

JAN 24 2024

A BILL FOR AN ACT

RELATING TO WILDFIRES.

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

1 SECTION 1. The legislature finds that as the risk of
2 catastrophic wildfires in Hawaii has increased, so has the
3 threat of property damage from such fires. Although most
4 property owners have insurance, some do not, and others'
5 insurance may not fully cover their losses.

6 The legislature further finds that when the cause of a
7 wildfire is uncertain or contested, costly and protracted
8 litigation ensues. Litigation regarding wildfire damages can
9 impose massive costs, including on the State, counties,
10 utilities, landowners, and other defendants that may be alleged
11 to have contributed to catastrophic wildfires. Such costs can
12 overwhelm these major institutions of the community, undermining
13 their ability to make investments that the State needs. Indeed,
14 even the possibility of litigation regarding a future
15 catastrophic wildfire can create a cloud of uncertainty that
16 threatens to impair the ability of these entities to attract
17 capital on reasonable terms--capital that is vital to make



1 investments in wildfire prevention, among other priorities.

2 Such an outcome harms everyone.

3 The legislature also finds that the risk of property damage
4 stemming from catastrophic wildfires may lead property insurers
5 to raise rates or refuse to provide coverage for certain losses,
6 or certain high-risk areas, of Hawaii--as occurred in the wake
7 of hurricane Iniki with respect to hurricanes.

8 The legislature additionally finds that it is in the public
9 interest to take steps to ensure that property insurance remains
10 available to cover losses associated with wildfires by providing
11 benefits to property insurers. Furthermore, the legislature
12 finds that it is in the public interest to ensure that the
13 threat of wildfires does not make investment in Hawaii's public
14 utilities so financially risky that it becomes too costly or
15 impossible for them to raise capital to implement vital plans,
16 including plans to mitigate wildfire risk, and to provide safe,
17 reliable, and affordable service to the people of the State.

18 Moreover, the legislature finds that it is in the public
19 interest to avoid the costs of litigation arising out of
20 catastrophic wildfires in order to protect Hawaii's economy and
21 encourage investment in the State. Therefore, the purpose of



1 this Act is to serve the public interest in the event of a
2 devastating wildfire by establishing a response to provide
3 compensation for property damage resulting from wildfires,
4 regardless of cause.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 **"CHAPTER**

9 **WILDFIRE RELIEF FUND**

10 § -1 **Definitions.** As used in this chapter:

11 "Administrator" means the wildfire relief fund
12 administrator appointed pursuant to section -5.

13 "Board" means the wildfire relief fund board of directors
14 created pursuant to section -4.

15 "Catastrophic wildfire" means a wildfire occurring on or
16 after the effective date of this Act that damages or destroys
17 more than five hundred residential or commercial structures.

18 "Contributor" means any person who contributes to the
19 wildfire relief fund as provided in section -3.



1 "Cooperative utility" means a public utility owned by
2 customers and overseen by a board of directors elected by
3 customers.

4 "Corporation" means the wildfire relief fund corporation
5 established pursuant to section -3.

6 "Electric utility" means a public utility that exists for
7 the furnishing of electrical power.

8 "Investor-owned utility" means a public utility that is
9 owned by shareholders and overseen by a board of directors
10 elected by shareholders.

11 "Other governmental entities" refers to governmental
12 entities, including county government agencies, other than state
13 government agencies.

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

15 "Wildfire relief fund" means the wildfire relief fund
16 established pursuant to section -2.

17 "Wildfire risk management plan" means a plan approved by
18 the public utilities commission pursuant to section -9.

19 § -2 **Wildfire relief fund; establishment.** (a) There is
20 established outside the state treasury a wildfire relief fund



1 and any accounts thereunder to carry out the purposes of this
2 chapter.

3 (b) The wildfire relief fund shall be placed within the
4 department of commerce and consumer affairs for administrative
5 purposes. The fund shall be a public body corporate and
6 politic.

7 (c) Moneys deposited in the wildfire relief fund and any
8 accounts thereunder shall be held by the fund, as trustee, in a
9 depository, as defined in section 38-1, or according to a
10 similar arrangement at the discretion of the board.

11 (d) All moneys received by the wildfire relief fund
12 corporation under this chapter shall be paid immediately to the
13 director of finance and shall become a part of the wildfire
14 relief fund.

15 (e) All payments authorized to be made by the corporation
16 by this chapter, including all payments for claims for
17 catastrophic wildfire damages, all salaries, and all other
18 expenses, shall be made from the wildfire relief fund.

19 (f) The moneys in the wildfire relief fund shall be
20 invested according to the same investment plans developed for
21 the Hawaii retirement savings special fund pursuant to chapter



1 389, and the earnings from such investments shall be credited to
2 the wildfire relief fund.

3 (g) All moneys in the wildfire relief fund shall be
4 appropriated and expended exclusively for the uses and purposes
5 set forth in this chapter; provided that this section shall not
6 be deemed to amend or impair the force or effect of any law of
7 this State specifically authorizing the investment of moneys
8 from the wildfire relief fund.

9 § -3 **Wildfire relief fund corporation; establishment;**
10 **purposes; duties.** (a) The wildfire relief fund corporation is
11 hereby established as an independent public body corporate and
12 politic.

13 (b) The corporation shall be established within the
14 department of commerce and consumer affairs for administrative
15 purposes.

