

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

House Committee on Energy and Environmental Protection

Tuesday, March 11, 2025

9:00 a.m.

State Capitol, Conference Room 325 and Videoconference

With Comments

Senate Bill No. 897, SD3, Relating to Energy

Chair Lowen, Vice Chair Perruso, and Members of the House Committee on Energy and Environmental Protection:

The Office of the Governor provides the following comments for S.B. No. 897, SD3, Relating to Energy. This bill establishes the Wildfire Liability Trust Fund within the Department of Commerce and Consumer Affairs and specifies that the fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate. This bill would also authorize securitization for electric utilities and requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard.

The Lahaina wildfires 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.

The Office of the Governor appreciates that this proposal tries to address how our state and utilities address the financial impacts of catastrophic wildfires, including how we stabilize our electric utility and our energy future. However, the Governor is keenly aware of our state's high electrical rates and the impact that it has on all our residents. We recognize and appreciate that while the current version of this bill has blank appropriations, previous versions did provide a contribution share between the ratepayers and the utility, which is intended to decrease the impact on the ratepayers of our state. We are mindful, however, of the constraints the utility may face in reaching these funding goals.

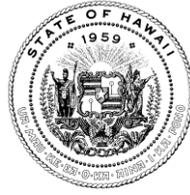
The Office of the Governor recognizes the importance of establishing a fund but is concerned about placing it within a state agency. We believe that the fund should remain independent and free from constraints that could complicate its administration. Separating it from state agencies would help prevent the risk of financial entanglements, ensuring that all resources are directed exclusively toward wildfire recovery efforts. The Office believes that

Testimony of the Office of the Governor
S.B. No. 897, SD3
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maintaining this autonomy is vital to ensuring the fund remains focused on its intended purpose.

While the Office of the Governor has concerns regarding the mechanics of this legislation, we do not oppose this bill moving forward so that discussions may continue with the electric utility and other key affected stakeholders.

Mahalo for the opportunity to provide testimony on this measure.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Energy & Environmental Protection
Tuesday, March 11, 2025
9:00 a.m.
Conference Room 325

On the following measure:
S.B. 897, S.D. 3, RELATING TO ENERGY

Chair Lowen 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 offers comments on this bill.

The purpose of this bill is to: (1) establish the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes; (2) specify that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate; (3) authorize securitization for electric utilities; and (4) require the Public Utilities Commission (Commission) to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard.

With respect to the provisions of the bill regarding the Wildfire Liability Trust Fund, the Department hopes that Hawaii will never again suffer the incredible loss and destruction of a major wildfire. The Department also understands the societal benefit of

having the ability to provide efficient compensation for property damaged or lost if there is any future wildfire. However, the Department believes that utility customers must not be the primary or sole contributor to such a fund and that it is appropriate to ensure that customers' contribution to such a fund be significantly limited. Put simply, customers did not start the fire that degraded Hawaiian Electric's credit rating and customers are not responsible for on-going risk. Additionally, customers will likely be asked to bear many of the infrastructure investment costs to reduce wildfire risk going forward.

The legislation, as currently drafted, does not specify the contribution amount from utility customers to the specified fund amount of \$1,000,000,000. However, the legislation, as drafted, appears that it would place the financial burden of funding the fund entirely onto customers without any guarantee of a benefit in return absent changes to the language. Requiring ratepayers to be the sole or primary contributor to this fund does not acknowledge that there is a substantial benefit to shareholders from establishing this fund in that it reduces the risk that a future catastrophic wildfire would result in Hawaiian Electric (or another utility) facing bankruptcy concerns leading to another substantial reduction in shareholder value such as what occurred after the Maui wildfire.

Hawaiian Electric provided comments from Moody's credit rating agency representing that to protect utility credit quality and retain investor confidence, a policy framework is needed that includes:

- limits on liability,
- a sufficiently large wildfire fund to cover the costs of a catastrophic event,
- and transparent guidelines or certification requirements for fire mitigation.

While a fund of this types appears to be a "needed" component of a framework to restore Hawaiian Electric's credit rating, the likelihood that the fund will deliver a benefit to customers is largely uncertain and so is the amount of the benefit. The Department notes that there is no certainty that the fund would:

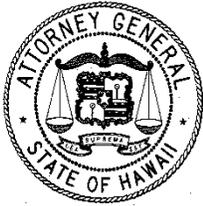
- improve the utility's credit rating,
- by how much the credit rating might improve, and
- no known timeline for any improvement.

Given these significant concerns and the benefits to shareholders of establishing this fund, the Department appreciates the amendments provided within H.D. 1 and H.D. 2 to H.B. 982, and offers that H.B. 982 H.D. 2 is a more balanced version than the current version of this legislation.

Regarding the proposed modifications to Hawaii Revised Statutes (HRS) §269-146 and -147, the Department notes the Public Utilities Commission's (Commission) testimony related to the Hawaii Electricity Reliability Administrator (HREA) on prior drafts of this bill. Notably, the Commission is actively in the process of procuring a consultant to serve as the HERA and is using its existing budget to avoid increasing rates on customers. As such, the need for the proposed changes to HRS §269-146 and -147 may not be necessary.

Finally, regarding the proposed changes to HRS §269-92 and establishing a requirement that the utility remove from its rate base a commensurate amount of costs related to when adding new or converted "firm renewable generation and renewable energy resources", the Department appreciates the intent of the amendment, which appears to be to support reliability with renewable generation. However, the Department notes that there are established processes such as integrated grid planning that seek to establish the most cost-effective resource mix for achieving the State's renewable portfolio standards (RPS) mandates and the regulatory process, which enables the assessment of the reasonable amount of rate base.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 897, S.D. 3, RELATING TO ENERGY.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Tuesday, March 11, 2025

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 325

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

Chair Lowen and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill:

1. Establishes the Wildfire Liability Trust Fund (Fund) to be placed within the Department of Commerce and Consumer Affairs for administrative purposes.
2. Assigns the administration and management of the Fund to an Executive Director appointed by the Governor and confirmed by the Senate.
3. Authorizes securitization for electric utilities.
4. Is to help mitigate the negative financial impacts of any future catastrophic wildfires in the State.

We note that the bill proposes to add a new part to chapter 269, Hawaii Revised Statutes (HRS), that includes several features that could adversely impact the State and its residents. The following list, which references sections in that new part, highlights those features that we believe are material for the Legislature to consider in its assessment of the bill.

**1. Section 269-B - Wildfire Liability Trust Fund; Establishment;
Executive Director, page 3, line 17, through page 5, line 5.**

Subsection (b) - Placement of the Wildfire Liability Trust Fund Within the
Department of Commerce and Consumer Affairs:

While the Fund is placed within the Department of Commerce and Consumer Affairs (DCCA), it is not a legal corporate entity. One way to resolve this would be for the bill to establish the Wildfire Recovery Fund Corporation (Corporation), define its statutory framework, and place it within the DCCA for administrative purposes only. The Fund would then be placed within the Corporation.

**2. Section 269-C - Financial Contributions Required from the
Investor-Owned Utilities to Capitalize the Fund, page 5, line 6,
through page 8, line 6.**

Subsection (b)(1) - Contributions from Investor-Owned Electric Utilities:

The initial contributions from investor-owned electric utilities shall be \$1,000,000,000 collectively, including:

- Amount: An unstated amount plus interest (if applicable).
- Funding mechanism: The unstated amount is to be recovered from the investor-owned utilities' customers through nonbypassable rates that can be securitized. The PUC must approve the nonbypassable rate charges. These nonbypassable rates mean that the customers must pay this charge.

Subsection (b)(2) - Shareholders of the Investor-Owned Utilities:

- Amount: An unstated amount.
- Funding mechanism: This contribution comes from the shareholders of the investor-owned utilities, not from the ratepayers.
- Purpose: To pay the salaries of the Executive Director of the Fund and other personnel needed to implement this part. If any portion of the amount relating to salaries remains unspent by 2035, it must be transferred to the Fund.

Subsection (c) - Funding by the Investor-Owned Utilities:

The investor-owned utilities may elect to capitalize the Fund over a period not to exceed five years unless paid through securitization. Any amount deferred after the first year shall accrue interest at the utility's cost of borrowing for long-term debt. The utilities are allowed to recover the principal and accrued interest from customers through rates approved by the PUC.

Under the financing mechanisms to capitalize the Fund, the financial burden falls on customers either through nonbypassable rates or rates charged for their electricity usage while the balance is funded by the shareholders of the investor-owned utilities.

**3. Section 269-E – Replenishment of the Wildfire Liability Trust
Fund, page 8, line 15, through page 10, line 15.**

Subsection (a) - Timing for Evaluating Prudence of the Contributor's Conduct Leading to the Catastrophic Wildfire:

Subsection (a) provides that a contributor whose facilities were implicated in a catastrophic wildfire shall initiate a proceeding before the PUC to review the prudence of their conduct. This proceeding is initiated only after the Fund has made payments regarding the catastrophic wildfire and "after resolution of substantially all third-party liability claims that were brought or could be brought against contributors arising from that covered catastrophic wildfire" We believe that assessing the contributor's conduct should not be contingent upon the resolution of all claims. Evaluation of the contributor's conduct can and should proceed independently of the claims settlement process.

We propose the following amendment to subsection (a):

"(a) If the fund has made payments with respect to a covered catastrophic wildfire, [~~and after resolution of substantially all third-party liability claims that were brought or could be brought against contributors arising from that covered catastrophic wildfire,~~] each contributor whose facilities were implicated in the covered catastrophic wildfire shall initiate a proceeding before the commission to review the prudence of the public utility's conduct leading to the catastrophic wildfire." See page 8, line 16, through page 9, line 2.

Subsection (b) - Criteria for the PUC's Evaluation of the Contributor's Conduct:

This section outlines a mechanism for restoring the Fund after it has been used to cover payments related to catastrophic wildfires. Subsection (b) specifies the criteria that the PUC must apply when assessing an electric utility's actions concerning a catastrophic wildfire. These criteria are used to determine whether the PUC can require the electric utility to replenish the Fund. By establishing these mandatory standards, the bill effectively limits the PUC's discretionary power to make decisions based on what it considers to be in the public's best interest.

We recommend the deletion of subsection (b)(4), which establishes gross negligence as the standard that the PUC must use in evaluating whether a contributor acted prudently. Gross negligence is a heightened degree of negligence that goes beyond ordinary carelessness. It represents a failure to exercise even slight care or diligence. In the context of the PUC's evaluation of prudence, if a contributor's action is found to meet the standard of gross negligence, it would automatically be considered imprudent. This means that the contributor failed to exercise the most basic level of care that would be expected in the situation. By setting gross negligence as the standard for imprudence, it sets a high threshold. It suggests that ordinary mistakes might not be considered imprudent, but actions that show extreme carelessness or disregard for safety would be deemed imprudent.

We recommend the following amendment to delete subsection (b)(4), at page 9, lines 14 to 15:

~~"[(4) Finding that any contributor's action was not prudent if the action meets the standard of gross negligence.]"~~

Along with that change, "and" should be added at the end of subsection (b)(2) on page 9, line 9, and the semi-colon and the "and" should be deleted from the end of subsection (b)(3) on page 9, line 13, and replaced with a period.

Subsection (d) - Cap on the Amount of Contributor's Reimbursement of the Fund:

Subsection (d) prohibits the PUC from ordering a contributor to reimburse the Fund in an amount that exceeds twenty per cent of the contributor's transmission and

distribution equity rate base. It is unclear why there would be a limit on how much a contributor must reimburse the Fund if they behave imprudently.

4. Section 269-F - Claims for Payment by Qualified Claimants, page 10, line 16, through page 12, line 9.

Subsection (a) - Process for Claims:

Subsection (a) provides that the Executive Director of the Fund must establish a process through rulemaking under chapter 91, HRS, for non-governmental claimants to submit claims to the Fund.

The bill expressly provides that only non-governmental claimants may make a claim ("a qualified claimant that is not a government entity," page 10, line 19). This would preclude the State from making a claim for damages to State-owned property, including, for example, housing projects.

We suggest the following amendment to this provision to permit the State to make a claim for damages to State-owned property against the Fund:

"(a) The executive director shall adopt rules pursuant to chapter 91 to create a process by which a qualified claimant [~~that is not a government entity~~] may submit to the wildfire liability trust 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." See page 10, line 17, to page 11, line 2.

The claims must concern economic damages related to property damage from a covered catastrophic wildfire.

The administrative rules will include a submission deadline for the claims.

Subsection (b) - Claimants Eligibility and Restrictions:

- Filing requirement:
 - Qualified claimant must file a claim for uninsured economic damages related to property damage.
 - Claims by non-property insurers are limited to uninsured losses, that is, damages not covered by insurance.
- Bar on civil actions:
 - Qualified claimant cannot file or pursue a civil lawsuit against a participating utility that contributes to the Fund unless:

- The claimant first files a claim with the Fund, and
- The claimant rejects the settlement offer made by the Fund.
- Deadline consequences:

If a qualified claimant fails to file a claim by the established deadline set by the Executive Director, the claimant is precluded from receiving payment from the Fund and instituting any civil action against the participating utility (page 11, lines 11-13).

We believe that this statutory provision, which restricts a person from suing an entity, may raise constitutional concerns depending on the context and the entity involved. Potential constitutional issues include Due Process, Equal Protection, the Right to Access the Courts, and the Takings Clause, particularly regarding the deprivation of a person's property interest without just compensation.

Subsection (c) - Settlement Offers:

The Executive Director of the Fund must review submitted claims and make settlement offers to the claimants.

Claimants may accept or reject the offer.

In determining the amount of the settlement offer, the Executive Director must consider:

1. The total damages sought by all claimants.
2. The total amount available in the Fund versus the total claims.
3. The strength of evidence regarding the utility's liability.
4. The strength of evidence regarding the involvement of non-contributor third-parties.

Subsection (d) - Insufficiency of Moneys in the Fund:

If the Fund's available moneys are less than fifty percent of the aggregate liability limit as defined in the bill, the Fund will only make payments to participating utilities, not to claimants. This means that, to the extent that the Fund lacks sufficient moneys to cover all claims, a claimant would have no further recourse against the participating utility. Consequently, Fund payments depend on the availability of moneys that may affect the Fund's ability to compensate claimants if moneys in the Fund are limited.

This bill appears to prioritize the needs of participating utilities over claimants when the Fund lacks sufficient funds.

5. Section 269-H - Limitation on Aggregate Liability, page 13, line 1, through page 14, line 16.

Subsection (a) - Calculation of the Liability Limitation:

The aggregate liability for all participating utilities for qualifying damages arising from a covered catastrophic wildfire is subject to a specified liability cap. Even if a claimant rejects an offer to settle and brings a claim in court, the liability cap will apply to the civil action. Amounts are payable whether or not be participating utilities' actions contributed to the property damage; however, further amounts would be payable if it is determined that the participating utility acted imprudently, but such additional amounts are capped.

Subsection (a)(2) states that the "average assessed value of commercial structures and residential structures" will be used to calculate the limitation on aggregate liability. However, the means for implementation of this provision is unclear. The timeframe for calculating the average is not defined and assessed real estate values do not accurately reflect the replacement costs of the structures.

The aggregate liability for all participating utilities for qualifying damages arising from a covered catastrophic wildfire is subject to a specified liability cap. Even if the claimant rejects an offer to settle and brings a claim in court, the liability cap will apply to the civil action. Amounts are payable whether or not the participating utilities' actions contributed to the property damage; however, no further amount would be payable if it is determined that the participating utility acted prudently.

6. Clarifying Amendments

We respectfully request that the following clarifying amendments be implemented:

Section 269-A – Definitions:

""Qualifying action" means a civil action by a [qualifying] qualified claimant to recover qualifying damages." See page 3, lines 5-6.

Section 269-C(b)(2) – Contributions from Investor-Owned Utilities:

"(2) \$ _____, which shall be funded by shareholders of the investor-owned electric utilities and of which \$ _____ shall be used exclusively for the payment of salaries of the executive director and of all other persons retained by the executive director to implement this part, with any funds remaining as of 2035 to be transferred to the fund." See page 6, lines 4-10.

Section 269-H(c) – Limitation on the Court:

"(c) All civil actions arising out of a catastrophic wildfire shall be brought in the circuit in which the catastrophic wildfire occurred. The court shall adopt procedures to equitably apply the limit set forth in subsection (a) to all filed civil claims. All settlements or judgments for claims for qualifying damages shall be subject to approval by the court. ~~[The court shall not approve any settlement or judgment that would cause the aggregate liability of contributors to exceed the aggregate liability limit.]~~" See page 14, lines 4-12.

Section 269-I(b) – Limitations on Claims:

"(b) No suit, claim, arbitration, or other civil legal action for indemnity or contribution for amounts paid, or that may be paid, as a result of a covered catastrophic wildfire, shall be instituted or maintained by any ~~[persons or entities]~~ qualified claimants against contributors or their affiliates, employees, agents, or insurers for damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire~~[-]; provided that this subsection shall not apply for any failure of a contributor to pay the amounts required hereunder into the wildfire liability trust fund.~~" See page 15, lines 6-12.

Section A-1 – Definitions:

""Financing costs" means the reasonable 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 commission in a financing order.

"Financing costs" ~~[may include]~~ includes any of the following:

. . . ; ~~[and]~~

(6) Costs related to the engagement of services of a financial advisor by the commission; and

~~[(6)]~~ (7) Other costs as specifically authorized by a financing order." See pages 20, line 7, through page 21, line 16.

""Wildfire recovery charges" means the nonbypassable charges, including but not limited to distribution, connection, disconnection, and termination rates and charges, that are authorized by section A-2 and in a financing order authorized under this chapter to be imposed on and collected from all existing and future consumers of a ~~[financing entity]~~ public utility or any successor to recover principal, interest, and other financing costs relating to the bonds~~[-]~~ issued by its financing entity." See page 24, lines 13-20.

""Wildfire recovery costs" means an investor-owned electric utility's contributions to the wildfire liability trust fund, as set forth in part of chapter 269~~[-, and electric cooperative wildfire claims costs]~~." See page 25, lines 1-4.

Section A-2 – Applications to Issue Bonds and Authorize Wildfire Recovery Charges:

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

- (1) Whether the issuance of the bonds, and the imposition and collection of wildfire recovery ~~[of costs is]~~ charges, are consistent with the public interest;" See page 30, lines 17-20.

.....

"If the commission makes the determination specified in this section, the commission shall establish, as part of the financing order, a procedure for the electric utility to submit applications from time to time to request the issuance of additional financing orders designating wildfire recovery charges and any associated fixed recovery tax amounts as recoverable. The commission, as a condition of the financing order, may prohibit any increase in compensation, including any bonuses, for the public utility's officers for a period of time determined by the commission; provided that any increase of an officer's compensation that is in violation of such condition shall be seized and deposited into the wildfire liability trust fund." See page 31, line 18, through page 32, line 3.

"(f) Wildfire recovery charges and any associated fixed recovery tax amounts shall be imposed only on existing and future consumers in the utility service territory~~[-]~~ of the electric utility that is subject to such financing order. Consumers within the utility

service territory of the electric utility that are subject to the financing order shall continue to pay wildfire recovery charges and any associated fixed recovery tax amounts until the bonds and associated financing costs are paid in full by the financing entity. See page 32, lines 14-21.

Section A-3 – Wildfire Recovery Financing Order:

"(b) Notwithstanding any other law to the contrary, with respect to wildfire recovery property that has been made the basis for the issuance of bonds and with respect to any associated fixed recovery tax amounts, the financing order, the wildfire recovery charges, and any associated fixed recovery tax amounts shall be irrevocable. The State and its agencies, including the commission, pledge and agree with bondholders, the owners and assignees of the wildfire recovery property, and other financing parties that the State and its agencies shall not take any action listed in this subsection. This subsection shall not preclude an action if the action would not adversely affect the interests of the electric utility [~~and~~], of assignees of the wildfire recovery property[~~], and of bondholders~~. The prohibited actions shall be the following:

- (1) Alter the provisions of this chapter, which authorize the commission to create an irrevocable contract right or [~~choice~~] chose in action by the issuance of a financing order, to create wildfire recovery property and make the wildfire recovery charges imposed by a financing order irrevocable, binding, nonbypassable charges for all existing and future consumers;" See page 33, line 9, through page 34, line 9.

Add two new subsections to section A-3 to be appropriately designated:

"() The commission may require, in the financing order, that, if a default by the electric utility in remittance of the wildfire recovery charges collected occurs, the commission shall order the sequestration and payment to the applicable financing entity. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

() The commission, in its discretion, may engage the services of a financial adviser for the purposes of assisting the commission in its consideration of an

application for a financing order and a subsequent issuance of bonds pursuant to a financing order."

Section A-4 – Bonds; Issuance; Wildfire Recovery Property Interests:

"(b) To the extent that any interest in wildfire recovery property is sold, assigned, or is pledged as collateral pursuant to subsection (a), the commission [~~may authorize~~] shall require the electric utility to contract with the financing entity or its assignees that the electric utility will:" See page 39, lines 9-13.

Section A-5 – Wildfire Recovery Charge:

"(c) The wildfire recovery charge shall be collected by an electric utility or its successors, in accordance with section A-8(a), in full through a charge that is separate and apart from the electric utility's rates. The wildfire recovery charge shall be collected by the electric utility or its successors as collection agents for the applicable financing entity, and such amounts shall be held in trust until transferred to the applicable financing entity." See page 43, lines 16-19.

Section A-7 – Transfers of Wildfire Recovery Property:

"(a) A transfer or assignment of wildfire recovery property by the electric utility to an assignee or to a financing entity, or by an assignee of the electric 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 [~~is~~] a true sale, and not as a pledge or other financing, of the wildfire recovery property, other than for federal and state income and franchise tax purposes." See page 48, lines 9-20.

