

**Green Oregon Alliance
3141 E. Burnside Street
Portland Oregon 97215**

June 25, 2025

Re: Testimony on Proposed -7 Amendment

Dear Chair Bowman and Members of the Committee:

I have followed and engaged on wildfire legislation this session, including on HB 3666, HB 3917, SB 926 and now HB 3984. I testified during Monday's public hearing, and I have read the proposed amendments on HB 3984, including the latest -7 amendment under consideration in your work session today.

During the hearings on SB 926, Representative Kropf engaged with the committee, me and others on the subject of tax relief for fire survivors. During Monday's hearing on HB 3984, he promised to work with colleagues to ensure that power utilities — who burned up Oregonians' homes and caused survivors tax liabilities on compensation they will eventually receive for the loss of their homes and property - will reimburse Oregonians for those tax consequences.

As I outlined in testimony on SB 926 and again on HB 3984, the tax consequences are grossly unfair. Last year, I worked with fire survivors, recovery groups and Senator Wyden and his staff to address those unfair tax consequences through the passage of federal tax relief. That tax relief expires at the end of this year, and it appears likely given the delays and likely course of extant litigation that thousands of Oregonians who were burned up as a result of the reckless disregard and grossly negligent conduct of PacifiCorp will not benefit from this relief.

My Background & Experience Relevant to This Testimony.

I graduated from Willamette University College of Law in 1998. I worked at Stoel Rives for several years and practiced corporate securities law. I have been practicing law in Oregon for over 25 years. For the last 20 years, my work has focused on forest and wildfire law and policy. I have worked with scientists, firefighters, the insurance industry, fire technology companies, government agencies and communities to prepare us to live in a hotter, drier world. I am also a documentary filmmaker, and I have produced several films on living with fire. (See *Elemental*, *Reimagine Wildfire* - elementafilm.com (Apple TV, Amazon, PBS) and [The Real Story of the LA Fires](#) (PBS)). For the last 8 years, I have worked with communities burned by fire and with recovery organizations like the American Red Cross, After the Fire USA and local recovery groups in Oregon. I have published on these subjects, including a recent piece in the 7th Oregon Climate Assessment on solutions to our wildfire challenges here in Oregon. My mission in life is to help people live with fire and prevent humanitarian disasters.

In the wake of the Labor Day fires, I was in communities across Oregon documenting the extent of the loss. I have submitted video and photo evidence of powerline ignitions from those fires, including the fires in the Santiam Canyon. I worked with a veteran expert arson and fire investigator to document the situation and provided that information to the news media, some of which I have submitted into the record. I also attended and watched the litigation brought by Oregon fire victims PacifiCorp for both my own edification and at the request of Oregon news organizations.

Testimony on the Proposed Amendments.

I write today to express and outline issues with the -7 Amendment, and with the proposed provisions of HB 3984 on safety certificates and the study of utility-caused wildfire risk. I provided this testimony to the committee to support clear policy that provides equitable relief for fire survivors from tax liabilities they will face as a result of being paid for the loss of their homes, property due to the negligence, gross negligence and reckless disregard of utilities who failed to shut the power off during Red Flag conditions (extreme winds, extended drought) on Labor Day 2020.

The -7 Amendment **provides utilities who burned up Oregon an opening to argue that they do not owe fire survivor plaintiffs' taxes** on compensation for their homes and property. To make it crystal clear to the committee, I am providing both a short explanation, and a longer one.

Short Explanation.

HB 3984 -7 says the utility is liable for taxes "imposed on the underlying final judgment." Utilities found liable for fires that destroyed Oregon communities are likely to argue that they do not owe taxes under the bill. Why? Because a plaintiff doesn't owe taxes on a judgment. Instead, a fire victim plaintiff only owes taxes on money that the fire victim plaintiff recovers from the defendant. Having a final judgment is not the same as being paid by a defendant. They are very different things.

Next, the utilities are likely to argue that the bill language is unclear what the "tax year" language means. The year a person obtains a final judgment could be different from the year(s) the fire victims are actually paid. The fire victim may not be subject to taxes the year the judgment is entered, and provides yet another way for the utilities to argue that they are not responsible for the taxes.

There is simple, straightforward language that was already developed for SB 926 by Representative Kropf. I testified on it, and so did others. The Judiciary Committee adopted this language.

