

____.B. NO._____

A BILL FOR AN ACT

RELATING TO WILDFIRES.

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

1 SECTION 1. The legislature finds that, as the risk of
2 catastrophic wildfires in Hawaii has increased, so has the
3 threat of property damage from these fires.

4 The legislature finds that the public interest is served by
5 providing a rapid, efficient, and low-cost process for property
6 owners, renters, businesses and their insurers to obtain
7 compensation if a regulated utility is alleged to have caused or
8 contributed to the damage resulting from a catastrophic
9 wildfire. Under current law, individuals and businesses must
10 pursue civil litigation, which is a lengthy, costly, and
11 contentious process. This bill helps those individuals and
12 businesses recover by giving them the option to obtain payment
13 quickly through an administrative claims process similar to the
14 One 'Ohana fund. The administrative claims process will begin
15 based on a preliminary determination that a utility was
16 involved, without waiting for the conclusion of a comprehensive
17 investigation of the origin and cause of a catastrophic
18 wildfire. Claimants are not required to prove that the

1 regulated utility was negligent in order to receive payment
2 through the administrative claims process.

3 This bill preserves claimants' right to pursue litigation
4 if they choose to reject the amount offered through the
5 administrative claims process. This bill limits the total
6 amount that can be paid through both the administrative claims
7 process and litigation, balancing the interests of those
8 affected by a catastrophic fire in obtaining compensation and
9 the interests of the public utilities in mitigating the risk of
10 financial instability that can result from unlimited liability.
11 This bill requires the public utilities commission to review the
12 conduct of the public utility and to order the utility to
13 replenish the fund, up to a cap, if it finds that the utility
14 acted imprudently.

15 The bill provides for the legislature to re-evaluate the
16 risk of catastrophic wildfires in 2035, and to refund to
17 customers the amounts they contributed, plus earnings on those
18 funds, to the extent the legislature concludes that the size of
19 the fund can be reduced based on actions taken to reduce risk.

20 The legislature finds that the public interest is served by
21 establishing a compensation mechanism that does not expose
22 regulated utilities to the financial instability that can result
23 from the existing litigation process. Regulated utilities that
24 may be alleged to have caused a catastrophic wildfire face
25 massive costs from litigation. Those costs can overwhelm those
26 utilities, undermining their ability to make investments that
27 the State needs. Indeed, even the possibility of litigation

1 regarding a future catastrophic wildfire can create a cloud of
2 uncertainty that can impair a utility's ability to attract
3 capital on reasonable terms. These costs and uncertainties
4 result in increased rates paid by customers, and may reduce the
5 utilities' ability to make investments in wildfire prevention
6 and resilience initiatives, among other priorities that may
7 affect the health and safety of the State's residents.

8 The legislature finds that securitization may be the most
9 efficient, least costly way for a utility to finance the
10 contributions to the wildfire recovery fund. Utility
11 securitization transactions have an extensive track record of
12 success.

13 Therefore, the purpose of this bill is to serve the public
14 interest by establishing a mechanism to provide efficient
15 compensation for property damage resulting from a future
16 catastrophic wildfire allegedly caused by a regulated utility,
17 while also protecting the financial integrity of Hawaii's
18 regulated utilities.

19 SECTION 2. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:

22 **CHAPTER []**

23 **PART I**

24 **WILDFIRE RECOVERY FUND**

25 **§ []-1 Definitions.**

26 As used in this Part, unless the context otherwise
27 requires:

1 "Catastrophic wildfire" means a wildfire occurring in the
2 State on or after the operation date that destroys more than
3 five hundred commercial structures or residential structures
4 designed for habitation.

5 "Commission" means the public utilities commission.

6 "Contributor" means a public utility that satisfies all
7 requirements to participate in the wildfire recovery fund.

8 "Covered catastrophic wildfire" means a catastrophic
9 wildfire that may have been caused, or whose severity may have
10 been increased, by a contributor's facilities or actions.

11 "Electric utility" means a public utility that exists for
12 the furnishing of electrical power.

13 "Executive director" means the wildfire recovery fund
14 executive director.

15 "Government entity" means any government agency,
16 department, division, subdivision, unit, component, bureau,
17 commission, office, board, or instrumentality of any kind,
18 including federal, state, and municipal entities.

19 "Investor-owned utility" means a public utility that is
20 owned by shareholders and overseen by a board of directors
21 elected by shareholders.

22 "Operation date" means the first date for contributors to
23 elect to participate in the wildfire recovery fund under section
24 []-3(a) and the rules effectuating it.

25 "Property insurer" means a person or entity that
26 indemnifies another by a contract of insurance for loss of or
27 damage to real or personal property in the State.

1 "Property owner" means an owner of real property in the
2 State.

3 "Public utility" has the meaning defined in section 269-1.

4 "Qualifying action" means a civil action by a qualifying
5 claimant to recover qualifying damages.

6 "Qualified claimant" means any property owner, property
7 insurer, or tenant who alleges any qualifying damages.

8 "Qualifying damages" means damages arising out of the loss
9 of or damage to real or personal property from a covered
10 catastrophic wildfire.

11 "Tenant" means a person or entity lawfully entitled to
12 occupy real property that they do not own in the State.

13 "Wildfire recovery fund" means the wildfire recovery fund
14 established by this Act.

15 "Wildfire risk mitigation plan" means a plan, which may
16 include a natural hazard mitigation report, in which a public
17 utility addresses how it will mitigate the risk of its equipment
18 causing or exacerbating a wildfire.