We respectfully ask the Committee to amend this bill to address these concerns, or, in the alternative to hold this bill.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

LEODOLOFF R. ASUNCION, JR.
CHAIR

NAOMI U. KUWAYE
COMMISSIONER

COLIN A. YOST
COMMISSIONER

Telephone: (808) 586-2020
Facsimile: (808) 586-2066

Website: puc.hawaii.gov
E-mail: puc@hawaii.gov

Testimony of the Public Utilities Commission

To the
House Committee on
Energy & Environmental Protection

March 11, 2025
9:00 a.m.

Chair Lowen, Vice Chair Perruso, and Members of the Committee:

Measure: S.B. No. 897, S.D. 3
Title: RELATING TO ELECTRIC UTILITIES.

Position:

The Public Utilities Commission ("Commission") offers the following comments for consideration.

Comments:

The Commission acknowledges the intent of the Committee to establish the wildfire liability trust fund to be administered by the Hawaii electricity reliability administrator. S.B. No 897 SD2 would require the Commission to contract the Hawaii Electric Reliability Administrator ("HERA") to collect and administer funds to be paid out to claimants for damages following a catastrophic wildfire.

The Commission is currently in the process of procuring a consultant to serve as the HERA for the Commission. The Commission issued the Request for Proposals in December 2024 and is currently reviewing proposals submitted by vendors specialized in utility engineering. The contract for the HERA will begin April 2025. It has a budget not to exceed \$1,200,000 over the two- to four-year contract term paid out of the PUC's own internal budget. The PUC is using its budget instead of establishing a ratepayer surcharge to avoid increasing electricity costs for residents.

In accordance with Part IX of HRS Chapter 269, the HERA will focus on primarily developing reliability standards that will reduce outages and improve the quality of the electric grid. The reliability standards will apply to Hawaiian Electric and Kauai Island Utility Cooperative and include, but not be limited to, generation resource adequacy targets, transmission and distribution outage duration and frequency targets, and generation outage duration and frequency targets. The HERA will also enforce standards,

working with stakeholders to track progress and develop a Reliability Roadmap. The HERA will support Commission work on improving interconnection for utility scale procurement, working alongside the Independent Engineer, which is also a consultant to the Commission specialized in utility engineering and paid for by the Commission. The HERA will review interconnection costs, oversee interconnection implementation, and evaluate the interconnection process periodically.

Finally, the HERA will train Commission staff, building up the capacity within the Commission's Engineering section so that at the end of the HERA's contract term, staff can continue the HERA's work and avoid the costs of hiring consultants. To build up capacity within the Commission, the Commission has submitted in its budget proposal a request for the Legislature to approve a new engineer position.

In addition, the Commission notes this version of S.B. 897 amends HRS §269-92-c by requiring the Commission to establish standards requiring electric utilities remove from their rate base a commensurate amount of costs related to fossil fuel resources when adding new or converted firm renewable electrical energy and renewable energy resources.

This section of S.B. 897, S.D. 3 is unclear when it refers to "fossil fuel resources". On the one hand, fossil fuel resources may mean the costs of ongoing fossil fuel spending passed through to customers and is not included in the rate base, or, on the other hand, it may mean the accounting value of fossil fuel related generation assets for which the companies recover depreciation expense through their rate base.

If the intended meaning of S.B. 897, S.D. 3 is the former, namely, spending by electric utilities on fossil fuels used in thermal generating facilities, then the Commission notes these costs are passed through directly to customers and are excluded from a utility's rate base. For example, Hawaiian Electric, when it purchases fossil fuels, passes the costs through to customers directly through an accounting mechanism referred to as the Energy Cost Recovery Clause ("ECRC"). As the amount of renewable generation increases on the state's grid, the spending by Hawaiian Electric on fossil fuels passed through in the ECRC will decrease.

If it is the latter, where S.B. 897, S.D. 3 refers to the recovery of fossil fuel related generation assets, the implication of the bill is more complex. This language in S.B. 897, S.D. 3 could impose significant financial hardship on electric utilities by disallowing recovery of depreciation of retired fossil fuel resources from the rate base. In this case, the Commission respectfully notes the docket process is the appropriate venue for managing customer costs of the energy transition versus amending HRS §269-92.

Hawaiian Electric and Kauai Island Utility Company ("KIUC") invest in their generation assets over the course of the assets' useful lifespan by procuring new parts and providing ongoing maintenance – just as one would an old car to keep it running. The value of their assets upon retirement, whether it is because of permitting or the Integrated Grid Plan or obsolescence, is therefore non-zero, or, rather, the asset has not yet completely depreciated. This remaining depreciation amount is what electric utilities seek recovery

for in the rate base, resulting in an increase in revenues and therefore prices that customers pay. Allowing electric utilities to receive a just and reasonable return on their investments into their assets encourages future investments.

Both Hawaiian Electric and KIUC file applications every five years seeking an update of their recovery of depreciation expense on their assets (see open dockets No. 2024-0199 and No. 2024-0244, respectively). In these dockets, depreciation studies, conducted by third-party firms specialized in utility financial accounting, estimate the remaining useful lives of all company assets, including renewable and fossil fuel generation facilities as well as other assets. The Commission, in making its decision to approve depreciation recovery works through the docketed process with intervening parties such as the utilities and the Consumer Advocate to analyze the report and determine a level that is just and reasonable.

Hawaiian Electric in two recent dockets relating to the retirement of large legacy fossil fuel generation assets, Honolulu 8 & 9 (Docket No. 2022-0243) and Waiiau 3 & 4 (Docket No. 2023-0418), sought to provide just and reasonable recovery to the utility for the remaining undepreciated value of those assets. In making such a determination, the Commission also considers, in addition to avoiding creating a disincentive to future investments, the utility's financial health. Disallowing recovery of undepreciated value of retiring plants may result in the utility with a stranded asset where the amount would have to be written off the company's books as bad debt expense, resulting in a significant reduction in its profitability and subsequently, its financial viability as a company.

Thank you for the opportunity to testify on this measure.



Charter Communications
Testimony of Rebecca Lieberman, Director of Government Affairs

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Hawaii State Capitol
Tuesday, March 11, 2025

COMMENTS ON S.B. 897, S.D. 3 – RELATING TO ENERGY

Chair Lowen, Vice Chair Perruso, and Members of the Committee.

Thank you for the opportunity to provide comments on S.B. 897, S.D. 3, a bill that would create a wildfire fund and administrative claims process that would allow claimants to be compensated for damage caused by a catastrophic wildfire relating to a public utility.

While Charter understands the intent of the bill and the desire to quickly and efficiently resolve claims stemming from catastrophic wildfires, without several important amendments, this bill does not strike the right balance in protecting the interests of Charter and its customers and, as a result, we cannot support the bill.

The changes we propose are necessary to create an efficient and comprehensive process to resolve claims in several important ways and are therefore fundamental to creating good public policy and a fair outcome for all involved.

Indemnity and Contribution Rights

As the bill is currently drafted, Section 269-I(b) shields Wildfire Fund participants from the contractual right of third-parties to seek indemnity under their agreements with such contributors. This limitation on indemnity claims could override existing obligations and negate existing contract rights that parties hold against contributors. For example, Hawaiian Electric Company (“HECO”) has a multitude of existing indemnity obligations in its contracts with Spectrum Oceanic and other parties. Without our proposed amendment, this provision could violate the Contracts Clause of the U.S. Constitution, which restricts the power of states to disrupt existing contractual arrangements¹.

¹ U.S. Const., Art. I, § 10, cl. 1; *Galima v. Ass'n of Apartment Owners of Palm Ct. by & Through Bd. of Directors*, 453 F. Supp. 3d 1334, 1355 (D. Haw. 2020).

Section 269-I(b) would also affect future contractual indemnity agreements between utilities and third-party service providers, which could frustrate Charter's obligation to provide important cable television services under the terms of franchises maintained with the State and efficiently offer important broadband, voice and mobile services provided over communication networks. Specifically, we suggest amending Section 269-I(b), Page 15, Lines 6-12:

(b) No suit, claim, arbitration, or other civil legal action for indemnity or contribution for amounts paid, or that may be paid, as a result of a covered catastrophic wildfire, may be instituted or maintained by any persons or entities against contributors or their affiliates, employees, agents, or insurers for damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire; provided that this subsection shall not affect the indemnity or contribution rights of any person or entity (or their affiliates) in any way involving their communications facilities or the shared use of electrical facilities or infrastructure, pole attachments, or related agreements.

Joint and Several Liability

We further propose edits to clarify that Hawaii's exceptions to the abolition of joint and several liability do not apply to this section, and that the abolition of joint and several liability applies to any suit related to a covered catastrophic wildfire. This amendment would streamline all wildfire claims for various types of damages and against various defendants into one comprehensive process and reduce the likelihood of claims splitting. Specifically, we suggest amending Section 269-J, Page 15, Lines 13-19:

§269-J Several liability. Notwithstanding any law to the contrary, joint and several liability shall not apply to any qualifying damages; provided that, in any action to recover ~~[qualifying damages]~~ from a person or entity in connection with a covered catastrophic wildfire, the person or entity may claim, in defense, apportionment of fault to any other person or entity

regardless of whether that person or entity is a party to the action. The exceptions to the abolition of joint and several liability set forth in section 663-10.9 do not apply to any suit, claim, arbitration, or other civil action arising out of a covered catastrophic wildfire.

Administrative Exhaustion

In an effort to prevent a piecemeal process that would channel contributor claims into an administrative process and claims against third-parties into broad reaching indemnity or non-contributor litigation, we propose that the administrative exhaustion provision be applied to any action that relates to a covered catastrophic wildfire, whether it relates to a contributor or other party. Specifically, we suggest amending Section 269-F(b), Page 11, Lines 3-13:

(b) A qualified claimant shall 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. The claim of a qualified claimant that is not a property insurer shall be limited to uninsured economic damages. A qualified claimant shall not file or maintain a civil action ~~[against a contributor]~~ unless and until it rejects an offer of settlement from the wildfire recovery fund. A qualified claimant who fails to file a claim for payment from the wildfire recovery fund shall be barred from instituting or maintaining any qualifying action ~~[by the deadline established by the executive director pursuant to rule shall be ineligible to receive payment from the fund]~~

Mahalo for the opportunity to provide suggested amendments to S.B. 897, S.D. 3.



Email: communications@ulupono.com

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
Tuesday, March 11, 2025 — 9:00 a.m.

Ulupono Initiative supports SB 897 SD 3, Relating to Energy.

Dear Chair Lowen 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 and clean transportation choices, and better management of freshwater resources.

Ulupono supports SB 897 SD 3, which establishes the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes; specifies that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate; authorizes securitization for electric utilities; and requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard.

Key Items for Inclusion in SB 897 SD 3:

1. Proactive wildfire mitigation and management best practices should be continuously monitored and implemented by utilities. Utilities should remain in constant consultation with Federal and State agencies (including but not limited to, the United States Forest Service, the United States Department of Agriculture, the State of Hawai'i Department of Land and Natural Resources' Division of Forestry and Wildlife, and the Department of Hawaiian Homelands), as well as the counties, Bishop Estate, and other entities to adapt with prevention practices as the threat of wildfires increases.
2. Utilities should be further incentivized to stay current on accepted standards of prevention and mitigation that are appropriate for inclusion in performance-based rate regulation (PBR). To the extent that the Public Utilities Commission (PUC) needs authorization or direction to implement Performance Incentive Mechanisms (PIMs) that lead to inclusion within the PBR framework that accomplish such prevention strategy, this legislation should explicitly delegate that authority to the PUC with an understanding that prevention is key.
3. The Fund should be limited to payment for actual damage to real and personal property that are directly caused by wildfires. The legislation should also contemplate whether the Fund should cover—in a capped amount similar to other injury funds—bodily injury and loss of life as a way to both efficiently manage injury claims outside of the courts while also

Investing in a Sustainable Hawai'i

providing some level of financial certainty to a utility or other defined Contributor. This fund should not include payment for punitive, non-economic damages unless the Fund includes payment for bodily injury and loss of life, emotional damages, or other damages that may be speculative or subjective in valuation.

4. This bill should require utilities to update their wildfire mitigation plans through filing at the PUC at least every three (3) years unless a duration of more frequent updates is ordered by the PUC. An annual filing and demonstration of compliance could also be a way for a utility to obtain a rebuttable presumption as to prudence.
5. The Fund should utilize securitized debt funding guaranteed by non-bypassable charges on monthly bills. The legislation should either establish the percentage contribution assigned to each class of customer (residential, commercial, and industrial) or instruct the PUC or a Master appointed by the Fund to hold an administrative proceeding to establish the allocation of contribution by customer class.
6. The Fund legislation should address the protection of the citizens of the State through fair and equitable compensation for actual damages caused by wildfires, preserve the natural resources located in the State, safeguard both real property and personal property, and maintain financial integrity of the electric utilities of the State.
7. Upon ratification, it should be required that a Request for Proposals (RFP) for qualified third-party administrators with previous experience in management of a catastrophe fund shall be issued, and the Governor shall choose the most qualified entity to contract with to administer the Fund.
8. The Fund should also explore other products or mechanisms, including the purchase of reinsurance from private entities, as a means of mitigating such risk.

The establishment of the Hawai'i Wildfire Liability Trust Fund has the potential to help provide much-needed support and relief to those affected by wildfires in our state. By offering a reliable source of compensation, the Fund will enhance the resilience of our communities, enabling quicker recovery and rebuilding efforts, and minimizing the long-term socio-economic impacts of wildfires.

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

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

**Senate Bill 897 SD3 – Relating to Energy
TESTIMONY**

Hawai'i State House of Representatives
House Committee on Energy & Environmental Protection
Tuesday, March 11, 2025
9:00 a.m.

Aloha Chair Lowen, Vice Chair Perruso, and Members of the Committee:

Mahalo for the opportunity to provide testimony in **support of SB 897 SD3, relating to Energy**. AES Hawai'i is the State's largest renewable energy provider. We share the State's vision for a 100% renewable energy future to enhance energy resilience, decarbonization, and promote energy equity. We are working to accelerate and support Hawai'i's transition toward a carbon-free energy future with renewable projects across the Hawaiian Islands totaling over 405 MW of solar, solar plus storage, and wind resources in operation or under contract, with 102.5 MW of Stage 1 projects and 37 MW of Stage 2 projects. Additionally, AES Hawai'i has two Stage 3 projects, which recently signed PPAs and were submitted to the PUC for review and approval.

The purpose of SB 897 SD3 is to establish a wildfire recovery fund to provide compensation for property damage resulting from future catastrophic wildfires in the State. Following the Maui Wildfires that resulted in tragic losses of life, personal injuries and property damage, AES Hawai'i fully appreciates and supports the **intent** of this measure, as stated, as well as the proposal's intent to address the future stability of the investor and electric utility. Hawai'i needs a stable utility to meet the ambitious renewable energy goals embedded in our state energy policy.

Mahalo for your consideration.



Sandra Larsen
President
AES Hawai'i



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
ENERGY & ENVIRONMENTAL PROTECTION**

**SUPPORT OF SB 897, SD3 with Amendments
Relating to Energy**

Tuesday, March 11, 2025

9:00 AM

State Capitol, Conference Room 325

Aloha Chair Lowen, Vice Chair Perusso, and Members of the Committee,

Hawaiian Electric is testifying **in support of SB 897, SD3 and requesting that contents of HB 982, HD3 be inserted into the bill with proposed amendments.** In the alternative, if the committee does not insert the contents of HB 982, HD3 into SB 897, SD3, please consider incorporating our amendments detailed in the attached into SB 897, SD3, where applicable. Attached are two documents, the first attachment is a table which details our amendments and the reasons for their inclusion. The second document is a redline of the bill which is referenced in the table. These proposed amendments are based on discussions with key stakeholders and others. We summarize only a few of them as follows:

1) **Proposing ~\$100 million shareholder contribution, reducing ratepayer contribution to \$900 million.** As noted in our previous testimony, Hawaiian Electric faces significant challenges in making shareholder contributions to the fund for a number of reasons, but particularly while we must prioritize raising an additional \$1.5 billion for our \$2 billion share of the Global Settlement from shareholders (and not customers) over the next four years. However, we are acutely aware of the impact of the fund on customers, while simultaneously recognizing that this bill is in the public interest and in our customers' long-term interest. Therefore, Hawaiian Electric is

proposing that, of the \$1 billion initial fund size, approximately \$100 million be paid for by shareholders, in addition to the \$5 million upfront shareholder contribution to stand up the fund. Ratepayer contributions would be reduced to \$900 million. To allow Hawaiian Electric the ability to make that shareholder contribution (\$105 million in total), we propose it be made in three ways:

- Shareholders would make a \$5 million contribution to pay salaries for fund employees and stand up the fund.
- Shareholder would make a \$50 million dollar contribution which would be paid over five years at \$10 million dollars per year payable six months after the Lahaina settlement payment is paid in full. As part of that settlement, shareholders are already paying \$2 billion to resolve claims from the Maui Fires.
- Shareholders would pay, after an event, 5% of whatever the fund pays out. This is the equivalent of a “co-pay” under an insurance policy. For instance, if the fund makes \$1 billion in payments after an event, Hawaiian Electric Shareholders would contribute a further \$50 million to the fund.

These terms would allow Hawaiian Electric’s shareholders to contribute substantially to this fund. We note, however, that in addition to this \$105 million, shareholders face substantial exposure for a wildfire—which the fund does not eliminate—and which strongly preserves both accountability and incentive to mitigate wildfire risk:

- Utility shareholders are at risk for costs in excess of the fund, up to the cap.
- Utility shareholders are at risk to replenish the fund if found imprudent.
- Utility shareholders are at risk for the costs of personal injury and wrongful death claims.
- Utility shareholders are at risk for the costs of wildfires that destroy fewer than 500 structures.

The utility can participate in the fund only if it has a wildfire mitigation plan that the PUC approves or accepts. As noted below, this bill, if passed, will have enormous benefits for ratepayers and those whose property is damaged in a catastrophic wildfire. We hope that the benefits of this bill are not frustrated by requiring a shareholder contribution that Hawaiian Electric's shareholders simply cannot feasibly contribute.

2) **Improving governance; creation of corporation and board of directors; ensuring settlement offers are fair for all claimants.** Hawaiian Electric is proposing the fund be a corporation, that the Executive Director be overseen by a board of directors, and that the Board establish and approve regulations under Chapter 91. Additionally, as part of this oversight, the executive director will determine a single ratio of settlement amounts to documented economic losses by claimants, and the board will approve that ratio prior to offers being made. This ensures consistency and equal treatment among claimants and between property owners, renters, and insurers, and provides substantial oversight of the executive director.

3) **Proposing concrete deadlines for submission of an administrative claim and filing an action.** Our amendments establish concrete deadlines for submission of an administrative claim and filing an action, to make sure claimants know how long they have to submit a claim. We establish a deadline to file a claim to the fund of 270 days after the executive director provides notice that a wildfire is covered by the fund. HB 982, HD3 proposes four years for this deadline—that is too long and would mean the executive director would either have to (a) substantially delay payments to claimants; or (b) make settlement offers without knowing the full scope of damage claims.

4) **Clarifying that damages from physical injury or wrongful death are not capped by the limitation on aggregate liability.** We added additional definitions to make absolutely clear that the aggregate liability cap does not apply to physical injury or wrongful death damages.

Other states are adopting Wildfire Funds and/or Limits on Liability for electric utilities

We also note that legislators across the Western United States are recognizing the need for bills like the one proposed here. Numerous states have passed, or are considering, measures that would (a) create funds for utilities to pay wildfire claims (with the vast majority funded by ratepayers); and/or (b) create significant liability reforms to protect regulated utilities and their ratepayers from the risk of unlimited damages from a wildfire. Those include Utah, California, Nevada, Wyoming, South Dakota, Montana, Idaho, Arizona, North Dakota, Kansas, New Mexico, and Texas. Utilities, regulators, and legislators in these states have come to understand the need to address the problem of unlimited wildfire liability for regulated utilities. This bill addresses that problem in a way that balances numerous competing interests and helps the residents of Hawaii and would, if passed, be a strong model for other states.

This bill is in the public interest and protects the people of Hawaii and our economy by creating a fund to provide compensation to property owners, renters, and insurers if there were to be a future catastrophic wildfire. The bill achieves the following three key objectives that reasonably balance the interest of many:

1. **Protect claimants and the economy** by creating a speedy process that provides fair compensation for property damage should another catastrophic wildfire occur, while preserving rights to pursue litigation.
2. **Protect customers from cost increases caused by utilities' exposure to unlimited wildfire liability.** Simply put, unbounded wildfire liability risk results in bad credit and high cost of capital for the utility, which in turn leads to higher costs to customers. The bill also provides for a unique giveback feature based on future risk reductions.
3. **Preserve accountability for wildfire risk mitigation.** The bill ensures that utilities are held accountable to prudently protect the public from wildfire risk by conditioning their participation on having a Hawaii Public Utilities Commission (PUC)-accepted wildfire mitigation plan; and by making shareholders pay if the utility is found imprudent.

Protect claimants and the economy

This bill creates a streamlined process to offer settlement payments for property damages quickly after a catastrophic fire, without the need for a lengthy and uncertain litigation process. Claimants don't have to hire a lawyer and can keep all of the settlement proceeds, without giving one third or more to attorneys, much of which would likely leave the state. No claimant would have to prove any contributing utility legally liable for a fire. But the bill preserves the right of any person to reject the fund's settlement offer and hire a lawyer to sue.