Longer Explanation.

The -7 amendment to HB 3984 provides an appearance of tax relief at Section 1, parts (2), (3), but not actual relief. The -7 provides that:

but does not secure tax relief for survivors. The last thing that people who have lost their homes and communities need is more uncertainty. “(2) In a civil action arising out of allegations that the conduct of an electric company caused or substantially contributed to a wildfire, an electric company that has been found to be liable for damages to a plaintiff or class member shall also be liable for any federal income tax liability for the tax year that is imposed on the underlying final judgment and owed or paid by the plaintiff or class member. (3) A plaintiff or class member may file a motion for entry of a supplemental judgment against an electric company for any amounts in federal income tax liability for which the electric company is liable under subsection (2) of this section.”

First off, a fire survivor or wildfire survivor (or any person) only owes taxes on what that person is paid. For example, a person could get a judgment against a grossly negligent corporation, and the corporation then refuses to pay and moves its money offshore. Or it pays dividends or moves money to a parent corporation. If the person never collects the judgment, then that person does not owe taxes. (Note - This is why SB 926 including provisions for a bond, among others)

Second, at **the time a judgment is entered, a person does not not owe taxes**. Stated simply, a person owes taxes and must pay them the following April for income the person was actually paid. No taxes are “imposed on the underlying final judgment.” The language in the -7 amendment is confusing, and invites argument and protracted litigation by utilities who caused fires.

As a result of the way that the -7 is written, I would also not be surprised if a catastrophic fire starting, negligent utility may argue that it is not not liable for any income tax liability on the final judgment for the very same reason. Part (3) of the -7 amendment is unnecessarily confusing and given the way it is written, if it provides any tax relief, the wildfire victim might have to pay the taxes first and then have to retain (and pay) an attorney to attempt to get a court to require the utility to reimburse the victim. This language opens the door for the utility to seek otherwise irrelevant discovery about fire victims' financial lives.

Importantly, unlike the language in SB 926, the language in the -7 amendment does not clearly accomplish the stated objective. For example, as a corporate lawyer who worked on mergers, buyouts, executive compensation, I wrote clauses that provided for one party to pay the other party's tax liability. This was called a “grossed up” amount, and it was often an essential part of the deal. Why? Because the payment by one party to another party for their tax liability is also taxable, and needs to be accounted for in the transaction. A “grossed-up” tax liability refers to the increased tax burden an individual or entity faces due to a tax gross-up,

where an employer provides additional compensation to cover an employee's tax obligations on certain payments. This means the recipient's gross income is increased to offset the taxes they would owe on that income, ensuring they receive a specific net amount after taxes are withheld.

The language that addresses the foregoing concerns is available to you in SB 926. Representative Kropf was involved in developing that language. SB 926 accomplishes the objective.

Comments on Wildfire Safety Certificate.

During this long session, the legislature engaged in months of back and forth with fire victims, timber, and insurance companies. The language in the original HB 3666 provided for immunity to utilities for fires they caused and it would likely make Oregon less safe in the future. While HB 3666 died, the safety certificate language was brought back in SB 926 - a bill that contained a comprehensive set of policies to encourage prompt settlement with fire victims.

In Judiciary and in amendments to SB 926, Representative Kropf made it clear that the possession of a safety certificate was not to be used as a surrogate for the actual conduct of the utilities. Representative Kropf moved those amendments through and SB 926 passed unanimously. The original SB 926 passed the Senate 22 to 6 with overwhelming, bipartisan support. The engrossed version of SB 926 is available and ready to move to the floor for vote, or amended further before being sent to the floor.

Importantly, the portion of HB 3666 that Representative Kropf added to SB 926 *did not include the problematic safety certificate language that has now been added to the -7 Amendment to HB 3984.* That language says the PUC may decide the standard of care and to "implement and enforce" it. This language would give catastrophic fire-lighting utilities an argument and angle with the PUC that could be used to prevent present and future fire victims from going to court and having a jury decide the facts. This language is unfair, likely unconstitutional and needs to be stricken.

Wildfire Study Bill Language.

During this session, HB 3917 was proposed to establish a fund whereby the State of Oregon would compensate wildfire victims. **I testified on this legislation, and pointed out all the issues with it, and how the California approach and experience is both fundamentally different** (e.g. CA has strict liability, immediate reporting, CA is not the middleman and utilities pay the victims). The language in HB 3984 -7 revives this concept, but not as a study bill.

