MEMORANDUM & ANALYSIS OF HB 3917

To: Chair Knopf, Vice-Chairs Chotzen & Wallan, Members of the Judiciary Committee
From: Ralph Bloemers, Esq., Director of Fire Safe Communities, Green Oregon Alliance
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Subject: Legal & Policy Analysis of HB 3917

I. INTRODUCTION

Oregon House Bill 3917 (2025) proposes the creation of a Catastrophic Wildfire Fund that is to be voluntarily funded by utilities, in part, and otherwise funded by ratepayers. The fund would center the State of Oregon as the responsible fund manager and payor who would pay wildfire victims who lost homes, property and were injured by wildfires a percentage of the value of property damaged in wildfires ignited by utility infrastructure.

The fund created by HB 3917 provides substantial protections for investor-owned utilities from paying wildfire survivors the full cost to replace lost homes, limits Oregonians who submit to the fund's ability to recover damages for the pain and suffering of having their lives upended while allowing utilities a way to pass on these costs of their fires to Oregonians through increased rates.

This memo compares HB 3917 to California's Wildfire Fund model (AB 1054), and through that comparison this memo reveals that HB 3917 shifts financial risk away from utilities, limits victim recovery, and undermines incentives for safety. In so doing, HB 3917 burdens utility customers, violates the Oregon Constitution and is contrary to the public interest.

II. SUMMARY of HB 3917

House Bill 3917 directs the Secretary of the Oregon Treasury to create the Catastrophic Wildfire Fund (CWF). "Catastrophic wildfire" refers to a fire likely ignited by a public utility's facility that causes property damage or damage to natural areas and requires significant resources to extinguish. § 2(2)(a)-(c).

The fund is intended to pay out claims made by victims of catastrophic wildfires, as well as pay the salaries and compensation, plus overhead expenses for the fund administrators. § 3(4). Section 3 also encourages the creation of subaccounts to track each participating utility's contribution. HB 3917 prevents utilities from participating if they are currently undergoing solvency ("bankruptcy") proceedings, or if a criminal case is pending against them in connection with a catastrophic wildfire. However, HB 3917 does not prohibit utilities with a track record of starting fires in Oregon from participating in the fund. The fund does not require otherwise eligible utilities to contribute, stating that a "public utility shall determine the amount of a public utility's initial contribution." § 4(1).

HB 3917's proposed language sets the total amount of the capitalization of the fund, including any accounts and subaccounts, from all public utilities that contribute to no more than $800 million. § 4(2).[1] Participating utilities will file a non-bypassable schedule of tariffs with their Public Utility Commission (PUC) to collect on the contribution within 10 years. Once reviewed, the amount collected from each utility should ultimately reflect the risks associated with operating without the fund, the scope of the utility's service territory and its transmission infrastructure, its wildfire reputation, and *the need to avoid imposing an unreasonable burden on the utility's customers***.** Thus, HB 3917 limits the rate increases for any customer class to 3% because of the tariffs. § 4(4). Should the fund approach depletion, the CWF's Independent Administrator is authorized to seek reinvestment from participating utilities consistent with their initial contribution and reflective of their wildfire liability in the interim. The Independent Administrator is further authorized to request an appropriation to the fund from the Oregon Legislative Assembly in the case of a particularized megafire. § 5(4).

Section 7 of HB 3917 describes the claim process. To be eligible for compensation, the claimant must establish (1) damage to real or personal property; (2) the extent of the allowed property loss; (3) any non-economic damages and their justifications; and (4) any mitigating factors, including the availability of insurance providers. "Allowed property loss" is defined as the lesser of the difference between the damage and the fair market value or the amount that would make the victim whole. In other words, Oregon fire victims will not be made whole or receive enough money to rebuild. And they will have to hire an appraiser at significant out of pocket cost to make a claim.