16 (c) The purpose of the corporation shall be to administer
17 the payment of:

18 (1) Eligible claims arising from catastrophic wildfires
19 from the wildfire relief fund; and

20 (2) Contributions of contributors to the wildfire relief
21 fund.



- 1 (d) The corporation shall:
 - 2 (1) Receive, process, and determine payments for eligible
 - 3 claims for property damage arising from catastrophic
 - 4 wildfires from the wildfire relief fund;
 - 5 (2) Determine and enforce the collection of contributions
 - 6 from contributors to the wildfire relief fund;
 - 7 (3) Retain, employ, or contract with officers; experts;
 - 8 employees; accountants; actuaries; financial
 - 9 professionals; and other advisers, consultants,
 - 10 attorneys, and professionals, as may be necessary in
 - 11 the administrator's judgment, for the efficient
 - 12 operation, management, and administration of the
 - 13 corporation;
 - 14 (4) Enter into contracts and other obligations related to
 - 15 the operation, management, and administration of the
 - 16 corporation;
 - 17 (5) Purchase insurance or take other actions to maximize
 - 18 the claims-paying resources of the wildfire relief
 - 19 fund;
 - 20 (6) Pay costs, expenses, and other obligations of the
 - 21 corporation from the wildfire relief fund's assets;



1 (7) Take any actions necessary to collect any amounts owed
2 to the wildfire relief fund; and

3 (8) Undertake such other activities as are related to the
4 operation, management, and administration of the
5 wildfire relief fund, as approved by the board.

6 **§ -4 Wildfire relief fund corporation; board of**

7 **directors.** (a) There is established a wildfire relief fund
8 board of directors, which shall consist of members
9 appointed by the governor in accordance with section 26-34. The
10 board shall be the policy-making body of the corporation.

11 Accordingly, the board shall be responsible for adopting
12 policies for the administration and operation of the wildfire
13 relief fund and the performance of other duties and functions
14 assigned to the fund, to the degree not specified in this
15 chapter.

16 (b) The members of the board shall serve staggered terms,
17 with one-half of the members' initial terms ending four years
18 after the initial appointment, and one-half of the members'
19 initial terms ending six years after the initial appointment.
20 Thereafter, each member shall serve four-year terms. Vacancies



1 shall be filled for the remainder of any unexpired term in the
2 same manner as the original appointments.

3 (c) The chairperson of the board shall be elected from
4 among the appointed members of the board. A majority of all
5 members currently appointed to the board shall constitute a
6 quorum to conduct business, and the concurrence of a majority of
7 all members currently appointed to the board shall be necessary
8 to make any action valid, if not otherwise specified in this
9 chapter.

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

11 (1) A broad and balanced representation, with proper
12 judgment, character, expertise, skills, and knowledge
13 useful to the oversight of the corporation; and

14 (2) Diversity with regard to viewpoints, background, work
15 experience, and demographics.

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

20 (e) The board shall meet at least once every three months
21 at a time and place determined by the board. The board shall



1 meet at such other times and places as determined by the call of
2 the chairperson or by a majority of the members of the board.

3 (f) No later than twenty days before the convening of each
4 regular session, the board shall submit to the legislature and
5 governor a report regarding the activities and operations of the
6 corporation during the preceding year. The report shall
7 include, at a minimum, a description of:

8 (1) The effectiveness of the wildfire relief fund's
9 claims-payment process; and

10 (2) The level of participation in the wildfire relief fund
11 by all eligible participants, including property
12 owners, property insurers, and contributors.

13 The legislature shall consider the report in determining
14 whether any adjustments to the wildfire relief fund are
15 necessary.

16 (g) Each member of the board shall retain all immunities
17 and rights provided to a member pursuant to section 26-35.5.

18 **§ -5 Administrator; wildfire relief fund corporation.**

19 (a) The board shall appoint an administrator and oversee the
20 administrator's management and administration of the
21 corporation.



1 (b) The administrator shall serve at the pleasure of the
2 board and shall be exempt from chapter 76.

3 (c) The administrator shall have such powers as are
4 necessary to carry out the functions of the corporation, subject
5 to the policy direction of the board.

6 (d) The administrator may employ, terminate, and supervise
7 employees, including assistants, experts, field personnel, and
8 clerks, as may be necessary in the administration of the
9 corporation.

10 (e) The board may overturn any decision of the
11 administrator through a majority vote.

12 (f) At the direction of the board, the administrator shall
13 prepare and present for approval a plan of operations related to
14 the operations, management, and administration of the wildfire
15 relief fund on an annual basis. At least annually and at the
16 direction of the board, the administrator shall present the plan
17 of operations to the appropriate policy committees of the
18 legislature. The plan shall include but not be limited to
19 reporting on the wildfire relief fund's assets and projections
20 for the duration of the fund.



1 (g) At the direction of the board, the administrator shall
2 at least annually prepare and publish on the corporation's
3 website a public-facing report that describes the operations and
4 activities of the corporation and wildfire relief fund during
5 the preceding year, including a description of the financial
6 condition of the wildfire relief fund.

7 § -6 **Wildfire relief fund corporation; audit.** (a) The
8 auditor shall conduct an annual audit of the corporation and
9 wildfire relief fund pursuant to chapter 23. As part of this
10 audit, the auditor may contract with a firm qualified to perform
11 an independent actuarial review.

