



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 897, S.D. 1, RELATING TO ENERGY.

**BEFORE THE:**

SENATE COMMITTEES ON ENERGY AND INTERGOVERNMENTAL AFFAIRS  
AND ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Tuesday, February 11, 2025      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 229

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

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Chairs Wakai and Keohokalole and Members of the Committees:

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

This bill:

1. Establishes the Wildfire Recovery Fund (Fund) and establishes the statutory framework to implement the Fund.
2. Outlines the statutory framework for power purchase agreements and cost recovery for electric utilities in Hawaii.
3. Clarifies the Hawaii electricity reliability surcharge.
4. Requires, rather than allows, the Public Utilities Commission (PUC) to contract for the Hawaii Electricity Reliability Administrator (HERA).
5. Specifies the qualifications of the HERA.

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

**1. Section 269-B - Wildfire Recovery Fund, page 6, line 18, through page 8, line 2.**

The nature of the Fund, that is, whether it is a special fund or a trust fund should be explicitly stated. We believe that the Fund is a trust fund as defined in section 37-62, Hawaii Revised Statutes (HRS). The Fund will operate as a separate, State-created fund with a fiduciary duty to manage its resources for the benefit of its intended purposes, the protection from catastrophic wildfires and for the benefit of independent power producers. Moneys in the Fund are derived from the ratepayer charges, regulated utilities contributions, and investment income, and we believe that such moneys are held in trust for the exclusive use of covering catastrophic wildfire related losses and for the benefit of independent power producers. This structure mirrors the characteristics of a trust fund. The bill should state the pertinent legislative findings to document that the Fund is a trust fund.

While moneys in the Fund can be invested (page 7, lines 4-10), the investment policies of the Fund are not specified. The bill should specify that the Executive Director of the Fund is responsible for establishing the Fund's investment policies.

**2. Section 269-C - Financial Contributions Required from the Investor-Owned Utilities to Capitalize the Fund, page 8, line 3, through page 11, line 5.**

Subsection (b)(1) - Contributions from investor-owned electric utilities:

- Amount: \$1,000,000,000 plus interest (if applicable)
- Funding mechanism: The \$1,000,000,000 is to be recovered from the investor-owned utilities' customers through nonbypassable rates that can be securitized. The Public Utilities Commission (PUC) must approve the nonbypassable rate charges. These nonbypassable rates mean that the customers must pay this charge.

Subsection (b)(2) - Shareholders of the investor-owned utilities:

- Amount: \$500,000,000
- Funding mechanism: This contribution comes from the shareholders of the investor-owned utilities, not from the ratepayers.

- Purpose: To pay the salaries of the Executive Director of the Fund and other personnel needed to implement this chapter. If any of this \$500,000,000 remains unspent by 2035, it must be transferred to the Fund.

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

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

Under the financing mechanisms to capitalize the Fund, the \$1,000,000,000 financial burden falls on customers either through nonbypassable rates or rates charged for their electricity usage while the \$500,000,000 is funded by the shareholders of the investor-owned utilities.

**3. Section 269-E – Replenishment of the Wildfire Recovery Fund, page 11, line 14, through page 13, line 20.**

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

**4. Section 269-F - Claims for Payment by Qualified Claimants, page 14, line 1, through page 16, line 7.**

Subsection (a) - Process for Claims:

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

The bill expressly provides that only non-governmental claimants may make a claim ("a qualified claimant that is not a government entity," page 14, lines 5-6). This would preclude the State from making a claim for damages to State-owned property, including, for example, housing projects.

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

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

#### Subsection (b) - Claimants Eligibility and Restrictions

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

If a claimant fails to file a claim by the established deadline set by the Executive Director, the claimant is precluded from receiving payment from the Fund and instituting any civil action against the participating utility.

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

#### Subsection (c) - Settlement Offers

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

Claimants may accept or reject the offer.

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

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

Subsection (d) - Insufficiency of Moneys in the Fund

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

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

**5. Section 269-H - Limitation on Aggregate Liability, page 16, line 19, through page 18, line 13.**

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

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

JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



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## Testimony of the Public Utilities Commission

To the  
Senate Committees on  
Energy & Intergovernmental Affairs  
and  
Commerce & Consumer Protection

Tuesday, February 11, 2025  
9:30 a.m.

Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and Members of the Committees:

**Measure:** S.B. No. 897, S.D. 1  
**Title:** RELATING TO ELECTRIC UTILITIES.

### Position:

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

### Comments:

The Commission acknowledges the intent of the Committee to amend the measure to remove sections relating to establishing a wildfire recovery fund. Moreover, the Commission appreciates the intent of this measure to mitigate risks for independent power producers ("IPPs") by requiring the Hawaii Electric Reliability Administrator ("HERA") to collect and administer funds to be held for the benefit of IPPs. The measure also expands the powers and duties of the HERA.

The Commission is aware of the concerns surrounding IPP financing cost increases and market uncertainty created by Hawaiian Electric's non-investment grade credit rating. The Commission closely monitors the Stage 3 Request for Procurement process (Docket No. 2017-0352). IPPs in their ongoing PPA negotiations with Hawaiian Electric have sought higher prices than previous rounds to offset their increased financing costs caused by Hawaiian Electric's PPA default risk. Hawaiian Electric in response has sought to find ways to accommodate IPPs to balance ratepayer electricity costs and developer economics. IPPs bidding into the forthcoming Integrated Grid Plan RFP ("IGP RFP"), which is under review by the Commission for approval (Docket No. 2024-0258), will face these same financing cost challenges unless Hawaiian Electric's credit rating improves.

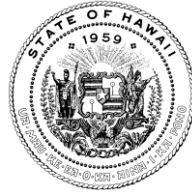
The Commission is currently in the process of procuring a consultant to serve as the HERA for the Commission. The Commission issued the Request for Proposals in accordance with HRS Chapter 103D in December 2024 and is currently reviewing proposals submitted by vendors specialized in utility engineering. The contract for the HERA will begin April 2025. It has a budget not to exceed \$1,200,000 over the two-year contract term paid out of the PUC's own budget. The PUC is using its budget instead of establishing a ratepayer surcharge to avoid increasing electricity costs for residents, mindful that electricity rates in Hawaii are the highest in the nation.

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

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

Finally, and importantly, the HERA will train Commission staff, building up the capacity within the Commission's Engineering section so that at the end of the HERA's contract term, staff can continue the HERA's work and avoid the costs of hiring consultants. To build up capacity within the Commission, the Commission has submitted in its budget proposal a request for the Legislature to approve a new engineer position. The Engineering section is a vital part of our team and their work with the HERA will support a more reliable and affordable electric grid.

Thank you for the opportunity to testify on this measure.



**JOSH GREEN, M.D.**  
GOVERNOR | KA KIA'ĀINA

**SYLVIA LUKE**  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I**  
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## **Testimony of the Department of Commerce and Consumer Affairs**

**Before the**  
**Senate Committee on Energy and Intergovernmental Affairs**  
**And**  
**Senate Committee on Commerce and Consumer Protection**  
**Tuesday, February 11, 2025**  
**9:30 a.m.**  
**Conference Room 229**

**On the following measure:**  
**S.B. 897, S.D. 1, RELATING TO ENERGY**

Chair Wakai, 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, rather than allow, the Public Utilities Commission (Commission) to contract for a Hawai'i Electricity Reliability Administrator (HERA) and require payment of the Hawai'i electricity reliability surcharge; (2) establish the Wildfire Recovery Fund; and (3) expand the powers and duties of the HERA.

With respect to the provisions of bill regarding the Wildfire Recovery Fund the Department hopes that Hawaii will never again suffer the incredible loss and destruction of a major wildfire. The Department also understands the societal benefit of having the ability to provide efficient compensation for property damaged or lost if there is any future



wildfire. However, the Department offers that this bill places the responsibility for funding the proposed one billion dollars almost entirely on Hawaiian Electric's customers without any assurance of a clearly defined and quantifiable benefit. Additionally, the Department notes that the most effective investment in reducing the risk of catastrophes from wildfire or importantly other threats to which Hawaii is highly vulnerable, such as high winds and flooding, is investment in maintaining the reliability of our electrical grid and utility systems. The Department also offers the following comments.