Furthermore, while insurance providers can recover from the fund and be reimbursed for what they pay out to their beneficiaries, the claimants' recovery is severely restricted. A claim of loss must be brought within 18 months of the fire's ignition. §7(2). Once a claim has been initiated, the investigative process begins with the PUC prudence review. § 8. If a utility or its actions were found to be imprudent, then they must reimburse the fund. Following the imprudence determination, the amount to be repaid may be mitigated by factors outside of the utility's control, including weather and fuel conditions, other substantial factors, and the timeliness and efficacy of the fire suppression activities by the responsible agency. §8(4)(b) and (d).[2]

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[1] The California fund was capitalized at $21 billion, and it appears the Dixie and Eaton fires may wipe it out: https://www.utilitydive.com/news/insurance-wildfire-risk-utility-california-funds-climate/741977/ The losses from the 2020 Labor Day fires exceed the proposed amount for the HB 3917 fund.

[2] In the trials against Pacificorp for the Labor Day fires, Pacificorp argued that climate change, the weather, the drought, the vegetation, the wind, and other natural factors that are regularly present in Oregon were substantial factors in the fires and absolved the company of responsibility. Even if a utility ignited fires, it would likely seek to substantially reduce, if not entirely reduce, its burden under the factors in this section. And the investor owned utilities' resources for attorneys and experts are significant and its interest in getting out of liability means it would vigorously contest liability. And, in the process set up by HB 3917, it is unclear who would even show up to contest their claims or have the expertise, time, and resources to do so.

III. CALIFORNIA's WILDFIRE FUND

California's $21B Wildfire Fund (WF) becomes available when a covered wildfire exceeds $1B in damages and generally requires that utilities who burn up homes and communities fully compensate their victims before seeking reimbursement. CA Pub Util Code § 451.1(d). (Enacted as AB 1054, Cal. Pub. Util. Code § 3292 et seq.) The goal of this policy was to promote utility accountability without shielding utilities from liability. California's WF also seeks to incentivize utilities to engage in proactive risk management by conditioning recovery to "just and reasonable" costs and expenses. § 6(b). Under California's law, a utility bears the burden in the first instance to demonstrate that its conduct was reasonable unless it has a valid safety certification for the period that the fire ignited. § 6(c). If so, then the burden shifts to the claimant to overcome that presumption. The safety certification is predicated on the utility submitting a Wildfire Mitigation plan, and it is a prerequisite for cost recovery from the fund.

California's WF requires utilities to contribute to the fund. The California Public Utility Commission (CPUC) enacted the WF in the wake of numerous destructive fires to provide a net benefit to the ratepayer, even though ratepayers had contributed to the fund, and simultaneously increased Investor Owned Utility credit ratings and insurability. California's WF is capitalized by a 50/50 ($10.5B) split between utility shareholders and ratepayers collected on a per kWh basis unless the customer class qualifies for one of the following exemptions: CARE, medical baselines, continuous direct access, and generation departing loads.

California's WF does not cap victim compensation, and it was significantly capitalized to address wildfire losses. However, recent events have laid bare that even California's experiment with its fund may not survive recent fires and, importantly, neither the safety certificate nor the fund have appeared to make Californians safer from utility caused fires.[3]

IV. COMPARATIVE LEGAL AND POLICY ANALYSIS

HB 3917 would bar civil claims against utilities if the victim was compensated, even if the compensation was only partial. §7. If a victim receives a partial or depleted payment, HB 3917 limits the availability of "true-up" payments to a period of three years following disbursement, but the remaining payment would only be made if funds become available. *Id.* These provisions do a disservice to wildfire victims and could absolve utilities of their liability to pay into the fund, as utilities could run out the clock by contesting their liability.

Furthermore, while California's WF obligates upfront contributions, Oregon's CWF is entirely voluntary. The Oregon CWF increases the administrative burden on select ratepayers without providing corresponding benefits to the public as a whole.

