

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

Senate Committee on Public Safety and Intergovernmental and Military Affairs

Friday, February 9, 2024

3:01 p.m.

State Capitol, Conference Room 225 and Videoconference

In Support

Senate Bill No. 3096, Relating to Wildfire Risk Mitigation

Chair Wakai, Vice Chair Elefante, and Members of the Senate Committee on Public Safety and Intergovernmental and Military Affairs:

The Office of the Governor supports S.B. No. 3096, Relating to Wildfire Risk Mitigation.

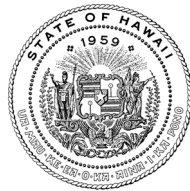
The Maui wildfire resulted in unbearable loss of lives, homes, infrastructure, and businesses. This tragic event is a wake-up call that due to climate changes, the risk of catastrophic wildfires, along with other natural disasters in Hawaii has increased.

S.B. No. 3096 would create a process for electric utilities to develop and submit effective wildfire risk protection plans to the public utilities commission (PUC) for approval and would allow for the recovery of related costs and expenses through the securitization process, while also avoiding a disproportionate impact on a specific ratepayer or county.

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, 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 this bill 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

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

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

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

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL
AND MILITARY AFFAIRS
ON
SENATE BILL NO. 3096

February 9, 2024
3:01 P.M.
Room 225 and Videoconference

RELATING TO WILDFIRE RISK MITIGATION.

The Department of Budget and Finance (B&F) offers the following comments on Senate Bill (S.B.) No. 3096 which creates a process whereby electric utilities develop and submit effective wildfire risk 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. Included in SB No. 3096 is 1) the ability for an electric utility or department (defined as any State Department or Agency in the bill) to apply to the public utilities commission for one or more financing orders to issue bonds; and 2) authorizes the issuance of Special Purpose Revenue Bonds (SPRB) for wildfire risk mitigation purposes.

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

Thank you for your consideration of our comments.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 3096, RELATING TO WILDFIRE RISK MITIGATION.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND
MILITARY AFFAIRS

DATE: Friday, February 9, 2024 **TIME:** 3:01 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

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

Chair Wakai and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill creates a process whereby electric utilities develop and submit wildfire risk protection plans to the Public Utilities Commission for approval and allows the electric utilities to recover the costs of its wildfire risk mitigation plan through the securitization of such costs by issuing bonds, which would be repaid by the electric utilities' customers.

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 House Bill No. 2407, which is the companion bill to this bill, and which, in its current draft, is identical to this bill. Mr. Scully provided the attached report, and we agree with his recommendations.

We respectfully ask the Committee to consider Mr. Scully's comments. We would be happy to collaborate with the Committee in formulating amendments to this bill consistent with his recommendations.

Thank you for the opportunity to testify.

ATTACHMENT TO ATG TESTIMONY ON SB 3096 (HB 2407 is the companion bill to SB 3096)

Hi Randall,

Based on our review of House Bill No. 2407, please find our comments below:

1. **Definition of Financing Entity** (Section –2 Definitions, page 5, lines 5 through 8): The term is currently defined as the public utility that is authorized to issue bonds or acquire wildfire protection property. No provision is made in the bill for a financing entity that is a separate legal entity from the public utility. Financings structured with bankruptcy remote special purpose entities as the issuer are often the most cost effective way to leverage dedicated revenue streams or property such as the wildfire protection fee and wildfire protection property. We would recommend revising the definition to contemplate this. In a typical structured finance transaction, we would expect a financing entity to be a bankruptcy-remote special purpose vehicle that would issue the bonds; however, non-bankruptcy-remote vehicles could be contemplated.
2. **Sale, Assignment or Pledge of Wildfire Protection Property.** The bill does not provide for the sale, assignment or pledge of wildfire protection property except in the case of a successor to a financing entity (section 2 page 17 lines 1 through 9). The right to sell, assign or pledge such property to a separate legal entity is essential to a structured finance using a special purpose entity to issue the bonds. We would recommend that HB No. 2407 include provisions similar to those in HB 2265 at Section 2 at pages 17 through 21 under the heading section **-4 Recovery bonds; issuance; recovery property interests** and Section 2 at pages 28-31 under the heading section **-6 Transfers of recovery property**, subject to the comment we made to those provisions regarding carve out to true sale treatment (which for your convenience we have set forth in the attached rider).
3. **Security Interests in Wildfire Protection Property.** Other than a commission sequestration order for payment of wildfire protection fees to beneficiaries in the event of default by a financing entity, the bill contains no specific provisions for creditor rights. The bill does not provide for the creation, attachment and perfection of security interests in wildfire property and the wildfire protection fees. Such security interests are critical to structured financing. We would recommend that HB No. 2407 include provisions similar to those in HB 2265 at Section 2 at pages 21 through 28 under the heading section **-5 Security interests in recovery property; financing statements**, subject to the comments we made those provisions regarding commingled cash, priority of liens and release of liens (which for your convenience we have set forth in the attached rider).
4. **Special Purpose Revenue Bonds.** Section 5 authorizes the issuance of special purpose revenue bonds for wildfire risk mitigation purposes. Special purpose revenue bonds are issued by the State acting through the Department of Budget and Finance and this section may be contradictory to or at least unclear with respect to the definition of financing entity. We would recommend clarifying that a financing entity could include a governmental issuer issuing bonds for the benefit of a utility. To that effect, we have attached a separate rider to the bill regarding a governmental entity as the financing entity to provide for the issuance of tax-exempt debt.

Best regards,
Craig

Craig M. Scully

Partner and Chair, *Government & Public Finance*

Katten

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**Rider to H.B. No. 2407 Regarding Sale, Assignment and Pledge of
and Security Interests in Wildfire Property**

Comments to Provisions of HB No 2265 Re Assignment or Pledge of Wildfire Protection Property:

Carveout to True Sale Treatment (Section –6(a), page 28, lines 19 and 20 of HB No. 2265): It is unclear why the transfer of recovery property would be treated as a true sale other than for federal and state income and franchise tax purposes. This would seem to negate the true sale treatment, which could be problematic in a bankruptcy scenario.

