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**SENATE BILL 5039**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Rolfes

Prefiled 12/12/22.

1 AN ACT Relating to mitigating the risk of wildfires through  
2 electric utility planning and identification of best management  
3 practices appropriate to each electric utility's circumstances;  
4 amending RCW 76.04.780; adding a new section to chapter 43.21F RCW;  
5 adding a new section to chapter 80.28 RCW; adding a new section to  
6 chapter 19.29A RCW; and creating a new section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** (1) It is in the best interest of the  
9 state, our citizens, and our natural resources to identify the  
10 sources of wildland fires; identify and implement best practices to  
11 reduce the prevalence and intensity of those wildland fires; put  
12 those practices in place; and by putting those practices in place,  
13 reduce the risk of wildland fires and damage and losses resulting  
14 from those fires.

15 (2) The legislature finds that electric utilities are partners  
16 with relevant state agencies, emergency responders, and public and  
17 private entities in identifying best practices to reduce the risk of  
18 and prevent wildland fires. Many electric utilities have developed  
19 and are implementing wildfire mitigation plans. The legislature  
20 further finds that electric utilities should adopt and implement  
21 wildfire mitigation plans, and that electric utilities should be

1 informed by recognized best practices, as applicable to their  
2 geography, terrain, vegetation, and other characteristics specific in  
3 their service area, for reducing wildland fire risk and reducing  
4 damage from wildland fires as may be ignited by electric utility  
5 equipment.

6 (3) Therefore, the legislature intends to authorize the  
7 identification of best practices guidelines and to require that  
8 electric utilities provide their wildfire mitigation plans to the  
9 state in order to promote public transparency.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21F  
11 RCW to read as follows:

12 (1) The office shall contract with an independent consultant with  
13 experience in developing electric utility wildfire mitigation plans  
14 to recommend a plan format and identify and recommend a list of  
15 actions to be included in electric utility wildfire mitigation plans,  
16 including best practices guidance that may apply to each action as  
17 appropriate. In identifying the plan format and list of actions, the  
18 office shall seek input from the utilities and transportation  
19 commission, the department of natural resources, the utility wildland  
20 fire prevention advisory committee, electric utilities, the state  
21 fire marshal, the governor's office of Indian affairs, and the  
22 public. By April 1, 2024, the office shall make public a recommended  
23 format and list of actions for electric utility wildfire mitigation  
24 plans. The office may update these guidelines annually if needed, but  
25 not more than once in each year.

26 (2) The recommended actions must acknowledge that utilities serve  
27 areas that vary in topography, vegetation, population, and other  
28 characteristics, and that best practices guidelines within each  
29 action must recognize that a utility's wildfire mitigation measures  
30 will be designed to fit site-specific circumstances. The recommended  
31 actions must include, but are not limited to:

32 (a) Vegetation management along transmission and distribution  
33 lines and near associated equipment;

34 (b) Infrastructure inspection and maintenance repair activities,  
35 schedules, and recordkeeping;

36 (c) Modifications or upgrades to facilities and construction of  
37 new facilities to incorporate cost-effective measures to minimize  
38 fire risk;

1 (d) Preventative programs, including adoption of new technologies  
2 to harden utility infrastructure;

3 (e) Operational procedures;

4 (f) Identification of appropriate widths for vegetation  
5 management and rights-of-way, including the consideration of fire-  
6 resistant vegetation alternatives;

7 (g) Protocols for disabling reclosers and deenergizing portions  
8 of the electric system along with associated communication plans for  
9 impacted parties and the public, including highly impacted  
10 communities as defined in RCW 19.405.020, vulnerable populations as  
11 defined in RCW 19.405.020, and persons reliant on electricity to  
12 maintain necessary life functions;

13 (i) Each electric utility's protocols must include a description  
14 of how the utility will mitigate the public safety impacts of  
15 disabling reclosers and deenergizing portions of the electric system  
16 that consider the impacts on all of the following: Critical first  
17 responders, local and tribal governments, health and communication  
18 infrastructure, highly impacted communities as defined in RCW  
19 19.405.020, vulnerable populations as defined in RCW 19.405.020, and  
20 persons reliant on electricity to maintain necessary life functions;

21 (ii) Decisions about whether or not to disable reclosers and  
22 deenergize electric lines are reserved to the electric utility; and

23 (h) Public and interested parties' engagement and communication  
24 plans addressing wildfire safety and risk mitigation.

