
SUBSTITUTE SENATE BILL 5039

State of Washington

68th Legislature

2023 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Rolfes, Conway, Gildon, Hasegawa, Keiser, Kuderer, Nguyen, Nobles, and Wellman)

READ FIRST TIME 02/08/23.

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 76.04 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 76.04
11 RCW to read as follows:

12 (1) The department, in consultation with the energy resilience
13 and emergency management office of the department of commerce, shall
14 contract with an independent consultant with experience in developing
15 electric utility wildfire mitigation plans to develop an electric
16 utility wildfire mitigation plan format and a list of elements to be
17 included in electric utility wildfire mitigation plans. When
18 developing the plan format and list of elements, the department shall
19 seek input from the utilities and transportation commission, the
20 utility wildland fire prevention advisory committee, electric
21 utilities, the state fire marshal, the governor's office of Indian
22 affairs, and the public. By April 1, 2024, the department shall make
23 public a recommended format and list of elements for electric utility
24 wildfire mitigation plans. The department may update these guidelines
25 annually if needed, but not more than once in each year.

26 (2) The recommended elements must acknowledge that utilities
27 serve areas that vary in topography, vegetation, population, and
28 other characteristics, and that best practices guidelines within each
29 element must recognize that a utility's wildfire mitigation measures
30 will be designed to fit site-specific circumstances. The recommended
31 elements 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; and

7 (g) Public and interested parties' engagement and communication
8 plans addressing wildfire safety and risk mitigation.

9 (3) The recommended format and list of elements identified by the
10 department must be forwarded to the utilities and transportation
11 commission, the energy resilience and emergency management office of
12 the department of commerce, and all electric utilities in Washington
13 state for a review period of no less than three months prior to
14 finalizing the format and list of elements that utilities will use to
15 adopt or update their electric utility wildfire mitigation plan.

16 (4) The department will provide technical assistance to all
17 electric utilities to support inclusion of these guidelines in the
18 revision of their plans.

19 (5) By December 31, 2024, the department must submit to the
20 appropriate committees of the senate and house of representatives a
21 compilation and summary of existing wildfire mitigation plans
22 maintained by electric utilities.

23 (6) The definitions in this subsection apply throughout this
24 section unless the context clearly requires otherwise.

25 (a) "Consumer-owned utility" means a municipal electric utility
26 formed under Title 35 RCW, a public utility district formed under
27 Title 54 RCW, an irrigation district formed under chapter 87.03 RCW,
28 a cooperative formed under chapter 23.86 RCW, or a mutual corporation
29 or association formed under chapter 24.06 RCW, that is engaged in the
30 business of distributing electricity to more than one retail electric
31 customer in the state.

32 (b) "Electric utility" means a consumer-owned utility or an
33 investor-owned utility as defined in this section.

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

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

1 (1) By October 31, 2024, and every three years thereafter, each
2 investor-owned utility must review, if appropriate revise, and adopt
3 its wildfire mitigation plan. When reviewing or revising a wildfire
4 mitigation plan, an investor-owned utility must use the recommended
5 format and elements pursuant to section 2 of this act.

6 (a) Local fire protection districts must be provided the
7 opportunity to provide input for each wildfire mitigation plan. Each
8 investor-owned utility must provide their wildfire mitigation plan to
9 the department of natural resources to review, along with a list and
10 description of wildland fires involving utility equipment within its
11 customer service area over the previous two years as reported by the
12 department of natural resources. The wildfire mitigation plan must be
13 submitted to the utility wildland fire prevention advisory committee
14 created in RCW 76.04.780 to be posted on their website as specified
15 in RCW 76.04.780. Information about sensitive or critical
16 infrastructure may be redacted by the utility prior to submission of
17 the plan for review or posting.

18 (b) The department of natural resources is not liable for an
19 investor-owned utility's implementation of its wildfire mitigation
20 plan. The department's review of the investor-owned utility's
21 wildfire mitigation plan and any recommendations associated with the
22 review do not constitute a reasonableness review or approval of
23 recovery of any measure, investment, cost, or other component of the
24 plan.