Comments to Provisions of HB No 2265 Re Security Interests in Recovery Property:

Commingled Cash (Section – 5(d), page 23, lines 9 through 21, and page 24, line 1 of HB No. 2265): The provision provides that validity and priority of a security interest will not be adversely affected by the commingling of revenues with other funds of the public utility or by a security interest in a deposit account of the public utility. However, in a typical bankruptcy scenario, commingled funds held in an account pledged in favor of another entity would adversely affect the interests of the recovery bondholders. This risk is even greater in a situation where a financing entity issues the securities, but the funds are received in the public utility’s account. If the public utility files for bankruptcy prior to distributing cash proceeds allocable to the financing entity, we would expect the party that has a security interest over the account where those funds are held to have a higher priority claim on those amounts.

Priority of Liens (Section –5(g), page 26, lines 1 through 7 of HB No. 2265): This provision provides that, upon the effective date of a financing order, a first priority lien on all recovery property will automatically arise. This provision seems to contradict Section –5(a) which requires, among other items, value being given by the pledgee and the pledgor signing a security agreement for a security interest to attach. The provision also appears to contradict Section –5(b) which requires the filing of a financing statement to perfect. Furthermore, Sections –5(c) and –5(g) contemplate the possibility of conflicting security interests and provide that those conflicting security interests will rank according to the priority of time of perfection. To the extent that differing priorities may exist, this also contradicts the idea that a first priority lien would automatically arise, as mentioned above. Query whether the language in Section –5(g) is partially redundant of the provisions set forth in Sections –5(a), –5(b) and –5(c).

Release of Liens (Section –5(g), page 26, lines 17 through 21 of HB No. 2265): This provision suggests that a lien will attach to recovery property regardless of who owns it. However, if the securityholders foreclose on the property following an event of default and sell the recovery property, the lien should automatically release. Otherwise, it would create liquidity issues.

**Rider to H.B. No. 2407 Enabling the Issuance of
Tax-Exempt Private Activity Bonds for Eligible Recovery Costs**

Explanation

Recovery Costs consisting of capital improvements (such as expenditures to improve safety and reliability) to separate and distinct local utility systems for the local furnishing of electric energy in the respective counties in which they operate may be eligible for tax-exempt private activity bond financing under federal tax law. Such bonds would reduce the interest cost of financing such investments and pass the benefit on to customers in the form of lower rates, in furtherance of the purpose of H.B. No. 2407.

Federal tax law requires that tax-exempt bonds be issued by the State or local governmental unit or an instrumentality thereof (“governmental issuer”). Under H.R. 2407, only a “financing entity” can issue bonds (see §2 Definitions at page 5, lines 5 – 8). It is not clear that a governmental issuer is a “financing entity. Accordingly, a rider to H.B. No. 2407 is proposed to make that clarification.

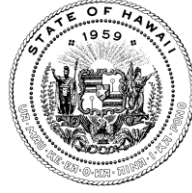
As a financing entity, the governmental issuer would issue revenue bonds payable solely from fixed recovery charges established pursuant to a financing order such that the bonds would not under State law be treated as a debt or liability of the issuer or the State and the bonds would not constitute a pledge of the full faith and credit of the State or any political subdivision thereof.

In order for bonds issued by a governmental issuer as a financing entity to qualify as federally tax-exempt, the bonds would need to satisfy all the requirements imposed by the federal tax code as a condition to tax-exempt status, including an allocation of the State’s private activity bond volume cap.

Rider to H.B. No. 2407

SECTION ____. FINANCING ENTITY. Section 2 of H.B. 2407 is hereby amended at §2 with respect to §269-A Definitions by deleting the definition of “Financing entity” and replacing such definition with the following:

“Financing entity” means a public utility and an entity to which a public utility sells or assigns all or a portion of such public utility’s interest in wildfire protection property, in each case as approved by the commission in a financing order. For this purpose, an entity to which a public utility sells or assigns all or a portion of such public utility’s interest in wildfire protection property shall include any governmental entity eligible to issue federally tax-exempt obligations pursuant to Section 103 of the Internal Revenue Code of 1986, including the State or a political subdivision thereof or any department, agency or instrumentality of the foregoing, provided that the bonds issued thereby shall not constitute a debt or liability of the State or any political subdivision thereof or any department, agency or instrumentality thereof and shall not constitute a pledge of the full faith and credit of such entity or of the State or any political subdivision thereof, but shall be payable solely from the funds provided under this chapter.



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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Public Safety and Intergovernmental and Military Affairs
Friday, February 9, 2024
3:01 p.m.
Conference Room 225**

**On the following measure:
S.B. 3096, RELATING TO WILDFIRE RISK MITIGATION**

Chair Wakai and Members of the Committee:

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 supports this administration bill.

The purpose of this bill is to create a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission (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.

The tragedy and devastation of the wildfires that arose on Maui during the August 8, 2023 windstorm must be prevented from reoccurring. The Department supports this bill, which requires that electric utilities implement wildfire protection plans. The Department appreciates that the bill focuses on creating pathways to prevent wildfires and protects at-risk infrastructure while also seeking to minimize the financial impact on ratepayers.

The Department strongly supports encouraging electric utilities to proactively manage their wildfire risk by requiring that they develop and regularly update their wildfire protection plans. The Department appreciates that the bill 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 the bill by requiring that the surcharge for the wildfire protection fee be non-bypassable. The Department also appreciates that the bill requires that the impacts of financing the wildfire protection costs be minimized.

However, the Department is concerned with the language of the decision-making procedures in the proposed § 269-B and § 269-C for best practices and wildfire protection plans which seem somewhat unclear and ambiguous. The Department respectfully recommends that the amendments provided below be adopted and that the proposed changes more clearly articulate that the Commission's process to review and make decisions on whether to approve wildfire protection plans will include: (1) public workshops to obtain input on best practices in developing wildfire protection plans, and (2) a docketed proceeding for decision-making. Requiring decision-making during a docketed as opposed to a non-docketed proceeding provides the opportunity for the public to participate and assist the Commission in the decision-making phase. It also ensures that the general powers and duties conferred to the Consumer Advocate under Hawaii Revised Statutes § 269-51 and § 269-54 are maintained. Therefore, the Department recommends the following amendments to the proposed §§ 269-B and 269-C of the bill to address its concerns (page 7, line 1 through page 11, line 5):

“§269-B Electric utility workshops. The public utilities commission may periodically convene workshops to help electric utilities develop and share information for the identification, adoption, and implementation of best practices regarding wildfires, including but not limited to risk-based wildfire protection and risk-based wildfire mitigation procedures and standards. The best

practices discussed in these workshops may be incorporated into the proposed wildfire protection plans and updates submitted for public utilities commission approval pursuant to section 269-C.