Hawaiian Electric has provided comments from Moody's credit rating agency representing that to protect utility credit quality and retain investor confidence in the event of catastrophic wildfires a policy framework is needed that includes limits on liability, a sufficiently large wildfire fund to cover the costs of a catastrophic event, and transparent guidelines or certification requirements for fire mitigation. The liability limits in proposed Sections 269-H, 269-I, and 269-J may improve utility credit, but the Department would like to see more evidence and quantitative analysis of:

- What the financial benefits of participating in this fund may be to utilities and their customers?
- How the \$1.005 billion initial contribution for investor-owned electric utilities in proposed Section 269-C(b) was calculated?
- Why the "actuarial assessment of risk" standard for other participating utilities in proposed Section 269-C(d) is not as or more appropriate for investor-owned electric utilities?

In addition, the Department believes that for any public utility that intends to participate, but at a minimum Hawaiian Electric, it must be required to provide a comparison to costs for current commercial insurance coverage compared to wildfire property damage and loss.

The Department also believes that utility customers should not be the primary or sole contributor to such a fund and that it is appropriate to ensure that customers contribution to such a fund be significantly limited. Customers' financial contributions are more appropriately expended on infrastructure investments. As such, the Department offers the following suggested changes:

- For investor-owned electric utilities, instead of the \$5 million contribution from shareholders in proposed Section 269-C(b)(2), which is only 0.5% of the \$1 billion contribution that would be recovered from ratepayers in proposed Section 269-C(b)(1), the Department recommends changing proposed Section 269-C(b) to require that the majority of the contribution to the fund be from the investor-owned electric utility; and
- In proposed Section 269-C(d) that the majority of other public utilities' contributions will not be recoverable from ratepayers.

The Department notes that several of the proposed amendments to a similar bill regarding a wildfire recovery fund (H.B. 982, H.D.1) improves protection for utility customers. Most notably, Section A-3(b) makes the majority of the contribution of any participating investor-owned electric utility not recoverable from utility customers. The Department recommends a similar amendment to the senate version to ensure that the majority of contribution of any participating investor-owned electricity utility not be recoverable from utility customers.

The Department also recommends that customers' contributions to the fund should provide some defined value to them, such as using the interest on the relief fund as an annual refund to customers, or to fund hazard mitigation projects that might lower the overall risk of needing the relief fund.

With respect to the provisions of the bill regarding HERA, the Department appreciates the bill's intent for the Commission to prioritize system reliability and interconnection. The Department offers that reliability and interconnection are system-wide considerations and affect the planning and design of the grid which in turn impacts all customers. As such, the Department supports these issues being addressed within on-going regulatory efforts that are overseen directly by the Commission. The Department notes that while existing legislation enables the Commission to contract with an entity to serve as the electricity reliability administrator, such capability could be established directly within the Commission rather than through a separate third-party entity. The Department believes that the interests and protection of the customers are

best served through direct oversight of reliability by the Commission together with recommendations provided by the Department.

With respect to the provisions of the bill regarding HERA administering the Wildfire Recovery Fund, the Department sees the duties of ensuring sufficient reliability that are envisioned for the HERA role and the fiduciary duties of administering the proposed Wildfire Recovery Fund as appropriately separate.

Thank you for the opportunity to testify on this bill.



**TESTIMONY BEFORE THE SENATE COMMITTEES ON ENERGY  
AND INTERGOVERNMENTAL AFFAIRS AND COMMERCE AND  
CONSUMER PROTECTION**

**SB 897 SD 1  
Relating to Energy**

Tuesday, February 11, 2025  
9:30AM  
State Capitol, Conference Room 229

Rebecca Dayhuff Matsushima  
Vice President, Resource Procurement  
Hawaiian Electric

Dear Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and  
Members of the Committees,

My name is Rebecca Dayhuff Matsushima and I am testifying on behalf of  
Hawaiian Electric in **opposition** to SB 897 SD 1, Relating to Energy, in its current form.

