



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  
Senate Committee on Water and Land  
And  
Senate Committee on Commerce and Consumer Protection  
Thursday, February 15, 2024  
9:30 a.m.  
Conference Room 229

On the following measure:  
**S.B. 3326, RELATING TO VEGETATION MANAGEMENT NEAR UTILITY LINES**

Chair Inouye, Chair Keohokalole, and Members of the Committees:

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

The purpose of this bill is to: (1) require the Department of Land and Natural Resources to create and annually update a wildfire hazard map; (2) require private and public property owners to trim grasses within certain proximities of public rights of way and utility lines; (3) authorize electric utility companies to enter private or public property to trim or remove hazardous vegetation; (4) protect electric utility companies from liability for certain damages to other vegetation and property caused during the removal of hazardous vegetation; and (5) declare that the general fund expenditure ceiling is exceeded and makes an appropriation.

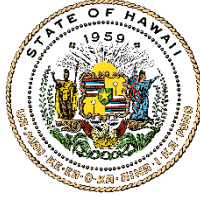
The tragedy and devastation of the wildfires that arose on Maui during the August 8, 2023, windstorm must be prevented from reoccurring. The Department supports the intent of this bill, which seeks to reduce risk from catastrophic wildfires by requiring vegetation management on a seasonal basis and if hazardous vegetation poses a serious threat to life and property.

The Department offers that more investigation is needed into the best practices for vegetation management to prevent wildfire risk at different levels of the electrical grid (transmission and distribution). The most appropriate entities for ensuring compliance with best practices for vegetation management to prevent wildfire risk and to have responsibility for undertaking vegetation management action should be determined as part of this investigation. Any investigation into best practices for vegetation management should also consider the wildfire mitigation actions that are being proposed as part of the Hawaiian Electric Company's Climate Adaptation Transmission and Distribution Resilience Program in Docket No. 2022-0135 and the electric utilities' (including Kaua'i Island Utility Cooperative) hazard mitigation plans that are expected to be filed with the Public Utilities Commission (Commission) by May 21, 2024 in response to Commission Order No. 40396. Such plans will be filed as part of a non-docketed proceeding under Case No. 2023-04661. The Department would additionally welcome further investigation as to whether wildfire risks are indeed only present during certain months of the year, or if these risks are present throughout the year.

Thank you for the opportunity to testify on this bill.

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

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

RYAN K.P. KANAKA'OLE  
FIRST DEPUTY

DEAN D. UYENO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committees on  
COMMERCE AND CONSUMER PROTECTION  
and  
WATER AND LAND

Thursday, February 15, 2024  
9:30 AM

State Capitol, Conference Room 229 & Videoconference

In consideration of  
SENATE BILL 3326  
RELATING TO VEGETATION MANAGEMENT

Senate Bill 3266 proposes to require the Department of Land and Natural Resources to create and annually update a wildfire hazard map; require private and public property owners to trim grasses within certain proximities of public rights of way and utility lines; authorize electric utility companies to enter private or public property to trim or remove hazardous vegetation; protect electric utility companies from liability for certain damages to other vegetation and property caused during the removal of hazardous vegetation. Declare that the general fund expenditure ceiling is exceeded; make an appropriation. **The Department of Land and Natural Resources (Department) strongly opposes this measure.**

The Department opposes this measure's attempt to shift the burden of vegetation management away from a utility company that has a responsibility to ensure their infrastructure does not pose a threat to public health and safety, and onto the Department and other landowners. When a utility company holds a utility easement granted by the State, it has the duty to keep the easement area in a clean, sanitary, and orderly condition and its infrastructure in a good and safe condition, including trimming and maintaining all vegetation in the easement area so that it does not present a threat to public safety. Moreover, the easement requires the utility company to indemnify and defend the State from all claims for damage, injury, or death, assume all risk associated with the easement, and provide general liability insurance. The Department does not believe that shifting those obligations from the utility company that benefits from holding the easement and voluntarily agreed to those terms, to the State is consistent with the public interest.

Furthermore, requiring the Department to identify and map wildfire hazard areas, remove vegetation on behalf of the utility, and enforce against landowners who fail to do so, creates an enormous burden on the Department's staff and financial resources. The Department also opposes absolving a utility company from liability that may be incurred as a result of its infrastructure causing damages, injury, or death. The Department's position is that utility companies should be responsible for mapping and maintaining the hazardous vegetation on the easements where their powerlines are located, and should not be shielded from any liability that may result from any fire that their lines ignite including any damage to property or to threatened and endangered species habitat due to a fire that the utility is determined responsible for. Where feasible, utility companies should install lines underground to reduce potential ignition in wind exposed, high fire danger locations. The utility company should consult with the Department to ensure compliance with threatened and endangered species habitat concerns where vegetation management will occur as well as any other environmental and cultural regulatory compliance that may apply.

