



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

NADINE Y. ANDO  
DIRECTOR | KA LUNA HO'OKELE

JOSH GREEN, M.D.  
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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committees on Ways and Means and Judiciary  
Friday, March 1, 2024  
10:31 a.m.  
State Capitol, Conference Room 211 and via Videoconference**

**On the following measure:  
S.B. 3344, S.D.1, RELATING TO WILDFIRES**

**WRITTEN TESTIMONY ONLY**

Chair Dela Cruz, Chair Rhoads, and Members of the Committee:

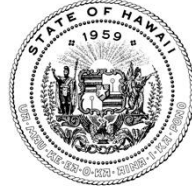
My name is Gordon Ito, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The purpose of this bill is to establish the Hawai'i Wildfire Relief Fund and Corporation to provide compensation for property damage resulting from catastrophic wildfires in the State and appropriate funds.

We note that the programs proposed in this bill may fall within the definition of insurance as defined in Hawai'i Revised Statutes (HRS) chapter 431 (Insurance Code), and accordingly may be subject to various provisions within chapter 431, including but not limited to Insurers General Requirements (article 3), Domestic Insurers (article 4), Financial Condition (article 5), and Rate Regulation (article 14). If the intent of the bill is not to create programs subject to insurance regulations, we respectfully suggest the bill

be amended to clearly exempt the programs proposed by this bill from regulation under the Insurance Code.

Thank you for the opportunity to testify on the bill.



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And

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Conference Room 211 & Videoconference

On the following measure:

**S.B. 3344, S.D.1, RELATING TO WILDFIRES.**

Chairs Dela Cruz and Rhoads, and Members of the Committee:

My name is Nadine Ando and I am the Director of the Department of Commerce and Consumer Affairs ("Department") The Department offers comments on this bill.

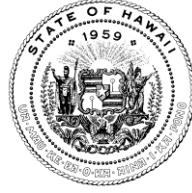
The purpose of this bill is to establish the Hawaii wildfire relief fund and corporation to provide compensation for property damage claims resulting from future catastrophic wildfires. The devastating effects of the Maui wildfires have highlighted the urgent need to address the increased risks associated with climate change in our region. We appreciate the gravity of the situation and the importance of finding sustainable solutions to safeguard lives, homes and businesses in the future.

Although the Department acknowledges the importance of planning for and mitigating the impacts of catastrophic wildfires and are open to the concept of establishing a relief fund that would be housed within the Department, we would like to

express our reservations and concerns regarding the current proposal set forth in S.B. 3344, S.D.1.

The proposed Hawai'i wildfire relief fund and corporation as outlined in the bill will be charged with administering fund contributions that may come from the State, electric utilities, public utilities that contribute to the risk or severity of a catastrophic wildfire, other government entities, and private landowners who own at least 1,000 acres in Hawai'i. The purpose of the wildfire relief fund is to process eligible claims for property damage resulting from future catastrophic wildfires. Notably, however, the current proposal does not address the means or the mechanisms to compensate for claims of property damage arising out of the recent devastating Maui wildfires. The Department believes that a more comprehensive proposal from key stakeholders such as the electric utility, is needed to better assess the feasibility and effectiveness of any proposed measure relating to property damage compensation and risk exposure.

The Department remains committed to contributing constructively to the development of legislation that ensures the safety and well-being of our communities and is grateful for the opportunity to offer comments on this bill.



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On the following measure:  
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### WRITTEN TESTIMONY ONLY

Chairs Dela Cruz and Rhoads and Members of the Committees:

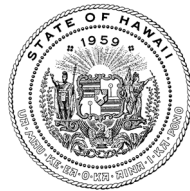
My name is Denise Balanay, and I am the Senior Hearings Officer of the Department of Commerce and Consumer Affairs' (Department) Office of Administrative Hearings (OAH). The Department offers comments on this bill.

The purposes of this bill are to establish the Hawai'i wildfire relief fund and corporation to provide compensation for property damage resulting from catastrophic wildfires in the State and to appropriate funds.

Section -17 (Hearings and appeals of determinations) sets forth a procedure for affected persons or entities to request an administrative or contested case hearing on determinations made by the wildfire relief fund administrator or board. Should this measure be enacted, the OAH respectfully requests the following amendments:

- Subsection (a), page 41, lines 9 through 10: “may request [~~a review and~~] a contested case hearing on that determination before the department of commerce and consumer affairs[.] pursuant to chapter 91.” This amendment would clarify the type of hearing contemplated by this bill and the statutory authority for the request for hearing.
- Subsection (b), page 41, lines 11 through 18: “Upon receipt of a request for [~~review of~~] hearing on the administrator or board’s determination, [~~the department of commerce and consumer affairs shall refer the request for hearing to the office of administrative hearings for determination as expeditiously as possible. A hearing shall be scheduled for a date no more~~] the office of administrative hearings shall schedule a hearing date no later than     days after its receipt [~~by the department of commerce and consumer affairs~~] of the request for [~~a~~] hearing.” Since subsection (b) seeks an administrative determination “as expeditiously as possible,” this amendment would allow the affected person or entity to request a hearing directly with the OAH.
- Subsection (c), page 41, line 19 through page 42, line 3: “Following the conclusion of any hearing or prior to the conclusion of the hearing, with the concurrence of the parties, the office of administrative hearings shall promptly, and [~~not~~] no later than     days after the hearing, decide the matter and [~~make an order~~] issue findings of fact, conclusions of law, and a decision in accordance with the [~~administrative judge’s decision.~~] hearings officer’s determination.” This amendment would conform with the verbiage in Hawaii Revised Statutes chapter 91 and Hawaii Administrative Rules title 16, chapter 201 (Administrative Practice and Procedure).

Thank you for the opportunity to testify on this bill.



JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LIEUTENANT GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

SABRINA NASIR  
DEPUTY DIRECTOR

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

STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE  
*Ka 'Oihana Mālama Mo'ohelu a Kālā*  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

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

**WRITTEN ONLY**

TESTIMONY BY LUIS P. SALAVERIA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEES ON WAYS AND MEANS AND JUDICIARY  
ON  
SENATE BILL NO. 3344, S.D. 1

**March 1, 2024  
10:31 a.m.  
Room 211 and Videoconference**

RELATING TO WILDFIRES

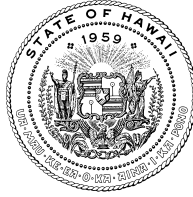
The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 3344, S.D. 1: 1) establishes the Wildfire Relief Fund (WRF) within the Department of Commerce and Consumer Affairs (DCCA) and outside of the State treasury to hold contributions from participating entities and fund compensation payments for property damage resulting from catastrophic wildfires; 2) establishes the WRF Corporation within DCCA to administer the WRF; 3) authorizes the Public Utilities Commission to order public utilities to reimburse the WRF for compensation payments if it determines the public utility engaged in imprudent conduct; 4) provides that investor-owned utilities ordered to reimburse the WRF shall not recover the reimbursement amounts from the ratepayer; and 5) appropriates an unspecified amount in FY 25 to seed the new fund.

