

Honolulu, Hawaii

, 2024

MAR 22

RE: S.B. No. 3344
S.D. 2
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committees on Water & Land and Consumer Protection & Commerce, to which was referred S.B. No. 3344, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO WILDFIRES,"

beg leave to report as follows:

The purpose of this measure is to establish the Hawaii Wildfire Relief Fund and Corporation to provide compensation for property damage resulting from a wildfire, regardless of cause.

Your Committees received testimony in support of this measure from the Hawai'i Farm Bureau; Hawaii Cattlemen's Council, Inc.; International Brotherhood of Electrical Workers Local 1260; AES Hawai'i; Ulupono Initiative; Kona-Kohala Chamber of Commerce; Chamber of Commerce Hawaii; Hawai'i Island Chamber of Commerce; Maui Chamber of Commerce; Hawaiian Electric; Clearway Energy Group; and numerous individuals. Your Committees received testimony in opposition to this measure from State Farm Mutual Automobile Insurance Company and Hawaii Association for Justice. Your Committees received comments on this measure from the Office of the Governor; Department of Commerce and Consumer Affairs; Office of Administrative Hearings, Division of Consumer Advocacy, and Insurance Division of the Department of Commerce and Consumer Affairs; Public Utilities Commission; Office of the Auditor; Tax



Foundation of Hawaii; Kaua'i Island Utility Cooperative; and
Hawaiian Telcom.

Your Committees find that when the cause of a wildfire is uncertain or contested, costly and protracted litigation ensues. Litigation regarding wildfire damages can impose massive costs on the State, counties, utilities, landowners, and other defendants that may be alleged to have contributed to catastrophic wildfires. Such costs can overwhelm these major institutions of the community, undermining their ability to make investments needed by Hawaii. Indeed, even the possibility of litigation regarding a future catastrophic wildfire can create a cloud of uncertainty that threatens to impair the ability of these entities to attract capital on reasonable terms--capital that is vital to make investments in wildfire prevention, among other priorities. Such an outcome harms everyone.

Your Committees further find that it is in the public interest 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. Your Committees also find that it serves the public good to avoid the costs of litigation arising out of catastrophic wildfires in order to protect Hawaii's economy and encourage investment in the State.

Your Committees have amended this measure by:

- (1) Introducing the concept of and adding a definition for an "operation date";
- (2) Amending the definitions of "catastrophic wildfire", "cooperative utility", "eligible claim", and "investor-owned utility";
- (3) Adding definitions for "property insurer", "property owner", and "upfront";
- (4) Clarifying that the Wildfire Relief Fund is not subject to chapter 431, Hawaii Revised Statutes;



- (5) Specifying that the Wildfire Relief Fund Corporation Board of Directors consists of five members, including the manner in which their terms are staggered;
- (6) Clarifying that the Auditor must conduct an annual financial audit of the Wildfire Relief Fund Corporation and Wildfire Relief Fund;
- (7) Removing telecommunications carriers as entities that may participate in the Wildfire Relief Fund as a contributor;
- (8) Modifying certain provisions for contributors' participation in the Wildfire Relief Fund;
- (9) Amending the components of the plan that an electric utility must submit to the Public Utilities Commission for the Commission's approval;
- (10) If any agency of the State that requires any contributor other than an electric utility to submit a plan to mitigate wildfire risk, allowing the agency to prohibit a contributor from participating in the Wildfire Relief Fund as a contributor until the agency approves the contributor's plan;
- (11) Clarifying the timing of the Public Utilities Commission's approval of the plan identified in paragraph (9) in relation to the electric utility's deadline to make a required contribution and commencement of participation in the Wildfire Relief Fund;
- (12) Deleting the requirement for an actuarial study regarding the Wildfire Relief Fund;
- (13) Modifying the manner in which the Wildfire Relief Fund is capitalized by initial contributions, including by:
 - (A) Specifying that the total capitalization of the Wildfire Relief Fund can be calculated based on the financial capacity of the Fund, not simply the amount of liquid money in the Fund;



- (B) Requiring the State to make an initial monetary contribution in an unspecified amount to the Wildfire Relief Fund and irrevocably pledge to appropriate and provide up to an unspecified amount to the Fund, subject to certain conditions;
 - (C) Limiting the aggregate amount of the State's financial responsibility to the Wildfire Relief Fund, contingent or otherwise, to an unspecified amount; and
 - (D) Allowing the Administrator of the Wildfire Relief Fund to permit payment of the initial contribution through an upfront payment and deferred annual payments, with interest;
- (14) Modifying provisions regarding how potential contributors can participate in the Wildfire Relief Fund after the Fund has begun operating;
 - (15) Modifying certain provisions concerning insufficient funding of the Wildfire Relief Fund, including by allowing the Administrator of the Wildfire Relief Fund to permit payment of supplemental contributions by deferred annual supplemental contributions with interest, rather than a single upfront contribution;
 - (16) Prohibiting an electric utility from recovering its contributions to the Wildfire Relief Fund from its customers in rates;
 - (17) In its evaluation of the prudence of the conduct of a public utility in connection with a catastrophic wildfire, requiring the Public Utilities Commission to determine whether the actions of the public utility were prudent and in the public interest;
 - (18) Applying the Public Utilities Commission's determination of prudence to all public utilities, not solely investor-owned utilities;
 - (19) Requiring contributors to notify the Administrator of the Wildfire Relief Fund if they will make, or fail to



make, a supplemental contribution to the Fund at least thirty days before the supplemental contribution is due;