19 **§ []-2 Wildfire recovery fund; Executive Director.**

20 (a) There is established outside the state treasury a
21 wildfire recovery fund and any accounts thereunder to carry out
22 the purposes of this chapter. All moneys in the wildfire
23 recovery fund shall be expended exclusively for the uses and
24 purposes set forth in this chapter. The wildfire recovery fund
25 shall not be subject to chapter 431. The moneys in the wildfire
26 recovery fund not required for immediate use shall be invested
27 by the executive director for the benefit of the wildfire

1 recovery fund; provided that no assets of the program shall be
2 transferred to the general fund of the State or to any other
3 fund of the State or otherwise encumbered or used for any
4 purpose other than those specified in for the wildfire recovery
5 fund.

6 (b) The wildfire recovery fund shall be placed within the
7 department of commerce and consumer affairs for administrative
8 purposes. The fund shall be a public body corporate and politic.

9 (c) The director of the department of commerce and consumer
10 affairs shall appoint an executive director of the wildfire
11 recovery fund, who shall be exempt from chapter 76, and fix the
12 executive director's compensation.

13 (d) The executive director shall be responsible for the
14 day-to-day operations and management of the wildfire recovery
15 fund and shall perform all functions necessary to effectuate the
16 purposes of this chapter, including entering into contracts and
17 other obligations related to the operation, management, and
18 administration of the wildfire recovery fund.

19 (e) The executive director may retain, employ, or contract
20 with officers; experts; employees; accountants; actuaries;
21 financial professionals; and other advisers, consultants,
22 attorneys, and professionals, as may be necessary in the
23 executive director's judgment, for the efficient operation,
24 management, and administration of the wildfire recovery fund.

25 (f) The executive director shall have the power to issue
26 revenue bonds, from time to time, in such principal amounts as
27 the executive director may deem advisable for the purpose of

1 this Chapter, backed by future payments to the wildfire recovery
2 fund that contributors have committed to make. Such bonds shall
3 be issued pursuant to part III of chapter 39, except as provided
4 in this chapter.

5 (g) The executive director shall adopt rules pursuant to
6 Chapter 91 to effectuate the purposes of this chapter.

7 § []-3 **Wildfire recovery fund; eligibility for**
8 **participation as a contributor; contributions.**

9 (a) To be eligible to participate as a contributor, a
10 person or entity must (i) be a public utility that has a
11 wildfire risk mitigation plan that has been approved or accepted
12 by the commission; (ii) notify the executive director, in the
13 year before the person or entity becomes a contributor, that it
14 intends to participate in the wildfire recovery fund; and (iii)
15 agree to make an initial contribution, the payment of which is
16 thereafter a binding commitment enforceable by the executive
17 director.

18 (b) The initial contributions from investor-owned electric
19 utilities collectively shall be (i) \$1 billion, plus interest as
20 provided in section []-3(c) for amounts not securitized,
21 which amounts shall be recovered from its customers in
22 nonbypassable rates, plus (ii) \$5 million, which amount shall be
23 funded by shareholders of those utilities and used exclusively
24 for the payment of salaries of the executive director and of all
25 other persons retained by the executive director to carry out
26 this Act, with any remainder in 2035 transferred to the wildfire
27 recovery fund.

1 (c) The investor-owned utilities may elect to make the
2 initial contributions as set forth in section []-3(b)(i), to
3 the degree not paid for via securitization under Part II of this
4 Act, over a period not to exceed five years, provided that
5 interest shall be added to any amounts paid after the first
6 year, at an interest rate equal to the State's average
7 incremental borrowing rate plus two hundred basis points.

8 (d) The executive director will determine the initial
9 contributions from other public utilities based on an actuarial
10 assessment of the risk of potential payments by the wildfire
11 recovery fund resulting from covered catastrophic wildfires
12 created by such public utility.

13 (e) The executive director may propose supplemental
14 contributions by participating public utilities to the wildfire
15 recovery fund.

16 (f) If a contributor fails to pay any part of an initial
17 contribution or a supplemental contribution it agreed to make,
18 or elects not to agree to make a supplemental contribution, that
19 contributor will no longer be a contributor as of the date the
20 payment was due, and shall not receive any refund of payments
21 previously made, provided that a contributor that elects not to
22 make a supplemental contribution shall be a contributor as to
23 any catastrophic wildfire that occurs prior to the election
24 date. After failing to, or electing not to, make a payment, a
25 public utility may rejoin the wildfire recovery fund as a
26 contributor on a going forward basis if it makes owed payments
27 with interest.

1 (g) The executive director shall issue rules addressing the
2 timing of initial and supplemental contributions, which may
3 include upfront, annual, and retrospective payments (that is,
4 payments made after a wildfire occurs).

5 (h) Initial and supplemental contributions of investor-
6 owned utilities shall constitute "wildfire recovery fund costs"
7 as defined in section []-1 of Part II of this Act.

8 **§ []-4 Determination of a covered catastrophic wildfire**

9 The executive director shall issue rules addressing how to
10 determine that a wildfire is a covered catastrophic wildfire.
11 Those rules shall include a provision requiring a determination
12 that a wildfire is a covered catastrophic wildfire in the event
13 that a party brings non-frivolous allegations in a lawsuit that
14 a contributor's facilities caused or contributed to the severity
15 of a catastrophic wildfire.

16 **§ []-5 Replenishment of the wildfire recovery fund.**

17 (a) If the wildfire recovery fund has made payments with
18 respect to a covered catastrophic wildfire, then, after
19 resolution of substantially all third-party liability claims
20 that were brought or could be brought against contributors
21 arising from that covered catastrophic wildfire, each
22 contributor whose facilities were implicated in the covered
23 catastrophic wildfire shall initiate a proceeding before the
24 commission to review the prudence of the public utility's
25 conduct leading to the catastrophic wildfire.