Mahalo for the opportunity to testify in opposition on this measure.

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

TO THE SENATE COMMITTEES ON  
WATER AND LAND  
and  
COMMERCE AND CONSUMER PROTECTION

February 15, 2024  
9:30AM

Chairs Inouye and Keohokalole , Vice Chairs Elefante and Fukunaga, and Members of the Committees:

**MEASURE:** S.B. No. 3326

**TITLE:** RELATING TO VEGETATION MANAGEMENT NEAR UTILITY LINES.

**DESCRIPTION:** Requires the Department of Land and Natural Resources to create and annually update a wildfire hazard map. Requires private and public property owners to trim grasses within certain proximities of public rights of way and utility lines. Authorizes electric utility companies to enter private or public property to trim or remove hazardous vegetation. Protects electric utility companies from liability for certain damages to other vegetation and property caused during the removal of hazardous vegetation. Declares that the general fund expenditure ceiling is exceeded. Makes an appropriation.

**POSITION:**

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

**COMMENTS:**

The Commission appreciates the intent of this measure to improve vegetation management practices to reduce wildfire risk, including by establishing and regularly updating a wildfire hazard map, specifying rights for electric utilities entering private property for vegetation management purposes, clarifying vegetation clearance requirements for property owners, and incentivizing public and private property owners to maintain combustible-free space within a certain distance from adjacent right of ways and utility lines.

The Commission notes that achieving compliance with this measure could prove challenging. Based on experience in California, the Commission is concerned that compliance would be complicated by factors including (1) fragmented and overlapping

responsibilities; (2) lack of consistent statewide data; and (3) lack of resources, authority, and motivation to enforce compliance.<sup>1</sup>

In addition, the Commission offers the following comments on notice for removal of hazardous vegetation that the electric utility reasonably determines poses imminent risk of wildfire, utility liability, and existing efforts to improve vegetation management.

First, while it could be problematic to allow a utility to enter private property generally, the Commission questions in particular whether it is in the public interest to allow an electric utility to trim or remove hazardous vegetation on public or private property without first providing notice, even if said vegetation poses an imminent risk of wildfire ignition. Thus, the Commission recommends the following amendment to page 7, lines 5 – 18:

(f) If a utility company reasonably determines that hazardous vegetation poses an imminent risk of wildfire ignition and reasonably believes that the hazardous vegetation must be trimmed or removed ~~without giving notice as provided in subsection (e)~~ as soon as feasibly possible, the utility company may enter private or public property ~~without notice~~ after giving 48 hours' notice and may trim or remove the hazardous vegetation. After trimming or removing the hazardous vegetation under this subsection, the utility company shall notify the private or public property owner of the action taken under this subsection within ~~fourteen~~ two days of having taken action. The notices provided under this subsection shall be sent by phone call, email, or if both are unobtainable, certified mail to the last known address of the private or public property owner identified on public land records associated with the property in question. On a schedule determined by the public utilities commission, the utility company shall regularly report on all notices issued under this subsection to the commission.

Second, the Commission believes that review of utility actions and decision making is appropriate and disagrees with the notion that electric utilities should be fully shielded from liability for certain damages to other vegetation and property caused during the utility's removal of hazardous vegetation. The Commission therefore recommends the following amendment to page 7, line 19 to page 8, line 20 of this measure:

~~(g) If a utility company trims or removes hazardous vegetation as provided in subsection (e), the utility~~

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<sup>1</sup> See California Legislative Analyst's Office, "Reducing the Destructiveness of Wildfires: Promoting Defensible Space in California," published September 30, 2021, available at: <https://lao.ca.gov/Publications/Report/4457>.