B&F understands the intent of this measure as it establishes a broad framework to: 1) commission an actuarial study of the capitalization amount of the proposed WRF necessary to manage claims arising from catastrophic wildfires; 2) collect contributions from governmental entities and utilities; and 3) make payments to eligible claimants. B&F is willing to work with its sister departments and agencies and the Legislature to advance the purposes of this bill.

Thank you for your consideration of our comments.

No. 1 Capitol District Building, 250 S. Hotel Street, Honolulu, Hawaii 96813



EXECUTIVE CHAMBERS  
KE KE'ENA O KE KIA'ĀINA

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

**Senate Committees on Ways and Means and Judiciary**

March 1, 2024

10:31 a.m.

State Capitol, Conference Room 211 and Videoconference

**With Comments**

**Senate Bill No. 3344, SD1, Relating to Wildfires**

Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Senate Committees on Ways and Means and Judiciary:

The Office of the Governor offers the following comments on S.B. No. 3344, SD1, Relating to Wildfires.

S.B. No. 3344, SD1, establishes the Hawai'i Wildfire Relief Fund and Corporation to provide compensation for property damage resulting from catastrophic wildfires in the State, requires the Corporation's board to report to the Legislature and appropriates funding.

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

The Office of the Governor sees this proposal as one of a few important pieces of legislation that needs to be explored as our state figures out how to stabilize our electric utility and our energy future. The bill proposes to establish a fund that the state, the electric utility, telecom companies and private landowners may contribute to a relief fund that would then potentially cover future claims arising out of a catastrophic future wildfire.

While the Office of the Governor is open to this concept, we do not feel like there is sufficient detail in this proposal, and do not currently see a full comprehensive package from the electric utility on how to resolve past claims before we believe it would be prudent for the state to commit to an approach on future claims.

Therefore, we cannot support this bill currently. However, we do not oppose this bill moving forward so that we may continue our discussions with the electric utility and other key affected stakeholders.

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



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

TO THE  
SENATE COMMITTEES ON  
WAYS AND MEANS  
and  
JUDICIARY

March 1, 2024  
10:31 a.m.

Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Committees:

**MEASURE:** S.B. No. 3344 SD 1  
**TITLE:** RELATING TO WILDFIRES.

**DESCRIPTION:** Establishes the Hawai'i wildfire relief fund and corporation to provide compensation for property damage resulting from catastrophic wildfires in the State. Appropriates funds.

**POSITION:**

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

**COMMENTS:**

The Commission appreciates the intent of this measure to mitigate the effects of a catastrophic wildfire in Hawaii by establishing a wildfire relief fund and corporation to provide compensation for property damage resulting from catastrophic wildfires in Hawaii.

On February 9, the Commission offered testimony on this measure before the Committee on Commerce and Consumer Protection and appreciates the work done by that Committee to advance this measure.

The Commission presently regulates both investor-owned utilities and cooperative utilities. The Commission notes that in the current draft of this measure both investor-owned utilities and cooperative utilities may participate in the wildfire relief fund as contributors but differ with respect to: (1) whether their contributions shall be recovered

from their customers in rates; and (2) in the evaluation of the prudence of their conduct should a catastrophic wildfire been ignited by their facilities. Given that both investor-owned utilities and cooperative utilities are regulated by the Commission and that the primary difference between investor-owned utilities and cooperative utilities is their ownership structures, which have little to no bearing on the amount of risk associated with a catastrophic wildfire, should the Legislature intend to the move this measure forward, the Commission suggests that this measure be amended such that there is conformity between investor-owned utilities and cooperative utilities with respect to whether their contributions may be recovered from their customers in rates and in the evaluation of the prudence of their conduct should a catastrophic wildfire have been ignited by the public utilities facilities.

The Commission further notes that as written this measure would create, in any Commission proceeding to evaluate the prudence of an investor-owned utility's conduct if a catastrophic wildfire may have been ignited by the facilities of an investor-owned utility, a presumption that an investor-owned utility's conduct will be deemed to be prudent if an investor-owned utility has a wildfire risk mitigation plan that was approved by the Commission. Such a presumption may not be warranted if the investor-owned utility's facilities may have ignited a catastrophic wildfire, and the removal of such a presumption would not impair or limit the investor-owned utility's ability to present evidence that its conduct was prudent.

Finally, the Commission notes that requiring an electric utility that is subject to proceedings for liability or insolvency claims related to a catastrophic wildfire prior to the effective date of this measure to provide, and have approved by the Commission, a plan that resolves the claims in those proceedings and also satisfies a number of conditions such as restructuring and alternate models of public ownership in order to participate in the wildfire relief fund may discourage current electric utilities from participating in the wildfire relief fund. This requirement appears related to addressing concerns about current electric utilities utilizing the wildfire relief fund to pay any claims they may be responsible for paying because of a catastrophic wildfire that has occurred prior to the effective date of this measure. However, any concerns about the wildfire relief fund being utilized to pay claims related to catastrophic wildfires that have already occurred are unwarranted because this measure defines "Catastrophic wildfire" as "a wildfire occurring on or after the effective date of this Act . . .". As such, the wildfire relief fund would only be paying claims for damages related to future catastrophic wildfires and this requirement to have the Commission approve a plan prior to the electric utility's participation in the

wildfire relief fund achieves nothing other than potentially discouraging current electric utilities from participating in the wildfire relief fund.

Consistent with the Commission's comments above, the Commission offers the following amendments to:

Page 16, Line 6, to Page 17, Line 11

~~(g) Notwithstanding any provision to the contrary, an electric utility that is subject to proceedings for liability or insolvency claims related to a catastrophic wildfire as of the effective date of this chapter may participate in the fund only if the utility provides, and the commission approves, a plan that resolves the claims in the proceedings and also satisfies the following conditions:~~

- ~~(1) The plan is neutral, on average, to the ratepayers of the electric utility;~~
- ~~(2) The plan provides for a restructuring of the public utility that includes the separation of energy generation and delivery functions;~~
- ~~(3) The plan provides for a system of enhanced local governance and accountability, which may include alternate models of public ownership;~~
- ~~(4) The plan includes a framework for addressing for addressing wildfire safety and risk management, including monitoring and enforcement, independent review and oversight, and performance-based utility incentive and executive compensation mechanisms;~~
- ~~(5) The plan provides for periodic performance-based management audits of the public utility and reviews of the public utility's franchise; and~~
- ~~(6) The plan is consistent with meeting the public utility's and the State's clean energy and climate mandates and obligations.~~

Page 24, Line 17

(k) Utility contribution. ~~An investor-owned~~ A public utility's contributions to the wildfire relief fund, including initial and supplemental contributions, ~~shall~~ may be recovered from its customers in rates, unless the public

utilities commission directs otherwise pursuant to  
section -9.