The study bill language is likely to produce a report that is favorable to the utilities and not in the public interest for ratepayers, fire victims or the safety of Oregon. The study calls for consideration of the utilities' borrowing costs. If a utility is safe, it should cost less to borrow money. If the utility is unsafe, it *should* cost it more to borrow money. Why should the

PUC allow the costs of an unsafe, serial fire starter to be passed to ratepayers? That is bad policy and lessens the financial consequences for unsafe business practices.

The study bill does not say anything about protecting Oregonians from utility-caused fires that kill Oregonians or burn down our homes and communities. The study bill provisions also say nothing about noneconomic damages. The heartbreaking testimony on SB 926 made it more than plain that fire victims face serious emotional challenges, ranging from PTSD to depression. I know from working with these communities that there have been several suicides as a result of the fires. I personally know people suffering deeply from the fires.

In the trial, and in the media, PacifiCorp has argued that a fire victim should only be able to recover economic damages, and has subjected victims to instructive depositions to claim they were already “messed up” before the fires. To understand the impact of utility caused fires on Oregonians and Oregon communities, **we need to understand both the material and psychological effects** of catastrophic wildfires that destroy our communities.

In **Exhibit A** to this testimony, I have included excerpts of the safety certificate language that is most problematic in HB 3984 -7 – the language that lets the PUC decide and enforce (or, more likely, not enforce) the standard of care.

Conclusion.

So what is **the solution here that is both elegant and simple** to accomplish in the time you have left? I submit that the solution is to get your colleagues to move SB 926 to the floor for a vote. I watched the Senate testimony on SB 926. I watched the work session in judiciary on SB 926. I think this is what your colleagues expected to happen. So why not make it happen.

SB 926 contains not just the tax provisions discussed here, but it also contains other provisions that will help the parties to this now nearly five year old dispute move towards a prompt resolution, and provisions to ensure a more fire ready and safe Oregon.

Sincerely,
Ralph Bloemers
Director of Fire Safe Communities
Green Oregon Alliance

Exhibit A

Here's 3984 -7:

14 "WILDFIRE SAFETY CERTIFICATION
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16 "SECTION 5. Sections 6 and 7 of this 2025 Act are added to and
17 made a part of ORS chapter 757.
18 "SECTION 6. (1) The Legislative Assembly finds that:
19 "(a) Human-caused wildfires are a risk to people, property and the
20 natural environment in Oregon;
21 "(b) Electric companies play an important role in reducing and
22 mitigating the risks of human-caused wildfires;
23 "(c) Electric companies are required to have and operate in com-
24 pliance with a risk-based wildfire protection plan under ORS 757.963;
25 "(d) Consistent with ORS 756.040, the Public Utility Commission has
26 the jurisdiction and powers to supervise and regulate public utilities
27 with regard to wildfire safety; and
28 "(e) State agencies, through regulations and orders, are allowed to
29 establish standards of care that apply to entities that the state agen-
30 cies regulate.

1 "(2) It is the intent of the Legislative Assembly:
2 "(a) To establish wildfire safety standards that apply to electric
3 companies; and
4 "(b) To vest the Public Utility Commission with the authority to
5 implement and enforce the wildfire safety standards in a manner that
6 is consistent with state law.

The above is the same as the original HB 3666 at Section 2.

6 **SECTION 2.** (1) The Legislative Assembly finds that:

7 (a) Human-caused wildfires are a risk to people, property and the natural environment

8 in Oregon;

9 (b) Electric utilities play an important role in reducing and mitigating the risks of

10 human-caused wildfires;

11 (c) Electric utilities are required to have and operate in compliance with a risk-based

12 wildfire protection plan under ORS 757.963 or risk-based wildfire mitigation plan under ORS

13 757.966;

14 (d) Consistent with ORS 756.040, the Public Utility Commission has the jurisdiction and

15 powers to supervise and regulate public utilities with regard to wildfire safety; and

16 (e) State agencies, through regulations and orders, are allowed to establish standards of

17 care that apply to entities that the state agencies regulate.

18 (2) It is the intent of the Legislative Assembly:

19 (a) To establish wildfire safety standards that apply to public utilities; and

20 (b) To vest the Public Utility Commission with the authority to implement and enforce

21 the wildfire safety standards in a manner that is consistent with state law.

