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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Ways and Means
Thursday, February 27, 2025
10:30 a.m.
Conference Room 211

On the following measure:
S.B. 897, S.D. 2, RELATING TO ENERGY

WRITTEN TESTIMONY ONLY

Chair Dela Cruz and Members of the Committee:

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) establish the Wildfire Liability Trust Fund to be administered by the Hawai'i Electricity Reliability Administrator (HERA); and (2) require, rather than allow, the Public Utilities Commission (Commission) to contract for a HERA and require payment of the Hawai'i electricity reliability surcharge.

With respect to the provisions of bill regarding the Wildfire Liability Trust 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 believes that utility customers must 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. Put simply, customers did not start the fire that degraded Hawaiian Electric's credit rating and customers are not responsible for on-going risk. Additionally, customers will likely be asked to bear many of the infrastructure investment costs to reduce wildfire risk going forward.

The legislation, as currently drafted, places a substantial financial burden on ratepayers by requiring them to provide one billion dollars of funding without any guarantee of a benefit in return. While the bill also requires Hawaiian Electric's shareholders to contribute five hundred million dollars, or approximately one-third of the total proposed initial total funding amount, requiring ratepayers to be the primary contributor to this fund does not acknowledge that there is a substantial benefit to shareholders from establishing this fund in that it reduces the risk that a future catastrophic wildfire would result in Hawaiian Electric (or another utility) facing bankruptcy concerns leading to another substantial reduction in shareholder value such as what occurred after the Maui wildfire.

Hawaiian Electric provided comments from Moody's credit rating agency representing that to protect utility credit quality and retain investor confidence, 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.

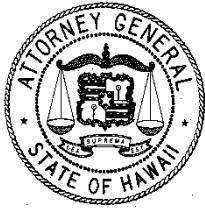
While a fund of this types appears to be a "needed" component of a framework to restore Hawaiian Electric's credit rating, the likelihood that the fund will deliver a benefit to customers is largely uncertain and so is the amount of the benefit. The Department notes that there is no certainty that the fund would:

- improve the utility's credit rating,
- by how much the credit rating might improve, and
- no known timeline for any improvement.

Given these significant concerns, the Department appreciates the amendments provided within H.D. 1 and H.D. 2 to H.B. 982, and offers that H.B. 982 H.D. 2 is a more balanced version than the current version of this legislation.

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.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 897, S.D. 2, RELATING TO ENERGY.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 27, 2025 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Randall S. Nishiyama,
Deputy Attorney General, at (808) 586-1267)

Chair Dela Cruz and Members of the Committee:

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

This bill:

1. Establishes the Wildfire Liability Trust Fund (Fund) to be administered by the Hawaii Electricity Reliability Administrator (HERA).
2. Requires, rather than allows, the Public Utilities Commission (PUC) to contract for a HERA and requires the payment of the Hawaii electricity reliability surcharge by all utilities, persons, businesses, or entities connecting to the Hawaii electric system.

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-C - Financial Contributions Required from the Investor-Owned Utilities to Capitalize the Fund, page 7, line 7, through page 10, line 6.**

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 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.

2. Section 269-E – Replenishment of the Wildfire Liability Trust Fund, page 10, line 15, through page 12, 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.

3. Section 269-F - Claims for Payment by Qualified Claimants, page 13, line 1, through page 15, 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 13, 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 (page 13, line 20, through page 14, line 3).

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.

4. Section 269-H - Limitation on Aggregate Liability, page 15, line 19, through page 17, 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 Committee on
Ways and Means

February 27, 2025
10:30 a.m.

Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

Measure: S.B. No 897, S.D. 2
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 measure to establish the wildfire liability trust fund to be administered by the Hawaii electricity reliability administrator. S.B. No 897, S.D. 2 would require the Commission to contract the Hawaii Electric Reliability Administrator ("HERA") to collect and administer funds to be paid out to claimants for damages following a catastrophic wildfire.

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- to four-year contract term paid out of the Commission's own internal budget. The Commission 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 ("KIUC") 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 Hawaiian Electric 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.