Page 24, Line 15 to Page 29, Line 5

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

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

- ~~(1) If the investor-utility has a wildfire risk mitigation plan that was approved by the public utilities commission, the investor-utility's conduct will be deemed to have been prudent, unless a party to the proceeding creates a serious doubt as to the prudence of the investor-owned utility's conduct; or~~
- ~~(2) If the investor-public utility does not have a wildfire risk mitigation plan that was approved by the public utilities commission, or if the public utilities commission determines that the presumption is overcome,~~
- (1) The public utilities commission shall determine whether the public utility acted prudently, considering only acts that may have caused the ignition and evaluating the public utility's actions in the context of the public utility's overall systems, processes and programs, such that an error by a public utility employee would not be a basis for a finding of imprudence,

unless that error was the result of an imprudent system, process, or program.

(c) In evaluating prudence under this section, the public utilities commission shall determine whether the actions of the ~~investor-owned~~ public utility were consistent with actions that a reasonable public utility would have undertaken in good faith under similar circumstances, at the relevant point in time, and based on the information available to the ~~investor-owned~~ public utility at the relevant point in time.

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

(d) If the public utilities commission determines that imprudent conduct by the ~~investor-owned~~ public utility caused the catastrophic wildfire, the public utilities commission shall determine whether to order the public utility to reimburse the wildfire relief fund in whole or in part for payments from the fund made in connection with the catastrophic wildfire. In determining the amount of reimbursement, if any, the public utilities commission shall consider the extent and severity of the public utility's imprudence and factors within and beyond the public utility's control that may have led to or exacerbated the costs from the catastrophic wildfire, including but not limited to humidity, temperature, winds, fuel, merged wildfires with independent ignitions, third-party actions that affected the spread of the wildfire, and fire suppression activities.

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

- (1) The costs that the public utilities commission determines were due to the ~~investor-owned~~ public utility's imprudence; or
- (2) Twenty per cent of the ~~investor-owned~~ public utility's transmission and distribution equity rate base minus the amounts the public utility has reimbursed, or is required to reimburse, the wildfire relief fund during the period of three

consecutive calendar years ending on December 31 of the year in which the calculation is being performed.

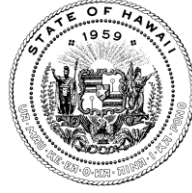
(f) If the public utilities commission orders the ~~investor-owned~~ public utility to reimburse the wildfire relief fund, the public utility shall not recover the amount of the reimbursement in rates charged to ratepayers.

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

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

Further, the Commission observes that it is hard to determine whether the limitations on reimbursement provided in section - 9 (d) are appropriate without first understanding the relative contributions to capitalization by different entities. Additionally, the Commission questions whether assessing "only acts that may have caused the ignition", is appropriate, or whether it may also be appropriate to assess whether a public utility contributed to the extent of a wildfire as well. Should the Legislature maintain separate treatment of investor-owned and cooperative utilities, it may be appropriate to designate different relative capitalization amounts under section - 8 (d) (3).

Thank you for the opportunity to testify on this measure.



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**Senate Committee on Ways and Means  
And  
Senate Committee on Judiciary  
Friday, March 1, 2024  
10:31 a.m.  
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**On the following measure:  
S.B. 3344, S.D. 1, RELATING TO WILDFIRES**

**WRITTEN TESTIMONY ONLY**

Chair Dela Cruz, Chair Rhoads, 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 (DCA). The Department offers comments on this bill.

The purpose of this bill is to: (1) establish the Hawaii Wildfire Relief Fund and Corporation to provide compensation for property damage resulting from catastrophic wildfires in the State; (2) require the Corporation's board to report to the Legislature; and (3) declare that the general fund expenditure ceiling is exceeded and makes an appropriation.

The SD 1 of this bill was amended by inserting language to prohibit an electric utility that is subject to liability proceedings or insolvency claims from participating in the

Hawaii Wildlife Relief Fund, unless it provides a plan to resolve the claims that are approved by the Public Utilities Commission (Commission).

The Maui wildfire resulted in tragic losses of life, personal injuries, and property damage. The pain of that tragedy will be felt for generations. We must take decisive action to eliminate the possibility of such tragic outcomes from recurring by focusing on mitigating the risks from natural hazards.

This bill proposes establishing a fund that the state, electric utilities, public utilities that contribute to the risk of occurrence or severity of a catastrophic wildfire, other government entities, and private landowners may participate in. The money within the fund would then potentially cover future claims related to property damage arising out of a future catastrophic wildfire.

While the Department appreciates that this proposal seeks to address the stability of the investor-owned electric utility, we have concerns about this bill in its current form. Most prominently, this bill requires that an investor-owned utility's contributions shall be recovered from its customers in rate increases unless the Commission finds that imprudent conduct by the investor-owned utility caused the catastrophic wildfire. The DCA believes that the burden of this financial risk for property damage resulting from the actions or inaction (except for conduct found to be imprudent by the Commission) or systems of investor-owned utilities should not summarily be placed upon its customers but rather on its shareholders.

However, we do not oppose this bill moving forward so that discussions with the key affected stakeholders may continue, and the Department offers the following suggested amendments to increase ratepayer protections:

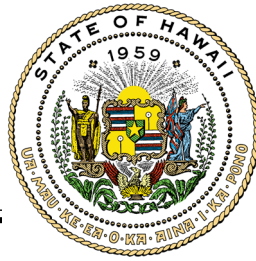
1. Proposed § -8(k) should be amended to state that utility contributions, initial and supplemental, should not be recoverable through rates from ratepayers. The existing ratepayer protection against recovering reimbursement through rates in the current proposed § -9(f) should be maintained.
2. To recognize the different business models and economic sizes between investor-owned electric utilities and cooperative member-owned electric utilities, proposed § -8(d)(3) should provide different contribution levels for the



two different utility business models. However, in an amended proposed § -8(k) with a prohibition on rate recovery, the “investor-owned” qualification should be removed such that any public utility’s contributions should not be recoverable through rates. While the Department recognizes how the differences in business models and economic sizes between investor-owned and member-owned utilities can affect their ability to contribute to the fund (see above), if a member-owned utility chose to participate in the fund, its ratepayers deserve no less rate protection than ratepayers for investor-owned utilities. And so wherever “investor-owned utility” is used, except for an intentional differentiation in an amended proposed § 8(d)(3), “public utility” should be used instead.

3. Proposed § -9(b) should be deleted because approval of a wildfire mitigation plan should not relieve a public utility of its obligation to act prudently by creating a rebuttable presumption. An approved plan should encourage public utilities to act according to a minimum level of prudence. Proposed § -9(c) should be amended to require the Commission to evaluate prudence from a neutral starting point; standards favorable to the public utility – such as the current proposed “good faith under similar circumstances” and “spectrum of possible practices” – should be deleted in favor of a more straightforward “prudent and in the public interest” standard. This would give the Commission appropriate discretion to make the best possible determination.

Thank you for the opportunity to testify on this bill.



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COMMITTEE ON WAYS AND MEANS  
The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Sharon Y. Moriwaki, Vice Chair

COMMITTEE ON JUDICIARY  
The Honorable Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice Chair

**S.B. NO. 3344, S.D. 1, RELATING TO WILDFIRES.**

Hearing: Friday, March 1, 2024, 10:31 a.m.