26 (b) The commission shall determine whether the contributor
27 acted prudently, considering only acts that may have caused the

1 occurrence or contributed to the severity of the covered
2 catastrophic wildfire, and evaluating the contributor's actions
3 in the context of its overall systems, processes, and programs,
4 such that an error by a contributor's employee would not be a
5 basis for a finding of imprudence, unless that error resulted
6 from an imprudent system, process, or program.

7 (c) If the commission determines that imprudent conduct by
8 the contributor caused the occurrence or contributed to the
9 severity of a covered catastrophic wildfire, the commission
10 shall determine whether to order the contributor to replenish
11 the wildfire recovery fund in whole or in part for payments from
12 the wildfire recovery fund in connection with the catastrophic
13 wildfire. In determining the amount of replenishment, if any,
14 the commission shall consider the extent and severity of the
15 contributor's imprudence and factors within and beyond the
16 contributor's control that may have led to or exacerbated the
17 costs from the covered catastrophic wildfire, including but not
18 limited to humidity, temperature, winds, fuel, merged wildfires
19 with independent ignitions, third-party actions that affected
20 the spread of the wildfire, and fire suppression activities.

21 (d) Over any three-year period, the commission shall not
22 order the contributor to reimburse the wildfire recovery fund in
23 an amount that exceeds twenty percent of the contributor's
24 transmission and distribution equity rate base.

25 (e) A contributor shall not recover in regulated rates any
26 amount that the commission orders it to pay to the wildfire
27 recovery fund as a replenishment under this section.

**§ []-6 Claims for payment by qualified claimants;
presentment requirement**

(a) The executive director shall issue rules creating a process through which a qualified claimant that is not a government entity may submit to the wildfire recovery fund a claim for payment of economic damages arising out of property damage resulting from a covered catastrophic wildfire, including a deadline to submit claims.

(b) A qualified claimant must file a claim for payment for economic damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire pursuant to this section, and must reject an offer of settlement from the wildfire recovery fund, prior to filing any civil action against a contributor. A qualified claimant who fails to file a claim by the deadline established by the executive director pursuant to rule shall be ineligible to receive payment from the wildfire recovery fund and shall be barred from instituting or maintaining any qualifying action against a contributor.

(c) The executive director shall make an offer to settle each claim submitted, which the claimant may accept or reject. In determining the amount of each offer, the executive director shall consider, at a minimum, (1) the economic damages sought by all qualified claimants in the aggregate; (2) the amount available to the fund relative to the amount under (2); (3) the strength of any evidence of contributor liability; and (4) the strength of any evidence of involvement of non-contributor third-parties.

(d) If the amount available to the wildfire recovery fund, including assets held by the wildfire recovery fund and all payments contributors are obligated to make to the wildfire recovery fund, is less than fifty percent of the aggregate liability limit as calculated in section []-8, the wildfire recovery fund shall make payment only to contributors as provided under section []-7.

§ []-7 Claims for payment by contributors

The executive director shall issue rules creating a process through which a contributor may obtain payment from the wildfire recovery fund to satisfy settled or finally adjudicated claims for recovery of qualifying damages after exhausting the contributor's available insurance. The rules shall address the standard for approving any settlement. To the extent that the wildfire recovery fund lacks sufficient funds to make a payment to a participating utility when sought, it will make such payment upon receipt of contributions that contributors are obligated to make to the wildfire recovery fund under payment schedules.

§ []-8 Limitation on aggregate liability

(a) The aggregate liability of all contributors for qualifying damages arising from a covered catastrophic wildfire, including economic and non-economic damages, shall not exceed the greater of (1) fifty percent of the amount available to the wildfire recovery fund at the time of the covered catastrophic wildfire, inclusive of amounts in and obligated to the wildfire recovery fund; or (2) the average assessed value of commercial

1 structures and residential structures designed for habitation in
2 the county where the covered catastrophic wildfire ignited
3 multiplied by the number of commercial structures or residential
4 structures designed for habitation that were destroyed. Both of
5 the following will be added to determine whether the aggregate
6 liability limit has been reached: (1) payments from the wildfire
7 recovery fund under section []-6; and (2) payments by a
8 contributor in connection with any settlement or judgment on a
9 claim for qualifying damages.

10 (b) All civil actions arising out of a catastrophic
11 wildfire shall be brought in the circuit in which the
12 catastrophic wildfire takes place. The court shall adopt
13 procedures to equitably apply the limit set forth in section
14 []-8(a) to all civil claims that are filed. All settlements
15 or judgments for claims for qualifying damages shall be subject
16 to approval by the court. The court shall not approve any
17 settlement or judgment that would cause the aggregate liability
18 of contributors to exceed the aggregate liability limit.

19 (c) A court shall consolidate cases arising from a covered
20 catastrophic wildfire. Any circuit court that is not the
21 consolidating court shall transfer any civil case to facilitate
22 such consolidation.

23 **§ []-9 Limitations on claims**

24 (a) No qualifying action may be instituted or maintained by
25 a qualified claimant against contributors or their affiliates,
26 employees, agents, or insurers if the qualified claimant accepts
27 an offer under section []-6, provided that the rights of a

1 property insurer to sue as a subrogee of its policyholder shall
2 not be affected by a property owner's or tenant's acceptance of
3 an offer under section []-6 and the subrogation rights shall
4 be affected only if the property insurer elects to accept an
5 offer under section []-6.