12 (b) The auditor shall determine the scope of the review
13 required by this section, which shall include but is not limited
14 to:

- 15 (1) A review of the sources and uses of the moneys in the
16 wildfire relief fund;
- 17 (2) A reconciliation of changes in actuarial assumptions
18 and reserve values from the preceding year;
- 19 (3) An examination of the development of claim reserve
20 inadequacies or redundancies over time; and



1 (4) An assessment of the future financial viability of the
2 wildfire relief fund.

3 (c) The corporation shall cooperate with the actuarial
4 firm in all respects and shall permit the firm full access to
5 all information the firm deems necessary for a true and complete
6 review. Information provided to the actuarial firm conducting
7 the annual review is subject to the same limitations on public
8 inspections as required for the records of the corporation.

9 (d) The audit required by this section shall be conducted
10 using both generally accepted accounting principles and the
11 statutory accounting principles published by the National
12 Association of Insurance Commissioners.

13 (e) The cost of the audit required by this section shall
14 be paid by the corporation.

15 (f) The auditor shall issue an annual report to the
16 governor, president of the senate, and speaker of the house of
17 representatives on the results of the audit and review. The
18 audit and report of the review performed by the independent
19 actuarial firm shall be available for public inspection, in
20 accordance with the auditor's established rules and procedures
21 governing public disclosure of audit documents.



1 (g) The legislature shall consider whether, after review
2 of the annual report in subsection (f), any adjustments to the
3 wildfire relief fund should be implemented.

4 § -7 **Wildfire relief fund; participation.** (a) The
5 following entities may participate in the wildfire relief fund
6 as contributors:

7 (1) The State;

8 (2) Electric utilities;

9 (3) Public utilities that are not electric utilities that
10 contribute to the risk of occurrence or severity of a
11 catastrophic wildfire, including but not limited to
12 public utilities for the production, conveyance,
13 transmission, delivery, or furnishing of gas and for
14 the conveyance of telecommunications messages;

15 (4) Other governmental entities; and

16 (5) Private landowners who own, or whose affiliated
17 persons or entities own in the aggregate, at least one
18 thousand acres of land in Hawaii.

19 (b) To participate in the wildfire relief fund, an entity
20 shall:



1 (1) Notify the administrator that it intends to
2 participate in the wildfire relief fund
3 by in the year preceding the year in which
4 the entity seeks to participate in the wildfire relief
5 fund; and

6 (2) Have made required contributions to the wildfire
7 relief fund pursuant to section -8.

8 (c) A contributor that is also a property owner in Hawaii
9 may make a claim to the wildfire relief fund for compensation in
10 the same manner provided for in section -13 as other property
11 owners; provided that the contributor:

12 (1) Retains all of the rights, privileges, and obligations
13 of a contributor; and

14 (2) Notwithstanding any other provisions of this chapter
15 and regardless of the existence of a depletion event
16 under section -16(c), is bound by the limitation on
17 claims under section -18.

18 (d) Any person or entity that poses a risk of causing or
19 exacerbating the severity of a catastrophic wildfire that is not
20 eligible to participate as a contributor in the wildfire relief
21 fund may submit an application to the board for participation.



1 (e) The board shall adopt rules pursuant to chapter 91 and
2 issue criteria for applications submitted under subsection (d).

3 (f) The board shall include in its annual report to the
4 legislature and governor under section -4 all applications
5 submitted under subsection (d) and shall recommend to the
6 legislature whether participation criteria for contributors
7 should be broadened.

8 § -8 **Wildfire relief fund; funding.** (a) Total
9 capitalization. The total capitalization amount of the wildfire
10 relief fund shall be \$. Neither the board nor the
11 administrator may modify the total capitalization amount, except
12 as otherwise expressly provided in this chapter.

13 (b) Actuarial study. The board shall commission an
14 actuarial study to be completed in 2024 to assess whether the
15 total capitalization amount should be increased or decreased
16 based on a holistic assessment of the risk of catastrophic
17 wildfires in Hawaii, and the potential exposure of the fund to
18 claims arising out of such wildfires. The board shall include
19 this assessment in the annual report that it submits to the
20 legislature and governor under section -4. The legislature
21 shall consider that assessment, as well as other information



1 submitted in the annual report, to determine whether adjustments
2 to the wildfire relief fund, including to its total
3 capitalization amount, should be implemented.

4 (c) Time to total capitalization. The administrator shall
5 recommend to the board, and the board shall, by majority vote,
6 approve initial contribution amounts under \$ for
7 potential contributors, other than the State and electric
8 utilities, based on the actuarial factors identified in
9 subsection (b) and with the goal of, to the extent reasonably
10 possible, having the wildfire relief fund reach the total
11 capitalization amount within five years of the effective date of
12 this Act, taking into consideration reasonably expected
13 investment returns and assuming no payments will be made by the
14 wildfire relief fund during that time period.

15 (d) Capitalization amounts. With the exception of the
16 contribution made by the State in paragraph (4), contribution
17 amounts shall be divided by the administrator into an initial
18 contribution amount to be made by , and annual
19 contribution amounts to be made over a five-year period, subject
20 to the administrator's ability to increase payments under the
21 insufficient funding provision in subsection (g).