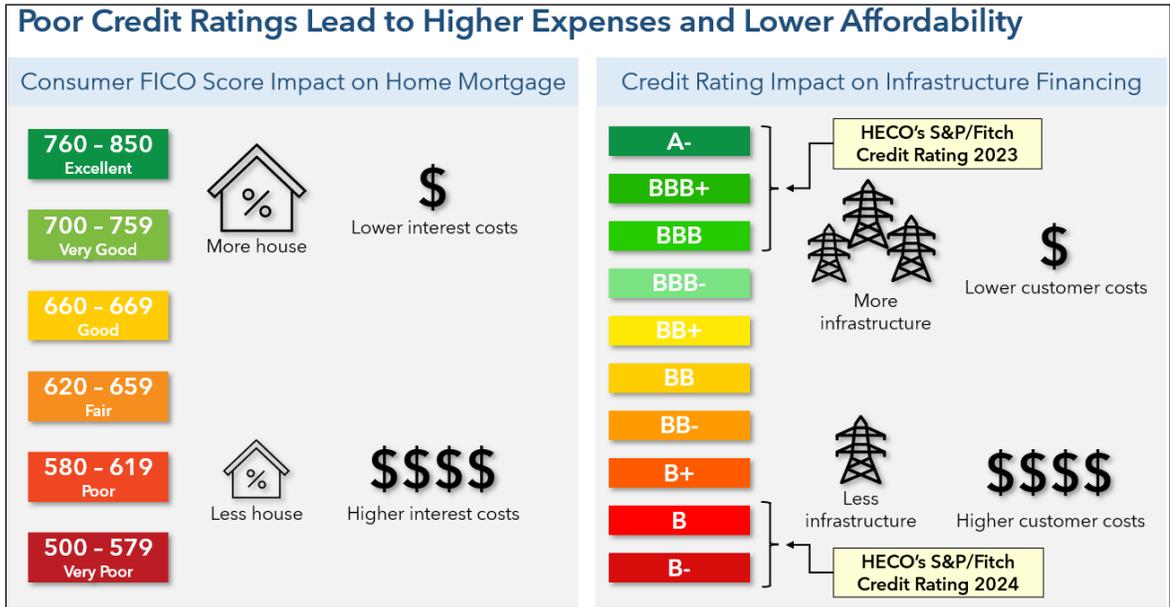
We note that in its January 2025 report, the Climate Advisory Team ("CAT") created by the Governor endorsed "efforts to establish a separate disaster mitigation

fund that would provide benefits to Hawaii residents,” including specifically for wildfires. (CAT Report at 36.) The Wildfire Recovery Fund meets the criteria recommended by the CAT for recovery legislation. (CAT Report, App’x F.)

The original version of the HB 982 proposed that Hawaiian Electric’s initial contribution to the fund be \$1 billion and be included in rates like all other costs related to providing essential utility services, including wildfire insurance premiums. We have recommended, as noted above, an amendment that would allow Hawaiian Electric’s shareholders to pay approximately \$100 million of this amount, with ratepayers paying \$900 million. To reduce the cost to customers, the bill proposes that the ratepayer-funded amount be securitized, which will result in a rate of less than \$4 per month for the typical residential customer. In addition, the bill includes a unique refund mechanism described below.

Protect customers from cost increases caused by utilities’ exposure to unlimited wildfire liability

Creating forward-looking financial protection for potential future catastrophic wildfires is a key part of restoring Hawaiian Electric’s credit rating. Utility credit rating and cost of capital are directly correlated to wildfire risk. Cost of capital is accounted for in the rate making process and directly impacts customer rates. As illustrated below, just as credit score affects consumers in buying a home, a utility’s credit rating and cost of capital directly results in higher costs to customers, all else being equal.



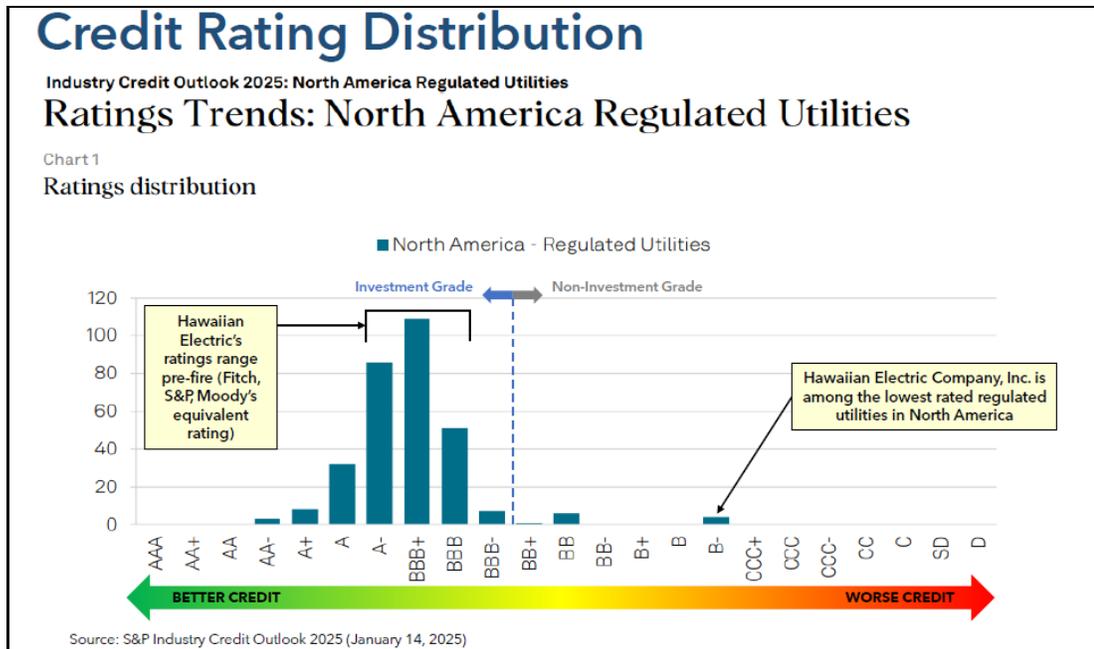
Addressing the problem of wildfire liability thus protects customers.

Wildfire risk exists, not due to any one entity, but as a result of a number of factors, including climate change and land management practices. Hawaiian Electric is taking vital steps to reduce wildfire risk. However, we can't completely eliminate that risk. And unlike an unregulated, private company, Hawaiian Electric has a duty to serve; it cannot decide to stop serving customers when the risk becomes too high in the environment in which it serves.

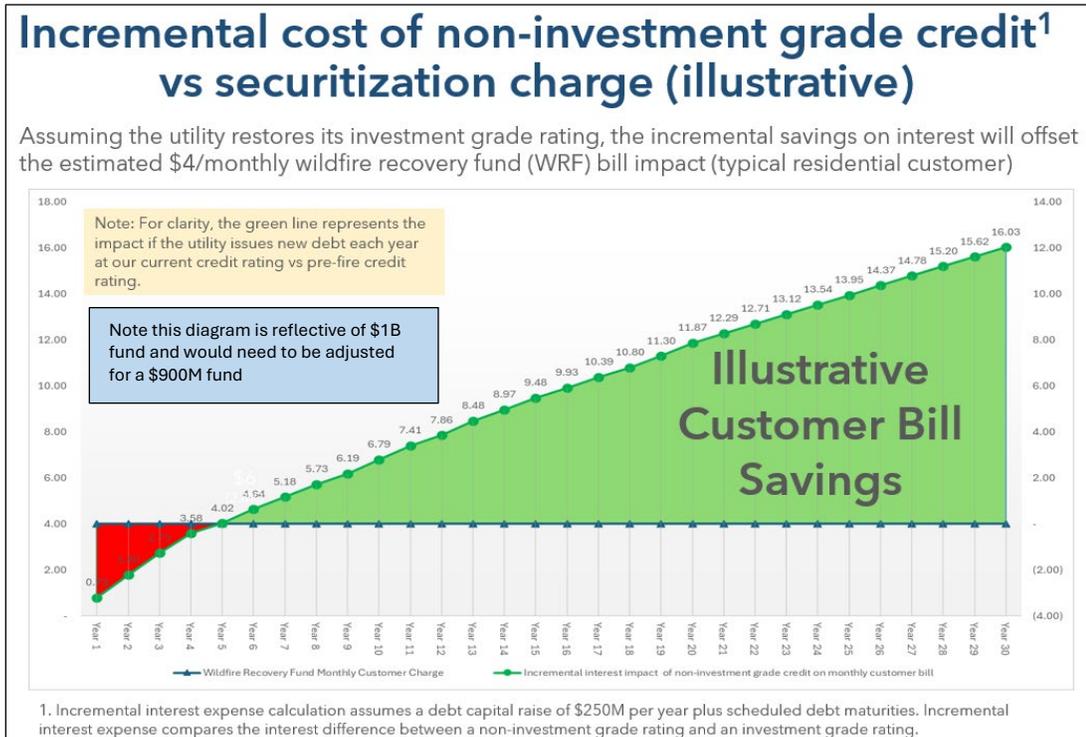
Without some financial protection in place to eliminate unlimited liability from future wildfires, regulated utilities like Hawaiian Electric risk losing access to capital on reasonable terms or at all, even as they need such capital to provide essential services and to make critical infrastructure investments in wildfire safety, resiliency, reliability, and the advancement of state energy policy.

To protect customers from these negative effects, the bill would reasonably mitigate the risk of unlimited financial liability from wildfires. It would do so, in part, by means of an aggregate cap on payments through the administrative process and

litigation for property damages only. An aggregate cap reflects a reasonable balance between the interests of those who suffer losses from a wildfire and the interests of everyone in obtaining reliable, safe, and affordable electricity. And it reflects the modern reality that even when a utility's facilities ignite a fire, whether it is immediately extinguished or spreads depends on many factors that are outside the utility's control. This bill is necessary for the utility to begin the stepwise process of restoring its credit rating to pre-fire levels.



Once the utilities are able to regain investment grade credit rating, the cost savings to customers can more than offset the cost of financing the fund. If customers were to pay \$1 billion via a securitization transaction, that, would lead to ~\$4 for the typical residential customer, as illustrated below.



If the customer portion is lower—\$900 million as proposed in our amendments—customers would pay less. The above diagram requires updates if the customer portion is reduced.

The bill also includes a unique refund provision. Over the past year, work done by hundreds of Hawaiian Electric employees has already reduced the potential for a fire ignited by our equipment by approximately 60 percent, according to a nationally recognized wildfire prevention specialist. The implementation of wildfire mitigation plans by contributor utilities is expected to further reduce risk over time. The bill provides that, in ten years, the Legislature will assess whether reduced risk means the fund can give money back to customers, with interest.

Preserve accountability

The bill will also help keep Hawaii safer from wildfires. The bill allows regulated utilities to participate, so long as they demonstrate a commitment to Hawai'i wildfire

safety by having a PUC-accepted wildfire mitigation plan. PUC acceptance and oversight ensures that utilities are held accountable to prudently protect the public from wildfire risk. Furthermore, the bill requires utilities to replenish the fund from shareholders, should they be found to have acted imprudently in the event of a future fire.

Lastly, HB 982, HD3 now includes a provision regarding executive compensation, which proposes that the PUC could prohibit any increase in compensation, including any bonuses for a period of time the PUC determines is appropriate. This provision is problematic and unnecessary because (1) such proposed controls could have unintended consequences; and (2) the majority of executive compensation is in the form of incentive compensation which is paid by shareholders and not included in rates. We propose to delete it. In addition, if the committee were to adopt SB 897, SD3, we request that Part III related to the Hawaii Energy Reliability Administrator (HB 337) and Part IV related to removal of the rate base as it relates to fossil fuels (HB 243) be deleted because the proposed language relates to stand alone bills, HB 337 and HB 243 which have since been deferred.

Importantly, we emphasize that this bill does not apply to claims arising from the August 2023 event—it is a forward-looking bill. Hawaiian Electric has entered a global settlement to resolve those claims, including a commitment to make almost \$2 billion in payments funded by shareholders, not customers.

Conclusion

We believe this bill is in the public interest and protects the people of Hawaii, while reasonably balancing stakeholder interests. Solving the impacts of climate change on our State must be addressed collectively and collaboratively. Please pass

SB 897, SD3 and replace the bill's contents with HB 982, HD3, and incorporate the proposed amendments in the attached. Thank you for your consideration.

Encl: 2 Attachments

Hawaiian Electric's
Proposed Modifications to SB 897, SD3 which incorporates
HB 982 HD3 with amendments

<u>Section</u> <u>(references to attached redline)</u>	<u>Proposed Revisions</u>	<u>Explanation</u>
Section 1	<p>7 fund. Utility securitization transactions have an extensive 8 track record of success. <u>The wildfire liability trust fund is</u> 9 <u>established for a public purpose, namely, the protection of</u> 0 <u>public health, safety, and welfare.</u></p>	We inserted a finding that the fund serves a public purpose, based on the recommendation of the State.
Passim	<p><u>"Fund" means the wildfire liability trust fund established pursuant to section 269-B.</u></p>	Consistent with SB 897, SD3, we recommend defining the fund as a liability trust fund and referring to the fund as "fund" for brevity purposes.
Section 269-A	<p><u>"Board" means the wildfire liability trust fund corporation board established by this section 269-[X2].</u></p> <p><u>"Corporation" means the wildfire liability trust fund corporation established by this section 269-[X1].</u></p>	We recommend adding the definitions of "Board" and "Corporation" to implement additional governance in response to testimony submitted by the State.
Section 269-A	<p><u>"Physical injury" means injury to the body from physical trauma, but does not include physical injury resulting from mental, emotional, or nervous injuries arising out of the wildfire. Physical injury includes injury to a person's body from physical trauma caused by real or personal property, such as property collapsing as a result of a fire and causing injury to a person's body.</u></p>	We recommend adding the definition of "physical injury" to clarify the types of claims that are not subject to the limitation on aggregate liability. This definition makes clear as well that, if a fire were to cause damage to real property (such as causing it to collapse), and that property were to physically injure someone, that is "physical injury" under the bill and not covered by the aggregate liability limit.

<p>Section 269-A; <i>passim</i></p>	<p>"Qualified<u>Qualifying</u> claimant" means any property owner, property insurer, or tenant who alleges any qualifying damages.</p>	<p>Consistent with SB 897, we recommend this edit for consistency, to ensure that "qualified" claimant refers instead to "qualifying" claimant.</p>
<p>Section 269-A;</p>	<p>"Qualifying damages" means economic damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire, <u>but does not include physical injury damages</u>.</p>	<p>We recommend this edit for consistency with the use of "qualifying damages" in other areas of the statute, such as the aggregate cap, which frame qualifying damages as including both economic and noneconomic damages, provided that they arise out of the loss of or damage to real or personal property from a catastrophic wildfire. The cross-reference here to the definition of physical injury, and inclusion of that definition above, ensures that "non-economic damages" cannot be read to include physical injury damages.</p>
<p>Section 269-B(a)</p>	<p>specified for the wildfire recovery fund<u>fund; provided further that the fund shall not be considered the property or asset of any of its contributors for purposes of a bankruptcy reorganization or other insolvency proceeding</u>.</p>	<p>We recommend this language added in SD3, which indicates that the fund is not utility property for purposes of a bankruptcy proceeding.</p>

Section 269-[X1]	See page 7 of the attached redline.	We recommend inserting this subsection to implement additional governance in response to testimony submitted by the State. This language also specifies that fund rules will be adopted pursuant to chapter 91 to implement this chapter. And it enumerates the powers of the wildfire liability trust fund corporation.
Section 269-[X2]	See page 9 of the attached redline.	We recommend inserting this provision establishing a board of the corporation to implement additional governance in response to testimony submitted by the State.
Section 269-C(a)(2)-(4)	<p>(2) Notify the executive director, in the year before the public utility becomesbecoming a contributor, that itthe utility intends to participate in the wildfire-recovery-fund; <u>and</u></p> <p>(3) Agree to make an initial contribution, the payment of which is thereafter a binding commitment enforceable by the executive director; <u>and</u>.</p> <p>(4) Provide a comparison of costs for current commercial insurance coverage compared to wildfire property damage and loss.</p>	<p>We recommend the following edits to Sections 269-C(a)(2) and (3) for clarity and consistency.</p> <p>We recommend deletion of Section 269-C(a)(4) as unnecessary because there is no commercial insurance coverage available at a comparable price to the fund.</p>
Section 269-C(b)(2)	<p>_____ (2) -\$ _____ \$5,000,000, which amount shall be funded by shareholders of thesethe investor-owned electric utilities, and of which \$ _____ shall be <u>and</u> used exclusively for the payment of salaries of the executive director and of all other persons retained by the executive director to implement this chapter and the contracting of consultants to assist the public utilities commission in determining whether a contributor acted prudently under section A-5part, with any funds remaining <u>as</u> of the \$ _____ in 2035 to be transferred to the wildfire-recovery fund.</p>	We recommend deleting the attached language as the public utilities commission is unlikely to require a consultant to determine prudence, since such a review already falls within its well-established experience and responsibilities.

<p>Section 269-C(b), Section 269-E(d)</p>	<p>See page 11 of the attached redline.</p>	<p>We propose having Hawaiian Electric’s shareholders contribute just over \$100 million of the utilities’ initial contribution to the fund, structured as (1) a \$5 million initial payment to pay fund salaries; (2) \$50 million to be paid in annual installments after we complete funding Hawaiian Electric’s \$2 billion payment to the Maui Fires settlements, which shareholders must cover and must be paid over the next few years; and (3) a 5% co-pay—meaning shareholders would pay 5% of whatever payments are made by the fund after an event, similar to a co-pay for an insurance policy. This structure ensures Hawaiian Electric’s shareholders make a substantial contribution to the fund. Ratepayers would pay \$900 million, so that the total initial contribution would still be approximately \$1 billion. The shareholder contribution would be subtracted from any replenishment the utility may be ordered to pay to the fund under Section 269-E(d), which is reflected in edits there.</p>
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Section 269-C(f)	<p>(f) Investment earnings associated with payments made to the wildfire recovery fund that were recovered in regulated rates from customers shall be refunded annually to the paying public utility to be refunded to those customers in the form of a credit on their ratepayer accounts.</p>	<p>We recommend deleting this provision to allow capitalization of the fund on a more rapid basis. The bill still includes a provision allowing the Legislature to refund contributions and interest to ratepayers after ten years.</p>
Section 269-C(h)	<p>SA-4 (h) Initial and supplemental contributions made by investor-owned electric utilities shall constitute wildfire recovery costs.</p>	<p>We recommend including this clause to indicate that these contributions are eligible for securitization.</p>
Section 269-C(i)	<p>(i) The executive director shall propose supplemental contributions to the fund in the event that the limitation on aggregate liability as calculated under Section 269-H exceeds the amount available to the fund at the time of the covered catastrophic wildfire, including amounts in and obligated to the fund.</p>	<p>This provision requires the executive director to ask for supplemental contributions if the fund has less money available than the aggregate liability limit. We added it in response to stakeholder concerns.</p>
Section 269-D	<p>§269-D Determination of a covered catastrophic wildfire. The executive director shall adopt rules pursuant to chapter 91 regarding how to determine whether a wildfire is a covered catastrophic wildfire. These<u>The</u> rules shall include a requirement that a wildfire shall be determined to be a covered catastrophic wildfire if a party makes non-frivolous allegations in a legal action that a contributor's facilities caused or contributed to the severity of a catastrophic wildfire[, in which case, the executive director need not make a determination that the contributor was the cause of the wildfire, but shall be <u>required to determine that the wildfire was a catastrophic wildfire as defined under this Act]</u>. <u>The executive director shall promptly publish a public notice of its determination that a wildfire is, or is not, a covered catastrophic wildfire.</u> </p>	<p>We recommend adding this language to confirm the intention, consistent with the defined terms “covered catastrophic wildfire” and “catastrophic wildfire.” We also propose to clarify that the executive director must provide public notice after the existence of a covered catastrophic wildfire.</p> <p>Some additional language is bracketed because it is not strictly necessary for the bill.</p>

<p>Section 269- E-(b)(2)</p>	<p>----- (2) Evaluating the contributor's actions in the context of its overall systems, processes, and programs, such that an error by a contributor's employee would not be a basis for a finding of imprudence, unless that error resulted from the failure of a system, process, or program to prevent the error.</p>	<p>This provision addresses the standard that the PUC applies to a prudency review (which determines whether a contributor must replenish the fund for payments as a result of a covered catastrophic wildfire). SB897 deletes this provision, and this edit conforms to SB897.</p>
<p>Section 269 E(f)</p>	<p><u>(f) For avoidance of doubt, this section does not alter the standard of care in a civil action.</u></p>	<p>This provision affirms that the prudency standard the PUC applies when investigating a contributor's conduct to determine whether to require the contributor to replenish the fund is not intended to change the standard of care that applies in a negligence claim in court. We added this in response to stakeholder input.</p>
<p>Section 269- F(c)-(e), (f)</p>	<p>See page 17 of attached redline.</p>	<p>We recommend adding these provisions, which establish concrete deadlines for submission of an administrative claim and filing an action, in response to testimony from the Attorney General. We further propose to require the executive director to determine a ratio of settlement amounts to documented economic losses and the board to approve that ratio prior to offers being made. This ensures consistency and equal treatment among claimants and between property owners, renters, and insurers.</p>

Section 269-F(d)	<p>——(d) If the amount available to the fund, including assets held by the fund and all payments contributors are obligated to make to the fund, is less than fifty per cent of the aggregate liability limit as calculated in section 269-H, the fund shall make payment only to contributors pursuant to section 269-G.</p>	We made this change in response to stakeholder input.
Section 269-F(g)	<p><u>(g) Notwithstanding any other laws, a qualifying claimant that is a government entity may file a qualifying action against a contributor not sooner than one year after the date the executive director publishes notice of the existence of a covered catastrophic wildfire pursuant to section 269-D, and not later than two years after such date. A qualifying claimant that is a government entity may not submit to the fund a claim for payment.</u></p>	We made this change response to stakeholder input.
Section 269-F(h)	<p><u>(h) Notwithstanding any other law, a qualifying claimant that is a property owner or tenant shall not recover insured economic damages in a qualifying action.</u></p>	We recommend adopting this clarifying language.
Section 269-H(c)	<p>damages.</p> <p><u>——(c) The aggregate liability limit shall not apply to claims arising out of physical injury or wrongful death.</u></p>	We added this language to further confirm that the limitation on aggregate liability does not apply to claims that the fire caused physical injury or wrongful death.
Section 269-H(f)	<p>to facilitate such consolidation.</p> <p><u>——§A-9(f) The aggregate liability limit shall not be effective until the public utility has satisfied the requirements to be a contributor to the fund pursuant to section 269-C(a).</u></p>	We added this language in response to stakeholder questions as to when the aggregate limitation on liability would apply.