25 (3) The recommended format and list of actions identified by the  
26 office must be forwarded to the utilities and transportation  
27 commission, the department of natural resources, and all electric  
28 utilities in Washington state for a review period of no less than  
29 three months prior to finalizing the format and list of actions that  
30 utilities will use to adopt or update their electric utility wildfire  
31 mitigation plan.

32 (4) The office will provide technical assistance to consumer-  
33 owned utilities and investor-owned utilities to support inclusion of  
34 these guidelines in the revision of their plans.

35 (5) The office must create a public website to host electric  
36 utility wildfire mitigation plans as described under sections 3 and 4  
37 of this act.

38 (6) By December 31, 2024, the office must submit to the  
39 appropriate committees of the senate and house of representatives a

1 compilation and summary of existing wildfire mitigation plans  
2 maintained by electric utilities.

3 (7) The definitions in this subsection apply throughout this  
4 section unless the context clearly requires otherwise.

5 (a) "Consumer-owned utility" means a municipal electric utility  
6 formed under Title 35 RCW, a public utility district formed under  
7 Title 54 RCW, an irrigation district formed under chapter 87.03 RCW,  
8 a cooperative formed under chapter 23.86 RCW, or a mutual corporation  
9 or association formed under chapter 24.06 RCW, that is engaged in the  
10 business of distributing electricity to more than one retail electric  
11 customer in the state.

12 (b) "Electric utility" or "electrical company" means a consumer-  
13 owned utility or an investor-owned utility as defined in this  
14 section.

15 (c) "Investor-owned utility" means a corporation owned by  
16 investors that meets the definition of "corporation" as defined in  
17 RCW 80.04.010 and is engaged in distributing electricity to more than  
18 one retail electric customer in the state.

19 (d) "Office" means the energy resilience and emergency management  
20 office of the department.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.28  
22 RCW to read as follows:

23 (1) By October 31, 2024, and every three years thereafter, each  
24 electrical company must review and revise, if appropriate, its  
25 wildfire mitigation plan. The plan should include a review of  
26 specific circumstances of that electrical company and incorporate as  
27 appropriate the identified actions pursuant to section 2 of this act.  
28 The electrical company must submit its plan to the commission and  
29 make the plan publicly available.

30 (a) Within six months of submission by the electrical company,  
31 the commission shall review the plan and confirm whether or not the  
32 plan contains the recommended actions. In reviewing the plan, the  
33 commission must consult with the energy resilience and emergency  
34 management office of the department of commerce. The commission's  
35 review of an electrical company's wildfire mitigation plan does not  
36 relieve an electrical company from proactively managing wildfire  
37 risk, including by monitoring emerging practices and technologies,  
38 and mitigating and responding to wildfires. The commission is not  
39 liable for an electrical company's performance implementing its

1 wildfire mitigation plan. The commission's review of an electrical  
2 company's wildfire mitigation plan and any recommendations associated  
3 with the review do not constitute a reasonableness review or approval  
4 of recovery of any measure, investment, cost, or other component of  
5 the plan.

6 (b) After the commission's review, the electrical company must  
7 provide a copy of the plan to the energy resilience and emergency  
8 management office of the department of commerce along with a list and  
9 description of wildland fires within its customer service area over  
10 the previous two years as reported by the department of natural  
11 resources. The plan must be posted as specified in section 2 of this  
12 act. Electrical companies are encouraged to submit any 2023 wildfire  
13 mitigation plans to the office prior to the revision date required in  
14 this subsection.

15 (2) Nothing in this act may be construed to relieve an electrical  
16 company from proactively managing wildfire risk, including by  
17 monitoring emergency practices and technologies, or mitigating and  
18 responding to wildland fires.