§269-C Wildfire protection plans. (a) Each electric utility shall have and operate in compliance with a risk-based wildfire protection plan, which shall be submitted to ~~filed with and evaluated by~~ the public utilities commission for approval. The risk-based wildfire protection plan shall be based on reasonable and prudent practices, which may be ~~identified through workshops and regulatory proceedings conducted by the public utilities commission pursuant to section 269-B,~~ and determined by public utilities commission standards adopted by decision or rule. The electric utility shall design the risk-based wildfire protection plan to protect public safety, reduce risk to utility customers, and promote resilience of the Hawaii electric system to wildfire damage.

* * * * *

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

* * * * *

(d) The public utilities commission, ~~in consultation with the department of land and natural resources and local emergency services agencies,~~ shall evaluate each electric utility's risk-based wildfire protection plan and plan updates ~~through a public process~~ according to the public utilities commission's

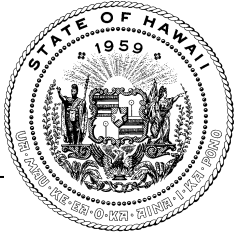
Rules of Practice and Procedure in Hawaii Administrative Rules Chapter 16-601. The public utilities commission shall allow the department of land and natural resources and local emergency services agencies to participate in proceedings evaluating risk-based wildfire protection plans.

(e) No more than ninety days after the last party filing, and no more than a total of one hundred eighty days after the initial application for approval of the submitted wildfire protection plan or update filing in the ~~docketed proceeding or non-docketed case related to the public utilities commission's evaluation of a risk-based wildfire protection plan or plan update from an electric utility,~~ the public utilities commission shall approve or approve with conditions or reject the plan or update ~~if~~ based on whether the public utilities commission finds that the plan or update is based on reasonable and prudent practices and designed to meet all applicable rules and standards adopted by the public utilities commission. The public utilities commission may, in approving the plan or update with conditions, direct the electric utility to make modifications to the plan or updates that the public utilities commission believes represent a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk based on the evidentiary record in the proceeding ~~information provided by the electric utility and based on best practices.~~ The public utilities commission shall issue a decision explaining its determinations and including findings of fact and conclusions of law in accord with Hawaii Revised Statutes Chapter 91 ~~any such~~

~~directed modifications at the time it approves the plan."~~

The Department also emphasizes that it is important to develop plans and take actions to prevent wildfires together with mitigating the risks from other hazards like high winds and flooding.

Thank you for the opportunity to testify on this administration bill.



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Testimony of
MARK B. GLICK, Chief Energy Officer

before the
**SENATE COMMITTEE ON
PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS**

Friday, February 9, 2024
3:01 PM
State Capitol, Conference Room 225 and Videoconference

In Support of
SB 3096

RELATING TO WILDFIRE RISK MITIGATION.

Chair Wakai, Vice Chair Elefante, and Members of the Committee, the Hawai'i State Energy Office (HSEO) supports SB 3096 that 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.

This measure appropriately presents an essential set of wildfire mitigation and prevention policies and plans along with a securitization model that is proven to be a highly effective and efficient way to finance investments to make such improvements. With the oversight of the Public Utilities Commission, rate reduction bonds, similar to those used in the Green Energy Market Securitization (GEMS) program, would be authorized only when the Commission had ensured the financing order was aligned with an effective process for wildfire plan protection and mitigation. The approach presented in SB 3096 should result in greater protections to the public and critical energy infrastructure while having minimal impact on utility customers' electricity bills.

The need for this measure is urgent. HSEO conducted a comprehensive energy system risk assessment for Oahu on the interdependencies within the energy sector supply chain and the interdependencies of the energy sector with FEMA Community Lifeline services that are essential to the response and recovery from all hazard events. The results were clear: wildfire is one of the top two most significant threats to our critical energy infrastructure and the emergency response sectors that depend on it. At the same time, power infrastructure in red flag conditions can also be the cause of wildfire. This is why proactive action is imperative. To strengthen the state's defenses against wildfire, developing robust wildfire protection plans statewide is critical.

SB 3096 is a measured, proactive, and preferred legislative proposal by the Green Administration to better safeguard our communities, reduce the likelihood of another Maui-like catastrophe, and ensure a reliable and resilient energy future.

Thank you for the opportunity to testify.

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

TO THE
SENATE COMMITTEE ON PUBLIC SAFETY AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS

February 9, 2024
3:01 p.m.

Chair Wakai, Vice Chair Elefante, and Members of the Committee:

MEASURE: S.B. No. 3096

TITLE: RELATING TO WILDFIRE RISK MITIGATION.

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.

POSITION:

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

COMMENTS:

The Commission supports the intent of this measure to require that electric utilities operate in accordance with a wildfire protection plan and to enable the recovery of related costs through securitization while minimizing impacts on specific ratepayers or counties. The Commission understands the importance of reducing the likelihood and impact of wildfires across the State and is committed to supporting such efforts.

On February 6, the Commission testified in support of this measure’s companion H.B. 2407 Before the House Committees on Water & Land and Energy & Environmental Protection. The committees adopted the Commission’s recommended amendments, except for paragraphs (1) and (2) in section (f) of §269-C, and also accepted amendments

proposed by others to ensure that stakeholders can provide input to the wildfire protection plans. The Commission agrees with all of the committees' amendments and thus, the Commission recommends the adoption of the same amendments reflected in the attached SD1 version of this bill.

The Commission also observes that the committees noted that the measure needs further provisions to ensure that ratepayers are protected and the public interest is prioritized. For that reason, the attached SD1 version of this bill proposes to slightly modify the definition of wildfire protection costs to include only costs associated with catastrophic wildfires that the commission finds were prudently incurred.

Wildfire protection plan requirements

The Commission recommends including additional detail as laid out in the attached SD1 to ensure expeditious development and review of plans.

Cost recovery

The Commission observes that multiple introduced measures (e.g. S.B. 2997, H.B. 2407 HD1, and S.B. 2091 SD1) include provisions that specify the proposed process for recovering actual costs incurred to develop, implement, and administer a risk-based wildfire protection plan, and would require the Commission to determine the amount deemed reasonable and prudent for the electric utility to recover through rates.