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The Office of the Auditor offers the following comments on § -6 of S.B. No. 3344, S.D. 1, which requires the Auditor to conduct an annual audit of the Wildfire Relief Fund Corporation (corporation) and Wildfire Relief Fund (fund) pursuant to Chapter 23, Hawai'i Revised Statutes (HRS). As part of that annual audit, the Auditor can contract with "a firm qualified to perform an independent actuarial review" to, among other things, reconcile changes in actuarial assumptions and reserve values from the preceding year as well as to assess the future financial viability of the fund.

Based on the requirement that the audit be conducted using generally accepted accounting principles in § -6(d), we assume the annual audit required by the bill is a *financial* audit and request that the bill be amended to specify that the Auditor conduct an annual *financial* audit of the fund. The audits that we conduct at the Legislature's direction are *performance* audits, which generally assess whether a state agency is effectively and efficiently performing activities key to its statutory mission. We contract with independent CPA firms to conduct the financial audits of a number of state departments and programs as well as the State of Hawai'i Annual Comprehensive Financial Report (or ACFR).

Thank you for considering our testimony.



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

March 1, 2024

HEARING BEFORE THE  
SENATE COMMITTEE ON WAYS AND MEANS  
SENATE COMMITTEE ON JUDICIARY

**TESTIMONY ON SB 3344, SD1**  
RELATING TO WILDFIRES

Conference Room 211 & Videoconference  
10:31 AM

Aloha Chairs Dela Cruz and Rhoads, Vice-Chairs Moriwaki and Gabbard, and Members of the Committees:

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 supports SB 3344, SD1**, which establishes the Hawai'i Wildfire Relief Fund and Corporation to provide compensation for property damage resulting from catastrophic wildfires in the State.

This bill would create a future wildfire relief fund for potential victims and provide Hawai'i families with an efficient process for recovering property damage from a future catastrophic wildfire, no matter the cause. While we hope what happened in West Maui never occurs again, this bill is being proposed to ensure resources would be available if it does. In addition, this bill would protect the creditworthiness of the state, counties, large landowners, and utilities that contribute to the fund by reining in the financial uncertainty created by the risk of future catastrophic wildfires.

Please pass SB 3344, SD1. Thank you for this opportunity to provide comments on this measure.



# INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1260 EMPOWERING THE PACIFIC

## JOINT SENATE COMMITTEE ON WAYS AND MEANS and JUDICIARY

HEARING DATE: Friday, March 1, 2024  
TIME: 10:31 a.m.  
PLACE: State Capitol  
Conference Room 211

RE: Testimony in Support of Senate Bill 3344 SD1 with Amendments

Aloha Honorable Chair(S) Dela Cruz and Rhoads, Vice Chair(s) Moriwaki and Gabbard, and Members of the Joint-Committee;

The International Brotherhood of Electrical Workers Local 1260 (IBEW 1260) would like to respectfully offer the following testimony in support of House Bill 3344 SD1 with additional amendments.

IBEW 1260 is comprised of approximately 3,000 members representing Hawaii's electric utility companies as well as Government Service Contracts, and Media Personnel throughout Hawaii, Guam, and Wake Island. Our portion of our membership are a diverse local workforce of dedicated, highly skilled, and trained individuals working 24 hours a day, 7 days a week, to generate, transmit, and distribute electricity throughout Hawai'i and to ensure the reliability of this precious resource.

IBEW 1260 supports Senate Bill 3344 SD1 which establishes the Hawai'i Wildfire Relief Fund and Corporation to provide compensation for property damage resulting from catastrophic wildfires in the State, and generally seeks to establish a streamline process to provide mitigative relief and economic stability to all who would be affected by "future" catastrophic events.

IBEW 1260, however, respectfully requests your committee's consideration to remove provisions found on **page 16, line(s) 13 thru 20**, which will impose undue hardship upon our union and adversely impact our membership.

Recent events have magnified the extreme tragedy that can befall an entire community by such unforeseen disasters, and how critical mitigative processes and financial backstops are to preventing economic uncertainty and to ensuring the continued stability and viability of Hawai'i's major institutions.

We understand the legislature and various stakeholders are working on compromise language and to that end, support continued dialogue, however request that the provisions identified above are deleted from this measure.

Mahalo for the opportunity to testify on this important matter.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Hawai'i Wildfire Relief Fund and Corporation; Public Utilities Commission; Catastrophic Wildfire

BILL NUMBER: SB 3344 SD 1

INTRODUCED BY: Senate Committee on Commerce and Consumer Protection

EXECUTIVE SUMMARY: Establishes the Hawai'i wildfire relief fund and corporation to provide compensation for property damage resulting from catastrophic wildfires in the State.

SYNOPSIS: Amends the HRS by adding a new chapter. The new chapter would establish the Wildfire Relief Fund and an associated quasi-government Wildfire Relief Fund Corporation. The entity is charged with administering a voluntary program for wildfire victims to apply for a payment from the fund in exchange for releasing from liability the entities that had contributed to the fund.

SD 1 restricts participation by an electric utility that is subject to liability proceedings or insolvency claims from participating in the Hawaii Wildlife Relief Fund, unless it provides a plan to resolve the claims that is approved by the Public Utilities Commission.

EFFECTIVE DATE: July 1, 2040.

STAFF COMMENTS: Our comments are contained in our publication of November 30, 2023, entitled "The Lahaina Recovery Fund," reprinted below.

## **The Lahaina Recovery Fund**

One of the more innovative items announced by the Governor's office when it comes to disaster relief measures is the creation of a Lahaina Recovery Fund.

In a press release announcing the measure, the Governor's Office said that the concept was similar to the 9/11 Fund created in the aftermath of the destruction of the World Trade Center. The idea is that the government, Hawaiian Electric, Kamehameha Schools, and others who might be facing lawsuits would pay into the fund. Claimants who want a distribution from the fund agree not to sue the fund contributors.

It was a controversial enough plan that the Star-Advertiser conducted an informal "Big Q" online poll to see if its readers thought the fund was a good idea. (As of this writing, supporters were a little more than twice the number of detractors.)

Typical of the opposition was this post on X: "So in other words, what our state government deems is the value of your loss is all you will receive because you sign your rights away to sue for more?!? DON'T DO IT #LAHAINA!"

In a previous column, we urged the government to create this type of fund. The primary advantages are (1) claimants get money in months, not years; (2) claimants typically won't have to contend with attorneys' fees, which could otherwise be a huge amount like a third of the recovery; and (3) people can get on with their lives instead of worrying about discovery, depositions, trial, and possible appeals.

The fund being proposed has a voluntary participation element, like many class actions. If someone thinks that they can get a better result by suing, they are certainly free to do so. And even for folks who sue, it's tough to get past the idea that the payment will "be a payment of the State's choosing." After all, if there is a settlement of any kind (90% of litigated court cases are settled), the government will have to sign off on the payment because it would be a defendant in the litigation.