6 (b) No suit, claim, arbitration, or other civil legal
7 action for indemnity or contribution for amounts paid, or that
8 may be paid, as a result of a covered catastrophic wildfire, may
9 be instituted or maintained by any persons or entities against
10 contributors or their affiliates, employees, agents, or insurers
11 for qualifying damages.

12 § []-10 **Several liability**

13 Any law to the contrary notwithstanding, joint and several
14 liability is abolished for any qualifying damages. Any person
15 or entity that is sued for qualifying damages may argue for
16 apportionment of fault to any other person or entity regardless
17 of whether that person or entity is a party to the action.

18 § []-11 **Reporting; refunds authorized by Legislature**

19 (a) The executive director shall submit to the legislature
20 an annual report for the wildfire recovery fund no later than
21 ninety days prior to the start of each legislative session until
22 2034. The annual plan submitted by the executive director shall
23 include an update on the activities of the wildfire recovery
24 fund.

25 (b) Ninety days before the legislative session of 2035, the
26 executive director shall submit a report regarding the financial
27 status and resources of the wildfire recovery fund relative to

1 the then-current assessment of actuarial risk of a catastrophic
2 wildfire. Based on such assessment, the Legislature may
3 determine that the wildfire recovery fund is over-funded and
4 direct the executive director to return contributions, in whole
5 or in part, with associated investment earnings, to
6 contributors. Any payments made to the wildfire recovery fund
7 that were recovered in regulated rates from customers, and any
8 investment earnings associated with those payments, shall, in
9 the event that the legislature orders a refund, be returned to
10 those customers.

11 **§ []-12 Inadmissible evidence**

12 (a) Any findings made or evidence submitted for purposes of
13 proceedings under sections []-4,6, and 7 of this act shall be
14 subject to the limits on admissibility under Haw. Rev. Stat.
15 Ann. § 626-1, Rule 408.

16
17 SECTION 3. The Hawaii Revised Statutes is amended by
18 adding a new chapter to be appropriately designated and to read
19 as follows:

20
21
22
23 **PART II**
24 **SECURITIZATION**

25
26 **§ []-1 Definitions.**

1 As used in this Part, unless the context otherwise
2 requires:

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

10 “Assignee” means a legally recognized entity to which an
11 electric utility assigns, sells, or transfers, other than as
12 security, all or a portion of the electric utility’s interest in
13 or right to wildfire recovery fund property.

14 “Assignee” includes a corporation, limited liability
15 company, general partnership or limited partnership, public
16 authority, trust, financing entity, or any other legal entity to
17 which an assignee assigns, sells, or transfers, other than as
18 security, its interest in or right to wildfire recovery fund
19 property.

20 “Bond” means any bond, note, certificate of participation
21 or beneficial interest, or other evidence of indebtedness or
22 ownership that is issued by the financing entity under a
23 financing order, the proceeds of which are used directly or
24 indirectly to recover, finance, or refinance financing costs of
25 any wildfire recovery fund costs, and that are directly or
26 indirectly secured by or payable from wildfire recovery fund
27 property.

1 "Commission" means the public utilities commission.

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

8 "Electric utility" means a public utility that exists for
9 the furnishing of electrical power.

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

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

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

18 (3) An amount required to fund or replenish reserve
19 accounts or other accounts established under an indenture,
20 ancillary agreement, or other financing document related to the
21 bonds;

22 (4) Taxes, franchise fees, or license fees imposed on
23 a financing entity as a result of the issuance of the financing
24 order; the assignment, sale, or transfer of any wildfire
25 recovery fund property; or the sale of the bonds, or imposed on
26 the wildfire recovery fund charges, or otherwise resulting from

1 the collection of the wildfire recovery fund charge, in any such
2 case whether paid, payable, or accrued;

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

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

13 "Financing entity" means an electric utility or an entity
14 to which an electric utility or an affiliate of an electric
15 utility sells, assigns, or pledges all or a portion of the
16 electric utility's interest in wildfire recovery fund property,
17 including an affiliate of the electric utility or any
18 unaffiliated entity, in each case as approved by the commission
19 in a financing order.

20 For purposes of this definition and subject to section
21 []-6(c), an entity to which an electric utility sells,
22 assigns, or pledges all or a portion of the electric utility's
23 interest in wildfire recovery fund property may include any
24 governmental entity that is able to issue bonds that are exempt
25 from federal tax pursuant to section 103 of the Internal Revenue
26 Code of 1986, as amended, including the State or a political
27 subdivision thereof or any department, agency, or

1 instrumentality of the State or political subdivision; provided
2 that the bonds issued shall not constitute a general obligation
3 of the State or any political subdivision thereof or any
4 department, agency, or instrumentality of the State or political
5 subdivision and shall not constitute a pledge of the full faith
6 and credit of the entity or of the State or any political
7 subdivision thereof, but shall be payable solely from the funds
8 provided under this part.

9 "Financing order" means an order of the commission under
10 this part that has become final and no longer subject to appeal
11 as provided by law and that authorizes the issuance of bonds and
12 the imposition, adjustment from time to time, and collection of
13 wildfire recovery fund charges, and which shall include a
14 procedure to require the expeditious approval by the commission
15 of periodic adjustments to wildfire recovery fund charges and to
16 any associated fixed recovery tax amounts included in that
17 financing order to ensure recovery of all wildfire recovery fund
18 costs and the costs associated with the proposed recovery,
19 financing, or refinancing thereof, including the costs of
20 servicing and retiring the bonds contemplated by the financing
21 order.

22 "Financing party" means any holder of the bonds, any party
23 to or beneficiary of an ancillary agreement, and any trustee,
24 collateral agent, or other person acting for the benefit of any
25 of the foregoing.