19 (3) For the purposes of this section, "electrical company" means  
20 a company owned by investors that meets the definition of  
21 "corporation" in RCW 80.04.010 and is engaged in distributing  
22 electricity to more than one retail electric customer in the state.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.29A  
24 RCW to read as follows:

25 (1) By October 31, 2024, and every three years thereafter, each  
26 consumer-owned utility must review and revise, if appropriate, its  
27 wildfire mitigation plan. The plan should include a review of  
28 specific circumstances of that utility and incorporate as appropriate  
29 the identified actions pursuant to section 2 of this act.

30 (a) The governing board of each consumer-owned utility shall  
31 review the plan and confirm whether the plan contains the recommended  
32 actions. Local fire districts must be provided the opportunity to  
33 review and provide feedback during this period. After the governing  
34 board's review, the utility must provide a copy to the energy  
35 resilience and emergency management office of the department of  
36 commerce, along with a list and description of wildland fires within  
37 its customer service area over the previous two years as reported by  
38 the department of natural resources. The energy resilience and  
39 emergency management office of the department of commerce must review

1 the plans and provide feedback within six months for consideration  
2 for inclusion in the next plan revision. The plan must be posted as  
3 specified in section 2 of this act.

4 (b) The energy resilience and emergency management office of the  
5 department of commerce must review the submitted plans and provide  
6 feedback within six months for consideration for inclusion in the  
7 plan revision. The energy resilience and emergency management office  
8 of the department of commerce is not liable for a consumer-owned  
9 utility's implementation of its wildfire mitigation plan. The energy  
10 resilience and emergency management office of the department of  
11 commerce's review of the consumer-owned utility's plan and any  
12 recommendations associated with the review do not constitute a  
13 reasonableness review or approval of recovery of any measure,  
14 investment, cost, or other component of the plan.

15 (c) Consumer-owned utilities are encouraged to submit any 2023  
16 wildfire mitigation plans to the energy resilience and emergency  
17 management office of the department of commerce prior to the revision  
18 date required in this subsection.

19 (2) Two or more abutting electric utilities may codevelop a  
20 wildfire mitigation plan. Wildfire mitigation plans that are  
21 codeveloped by more than one utility may identify areas of common  
22 implementation, including communication protocols, that will assist  
23 in implementing the identified recommended actions pursuant to  
24 section 2 of this act.

25 (3) Nothing in this section prohibits a utility from reviewing or  
26 updating its wildfire mitigation plan more often than once a year or  
27 requires that the utility submit their plan beyond the requirements  
28 of subsection (1) of this section.

29 (4) Nothing in this act may be construed to relieve an electric  
30 utility from proactively managing wildfire risk, including by  
31 monitoring emerging practices and technologies, and mitigating and  
32 responding to wildfires.

33 **Sec. 5.** RCW 76.04.780 and 2021 c 183 s 1 are each amended to  
34 read as follows:

35 (1) The commissioner shall convene a utility wildland fire  
36 prevention advisory committee with electrical power distribution  
37 utilities by August 1, 2021. The duties of the advisory committee are  
38 to advise the department on issues including, but not limited to:

1 (a) Matters related to the ongoing implementation of the relevant  
2 recommendations of the electric utility wildland fire prevention task  
3 force established in chapter 77, Laws of 2019, and by August 1, 2021:

4 (i) Finalizing a model agreement for managing danger trees and  
5 other vegetation adjacent to utility rights-of-way on state uplands  
6 managed by the department;

7 (ii) Implementing recommendations of the task force related to  
8 communications and information exchanges between the department and  
9 utilities;

10 (iii) Implementing recommendations of the task force related to  
11 protocols and thresholds when implementing provisions of RCW  
12 76.04.015; and

13 (iv) Implementing recommendations of the task force related to  
14 creating rosters of certified wildland fire investigator firms or  
15 persons and qualified utility operations personnel who may be called  
16 upon as appropriate;

17 (b) Providing a forum for electric utilities, the department, and  
18 other fire suppression organizations of the state to identify and  
19 develop solutions to issues of (~~wildfire~~) wildland fire prevention  
20 and risk mitigation specifically related to electric utilities  
21 transmission and distribution networks, identification of best  
22 management practices, electric utility infrastructure protection, and  
23 wildland fire suppression and response;

24 (c) Establishing joint public communications protocols among  
25 members of the advisory committee, and other entities, to inform  
26 residents of the state of potential critical fire weather events and  
27 the potential for power outages or disruptions;

28 (d) Providing comment to the wildland fire advisory committee  
29 established in RCW 76.04.179 through an annual presentation  
30 addressing policies and priorities of the utility wildland fire  
31 prevention advisory committee; and

32 (e) All other related issues deemed necessary by the  
33 commissioner.