25 (c) Investor-owned utilities are encouraged to submit any 2023
26 wildfire mitigation plans to the utility wildland fire prevention
27 advisory committee created in RCW 76.04.780 prior to the revision
28 date required in this subsection. Information about sensitive or
29 critical infrastructure may be redacted by the utility prior to
30 submission of the plan.

31 (2) Nothing in this section prohibits an investor-owned utility
32 from reviewing or updating its wildfire mitigation plan more often
33 than required in subsection (1) of this section.

34 (3) For the purposes of this section, the term "investor-owned
35 utility" means a corporation owned by investors that meets the
36 definition of "corporation" as defined in RCW 80.04.010 and is
37 engaged in distributing electricity to more than one retail electric
38 customer in the state.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.29A

2 RCW to read as follows:

3 (1) By October 31, 2024, and every three years thereafter, each
4 consumer-owned utility must review, if appropriate revise, and adopt
5 its wildfire mitigation plan. When reviewing or revising a wildfire
6 mitigation plan, a consumer-owned utility must use the recommended
7 format and elements pursuant to section 2 of this act.

8 (a) The governing board of each consumer-owned utility shall
9 review the plan. Local fire protection districts must be provided the
10 opportunity to provide input. After the governing board's review, the
11 utility must provide a copy to the department of natural resources,
12 along with a list and description of wildland fires involving utility
13 equipment within its customer service area over the previous two
14 years as reported by the department of natural resources. The plan
15 must be submitted to the utility wildland fire prevention advisory
16 committee created in RCW 76.04.780 to be posted on their website as
17 specified in RCW 76.04.780. Information about sensitive or critical
18 infrastructure may be redacted by the utility prior to submission of
19 the plan for review or posting.

20 (b) The department of natural resources is not liable for a
21 consumer-owned utility's implementation of its wildfire mitigation
22 plan. The department's review of the consumer-owned utility's
23 wildfire mitigation plan and any recommendations associated with the
24 review do not constitute a reasonableness review or approval of
25 recovery of any measure, investment, cost, or other component of the
26 plan.

27 (c) Consumer-owned utilities are encouraged to submit any 2023
28 wildfire mitigation plans to the utility wildland fire prevention
29 advisory committee created in RCW 76.04.780 prior to the revision
30 date required in this subsection. Information about sensitive or
31 critical infrastructure may be redacted by the utility prior to
32 submission of the plan.

33 (2) Two or more abutting consumer-owned utilities may codevelop a
34 wildfire mitigation plan. Wildfire mitigation plans that are
35 codeveloped by more than one utility may identify areas of common
36 implementation, including communication protocols, that will assist
37 in implementing the identified recommended elements pursuant to
38 section 2 of this act.

1 (3) Nothing in this section prohibits a consumer-owned utility
2 from reviewing or updating its wildfire mitigation plan more often
3 than required in subsection (1) of this section.

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

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

10 (a) Matters related to the ongoing implementation of the relevant
11 recommendations of the electric utility wildland fire prevention task
12 force established in chapter 77, Laws of 2019, and by August 1, 2021,
13 with an update by May 30, 2024, and updated every three years
14 thereafter:

15 (i) (~~Finalizing~~) Implementing and updating as appropriate a
16 model agreement for managing danger trees and other vegetation
17 adjacent to utility rights-of-way on state uplands managed by the
18 department;

19 (ii) Implementing and updating recommendations of the task force
20 related to communications and information exchanges between the
21 department and utilities;

22 (iii) Implementing and updating recommendations of the task force
23 related to protocols and thresholds when implementing provisions of
24 RCW 76.04.015; and

25 (iv) Implementing and updating recommendations of the task force
26 related to creating rosters of certified wildland fire investigator
27 firms or persons and qualified utility operations personnel who may
28 be called upon as appropriate;