Those who want to be purists about it would need to settle in for the long haul. Take-no-prisoners litigation would need at least a couple of years to get to trial. Many more years could be added to that if appeals follow. Those purists will be waiting a long time for their money.

So, how much is each participant going to get if they opt into the fund? The exact amount isn't known at this point. This is because negotiations are still ongoing with the potential defendants who would be putting money into the fund, and folks don't yet have a clear idea of how many people would be participating. This is not unusual even for mass tort litigation and other class actions. The Governor says that the amount per participant will be north of \$1 million. Obviously, this is not a case where the government is trying to get people to sign off for a pittance like 20 bucks in some preloaded gift card. This is serious money and should be considered by the claimants seriously.

People who are thinking about being a possible claimant of the fund need to thoughtfully consider the dollar amount, whether the claimant could do better if he or she filed a lawsuit, and the cost of that lawsuit. Attorneys don't come cheap, and a "contingency fee" where the attorney is paid only if there is a recovery may cost a third (or more) of the total recovery. Add to that the uncertainty of when, or if, litigation recovery will be paid. The recovery fund, in contrast, will be ready to pay out in months, not years.

Maui claimants can be the adults in the room. They can and should make their own choices about their own future. There is no one-size-fits-all approach to a Lahaina claim. We congratulate the Governor's office for putting this option on the table.

Digested: 2/28/2024



Testimony Before the Senate Committees on  
Ways and Means and Judiciary

By David Bissell  
President and Chief Executive Officer  
Kaua'i Island Utility Cooperative  
4463 Pahe'e Street, Suite 1, Līhu'e, Hawai'i, 96766-2000

Friday, March 1, 2024; 10:31 am  
Conference Room #211 & Videoconference

**Senate Bill No. 3344 SD1 - RELATING TO WILDFIRES**

To the Honorable Donovan M. Dela Cruz and Karl Rhoads, Chairs, Honorable Sharon Y. Moriwaki and Mike Gabbard, Vice Chairs, and Members of the Committees:

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 shares the legislature's concern regarding the risks posed by catastrophic wildfires and the potential impact to the health, safety and financial security of residents and businesses throughout the state. KIUC agrees that it is in the best interest of the state to minimize the impact of potential litigation following catastrophic events, and ensure residents have access to compensation for property damage resulting from wildfires.

The establishment of a Wildfire Relief Fund could have significant financial impacts, both positive and negative, on residents, businesses, utilities, government agencies and other stakeholders. KIUC believes the needs and circumstances of each of these stakeholders is diverse and should be considered prior to acting on this legislation. Without access to background on studies or other information used to develop this complex proposal, we have concerns about the bill's potential negative impact to KIUC. In order to support the establishment of a Wildfire Relief Fund, KIUC would need much more information on costs and potential benefits of participating, both initially and ongoing.

The preamble to SB 3344 SD1 states that the measure is designed in part to "...ensure that the threat of wildfires does not make investment in Hawaii's public utilities so financially risky that it becomes too costly or impossible for them to raise capital to implement vital plans, including plans to mitigate wildfire risk, and to provide safe, reliable, and affordable service to the people of the State."

While this is undoubtedly a consideration for an investor-owned utility such as Hawaiian Electric (HECO), a cooperative such as KIUC does not bear anywhere near the same amount of investment risk. Because KIUC has no shareholders and is therefore considered to be part of the public power universe of electric utilities, KIUC would have access to funding assistance from the Federal Emergency Management Agency (FEMA) in the event of a wildfire, and it is likely that FEMA would cover 75% of KIUC's rebuild costs following a major catastrophic event. Additionally, as a cooperative, KIUC has access to low-cost capital through the U.S.D.A. Rural Utilities Service (RUS), which would likely be a lower interest rate source of debt capital than even AAA-rated securitized bonds. If RUS debt is unavailable, KIUC would seek capital from one of our cooperative lenders, such as the National Rural Utilities Cooperative Finance Corporation or CoBank.

In light of these concerns and, in the event this bill moves forward, KIUC suggests the following amendments, which would allow KIUC the option of becoming a contributor if, after further review, participation in the Wildfire Relief Fund is found to have a net benefit to KIUC and its members.

**Amendment 1:** Page 18, line 1: "potential contributors, other than the State and investor-owned electric"

**Amendment 2:** Page 20, line 3: "(3) From investor-owned electric utilities, \$ ; and"

**Amendment 3:** Page 22, Line 15: "amount to be paid by each contributing electric utility, other"

Should the committees choose not to adopt proposed amendments 1-3, KIUC requests the following amendment, which would give KIUC parity with HECO in allowing the utility to recover fund contribution costs from its customers in rates unless the public utilities commission directs otherwise:

**Amendment 4:** Page 24, line 4: "(k) Utility Contribution. An investor-owned or cooperative utility's"

In summary, we ask that you fully evaluate the potential impacts to KIUC in your decision-making.

Thank you for your consideration.



**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION OF  
SB 3344 SD1**

Date: Friday, March 1, 2024

Time: 10:31 a.m.

My name is Evan Oue and thank you for allowing me to submit testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION** to SB 3344 SD1 - RELATING TO WILDFIRES. The measure seeks to establish a Hawaii Wildfire Fire Relief Fund to provide compensation for property damage resulting from catastrophic wildfires in the State.

Primarily, HAJ is concerned with § -18, pages 42-43, relating to limitations on claims. Specifically, the measure provides that: "**No suit, claim, or other civil legal action may be instituted or maintained against contributors or their affiliates, employees, agents, or insurers:** (1). For recovery of losses or damages of a type for which compensation may be sought from the wildfire relief fund." SB 3344 SD1 seeks to immunizes electric utilities, public utilities other than electric utilities, the State, or private landowners from property damage claims arising from a catastrophic wildfire.

HAJ has always held the position that broad immunity is bad public policy. In this instance, HAJ is concerned that the proposed measure will preclude all property damage claims against fund contributors for any disaster in the future. The measure seeks to revictimize the people of Maui who were affected by the 2023 wildfires and to undercut the rights of victims of any, and all future disasters. This immunity will apply even to disasters that are caused by the sort of negligence that led to the recent destruction of so many lives and livelihoods on Maui.

HAJ understands the implications this measure may have for fund contributors, however, we fail to see why those who have caused so much damage and destruction should grant broad immunity for the damage they caused at the expense of their victims.

Furthermore, HAJ is not aware of **any** other state that has provided such broad immunity of this type when establishing a relief fund. Under the current measure, Hawaii would be the first state in the nation to reward potentially responsible parties by absolving them of their responsibilities to those they harm. Providing immunity under this measure will remove any accountability for utility companies, the State, and private landowners whose actions or omissions result in damage to residents across the state. The current immunity language sets a dangerous precedent of rewarding companies, our government, and private landowners for their negligence which contribute to catastrophic wildfires or disasters in the future.

Ultimately, the residents of Hawaii will be unable to seek recourse for damage to their property. SB 3344 SD1 may remove fund a contributor's responsibility to safely design and maintain their operations. The public welfare depends on fund contributors employing reasonable diligence and our state should not limit claims for our residents, especially immediately following a disaster which impacted so many. We encourage the State to protect the residents of Hawaii and ensure that victims of these disasters are able to freely seek recourse for damage to their property.