<p>Section 269-I(b)</p>	<p>(b) No suit, claim, arbitration, or other civil legal action for indemnity or contribution for amounts paid, or that may be paid, as a result of a covered catastrophic wildfire, may shall be instituted or maintained by any persons or entities against contributors or their affiliates, employees, agents, or insurers for qualifying damages; provided that this subsection shall not apply to any agreements entered into before the operation date <u>damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire.</u></p>	<p>We recommend adopting the suggested language and removing the HB 982's language that it does not apply to any agreement entered into before the operation date. There is no constitutional requirement to exclude agreements entered into before the operation date. Such a carve-out is unnecessary for purposes of fairness, as the fund already ensures all damages are several, not joint and several—meaning that any party to these contracts can only be found liable for its own proportionate share of fault. And the effect of this carve-out would be to allow entities with these contracts to effectively draw money from the fund without contributing to the fund—which is not fair.</p> <p>The further edit here is just to clarify the language.</p>
<p>Section 269-J</p>	<p>SA-10269-J Several liability. Any<u>Notwithstanding any</u> law to the contrary notwithstanding, joint and several liability is abolished for<u>shall not apply to</u> any qualifying damages.<u>Any person or entity; provided that is sued for, in any action to recover</u> qualifying damages from a person or entity, the person or entity may argue for claim, in defense, apportionment of fault to any other person or entity regardless of whether that person or entity is a party to the action.</p>	<p>We recommend adopting these clarifying edits.</p>

<p>Section 269-K(c)</p>	<p>of a catastrophic wildfire.</p> <p>10 (c) Based on the report submitted under subsection (b),</p> <p>11 the legislature may determine, <u>based on recommendation by the</u></p> <p>12 <u>executive director</u>, that the wildfire recovery fund is</p> <p>13 overfunded and direct the executive director to return a refund an</p> <p>14 <u>amount of money then in the fund</u> contributions, in whole or in</p> <p>15 part, with associated investment earnings, to</p> <p>16 contributors. <u>Any refund from the fund of principal and/or</u></p> <p>17 <u>interest will be returned to ratepayers and shareholders of</u></p> <p>18 <u>investor-owned electric utilities in proportion to their</u></p> <p>19 <u>respective contributions to the fund.</u></p>	<p>We recommend clarifying language to make clear how a refund works as to shareholder and ratepayer contributions.</p>
<p>Section 269-K(d)</p>	<p><u>(d) In implementing any refund to ratepayers under this</u></p> <p><u>sub-part, the commission may design the refund to match the</u></p> <p><u>remaining duration of any wildfire recovery charges under</u></p> <p><u>Chapter A.</u></p> <p>any amounts paid to the wildfire recovery fund that were</p>	<p>We recommend this edit in response to stakeholder input. For amounts securitized, wildfire surcharges may be paid for 30 years. This would allow any refund to also cover that period—and be a credit on a ratepayer’s bill that corresponds to any such wildfire charge.</p>
<p>Section 269-L</p>	<p>§A-12 Inadmissible-269-L <u>Admissibility of evidence.</u> Any</p> <p>findings made <u>by</u> or evidence submitted for purposes of</p> <p>proceedings under sections A-4, A-6269-D, 269-F, and A-7269-G</p> <p>shall be subject to the limits on-of <u>admissibility</u> under rule</p> <p>408, Hawaii rules-of <u>Rules of Evidence</u>, <u>provided that any</u></p> <p>findings made by or <u>evidence, otherwise discoverable in a civil</u></p> <p><u>action, as set forth in the possession of a contributor shall</u></p> <p><u>be discoverable and admissible evidence in any civil action</u></p> <p><u>arising from a covered catastrophic wildfire. Failure by a</u></p> <p><u>contributor to independently preserve evidence shall require</u></p> <p><u>that the director make the same evidence, if, otherwise</u></p> <p><u>discoverable in a civil action and submitted for purposes of</u></p> <p><u>proceedings under sections 269-D, 269-F, and 269-G, available to</u></p> <p><u>the parties in any civil action arising from a covered</u></p> <p><u>catastrophic wildfire</u></p>	<p>In response to testimony by the Hawaii Alliance for Justice, we recommend adopting this clarifying language.</p>

Section A-1	<p>Subject to section A-6(e2(e)), an entity to which an electric utility sells, assigns, or pledges all or a portion of</p>	<p>We recommend correcting this internal reference to another section of the securitization statute.</p>
Section A-2(d)	<p>(d) The 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 <u>but no later than</u> <u>after the application is filed</u>.</p>	<p>We have inserted a placeholder instead of the prior one-year deadline for a financing order proposed by the PUC. One year is an outlier from other states' securitization statutes, which generally require issuance of a financing order within 90 to 120 days. We recommend, and are asking the PUC to consider, a period shorter than a year.</p>
Section A-2(e)(5)	<p>(5) Any other factors that the commission deems reasonable and in the public interest.</p> <p>If the commission makes the determination specified in this section, the commission shall establish, as part of the financing order, a procedure for the electric utility to submit applications from time to time to request the issuance of additional financing orders designating wildfire recovery charges and any associated fixed recovery tax amounts as recoverable. The commission, as a condition of the financing order, may prohibit any increase in compensation, including any bonuses, for the electric utility's officers for a period of time determined by the commission; provided that any increase of an officer's compensation that is in violation of such condition shall be seized and deposited into the wildfire recovery fund.</p>	<p>We recommend deleting this provision as a restriction on executive compensation does not serve the purposes of the bill, is out of scope of this legislation, and is unjustified.</p>

1 This Act:

2 (1) Preserves claimants' right to pursue litigation if
3 they choose to reject the amount offered through the
4 administrative claims process;

5 (2) Limits the total amount that can be paid for property
6 damage through both the administrative claims process and
7 litigation, balancing the interests of those affected by a
8 catastrophic fire in obtaining compensation and the interests of
9 the public utilities in mitigating the risk of financial
10 instability that can result from unlimited liability;

11 (3) 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; and

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

20 The legislature also finds that the public interest is
21 served by establishing a compensation mechanism that does not
22 expose regulated utilities to the financial instability that can
23 result from the existing litigation process. Regulated
24 utilities 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
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 additionally finds that securitization may
9 be the most efficient, least costly way for a utility to finance
10 the contributions to the wildfire ~~recovery~~liability trust
11 fund. Utility securitization transactions have an extensive
12 track record of success. The wildfire liability trust fund is
13 established for a public purpose, namely, the protection of
14 public health, safety, and welfare.

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

21 Chapter 269, ~~SECTION 2.~~ The Hawaii Revised Statutes, is
22 amended by adding ~~two~~a new ~~chapters~~part to be appropriately
23 designated and to read as follows:

24 ~~"CHAPTER A~~
25 ~~WILDFIRE RECOVERY FUND~~

26 ~~§"PART~~ . WILDFIRE LIABILITY TRUST FUND

27 §269-A-1 Definitions. As used in this ~~chapter, unless~~ part :

1 "Board" means the ~~context otherwise requires:~~wildfire
2 liability trust fund corporation board established by this
3 section 269-[X2].

4 "Catastrophic_wildfire" means a wildfire occurring in the
5 State on or after the operation date that destroys more than
6 five hundred commercial structures or residential structures
7 designed for habitation, or, for an electric cooperative with
8 less than fifty thousand residential members, meets a threshold
9 dollar amount of potential claims to be determined by the
10 executive director.

11 "Commission" means the public utilities commission.

12 "Contributor" means a public utility that satisfies all
13 requirements to participate in the wildfire recoveryliability
14 trust fund.

15 "Corporation" means the wildfire liability trust fund
16 corporation established by this section 269-[X1].

17 "Covered catastrophic_wildfire" means a catastrophic
18 wildfire that may have been caused, or whose severity may have
19 been increased, by a contributor's facilities or actions.

20 "Electric_utility" means a public utility that exists for
21 the furnishing of electrical power.

22 "Executive director" means the executive director of the
23 wildfire recoveryliability trust fund corporation.

24 "Fund" means the wildfire liability trust fund established
25 pursuant to section 269-B.

26 "Government entity" means any government agency, board,
27 bureau, commission, component, department, division, office,

1 subdivision, unit, component, bureau, commission, office, board,
2 or instrumentality of any kind, including federal, state, and
3 municipal entities.

4 "Investor-owned electric utility" means an electric utility
5 that is owned by shareholders and overseen by a board of
6 directors elected by shareholders.

7 "Operation-date" means the first date for contributors to elect to
8 participate in the wildfire ~~recovery~~liability trust fund ~~under~~pursuant to
9 section ~~A-3269-C~~(a) and ~~the~~any rules adopted pursuant to ~~implement~~this part.

10 "Physical injury" means injury to the body from physical
11 trauma, but does not include physical injury resulting from
12 mental, emotional, or nervous injuries arising out of the loss
13 or damage to real or personal property from a covered
14 catastrophic wildfire ~~recovery fund.~~ Physical injury includes
15 injury to a person's body from physical trauma caused by real or
16 personal property, such as property collapsing as a result of a
17 fire and causing injury to a person's body.

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

21 "Property owner" means an owner of real property in the
22 State.

23 ~~"Public utility" has the same meaning as in section 269-1.~~

24 ~~"Qualified~~ "Qualifying claimant" means any property
25 owner, property insurer, or tenant who alleges any qualifying
26 damages.

27 "Qualifying action" means a civil action by a
28 ~~qualified~~qualifying claimant to recover qualifying damages.

1 "Qualifying damages" means ~~economic~~ damages arising out of
2 the loss of or damage to real or personal property from a
3 covered catastrophic wildfire, but does not include physical
4 injury damages.

5 "Tenant" means a person or entity lawfully entitled to
6 occupy real property in the State that the person or entity does
7 not own ~~in the State.~~

8 "~~Wildfire recovery fund~~" ~~means the wildfire recovery fund~~
9 ~~established by section A-2.~~

10 ~~"Wildfire risk mitigation plan"~~ means a plan, which may
11 include a natural hazard mitigation report, in which a public
12 utility addresses how ~~it~~ the public utility will mitigate the
13 risk of its equipment in causing or exacerbating a wildfire.

14 **§A-2269-B Wildfire ~~recovery~~liability trust fund;**

15 **establishment; executive director.** (a) There is established
16 outside the state treasury a wildfire liability trust fund ~~to be~~
17 ~~known as the wildfire recovery fund~~ and any accounts thereunder
18 that are necessary to carry out the purposes of this
19 ~~chapter~~part. All moneys in the ~~wildfire recovery~~ fund shall be
20 administered by the executive director and expended exclusively
21 for the uses and purposes set forth in this ~~chapter~~section. The
22 ~~wildfire recovery~~ fund shall not be subject to chapter
23 431. ~~The~~Any moneys in the ~~wildfire recovery~~ fund not required
24 for immediate use shall be invested by the ~~the~~ executive director
25 for the benefit of the ~~wildfire recovery~~ fund; provided that no
26 assets of the ~~wildfire recovery~~ fund shall be transferred to the
27 general fund of the State or to any other fund of the State or
28 otherwise encumbered or used for any purpose other than those

1 specified for the ~~wildfire recovery fund~~ fund; provided further
2 that the fund shall not be considered the property or asset of
3 any of its contributors for purposes of a bankruptcy
4 reorganization or other insolvency proceeding.

5 (b) The wildfire ~~recovery~~ liability trust fund shall be ~~placed~~ held
6 in trust for the purposes of this Act and administered by the corporation.

7 §269-[X1] Wildfire liability trust fund corporation;
8 establishment; executive director; powers.

9 (a) There is established the wildfire liability trust fund
10 corporation, which shall be an independent public body corporate
11 and politic.

12 (b) The corporation shall be established within the
13 department of ~~commerce~~ and consumer affairs for administrative
14 purposes. ~~The fund shall be a public body corporate and~~
15 ~~politic.~~

16 ~~_____~~ (c) ~~_____~~ The purpose of the corporation shall be to administer the
17 payment from the fund of eligible claims from qualifying claimants and
18 contributors arising from covered catastrophic wildfires.

19 (d) The governor shall appoint, subject to confirmation by
20 the senate, an executive director of the wildfire
21 ~~recovery~~ liability trust fund, who shall be exempt from chapter
22 76, ~~and.~~ The governor shall fix the executive director's
23 compensation. The executive director shall serve for a four-
24 year term and may be removed only by the governor.

25 (e) ~~The~~ ~~executive~~ ~~director~~ shall be responsible for the day-to-day
26 operations of the corporation and management of the ~~wildfire recovery~~ fund
27 and shall perform all functions necessary to implement this ~~chapter~~ part.

1 (f) The corporation shall have all the powers necessary to
2 carry out its purposes, including ~~entering into~~ the following powers,
3 which may be exercised through the executive director:

4 (1) Sue and be sued;

5 (2) Have a seal and alter the same at its pleasure;

6 (3) Make and alter bylaws for its organization and internal
7 management;

8 (4) Make and execute contracts and all other ~~obligations~~
9 ~~related to~~ instruments necessary or convenient for the
10 operation, management, exercise of its powers and
11 administration of the ~~wildfire recovery fund.~~

12 ~~—— (e) The executive director may retain~~ functions under
13 this chapter;

14 (5) Retain, employ, or contract with officers; experts;
15 employees; accountants; actuaries; financial professionals;
16 and other advisers, consultants, attorneys, and
17 professionals, as may be necessary in the executive
18 director's judgment, for the efficient operation,
19 management, and administration of the ~~wildfire recovery~~
20 ~~fund.~~;

21 ~~—— (f) The executive director shall have the power to~~
22 ~~issue~~ (6) Issue revenue bonds, from time to time, in such
23 principal amounts as the executive director may deem
24 advisable for the purpose of this chapter, backed by future
25 payments to the ~~wildfire recovery~~ fund that contributors
26 have committed to make. ~~These bonds, and which~~ shall be

1 issued pursuant to part III of chapter 39, except as
2 provided in this chapter-;

3 ~~— (g) The executive director may~~
4 establish(7) Establish the investment policies of the fund;
5 (8) Receive, process, and determine payments for claims
6 submitted under Section 269-F;
7 (9) Determine and enforce the collection of contributions
8 from contributors to the wildfire ~~recovery~~relief fund-;

9 ~~— (h) The executive director shall adopt~~(10) Adopt
10 rules pursuant to chapter 91 to implement this chapter-;

11 ~~— SA-3~~(11) Purchase insurance or take other actions
12 to maximize the claims-paying resources of the wildfire
13 relief fund;

14 (12) Take any actions necessary to collect any amounts owed
15 to the wildfire relief fund;

16 (13) Pay costs, expenses, and other obligations of the
17 corporation from the wildfire relief fund's assets;

18 (14) Do any and all things necessary or convenient to carry
19 out its purposes and exercise the powers expressly provided
20 in this chapter.

21 ~~§269-[X2] Wildfire ~~recovery~~ fund; ~~eligibility~~liability trust fund~~
22 corporation; board of directors.

23 (a) There is established a corporation board of
24 directors, which shall consist of five members appointed by the
25 governor in accordance with section 26-34.

26 (b) The members of the board shall serve staggered terms,
27 with three members' initial terms ending four years after the

1 initial appointment, and two members' initial terms ending six
2 years after the initial appointment. Thereafter, each member
3 shall serve four-year terms. Vacancies shall be filled for the
4 remainder of any unexpired term in the same manner as the
5 original appointments.

6 (c) The chairperson of the board shall be elected from
7 among the appointed members of the board. A majority of all
8 members currently appointed to the board shall constitute a
9 quorum to conduct business, and the concurrence of a majority of
10 all members currently appointed to the board shall be necessary
11 to make any action valid, unless otherwise specified in this
12 chapter.

13 (d) Members of the board shall be appointed to ensure:

14 (1) A broad and balanced representation, with proper
15 judgment, character, expertise, skills, and knowledge
16 useful to the oversight of the corporation; and

17 (2) Diversity with regard to viewpoints, background,
18 work experience, and other lawful characteristics.

19 The members of the board shall serve without compensation
20 but shall be reimbursed for actual and necessary expenses,
21 including travel expenses, incurred in the discharge of
22 their duties.

23 (e) The board shall meet at least once every three months
24 at a time and place determined by the board. The board shall
25 meet at other times and places as determined by the call of the
26 chairperson or by a majority of the members of the board.

1 (f) Each member of the board shall retain all immunities
2 and rights provided to a member under section 26-35.5.

3
4 **§269-C Eligibility for participation as a contributor;**

5 **contributions.** (a) To be eligible to participate ~~as a~~
6 contributor, a public utility shall:

7 (1) Have a wildfire risk mitigation plan that has been
8 approved or accepted by the commission;

9 (2) Notify the executive director, in the year before ~~the~~
10 ~~public utility becomes~~becoming a contributor, that ~~it~~the utility
11 intends to participate in the ~~wildfire recovery~~ fund; and

12 (3) Agree to make an initial contribution, the payment of
13 which is thereafter a binding commitment enforceable by the
14 executive director; ~~and.~~

15 ~~_____ (4) Provide a comparison of costs for current commercial~~
16 ~~insurance coverage compared to wildfire property damage and~~
17 ~~loss.~~

18 (b) The initial contributions from investor-owned electric
19 utilities ~~collectively shall be~~ that elect and agree to
20 participate as contributors under sub-part (a) shall be as
21 follows:

22 (1) \$_____ 900,000,000, which ~~amount~~ shall be
23 recovered from its customers in nonbypassable rates; ~~and~~

24 _____ (2) \$_____ \$5,000,000, which ~~amount~~ shall be
25 funded by shareholders of ~~these~~ the investor-owned electric
26 utilities, ~~and of which \$_____ shall be~~ and used

27 exclusively for the payment of salaries of the executive
28 director and of all other persons retained by the executive

1 director to implement this ~~chapter and the contracting of~~
2 ~~consultants to assist the public utilities commission in~~
3 ~~determining whether a contributor acted prudently under section~~
4 ~~A-5part~~, with any funds remaining as of the \$ _____ in 2035
5 to be transferred to the ~~wildfire recovery~~ fund.

6 (3) \$50,000,000, which shall be funded by shareholders of
7 the investor-owned electric utilities in five \$10,000,000 annual
8 installments, with the first installment due six months after
9 the investor-owned electric utilities complete payment of their
10 final contribution to the individual settlement fund and class
11 settlement fund for the August 8, 2023 fires in Maui, as
12 described in the Individual Settlement Agreement and Class
13 Settlement Agreement both dated November 1, 2024, provided that
14 the initial payment due date, as defined in those agreements,
15 occurs.

16 (4) Five percent of any amounts paid by the fund under
17 sections 269-F or §269-G for a covered catastrophic wildfire
18 where the investor-owned electric utilities' facilities were
19 implicated, which amounts shall be funded by shareholders of the
20 investor-owned electric utilities, and which amounts shall be
21 paid to the fund within 60 days of the fund making any such
22 payments.

23 (c) The investor-owned electric utilities may elect to
24 make the initial contributions set forth in subsection (b) (1),
25 to the degree not paid for through securitization pursuant to
26 chapter BA, over a period not to exceed five years; provided
27 that interest shall be added to any amounts paid after the first

1 year, at an interest rate equal to the investor-owned electric
2 utilities' incremental cost of long--term debt, with ~~such~~the
3 interest recovered from customers in rates.

4 (d) The executive director shall determine the initial
5 contributions from other public utilities based on an actuarial
6 assessment of the risk of potential payments by the ~~wildfire~~
7 ~~recovery~~ fund--_resulting--_from covered catastrophic wildfires
8 created by ~~such~~a public utility.

9 (e) The executive director may propose supplemental
10 contributions to the ~~wildfire recovery~~ fund by ~~participating~~
11 ~~public utilities~~contributors.

12 (f) ~~Investment earnings associated with payments made to~~
13 ~~the wildfire recovery fund that were recovered in regulated~~
14 ~~rates from customers shall be refunded annually to the paying~~
15 ~~public utility to be refunded to those customers in the form of~~
16 ~~a credit on their ratepayer accounts.~~

17 ~~—(g)—~~If a contributor fails to pay any part of an initial
18 contribution or a--_supplemental--_contribution that ~~it~~the
19 contributor agreed to make, or elects not to agree to make a
20 supplemental contribution, that contributor shall no longer be a
21 contributor as of the date on which the payment was due, and the
22 contributor shall not receive any refund of payments previously
23 made; provided that a contributor that elects not to make a
24 supplemental contribution shall be a contributor as to any
25 catastrophic wildfire that occurs before the election
26 date. After failing to, or electing not to, make a payment, a
27 public utility may rejoin the ~~wildfire recovery~~ fund as a
28 contributor on a prospective basis if ~~it~~the public utility makes
29 all owed payments with interest.

1 (hg) The executive director shall adopt rules pursuant to
2 chapter 91 regarding the timing of initial and supplemental
3 contributions, which may include upfront, annual, and
4 retrospective payments, specifically including payments made
5 after a wildfire occurs.

6 ~~SA-4~~ (h) Initial and supplemental contributions made
7 by investor-owned electric utilities shall constitute wildfire
8 recovery costs.

9 (i) The executive director shall propose supplemental
10 contributions to the fund in the event that the limitation on
11 aggregate liability as calculated under Section 269-H exceeds
12 the amount available to the fund at the time of the covered
13 catastrophic wildfire, including amounts in and obligated to the
14 fund.