- (20) Specifying that it is the Department of Land and Natural Resources that assigns areas within the State to extreme, high, and moderate wildfire risk classes;
- (21) Clarifying compensation amounts from the Wildfire Relief Fund that may be claimed by property owners with insurance coverage for the losses;
- (22) Specifying that the date for a property insurer to elect to participate in the Wildfire Relief Fund election is the same as the date for property owners to submit a request to opt out of participation in the Fund;
- (23) Specifying that property damage claims apply to real or personal property;
- (24) Authorizing the Administrator of the Wildfire Relief Fund to extend, for good cause, the declaration of a depletion event by an additional thirty days;
- (25) Tolling the limitation period for any cause of action arising out of the catastrophic wildfire that could be asserted by the property owner or property insurer that declines to accept the depletion payment from the date of the catastrophic wildfire to the date the Administrator of the Wildfire Relief Fund offers claimants the depletion payment;
- (26) Not binding any property owner or property insurer, other than a contributor, that accepts the depletion payment to the limitation on claims with respect to only the applicable catastrophic wildfire;
- (27) Entitling any contributor against whom a claim is brought by a recipient of a depletion payment to a credit against the contributor's financial liability as to that claimant, in an amount equal to the depletion payment received by the claimant multiplied by the contributor's proportion of contribution to the Wildfire Relief Fund relative to the other contributors;



- (28) After the payments to all claimants who accepted the depletion payment have been made, and within three years from the date of the applicable wildfire, requiring the Administrator of the Wildfire Relief Fund to make additional payments to each claimant who accepted the depletion payment;
- (29) Requiring the additional payments identified in paragraph (28), when added to the depletion payment, to be equal to the full value of the Administrator of the Wildfire Relief Fund's determination of the amount of payment due to each claimant;
- (30) Clarifying the process for hearings and appeals of determinations, including specifying thirty-day deadlines;
- (31) Clarifying that the rights of a property insurer to sue as subrogee of its policyholder are not affected by a property owner's participation in the Wildfire Relief Fund and eligibility to seek uninsured property damages from the Fund;
- (32) Establishing a working group within the Department of Commerce and Consumer Affairs to prepare a report and submit it to the Legislature by November 1, 2024, concerning implementation of the Wildfire Relief Fund;
- (33) Inserting an appropriation of general revenues, to take effect on the operation date, as defined in this measure, as a reserve against the State's irrevocable pledge to the Wildfire Relief Fund;
- (34) Changing its effective date to July 1, 3000, to encourage further discussion; provided that part I takes effect on July 1, 2025; and
- (35) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Your Committees respectfully request your Committee on Finance, should it choose to deliberate on this measure, to consider testimony suggesting that:



- (1) The total capitalization amount of the Wildfire Relief Fund should be \$1,000,000,000;
- (2) The initial contributions to the Wildfire Relief Fund by public utilities other than investor-owned electric utilities, property owners, and other governmental entities that are eligible to participate in the Fund should be \$333,300,000 collectively;
- (3) The initial contributions to the Wildfire Relief Fund by investor-owned electric utilities should be \$333,300,000;
- (4) The initial monetary contribution of the State to the Wildfire Relief Fund should be \$9,300,000 and the irrevocable pledge of the State to the Fund should be \$324,000,000, for a total of \$333,300,000;
- (5) At no time should the aggregate amount of the State's financial responsibility to the Wildfire Relief Fund, contingent or otherwise, exceed \$324,000,000;
- (6) The maximum amount that an uninsured property owner can receive from the Wildfire Relief Fund should be \$50,000;
- (7) An insured property owner should receive as Wildfire Relief Fund compensation the lesser of:
 - (A) Thirty-five percent of the amount by which the property owner's losses exceed the amount of insurance coverage for the losses; or
 - (B) Fifty percent of the property owner's insurance coverage applicable to the losses; and
- (8) The sum of \$32,400,000 should be appropriated from the general fund as a reserve for the State's irrevocable pledge to the Wildfire Relief Fund.


As affirmed by the records of votes of the members of your Committees on Water & Land and Consumer Protection & Commerce that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3344, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form



attached hereto as S.B. No. 3344, S.D. 2, H.D. 1, and be referred to your Committee on Finance.

Respectfully submitted on behalf of the members of the Committees on Water & Land and Consumer Protection & Commerce,

for 
MARK M. NAKASHIMA, Chair


LINDA ICHIYAMA, Chair