As contemplated in H.B. 2407 HD1, if actual costs exceed the Commission's determined amount, the burden of proving the reasonableness lies with the electric utility and the Commission may disallow recovery through rates. If actual costs are less than deemed reasonable, the additional costs would be refunded to customers. For the Commission's evaluation of additional costs, S.B. 2997 and S.B. 2091 SD1 further specify a 15% upward variance from costs deemed to be reasonable.

Securitization

The Commission makes the following observations regarding securitization:

- 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;
- Costs that may be recovered via securitization include costs associated with prospective wildfire protection plans among other items;

- The Commission should have the discretion to determine whether recoverable costs include professional, consulting, and other similar costs given the totality of the situation;
- Increased detail around transferability of property rights and security interests would be beneficial;
- Securitization opportunities related to wildfires should be limited to electric utilities;
- The process of departments applying to the Commission for financing would be administratively complicated, may not provide benefits in terms of financing costs, and should therefore be removed from eligible entities; and
- The discretion to assess penalties provides appropriate enforcement opportunities.

The Commission notes that the language in S.B. 2922 appears to have similar intent to the language presented in this measure, though with a few notable differences in implementation. The Commission observes that some of the language and provisions in the S.B. 2922 would be beneficial. The attached SD1 considers the useful provisions in S.B. 2922, including how the securitization language integrates with the wildfire protection planning requirements in this bill, and provides additional clarity and efficiency aligned with the intent of the measure.

Thank you for the opportunity to testify on this measure.

Attachment : SD1 to SB3096

A BILL FOR AN ACT

RELATING TO WILDFIRE RISK MITIGATION.

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

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

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

capabilities following severe events. The resilience working group identified wildfires as one of five types of severe events of utmost importance to consider for achieving a resilient grid and provided resilience options for utilities to consider.

The legislature further finds that securitization may be the most efficient, least-cost way to finance wildfire risk mitigation costs and expenses. 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.

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

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

"PART . WILDFIRE PROTECTION AND MITIGATION

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

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

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

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

"Department" means any state department or agency.

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

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

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

- (2) A payment required under an ancillary agreement;
- (3) An amount required to fund or replenish reserve accounts or other accounts established under an indenture, ancillary agreement, or other financing document related to the bonds;
- (4) Taxes, franchise fees, or license fees imposed on the wildfire protection plan fee;
- (5) Costs related to issuing and servicing bonds or the application for a financing order, including, without limitation, servicing fees and expenses, trustee fees and expenses, legal fees and expenses, accounting fees, administrative fees, underwriting and placement fees, financial advisory fees, original issue discount, capitalized interest, rating agency fees, and any other related costs that are approved for recovery in the financing order; and
- (6) Other costs as specifically authorized by a financing order.

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

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

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

- (1) Catastrophic wildfire costs or expenses that the z commission has determined were prudently incurred;
- (2) Federal and state taxes associated with recovery of the amounts pursuant to paragraph (1); or
- (3) Financing costs.

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

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

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

- (1) In and to the wildfire protection fee established pursuant to a financing order, including all rights to obtain adjustments to the wildfire protection fee in accordance with section 269-G and the financing order;
- (2) To be paid in the amount that is determined in a financing order to be the amount that the public utility or its transferee is lawfully entitled to receive pursuant to this part and the proceeds thereof, and in and to all revenues, collections, claims, payments, moneys, or proceeds of, or arising from, the wildfire protection fee that is the subject of a financing order.

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

§269-C Wildfire protection plans. (a) Each electric utility shall have and operate in compliance with a risk-based wildfire protection plan, which shall be ~~filed with and evaluated by~~ submitted to the public utilities commission for approval. The risk-based wildfire protection plan shall be based on reasonable and prudent practices, which may be ~~identified through workshops and regulatory proceedings conducted by the public utilities commission pursuant to section 269-B, and~~ determined by public utilities commission standards adopted by decision or rule. The electric utility shall design the risk-based wildfire protection plan to protect public safety, reduce risk to utility customers, and promote resilience of the Hawaii electric system to wildfire damage. Each electric utility's plan shall, at a minimum:

- (1) Account for the responsibilities of persons responsible for executing the plan;
- (2) Describe the objectives of the plan;

- (3) Identify areas that are subject to a heightened risk of wildfire and are:
 - (A) Within the right of way or legal control or ownership of the electric utility; and
 - (B) Outside the right of way or legal control or ownership of the electric utility but within a reasonable distance, as determined by the public utilities commission, of the electric utility's generation or transmission assets;
- (4) Identify a means for mitigating wildfire risk that reflects a reasonable balancing of mitigation costs, continuity of reliable service and reduction of wildfire risk;
- (5) Identify preventive actions and programs that the electric utility shall carry out to minimize the risk of utility facilities causing wildfire;
- (6) Identify the metrics the electric utility plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics;
- (7) Describe how the application of previously identified metrics to previous plan performances has informed the plan;
- (8) After seeking information from state and local entities, identify a protocol for the deenergizing of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the

public and first responders, and preserve health and communication infrastructure;

- (9) Describe appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines. The procedures shall consider the need to notify, as a priority, critical first responders, health care facilities, operators of wastewater and water delivery infrastructure and operators of telecommunications infrastructure;
- (10) Describe the procedures, standards, and time frames that the electric utility shall use to inspect utility infrastructure in areas that the electric utility identifies under paragraph (1), including whether those procedures, standards, and time frames are already set forth in the electric utility's existing plans or protocols and in coordination with any relevant entities;
- (11) Describe the procedures, standards, and time frames that the electric utility will use to carry out vegetation management in areas that the electric utility identifies under paragraph (1), including whether those procedures, standards, and time frames are already set forth in the electric utility's existing plans or protocols and in coordination with any relevant entities;
- (12) Include a list that identifies, describes, and

prioritizes all wildfire risks, and drivers for those risks, throughout the electric utility's service territory. The list shall include, but not be limited to, both of the following:

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

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

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

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

(14) Demonstrate that the electric utility has an adequately sized and trained workforce to promptly restore service after a wildfire, taking into account employees of other utilities pursuant to mutual aid

agreements and employees of entities that have entered into contracts with the electric utility;

(15) Identify the estimated development, implementation, and administration costs for the risk-based wildfire protection plan; and

(16) Identify the timelines, as applicable, for development, implementation, and administration of any aspects of the risk-based wildfire protection plan;

(17) Describe how the plan is consistent with the electric utility's other hazard mitigation and grid hardening plans, including plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and repositioning equipment and employees;

(18) Identify community outreach and public awareness efforts that the electric utility will use before, during, and after a wildfire;

(19) Describe the processes and procedures the electric utility will use to do all of the following:

(A) Monitor and audit the implementation of the plan;

(B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies; and

(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by

contractors, carried out under the plan and other applicable statutes and commission rules;

(20) Demonstrate elements of data governance, including enterprise systems; and

(21) Any modifications to the above, or other information as required by the commission.