15 §269-D **Determination of a covered catastrophic**

16 **wildfire.** The executive director shall adopt rules pursuant to
17 chapter 91 regarding how to determine whether a wildfire is a
18 covered catastrophic ~~_~~wildfire. ~~These~~The rules shall include a
19 requirement that a wildfire shall be determined to be a covered
20 catastrophic wildfire if a party makes non-frivolous allegations
21 in a legal action that a contributor's facilities caused or
22 contributed to the severity of a catastrophic wildfire, in
23 which case, the executive director need not make a determination
24 that the contributor was the cause of the wildfire, but shall be
25 required to determine that the wildfire was a catastrophic
26 wildfire as defined under this Act. The executive director

1 shall promptly publish a public notice of its determination that
2 a wildfire is, or is not, a covered catastrophic wildfire.

3 **SA-5269-E Replenishment of the wildfire ~~recovery~~liability**
4 **trust fund.** (a) If the ~~wildfire recovery~~ fund has made
5 payments with respect to a covered ~~_catastrophic_~~ wildfire, and
6 after resolution of substantially all third-party liability
7 claims that were brought or could be brought against
8 contributors arising from that covered catastrophic wildfire,
9 each contributor whose facilities were implicated in the covered
10 catastrophic wildfire shall initiate a proceeding before the
11 commission to review the prudence of the contributor's conduct
12 leading to the catastrophic wildfire.

13 (b) The commission shall determine whether the contributor
14 acted prudently by:

15 (1) Considering only acts that may have caused the
16 occurrence or contributed to the severity of the covered
17 catastrophic wildfire; and

18 (2) Evaluating the contributor's actions in the context of
19 its overall systems, processes, and programs, ~~such that an error~~
20 ~~by a contributor's employee would not be a basis for a finding~~
21 ~~of imprudence, unless that error resulted from the failure of a~~
22 ~~system, process, or program to prevent the error.~~

23 (c) If the commission determines that imprudent conduct by
24 the contributor caused the occurrence or contributed to the
25 severity of a covered ~~_catastrophic_~~ wildfire, the commission
26 shall determine whether to order the contributor to replenish
27 the ~~wildfire recovery~~ fund in whole or in part for payments from

1 the ~~wildfire recovery~~ fund in connection with the ~~covered~~
2 catastrophic wildfire. In determining the amount of
3 replenishment, if any, the commission shall consider the extent
4 and severity of the contributor's imprudence and factors within
5 and beyond the contributor's control that may have led to or
6 exacerbated the costs from the covered catastrophic wildfire,
7 including but not limited to humidity, temperature, winds, fuel,
8 merged wildfires with independent ignitions, third-party actions
9 that affected the spread of the wildfire, and fire suppression
10 activities.

11 (d) Over any ~~three~~-year period, the commission shall not
12 order the contributor to reimburse the ~~wildfire recovery~~ fund in
13 an amount that exceeds twenty per cent of the contributor's
14 transmission and distribution equity rate base minus, for
15 investor-owned electric utilities, any contributions funded by
16 shareholders under Section 269-C.

17 (e) A contributor shall not recover in regulated rates any
18 amount that ~~the~~ commission orders ~~it~~ the contributor to pay to
19 the ~~wildfire recovery~~ fund as a replenishment under this
20 section.

21 ~~SA-6~~ (f) For avoidance of doubt, this section does not
22 alter the standard of care in a civil action.

23 **§269-F** **Claims for payment by ~~qualified~~qualifying**
24 **claimants;** ~~presentment requirement.~~ (a) The executive
25 director shall adopt rules pursuant to chapter 91 to create a
26 process throughby which a ~~qualified~~qualifying claimant that is
27 not a government entity may submit to the ~~wildfire recovery~~ fund

1 a claim for payment of economic damages arising out of property
2 damage resulting from a covered catastrophic wildfire.

3 (b) A ~~qualified~~qualifying claimant shall file a claim for payment for
4 economic damages arising out of the loss of or damage to real or personal
5 property from a covered catastrophic wildfire pursuant to this section. The
6 claim of a ~~qualified~~qualifying claimant that is not a property insurer shall
7 be limited to uninsured economic damages. __

8 ~~(c) A qualified claimant shall not file or maintain a civil~~
9 ~~action against a contributor unless and until the qualified~~
10 ~~claimant rejects an offer of settlement from the wildfire~~
11 ~~recovery fund. A qualified~~qualifying claimant who fails to file
12 a claim for payment within ~~four years~~two hundred and seventy
13 days from the date the executive director publishes notice of
14 the existence of a covered catastrophic wildfire pursuant to
15 section 269-D shall be ineligible to receive payment from the
16 ~~wildfire recovery~~ fund and shall be barred from instituting or
17 maintaining any qualifying action against a contributor;
18 ~~provided that the executive director may establish a deadline~~
19 ~~beyond the four-year period by rule and until which time the~~
20 ~~claimant shall still be eligible to receive payment and shall~~
21 ~~not be barred from instituting or maintaining any qualifying~~
22 ~~action.~~

23 ~~(d)~~ (e) A qualifying claimant shall not file or maintain
24 a qualifying action against a contributor unless and until the
25 qualifying claimant rejects or fails to accept an offer of
26 settlement from the fund within sixty days after the date the
27 fund communicates the offer to the qualifying claimant.

1 (e) The executive director shall make an offer to settle
2 each claim submitted, which ~~the~~ claimant may accept or
3 reject. Prior to making a settlement offer for a covered
4 catastrophic wildfire, the executive director shall propose, and
5 the Board shall review and approve or modify, a ratio of
6 settlement amounts to documented economic losses that shall be
7 consistently applied to all settlement offers. In determining
8 the amount of each offer, the executive director and the Board
9 shall consider, at a minimum:

10 (1) The economic damages sought by all ~~qualified~~qualifying
11 claimants in the aggregate;

12 (2) The amount available to the ~~wildfire recovery~~ fund
13 relative to the amount under paragraph (1);

14 (3) The strengthweight of any evidence of contributor
15 liability; and

16 (4) The strengthweight of any evidence of the involvement
17 of non--contributor third-parties.

18 ~~(d) If the amount available to the wildfire recovery fund,~~
19 ~~including assets held by the wildfire recovery fund and all~~
20 ~~payments contributors are obligated to make to the wildfire~~
21 ~~recovery fund, is less than fifty per cent of the aggregate~~
22 ~~liability limit as calculated in section A-8, the wildfire~~
23 ~~recovery fund shall make payment only to contributors pursuant~~
24 ~~to section A-7.~~

25 ~~SA-7~~(f) Notwithstanding any other law, a qualifying
26 claimant shall be barred from filing or maintaining a qualifying
27 action against a contributor unless the action is filed or
28 maintained within five hundred and ten days after the date the
29 fund communicates the offer of settlement under subsection (d)
30 to the qualifying claimant.

1 (g) Notwithstanding any other laws, a qualifying claimant
2 that is a government entity may file a qualifying action against
3 a contributor not sooner than one year after the date the
4 executive director publishes notice of the existence of a
5 covered catastrophic wildfire pursuant to section 269-D, and not
6 later than two years after such date. A qualifying claimant
7 that is a government entity may not submit to the fund a claim
8 for payment.

9 (h) Notwithstanding any other law, a qualifying claimant
10 that is a property owner or tenant shall not recover insured
11 economic damages in a qualifying action.

12 **§269-G Claims for payment by contributors; rules.** The
13 executive director shall adopt rules pursuant to chapter 91 to
14 create a process ~~throughby~~ which a contributor may obtain
15 payment from the ~~wildfire recovery~~ fund to satisfy settled or
16 finally adjudicated claims for ~~recovery_of_~~qualifying damages
17 after exhausting the contributor's available insurance. The
18 rules shall establish the standard for approving any
19 settlement. To the extent that the ~~wildfire recovery~~ fund lacks
20 sufficient funds to make a payment to a contributor when sought,
21 the ~~wildfire recovery~~ fund shall make ~~such~~the payment upon
22 receipt_of contributions that contributors are obligated to
23 make to the ~~wildfire recovery~~ fund under payment schedules.

24 **§A-8269-H Limitation on aggregate liability.—** (a) — The
25 aggregate liability of all contributors for ~~_~~qualifying damages
26 arising from a covered ~~_~~catastrophic ~~_~~wildfire, including

1 economic and non-economic damages, shall not exceed the greater
2 of:

3 (1) Fifty per cent of the amount available to the wildfire
4 recovery fund at the time of the covered catastrophic wildfire,
5 including amounts in and obligated to the wildfire recovery
6 fund; or

7 (2) The average assessed value of commercial structures
8 and residential structures designed for habitation in the county
9 in which the covered catastrophic wildfire ignited, multiplied
10 by the number of commercial structures or residential structures
11 designed for habitation that were destroyed.

12 _____(b)_____The following amounts shall be added to
13 determine whether the aggregate liability limit has been
14 reached:

15 _____(1)_____Payments from the ~~wildfire recovery~~ fund
16 under section ~~A-6269-F~~; and

17 _____(2)_____Payments by a contributor in connection with
18 any settlement or judgment on a claim for qualifying
19 damages.

20 _____(c)_____ The aggregate liability limit shall not apply to claims
21 arising out of physical injury or wrongful death.

22 (d) All civil actions arising out of a catastrophic
23 wildfire ~~shall be~~ brought in the ~~judicial~~ circuit in which the
24 catastrophic wildfire occurred. ~~_____~~The court shall adopt
25 procedures to equitably apply the limit set forth in subsection
26 (a) to all ~~civil claims for~~ qualifying ~~damages~~actions that are
27 filed. ~~_____~~All settlements or judgments for claims

1 for ~~qualifying damages~~ shall be subject to approval by the
2 court.— The court shall not approve any settlement or judgment
3 that would cause the aggregate liability of contributors to
4 exceed the aggregate liability limit.

5 ~~(d)~~ (e) A court ~~shall~~ may consolidate cases arising
6 from a covered catastrophic wildfire.— Any circuit court that
7 is not the ~~consolidating~~ court shall transfer any civil case
8 to facilitate such consolidation.

9 ~~SA-9~~ (f) The aggregate liability limit shall not be
10 effective until the public utility has satisfied the
11 requirements to be a contributor to the fund pursuant to section
12 269-C(a).

13 §269-I **Limitations on claims.** (a) No qualifying action
14 ~~shall~~ may be instituted or maintained by a ~~qualified~~ qualifying
15 claimant against contributors or their affiliates, employees,
16 agents, or insurers if the ~~qualified~~ qualifying claimant accepts
17 an offer under section ~~A-6269-F~~; provided that the rights of a
18 property insurer to ~~sue~~ bring an action as a subrogee of its
19 policyholder shall not be affected by a property owner's or
20 tenant's acceptance of an offer under section ~~A-6269-F~~ and the
21 subrogation rights shall be affected only if the property
22 insurer elects to accept an offer under section ~~A-6~~ 269-F.

23 (b) No suit, claim, arbitration, or other civil legal
24 action for indemnity or contribution for amounts paid, or that
25 may be paid, as a result of a covered catastrophic wildfire,
26 ~~may~~ shall be instituted or ~~maintained~~ by any persons or
27 entities against contributors or their affiliates, employees,

1 agents, or insurers for ~~qualifying damages; provided that this~~
2 ~~subsection shall not apply to any agreements entered into before~~
3 ~~the operation date~~ damages arising out of the loss of or damage
4 to real or personal property from a covered catastrophic
5 wildfire.

6 **SA-10269-J Several liability.** ~~Any~~Notwithstanding any law
7 to the contrary ~~notwithstanding~~, joint and several liability ~~is~~
8 ~~abolished for~~ shall not apply to any qualifying damages. ~~Any~~
9 ~~person or entity; provided~~ that ~~is sued for~~, in any action to
10 recover qualifying damages from a person or entity, the person
11 or entity may ~~argue for~~ claim, in defense, apportionment of
12 fault to any other person or entity regardless of whether that
13 person or entity is a party to the action.

14 **SA-11269-K Reporting; refunds authorized by the**
15 **legislature.** (a) The executive director shall submit a report
16 on the activities of the fund to the legislature ~~and commission~~
17 ~~an annual report regarding the wildfire recovery fund~~ no later
18 than ninety days prior to the ~~beginning~~ convening of
19 each ~~regular~~ session ~~until~~ through the regular session of
20 2034. ~~The annual report submitted by the executive director~~
21 ~~shall include an update on the activities of the wildfire~~
22 ~~recovery fund.~~

23 (b) No later than ninety days prior to the convening of
24 the regular session of 2035, the executive director shall submit
25 a comprehensive report to the legislature regarding
26 the financial status and resources of the ~~wildfire recovery~~

1 fund relative to the then--current assessment of actuarial risk
2 of a catastrophic wildfire.

3 (c) Based on the report in-submitted under subsection (b),
4 the legislature may--determine-, based on recommendation by the
5 executive director, that the ~~wildfire recovery~~ fund is
6 overfunded and direct the executive director to ~~return~~
7 ~~contributions, in whole or in part, with associated investment~~
8 ~~earnings, to contributors. Any payments made to the wildfire~~
9 ~~recovery fund that were recovered in regulated rates from~~
10 ~~customers, and any investment earnings associated with those~~
11 ~~payments, shall, refund an amount of money then in the event that~~
12 ~~the legislature orders a refund, fund. Any refund from the fund~~
13 of principal and/or interest will be returned to ~~those~~
14 ~~customers. ratepayers and shareholders of investor-owned electric~~
15 ~~utilities in proportion to their respective contributions to the~~
16 fund.

17 ~~SA-12 Inadmissible~~ (d) In implementing any refund to
18 ratepayers under this sub-part, the commission may design the
19 refund to match the remaining duration of any wildfire recovery
20 charges under Chapter A.

21 §269-L Admissibility of evidence. Any findings made by or
22 evidence submitted for purposes of proceedings under sections ~~A-4, A-6~~269-D,
23 269-F, and ~~A-7~~269-G shall be subject to the limits ~~on~~of admissibility--under
24 rule 408, Hawaii ~~rules of~~Rules of Evidence, provided that any evidence, as
25 ~~set forth~~otherwise discoverable in a civil action, in the possession of a
26 contributor shall be discoverable and admissible evidence in any civil action
27 arising from a covered catastrophic wildfire. Failure by a contributor to

1 independently preserve evidence shall require that the director make the same
2 evidence, if otherwise discoverable in a civil action and submitted for
3 purposes of proceedings under sections 269-D, 269-F, and 269-G, available to
4 the parties in any civil action arising from a covered catastrophic wildfire
5 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
6 amended by adding a new section ~~626-1~~ to part I to be
7 appropriately designated and to read as follows:

8 "§269- Electric cooperative cost recovery for wildfire
9 mitigation, repair, and restoration costs. (a) An electric
10 cooperative may recover commission-approved wildfire mitigation,
11 repair, and restoration costs through an automatic rate
12 adjustment clause or other tariff recovery mechanism to be
13 established by the commission.

14 (b) For purposes of this section, "electric cooperative"
15 means an electric utility that satisfies the requirements under
16 section 269-31(c)."

17 PART II

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

21 "CHAPTER A

22 CHAPTER B

23 **SECURITIZATION**

24 **§BA-1 Definitions.** As used in this chapter, unless the
25 context otherwise requires:

26 "Ancillary agreement" means a bond insurance policy, letter
27 of credit, reserve account, surety bond, swap arrangement,
28 hedging arrangement, liquidity or credit support arrangement, or

1 other similar agreement or arrangement entered into in
2 connection with the issuance of bonds that is designed to
3 promote the credit quality and marketability of the bonds or to
4 mitigate the risk of an increase in interest rates.

5 "Assignee" means a legally recognized entity to which an
6 electric utility assigns, sells, or transfers, other than as
7 security, all or a portion of the electric utility's interest in
8 or right to wildfire recovery property. "Assignee" includes a
9 corporation, limited liability company, general partnership or
10 limited partnership, public authority, trust, financing entity,
11 or any other legal entity to which an assignee assigns, sells,
12 or transfers, other than as security, its interest in or right
13 to wildfire recovery property.

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

21 "Commission" means the public utilities commission.

22 "Consumer" means any individual, governmental body, trust,
23 business entity, or nonprofit organization that consumes
24 electricity that has been transmitted or distributed by means of
25 electric transmission or distribution facilities, whether those
26 electric transmission or distribution facilities are owned by
27 the consumer, the electric utility, or any other party.

1 "Electric cooperative" means an electric utility that
2 satisfies the requirements under section 269-31(c).

3 "Electric cooperative wildfire claims costs" means costs
4 incurred by an electric cooperative to resolve third-party
5 liability claims arising from any wildfire occurring in the
6 State that are not covered by insurance and that the commission
7 finds to be just and reasonable. "Electric cooperative wildfire
8 claims costs" ~~does~~do not include costs incurred by an investor-
9 owned electric utility.

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

12

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

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

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

22 (3) An amount required to fund or replenish reserve
23 accounts or other accounts established under an indenture,
24 ancillary agreement, or other financing document related to the
25 bonds;

26 (4) Taxes, franchise fees, or license fees imposed on a
27 financing entity as a result of the issuance of the financing

1 order; the assignment, sale, or transfer of any wildfire
2 recovery property; or the sale of the bonds, or imposed on the
3 wildfire recovery charges, or otherwise resulting from the
4 collection of the wildfire recovery charge, in any such case
5 whether paid, payable, or accrued;

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

14 (6) Costs related to the engagement of services of a
15 financial advisor by the commission pursuant to section B-3(h);
16 and

17 (7) Other costs as specifically authorized by a financing
18 order.

19 "Financing entity" means an electric utility or an entity
20 to which an electric utility or an affiliate of an electric
21 utility sells, assigns, or pledges all or a portion of the
22 electric utility's interest in wildfire recovery property,
23 including an affiliate of the electric utility or any
24 unaffiliated entity, in each case as approved by the commission
25 in a financing order.

26 Subject to section ~~B-6~~(eA-2(e)), an entity to which an
27 electric utility sells, assigns, or pledges all or a portion of

1 the electric utility's interest in wildfire recovery property
2 may include any governmental entity that is able to issue bonds
3 that are exempt from federal tax pursuant to section 103 of the
4 Internal Revenue Code of 1986, as amended, including the State
5 or a political subdivision thereof or any department, agency, or
6 instrumentality of the State or political subdivision; provided
7 that the bonds issued shall not constitute a general obligation
8 of the State or any political subdivision thereof or any
9 department, agency, or instrumentality of the State or political
10 subdivision and shall not constitute a pledge of the full faith
11 and credit of the entity or of the State or any political
12 subdivision thereof, but shall be payable solely from the funds
13 provided under this chapter.

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

1 "Financing party" means any holder of the bonds; any party
2 to or beneficiary of an ancillary agreement; and any trustee,
3 collateral agent, or other person acting for the benefit of any
4 of the foregoing.

5 "Fixed recovery tax amounts" means those nonbypassable
6 rates and other charges, including but not limited to
7 distribution, connection, disconnection, and termination rates
8 and charges, that are needed to recover federal and state taxes
9 associated with wildfire recovery charges authorized by the
10 commission in a financing order, but are not approved as
11 financing costs financed from proceeds of bonds.

12 "Investor-owned electric utility" means an electric utility
13 that is owned by shareholders and overseen by a board of
14 directors elected by shareholders.

15 "Public utility" has the same meaning as defined in section
16 269-1.

17 "True-up adjustment" means a formulaic adjustment to the
18 wildfire recovery charges as they appear on consumer bills that
19 is necessary to correct for any overcollection or
20 undercollection of the wildfire recovery charges authorized by a
21 financing order and to otherwise ensure the timely and complete
22 payment and recovery of wildfire recovery costs over the
23 authorized repayment term.

24 "Wildfire recovery charges" means the nonbypassable
25 charges, including but not limited to distribution, connection,
26 disconnection, and termination rates and charges, that are
27 authorized by section BA-2 and in a financing order authorized

1 under this chapter to be imposed on and collected from all
2 existing and future consumers of a financing entity or any
3 successor to recover principal, interest, and other financing
4 costs relating to the bonds.

5 "Wildfire recovery costs" means an investor-owned electric
6 utility's ~~initial and supplemental~~ contributions to the wildfire
7 recoveryliability trust fund, as set forth in ~~section A-~~
8 3part of chapter 269, and electric cooperative wildfire
9 claims costs.

10 "Wildfire recoveryliability trust fund" means the ~~wildfire~~
11 ~~recovery~~ fund established by ~~section A-2part~~ of chapter 269.

12 "Wildfire recovery property" means the property right
13 created pursuant to this chapter, including without limitation
14 the right, title, and interest of the electric utility,
15 financing entity, or its assignee:

16 (1) In and to the wildfire recovery charge established
17 pursuant to a financing order, including the right to impose,
18 bill, collect, and receive such wildfire recovery charges under
19 the financing order and all rights to obtain adjustments to the
20 wildfire recovery charge in accordance with section B-3 and the
21 financing order; and

22 (2) To be paid the amount that is determined in a
23 financing order to be the amount that the electric utility or
24 its assignee is lawfully entitled to receive pursuant to this
25 chapter and the proceeds thereof, and in and to all revenues,
26 collections, claims, payments, moneys, or proceeds of, or

1 arising from, the wildfire recovery charge that is the subject
2 of a financing order.

3 "Wildfire recovery property" does not include a right to be paid
4 fixed recovery tax amounts. "Wildfire recovery property" shall
5 constitute a current property right, notwithstanding the fact
6 that the value of the property right will depend on consumers
7 using electricity or, in those instances where consumers are
8 customers of the electric utility, the electric utility
9 performing certain services.