26 "Fixed recovery tax amounts" means those nonbypassable
27 rates and other charges, including but not limited to

1 distribution, connection, disconnection, and termination rates
2 and charges, that are needed to recover federal and state taxes
3 associated with wildfire recovery fund charges authorized by the
4 commission in a financing order, but are not approved as
5 financing costs financed from proceeds of bonds.

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

7 "True-up adjustment" means a formulaic adjustment to the
8 wildfire recovery fund charges as they appear on consumer bills
9 that is necessary to correct for any overcollection or
10 undercollection of the wildfire recovery fund charges authorized
11 by a financing order and to otherwise ensure the timely and
12 complete payment and recovery of wildfire recovery fund costs
13 over the authorized repayment term.

14 "Wildfire recovery fund" means the wildfire recovery fund
15 established by this Act.

16 "Wildfire recovery fund charges" means the nonbypassable
17 charges, including but not limited to distribution, connection,
18 disconnection, and termination rates and charges, that are
19 authorized by section []-2 and in a financing order
20 authorized under this part to be imposed on and collected from
21 all existing and future consumers of a financing entity or any
22 successor to recover principal, interest, and other financing
23 costs relating to the bonds.

24 "Wildfire recovery fund costs" means an investor-owned
25 utility's contributions to the wildfire recovery fund, as set
26 forth in section []-3 of Part I of this Act. Wildfire
27 recovery fund costs shall also include professional fees,

1 consultant fees, redemption premiums, tender premiums, and other
2 costs incurred by the electric utility in using proceeds of
3 bonds to acquire outstanding securities of the electric utility
4 that the commission has determined were or will be prudently
5 incurred.

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

10 (1) In and to the wildfire recovery fund charge
11 established pursuant to a financing order, including the right
12 to impose, bill, collect, and receive such wildfire recovery
13 fund charges under the financing order and all rights to obtain
14 adjustments to the wildfire recovery fund charge in accordance
15 with section []-3 and the financing order; and

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

23 "Wildfire recovery fund property" does not include a right
24 to be paid fixed recovery tax amounts. "Wildfire recovery fund
25 property" shall constitute a current property right,
26 notwithstanding the fact that the value of the property right
27 will depend on consumers using electricity or, in those

1 instances where consumers are customers of the electric utility,
2 the electric utility performing certain services.

3 "Wildfire risk mitigation plan" means a plan, which may
4 include a natural hazard mitigation report, in which a public
5 utility addresses how it will mitigate the risk of its equipment
6 causing or exacerbating a wildfire.

7 **§ []-2 Applications to issue bonds and authorize**
8 **wildfire recovery fund charges.**

9 (a) An electric utility may apply to the commission for
10 one or more financing orders to issue bonds to recover any
11 wildfire recovery fund costs, each of which authorizes the
12 following:

13 (1) The imposition, charging, and collection of a wildfire
14 recovery fund charge, to become effective upon the issuance
15 of the bonds, and an adjustment of any such wildfire
16 recovery fund charge in accordance with a true-up
17 adjustment mechanism under this part in amounts sufficient
18 to pay the principal and interest on the bonds and all
19 other associated financing costs on a timely basis;

20 (2) The creation of wildfire recovery fund property under
21 the financing order; and

22 (3) The imposition, charging, and collection of fixed
23 recovery tax amounts to recover any portion of the electric
24 utility's federal and state taxes associated with those
25 wildfire recovery fund charges and not financed from the
26 proceeds of bonds.

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

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

1 charge to correct for any overcollection or undercollection
2 of the wildfire recovery fund charge, and to otherwise
3 ensure the timely payment of principal and interest on the
4 bonds and all other associated financing costs; and

5 (10) Any other information required by the commission.

6 (c) An electric utility may file an application for a
7 financing order, including as a joint application with one or
8 more affiliate electric utilities, to issue bonds to recover
9 wildfire recovery fund costs. The application shall include a
10 description of:

11 (1) How the wildfire recovery fund charges will be
12 allocated among the applicant electric utilities in a
13 manner that is equitable and that need not correspond to
14 the incurrence of wildfire recovery fund costs by each
15 electric utility; and

16 (2) Whether and how the consumers of any of the applicant
17 electric utilities will be responsible for the payment of
18 wildfire recovery fund charges allocated to consumers of
19 affiliate electric utilities.

20 In the alternative, an electric utility may apply for a
21 financing order to issue bonds to recover wildfire recovery fund
22 costs, including wildfire recovery fund costs incurred, or to be
23 incurred, by the applicant and one or more of its affiliate
24 electric utilities. In connection with the issuance of a
25 financing order pursuant to this subsection, the commission
26 shall issue a concurrent order to the affiliate electric utility
27 or electric utilities directing such affiliate electric utility

1 or electric utilities to impose rates on its or their consumers
2 designed to generate revenue sufficient to pay credits over the
3 life of the bonds to the applicant electric utility in such
4 amount as the commission determines is equitable, just, and
5 reasonable. Such an application shall describe the allocation
6 method and adjustment mechanism for the affiliate electric
7 utility credit payments proposed to be subject to such
8 concurrent commission order.

9 (d) The commission shall issue an approval or denial of
10 any application for a financing order filed pursuant to this
11 section within ninety days of the last filing in the applicable
12 docket but no later than one year after the application is
13 filed.

