



# CONSOLIDATED OREGON INDIVISIBLE NETWORK

**To:** House Committee on Judiciary  
**From:** Consolidated Oregon Indivisible Network (COIN)  
**Re:** IN OPPOSITION TO HB 3917  
**Date:** 03/23/2025

*Chair Kropf, Vice-Chair Chotzen, Vice-Chair Wallan, and Members of the House Committee on Judiciary:*

The Consolidated Oregon Indivisible Network (COIN) **opposes HB 3917, and we urge you NOT to pass this bill out of committee.**

COIN is a coalition of over 50 local Indivisible groups throughout Oregon that work together to advance important federal and state legislation and engage with elected officials to promote progressive causes for the benefit of all Oregonians.

Due to many of our members and other community members having experienced the trauma and loss of wildfires, we've been paying close attention to this bill. We believe this bill could be used to immunize utilities from liability—or certainly limit their liability--for wildfires they negligently cause.

In essence, this is a utility bailout bill when a utility is responsible for causing catastrophic wildfires. If someone harmed by a wildfire receives any payment from the fund, the utility is immunized from lawsuit. The amount that any victim receives is up to an appointed “independent administrator,” with no judicial review. The bill authorizes charging at least half, and probably more, of the cost of the cost of claims to ratepayers.

The bill creates a "catastrophic wildfire fund" with the Oregon Public Utility Commission (OPUC) to reimburse people who lose homes or businesses to utility-caused wildfires.

## **Creation of the Fund**

The “privately owned” utilities (PGE, PP&L, Idaho Power) each decide the size of their own fund, since each utility decides how much it contributes; however, the fund cannot exceed \$800 million from all utilities. The utility can recover from ratepayers up to 50% of the amounts it puts into the fund, although the resulting rate increase is limited to 3%. A utility can issue bonds and securitize debt for costs and expenses associated with contributions to the fund. This provision makes it unclear whether the utility can charge more than half of the cost of capitalizing the fund to ratepayers:

(6) A public utility may use a financing order issued under ORS 757.461 to collect from customers of the public utility the amount needed for the public utility's initial capitalization.

So the utility gets “to collect from customers of the public utility *the amount needed* for the public utility’s initial capitalization.” That is not consistent with the bill’s prior limitation of allocating more than half of the cost to ratepayers.

### **The Claims Process**

Claims are submitted to an “independent administrator” (IA) appointed by the OPUC. A claimant is prohibited from recovering any more than 80% of the experienced property damage and noneconomic damages of \$100,000, unless there has been “serious bodily injury or death.” If anyone harmed by a fire caused by the utility receives any payment from the fund, the utility is immunized from lawsuit, “regardless of whether the fund compensated the full or partial amount of the claim for loss.”

If the fund is depleted, the IA can offer claimants reduced payments. If the claimant accepts the reduced payment, the utility is still immunized from any court actions to recover damages for any additional losses.

**Decisions by the IA about how much, if any, compensation a claimant receives is immune from judicial review. It is “final and not appealable.”**

### **Deciding Whether the Utility Must Reimburse the Fund**

The OPUC shall initiate an investigation to review the utility’s actions and conduct prior to the ignition of the catastrophic wildfire to evaluate and determine whether the actions of the public utility were “prudent.” If not, then the OPUC may require the utility to reimburse the fund, but no such reimbursement is required by the bill.

If the utility has acted materially consistently with its wildfire protection plan, the bill deems the utility to have acted prudently. It is up to someone else to prove otherwise.

(3)(a) Notwithstanding ORS 757.963 (6), in any proceeding initiated under this section, the commission shall make a preliminary determination that the public utility’s actions and conduct were prudent if commission finds that at the time of the ignition of the catastrophic wildfire the public utility had a risk-based wildfire protection plan approved under ORS 757.963 and the public utility’s actions and conduct were materially consistent with and in compliance with the risk-based wildfire protection plan.

(b) A party to the proceeding may show that a public utility’s actions and conduct, despite being materially consistent with and in compliance with the public utility’s risk-based wildfire protection plan, were imprudent by providing clear and convincing evidence that some part of the public utility’s overall systems, processes or programs failed to proactively manage wildfire risk. The commission may not use a simple error by a public utility employee or contractor as a basis for a finding of imprudence unless the error is a result of an imprudent system, process or program.

If the victims of the wildfire were suing the utility in court for damages, the utility’s compliance with its own wildfire protection plan would not create a presumption of prudence or lack of negligence on the part of the utility. Further, the victims would be allowed to prove that the utility acted unreasonably (negligently) by a preponderance of the evidence. They would not be

required to meet the higher burden of proof by “clear and convincing evidence.” The Oregon Supreme Court wrote in 2021:

Under the preponderance of the evidence-standard, the factfinder must determine whether the facts asserted are more likely true than false. Riley Hill General Contractor v. Tandy Corp., 303 Or. 390, 402, 737 P.2d 595 (1987). Under the clear and convincing evidence standard, the proponent must establish that the facts asserted are “highly probable.” \*531 *Id.*

State v. Pittman, 367 Or 498, 530–31, 479 P3d 1028 (2021).

If OPUC determines that a utility’s actions and conduct that caused the catastrophic wildfire were imprudent, OPUC may order the utility to reimburse the fund, in whole or in part, for claims paid from the fund; however, that reimbursement is limited to "Twenty percent of the public utility’s transmission and distribution equity rate base situs to [located in] Oregon minus any amounts the public utility has already reimbursed the fund during a period of three consecutive calendar years ending on December 31 of the year in which the calculation is being performed." And the bill does not require the OPUC to order any reimbursement of the fund by the utility, even if its actions were not prudent.

The bill applies to wildfires that begin on or after the effective date and contains an emergency clause making the bill’s provisions effective upon passage.

A concern that has been stated as a justification for SB 3917 is that utilities could go bankrupt by having to pay for the entire cost of wildfires they cause. It should be noted that, while utilities can go bankrupt, Pacific Gas & Electric Co. in California (the largest utility there) has gone bankrupt twice in recent years, 2001 and 2019. Its shareholders lost money, but the utility continued to operate. Portland General Electric (PGE) itself was part of the bankruptcy of Enron Corporation filed in 2001. PGE continued to operate.

SB 3917 is a companion bill to HB 3666 (and the -1 amendment), both of which COIN opposes.

While we appreciate Representative Marsh’s motivation for this bill, we do not think it works for the best interests of wildfire survivors or ratepayers but rather for the best interests of utility companies. It limits the liability of public utilities for catastrophic wildfires caused by them.

**Please DO NOT vote to move HB 3917 forward.**

Respectfully,

The Consolidated Oregon Indivisible Network (COIN)  
[www.coinoregon.org](http://www.coinoregon.org)  
Becky Orf, Ashland  
Patricia Kramer, Portland  
Dan Meek, Portland