34 (2) By August 1, 2021, the department must post on its website  
35 and update quarterly as necessary:

36 (a) Communication protocols and educational exchanges between the  
37 department and electric utilities;

38 (b) A voluntary model danger tree management agreement to  
39 utilities for their consideration for execution with the department;

1 (c) Protocols and thresholds that may be utilized when the  
2 department's investigation involves electric utility infrastructure  
3 or potential electric utility liability; and

4 (d) A roster of third-party certified wildland fire investigators  
5 and qualified utility personnel that may assist the department or  
6 utility in understanding and reducing risks and liabilities from  
7 wildland fire.

8 (3) Beginning July 1, 2022, and at the beginning of each  
9 subsequent biennium thereafter, the department must submit, in  
10 compliance with RCW 43.01.036, a report describing the prior biennium  
11 proceedings of the advisory committee, including identification of  
12 recommended legislation, if any, necessary to prevent wildfires  
13 related to electric utilities. In addition, by December 31, 2023, the  
14 department must submit to the appropriate committees of the senate  
15 and house of representatives:

16 (a) An analysis of the costs and benefits of preparing and  
17 maintaining a comprehensive statewide wildland fire risk map that  
18 identifies relative risk classes, with detail at a level to assist  
19 property owners, local governments, utilities, wildland management  
20 agencies, and fire response agencies in taking actions to minimize  
21 wildland fire starts and resulting damage. The analysis must also  
22 address incorporating the boundaries of the wildland urban interface  
23 as mapped pursuant to RCW 19.27.031 and the boundaries of electric  
24 utilities' service territories; and

25 (b) Recommendations for strengthening state agency coordination  
26 of wildland fire risk reduction, prevention, and suppression. In this  
27 work the utility wildland fire prevention advisory committee shall  
28 seek the views of the wildland fire advisory committee created under  
29 RCW 76.04.179, as well as the views of the energy resilience and  
30 emergency management office of the department of commerce.

31 (4) The commissioner or the commissioner's designee must chair  
32 the advisory committee created in subsection (1) of this section and  
33 must appoint advisory committee members. The advisory committee must  
34 include a representative of the energy resilience and emergency  
35 management office of the department of commerce and a representative  
36 of the utilities and transportation commission. Advisory committee  
37 membership should also include:

- 38 (a) Entities providing retail electric service, including:  
39 (i) One person representing each investor-owned utility;  
40 (ii) Two persons representing municipal utilities;



1 (iii) Two persons representing public utility districts;  
2 (iv) Two persons representing rural electric cooperatives;  
3 (v) One person representing small forestland owners;  
4 (vi) One person representing industrial forestland owners;  
5 (b) Other persons with expertise in wildland fire risk reduction  
6 and prevention; and  
7 (c) No more than two other persons designated by the  
8 commissioner.

9 (5) In addition to the advisory committee membership established  
10 in subsection (4) of this section, the commissioner shall designate  
11 two additional advisory committee members representing historically  
12 marginalized or underrepresented communities.

13 (6) The commissioner or the commissioner's designee shall convene  
14 the initial meeting of the advisory committee. The advisory committee  
15 chair must schedule and hold meetings on a regular basis in order to  
16 expeditiously accomplish the duties and make recommendations  
17 regarding the elements described in subsection (3) of this section.

18 (7) The members of the advisory committee, or individuals acting  
19 on their behalf, are immune from civil liability for official acts  
20 performed in the course of their duties specifically related to the  
21 advisory committee.

22 (8) Participation on the advisory committee created in subsection  
23 (1) of this section is strictly voluntary and without compensation.

24 (9) Any requirements in this section are subject to the  
25 availability of amounts appropriated for the specific purposes  
26 described.

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