10 ~~§BA-2-~~ **Applications to issue bonds and authorize wildfire**

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

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

22 (2) The creation of wildfire recovery property under the
23 financing order; and

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

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

2 (1) The wildfire recovery costs to be financed through the
3 issuance of bonds;

4 (2) The principal amount of the bonds proposed to be
5 issued and the selection of a financing entity;

6 (3) An estimate of the date on which each series of bonds
7 is expected to be issued;

8 (4) The scheduled final payment date, which shall not
9 exceed thirty years, and a legal final maturity date, which may
10 be longer, subject to rating agency and market considerations,
11 during which term the wildfire recovery charge associated with
12 the issuance of each series of bonds is expected to be imposed
13 and collected;

14 (5) An estimate of the financing costs associated with the
15 issuance of each series of bonds;

16 (6) An estimate of the amount of the wildfire recovery
17 charge revenues necessary to pay principal and interest on the
18 bonds and all other associated financing costs as set forth in
19 the application and the calculation for that estimate;

20 (7) A proposed design of the wildfire recovery charge and
21 a proposed methodology for allocating the wildfire recovery
22 charge among customer classes within the electric utility's
23 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 charge to

1 correct for any overcollection or undercollection of the
2 wildfire recovery charge, and to otherwise ensure the timely
3 payment of principal and interest on the bonds and all other
4 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 or~~ as a joint ~~application~~applicant
8 with one or more affiliate electric utilities, to issue bonds to
9 recover wildfire recovery costs. The application shall include
10 a description of how the wildfire recovery costs will be
11 allocated among consumers of the applicant electric utilities.

12
13 In the alternative, an electric utility may apply for a
14 financing order to issue bonds to recover wildfire recovery
15 costs, including wildfire recovery costs incurred, or to be
16 incurred, by the applicant and one or more of its affiliate
17 electric utilities. In connection with the issuance of a
18 financing order pursuant to this subsection, the commission
19 shall issue a concurrent order to the affiliate electric utility
20 or electric utilities directing ~~such~~the affiliate electric
21 utility or electric utilities to impose rates on its or their
22 consumers designed to generate revenue sufficient to pay credits
23 over the life of the bonds to the applicant electric utility in
24 ~~such~~the amount as the commission determines is equitable, just,
25 and reasonable. ~~Such an~~The application shall describe the
26 allocation method and ~~true-up~~ adjustment mechanism for the

1 affiliate electric utility credit payments proposed to be
2 subject to the concurrent commission order.

3 (d) The commission shall issue an approval or denial of
4 any application for a financing order filed pursuant to this
5 section within ninety days of the last filing in the applicable
6 docket but no later than after the application is
7 filed.

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

10 (1) Whether the issuance of the bonds, and the imposition
11 and collection of wildfire recovery charges are consistent with
12 the public interest;

13 (2) Whether the structuring, marketing, and pricing of the
14 bonds are expected to result in the lowest wildfire recovery
15 charges consistent with market conditions at the time at which
16 the bonds are priced and the terms of the financing order;

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

19 (4) With respect to an application by an investor-owned
20 electric utility, whether the recovery of wildfire recovery
21 costs through the designation of the wildfire recovery charges
22 and any associated fixed recovery tax amounts, and the issuance
23 of bonds in connection with the wildfire recovery charges, would
24 result in net savings or mitigate rate impacts to consumers, as
25 compared to rate recovery without securitization; and

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

1 If the commission makes the determination specified in this
2 section, the commission shall establish, as part of the
3 financing order, a procedure for the electric utility to submit
4 applications from time to time to request the issuance of
5 additional financing orders designating wildfire recovery
6 charges and any associated fixed recovery tax amounts as
7 recoverable. ~~The commission, as a condition of the financing
8 order, may prohibit any increase in compensation, including any
9 bonuses, for the electric utility's officers for a period of
10 time determined by the commission; provided that any increase of
11 an officer's compensation that is in violation of such condition
12 shall be seized and deposited into the wildfire recovery fund.~~

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

23 (f) Wildfire recovery charges and any associated fixed
24 recovery tax amounts shall be imposed only on existing and
25 future consumers in the utility service territory ~~of the
26 electric utility that is subject to such financing
27 order.~~ Consumers within the utility service territory of the

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

5 **§BA-3 Wildfire recovery financing order.** (a) A financing
6 order shall remain in effect until the bonds issued under the
7 financing order and all financing costs related to the bonds
8 have been paid in full or defeased by their terms.

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

13 (b) Notwithstanding any other law to the contrary, with
14 respect to wildfire recovery property that has been made the
15 basis for the issuance of bonds and with respect to any
16 associated fixed recovery tax amounts, the financing order, the
17 wildfire recovery charges, and any associated fixed recovery tax
18 amounts shall be irrevocable. The State and its agencies,
19 including the commission, pledge and agree with bondholders, the
20 owners and assignees of the wildfire recovery property, and
21 other financing parties~~7~~ that the State and its agencies shall
22 not take any action listed in this subsection. This subsection
23 shall not preclude an action if ~~such~~the action would not
24 adversely affect the interests of the electric utility~~7~~ and of
25 assignees of the wildfire recovery property, and of
26 bondholders. The prohibited actions shall be the following:

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

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

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

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

22 The financing entity ~~is authorized to~~may include this
23 pledge in the bonds.

24 (c) Under a financing order, the electric utility shall
25 retain sole discretion to select the financing entity and to
26 cause bonds to be issued, including the right to defer or

1 postpone the issuance, assignment, sale, or transfer of wildfire
2 recovery property.

3 (d) The commission may create, pursuant to an application
4 from an electric utility, a nonbypassable charge referred to as
5 a wildfire recovery charge, which shall be applied to recover
6 principal, interest, and other financing costs relating to the
7 bonds. The wildfire recovery charge shall be a dedicated,
8 discrete tariff rider.

9 The commission ~~shall~~, in any financing order, shall
10 establish a procedure for periodic true-up adjustments to
11 wildfire recovery charges, which shall be made at least annually
12 and may be made more frequently. ~~The periodic true-up~~
13 ~~adjustment to wildfire recovery charges shall also consider~~
14 ~~interest on ratepayer investments into the fund.~~ Within thirty
15 days after receiving an electric utility's filing of a true-up
16 adjustment, the commission's review of the filing shall be
17 limited to mathematical or clerical errors as determined in
18 accordance with any true-up adjustment formulas set forth in the
19 applicable financing order.

20 The commission shall either approve the filing or inform
21 the electric utility of any mathematical or clerical errors in
22 its calculation. If the commission informs the electric utility
23 of mathematical or clerical errors in its calculation, the
24 electric utility shall correct its error and refile its true-up
25 adjustment. The timeframes previously described in this
26 subsection shall apply to a refiled true-up adjustment.

1 (e) Neither financing orders nor bonds issued under this
2 chapter shall constitute a general obligation of the State or
3 any of its political subdivisions, 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 property provided under this chapter.

7 All bonds shall contain on the face thereof a statement to
8 the following effect: "Neither the full faith and credit nor
9 the taxing power of the State of Hawaii is pledged to the
10 payment of the principal of, or interest and premium on, this
11 bond."."

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

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

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

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

8 _____ (h) The commission, in its discretion, may engage the
9 services of a financial adviser for the purposes of assisting
10 the commission in its consideration of an application for a
11 financing order and a subsequent issuance of bonds pursuant to a
12 financing order.

13 **§BA-4 Bonds; issuance; wildfire recovery property**

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

25 (1) The financing entity or a trustee for the holders of
26 bonds or the holders of an ancillary agreement in connection

1 with the exercise of remedies upon a default under the terms of
2 the bonds; or

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

5 (b) To the extent that any interest in wildfire recovery
6 property is sold, assigned, or is pledged as collateral pursuant
7 to subsection (a), the commission may authorize the electric
8 utility to contract with the financing entity or its assignees
9 that the electric utility will:

10 (1) Continue to operate its system to provide service to
11 consumers within its service territory;

12 (2) Collect amounts in respect of the wildfire recovery
13 charges for the benefit and account of the financing entity or
14 its assignees; and

15 (3) Account for and remit these amounts to or for the
16 account of the financing entity or its assignees.

17 Contracting with the financing entity or its assignees in
18 accordance with that authorization shall not impair or negate
19 the characterization of the sale, assignment, or pledge as an
20 absolute transfer, a true sale, or a security interest, as
21 applicable. To the extent that billing, collection, and other
22 related services with respect to the provision of the electric
23 utility's services are provided to a consumer by any person or
24 entity other than the electric utility in whose service
25 territory the consumer is located, that person or entity shall
26 collect the wildfire recovery charges and any associated fixed
27 recovery tax amounts from the consumer for the benefit and

1 account of the electric utility, financing entity, or assignees
2 with the associated revenues remitted solely for ~~such~~the
3 person's benefit as a condition to the provision of electric
4 service to that consumer.

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

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

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

1 security interest in the wildfire recovery property, or amount
2 of the wildfire recovery property, is dependent on the future
3 provision of service to consumers. All wildfire recovery
4 property specified in a financing order shall continue to exist
5 until the bonds issued pursuant to a financing order and all
6 associated financing costs are paid in full.

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

16 (f) Notwithstanding any law to the contrary, any
17 requirement under this chapter or a financing order that the
18 commission ~~take action with respect to the subject matter of a~~
19 ~~financing order~~ acts upon shall be binding upon the commission,
20 as it may be constituted from time to time, and any successor
21 agency exercising functions similar to the commission, and the
22 commission shall have no authority to rescind, alter, or amend
23 that requirement in a financing order.

24 **§BA-5 Wildfire recovery charge.** (a) The wildfire
25 recovery charge created pursuant to a financing order approved
26 pursuant to section BA-2 shall be a nonbypassable charge of a
27 financing entity that shall be applied to the repayment of bonds

1 and related financing costs as described in this chapter. The
2 wildfire recovery charge and any associated fixed recovery tax
3 amounts may be a usage-based charge, a flat user charge, or a
4 charge based upon customer revenues as determined by the
5 commission for each consumer class in any financing order.

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

14 (c) The wildfire recovery charge shall be collected by an
15 electric utility or its successors, in accordance with section
16 B A-8(a), in full through a charge that is separate and apart
17 from the electric utility's rates.

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

23 **§BA-6 Security interests in wildfire recovery property;**
24 **financing statements.** (a) A security interest in wildfire
25 recovery property is valid and enforceable against the pledgor
26 and third parties, subject to the rights of any third parties
27 holding security interests in the wildfire recovery property

1 perfected in the manner described in this section, and attaches
2 when all of the following have occurred:

3 (1) The commission has issued a financing order
4 authorizing the wildfire recovery charge to be included in the
5 wildfire recovery property;

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

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

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

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

26 (c) A perfected security interest in wildfire recovery
27 property shall be a continuously perfected security interest in

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

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

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

1 (e) If default occurs under the security agreement
2 covering the wildfire recovery property, the pledgees of the
3 wildfire recovery property, subject to the terms of the security
4 agreement, shall have all rights and remedies of a secured party
5 upon default under article 9 of chapter 490 and shall be
6 entitled to foreclose or otherwise enforce their security
7 interest in the wildfire recovery property, subject to the
8 rights of any third parties holding prior security interests in
9 the wildfire recovery property perfected in the manner provided
10 in this section.

11 In addition, the commission may require in the financing
12 order creating the wildfire recovery property that in the event
13 of default by the electric utility in payment of
14 wildfire recovery property revenues, the commission and any
15 successor thereto, upon the application by the pledgees or
16 assignees, including assignees under section B-5 of the
17 wildfire recovery property, and without limiting any other
18 remedies available to the pledgees or assignees by reason of the
19 default, shall order the sequestration and payment to the
20 pledgees or assignees of wildfire recovery
21 property revenues. Any financing order shall remain in full
22 force and effect notwithstanding any bankruptcy, reorganization,
23 or other insolvency proceedings with respect to the debtor,
24 pledgor, or transferor of the wildfire recovery property. Any
25 surplus in excess of amounts necessary to pay principal;
26 premiums, if any; interest, costs, and arrearages on the bonds;
27 and associated financing costs arising under the security

1 agreement, shall be remitted to the debtor, pledgor, or
2 transferor, for the purpose of remitting such amounts to
3 customers ~~by means of~~via the electric utility.

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

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

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

24 (1) Commingling of wildfire recovery charge revenues with
25 other amounts;

26 (2) The retention by the seller of either of the
27 following:

1 (A) A partial or residual interest, including an
2 equity interest, in the financing entity or the
3 wildfire recovery property, whether direct or
4 indirect, subordinate or otherwise; or

5 (B) The right to recover costs associated with taxes,
6 franchise fees, or license fees imposed on the
7 collection of wildfire recovery charge;

8 (3) Any recourse that an assignee may have against the
9 seller;

10 (4) Any indemnification rights, obligations, or repurchase
11 rights made or provided by the seller;

12 (5) The obligation of the seller to collect wildfire
13 recovery charges on behalf of an assignee;

14 (6) The treatment of the sale, assignment, or transfer for
15 tax, financial reporting, or other purpose; or

16 (7) Any true-up adjustment of the wildfire recovery charge
17 as provided in the financing order.

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

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

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

26 (d) As between bona fide assignees of the same right for
27 value without notice, the assignee first filing a financing

1 statement with the bureau of conveyances of the State of Hawaii
2 in accordance with part 5 of article 9 of chapter 490, naming
3 the assignor of the wildfire recovery property as debtor and
4 identifying the wildfire recovery property, shall have
5 priority. Any description of the wildfire recovery property
6 shall be sufficient if it refers to the financing order creating
7 the wildfire recovery property. A copy of the financing
8 statement shall be filed by the assignee with the commission,
9 and the commission may require the assignor or the assignee to
10 make other filings with respect to the transfer in accordance
11 with procedures the commission may establish, ~~but~~; provided that
12 these filings shall not affect the perfection of the transfer.

13 **§BA-8 Financing entity successor requirements; default of**
14 **financing entity.** (a) Any successor to an electric utility
15 subject to a financing order, whether pursuant to any
16 bankruptcy, reorganization, or other insolvency proceeding, or
17 pursuant to any merger, sale, or transfer, by operation of law,
18 or otherwise, shall be bound by the requirements of this
19 chapter. The successor of the electric utility shall perform
20 and satisfy all obligations of the electric utility under the
21 financing order⁷ in the same manner and to the same extent as
22 the electric utility, including the obligation to collect and
23 pay the wildfire recovery charge to any financing party as
24 required by a financing order or any assignee. Any successor to
25 the electric utility shall be entitled to receive any fixed
26 recovery tax amounts otherwise payable to the electric utility.

1 (b) The commission may require in a financing order that,
2 if a default by the electric utility in remittance of the
3 wildfire recovery charge collected arising with respect to
4 wildfire recovery property occurs, the commission, without
5 limiting any other remedies available to any financing party by
6 reason of the default, shall order the sequestration and payment
7 to the beneficiaries of the wildfire recovery charge collected
8 arising with respect to the wildfire recovery property. Any
9 order shall remain in full force and effect notwithstanding any
10 bankruptcy, reorganization, or other insolvency proceedings with
11 respect to the electric utility.

12 **§BA-9 Severability.** If any provision of this chapter is
13 held to be invalid or is superseded, replaced, repealed, or
14 expires for any reason:

15 (1) That occurrence shall not affect any action allowed
16 under this chapter that is taken prior to that occurrence by the
17 commission, a financing entity, a bondholder, or any financing
18 party, and any such action shall remain in full force and
19 effect; and

20 (2) The validity and enforceability of the rest of this
21 chapter shall remain unaffected."

22 PART V

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

25 "**§269-17 Issuance of securities.** A public utility
26 corporation may, on securing the prior approval of the public
27 utilities commission, and not otherwise, except as provided in
28 section B-4, issue stocks and stock certificates, bonds, notes,
29 and other evidences of indebtedness, payable at periods of more
30 than twelve months after the date thereof, for the following
31 purposes and no other, namely: for the acquisition of property

1 or for the construction, completion, extension, or improvement
2 of or addition to its facilities or service, or for the
3 discharge or lawful refunding of its obligations or for the
4 reimbursement of moneys actually expended from income or from
5 any other moneys in its treasury not secured by or obtained from
6 the issue of its stocks or stock certificates, or bonds, notes,
7 or other evidences of indebtedness, for any of the aforesaid
8 purposes except maintenance of service, replacements, and
9 substitutions not constituting capital expenditure in cases
10 where the corporation has kept its accounts for [such]
11 expenditures in [such] a manner [as to enable] that enables the
12 commission to ascertain the amount of moneys so expended and the
13 purposes for which the expenditures were made, and the sources
14 of the funds in its treasury applied to the expenditures. As
15 used [herein,] in this section, "property" and "facilities"[,]
16 mean property and facilities used in all operations of a public
17 utility corporation whether or not included in its public
18 utility operations or rate base. A public utility corporation
19 may not issue securities to acquire property or to construct,
20 complete, extend or improve or add to its facilities or service
21 if the commission determines that the proposed purpose will have
22 a material adverse effect on its public utility operations.

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

28 SECTION 4. This Act does not affect rights and duties that
29 matured, penalties that were incurred, and proceedings that were
30 begun before its effective date.

31 SECTION 5. 8. In codifying the new sections added by
32 section 21 of this Act, the revisor of statutes shall substitute
33 appropriate section numbers for the letters used in designating
34 the new sections in this Act.

35 SECTION 69. Statutory material to be repealed is bracketed
36 and stricken. New statutory material is underscored.

37 SECTION 710. This Act shall take effect on July 1, 3000May
38 13, 2040.

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Report Title:

~~DCCA; PUC; Energy; Wildfire RecoveryLiability Trust Fund;
Securitization; Public Utilities Commission~~

Description:

~~Establishes the Wildfire RecoveryLiability Trust Fund.—Allows
to be placed within the Department of Commerce and Consumer
Affairs for administrative purposes. Specifies that the
Wildfire Liability Trust Fund shall be administered by an
Executive Director appointed by the Governor and confirmed by
the Senate. Authorizes securitization for electric
utilities. Effective ~~7/1/3000.~~ (HD35/13/2040. (SD3)~~

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

.B. NO.

Report Title:

[Insert]

Description:

[Insert]

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

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



March 10, 2025

Via Electronic Submittal

Committee on Energy & Environmental Protection
Representative Nicole E. Lowen, Chair
Representative Amy A. Perruso, Vice Chair

Tuesday, March 11, 2025; 9:00 a.m.
Conference Room 325 & Videoconference

RE: SB 897 SD3 – Relating to Energy - Support the Intent

Aloha Chair Lowen, Vice Chair Perruso, and members of the Committee,

Clearway Energy Group (“Clearway”) supports the intent of SB 897 SD3, which establishes a recovery fund for future wildfire-related claims. Clearway is one of the largest suppliers of renewable energy to Hawaiian Electric and its customers. Our projects provide clean, reliable power to Hawaiian Electric’s customers at a fixed price and at a lower cost than electricity from fossil fuel sources.

In supporting the intent of SB 897 SD3, Clearway wishes to underscore the importance of a financially stable utility in enabling continued construction of affordable, clean energy resources to meet Hawaii’s electricity needs. A recent S&P Global Ratings report on Hawaiian Electric Industries Inc. and its subsidiaries confirmed a credit rating of B- (six notches below investment grade), with a negative outlook driven by litigation risk.¹ When Clearway and other independent power producers seek financing for our clean energy investments in Hawaii, lenders rely on these credit ratings and reports to determine whether, and at what cost, they will invest in a project contracted with Hawaiian Electric. In the current environment, Clearway has determined that it is currently not possible to secure financing at a reasonable cost for projects relying on revenue from Hawaiian Electric.

¹ S&P Global Ratings, RatingsDirect: “Hawaiian Electric Industries Inc. And Subsidiaries Ratings Affirmed, Off Credit Watch; Outlook Negative,” November 22, 2024.

In addition to SB 897 SD3, Clearway also supports SB 1501/HB 974, which allows independent power producers to enter into a step-in agreement with the State, giving lenders near-term assurance that payments for delivered energy will continue even if the utility were to become subject to a bankruptcy proceeding. Both proposals are needed to support continued financing of clean energy projects. The step-in agreement is a temporary mechanism to allow project financing to continue in the near term while Hawaiian Electric works back toward an investment-grade credit rating, whereas SB 897 SD3 is important as a mechanism to support Hawaiian Electric's long-term credit recovery.

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

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group



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

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair

Rep. Amy A. Perruso, Vice Chair

DATE: Tuesday, March 11, 2025

TIME: 9:00 AM

Conference Room 325

RE: SB 897 Energy

Comments

Aloha Chair Lowen, Vice Chair Perruso, 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 55 years. Our 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.

The bill addresses wildires and securitization. Life of the Land generally supports securitization with safeguards. The bill is a work in progress that needs substantial revisions and additions.

Unconstitutional: The last section of the bill throws a totally new and unrelated item into the mix: it proposes changing the Renewable Portfolio Standard. No testifier was informed in any Senate hearing that the issue would be added to the bill. The section on RPS appears to violate the spirit of the State Constitution. Article 3 Section 14 -- Each law shall embrace but one subject.

This bill asserts that a wildfire is **catastrophic** ONLY IF a certain number of buildings are burned down and it is irrelevant how many people died or were injured.

In contrast, the Public Utilities Commission served Information Requests on the Hawaiian Electric Companies on March 3, 2025. "Please describe Hawaiian Electric's **significant wildfire** history for the past 20 years. **Significant wildfires** are fires ignited by Hawaiian Electric's equipment that have resulted in at least one **death** and/or burned a significant number of **acres** or destroyed a significant number of **structures**."

The bill asserts that all costs will be borne by electric utilities and electricity ratepayers. The 2023 Lahaina wildfire disaster was the result of multiple issues: electric utility ignition, dead vegetative fuel on large parcels owned by major landowners, failed telecom systems, lack of a unified chain of command, and governmental inaction in regulating the threat even though a 2018 Lahaina wildfire burned some of the same land, burned more acreage, and averted burning down Lahaina town due to a shift in the winds.

HECO asserts that they have limited funds to contribute to the wildfire fund and that they have poor credit. When things improve, shareholder funds should replace ratepayer funds. Landowners with large fields of dead vegetative fuel should pay a premium.