14 (e) In exercising its duties under this section, the
15 commission shall consider:

16 (1) Whether the recovery of such costs is consistent with
17 the public interest;

18 (2) Whether the structuring, marketing, and pricing of the
19 bonds are expected to result in the lowest wildfire
20 recovery fund charges consistent with market conditions at
21 the time the bonds are priced and the terms of the
22 financing order;

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

25 (4) Whether the recovery of wildfire recovery fund costs
26 through the designation of the wildfire recovery fund
27 charges and any associated fixed recovery tax amounts, and

1 the issuance of bonds in connection with the wildfire
2 recovery fund charges, would result in net savings or
3 mitigate rate impacts to consumers as compared to rate
4 recovery without securitization as set forth in section [
5]-3(c) of Part I of this Act; and

6 (5) Any other factors that the commission deems reasonable
7 and in the public interest.

8 If the commission makes the determination specified in this
9 section, the commission shall establish, as part of the
10 financing order, a procedure for the electric utility to submit
11 applications from time to time to request the issuance of
12 additional financing orders designating wildfire recovery fund
13 charges and any associated fixed recovery tax amounts as
14 recoverable.

15 At the option of the electric utility, the electric utility
16 may include in its application for a financing order a request
17 for authorization to sell, transfer, assign, or pledge wildfire
18 recovery fund property to a governmental entity if the electric
19 utility expects bonds issued by a governmental entity would
20 result in a more cost efficient means, taking into account all
21 financing costs related to the bonds, than using another
22 financing entity to issue bonds to finance the same wildfire
23 recovery fund costs, taking into account the costs of issuing
24 the other financing entity's bonds.

25 (f) Wildfire recovery fund charges and any associated
26 fixed recovery tax amounts shall be imposed only on existing and
27 future consumers in the utility service territory. Consumers

1 within the utility service territory of the electric utility
2 that are subject to the financing order shall continue to pay
3 wildfire recovery fund charges and any associated fixed recovery
4 tax amounts until the bonds and associated financing costs are
5 paid in full by the financing entity.

6 **§ []-3 Wildfire recovery fund financing order.**

7 (a) A financing order shall remain in effect until the
8 bonds issued under the financing order and all financing costs
9 related to the bonds have been paid in full or defeased by their
10 terms.

11 A financing order shall remain in effect and unabated
12 notwithstanding the bankruptcy, reorganization, or insolvency of
13 the electric utility or the commencement of any judicial or
14 nonjudicial proceeding on the financing order.

15 (b) Notwithstanding any other law, with respect to
16 wildfire recovery fund property that has been made the basis for
17 the issuance of bonds and with respect to any associated fixed
18 recovery tax amounts, the financing order, the wildfire recovery
19 fund charges, and any associated fixed recovery tax amounts
20 shall be irrevocable. The State and its agencies, including the
21 commission, pledge and agree with bondholders, the owners and
22 assignees of the wildfire recovery fund property, and other
23 financing parties that the State and its agencies shall not take
24 any action listed in this subsection. This subsection shall not
25 preclude an action if such action would not adversely affect the
26 interests of the electric utility and of assignees of the

wildfire recovery fund property. The prohibited actions shall be the following:

(1) Alter the provisions of this part, which authorize the commission to create an irrevocable contract right or choice in action by the issuance of a financing order, to create wildfire recovery fund property, and make the wildfire recovery fund charges imposed by a financing order irrevocable, binding, nonbypassable charges for all existing and future consumers;

(2) Take or permit any action that impairs or would impair the value of wildfire recovery fund property or the security for the bonds or revise the wildfire recovery fund costs for which recovery is authorized;

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

(4) Except for changes made pursuant to the formula-based true-up mechanism authorized under subsection (d), reduce, alter, or impair wildfire recovery fund charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs, and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related bonds have been paid and performed in full.

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

1 (c) Under a financing order, the electric utility shall
2 retain sole discretion to select the financing entity and to
3 cause bonds to be issued, including the right to defer or
4 postpone the issuance, assignment, sale, or transfer of wildfire
5 recovery fund property.

6 (d) The public utilities commission may create, pursuant
7 to an application from an electric utility, a nonbypassable
8 charge referred to as a wildfire recovery fund charge, which
9 shall be applied to recover principal, interest, and other
10 financing costs relating to the bonds. The wildfire recovery
11 fund charge shall be a dedicated, discrete tariff rider. The
12 commission shall, in any financing order, establish a procedure
13 for periodic true-up adjustments to wildfire recovery fund
14 charges, which shall be made at least annually and may be made
15 more frequently. Within thirty days after receiving an electric
16 utility's filing of a true-up adjustment, the public utilities
17 commission's review of the filing shall be limited to
18 mathematical or clerical errors as determined in accordance with
19 any true-up adjustment formulas set forth in the applicable
20 financing order. The public utilities commission shall either
21 approve the filing or inform the electric utility of any
22 mathematical or clerical errors in its calculation. If the
23 commission informs the electric utility of mathematical or
24 clerical errors in its calculation, the electric utility shall
25 correct its error and refile its true-up adjustment. The
26 timeframes previously described in this subsection shall apply
27 to a refiled true-up adjustment.

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

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

15 (f) Wildfire recovery fund charges are wildfire recovery
16 fund property when, and to the extent that, a financing order
17 authorizing the wildfire recovery fund charges has become
18 effective in accordance with this part, and the wildfire
19 recovery fund property shall thereafter continuously exist as
20 property for all purposes, and all of the rights and privileges
21 relating to that property shall continuously exist for the
22 period and to the extent provided in the financing order, but in
23 any event until the bonds are paid in full, including all
24 principal; premiums, if any; interest with respect to the bonds;
25 and all other financing costs are paid in full. A financing
26 order may provide that the creation of wildfire recovery fund
27 property shall be simultaneous with the sale of the wildfire

1 recovery fund property to an assignee as provided in the
2 application of the pledge of the wildfire recovery fund property
3 to secure the bonds.