Further to the February 4, 2025 decision-making meeting of the Senate  
Committee on Energy and Intergovernmental Affairs, Hawaiian Electric understands  
that SB 897 SD 1 will be narrowed to focus on contracting for a Hawaii electricity  
reliability administrator (“HERA”) and content relating to the establishment of a wildfire  
recovery fund and expansion of the HERA’s powers and duties will be removed. If this  
is not the case, Hawaiian Electric opposes the inclusion of these topics, which are  
addressed more comprehensively in other bills, such SB 1201 / HB 982, Relating to  
Wildfires, and SB 1501 / HB 974, Relating to Energy.

SB 897 SD 1 requires the Public Utilities Commission (“Commission”) to  
contract for a HERA and establish a Hawaii electricity reliability surcharge to be used  
for the activities of the HERA. Hawaiian Electric respectfully submits that these

amendments to HRS Chapter 269 are unnecessary. The Commission has the authority to contract for a HERA under existing law, as demonstrated by the State's recently issued request for proposals seeking to procure a HERA. As the Commission is already taking steps to implement a HERA, Hawaiian Electric does not see the need at this time for amendments to the HERA statute. Further, the mandatory collection of a Hawaii electricity reliability surcharge and establishment of a HERA would also result in additional costs to customers. Accordingly, the Commission should maintain the discretion to opt out of contracting a HERA and requiring payment of the Hawaii electricity reliability surcharge if the Commission determines at some point in the future that a HERA is not necessary or alternative solutions that will have less of an impact on utility customers exist.

For these reasons, Hawaiian Electric opposes SB 897 SD 1. Thank you for this opportunity to testify.



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TESTIMONY TO THE COMMITTEE ON ENERGY & INTERGOVERNMENTAL AFFAIRS AND  
THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

9:30 AM, FEBRUARY 11, 2025

Conference Room 229 & Via Videoconference

**SB 897 PROPOSED SD1**

Chair Wakai, Vice Chair Chang, Chair Keohokalole, Vice Chair Fukunaga and Members of the  
Committees,

Ameresco provides comments on SB 897 SD1 which expands the powers and duties of the Hawaii Electricity Reliability Administrator (HERA), but has concerns that as currently drafted, the bill would not help ensure the financing and construction of the critically needed “Stage 3” renewable energy projects that have already been procured by the utility and are now under development.

Ameresco is a leading cleantech integrator and renewable energy asset developer, owner and operator. With 25 years of experience, we have successfully completed energy saving, renewable energy and environmentally responsible projects for commercial, industrial, Federal, State and Local government in Hawai‘i, across the US, Canada and Europe. Ameresco has been a part of the Hawai‘i community for the last 15 years and committed to supporting the goals of clean, reliable and affordable energy. Last year, we completed the Kūpono Solar 42 MW/168 MWh photovoltaic solar and battery project in ‘Ewa. We currently have three additional large-scale renewable energy projects in development on O‘ahu and Maui.

**Background**

In January 2023, Hawaiian Electric solicited renewable energy project bids through its “Stage 3” Request for Proposals (RFP). The goal of the RFP was to procure 800-1,200 MW of renewable energy projects that would be placed in service by the end of 2029 (and additional capacity to be placed in service by 2033), which is critical to reliability and resilience. Proposals were submitted to Hawaiian Electric in April of 2023 and projects were awarded in November 2023. Between the time that the proposals were submitted and awarded, however, Hawaiian Electric’s credit rating was significantly downgraded to sub-investment-grade status, making it much more challenging for IPPs to obtain both equity and debt financing for these large renewable projects.

Several IPPs have already withdrawn their Stage 3 projects. Additionally, many planned Stage 2 projects have also terminated or been delayed. It is in the state’s interest to ensure that the remaining projects are able to obtain financing and come online – not only to ensure that Hawai‘i is able to meet its climate and renewable energy goals, in which these Stage 3 projects play a critical role, but also for the integrity and reliability of the electric grid, and to ensure affordable rates to the ratepayers of Hawai‘i that are not tied to volatile fossil fuel prices. Hawaiian Electric’s only other current renewable energy procurement is the Integrated Grid Planning (IGP) procurement. However, the IGP procurement has been delayed pending a

contested case proceeding before the Public Utilities Commission, just now commencing. There are no other large renewable projects “in the works” beyond the Stage 3 projects.