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



**Hawaiian  
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEES ON  
WAYS & MEANS  
AND  
JUDICIARY**

**SB 3344, SD1  
Relating to Wildfires**

**Decision Making – Written Testimony Only**

Friday, March 1, 2024

10:31 AM

State Capitol, Conference Room 211

Jason Benn  
Senior Vice President Chief Information Officer  
Hawaiian Electric

Dear Chair Dela Cruz, Chair Rhoads, Vice Chair Moriwaki, Vice Chair Gabbard,  
and Members of the Committees,

My name is Jason Benn, Senior Vice President & Chief Information Officer for  
Hawaiian Electric and I am testifying **in support of SB 3344, SD1, Relating to  
Wildfires. I am also requesting amendments as we have grave concerns  
regarding the language proposed in the SD1 draft but would like to work with the  
current committees to improve the language and address those concerns.**

SB 3344, SD1 would create a statewide wildfire relief fund to compensate  
property owners, insurers, and government entities for property damage resulting from  
future catastrophic wildfires, regardless of who or what caused them. As we so painfully  
learned on August 8, 2023, the impacts of climate change, combined with the changing  
uses of land in Hawaii, are creating a whole-of-society problem. SB 3344, SD1 is part  
of that whole-of-society solution.

This measure – and the other measures Hawaiian Electric has proposed – does not contemplate a financial bailout for the company related to the Maui wildfires. These measures are forward-looking, about working to prevent something terrible like this from ever happening again and to provide additional financial protection for everyone in the unlikely event of a future catastrophic wildfire. This legislation as originally drafted will also help strengthen the financial standing of Hawaiian Electric, enabling it to continue serving the energy needs of Hawaii as it has done since 1891.

There are four amendments we propose to SB 3344, SD1:

1. Exempt wildfire relief fund from regulation under the insurance code (as proposed by the Insurance Commissioner, Department of Commerce and Consumer Affairs). Add a new subsection in Section \_\_\_-18 (d) that says: “The wildfire relief fund will not be subject to regulation under Chapter 431.”
2. Authorize the wildfire relief fund administrator/board to issue rules for hearings (as proposed by the Department of Commerce and Consumer Affairs).
3. Incorporate further amendments regarding cooperatives, other than the proposed deletion of the presumption of prudence (as proposed by KIUC and the Public Utilities Commission).
4. Delete the SD1 amendments starting on page 16, line 6 through page 17, line 11 for the following reasons:
  - a. The provision which requires a plan that resolves the claim is unclear. If this means the utility must settle *all* of the August 8 claims before it may participate in the wildfire fund, that would be problematic. For example, which could lead to hold-out plaintiffs— who leverage the provision to achieve unfair settlements that undermine the utility’s right to due process.
  - b. The provision which requires dismantling company operations by splitting the generation operation (power plants) from the utility’s delivery functions (pole & lines) as a condition on the utility’s participation in the fund would work against ratepayer interest by increasing costs. Recent articles in the Wall Street Journal and New York times have detailed that similar measures on the mainland have

resulted in vastly higher electricity costs for consumers<sup>1</sup>.

Experimenting with separation could lead to negative unanticipated consequences and destabilization of the utility's operations at a critical time, when the utility serves 95% of Hawaii residents, including critical defense facilities of the U.S. military.

- c. The provision suggesting an alternate model of ownership was studied by DBEDT who hired London Economics as recently as 2019<sup>2</sup>. The study concluded that changing the ownership model of the utility would not be the way to improve electric services or lower rates. Instead, the State could achieve its goals through regulatory reform rather than a change in the utility ownership model.
- d. Aside from these specific problems with these amendments, more broadly, these ideas require further deliberations before the Legislature considers adopting them. These amendments propose large shifts in Hawaii energy policy that were proposed with minimal discussion and process and could create disruption and uncertainty in our ability to secure the capital we need to continue to serve Hawaii cost effectively, not just now, but for decades. And the amendments put at risk the success of important legislation that is necessary to protect Hawaii and lower electricity costs for consumers.

As noted, the amendments are particularly problematic, because they jeopardize the success of the wildfire relief fund, which has numerous benefits. SB 3344, SD1 does not apply to claims arising from the August 8 event. Rather, it is intended to help protect the people of Hawaii and our economy by providing compensation for property damage should another catastrophic wildfire occur in the future.

In short, if passed SB 3344, SD1 would:

- Provide expedited compensation to property owners for uninsured losses— with no up-front out of pocket costs, and without the need for time-consuming, costly, and uncertain litigation.
- Provide compensation to state and local governments for losses, including the costs of fire suppression and damage to infrastructure.

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<sup>1</sup> <https://www.wsj.com/articles/texas-electric-bills-were-28-billion-higher-under-deregulation-11614162780>; and <https://www.nytimes.com/2023/01/04/business/energy-environment/electricity-deregulation-energy-markets.html>

<sup>2</sup> [https://energy.hawaii.gov/wp-content/uploads/2019/06/HI\\_DBEDT\\_UTILITYMODELSTUDY.pdf](https://energy.hawaii.gov/wp-content/uploads/2019/06/HI_DBEDT_UTILITYMODELSTUDY.pdf)

- Reimburse property insurers a percentage of their payments to their policyholders. Again, this would be accomplished through an expedited, low-cost, non-litigation process.

Other noteworthy features of SB 3344, SD1 include:

- The fund would pay regardless of the cause. If a fire is caused by arson, fireworks, trash fires or natural events, or where a fire cannot be legally attributed to a financially capable party, property owners have no recourse to recover their uninsured losses. This bill seeks to address that, while also eliminating costly and lengthy litigation.
- Contributors to the fund would be the State, electric utilities, large landowners, and counties, if those entities voluntarily choose to participate.
- Beneficiaries who chose to participate, such as property owners and property insurers, would not be able to sue those who contribute to the fund. Contributors, for their part, would provide funds available to compensate beneficiaries no matter the cause of a catastrophic fire—pooling their resources to provide a financial backstop regardless of fault. At the same time, the bill includes a process to hold contributors accountable if they are found to have caused or contributed to the spread of fire, by means of a reimbursement to the fund.
- All property owners that do not opt out of the program via their annual property tax assessment would be participants. That feature makes it possible for the fund to cover all catastrophic wildfires regardless of fault.

The fund not only provides compensation to property owners and insurers; it also helps the State and individuals avoid the costs and burdens of litigation, as well as the financial instability that can result from litigation due to catastrophic wildfires. The State has a strong interest in avoiding that outcome. Electric utilities, for example, invest hundreds of millions of dollars every year in our State to help achieve its energy policy objectives. These include renewable energy, decarbonization, resilience and the availability of safe, reliable, and secure service to our customers, including other critical infrastructure providers, such as hospitals and the Department of Defense.