29 (b) Providing a forum for electric utilities, the department, and
30 other fire suppression organizations of the state to identify and
31 develop solutions to issues of (~~wildfire~~) wildland fire prevention
32 and risk mitigation specifically related to electric utilities
33 transmission and distribution networks, identification of best
34 management practices, electric utility infrastructure protection, and
35 wildland fire suppression and response;

36 (c) Establishing and updating joint public communications
37 protocols among members of the advisory committee, and other
38 entities, to inform residents of the state of potential critical fire
39 weather events and the potential for power outages or disruptions;

1 (d) Providing comment to the wildland fire advisory committee
2 established in RCW 76.04.179 through an annual presentation
3 addressing policies and priorities of the utility wildland fire
4 prevention advisory committee; and

5 (e) All other related issues deemed necessary by the
6 commissioner.

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

9 (a) Communication protocols and educational exchanges between the
10 department and electric utilities;

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

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

16 (d) A roster of third-party certified wildland fire investigators
17 and qualified utility personnel that may assist the department or
18 utility in understanding and reducing risks and liabilities from
19 wildland fire.

20 (3) Beginning July 1, 2022, and at the beginning of each
21 subsequent biennium thereafter, the department must submit, in
22 compliance with RCW 43.01.036, a report describing the prior biennium
23 proceedings of the advisory committee, including identification of
24 recommended legislation, if any, necessary to prevent wildfires
25 related to electric utilities.

26 (4) The utility wildland fire prevention advisory committee must
27 develop recommendations for strengthening state agency coordination
28 of wildland fire risk reduction, prevention, and suppression. In this
29 work, the utility wildland fire prevention advisory committee shall
30 seek the views of the wildland fire advisory committee created under
31 RCW 76.04.179, as well as the views of the energy resilience and
32 emergency management office of the department of commerce and the
33 utilities and transportation commission.

34 (5) The utility wildland fire prevention advisory committee must
35 host electric utility wildfire mitigation plans as described under
36 section 4 of this act on its website.

37 (6) The commissioner or the commissioner's designee must chair
38 the advisory committee created in subsection (1) of this section and
39 must appoint advisory committee members. The commissioner shall
40 invite a representative of the energy resilience and emergency

1 management office of the department of commerce and a representative
2 of the utilities and transportation commission. Advisory committee
3 membership should also include:

4 (a) Entities providing retail electric service, including:

5 (i) One person representing each investor-owned utility;

6 (ii) Two persons representing municipal utilities;

7 (iii) Two persons representing public utility districts;

8 (iv) Two persons representing rural electric cooperatives or
9 mutual corporations or associations;

10 (v) One person representing small forestland owners;

11 (vi) One person representing industrial forestland owners;

12 (b) Other persons with expertise in wildland fire risk reduction
13 and prevention; (~~and~~)

14 (c) (~~No more than two other~~) Other persons (~~designated by~~)
15 whom the commissioner(~~-~~

16 ~~(5) In addition to the advisory committee membership established~~
17 ~~in subsection (4) of this section, the commissioner shall designate~~
18 ~~two additional advisory committee members)) deems appropriate to~~

19 carry out the functions of the advisory committee; and
20 (d) Two persons representing historically marginalized or
21 underrepresented communities.

22 (~~(6)~~) (7) The commissioner or the commissioner's designee shall
23 convene the initial meeting of the advisory committee. The advisory
24 committee chair must schedule and hold meetings on a regular basis,
25 at a minimum of twice per year but not more than four times per year,
26 in order to expeditiously accomplish the duties and make
27 recommendations regarding the elements described in this section.

28 (~~(7)~~) (8) The members of the advisory committee, or individuals
29 acting on their behalf, are immune from civil liability for official
30 acts performed in the course of their duties specifically related to
31 the advisory committee.

32 (~~(8)~~) (9) Participation on the advisory committee created in
33 subsection (1) of this section is strictly voluntary and without
34 compensation. A lack of volunteers or applicants for any category may
35 not prevent the committee from meeting and conducting its business.

36 (~~(9)~~) (10) Any requirements in this section are subject to the
37 availability of amounts appropriated for the specific purposes
38 described.

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