1 The wildfire relief fund shall be capitalized by the
2 following contributions:

3 (1) From other governmental entities that are eligible to
4 elect to participate in the wildfire relief fund, an
5 amount determined by the administrator based on an
6 actuarial assessment of the risk of payments to these
7 entities by the fund resulting from catastrophic
8 wildfires created by such entities, as well as the
9 risk of potential payments made by the fund resulting
10 from catastrophic wildfires created by these entities;

11 (2) From public utilities other than electric utilities
12 and private landowners that are in all cases eligible
13 to participate in the wildfire relief fund, an amount
14 determined by the administrator based on an actuarial
15 assessment of the risk of potential payments by the
16 wildfire relief fund resulting from catastrophic
17 wildfires created by these entities;

18 (3) From electric utilities, \$; and

19 (4) From the State, \$.

20 (e) The board shall determine the contribution amounts of
21 eligible contributors by ; provided that this date is



1 thirty days before the date by which participants are required
2 to notify the administrator of their intention to participate in
3 the wildfire relief fund. If an eligible contributor declines
4 to notify the administrator that the eligible contributor wishes
5 to participate in the wildfire relief fund and become a
6 contributor, the board shall reduce the total capitalization
7 amount by subtracting the amount the board allocated to that
8 eligible contributor.

9 (f) If an electric utility, public utility other than an
10 electric utility, other governmental entity, or private
11 landowner elects to become a contributor after the initial
12 capitalization of the wildfire relief fund, the electric
13 utility, public utility other than an electric utility, other
14 governmental entity, or private landowner shall provide,
15 by _____ in the year before the year in which the electric
16 utility, public utility other than an electric utility, other
17 governmental entity, or private landowner seeks to become a
18 contributor, an initial contribution in an amount determined by
19 the board by a majority vote upon the administrator's
20 recommendation, based on an up-to-date consideration of the
21 factors identified in subsection (b), such that the previous and



1 present initial contributions by all contributors reflect their
2 relative contributions to the risk of future payments from the
3 wildfire relief fund.

4 If necessary to achieve such an allocation of initial
5 contributions, and if the election is made prior to the fifth
6 year of fund operation, the administrator shall reduce the
7 amount of annual contributions by one or more contributors who
8 previously made initial contributions until such an allocation
9 is reached. The administrator shall increase the total
10 capitalization amount of the fund by the amount of the initial
11 contribution of the new fund contributor. The administrator
12 may, in the administrator's discretion, permit a new contributor
13 under this subsection to make payments over a five-year period.

14 (g) Insufficient funding. If the administrator determines
15 that payments made by the wildfire relief fund, and expected
16 future contributions by contributors and investment returns,
17 will result in the fund's: failing to reach the total
18 capitalization amount, as adjusted, as applicable, under
19 subsection (a), by the fifth year; or falling below the total
20 capitalization amount after the fifth year--including, in either
21 case, as a result of the legislature increasing the total



1 capitalization amount--the administrator shall recommend that
2 the board establish a supplemental contribution to be
3 contributed to the wildfire relief fund. Responsibility among
4 contributors for the supplemental contribution shall be
5 allocated as follows:

6 (1) The administrator shall recommend to the board, and
7 the board shall determine by majority vote, the
8 respective portions of the supplemental contribution
9 amount to be paid by each electric utility, other
10 public utility, other governmental entity, and private
11 landowner contributor, based on an up-to-date
12 assessment of the factors identified in subsection
13 (b); and

14 (2) The remaining amount of the supplemental amount shall
15 be paid by the State, subject to legislative
16 appropriation.

17 (h) The administrator may allow contributors to pay
18 supplemental contributions via annual contributions, or in part
19 via an initial contribution followed by annual contributions,
20 unless the administrator determines such a contribution schedule
21 will create a material risk that the wildfire relief fund will



1 not reach or return to its total capitalization amount within a
2 reasonable period of time to perform the functions identified in
3 this chapter.

4 (i) If the board establishes a supplemental contribution
5 pursuant to subsection (g), before the wildfire relief fund
6 receives the supplemental contribution, the wildfire relief fund
7 may issue revenue bonds up to the amount of the supplemental
8 contribution, which shall be backed by future contributions to
9 the wildfire relief fund.

10 (j) The board may order supplemental contributions under
11 this chapter even if an investigation under the replenishment
12 process under section -9 is ongoing. In the event that
13 payments are later made under that replenishment process, the
14 board, provided that other conditions of the refunds section are
15 met pursuant to section -11, may refund supplemental
16 contributions in whole or in part.

17 (k) Utility contribution. An investor-owned utility's
18 contributions to the wildfire relief fund, including initial and
19 supplemental contributions, shall be recovered from its
20 customers in rates, unless the public utilities commission
21 directs otherwise pursuant to section -9.



1 (1) If the total amount of payments that the administrator
2 determines should be paid in connection with a catastrophic
3 wildfire pursuant to sections -13, -14, and -15 exceeds
4 the current balance of the wildfire relief fund, the State may
5 provide a loan to the wildfire relief fund. The loan shall be
6 repaid over time through annual contributions by contributors.

7 § -9 Replenishment of the wildfire relief fund;
8 determination of prudence. (a) If the administrator, or an
9 agency of the State with responsibility for determining the
10 causes of wildfires, informs the public utilities commission
11 that a catastrophic wildfire may have been ignited by the
12 facilities of an investor-owned utility that is a contributor,
13 the public utilities commission shall initiate a proceeding to
14 review the investor-owned utility's conduct leading to the
15 catastrophic wildfire and make findings. The public utilities
16 commission may, even without formal notice from the
17 administrator or the agency, initiate this proceeding of its own
18 accord.