Furthermore, the scope of a catastrophic wildfire is the result of a number of factors,

including climate change and land management practices, that are not the fault of any single entity. The fund equitably shares the burden of these factors that can lead to a catastrophic wildfire, promoting the public's interest in ensuring that our critical infrastructure providers, including electric utilities, remain able to raise the capital needed to invest in our State.

In order to continue to be able to make these large upfront investments, the utility must eliminate the financial uncertainty of future wildfire risks and regain access to capital. We believe this bill and investments Hawaiian Electric and others will make to mitigate wildfire risk, will help do so.

In summary, SB 3344, SD1 provides a low-cost and rapid process to compensate property owners and insurance companies and avoids the uncertainty of litigation that can financially destabilize utilities, large landowners, and government entities. Solving the impacts of climate change on our State must be addressed collectively and collaboratively.

On behalf of the 2,600 employees, 5,200 retirees and the generations of Hawaiian Electric employees who have faithfully served our community for 132 years, mahalo for allowing me to testify in support of this important bill. Please pass SB 3344, SD1 with amendments.



**SanHi**

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: March 1, 2024

TO: Senator Donovan M. Dela Cruz  
Chair, Committee on Ways and Means

Senator Karl Rhoads  
Chair, Committee on Judiciary

FROM: Matt Tsujimura

RE: **S.B. 3344 S.D. 1 – Relating to Wildfires**  
**Hearing Date: Friday, March 1, 2024, at 10:31AM**  
**Conference Room: 211**

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Dear Chair Dela Cruz, Chair Rhoads, and Members of the Joint Committee on Ways and Means and Judiciary:

I am Matt Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers this testimony **in opposition** to S.B. 3344 S.D. 1, Relating to Wildfires.

S.B. 3344 S.D. 1 establishes the Hawaii Wildfire Relief Fund and corporation to provide compensation for property damage resulting from catastrophic wildfires in the State.

S.B. 3344 S.D. 1 does not protect consumers. Participating in the Wildfire Relief Fund would result in the property owner never being made whole. Instead, the proposal asks property owners and insurers to waive rights before a loss has occurred and the extent of the damage and liability is known. It requires property owners to participate in the fund unless they “opt out.” If the property owner does not affirmatively “opt out,” the only source of recovery against a negligent party is a pre-determined amount (uninsured property owner) or a percentage (insured property owner) of their overall loss. A property owner who failed to “opt out” may unknowingly waive their individual right to seek damages from a negligent party and which may also impact an insurer’s subrogation rights.<sup>1</sup>

Insurers are required to “opt-in” to participate in the proposed Wildfire Relief Fund and, if they do so, the recovery is limited to a percentage predetermined by the fund. The proposal essentially asks an insurer to assess liability and likelihood of potential recovery before the event has occurred, a time when the facts, circumstances, and identity of the responsible parties is unknown.

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<sup>1</sup> Subrogation supports a critical public policy purpose of ensuring the party who caused the loss bears the financial burden for the damage caused.



S.B. 3344 S.D. 1 does not appear to *require* any type of wildfire mitigation plan by contributing entities to prevent catastrophic wildfire events. Rather, the proposal gives the public utilities commission, the fund administrator, or other state agency the ability to determine if the conduct was “prudent.”<sup>2</sup> While unlikely, this could enable contributing entities to pay into the fund to significantly limit their liability while limiting other types of preventative wildfire measures they could take due to the protection offered by being a fund contributor.

Ultimately, State Farm is concerned this proposal is detrimental to consumers and does little to help mitigate wildfire losses, while allowing the responsible parties to limit liability for their wrongful conduct.

For these reasons we offer this testimony in opposition. Thank you for the opportunity to testify.

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<sup>2</sup> Investor-owned utilities who have a wildfire mitigation plan approved by the public utilities commission are deemed to have been “prudent” unless a party to the proceeding creates doubt as to the conduct.

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



March 1, 2024

Via Electronic Submittal

Committee on Ways and Means  
Senator Donovan M. Dela Cruz, Chair  
Senator Sharon Y. Moriwaki, Vice Chair

Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

Friday, March 1, 2024, 10:31 am  
Conference Room 211 & Videoconference

**RE: SB 2922 SD1 and SB 3344 SD1**

Aloha Chair Dela Cruz, Vice Chair Moriwaki, Chair Rhoads, Vice Chair Gabbard and members of the Committees:

Clearway Energy Group ("Clearway") supports the intent of SB 2922, which provides a mechanism for securitization of costs associated with utility wildfire liability, and SB 3344, which creates a fund to address future wildfire costs.

Clearway is one of the largest suppliers of renewable energy to Hawaiian Electric and its customers. Clearway owns and operates four solar energy projects on Oahu, two of which are solar-only projects that came online in 2019 (5 years into 22-year Power Purchase Agreements (PPAs)), and two of which are solar plus battery storage projects, Mililani I Solar and Waiawa Solar, which came online in July 2022 and January 2023, respectively (one year into 20-year PPAs). Clearway has three additional projects under development that were recently awarded in Hawaiian Electric's Stage 3 Renewable RFP. 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 2922 and SB 3344, Clearway wishes to underscore the importance of a financially stable utility in keeping Hawai'i on track to meet its clean energy and grid reliability goals. Independent power producers such as Clearway enter into PPAs with the utility based on the strength of the utility's credit and confidence that it will honor its contractual obligations to pay for the power produced. These renewable power plants operate under supply contracts with Hawaiian Electric for decades, and the financial viability of the plants depends on the long-term financial viability of our customer. In the case of Clearway's operating plants, a stable long-term revenue stream goes to fund the long-term debt that financed the upfront capital costs on equipment and labor to construct the projects.

In this current environment of uncertainty, it is critically important to Clearway that our existing contracts are protected and that there is no interruption in Hawaiian Electric's purchases of power from our facilities. Additionally, for investors to have confidence investing in new renewable energy projects developed in Hawai'i, the utility will need to be viewed by the investment community as financially stable and capable of providing sufficient credit support. Until that point, it will be difficult for new, large-scale clean energy projects to move forward.

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



# MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**LATE**

**HEARING BEFORE THE SENATE COMMITTEES ON  
JUDICIARY and WAYS AND MEANS  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211  
Friday, March 1, 2024 AT 10:31 A.M.**

To The Honorable Senator Karl Rhoads, Chair  
The Honorable Senator Mike Gabbard, Vice Chair  
Members of the committee on Judiciary  
To The Honorable Senator Donovan M. Dela Cruz, Chair  
The Honorable Senator Sharon Y. Moriwaki, Vice Chair  
Members of the committee on Ways and Means

**SUPPORT SB3344 SD1 RELATING TO WILDFIRES**

The Maui Chamber of Commerce **SUPPORTS SB3344 SD1.**

The Chamber supports the concept of this fund that helps protect impacted residents and businesses of future catastrophic wildfires by getting paid from the fund regardless of the cause of the wildfire. We acknowledge that it will help protect state, counties, large landowners, and utilities that contribute to the fund from financial uncertainty due to the risk of future catastrophic wildfires. However, we note that residents and businesses that will benefit from this fund will also be contributors to this fund through state taxes, other governmental taxes, and as ratepayers of utility companies. We all must come together on solutions when dealing with catastrophic events.