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION OF
SB 897 SD2**

Date: Thursday February 27, 2025

Time: 10:30 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 SD2 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 SD2 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 SD2 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 SD2 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 SD2 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 SD2 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 SD2: 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 SD2. Please feel free to contact me should you have any questions or desire additional information.



Testimony Before the Senate Committee on Ways and Means

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

Thursday, February 27, 2025; 10:30 am
Conference Room #211 & Videoconference

Senate Bill No. 897 SD2 - RELATING TO ENERGY

To the Honorable Chair Donovan M. Dela Cruz, Vice Chair Sharon Y. Moriwaki, and Members of the Committee:

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 recognizes that it is in the best interest of the state to minimize negative impacts to electric utility ratepayers for wildfire risk mitigation, disaster relief, and litigation costs. Public utilities are very capital intensive, and maintaining access to low-cost financing is of utmost importance to utilities. Providing a vehicle for expedient processing of claims from consumers not covered by insurance, while preserving the financial viability of electric utilities by allowing them to obtain timely recovery of costs related to wildfires from the Hawai'i Public Utilities Commission (PUC), could substantially mitigate negative impacts from catastrophic events.

KIUC supports the concept of a wildfire relief fund, but **prefers the more comprehensive approach offered in SB 1201 SD1**. That measure sets out the parameters of such a fund while also creating a framework for securitization for wildfire-related claims costs and, as amended in SD1, provides a means for an electric cooperative to recover costs of wildfire mitigation via a tariff recovery mechanism to be established by the commission.

We strongly encourage the committee to consider striking the Wildfire Liability Trust Fund language from this bill and use SB 1201 SD1 as the vehicle for addressing these important issues.

Should SB 897 SD2 move forward, we offer the following amendments for consideration:

Page 3, lines 10-13, amend the definition of Catastrophic wildfire to: "Catastrophic wildfire" means a wildfire occurring in the State on or after the operation date that destroys more than five hundred commercial structures or residential structures designed for habitation; or, for an electric cooperative with less than 50,000 residential members, meets a threshold dollar amount of potential claims to be determined by the Executive Director.

Page 32, Line 2: Insert a new §269-M to read: **Electric Cooperative Cost Recovery for Wildfire Mitigation, Repair and Restoration Costs.** Electric cooperatives are authorized to recover commission approved wildfire mitigation, repair and restoration costs through an automatic rate adjustment clause or other tariff recovery mechanism to be established by the commission.

Mahalo for your consideration.



**TESTIMONY BEFORE THE
SENATE COMMITTEE ON WAYS AND MEANS**

**COMMENTS REGARDING SB 897, SD2
Relating to Energy**

Thursday, February 27, 2025
10:30 AM
State Capitol, Conference Room 211

Dear Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee,

Hawaiian Electric submits **comments** regarding SB 897, SD2, Relating to Energy and requests that the bill pass out by inserting the original contents of SB 1201. **One of the concerns with SB 897, SD2 is the required contribution of \$500 million** by Hawaiian Electric shareholders to fund the salaries of the executive director and others. The proposed contribution is infeasible at this time and will have the effect of preventing the fund from operating—and negating all of its crucial benefits—creating greater burdens on ratepayers. Shareholders are already paying all claims for settlements related to the August 2023 event: this fund does not apply to those claims and is applicable to future catastrophic events only. Thus, we are requesting the bill revert back to SB 1201.

On February 11, 2025, the joint committees on Energy and Intergovernmental Affairs & Commerce and Consumer Protection's adopted a variation of SB 1201. Hawaiian Electric is concerned that this new version has unintended consequences and will fail to address the original intent of the legislation. The current bill's contents are inconsistent with what was represented at the February 4, 2025 decision-making meeting of the Senate Committee on Energy and Intergovernmental Affairs where the

committee represented that SB 897, SD1 would 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. Since this was not the case, Hawaiian Electric remains concerned that this bill may result in unintended consequences and requests that the contents of SB 1201, Relating to Energy be inserted into this measure.

SB 897 SD2 requires the Public Utilities Commission (“Commission”) to contract for HERA and establish a Hawaii electricity reliability surcharge to be used for its activities. 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 has concerns with SB 897, SD2 and requests that its contents be replaced with SB 1201. Thank you for this opportunity to submit comments.