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

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

(d) The public utilities commission, ~~in consultation with the department of land and natural resources and local emergency services agencies,~~ shall evaluate each electric utility's risk-based wildfire protection plan and plan updates according to the public utilities commission's rules of practice and procedure in chapter 16-601 of the Hawaii administrative rules. The public utilities commission shall allow the department of land and natural resources and local emergency services agencies to participate in proceedings evaluating risk-based wildfire protection plans. ~~through a public process.~~

(e) No more than ninety days after the last party filing, and no more than a total of one hundred eighty days after the initial application for approval of the submitted wildfire protection plan or update in the docketed proceeding, ~~filing in~~

~~the docket or non-docketed case related to the public utilities commission's evaluation of a risk-based wildfire protection plan or plan update from an electric utility,~~ the public utilities commission shall approve or approve with conditions or reject the plan or update if based on whether the public utilities commission finds that the plan or update is based on reasonable and prudent practices and designed to meet all applicable rules and standards adopted by the public utilities commission. The public utilities commission may, in approving the plan or update with conditions, direct the electric utility to make modifications to the plan or updates that the public utilities commission believes represent a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk based on the evidentiary record in the proceeding information provided by the electric utility and based on best practices. The public utilities commission shall issue a decision explaining its determinations, including findings of fact and conclusions of law, in accordance with chapter 91. ~~any such directed modifications at the time it approves the plan.~~

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

If the actual costs are less than the amounts that the public utilities commission determined were reasonable in its

decision under subsection (e), the public utilities commission shall direct the electric utility to refund or credit the costs to ratepayers.

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

(~~f~~g) The public utilities commission's approval of a risk-based wildfire protection plan does not by itself establish a defense to any enforcement action for violation of a public utilities commission decision, order, or rule, or relieve an electric utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies. Electric utilities are expected to continuously improve and take reasonable actions outside of approved plans to mitigate wildfire risk.

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

§269-D Penalties. In addition to any other penalties provided by law, a failure by an electric utility to comply with an approved plan or part of an approved plan shall be subject to a civil penalty, as determined by the public utilities commission. Imposition of penalties pursuant to this section shall otherwise be in accordance with section 269-28 and all applicable administrative rules. All moneys collected under this section shall be deposited into the public utilities commission special fund.

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

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

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

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

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

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

(3) The expected term, not to exceed thirty years, during which term the wildfire protection fee associated with the

issuance of each series of bonds is expected to be imposed and collected;

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

(5) An estimate of the amount of the wildfire protection fee revenues necessary to pay principal and interest on the bonds and related financing costs as set forth in the application and the calculation for that estimate;

(6) A proposed methodology for allocating the wildfire protection fee among customer classes within the financing entity;

(7) A description of a proposed formulaic adjustment mechanism for the adjustment of the wildfire protection fee to correct for any overcollection or undercollection of the wildfire protection fee, and to otherwise ensure the timely payment of principal and interest on the bonds and related financing costs; and

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

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

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

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

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

(~~2~~3) Whether the terms and conditions of any bonds to be issued are just and reasonable;

(34) Whether the immediate ratepayer bill impact of any financing order is minimized to the furthest extent practicable; and

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

§269-F Wildfire protection plan financing order. (a) A financing order shall remain in effect until the bonds issued under the financing order and all financing costs related to the bonds have been paid in full or defeased by their terms. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of the ~~financing entity~~ electric utility or the commencement of any judicial or nonjudicial proceeding on the financing order.

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

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

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

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

- (1) The financing entity or a trustee for the holders of bonds or the holders of an ancillary agreement in connection with the exercise of remedies upon a default; or
- (2) Any person acquiring the wildfire protection property after a sale or assignment pursuant to this chapter.

§269-G Wildfire protection fee. (a) The public utilities commission may create, pursuant to a financing order approved pursuant to section 269-F, a nonbypassable surcharge for a financing entity, referred to as a wildfire protection fee, which shall be applied to the repayment of bonds and related financing costs as described in this part. The wildfire protection fee may be a usage-based surcharge, a flat user fee, or a charge based upon customer revenues as determined by the public utilities commission for each customer class in any financing order.

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

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

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

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

- (1) The public utilities commission has issued a financing order authorizing the wildfire protection fee included in the wildfire protection property;
- (2) Value has been given by the pledgees of the wildfire

protection property; and

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

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

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

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

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

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

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

(e) If default occurs under the security agreement covering the wildfire protection property, the pledgees of the wildfire protection property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under chapter 490, article 9, and shall be entitled to foreclose or otherwise enforce their security interest in the wildfire protection property, subject to the rights of any third parties holding prior security interests in the wildfire protection property perfected in the manner provided in this section. In addition, the public utilities commission may require in the financing order creating the wildfire protection property that, in the event of default by the electrical corporation in payment of wildfire protection property revenues, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under section 269-I of the wildfire protection property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of wildfire protection property revenues. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the wildfire protection property. Any surplus in excess of amounts necessary to pay principal, premiums, if any, interest, costs, and arrearages on the bonds, and associated financing costs arising

under the security agreement, shall be remitted to the debtor or to the pledgor or transferor.