Mahalo
Henry Curtis
Executive Director



Testimony Before the House Committee on Energy & Environmental Protection

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

Tuesday, March 11, 2025; 9:00 am

Conference Room #325 & Videoconference

Senate Bill No. 897 SD3 - RELATING TO ENERGY

To the Honorable Chair Nicole E. Lowen, Vice Chair Amy A. Perruso, 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 offers comments on this measure.

KIUC recognizes that it is in the best interest of the state to minimize negative impacts to electric utility ratepayers for wildfire risk mitigation, disaster relief, and litigation costs. Public utilities are very capital intensive, and maintaining access to low-cost financing is of utmost importance to utilities. Providing a vehicle for expedient processing of claims from consumers not covered by insurance, while preserving the financial viability of electric utilities by allowing them to obtain timely recovery of costs related to wildfires from the Hawai'i Public Utilities Commission (PUC), could substantially mitigate negative impacts from catastrophic events.

Wildfire Recovery Fund

KIUC understands the intent of establishing this fund and would consider participating if it is established.

Securitization

As a not-for-profit cooperative, KIUC could have access to funding assistance from the Federal Emergency Management Agency (FEMA) following a declared disaster. It is reasonable to expect FEMA would cover 75% of KIUC's eligible rebuilding costs following a wildfire. However, FEMA would not reimburse all losses, and there could be additional third-party liability claims not covered by insurance resulting from a wildfire event. Additionally, FEMA has been mentioned by the Trump administration as an agency targeted for potential changes which could impact future availability of funding.

Securitization of wildfire related claim costs is potentially the most cost-effective method of financing if it is available, as debt can be issued in the capital market at investment grade levels often at the highest investment grade. The PUC's recently issued *2024 Inclinations on the Future of Energy in Hawaii* states "... creative new mechanisms, such as securitization, are likely necessary to secure the timely availability of funds and reduce ratepayer impact." KIUC notes that issuance and ongoing costs associated with securitization can be substantial. This likely limits the applicability of securitization to KIUC, since claim costs that may be material to a relatively small utility like KIUC may not reach a threshold that makes financial sense for incurring the carrying costs of securitization.

KIUC is nevertheless supportive of having the ability to participate in securitization in the event electric cooperative wildfire claim costs are large enough to justify a securitized offering.

KIUC does not agree with amendments on pages 57 and 60 related to the addition of "new or converted firm renewable electrical energy and renewable energy resources." There are several reasons why we believe such a provision is problematic:

- There is currently no definition of "firm" renewable energy. Thus, the potential impact of this provision is difficult to ascertain.
- KIUC does not plan to retire conventional generation units as new renewable generating resources are developed. Even as we approach meeting the 100% renewable standard as early as 2033, these conventional units will be necessary. For example, they will provide supplementary generation during extreme circumstances such as prolonged periods without access to solar resources. Furthermore, we anticipate operating these conventional units using biofuels leading up to and after 2045.

We request these provisions be removed from the measure.

Thank you for your consideration.

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION OF
SB 897 SD3**

Date: Tuesday, March 11, 2025

Time: 9:00 a.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION** of **SB 897 Relating to Energy**. The measure seeks to establish the Hawaii Wildfire Liability Trust Fund (the “Fund”) to provide compensation for property damage resulting from catastrophic wildfires in the State.

As currently drafted, SB 897 establishes the Fund and creates a process for future property damage claims arising from catastrophic wildfire (500 or more residential and commercial structures). The measure creates a process which victims of a future catastrophic wildfire will be required to submit their claims for property damages to the Fund executive director (the “ED”) for evaluation of the claim after which offers to settle the claim will be made. If the offer is accepted, then the victim will be prohibited from filing a claim against a participating public utility.

Victims which reject an offer from the Fund will be permitted to pursue litigation, however, their aggregate claimants (all claimants who rejected offers) would be capped at the lesser of:

- 1. \$500,000,000; or**
- 2. The average assessed value of commercial structures and residential structures designed for habitation in the county in which the covered catastrophic wildfire occurred, multiplied by the number of commercial structures or residential structures designed for habitation that were destroyed, plus the value of personal property lost; or**
- 3. The aggregate assessed replacement value of commercial structures and residential structures designed for habitation in the county in which the covered catastrophic wildfire occurred, plus the value of personal property lost.**

SB 897 limits liability of contributing public utilities and cap the total amount of property damage that can be paid through both the administrative claims process and litigation by

participating public utilities. HAJ is concerned that this measure penalizes victims who elect to litigate and seek full recovery for property damages should another catastrophic wildfire occur. The Fund should serve as an option for victims to seek recovery and participation by victims in the Fund should not be mandated, especially with the current liability limitations in place.

I. SB 897 Limits Recovery for Future Wildfire Victims:

HAJ has always held the position that liability limits on economic damages is bad public policy. In this instance, HAJ is concerned that the proposed measure will limit property damage claims against public utilities that contribute to the Fund for any disaster in the future where those very same fund contributors, through their negligence, caused a wildfire disaster and failed to ensure that the wildfire relief fund was adequately funded.

As currently drafted the measure would undercut the rights of victims in all future disasters. HAJ strongly opposes this measure which imposes a cap on the aggregate liability to be the lesser of : 1) \$500,000,000; or 2) the average assessed value of commercial structures and residential structures designed for habitation in the county in which the covered catastrophic wildfire occurred, multiplied by the number of commercial structures or residential structures designed for habitation that were destroyed, plus the value of personal property lost; or 3) the aggregate assessed replacement value of commercial structures and residential structures designed for habitation in the county in which the covered catastrophic wildfire occurred, plus the value of personal property lost. This liability limitation places a substantial cap on recovery for victims who reject an offer from the fund and will apply even to disasters that are caused by the same sort of negligence that led to the recent destruction of so many lives

and livelihoods on Maui. HAJ is concerned that the severely reduce a victim's ability to obtain recovery for losing their property in a future catastrophic wildfire.

HAJ understands the business implications that this measure may have for fund contributors, however, we fail to see why those who have caused so much damage and destruction should be rewarded for their callousness with a grant of capping liability for the damage they caused, at the expense of their victims.

Limiting a victim's ability under this measure will remove any accountability for utility companies whose actions or omissions result in damage to people across the state. The current liability language sets a dangerous precedent of rewarding public utilities that contribute to catastrophic wildfires or disasters in the future.

II. Substantial ED Authority Without Clear Parameters:

HAJ is concerned that SB 897 gives the ED, an appointed official, too much power by giving them the sole authority to determine rules and make offers to settle on behalf of the WRF. Given the authority granted under this measure there should be an appointed panel based on the qualifications of the members (e.g., insurance rep, attorney, a DCCA rep, etc.), and a new panel should be appointed every time a "catastrophic wildfire" occurs (similar to the MICP proceedings). In turn, we recommend an amendment to Section A-2 (c) to read as follow:

"Upon each occurrence of a catastrophic wildfire, the governor shall appoint an executive committee for the wildfire recovery fund which shall include:

1. The governor or his or her appointee;
2. The senate president or his or her appointee;
3. The speaker of the house or his or her appointee;

4. The senator of the district in which the catastrophic wildfire occurred or his or her appointee;
5. The representative of the district in which the catastrophic wildfire occurred or his or her appointee;
6. The director of the Department of Commerce and Consumer Affairs or his or her appointee;
7. The mayor of the county which the catastrophic wildfire occurred or his or her appointee;
8. The fire chief of the county which the catastrophic wildfire occurred or his or her appointee; and
9. The insurance commissioner or his or her appointee.”

Further, rules on how applications will be evaluated and offers are determined should be a part of this legislation to provide direct guidelines to the ED or a panel. This will ensure that future victims will receive equitable offers from the ED and obtain the recovery they desperately need following a future catastrophic wildfire.

In addition, HAJ concerned that the measure penalizes a claimant who fails to meet a deadline to file a claim, which is determined by ED (i.e., the ED) and not clearly defined in this legislation. The lack of a specified timeframe to file a claim is deeply concerning and may adversely impact a victim’s rights to seek remedy from the Fund or after rejecting an offer from the ED. An appropriate deadline which reflects the intent to expedite claims while balancing the time needed for victim to heal and begin the recovery process should be made a part of this legislation.

III. Unclear Language Regarding Process for Damages Exceeding Obligated Amounts:

The current language of the measure does not appear to specify parameters of the Fund should the amount of economic damages exceed the amount of funds obligated. HAJ has concerns with Section 269-F(d) which indicates that funds from the Fund shall only be made to contributors if the amount available to the Fund is less than 50% of the aggregate liability under Section 269-H. It appears that Section 269-F(d) should only apply when the Fund is not triggered as the obligated funds are clearly insufficient to account for the economic damages. However, the language of the measure does not clearly state that the Fund would not trigger and the liability limits do not apply under this circumstance. SB 897 should be amended to reflect this intent and clarify that: 1) the Fund is not applicable victims of a catastrophic wildfires under Section 269-F(d); 2) all proposed liability imitations on victims are not applicable if Section 269-F(d) is utilized by the participating utilities.

Furthermore, the ED is not required to request supplemental payments from contributors when the damages exceed the obligated amounts to the WRF. In turn, leaving requests for supplemental payments to the Fund at the discretion of the ED doesn't promote utilization of the fund and is inconsistent with the intent of the measure to expedite victim's recovery. The ED should be required to request supplemental payments from the participating public utilities if the economic damages exceed the obligated amounts to the funds. In conjunction, if a request for supplemental payment is denied by a participating public utility, then mandatory participation in the Fund and recovery limitations for victims that reject offers from the ED should be waived. This encourages the Fund to be adequately funded for victims to seek quicker recovery.

IV. Reduces Accountability to Adhere to Mitigation Plans:

The measure imposes an imprudent standard for the Public Utilities Commission (the “PUC”) when determining whether the conduct of a contributor caused the occurrence or contributed to the severity of a covered catastrophic wildfire. If the PUC finds that the public utility acted imprudent leading to the wildfire, then the PUC must order contributor to replenish the FUND not more than amount that exceeds 20% of the contributor’s transmission and distribution equity base rate (Section 269-E(e)).

First, the measure imposes an unclear cap on reimbursement for imprudent public utilities by failing to define “distribution equity base rate.” This is concerning for ensuring the proper replenishment and maintenance of adequate obligated funds for future applicants to the WRF. Further, it is curious as to why limitation on replenishment by public utilities found to be imprudent is necessary. For example, if a public utility is found to be imprudent in adhering to a wildfire mitigation plan, the cap on reimbursement would still apply.

Most importantly, the limitation on recovery for victims that reject offers from the fund still applies if a public utility is found to be imprudent. HAJ believes that should it be determined that a public utility was imprudent in adhering to a wildfire mitigation plan, then the limitation on the aggregate claims for applicants who reject offers from the ED should not be applicable. This promotes accountability in adhering to mitigation plans designed to prevent future wildfires.

Further, subsection (b)(2) (page 13) should be amended to read “Evaluating the contributor's actions in the context of its overall systems, processes, and programs, such that an error by a contributor’s employee would not be a basis for a finding of imprudence, unless that error resulted from the failure of a system, process, or program to prevent the error.”

This amendments clarifies that a “failure of a system” to prevent wildfires rather than an “imprudent system” should be considered when making a determination as to whether a contributor acted prudently. This will place emphasis on ensuring that systems implemented to prevent wildfires are upkept and proper protocols are adhered to by a contributor.

V. Evidence Limitations:

Lastly, we are concerned with limitations on evidence that section 269-L imposes. Specifically, Section 269-L indicates that “evidence submitted for the purposes of proceedings under sections 269-D, 269-F, and 269-G shall be subject to the limits on admissibility under rule 408, section 626-1.” This section is concerning as the FUND process under 269-D, 269-F, and 269-G could be utilized preclude evidence submitted to the ED from being discoverable and admissible as evidence during a civil proceeding. However, if this is not the intent of Section 269-L, then an amendment should be made to clarify that findings submitted to the ED shall remain discoverable and admissible in a civil claim.

VI. Proposed Amendments:

In accordance with the foregoing concerns, HAJ recommends the following amendments to provide additional clarity, ensure application of the Fund to property damages only, and ensure victim rights are preserved throughout the Fund process.

1. Page 3: Amend “Qualifying damages” to mean economic damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire. An additional defined term for physical injury with corresponding language clarifying exemption of wrongful death and personal injury claims from FUND should be

2. Page 8: Amend Section 269-B(c) to read as provided on Page 3 and 4 of this testimony with conforming amendments;
3. Pages 6: Amend (b)(1) ...which amounts [~~shall~~] may be recovered from its customers in nonbypassable rates not to exceed an increase of 10% of rates paid by customers prior to January 1, 2025;
 - (c) ... with such interest recovered from [~~eustomers in rates.~~] shareholder dividends.
4. Page 7: Amend (e) to read “If economic damages arising out of property damage resulting from a covered catastrophic wildfire exceed the amounts in and obligated to the wildfire recovery fund, the executive director [~~may~~] shall propose supplemental contributions to the wildfire recovery fund by participating public utilities.
5. Page 7: Amend (f) ...a public utility may rejoin the wildfire recovery fund as a contributor on a prospective basis if it makes owed payments with interest to be paid by its shareholders.
6. Page 10: Amend (c)...and the foreseeability of factors within and beyond the contributor’s control that may have led...
7. Pages 11: Amend (b)... A qualified claimant who fails to file a claim by [~~the deadline established by the executive director pursuant to rule~~] six years after a wildfire or two years after a qualified claimant receives payment, whichever is later, 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, except that any other action under Chapter 663 may be brought in the normal course or, if related to a claim under this section, may be brought in the same course as a qualifying action, any other time constraints notwithstanding.
8. Pages 13-14: Remove Section 269-H. Alternatively, amend (a)...arising from a covered catastrophic wildfire[, ~~including economic and non-economic damages,~~] shall not exceed the [~~lesser~~] greater of:
9. Page 14 Amend (c)...The court shall adopt procedures to equitably apply the limit set forth in subsection (a) to all [~~civil actions~~] qualifying actions that are filed.
10. Page 14: Add new section (e) The aggregate liability limit set forth in section (a) shall not apply until the initial contribution of each qualified contributor is satisfied in full.
11. Page 15: Remove §269-J, abolition of joint and several liability.
12. Page 16-17: Revise §269-L Inadmissible evidence. Any findings made by or evidence submitted to the director for purposes of proceedings under sections 269-D, 269-F, and 269-G shall be subject to the limits on admissibility under rule 408, section 626-1[-], provided that any findings made by or evidence in the possession of a qualified contributor shall be discoverable and admissible evidence in any civil action arising from a covered catastrophic wildfire. Failure by a qualified contributor to independently preserve evidence shall require

that the director make the same evidence, submitted for purposes of proceedings under sections 269-D, 269-F, and 269-G available to the parties in any civil action arising from a covered catastrophic wildfire.

In sum, SB 897: 1) impairs in seeking recourse for damage to their property; 2) subsidizes public utility liability through by securitization through raising customer rates; 3) provides a substantial amount of ED authority without clarity to ensure victims are properly remedied; and 4) reduces a contributor's responsibility to safely design and maintain their operations.

We look forward to working with all involved stakeholders on this measure. Thank you very much for allowing me to testify in **OPPOSITION** of the current draft of SB 897. Please feel free to contact me should you have any questions or desire additional information.

Written Statement of
Jeannine Souki
Senior Manager – Government & Regulatory Affairs

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
March 11, 2025, 9:00 AM
Conference Room 325, Hawai'i State Capitol

**COMMENTS FOR:
S.B. 897, S.D. 3 – RELATING TO ENERGY**

To: Rep. Lowen, Chair, Rep. Perruso, Vice Chair, and Members of the Committee

Re: **Testimony providing comments for SB897, SD3, with requested amendments**

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for the opportunity to provide comments on SB897, SD3, which aims to establish a Wildfire Liability Trust Fund (“Wildfire Trust Fund”) and an administrative claims process with the Department of Commerce and Consumer Affairs. This process will allow claimants to be compensated for damages resulting from covered catastrophic wildfires caused by a public utility.

Hawaiian Telcom hopes never to experience devastation like the wildfires in Maui again and appreciates the legislative initiative to establish a Wildfire Trust Fund for those affected by future catastrophic wildfires. Risk mitigation is in the state’s best interest and is essential for Hawai’i’s wildfire preparedness. We support the legislative intent of this measure and believe that clarifying language is necessary to address several matters:

1. FCC Compliance with the Replenishment of the Wildfire Liability Trust Fund:

The Federal Communications Commission (“FCC”) mandates that utility poles must be accessible to telecommunications carriers and cable systems, ensuring fair competition.¹ The FCC provides a formula for calculating pole attachment fees, which utilities must follow. This formula aims to ensure that rates are just and reasonable.²

As the bill is drafted, there is no guarantee that a contributor will not incorporate any amount toward FCC-based calculations that the Hawaii Public Utilities Commission orders the

¹ [FCC Docket 17-84: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Adopted December 13, 2023.](#)

² [FCC Docket 97-98: FCC Updates Pole Attachment Rules and Policies Clarification to Improve Accuracy, Adopted April 3, 2000.](#)

contributor to pay. We recommend adding the underlined language to page 10, Section 269-E (e), to ensure the contributors comply with FCC guidelines:

(e) A contributor shall not recover in regulated rates nor incorporate towards Federal Communications Commission-based calculations any amount that the commission orders the contributor to pay to the fund as a replenishment under this section.

2. Contractual Rights for Indemnification:

The following amendment is needed to ensure that beneficial telecommunications and video services are maintained under the terms of the tariffs, contractual obligations, and franchise agreements while guaranteeing the opportunity to provide beneficial broadband, voice, and video services through pole attachment agreements with electric utilities. Hawaiian Telcom supports the amendment proposed by Charter Communication, which adds language to page 15, Section 269-I(b), explicitly covering the contractual rights of third parties to seek indemnity under their pre-existing agreements with contributors. It also clarifies that nothing in the bill abrogates any indemnity obligations in existing contract parties:

(b) No suit, claim, arbitration, or other civil legal action for indemnity or contribution for amounts paid, or that may be paid, as a result of a covered catastrophic wildfire, shall be instituted or maintained by any persons or entities against contributors or their affiliates, employees, agents, or insurers for damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire; provided that this subsection shall not affect the indemnity or contribution rights of any person or entity (or their affiliates) in any way involving their communications facilities or infrastructure, pole attachments, or related agreements.

3. Addressing a Lack of Comprehensive Process for Wildfire Litigation Claims:

Finally, Hawaiian Telcom shares concerns that a comprehensive approach is necessary to efficiently resolve wildfire litigation claims and avoid fragmented litigation and resolution. The lack of a comprehensive approach can result in more delays and costs for claimants and protracted legal deliberations that impose an undue burden on our local courts.

Hawaiian Telcom urges your committee to consider the proposed amendments for these reasons. We appreciate the opportunity to offer comments and stand ready to work with your committee and other stakeholders on the requested changes to SB897, SD3.



THIRTY-THIRD LEGISLATURE, 2025,
House Committee on Energy and Environmental Protection
HEARING DATE: Tuesday, March 11, 2025
TIME: 09:00 a.m.
PLACE: Committee Room 325
RE: Senate Bill 897 SD3- **IN SUPPORT**

Aloha Honorable Chair Lowen, Vice-Chair Perruso, and Committee Members;

The International Brotherhood of Electrical Workers Local 1260 (IBEW 1260) offers the following testimony in SUPPORT of Senate Bill 897 SD3 and recognizes this measure as a vehicle to continue discussions on this issue in conjunction with HB982 HD3.

IBEW Local 1260, is comprised of approximately 3,000 members throughout Hawaii and Guam and consists of a diverse and highly-skilled workforce that supports the electric utility infrastructure across our state as well as government service contracts and broadcasting. We are committed to protecting the well-being of the members we serve and the community at large.

SB897 SD3 establishes the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes, specifying that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate, and authorizing securitization for electric utilities. This measure also requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard.

SB897 HD3 is a positive step towards mitigating risk and providing access to capital at lower costs, helping to fulfill government-imposed mandates to improve overall reliability and resiliency, and achieve Hawai'i's renewable portfolio standard goals. Recent local and national events have magnified the tremendous impact catastrophic wildfires can have on a community. Without proactive policies, regulated electric utilities can face insurmountable financial hardship.¹ Such challenges not only impact the utility, but the communities they serve. *Without the ability to minimize liability and obtain capital at a lower cost, ratepayers will likely pay higher rates than what may result from this bill.*

Stable, reliable, and resilient energy is an extremely critical component of a community's well-being. The health and viability of Hawaii's electric utilities are critical to IBEW1260 and the thousands of members and their families we represent throughout the state. Our members take great pride in the work they do to ensure that Hawaii's electrical infrastructure is the best that it can be.

SB897 HD3 is a proactive and forward-looking measure that we believe will not only result in a net benefit to ratepayers but also provide relief to those who suffer loss in the event of a future catastrophic wildfire. Mahalo for the opportunity to testify on this measure.

¹ [What the Eaton fire could mean for Edison's bottom line - Los Angeles Times, Caroline Petrow-Cohen, Feb. 11, 2025](#)



**Testimony to the House Committee on Energy & Environmental Protection
Representative Nicole E. Lowen, Chair
Representative Amy A. Perruso, Vice Chair**

**Tuesday, March 11, 2025, at 9:00AM
Conference Room 325 & Videoconference**

RE: SB897 SD3 Relating to Energy

Aloha e Chair Lowen, Vice Chair Perruso, and Members of the Committee:

My name is Sherry Menor, President and CEO of the Chamber of Commerce Hawaii ("The Chamber"). The Chamber supports Senate Bill 897 Senate Draft 3 (SB897 SD3), which establishes the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes. Specifies that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate. Authorizes securitization for electric utilities. Requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard.

SB897 SD3 aligns with our 2030 Blueprint for Hawaii: An Economic Action Plan, specifically under the policy pillar for Business Services. This bill promotes policies that drive economic growth, enhance workforce opportunities, and improve the quality of life for Hawaii's residents.