19 (b) The public utilities commission shall evaluate the
20 prudence of the conduct of the investor-owned utility in
21 connection with a catastrophic wildfire as follows:



- 1 (1) If the investor-utility has a wildfire risk mitigation
2 plan that was approved by the public utilities
3 commission, the investor-utility's conduct will be
4 deemed to have been prudent, unless a party to the
5 proceeding creates a serious doubt as to the prudence
6 of the investor-owned utility's conduct; or
- 7 (2) If the investor-utility does not have a wildfire risk
8 mitigation plan that was approved by the public
9 utilities commission, or if the public utilities
10 commission determines that the presumption is
11 overcome, the public utilities commission shall
12 determine whether the investor-owned utility acted
13 prudently, considering only acts that may have caused
14 the ignition and evaluating the utility's actions in
15 the context of the utility's overall systems,
16 processes and programs, such that an error by a
17 utility employee would not be a basis for a finding of
18 imprudence, unless that error was the result of an
19 imprudent system, process, or program.
- 20 (c) In evaluating prudence under this section, the public
21 utilities commission shall determine whether the actions of the



1 investor-owned utility were consistent with actions that a
2 reasonable utility would have undertaken in good faith under
3 similar circumstances, at the relevant point in time, and based
4 on the information available to the investor-owned utility at
5 the relevant point in time.

6 Reasonable conduct shall not be limited to the optimum
7 practice, method, or act to the exclusion of others, but rather
8 shall encompass a spectrum of possible practices, methods, or
9 acts consistent with utility system needs, the interest of
10 ratepayers, and the requirements of governmental agencies of
11 competent jurisdiction.

12 (d) If the public utilities commission determines that
13 imprudent conduct by the investor-owned utility caused the
14 catastrophic wildfire, the public utilities commission shall
15 determine whether to order the utility to reimburse the wildfire
16 relief fund in whole or in part for payments from the fund made
17 in connection with the catastrophic wildfire. In determining
18 the amount of reimbursement, if any, the public utilities
19 commission shall consider the extent and severity of the
20 utility's imprudence and factors within and beyond the utility's
21 control that may have led to or exacerbated the costs from the



1 catastrophic wildfire, including but not limited to humidity,
2 temperature, winds, fuel, merged wildfires with independent
3 ignitions, third-party actions that affected the spread of the
4 wildfire, and fire suppression activities.

5 (e) The public utilities commission shall not order the
6 investor-owned utility to reimburse the wildfire relief fund in
7 an amount that exceeds the lesser of:

8 (1) The costs that the public utilities commission
9 determines were due to the investor-owned utility's
10 imprudence; or

11 (2) Twenty per cent of the investor-owned utility's
12 transmission and distribution equity rate base minus
13 the amounts the utility has reimbursed, or is required
14 to reimburse, the wildfire relief fund during the
15 period of three consecutive calendar years ending on
16 December 31 of the year in which the calculation is
17 being performed.

18 (f) If the public utilities commission orders the
19 investor-owned utility to reimburse the wildfire relief fund,
20 the utility shall not recover the amount of the reimbursement in
21 rates charged to ratepayers.



1 (g) If the administrator, or an agency of the State with
2 responsibility for determining the causes of wildfires or other
3 catastrophic wildfires concludes that the conduct of a
4 cooperative utility, other governmental entity, or private
5 landowner that is a contributor may have caused the occurrence
6 or contributed to the severity of a catastrophic wildfire, the
7 administrator shall assess the prudence of the contributor's
8 conduct, applying the same standard of prudence applied to
9 investor-owned utilities pursuant to subsection (c).

10 (h) If the administrator determines that the contributor
11 acted imprudently and that such imprudence caused or contributed
12 to the severity of the catastrophic wildfire, the administrator
13 shall recommend that the board require such contributor to
14 reimburse the wildfire relief fund in whole or in part for
15 payments that the fund made in connection with the catastrophic
16 wildfire, considering the factors set forth in subsection (d),
17 subject to a cap of ten per cent of the contributor's assets
18 within Hawaii, measured over a rolling three-year period.

19 **§ -10 Failure to make contributions to wildfire relief**
20 **fund.** (a) Contributors shall notify the administrator if they
21 will make, or fail to make, a required contribution, whether



1 initial, annual, or supplemental, to the wildfire relief fund at
2 least days before the contribution is due.

3 (b) If a contributor fails to make a required contribution
4 to the wildfire relief fund, that contributor will no longer be
5 a contributor as of the date that the contribution was due.
6 That entity may, however, rejoin the fund under the process for
7 joining the fund after initial capitalization set forth in
8 section -8.

9 (c) The administrator shall not refund to an entity that
10 fails to make a contribution any previous payments made to the
11 wildfire relief fund. However, the administrator shall credit
12 all such previous contributions when determining the amount of
13 payment to be made if a participant rejoins the fund under
14 subsection (b).

15 § -11 **Refunds.** (a) In the event that the total amount
16 in the wildfire relief fund exceeds one hundred twenty per cent
17 of the total capitalization amount, the administrator may
18 recommend that the board authorize refunds to be made to the
19 contributors; provided that the refunds do not deplete the
20 wildfire relief fund below one hundred twenty per cent of the
21 total capitalization amount.