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

(g) This section sets forth the terms by which a consensual security interest shall be created and perfected in the wildfire protection property. Unless otherwise ordered by the public utilities commission with respect to any series of bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subsection. Upon the effective date of the financing order, there shall exist a first priority lien on all wildfire protection property then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this section automatically without any action on the part of the public utility, any affiliate thereof, the financing entity, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the bonds issued pursuant to the financing order, the trustee or representative for the holders, and any other entity specified in the financing order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the financing order, have all rights and remedies of a secured party upon default under chapter 409, article 9, and are entitled to foreclose or otherwise enforce this statutory lien in the wildfire protection property. This lien

shall attach to the wildfire protection property regardless of who owns, or is subsequently determined to own, the wildfire protection property, including the public utility, any affiliate thereof, the financing entity, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the wildfire protection property and all third parties upon the effectiveness of the financing order without any further public notice; provided that any person may file a financing statement in accordance with this section. Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the wildfire protection property.

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

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

In addition, the public utilities commission may require, in the financing order creating the wildfire protection property, that, in the event of default by the public utility in the payment of wildfire protection property revenues, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of

the default, shall order the sequestration and payment to the beneficiaries of wildfire protection property revenues. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premiums, if any, interest, costs, and arrearages on the bonds, and other costs arising in connection with the documents governing the bonds, shall be remitted to the debtor.

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

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

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

- (2) The retention by the seller of either of the following:
- (A) A partial or residual interest, including an equity interest, in the financing entity or the wildfire protection property, whether direct or indirect, subordinate or otherwise; or
 - (B) The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of wildfire protection fee;
- (3) Any recourse that the purchaser may have against the seller;
- (4) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;
- (5) The obligation of the seller to collect wildfire protection fee on behalf of an assignee;
- (6) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purpose; or
- (7) Any true-up adjustment of the wildfire protection fee as provided in the financing order.

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

- (1) The commission issues the financing order authorizing the wildfire protection fee included in the wildfire protection property; and
- (2) An assignment of the wildfire protection property in

writing has been executed and delivered to the transferee.

(d) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with chapter 409, article 9, part 5, naming the assignor of the wildfire protection property as debtor and identifying the wildfire protection property shall have priority. Any description of the wildfire protection property shall be sufficient if it refers to the financing order creating the wildfire protection property. A copy of the financing statement shall be filed by the assignee with the public utilities commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings shall not affect the perfection of the transfer.

§269-HJ Financing entity successor requirements; default of financing entity. (a) Any successor to a ~~financing entity~~ an electric utility subject to a financing order shall be bound by the requirements of this part. The successor of the electric utility shall perform and satisfy all obligations of the ~~financing entity~~ electric utility under the financing order, in the same manner and to the same extent as the ~~financing entity~~ electric utility, including the obligation to collect and pay the wildfire protection plan fee to any financing party as required by a financing order.

(b) The public utilities commission may require in a financing order that, if a default by the ~~financing entity~~ electric utility in remittance of the wildfire protection plan fee collected arising with respect to wildfire protection property occurs, the public utilities commission, without limiting any other remedies available to any financing party by reason of the default, shall order the sequestration and payment to the beneficiaries of the wildfire protection plan fee collected arising with respect to the wildfire protection plan property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the ~~financing entity~~ electric utility.

§269-~~IK~~ Treatment of bonds, fees, and

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

(b) The issuance of bonds under this part shall not directly, indirectly, or contingently obligate the State or any

political subdivision thereof to levy or pledge any form of taxation or to make any appropriation for their payment.

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

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

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

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

purposes except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures. As used herein, "property" and "facilities", mean property and facilities used in all operations of a public utility corporation whether or not included in its public utility operations or rate base. A public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations.

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

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

SECTION 5. Notwithstanding the provisions of Act 262, Session Laws of Hawaii 2023, the legislature authorizes the

issuance of special purpose revenue bonds for wildfire risk migration purposes that requires an allocation of the annual state ceiling under section 39B-2, Hawaii Revised Statutes, for the period July 1, 2024, through December 31, 2028.

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

SECTION 7. In codifying the new part added to chapter 269, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

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

SECTION 9. This Act shall take effect upon its approval.



Email: communications@ulupono.com

SENATE COMMITTEE ON PUBLIC SAFETY & INTERGOVERNMENTAL & MILITARY AFFAIRS
Friday, February 9, 2024 — 3:01 p.m.

Ulupono Initiative supports the intent of SB 3096, Relating to Wildfire Risk Mitigation.

Dear Chair Wakai and Members of the Committee:

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 3096, which creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission (PUC) for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county.

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.

Ulupono supports this bill's requirement that the utility wildfire protection planning process 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. To further enhance the decision-making process, Ulupono recommends that greater visibility and optionality be presented by developing a set of investment and price-based scenarios for the PUC to decide upon. Ulupono recommends the bill require the utility, when developing its wildfire protection plan, to develop a series of sensitivities at a low, base, and high set of investment and cost scenarios. Providing pricing scenarios would enable deeper discussion and improve decision-making discussions between the regulator, consumer advocate, stakeholders, community, and utilities.

Investing in a Sustainable Hawai'i



Additionally, Ulupono applauds the Legislature's efforts to utilize unique methods to finance much-needed investments that will mitigate customer impacts to the extent possible.

Undisputed are the importance of preparing for increased risks from wildfires and ensuring that loss and damage caused by wildfires are addressed. Developing utility wildfire protection plans is a sound policy to address future wildfire risks across our state. We support the PUC's review and approval of said plans as it creates a transparent public process.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
PUBLIC SAFETY & INTERGOVERNMENTAL & MILITARY AFFAIRS**

SB 3096

Relating to Wildfire Risk Mitigation

Friday, February 9, 2024

3:01 PM

State Capitol, Conference Room 225

Jimmy D. Alberts
Senior Vice President & Chief Operations Officer
Hawaiian Electric

Dear Chair Wakai, Vice Chair Elefante, and Members of the Committee,

My name is Jimmy D. Alberts, Senior Vice President & Chief Operations Officer for Hawaiian Electric and I am testifying in **support with amendments** to SB 3096, Relating to Wildfire Risk Mitigation and appreciate that this bill is a part of the Governor's package.