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[3] LA Times: Edison customers are paying more for fire prevention. So why are there more fires? Available at: https://www.latimes.com/environment/story/2025-03-30/edisons-wires-spark-scores-of-fires-each-year-despite-billions-charged-to-customers-to-prevent-them

Compared to the California model, HB 3917 is very favorable and tilted to investor owned utilities. HB 3917 has lenient thresholds and allows the utility to rebut prudence determinations even after the utility conclusively failed to comply. HB 3917 further favors the utility by delegating decision-making to a contracted independent administrator, not an accountable public agency, and makes that decision final and non-appealable. § 7(8). HB 3917 also lacks any provision safeguarding equity or encouraging transparency in the claims process. Ultimately, HB 3917 contemplates ratepayer collection in exchange for a wait-and-see recovery process that creates uncertainty for victims and limits access to judicial remedies.

Furthermore, the practical exercise of HB 3917's recovery caps and de-facto settlement dynamics may violate equal protection. HB 3917 caps property recovery at 80% and noneconomic damages at $100,000 cap and appears to bar additional civil claims once a victim receives partial compensation, appears to violate the Equal Protection Clause under the Oregon Constitution (Article I, § 20) and the 14th Amendment of the U.S. Constitution. HB 3917 treats victims who suffer similar losses differently based solely on whether they were part of an adequately funded payout period.

The statutory distinction between insured and uninsured victims, and between those who file within different timeframes, lacks a rational basis if it results in materially unequal recovery for similarly situated wildfire victims without serving a legitimate state interest. For example, HB 3917's framework, which permits insurance providers to seek reimbursement from the fund for payouts made to their beneficiaries, while simultaneously capping and restricting direct compensation available to uninsured victims. This creates a disparate recovery process based on insurance status, embedded in § 7(3)-(5) and compounded by the bill's strict 18-month filing window, which may further disadvantage late-filing or underinsured claimants.

In contrast, California's Wildfire Fund, created by Cal. Pub. Util. Code § 3293, establishes a structured and victim-focused framework. Utilities are only eligible to participate if they meet strict conditions, most notably, they must not be in bankruptcy or on criminal probation unless they satisfy court-approved restructuring and satisfy pre-petition wildfire liabilities (§ 3292(b)(1)). Participation is conditioned on a mandatory, non-recoverable initial contribution from utilities by September 10, 2019 (§ 3292(b)(3)), with annual contributions due each January 1 (§ 3292(c)). Crucially, utilities may not pass these costs on to ratepayers, except in narrow cases.

Victims in California may receive full settlements of adjudicated claims, and insurance subrogation claims are generally honored without harsh statutory caps (§ 3292(f)). Where settlements are less than 40% of the claimed value, the administrator must still approve them if they fall within reasonable business judgment standards. For fully adjudicated subrogation claims, the Wildfire Fund pays the entire judgment (§ 3292(f)(2)). The fund also prioritizes

utility contributions before tapping into ratepayer funds, ensuring a more equitable burden distribution (§ 3292(i)(1)).

California's approach seeks to achieve fairness by not capping victim compensation, maintaining judicial access for claimants, and conditioning utility reimbursement on "just and reasonable" conduct. California also includes a clear penalty structure: if a utility is found to have acted with conscious or willful disregard for public safety or lacked a valid safety certification at the time of ignition, it must reimburse the fund without the benefit of contribution caps (§ 3292(h)(3)(A)-(B)). California also requires immediate reporting of all ignitions.

In sum, where HB 3917 creates barriers to recovery and shields utilities through soft eligibility standards, California's AB 1054 imposes structured contributions, aligns incentives with safety and risk mitigation, and treats victims and insurers equitably. HB 3917's cap-limited and waiver-laden framework invites constitutional scrutiny, while California's funds more closely align with equal protection and due process principles.