1 (b) Refunds shall be made in proportion to the total
2 amount contributed by the contributors to the wildfire relief
3 fund as of the date of the refund, excluding any payments made
4 under the replenishment provisions under section -9.

5 (c) The administrator has no obligation to recommend, and
6 the board has no obligation to authorize, a refund. The board
7 shall make a refund only if it takes into consideration all
8 relevant factors and circumstances and determines that making a
9 refund will be unlikely to result in the wildfire relief fund's
10 falling below one hundred twenty per cent of total
11 capitalization within three years after the refund.

12 (d) Any contributor may request that the board make a
13 refund whenever the conditions under this section are met.

14 (e) If the board elects to issue a refund or elects not to
15 do so after receiving a request under subsection (d), the
16 administrator shall issue an order explaining the board's
17 decision.

18 § -12 **Processing of claims.** (a) With the approval of
19 the board, the administrator shall establish and approve
20 procedures for the review, approval, and timely payment of
21 claims for reimbursement from the wildfire relief fund. The



1 procedures may be revised from time to time by the administrator
2 with the approval of the board.

3 (b) In the event of a catastrophic wildfire within the
4 State, the administrator shall process claims made for
5 compensation against the wildfire relief fund related to the
6 catastrophic wildfire, consistent with the requirements of this
7 chapter.

8 § -13 **Claims by property owners.** (a) To be eligible
9 for compensation from the wildfire relief fund for damage to
10 property from a catastrophic wildfire, a property owner shall
11 not have opted out from participation in the wildfire relief
12 fund before the occurrence of the catastrophic wildfire.

13 (b) County tax assessors shall include, with each real
14 property tax assessment sent to a property owner in the State, a
15 prominent notice regarding participation in the wildfire relief
16 fund. The notice shall be in a form prescribed by the
17 administrator and shall clearly explain the property owner's
18 right to opt out of participation in the wildfire relief fund by
19 submitting a request to opt out to the administrator within a
20 specific time. A property owner who does not submit a timely
21 request to opt out shall be deemed to participate in the



1 wildfire relief fund as of the deadline for submitting a request
2 to opt out.

3 (c) Any costs of administering the process described in
4 subsection (b) shall be reimbursed by the wildfire relief fund.

5 (d) In order to opt out of participation in the wildfire
6 relief fund with regard to property either in areas within the
7 State that have been assigned extreme, high, and moderate
8 wildfire risk classes by _____, a property owner shall
9 submit documentation of insurance coverage for such property
10 along with the property owner's request to opt out of the
11 wildfire relief fund, and the administrator shall approve such
12 documentation as adequate evidence of insurance for the
13 applicable property.

14 (e) Following a catastrophic wildfire, to make a claim for
15 compensation from the wildfire relief fund for damage to
16 property from the wildfire, a property owner shall submit to the
17 administrator documentation establishing:

18 (1) That the catastrophic wildfire damaged the owner's
19 property;

20 (2) The extent of the losses to the owner's property
21 caused by that catastrophic wildfire; and



1 (3) Any insurance policy providing coverage for those
2 losses.

3 (f) Within ninety days after a property owner submits a
4 claim for compensation from the wildfire relief fund, including
5 the documentation required in this section, the administrator
6 shall determine whether the documentation is adequate and, if
7 so, the appropriate amount of the payment to the property owner
8 from the wildfire relief fund. If the administrator determines
9 that the property owner has not submitted sufficient
10 documentation for the administrator to evaluate the claim, the
11 administrator may request additional documentation from the
12 property owner and may set a date by which the additional
13 information shall be provided by the property owner.

14 (g) If no insurance policy provides coverage for the
15 losses for which a property owner seeks compensation from the
16 wildfire relief fund, the property owner shall be eligible to
17 receive as compensation from the wildfire relief fund a maximum
18 of \$.

19 (h) If an insurance policy provides coverage for the
20 losses for which a property owner seeks compensation from the
21 wildfire relief fund, the property owner shall be eligible to



1 receive as compensation from the wildfire relief fund an amount
2 up to the lesser of:

3 (1) per cent of the amount by which the property
4 owner's losses exceed the amount of insurance coverage
5 for such losses; or

6 (2) per cent of the property owner's insurance
7 coverage applicable to such losses;

8 provided that the property owner submits adequate documentation
9 of those losses, as required by this section.

10 § -14 **Claims by property insurers.** (a) To be eligible
11 for compensation from the wildfire relief fund, a property
12 insurer shall have elected to participate in the fund prior to
13 the annual policy period in which the catastrophic wildfire
14 occurred. The administrator shall establish a process for
15 property insurers to annually submit an election to participate
16 in the fund to the administrator within a specified time.

17 (b) All property insurers who elect to participate in the
18 wildfire relief fund shall be eligible to receive as
19 compensation from the wildfire relief fund per cent of
20 their total payments for property damage claims in Hawaii as a
21 result of a catastrophic wildfire.



1 (c) Following a catastrophic wildfire, to make a claim for
2 compensation from the wildfire relief fund based on claims
3 resulting from the catastrophic wildfire, an eligible property
4 insurer shall submit to the administrator documentation
5 establishing the number, nature, and total value of insurance
6 claims that the property insurer paid pursuant to its policies
7 for damage resulting from the catastrophic wildfire as well as
8 documentation sufficient to assess the reasonableness of the
9 property insurer's payment of such claims.