Our proposed amendments are included in the attachment and, for now, only address the wildfire risk mitigation plan; however, we would like to reserve the opportunity to suggest revisions to the securitization section of the bill to ensure that any securitization is successful. Hawaiian Electric supports the objectives of SB 3096, Relating to Wildfire Risk Mitigation but would like to propose amendments that will ensure that the mitigation plan provisions will give utilities the tools and resources that are necessary to make our grids safe and resilient. We agree that utilities should develop and implement plans to mitigate wildfire risks with regulatory oversight and cost recovery, and that the Public Utilities Commission ("PUC" or "Commission") is best positioned to decide what details should and shouldn't be included in a given plan. We

also agree that allowing the Commission to authorize the issuance of bonds securitized by rates is the most efficient, least-cost way to finance expenses associated with catastrophic wildfires.

At this time, we are requesting your consideration of three sets of amendments (details in the attachment) that we believe will better protect against the risk of another catastrophic wildfire and minimize the burden on ratepayers.

First, our amendments request the Commission to develop a method for prompt recovery by an electric utility of costs expended developing, implementing, and administering a wildfire protection plan. The current bill contemplates that the costs of a wildfire mitigation plan may be securitized, but it does not provide a process for ensuring that such costs are promptly approved; nor does it create a method for recovery for reasonable costs and expenses that are not securitized.

Second, our amendments strike the penalties section (See pages 11 -12) of the bill as the Commission already has existing discretion to decide whether and at what level to impose a penalty. For your reference, Hawaii Revised Statutes, Section 269-28 prescribes how the Commission can administer penalties on a utility. The amendment also would avoid a scenario in which the Commission feels it must impose penalties even for minor infractions.

Third, our amendments seek to protect the jurisdiction of the Commission by adding limitations on the ability of private plaintiffs to sue electric utilities or the Commission based on alleged inadequacies in plans. As part of approving a plan, the Commission must decide *both* what measures are necessary for safety *and* what measures would be too costly to be reasonable. For example, the Commission might decide that a power shutoff in high wind conditions is needed to protect public safety. If

a plaintiff could sue the utility for damages resulting from the power outage, the Commission's decision would be undermined. Or the Commission might decide that undergrounding lines in a particular area was too costly compared to the risk reduction. If a plaintiff could sue the utility for causing a fire, on the theory that it should have undergrounded in that area, the plaintiff would be asking the jury or court to second-guess the Commission's decision. On the other hand, these provisions do not provide blanket immunity to electric utilities; they bar suits only to the extent they ask judges and juries to contradict the Commission's express judgments. For example, if a plan requires a utility to inspect certain poles every year, and the utility fails to do so, a plaintiff would not be barred from alleging the utility was negligent.

As mentioned, we are not proposing amendments to the securitization sections of the bill at this time. We do believe that some technical amendments should be considered to ensure that the bill includes the features needed for a successful securitization transaction. We also feel that the bill should give the Commission the authority to consider securitization for a broad range of costs related to catastrophic wildfires, and not limited to costs of wildfire risk mitigation plans. We intend to work with the Governor's office on amendments that will ensure the bill meets its intended purposes.

Hawaiian Electric supports SB 3096 and requests the Committee's consideration of the requested amendments regarding the risk-wildfire mitigation.

S.B. NO. 3096, **SD1 Proposed**

1 of mitigation costs with the resulting reduction of wildfire
 2 risk based on the information provided by the electric utility
 3 and based on best practices. The public utilities commission
 4 will issue a decision explaining any such directed
 5 modifications at the time it approves the plan.

6 (f) The public utilities commission's approval of a risk-
 7 based wildfire protection plan does not by itself establish a
 8 defense to any enforcement action for violation of a public
 9 utilities commission decision, order, or rule, ~~or relieve an~~
 10 ~~electric utility from proactively managing wildfire risk,~~
 11 ~~including by monitoring emerging practices and technologies,~~
 12 ~~and electric utilities are expected to continuously improve and~~
 13 ~~take reasonable actions outside of approved plans to mitigate~~
 14 ~~wildfire risk.~~

See page
 11, Strike
 Lines 9-14

15 (g) The public utilities commission shall, as
 16 appropriate, adopt rules or issue orders for the implementation
 17 of this section. The rules or orders may include but need not
 18 be limited to procedures and standards regarding vegetation
 19 management, public power safety shutoffs and restorations, pole
 20 materials, circuitry, and monitoring systems.

21 (h) In its decision pursuant to § (e), the public
 22 utilities commission shall determine the reasonable costs to

See page 11,
 Line 20 add
 language
 from HB 2281

1 develop, implement and administer the plan and shall authorize
2 the electric utility to recover such costs in rates. The
3 commission shall establish a method to allow timely and prompt
4 recovery of these wildfire protection costs. The commission
5 shall establish rules for the electric utility to track actual
6 wildfire protection costs; and for the commission to authorize,
7 as applicable, refunds or credits to ratepayers where actual
8 wildfire protection costs are ultimately less than those the
9 commission determined reasonable and authorized for rate
10 recovery. To the degree actual wildfire protection costs
11 exceed those the commission determined were reasonable and
12 authorized for rate recovery, the commission will authorize
13 cost recovery in the event that it determines those additional
14 wildfire protection costs are just and reasonable. The method
15 established hereunder may include the issuance of bonds under §
16 269-E.

17 (i) (a) No electric utility shall be civilly liable for the
18 death of or injury to persons, or property damage, as a result
19 of (1) any act taken in accordance with a plan or updated plan
20 approved by the public utilities commission under this Chapter;
21 or (2) any failure to take an action proposed by an electric
22 utility in a plan or updated plan and thereafter removed from
23 the plan by modification of the public utilities commission.

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

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

19 ~~§269-D Penalties. (a) In addition to any other penalties~~
20 ~~provided by law, a material failure by an electric utility to~~
21 ~~comply with an approved plan or part of an approved plan shall~~
22 ~~be subject to a civil penalty, as determined by the public~~
23 ~~utilities commission. Imposition of penalties pursuant to this~~
24 ~~section shall otherwise be in accordance with section 269-28,~~

See page 11
to 12 strike
penalties
section.

1 ~~and all applicable administrative rules. All moneys collected~~
2 ~~under this section shall be deposited into the public utilities~~
3 ~~commission special fund.~~

4

5



INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1260 EMPOWERING THE PACIFIC

HOUSE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS

HEARING DATE: Friday, February 9, 2024
TIME: 3:01 p.m.
PLACE: State Capitol
Conference Room 225

RE: **In Support** of Senate Bill 3096 Relating To Wildfire Risk Mitigation

Aloha Honorable Chair Wakai, Vice Chair Elefante, and Members of the Committee;

The International Brotherhood of Electrical Workers Local 1260 (IBEW 1260) would like to respectfully offer testimony **in Support** of Senate Bill 3096.