**SB 897 SD 1**

As currently drafted, SB897 SD 1 will not assist with ensuring the financing and construction of Stage 3 projects, because it applies only to projects procured by the HERA on a going-forward basis. Here the Stage 3 projects have already been procured by Hawaiian Electric. The counterparty to these PPAs will be Hawaiian Electric, not HERA. What is needed, therefore, is a mechanism to ensure that lenders have greater confidence that the payments due under the PPAs will continue to be made even in the event of a Hawaiian Electric bankruptcy.

To this end, we recommend that the Committees remove any language that amends the HERA statute referring to “power purchase agreements” and “cost recovery” and utilize SB1501 as the legislation to address this important issue. SB1501 would give lenders’ needed confidence with respect to these critically important renewable energy projects that have already been procured by Hawaiian Electric and will be in the public interest to provide reliable and affordable energy.

Thank you for the opportunity to provide this testimony.

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

Date: Tuesday, February 11, 2025

Time: 9:30 a.m.

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

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

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

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

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



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

**I. SB 897 Limits Recovery for Future Wildfire Victims:**

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

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

HAI is concerned that the severely reduce a victim's ability to obtain recovery for losing their property in a future catastrophic wildfire.

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

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

## **II. Substantial ED Authority Without Clear Parameters:**

HAI is concerned that SB 897 gives the ED, an appointed official, too much power by giving them the sole authority to determine rules and make offers to settle on behalf of the WRF. Given the authority granted under this measure there should be an appointed panel based on the qualifications of the members (e.g., insurance rep, attorney, a DCCA rep, etc.), and a new panel should be appointed every time a "catastrophic wildfire" occurs (similar to the MICP proceedings). Further, rules on how applications will be evaluated and offers are determined should be a part of this legislation to provide direct guidelines to the ED or a panel. This will ensure that future victims will receive equitable offers from the ED and obtain the recovery they desperately need following a future catastrophic wildfire.

In addition, HAI concerned that the measure penalizes a claimant who fails to meet a deadline to file a claim, which is determined by ED (i.e., the ED) and not clearly defined in this

legislation. The lack of a specified timeframe to file a claim is deeply concerning and may adversely impact a victim's rights to seek remedy from the WRF or after rejecting an offer from the ED. An appropriate deadline which reflects the intent to expedite claims while balancing the time needed for victim to heal and begin the recovery process should be made a part of this legislation.

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

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

Furthermore, the ED is not required to request supplemental payments from contributors when the damages exceed the obligated amounts to the WRF. In turn, leaving requests for supplemental payments to the WRF at the discretion of the ED doesn't promote utilization of the fund and is inconsistent with the intent of the measure to expedite victim's recovery. The ED should be required to request supplemental payments from the participating

public utilities if the economic damages exceed the obligated amounts to the funds. In conjunction, if a request for supplemental payment is denied by a participating public utility, then mandatory participation in the WRF and recovery limitations for victims that reject offers from the ED should be waived. This encourages the WRF to be adequately funded for victims to seek quicker recovery.

#### **IV. Reduces Accountability to Adhere to Mitigation Plans:**

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

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

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

be applicable. This promotes accountability in adhering to mitigation plans designed to prevent future wildfires.

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

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

## **V. Evidence Limitations:**

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

## **VI. Proposed Amendments:**

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

1. Page 6: Amend “Qualifying damages” to mean economic damages arising out of the loss of or damage to real or personal property from a covered catastrophic wildfire.
2. Pages 8-9: Amend (b)(1) ...which amounts [~~shall~~] may be recovered from its customers in nonbypassable rates not to exceed an increase of 10% of rates paid by customers prior to January 1, 2025;  
  