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

8 § []-4 Bonds; issuance; wildfire recovery fund property
9 interests.

10 (a) The electric utility may sell and assign all or
11 portions of its interest in wildfire recovery fund property to
12 one or more financing entities that make that wildfire recovery
13 fund property the basis for issuance of bonds, to the extent
14 approved in a financing order. The electric utility or
15 financing entity may pledge wildfire recovery fund property as
16 collateral, directly or indirectly, for bonds to the extent
17 approved in the pertinent financing orders providing for a
18 security interest in the wildfire recovery fund property, in the
19 manner set forth in this section. In addition, wildfire
20 recovery fund property may be sold or assigned by either of the
21 following:

22 (1) The financing entity or a trustee for the holders of
23 bonds or the holders of an ancillary agreement in
24 connection with the exercise of remedies upon a default
25 under the terms of the bonds; or

1 (2) Any person acquiring the wildfire recovery fund
2 property after a sale or assignment pursuant to this
3 chapter.

4 (b) To the extent that any interest in wildfire recovery
5 fund property is sold, assigned, or is pledged as collateral
6 pursuant to subsection (a), the commission may authorize the
7 electric utility to contract with the financing entity or its
8 assignees that the electric utility will continue to operate its
9 system to provide service to consumers within its service
10 territory, will collect amounts in respect of the wildfire
11 recovery fund charges for the benefit and account of the
12 financing entity or its assignees, and will account for and
13 remit these amounts to or for the account of the financing
14 entity or its assignees. Contracting with the financing entity
15 or its assignees in accordance with that authorization shall not
16 impair or negate the characterization of the sale, assignment,
17 or pledge as an absolute transfer, a true sale, or a security
18 interest, as applicable. To the extent that billing,
19 collection, and other related services with respect to the
20 provision of the electric utility's services are provided to a
21 consumer by any person or entity other than the electric utility
22 in whose service territory the consumer is located, that person
23 or entity shall collect the wildfire recovery fund charges and
24 any associated fixed recovery tax amounts from the consumer for
25 the benefit and account of the electric utility, financing
26 entity, or assignees with the associated revenues remitted
27 solely for such person's benefit as a condition to the provision

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

8 (c) The financing entity may issue bonds upon approval by
9 the commission in a financing order. Bonds shall be nonrecourse
10 to the credit or any assets of the electric utility, other than
11 the wildfire recovery fund property as specified in that
12 financing order.

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

1 continue to exist until the bonds issued pursuant to a financing
2 order and all associated financing costs are paid in full.

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

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

20 § []-5 **Wildfire recovery fund charge.**

21 (a) The wildfire recovery fund charge created pursuant to
22 a financing order approved pursuant to section []-2 shall be
23 a nonbypassable charge of a financing entity that shall be
24 applied to the repayment of bonds and related financing costs as
25 described in this part. The wildfire recovery fund charge and
26 any associated fixed recovery tax amounts may be a usage-based
27 charge, a flat user charge, or a charge based upon customer

1 revenues as determined by the public utilities commission for
2 each consumer class in any financing order.

3 (b) As long as any bonds are outstanding and any financing
4 costs have not been paid in full, any wildfire recovery fund
5 charge and any associated fixed recovery tax amounts authorized
6 under a financing order shall be nonbypassable. Subject to any
7 exceptions provided in a financing order, a wildfire recovery
8 fund charge and any associated fixed recovery tax amounts shall
9 be paid by all existing and future consumers within the utility
10 service territory.

11 (c) The wildfire recovery fund charge shall be collected
12 by an electric utility or its successors, in accordance with
13 section []-8(a), in full through a charge that is separate
14 and apart from the electric utility's rates.

15 (d) An electric utility may exercise the same rights and
16 remedies under its tariff and applicable law and regulation
17 based on a consumer's nonpayment of the wildfire recovery fund
18 charge as it could for a consumer's failure to pay any other
19 charge payable to that electric utility.

20 § []-6 **Security interests in wildfire recovery fund**
21 **property; financing statements.**

22 (a) A security interest in wildfire recovery fund property
23 is valid and enforceable against the pledgor and third parties,
24 subject to the rights of any third parties holding security
25 interests in the wildfire recovery fund property perfected in
26 the manner described in this section, and attaches when all of
27 the following have taken place:

1 (1) The commission has issued a financing order
2 authorizing the wildfire recovery fund charge included in
3 the wildfire recovery fund property;

4 (2) Value has been given by the pledgees of the wildfire
5 recovery fund property; and

6 (3) The pledgor has signed a security agreement covering
7 the wildfire recovery fund property.

8 (b) A valid and enforceable security interest in wildfire
9 recovery fund property is perfected when it has attached and
10 when a financing statement has been filed with the bureau of
11 conveyances of the State of Hawaii naming the pledgor of the
12 wildfire recovery fund property as "debtor" and identifying the
13 wildfire recovery fund property.

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

24 (c) A perfected security interest in wildfire recovery
25 fund property shall be a continuously perfected security
26 interest in all wildfire recovery fund property revenues and
27 proceeds arising with respect thereto, whether or not the

1 revenues or proceeds have accrued. Conflicting security
2 interests shall rank according to priority in time of
3 perfection. Wildfire recovery fund property shall constitute
4 property for all purposes, including for contracts securing
5 bonds, whether or not the wildfire recovery fund property
6 revenues and proceeds have accrued.

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

19 Subject to the terms of the security agreement, upon
20 compliance with the requirements of section 490:9-312(b)(1), the
21 pledgees of the wildfire recovery fund property shall have a
22 perfected security interest in all cash and deposit accounts of
23 the electric utility in which wildfire recovery fund property
24 revenues have been commingled with other funds.