The proposed legislation establishes a Wildfire Liability Trust Fund to mitigate the financial risks of catastrophic wildfires in Hawaii. It provides a financial safety net for property owners and insurers affected by wildfires linked to public utilities. Additionally, it requires utilities to develop Wildfire Risk Mitigation Plans to reduce future fire risks.

While the bill establishes essential financial safeguards, further improvements are needed to refine the response to environmental challenges, clarify utility liability, and ensure fair cost distribution. The language in HB982 HD3 strengthens consumer protections, enhances fund transparency, and streamlines claims. It provides a financial safety net for property owners and insurers affected by wildfires linked to public utilities while requiring utilities to develop Wildfire Risk Mitigation Plans to reduce future fire risks. Given the increasing frequency of extreme weather events, this bill takes a proactive approach to addressing the economic threat of catastrophic wildfires caused by utility infrastructure. The Chamber supports SB897 SD3 with amendments to align with HB982 HD3, as it enhances financial preparedness, promotes utility accountability, and ensures long-term energy resilience in Hawaii.

The Chamber of Commerce Hawaii is the state's leading business advocacy organization, dedicated to improving Hawaii's economy and securing Hawaii's future for growth and opportunity. Our mission is to foster a vibrant economic climate. As such, we support initiatives and policies that align with the 2030 Blueprint for Hawaii that create opportunities to strengthen overall competitiveness, improve the quantity and skills of available workforce, diversify the economy, and build greater local wealth.

We respectfully ask to pass Senate Bill 897 Senate Draft 3 with amendments to align with HB982 HD3. Thank you for the opportunity to testify.

TESTIMONY OF MICHAEL ONOFRIETTI

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Representative Nicole E. Lowen, Chair
Representative Amy A. Perruso, Vice Chair

Tuesday, March 11, 2025
9:00 a.m.

SB 897, SD3

Chair Lowen, Vice Chair Perruso, and members of the Committee on Energy & Environmental Protection, my name is Michael Onofrietti, ACAS, MAAA, CPCU, Senior Vice President, Chief Actuary & Chief Risk Officer for Island Insurance, Board Chair and Chairman of the Auto Policy Committee for Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit association of property and casualty insurance companies licensed to do business in Hawaii. Members companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council submits **comments** on this bill. We respectfully suggest amending the definition of "Property owner" to include "personal property" so that what is covered in the definition of "Property insurer" aligns. The definition would read as follows, "Property owner" means an owner of real property or personal property in the State."

Thank you for the opportunity to testify.

**TESTIMONY BEFORE THE
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

SB 897 SD3 - Relating to Energy

In Support

Tuesday, March 11, 2025

9:00 AM

State Capitol, Conference Room 325

Submitted by Plus Power

Aloha Chair Lowen, Vice Chair Perruso, and Members of the Committee,

On behalf of Plus Power, I am submitting testimony in support of SB 897 SD3, Relating to Energy, which establishes the Wildfire Liability Trust Fund and authorizes securitization for electric utilities. Given various factors affecting our environment, including extreme weather events, SB 897 SD3 is a proactive approach to address the economic threat of a future catastrophic wildfire. Like other states challenged by wildfires have done, Hawaii needs to establish a recovery fund that can pay claims faster after a future catastrophic wildfire, providing an option to people without the expense and uncertainty of going to court.

While we hope nothing like what happened in West Maui ever occurs again, this bill is being proposed to ensure resources would be available if it does, especially for our local families. This bill would create a future wildfire recovery fund for potential victims and provide Hawaii families with an efficient option for recovering property damage claims from a future catastrophic wildfire without the expense and uncertainty of going to court. In addition, this bill would protect the creditworthiness of the participating regulated utilities that contribute to the fund. The

economic viability of our state's largest electric utility is important to the economic viability of our state. This bill's purpose is to reduce the financial uncertainty created by the risk of future catastrophic wildfires and to help support Hawaii's economy.

The Plus Power team is accelerating the deployment of transmission-connected battery energy storage throughout the United States. Plus Power develops, owns, and operates standalone battery energy storage systems that provide capacity, energy, and ancillary services, enabling the rapid integration of renewable generation resources. We now have 7 operating projects, with 1 in Hawaii, 4 in Texas, 2 in Arizona, and 2 more coming online this year in Maine and Massachusetts, totaling over 4000 MWh. Behind those, we have 10 GW of projects in 28 U.S. states, including Hawaii, and Canada in development. Plus Power wants to continue to help Hawaii meet its energy and reliability needs, and this legislation helps unlock the financing required.

We support SB 897 SD3 and request its passage. Thank you for the opportunity to share support.

Brian Duncan

Senior Vice President, Origination & Commercial

Plus Power



Sustainable Energy Hawai'i

sustainableenergyhawaii.org
noel@sustainableenergyhawaii.org

March 10, 2025

Testimony for SB897 SD3 - RELATING TO ENERGY

Dear Chair Lowen, Vice Chair Perruso, and Committee members.

I'm testifying on behalf of **Sustainable Energy Hawai'i**, a 501(c)(3) non-profit dedicated to improving the quality of life for Hawaii Island residents. Our mission is to enable an economic, social, and environmental revival in Hawaii through a just transition to sustainable, 100% locally sourced renewable energy and the creation of a thriving clean hydrogen economy.

Sustainable Energy Hawai'i supports SB897 SD3 with amendments. This measure *'Establishes the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes. Specifies that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate. Authorizes securitization for electric utilities. Requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard.'*

We request that **SB897 SD3** be amended by replacing the contents of the bill with **HB982 HD3** to enable an effective Wildfire Recovery Fund.

Once established, the Wildfire Liability Trust Fund will provide compensation to those who suffer property loss in a future catastrophic wildfire involving utility equipment, encourage and support long-term wildfire mitigation efforts, and help ensure that Hawaii's utilities will be able to continue to effectively deliver essential services.

SB897 SD3 would create a recovery fund to ensure an efficient option for potential wildfire victims to recover property damage claims. It will allow for a proactive means to mitigate the economic threat posed by future catastrophic wildfires. It will allow for more efficient payment of claims and prompt recovery for those affected. It will also protect the creditworthiness of participating utilities which ultimately translates to lower impact to ratepayers.

We encourage passage of **SB897 SD3** with amendments.

Thank you for this opportunity to testify.
Respectfully,

A handwritten signature in black ink, appearing to read 'Noel Morin', is written over a horizontal line.

Noel Morin, Chairman, Board of Directors and on behalf of the Sustainable Energy Hawai'i Board of Directors: Peter Sternlicht – Treasurer | Kanani Aton – Secretary | David De Luz – Director | Desmon Haumea – Director | Jerry Chang - Director | Stanley Osserman - Director



March 10, 2025

Representative Nicole E. Lowen, Chair
Representative Amy A. Perruso, Vice Chair
House Committee on Energy and Environmental Protection

Support and Proposed Amendments to SB 897, SD3, RELATING TO ENERGY (Establishes the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes. Specifies that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate. Authorizes securitization for electric utilities. Requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard. Effective 5/13/2040. [SD3])

**EEP Hearing: Tuesday, March 11, 2025, 9:00 a.m.
Conference Room 325; VIA VIDEOCONFERENCE**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth, housing, and renewable energy, while safeguarding Hawaii's significant natural, cultural, and agricultural resources, and public health and safety.

LURF and its members support all forms of renewable energy and for over one hundred years, our members have led the state in energy research, development, installation, generation, transmission, and delivery of renewable energy.

LURF appreciates the opportunity to express its **support for SB 897, SD3**, and respectfully **requests an amendment by replacing the contents of the bill with HB 982, HD3**. LURF also encourages further work on other aspects of the bill and believes that moving this bill forward will allow continued discussion on the merits of the bill.

SB 897, SD3. This measure:

- Establishes the Wildfire Liability Trust Fund to be placed within the Department of Commerce and Consumer Affairs for administrative purposes.
- Specifies that the Wildfire Liability Trust Fund shall be administered by an Executive Director appointed by the Governor and confirmed by the Senate.
- Authorizes securitization for electric utilities; and
- Requires the Public Utilities Commission to establish standards for each electric utility to replace fossil fuel resources with firm renewable energy sources in the renewable portfolio standard.

LURF's Position. LURF requests an amendment to insert the contents **HB 982, HD3**, which we understand would provide a proactive approach and solution to address the economic threat of a future catastrophic wildfire that could be caused by a regulated utility's infrastructure. Like other states challenged by wildfires have done, Hawaii needs to establish a recovery fund that can pay victims' claims faster after a future catastrophic wildfire.

We believe the amendment could ensure that financial resources would be available for our local families if a future catastrophic wildfire occurs again, by creating and funding a Wildfire Recovery Fund for potential victims and could provide Hawaii families with an efficient option for recovering property damage claims without the expense and uncertainty of going to court.

In addition, we understand amending this bill would protect the creditworthiness of the participating regulated electric utilities that contribute to the fund. The economic viability of our state's electric utilities is important to the economy of our state, and this measure could reduce the financial uncertainty created by the risk of future catastrophic wildfires and help support Hawaii's economy.

For the above reasons, LURF **supports the amendment of SB 897, SD3, by inserting the contents of HB 982, HD3.** and respectfully urges your favorable consideration of the amendment.

Thank you for the opportunity to present testimony regarding this measure.



HAWAII REGIONAL COUNCIL OF CARPENTERS

March 11, 2025

TO: The Honorable Nicole E. Lowen, Chair
The Honorable Amy A. Perruso, Vice Chair
and Members of the House Committee on Energy & Environmental Protection

RE: **STRONG OPPOSITION TO SB897 – A COSTLY BURDEN ON
HAWAII’S WORKING FAMILIES**

Aloha Chair Yamashita, Vice Chair Takenouchi, and Members of the Committees,

On behalf of the Hawai’i Regional Council of Carpenters (HRCC), I submit this testimony in **strong opposition of SB897**, which seeks to establish the Wildlife Recovery Fund and allows securitization for electric utilities. This bill is a direct attack on affordability on Hawai’i.

This Bill Negatively Affects Affordable Housing Development

HRCC supports affordable housing in Hawai’i, and this bill severely impacts the production of affordable housing projects statewide. Not only would taxpayers have to bear the burden of yet another increase on cost of living, but for every dollar in the form of qualified tax-exempt private activity bonds (PABs) that goes into helping HECO for nonhousing purposes, the State loses potential subsidy of 65% - 70% of that dollar in the form of lost federal Low-Income Housing Tax Credit (LIHTC)—this is an incredibly valuable financial resource that finances most rental housing projects in the State.

Hawai’i’s Most Vulnerable Will Suffer the Most

Energy costs already hit low-income residents the hardest. According to DBEDT, households below the poverty line in Hawai’i spend up to 24% of their income just to keep the lights on. This bill would pile on even higher costs, wiping out the relief provided by historic housing investments and the 2024 tax relief package—progress that was meant to help struggling families. Who is looking out for our kupuna on fixed income?

According to the most recent ALICE (asset limited, income constrained, employed) Report, ALICE households barely scrape by, unable to afford even the most basic necessities—housing, childcare, food, transportation, healthcare, a smartphone plan, and taxes—leaving them in a constant state of financial insecurity, one crisis away from devastation. Households below the

STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Houghtailing Street, Honolulu Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 440-9188
HILO OFFICE: 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576
KONA OFFICE: 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376
MAUI OFFICE: 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961
KAUAI OFFICE: Kuhio Medical Ctr Bldg., 3-3295 Kuhio Hwy, Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911

ALICE Threshold are struggling more than ever, with many losing hope of achieving their long-term goals and remaining in the islands.

Nowhere is this crisis more severe than in Maui County, where residents are still reeling from the devastation of the August 2023 wildfires. The path to recovery is fraught with overwhelming obstacles, as they face an uphill battle to rebuild their economy and secure affordable housing. Adding to these hardships, HECO's attempt to shift accountability and costs onto ratepayers presents yet another crushing burden, further exacerbating the already high cost of living.

What is the Plan for To Transition Hawai'i Reliable, Affordable, Renewable Energy?

The fact that there is no clear pathway to a future where residents of Hawai'i can enjoy reliable, affordable, and renewable energy brings into question what ratepayers and taxpayers get in return for paying for HECO's slush fund, especially in light of the paralysis of the U.S. wind power industry by President Trump.

Under the Aggressive Electrification scenario, O'ahu's electricity demand is projected to reach 14,500 GWh per year by 2045—roughly double today's usage and 45% higher than the projected 2045 demand in the IGP Reference case. Initial modeling indicates that solar and wind energy will serve as the primary zero-carbon generation sources, supplying over 90% of the island's electricity needs. **This includes a combination of distributed solar, utility-scale solar, land-based wind, and offshore wind.** To balance supply and demand, battery storage will be essential for shifting energy to high-load periods.

Early analyses suggest that transitioning from fossil fuel-based generation to renewables could reduce electricity generation costs by decreasing reliance on imported fuels. **However, achieving this shift will require a massive expansion of generation and transmission infrastructure.** While distributed solar will play an important role, it alone will not be sufficient to meet customer demand. Research from the National Renewable Energy Laboratory estimates that even if solar panels were installed on every rooftop in O'ahu, they would generate only 6,400 GWh per year—less than half of the island's projected electricity needs.

As a result, large-scale renewable resources—including utility-scale solar, land-based wind, and offshore wind—will be necessary, along with extensive transmission infrastructure to integrate these resources into the grid. There are currently no alternative energy sources that are zero-carbon, cost-effective, and capable of meeting the required scale. The momentum for wind energy gained during the Biden era has been abruptly halted under President Trump, as federal permitting and leasing for wind projects have come to a standstill, threatening the future of renewable energy expansion.

Enough Is Enough—Reject SB897

For years, HECO has failed to make the necessary investments to ensure affordable, reliable energy for the people of Hawai'i. Instead, they have funneled millions into executive

compensation, stock buybacks, and shareholder dividends—all while leaving our communities vulnerable.

Hawai'i's working families should not be forced to bail out a utility company that has repeatedly failed them. We strongly urge the committee to **reject SB897** and **protect the people of Hawai'i from skyrocketing energy costs.**

Mahalo for your time and consideration.

Mitchell Tynanes

Hawai'i Regional Council of Carpenters



Hawai'i Island Chamber of Commerce

1321 Kino'ole Street - Hilo, Hawai'i 96720

Phone (808) 935-7178 - Fax (808) 961-4435 - Email exec@hicc.biz - www.hicc.biz

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TESTIMONY BEFORE THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION SB 897 HD2 - Relating to Energy – IN SUPPORT

Tuesday, March 11, 2025 0:00 AM

Aloha Chair Lowen, Vice Chair Perruso, and Members of the Committee,

On behalf of the Hawai'i Island Chamber of Commerce, representing over 300 businesses and individual members primarily on the East side of Hawai'i Island, I submit this written testimony in strong support of SB 897, SD3, with amendments to replace its contents with HB 982, HD3. Advancing this bill will ensure continued discussion on its merits, and we respectfully request its passage with these amendments.

By incorporating the provisions of HB 982, HD3 into SB 897, SD3, this bill will provide a proactive solution in the event of a future catastrophic wildfire caused by a regulated utility's infrastructure. With the increasing risks posed by extreme weather events, this measure takes an important step toward mitigating the economic threat of wildfires. Similar legislation is being considered in states such as Wyoming, South Dakota, Colorado, Montana, Oregon, New Mexico, and California to address wildfire risk and its impact on electric utilities. Additionally, recent fires in Los Angeles highlight the urgency of this issue.

This bill would establish a wildfire recovery fund to offer an efficient and reliable means for victims to recover property damage claims without the expense and uncertainty of litigation. At the same time, it would help maintain the financial stability of participating regulated utilities that contribute to the fund—an essential factor in preserving the economic health of our state's largest electric utility and, by extension, our broader economy.

We urge the passage of SB 897, SD3, with amendments to incorporate HB 982, HD3. Thank you for the opportunity to testify.

Sincerely,

Carla Kuo

Executive Officer

Hawai'i Island Chamber of Commerce



**TESTIMONY IN SUPPORT OF
SB 892 SD3**

**BEFORE THE HOUSE COMMITTEE ON ENERGY &
ENVIRONMENTAL PROTECTION**

SB 897 SD3- Relating to Energy

Tuesday, March 9, 2025

9:00 AM; Conference Room 325

Dear Chair Lowen, Vice Chair Perruso, and Members of the Committee,

Thank you for the opportunity to testify in support of SB 897 SD3 Relating to Energy, and request that the committee replace the contents of the bill with HB 982, HD3. My name is Eric Wright and I serve as President of Par Hawaii. Par Hawaii is the largest local supplier of fuels, including various grades of utility fuels, as well as diesel, jet fuel, gasoline and propane.

SB 897 SD3 is a proactive approach to dealing with economic losses from a wildfire. The process that SB 897 SD3 would put in place would help ensure that Hawaiian Electric can attract investors in the capital markets. It would address the uncertainty associated with wildfire risks, an issue that is well documented by rating agencies such as Fitch¹ and Moody's². Other states have taken similar measures.

One of the underappreciated benefits of this legislation is the positive impact it has on Hawaii's local companies. In the case of Par Hawaii, we are a fuel supplier to Hawaiian Electric. We depend on Hawaiian Electric's ability to access capital and make timely payments on its obligations.

Similarly, there are several independent power producers³ who are critical to our daily lives because they produce and sell power to Hawaiian Electric. Additionally, there are potentially hundreds of local contractors and vendors who do business with Hawaiian Electric. These companies all depend on Hawaiian Electric to pay its bills on time. In turn, these companies are able to cover the cost of their business, including salaries and wages for their employees, as well as payments to local contractors and vendors.

The benefits of SB 897 SD3 go well beyond Hawaiian Electric by providing assurance to many local companies, and their employees, who do business with Hawaiian Electric.

¹ <https://www.fitchratings.com/research/corporate-finance/fitch-affirms-hawaiian-electric-industries-hawaiian-electric-co-at-b-removes-negative-watch-25-10-2024>

² <https://events.moody.com/2024-miu22138-investor-breakfast-briefing/liability-reform-will-be-key-to-support-credit-quality-of-utilities-in-wildfire-prone-states>

³ <https://www.hawaiianelectric.com/about-us/power-facts>



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

March 11, 2025

HEARING BEFORE THE
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

TESTIMONY ON SB 897, SD3
RELATING TO ENERGY

Conference Room 325 & Videoconference
9:00 AM

Aloha Chair Lowen, Vice-Chair Perruso, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate, and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau respectfully submits comments on SB 897, SD3, and requests amendments by replacing the contents of the bill with HB 982, HD3. Moving this bill forward will allow continued discussion on the merits of the proposal. Therefore, we request the passage of SB 897, SD3, with amendments.

Upon inserting the contents of HB 982, HD3 into SB 897, SD3, this bill will offer a proactive solution in the event of a future catastrophic wildfire that could be caused by a regulated utility's infrastructure. Given various factors affecting our environment, including extreme weather events, this measure takes an important step toward addressing the economic threat of future wildfires. Like other states that have faced similar wildfire challenges, Hawai'i must establish a recovery fund that can provide timely compensation for losses while reducing the financial uncertainty associated with litigation.

This year alone, states such as Wyoming, South Dakota, Colorado, Montana, Oregon, New Mexico, and California are considering similar legislation to address wildfire risk and its impact on electric utilities. Additionally, recent fires in Los Angeles underscore the urgency of establishing a proactive policy framework.

By creating a future wildfire recovery fund, this bill would ensure that potential victims have a structured and efficient option for recovering property damage claims resulting from a catastrophic wildfire. The measure also protects the financial stability of participating regulated utilities that contribute to the fund. The economic viability of Hawai'i's largest electric utility is important not only to the energy sector but to the overall economic health of the state. Reliable electric service is essential for agricultural

operations, including irrigation, food processing, and refrigeration, and disruptions due to wildfire-related financial instability would have far-reaching consequences.

We urge the committee to pass SB 897, SD3, with amendments to insert the language from HB 982, HD3.

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

March 11, 2025

House Committee on Energy & Environmental Protection
Representative Nicole E. Lowen, Chair
Representative Amy A. Perruso, Vice Chair



Working together for Kapolei

Tuesday, March 11, 2025
9:00 a.m. Conference Room #325 and via videoconference

RE: SB897 SD3 – Relating to Energy (Wildfire Recovery Fund)

Dear Chair Lowen, Vice Chair Perruso, members of the Committees,

My name is Kiran Polk, and I am the Executive Director & CEO of the Kapolei Chamber of Commerce. The Kapolei Chamber of Commerce is an advocate for businesses in the Kapolei region including Waipahu, Kapolei, 'Ewa Beach, Nānakūli, Wai'anae and Mākaha. The Chamber works on behalf of its members and the business community to improve the regional and State economic climate and help West O'ahu businesses thrive. We are a member-driven, member-supported organization representing the interests of all types of business: small, medium or large, for profit or non-profit businesses or sole proprietorship.

The Kapolei Chamber of Commerce **supports the intent of SB 897SD3** which establishes a wildfire recovery fund to provide compensation for property damage resulting from future wildfires in our state. The devastation of the Maui wildfires has touched all of us and while we hope that nothing like that happens again anywhere in our State, we must be vigilant and be prepared in the case that it does. This bill would create a future wildfire recovery fund for potential victims and provide Hawaii families with an efficient process for recovering property damage from a future catastrophic wildfire. The impact on the infrastructure is a reality that is very real. Having a funding mechanism that will help protect the creditworthiness of the state, counties, large landowners, and utilities that contribute to the fund is a solution we must seek now.

There are portions of West O'ahu that are specifically vulnerable to devastating wildfire in a very similar manor that West Maui was impacted, and we continue to prepare our West O'ahu community including preparation, mitigation and the consideration of funding mechanisms like this measure provides.

Thank you for this opportunity to provide testimony.

Respectfully,

Kiran Polk
Executive Director & CEO