We appreciate the forward thinking of this initiative. We hope the state will continue to explore federal and other funding methods for expediting protective measures to help lessen the impacts of future disasters.

The Chamber looks forward to continued discussions on this and other related bills to find the best possible solutions.

For these reasons, we **SUPPORT SB3344 SD1.**

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



**LATE**

Email: [communications@ulupono.com](mailto:communications@ulupono.com)

SENATE COMMITTEES ON WAYS & MEANS AND JUDICIARY  
Friday, March 1, 2024 — 10:31 a.m.

**Ulupono Initiative supports the intent of SB 3344 SD1, Relating to Wildfires.**

Dear Chair Dela Cruz, Chair Rhoads, and Members of the Committees:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy, clean transportation choices, and better management of freshwater resources.

**Ulupono supports the intent of SB 3344 SD1 and offers comments.** This bill establishes the Hawai'i Wildfire Relief Fund and corporation to provide compensation for property damage resulting from catastrophic wildfires in the State, but shares some comments for the committee's consideration.

Hawai'i's unique communities and ecosystems are increasingly threatened by the devastating impacts of wildfires. In recent years, we have witnessed a rise in the frequency and intensity of wildfires, exacerbated by climate change, land and water management practices, and urban encroachment into fire-prone areas. The culmination of these forces resulted in the devastating and heartbreaking destruction seen on Maui last year.

Undisputed are the importance and urgency of preparing for increased risks from wildfires and ensuring that loss and damage caused by wildfires are addressed. The establishment of the Hawai'i Wildfire Relief Fund and Corporation could be an important opportunity to address the financial aftermath of such disasters. This initiative can help serve as a safety net for those affected, ensuring that residents have the support they need to rebuild their lives and homes without the overwhelming burden of financial insecurity.

While many may view such a bill as a benefit to existing electric utilities, it is important to note that any business will struggle with unlimited liability, making access to capital difficult or more expensive and constraining a business' ability to make much needed investments in the interim.<sup>1</sup> Furthermore, there is a very real risk that utilities may be unable to adequately insure against

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<sup>1</sup> As stated by the Hawaiian Electric Companies in its January 31, 2024, filing with the Public Utilities Commission, "Maui Electric is aware of 100 complaints related to the August 2023 Maui wildfires that assert claims against Maui Electric. One complaint is pending in the First Circuit Court in O'ahu, 19 complaints are pending in the Second Circuit Court in Maui County, and 80 complaints are pending in the U.S. District Court. for the District of Hawai'i." See Non-Docketed Case No. 2023-04643 Maui Electric Monthly Wildfire-Related Litigation Report January 2024. <https://shareus11.springcm.com/Public/DownloadNative/25256/e52ef351-84c0-ee11-b83e-48df377ef808/0b5fa85f-a9c0-ee11-b83e-48df377ef808>

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future climate related disasters, such as wildfires, and will increasingly rely on new approaches to risk mitigation.<sup>2</sup> UluPono recognizes the multifaceted challenges facing the electric utilities, including the need to address ongoing potential wildfire liability while aggressively pursuing the state’s policy goals of increasing clean energy, improving grid reliability and resiliency, and reducing costs for customers. As such, a measure such as this bill can help establish an approach going forward that would place boundaries around potential liability, while ensuring a pool of resources to help aid in future recovery needs. This is not a perfect solution—there are tradeoffs to be sure—but, on the whole, UluPono considers this a net positive for the state.

UluPono offers the following comments/suggestions to improve the bill’s effectiveness:

UluPono strongly urges the committee to remove Section 7 (g), which was amended in SD1 and now requires certain electric utilities to submit to a plan that provides for the restructuring of the utility and possible alternate modes of ownership. This amendment is unrelated to the establishment of the wildfire relief fund and effectively eliminates the opportunity for a major stakeholder to participate in the fund unless they submit to a wholesale organizational overhaul. This amendment will almost certainly result in the subject electric utility being unable to participate in the wildfire relief fund and increase recovery risk to future wildfire victims. As an investor-owned utility, its fiduciary duty to shareholders would likely prohibit the utility from agreeing to such restructuring conditions even if they wanted to participate in the fund. In order to achieve the desired outcome of protecting wildfire victims, it is crucial that the investor-owned utility be a participant in this fund.

The establishment of the Hawai’i Wildfire Relief 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.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata  
Director of Government Affairs

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<sup>2</sup> **As wildfires losses mount, will commercial insurers decline to cover utilities?** Utility Dive, January 31, 2024. <https://www.utilitydive.com/news/wildfire-utility-grid-insurance-climate-pge-xcel-hawaiian-electric/703178/>

Testimony by Dr. Clay Trauernicht IN OPPOSITION of SB3344 SDI, Relating to Wildfires  
For the hearing on March 01, 2024; Conference Room 229

To Senators Donovan Dela Cruz and Sharon Moriwaki, Chair and Vice Chair, respectively, and the members of the Committee on Ways and Means,

To Senators Karl Rhoads and Mike Gabbard, Chair and Vice Chair, respectively, and the members of the Committee on Judiciary,

I am submitting testimony in opposition of SB 3344. I have been working at the University of Hawai'i at Mānoa in the field of wildfire science and management since 2013. However, I am submitting this testimony as an individual and not as an official University of Hawai'i spokesperson.

My profession has provided me with an intimate understanding of the destructiveness and risk posed by wildfires across the Hawaiian Islands. I also have an appreciation of the challenges to managing and responding to wildfire risk, especially for the electric utilities who need to act in the best interest of and provide a service to the public. I do not take issue with the creation of a wildfire relief fund. However my major concern is that by hitching contributions to this fund on the 'benefit' that those contributors will be protected from future liability, those same contributors will be far less likely adhere to and implement proactive practices that will reduce the risk of wildfire and limit wildfire damage in the first place.

In other words, we should be prioritizing and incentivizing investments in wildfire prevention, because once we're at the point of wildfire recovery, as we can see from Maui, the costs are far, far greater. Lahaina shows us so plainly that some impacts of wildfires are simply irrecoverable - the human lives we lost above all else, but also the neighborhoods, historical sites, artwork, personal belongings, etc. Other impacts are just irreparable as we have seen over and over again with fires in native ecosystems and we are now learning with the post-fire mess of waste and toxins at Lahaina.

I oppose this bill because despite its potential to muster large capital investment, realizing benefits for public health and safety requires at least commensurate, if not far greater, investment in wildfire prevention. This bill is just an overly complicated way to allow those who actually have the capital to affect positive change to put our eggs in the wrong basket.

Sincerely,



Clay Trauernicht, PhD  
Extension Specialist in Ecosystems and Fire  
University of Hawai'i at Mānoa

**SB-3344-SD-1**

Submitted on: 2/29/2024 12:38:59 AM

Testimony for WAM on 3/1/2024 10:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

We NEED to CUT spending for the Government. When they screw up we the people end up paying for it. NO MORE!!!!!!!!!!!!