25 (e) If default occurs under the security agreement
26 covering the wildfire recovery fund property, the pledgees of
27 the wildfire recovery fund property, subject to the terms of the

1 security agreement, shall have all rights and remedies of a
2 secured party upon default under chapter 490, article 9, and
3 shall be entitled to foreclose or otherwise enforce their
4 security interest in the wildfire recovery fund property,
5 subject to the rights of any third parties holding prior
6 security interests in the wildfire recovery fund property
7 perfected in the manner provided in this section. In addition,
8 the commission may require in the financing order creating the
9 wildfire recovery fund property that, in the event of default by
10 the electric utility in payment of wildfire recovery fund
11 property revenues, the commission and any successor thereto,
12 upon the application by the pledgees or assignees, including
13 assignees under section []-5 of the wildfire recovery fund
14 property, and without limiting any other remedies available to
15 the pledgees or assignees by reason of the default, shall order
16 the sequestration and payment to the pledgees or assignees of
17 wildfire recovery fund property revenues. Any financing order
18 shall remain in full force and effect notwithstanding any
19 bankruptcy, reorganization, or other insolvency proceedings with
20 respect to the debtor, pledgor, or transferor of the wildfire
21 recovery fund property. Any surplus in excess of amounts
22 necessary to pay principal, premiums, if any, interest, costs,
23 and arrearages on the bonds, and associated financing costs
24 arising under the security agreement, shall be remitted to the
25 debtor, pledgor, or transferor, for the purpose of remitting
26 such amounts to customers via the electric utility.

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

5 § []-7 **Transfers of wildfire recovery fund property.**

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

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

22 (1) Commingling of wildfire recovery fund charge revenues
23 with other amounts;

24 (2) The retention by the seller of either of the
25 following:

26 (A) A partial or residual interest, including an
27 equity interest, in the financing entity or the

wildfire recovery fund 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 recovery fund charge;

(3) Any recourse that an assignee 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 recovery fund charges 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 recovery fund charge as provided in the financing order.

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

(1) The commission issues the financing order authorizing the wildfire recovery fund charge included in the wildfire recovery fund property; and

(2) An assignment of the wildfire recovery fund property in writing has been executed and delivered to the assignee.

(d) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the bureau of conveyances of the State of Hawaii in accordance with chapter 490, article 9, part 5, naming the

1 assignor of the wildfire recovery fund property as debtor and
2 identifying the wildfire recovery fund property shall have
3 priority. Any description of the wildfire recovery fund
4 property shall be sufficient if it refers to the financing order
5 creating the wildfire recovery fund property. A copy of the
6 financing statement shall be filed by the assignee with the
7 commission, and the commission may require the assignor or the
8 assignee to make other filings with respect to the transfer in
9 accordance with procedures the commission may establish, but
10 these filings shall not affect the perfection of the transfer.

11 § []-8 **Financing entity successor requirements; default**
12 **of financing entity.**

13 (a) Any successor to an electric utility subject to a
14 financing order, whether pursuant to any bankruptcy,
15 reorganization, or other insolvency proceeding, or pursuant to
16 any merger, sale, or transfer, by operation of law, or
17 otherwise, shall be bound by the requirements of this part. The
18 successor of the electric utility shall perform and satisfy all
19 obligations of the electric utility under the financing order,
20 in the same manner and to the same extent as the electric
21 utility, including the obligation to collect and pay the
22 wildfire recovery fund charge to any financing party as required
23 by a financing order or any assignee. Any successor to the
24 electric utility shall be entitled to receive any fixed recovery
25 tax amounts otherwise payable to the electric utility.

26 (b) The commission may require in a financing order that
27 if a default by the electric utility in remittance of the

wildfire recovery fund charge collected arising with respect to wildfire recovery fund property occurs, the 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 recovery fund charge collected arising with respect to the wildfire recovery fund property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

§ []-9 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 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 []. 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 []-14, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods

1 of more than twelve months after the date thereof, for the
2 following purposes and no other, namely: for the acquisition of
3 property or for the construction, completion, extension, or
4 improvement of or addition to its facilities or service, or for
5 the discharge or lawful refunding of its obligations or for the
6 reimbursement of moneys actually expended from income or from
7 any other moneys in its treasury not secured by or obtained from
8 the issue of its stocks or stock certificates, or bonds, notes,
9 or other evidences of indebtedness, for any of the aforesaid
10 purposes except maintenance of service, replacements, and
11 substitutions not constituting capital expenditure in cases
12 where the corporation has kept its accounts for ~~[such]~~
13 expenditures in ~~[such]~~ a manner ~~[as to enable]~~ that enables the
14 commission to ascertain the amount of moneys so expended and the
15 purposes for which the expenditures were made, and the sources
16 of the funds in its treasury applied to the expenditures. As
17 used ~~[herein,]~~ in this section, "property" and "facilities"~~[,]~~
18 mean property and facilities used in all operations of a public
19 utility corporation whether or not included in its public
20 utility operations or rate base. A public utility corporation
21 may not issue securities to acquire property or to construct,
22 complete, extend ~~[or]~~, improve, or add to its facilities or
23 service if the commission determines that the proposed purpose
24 will have a material adverse effect on its public utility
25 operations.

26 All stock and every stock certificate, and every bond,
27 note, or other evidence of indebtedness of a public utility

1 corporation not payable within twelve months, issued without an
2 order of the commission authorizing the same, then in effect,
3 shall be void."

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INTRODUCED BY: _____

7

BY REQUEST

____.B. NO.____

Report Title:

[Insert]

Description:

[Insert]

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