~~company shall be immune from any liability arising from the utility company's performance, either by itself or through others, of any work authorized under subsection (e), including but not limited to any damage to other vegetation or other property caused in whole or in part by the utility company's actions or omissions, acting by itself or through others. A utility company that enters private or public property pursuant to subsection (f) shall be liable for any negligent act that is a direct cause of damages to other vegetation or other property located on the property in question as a result of trimming or removing the hazardous vegetation, excluding any liability for erosion or land subsidence or other considerations.~~

~~(h) A utility company shall not be liable for any failure to determine the existence of hazardous vegetation on private or public property that is located within or outside of the utility company's easements or within or outside a public right of way. A utility company that does not trim or remove hazardous vegetation as provided in subsections (e) and (f) shall be immune from any liability associated with the utility company's decision to refrain from doing so.~~

~~(i)(g) For purposes of this section:~~

The Commission agrees that it is important to improve vegetation management practices, and recently approved millions in funding for Hawaiian Electric to develop a hazard tree removal program that will support removal of hazardous trees outside of the Company's right of way. The Commission is committed to working with utilities and experts to further develop standards and rules related to vegetation management, including determining updated appropriate vegetation clearances from electric utility infrastructure, enforcement mechanisms, working collaboratively to identify state responsibility areas for fire protection and high risk areas, identifying and tracking exempt vegetation that is planted to reduce fire ignition risk, and other actions, as needed.

On a technical basis, the Commission observes that this measure may be better suited under a different chapter of the HRS, as this does not directly implicate the Commission's regulation of public utilities. Additionally, the measure includes a definition of "utility company" that is inconsistent with the definitions in HRS §269-1, and the Commission recommends using the term "electric utility", as defined in that chapter, throughout should this measure move forward.

Thank you for the opportunity to testify on this measure.



**Hawaiian  
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON  
WATER & LAND  
AND  
COMMERCE AND CONSUMER PROTECTION**

**SB 3326  
Relating to Vegetation Management Near Utility Lines**

Thursday, February 15, 2024  
9:30 AM  
State Capitol, Conference Room 229

Dave Nagata  
Land Agent  
Hawaiian Electric

Dear Chair Inouye, Chair Keohokalole, Vice Chair Elefante, Vice Chair Fukunaga, and Members of the Committees,

My name is Dave Nagata and I am testifying on behalf of Hawaiian Electric in **strong support** of SB 3326, Relating to Vegetation Management Near Utility Lines

Establishing a comprehensive statewide vegetation management program that includes the creation of wildfire hazard maps for each county, establishing vegetation management guidelines and responsibilities near utility lines on public and private properties, and establishing a vegetation management violation and notification process will help reduce wildfire risks across the state. Authorizing electric utility companies to use their discretion to enter public and private properties to perform vegetation management around electric utility lines, and limiting the companies' liability for property damage caused by such actions, will support the execution of an effective vegetation management program for wildfire mitigation and is also in the public interest.

Accordingly, Hawaiian Electric strongly supports SB 3326. Thank you for this opportunity to testify.



**SB-3326**

Submitted on: 2/13/2024 7:30:28 AM

Testimony for WTL on 2/15/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tamra Hayden	Individual	Support	Written Testimony Only

Comments:

I live in Makaha Valley. There are only 2 roads that I can use to escape our tinder box. Kili Road and Makaha Valley Road. The area contains 4 residences with over 1,000 people who could be in harms way. Makaha Valley Road is the biggest concern. Not only is it boxed in with dried and dead plants but there are low hanging power lines with tons of sea grass and dried grasses during the dry season I love this place, I would feel a lot safer if these invasive grasses were destroyed and if the private landowner, Makaha Valley Golf Course, was forced to get rid of all this unused, dead vegetative land. One proposal I have is to put a park on some of that land. We have no parks after Kapolei, the kids and adults must walk on the road in this area, there are no sidewalks. There are hundreds of dog owners that would love to have a dog park, young families that need a safe playground and older adults who need a safe place to get out for a walk. Why this side of the island has no resources for the same thing all other areas of the island have, is very unfair. The park could be built south of Makaha Valley Plantation. It could provide a fire break for some of this space and perhaps provide another access road out of here. Thank you for your time and consideration.

**SB-3326**

Submitted on: 2/13/2024 10:02:26 AM

Testimony for WTL on 2/15/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Gregory	Individual	Oppose	Written Testimony Only

Comments:

Seems to shift responsibility from the utility to landowners. Does not mention undergrounding of utility lines.

**SB-3326**

Submitted on: 2/13/2024 10:46:28 AM

Testimony for WTL on 2/15/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
kenneth matsui	Individual	Comments	Written Testimony Only

Comments:

Please consider allowing leashed herbivores like goats, or lambs within 10 foot of private property line into state property for weed control. I live on Pacific Palisades and have slope adjacent to my property and am getting too old to climb down hill to cut grasses. State employees only once within 30 years cut some limbs off of albezia trees on that land. Otherwise I need maintain fire break. My uncle lived in Wahiawa heights and faced fire approaching his property a few years back so I am concerned. Thanks. Funding departments that seldomly perform weed control on most state lands seems poorly spent.