(c) ... with such interest recovered from [~~customers in rates.~~] shareholder dividends.
3. Page 11: Amend (e) to read “If economic damages arising out of property damage resulting from a covered catastrophic wildfire exceed the amounts in and obligated to the wildfire recovery fund, the executive director [~~may~~] shall propose supplemental contributions to the wildfire recovery fund by participating public utilities.
4. Page 11: Amend (f) ...a public utility may rejoin the wildfire recovery fund as a contributor on a prospective basis if it makes owed payments with interest to be paid by its shareholders.
5. Page 13: Amend (b)(2) ...an error by a contributor’s employee would not be a basis for a finding of imprudence, unless that error resulted from [~~an imprudent~~] the failure of a system, process, or program to prevent the error.
6. Page 14: Amend (c)...and the foreseeability of factors within and beyond the contributor’s control that may have led...
7. Pages 14-15: Amend (b)... A qualified claimant who fails to file a claim by [~~the deadline established by the executive director pursuant to rule~~] six years after a wildfire or two years after a qualified claimant receives payment, whichever is later, shall be ineligible to receive payment from the wildfire recovery fund and shall be barred from instituting or maintaining any qualifying action against a contributor, except that any other action under Chapter 663 may be brought in the normal course or, if related to a claim under this section, may be brought in the same course as a qualifying action, any other time constraints notwithstanding.
8. Pages 16-17: Amend (a)...arising from a covered catastrophic wildfire[, ~~including economic and non-economic damages,~~] shall not exceed the [~~lesser~~] greater of:
9. Page 18: Amend (c)...The court shall adopt procedures to equitably apply the limit set forth in subsection (a) to all [~~civil actions~~] qualifying actions that are filed.

10. Page 18: Add new section (e) The aggregate liability limit set forth in section (a) shall not apply until the initial contribution of each qualified contributor is satisfied in full.
11. Page 19: Remove §269-J, abolition of joint and several liability.
12. Page 20: Revise §269-L Inadmissible evidence. Any findings made by or evidence submitted to the director for purposes of proceedings under sections 269-D, 269-F, and 269-G shall be subject to the limits on admissibility under rule 408, section 626-1[-], provided that any findings made by or evidence in the possession of a qualified contributor shall be discoverable and admissible evidence in any civil action arising from a covered catastrophic wildfire. Failure by a qualified contributor to independently preserve evidence shall require that the director make the same evidence, submitted for purposes of proceedings under sections 269-D, 269-F, and 269-G available to the parties in any civil action arising from a covered catastrophic wildfire.

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

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



**LATE**

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COMMITTEE ON ENERGY AND INTERGOVERNMENTAL AFFAIRS

Senator Glenn Wakai, Chair

Senator Stanley Chang, Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

DATE: Tuesday, February 11, 2025

TIME: 9:30 AM

PLACE: Conference Room 229 & Videoconference

SB 897, SD1 RELATING TO ENERGY

**OPPOSE Section 4**

Aloha Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and Members of the Committees

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 55 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.



Section 4 appears to expand the job beyond what was asked for in the DCCA Procurement (Posted Dec. 2, 2024; Response Deadline Feb. 7, 2025)

The Hawaii State Public Utilities Commission (PUC) is seeking to establish the **Hawaii Electricity Reliability Administrator (HERA)** to manage and improve the reliability of Hawaii's electric system.<sup>1</sup>

Section 4 is confusing, and a few words are missing, but the bill appears to say that the appointed HERA can assume some of the functions of the Public Utilities Commission.

b) The public utilities commission may direct public utilities that supply electricity to the public **utility** or the Hawaii electricity administrator established under **HRS 269 part IX**.

HERA can take over the approval process for power purchase agreements, bypass stakeholder constitutional and due process rights, ignore costs, and bypass HRS 269(b) that requires consideration of price volatility, fuel supply reliability risk, and lifecycle greenhouse gas emissions.

HECO can own 59.9% of an energy company and it is still called an independent power producer.

That price plays no role in determining whether a new project will come online.

Power plants can be designed to use any type of fuel, but if a power producer “commits” to using undefined “low carbon fuels” at start-up then it is a nonfossil fuel company. The company may then switch back to fossil fuels.

That there is no appeal process.

Mahalo,

Henry Curtis  
Executive Director

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<sup>1</sup> <https://www.highergov.com/sl/contract-opportunity/hi-hawaii-electricity-reliability-administr-39629884/>