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 3096 which 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, and would additionally like to support amendments to the bill as proposed by the utility.

Electric utilities and the infrastructure they provide are vital to our community. Having the tools necessary to effectively manage risk and implement policy with clear direction, expected outcomes, and the ability to access low-cost financing, and reasonably recover associated costs in a timely manner is imperative to the utilities continued viability and the livelihood of IBEW1260 members.

Recent reports indicate that over 40% of Hawai'i's residents are ALICE and living paycheck to paycheck. At a time when cost of living, housing, and affordability...especially here in Hawai'i, is at the forefront of most public policy discussions, it is important that while we continue to grieve, remember, and recover from Maui's recent tragic events, we give great effort and consideration to policy that reasonably aims to prevent added harm from future similar events, as well as processes to ensure Hawai'i's most vital industries like our electric utilities, remain viable and able to continue to serve our community as it has for over a century.

Mahalo for the opportunity to testify in support SB3096, and we respectfully request that you consider the amendments to the bill as proposed by the utility.



Testimony Before the Senate Committee on
Public Safety and Intergovernmental and Military Affairs

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, February 9, 2024; 3:01 pm
Conference Room #225 & Videoconference

Senate Bill No. 3096 - RELATING TO WILDFIRE RISK MITIGATION

To the Honorable Glenn Wakai, Chair, Honorable Brandon J.C. Elefante, Vice Chair, and Members of the Committee:

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 and offers comments on this measure.

KIUC supports the development and implementation of wildfire protection plans, and we appreciate the recognition that costs associated with plan implementation should be cost-effectively recoverable in a dedicated manner. In September, KIUC engaged a consulting firm and is in the process of developing a wildfire mitigation plan which is expected to be complete within the next two months.

KIUC believes recovery of allowable costs related to wildfire protection plans should be specific to the service territory covered by the wildfire protection plan and limited to the customers of the electric utility covered by the plan. In other words, we do not believe members of KIUC should be assessed costs associated with wildfire protection plans covering HECO service areas, and vice versa.

KIUC does not anticipate the need to seek a financing order and sell securitized bonds as proposed in the bill because the total cost of its wildfire protection plan implementation is not expected to be of sufficient magnitude to make securitized bonds the most cost effective financing tool. Also, 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 would encourage an alternative to securitization by including the ability for a utility to request approval of a wildfire protection fee as a dedicated, discrete tariff rider without a financing order to issue securitization bonds as described in §269-E. This approach would allow KIUC to cost-effectively recoup the implementation costs of the wildfire protection plan using available lending options as noted above, without incurring the significant upfront and ongoing cost of financing using securitization bonds.

A suggested amendment to §269-G to create such an option follows:

(e) Absent a financing order, the public utilities commission may create, pursuant to an application from an electric utility, a nonbypassable surcharge referred to as a wildfire protection fee, which shall be applied to recover financing costs and wildfire protection costs as described in §269-A (Definitions). The wildfire protection fee will be a dedicated, discrete tariff rider, subject to the same application requirements listed in §269-E (b) Such costs 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.

Mahalo for your consideration.

LATE



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

COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Glenn Wakai, Chair

Senator Brandon J.C. Elefante, Vice Chair

DATE: Friday, February 9, 2024

TIME: 3:01 PM

PLACE: Conference Room 225 \

RE: SB 3096 Relating To Wildfire Risk Mitigation

SUPPORT WITH AMENDMENTS

Aloha Chair Wakai, Vice Chair Elefante, and Members of the Committee

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

Life of the Land has been in more than 60 Hawai`i Public Utilities Commission contested case proceedings over the past half century, been a party in several transmission line proceedings, served on the PUC's Reliability Standards Working Group, serves on HECO's Resilience Working Group, delved heavily into fire risks, mitigation, and adaptation, and reviewed and filed with the PUC the 2023 wildlife management plans filed by California utilities Pacific Gas and Electric Company (PG&E), Southern California Edison, and Pacific Corporation.

De-Energization / Public Safety Power Shutoff

There have been several Red Flag days issued by the National Weather Service since the Maui fires.

De-energization can decrease fire risk but significantly makes life more difficult for vulnerable communities.

The California Public Utilities Commission has a web page devoted to Public Safety Power Shutoff (PSPS), the California phrase for de-energization.¹

“With the continuing threat of wildfire, the electric investor-owned utilities (IOUs) **may proactively cut power to electrical lines as a measure of last resort** if the utility reasonably believes that there is an imminent and significant risk that strong winds may topple power lines or cause major vegetation-related issues leading to increased risk of wildfires. This effort is called a Public Safety Power Shutoff (PSPS). While PSPS events may reduce the risk of utility-associated wildfires, PSPS events can leave communities and essential facilities without power, which brings its own risks and hardships, especially for vulnerable communities and individuals.

A few amendments to the bill are needed.

§269-C Wildfire protection plans... Each electric utility's plan shall, at a minimum: (4) After seeking information from state and local entities, **and stakeholders**, identify a protocol for the deenergizing of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the public and first responders, and preserve health and communication infrastructure;

The initial plan may take longer than updating the plan.

¹ <https://www.cpuc.ca.gov/psps/>

The non-docket concept must be removed. In essence it states that no concern stakeholder should be allowed to formally intervene in a utility wildfire management plan and no stakeholder should have a right to appeal a bad PUC regulatory decision regarding wildfires.

Considering that state law mandates that the PUC open a fire investigation, and they have not done so, the law should not be reinforcing the idea that the PUC can issue a bad decision without review.

§269-C Wildfire protection plans... (e) **The initial plan should be a priority proceeding.** No more than ninety days after the last party filing, and no more than a total of one hundred eighty days after the initial filing in the docket ~~or non-docketed case~~ related to the public utilities commission's evaluation of a risk-based wildfire protection plan ~~or plan~~ update from an electric utility, the public utilities commission shall approve or approve with conditions the plan or update if the public utilities commission finds that the plan or update is based on reasonable and prudent practices and designed to meet all applicable rules and standards adopted by the public utilities commission.

Mahalo

Henry Curtis
Executive Director