V. POLICY CONCERNS AND STAKEHOLDER PERSPECTIVES

HB 3917 shifts financial risk onto ratepayers while capping victim compensation, limiting legal redress, and shielding utilities from full liability. This structure is unjust and misaligned with principles of fairness and deterrence. Moreover, HB 3917 is likely to hinder Oregon's climate adaptation strategy, including the wildfire mitigation. By insulating utilities from full liability through contribution caps and discretionary reinvestment obligations, the bill fails to incentivize the kind of long-term, proactive risk mitigation and infrastructure modernization necessary in the face of intensifying wildfire seasons. This concern is underscored by California's experience with Southern California Edison, which despite charging customers billions for wildfire prevention, continues to see its equipment implicated in dozens of fires annually ("Edison's wires spark scores of fires each year despite billions charged to customers to prevent them" *Los Angeles Times,* Mar. 30, 2025). Without strong accountability mechanisms and enforceable safety obligations, Oregon could experience similar failures, where customer funds are collected in the name of prevention, but the actual utility practices remain insufficient.

HB 3917 also threatens to disadvantage landowners and underinsured rural residents. The bill's 80% cap on property recovery and $100,00 ceiling on noneconomic damages (§ 7(3)-(4)) creates disproportionate hardship for those who lack sufficient private insurance, particularly in wildfire-prone areas. Furthermore, the statutes' 19-month limitation period may exclude claims arising from slower-to-discover or latent damage, which are not uncommon in large-scale wildfire events. These features collectively burden victims while reducing deterrence against utility negligence. For insurers, the fund's reimbursement structure adds complexity and uncertainty, especially since subrogation claims must compete with a capped, potentially depleted fund (§ 7(5)). The result could be rising premiums and narrower coverage, and more insurers exiting Oregon's markets, particularly in high-risk zones, mirroring what has been observed in California.

Lastly, HB 3917 is likely to erode public trust. By allowing utilities to voluntarily determine their contribution amounts (§ 4(1)), and by appointing a non-governmental "Independent Administrator" whose decisions are final and non-appealable (§ 7(8)), the bill fosters the perception that utility companies are regulating themselves. This lack of procedural transparency and enforceable accountability contracts sharply contrasts with California's Wildfire Fund (Cal. Pub. Util. Code § 3292), which mandates utility participation, prohibits cost recovery from ratepayers (with limited exceptions), and conditions fund access on safety certifications and demonstrated prudence. California's model centers on ratepayer protection and utility reform, whereas HB 3917 appears to stabilize utility finances through legal immunity, leaving victims and the public to shoulder the uncertainty. Without significant structural amendments, I believe HB 3917 will undercut Oregon's long-term wildfire resilience, economic recovery, and public confidence in its government.

VI. RECOMMENDATIONS

I recommend that the Oregon Legislature reconsider the bill entirely and that it start with a concept more akin to California's approach. First, remove HB 3917's 80% cap on property and $100,000 limit for noneconomic damages, and allow for proof to be provided of the replacement cost of the lost property from publicly available sources (e.g. building, land use records, recent cost of construction, photographs, personal records). Second, require that utilities "fully compensate" third-party claimants directly before seeking reimbursement from the fund. Third, conduct a full prudence review requiring that a utility's actions be "just and reasonable" before granting access to the fund, and use a but-for analysis to determine if the utility caused or contributed to the catastrophic fire. Fourth, ensure that reimbursement is post hoc, not a pre-funded liability shelter. Fifth, require immediate reporting of all ignitions by all utilities in Oregon, as is required in California, and ensure that the investigation is conducted by an independent entity who does not have an interest in cost recovery from the federal government. Overall, the goal should be to provide a transparent, victim-centered design with speedy payment that also increases utility accountability and responsibility in Oregon.

VII. CONCLUSION

Oregon could benefit from a framework that incentivizes fire prevention and victim recovery, modeled after California's more "just and reasonable" approach while also learning lessons from their experience. In its current form, HB 3917 elevates the status and position of utilities that cause catastrophic wildfires over fairness and justice for victims. As written, the proposed law undermines the goals of public safety and systemic accountability.

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