10 (d) After receipt of a property insurer's claim for
11 compensation from the wildfire relief fund, including the
12 documentation required in this section, the administrator shall:

13 (1) Review via an expedited procedure the property
14 insurer's claim for compensation from the wildfire
15 relief fund; and

16 (2) Determine:

17 (A) Whether the documentation provided is adequate;

18 and

19 (B) The appropriate amount of the payment to the
20 property insurer from the fund.



1 § -15 **Claims by the State and other governmental**
2 **entities.** (a) The State may submit claims for compensation
3 from the wildfire relief fund for damages it incurred resulting
4 from a catastrophic wildfire, including damage to infrastructure
5 or other property, costs of fire suppression, and natural
6 resource damages, to the extent recovery of such losses is
7 authorized by law.

8 (b) Other governmental entities may submit claims for
9 compensation from the wildfire relief fund for damages they
10 incurred resulting from a catastrophic wildfire, including
11 damage to infrastructure or other property and other losses, to
12 the extent recovery of such losses is authorized by law;
13 provided that to be eligible for compensation from the wildfire
14 relief fund related to a catastrophic wildfire, another
15 governmental entity shall elect to be a contributor and shall
16 have satisfied contribution obligations pursuant to
17 section -8 before the occurrence of the catastrophic
18 wildfire.

19 (c) To make a claim under this section, the State or other
20 governmental entity shall submit to the administrator
21 documentation establishing:



- 1 (1) That the catastrophic wildfire caused the damages;
- 2 (2) The extent of the damages caused by the catastrophic
- 3 wildfire; and
- 4 (3) Any other documentation necessary to establish the
- 5 State's or other governmental entity's right to
- 6 recover such losses pursuant to law.

7 (d) After receipt of a claim for compensation from the
8 wildfire relief fund pursuant to this section, the administrator
9 shall determine whether the State or other governmental entity
10 is authorized to recover damages under applicable law and, if
11 so, the appropriate amount of the payment.

12 § -16 **Fund depletion.** (a) Within thirty days of a
13 catastrophic wildfire, the administrator shall assess whether
14 the total payments that the wildfire relief fund is projected to
15 make to eligible property owners, property insurers, and the
16 State and other governmental entities under
17 sections -13, -14, and -15, respectively, are expected
18 to exceed seventy-five per cent of the total available money
19 remaining in the wildfire relief fund. The board shall adopt
20 rules pursuant to chapter 91 regarding the performance of this
21 assessment.



1 (b) If the administrator assesses pursuant to subsection
2 (a) that the total payments that the wildfire relief fund is
3 projected to make to eligible property owners, property
4 insurers, and the State and other governmental entities under
5 sections -13, -14, and -15, respectively, are expected
6 to exceed seventy-five per cent of the total available money
7 remaining in the wildfire relief fund, the administrator shall
8 seek to increase the total amount of money in the fund using all
9 available methods under this chapter.

10 (c) Depletion event. If the administrator is unable,
11 despite taking the steps under subsection (b), to secure
12 sufficient additional funding for the wildlife relief fund,
13 including credible pledges for future funding, to reverse the
14 administrator's assessment under subsection (a) within forty-
15 five days, the administrator shall declare the existence of a
16 depletion event.

17 (d) Depletion percentage. If the administrator declares
18 the existence of a depletion event, the administrator shall
19 determine what percentage of total eligible payments the
20 wildlife relief fund can make without the likelihood that the
21 payments will exceed seventy-five per cent of the total



1 available money in the wildlife relief fund. This percentage
2 shall be deemed the depletion percentage.

3 (e) Depletion payment. The administrator shall thereafter
4 offer all property owners, property insurers, the State, and
5 other governmental entities that submit claims for compensation
6 from the wildfire relief fund and would otherwise, under
7 sections -13, -14, and -15, respectively, be entitled
8 to a particular payment amount, that amount multiplied by the
9 depletion percentage. This amount shall be deemed the depletion
10 payment.

11 (f) All claimants that are offered the depletion payment
12 may choose to accept or decline the payment. Any property owner
13 or property insurer, other than a contributor, that declines to
14 accept the depletion payment shall:

15 (1) Be ineligible for any payments by the wildfire relief
16 fund with respect to the catastrophic wildfire for
17 which the claim was made; and

18 (2) Not be bound by the limitation on claims under
19 section -18 with respect to only that catastrophic
20 wildfire.



1 (g) After the payments to all claimants who accepted the
2 depletion payment have been made, the administrator may
3 recommend to the board, and the board may decide, in its
4 discretion, to make a further payment to all claimants who
5 accepted the depletion payment. The board shall adopt rules
6 pursuant to chapter 91 for the making of this decision.

7 (h) Multiple catastrophic events. The board shall adopt
8 rules pursuant to chapter 91 regarding how to pay claims in the
9 event that one or more catastrophic wildfires occur while the
10 corporation is in the process of assessing, receiving,
11 determining, or paying claims from an earlier catastrophic
12 wildfire.