The above language is not in SB 926 that passed House Judiciary. This is the complete safety certificate from SB 926:

32 **WILDFIRE SAFETY CERTIFICATION**

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SECTION 8. Sections 9 and 10 of this 2025 Act are added to and made a part of ORS chapter 757.

SECTION 9. (1) As used in this section, “electric company” has the meaning given that term in ORS 757.600.

(2) An electric company shall file annually an application with the Public Utility Commission for a wildfire safety certification.

(3) The commission shall issue a wildfire safety certification to an applicant if the applicant:

(a) Has a wildfire protection plan approved under ORS 757.963.

(b) Establishes that the applicant is implementing and taking actions identified in the wildfire protection plan. The application must describe and verify the development and adoption of the wildfire protection plan's components and measures by documenting, for the

1 prior 12-month period, the applicant's wildfire mitigation expenditures and physical evidence
2 of the work undertaken in the development and adoption of the wildfire protection plan's
3 components and measures.

4 (c) Identifies any actions identified in the wildfire protection plan that have not been
5 implemented, provides adequate justification for not taking such actions and establishes
6 dates by which such actions will be taken.

7 (d) Demonstrates a commitment to wildfire safety. An applicant may demonstrate a
8 commitment to wildfire safety through various means, such as:

9 (A) Participating in workshops convened by the commission under ORS 757.960.

10 (B) Performing an internal wildfire safety culture assessment and adopting a process to
11 implement the findings of the assessment.

12 (C) Providing wildfire safety training to employees.

13 (D) Conducting annual safety performance reviews establishing processes to facilitate the
14 reporting of risks and management accountability.

15 (E) Implementing other wildfire mitigation measures.

16 (e) Has taken timely and reasonable actions on matters within the applicant's control,
17 that are consistent with safety rules adopted by the commission under ORS 757.035, to ad-
18 dress any outstanding deficiencies reported by the commission during the commission's most
19 recent audit and safety inspection of the applicant's infrastructure.

20 (f) Meets any other requirements adopted by the commission.

21 (4) The commission may adopt requirements under subsection (3)(f) of this section that
22 help verify that an applicant is applying risk-based wildfire mitigation standards and proce-
23 dures to protect the public safety, reduce risks to utility customers and promote electric
24 system resilience to wildfire damage. To verify that the applicant meets requirements
25 adopted under subsection (3)(f) of this section, an applicant may provide reviews, assess-
26 ments or evaluations conducted by third parties that demonstrate the applicant's efforts
27 regarding risk reduction and development of a resilient electric system.

28 (5) The commission shall approve or deny an application for a wildfire safety certification
29 within 90 days after receipt of the application. If the commission finds that an application
30 does not include documentation sufficient to approve the application, the commission may
31 allow the applicant to provide additional documentation or require the applicant to refile.

32 (6) The issuance of a wildfire safety certification:

33 (a) Establishes that the applicant has established and implemented wildfire policies and
34 practices consistent with the commission's wildfire safety standards for electric companies
35 on the date the certification is issued.

36 (b) Does not relieve an applicant from its obligation to take reasonable care to proac-
37 tively prevent wildfires and mitigate wildfire risk.

38 (c) Does not establish immunity against claims for damages resulting from a wildfire.

39 (7) The denial of an application for a wildfire safety certification does not establish li-
40 ability for claims for damages resulting from a wildfire.

41 (8) Failure of the commission to act in a timely manner on an application for a wildfire
42 safety certification is not admissible evidence in a civil proceeding relating to allegations that
43 an electric company caused or contributed to a wildfire.

44 (9) The commission, in consultation with the State Forestry Department, the Department
45 of the State Fire Marshal and academic institutions with expertise in evidence-based wildfire

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1 mitigation strategies, shall adopt rules for the implementation of this section. The rules
2 must include:

3 (a) Reporting and auditing requirements for determining an applicant's implementation
4 of the applicant's wildfire protection plan approved under ORS 757.963.

5 (b) The timing, procedures, reporting requirements and standards for the review of an
6 application for a wildfire safety certification.

7 SECTION 10. An electric company shall first file an application under section 9 of this
8 2025 Act no later than December 31, 2027.

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