expenses associated with catastrophic wildfires.

Securitization is the most efficient, least-cost way to finance those expenses. Bonds securitized by rates receive AAA credit ratings from credit ratings agencies and thus

provide a means of securing capital at a lower interest rate than those currently available to utilities. For Hawaiian Electric, the potential savings are even greater, because rating agencies have rated us below investment-grade in the wake of the Maui fires, even before any determination of cause or fault has been reached. That rating means our ability to raise capital at this time is constrained and costly, which could harm customers through higher rates and reduced investment. A financially weak utility is less able to make the investments and commitments Hawaii needs to meet its renewable energy and other goals.

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

In summary, SB 2922, SD1 will enable the expenses due to catastrophic wildfires – that the commission determines customers should pay – to be financed at a lower cost and with less impact on customer bills. It will support the financial strength of electric utilities, which will enable them to make investments to reduce the risk of future wildfires at the lowest possible cost. And it will result in the adoption of a mechanism for funding wildfire costs that is well-established and well-tested, providing an added assurance of efficacy.

Thank you for the opportunity to testify in support of SB 2922, SD1. Please pass SB 2922, SD1 with amendments.

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



March 1, 2024

Via Electronic Submittal

Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, March 1, 2024, 10:31 am
Conference Room 211 & Videoconference

RE: SB 2922 SD1 and SB 3344 SD1

Aloha Chair Dela Cruz, Vice Chair Moriwaki, Chair Rhoads, Vice Chair Gabbard and members of the Committees:

Clearway Energy Group ("Clearway") supports the intent of SB 2922, which provides a mechanism for securitization of costs associated with utility wildfire liability, and SB 3344, which creates a fund to address future wildfire costs.

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

In supporting the intent of SB 2922 and SB 3344, Clearway wishes to underscore the importance of a financially stable utility in keeping Hawai'i on track to meet its clean energy and grid reliability goals. Independent power producers such as Clearway enter into PPAs with the utility based on the strength of the utility's credit and confidence that it will honor its contractual obligations to pay for the power produced. These renewable power plants operate under supply contracts with Hawaiian Electric for decades, and the financial viability of the plants depends on the long-term financial viability of our customer. In the case of Clearway's operating plants, a stable long-term revenue stream goes to fund the long-term debt that financed the upfront capital costs on equipment and labor to construct the projects.

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

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

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group



February 29, 2024

Senator Donovan Dela Cruz, Chair
Senator Sharon Moriwaki, Vice Chair
Committee on Ways and Means

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary

Friday, March 1, 2024; 10:31 a.m.
Conference room 211 & Videoconference

RE: SB 2922 SD1 – Relating to Public Utilities – In Support

Aloha Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard and members of the Committees,

My name is Wren Wescoatt, Vice President of Development for Longroad Energy (Longroad), and I am testifying in support of SB 2922 SD1. This bill is an important step toward restoring Hawaiian Electric Company's (HECO's) credit rating which will reduce the financial costs to ratepayers and allow the utility to continue progress on meeting the state's clean energy goals.

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

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

SB 2922 SD1 offers an important solution to help restore HECO's credit rating. Securitization would allow the utility a critical path to access low-interest capital to fund its normal operations and system improvements. It also would allow HECO to enter into new Power Purchase Agreements that are currently being negotiated with Longroad and other clean power producers. Most importantly, this bill

could go a long way toward improving the utility's credit rating, which would ultimately lower costs for ratepayers and enable Hawaii's clean energy transition to continue.

I would encourage you to please pass SB 2922 SD1.

Mahalo,



Wren W. Wescoatt

Vice President of Development

wren.wescoatt@longroadenergy.com

808-780-1000



MAUI

CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE SENATE COMMITTEES ON
JUDICIARY and WAYS AND MEANS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
Friday, March 1, 2024 AT 10:31 A.M.**

To The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Mike Gabbard, Vice Chair
Members of the committee on Judiciary
To The Honorable Senator Donovan M. Dela Cruz, Chair
The Honorable Senator Sharon Y. Moriwaki, Vice Chair
Members of the committee on Ways and Means

COMMENTS ON SB2922 SD1 RELATING TO PUBLIC UTILITIES

The Maui Chamber of Commerce would like to **COMMENT on SB2922 SD1.**

The Chamber agrees that it is important for electric utilities to be able to fund their recovery costs after a catastrophic wildfire such as the August 8 wildfires on Maui. However, we note that there is not any financial analysis that determined that this is the most cost-effective way to fund the utility's costs and expenses arising out of catastrophic wildfires. We are concerned about the potential cost to consumers during this challenging time and when all costs are already increasing. Each of these incremental costs are what creates the widening gap between minimum wage and a true living wage.

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

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

Mahalo for the opportunity to **COMMENT on SB2922 SD1.**

Sincerely,

Pamela Tumpap
President

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



LATE

Email: communications@ulupono.com

SENATE COMMITTEES ON WAYS & MEANS AND JUDICIARY
Friday, March 1, 2024 — 10:31 a.m.

Ulupono Initiative supports the intent of SB 2922 SD1, Relating to Public Utilities.

Dear Chair Dela Cruz, Chair Rhoads, and Members of the Committees:

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

Ulupono supports the intent of SB 2922 SD1 and offers comments. This bill establishes and implements the Catastrophic Wildfire Securitization Act, to allow public utilities to securitize rates in order to raise capital that can be used to pay for costs and expenses arising out of catastrophic wildfires.

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

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

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

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

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



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

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

While this bill's objectives are clear and necessary, it is essential to ensure that the mechanisms for rate securitization are transparent and include robust safeguards to prevent undue financial burdens on ratepayers. It would be prudent to consider provisions for regular audits and public reporting to maintain accountability and transparency in how the raised funds are utilized towards wildfire mitigation and recovery efforts. Furthermore, Ulupono recommends that the bill include a requirement that, in order to seek approval for recovery of costs using securitized rates, the utility develop and seek approval from the Public Utilities Commission for a wildfire protection plan, and that the process to develop such a plan be one that is open to community and stakeholder engagement. Ulupono considers community engagement a crucial component of the decision-making process, particularly when it comes to investments that support community health and safety—even more so when the investments will ultimately be at the ratepayer's/community's expense.

Ulupono strongly urges removing the Section 3 (c) 3, which requires that certain electric utilities, when submitting for recovery of costs associated with securitization of specified costs, be subject to a Public Utilities Commission review and issuance of a financing order that provides for, among other things, the restructuring of the utility and possible alternate modes of ownership. This amendment is unrelated to the establishment of the wildfire relief securitization and effectively eliminates the opportunity for a major stakeholder to participate in securitization unless they submit to a wholesale organizational overhaul. This “poison pill” amendment will result in the subject electric utility being unable to participate in securitization and increase recovery risk to future wildfire victims as well as increase costs to utility customers who will as a result be subject to increased finance costs. As an investor-owned utility, its fiduciary duty to shareholders would likely prohibit the utility from agreeing to such restructuring conditions, even if they wanted to participate in the fund. In order to achieve the desired outcome of protecting wildfire victims, it is crucial that the investor-owned utility be a participant in this fund.

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

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

SB-2922-SD-1

Submitted on: 2/29/2024 12:28:08 AM

Testimony for WAM on 3/1/2024 10:31:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

More Corruption form the Government !!!!!

We the people have Had it with Government Corruption !!!!