13 § -17 **Hearings and appeals of determinations.** (a)
14 Within thirty days after the administrator's determination of
15 the amount of payment due to any claimant from the wildfire
16 relief fund pursuant to sections -13, -14, and -15,
17 respectively, or the board's determination of a contributor's
18 allocation for any contribution, the affected person or entity
19 may request a review and hearing on that determination before
20 the department of commerce and consumer affairs.



1 (b) Upon receipt of a request for review of the
2 administrator or board's determination, the department of
3 commerce and consumer affairs shall refer the request for
4 hearing to the office of administrative hearings for
5 determination as expeditiously as possible. A hearing shall be
6 scheduled for a date no more than days after receipt by the
7 department of commerce and consumer affairs of the request for a
8 hearing.

9 (c) Following the conclusion of any hearing or prior to
10 the conclusion of the hearing, with the concurrence of the
11 parties, the office of administrative hearings shall promptly,
12 and no later than days after the hearing, decide the matter
13 and make an order in accordance with the administrative judge's
14 decision.

15 (d) Within days after the date on which a copy of the
16 office of administrative hearings' order is mailed to the
17 parties, a party may seek judicial review of the order by filing
18 a petition for review in the applicable circuit court, with a
19 right of appeal as allowed by law. If no such petition is
20 timely filed, the order of the office of administrative hearings
21 shall be final.



1 § -18 **Limitations on claims.** (a) No suit, claim, or
2 other civil legal action may be instituted or maintained against
3 contributors or their affiliates, employees, agents, or
4 insurers:

5 (1) For recovery of losses or damages of a type for which
6 compensation may be sought from the wildfire relief
7 fund; and

8 (2) By persons or entities:

9 (A) Who are contributors, property owners who do not
10 opt out of the wildfire relief fund, or property
11 insurers who elect to participate in the wildfire
12 relief fund; or

13 (B) Who seek indemnity or contribution for amounts
14 paid, or that may be paid, to contributors,
15 property owners who do not opt out of the
16 wildfire relief fund, or property insurers who
17 elect to participate in the wildfire relief fund.

18 (b) Persons or entities who are eligible to seek
19 compensation from the wildfire relief fund for property damage
20 arising from a catastrophic wildfire may not seek to recover for
21 such damage from electric utilities, public utilities other than



1 electric utilities, the State, or private landowners who are
2 contributors, notwithstanding that the claimed property damage
3 may exceed the amount of payment by the wildfire relief fund for
4 such damage.

5 (c) The wildfire relief fund shall be subrogated to the
6 rights of the contributors, property owners who do not opt out
7 of the wildfire relief fund, and property insurers who elect to
8 participate in the wildfire relief fund, to the extent of any
9 payment made by the wildfire relief fund to such person or
10 entity, such that the wildfire relief fund may pursue claims
11 against a person or entity that is not a contributor for damages
12 resulting from the catastrophic wildfire."

13 SECTION 3. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$ or so
15 much thereof as may be necessary for fiscal year 2024-2025 for
16 deposit into the wildfire relief fund.

17 The sum appropriated shall be expended by the department of
18 commerce and consumer affairs for the purposes of this Act.

19 SECTION 4. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so
21 much thereof as may be necessary for fiscal year 2024-2025 for

1 the establishment of one full-time equivalent (1.0 FTE)
2 administrator position, who shall be exempt from chapter 76,
3 Hawaii Revised Statutes, to support the Hawaii wildfire relief
4 fund corporation; provided that in all subsequent fiscal years,
5 all funding for the administrator position shall be paid from
6 the wildfire relief fund.

7 The sum appropriated shall be expended by the department of
8 commerce and consumer affairs for the purposes of this Act.

9 SECTION 5. In accordance with section 9 of article VII of
10 the Hawaii State Constitution and sections 37-91 and 37-93,
11 Hawaii Revised Statutes, the legislature has determined that the
12 appropriations contained in H.B. No. , will cause the state
13 general fund expenditure ceiling for fiscal year 2024-2025 to be
14 exceeded by \$ or per cent. In addition, the
15 appropriation contained in this Act will cause the general fund
16 expenditure ceiling for fiscal year 2024-2025 to be further
17 exceeded by \$ or per cent. The combined total
18 amount of general fund appropriations contained in only these
19 two Acts will cause the state general fund expenditure ceiling
20 for fiscal year 2024-2025 to be exceeded by



1 § or per cent. The reasons for exceeding the
2 general fund expenditure ceiling are that:

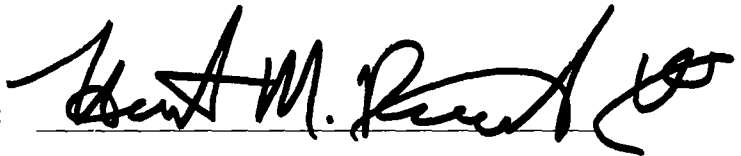
3 (1) The appropriation made in this Act is necessary to
4 serve the public interest; and

5 (2) The appropriation made in this Act meets the needs
6 addressed by this Act.

7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect on July 1, 2024.

10

INTRODUCED BY: 



S.B. NO. 3344

Report Title:

Hawaii Wildfire Relief Fund and Corporation; Public Utilities Commission; Catastrophic Wildfire; Appropriation; Expenditure Ceiling

Description:

Establishes the Hawaii wildfire relief fund and corporation to provide compensation for property damage resulting from catastrophic wildfires in the State. Appropriates funds.

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

